STRICT EMBARGO UNTIL 13:15 CEST ON 3 SEPTEMBER 2018

The Hague – Port Louis
3 September 2018

PRESS RELEASE OF THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS

At 10.00am on 3 September 2018 in The Hague, Sir Anerood Jugnauth GCSK, KCMG, QC, Minister Mentor and former Prime Minister of the Republic of Mauritius, opened the oral hearings before the International Court of Justice on the request for an Advisory Opinion on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.

During the course of this week, from 3 to 6 September 2018, the Court will hear from 22 States and the African Union on the question of whether the process of decolonisation of Mauritius was lawfully completed in 1968, and on the legal consequences that arise from the continued administration of the Chagos Archipelago by the United Kingdom of Great Britain and Northern Ireland. This follows two rounds of extensive written submissions, made by 31 States and the African Union.

In his opening statement to the Court, the Minister Mentor recalled participating in the 1965 Constitutional Conference during which the British Government, the colonial power in Mauritius, threatened Mauritian representatives that they would not be granted independence unless they agreed to the dismemberment of Mauritius. The colonial power unilaterally detached the Chagos Archipelago from Mauritius on 8 November 1965, prior to granting Mauritius independence on 12 March 1968. Diego Garcia, the largest island in the Chagos Archipelago, has since been made available to the United States of America by the colonial power, to establish a military facility. The Minister Mentor also recalled that "between 1967 and 1973, the administering power forcibly removed the entire population of the Chagos Archipelago … many of whom had ancestors originating and living in those islands for generations" and that "the shameful eviction caused and continues to cause immense suffering." He made clear that "Mauritius fully supports their immediate right of return to the Chagos Archipelago, to their homes. But as long as our decolonisation is not complete, we are not able to implement a programme for resettlement."

Mauritius' presentation also included a video statement by Mrs Marie Liseby Elysé, who travelled to The Hague as part of a nine-strong Chagossian team as members of the Mauritian delegation. In her statement Mrs Elysé recounted how she was forcibly evicted from the Chagos Archipelago in 1973: "We were like animals and slaves in that ship. People were dying of sadness". She added that "I must return to the island where I was

born and I must die there and where my grandparents have been buried … in the place where I took birth, and in my native island."

Counsel for Mauritius made submissions on all the legal issues arising from the two questions posed to the Court by the UN General Assembly. Professor Pierre Klein argued that the Court has jurisdiction and that it can and should answer both questions in full. Ms Alison Macdonald QC took the Court through the historical record to show that the colonial power's conduct in the 1960's fell far short of ensuring that the people of Mauritius could exercise their right to self-determination. Mr Paul Reichler argued that the decolonisation of Mauritius remains incomplete for as long as the Chagos Archipelago remains under the control of the colonial power and that this internationally wrongful situation must be brought to an immediate end. Finally, Professor Philippe Sands QC urged the Court to "honour its judicial function by assisting the General Assembly and its members to complete the decolonisation of Mauritius."

His Excellency Mr Jagdish Dharamchand Koonjul, GOSK, Ambassador and Permanent Representative of the Republic of Mauritius to the United Nations in New York, in a statement after the close of Mauritius' presentation to the Court, stated that "the U.N. General Assembly voted overwhelmingly in favour of referring these questions to the International Court of Justice, the principal judicial organ of the United Nations. Today is an historic day in the continuing struggle for the eradication of colonialism, not just for Mauritius, but for the whole of Africa. We trust that the Court will assist the General Assembly in closing this final chapter and to bring to an end the last remaining British colony in Africa."

* * *

The opening and closing speeches made by Mauritius to the Court are attached. The video statement of Mrs Elysé can be downloaded at: https://bit.ly/2C9VFqk. **All are embargoed until 1315 CEST on 3 September**.

The hearings conclude on the afternoon of Thursday 6 September after a statement of the African Union.

For all requests for comments, please contact:

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STRICT EMBARGO UNTIL 13.15 CEST ON 3 SEPTEMBER 2018

INTERNATIONAL COURT OF JUSTICE

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

REQUEST FOR ADVISORY OPINION

ORAL PROCEEDINGS

THE RT. HON. SIR ANEROOD JUGNAUTH, GCSK, KCMG, QC, MINISTER MENTOR, MINISTER OF DEFENCE, MINISTER FOR RODRIGUES OF THE REPUBLIC OF MAURITIUS

OPENING STATEMENT

1. Mr President, Members of the Court, it is a special honour for me to open the oral pleadings on behalf of the Republic of Mauritius.

2. I sincerely thank the Court for promptly organising these proceedings on the General Assembly's request for an Advisory Opinion on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965. I also extend my Government's appreciation to all the participants in this process.

3. Mr President, I have been immensely privileged to witness and participate in my country's political advancement, from a colony to independence on 12 March 1968. I am the only one still alive among those who participated in the Mauritius Constitutional Conference at Lancaster House in 1965 where talks on the ultimate status of Mauritius were held.

4. Today Mauritius is a peaceful and stable democratic State. It has maintained excellent relations with all States concerned with the questions referred to the Court. However, I am sorry to say that more than fifty years after independence, and more than fifty years after I travelled to London for the Constitutional Conference, the process of

decolonisation of Mauritius remains incomplete, as a result of the unlawful detachment of an integral part of our territory on the eve of our independence.

5. Following long periods of Dutch and French occupation from 1638 to 1810, there followed 157 years of British colonial rule. Throughout that period, the Chagos Archipelago was always an integral part of Mauritius, and was treated as such by successive administering powers.

6. Mr President, Members of the Court, as you will have read in our Written Statement, in the run-up to the 1965 Conference, officials of the colonial power devised a strategy by which Mauritian representatives were given no room for any choice.[1] In parallel with the scheduled constitutional talks, smaller private meetings on "defence matters" were organised by the Colonial Secretary in London, to which only five Mauritian representatives were invited, including Premier Sir Seewoosagur Ramgoolam.[2] These secret meetings were not, at that time, made known to the other Mauritian representatives, myself included, although we were later told of the immense pressure that was imposed on the small group. The official records, which only came to light many years later, reveal that during the first two meetings, on 13 and 20 September 1965, Mauritian representatives had indeed expressed strenuous opposition to the proposal to detach the Chagos Archipelago.[3]

7. In the face of this opposition, the then Prime Minister, Harold Wilson, decided to have a "private word" with Sir Seewoosagur. [SCREEN ON]

[1] *See* Written Statement of the Republic of Mauritius (1 Mar. 2018), paras. 3.15-3.90 (hereinafter "Written Statement of Mauritius"). *See also* Written Comments of the Republic of Mauritius (15 May 2018), paras. 1.14-1.32.

[2] *See* Written Statement of Mauritius, paras. 3.59-3.84.

[3] *See ibid*., paras. 3.30, 3.36-3.38 and 3.51-3.52.

8. Speaking notes prepared for Mr Wilson set out in clear and unambiguous terms that the object of that meeting was:

> "**to frighten [Sir Seewoosagur] with hope: hope that he might get independence; Fright lest he might not unless he is sensible about the detachment of the Chagos Archipelago.**"[4] [SCREEN OFF]

9. The record of that meeting shows how the then Prime Minister of the colonial power put this objective into practice. He told Sir Seewoosagur that he and his colleagues could return to Mauritius "either with Independence or without it", and that "the best solution of all might be Independence and detachment by agreement".[5]

10. Sir Seewoosagur understood Prime Minister Wilson's words to be in the nature of a threat. It is against that backdrop of immense pressure and in circumstances amounting to duress, that less than five hours later, four of the five Mauritian representatives yielded to the detachment of the Chagos Archipelago.[6] They did so only because the administering power made it abundantly clear that independence would only be granted if they "agreed" to the detachment, and the dismemberment of Mauritius.

11. Mr President, the administering power now contends that Mauritius freely consented to the detachment of the Chagos Archipelago.[7] Yet the choice we were faced with was no

[4] U.K. Colonial Office, *Note for the Prime Minister's Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius*, PREM 13/3320 (22 Sept. 1965) (Written Statement of Mauritius, Annex 59).

[5] *See* U.K. Foreign Office, *Record of a Conversation between the Prime Minister and the Premier of Mauritius, Sir Seewoosagur Ramgoolam, at No. 10, Downing Street, at 10 A.M. on Thursday, September 23, 1965*, FO 371/184528 (23 Sept. 1965), p. 3 (Written Statement of Mauritius, Annex 60) ("The Prime Minister went on to say 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 we could not of course commit the Colonial Secretary at this point.")

[6] *See* Written Statement of Mauritius, paras. 3.82-3.84.

[7] Written Statement of the United Kingdom of Great Britain and Northern Ireland (15 Feb. 2018), paras. 1.4,

choice at all: it was independence on condition of "agreement" to detachment, or no independence, with detachment anyway. This was not – and cannot be treated as – the freely expressed will of the people of Mauritius. It cannot meet the requirements of self-determination. At no time were the Mauritian people, either as a whole or through their representatives, given any opportunity to retain the Chagos Archipelago.

12. Six weeks after the 1965 Conference, the administering power unilaterally detached the Chagos Archipelago from the territory of Mauritius. It did so by way of Order in Council, which created a new colony, the so-called "BIOT". Its sole purpose was the establishment of a military base on Diego Garcia, the largest island in the Chagos Archipelago.

13. To facilitate that, between 1967 and 1973, the administering power forcibly removed the entire population of the Chagos Archipelago. Some 1,500 men, women and children, many of whom had ancestors originating and living in those islands for generations, were forcibly removed. A few of them are in the courtroom today and later this morning you will see a video statement from one of them. The shameful eviction caused and continues to cause immense suffering to part of the Mauritian population, commonly referred to as Chagossians.

14. The Chagossians have fought for more than four decades for the right to return to their place of birth, but without success. While the U.K. contend that they have given financial support to them, let me say that no amount of monetary compensation can remedy the flagrant and on-going breaches of their fundamental human rights, rights that are an inherent part of the principle of self-determination. Mauritius fully supports their immediate right of return to the Chagos Archipelago, to their homes. But as long as our decolonisation is not complete, we are not able to implement a programme for resettlement.

1.23, 3.7-3.8, 3.35-3.37, 3.52.

15. Mr President, Members of the Court, one of the facts revealed by the release of records from the British archives, decades after the event, shows that the administering power sought to carry out the detachment as quickly as possible, so as to present the United Nations – and its Committee of 24 – with a *fait accompli*.[8] Mr President, there was a clear plan to do the excision behind the back of the United Nations.

16. There is a complaint that Mauritius relies primarily on the colonial power's documents and has failed to produce its own contemporaneous records.[9] But Mauritius was a colony of the United Kingdom before, during and for three years after the 1965 Conference. It was British Colonial and Foreign Office officials who produced records of all the relevant meetings at Lancaster House. Those official records, and the views expressed by its own politicians and officials, seem to be challenged by no one, except the former administering power which produced them.

17. Mr President, Members of the Court, after achieving independence, and as soon as its socio-economic conditions permitted, Mauritius has consistently voiced its opposition to the detachment of the Chagos Archipelago.[10] It has done so dozens of times before the United Nations General Assembly, over many decades, and it has done so before many other UN and international fora. There is widespread recognition among the international community, including the African Union and the Non-Aligned Movement, that the process of decolonisation of Mauritius remains incomplete.[11] This overwhelming consensus is also reflected in the written submissions made to the Court in these proceedings.

[8] U.K. Foreign Office, *Minute from Secretary of State for the Colonies to the Prime Minister*, FO 371/184529 (5 Nov. 1965), para. 7 (Written Statement of Mauritius, Annex 70). *See also* Written Statement of Mauritius, paras. 4.24-4.41.

[9] Written Comments of the United Kingdom of Great Britain and Northern Ireland (14 May 2018), para. 2.49.

[10] *See* Written Statement of Mauritius, paras. 4.2-4.22.

[11] *See* Written Statement of Mauritius, paras. 4.42-4.48.

18. Mauritius has been clear that this Request for an advisory opinion is not intended to bring into question the presence of the base on Diego Garcia, only one of the islands of the Chagos Archipelago. Mauritius recognises its existence and has repeatedly made clear to the United States and the administering power that it accepts the future operation of the base in accordance with international law.[12] This is a solemn commitment on behalf of Mauritius and we trust the Court will recognise it as such. Mauritius is also committed to the protection of the environment and has been a responsible guardian of other areas of great environmental significance within its territory.[13]

19. Monsieur le Président, Mesdames et Messieurs de la Cour, la question qui se trouve au coeur de cette requête – l'achèvement de la décolonisation de Maurice – est inextricablement liée à l'un des principaux buts des Nations Unies: "développer entre les nations des relations amicales fondées sur le respect du principe de l'égalité de droits des peuples et de leur droit à disposer d'eux-mêmes". La République de Maurice est attachée à la règle de droit et consciente de la place toute particulière de la Cour dans l'ordre juridique international. Le peuple mauricien espère que la Cour remplira son mandat et répondra aux deux questions posées par l'Assemblée générale dans la résolution adoptée par une majorité écrasante des votes exprimés. Un avis consultatif de la Cour contribuerait indubitablement à la décolonisation de Maurice et permettrait la réinstallation des Chagossiens qui le souhaitent.

[12] *See ibid.,* para. 1.30 and Chapter 7, Part III. B. 2. *See also*: *Letter* from the Minister of Foreign Affairs and Regional Cooperation, Republic of Mauritius, to Secretary of State for Foreign & Commonwealth Affairs, United Kingdom (21 Dec. 2000) (Written Statement of Mauritius, Annex 141); *Letter* from the Prime Minister of Mauritius to the Prime Minister of the United Kingdom (22 July 2004) (Written Statement of Mauritius, Annex 147); *Letter* from the Minister of Foreign Affairs, International Trade and Regional Co-operation of the Republic of Mauritius to Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom (22 Oct. 2004) (Written Statement of Mauritius, Annex 148); *Note Verbale* from the Ministry of Foreign Affairs of the Republic of Mauritius to the Embassy of the United States of America in Mauritius, No. 26/2014 (1197/28) (28 Mar. 2014) (Written Statement of Mauritius, Annex 168); *Letter* from the Prime Minister of the Republic of Mauritius to the President of the United States (11 July 2017) (Written Statement of Mauritius, Annex 193).

[13] See Written Statement of Mauritius, para. 1.30.

20. Monsieur le Président, je vais maintenant indiquer comment la présentation de Maurice sera organisée. Le professeur Pierre Klein me succédera et traitera des questions de compétence et d'opportunité. Me Alison Macdonald traitera ensuite de la première question et Me Paul Reichler de la seconde. Enfin, le professeur Philippe Sands conclura la présentation de Maurice en parlant du rôle de la Cour en matière de droit à l'autodétermination. Il présentera aussi une vidéo qui permettra à la Cour d'entendre Mme Marie Liseby Elysé qui représente les personnes qui ont été expulsées de force de l'archipel des Chagos.

21. Monsieur le Président, Mesdames et Messieurs de la Cour, c'est un privilège pour Maurice d'apparaître pour la première fois devant la Cour. Et c'est un privilège tout particulier pour moi de me présenter devant vous aujourd'hui. Je resterai à la disposition de la Cour pour toute assistance qui serait requise durant ces audiences. Je vous demanderais maintenant de bien vouloir passer la parole au professeur Klein et vous remercie pour votre aimable attention.

STRICT EMBARGO UNTIL 13.15 CEST ON 3 SEPTEMBER 2018

INTERNATIONAL COURT OF JUSTICE

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

ORAL PROCEEDINGS

PROFESSOR PHILIPPE SANDS QC

CLOSING REMARKS

1. Mr President, Madam Vice-President, Members of the Court, it is a privilege to close the arguments of Mauritius, on an important matter which raises issues on which the Court has played a singular and significant role.

2. Mr. President, no country wishes to be a colony. The mere possibility engenders strong feelings. A recent British Foreign Secretary made that clear a few weeks ago, [SCREEN ON] in his resignation letter. He complained to the Prime Minister that she was adopting a path, in respect of BREXIT, that would turn the country into one "headed for the status of colony".[1]

3. The irony of his words will not be lost in this Great Hall. The United Kingdom does not wish to be a colony, yet it stands before this Court to defend a status as coloniser of Mauritius, a significant part of whose territory it administers. Unlike Mauritius, the coming "colony" of the former Foreign Secretary's imagination is not in danger of having its people forcibly removed and prevented from returning. [SCREEN OFF]

[1] The Guardian, *Full text of Boris Johnson's resignation letter and PM's reply*, available at https://www.theguardian.com/politics/2018/jul/09/full-text-of-boris-johnsons-resignation-letter-to-the-pm (last accessed on 2 September 2018).

4. Mr President, Members of the Court, may I record the presence in the Great Hall of three members of the Chagossian community, who have travelled from Mauritius: Mme Marie Liseby Elysé and M. Louis Olivier Bancoult, from Peros Banhos; and M. Louis Rosemond Saminaden from Salomon Islands. Also in the Peace Palace are Mme Marie Janine Sadrien and Mme Marie Rosemonde Berthin from Salomon Islands, Mme Marie Mimose Furcy from Peros Banhos and, from Diego Garcia, M. Louis Roger Alexis, Mme Marie Suzelle Baptiste and Mme Marie Nella Gaspard. You will have read the statements in our written submissions.[2] It is appropriate that the Court should hear the voice of the Chagossians directly. Time is limited, so in accordance with the decision of the Court, for which we express our appreciation, we will play a short video, communicated two weeks ago to the Court and all participants in these proceedings. The words of Madame Elysé are not offered as testimonial evidence, but as a member of the delegation of Mauritius, a statement of impact, what the continuation of colonialism really means. [PLAY VIDEO]

5. Mr President, Members of the Court, that is what it means to be expelled from your home and to wish to return. After fifty years of waiting and hoping, it is understandable there will be emotion. The Chagossians in the Peace Palace today are representatives of a formerly thriving community, 1,500, men, women and children forcibly removed after 1967. The General Assembly's Request, pursuant to an African resolution, is not theoretical or abstract. It concerns real lives and real facts, with continuing consequences. The desire to return, and the inability to do so, offer tangible evidence that the decolonisation of Mauritius is yet to be completed.

6. Two years ago the idea of resettlement was put to the community, in a consultation conducted by the colonial power. I should add that the Government of Mauritius did not

[2] *See* Written Comments of the Republic of Mauritius (15 May 2018) (hereinafter "Written Comments of Mauritius"), para. 4.114.

participate in that consultation because it does not recognise the authority of the United Kingdom to determine the issue of resettlement.[3] 98% of Chagossian respondents expressed a desire to return.[4] The colonial power recognises it "treated the Chagossians very badly", that it acted in "callous disregard of their interests".[5] Such sentiments cannot undo a harm which continues. This Court can.

7. The colonial power says you can and should do nothing. They follow in the footsteps of South Africa, in 1971. The colonial power says feasibility, cost and unspecified "defence and security interests" prevent a return to the Chagos Archipelago.[6] [SCREEN ON] Yet in 2015 its own study reported that resettlement *is* feasible, with no fundamental legal obstacle.[7] On costs, the figures it relies on are grossly overestimated and irrelevant.[8] On "defence and security" concerns, we look forward to an explanation as to why the repopulation of some islands, more than 200 kilometres from Diego Garcia, give rise to insurmountable concerns. To date, no explanation has been offered. [SCREEN OFF]

8. Instead of resettlement, the United Kingdom proposes to fund so-called "heritage visits", as you can see on the screens.[9] [SCREEN ON] They would allow a handful of former 'Man Fridays' – as some colonial documents refer to members of the Chagossian community

[3] U.K. Foreign and Commonwealth Office, "*BIOT Resettlement Policy Review: Summary of Responses to Public Consultation*" (21 Jan. 2016), p. 5 (**Annex 178**).

[4] *Ibid*., p. 3.

[5] Written Statement of the United Kingdom of Great Britain and Northern Ireland (15 Feb. 2018), paras. 1.5, 4.3.

[6] U.K. House of Lords, *"Written Statement: Update on the British Indian Ocean Territory"*, No. HLWS257 (16 Nov. 2016) (**Annex 185**). *See also* United Kingdom, *"British Indian Ocean Territory: Autumn 2017 Heritage Visits"*, *available at* https://biot.gov.io/biot-policy-review/heritage-visits/autumn-2017-hv/ (last accessed: 21 Aug. 2018).

[7] KPMG LLP, *"Feasibility study for the resettlement of the British Indian Ocean Territory"* (31 Jan. 2015), p. 20, *available at* http://qna.files.parliament.uk/ws-attachments/178757/original/Feasibility%20study%20for%20the%20resettlement%20of%20the%20British%20Indian%20Ocean%20Territory%20Volume%201.pdf (last accessed: 10 July 2018).

[8] *See* Written Comments of Mauritius, p. 189, fn. 571.

[9] *See* United Kingdom, "*British Indian Ocean Territory: Autumn 2017 Heritage Visits*", *available at* https://biot.gov.io/biot-policy-review/heritage-visits/autumn-2017-hv/ (last accessed: 21 Aug. 2018).

– to visit their old homes, for a few hours. At the same time, the colonial power offers four-week permits to allow private yachts to visit the outer islands of the Chagos Archipelago, for a fee.[10] Mr. President, the right to self-determination is not a "heritage" issue. This is not Africa in the late nineteenth or early twentieth century. This is September 2018, forty-seven years since the Advisory Opinion on Namibia. As Mme Rosemonde Berthin, a Chagossian born in Salomon Island in 1954, put it: "I do not want to visit", she wants to return. "It is my home…".[11] [SCREEN OFF]

Decolonisation and the right to self-determination

9. I turn to decolonisation and the right to self-determination. I once heard a student of international law ask a judge of this Court: why hasn't the Court done more for human rights? Some questions are best answered with another. Is any human right more important than that of self-determination? No. The ability of a community to freely determine its own destiny is as fundamental as any other human right. Has any Court done more than this one to protect and defend that right? No. This Court has handed down judgments and advisory opinions with real consequences for peoples and territories subject to colonial domination. In answering the two questions sent from the General Assembly, Mauritius asks that the Court give effect to its own long line of authorities.

10. This Court's *South West Africa* decisions, from 1950 to 1971, played a key role in facilitating Namibia's transition to independence.[12] The Court has long confirmed that the

[10] As of 1 August 2018, the charges are £75 per week. *See* United Kingdom, *"British Indian Ocean Territory: How to apply for a mooring permit"*, *available at* https://biot.gov.io/visiting/mooring-permits/ (last accessed: 1 Aug. 2018).

[11] *See* Written Comments of Mauritius, p. 182 (Rosemonde Berthin).

[12] *See, in particular*, *International Status of South-West Africa*, *Advisory Opinion, I.C.J. Reports 1950*; *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* (hereinafter "*South West Africa (Advisory Opinion)*").

right to self-determination "is a right *erga omnes*".[13] In 2004, you advised that Israel's construction of a wall breached the right of the Palestinian people to self-determination.[14] In 2010, the Court invoked again "the international law of self-determination"[15] as a "major development".[16] Over six decades, this Court's judicial activity has transformed the world. It can contribute to the completion of the decolonisation of Africa, through the rule of law. Mauritius, the African Union and the overwhelming majority of States that have participated in these proceedings – from all the UN regional groupings – urge you to do so.

The Court's judicial function in advisory proceedings

11. Mr President, I turn to the judicial function. An advisory opinion is not for resolving a dispute between States. We know that. Mauritius does not ask you resolve such a dispute. Rather, Mauritius asks that the Court honour its judicial function by assisting the General Assembly and its members to complete the decolonisation of Mauritius. As Professor Klein explained, with colonialism ended, the colonial power's claim that this a bilateral territorial dispute evaporates.

12. In overwhelming numbers States expect the Court to give the advisory opinion requested. To decline to do so, whether for the reason invoked by Australia – whose argument, given its own historical experience, resembles a form of abused child syndrome, in

[13] *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995,* p. 102, para. 29.

[14] *Legal Consequences of the Construction of a Wall in the Palestinian Occupied Territories, Advisory Opinion, I.C.J. Reports 2004* (hereinafter "*Construction of a Wall (Advisory Opinion)*"), p. 184, para. 122.

[15] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo,* Advisory Opinion, I.C.J. Reports 2010 (hereinafter "*Declaration of Independence in Respect of Kosovo (Advisory Opinion)*"), p.438, para. 82.

[16] *Ibid*.

which the victim becomes the oppressor – or as put forward by a tiny number of other States, would be an unhappy first.[17]

13. As Professor Klein has made clear, the decolonisation of Mauritius is not, and cannot logically be, a bilateral dispute between Mauritius and the administering power. Decolonisation is not about title to territory. Decolonisation transcends any bilateral relationship. The General Assembly has no role on matters of title to territory, as such. It *does* have a central role in eradicating colonisation.

14. This Request goes to the heart of your judicial function, as principal judicial organ of the United Nations.[18] Your discretion is not an option: absent "compelling reasons", the Court *must* give the Opinion. What compelling reasons exist?[19] There are none.

15. It is not for the colonial power to "prevent the giving of an Advisory Opinion which the United Nations considers to be desirable".[20] It is not for the Court to second-guess Resolution 71/292.[21] As the Court has said, the judicial function is to "identify the existing

[17] *Construction of a Wall (Advisory Opinion)*, p. 156, para. 44. It is only in *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* that the Court declined to give its advisory opinion, on the ground that the request for an advisory opinion submitted by the World Health Organization did not relate to a question arising "within the scope of [the] activities" of that organisation. *See Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996* (hereinafter "*Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*"), p. 233, para. 11.

[18] *Declaration of Independence in Respect of Kosovo (Advisory Opinion)*, p. 416, para. 29. *See also Status of Eastern Carelia, Advisory Opinion, 1923, P.C.I.J., Series B, No. 5,* p. 29; *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 175, para. 24; *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, p. 334, para. 22; *Construction of a Wall (Advisory Opinion)*, pp. 156-157, paras. 44-45.

[19] *Declaration of Independence in Respect of Kosovo (Advisory Opinion)*, p. 416, para. 30. *See also Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, p. 234, para. 13.

[20] *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, *Advisory Opinion, I.C.J. Reports 1950*, (first phase) p. 71.

[21] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo,* Advisory Opinion, I.C.J. Reports 2010, p. 415, para. 27. *See also Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter*), *Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, p. 61; *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, p. 234, para. 13.

principles and rules, interpret them and apply them [to the relevant factual matrix], thus offering a reply to the question posed based on law".[22]

16. Mr President, Members of the Court, just 6 states out of 32 participants argue that the Court should not answer the Request sent to you by resolution adopted by overwhelming majority. Of the six, just two filed Written Comments in the second round: the administering power and the State to which a part of the Chagos Archipelago has been made available. An overwhelming majority – from around the world, small and large, north and south – favour the Court's exercising of jurisdiction, to answer both questions.

17. The colonial power argues that four other States have "expressed serious concern". Where are they? Of the four, three are not participating in these oral proceedings: – China, Russia and South Korea.[23]

18. We have read the written statements of China and Russia with the great care they deserve. Neither says the Court *should not* answer the two questions put before it by the General Assembly. China recognises the important role of the Court "in the performance of the United Nations' function of decolonization."[24] Russia accepts that the Court should answer the questions if they will be of "assistance to it for the proper exercise of its functions concerning the decolonization of the territory."[25] These are important contributions. Neither State opposed the vote on the General Assembly resolution, or filed a written statement inviting you not to answer one or both questions. It is reasonable to conclude that neither

[22] *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, p. 234, para. 13. *See also Construction of a Wall (Advisory Opinion)*, p. 153, para. 38.

[23] Written Comments of the United Kingdom of Great Britain and Northern Ireland (14 May 2018), para. 1.4.

[24] Written Statement of the People's Republic of China (1 Mar. 2018), para. 9.

[25] Written Statement by the Russian Federation (27 Feb. 2018), para. 24.

objects to the Court answering both questions, provided that the focused concern they have raised is taken into account.

19. As noted in our Written Comments, we agree that the concern can and should be taken into account, without limiting the ability of the Court to answer both questions, fully. The concern is that a matter which is not about decolonisation, but actually a real dispute about territory, must not be the subject of a request for an Advisory Opinion from the General Assembly. We agree. The position is correct.

20. However, in answering both questions the Court will not trespass into a forbidden area. The matter before you does not concern a dispute on title to territory. The only law to be applied is on self-determination, for decolonisation, against dismemberment. In applying that law, you need say nothing on the law on title to territory. There are no competing claims to land or maritime territory in relation to the Chagos Archipelago. We agree with the position taken by China and Russia. By acceding to the General Assembly's request you open no door, beyond the one opened in previous advisory opinions.

21. South Korea offers no support to the UK on the merits. On jurisdiction it submits that to deny the competence of the General Assembly "would run against well-established principles and long-standing judicial practice."[26] Why that is helpful to continued colonial administration is unclear. As to Germany, it wants you to answer both questions.

22. France submitted a written statement, but presents no oral arguments. It did not oppose the request from the General Assembly. Its written statement offers no support to the colonial power on the merits of the two questions before you. Indeed, not a single written statement does, apart from that of the United States. We note too what President Macron said

[26] Written Statement of the Government of the Republic of Korea (28 Feb. 2018), para. 6.

on a visit to Algeria, earlier this year: colonisation is a 'crime against humanity'. "Ça fait partie de ce passé", he explained, "que nous devons regarder en face en présentant aussi nos excuses à l'égard de celles et ceux envers lesquels nous avons commis ces gestes".[27]

23. This Court has not shirked from giving an Advisory Opinion in relation to a colonial territory against the wishes of the administering power. In *South West Africa*, in 1971, the Court found no "compelling reasons" to decline the Request. Mr John Stevenson, the U.S. State Department legal adviser, addressed the Court on the morning of March 9th, 1971, assisted by Professor Louis Sohn, born in Lwòw, or Lemberg, or Lviv. [SCREEN ON] "South Africa argues … that the present case involves a 'dispute' between States and is, therefore, not properly a subject for an advisory opinion", Mr Stevenson told the Court, urging the Court to reject the argument, citing Article 96 of the Charter. "My Government believes that the Court should give an opinion on the important legal question submitted to it".[28] The Court did. [SCREEN OFF]

24. In so doing, the Court underscored the significance of its "functions as 'the principal judicial organ of the United Nations'",[29] and the special character of the rights at stake. "The injured entity", it ruled, "is a people which must look to the international community for assistance".[30] The same words apply in relation to this matter.

25. In the Advisory Opinion on the *Western Sahara* case, Spain raised jurisdictional objections that mirror those raised in these proceedings. It argued that the advisory proceedings were being used to circumvent the principle of consent; the Court ruled they

[27] Le Monde, *En Algérie, Macron qualifie la colonisation de « crime contre l'humanité », tollé à droite*, *available at* https://www.lemonde.fr/election-presidentielle-2017/article/2017/02/15/macron-qualifie-la-colonisation-de-crime-contre-l-humanite-tolle-a-droite-et-au-front-national_5080331_4854003.html (15 Feb. 2017).

[28] *South West Africa, Advisory Opinion*, *Vol. II, Oral Statements and Correspondence*, p. 500.

[29] *South West Africa (Advisory Opinion)*, p. 27, para. 41.

[30] *Ibid.*, p. 56, para. 127.

were not. Spain argued that the questions related to territorial sovereignty; the Court ruled that they did not. Spain argued that the Court did not possess sufficient information to make a judicial pronouncement on the questions.[31] The Court ruled that it did.

26. When this Great Hall has heard the plea of the colonizers, it has always rejected them. This afternoon you will listen to arguments that have all been made before, and all been rejected. It will be like listening to a broken record. [SCREEN ON] Professor Klein reminded us of the words of Judge Gros, back in 1975: "[i]l n'y a pas de différend bilatéral détachable du débat sur la décolonisation aux Nations Unies"[32]. [SCREEN OFF]

The legacy and legal consequences of colonialism

27. J'en viens maintenant aux deux questions qui vous sont posées. Me McDonald a expliqué avec beaucoup de clarté pourquoi il n'existe qu'une seule réponse possible à la première question. Seuls deux membres des Nations Unies pensent autrement. Si le pouvoir coloniale a parcouru le monde en quête de soutien, il n'en a guère trouvé. [SCREEN ON] Il a ignoré les vues de celle qui fut sa propre juge à la Cour, Dame Rosalyn Higgins, qui écrivait en 1963 que « there now exists a legal right of self-determination » – le droit à l'autodétermination faisait déjà partie intégrante du droit international [SCREEN OFF].[33] Ce droit prohibait toute atteinte partielle ou totale à l'intégrité territoriale d'un pays ("[a]ny … partial or total disruption of … the territorial integrity of a country").[34] Toute tentative de cet ordre était, aux termes de la résolution 1514, "incompatible avec les buts et principes de la

[31] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 22, para. 25.

[32] *Sahara occidental, avis consultatif*, déclaration du juge Gros, *C.I.J. Recueil 1975*, p. 71, para. 2.

[33] Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations* (1963), p. 104 (**Annex 19**).

[34] Assemblée générale des Nations Unies, 15e session, *Déclaration sur l'octroi de l'indépendance aux pays et aux peuples coloniaux*, Doc. A/RES/1514(XV) (14 déc. 1960), par. 6 (**Dossier No. 55**)

Charte des Nations Unies" .[35] [SCREEN ON] L'un des conseils du Maroc dans l'affaire du *Sahara occidental* l'exprimait à la perfection, lorsqu'il déclarait ici même en 1975 que "le démembrement d'un peuple n'était pas admissible"[36]. Il poursuivait en ces termes : "le sens de la déclaration 1514 (XV) est … clairement posé: la décolonisation partielle est condamnée. La libre détermination ne peut se réaliser que dans le respect de l'unité nationale du peuple concerné."[37] Il avait raison à l'époque, et ce qu'il disait alors est toujours vrai aujourd'hui. Il suffit de treize mots pour répondre à la première question : le processus de décolonisation de Maurice n'a pas été validement mené à bien. [SCREEN OFF]

28. M. Reichler a traité de manière très complète de la seconde question, avec sa concision habituelle. Si, comme elle doit le faire, la Cour conclut que le territoire de Maurice a été démembré en violation du droit à l'autodétermination, il lui revient alors de traiter, conformément à sa pratique, de l'ensemble des conséquences juridiques qui résultent de ce constat. Il n'y a aucune raison pour la Cour de ne pas se prononcer sur les conséquences pour les Etats. Elle l'a fait tant dans l'affaire de la *Namibie* que dans celle du *Mur*. La résolution 71/292 vise toutes les conséquences juridiques, pas seulement celles qui concernent l'Assemblée générale. La Cour n'a jamais reformulé, ni interprété de façon étroite une question posée de façon aussi claire. Il n'y a aucune raison pour elle de s'écarter aujourd'hui de sa pratique

29. Dans cette ère presque post-coloniale, les membres de la Cour sont bien conscients du legs du colonialisme. L'une des opinions individuelles jointes à l'avis sur le *Kosovo* reconnaissait ainsi que le droit à l'autodétermination n'est pas un concept juridique qui

[35] Assemblée générale des N.U., 15ème session, Déclaration sur l'octroi de l'indépendance aux pays et peuples coloniaux, Doc. N.U. A/RES/1514(XV) (14 décembre 1960) (**Dossier No. 55**).

[36] *Sahara occidental, avis consultatif*, *Vol. IV, Exposés oraux, C.I.J. Recueil 1975,* p. 181.

[37] *Ibid.*, p. 182.

présenterait un intérêt purement historique ; il continue au contraire à jouer un rôle en droit international.[38]

30. C'est seulement si elle répond de manière complète aux deux questions posées par l'Assemblée générale que la Cour contribuera à la « *primauté de l'état de droit"*.[39] En formulant vos réponses, vous ne sauriez « oublier l'objet en vue duquel l'avis est sollicité."[40] Etre conscient du but de la présente procédure, c'est avant tout comprendre que l'Assemblée générale requiert un avis en vue de mettre fin immédiatement aux derniers vestiges britanniques du colonialisme en Afrique.

31. L'Allemagne vous invite à répondre aux deux questions, mais en faisant preuve de retenue pour ce qui est de la seconde question, en évitant d'aborder les conséquences juridiques pour les Etats à titre individuel.[41] Nous remercions l'Allemagne pour sa présence et pour son intervention cette semaine, mais pas sur ce point. Comme l'exposé écrit de Maurice et comme M. Reichler l'ont indiqué, l'avis de la Cour doit traiter de *toutes* les conséquences juridiques, y compris pour les Etats.[42] [SCREEN ON] En 1971, la Cour a déclaré qu'elle "ne s'acquitterait pas de ses fonctions judiciaires si elle ne déclarait pas qu'il existe une obligation, pour les Membres des Nations Unies en particulier, de mettre fin à cette situation."[43] Telle est l'approche que vous avez toujours suivie. [SCREEN OFF]

32. Pour ce qui nous concerne, cela signifie que le processus de décolonisation doit être mené à terme immédiatement. Il est de la plus haute importance pour Maurice, pour

[38] *Declaration of Independence in Respect of Kosovo, Advisory Opinion, Separate Opinion of Judge Yusuf*, *I.C.J. Reports* 2010, p. 621, para. 8.

[39] *Declaration of Independence in Respect of Kosovo, Advisory Opinion, Separate Opinion of Judge Cançado Trinidade, I.C.J. Reports 2010*, p. 534, para. 25.

[40] *Western Sahara (Advisory Opinion)*, pp. 67-68, para. 161.

[41] Written Statement of Germany (Jan. 2018), para. 155.

[42] Written Comments of Mauritius, paras. 4.28-4.42.

[43] *South West Africa (Advisory Opinion)*, p. 54, para. 117.

l'Assemblée générale, et pour la communauté internationale dans son ensemble, que votre avis consultatif expose en détail les conséquences qui doivent en résulter, avec un calendrier précis. L'Assemblée générale et ses membres doivent, par exemple, savoir quand Maurice sera habilitée à déposer les coordonnées de sa zone économique exclusive et de son plateau continental auprès du Secrétaire général des Nations Unies, et quand elle pourra prendre les mesures pratiques en vue d'assurer le retour immédiat de Mme Elysé et des autres anciens habitants des Chagos. Passer cette question sous silence reviendrait à laisser les choses en jachère pour une période indéterminée. Et cela s'écarterait de la pratique antérieure de la Cour.

33. Monsieur le Président, Mesdames et Messieurs les membres de la Cour, cela fait maintenant cinquante ans que la décolonisation n'a pas été menée à son terme. Le Brésil, l'Inde, l'Afrique du sud, et quinze autres Etats sont ici pour demander qu'elle le soit. Ce jeudi, l'Union africaine prendra la parole au nom des peuples et des Etats du continent africain. [SCREEN ON] En janvier dernier, la Conférence des Chefs d'État et de gouvernement des États membres a adopté à l'unanimité sa Décision 684. La Conférence a décidé de "soutenir pleinement la République de Maurice par tous les moyens pour assurer l'achèvement de sa décolonisation et permettre à la République de Maurice d'exercer effectivement sa souveraineté sur l'archipel des Chagos, y compris Diego Garcia", invitant le Royaume-Uni "à mettre rapidement un terme à son occupation illégale de l'archipel des Chagos, en vertu des principes bien établis du droit international et des décisions pertinentes de l'OUA/UA ainsi que des décisions pertinentes des Nations Unies".[44] [NEXT SLIDE]

[44] Conférence de l'Union africaine, 30e session ordinaire, *Décision sur l'archipel de Chagos*, Assembly/AU/Dec.684(XXX) (28-29 janvier 2018), pars. 7 et 9. Les 55 États membres de L'Union Africain sont: République algérienne démocratique et populaire, République d'Angola, République du Bénin, République du Botswana, Burkina Faso, République du Burundi, République du Cameroun, République de Cabo Verde, République centrafricaine, République du Tchad, Union des Comores, République de le Congo, la République de Côte d'Ivoire, République démocratique du Congo, République de Djibouti, République arabe d'Égypte,

34. Vous avez également vu la déclaration du 6 décembre 2017 du All-Party Parliamentary Group on Chagos[45] – le groupe parlementaire multipartite du Parlement britannique sur les îles Chagos – qui comprend des députés de tous les principaux partis représentés à Westminster, d'anciens ministres – y compris un récent Attorney General du parti conservateur – et l'actuel chef de l'opposition. Ce groupe s'est exprimé en faveur d'un avis consultatif qui réponde aux deux questions, déclarant clairement que l'avis de la Cour "contribuerait au processus de décolonisation" et "à mettre fin à une tragédie humaine pressante". [SCREEN OFF]

35. Seule cette Cour a le pouvoir d'énoncer le droit en matière d'achèvement de la décolonisation. Nous vous invitons à exercer votre fonction judiciaire, à contribuer à mettre fin immédiatement à cette situation honteuse, celle de l'archipel des Chagos comme colonie du 21ème siècle. Mais en réalité, nous ne vous demandons pas de faire autre chose que ce que vous avez toujours fait : donner effet à la règle de droit. Ce faisant, vous contribuerez à mettre fin à une présence coloniale en Afrique, et à renforcer la défense du principe fondamental de l'intégrité territoriale des Etats.

36. Monsieur le Président, aucun pays ne souhaite être une colonie, en totalité ou en partie. Pas le Royaume Uni. Pas Maurice.

République de Guinée équatoriale, État d'Érythrée, République fédérale démocratique d'Éthiopie, République gabonaise, République de Gambie, République du Ghana, République de Guinée, République de Guinée-Bissau, République du Kenya, Royaume du Lesotho, République du Libéria, Libye, République de Madagascar, République du Malawi, République du Mali, République de Mauritanie, République de Maurice, Royaume du Maroc (rejoint le 31 janvier 2017), République du Mozambique, République de Namibie, République du Niger, République fédérale du Nigéria, République du Rwanda, République arabe sahraouie démocratique, République démocratique de Sao Tomé-et-Principe, République du Sénégal, République des Seychelles, République de Sierra Leone, République somalienne, République d'Afrique du Sud, République du Soudan du Sud, République du Soudan, République du Swaziland, République-Unie de Tanzanie, République togolaise, République tunisienne, République d'Ouganda, République de Zambie, République du Zimbabwe.

[45] Chagos Islands (BIOT) All-Party Parliamentary Group, *Statement issued at its 65th meeting on 6 December 2017 by the Chagos Islands (BIOT) All-Party Parliamentary Group on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 to be considered by the International Court of Justice* (6 Dec. 2017) (**Annex 196**).

37. Monsieur le Président, Mesdames et Messieurs les membres de la Cour, au nom de mes collègues et du peuple mauricien, y compris ses membres d'origine chagossienne, je voudrais vous remercier pour votre attention. Je voudrais également remercier le Greffier et les membres du Greffe, ainsi que les interprètes, pour la conduite remarquablement efficace et professionnelle de cette procédure. Nous exprimons aussi notre gratitude à tous les participants à cette procédure pour leur contribution à la défense de la règle de droit dans les relations internationales. Ceci conclut la présentation orale de Maurice.