INTERNATIONAL COURT OF JUSTICE

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General List
No. 169

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LEGAL CONSEQUENCES OF THE SEPARATION OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS IN 1965

Events leading to the adoption of General Assembly resolution 71/292 requesting an advisory opinion.

Geographic location of Mauritius in the Indian Ocean — Chagos Archipelago, including the island of Diego Garcia, administered by the United Kingdom during colonization as a dependency of Mauritius — Adoption on 14 December 1960 of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)) — Establishment of the Special Committee on Decolonization ("Committee of Twenty-Four") to monitor the implementation of resolution 1514 (XV) — Lancaster House agreement between the representatives of the colony of Mauritius and the United Kingdom Government regarding the detachment of the Chagos Archipelago from Mauritius — Creation of the British Indian Ocean Territory ("BIOT"), including the Chagos Archipelago — Agreement between the United States of America and the United Kingdom concerning the availability of the BIOT for defence purposes — Adoption by the General Assembly of resolutions on the territorial integrity of non-self-governing territories — Independence of Mauritius — Forcible removal of the population of the Chagos Archipelago — Request by Mauritius for the BIOT to be disbanded and the territory restored to it — Creation of a marine protected area around the Chagos Archipelago by the United Kingdom — Challenge to the creation of a marine protected area by Mauritius before an Arbitral Tribunal and decision of the Tribunal.

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Jurisdiction of the Court to give the advisory opinion requested.

Article 65, paragraph 1, of the Statute — Article 96, paragraph 1, of the Charter — Competence of the General Assembly to seek advisory opinions — Request made in accordance with the Charter — Questions submitted to the Court are legal in character.

Argument that there is no exact statement of the question upon which an opinion is required — Any lack of clarity in the questions cannot deprive the Court of its jurisdiction — Arguments examined by the Court when it analyses the questions put by the General Assembly.

The Court has jurisdiction to give the advisory opinion requested.

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Discretion of the Court to decide whether it should give an opinion.

Integrity of the Court's judicial function — Only "compelling reasons" may lead the Court to refuse to exercise its judicial function.

Argument that advisory proceedings are not suitable for determination of complex and disputed factual issues — Sufficient information on the facts at the disposal of the Court.

Argument that the Court's response would not assist the General Assembly in the performance of its functions — Determination of the usefulness of the opinion left to the requesting organ.

Argument that an advisory opinion by the Court would reopen the findings of an Arbitral Tribunal — Opinion given to the General Assembly, not to States — Principle of res judicata *does not preclude the rendering of an advisory opinion — Issues determined by the Arbitral Tribunal not the same as those before the Court.*

Argument that the questions asked relate to a pending territorial dispute between two States, which have not consented to its settlement by the Court — Questions relate to the decolonization of Mauritius — Active role played by the General Assembly with regard to decolonization — Issues raised by the request located in the broader frame of reference of decolonization — The Court not dealing with a bilateral dispute by giving an opinion on legal issues on which divergent views are said to have been expressed by the two States — Giving the opinion requested does not have the effect of circumventing the principle of consent by a State to the judicial settlement of its dispute with another State.

No compelling reasons for the Court to decline to give the opinion requested by the General Assembly.

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Factual context of the separation of the Chagos Archipelago from Mauritius and the removal of Chagossians from the archipelago.

Discussions between the United Kingdom and the United States on the use of certain British-owned islands in the Indian Ocean for defence purposes — Agreement between the two parties for the establishment of a military base by the United States on the island of Diego Garcia.

Discussions between the Government of the United Kingdom and the representatives of the colony of Mauritius with respect to the Chagos Archipelago — Fourth Constitutional Conference held in London in September 1965 involving representatives of the two parties — Lancaster House agreement — Agreement in principle by representatives of the colony of Mauritius to the detachment of the Chagos Archipelago from the territory of Mauritius.

Situation of the Chagossians — Entire population of Chagos Archipelago forcibly removed from the territory between 1967 and 1973 and prevented from returning — Compensation paid by the United Kingdom to certain Chagossians — Various proceedings initiated by Chagossians before United Kingdom courts, the European Court of Human Rights and the Human Rights Committee — Committee's recommendations that Chagossians should be able to exercise their right to return to their territory — Today Chagossians are dispersed in several countries, including the United Kingdom, Mauritius and Seychelles — By virtue of United Kingdom law and judicial decisions of that country, they are not allowed to return to the archipelago.

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Language of the questions posed in resolution 71/292 — Competence of the Court to clarify the questions put to it for an advisory opinion — No need to reformulate the questions in this instance — No need for the Court to interpret restrictively the questions put by the General Assembly.

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Question of whether the process of decolonization of Mauritius was lawfully completed having regard to international law.

Relevant period and applicable rules of law.

Relevant period between the separation of the Chagos Archipelago in 1965 and the independence of Mauritius in 1968 — Evolution of the law on self-determination — Right to self-determination has a broad scope of application as a fundamental human right — In these proceedings, the Court only to analyse that right in the context of decolonization — Right to self-determination enshrined by the Charter and reaffirmed by subsequent General Assembly resolutions — Resolution 1514 (XV) represents a defining moment in the consolidation of State practice on decolonization — Declaratory character of resolution 1514 (XV) with regard to the right to self-determination as a customary norm — Resolution 1514 (XV) provides that any disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter — Reaffirmation of the right of all peoples to self-determination by the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights — Right to self-determination reiterated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States — Means of implementing the right to self-determination in a non-self-governing territory set out in resolution 1541 (XV) — Exercise of self-determination must be the expression of the free and genuine will of the people concerned — Right to self-determination, under customary international law, does not impose a specific mechanism for its implementation in all instances — Right to self-determination of a people defined by reference to the entirety of a non-self-governing territory — Customary law character of the right to territorial integrity of a non-self-governing territory as a corollary of the right to self-determination — Incompatibility with the right to self-determination of any detachment by the administering Power of part of a non-self-governing territory, unless such detachment is based on the freely expressed and genuine will of the people of the territory concerned.

Right to self-determination, as a customary norm, constitutes the applicable international law during the relevant period.

Functions of the General Assembly with regard to decolonization.

Crucial role of the General Assembly with regard to decolonization — Monitoring of the means by which the free and genuine will of the people of a non-self-governing territory is expressed — General Assembly has consistently called upon administering Powers to respect the territorial integrity of non-self-governing territories.

Examination of the circumstances relating to the detachment of the Chagos Archipelago and its accordance with the applicable international law.

Agreement in principle of the Council of Ministers of Mauritius to the detachment of the Chagos Archipelago given when the colony of Mauritius was under the authority of the United Kingdom, its administering Power — Agreement not an international agreement — No free and genuine expression of the will of the people — Unlawful detachment of the Chagos Archipelago and its incorporation into a new colony, known as the BIOT.

Process of decolonization of Mauritius not lawfully completed when Mauritius acceded to independence in 1968.

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Consequences under international law arising from the continued administration by the United Kingdom of the Chagos Archipelago.

Decolonization of Mauritius not conducted in a manner consistent with the right of peoples to self-determination — United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State — Continuing character of the unlawful act — United Kingdom under an obligation to bring an end to its administration of the Chagos Archipelago as rapidly as possible — Modalities for completing the decolonization of Mauritius to be determined by the General Assembly.

Obligation of all Member States to co-operate with the United Nations to put the modalities for completing the decolonization of Mauritius into effect — Resettlement on the Chagos Archipelago of Mauritian nationals, including those of Chagossian origin, is an issue relating to the protection of the human rights of those concerned — Issue should be addressed by the General Assembly during the completion of the decolonization of Mauritius.

ADVISORY OPINION

Present: *President* YUSUF; *Vice-President* XUE; *Judges* TOMKA, ABRAHAM, BENNOUNA, CANÇADO TRINDADE, DONOGHUE, GAJA, SEBUTINDE, BHANDARI, ROBINSON, GEVORGIAN, SALAM, IWASAWA; *Registrar* COUVREUR.

On the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965,

THE COURT,

composed as above,

gives the following Advisory Opinion:

1. The questions on which the advisory opinion of the Court has been requested are set forth in resolution 71/292 adopted by the General Assembly of the United Nations (hereinafter the "General Assembly") on 22 June 2017. By a letter dated 23 June 2017 and received in the Registry on 28 June 2017, the Secretary-General of the United Nations officially communicated to the Court the decision taken by the General Assembly to submit these questions for an advisory opinion. Certified true copies of the English and French texts of the resolution were enclosed with the letter. The resolution reads as follows:

"*The General Assembly*,

Reaffirming that all peoples have an inalienable right to the exercise of their sovereignty and the integrity of their national territory,

Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960, and in particular paragraph 6 thereof, which states 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 purposes and principles of the Charter of the United Nations,

Recalling also its resolution 2066 (XX) of 16 December 1965, in which it invited the Government of the United Kingdom of Great Britain and Northern Ireland to take effective measures with a view to the immediate and full implementation of resolution 1514 (XV) and to take no action which would dismember the Territory of Mauritius and violate its territorial integrity, and its resolutions 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967,

Bearing in mind its resolution 65/118 of 10 December 2010 on the fiftieth anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples, reiterating its view that it is incumbent on the United Nations to continue to play an active role in the process of decolonization, and noting that the process of decolonization is not yet complete,

Recalling its resolution 65/119 of 10 December 2010, in which it declared the period 2011-2020 the Third International Decade for the Eradication of Colonialism, and its resolution 71/122 of 6 December 2016, in which it called for the immediate and full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Noting the resolutions on the Chagos Archipelago adopted by the Organization of African Unity and the African Union since 1980, most recently at the twenty-eighth ordinary session of the Assembly of the Union, held in Addis Ababa on 30 and 31 January 2017, and the resolutions on the Chagos Archipelago adopted by the Movement of Non-Aligned Countries since 1983, most recently at the Seventeenth Conference of Heads of State or Government of Non-Aligned Countries, held on Margarita Island, Bolivarian Republic of Venezuela, from 13 to 18 September 2016, and in particular the deep concern expressed therein at the forcible removal by the United Kingdom of Great Britain and Northern Ireland of all the inhabitants of the Chagos Archipelago,

Noting also its decision of 16 September 2016 to include in the agenda of its seventy-first session the item entitled 'Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965', on the understanding that there would be no consideration of this item before June 2017,

Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following questions:

(a) ‘Was the process of decolonization of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in 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?’;

(b) ‘What are the consequences under international law, including obligations reflected in the above-mentioned resolutions, arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin?’.”

2. By letters dated 28 June 2017, the Registrar gave notice of the request for an advisory opinion to all States entitled to appear before the Court, pursuant to Article 66, paragraph 1, of the Statute.

3. By an Order dated 14 July 2017, the Court decided, in accordance with Article 66, paragraph 2, of the Statute, that the United Nations and its Member States were likely to be able to furnish information on the questions submitted to it for an advisory opinion, and fixed 30 January 2018 as the time-limit within which written statements might be submitted to it on those questions and 16 April 2018 as the time-limit within which States and organizations having presented a written statement might submit written comments on the other written statements.

4. By letters dated 18 July 2017, the Registrar informed the United Nations and its Member States of the Court’s decisions and transmitted to them a copy of the Order.

5. Pursuant to Article 65, paragraph 2, of the Statute, the Secretary-General of the United Nations, under cover of a letter dated 30 November 2017 from the United Nations Legal Counsel, communicated to the Court a dossier of documents likely to throw light upon the questions formulated by the General Assembly, which was received in the Registry on 4 December 2017.

6. By a letter dated 10 January 2018 and received in the Registry the same day, the Legal Counsel of the African Union requested, first, that the African Union be permitted to furnish information, in writing and orally, on the questions submitted to the Court for an advisory opinion, and, secondly, that it be granted an extension of one month for the filing of its written statement.

7. By an Order dated 17 January 2018, the Court decided that the African Union was likely to be able to furnish information on the questions submitted to the Court for an advisory opinion and that it might do so within the time-limits fixed by the Court. By the same Order, the Court further decided to extend to 1 March 2018 the time-limit within which all written statements might be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute, and to extend to 15 May 2018 the time-limit within which States and organizations having presented a written statement might submit written comments, in accordance with Article 66, paragraph 4, of the Statute.

8. By letters dated 17 January 2018, the Registrar informed the United Nations and its Member States, as well as the African Union, of the Court's decisions and transmitted to them a copy of the Order.

9. Within the time-limit thus extended by the Court in its Order of 17 January 2018, written statements were filed in the Registry, in order of their receipt, by Belize, Germany, Cyprus, Liechtenstein, Netherlands, United Kingdom of Great Britain and Northern Ireland, Serbia, France, Israel, Russian Federation, United States of America, Seychelles, Australia, India, Chile, Brazil, Republic of Korea, Madagascar, China, Djibouti, Mauritius, Nicaragua, the African Union, Guatemala, Argentina, Lesotho, Cuba, Viet Nam, South Africa, Marshall Islands and Namibia.

10. By a communication dated 5 March 2018, the Registry informed States having presented written statements, as well as the African Union, of the list of participants having filed written statements in the proceedings and explained that the Registry had set up a dedicated website from which those statements could be downloaded. By the same communication, the Registry further informed those States and the African Union that the Court had decided to hold hearings which would open on 3 September 2018.

11. On 14 March 2018, the Court decided, on an exceptional basis, to authorize the late filing of the written statement of the Republic of Niger.

12. On the same day, the Registrar informed the United Nations, and those of its Member States which had not presented written statements, that written statements had been filed in the Registry. By the same communication, the Registrar also indicated that the Court had decided to hold hearings which would open on 3 September 2018, during which oral statements and comments might be presented by the United Nations and its Member States, regardless of whether or not they had submitted written statements and, as the case may be, written comments.

13. On 15 March 2018, the Registrar communicated a full set of the written statements received in the Registry to all States having submitted written statements, as well as to the African Union.

14. By communications dated 26 March 2018, the United Nations and its Member States, as well as the African Union, were asked to inform the Registry, by 15 June 2018 at the latest, if they intended to take part in the oral proceedings.

15. Within the time-limit as extended by the Court in its Order of 17 January 2018, written comments were filed in the Registry, in order of their receipt, by the African Union, Serbia, Nicaragua, United Kingdom of Great Britain and Northern Ireland, Mauritius, Seychelles, Guatemala, Cyprus, Marshall Islands, United States of America and Argentina.

16. Upon receipt of those written comments, the Registrar, by communications dated 16 May 2018, informed States having presented written statements, as well as the African Union, that written comments had been submitted and that those comments could be downloaded from a dedicated website.

17. On 22 May 2018, the Registrar transmitted a full set of the written comments to all States having submitted such comments, as well as to the African Union.

18. By letters dated 29 May 2018, the Registrar transmitted to the United Nations, and to all its Member States that had not participated in the written proceedings, a full set of the written statements and written comments filed in the Registry.

19. By letters dated 21 June 2018, the Registrar communicated to the United Nations and its Member States, as well as to the African Union, the list of participants in the oral proceedings and enclosed a detailed schedule of those proceedings.

20. By letters dated 26 June 2018, the Registrar informed Member States of the United Nations participating in the oral proceedings, as well as the African Union, of certain practical arrangements regarding the organization of those proceedings.

21. By a letter dated 2 July 2018, the Philippines informed the Court that it would no longer be making a statement during the oral proceedings. By letters dated 10 July 2018, the Registrar informed Member States of the United Nations participating in the oral proceedings and the African Union accordingly.

22. Pursuant to Article 106 of the Rules of Court, the Court decided to make the written statements and written comments submitted to it accessible to the public with effect from the opening of the oral proceedings.

23. In the course of the hearings held from 3 to 6 September 2018, the Court heard oral statements, in the following order, by:

for the Republic of Mauritius: H.E. Sir Anerood Jugnauth, GCSK, KCMG, QC, Minister Mentor, Minister of Defence, Minister for Rodrigues of the Republic of Mauritius,

Mr. Pierre Klein, Professor at the Université libre de Bruxelles,

	Ms Alison Macdonald, QC, Barrister at Matrix Chambers, London,
	Mr. Paul S. Reichler, Attorney at Law, Foley Hoag LLP, member of the Bar of the District of Columbia,
	Mr. Philippe Sands, QC, Professor of International Law at University College London, Barrister at Matrix Chambers, London;
for the United Kingdom of Great Britain and Northern Ireland:	Mr. Robert Buckland, QC, MP, Solicitor General,
	Mr. Samuel Wordsworth, QC, member of the Bar of England and Wales, Essex Court Chambers,
	Ms Philippa Webb, member of the Bar of England and Wales, 20 Essex Street Chambers,
	Sir Michael Wood, KCMG, member of the Bar of England and Wales, 20 Essex Street Chambers;
for the Republic of South Africa:	Ms J. G. S. de Wet, Chief State Law Adviser (International Law), Department of International Relations and Co-operation;
for the Federal Republic of Germany:	H.E. Mr. Christophe Eick, Ambassador, Legal Adviser, Federal Foreign Office, Berlin,
	Mr. Andreas Zimmermann, Professor of International Law, University of Potsdam;
for the Argentine Republic:	H.E. Mr. Mario Oyarzábal, Ambassador, Legal Adviser, Ministry of Foreign Affairs and Worship,
	Mr. Marcelo Kohen, Professor of International Law, Graduate Institute of International and Development Studies, Geneva, Member and Secretary-General of the Institut de droit international;
for Australia:	Mr. Bill Campbell, QC,
	Mr. Stephen Donaghue, QC, Solicitor General of Australia;
for Belize:	Mr. Ben Juratowitch, QC, Attorney at Law, Belize, and admitted to practice in England and Wales, and in Queensland, Australia, Freshfields Bruckhaus Deringer;
for the Republic of Botswana:	Mr. Chuchuchu Nchunga Nchunga, Deputy Government Attorney, Attorney General's Chambers, Botswana,
	Mr. Shotaro Hamamoto, Professor of International Law, Kyoto University, Japan;
for the Federative Republic of Brazil:	H.E. Ms Regina Maria Cordeiro Dunlop, Ambassador of the Federative Republic of Brazil to the Kingdom of the Netherlands;

for the Republic of Cyprus:	H.E. Mr. Costas Clerides, Attorney General of the Republic of Cyprus,
	Ms Mary-Ann Stavrinides, Attorney of the Republic, Law Office of the Republic of Cyprus,
	Mr. Polyvios G. Polyviou, Chryssafinis & Polyviou LLC;
for the United States of America:	Ms Jennifer G. Newstead, Legal Adviser, United States Department of State;
for the Republic of Guatemala:	Mr. Lesther Antonio Ortega Lemus, Minister Counsellor, Co-Representative of Guatemala,
	H.E. Ms Gladys Marithza Ruiz Sánchez De Vielman, Ambassador, Representative of Guatemala;
for the Republic of the Marshall Islands:	Mr. Caleb W. Christopher, Legal Adviser, Permanent Mission of the Republic of the Marshall Islands to the United Nations, New York;
for the Republic of India:	H.E. Mr. Venu Rajamony, Ambassador of India to the Kingdom of the Netherlands;
for the State of Israel:	Mr. Tal Becker, Legal Adviser, Ministry of Foreign Affairs,
	Mr. Roy Schöndorf, Deputy Attorney General (International Law), Ministry of Justice;
for the Republic of Kenya:	H.E. Mr. Lawrence Lenayapa, Ambassador of the Republic of Kenya to the Kingdom of the Netherlands,
	Ms Pauline Mcharo, Deputy Chief State Counsel, Office of the Attorney General of Kenya;
for the Republic of Nicaragua:	H.E. Mr. Carlos José Argüello Gómez, Ambassador of Nicaragua to the Kingdom of the Netherlands;
for the Federal Republic of Nigeria:	Mr. Dayo Apata, Solicitor General of the Federal Republic of Nigeria, Permanent Secretary, Federal Ministry of Justice;
for the Republic of Serbia:	Mr. Aleksandar Gajić, Chief Legal Counsel at the Ministry of Foreign Affairs;
for the Kingdom of Thailand:	H.E. Mr. Virachai Plasai, Ambassador of the Kingdom of Thailand to the United States of America;
for the Republic of Vanuatu:	Mr. Robert McCorquodale, Brick Court Chambers, member of the Bar of England and Wales,
	Ms Jennifer Robinson, Doughty Street Chambers, member of the Bar of England and Wales;

for the Republic of Zambia:	Mr. Likando Kalaluka, SC, Attorney General,
	Mr. Dapo Akande, Professor of Public International Law, University of Oxford;
for the African Union:	H.E. Ms Namira Negm, Ambassador, Legal Counsel of the African Union and Director of Legal Affairs Directorate,
	Mr. Mohamed Gomaa, Legal Counsellor and Arbitrator,
	Mr. Makane Moïse Mbengue, Professor of International Law, University of Geneva, and Affiliate Professor, Institut d'études politiques, Paris.

24. At the hearings, a Member of the Court put a question to Mauritius, which replied in writing, as requested, within the prescribed time-limit. The Court having decided that the other participants could submit comments or observations on the reply given by Mauritius, written comments were filed in the Registry, in order of their receipt, by the African Union, Argentina, United Kingdom of Great Britain and Northern Ireland and United States of America. Another Member of the Court put a question to all the participants in the oral proceedings, to which Australia, Botswana and Vanuatu, Nicaragua, United Kingdom of Great Britain and Northern Ireland, Mauritius, Argentina, United States of America and Guatemala, in that order, replied in writing, as requested. The Court having decided that the other participants could submit comments or observations on the replies thus given, Mauritius, the African Union and United States of America submitted such comments or observations in writing.

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I. EVENTS LEADING TO THE ADOPTION OF THE REQUEST FOR THE ADVISORY OPINION

25. Before examining the events leading to the adoption of the request for the advisory opinion, the Court recalls that the Republic of Mauritius consists of a group of islands in the Indian Ocean comprising approximately 1,950 sq km. The main island of Mauritius is located about 2,200 km south-west of the Chagos Archipelago, about 900 km east of Madagascar, about 1,820 km south of Seychelles and about 2,000 km off the eastern coast of the African continent.

26. The Chagos Archipelago consists of a number of islands and atolls. The largest island is Diego Garcia, located in the south-east of the archipelago. With an area of about 27 sq km, Diego Garcia accounts for more than half of the archipelago's total land area.

27. Although Mauritius was occupied by the Dutch from 1638 to 1710, the first colonial administration of Mauritius was established in 1715 by France which named it *Ile de France*. In 1810, the British captured *Ile de France* and renamed it Mauritius. By the Treaty of Paris of 1814, France ceded Mauritius and all its dependencies to the United Kingdom.

28. Between 1814 and 1965, the Chagos Archipelago was administered by the United Kingdom as a dependency of the colony of Mauritius. From as early as 1826, the islands of the Chagos Archipelago were listed by Governor Lowry-Cole as dependencies of Mauritius. The islands were also described in several ordinances, including those made by Governors of Mauritius in 1852 and 1872, as dependencies of Mauritius. The Mauritius Constitution Order of 26 February 1964 (hereinafter the "1964 Mauritius Constitution Order"), promulgated by the United Kingdom Government, defined the colony of Mauritius in section 90 (1) as "the island of Mauritius and the Dependencies of Mauritius".

29. In accordance with General Assembly resolution 66 (I) of 14 December 1946, the United Kingdom as the administering Power regularly transmitted information to the General Assembly under Article 73 *(e)* of the Charter of the United Nations concerning Mauritius as a non-self-governing territory. The information submitted by the United Kingdom was included in several reports of the Fourth Committee (Special Political and Decolonization Committee) of the General Assembly. In many of these reports, the islands of the Chagos Archipelago, and sometimes the Chagos Archipelago itself, are referred to as dependencies of Mauritius. In its 1947 Report, Mauritius is described as comprising the island of Mauritius and its dependencies among which are mentioned the island of Rodriguez and the Oil Islands group of which the principal island is Diego Garcia. The Report of 1948 collectively referred to all of the islands as "Mauritius". The Report of 1949 states that "there are dependent upon Mauritius a number of islands scattered over the Indian Ocean, of which the most important is Rodriguez . . . Other dependencies are: Chagos Archipelago . . . Agalega and Cargados Charajos".

30. On 14 December 1960, the General Assembly adopted resolution 1514 (XV) entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples" (hereinafter "resolution 1514 (XV)"). On 27 November 1961, the General Assembly, by resolution 1654 (XVI), established the United Nations Special Committee on Decolonization (hereinafter the "Committee of Twenty-Four") to monitor the implementation of resolution 1514 (XV).

31. In February 1964, discussions commenced between the United States of America (hereinafter the "United States") and the United Kingdom regarding the use by the United States of certain British-owned islands in the Indian Ocean. The United States expressed an interest in establishing military facilities on the island of Diego Garcia.

32. On 29 June 1964, the United Kingdom also commenced talks with the Premier of the colony of Mauritius regarding the detachment of the Chagos Archipelago from Mauritius. At Lancaster House, talks between representatives of the colony of Mauritius and the United Kingdom Government led to the conclusion on 23 September 1965 of an agreement (hereinafter the "Lancaster House agreement", described in more detail in paragraph 108 below).

33. On 8 November 1965, by the British Indian Ocean Territory Order 1965, the United Kingdom established a new colony known as the British Indian Ocean Territory (hereinafter the "BIOT") consisting of the Chagos Archipelago, detached from Mauritius, and the Aldabra, Farquhar and Desroches islands, detached from Seychelles.

34. On 16 December 1965, the General Assembly adopted resolution 2066 (XX) on the "Question of Mauritius", in which it expressed deep concern about the detachment of certain islands from the territory of Mauritius for the purpose of establishing a military base and invited the "administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity".

35. On 20 December 1966, the General Assembly adopted resolution 2232 (XXI) on a number of territories including Mauritius. The resolution reiterated that

> "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories and the establishment of military bases and installations in these Territories is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV)".

36. The talks between the United Kingdom and the United States resulted in the conclusion on 30 December 1966 of the "Agreement concerning the Availability for Defence Purposes of the British Indian Ocean Territory" and the conclusion of an Agreed Minute of the same date.

37. Based on the 1966 Agreement, the United States and the United Kingdom agreed that the Government of the United Kingdom would take any "administrative measures" necessary to ensure that their defence needs were met. The Agreed Minute provided that, among the administrative measures to be taken, was "resettling any inhabitants" of the islands. The inhabitants of the Chagos Archipelago are referred to as Chagossians and, sometimes, as the "Ilois" or "islanders". In this Opinion these terms are used interchangeably.

38. On 10 May 1967, Sub-Committee I of the Committee of Twenty-Four reported that:

> "By creating a new territory, the British Indian Ocean Territory, composed of islands detached from Mauritius and Seychelles, the administering Power continues to violate the territorial integrity of these Non-Self Governing Territories and to defy resolutions 2066 (XX) and 2232 (XXI) of the General Assembly."

39. On 15, 17 and 19 June 1967, the Committee of Twenty-Four examined the Report of Sub-Committee I and adopted a resolution on Mauritius. In this resolution, the Committee "[d]eplores the dismemberment of Mauritius and Seychelles by the administering Power which violates their territorial integrity, in contravention of General Assembly resolutions 2066 (XX) and 2232 (XXI) and calls upon the administering Power to return to these Territories the islands detached therefrom".

40. On 7 August 1967, general elections were held in Mauritius and the political parties in favour of independence prevailed.

41. On 19 December 1967, the General Assembly adopted resolution 2357 (XXII) on a number of territories including Mauritius, and reaffirmed what it had declared in resolution 2232 (XXI) (see paragraph 35 above).

42. On 12 March 1968, Mauritius became an independent State and on 26 April 1968 was admitted to membership in the United Nations. Sir Seewoosagur Ramgoolam became the first Prime Minister of the Republic of Mauritius. Section 111, paragraph 1, of the 1968 Constitution of Mauritius, promulgated by the United Kingdom Government before independence on 4 March 1968, defined Mauritius as "the territories which immediately before 12th March 1968 constituted the colony of Mauritius". This definition did not include the Chagos Archipelago in the territory of Mauritius.

43. Between 1967 and 1973, the entire population of the Chagos Archipelago was either prevented from returning or forcibly removed and prevented from returning by the United Kingdom. The main forcible removal of Diego Garcia's population took place in July and September 1971.

44. On 11 April 1979, in a discussion on the detachment of the Chagos Archipelago, Prime Minister Ramgoolam told the Mauritian Parliament "we had no choice".

45. In July 1980, the Organisation of African Unity (hereinafter the "OAU") adopted resolution 99 (XVII) (1980) in which it "demands" that Diego Garcia be "unconditionally returned to Mauritius".

46. On 9 October 1980, the Mauritian Prime Minister, at the thirty-fifth session of the United Nations General Assembly, stated that the BIOT should be disbanded and the territory restored to Mauritius as part of its natural heritage.

47. In July 2000, the OAU adopted Decision AHG/Dec.159 (XXXVI) (2000) expressing its concern that the Chagos Archipelago was "excised by the colonial power from Mauritius prior to its independence in violation of UN Resolution 1514".

48. On 1 April 2010, the United Kingdom announced the creation of a marine protected area in and around the Chagos Archipelago. On 20 December 2010, Mauritius instituted proceedings against the United Kingdom pursuant to Article 287 of the United Nations Convention on the Law of the Sea (hereinafter "UNCLOS" or "the Convention") before an Arbitral Tribunal constituted under Annex VII of the Convention, challenging the creation of a marine protected area by the United Kingdom. In those proceedings, Mauritius submitted, *inter alia*, that (1) the

United Kingdom was not entitled to declare a marine protected area or other maritime zones in and around the Chagos Archipelago as it was not a coastal State within the meaning of UNCLOS; (2) the United Kingdom was not entitled to declare unilaterally a marine protected area or other maritime zones because Mauritius had rights as a coastal State within the meaning of Articles 56, paragraph 1, and 76, paragraph 8, of UNCLOS; (3) the United Kingdom should not take any steps to prevent the Commission on the Limits of the Continental Shelf from making recommendations to Mauritius in respect of any submission that Mauritius may make to that Commission regarding the Chagos Archipelago; and (4) the marine protected area was incompatible with the United Kingdom's obligations under UNCLOS.

49. On 27 July 2010, the African Union adopted Decision 331 (2010), in which it stated that the Chagos Archipelago, including Diego Garcia, was detached "by the former colonial power from the territory of Mauritius in violation of [General Assembly] Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965 which prohibit colonial powers from dismembering colonial territories prior to granting independence".

50. On 18 March 2015, the Arbitral Tribunal constituted under Annex VII of UNCLOS rendered an award in the *Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom* (hereinafter the "*Arbitration regarding the Chagos Marine Protected Area*"). The Tribunal found, in its Award, that it lacked jurisdiction on Mauritius' first, second and third submissions, but had jurisdiction to consider Mauritius' fourth submission. With respect to the first submission, the Tribunal observed that "[t]he parties' dispute regarding sovereignty over the Chagos Archipelago does not concern interpretation or application" of UNCLOS. On the merits, the Arbitral Tribunal found, *inter alia*, that, in establishing the marine protected area surrounding the Chagos Archipelago, the United Kingdom had breached its obligations under Article 2, paragraph 3, Article 56, paragraph 2, and Article 194, paragraph 4, of the Convention, and that the United Kingdom's undertaking to return the Chagos Archipelago to Mauritius, when no longer needed for defence purposes, was legally binding.

51. On 30 December 2016, the 50-year period covered by the 1966 Agreement came to an end; however, it was extended for a further period of twenty years, in accordance with its terms.

52. On 30 January 2017, the Assembly of the African Union adopted resolution AU/Res.1 (XXVIII) on the Chagos Archipelago which resolved, among other things, to support Mauritius with a view to ensuring "the completion of the decolonization of the Republic of Mauritius".

53. On 23 June 2017, the General Assembly adopted resolution 71/292 requesting an advisory opinion from the Court (see paragraph 1 above). Having recalled the events leading to the adoption of that request, the Court now turns to the consideration of the questions of jurisdiction and discretion.

II. JURISDICTION AND DISCRETION

54. When the Court is seised of a request for an advisory opinion, it must first consider whether it has jurisdiction to give the opinion requested and if so, whether there is any reason why the Court should, in the exercise of its discretion, decline to answer the request (see *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 232, para. 10; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 144, para. 13; *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 412, para. 17).

A. Jurisdiction

55. The Court's jurisdiction to give an advisory opinion is based on Article 65, paragraph 1, of its Statute which provides that "[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request".

56. The Court notes that the General Assembly is competent to request an advisory opinion by virtue of Article 96, paragraph 1, of the Charter, which provides that "[t]he General Assembly . . . may request the International Court of Justice to give an advisory opinion on any legal question".

57. The Court now turns to the requirement in Article 96 of the Charter and Article 65 of its Statute that the advisory opinion must be on a "legal question".

58. In the present proceedings, the first question put to the Court is whether the process of decolonization of Mauritius was lawfully completed having regard to international law when it was granted independence following the separation of the Chagos Archipelago. The second question relates to the consequences arising under international law from the continued administration by the United Kingdom of the Chagos Archipelago. The Court considers that a request from the General Assembly for an advisory opinion to examine a situation by reference to international law concerns a legal question.

59. The Court therefore concludes that the request has been made in accordance with the Charter and that the two questions submitted to it are legal in character.

60. One of the participants in the present proceedings has argued that the Court lacks jurisdiction because the questions asked "ostensibly relate to one topic, but . . . in fact relate to a different topic". Moreover, it contended that there is no "exact statement of the question upon which an opinion is required" within the meaning of Article 65, paragraph 2, of the Statute. According to the same participant, the questions put to the Court do not reflect the real issues, which relate to sovereignty rather than decolonization.

61. The Court is of the view that the arguments raised in these proceedings in relation to Article 65, paragraph 2, of its Statute do not deprive it of jurisdiction to render the advisory opinion. When faced with similar arguments in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court observed that "lack of clarity in the drafting of a question does not deprive the Court of jurisdiction. Rather, such uncertainty will require clarification in interpretation, and such necessary clarifications of interpretation have frequently been given by the Court." (*Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 153-154, para. 38.) The Court will examine these arguments in paragraphs 135 to 137 below.

62. The Court accordingly has jurisdiction to give the advisory opinion requested by resolution 71/292 of the General Assembly.

B. Discretion

63. The fact that the Court has jurisdiction does not mean, however, that it is obliged to exercise it:

> "The Court has recalled many times in the past that Article 65, paragraph 1, of its Statute, which provides that 'The Court may give an advisory opinion . . .', should be interpreted to mean that the Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met." (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I),* p. 156, para. 44; *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, pp. 415-416, para. 29.)

64. The discretion whether or not to respond to a request for an advisory opinion exists so as to protect the integrity of the Court's judicial function as the principal judicial organ of the United Nations (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 156-157, paras. 44-45; *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, pp. 415-416, para. 29).

65. The Court is, nevertheless, mindful of the fact that its answer to a request for an advisory opinion "represents its participation in the activities of the Organization, and, in principle, should not be refused" (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999 (I)*, pp. 78-79, para. 29; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 156, para. 44). Thus, the consistent jurisprudence of the Court is that only "compelling reasons" may lead the Court to refuse its opinion in response to a request falling within its jurisdiction (*Legal*

Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 156, para. 44; *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 416, para. 30).

66. The Court must satisfy itself as to the propriety of the exercise of its judicial function in the present proceedings. It will therefore give careful consideration as to whether there are compelling reasons for it to decline to respond to the request from the General Assembly.

67. Some participants in the present proceedings have argued that there are "compelling reasons" for the Court to exercise its discretion to decline to give the advisory opinion requested. Among the reasons raised by these participants are that, first, advisory proceedings are not suitable for determination of complex and disputed factual issues; secondly, the Court's response would not assist the General Assembly in the performance of its functions; thirdly, it would be inappropriate for the Court to re-examine a question already settled by the Arbitral Tribunal constituted under Annex VII of UNCLOS in the *Arbitration regarding the Chagos Marine Protected Area*; and fourthly, the questions asked in the present proceedings relate to a pending bilateral dispute between two States which have not consented to the settlement of that dispute by the Court.

68. The Court will now turn to the examination of these arguments.

1. Whether advisory proceedings are suitable for determination of complex and disputed factual issues

69. It has been argued by some participants that the questions raise complex and disputed factual issues which are not suitable for determination in advisory proceedings. Those participants have contended that in these proceedings the Court does not have sufficient information and evidence to arrive at a conclusion on the complex and disputed questions of fact before it.

70. Other participants have maintained that the factual issues before the Court are not complex and that what really matters is the Court's interpretation of those facts.

71. The Court recalls that in its Advisory Opinion on *Western Sahara* when it was faced with the same argument, it concluded that what was decisive was whether it had

> "sufficient information and evidence to enable it to arrive at a judicial conclusion upon any disputed questions of fact the determination of which is necessary for it to give an opinion in conditions compatible with its judicial character" (*I.C.J. Reports 1975*, pp. 28-29, para. 46).

72. Moreover, the Court recalls that, in its Advisory Opinion on *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, it held that

> "to enable [it] to pronounce on legal questions, it must also be acquainted with, take into account and, if necessary, make findings as to the relevant factual issues" (*I.C.J. Reports 1971*, p. 27, para. 40).

73. The Court observes that an abundance of material has been presented before it including a voluminous dossier from the United Nations. Moreover, many participants have submitted written statements and written comments and made oral statements which contain information relevant to answering the questions. Thirty-one States and the African Union filed written statements, ten of those States and the African Union submitted written comments thereon, and twenty-two States and the African Union made oral statements. The Court notes that information provided by participants includes the various official records from the 1960s, such as those from the United Kingdom concerning the detachment of the Chagos Archipelago and the accession of Mauritius to independence.

74. The Court is therefore satisfied that there is in the present proceedings sufficient information on the facts before it for the Court to give the requested opinion. Accordingly, the Court cannot decline to answer the questions put to it.

2. Whether the Court's response would assist the General Assembly in the performance of its functions

75. It has been argued by some participants that the advisory opinion requested would not assist the General Assembly in the proper exercise of its functions. These participants have maintained that the General Assembly has not been actively engaged in the decolonization of Mauritius since 1968. In particular, they have asserted that, after Mauritius became independent in March 1968, it was removed from the list of territories being monitored by the Committee of Twenty-Four and that the Chagos Archipelago was never added to that list. Other participants have argued that the Court's response would be useful to the General Assembly, which continued to be active after 1968 in considering the question of Mauritius and the detachment of the Chagos Archipelago.

76. The Court considers that it is not for the Court itself to determine the usefulness of its response to the requesting organ. Rather, it should be left to the requesting organ, the General Assembly, to determine "whether it needs the opinion for the proper performance of its functions" (*Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 417, para. 34). The Court recalls that, in its Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons*, it did not accept an argument that the Court should refuse to respond to the General Assembly's request on the ground that the General Assembly had not explained to the Court the purposes for which it sought an opinion. The Court observed that:

> "it is not for the Court itself to purport to decide whether or not an advisory opinion is needed by the Assembly for the performance of its functions. The General Assembly has the right to decide for itself on the usefulness of an opinion in the light of its own needs." (*I.C.J. Reports 1996 (I)*, p. 237, para. 16.)

77. In the Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court stated that it "cannot substitute its assessment of the usefulness of the opinion requested for that of the organ that seeks such opinion" (*I.C.J. Reports 2004 (I)*, p. 163, para. 62). The Court recalls that "[i]n any event, to what extent or degree its opinion will have an impact on the action of the General Assembly is not for the Court to decide" (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 37, para. 73).

78. It follows that in the present proceedings the Court cannot decline to answer the questions posed to it by the General Assembly in resolution 71/292 on the ground that its opinion would not assist the General Assembly in the performance of its functions.

3. Whether it would be appropriate for the Court to re-examine a question allegedly settled by the Arbitral Tribunal constituted under UNCLOS Annex VII in the *Arbitration regarding the Chagos Marine Protected Area*

79. Certain participants have argued that an advisory opinion by the Court would reopen the findings of the Arbitral Tribunal in the *Arbitration regarding the Chagos Marine Protected Area* that are binding on Mauritius and the United Kingdom.

80. Other participants have contended that *res judicata* does not apply in these proceedings because the same parties are not seeking to litigate the same issue that has already been definitively settled between them in an earlier case.

81. The Court recalls that its opinion "is given not to States, but to the organ which is entitled to request it" (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71). The Court observes that the principle of *res judicata* does not preclude it from rendering an advisory opinion. When answering a question submitted for an opinion, the Court will consider any relevant judicial or arbitral decision. In any event, the Court further notes that the issues that were determined by the Arbitral Tribunal in the *Arbitration regarding the Chagos Marine Protected Area* (see paragraph 50 above) are not the same as those that are before the Court in these proceedings.

82. It follows from the foregoing that the Court cannot decline to answer the questions on this ground.

4. Whether the questions asked relate to a pending dispute between two States, which have not consented to its settlement by the Court

83. Some participants have argued that there is a bilateral dispute between Mauritius and the United Kingdom regarding sovereignty over the Chagos Archipelago and that this dispute is at the core of the advisory proceedings. According to those participants, to determine the issues in the present proceedings, the Court would be required to arrive at conclusions on certain key points such as the effect of the 1965 Lancaster House agreement. Certain participants have contended that the dispute over sovereignty, which arose in the 1980s in bilateral relations, is the "real dispute" that motivates the request. These participants have further contended that Mauritius' claims in the *Arbitration regarding the Chagos Marine Protected Area* revealed the existence of a bilateral territorial dispute between that State and the United Kingdom. Therefore, to render an advisory opinion would contravene "the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent" (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, pp. 24-25, paras. 32-33; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71).

84. Other participants have maintained that there is no territorial dispute between the United Kingdom and Mauritius that would prevent the Court from giving the advisory opinion requested. In particular, they have argued that the questions put to the Court by the General Assembly concern issues located in a broader frame of reference, that is, the law of decolonization and the exercise of the right to self-determination. Some participants have argued that the dispute between Mauritius and the United Kingdom relating to territorial sovereignty over the Chagos Archipelago could neither have arisen independently nor could it be detached from the question of decolonization. Other participants have contended that the United Kingdom, having undertaken in 1965 to return the Chagos Archipelago to Mauritius once it was no longer needed for defence purposes, recognized that the archipelago belonged to Mauritius, and accordingly there could be no territorial dispute.

85. The Court recalls that there would be a compelling reason for it to decline to give an advisory opinion when such a reply "would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent" (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 25, para. 33).

86. The Court notes that the questions put to it by the General Assembly relate to the decolonization of Mauritius. The General Assembly has not sought the Court's opinion to resolve a territorial dispute between two States. Rather, the purpose of the request is for the General Assembly to receive the Court's assistance so that it may be guided in the discharge of its functions relating to the decolonization of Mauritius. The Court has emphasized that it may be in the interest of the General Assembly to seek an advisory opinion which it deems of assistance in carrying out its functions in regard to decolonization:

> "The object of the General Assembly has not been to bring before the Court, by way of a request for advisory opinion, a dispute or legal controversy, in order that it may later, on the basis of the Court's opinion, exercise its powers and functions for the peaceful settlement of that dispute or controversy. The object of the request is an

> entirely different one: to obtain from the Court an opinion which the General Assembly deems to be of assistance to it for the proper exercise of its functions concerning the decolonization of the territory." (*Western Sahara, Advisory Opinion, I.C.J Reports 1975*, pp. 26-27, para. 39.)

87. The Court observes that the General Assembly has a long and consistent record in seeking to bring colonialism to an end. From the earliest days of the United Nations, the General Assembly has played an active role in matters of decolonization. Article 1, paragraph 2, of the Charter establishes, as one of the purposes of the United Nations, respect for the principle of equal rights and self-determination of peoples. In this regard, the Court notes that Chapter XI of the Charter of the United Nations relates to non-self-governing territories and that the first article in that Chapter, Article 73, provides that administering powers of non-self-governing territories are required, *inter alia*, to "transmit regularly to the Secretary-General for information purposes . . . statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible". This information was considered by the Fourth Committee (Special Political and Decolonization Committee) of the General Assembly and included in its reports. The work of the Committee continued until 1961 when the Committee of Twenty-Four was established.

88. The Court therefore concludes that the opinion has been requested on the matter of decolonization which is of particular concern to the United Nations. The issues raised by the request are located in the broader frame of reference of decolonization, including the General Assembly's role therein, from which those issues are inseparable (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 26, para. 38; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 159, para. 50).

89. Moreover, the Court observes that there may be differences of views on legal questions in advisory proceedings (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 24, para. 34). However, the fact that the Court may have to pronounce on legal issues on which divergent views have been expressed by Mauritius and the United Kingdom does not mean that, by replying to the request, the Court is dealing with a bilateral dispute.

90. In these circumstances, the Court does not consider that to give the opinion requested would have the effect of circumventing the principle of consent by a State to the judicial settlement of its dispute with another State. The Court therefore cannot, in the exercise of its discretion, decline to give the opinion on that ground.

91. In light of the foregoing, the Court concludes that there are no compelling reasons for it to decline to give the opinion requested by the General Assembly.

III. THE FACTUAL CONTEXT OF THE SEPARATION OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS

92. The Court notes that the questions submitted to it by the General Assembly relate to the separation of the Chagos Archipelago from Mauritius and the legal consequences arising from the continued administration by the United Kingdom of the Chagos Archipelago (see paragraph 1 above). Before addressing these questions, the Court deems it important to examine the factual circumstances surrounding the separation of the archipelago from Mauritius, as well as those relating to the removal of the Chagossians from this territory.

93. In this regard, the Court notes that, prior to the separation of the Chagos Archipelago from Mauritius, there were formal discussions between the United Kingdom and the United States and between the Government of the United Kingdom and the representatives of the colony of Mauritius.

A. The discussions between the United Kingdom and the United States with respect to the Chagos Archipelago

94. In February 1964, talks commenced between the Governments of the United Kingdom and the United States on the "strategic use of certain small British-owned islands in the Indian Ocean" for defence purposes. During these talks, the United States expressed an interest in establishing a military communication facility on Diego Garcia. At the end of the talks, it was agreed that the United Kingdom delegation would recommend to its Government that it should be responsible for acquiring land, resettling the population and providing compensation at the United Kingdom Government's expense; that the Government of the United States would be responsible for construction and maintenance costs and that the United Kingdom Government would assess quickly the feasibility of the transfer of the administration of Diego Garcia and the other islands of the Chagos Archipelago from Mauritius.

95. According to a Memorandum of the United Kingdom Foreign Office, the United Kingdom was of the view that the course of action that would best satisfy its major interests would appear to be to detach Diego Garcia and other islands in the Chagos Archipelago from Mauritius prior to the latter's independence, and to place these islands under the direct administration of the United Kingdom, and that this action could be done by Order in Council. The United Kingdom considered that it had the constitutional power to take such action without the consent of Mauritius, but that such an approach would expose it to criticism in the United Nations. The same document also indicated that such criticism would lose most of its force if prior acceptance by the Mauritian Ministers of the detachment was obtained by the United Kingdom, whether such acceptance was obtained by positive consent or by acquiescence. The document further stated that it would best suit the interests of the United Kingdom if the detachment of the Chagos Archipelago was presented to Mauritius as "a *fait accompli*" or at most if Mauritius was told of the United Kingdom's plans "at the last moment".

96. According to a declassified internal United Kingdom document dated 23 and 24 September 1965 (Record of UK-US Talks on Defence Facilities in the Indian Ocean, United Kingdom, FO 371/184529), the Governments of the United Kingdom and the United States

considered that, rather than detaching the islands of the Chagos Archipelago from Mauritius and the islands of Aldabra, Farquhar and Desroches from Seychelles in two separate operations, their interests would be better served by carrying out the detachment "as a single operation" in order to avoid "a second row" in the United Nations. According to the same document, during the talks, the United Kingdom explained to the United States that the detachment of the Chagos Archipelago from Mauritius would take place in three stages; in the final stage it was envisaged that, when the defence facilities were installed on an island, "it would be free from local civilian inhabitants".

97. The discussions between the United Kingdom and the United States led to the conclusion of the 1966 Agreement for the establishment of a military base by the United States on the Chagos Archipelago (see paragraph 36 above).

B. The discussions between the Government of the United Kingdom and the representatives of the colony of Mauritius with respect to the Chagos Archipelago

98. The 1964 Mauritius Constitution Order, promulgated by the United Kingdom Government, established a Legislative Assembly consisting of 40 elected members, the Speaker and the Chief Secretary *ex officio* and up to 15 members nominated by the Governor. The nominated members of the Legislative Assembly held office at the pleasure of the Governor. There was established a Council of Ministers for Mauritius consisting of 10 to 13 appointed members, the Chief Secretary of Mauritius and the Premier of Mauritius; and temporary members who could replace an appointed member who was ill or absent from the island of Mauritius. The Members of the Council were appointed by the Governor, after consultation with the Premier. They had to be Members of the Legislative Assembly. In the discussions between the Government of the United Kingdom and the representatives of the colony of Mauritius, the latter was represented by the Premier of Mauritius, or by the Premier and other Members of the Council of Ministers.

99. In 1964, the Committee of Twenty-Four reported that the Constitution of Mauritius did not allow the representatives of the people to exercise real powers, and that authority was virtually all concentrated in the hands of the United Kingdom Government (see paragraph 172 below).

100. On 29 June 1964, Mr. John Rennie, the Governor of Mauritius, discussed with Sir Seewoosagur Ramgoolam, the Premier of Mauritius, the idea of detaching the Chagos Archipelago from Mauritius. Although he was favourably disposed to providing "facilities", the Premier indicated that he preferred a long-term lease rather than detachment.

101. On 19 July 1965, the Governor of Mauritius was instructed by the Colonial Office to inform the Mauritian Council of Ministers of the proposal to detach the Chagos Archipelago by constitutionally separating it from Mauritius. On 30 July 1965, the Governor of Mauritius informed the Colonial Office that the Council of Ministers opposed the detachment because of the negative public reaction that it would receive in Mauritius. The Governor indicated that the Council of Ministers expressed a preference for a long-term lease of the islands, while the United Kingdom indicated that a lease was not acceptable.

102. On 3 September 1965, Sir Seewoosagur Ramgoolam and Sir Anthony Greenwood, the United Kingdom's Secretary of State for the Colonies, met in London prior to the start of the Fourth Constitutional Conference and agreed that the discussion on the detachment and the constitutional conference should be kept separate. However, it appears that this approach was later modified to link both matters in a possible package deal.

103. On 7 September 1965, the Fourth Constitutional Conference commenced in London and ended on 24 September 1965. Previous constitutional conferences were held in July 1955, February 1957 and June 1961. During the Fourth Constitutional Conference, there were several private meetings on defence matters. The first meeting on 13 September 1965 was attended by Sir Seewoosagur Ramgoolam, Sir Anthony Greenwood, and Mr. John Rennie. At the meeting, the Premier stated that Mauritius preferred a lease rather than a detachment of the Chagos Archipelago. Following the meeting, the United Kingdom Foreign Secretary and the Defence Secretary concluded that if Mauritius would not agree to the detachment, they would have to "adopt the Foreign Office and Ministry of Defence recommendation of 'forcible detachment and compensation paid into a fund'".

104. On 20 September 1965, during a meeting on defence matters chaired by the United Kingdom Secretary of State, the Premier of Mauritius again stated that "the Mauritius Government was not interested in the excision of the islands and would stand out for a 99-year lease". As an alternative, the Premier of Mauritius proposed that the United Kingdom first concede independence to Mauritius and thereafter allow the Mauritian Government to negotiate with the Governments of the United Kingdom and the United States on the question of Diego Garcia. During those discussions, the Secretary of State indicated that a lease would not be acceptable to the United States and that the Chagos Archipelago would have to be made available on the basis of its detachment.

105. On 22 September 1965, a Note was prepared by Sir Oliver Wright, Private Secretary to the United Kingdom's Prime Minister, Sir Harold Wilson. It read:

> "Sir Seewoosagur Ramgoolam is coming to see you at 10:00 tomorrow morning. The object is to frighten him with hope: hope that he might get independence; Fright lest he might not unless he is sensible about the detachment of the Chagos Archipelago. I attach a brief prepared by the Colonial Office, with which the Ministry of Defence and the Foreign Office are on the whole content. The key sentence in the brief is the last sentence of it on page three."

106. The key last sentence referred to above read:

> "The Prime Minister may therefore wish to make some oblique reference to the fact that H.M.G. have the legal right to detach Chagos by Order in Council, *without* Mauritius consent but this would be a grave step." (Emphasis in the original.)

107. On 23 September 1965 two events took place. The first event was a meeting in the morning of 23 September 1965 between Prime Minister Wilson and Premier Ramgoolam. Sir Oliver Wright's Report on the meeting indicated that Prime Minister Wilson told Premier Ramgoolam that

> "in theory there were a number of possibilities. The Premier and his colleagues could return to Mauritius either with Independence or without it. On the Defence point, Diego Garcia could either be detached by order in Council or with the agreement of the Premier and his colleagues. The best solution of all might be Independence and detachment by agreement, although he could not of course commit the Colonial Secretary at this point."

108. The second event on the same day was a meeting on defence matters held at Lancaster House between Premier Ramgoolam, three other Mauritian Ministers and the United Kingdom Secretary of State. At the end of that meeting, the United Kingdom Secretary of State enquired whether the Mauritian Ministers could agree to the detachment of the Chagos Archipelago on the basis of undertakings that he would recommend to the Cabinet. The undertakings in the Lancaster House agreement, contained in paragraph 22 of the Record of the Meeting of 23 September 1965, were:

> "(i) negotiations for a defence agreement between Britain and Mauritius;
>
> (ii) in the event of independence an understanding between the two governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;
>
> (iii) compensation totalling up to £3[million] should be paid to the Mauritius Government over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Islands;
>
> (iv) the British Government would use their good offices with the United States Government in support of Mauritius' request for concessions over sugar imports and the supply of wheat and other commodities;
>
> (v) that the British Government would do their best to persuade the American Government to use labour and materials from Mauritius for construction work in the islands;
>
> . . . . . .
>
> (vii) that if the need for the facilities on the islands disappeared the islands should be returned to Mauritius".

The Premier of Mauritius informed the Secretary of State for the Colonies that the proposals put forward by the United Kingdom were acceptable in principle, but that he would discuss the matter with his other ministerial colleagues.

109. On 24 September 1965, the Government of the United Kingdom announced that it was in favour of granting independence to Mauritius.

110. On 6 October 1965, the Secretary of State for the Colonies communicated to the Governor of Mauritius the United Kingdom's acceptance of the following additional understanding that had been sought by the Premier of Mauritius:

(i) the British Government would use their good offices with the United States Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable:

(a) navigational and meteorological facilities;

(b) fishing rights;

(c) use of air strip for emergency landing and for refuelling civil planes without disembarkation of passengers.

(ii) that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Mauritius Government.

This additional understanding was eventually incorporated into the final record of the meeting at Lancaster House and formed part of the Lancaster House agreement.

111. In a Minute sent on 5 November 1965 to the United Kingdom Prime Minister, the Secretary of State for the Colonies expressed concern that the United Kingdom would be accused of "creating a . . . colony in a period of decolonisation and of establishing new military bases when we should be getting out of the old ones". The Foreign Office also advised that "the islands chosen have virtually no permanent inhabitants".

112. On 5 November 1965, the Governor of Mauritius informed the United Kingdom Secretary of State that the Mauritius Council of Ministers "confirmed agreement to the detachment of the Chagos Archipelago". The Governor noted that agreement had been given on the conditions set out in paragraph 22 of the Record of the Meeting of 23 September 1965 (which contained the Lancaster House agreement) and that the Council of Ministers had formulated an additional understanding.

C. The situation of the Chagossians

113. In the early nineteenth century, several hundred persons were brought to the Chagos Archipelago from Mozambique and Madagascar and enslaved to work on coconut plantations owned by British nationals who lived on the island of Mauritius. In the 1830s, 60,000 enslaved persons in Mauritius, including those in the Chagos Archipelago, were set free.

114. Following the 1966 Agreement (see paragraph 36 above), between 1967 and 1973, the inhabitants of the Chagos Archipelago who had left the islands were prevented from returning. The other inhabitants were forcibly removed and prevented from returning to the islands (see paragraph 43 above).

115. On 16 April 1971, the BIOT Commissioner enacted the Immigration Ordinance 1971, which made it unlawful for any person to enter or remain in the Chagos Archipelago without a permit. It also provided for the Commissioner to make an order directing the removal of such a person from the Chagos Archipelago (*Chagos Islanders* v. *Attorney General and BIOT Commissioner* (2003) EWHC 2222, para. 34).

116. In the oral proceedings, the United Kingdom reiterated that it "fully accepts that the manner in which the Chagossians were removed from the Chagos Archipelago, and the way they were treated thereafter, was shameful and wrong, and it deeply regrets that fact".

117. On 4 September 1972, by virtue of an agreement concluded between Mauritius and the United Kingdom, Mauritius accepted payment of the sum of £650,000 in full and final discharge of the United Kingdom's undertaking given in 1965 to meet the cost of resettlement of persons displaced from the Chagos Archipelago. On 24 March 1973, Prime Minister Ramgoolam wrote to the British High Commissioner in Port Louis, acknowledging receipt of the sum of £650,000, but emphasizing that the payment did not affect the verbal agreement on minerals, fishing and prospecting rights reached at Lancaster House on 23 September 1965 and was subject to the remaining Lancaster House undertakings, including the return of the islands to Mauritius without compensation if the need for use by the United Kingdom of the islands no longer existed.

118. In February 1975, Mr. Michel Vencatessen, a former resident of the Chagos Archipelago, brought an action against the United Kingdom Government claiming damages for intimidation, deprivation of liberty and assault in relation to his removal from the Chagos Archipelago in 1971. In 1982, the claim was stayed by agreement of the parties.

119. On 7 July 1982, an agreement was concluded between the Governments of Mauritius and the United Kingdom, for the payment by the United Kingdom of the sum of £4 million on an *ex gratia* basis, with no admission of liability on the part of the United Kingdom, "in full and final settlement of all claims whatsoever of the kind referred to in Article 2 of this Agreement against . . . the United Kingdom by or on behalf of the Ilois". According to Recital 2 of the preamble to the Agreement, the term "Ilois" has to be understood as those who went to Mauritius on their departure or removal from the Chagos Archipelago after November 1965. Article 2 provides:

"The claims referred to in Article 1 of this Agreement are solely claims by or on behalf of the Ilois arising out of:

(a) All acts, matters and things done by or pursuant to the British Indian Ocean Territory Order 1965, including the closure of the plantations in the Chagos Archipelago, the departure or removal of those living or working there, the termination of their contracts, their transfer to and resettlement in Mauritius and their preclusion from returning to the Chagos Archipelago (hereinafter referred to as "the events"); and

(b) Any incidents, facts or situations, whether past, present or future, occurring in the course of the events or arising out of the consequences of the events."

Article 4 requires Mauritius "to procure from each member of the Ilois community in Mauritius a signed renunciation of the claims".

120. The sum of approximately £4 million paid by the United Kingdom was disbursed to 1,344 islanders between 1983 and 1984. As a condition for collecting the funds, the islanders were required to sign or to place a thumbprint on a form renouncing the right to return to the Chagos Archipelago. The form was a one-page legal document, written in English, without a Creole translation. Only 12 persons refused to sign (*Chagos Islanders* v. *Attorney General and BIOT Commissioner* (2003) EWHC 2222, para. 80).

121. In 1998, Mr. Louis Olivier Bancoult, a Chagossian, instituted proceedings in the United Kingdom courts challenging the validity of legislation denying him the right to reside in the Chagos Archipelago. On 3 November 2000, judgment was given in his favour by the Divisional Court which ruled that the relevant provisions of the 1971 Ordinance be quashed (*Regina (Bancoult)* v. *Secretary of State for Foreign and Commonwealth Affairs & another (No 1)* (2000)). The United Kingdom Government did not appeal the ruling and it repealed the 1971 Ordinance that had prohibited Chagossians from returning to the Chagos Archipelago. The United Kingdom's Foreign Secretary announced that the United Kingdom Government was examining the feasibility of resettling the Ilois.

122. On the same day that the Divisional Court rendered the judgment in Mr. Bancoult's favour, the United Kingdom made another immigration ordinance applicable to the Chagos Archipelago, with the exception of Diego Garcia (Ordinance No 4 of 2000). The ordinance provided that restrictions on entry into and residence in the archipelago would not apply to the Chagossians, given their connection to the Chagos Islands. In its written statement, the United Kingdom has submitted that, following the adoption of that ordinance, none of the Chagossians returned to live there although there was no legal bar to them doing so. Chagossians were however not permitted to enter or reside in Diego Garcia.

123. On 6 December 2001, the Human Rights Committee, constituted under the International Covenant on Civil and Political Rights, in considering the periodic reports submitted by the United Kingdom under Article 40 of the said Covenant, noted "the State party's acceptance that its

prohibition of the return of Ilois who had left or been removed from the territory was unlawful". It recommended that "the State party should, to the extent still possible, seek to make exercise of the Ilois' right to return to their territory practicable".

124. In June 2002, a feasibility study commissioned by the BIOT Administration concerning the Chagos Archipelago was completed. It was carried out in response to a request made by former inhabitants of the Chagos Archipelago to be permitted to return and live in the archipelago. The study indicated that, while it may be feasible to resettle the islanders in the short term, the costs of maintaining a long-term inhabitation were likely to be prohibitive. Even in the short term, natural events such as periodic flooding from storms and seismic activity, were likely to make life difficult for a resettled population. In 2004, the United Kingdom issued two orders in Council: the British Indian Ocean Territory (Constitution) Order 2004 and the British Indian Ocean Territory (Immigration) Order 2004. These orders declared that no person had the right of abode in the BIOT nor the right without authorization to enter and remain there.

125. In 2004, Mr. Bancoult challenged the validity of the British Indian Ocean Territory (Constitution) Order 2004 and the British Indian Ocean Territory (Immigration) Order 2004 in the courts of the United Kingdom. He succeeded in the High Court. An appeal was brought by the Secretary of State for Foreign and Commonwealth Affairs against the decision of the High Court. The Court of Appeal upheld the decision of the High Court that the orders were invalid on the basis that their content and the circumstances of their adoption constituted an abuse of power by the United Kingdom Government (*Regina (Bancoult)* v. *Secretary of State for Foreign and Commonwealth Affairs (No 2)* (2007)).

126. On 30 July 2008, the Human Rights Committee, in considering another periodic report submitted by the United Kingdom, took note of the aforementioned decision of the Court of Appeal. On the basis of Article 12 of the International Covenant on Civil and Political Rights, the Committee recommended that:

> "The State party should ensure that the Chagos islanders can exercise their right to return to their territory and should indicate what measures have been taken in this regard. It should consider compensation for the denial of this right over an extended period."

127. The Secretary of State for Foreign and Commonwealth Affairs appealed the decision of the Court of Appeal (see paragraph 125) upholding Mr. Bancoult's challenge of the validity of the British Indian Ocean Territory (Constitution) Order 2004. On 22 October 2008, the House of Lords upheld the appeal by the Secretary of State for Foreign and Commonwealth Affairs.

128. On 11 December 2012, the European Court of Human Rights, in the *Chagos Islanders* v. *United Kingdom* case, declared inadmissible an application made by a group of 1,786 Chagossians against the United Kingdom for breach of their rights under the European Convention on Human Rights. One of the grounds for the decision was that the claims of the applicants had been settled through implementation of the 1982 Agreement between Mauritius and the United Kingdom.

129. On 20 December 2012, the United Kingdom announced a review of its policy on resettlement of the Chagossians who were forcibly removed from, or prevented from returning to, the Chagos Archipelago. A second feasibility study, carried out between 2014 and 2015, was commissioned by the BIOT Administration to analyse the different options for resettlement in the Chagos Archipelago. The feasibility study concluded that resettlement was possible although there would be significant challenges including high and very uncertain costs, and long-term liabilities for the United Kingdom taxpayer. Thereafter, on 16 November 2016, the United Kingdom decided against resettlement on the "grounds of feasibility, defence and security interests and cost to the British taxpayer".

130. On 8 February 2018, the Supreme Court of the United Kingdom rendered its judgment in the case of *Regina (on the application of Bancoult No. 3)* v. *Secretary of State for Foreign and Commonwealth Affairs* (2018). The case was brought by Mr. Bancoult on behalf of a group of Chagossians who were forcibly removed from the archipelago. In the proceedings, Mr. Bancoult challenged the declaration of a marine protected area by the United Kingdom around the Chagos Archipelago. Mr. Bancoult, the appellant, contended that the marine protected area had been established for the improper purpose of rendering impracticable the resettlement of the Chagos islanders on the archipelago. He claimed that this was evidenced by a diplomatic cable sent by the United States Embassy in London to departments of the United States Government in Washington, to elements in its military command structure and to its Embassy in Port Louis, Mauritius. The cable recorded a 2009 meeting in which United States and United Kingdom officials discussed the reasons for the establishment of the marine protected area. The cable was subsequently leaked and published in two national newspapers. The issue in the appeal was the admissibility of the cable. The Supreme Court held that the cable was inadmissible in evidence on the ground that its inviolability as part of the mission's archive protected its privacy.

131. To date, the Chagossians remain dispersed in several countries, including the United Kingdom, Mauritius and Seychelles. By virtue of United Kingdom law and judicial decisions of that country, they are not allowed to return to the Chagos Archipelago.

IV. THE QUESTIONS PUT TO THE COURT BY THE GENERAL ASSEMBLY

132. Having reviewed the factual background of the present request for an advisory opinion, the Court will now examine the two questions put by the General Assembly:

> Question *(a)*: "Was the process of decolonization of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in 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?"

Question *(b)*: "What are the consequences under international law, including obligations reflected in the above-mentioned resolutions, arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin?"

133. Some participants have asked the Court to reformulate both questions or to interpret them restrictively. In particular, they have contested the assumption that the resolutions referred to in Question *(a)* would create international obligations for the United Kingdom, thereby prejudging the answer the Court is requested to give. They have also contended that the legal questions really at issue concern the matter of sovereignty over the Chagos Archipelago, which is the subject of a bilateral dispute between Mauritius and the United Kingdom.

134. One participant has asserted that the General Assembly's request, which does not expressly refer to the legal consequences for States of the continued administration by the United Kingdom of the Chagos Archipelago, should be interpreted in such a way as to limit the advisory opinion to the functions of the United Nations, excluding all issues that concern States, in particular, Mauritius and the United Kingdom.

135. The Court recalls that it may depart from the language of the question put to it where the question is not adequately formulated (*Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV), Advisory Opinion, 1928, P.C.I.J., Series B, No. 16*) or does not reflect the "legal questions really in issue" (*Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980,* p. 89, para. 35). Similarly, where the question asked is ambiguous or vague, the Court may clarify it before giving its opinion (*Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, p. 348, para. 46). Although, in exceptional circumstances, the Court may reformulate the questions referred to it for an advisory opinion, it only does so to ensure that it gives a reply "based on law" (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 18, para. 15).

136. The Court considers that there is no need for it to reformulate the questions submitted to it for an advisory opinion in these proceedings. Indeed, the first question is whether the process of decolonization of Mauritius was lawfully completed in 1968, having regard to international law, following the separation of the Chagos Archipelago from its territory in 1965. The General Assembly's reference to certain resolutions which it adopted during this period does not, in the Court's view, prejudge either their legal content or scope. In Question *(a)*, the General Assembly asks the Court to examine certain events which occurred between 1965 and 1968, and which fall within the framework of the process of decolonization of Mauritius as a non-self-governing territory. It did not submit to the Court a bilateral dispute over sovereignty which might exist between the United Kingdom and Mauritius. In Question *(b)*, which is clearly linked to Question *(a)*, the Court is asked to state the consequences, under international law, of the continued administration by the United Kingdom of the Chagos Archipelago. By referring in this way to international law, the General Assembly necessarily had in mind the consequences for the subjects of that law, including States.

137. It is for the Court to state the law applicable to the factual situation referred to it by the General Assembly in its request for an advisory opinion. There is thus no need for it to interpret restrictively the questions put to it by the General Assembly. When the Court states the law in the exercise of its advisory function, it lends its assistance to the General Assembly in the solution of a problem confronting it (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 21, para. 23). In giving its advisory opinion, the Court is not interfering with the exercise of the General Assembly's own functions.

138. The Court will now consider the first question put to it by the General Assembly, namely whether the process of decolonization of Mauritius was lawfully completed having regard to international law.

A. Whether the process of decolonization of Mauritius was lawfully completed having regard to international law (Question *(a)*)

139. In order to pronounce on whether the process of decolonization of Mauritius was lawfully completed having regard to international law, the Court will determine, first, the relevant period of time for the purpose of identifying the applicable rules of international law and, secondly, the content of that law. In addition, since the General Assembly has referred to some of the resolutions it adopted, the Court, in determining the obligations reflected in these resolutions, will have to examine the functions of the General Assembly in conducting the process of decolonization.

1. The relevant period of time for the purpose of identifying the applicable rules of international law

140. In Question *(a)*, the General Assembly situates the process of decolonization of Mauritius in the period between the separation of the Chagos Archipelago from its territory in 1965 and its independence in 1968. It is therefore by reference to this period that the Court is required to identify the rules of international law that are applicable to that process.

141. Various participants have stated that international law is not frozen at the date when the first steps were taken towards the realization of the right to self-determination in respect of a territory.

142. The Court is of the view that, while its determination of the applicable law must focus on the period from 1965 to 1968, this will not prevent it, particularly when customary rules are at issue, from considering the evolution of the law on self-determination since the adoption of the Charter of the United Nations and of resolution 1514 (XV) of 14 December 1960 entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples". Indeed, State practice and *opinio juris*, i.e. the acceptance of that practice as law (Article 38 of the Statute of the Court), are consolidated and confirmed gradually over time.

143. The Court may also rely on legal instruments which postdate the period in question, when those instruments confirm or interpret pre-existing rules or principles.

2. Applicable international law

144. The Court will have to determine the nature, content and scope of the right to self-determination applicable to the process of decolonization of Mauritius, a non-self-governing territory recognized as such, from 1946 onwards, both in United Nations practice and by the administering Power itself. The Court is conscious that the right to self-determination, as a fundamental human right, has a broad scope of application. However, to answer the question put to it by the General Assembly, the Court will confine itself, in this Advisory Opinion, to analysing the right to self-determination in the context of decolonization.

145. The participants in the advisory proceedings have adopted opposing positions on the customary status of the right to self-determination, its content and how it was exercised in the period between 1965 and 1968. Some participants have asserted that the right to self-determination was firmly established in customary international law at the time in question. Others have maintained that the right to self-determination was not an integral part of customary international law in the period under consideration.

146. The Court will begin by recalling that "respect for the principle of equal rights and self-determination of peoples" is one of the purposes of the United Nations (Article 1, paragraph 2, of the Charter). Such a purpose concerns, in particular, the "Declaration regarding non-self-governing territories" (Chapter XI of the Charter), since the "Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government" are obliged to "develop [the] self-government" of those peoples (Article 73 of the Charter).

147. In the Court's view, it follows that the legal régime of non-self-governing territories, as set out in Chapter XI of the Charter, was based on the progressive development of their institutions so as to lead the populations concerned to exercise their right to self-determination.

148. Having made respect for the principle of equal rights and self-determination of peoples one of the purposes of the United Nations, the Charter included provisions that would enable non-self-governing territories ultimately to govern themselves. It is in this context that the Court must ascertain when the right to self-determination crystallized as a customary rule binding on all States.

149. Custom is constituted through "general practice accepted as law" (Article 38 of the Statute of the Court). The Court has emphasized that both elements, namely general practice and *opinio juris*, which are constitutive of international custom, are closely linked:

> "Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the *opinio juris sive necessitatis*. The States concerned must therefore feel that they are conforming to what amounts to a legal obligation. The frequency, or even habitual character of the acts is not in itself enough." (*North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 44, para. 77.)

150. The adoption of resolution 1514 (XV) of 14 December 1960 represents a defining moment in the consolidation of State practice on decolonization. Prior to that resolution, the General Assembly had affirmed on several occasions the right to self-determination (resolutions 637 (VII) of 16 December 1952, 738 (VIII) of 28 November 1953 and 1188 (XII) of 11 December 1957) and a number of non-self-governing territories had acceded to independence. General Assembly resolution 1514 (XV) clarifies the content and scope of the right to self-determination. The Court notes that the decolonization process accelerated in 1960, with 18 countries, including 17 in Africa, gaining independence. During the 1960s, the peoples of an additional 28 non-self-governing-territories exercised their right to self-determination and achieved independence. In the Court's view, there is a clear relationship between resolution 1514 (XV) and the process of decolonization following its adoption.

151. As the Court has noted:

> "General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*. To establish whether this is true of a given General Assembly resolution, it is necessary to look at its content and the conditions of its adoption; it is also necessary to see whether an *opinio juris* exists as to its normative character." (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 254-255, para. 70.)

152. The Court considers that, although resolution 1514 (XV) is formally a recommendation, it has a declaratory character with regard to the right to self-determination as a customary norm, in view of its content and the conditions of its adoption. The resolution was adopted by 89 votes with 9 abstentions. None of the States participating in the vote contested the existence of the right of peoples to self-determination. Certain States justified their abstention on the basis of the time required for the implementation of such a right.

153. The wording used in resolution 1514 (XV) has a normative character, in so far as it affirms that "[a]ll peoples have the right to self-determination". Its preamble proclaims "the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations" and its first paragraph states that "[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights [and] is contrary to the Charter of the United Nations".

This resolution further provides that "[i]mmediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire". In order to prevent any dismemberment of non-self-governing territories, paragraph 6 of resolution 1514 (XV) provides 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 purposes and principles of the Charter of the United Nations."

154. Article 1, common to the International Covenant on Civil and Political Rights and to the International Covenant on Economic, Social and Cultural Rights, adopted on 16 December 1966, by General Assembly resolution 2200 A (XXI), reaffirms the right of all peoples to self-determination, and provides, *inter alia*, that:

> "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

155. The nature and scope of the right to self-determination of peoples, including respect for "the national unity and territorial integrity of a State or country", were reiterated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. This Declaration was annexed to General Assembly resolution 2625 (XXV) which was adopted by consensus in 1970. By recognizing the right to self-determination as one of the "basic principles of international law", the Declaration confirmed its normative character under customary international law.

156. The means of implementing the right to self-determination in a non-self-governing territory, described as "geographically separate and . . . distinct ethnically and/or culturally from the country administering it", were set out in Principle VI of General Assembly resolution 1541 (XV), adopted on 15 December 1960:

> "A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:
>
> *(a)* Emergence as a sovereign independent State;
>
> *(b)* Free association with an independent State; or
>
> *(c)* Integration with an independent State."

157. The Court recalls that, while the exercise of self-determination may be achieved through one of the options laid down by resolution 1541 (XV), it must be the expression of the free and genuine will of the people concerned. However, "[t]he right of self-determination leaves the General Assembly a measure of discretion with respect to the forms and procedures by which that right is to be realized" (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 36, para. 71).

158. The right to self-determination under customary international law does not impose a specific mechanism for its implementation in all instances, as the Court has observed:

> "The validity of the principle of self-determination, defined as the need to pay regard to the freely expressed will of peoples, is not affected by the fact that in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given territory. Those instances were based either on the consideration that a certain population did not constitute a 'people' entitled to self-determination or on the conviction that a consultation was totally unnecessary, in view of special circumstances." (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 33, para. 59.)

159. Some participants have argued that the customary status of the right to self-determination did not entail an obligation to implement that right within the boundaries of the non-self-governing territory.

160. The Court recalls that the right to self-determination of the people concerned is defined by reference to the entirety of a non-self-governing territory, as stated in the aforementioned paragraph 6 of resolution 1514 (XV) (see paragraph 153 above). Both State practice and *opinio juris* at the relevant time confirm the customary law character of the right to territorial integrity of a non-self-governing territory as a corollary of the right to self-determination. No example has been brought to the attention of the Court in which, following the adoption of resolution 1514 (XV), the General Assembly or any other organ of the United Nations has considered as lawful the detachment by the administering Power of part of a non-self-governing territory, for the purpose of maintaining it under its colonial rule. States have consistently emphasized that respect for the territorial integrity of a non-self-governing territory is a key element of the exercise of the right to self-determination under international law. The Court considers that the peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power. It follows that any detachment by the administering Power of part of a non-self-governing territory, unless based on the freely expressed and genuine will of the people of the territory concerned, is contrary to the right to self-determination.

161. In the Court's view, the law on self-determination constitutes the applicable international law during the period under consideration, namely between 1965 and 1968. The Court noted in its Advisory Opinion on *Namibia* the consolidation of that law:

> "the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them" (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 31, para. 52).

162. The Court will now examine the functions of the General Assembly during the process of decolonization.

3. The functions of the General Assembly with regard to decolonization

163. The General Assembly has played a crucial role in the work of the United Nations on decolonization, in particular, since the adoption of resolution 1514 (XV). It has overseen the implementation of the obligations of Member States in this regard, such as they are laid down in Chapter XI of the Charter and as they arise from the practice which has developed within the Organization.

164. It is in this context that the Court is asked in Question *(a)* to consider, in its analysis of the international law applicable to the process of decolonization of Mauritius, the obligations reflected in General Assembly resolutions 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967.

165. In resolution 2066 (XX) of 16 December 1965, entitled "Question of Mauritius", having noted "with deep concern that any step taken by the administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of the Declaration, and in particular of paragraph 6 thereof", the General Assembly, in the operative part of the text, invites "the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity".

166. In resolutions 2232 (XXI) and 2357 (XXII), which are more general in nature and relate to the monitoring of the situation in a number 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 and the establishment of military bases and installations in these Territories is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV)".

167. In the Court's view, by inviting the United Kingdom to comply with its international obligations in conducting the process of decolonization of Mauritius, the General Assembly acted within the framework of the Charter and within the scope of the functions assigned to it to oversee the application of the right to self-determination. The General Assembly assumed those functions in order to supervise the implementation of obligations incumbent upon administering Powers under the Charter. It thus established a special committee tasked with examining the factors that would enable it to decide "whether any territory is or is not a territory whose people have not yet attained a full measure of self-government" (resolution 334 (IV) of 2 December 1949). It has been

the Assembly's consistent practice to adopt resolutions to pronounce on the specific situation of any non-self-governing territory. Thus, immediately after the adoption of resolution 1514 (XV), it established the Committee of Twenty-Four tasked with monitoring the implementation of that resolution and making suggestions and recommendations thereon (resolution 1654 (XVI) of 27 November 1961). The General Assembly also monitors the means by which the free and genuine will of the people of a non-self-governing territory is expressed, including the formulation of questions submitted for popular consultation.

168. The General Assembly has consistently called upon administering Powers to respect the territorial integrity of non-self-governing territories, especially after the adoption of resolution 1514 (XV) of 14 December 1960 (see, for example, General Assembly resolutions 2023 (XX) of 5 November 1965 and 2183 (XXI) of 12 December 1966 (Question of Aden); 3161 (XXVIII) of 14 December 1973 and 3291 (XXIX) of 13 December 1974 (Question of the Comoro Archipelago); 34/91 of 12 December 1979 (Question of the islands of Glorieuses, Juan de Nova, Europa and Bassas da India)).

169. The Court will now examine the circumstances relating to the detachment of the Chagos Archipelago from Mauritius and determine whether it was carried out in accordance with international law.

4. Application in the present proceedings

170. It is necessary to begin by recalling the legal status of Mauritius before its independence. Following the conclusion of the 1814 Treaty of Paris, the "island of Mauritius and the Dependencies of Mauritius" [*"l'île Maurice et les dépendances de Maurice"*], including the Chagos Archipelago, were administered without interruption by the United Kingdom. This is how the whole of Mauritius, including its dependencies, came to appear on the list of non-self-governing territories drawn up by the General Assembly (resolution 66 (I) of 14 December 1946). It was on this basis that the United Kingdom regularly provided the General Assembly with information relating to the existing conditions in that territory, in accordance with Article 73 of the Charter. Therefore, at the time of its detachment from Mauritius in 1965, the Chagos Archipelago was clearly an integral part of that non-self-governing territory.

171. In the Lancaster House agreement of 23 September 1965, the Premier and other representatives of Mauritius, which was still under the authority of the United Kingdom as administering Power, agreed in principle to the detachment of the Chagos Archipelago from the territory of Mauritius. This agreement in principle was given on condition that the archipelago could not be ceded to any third party and would be returned to Mauritius at a later date, a condition which was accepted at the time by the United Kingdom.

172. The Court observes that when the Council of Ministers agreed in principle to the detachment from Mauritius of the Chagos Archipelago, Mauritius was, as a colony, under the authority of the United Kingdom. As noted at the time by the Committee of Twenty-Four: "the present Constitution of Mauritius . . . do[es] not allow the representatives of the people to exercise

real legislative or executive powers, and that authority is nearly all concentrated in the hands of the United Kingdom Government and its representatives" (UN doc. A/5800/Rev.1 (1964-1965), p. 352, para. 154). In the Court's view, it is not possible to talk of an international agreement, when one of the parties to it, Mauritius, which is said to have ceded the territory to the United Kingdom, was under the authority of the latter. The Court is of the view that heightened scrutiny should be given to the issue of consent in a situation where a part of a non-self-governing territory is separated to create a new colony. Having reviewed the circumstances in which the Council of Ministers of the colony of Mauritius agreed in principle to the detachment of the Chagos Archipelago on the basis of the Lancaster House agreement, the Court considers that this detachment was not based on the free and genuine expression of the will of the people concerned.

173. In its resolution 2066 (XX) of 16 December 1965, adopted a few weeks after the detachment of the Chagos Archipelago, the General Assembly deemed it appropriate to recall the obligation of the United Kingdom, as the administering Power, to respect the territorial integrity of Mauritius. The Court considers that the obligations arising under international law and reflected in the resolutions adopted by the General Assembly during the process of decolonization of Mauritius require the United Kingdom, as the administering Power, to respect the territorial integrity of that country, including the Chagos Archipelago.

174. The Court concludes that, as a result of the Chagos Archipelago's unlawful detachment and its incorporation into a new colony, known as the BIOT, the process of decolonization of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968.

B. The consequences under international law arising from the continued administration by the United Kingdom of the Chagos Archipelago (Question *(b)*)

175. Having established that the process of decolonization of Mauritius was not lawfully completed in 1968, the Court must now examine the consequences, under international law, arising from the United Kingdom's continued administration of the Chagos Archipelago (Question *(b)*). The Court will answer this question, drafted in the present tense, on the basis of the international law applicable at the time its opinion is given.

176. Several participants in the proceedings before the Court have argued that the United Kingdom's continued administration of the Chagos Archipelago has consequences under international law not only for the United Kingdom itself, but also for other States and international organizations. The consequences mentioned include the requirement for the United Kingdom to put an immediate end to its administration of the Chagos Archipelago and return it to Mauritius. Some participants have gone further, advocating that the United Kingdom must make good the injury suffered by Mauritius. Others have considered that the former administering Power must co-operate with Mauritius regarding the resettlement on the Chagos Archipelago of the nationals of the latter, in particular those of Chagossian origin.

In contrast, one participant has contended that the only consequence for the United Kingdom under international law concerns the retrocession of the Chagos Archipelago when it is no longer needed for the defence purposes of that State. Finally, a few participants have taken the view that the time frame for completing the decolonization of Mauritius is a matter for bilateral negotiations to be conducted between Mauritius and the United Kingdom.

As regards the consequences for third States, some participants have maintained that those States have an obligation not to recognize the unlawful situation resulting from the United Kingdom's continued administration of the Chagos Archipelago and not to render assistance in maintaining it.

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177. The Court having found that the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State (see *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949,* p. 23; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 38, para. 47; see also Article 1 of the Articles on Responsibility of States for Internationally Wrongful Acts). It is an unlawful act of a continuing character which arose as a result of the separation of the Chagos Archipelago from Mauritius.

178. Accordingly, the United Kingdom is under an obligation to bring an end to its administration of the Chagos Archipelago as rapidly as possible, thereby enabling Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self-determination.

179. The modalities necessary for ensuring the completion of the decolonization of Mauritius fall within the remit of the United Nations General Assembly, in the exercise of its functions relating to decolonization. As the Court has stated in the past, it is not for it to "determine what steps the General Assembly may wish to take after receiving the Court's opinion or what effect that opinion may have in relation to those steps" (*Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 421, para. 44).

180. Since respect for the right to self-determination is an obligation *erga omnes*, all States have a legal interest in protecting that right (see *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29; see also *Barcelona Traction, Light and Power Company, Limited (Belgium* v. *Spain), Second Phase, Judgment, I.C.J. Reports 1970*, p. 32, para. 33). The Court considers that, while it is for the General Assembly to pronounce on the modalities required to ensure the completion of the decolonization of Mauritius, all Member States must co-operate with the United Nations to put those modalities into effect. As recalled in the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations:

> "Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle" (General Assembly resolution 2625 (XXV)).

181. As regards the resettlement on the Chagos Archipelago of Mauritian nationals, including those of Chagossian origin, this is an issue relating to the protection of the human rights of those concerned, which should be addressed by the General Assembly during the completion of the decolonization of Mauritius.

182. In response to Question *(b)* of the General Assembly, relating to the consequences under international law that arise from the continued administration by the United Kingdom of the Chagos Archipelago, the Court concludes that the United Kingdom has an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible, and that all Member States must co-operate with the United Nations to complete the decolonization of Mauritius.

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183. For these reasons,

THE COURT,

(1) Unanimously,

Finds that it has jurisdiction to give the advisory opinion requested;

(2) By twelve votes to two,

Decides to comply with the request for an advisory opinion;

IN FAVOUR: *President* Yusuf; *Vice-President* Xue; *Judges* Abraham, Bennouna, Cançado Trindade, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian, Salam, Iwasawa;

AGAINST: *Judges* Tomka, Donoghue;

(3) By thirteen votes to one,

Is of the opinion that, having regard to international law, the process of decolonization of Mauritius was not lawfully completed when that country acceded to independence in 1968, following the separation of the Chagos Archipelago;

IN FAVOUR: *President* Yusuf; *Vice-President* Xue; *Judges* Tomka, Abraham, Bennouna, Cançado Trindade, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian, Salam, Iwasawa;

AGAINST: *Judge* Donoghue;

(4) By thirteen votes to one,

Is of the opinion that the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible;

IN FAVOUR: *President* Yusuf; *Vice-President* Xue; *Judges* Tomka, Abraham, Bennouna, Cançado Trindade, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian, Salam, Iwasawa;

AGAINST: *Judge* Donoghue;

(5) By thirteen votes to one,

Is of the opinion that all Member States are under an obligation to co-operate with the United Nations in order to complete the decolonization of Mauritius.

IN FAVOUR: *President* Yusuf; *Vice-President* Xue; *Judges* Tomka, Abraham, Bennouna, Cançado Trindade, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian, Salam, Iwasawa;

AGAINST: *Judge* Donoghue.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this twenty-fifth day of February, two thousand and nineteen, in two copies, one of which will be placed in the archives of the Court and the other transmitted to the Secretary-General of the United Nations.

(Signed) Abdulqawi Ahmed YUSUF,
President.

(Signed) Philippe COUVREUR,
Registrar.

Vice-President XUE appends a declaration to the Advisory Opinion of the Court; Judges TOMKA and ABRAHAM append declarations to the Advisory Opinion of the Court; Judge CANÇADO TRINDADE appends a separate opinion to the Advisory Opinion of the Court; Judges CANÇADO TRINDADE and ROBINSON append a joint declaration to the Advisory Opinion of the Court; Judge DONOGHUE appends a dissenting opinion to the Advisory Opinion of the Court; Judges GAJA, SEBUTINDE and ROBINSON append separate opinions to the Advisory Opinion of the Court; Judges GEVORGIAN, SALAM and IWASAWA append declarations to the Advisory Opinion of the Court.

(Initialled) A.A.Y.

(Initialled) Ph.C.

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