

LEGAL CONSEQUENCES OF
THE SEPARATION OF CHAGOS FROM MAURITIUS IN 1965
(REQUEST FOR ADVISORY OPINION)

Answer of the Argentine Republic to the question put by Judge Cançado Trindade

Question by Judge Cançado Trindade:

As recalled in paragraph (a) of the UN General Assembly's Request for an advisory opinion of the International Court of Justice, General Assembly resolution 71/292 of 22 June 2017, the General Assembly refers to obligations enshrined into successive pertinent resolutions of its own, as from 1960, namely: General Assembly resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966, and 2357 (XXII) of 19 December 1967.

In the course of the present oral advisory proceedings, references were often made to such resolutions by several delegations of Participants.

*In your understanding, what are the legal consequences ensuing from the formation of customary international law with the significant presence of *opinio juris communis* for ensuring compliance with the obligations stated in those General Assembly resolutions?*

Answer by Argentina

1. The question relates to the obligations stated in General Assembly resolutions 1514 (XV), 2066 (XX), 2232 (XXI) and 2357 (XXII). These resolutions are the expression of the *opinio iuris communis* and also interpret obligations stemming from both conventional law (the Charter of the United Nations in particular) and customary law. Resolution 1514 (XV) is of general character and interprets and applies fundamental principles of International Law relating to colonialism. The three other General Assembly resolutions refer to the particular situation of Mauritius (2066 (XX), 2232 (XXI) and 2357 (XXII)).
2. The response by Argentina will start by identifying those obligations in each of the abovementioned resolutions (A). It will continue by outlining which are the legal consequences envisaged in customary law stemming from these obligations, including the conduct that the international legal order requires for ensuring compliance (B).

A. Obligations enshrined in resolutions 1514 (XV), 2066(XX), 2232 (XXI) and 2357 (XXII)

3. We start with *resolution 1514 (XV)*. Its paragraph 1 considers colonialism as contrary to the United Nations Charter. It follows, as a consequence, the obligation to put an end to colonialism. Paragraph 2 defines the right of peoples to self-determination. It follows as a consequence that those human communities that are recognized as "peoples" and are then holder of this right determine their political status and freely pursue their economic, social and cultural development. As a result, States have the obligation to respect this right.

Paragraph 4 reflects the obligation to cease all armed actions or repressive measures against dependent peoples, in order to enable them to exercise peacefully and freely their right to complete independence, and to respect the integrity of their national territory. Paragraph 5 sets out the obligation to take immediate steps to transfer all powers to the peoples of territories that have not yet attained independence, without any conditions or reservations. Paragraph 6, by reaffirming that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the United Nations Charter, states the obligation to respect the territorial integrity of any country, which includes both States and dependent peoples victims of colonialism. Paragraph 7 also reaffirms the obligation to observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration contained in resolution 1514 (XV). It is to be noticed that the Universal Declaration of Human Rights was adopted by another General Assembly resolution having declaratory effect, also with abstentions, which did not hinder the Court from referring to it without any further analysis¹.

4. *Resolution 2066 (XX)* reaffirmed the right of Mauritius to freedom and independence and “invited” the United Kingdom to take effective measures for the immediate and full implementation of resolution 1514 (XV), to take no action which would dismember the territory and Mauritius and violate its territorial integrity, and to report to the Decolonization Committee on the implementation of the present resolution. Clearly, these “invitations” are to respect existing substantial and procedural obligations, not a matter left to the discretion of the administering Power. The resolution also requested the Decolonization Committee to keep this question under review and to report to the General Assembly.
5. *Resolutions 2232 (XXI) and 2357 (XXII)* reaffirmed the right of peoples to self-determination and independence, reiterated that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial territories and the installation of military bases is incompatible with the Charter and with resolution 1514 (XV), and called upon the administering Powers to implement without delay the relevant General Assembly resolutions.

B. Legal Consequences for ensuring compliance with the abovementioned obligations

6. The legal consequences arising from the obligations reflected in these resolutions are: (a) those established by customary International Law in the field of responsibility of States, (b) those stemming from the obligation to settle international disputes through peaceful

¹ “Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights” *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980, p. 42, para. 91*

means, (c) those resulting from the practice of the United Nations in the field of decolonization and (d) those incumbent to the United Nations themselves.

7. (a) By virtue of the law of State responsibility, administering Powers in breach of the obligations referred to in the resolutions enunciated by Judge Cançado Trindade in his question must cease their illegal conduct, restore the territorial integrity of the peoples concerned, allow the peoples entitled to self-determination to exercise their right, and make appropriate reparation for their illegal conduct. Given the nature of these obligations, all States are under the obligation not to recognize the illegal situation resulting from those breaches and to refrain from rendering any aid or assistance that would help maintain the colonial situation;
8. (b) By virtue of the customary (as well as conventional) obligation to settle international disputes through peaceful means, the administering Power has the obligation to negotiate with the subject concerned (in this case with the Republic of Mauritius) the completion of its decolonization without conditions, whether of timing or otherwise. This obligation is reinforced by "the duty (...) [t]o bring a speedy end to colonialism", as established by the Declarations adopted by General Assembly resolutions 1514 (XV), 2625 (XXV) and as stressed by the Court in its 1975 Advisory Opinion.²
9. (c) By virtue of the powers of the United Nations in the field of decolonization, there are obligations of substantial and of procedural nature. States have the obligation not to take unilateral measures that may affect the process of decolonization, such as dismembering the territory, exploiting its natural resources, or using its territory for military purposes. States must also respect the competences of the United Nations in the field of decolonization, exercised through the General Assembly and its Decolonization Committee. In particular, State conduct must be in line with the resolutions taken by the said organs regarding the manner to put an end to the colonial situation, without conditions and without delay.
10. (d) Given the specific functions and powers of the United Nations, and especially of the General Assembly, this organ but also the Security Council, should consider what further action is required to bring to an end illegal situations resulting from the breaches of the different obligations included in the general obligation to put an end, unconditionally and without delay, to colonialism in all its forms and manifestations and in all pending cases.



MARIO OYARZÁBAL
CONSEJERO LEGAL

² *Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 31, para. 55.*