



Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Advisory Opinion; Madagascar; Marshall Islands; Mauritius; United Kingdom)

ARGUED: 24 October 2020

DECIDED: 24 October 2020

1 The Concurring Opinion was written and signed onto by International Court of Justice President Maxwell
2 of Greece.

3 In her opinion, this Justice concurs with the majority opinion that the International Court of Justice has
4 jurisdiction to provide an advisory opinion for this case, as requested by the United Nations General Assembly via
5 A/RES/71/292, due to Article 65 of the Statute of the International Court of Justice. Article 65(1) of the Court's
6 Statute provides that "the Court may give an advisory opinion on any legal question at the request of whatever
7 body may be authorized by or in accordance with the Charter of the United Nations to make such a request."
8 Moreover, this Justice acknowledges the General Assembly's authorization and capacity to request such an advisory
9 opinion within Article 96(1) of the United Nations Charter, which states "the General Assembly ... may request the
10 International Court of Justice to give an advisory opinion on any legal question." Justice Maxwell believes that it is
11 of critical importance to note that both Article 65 of the Court's Statute and Article 96 of the Charter require that
12 a requested advisory opinion must be in regards to a "legal question."

13 In this case, there are two principal legal questions that have been referred to the Court. First, whether the
14 process of the decolonization of Mauritius was lawfully completed when the country was granted independence in 1965,
15 following the separation of the Chagos Archipelago. Second, if said decolonization was unlawfully completed, then
16 what consequences may arise under international law due to the United Kingdom's continued administration of the
17 Chagos Archipelago. The General Assembly's request for an advisory opinion focuses on the Court's examination
18 of a situation centrally focused on international law; thus, this Justice believes that the requirement of a "legal
19 question" is made in accordance with the Court's Statute and the UN Charter.

20 Recognizing the Court's jurisdiction to provide an advisory opinion on this case, Justice Maxwell notes that
21 it is still within the Court's rights to utilize its discretionary power and decline to deliver an advisory opinion. As
22 the principal judicial organ of the United Nations at The Hague, the International Court of Justice maintains this
23 discretionary power, under Article 65(1) of its Statute to protect the Court's integrity of judicial function. However,
24 this Justice notes with great respect the Court's determination that accepting advisory opinions is an incredibly
25 essential aspect of contribution to the United Nations' body as a whole. To that end, Justice Maxwell believes that
26 the Court's reliable application of jurisprudence should include that only "compelling reasons" would require the
27 Court to use discretion and refuse an advisory opinion that is within its jurisdiction. This Justice cannot determine
28 a compelling reason to utilize discretion in this matter.

29 This Justice is satisfied with the Court's majority opinion that (a) the Court has jurisdiction to deliver
30 an advisory opinion on this matter, and (b) the Court cannot use discretion and decline to answer the requested
31 questions posed by the General Assembly.

32 Prior to the delivery of the aforementioned request for an advisory opinion, Justice Maxwell reminds the
33 Court of the General Assembly resolutions of primary importance and critical relevance to the Court's advisory
34 opinion. Of utmost importance, the 14 December 1960 General Assembly resolution 1514 (XV) "Declaration on the
35 Granting of Independence to Colonial Countries and People" serves as the cornerstone of all future self-determination

36 cases. In particular, Operative Clause 6 of A/RES/1514 (XV) states that “[a]ny attempt aimed at the partial or
37 total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes
38 and principles of the Charter.” This Justice affirms the Court’s determination that resolution 1514 (XV) represents
39 customary international law and opinio juris regarding a non-self-governing territory’s right to territorial integrity
40 as a result of the right to self-determination. Justice Maxwell notes with appreciation resolution 1654 (XVI), which
41 established the Committee of Twenty-Four to monitor the international decolonization process and implementation
42 of resolution 1514 (XV). After the 1965 Lancaster House Agreement detached the Chagos Archipelago from the
43 territory of Mauritius and the United Kingdom established a new colony known as the British Indian Ocean Territory
44 (hereinafter referred to as “the BIOT”), the “Question of Mauritius” was addressed by the General Assembly on 16
45 December 1965 with resolution 2066 (XX). Resolution 2066 (XX) expressed deep concern regarding the detachment
46 of Mauritian islands and the establishment of a military base on the Archipelago. Further, the General Assembly
47 invited the “administering Power to take no action which would dismember the Territory of Mauritius and violate its
48 territorial integrity.” Finally, General Assembly resolution 2232 of 20 December 1966 stated that “any attempt aimed
49 at the partial or total disruption of the national unity and the territorial integrity of colonial Territories and the
50 establishment of military bases and installations in these Territories is incompatible with the purposes and principles
51 of the Charter of the United Nations and of General Assembly resolution 1514 (XV).” This Justice believes that all
52 of the aforementioned General Assembly resolutions serve as testamentary support of customary international law
53 regarding decolonization and the right to self-determination.

54 Therefore, Justice Maxwell delivers this concurring opinion regarding the International Court of Justice’s
55 advisory opinion that:

56 The process of decolonization of Mauritius was not lawfully completed when the country was granted inde-
57 pendence.

58 However, this Justice has also determined that Mauritius’ right to self-determination was denied by the
59 administering Power, and the United Kingdom is obligated to terminate its administration of the Chagos Archipelago
60 as soon and as swiftly as possible.

61 Justice Maxwell believes that it is of vital importance that, with respect to the customary international
62 law of self-determination, the administering Power (the United Kingdom) is responsible for respecting Mauritius’
63 right to exercise self-determination for the entirety of their territory, including the Chagos Archipelago. As the UN
64 Charter states in Article 1(2), “respect for the principle of equal rights and self-determination of people” is one of
65 the key tenets of the United Nations. As such, this Justice calls upon the United Kingdom to summarily conclude
66 its administration of the Chagos Archipelago.

67 Additionally, this Justice notes with concern that the Chagos Archipelago’s detachment was not based on
68 the free will of the people. As a non-self-governing territory, Mauritius was not in a position of equal standing to
69 enter into negotiations regarding the Lancaster House Agreement with the United Kingdom. The 14 December 1960
70 General Assembly Resolution 1514 (XV) serves as customary international law in effect before the 1965 Lancaster
71 House Agreement; therefore, Mauritius should have been entitled to self-determination at the time of negotiations
72 between the Parties.

73 Whereas this opinion primarily relied on the nature of the legal right of self-determination, Justice Maxwell
74 urges the Court to remember the human rights issues at stake. The Chagossian people were removed from or refused
75 entry into the territory during the United Kingdom’s conduction of the BIOT, and this Justice encourages the General
76 Assembly to consider the resettlement process of all displaced Mauritians when they address the decolonization
77 process as a result of this Court’s advisory opinion. Furthermore, it is vital that all United Nations Member States
78 provide support of the decolonization process and promote the right of self-determination.

79 Ultimately, this Justice could not find any precedent, after the adoption of resolution 1514 (XV), of a
80 United Nations body allowing for the lawful detachment of land by the administering Power of a non-self-governing
81 territory to uphold colonial rule. As such, there is no substantive evidence that the Chagos Archipelago was lawfully
82 decolonized. Rather, this Justice calls upon the United Kingdom to end its unlawful administration of the Chagos
83 Archipelago. Furthermore, this Justice directs her concurring opinion to the General Assembly to exercise the
84 necessary functions to facilitate proper decolonization processes.

85 Justice Maxwell concurs with the Court’s advisory opinion, and she insists that respect for territorial integrity
86 is a critical element of the right to self-determination.

Signed By

JEJ President Kaitlin Maxwell, Greece

Justice Justice Kaitlin Maxwell