

Embassy of India

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Historical facts concerning the Chagos archipelago and consideration of the legal aspects associated therewith confirm that the sovereignty of the Chagos archipelago has been and continues to be with Mauritius declares India

India made a statement today in the Request for an Advisory Opinion by the United Nations General Assembly to the International Court of Justice in the proceedings concerning “The Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965.”

Speaking on behalf of India, Ambassador Venu Rajamony stated it is significant to note in this context that the historical survey of facts concerning colonization and the process of decolonization indicates that the Chagos Archipelago throughout the pre- and post-colonial era has been part of the Mauritian territory. These islands came under the colonial administration of the United Kingdom as part of Mauritian territory. The understanding reached in November 1965 between Mauritius and the United Kingdom for the retention of Chagos by the United Kingdom for defence purposes and return thereof to Mauritius when no longer needed for defence purposes, is also in itself evidence that Mauritius has been and continues to be the sovereign nation for the Chagos Archipelago. Thus, the historical aspects of the matter in question do clearly

establish the Chagos Archipelago being part of the Mauritian territory to the exclusion of the sovereignty of any other State

He also added that that the legal aspects should root themselves in the historical facts, behaviour of the nations concerned, and the consideration of the issue by relevant administrative and judicial institutions. Needless to mention that the United Nations is the highest and most relevant institution in matters affecting nations; and the international courts and tribunals are the most relevant judicial institutions.

Before the independence of Mauritius, the United Nations, in December 1960, recognizing the ardent desire of the peoples of the world to end colonialism; believing in the need of ending all practices of segregation and discrimination associated with the colonialism; convinced of the right of all peoples to full freedom and of the integrity of their national territory, solemnly proclaimed the necessity of a speedy and unconditional end of colonialism in all its forms and manifestations in the General Assembly resolution 1514(XV). This resolution declared any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country, as incompatible with the purposes and principles of the Charter of the United Nations, he said.

However, in November 1965, detachment of the Chagos Archipelago still took place. *The United Nations reacted to the detachment of the Chagos Archipelago by adopting* resolution 2066 (XX) entitled “Question of Mauritius” *in December 1965*, calling on the United Kingdom to fully implement Resolution 1514 (XV). The resolution obligated the United Kingdom to complete the decolonization of Mauritius and report the same to the General Assembly.

The Arbitral Tribunal constituted by agreement between both these countries has, in its Award dated 18 March 2015, ruled that the undertakings of the United Kingdom with respect to: the fishing rights of Mauritius in the waters of Chagos Archipelago; the eventual return of the Archipelago to Mauritius and; the benefit of mineral and oil resources in and near the Archipelago, are legally binding undertakings. Further, by declaring as legally binding the undertaking of the United Kingdom to return the Archipelago to Mauritius, the Award has determined the legal obligation of the United Kingdom to return the Archipelago to Mauritius.

Regarding the process of decolonization of Mauritius, it remains incomplete both technically and in substance as long as the Chagos Archipelago continues to be under the colonial control.

Full text of the Ambassador's statement to the Request for an Advisory Opinion at the International Court of Justice is given below.



Statement of India

1. Mr. President, esteemed Members of the Court, it is a great honour for me to appear before this Court as India's representative for presenting the position of India in the current advisory proceedings in the matter of Advisory Opinion requested by the United Nations General Assembly in its resolution A/RES/71/292 of 22nd June 2017.

2. In accordance with Article 96 of the Charter of the United Nations and pursuant to Article 65 of its Statute, this Court has been requested by the General Assembly to render an advisory opinion on the following two 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?”; and*
- (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?”*

3. Mr. President, Members of the Court, the text of the questions referred to this Court for an advisory opinion suggests that the subject matter of the Question for advisory opinion essentially concerns the completeness of decolonization and independence of Mauritius from the United Kingdom (UK), which commenced (or in other words took place) in the month of March of the year 1968, subject to the retention of the Chagos Archipelago with the UK. The retention was the result of separation/detachment of Chagos Archipelago from Mauritius in November 1965. The basis of the separation has found content in an understanding/agreement between Mauritius and the UK, wherein in return to the

use of Chagos Archipelago for defence purposes, UK made certain undertakings including for compensation to Mauritius; fishing rights; benefits of oil and minerals; and the return to Mauritius of Chagos Archipelago when it is no longer needed for defence purposes. This agreement seems to have been constituted through a series of correspondence between the two sides.

4. Mauritius has repeatedly asserted that the Chagos Archipelago is part of its territory and that the UK should return the same to it. It is our understanding that while, the UK recognizes in principle the Mauritian sovereignty over the Chagos, it maintains that the Chagos will be returned to Mauritius once the islands are no longer required for defence purposes. Given the absence of action on the part of the UK in returning the Archipelago, Mauritius brought the matter, through the UN General Assembly, before this Court for an advisory opinion.

5. Mr. President, Members of the Court, India has given its views in detail in its Written Submission, submitted on 28 February 2018, on the aspects relating to the issue in Question for consideration of the Court in the process of framing its advisory opinion. These aspects include: historical facts concerning the colonial period of Mauritius; process of decolonization of Mauritius; the status of Chagos Archipelago; resolutions of the United Nations and other measures relevant to the issue between Mauritius and t

he United Kingdom; and that how all these aspects contributed to the necessity of approaching this Court for the Advisory Opinion. Therefore, Mr. President, India will not go in or repeat all those details during the current oral proceedings and so would crave the leave of the Court to briefly draw attention to the substance only.

6. The Court, in our view, in the making of its advisory opinion on the questions referred to it, would need to analyze certain factors *inter-alia* that with

which country the sovereignty of Chagos Archipelago rests; whether formal and final transfer of sovereignty to the UK has ever been agreed to by Mauritius; whether the decolonization of Mauritian territory has been and still continues to be an obligation of the United Kingdom; and if so, whether the process of decolonization of the whole territory of Mauritius has been completed.

7. The analysis of these factors would, in our view, necessitate consideration of the historical aspects and legal aspects associated with and surrounding the colonization of Mauritius, its decolonization, and the status of the Chagos Archipelago.

8. Mr. President, Members of the Court, it is significant to note in this context that the historical survey of facts concerning colonization and the process of decolonization indicates that the Chagos Archipelago throughout the pre and post colonial era has been part of the Mauritian territory. These islands came under the colonial administration of the United Kingdom as part of Mauritian territory.

9. Since May 1814, the United Kingdom is administering the Chagos Archipelago as part of Mauritian territory, in the capacity as a colonial power. The understanding reached in November 1965 between Mauritius and the United Kingdom for the retention of Chagos by the United Kingdom for defence purposes and return thereof to Mauritius when no longer needed for defence purposes, is also in itself evidence that Mauritius has been and continues to be the sovereign nation for the Chagos Archipelago.

10. Thus, the historical aspects of the matter in question do clearly establish the Chagos Archipelago being part of the Mauritian territory to the exclusion of the sovereignty of any other State.

11. In its efforts to reminding the United Kingdom to return the Chagos Archipelago back, in June 1980, Mauritius called on the United Kingdom to return the Archipelago, which was followed by a formal claim made in October

1980 in an address by the Mauritian Prime Minister to the United Nations General Assembly. Since then, Mauritius has repeatedly claimed sovereignty over the Chagos. Meanwhile, the United Kingdom has consistently maintained that it has no doubts about the Mauritian claim to sovereignty whilst at the same time acknowledging that it will cede the Archipelago to Mauritius when no longer required for defence purposes.

12. According to the Constitution of Mauritius, the outer islands of Mauritius include the Chagos Archipelago. Mauritius did not recognise the British Indian Ocean Territory (BIOT) which the United Kingdom created by excising the Chagos Archipelago from the territory of Mauritius prior to its independence. Mauritius claims that the Chagos Archipelago forms an integral part of its territory under both Mauritian law and international law.

13. Touching to the legal aspects, Mr. President, Members of the Court, it is our understanding that the legal aspects should root themselves in the historical facts, behaviour of the nations concerned, and the consideration of the issue by relevant administrative and judicial institutions. Needless to mention that the United Nations is the highest and most relevant institution in matters affecting nations; and the international courts and tribunals are the most relevant judicial institutions.

14. Mauritius became independent in March 1968. From the legal perspective, taking stock of the events before independence, around that time and thereafter, becomes crucial in determining whether or not the process of decolonization got completed.

15. Before the independence of Mauritius, the United Nations, in December 1960, recognizing the ardent desire of the peoples of the world to end colonialism; believing in the need of ending all practices of segregation and discrimination associated with the colonialism; convinced of the right of all peoples to full

freedom and of the integrity of their national territory, solemnly proclaimed the necessity of a speedy and unconditional end of colonialism in all its forms and manifestations in the General Assembly resolution 1514(XV). This resolution declared any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country, as incompatible with the purposes and principles of the Charter of the United Nations.

16. However, in November 1965, detachment of the Chagos Archipelago still took place. *The United Nations reacted to the detachment of the Chagos Archipelago by adopting* resolution 2066 (XX) entitled “Question of Mauritius” *in December 1965*, calling on the United Kingdom to fully implement Resolution 1514 (XV). The resolution obligated the United Kingdom to complete the decolonization of Mauritius and report the same to the General Assembly.

17. The plans for the detachment of Chagos Archipelago were however pressed ahead. The United Nations General Assembly again took cognizance of the matter and considered the issue in December 1966. Condemning the non-implementation of its resolutions and the continuation of colonial occupations, the General Assembly adopted resolution 2232(XXI) on 20 December 1966. The resolution reaffirmed the right of colonial territories including Mauritius to full and complete independence, with the call to the administering Powers to complete the decolonization process without delay. There being no sign of positive action by the administering Powers, the General Assembly once again adopted similar resolution 2357(XXII) a year after on 19 December 1967.

18. Mr. President, Members of the Court, the international arbitration between Mauritius and the United Kingdom in the recent past (December 2010 - March 2015) which dealt with issues relating to Chagos Archipelago, deserves mention from the point of view of determining the sovereignty status of Chagos

Archipelago and also the nature and status of undertakings by the United Kingdom towards Mauritius.

19. The Arbitral Tribunal constituted by agreement between both these countries has, in its Award dated 18 March 2015, ruled that the undertakings of the United Kingdom with respect to: the fishing rights of Mauritius in the waters of Chagos Archipelago; the eventual return of the Archipelago to Mauritius and; the benefit of mineral and oil resources in and near the Archipelago, are legally binding undertakings. The Award has, by declaring as unlawful the Marine Protected Area established by the United Kingdom in the waters of Archipelago, denied the status of the United Kingdom as the coastal State for the Chagos Archipelago. Further, by declaring as legally binding the undertaking of the United Kingdom to return the Archipelago to Mauritius, the Award has determined the legal obligation of the United Kingdom to return the Archipelago to Mauritius.

20. Thus, the analysis of the historical facts concerning the Chagos Archipelago and consideration of the legal aspects associated therewith confirm that the sovereignty of the Chagos Archipelago has been and continues to be with Mauritius (which in fact the United Kingdom also admits). Regarding the process of decolonization of Mauritius, it remains incomplete both technically and in substance as long as the Chagos Archipelago continues to be under the colonial control.

Thank you.
