

**WRITTEN COMMENTS OF THE REPUBLIC OF MAURITIUS**  
**ON THE RESPONSES OF THE UNITED KINGDOM AND THE UNITED STATES TO**  
**JUDGE CANÇADO TRINDADE'S QUESTION**

The United Kingdom and the United States have replied to Judge Cançado Trindade's question by repeating their arguments that General Assembly resolutions 1514(XV), 2066(XX), 2232(XXI), and 2357(XXII) did not reflect customary international law at the time the Chagos Archipelago was detached from Mauritius, were not legally binding on the administering power and other States, and could not give rise to legal consequences.<sup>1</sup> Mauritius notes that neither the administering power nor the United States has made any effort to respond to the submissions made by various States and the African Union during the recent hearings, including in relation to positions taken by each State which contradicts their position in this matter. In response, Mauritius wishes to make the following brief comments, which are confined to matters raised in Judge Cançado Trindade's question:

1. As Mauritius and many States, as well as the African Union, demonstrated in their written and oral submissions,<sup>2</sup> Resolution 1514(XV) reflected a rule of customary international law already in 1960, conferring on the peoples of colonial territories the right to self-determination, including the associated right of territorial integrity. The process of

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<sup>1</sup> See, e.g., United Kingdom of Great Britain and Northern Ireland, Response to Question Put By Judge Cançado Trindade (10 Sept. 2018); United States of America, Response to Question Put By Judge Cançado Trindade (10 Sept. 2018).

<sup>2</sup> See, e.g., Written Statement of the Republic of Mauritius (1 Mar. 2018), paras. 6.20-6.61; Written Comments of the Republic of Mauritius (15 May 2018), paras. 3 7-3.67 (summarising the positions of numerous other States on this issue); Oral Submissions of the Republic of Mauritius, Verbatim Record (3 Sept. 2018), paras. 5-17 (Ms Macdonald); Oral Submissions of the Argentine Republic, Verbatim Record (4 Sept. 2018), paras. 11-28 (Mr Kohen); Oral Submissions of Belize, Verbatim Record (4 Sept. 2018), paras. 9-28 (Mr Juratowitch); Oral Submissions of Brazil, Verbatim Record (4 Sept. 2018), paras. 10-17 (Ms. Dunlop); Oral Submissions of Guatemala, Verbatim Record (5 Sept. 2018), paras. 23-29 (Ms Sánchez de Vielman); Oral Submissions of Nigeria, Verbatim Record (5 Sept. 2018), paras. 20, 25 (Mr Apata); Oral Submissions of the Republic of Vanuatu, Verbatim Record (6 Sept. 2018), paras. 10-11, 18, 21 (Mr McCorquodale); Oral Submissions of the Republic of Zambia, Verbatim Record (6 Sept. 2018), paras. 7-12 (Mr Akande); Oral Submissions of the Republic of India, Verbatim Record (5 Sept. 2018), para. 20 (Mr Rajamony); Oral Submissions of the Republic of Botswana, Verbatim Record (4 Sept. 2018), paras. 4-21 (Mr Nchunga Nchunga); Oral Submissions of the Republic of Cyprus, Verbatim Record (4 Sept. 2018), para. 3 (Mr Polyviou); Oral Submissions of the Republic of Kenya, Verbatim Record (5 Sept. 2018), paras. 22-32 (Ms Mcharo); Oral Submissions of the Marshall Islands, Verbatim Record (5 Sept. 2018), paras. 19, 36 (Mr Christopher); Oral Submissions of the Republic of Nicaragua, Verbatim Record (5 Sept. 2018), paras. 39-43 (Mr Argüello Gómez); Oral Submissions of the Republic of Serbia, Verbatim Record (6 Sept. 2018), para. 33 (Mr Gajic); Oral Submissions of the Republic of South Africa, Verbatim Record (3 Sept. 2018), paras. 21, 23, 26 (Ms de Wet); Oral Submissions of the African Union, Verbatim Record (6 Sept. 2018), paras. 7-13 (Mr Mbengue); Written Submission of the Republic of Djibouti (1 Mar. 2018), paras. 27-34; Written Statement of the Netherlands para. 3.7.

decolonisation, including the decolonisation of Mauritius, was governed by that rule, binding under international law.<sup>3</sup>

2. The only two States to argue that there was no obligation to respect the right of self-determination at the time the Chagos Archipelago was detached from Mauritius are the administering power and the United States. Yet, contemporaneously with the adoption of Resolution 1514(XV), and subsequently, they have taken the opposite position in making statements that recognise the existence of the right to self-determination, and voting for resolutions that reaffirmed the existence of this right.<sup>4</sup> In 2009 the United Kingdom declared

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<sup>3</sup> Resolution 1514(XV) reflected *opinio juris communis*, as demonstrated by the fact that 89 countries voted in favour, and none voted against. The nine states that abstained, including the United Kingdom and United States, did not contest the existence of the right to self-determination or its application to the peoples of non-self-governing territories. Among the abstaining States, only the United Kingdom, Portugal and the United States gave explanations of vote. The United Kingdom and Portugal did not contest the existence of the right to self-determination, and the United States accepted the existence of the right. See U.N. General Assembly, 15th Session, 947th Plenary Meeting, *Agenda Item 87: Declaration on the granting of independence to colonial countries and peoples*, U.N. Doc. A/PV.947 (14 Dec. 1960), p. 1283, para. 145 (“One thing is clear, however. This resolution applies equally to all areas of the world which are not free... It proclaims that all people have the *right* to self-determination”) (United States) (Dossier No. 74) (emphasis added). See also, e.g., U.N. General Assembly, 15th Session, 933rd Plenary Meeting, *Agenda Item 87: Declaration on the granting of independence to colonial countries and peoples*, U.N. Doc. A/PV.933 (2 Dec. 1960), p. 1093, para. 87 (“The Prime Minister of Australia said in this very Assembly hall on 5 October 1960: ‘we regard ourselves as having a *duty* to produce as soon as it is practicable an opportunity for complete self-determination for the people of Papua and New Guinea’”) (Australia) (Dossier No. 64) (emphasis added); U.N. General Assembly, 15th Session, 946th Plenary Meeting, *Agenda Item 87: Declaration on the granting of independence to colonial countries and peoples*, U.N. Doc. A/PV.946 (14 Dec. 1960), p. 1266, para. 13 (accepting the “*unimpeachable* principle” that “all peoples have an inalienable *right* to complete freedom, the exercise of their sovereignty and the integrity of their national territory”, but observing that its application could lead to controversy) (Sweden) (Dossier No. 73) (emphasis added); U.N. General Assembly, 15th Session, 947th Plenary Meeting, *Agenda Item 87: Declaration on the granting of independence to colonial countries and peoples*, U.N. Doc. A/PV.947 (14 Dec. 1960), p. 1276, para. 62 (accepting the right to self-determination, and questioning Indonesia’s application of the right to Netherlands New Guinea) (Netherlands) (Dossier No. 74). The *opinio juris* in regard of the character of the right of self-determination as a right under customary international law was also accompanied by widespread State practice reflected in the fact that some thirty non-self-governing and Trust Territories achieved independence prior to the adoption of Resolution 1514. See, e.g., Written Statement of the Netherlands, para. 3.7.

<sup>4</sup> For example, the United Kingdom, during the debate on Gibraltar before the Committee of 24, in 1964, noted “the ultimate irony . . . that Spain should attempt to take over the people of Gibraltar under the cover of General Assembly resolution 1514 (XV), which proclaimed the *right* of all peoples to self-determination”. U.N. General Assembly, 19th Session, *Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, U.N. Doc. A/5800/Rev.1 (1964-1965), para. 143 (Dossier No. 251) (emphasis added). The United Kingdom also noted in that same session of the Committee in that same period, that paragraph 2 of the Colonial Declaration “quite rightly stated that all peoples had the right of self-determination”. *Ibid.*, para. 149. Both the United States and the United Kingdom voted for Security Council resolution 183 of 11 December 1963, which “[r]eaffirms the interpretation of self-determination laid down in General Assembly resolution 1514 (XV) as follows: All peoples have the *right* to self-determination”. U.N. Security Council, *Question relating to Territories under Portuguese administration*, U.N. Doc. S/RES/183 (11 Dec. 1963). See also, e.g., United Nations, *Official Records of the General Assembly, Twenty-second Meeting, Fourth Committee, 1741<sup>st</sup> meeting*, U.N. Doc. A/C.4/SR.1741 (7 Dec. 1967), para. 31 (in which the United Kingdom reaffirmed as a “basic principle” the “wholeness and indivisibility of Territories which had been administered as a single unit”, as protected by the rule on territorial integrity in paragraph 6 of resolution

before this Court that “[t]he principle of self-determination was articulated as a *right of all colonial countries and peoples by General Assembly resolution 1514 (XV)*.”<sup>5</sup>

3. The legal obligations set out in Resolution 1514(XV), which are addressed to “all States”, including Members of the United Nations and administering Powers, were reaffirmed in resolutions 2066(XX), 2232(XXI) and 2357(XXII). These condemned the dismemberment of non-self-governing territories, including Mauritius, as contraventions of Resolution 1514(XV), making it clear that compliance with these resolutions is obligatory as a matter of international law.<sup>6</sup>

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1514 (XV)); U.N. Security Council, *Southern Rhodesia*, U.N. Doc. S RES 217 (20 Nov. 1965); U.N. Security Council, *Southern Rhodesia*, U.N. Doc. S RES 232 (12 Dec. 1966); U.N. General Assembly, 15th Session, 925th Plenary Meeting, *Agenda Item 87: Declaration on the granting of independence to colonial countries and peoples*, U.N. Doc. A/PV.925 (28 Nov. 1960), p. 983, para. 32 (Dossier No. 56); *ibid.*, p. 985, para. 50, U.N. General Assembly, 15th Session, 947th Plenary Meeting, *Agenda Item 87: Declaration on the granting of independence to colonial countries and peoples*, U.N. Doc. A/PV.947 (14 Dec. 1960), paras. 47, 53 (Dossier No. 74); U.N. General Assembly, 15th Session, 937th Plenary Meeting, *Agenda Item 87: Declaration on the granting of independence to colonial countries and peoples*, U.N. Doc. A/PV.937 (6 Dec. 1960), p. 1158, para. 27 (Dossier No. 68); *ibid.*, p. 1159, para. 27; U.N. General Assembly, 19th Session, *Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, U.N. Doc. A/5800/Rev.I (1964-1965), paras. 143, 146, 148-149 and 151 (Dossier No. 251); U.N. General Assembly, 24th Session, *Report of the Special Committee on Principles of International Law Concerning Friendly Relations and Co-operation Among States*, U.N. Doc. A/7619, Supplement No. 19 (1969), p. 51; U.N. General Assembly, 22nd Session, 1641st Plenary Meeting, *Agenda Item 23: Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, U.N. Doc. A/PV.1641 (19 Dec. 1967), para. 97 (Dossier No. 199); U.N. General Assembly, 22nd Session, *Agenda Item 23 Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, U.N. Doc. A/6700/Add.9 (28 Nov. 1967), para. 36; U.N. General Assembly, 17th Session, *Permanent sovereignty over natural resources*, A/RES 1803(XVII) (14 Dec. 1962), Preamble; Oral Submissions of the Republic of Zambia, Verbatim Record (6 Sept. 2018), paras. 10-11 (Mr Akande); Oral Submissions of the Republic of Mauritius, Verbatim Record (3 Sept. 2018), para. 13 (Ms Macdonald); Written Comments of the Republic of Mauritius (15 May 2018), paras. 3.31-3.55.

<sup>5</sup> See *Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion)*, Written Statement of the United Kingdom (17 Apr. 2009), para. 5.21 (emphasis added).

<sup>6</sup> See U.N. General Assembly, 20th Session, *Question of Mauritius*, U.N. Doc. A/RES 2066(XX) (16 Dec. 1965), preambular para. 5 & para. 4 (in which the General Assembly considered that “any step taken by the administering Power to detach certain islands from the Territory of Mauritius... would be *in contravention of the Declaration*, and in particular paragraph 6 thereof” and invited the United Kingdom “to take no action which would dismember the Territory of Mauritius and violate its territorial integrity”) (Dossier No. 146) (emphasis added). The obligation to maintain the territorial integrity of Mauritius was repeated in resolutions 2232 (XXI) and 2357 (XXII). See U.N. General Assembly, 21st Session, *Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands*, U.N. Doc. A/RES 2232(XXI) (20 Dec. 1966), preambular para. 4 and para. 4 (after expressing its deep concern about the continuation of policies aimed at the disruption of the territorial integrity of non-self-governing territories, the General Assembly “[r]eiterates its declaration that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories... is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV).”) (Dossier No. 171) (emphasis added); U.N. General Assembly, 22nd Session, *Question of American Samoa, Antigua*,

4. As a matter of general international law, the breach of an obligation gives rise to legal consequences. The breaches of the obligations set forth in Resolutions 1514(XV), 2066(XX), 2232(XXI), and 2357(XXII) give rise to legal consequences for the United Kingdom, as the administering Power, and for all other States and international organisations. This is as set out in the written and oral submissions of Mauritius,<sup>7</sup> and in Mauritius' answer to Judge Cançado Trindade's question, submitted to the Court on 10 September 2018.<sup>8</sup> Mauritius will not burden the Court by repeating those consequences here.

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*Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Swaziland, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands*, U.N. Doc. A/RES/2357(XXII) (19 Dec. 1967), preambular para. 6 & para. 4 (to the same effect) (Dossier No. 198). Other resolutions also called for strict compliance with and implementation of resolution 1514(XV). See, e.g., U.N. General Assembly, 20th Session, *Question of South West Africa*, U.N. Doc. A/RES/2074(XX) (17 Dec. 1965), para. 5 (in which the General Assembly considered, in respect of South West Africa, that "any attempt to partition the Territory or to take any unilateral action, directly or indirectly, preparatory thereto constitutes a violation of... resolution 1514 (XV)"). See also *ibid.*, para. 10; U.N. General Assembly, 15th Session, *Question of Algeria*, U.N. Doc. A/RES/1573(XV) (19 Dec. 1960), para. 2; U.N. General Assembly, 16th Session, *Question of Algeria*, U.N. Doc. A/RES/1724(XVI) (20 Dec. 1961), Preamble (in which the General Assembly recognized, in respect of Algeria, the need "to ensure the successful and just implementation of the right of self-determination on the basis of respect for the unity and territorial integrity of Algeria"); U.N. General Assembly, 16th Session, *The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples*, U.N. Doc. A/RES/1654(XVI) (27 Nov. 1961), preambular para. 6 (in which the General Assembly expressed its deep concern that, contrary to paragraph 6 of the Declaration on the granting of independence to colonial countries and peoples, "acts aimed at the partial or total disruption of national unity and territorial integrity" were being carried out in the process of decolonization), U.N. General Assembly 17th Session, *Question of Basutoland Bechuanaland and Swaziland*, U.N. Doc. A/RES/1817(XVII) (18 Dec. 1962), para. 6; U.N. General Assembly, 18th Session, *Question of Basutoland, Bechuanaland and Swaziland*, U.N. Doc. A/RES/1954(XVIII) (11 Dec. 1963), para. 4 (in which the General Assembly warned South Africa against any attempt to encroach upon the territorial integrity of Basutoland, Bechuanaland or Swaziland in any way).

<sup>7</sup> See Written Statement of the Republic of Mauritius (1 March 2018), Chapter 7, Written Comments of the Republic of Mauritius (15 May 2018), Sections III and IV; Oral Submissions of the Republic of Mauritius, Verbatim Record (3 Sept. 2018), paras 33-57 (Mr Reichler).

<sup>8</sup> Republic of Mauritius, Response to Question Put By Judge Cançado Trindade (10 Sept. 2018), para. 8. See also Argentine Republic, Response to Question Put By Judge Cançado Trindade (10 Sept. 2018), paras. 6-10; Oral Submissions of Belize, Verbatim Record (4 Sept. 2018), para. 62 (a)-(e) (Mr Juratowitch); Republic of Botswana and Republic of Vanuatu, Response to Question Put By Judge Cançado Trindade, p. 2; Republic of Nicaragua, Response to Question Put By Judge Cançado Trindade (10 Sept. 2018), p. 2.