STATEMENT OF NIGERIA

LEGAL CONSEQUENCES OF THE SEPARATION OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS BY THE UNITED KINGDOM OF GREAT BRITAIN

DELIVERED BY

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AT

THE INTERNATIONAL COURT OF JUSTICE, THE HAGUE, THE NETHERLANDS

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NIGERIA'S LEGAL VIEWS IN SUPPORT OF THE REPUBLIC OF MAURITIUS ON THE LEGAL CONSEQUENCES OF THE SEPARATION OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS BY THE UNITED KINGDOM OF GREAT BRITAIN PRESENTED TO THE INTERNATIONAL COURT OF JUSTICE, THE HAGUE, THE NETHERLANDS 3 – 6 SEPTEMBER, 2018

1. Nigeria presents her compliments to the Distinguished President, Madam Vice President and members of the International Court of Justice (ICJ) and with honour presents legal views in support of the Republic of Mauritius on the request for advisory opinion posed to it by the United Nations General Assembly on the on the implication of thes continued presence of the United Kingdom of Great Britain in the Chagos Archipelago.

2. Let me begin by expressing my country's profound disappointment that today, in the Twenty First (21st) Century, the World is yet gathered together to discuss the issue of decolonisation, forceful relocation of Chagosians from their ancestral homes, in whatever pretext that was done, to us in Nigeria that cannot be justified by any legal or logical reasoning.

Comments on Germany's presentation

3. Mr. President, Madam Vice President and Members of the Court, let me also comment briefly on the presentation of the Republic of Germany. Yesterday, Germany insinuated that the resolution

requesting this Court's advisory opinion was, for all practical purposes, Mauritius" alone.

4. With respect, that is mistaken. Resolution 71/292 is a resolution of all 54 Members of the United Nations' African Group. The questions it poses are the result of extensive consultations amongst the nations of Africa and the Non-Aligned Movement. We decided – consistent with our decades –long call for the immediate termination of the colonial administration in the Chagos Archipelago – to seek an advisory opinion on all consequences under international law that arise from the continuing colonial administration of the Chagos Archipelago. These include the consequences for the administering power and other States.

5. Mr. President, since Nigeria participated in this process, l can say that when the questions were being drafted, careful regard was had for the Court's advisory opinion jurisprudence, including the Wall Case, where the Court interpreted a request for ''the legal consequences'' as requiring that it set out the consequences for all relevant entities, including States. Were the Court to now forebear from expressing its opinion on the consequences for States on the basis that Resolution 71/292 does not include the specific words ''for States,'' as Germany has suggested, it would – in effect – be announcing a new rule for advisory opinions. But those words have never been required, and it would be manifestly unfair to impose such a rule now. Nigeria, for one, would be deeply disappointed if the Court were to follow that path.

6. Nigeria's disappointment would be especially acute since the imposition of such a new rule would have the pernicious effect of depriving the General Assembly of the Court's opinion on a matter where the intention to obtain it is clear.

7. Professor Zimmerman referred to the 14 July 2016 document which asked that the request for an advisory opinion be included on the provisional agenda of the General Assembly's 71st session. He conceded that this request – which was circulated as an official document of the General Assembly – contains in its Explanatory Memorandum what he referred to as ''references to possible consequences for Member States of the Court's opinion.'' (Verbatim Record, Day 2, Submission of Germany – Mr. Zimmermann, para.57). The fact that he did not dispute this shows an intention to obtain an advisory opinion on the legal consequences for States.

8. Indeed, the Explanatory Memorandum makes that intention unmistakable:

9. It refers to Resolution 1514, which expressly refers to obligations of "all States''. It refers to Resolution 2066, which the Explanatory Memorandum describes as a Resolution 1514 (XV) and invited 'the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity.''

10. It refers to Resolution 2357, adopted in 1967, which calls upon ''administering Powers to implement without delay the relevant resolutions of the General Assembly...''

11. And it states that Member States of the United Nations would ''benefit from the guidance of the principal judicial organ of the United Nations.''

a. The request was accepted onto the General Assembly's agenda without objection.

12. Since the intention is incontestable, Professor Zimmerman attempted to suggest that it had changed by the time the Africa Group introduced resolution 71/292. It did not.

13. The only document Professor Zimmerman cited to try to show such a change is an aide-memoire that Mauritius circulated in May 2017. He relied exclusively on the fact that the aide-memoire does not include precisely the same language as the Explanatory Memorandum. But he ignored the fact that the aide-memoire invokes both Resolution 1514 and Resolution 2066. In other words, it explained the need for the Court's advisory opinion by reference to Resolutions that impose obligation on States.

14. This hardly supports Professor Zimmerman's thesis. Plainly, the intention to seek an advisory opinion that addresses the legal consequences for States had not changed. For its part, Nigeria underwent no such change of heart; nor, as far as Nigeria is aware, did any other State.

15. Of course, the legal consequences for which the Court is asked to opine in Resolution 71/292 are defined by reference to, among other things, these very same Resolutions. Nigeria observes that Professor Zimmerman studiously avoided mentioning them.

16. Mr. President, in sum, an opinion that fails to address the legal consequences for States, including the administering power, would, in Nigeria's view, depart from the plain text of Resolution 71/292 and would not be faithful to the intention of the General Assembly, including the members of the Africa Group that sponsored it.

Comments on April 1965 Agreement

17. Mr. President, members of the Court, Nigeria has only one simple sentence or comment on the April 1965 Agreement, which purportedly ceded the Chagos Island to the United Kingdom of Great Britain for a paltry sum of £3,000.000.00. Nigeria is of the opinion that the Agreement was concocted by one and the same party (the Colonial Government of Great Britain in Mauritius at the time and the then British Foreign Secretary – Mr. Anthony Greenwood). In this case, the Court can decipher the weakness of Mauritius from the strength of the Great Britain in the purported negotiation. Nigeria urges the Court not to place any reliance in the so-called agreement in rendering it advisory opinion being requested.

The issue of self determination

18. This issue has been thoroughly belaboured by other speakers. Nigeria joins other speakers that have argued that the concept of self-determination has assumed the status of erga omnes. We can only add that in this case the exercise of the right of self- determination by the Chagosians should be done in the context of exercising the right inform of internal self-determination within the sovereignty of Mauritius and clearly not in the form of exercise of external self-determination that could result in the disintegration of the territorial integrity and sovereignty of Mauritius.

The issue of jurisdiction of ICJ to give the advisory opinion

17 The President, Madam Vice President and members of the Court, Nigeria respectfully submits that the issue of exercise of contentious jurisdiction by this honourable Court is aptly dealt with by the provisions of **Article 34 (1) of the Statute of the International Court of Justice** which provides that, "only States may be parties in cases before the Court". **Article 35 on the other hand refines the provisions of Article**

34 (1) by setting out the conditions under which States that are not parties to the ICJ Statute may access the Court. This Article clearly distinguishes between States that are Parties to the Statute of the Court on the one hand, a community of States which by virtue of Article 93 of the Charter of the United Nations includes, "all member States of the United Nations".

18. Nigeria further submits that Article 65 (1) and (2) of the Statute of the Court vests in the Court the Jurisdiction to give advisory opinion, especially where such opinion has been requested by a major organ of the United Nations as in this case and Nigeria urges that the Court should so hold.

19. Mr. President it is true that the United Kingdom of Great Britain was one of the nine States that abstained from either voting in favour or against the adoption of the United Nations General Assembly Resolution 1514 of 14th December, 1960 - Declaration on the Granting of Independence to Colonial Countries and Peoples and as such has urged the Court not to render the opinion being sought. Nigeria urges the Court to consider that notwithstanding that the United Kingdom of Great Britain abstained from voting in favour of Resolution 1514, it indeed complied with and applied the provisions thereof by granting independence to most of its colonial territories (Mauritius and Nigeria inclusive), except a few that wanted to remain under it. By so doing, the United Kingdom of Great Britain must be held to have brought itself under the provisions of Resolution 1514.

20. In deciding whether or not it has jurisdiction to give advisory opinion, the Court is urged to take cognisance of Articles 65(1) of its Statute and also consider that the matter in dispute has to do with

sovereignty, territorial integrity and political independence – the very essence or existence of a State. Thus, if the Court denies jurisdiction, by failing to render legal opinion as being requested, the question then is where will the United Nations General Assembly go to seek for legal advice that would guide it in the determination of the questions?

21. Nigeria also urges the Court to consider that 89 States voted in favour of the adoption of Resolution 1514, apart from the nine abstentions earlier mentioned, no single State voted against it. If jurisdiction is thus denied because a State abstained from voting for adoption of a document that ends colonialism in its entirety, there will be no other means of complying with the provisions of Article 2 (3) of the Charter of the United Nations on pacific settlement of international disputes.

The Principle of Uti Possidetis

22. Mr President, Nigeria urges the Court to take cognisance of the above mentioned doctrine and the fact that the geographical areas (the international boundary) that constituted Mauritius during colonialism and which necessarily included the Chagos and other Islands that make up the Archipelago are still the same geographical areas that should constitute Mauritius' territory at independence. It therefore logically follows that in the absence of any evidence to the contrary during liberation period that Chagos Archipelago naturally constitutes Mauritius' territory, as such the separation of Chagos should be regarded as violation of international law.

23. The ICJ to consider the legal principle of Uti Possidetis in holding that from the date of granting of independence by Britain to Mauritius, the international boundary of Mauritius, which necessarily includes the maritime boundary encompassing the Chagos Archipelago remains sacrosanct and cannot be changed, unless by an Agreement. Thus in

the absence of a valid Agreement between Britain and Mauritius recognising Britain's right to occupy the Archipelago or to establish Marine Protected Area (MPA) on it, Britain has no any legal right to hold unto the Archipelago. The concept is deeply linked to colonization (in which case Resolution 1514 of 14th December 1960 is instructive), self-determination, territorial integrity, sovereignty, statehood, creation of states and territorial boundaries.

24. The purpose of the concept was to maintain territorial stability of newly created or independent States at the time of decolonization and also to resolve issues related to title, boundary demarcation and delimitation of maritime areas in situations in which treaty did not exist or did not explicitly deal with such issues. Nigeria urges the Court to hold that this principle is applicable in this case and in favour of the Republic of Mauritius.

ILLEGALITY OF OCCUPATION IN INTERNATIONAL LAW

25. Mr. President, Madam Vice President, and members of the Court Nigeria respectfully submits that forceful evacuation of Chagosians from their ancestry homes and their excise from Mauritius sovereignty notwithstanding the compendium of international law provisions in regard thereto, constitute occupation of Chagos Archipelago by the Great Britain. This in our view negates the intendment and purpose of Resolution 1514 and other pertinent laws cited hereunder and against the wish of the Republic of Mauritius. This no doubt violates the territorial integrity and sovereignty of Mauritius, all of which are illegal in international law (Kellogg Briand's Pact of 1928 and the Western Sahara case, Article 4, paragraph (f) and (g) of the Constitutive Act of the African Union, Paragraphs (a - c) of the Preamble to the Declaration of Principle of International Law Concerning friendly relations and cooperation among State in Accordance with the Charter of the United Nations of 1970 and paragraphs 1, 6 and 7 of the declaration on the Granting of Independence to Colonial Countries and Peoples, UN General Assembly Resolution 1514 (XV) of 14th December, 1060.

26. Nigeria submits that gone are the days when discovery, annexation/occupation of terra nullius (empty unoccupied land) or colonialism are valid means of acquisition of title to territory *(See: The Western Sahara case)*. Occupation is also contrary to Article 2(4) of the UN Charter. Traditionally, other means of acquisition of title to territory was through cession (transfer) *(see the case of Republic of Cameroon vs. Federal Republic of Nigeria with Equatorial Guinea intervening)*, prescription (acquisition of territory through a continuous and undisputed exercise of sovereignty over it), conquest, accretion and which are not applicable in the case.

RELEVANT PORTIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

27. Mr. President, Nigeria submits that in deciding to render advisory opinion as requested in this case, that cognisance be had to the provisions of Article 2 of the United Nations Convention on the Law of the Sea (UNCLOS), which establishes the sovereignty of a coaster State, over its adjacent Territorial Sea, including the Sea-Bed, the Sub-Soil and the Airspace thereof. For archipelagic States, such as Mauritius, (i.e. a State constituted wholly by one or more archipelagos and may include other Islands), Article 49 of UNCLOS confers sovereignty over its adjacent archipelagos, including the Sea-Bed, the Sub-Soil and the Airspace above to coastal States. By Article 56 of UNCLOS, coastal States are granted sovereign rights and jurisdiction over a portion of their adjacent sea known as the Exclusive Economic Zone up to a distance of 200 nautical miles. Similarly, by Article 77 of UNCLOS, a coastal State is granted sovereign right and jurisdiction over its adjacent Continental Shelf. No doubt, Chagos Archipelago falls within Mauritius maritime zones as defined by UNCLOS.

28. All the provisions cited foreclose the possibility of other States exercising similar sovereignty, sovereign rights and jurisdiction over other States' Maritime space. The continuous occupation of Chagos Archipelago or attempt to establish Marine Protected Area within the Mauritius maritime zones violates articles of UNCLOS referred to above and they constitute failure to adhere to or breach of obligations undertaken under Articles 56(2) and 194 (4) of UNCLOS.

29. On this basis, and in attempt to decide whether or not to render the advisory opinion being requested, Nigeria urges the Court to take cognisance of these very important provisions and the agony of the Chagosians driven away from their ancestral lands and as such should render the opinion requested by the General Assembly of the United Nations.

RESPECT FOR TERRITORIAL INTEGRITY

30. The Court is also advised to hold that the principles of respect of territorial integrity of States have long been part of the most fundamental principles of International Law. The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity, sovereignty or political independence of another State was re-echoed in paragraphs (a – c) of the preamble to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations of 1970 and paragraph 1, 6 and 7 of the Declaration on the Granting of Independence to Colonial Countries and Peoples (UN General Assembly Resolution 1514 (XV) of 14th December, 1960.

5.0 Conclusion

In conclusion therefore, Nigeria urges the ICJ to assume jurisdiction in the matter and hold that the continued presence of the United

Kingdom of Great Britain and Northern Ireland in the Chagos Archipelago, including its establishment of Marine Protected Area on it violates all the principles and international law enunciated above, and such should attract consequences against States including the United Kingdom of Great Britain

Thank you.

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