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Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965

Report of the Secretary-General

Summary

In its resolution 73/295, entitled "Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965", the General Assembly requested the Secretary-General to submit to it at its seventy-fourth session a report on the implementation of the resolution, including any actions taken by the United Kingdom of Great Britain and Northern Ireland and other Member States.

The present report reproduces the replies of Governments and of organs and agencies of the United Nations system to the request of the Secretary-General for information on the matter.

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1. In its resolution 73/295, entitled “Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965”, the General Assembly requested the Secretary-General to submit to it at its seventy-fourth session a report on the implementation of the resolution, including any actions taken by the United Kingdom of Great Britain and Northern Ireland and other Member States.

2. Shortly after the adoption of resolution 73/295, the Secretariat informed United Nations system entities of the adoption of the text and requested them to review and, as necessary, adjust any relevant practices.

3. Pursuant to the request in resolution 73/295 for the Secretary-General to submit a report to the General Assembly, the Secretariat, in notes verbales dated 10 December 2019, invited Governments, international, regional and intergovernmental organizations, and organs and agencies of the United Nations system to provide any information they might wish to contribute concerning the implementation of the resolution.

4. The present report reproduces the replies received from Governments and from organs and agencies of the United Nations system as at 18 May 2020. Replies received after that date will be reproduced as addenda to the present report.

II. Replies received from Governments

Argentina

[Original: Spanish]
[14 January 2020]

Since its inception, one of the main purposes of the United Nations has been to put an end to colonialism in all its forms. The commitment of the Argentine Republic to this purpose led it to support Mauritius in its legitimate claim to sovereignty over the Chagos Archipelago. It was for this reason that Argentina voted in favour of resolutions 2066 (XX), 2232 (XXI) and 2357 (XXII), and co-sponsored and voted in favour of resolutions 71/292 and 73/295, relating to the advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.

Argentina also participated in all the phases of this procedure before the Court, both in writing and orally. In this context, it stressed the primary role of the General Assembly and its Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, held that the separation of Chagos constituted a violation of the territorial integrity of Mauritius, as a result of which the people of Mauritius were not able to fully exercise their right to self-determination (over their entire territory) upon independence and noted that the administering Power could not take unilateral measures that were contrary to General Assembly resolutions and not conducive to the decolonization of the territory, among other arguments.

The advisory opinion of 25 February 2019 is a victory for international law and conveys the unequivocal message that colonialism is unacceptable in the twenty-first century. Upholding the judgment of the Court, in resolution 73/295 the General Assembly confirmed that the Chagos Archipelago is an integral part of the territory of Mauritius and established that the United Kingdom must bring its colonial administration to an end within six months of the adoption of the resolution, a period

which had already been prescribed, the resolution notwithstanding. In addition, in resolution 73/295, all Member States were called on to cooperate to ensure the completion of the decolonization of Mauritius as rapidly as possible.

Argentina attaches great importance to respect for international law in general, and United Nations law in particular, and values the role of the International Court of Justice in their application.

In this connection, Argentina recognizes the sovereignty of Mauritius over the Chagos Archipelago and the need to respect the right of the people of Mauritius to self-determination, and will act accordingly, fully respecting the advisory opinion of the Court and complying with resolution 73/295. Argentina will therefore not recognize any unilateral measures that might be taken by the colonial Power in relation to these territories, as such measures would be incompatible with international law and taken in defiance of the exclusive competence of the General Assembly over decolonization processes.

In the view of Argentina, it is unacceptable that the United Kingdom has not fulfilled its obligation to put an end to its colonial administration of the Chagos Archipelago within the time frame established in resolution 73/295. Argentina urges the British Government to fulfil its obligation and immediately put an end to its colonial administration.

The Court has been forceful in emphasizing the crucial role of the General Assembly and its Special Committee on decolonization in overseeing the fulfilment of obligations incumbent on administering Powers and the modalities required to ensure that decolonization processes are duly completed, as well as in determining when the exercise of peoples' self-determination is at issue and how that exercise should proceed.

In this context, it is appropriate to recall that the Court has pointed out that 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*.[1] While this statement applies to resolutions in general, there are certain situations in which the General Assembly is endowed with powers other than those expressly mentioned in the Charter of the United Nations. As the Court stated in its advisory opinion on compensation made by the United Nations administration, "Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties".[2] This is precisely the case when it comes to the (exclusive) competence conferred on the General Assembly with regard to decolonization, a context in which its resolutions do not constitute mere recommendations, but are necessarily binding in nature. As the Court indicated in its advisory opinion of 25 February 2019, in referring to the international obligations of the United Kingdom in the process of decolonization, the General Assembly acted within the framework of the Charter and in the exercise of its supervisory functions relating to the implementation of the obligations incumbent upon administering Powers under the Charter.

Lastly, Argentina would like to take this opportunity to recall the duty of all countries to cooperate in order to ensure the decolonization of Mauritius, and the

[1] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, pp. 254 and 255, para. 70.

[2] *Effects of awards of compensation made by the U.N. Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1954*, page 13.

other territories that remain subject to colonial rule, so that the united voices of the General Assembly and the International Court of Justice do not go unheeded.

The presentations and statements made by Argentina in relation to the advisory opinion and the adoption of General Assembly resolution 73/295 are attached to the present report.[3]

Australia

[Original: English]
[31 January 2020]

Australia's long-standing position is that the advisory jurisdiction of the International Court of Justice should not be used to adjudicate bilateral disputes in situations where the parties involved have not agreed to the Court's jurisdiction.

We note that both the Court's advisory opinion and General Assembly resolution 73/295 are non-binding and do not create any legal obligations for States Members of the United Nations. We remain of the view that the General Assembly should not seek to act on the Court's advisory opinion as if it were otherwise. Australia does not take a position on the merits of this matter.

Australia considers that there is a risk that General Assembly resolution 73/295 will encourage the reference of other bilateral disputes to the International Court of Justice's advisory opinion mechanism by the General Assembly. This further entrenches the advisory jurisdiction as a means for States to circumvent the requirement for consent in the exercise of the Court's contentious jurisdiction.

Australia is firmly of the view that it is in the interest of all Member States that there be no uncertainty about the status of the joint United Kingdom-United States military base on Diego Garcia that could jeopardize its pivotal contribution to international peace and security.

Australia encourages both Mauritius and the United Kingdom to intensify their dialogue to achieve a durable solution.

Azerbaijan

[Original: English]
[9 January 2020]

The Republic of Azerbaijan firmly upholds the norms and principles of international law in its foreign policy.

Azerbaijan has not taken any action that would impede or delay the completion of the process of decolonization of Mauritius.

Mauritius

[Original: English]
[15 January 2020, updated 2 March 2020]

Introduction

Following the advisory opinion given by the International Court of Justice on 25 February 2019 on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965, the Prime Minister of Mauritius was invited by

[3] May be consulted in the Secretariat archives.

the former United Kingdom Prime Minister to a meeting on 18 March 2019, during which he expressed the willingness of Mauritius to work with the United Kingdom in order to produce a joint draft resolution to give effect to the advisory opinion. The United Kingdom stated that it was still studying the advisory opinion. On 30 April 2019, the United Kingdom Government made a statement to the United Kingdom Parliament in which it rejected the advisory opinion.

On 22 May 2019, a draft resolution was tabled by Senegal on behalf of the States Members of the United Nations that are members of the Group of African States. It was adopted by the General Assembly by 116 votes to 6, with 56 abstentions.

In its resolution 73/295, the General Assembly, inter alia, requested the Secretary-General to submit to it a report at its seventy-fourth session on the implementation of the resolution, including any actions taken by the United Kingdom and other Member States. In this context, the information below is being submitted by Mauritius.

I. Actions taken by Mauritius

1.1 Plight of Mauritians of Chagossian origin

In the wake of the illegal excision of the Chagos Archipelago from the territory of Mauritius, the United Kingdom forcibly removed all the Mauritians born and residing at the time in the Chagos Archipelago (“Chagossians”). Most of them were taken to the main island of Mauritius.

The Chagossians have to date not been able to return to the Chagos Archipelago because of its illegal occupation by the United Kingdom. The forcible removal of the Chagossians and the continuing denial by the United Kingdom of their right to return to the Chagos Archipelago are manifest breaches of international law and flout their human rights.

The Government of Mauritius remains fully sensitive to the plight of Chagossians and is deeply concerned about the serious violations of human rights from which they continue to suffer because of their inability to return to the Chagos Archipelago.

1.2 Resettlement

The long-standing struggle of Mauritius to complete its decolonization process and the right of Mauritian citizens, including those of Chagossian origin, to return to the Chagos Archipelago are indissociable. The Government of Mauritius firmly supports the legitimate aspiration of Chagossians, as Mauritian citizens, to resettle in the Chagos Archipelago.

In this regard, a special provision of 50 million rupees has been made in the budget of Mauritius for the financial year 2019–2020 for meeting, inter alia, expenses relating to preparations for eventual resettlement in the Chagos Archipelago.

With a view to enabling Chagossians to continue exercising their rights, including the right to vote, when they resettle in the Chagos Archipelago, the National Assembly of Mauritius adopted on 12 July 2019 a motion for the inclusion of the Chagos Archipelago, including Diego Garcia, in one of the constituencies of the Republic of Mauritius, to be determined by the Electoral Boundaries Commission.

The Government of Mauritius is also committed to safeguarding the sega tambour Chagos, which was practised by Chagossians who were living in the Chagos Archipelago before their forcible removal. At its fourteenth session, held from 9 to 14 December 2019 in Bogotá, the Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage of the United Nations Educational, Scientific and

Cultural Organization decided to inscribe the sega tambour Chagos on the List of Intangible Cultural Heritage in Need of Urgent Safeguarding, following its nomination by Mauritius.

1.3 Visit to the Chagos Archipelago

On 3 February 2020, the United States Embassy in Mauritius addressed a note verbale to the Office of the Prime Minister of Mauritius to convey the objection of the United States of America to the visit that the Government of Mauritius proposes to organize to the Chagos Archipelago.[4]

On 14 February 2020, the Ministry of Foreign Affairs, Regional Integration and International Trade of Mauritius addressed a note verbale to the United States Embassy in response to its note verbale of 3 February 2020. In the note verbale, Mauritius underscored that the Chagos Archipelago is and always has been an integral part of its territory, as made clear by the International Court of Justice in its advisory opinion of 25 February 2019 and reaffirmed by the General Assembly in its resolution 73/295, and that it is the sole State lawfully entitled to exercise sovereignty and sovereignty rights over the Chagos Archipelago and its maritime zones and to organize visits to the Chagos Archipelago.[5]

1.4 Creation of a marine protected area around the Chagos Archipelago

In line with its commitment to protect and preserve the terrestrial and marine environment of the Chagos Archipelago, the Government of Mauritius has initiated action for the creation of a marine protected area around the Archipelago, with the support of relevant partners.

The Government of Mauritius has written to a number of non-governmental organizations (NGOs) to seek their support for the creation of the marine protected area.[6]

Replies have been received from several of the NGOs.[7]

1.5 Marine scientific research in the maritime zones of the Chagos Archipelago

Following its note verbale of 22 April 2019, the Ministry of Foreign Affairs of Mauritius addressed, on 6 August 2019, another note verbale to all diplomatic missions based in Mauritius to reiterate that any marine scientific research in the maritime zones of the Chagos Archipelago should be conducted with the consent of Mauritius.[8]

Moreover, Mauritius has written to the University of Plymouth, United Kingdom; Swansea University, United Kingdom; Deakin University, Australia; and the University of Western Australia to draw their attention to the advisory opinion of the International Court of Justice of 25 February 2019 and General Assembly resolution 73/295 and to inform them that they cannot undertake any marine scientific

[4] The note verbale is available at https://mauritiusmission.org/files/annex-1/.
[5] The note verbale is available at https://mauritiusmission.org/files/annex-2/.
[6] A list of the non-governmental organizations to which letters were addressed is available at https://mauritiusmission.org/files/list-of-ngos/. The letters are available at https://mauritiusmission.org/files/annex-3/.
[7] The replies are available at https://mauritiusmission.org/files/annex-4/.
[8] The notes verbales are available at https://mauritiusmission.org/files/annex-5/ and https://mauritiusmission.org/files/annex-6/.

research in the maritime zones of the Chagos Archipelago without the prior consent of Mauritius.[9]

1.6 Extension of agreements by the United Kingdom to the so-called "British Indian Ocean Territory"

Mauritius has written to the depositaries of agreements that the United Kingdom has extended to the so-called "British Indian Ocean Territory" to register its strong objection against such extension.[10]

1.7 Designation of the Chagos Archipelago as the so-called "British Indian Ocean Territory" on maps

Mauritius has written to publishers of maps designating the Chagos Archipelago as the so-called "British Indian Ocean Territory" in order to object to such designation and ask that this be rectified.[11]

1.8 United Kingdom membership in the Indian Ocean Tuna Commission as a coastal State

At the twenty-third session of the Indian Ocean Tuna Commission, held from 17 to 21 June 2019 in Hyderabad, India, Mauritius requested that an item be included on the agenda with regard to the termination of the United Kingdom's membership in the Commission as a coastal State.

The United Kingdom objected to that request, and contended that the issue was a bilateral one between Mauritius and the United Kingdom and that neither the advisory opinion of the International Court of Justice nor General Assembly resolution 73/295 was binding.

Mauritius made it clear that the issue was not a bilateral one and that the Chagos Archipelago had been illegally excised from the territory of Mauritius in violation of international law. It pointed out that the decolonization of Mauritius had not been lawfully completed and that the United Kingdom had to terminate its administration of the Chagos Archipelago as rapidly as possible, as required by the International Court of Justice. Mauritius also underscored that the United Nations and all its specialized agencies had an obligation under General Assembly resolution 73/295 to recognize that the Chagos Archipelago forms an integral part of the territory of Mauritius, to support the decolonization of Mauritius as rapidly as possible and to refrain from impeding that process by recognizing or giving effect to any measure taken by or on behalf of the so-called "British Indian Ocean Territory". The Indian Ocean Tuna Commission therefore had an obligation to terminate the United Kingdom's membership as a coastal State.

In the light of the discussions, the Chairperson of the Indian Ocean Tuna Commission concluded that the issue was a global one and needed to be considered by the Commission. She proposed that the matter be included on the agenda of the Commission at its subsequent session, since its members might not have had the chance to receive instructions from their relevant ministries. On the proposal of Mauritius, the Chairperson also invited the Food and Agriculture Organization of the

[9] The letters addressed to the universities and a reply received from the University of Plymouth are available at https://mauritiusmission.org/files/annexes-7-12/.

[10] The notes verbales addressed to the depositaries of the agreements are available at https://mauritiusmission.org/files/annexes-13-22/.

[11] The letters addressed to Apple, Google and the World Atlas are available at https://mauritiusmission.org/files/annexes-23-25/.

United Nations to submit a paper on how it proposes to implement paragraph 6 of General Assembly resolution 73/295.

1.9 Submission made by Mauritius for an extended continental shelf in the southern Chagos Archipelago region

On 26 March 2019, the Permanent Mission of Mauritius to the United Nations lodged with the Division for Ocean Affairs and the Law of the Sea a submission for an extended continental shelf with an approximate area of 175,000 km2 in the southern Chagos Archipelago region.

On 28 June 2019, the Permanent Mission of the United Kingdom to the United Nations addressed a note verbale to the Secretary-General to object to the consideration by the Commission on the Limits of the Continental Shelf of the submission on the grounds that there is a sovereignty dispute between Mauritius and the United Kingdom over the Chagos Archipelago.

At the invitation of the Commission on the Limits of the Continental Shelf, Mauritius made, on 14 August 2019, a presentation of its submission to the Commission. In its presentation, Mauritius stressed that it is the coastal State in relation to the Chagos Archipelago and is fully entitled to make a submission to the Commission on the outer limits of the continental shelf appurtenant to the Chagos Archipelago in accordance with article 76 of the United Nations Convention on the Law of the Sea. Mauritius also argued that the Commission should proceed to consider its submission, as the only objection to its submission had been filed on behalf of the so-called "British Indian Ocean Territory". It underscored that the Commission should refrain from giving effect to that objection, in line with General Assembly resolution 73/295.

On 16 August 2019, the Chairperson of the Commission on the Limits of the Continental Shelf wrote to the Permanent Representative of Mauritius to the United Nations to inform him that the Commission had decided to revert to the consideration of the submission when it would be next in line for consideration as queued in the order in which it was received.[12]

1.10 Delimitation of the maritime boundary with Maldives

On 18 June 2019, Mauritius initiated arbitral proceedings against Maldives under article 287 of, and annex VII to, the United Nations Convention on the Law of the Sea, for the delimitation of the maritime boundary between the two countries in the exclusive economic zone and the continental shelf. Part of the exclusive economic zone and the continental shelf of Mauritius generated by the Chagos Archipelago overlaps with the exclusive economic zone and the continental shelf of Maldives.

On 17 September 2019, Mauritius and Maldives agreed to transfer the arbitral proceedings to a special chamber of the International Tribunal for the Law of the Sea, composed of nine members.

The proceedings were subsequently instituted by Mauritius and Maldives before the International Tribunal for the Law of the Sea on 24 September 2019 and the special chamber was constituted on 27 September 2019.

On 18 December 2019, Maldives filed preliminary objections relating to jurisdiction and admissibility. Deadlines for the submission of written pleadings on those preliminary objections were set as follows:

[12] The letter from the Chairperson of the Commission is available at https://mauritiusmission.org/files/annex-26/.

(a) 17 February 2020 as the time limit for Mauritius to file its written observations and submissions on the preliminary objections filed by Maldives;

(b) 17 April 2020 as the time limit for Maldives to file its written observations and submissions in reply.

II. Statements made by Mauritius at the United Nations

In statements that he made in October 2019 to the Fourth Committee, the Sixth Committee and the General Assembly, the Permanent Representative of Mauritius underscored the importance of implementing resolution 73/295 for the completion of the decolonization of Mauritius.[13]

III. Statements made in the Mauritius National Assembly

The Prime Minister of Mauritius made a statement in the country's parliament on 21 November 2019, stating the position of Mauritius following certain assertions by the United Kingdom regarding the International Court of Justice advisory opinion and General Assembly resolution 73/295.

On 28 February 2020, the Prime Minister once again made a statement restating the Government of Mauritius' position following replies made by Lord Ahmad and the Honourable Christopher Pincher, of the Foreign and Commonwealth Office, in the House of Lords and the House of Commons respectively.[14]

IV. Exchange of correspondence between Mauritius and the United Kingdom

The following correspondence has been exchanged between Mauritius and the United Kingdom with regard to the implementation of General Assembly resolution 73/295:

(a) On 3 June 2019, the Ministry of Foreign Affairs of Mauritius addressed a note verbale to the British High Commission in Mauritius to express the deep disappointment of Mauritius at the purported organization by the United Kingdom Government, barely a few days after the adoption of General Assembly resolution 73/295, of a programme of visits to the Chagos Archipelago as part of a supposed £40 million package said to be aimed at improving the livelihoods of Mauritians of Chagossian origin. Mauritius requested the United Kingdom Government to put an end immediately to the purported programme of visits to the Chagos Archipelago;

(b) On 4 July 2019, the British High Commission addressed a note verbale to the Ministry of Foreign Affairs to protest against actions taken by Mauritius following the adoption of General Assembly resolution 73/295, contending that they had been "aggressive and unprecedented actions" that Mauritius had taken against the United Kingdom and "repeated erroneous claims of sovereignty" over the Chagos Archipelago;

(c) On 11 July 2019, the Ministry of Foreign Affairs of Mauritius addressed a note verbale to the British High Commission in response to the latter's note verbale of 4 July 2019 to reject the United Kingdom's claims. Mauritius also indicated that it would continue to take such action as it deemed appropriate in respect of the Chagos Archipelago in furtherance of the implementation of General Assembly resolution 73/295;

[13] The statements, as well as the Permanent Representative's response to the United Kingdom's statement in exercise of the right of reply at the meeting of the Fourth Committee, are available at https://mauritiusmission.org/files/annexes-27-31/.

[14] The statements are available at https://mauritiusmission.org/files/annex-32/ and https://mauritiusmission.org/files/annex-33/.

(d) On 25 July 2019, the British High Commission addressed a note verbale to the Ministry of Foreign Affairs of Mauritius to object to the circulation by the latter, on 22 April 2019, to all diplomatic missions based in Mauritius, of a note verbale relating to the conduct of marine scientific research in the maritime zones of the Republic of Mauritius, including those generated by the Chagos Archipelago. In its note verbale, the British High Commission stated that any approval granted by Mauritius for marine scientific research in the maritime areas adjacent to the Chagos Archipelago would not be recognized or accepted by the United Kingdom. It further stated that unauthorized entry into the so-called "British Indian Ocean Territory" was an offence under the so-called "British Indian Ocean Territory (Immigration) Order 2004". The High Commission also circulated, on 25 July 2019, a note verbale to all diplomatic missions based in Mauritius to convey that marine scientific research in the maritime areas adjacent to the Chagos Archipelago should be authorized by the United Kingdom;

(e) On 6 August 2019, the Ministry of Foreign Affairs of Mauritius addressed to the British High Commission a note verbale in which it expressed the disappointment of Mauritius that the United Kingdom had taken that position, and advised other States that entry into the Chagos Archipelago without its permission was an offence. Mauritius also expressed its disappointment that the High Commission had invited diplomatic missions based in Port Louis to join in the violation of General Assembly resolution 73/295 and the findings of the International Court of Justice. It requested the British High Commission to recall the note verbale that it had circulated to other diplomatic missions on 25 July 2019;

(f) On 4 September 2019, the Ministry of Foreign Affairs of Mauritius addressed to the British High Commission a note verbale in which Mauritius expressed its disappointment at the fact that the United Kingdom Government had organized a visit for some United Kingdom parliamentarians to the Chagos Archipelago without informing or consulting the Government of Mauritius;

(g) On 27 September 2019, the Ministry of Foreign Affairs of Mauritius addressed a note verbale to the British High Commission to inform the latter that, in the absence of any indication of compliance by the United Kingdom with the advisory opinion of the International Court of Justice of 25 February 2019 and General Assembly resolution 73/295, the Government of Mauritius was not in a position to accept the United Kingdom's proposal for two officials of the United Kingdom Department for International Development to undertake a visit to Mauritius to explore the options for providing further support to the Chagossian community in Mauritius;

(h) On 1 October 2019, the British High Commission issued a note verbale to the Ministry of Foreign Affairs of Mauritius in response to the latter's note verbale of 4 September 2019. In the note verbale, the United Kingdom reiterated its sovereignty claim over the Chagos Archipelago;

(i) On 3 December 2019, the Ministry of Foreign Affairs of Mauritius issued a note verbale to the British High Commission to inform the latter that it had written to the University of Plymouth to request it to cease and desist from its activities in the maritime zones of the Chagos Archipelago, given that it had not obtained the prior consent of Mauritius;

(j) On 24 December 2019, the British High Commission addressed a note verbale to the Ministry of Foreign Affairs of Mauritius to object to the letters recently addressed by Mauritius to scientific institutions to inform them that marine scientific research in the maritime zones of the Chagos Archipelago should be carried out with the consent of Mauritius;

(k) On 8 January 2020, the Ministry of Foreign Affairs of Mauritius addressed a note verbale to the British High Commission in response to its note verbale of 24 December 2019. In the note verbale, Mauritius underscored that the United Kingdom's objection to the letters that it had addressed to scientific institutions and claim that it is the coastal State in relation to the Chagos Archipelago constitute a flagrant violation of international law, including the obligations of the United Kingdom thereunder, as clearly set out in the advisory opinion of the International Court of Justice of 25 February 2019 and General Assembly resolution 73/295;

(l) Following their meeting on the margins of the United Kingdom-Africa Investment Summit on 20 January 2020 in London, the Prime Minister of Mauritius wrote to the United Kingdom Prime Minister to urge the United Kingdom to complete the decolonization of Mauritius in accordance with international law.[15]

V. Failure of the United Kingdom to withdraw its Administration from the Chagos Archipelago

Mauritius is deeply disappointed at the failure of the United Kingdom to withdraw its colonial administration from the Chagos Archipelago by the deadline of 22 November 2019 set by the General Assembly in paragraph 3 of its resolution 73/295.

This failure has been deplored by the African Union, which issued a communiqué on the matter.[16]

VI. Defence needs of the West

Mauritius has made repeated commitments guaranteeing the continued operation of the defence facility on the island of Diego Garcia.

In that regard, it has offered to enter into a long-term arrangement with the United States or, if needed, with the United States and the United Kingdom, which would permit unimpeded use of the defence facility. Mauritius stands by these commitments.

VII. Other information relating to the implementation of resolution 73/295

In the final document adopted at their eighteenth Summit, held on 25 and 26 October 2019 in Baku, the Heads of State and Government of the Non-Aligned Movement resolved to cooperate fully with the General Assembly in ensuring the prompt decolonization of Mauritius, as required by the International Court of Justice, and take all necessary measures for the process of decolonization of Mauritius to be completed without hindrance and as rapidly as possible.

A similar stance was adopted by the Ministers for Foreign Affairs of the Group of 77 at their forty-third annual meeting, held on 27 September 2019 in New York. This is reflected in the Ministerial Declaration adopted at that meeting.

In the Nairobi Nguvu Ya Pamoja Declaration, adopted at their ninth Summit, held on 9 and 10 December 2019 in Nairobi, the Heads of State and Government of the African, Caribbean and Pacific Group of States urged the United Kingdom to comply with the International Court of Justice advisory opinion of 25 February 2019 and General Assembly resolution 73/295.

[15] The above-mentioned correspondence is available at https://mauritiusmission.org/files/annexes-34-45/.

[16] Available at https://mauritiusmission.org/files/annex-46/.

The Assembly of the African Union, at its thirty-third ordinary session, held on 9 and 10 February 2020 in Addis Ababa, adopted a decision in which, inter alia, it expressed its deep concern at the failure of the United Kingdom to respect General Assembly resolution 73/295 and directed the States members of the African Union to support, at the General Assembly and in the context of all international, regional and intergovernmental organizations, such as the Indian Ocean Tuna Commission, actions necessary to contribute to the complete decolonization of Mauritius in accordance with General Assembly resolution 73/295.[17]

VIII. Press conference of Pope Francis

Following his visit to Mauritius on 9 September 2019, Pope Francis gave a press conference on his flight back to Rome. In response to a question that was put to him about Mauritians of Chagossian origin who had been forcibly removed by the United Kingdom from the Chagos Archipelago in the wake of its illegal excision from the territory of Mauritius, the Pope emphasized the need for international institutions such as the International Court of Justice and the United Nations to be respected.[18]

Conclusion

Despite the best efforts of the Republic of Mauritius, it is to be noted that the United Kingdom has shown no willingness whatsoever to engage with Mauritius to implement the advisory opinion of the International Court of Justice and General Assembly resolution 73/295. This despite the fact that Mauritius has given every assurance that the security and defence interests of the West will not be affected by the exercise of its full sovereignty over the Chagos Archipelago.

In fact, as can be seen from the various statements made by the United Kingdom in its own Parliament and in correspondence exchanged with Mauritius, the United Kingdom has opted to challenge both the International Court of Justice and the General Assembly. Mauritius considers that this attitude by the United Kingdom is at odds with its efforts to promote itself as a country that is respectful of the international rule of law and United Nations institutions. This is disappointing in itself and worthy of note and condemnation.

The Republic of Mauritius calls upon the specialized bodies of the United Nations, as well as all international, regional and intergovernmental organizations, including international courts and tribunals, to ensure that paragraphs 6 and 7 of resolution 73/295 are strictly adhered to.

In this regard, the Republic of Mauritius requests the United Nations and all its agencies and specialized bodies to urgently amend their maps in order to reflect the correct designation of the Chagos Archipelago as part of the territory of Mauritius.

The plight of the inhabitants who were forcibly displaced from the Chagos Archipelago and who have so far been unable to return to their place of birth will be best addressed once the decolonization of Mauritius is completed. The Government of the Republic of Mauritius is strongly committed to the resettlement of Mauritian citizens, including those former inhabitants of the Chagos Archipelago, and urges the international community's support in that regard.

[17] Relevant extracts from the final document, declarations and decision are available at https://mauritiusmission.org/files/annexes-47-50/.

[18] The relevant extract from the transcript of the press conference is available at https://mauritiusmission.org/files/annex-51/.

The Republic of Mauritius expresses its thanks and gratitude to all the members of the United Nations, to the African Union and to the United Nations Secretariat for the support they have provided, and looks forward to their continued support.

Russian Federation

[Original: English]
[18 May 2020]

In the statement of the Spokesperson of the Ministry of Foreign Affairs of the Russian Federation, Maria Zakharova, of 28 November 2019,[19] a call to comply with General Assembly resolution 73/295 and complete the decolonization of Mauritius was addressed to the United Kingdom of Great Britain and Northern Ireland.

United Kingdom of Great Britain and Northern Ireland

[Original: English]
[15 January 2020]

The United Kingdom is a key trade and investment partner of Mauritius and continues to regard Mauritius as a friend and ally in an important part of the world. The United Kingdom is also a committed supporter of the institutions of the General Assembly and the International Court of Justice. However, the United Kingdom voted against Assembly resolution 73/295 and remains firmly of the view that the Court and the Assembly are not the appropriate forums for resolving what is fundamentally a bilateral matter of disputed sovereignty between two States Members of the United Nations.

Basis of United Kingdom's sovereignty

The British Indian Ocean Territory (also referred to as the Chagos Archipelago) has been under continuous British sovereignty since 1814. Prior to its independence, Mauritius's elected representatives freely agreed to the detachment of the islands in 1965, in return for a range of benefits. These included fishing rights and natural and marine resources, compensation of £3 million ($65 million at today's prices) paid to the Government of Mauritius over and above direct compensation to landowners and others affected, and a United Kingdom undertaking to cede the Territory when it was no longer needed for defence purposes. Mauritian ministers have subsequently reaffirmed the 1965 agreement on several occasions, at the highest level, following independence in 1968, including through the country's own laws and constitution. There was no suggestion by Mauritius then, or for a significant period thereafter, that the consent was invalid.

Furthermore, the 1965 undertaking has been found to be legally binding. In 2015, an arbitral tribunal constituted under annex VII of the United Nations Convention on the Law of the Sea concluded its award that, upon Mauritian independence, the 1965 agreement had become a matter of international law between the parties. Contrary to the premise of resolution 73/295, the process of decolonization of Mauritius was lawfully complete when Mauritius gained its independence in 1968. Any suggestion that Mauritian independence was conditioned on detachment is simply not based on fact.

[19] Available at www.mid.ru/web/guest/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/3923846?p_p_id=101_INSTANCE_cKNonkJE02Bw&_101_INSTANCE_cKNonkJE02Bw_languageId=en_GB#13.

Interventions of the International Court of Justice and the General Assembly

A fundamental principle of international law and the international legal order is that of consent. By agreeing to answer the questions put to it by the General Assembly on behalf of Mauritius, the International Court of Justice enabled Mauritius to circumvent the basic principle that the Court should not consider a bilateral dispute without the consent of both States concerned. This was an inappropriate use of the Court's advisory opinion mechanism and set a precedent that will potentially have wide implications for other States with bilateral disputes. At the time of the adoption of General Assembly resolution 71/292, a significant number of States Members of the United Nations placed on record, during the debate or in statements made in explanation of vote, their doubts and objections concerning the propriety of making the request for an advisory opinion. They included those abstaining as well as those voting against the resolution.

Approach taken by the International Court of Justice and the General Assembly

Despite clear reservations, the United Kingdom participated fully in the advisory proceedings in good faith and out of respect for the International Court of Justice. However, we do not share the Court's approach and have made known our views on the content of the opinion, including the insufficient regard for significant material facts and legal issues. Chief among these are Mauritius's freely given consent to enter into the 1965 agreement, the legally binding status of the 1965 undertaking (as upheld by the arbitral tribunal in its 2015 award, itself legally binding), and the content of the United Kingdom's legally binding treaty with the United States over the use of the British Indian Ocean Territory for defence purposes.

In any event, what is undisputed is that the opinion of the International Court of Justice is advisory and not legally binding. The General Assembly, in its resolution 73/295, adopted following the Court's advisory opinion, does not and cannot create any legal obligations for States Members of the United Nations. Neither the non-binding advisory opinion nor the non-binding General Assembly resolution alter the legal situation, that of a sovereignty dispute between the United Kingdom and Mauritius. The General Assembly is not the appropriate forum to resolve such a bilateral dispute. Any action in the General Assembly that seeks to cut across a bilateral dispute by specifying how or when a non-binding advisory opinion might be implemented should be of concern to all Member States.

United Kingdom sovereignty and the security value of the British Indian Ocean Territory

In this important part of the world, the joint United Kingdom and United States defence facility in the British Indian Ocean Territory plays a vital role in keeping people around the world safe and secure, including from threats from terrorism and piracy. It supports partners in the Combined Maritime Forces, a multinational naval partnership whose areas of operation include some of the most strategically important shipping lanes in the world. It is the site of one of the world's four Global Positioning System stations, used widely for military and civilian navigation, and it stands ready to assist in times of humanitarian crisis, as it has done previously, for example in response to Typhoon Haiyan in the Philippines in 2013 and to the 2004 Indian Ocean earthquake and tsunami.

Any action that potentially compromises the current or future operations of the joint United Kingdom and United States defence facility in the British Indian Ocean Territory should therefore be of concern to all States, given the important role the facility plays in maintaining regional and global peace and security – a role that

Mauritius itself acknowledges. Crucially, this role is only possible under United Kingdom sovereignty. The joint facility is the result of a uniquely close and active defence and security partnership between two long-standing allies. On 8 May 2019, the United States Secretary of State, Michael R. Pompeo, publicly stated that the United States "unequivocally supports UK sovereignty over the British Indian Ocean Territory" with its status as a United Kingdom territory "essential to the value of the joint US-UK base on Diego Garcia and our shared security interests".

Supporting Chagossians

The United Kingdom has stated on many occasions, and hereby reiterates, its deep regret for the way Chagossians were treated. As we made clear in our written statement to the International Court of Justice in 2018, the manner in which they were removed from the British Indian Ocean Territory and the way they were treated thereafter were wrong. Substantial compensation (around $20 million at current prices) has been paid to Chagossians since that time. As the European Court of Human Rights recognized in its 2012 judgment, receipt of such payment has resulted in a full and final settlement, accompanied by freely made and broad renunciations of all future claims, including with respect to resettlement.

Nevertheless, the United Kingdom is committed to doing more (on a voluntary basis) to address the aspirations of Chagossians, including the desire for better lives and to maintain a connection to the British Indian Ocean Territory. In 2016, the United Kingdom therefore decided to implement a support package worth approximately $50 million (£40 million) over 10 years in order to provide Chagossians with better life chances in the communities in which they currently live, not just in Mauritius but also in the United Kingdom and the Seychelles. Support will focus on improved access to health and social care, better education and employment opportunities, and cultural conservation. A programme of English language training is already under way in Mauritius and more initiatives will be announced in due course.

The support package is already enabling Chagossians to maintain a connection with the British Indian Ocean Territory through a more frequent programme of visits. Building on the visits that have taken place in the past, we are now providing opportunities in greater numbers. Seven heritage visits have taken place since November 2017, with 128 Chagossians each spending a week visiting the British Indian Ocean Territory. The visits were well received by those participating. The most recent was conducted from 2 to 11 December 2019 and the next one is scheduled for February 2020. More visits will take place each year over the next eight years.

The United Kingdom has offered to work with the Government of Mauritius to deliver support to the Chagossian community in Mauritius. We regret that they have so far refused to cooperate with the United Kingdom.

Environmental stewardship

Because the British Indian Ocean Territory is geographically isolated and the United Kingdom protects its waters from commercial fishing, it is one of the world's last undisturbed ecosystems, supporting enhanced biodiversity as well as acting as a haven for many endangered species. The protection of this unique habitat is of great importance to the United Kingdom, and we pride ourselves on the good stewardship we provide. We work closely with conservation partners to defend against a myriad of threats, including by using dedicated maritime resources, advanced surveillance and our global diplomatic influence to tackle illegal fishing, which blights marine environments across the Indian Ocean.

Scientific expeditions from leading institutions visit the British Indian Ocean Territory in partnership with the Territory's Administration, contributing to the

development of the Territory as a valuable observatory for largely undisturbed ecosystems. The United Kingdom regrets the inappropriate steps taken by the Government of Mauritius to threaten legal action against the United Kingdom and international universities and research institutions engaged in this important marine science research.

A key goal of our environmental protection work is to ensure that we meet our obligation to safeguard Mauritian fishing and natural resources rights. Our administration does not include any exploitation of the living or non-living resources of the archipelago, its 200-nautical-mile exclusive economic zone and its continental shelf, consistent with the 1965 agreement. Indeed, the marine protected area established by the United Kingdom in 2010 has resulted in an important environmental protection regime for these maritime zones. Contrary to the impression Mauritius seeks to convey, the arbitral tribunal did not find that a marine protected area as such was unlawful, but rather that its establishment was in certain respects not carried out in conformity with the provisions of the United Nations Convention on the Law of the Sea.

Commitment to dialogue

The United Kingdom has no doubt about its sovereignty over the British Indian Ocean Territory and remains concerned over Mauritius's continued stance. Nevertheless, the United Kingdom remains open to dialogue with Mauritius on matters of shared interest, including the marine protected area. We reiterate both our offer to work with Mauritius to implement the 2015 award made by the arbitral tribunal and our long-standing commitment to cede the British Indian Ocean Territory when it is no longer required for defence purposes. The United Kingdom's commitment to bilateral partnership was demonstrated by the meeting between the Prime Minister of Mauritius and the then Prime Minister of the United Kingdom at Downing Street, in March 2019, and by the invitation extended to the Prime Minister of Mauritius to participate in the United Kingdom-Africa Investment Summit in London, in January 2020.

United States of America

[Original: English]
[3 February 2020]

The United States recognizes the important work of the General Assembly and the International Court of Justice, and recalls that their respective mandates must be exercised consistent with the right of States to determine for themselves how to peacefully settle their disputes. This fundamental principle of international law is reflected in both the Charter of the United Nations and the deliberate limitations that States elected to place on the Court's jurisdiction.

Consistent with this principle, the United States voted against General Assembly resolutions 71/292 and 73/295. These resolutions respectively sought and welcomed an advisory opinion inappropriately designed to address a bilateral dispute between Mauritius and the United Kingdom regarding sovereignty over the British Indian Ocean Territory, also referred to as the Chagos Archipelago. The United States did not support referral of this matter to the International Court of Justice out of concern that it could set a dangerous precedent, including by disregarding the fundamental principle of international law that States must consent to adjudication of their bilateral disputes. During the debate in the General Assembly on resolution 71/292, other States Members of the United Nations expressed similar concerns and ultimately less than half voted in favour of referring the request to the Court.

However, out of respect for the International Court of Justice and given the potential implications of this improper request, the United States participated fully in the proceedings before the Court. It is notable that there was no disagreement among participants in those proceedings that the questions referred bore directly and significantly on an ongoing bilateral dispute over sovereignty, or indeed that the purpose of the referral was to adjudicate that sovereignty dispute. Attempts to present the questions as ones that might guide the General Assembly in the exercise of its decolonization mandate neither altered that reality nor displaced the principle of consent to judicial settlement as an important constraint on the Court's jurisdiction.

The General Assembly, in its resolution 73/295, did nothing to allay these concerns, including in its suggestion that a non-binding advisory opinion of the Court could not only resolve a bilateral dispute but also lead to obligations for third States and international organizations to take steps in support of one side in that dispute. This is a troubling mischaracterization of the effect of the Court's opinion, a mischaracterization that reflects conclusions that are unsupported by either the historical record or the Court's own test for determining the existence of rules of customary international law, as is made clear in the submissions of the United States during the course of the proceedings before the Court.

Indeed, the approach taken by the General Assembly in its resolution 73/295 suggests that a State that is party to any bilateral dispute could be compelled to have its sovereignty dispute adjudicated through the Court's advisory opinion procedure simply through a recasting of its claim as a matter that could be addressed by the General Assembly. This position would effectively dispose of the non-circumvention principle, as well as rewrite the careful and conscious jurisdictional limitations that were placed upon the Court.

In conclusion, the United States reiterates its unequivocal support for the position that the United Kingdom is and remains sovereign over the British Indian Ocean Territory, as has been the case continuously since 1814. Furthermore, the United States notes that the arrangement involving the joint United States-United Kingdom military base in the British Indian Ocean Territory is grounded in the uniquely close and active partnership between the United States and the United Kingdom. The Territory's status as a United Kingdom territory is essential to the value of the joint United States-United Kingdom base in the Territory, which is critical to not only shared security interests but also our broader efforts toward global security. The importance of the base to the Indian Ocean region and beyond has been recognized by many States. The location of the shared base enables the United States and the United Kingdom to provide a rapid response in times of humanitarian crisis and allows us, with our allies and partners, to combat some of the most challenging threats to global peace and security, including terrorism and piracy, natural disasters and various types of maritime crime, including trafficking in persons and illicit drugs, as well as illegal, unreported and unregulated fishing.

III. Replies received from organs and agencies of the United Nations system

Food and Agriculture Organization of the United Nations

[Original: English]
[15 January 2020]

The Food and Agriculture Organization of the United Nations (FAO) recalls that the Agreement for the Establishment of the Indian Ocean Tuna Commission was

concluded on 25 November 1993, under article XIV of the FAO Constitution, and entered into force on 27 March 1996.

The Organization further recalls that the criteria for becoming a member of the Indian Ocean Tuna Commission are set out in article IV, paragraph 1, of the Agreement, as follows:

> Membership in the Commission shall be open to Members and Associate Members of FAO
>
> (a) that are:
>
> (i) coastal States or Associate Members situated wholly or partly within the Area;
>
> (ii) States or Associate Members whose vessels engage in fishing in the Area for stocks covered by this Agreement;
>
> …
>
> and
>
> (b) that accept this Agreement in accordance with the provisions of paragraph 1 of Article XVII.

The Organization advises that the United Kingdom of Great Britain and Northern Ireland deposited an instrument of acceptance of the Agreement on 31 March 1995 “in respect of the British Indian Ocean Territory only”.

The Organization further advises that, following the adoption of resolution 73/295:

- In advance of the twenty-third session of the Commission, the Legal Office of FAO issued a note,[20] prepared in consultation with the Office of Legal Affairs of the United Nations, in which it drew attention to the above-mentioned resolution, observed “that issues related to the Chagos Archipelago, presumably including the United Kingdom’s continued membership in the Commission, might be brought up at the 23rd session”, and noted that the continued membership of a member of the Commission appears to be a matter for the Commission in accordance with article IV, paragraph 4, of the Agreement, which provides as follows:

> If any Member of the Commission ceases to meet the criteria set out in paragraphs 1 or 2 above for two consecutive calendar years, the Commission may, after consultation with the Member concerned, determine that the Member is deemed to have withdrawn from this Agreement effective as from the date of that determination.

The Legal Office of FAO also recalled that article XXIII of the Agreement provides as follows:

> Any dispute regarding the interpretation or application of this Agreement, if not settled by the Commission, shall be referred for settlement to a conciliation procedure to be adopted by the Commission. The results of such conciliation procedure, while not binding in character, shall become the basis for renewed consideration by the parties concerned of the matter out of which the disagreement arose. If as the result of this procedure the dispute is not settled, it may be referred to the International Court of

[20] Available at www.iotc.org/documents/note-legal-office-fao.

Justice in accordance with the Statute of the International Court of Justice, unless the parties to the dispute agree to another method of settlement.

- At the twenty-third session of the Commission, held in Hyderabad, India, from 17 to 21 June 2019, the Republic of Mauritius drew attention to resolution 73/295, objected to the participation of the United Kingdom in the session, and requested the Commission "to apply the procedure for termination of the UK's membership in the IOTC as a 'coastal State situated wholly or partly within the area of competence' of the IOTC as defined in Article II of the Agreement for the Establishment of the IOTC". The United Kingdom rejected the position of Mauritius and recorded "its objection to the inclusion of this issue, as a bilateral dispute, on a future agenda". The texts of the several statements made by Mauritius and the United Kingdom are reflected in appendix 2 to the report on the twenty-third session of the Commission.[21]

- As also reflected in the report on the twenty-third session relating to the adoption of the agenda for the session, the Commission noted "the statement made by the Republic of Mauritius requesting the inclusion of an item on the Agenda of the meeting relating to the termination of the United Kingdom (BIOT)'s membership of the Commission as a coastal State following the adoption of the UNGA resolution 73/295 on May 22, 2019" and "the statement by the United Kingdom (BIOT) which included a rejection of this item on the agenda for future sessions of the IOTC". The Chair of the Commission "concluded that this issue was a global one" and "also noted that the Commission as a specialised institution of the UN would need to abide by the Resolution of the UN General Assembly", but, "given that the delegates present may not have had proper guidance from their capitals", requested Mauritius to allow the Commission "to take note of the issue but to put the issue of the termination of United Kingdom (BIOT)'s membership at the IOTC as a coastal State as an item on the agenda for the next session of the Commission". The Chair invited FAO to submit a further paper on how it proposed to implement paragraph 6 of resolution 73/295, "bearing in mind instructions issued by the Office of Legal Affairs".

The Organization understands that, in the light of the deliberations at the twenty-third session of the Indian Ocean Tuna Commission, issues related to the Chagos Archipelago, including the continued membership of the United Kingdom in the Commission, may be addressed at the twenty-fourth session of the Commission, which is expected to be held in June 2020.

Office of the United Nations High Commissioner for Human Rights

[Original: English]
[24 February 2020]

In view of the General Assembly's call in its resolution 73/295 for the United Nations and all its specialized agencies to recognize that the Chagos Archipelago forms an integral part of the territory of Mauritius, the Office of the United Nations High Commissioner for Human Rights has advised Mauritius, as part of its technical assistance provided to Mauritius for strengthening its engagement with international human rights mechanisms, to include appropriate information on the Chagos

[21] Available at https://iotc.org/sites/default/files/documents/2019/10/IOTC-2019-S23-RE_Rev1_FINAL.pdf.

Archipelago in its State party reports to treaty bodies and in its national report to the universal periodic review.

Universal Postal Union

[Original: English]
[22 January 2020]

We may indeed confirm that the Universal Postal Union (UPU) has taken due note of resolution 73/295, as adopted by the General Assembly, and is currently in the process of gathering any and all relevant information pertaining to its international postal activities concerning the Chagos Archipelago.

It may be further noted that such information would, inter alia, address the following aspects as related to the Chagos Archipelago: (a) identification of entities responsible for fulfilling the obligations arising from adherence to the Acts of UPU; (b) philatelic activities; (c) the existence of international mail processing centres or extraterritorial offices of exchange; (d) international postal transit operations; (e) the use of information technology infrastructure and solutions provided by UPU; and (f) development assistance and technical cooperation initiatives undertaken by UPU for that territory.

Accordingly, the secretariat of UPU (the International Bureau) shall refer the matter to the governing bodies of UPU at the earliest possible opportunity (during the course of 2020), and expects to revert to the United Nations with a formal communication on any relevant decisions as soon as those governing bodies deliberate on the matter.

IV. Observations

5. It is encouraging to note that, since the adoption of General Assembly resolution 73/295, communications between Mauritius and the United Kingdom on the issue of the Chagos Archipelago have remained open. Such communications have included, notably, a meeting on 20 January 2020 in London between the Prime Minister of Mauritius, Pravind Jugnauth, and the Prime Minister of the United Kingdom, Boris Johnson, during which the subject was discussed. I commend both parties for their openness to dialogue.

6. The designation of the Chagos Archipelago has been modified on the maps produced by the Secretariat, in line with resolution 73/295.

7. I am pleased to note that both parties' engagement on the issue continues to be marked by friendship and cooperation. I encourage both to continue the dialogue in the hope of resolving the matter in a spirit of constructiveness and collaboration.