

THE CHAGOS ARCHIPELAGO CASE IN THE INTERNATIONAL COURT OF JUSTICE*

Uluslararası Adalet Divanı'ndaki Chagos Takımadaları Davası

Mehmet Şükrü GÜZEL**

Abstract

On 22 June 2017, the General Assembly of the United Nations adopted resolution A/RES/71/292 in which, referring to Article 65 of the Statute of the Court, it requested the International Court of Justice to give an advisory opinion 2 questions on the separation of the Chagos Archipelago from Mauritius in 1965 by the Lancaster House Undertakings. Even if the case seems to be between the United Kingdom and Mauritius, in fact, the case has a Sui Generis character and is between the United Nations and the United Kingdom.

Keywords: *Chagos Archipelago, United Nations, International Court of Justice, Mauritius, Chapter XI of the United Nations Charter.*

Öz

22 Haziran 2017 tarihinde Birleşmiş Milletler Genel Kurulu'nun A/RES/71/292 sayılı kararı ile, 1965 tarihinde Chagos Takımadaları'nın Mauritius'dan Lancaster House Taahhütleri Sözleşmesi ile ayrıştırılması konusunda 2 soru sormuştur. Her ne kadar Uluslararası Adalet Divanı'nda ki dava Birleşik Krallık ile Mauritius arasında gözükse de aslında Birleşmiş Milletler ile Birleşik Krallık arasında ki Sui Generis karaktere sahip bir davadır.

Anahtar Kelimeler: *Chagos Takımadaları, Birleşmiş Milletler, Uluslararası Adalet Divanı, Mauritius, Birleşmiş Milletler Sözleşmesi'nin XI. Bölümü.*

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** Prof. Dr. h.c., Ankara Kriz ve Siyaset Araştırmaları Merkezi (ANKASAM) İsviçre Temsilcisi, e-posta: guzelmehmetsukru@gmail.com

Introduction

On 22 June 2017, the General Assembly of the United Nations adopted resolution A/RES/71/292 in which, referring to Article 65 of the Statute of the Court, it requested the International Court of Justice to give an advisory opinion on the following questions:

(a) *“Was the process of decolonization of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in General Assembly resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967?”;*

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

This article is focused on the answer of the first question and tries to prove that the Chagos Archipelago case in the International Court of Justice is in fact not between the United Kingdom and Mauritius but between the United Nations and the United Kingdom. This article tries to prove that the answer of the first questions is NO.

The first question is if the process of decolonization of Mauritius completed lawfully or not following the separation Chagos Archipelago from Mauritius by the Lancaster House Undertakings with regard to international law, including the obligations reflected in General Assembly resolutions 1514, 2066 and 2357.

When we approach the first question under international law, we have to analyze the legality of the Lancaster House Undertakings as a treaty. Many researcher approach on treaty termination when the treaty is silent in his articles for the termination. Some researcher claim that as a signer to the Lancaster House Undertakings, Mauritius has an obligation to act in Good Faith for the treaty obligations with in the principle of *pacta sunt servanda* as well *rebus sic stantibus*, the principle of fundamental change of circumstances within the Vienna Convention of the Law of Treaties. On the other hand, the resolutions of the General Assembly even if forms a kind of obligations under the customary international law, they legally are not binding to the states who did not vote in favor in the General Assembly. The United Kingdom voted against all the resolutions mentioned in the questions. Under these approaches, the answer of the International Court of Justice will be YES for the first question.

The Articles of the United Nations Charter have *jus dispositivum* character. When there is a breach of an obligation arising from the charter by a member country, there is the responsibility of the international organization not to recognize as lawfully the situation created by the breach of the obligation by its all organs. First time with this article, with the obligations arising from the United Nations` Charter, International Court of Justice`s decision will be analyzed for the legality of the decolonization process for the separation Chagos Archipelago from Mauritius by the Lancaster House Undertakings.

This article is focused on the *Sui Generis* character of the Chagos Archipelago Case in International Court of Justice by proving that the case is in fact between the United Nations and the United Kingdom

History of the Chagos Archipelago Case

The Chagos Archipelago lies approximately 1,770 km east of Mahé (the main island of Seychelles). The territory, an archipelago of 58 islands, covers some 640,000 square km of ocean. The islands have a land area of only 60 square km and 698 km of coastline.

Diego Garcia, the largest and most southerly atoll and island, is 44 square km. The terrain is flat and low and most areas do not exceed two meters in elevation. The uninhabited Chagos islands were first discovered by the Portuguese in the 16th century. The French assumed sovereignty in the late 18th century and began to exploit them for copra, originally employing slave labour. By then, the Indian Ocean and its African, Arabian and Indian coasts had become a center of rivalry between the Dutch, French and British East India companies for dominance over the spice trade and over the routes to India and the Far East. France, which had already colonized Réunion in the middle of the seventeenth century, claimed Mauritius in 1775, having sent its first settlers there in 1772, it subsequently took possession of the Seychelles group and the islands of the Chagos Archipelago.

During the Napoleonic wars, Britain captured Mauritius and Réunion from the French. Under the treaty of Paris in 1814, Britain restored Réunion to France, and France ceded to Britain Mauritius and its dependencies, which comprised Seychelles and various other islands, including the Chagos Archipelago. All these dependencies continued to be administered from Mauritius until 1903, when the Seychelles group was detached to form a separate Crown Colony. The Chagos islands continued to be administered as a dependency of Mauritius until they were detached to become the British Indian Ocean Territory in November 1965.¹

The Lancaster House Undertakings

Mauritius became an independent State on 12 March 1968. The process towards independence began long before. Constitutional Conferences were held in 1955, 1958, 1961, and 1965, resulting in a new constitution in 1958 and the creation of the post of Chief Minister in 1961. The final Constitutional Conference was held in London in September 1965. Mauritius' independence was announced on 23 September 1965. On 5 November 1965, the Mauritian Council of Ministers formally agreed to the detachment of Chagos Archipelago This is known as the Lancaster House

¹ "Policy Review of Resettlement of the British Indian Ocean Territory", *Government of the United Kingdom*, <https://www.gov.uk/government/speeches/policy-review-of-resettlement-of-the-british-indian-ocean-territory>, (Date of Accession: 04.02.2018).

Undertakings. The British Indian Ocean Territories² was created on 8 November 1965.³

Under the Lancaster House Undertakings, the United Kingdom made several commitments on Mauritian independence, including with respect to fishing rights in the waters surrounding the Chagos Archipelago, mineral and oil rights, and a reversionary interest of Mauritius in the archipelago once it was no longer needed for the United Kingdom's defense purposes. At the same time, the United Kingdom detached the Chagos Archipelago from Mauritius – formally with the agreement of the Mauritian Council of Ministers headed by a British governor – even though it had administratively formed part of Mauritius when it was a British colony.⁴

United Nation General Assembly's Reaction to the Lancaster House Undertakings

Between 8 November 1965, the date of the establishment of the British Indian Ocean Territories, and 12 March 1968, the date of the independence of the Republic of Mauritius, the United Nations General Assembly adopted three resolutions touching on the question of the British Indian Ocean Territories. General Assembly of the United Nations, by resolution 2066 of 16 December 1965 called upon the United Kingdom Government to take effective measures with a view to the immediate and full implementation of General Assembly Resolution 1514 on decolonization and to

2 British Indian Ocean Territory Order No: 1 of 1965: Annex 32. Section 3 of the Order provides that: "3. As from the date of this Order – (a) the Chagos Archipelago, being islands which immediately before the date of this Order were included in the Dependencies of Mauritius, and (b) the Farquhar Islands, the Aldabra Group and the Island of Desroches, being islands which immediately before the date of this Order were part of the Colony of Seychelles, shall together form a separate colony which shall be known as the British Indian Ocean Territory. Stephen Allen, *The Chagos Islanders and International Law*, Hurt Publishing, Sydney, p. 89.

3 Counter-Memorial Submitted by the United Kingdom, *Arbitration under Annex VII of the United Nations Convention on the law of the Sea, Mauritius v. United Kingdom*, <https://pcacases.com/web/sendAttach/1798>, (Date of Accession: 04.02.2018).

4 "The Lancaster House Undertakings as Binding Commitments", *University of Cambridge*, <http://www.myheplus.com/sites/www.myheplus.com/files/downloads/topics/Activity%20One%20-%20The%20Lancaster%20House%20Undertakings%20as%20Binding%20Commitments.pdf>, (Date of Accession: 04.02.2018).

take no action which would dismember the Territory of Mauritius and violate its territorial integrity. These views were reiterated in General Assembly Resolution 2232 of 20 December 1966 and Resolution 2357 of 19 December 1967. No further such resolutions were adopted after the independence of Mauritius, and the subject was not brought up in the General Assembly for another 12 years until Mauritian representatives began to refer to it in speeches in the annual general debate.⁵

United Kingdom` Point of View for the Chagos Archipelago Case

The United Kingdom`s argument that prior to independence, the agreement between the United Kingdom and Mauritius was a matter for British constitutional law alone. Nevertheless, it held that Mauritius` independence in 1968 *“elevat[ed] the package deal ... to the international plane and transform[ed] the commitments made in 1965 into an international agreement”*.

The British Government maintains that British Indian Ocean Territory is British and has been since 1814. It does not recognize the sovereignty claim of the Mauritian Government. However, the British Government has recognized the Republic of Mauritius as the only State which has a right to assert a claim of sovereignty when the United Kingdom relinquishes its claim of sovereignty over the Chagos Archipelago. Successive British Governments have given assurances to the Government of Mauritius that the Chagos Archipelago will be ceded to the Republic of Mauritius when the United Kingdom no longer requires it for defense purposes.⁶

5 “Statement by the Rt Hon Sir Anerood Jugnauth, GCSK, KCMG, OC, Minister Mentor, Minister of Defence, Minister for Rodrigues of the Republic of Mauritius, on the Draft Resolution Tabled under item 87 of UN General Assembly Agenda”, *PaperSmart*, 2017, <https://papersmart.unmeetings.org/media2/14685679/mauritius.pdf>, (Date of Accession: 04.02.2018).

6 United Nations, “Ambassador of the United Kingdom, *General Assembly, 19th Plenary Meeting, 54th Session*”, 30 September 1999, <http://www.un.org/ga/54/pv54e.htm>, (Date of Accession: 04.02.2018).

The Chagos Archipelago in the United Nations Decolonization System under Chapter XI, Article 73 of the United Nations Charter as a Territory of Non-Self-Governing Territory, Mauritius

The General Assembly of the United Nations, during the first part of its first session in London, on 9 February 1946, with a view to implementing the Declaration Regarding Non-Self-Governing Territories, passed unanimously Resolution 9 (I) entitled “*Non-Self-Governing Peoples.*” By the operative paragraph 2 of the resolution, the General Assembly requests the Secretary-General to include in his annual report on the work of the Organization, as provided for in Article 98 of the Charter, a statement summarizing such information as may have been transmitted to him by Members of the United Nations under Article 73 (e) of the Charter relating to economic, social and educational conditions in the territories for which they are responsible other than those to which Chapters XII and XIII apply.

In the operative paragraph of the General Assembly resolution 9 (I), it is written that the UN “expects that the realization of the objectives of Chapter XI, XII and XIII will make possible the attainment of the political, economic, social and educational aspirations of *non-self-governing peoples.*” The United Kingdom was in favor of the resolution 9 (I). In the voting process of General Assembly resolution 9 (I), there were 41 yes, 0 no, and 10 non-voting.

In reply to a letter by the Secretary-General, written in compliance with this directive, a number of Member Governments stated their views regarding certain problems raised in the letter which arose out of the General Assembly’s action. The replies received from Members up to September 20, 1946. The Secretary-General set forth in a report which was submitted to the General Assembly during the second part of its first session in New York in October 1946.

The territories enumerated by the United Kingdom were the following;

Barbados, Bermuda, British Guiana, British Honduras, Fiji, Gambia, Gibraltar, Leeward Islands, Mauritius, St. Lucia and Zanzibar Protectorate.

The General Assembly Resolution 66 (I) of 14 December 1946 was entitled “Transmission of Information under Article 73 (e) of the Charter.” After noting the Territories in respect of which information had been transmitted by the United Kingdom, *Barbados, Bermuda, British Guiana, British Honduras, Fiji, Gambia, Gibraltar, Leeward Islands, Mauritius, St. Lucia and Zanzibar Protectorate* were placed on the United Nations list of non-self-governing territories — “the decolonization list”.

Decolonization Cases in the International Court of Justice Subject to United Nations Charter

In the history of International Court of Justice, there were 4 decolonization cases and 1 external self-determination case.

The four decolonization cases were: South West Africa Decolonization cases (1949-1971), Western Sahara (Advisory Opinion of 16 October 1975), East Timor (Portugal v. Australia, Judgment of 30 June 1995), and Legality of the Construction of a Wall in the Occupied Palestinian Territory.

The external self-determination case in the International Court of Justice’s advisory opinion of 22 July 2010 on the Unilateral Declaration of Independence in Respect of Kosovo is not a decolonization case but an external self-determination case which is not codified by the United Nations’ Charter. International Court of Justice evaluated the case under international customary law.

***Sui Generis* Character of the Chagos Archipelago Case in the International Court of Justice**

What makes the *Sui Generis* character of the Chagos Archipelago Case in International Court of Justice is, in fact, the dispute is between a state and an international organization, that is, between the United Kingdom, as an administrative power of a non-self-governing territory, and United Nations. The dispute is based on the breach of an international responsibility on violation of the obligations as defined in Article 73 of the United Nations Charter.

Obligations Arising from Article 73 of the United Nations Charter for the Administrative States

In Article 73 of the United Nations Charter, it is written that *“Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end.”*

Members of the United Nations that assume responsibilities for the administration of Non-Self-Governing Territories had accepted this title as a legally binding unilateral declaration of the United Nations` Charter Chapter XI. As an obligation by the United Nations` Charter and by being a member of the United Nations, these states had accepted the binding character of the declaration regarding non-self-governing territories and Articles 73 and 74 of the United Nations Charter.

The International Court of justice found that binding unilateral declarations were made as *“the State... thenceforth legally required to follow a course of conduct consistent with the declaration.”* in the Nuclear Tests case, 1974. The International Court of Justice also in the Nuclear Tests case stated that *“Just as the very rule of*

pacta sunt servanda in the law of treaties is based on good faith, so is the binding character of an international obligation assumed by unilateral declaration.”⁷

Administrative states of the Non-Self-Governing Territories unilaterally declared that “*the interests of the inhabitants of these territories are paramount,*” for all their policies as written in Article 73 as a legal obligation to the United Nations by the treaty law.

In fact, Article 73 of the United Nations Charter has the same binding obligation for the administrative states of Non-Self-Governing Territories as Article 25 of the United Nations Charter for its members. According to Article 25, members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the Charter. According to Article 73, administrative states of Non-Self-Governing Territories are to carry out all their decision according to the paramount interest of the inhabitants of the Non-Self-Governing Territories.

By becoming the administrative state of Non-Self-Governing Territories, States assume obligations and duties under the United Nations Charter to respect, to protect and to fulfill interest of the inhabitants of these territories. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment or causing any harm to these territories and their inhabitants. The obligation to protect requires States to guard these territories against any abuses. The obligation to fulfill means that States must take positive action to facilitate their responsibilities.

The Obligations Arising from the Wording “*the system of international peace and security established by the present Charter*” in the Preamble of the Article 73 of the United Nations Charter

If, as mentioned by the ambassador of the United Kingdom, that the Chagos Archipelago was required for defense purposes, then the

⁷ “Nuclear Tests Case (New Zealand v. France) Judgement of 20 December 1974”, *International Court of Justice*, <http://www.icj-cij.org/files/case-related/59/059-19741220-JUD-01-00-EN.pdf>, (Date of Accession: 04.02.2018).

United Kingdom should have followed the system of international peace and security as established in Article 73 of the United Nations Charter.

The defense requirement means conflict prevention of international peace and security and codified in the United Nations Charter, (essentially in Articles 1, 11(2), 24, Chapter VI and VIII, Articles 40 and especially 41, as well as in Article 99). Article 1 stipulates that the Purposes of the United Nations as:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and the removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustments or settlement of international disputes or situations which might lead to a breach of the peace.

Article 24 specifies the functions and powers of the Security Council to whom the Member States have conferred the primary responsibility for the maintenance of international peace and security. Article 25 provides that 'the Member States of the United Nations agree to carry out the decisions of the Security Council' in accordance with the Charter.

Chapter VI and VII of the Charter refers to the peaceful settlement of disputes and action with respect to threats to the peace, breaches of the peace, and acts of aggression. These are key elements of UN conflict prevention. For the peaceful settlement of disputes, the Security Council shall, on the basis of Article 33, call upon the parties of any dispute to settle it by such means as negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

In accordance with Article 34, Member States agree that the Security Council may investigate any dispute, any situation which might lead to international friction, or which may give rise to a dispute, in order to determine the degree of possible danger to international peace and security

Continuance of Article 40 of Chapter VII provides that, in order to prevent the aggravation of a situation, the Security Council may call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. In exceptional circumstances, the Security Council may proceed under Article 41 and decide on such measures as arms embargo and non-military sanctions.⁸

Obligation Giving Information on Security Issues to the Administrative State of a Non-Self-Governing Territory Arising from General Assembly Resolution 1541

In Article 73 (e), it is written that *“to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, the statistical and other information of a technical nature relating to economic, social and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.”*

Resolution 1541 of General Assembly 15 December 1960 states, Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 (e) of the Charter.” In Principle XII of the Annex, it is written that *“security considerations have not been invoked in the past. Only in very exceptional circumstances can information on economic, social and educational conditions have any security aspect. In other circumstances, therefore, there should be no necessity to limit the transmission of information on security grounds.”*

The United Kingdom abstained in the voting of General Assembly Resolution 1541, which means the United Kingdom did

⁸ Eugenia Lopez-Jacoiste, “The UN Collective Security System and its Relationship with Economic Sanctions and Human Rights”, *Max Planck UNYB*, Vol: 14, 2010, http://www.mpil.de/files/pdf3/mpunyb_07_lopez-jacoiste_14.pdf, (Date of Accession: 04.02.2018).

not vote against giving information on security issues.

The Doctrine *Rebus Sic Stantibus* and the United Nations Charter

According to the doctrine, *rebus sic stantibus*, a recommendation of the General Assembly has sufficient force to effectively release a State from obligations incurred under a treaty. The doctrine, which is codified in Article 62 of the Vienna Convention on the Law of Treaties, provides that a fundamental change of circumstances, which has occurred with regard to those existing at the time of the conclusion of the treaty, and which was not foreseen by the parties, may be invoked as a ground for terminating, withdrawing, or suspending the operation of a treaty. Additionally, the existence of those circumstances must have constituted an essential basis of the consent of the parties to be bound by the treaty and the effect of the change must radically transform the extent of obligations still to be performed under the treaty. It seems doubtful that either the adoption of a recommendation by the General Assembly or the situation giving rise to such a recommendation meets the rather strict requirements of the *rebus sic stantibus* doctrine.

In any case, a fundamental change of circumstances does not automatically release States from their treaty obligations. Rather, the fundamental change may only be “*invoked*” by States as a ground for terminating, withdrawing, or suspending the operation of the treaty. States Parties to the Vienna Convention on the Law of Treaties that want to invoke such a change must give a written notice to the addressee of the measures recommended by the General Assembly. If that State objects to the termination, withdrawal, or suspension of the operation of the treaty, a special conciliation procedure must be followed according to the Vienna Convention on the Law of Treaties, Article 66 (b) ⁹.

9 Stefan Talmon, “The Legalizing and Legitimizing Functions of UN General Assembly Resolutions”, *Cambridge University Press*, <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/C3553648C06E4FCB9B3173CFBC83F8E2/>

Article 2. (2) Good Faith Clause of the United Nations Charter

The principle of Article 2. (2) and in particular the clause “in good faith” lays down the obligation for all members of the UN to fulfill their obligations “in accordance with the present Charter”. This means the principle of “*pacta sunt servanda*”.

The obligation contained in paragraph 2 of Article 2 goes beyond the mere integration of a principle of general international law into the law of the Charter. The decisions of international courts show that good faith develops particular legal effects wherever states have a qualified relationship of confidence with one another, such as in the context of an arbitral or border adjustment procedure, or a vassalage relationship, *inter alia*.

The formulation of Article 2. (2) of the Charter draws attention to the social purposes of the obligation of good faith in order to ensure to all of them the rights and benefits resulting from membership. The practice of the United Nations concerning the principle of good faith has been confirmed and given concrete form in various major documents of the General Assembly.

The link between the good faith clause and the need to respect the meaning and purposes of the treaty as contained in Article 31. (1) of the Vienna Convention on the Law of Treaties is an indication of the objectivity-creating function of good faith in the law of international treaties.

The International Court of Justice’s advisory opinion on Certain Expenses case of 1962¹⁰ can be quoted in support of the thesis that a state cannot plead that an organ of an international organization has exceeded its competences in accordance with the treaty establishing it, if by voting accordingly or by some other active participation by its delegates, that state has contributed to establishing the practice at issue.¹¹

S2398772300002002a.pdf/div-class-title-the-legalizing-and-legitimizing-function-of-un-general-assembly-resolutions-div.pdf, (Date of Accession: 04.02.2018).

10 International Court of Justice, “*Certain Expenses of the United Nations Advisory Opinion*”, 20 July 1962.

11 Bruno Simma et al., *The Charter of the United Nations: A Commentary*, Oxford University Press, New York 2002, p. 93.

Self-Determination (Decolonization) as a Peremptory Norm

In paragraph 29 of the International Court of Justice's view on the East Timor case, Portugal's assertion that the right of peoples to self-determination, as it evolved from the charter and from United Nations practice, has an *erga omnes* character. In other words, it is irrefragable. The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the International Court of Justice, and it is one of the essential principles of contemporary international law.¹²

Vienna Convention on the Law of Treaties, Peremptory Norm *Jus Cogens*, and the Lancaster House Undertakings

There is an important practice that gives effect to the informal sense that some norms are more important than others, and that in cases of conflict, those more important norms should be given effect to. In the absence of a general theory about where to derive this sense of importance, the practice has developed a vocabulary that gives expression to something like an informal hierarchy in international law, namely Article 103 of the UN Charter, the concepts of peremptory norms (*jus cogens*) and obligations (*erga omnes*).¹³

Article 53 of the Vienna Convention on the Law of Treaties, provides for the invalidity of treaties that, at the time of their conclusion, are in conflict with a peremptory norm of general international law.¹⁴ Article 53 does not identify any norms having peremptory status. Article 53 was thus negotiated so as to leave it to the international community as a whole to identify those international law norms belonging to the category of *jus cogens*.¹⁵

12 "Case Concerning East Timor (Portugal v. Australia) Judgment of 30 June 1995", *International Court of Justice*, <http://www.icj-cij.org/files/case-related/84/084-19950630-JUD-01-00-BI.pdf>, (Date of Accession: 04.02.2018).

13 International Law Commission, "Report of the Study Group on Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law", *United Nations General Assembly*, http://legal.un.org/ilc/documentation/english/a_cn4_l682.pdf, (Date of Accession: 04.02.2018).

14 *Ibid.*

15 Erika De Wet, "Jus Cogens and Obligations Erga Omnes", Erika de Wet-Iure Vidmar, ed.,

According to the definition provided in the Vienna Convention on the Law of Treaties Article 53, a *jus cogens* norm is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.¹⁶

The Vienna Convention on the Law of Treaties Article 53 requires not merely that the norm in question should meet all the criteria for recognition as a norm of general international law, and thus be binding as such, but further, that it should be recognized as having a peremptory character by the international community of states as a whole. So far, relatively few peremptory norms have been recognized as such. But various tribunals, national and international, have affirmed the idea of peremptory norms in contexts not limited to the validity of treaties. Peremptory norms that are clearly accepted and recognized include the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination (decolonization).¹⁷

It is useful to point out that, in international law, the idea that some rules are peremptory and cannot be derogated from through ordinary means of lawmaking is exceptional. The majority of rules of international law fall into the category of *jus dispositivum* and can be amended, derogated from, and even abrogated by consensual acts of states.¹⁸

However, the literature has also recognized, as an exception to the general structure of international law, a set of norms from which states cannot contract out. These norms are, to use the

Hierarchy in International Law: The Place of Human Rights, Oxford University Press, Oxford 2012, p. 554.

¹⁶ Ulf Linderfalk, "The Effect of Jus Cogens Norms: Whoever Opened Pandora's Box, Did You Ever Think about the Consequences?", *European Journal of International Law*, Vol: 18, No: 5, 2007, p. 856.

¹⁷ Brian D. Lepard, *Customary International Law: A New Theory with Practical Publications*, Cambridge University Press, New York 2010, p. 7.

¹⁸ Dire Tladi, *First Report on Jus Cogens*, United Nations, UN Document A/CN.4/693, Special Rapporteur, International Law Commission, 2016, p. 38.

words of one commentator, “*potent enough to invalidate contrary rules which might otherwise be consensually established by States.*”¹⁹ In short, writings of international law, irrespective of theoretical differences, converge on the idea that the majority of rules are *jus dispositivum* and “*can be excluded or modified in accordance with the duly expressed will of States,*” while, exceptionally, some rules are *jus cogens* and cannot be so excluded or modified. The distinction between *jus dispositivum*, which is subject to the agreement of states, and *jus cogens*, from which states cannot escape by agreement, has also been recognized by states themselves.²⁰

Norms of *jus cogens*, as distinct from *jus dispositivum*, are also generally recognized as being universally applicable. As a point of departure, the majority of international law rules are binding on states that have agreed to them, in case of treaties, or at the very least, to states that have not persistently objected to them, in the case of customary international law (*jus dispositivum*). *Jus cogens*, as an exception to this basic rule, presupposes the existence of rules “*binding upon all members of the international community.*”²¹

Article 64 of the Vienna Convention on the Law of Treaties, it is written that “*if a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.*”

The Vienna Convention on the Law of Treaties, Article 2 provides that the validity of a treaty may be impeached “*only through the application of the present Convention.*” The basic limitation in the effective enforcement of *jus cogens* norms in the regime of the law of treaties is that this ground of invalidity may be invoked only by the parties to the convention.²²

The non-retroactivity rule contemplated in Article 4 may be concretized in the application of Article 53. Since it is to be

19 Mark W. Janis, “The Nature of Jus Cogens”, *Connecticut Journal of International Law*, Vol: 3, No: 2, 1987-1988, p. 361.

20 Tladi, *op. cit.*, p. 40.

21 Tladi, *op. cit.*, p. 41.

22 Merlin M. Magallona, “The Concept of Jus Cogens in the Vienna Convention on the Law of the Treaties”, *Philippine Law Journal*, Vol: 51, No: 5, p. 538.

understood that a treaty under the latter article is one that is concluded after the convention enters into force, a *jus cogens* norm cannot possibly reach a treaty concluded before the convention comes into force because the point of conflict defined by this article is “the time of its treaty’s conclusion.” Treaties concluded before the convention’s entry into force are perforce saved from the operation of Article 53, even if they conflict with a *jus cogens* norm. Here, the date of the convention’s entry into force draws the dividing line between treaties that are affected by the non-retroactivity rule and those that are not. However, Article 4 bears a different level of relevance with respect to Article 64. Commenting on the issue of retroactivity in regard to its draft Article 61, which is now Article 64 of the Vienna Convention on the Law of Treaties, the commission explained as follows:

Manifestly, if a new rule of that character—a new rule of jus cogens— emerges, its effect must be to render void not only future but existing treaties. This follows from the fact that a rule of jus cogens is an overriding rule depriving any act or situation which is in conflict with it of legality. An example would be former treaties regulating the slave trade, the performance of which later ceased to be compatible with international law owing to the general recognition of the total illegality of all forms of slavery.²³

It is suggested that by “existing treaties,” the commission necessarily had in mind treaties already concluded at the time it submitted its report to the United Nations General Assembly in 1966, together with its final articles on the law of treaties. In other words, it was referring to treaties already concluded before the convention enters into force. It would be reasonable to interpret the commission’s view as meaning that existing treaties, although concluded before the convention’s entry into force, are affected by the invalidating force of a *jus cogens* norm when it is given binding force as such by the entry into force of the convention. In this case, the non-retroactivity rule in Article 4 does not relate so much to the

23 *Ibid.*

fact that a treaty in question was concluded before the convention's entry into force, which is the literal requirement of that article, as to the non-retroactive effect of a particular *jus cogens* norm on a treaty concluded before the convention's entry into force.²⁴

To determine the correct application of the non-retroactive rule under Article 4 in relation to Article 64, the relevant issue is not whether the treaty in question was concluded before or after the convention's entry into force, but from the point of time after the convention's entry into force a *jus cogens* norm should invalidate that treaty. On the basis of the nature of the *jus cogens* rule in Article 64, the more precise non-retroactivity rule applicable is not Article 4, but paragraph 2(b) of Article 71, which provides, *inter alia*, that the termination of a treaty under Article 64 "*does not affect any right, obligation or legal situation of the parties created by the execution of the treaty prior to its termination.*"²⁵

Obligation *Erga Omnes* and the Lancaster House Undertakings

In its dictum on the Barcelona Traction case, the International Court of Justice gave rise to the concept of *erga omnes* obligations in international law. The International Court of Justice adapted an idea similar to the field of law enforcement by cryptically pointing to an essential distinction between the regular obligations of a state and those toward the international community as a whole. The latter, it went on, included obligations deriving from the outlawing of acts of aggression and genocide, and also from the principles and rules concerning basic human rights, including protection from slavery and racial discrimination, which were the concern of all states. Furthermore, in view of the importance of the rights involved, all states can be held to have a legal interest in their protection; they are obligations *erga omnes*. In its dictum on the Barcelona Traction case, the International Court of Justice,

²⁴ *Ibid*, p. 538.

²⁵ *Ibid*, p. 539.

as the primary judicial organ of the United Nations, gave rise to the concept of *erga omnes* obligations in international law. In this judgment, the court drew a distinction between the *erga omnes* obligations that a state has toward the international community as a whole and in whose protection all states have a legal interest and the obligations of a state vis-à-vis another state.²⁶

The concept of obligations that are directed toward the international community as a whole finds further recognition in the law of state responsibility. The Articles on State Responsibility draw a distinction between breaches of bilateral obligations and obligations of a collective nature, which include obligations toward the international community as a whole. Breaches of a bilateral nature may arise where the performance of obligations stemming from the multilateral treaty or customary rule can be described as “*bundles of bilateral obligations*.” An example would be Article 22 of the Vienna Convention on Diplomatic Relations of 1961, where the obligation to protect the premises of a diplomatic mission is owned by the individual state to the individual sending state.

Breaches deemed to be of a collective nature are those that concern obligations established for the protection of the collective interest of a group of states *erga omnes partes* or indeed of the international community as a whole *erga omnes*. Concrete examples of *erga omnes partes* obligations can be found in particular in human rights treaties. Obligations stemming from regional or universal human rights treaties would have *erga omnes partes* effect toward other states partes, as well as *erga omnes* effect to the extent that they are recognized as customary international law. The same would apply to the obligations articulated in the Statute of the International Criminal Court that grant the International Criminal Court jurisdiction over the most serious crimes of concern to the

²⁶ Hossein Sartipi-Ali Reza Hojatzadeh, “The Innovation in Concept of the *Erga-Omnisation* of International Law”, *International Journal of Humanities and Social Science Studies* 2, No: 2, September 2015, p. 192.

“international community as a whole,” namely genocide, crimes against humanity, and war crimes.²⁷

After the pronouncement, references to the concept of obligations *erga omnes* have occurred both in the judgments and advisory opinions rendered by the International Court of Justice. In his dissenting opinion on the East Timor case (where references to *erga omnes* obligations were also made), Judge Weeramantry listed the following cases as those in which the International Court of Justice dealt with the question of obligations *erga omnes*: Northern Cameroon, South West Africa, Nuclear Tests, Hostages, and Border and Transborder Armed Actions (Nicaragua v. Honduras). However, the most important evolution beyond the Barcelona Traction Case was the emergence of the *erga omnes* obligation to respect the right to self-determination in the East Timor case and in the advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, and the *erga omnes* obligation on the prohibition of torture recognized by the International Criminal Tribunal for the former Yugoslavia in the Furundzija case.²⁸

The jurisprudence of the International Court of Justice is open to critics in what touches upon obligation *erga omnes*, because it is marred by definitional confusions. Besides the *obiter dictum* in the East Timor case, the court in the Israel Wall advisory opinion also identified as *erga omnes* a number of obligations pertaining to international human rights law and international humanitarian law violated by Israel in the construction of the wall in Palestine, concluding that as a consequence, all states had a duty not to recognize or assist the resulting situation.²⁹ Since the International Court of Justice has clearly referred to it as an *erga omnes* obligation, by drawing an analogy with the other *erga omnes* obligations in the Barcelona Traction case deriving from *jus cogens* norms, it is safe

27 Erika De Wet, “Jus Cogens and Obligations Erga Omnes”, Erika de Wet-Iure Vidmar, ed., *Hierarchy in International Law: The Place of Human Rights*, Oxford University Press, Oxford 2012, p. 554.

28 Hossein Sartipi-Ali Reza Hojatzadeh, “The Innovation in Concept of the Erga-Omnisation of International Law”, *International Journal of Humanities and Social Science Studies* 2, No: 2, September 2015, p. 201.

29 *Ibid.*

to regard the obligation to respect the right to self-determination as an *erga omnes* obligation.³⁰

Responsibility of International Organizations for Internationally Wrongful Acts

When there exists an *erga omnes* obligation to the international community as a whole deriving from *jus cogen* norms, the obligation also arises for the members of the international organization as *erga omnes partes* if the *erga omnes* obligation derives from the treaty that the international organization is formed as not to recognize as lawfully for any breach of an *erga omnes partes* obligation of a member state of the organization.

The *erga omnes partes* responsibility of the United Nations are codified within the Responsibility of International Organizations Draft Articles Adopted by the International Law Commission:

- Article 1: Scope of the present Draft Articles

Article 1, it is written that: “*The present draft articles apply to the international responsibility of an international organization for an internationally wrongful act. 2. The present draft articles also apply to the international responsibility of a State for an internationally wrongful act in connection with the conduct of an international organization.*”

An international organization may thus be held responsible if it aids or assists a state or another organization in committing an internationally wrongful act; if it directs and controls a state or another organization in the commission of such an act; or if it coerces a state or another organization to commit an act that would, but for the coercion, be an internationally wrongful act. Another case in which an international organization may be held responsible is that of an internationally wrongful act committed by another international organization of which the first organization is a member.³¹

³⁰ Sartipi-Hojatzadeh, *op. cit.*, p. 202.

³¹ The United Nations International Law Commission, “Draft Articles on the Responsibility of International Organization”, <http://legal.un.org/ilc/texts/instruments/english/>

- Article 4: Elements of an internationally wrongful act of an international organization

Article 4 expresses, with regard to international organizations, a general principle that applies to every internationally wrongful act, whoever its author. As in the case of states, the attribution of conduct to an international organization is one of the two essential elements of an internationally wrongful act to occur. The term “conduct” is intended to cover both acts and omissions on the part of the international organization.³²

The obligation may result from either a treaty binding the international organization or any other source of international law applicable to the organization. As the International Court of Justice noted in its advisory opinion on the Interpretation of the Agreement of March 25, 1951, between the World Health Organization and Egypt³³, international organizations “are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.”³⁴

- Article 25: Necessity

Comment of the United Nations Secretariat Article 25 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, “necessity” as a circumstance precluding wrongfulness must be the only means available for an international organization to safeguard against a grave risk threatening the interest of the international community.

Article 25 on the responsibility of states for internationally wrongful acts would be applicable also with regard to international

commentaries/9_11_2011.pdf, (Date of Accession: 05.02.2018).

³² *Ibid.*

³³ International Court of Justice, “Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion of 20 December 1962”, <http://www.icj-cij.org/en/case/65>, (Date of Accession: 05.02.2018)..

³⁴ The United Nations International Law Commission, “Draft Articles on the Responsibility of International Organization”, *UN*, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf, (Date of Accession: 05.02.2018).

organizations, the scarcity of practice and the considerable risk that invocability of necessity entails for compliance with international obligations suggest that, as a matter of policy, necessity should not be invocable by international organizations as widely as by states. This may be achieved by limiting the essential interests that may be protected to those of the member states and the international community as a whole, to the extent that the organization has, in accordance with international law, the function to protect them.³⁵

- Article 26: Compliance with peremptory norms

It is clear that international organizations, like states, could not invoke a circumstance precluding wrongfulness in the case of noncompliance with an obligation arising under a peremptory norm. Thus, there is the need for a “without prejudice” provision matching the one applicable to states.³⁶

- Article 41: Application of this chapter

Article 41, corresponds to the scope defined in Article 40 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts. The breach of an obligation under a peremptory norm of general international law may be less likely on the part of international organizations than on the part of states. However, the risk of such a breach cannot be entirely ruled out. It is not inconceivable, for example, that an international organization commits an aggression or infringes an obligation under a peremptory norm of general international law relating to the protection of human rights. If a serious breach does occur, it calls for the same consequences as in the case of states.³⁷

- Article 42: Particular consequences of a serious breach of an obligation under this chapter

Article 42 sets out that should an international organization commit a serious breach of an obligation under a peremptory norm

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

of general international law, states and international organizations have duties corresponding to those applying to states according to Article 41 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts. Therefore, the same wording is used here as in that article, with the addition of the words “*and international organizations*” in paragraph 1 and “*or international organization*” in paragraph 2.

In its report to the United Nations General Assembly, the International Law Commission asked two questions of the governments and international organizations:

- 1) Do members of an international organization that are not responsible for an internationally wrongful act of that organization have an obligation to provide compensation to the injured party, should the organization not be in a position to do so?
- 2) According to Article 41, paragraph 1, on the responsibility of states for internationally wrongful acts, when a state commits a serious breach of an obligation under a peremptory norm of general international law, the other states are under an obligation to cooperate to bring the breach to an end through lawful means. Should an international organization commit a similar breach, are states and also other international organizations under an obligation to cooperate to bring the breach to an end?

Several states expressed the view that the legal situation of an international organization should be the same as that of a state having committed a similar breach.³⁸ Moreover, several states

38 Response of Switzerland for the question: As to the commission's second question, in paragraph 28 (b), concerning whether states and other international organizations had an obligation to cooperate to bring to an end a serious breach by an international organization of an obligation under a peremptory norm of general international law, his delegation's answer was “Yes” (*UN Document*, No: A/C.6/61/SR.15, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/589/33/PDF/N0658933.pdf?OpenElement>, (Date of Accession: 05.02.2018)). Response of Denmark on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden): With regard to the second question, which asked whether states and other international organizations were under an obligation to cooperate to bring to an end a serious breach of an obligation under a peremptory norm of international

maintained that international organizations would also be under an obligation to cooperate to bring the breach to an end.

The Organization for the Prohibition of Chemical Weapons made the following observation:

“States should definitely be under an obligation to cooperate to bring such a breach to an end because in the case when an international organization acts in breach of a peremptory norm of general international law, its position is not much different from that of a State.”

law, the most appropriate approach would be to echo Article 41, par. 1, of the articles on responsibility of states for internationally wrongful acts, which did impose such an obligation. The rationale for the existence of such a principle in inter-state relations was all the more compelling in relations between states and international organizations, particularly where the state in question was a member of the organization. The commentary to Article 41, par. 1, of the articles on responsibility of states for internationally wrongful acts could be helpful in suggesting the precise content of such an obligation (*UN Document*, No: A/C.6/61/SR.13, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/589/33/PDF/N0658933.pdf?OpenElement>, (Date of Accession: 05.02.2018)). Response of Argentina: Regarding the second question, his delegation believed that Article 41, par. 1, of the articles on responsibility of states for internationally wrongful acts was, *mutatis mutandis*, applicable to the case of a serious breach of an obligation under a peremptory norm of international law by an international organization. For the reasons that had inspired that rule, states and other international organizations must cooperate to put an end to the breach in a joint and coordinated manner by such lawful means as were called for under the circumstances, regardless of whether they had been directly injured by the breach or not (*UN Document*, No: A/C.6/61/SR.13, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/589/33/PDF/N0658933.pdf?OpenElement>, (Date of Accession: 05.02.2018)), Response of the Netherlands: With regard to the commission's second question in par. 28 of its report, it was hard to imagine how a serious breach of an obligation could be committed under a peremptory norm of general international law, since a constituent instrument that provided for such a power would be void under the terms of Article 53 of the Vienna Convention on the Law of Treaties. The only case in which the question could arise was if an international organization acted *ultra vires*. Nevertheless, the introduction of a provision for international organizations parallel to Article 41, par. 1, of the articles on responsibility of states for internationally wrongful acts could do no harm. There was no reason why there should not be an obligation for states and also international organizations to cooperate to bring to an end a serious breach of a *jus cogens* obligation of an international organization, and there was nothing in the specific nature of international organizations that would justify departing from the parallel rule for state responsibility (*UN Document*, No: A/C.6/61/SR.15, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/589/33/PDF/N0658933.pdf?OpenElement>, (Date of Accession: 05.02.2018)), Response of Belgium: To the extent that *jus cogens* norms were *erga omnes* norm, they were binding on the whole of the international community, including international organizations. Hence the obligation to cooperate obviously extended to the latter, which could therefore be found guilty of having failed in their duty to take action to ensure respect for *jus cogens* norms (*UN Document*, No: A/C.6/61/SR.15, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/589/33/PDF/N0658933.pdf?OpenElement>, (Date of Accession: 05.02.2018)).

With regard to the obligation to cooperate on the part of international organizations, the same organization noted that an international organization “must always act within its mandate and in accordance with its rules.”³⁹

Some instances of practice relating to serious breaches committed by states concern the duty of international organizations not to recognize as lawful a situation created by one of those breaches. For example, with regard to the annexation of Kuwait by Iraq, United Nations Security Council Resolution 662 (1990) called upon “*all States, international organizations, and specialized agencies not to recognize that annexation, and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation.*” The present article concerns the obligations of states and international organizations in the event of a serious breach of an obligation under a peremptory norm of general international law by an international organization.⁴⁰

Conclusion

The articles of the United Nations Charter do not have the *jus dispositivum* character. Full implementation of Article 73 of the United Nations Charter is an obligation for the administrative states as well for the United Kingdom for the territorial integrity of Mauritius. The doctrine of *rebus sic stantibus* for any defense needs to terminate, withdraw, or suspend its obligations arising from the United Nations Charter regarding the Chagos Archipelago cannot be used by the United Kingdom as the articles of the United Nations Charter does not have the *jus dispositivum* character. The doctrine of necessity or the term “*state of necessity*” to denote the situation of a state whose sole means of safeguarding an essential interest threatened by a grave and imminent peril is to adopt conduct not in conformity with what is required by its international obligation to international community unilaterally.

³⁹ United Nations, *Responsibility of International Organizations, Comments and observations received from international organizations*, No: A/CN.4/582, p. 19.

⁴⁰ The United Nations International Law Commission, “*Draft Articles on the Responsibility of International Organization*”, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_11_2011.pdf, (Date of Accession: 05.02.2018).

The Lancaster House Undertakings is under the *ex injuria jus non oritur* principle, that unjust acts cannot create law. The United Kingdom did not fulfill in good faith the obligations assumed by the Article 73 in accordance with Article 2 (2) of the United Nations' Charter.

If there existed a defense problem for Mauritius and surroundings, the United Kingdom had an obligation to follow the United Nations' system of international peace and security established by the United Nations' Charter as written in the preamble of Article 73 of the United Nations Charter. The United Kingdom should have been informed the Secretary-General of the United Nations as of his obligation to provide information on Non-Self-Governing Territories Article (e) in conformity with General Assembly resolution 1541, Principle XII of the Annex if there existed a defense problem for Mauritius and surroundings as the United Kingdom abstained in the voting of General Assembly Resolution 1541, which means the United Kingdom did not vote against giving information on security issues.

The United Kingdom on two more occasions confirmed its accepted obligations for the territorial integrity of Mauritius by voting "YES" for the General Assembly Resolutions, 9 (I) of 9 February 1946, including the obligation of following the road map for the system of international peace and security established by the United Nations' Charter as well by the General Assembly Resolution 67 (I) of 14 December 1946. By voting in favour, the United Kingdom had gone one more time under obligation to advocate for the realization of the objectives of Chapter XI of the United Nations Charter as expressed in the International Court of Justice advisory opinion on Certain Expenses of 1962, "

Article 64 of the Vienna Convention on the Law of Treaties, states that "*if a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.*" A treaty in conflict with a *jus cogens* norm is invalid in international law. Thus the Lancaster House Undertakings is as a breach of self-determination rights of the Mauritous peoples which is a *jus cogens* norm according to the Vienna Convention on the Law

of Treaties. Section 2(b) of Article 71 of the Vienna Convention on the Law of Treaties provides, inter alia, that the termination of a treaty under Article 64 *“does not affect any right, obligation or legal situation of the parties created by the execution of the treaty prior to its termination.”*

General Assembly Resolutions 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967 for the Chagos Archipelago makes it the responsibility of the General Assembly to fulfill its obligations arising from the United Nations Charter and from the International Court of Justice’s advisory opinion on the Interpretation of the Agreement of March 25, 1951, between the World Health Organization and Egypt. International organizations *“are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.”*

General Assembly Resolutions for the Chagos Archipelago are the legal background of the dispute between the United Kingdom and the United Nations, in conformity with Article 18 (b) of the United Nations Charter, these General Assembly Resolutions received the two-thirds majority vote of the UN member states.

Article 103 of the United Nations Charter reads: *“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”* The Lancaster House Undertakings is null and void as it is a breach of the *erga omnes partes* obligation of the United Kingdom as codified in Article 73 of the United Nations Charter

The Chagos Archipelago case in the International Court of Justice is the international responsibility of the United Kingdom for an internationally wrongful act in connection with the conduct of an international organization, the United Nations. The United Nations with all its related organs have the same responsibility as the United Kingdom for the same internationally wrongful act.

The answer of the first question asked to the International Court of Justice is NO. The process of decolonization of Mauritius was not completed lawfully as the Lancaster House Undertakings are under the *ex injuria jus non oritur* principle, as the treaty itself is a breach of the obligation of the United Kingdom as an administrator state under Article 73 of the United Nations` Charter.

The Chagos Archipelago case in the International Court of Justice has a *sui generis* character, the legal dispute is in fact between the United Nations and the United Kingdom on the realization of the principles and the objectives of the Article 73 of the United Nations` Charter.

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