

Chagos Archipelago

Student Materials

- Decided by the International Court of Justice in February 2019
- Key topics: making international law (customary international law, peremptory norms); breaking international law (consequences of responsibility); upholding international law (international legal enforcement, political enforcement)

Learning Objectives

- Understand and apply:
 - elements of customary international law
 - the concept of peremptory norms (*jus cogens*)
 - consequences of legal violations
- Analyze and evaluate:
 - how judges use UN General Assembly resolutions to assess customary international law
 - when and why actors invoke peremptory norms (*jus cogens*)
 - appropriate consequences for legal violations

Background Information

In the nineteenth and early twentieth centuries, the UK ruled Mauritius, which is located in the Indian Ocean, off the southeastern coast of Africa. This territory included the Chagos Archipelago, a group of islands located further into the Indian Ocean. When the United Nations was created in 1945, Mauritius was categorized as a non-self-governing territory, meaning that the UK had a legal obligation under the UN Charter to help Mauritius transition to independence. In the 1950s and 1960s, the decolonization movement placed intense pressure on states like the UK to grant self-determination to their non-self-governing territories. Much of this activism occurred in the UN General Assembly, which passed numerous resolutions on decolonization.

In 1965, representatives of Mauritius, which was still under UK rule, agreed to allow the UK to incorporate the Chagos Archipelago into a new colony. In exchange, the UK promised to return the islands once they were no longer needed. In 1968, Mauritius became an independent state, but the Chagos Archipelago remained under UK control. Meanwhile, the UK signed a treaty in which it allowed the US to build a military base on Diego Garcia, the largest island in the Chagos Archipelago. As part of this construction, numerous residents of the Chagos Archipelago were forcibly deported from their homes and not allowed to return.

In subsequent decades, attempts were made to persuade the UK to return the Chagos Archipelago to Mauritius. The UK agreed to pay financial compensation to Mauritius in the early 1970s and 1980s. These payments were used to compensate individuals who had been forcibly deported. Yet many of these individuals continued to try to sue the UK in domestic and international courts so that they could return to their homeland. In 2017, the UN General Assembly asked the ICJ to issue an advisory opinion about the Chagos Archipelago. They asked the ICJ to rule on the legality of the UK's actions in 1965—1968 and the consequences of any legal violations. The UN General Assembly did not explicitly mention the US military base on Diego Garcia. But states and international law experts understood that the ICJ's ruling could have consequences for not only the UK, but also the US.

In its advisory opinion, the ICJ majority argued that the UK had broken customary international law in 1965—1968, and that the UK's rule over the Chagos Archipelago was an ongoing violation of international law. It argued that the UK had a legal obligation to cease this ongoing violation. However, the majority did not explicitly address the US military base on Diego Garcia. Several members of the majority issued separate opinions, in which they argued that the ICJ should have gone further in its ruling by arguing that the UK had violated a peremptory norm of international law that created a right to self-determination.¹ This finding would have invalidated the treaty between the UK and US that created the Diego Garcia military base.

Relevant Legal Texts

UN General Assembly Resolution 1514 (1960)

Declaration on the Granting of Independence to Colonial Countries and Peoples

¹ These judges include: Cançado Trindade (of Brazil), Robinson (of Jamaica), and Sebutinde (of Uganda).

- “The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights” ...
- “All peoples have the right to self-determination” ...
- “Any attempt aimed at the partial or total destruction of the national unity and the territorial integrity of a country is incompatible with” the UN Charter

UN General Assembly Resolution 2066 (1965)

Asks the UK “to take no action which would dismember the territory of Mauritius and violate its territorial sovereignty”

UN General Assembly Resolution 2232 (1966)

“Reiterates ... that any attempt aimed at the partial or total destruction of the national unity and the territorial integrity of colonial territories and the establishment of military bases and installations in these territories is incompatible with” the UN Charter and UNGA Resolution 1514 (1960)

UN General Assembly Resolution 2357 (1967)

“Reiterates ... that any attempt aimed at the partial or total destruction of the national unity and the territorial integrity of colonial territories and the establishment of military bases and installations in these territories is incompatible with” the UN Charter and UNGA Resolution 1514 (1960)

UN General Assembly Resolution 2625 (1970)

Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States:

- “Every state has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples ... and to render assistance ... to bring a speedy end to colonialism” ...
- “Every state shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other state

Majority Opinion

The Court began by repeating the questions from the UN General Assembly's request for an advisory opinion:

The Court will now examine the two questions put by the General Assembly:

Question (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 [(1960)], 2066 [(1965)], 2232 [(1966),] and 2357 [(1967)]?"

Question (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 the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin?" ...

To answer the first question, the Court began by discussing the relevant time period for identifying the international law that applies to this dispute:

In Question (a), the General Assembly situates the process of decolonization of Mauritius in the period between the separation of the Chagos Archipelago from its territory in 1965 and its independence in 1968. It is therefore by reference to this period that the Court is required to identify the rules of international law that are applicable to that process.

Various participants have stated that international law is not frozen at the date when the first steps were taken towards the realization of the right to self-determination in respect of a territory.

The Court is of the view that, while its determination of the applicable law must focus on the period from 1965 to 1968, this will not prevent it, particularly when customary rules are at issue, from considering the evolution of the law on self-determination ... Indeed, state practice and *opinio juris* ... are consolidated and confirmed gradually over time.

The Court may also rely on legal instruments which postdate the period in question, when those instruments confirm or interpret pre-existing rules or principles ...

The Court then described what was the applicable international law on decolonization in 1965–1968. In particular, it argued that the right to self-determination was part of customary international law:

The Court will have to determine the nature, content and scope of the right to self-determination applicable to the process of decolonization of Mauritius, a non-self-governing territory ...

The participants in the advisory proceedings have adopted opposing positions on the customary status of the right to self-determination, its content and how it was exercised in the period between 1965 and 1968. Some participants have asserted that the right to self-determination was firmly established in customary international law at the time in question. Others have maintained that the right to self-determination was not an integral part of customary international law in the period under consideration.

The Court will begin by recalling that “respect for the principle of equal rights and self-determination of peoples” is one of the purposes of the United Nations ... since [the UN Charter requires that] the “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” are obliged to “develop [the] self-government” of those peoples ...

In the Court’s view, it follows that the legal régime of non-self-governing territories, as set out in ... the Charter, was based on the progressive development of their institutions so as to lead the populations concerned to exercise their right to self-determination.

Having made respect for the principle of equal rights and self-determination of peoples one of the purposes of the United Nations, the Charter included provisions that would enable non-self-governing territories ultimately to govern themselves. It is in this context that the Court must ascertain when the right to self-determination crystallized as a customary rule binding on all states.

Custom is constituted through “general practice accepted as law” ... The Court has emphasized that both elements, namely general practice and *opinio juris*, which are constitutive of international custom, are closely linked ...

The adoption of Resolution 1514 [(1960)] represents a defining moment in the consolidation of state practice on decolonization. Prior to that resolution, the General Assembly had affirmed on several occasions the right to self-determination ... and a number of non-self-governing territories had acceded to independence. General Assembly Resolution 1514 ... clarifies the content and scope of the right to self-determination. The Court notes that the decolonization process accelerated in 1960, with 18 countries, including 17 in Africa, gaining independence. During the 1960s, the peoples of an additional 28 non-self-governing-territories exercised their right to self-determination and achieved independence. In the Court’s view, there is a clear relationship between Resolution 1514 ... and the process of decolonization following its adoption ...

The Court considers that, although Resolution 1514 ... is formally a recommendation, it has a declaratory character with regard to the right to self-determination as a customary norm, in view of its content and the conditions of its adoption. The resolution was adopted by 89 votes with 9 abstentions. None of the states participating in the vote contested the existence of the right of peoples to self-determination. Certain states justified their abstention on the basis of the time required for the implementation of such a right.

The wording used in Resolution 1514 ... has a normative character, in so far as it affirms that “[a]ll peoples have the right to self-determination”. Its preamble proclaims “the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations” and its first paragraph states that “[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights [and] is contrary to the Charter of the United Nations.”

This resolution further provides that “[i]mmediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire”. In order to prevent any dismemberment of non-self-governing territories, paragraph 6 of Resolution 1514 ... provides that:

“Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.” ...

The International Covenant on Civil and Political Rights and ... the International Covenant on Economic, Social and Cultural Rights ... reaffirms the right of all peoples to self-determination, and provides ... that:

“The states parties to the present Covenant, including those having responsibility for the administration of non-self-governing and trust territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”

The nature and scope of the right to self-determination of peoples, including respect for “the national unity and territorial integrity of a state or country”, were reiterated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States ... This Declaration was annexed to General Assembly Resolution 2625 [(1970)]. By recognizing the right to self-determination as one of the “basic principles of international law”, the Declaration confirmed its normative character under customary international law.

The means of implementing the right to self-determination in a non-self-governing territory ... were set out in ... General Assembly Resolution 1541 [(1960)]:

“A non-self-governing territory can be said to have reached a full measure of self-government by:

- (a) Emergence as a sovereign independent state;
- (b) Free association with an independent state; or
- (c) Integration with an independent state.” ...

The Court recalls that the right to self-determination of the people concerned is defined by reference to the entirety of a non-self-governing territory, as stated in the aforementioned paragraph 6 of Resolution 1514 ... Both state practice and *opinio juris* at the relevant time confirm the customary law character of the right to territorial integrity of a non-self-governing territory as a corollary of the right to self-determination. No example has been brought to the

attention of the Court in which, following the adoption of Resolution 1514 ..., the General Assembly or any other organ of the United Nations has considered as lawful the detachment by the administering power of part of a non-self-governing territory, for the purpose of maintaining it under its colonial rule. States have consistently emphasized that respect for the territorial integrity of a non-self-governing territory is a key element of the exercise of the right to self-determination under international law. The Court considers that the peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering power. It follows that any detachment by the administering power of part of a non-self-governing territory, unless based on the freely expressed and genuine will of the people of the territory concerned, is contrary to the right to self-determination ...

The Court then described the historical role of the UN General Assembly in overseeing decolonization:

The General Assembly has played a crucial role in the work of the United Nations on decolonization ... It has overseen the implementation of the obligations of member states in this regard ...

It is in this context that the Court is asked in Question (a) to consider ... the obligations reflected in General Assembly Resolutions 2066 [(1965)], 2232 [(1966),] and 2357[(1967)].

In Resolution 2066 [(1965)], having noted “with deep concern that any step taken by the administering power to detach certain islands from the territory of Mauritius for the purpose of establishing a military base would be in contravention of the Declaration, and in particular of paragraph 6 thereof”, the General Assembly, in the operative part of the text, invites “the administering power to take no action which would dismember the territory of Mauritius and violate its territorial integrity”.

In Resolutions 2232 [(1966)] and 2357 [(1967)], which are more general in nature and relate to the monitoring of the situation in a number of non-self-governing territories, the General Assembly

“[r]eiterates ... that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial territories and the establishment of military

bases and installations in these territories is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly Resolution 1514” ...

In the Court’s view, by inviting the United Kingdom to comply with its international obligations in conducting the process of decolonization of Mauritius, the General Assembly acted within the framework of the Charter and within the scope of the functions assigned to it to oversee the application of the right to self-determination. The General Assembly assumed those functions in order to supervise the implementation of obligations incumbent upon administering powers under the Charter ... It has been the Assembly’s consistent practice to adopt resolutions to pronounce on the specific situation of any non-self-governing territory ... The General Assembly also monitors the means by which the free and genuine will of the people of a non-self-governing territory is expressed, including the formulation of questions submitted for popular consultation.

The General Assembly has consistently called upon administering powers to respect the territorial integrity of non-self-governing territories ...

Finally, the Court applied the relevant law to the specific of the dispute. It began by noting that the Chagos Archipelago had long been considered part of Mauritius:

Following the conclusion of the 1814 Treaty of Paris, the “island of Mauritius and the dependencies of Mauritius” ..., including the Chagos Archipelago, were administered without interruption by the United Kingdom. This is how the whole of Mauritius, including its dependencies, came to appear on the list of non-self-governing territories drawn up by the General Assembly ... It was on this basis that the United Kingdom regularly provided the General Assembly with information relating to the existing conditions in that territory ... Therefore, at the time of its detachment from Mauritius in 1965, the Chagos Archipelago was clearly an integral part of that non-self-governing territory.

In [1965,] representatives of Mauritius, which was still under the authority of the United Kingdom as administering power, agreed in principle to the detachment of the Chagos Archipelago from the territory of Mauritius. This agreement in principle was given on condition that the archipelago could not be ceded to any third party and would be returned to Mauritius at a later date, a condition which was accepted at the time by the United Kingdom.

The Court observes that when the [representative of Mauritius] agreed in principle to the detachment from Mauritius of the Chagos Archipelago, Mauritius was, as a colony, under the authority of the United Kingdom ... In the Court's view, it is not possible to talk of an international agreement, when one of the parties to it, Mauritius, which is said to have ceded the territory to the United Kingdom, was under the authority of the latter ... Having reviewed the circumstances in which the [representatives] of the colony of Mauritius agreed in principle to the detachment of the Chagos Archipelago ..., the Court considers that this detachment was not based on the free and genuine expression of the will of the people concerned.

In its Resolution 2066 [(1965)], adopted a few weeks after the detachment of the Chagos Archipelago, the General Assembly deemed it appropriate to recall the obligation of the United Kingdom, as the administering power, to respect the territorial integrity of Mauritius. The Court considers that the obligations arising under international law and reflected in the resolutions adopted by the General Assembly during the process of decolonization of Mauritius require the United Kingdom, as the administering power, to respect the territorial integrity of that country, including the Chagos Archipelago.

The Court concludes that, as a result of the Chagos Archipelago's unlawful detachment and its incorporation into a new colony ..., the process of decolonization of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968.

The Court then turned to the second question posed by the UN General Assembly: what are the legal consequences of the UK's actions? It noted that states disagreed about which consequences were appropriate:

Several participants in the proceedings before the Court have argued that the United Kingdom's continued administration of the Chagos Archipelago has consequences under international law not only for the United Kingdom itself, but also for other states and international organizations. The consequences mentioned include the requirement for the United Kingdom to put an immediate end to its administration of the Chagos Archipelago and return it to Mauritius. Some participants have gone further, advocating that the United Kingdom must make good the injury suffered by Mauritius. Others have considered that the former administering power must cooperate with Mauritius regarding the resettlement on the Chagos Archipelago of the nationals of the latter ...

In contrast, one participant has contended that the only consequence for the United Kingdom under international law concerns the retrocession of the Chagos Archipelago when it is no longer needed for the defence purposes of that state. Finally, a few participants have taken the view that the time frame for completing the decolonization of Mauritius is a matter for bilateral negotiations to be conducted between Mauritius and the United Kingdom.

As regards the consequences for third states, some participants have maintained that those states have an obligation not to recognize the unlawful situation resulting from the United Kingdom's continued administration of the Chagos Archipelago and not to render assistance in maintaining it.

The Court then put forth its own view. It argued that the UK had an obligation to cease the continuing violation. However, it did not provide any specific reparations, instead referring the issue to the UN General Assembly:

The Court having found that the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that state ... It is an unlawful act of a continuing character which arose as a result of the separation of the Chagos Archipelago from Mauritius.

Accordingly, the United Kingdom is under an obligation to bring an end to its administration of the Chagos Archipelago as rapidly as possible, thereby enabling Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self-determination.

The modalities necessary for ensuring the completion of the decolonization of Mauritius fall within the remit of the United Nations General Assembly, in the exercise of its functions relating to decolonization. As the Court has stated in the past, it is not for it to "determine what steps the General Assembly may wish to take after receiving the Court's opinion or what effect that opinion may have in relation to those steps" ...

Since respect for the right to self-determination is an obligation *erga omnes*, all states have a legal interest in protecting that right ... The Court considers that, while it is for the General Assembly to pronounce on the modalities required to ensure the completion of the decolonization of Mauritius, all member states must co-operate with the United Nations to put those modalities into effect ...

As regards the resettlement on the Chagos Archipelago of Mauritian nationals ... this is an issue ... which should be addressed by the General Assembly during the completion of the decolonization of Mauritius ...

The Court concludes that the United Kingdom has an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible, and that all member states must co-operate with the United Nations to complete the decolonization of Mauritius.

Separate Opinion of Judge Sebutinde

Judge Sebutinde began by writing that she agreed with the key elements of the majority judgment:

The Court correctly recognizes that by 1960 the obligation to respect the right to self-determination of non-self-governing countries and peoples had attained the status of a customary rule ... and was, therefore, applicable from 1965 to 1968 during the decolonization process of Mauritius ... The Court also correctly opines that during the process of decolonizing Mauritius, the United Kingdom as administering power, was under a duty to respect the territorial integrity of the whole of Mauritius, including the Chagos Archipelago ... By unlawfully detaching the Chagos Archipelago in 1965 and incorporating it into a new colony ... prior to Mauritius' independence in 1968, the United Kingdom violated the right of the Mauritian people to self-determination in failing to respect the territorial integrity of the former colony as a whole unit.

Furthermore, I concur that the applicable law for determining the consequences of the United Kingdom's continued administration of the Chagos Archipelago ... is the international law applicable today ... The Court rightly opines that the United Kingdom's continued administration of the Chagos Archipelago constitutes "a wrongful act . . . of a continuing character" entailing the international responsibility of that state ...

However, Judge Sebutinde also argued that the UK violated a peremptory norm. This conclusion affected the consequences of a legal violation:

The Court fails in the Opinion to recognize that the right to self-determination has evolved into a peremptory norm of international law (*jus cogens*), from which no derogation is permitted and the breach of which has consequences not just for the administering power concerned, but also for all states ... Having failed to recognize the peremptory nature of the rule at issue, the Court has, in my view, insufficiently articulated the consequences of the United Kingdom's continued administration of the Chagos Archipelago for third states ...

Judge Sebutinde proceeded to describe the concept of peremptory norms. She then summarized the conclusions of the International Law Commission about the consequences of breaking peremptory norms (which the ILC describes as “serious breaches”):

Peremptory norms occupy a superior position within the hierarchy of customary international law. As set forth in Article 53 of the 1969 Vienna Convention on the Law of Treaties (hereinafter the “Vienna Convention”), a peremptory 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”. The Court has expressly recognized the supremacy of peremptory norms in the international legal order and has held that the prohibitions against genocide and torture are norms of a peremptory character.

The status of a norm as peremptory has significant consequences. As reflected in Article 53 of the Vienna Convention, the primary consequence is non-derogation. The consequence of invalidity of treaties that conflict with a peremptory norm, which follows from the rule of non-derogation, is set forth in Articles 53 and 64 of the Vienna Convention. Article 53 provides that “[a] treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm”. Article 64 further provides that “[i]f a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates”. These rules are now part of customary international law. This is reflected in the extensive practice of states declaring that a given treaty was invalid due to a purported inconsistency with a peremptory norm.

Additionally, the serious breach of a peremptory norm of international law has significant consequences for all states. As set forth [by] the International Law Commission[:]

- (a) States shall co-operate to bring to an end through lawful means any serious breach ...
- (b) No state shall recognize as lawful a situation created by a serious breach ..., nor render aid or assistance in maintaining that situation ...

She then argued that the right of self-determination is a peremptory norm. She argued that territorial integrity is a key part of this concept:

There can be no doubt that the inalienable right to self-determination sits at the pinnacle of the international legal order. It is set forth in ... the United Nations Charter as one of the purposes and principles of the United Nations. Characterizations of the right to self-determination as a peremptory norm stretch back many decades and are now far too common to ignore. Eminent jurists, including former and current members of this Court, have recognized the peremptory character of the right to self-determination. It has also been recognized as a peremptory norm by courts and tribunals, United Nations Special Rapporteurs, ILC members, and the ILC itself. In 1964, when the ... General Assembly discussed the ILC's draft articles on the law of treaties, many states endorsed the characterization of the right to self-determination as a peremptory norm and only one state voiced opposition. These statements and instruments inexorably demonstrate that the right to self-determination is a rule of special importance in the international legal order.

In my view, the Court should have expressly recognized that in the context of decolonization, the rule requiring respect for the territorial integrity of a self-determination unit is now a peremptory norm. It lies at the very heart of the right to self-determination. Any derogation from this rule during a decolonization process would present the colonial power with the opportunity to endlessly perpetuate colonial domination, thereby rendering the right to self-determination illusory.

State practice demonstrates that in the context of decolonization, the relevant self-determination unit is the entirety of a colonial territory. Since Resolution 1514, the General Assembly has routinely taken this position. On a few rare occasions the international community has made exceptions to this practice in recognition that the relevant people for the purposes of self-determination did not correspond to the colonial boundaries. However, this was strictly in

accordance with the expression of the free and genuine will of the peoples concerned and did not constitute a derogation from their peremptory right to self-determination ...

The Court has repeatedly alluded to the peremptory nature of the rule protecting the territorial integrity of a self-determination unit in cases in which that aspect of the right to self-determination was implicated. The Advisory Opinion in *Namibia* concerned South Africa's failure to respect the territorial integrity of Namibia ... The Court implied that the right to self-determination had peremptory character in that context by indicating that all states had a duty of non-recognition which flowed ... from general international law.

In *East Timor*, another case implicating territorial integrity and self-determination in the context of decolonization, the Court made an important contribution to the understanding of international law by observing that the "right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character". It also alluded to the peremptory status of the rule protecting the territorial integrity of a self-determination unit by describing self-determination in that context as "one of the essential principles of contemporary international law".

In *Construction of a Wall*, the Court recognized that Israel's construction of a wall and Israeli settlements in occupied Palestinian territory could disrupt the territorial integrity of the Palestinian self-determination ... The Court did not expressly hold that the right to self-determination is a peremptory norm. However, again, it implied the elevated status of that right within the hierarchy of international legal norms by venerating its "character and . . . importance" ...

These cases should be read as confirming the widespread state recognition that the rule requiring respect for the territorial integrity of a self-determination unit in the context of decolonization is non-derogable. It is implicit in the third principle set forth in the Atlantic Charter of 1941, recognized in the Final Communiqué of the Asian-African conference of Bandung of 1955, declared as customary international law in ... General Assembly Resolution 1514 [(1960)] ..., and reinforced by the Charter of the Organization of African Unity of 1963. As today's Advisory Opinion confirms, it has come to be embodied in ... the United Nations Charter. Presently, there is no state on the planet that has not signed on to an international legal instrument protecting the territorial integrity of a self-determination unit during the process of decolonization.

The international community's consistent opposition to any act that disrupts territorial integrity during the decolonization process developed very early in United Nations practice. In its very first session the General Assembly passed Resolution 65 ... rejecting South Africa's proposal to annex South West Africa. In 1966, it passed Resolution 2145 ... declaring that South Africa had failed to fulfil its obligations to South West Africa under the mandate and terminating it. Resolution 2325 [(1966)], which the General Assembly passed in response to South Africa's continued presence in South West Africa, is particularly pertinent. It called on all member states to co-operate to end South Africa's flagrant violation of South West Africa's territorial integrity. The General Assembly reprised that call in Resolution 2372 [(1968)] and further invoked the duty of non-recognition by calling on all states "to desist from those dealing . . . which would have the effect of perpetuating South Africa's illegal occupation of Namibia". These duties achieved near universal compliance and eventually South West Africa became the independent Republic of Namibia.

Similarly, the international community strenuously opposed the attempt of a racist minority régime to establish the state of Southern Rhodesia in 1965 in violation of the right of the Zimbabwe people to self-determination. The General Assembly adopted Resolution 2022 ... appealing to states not to recognize the minority government, and to co-operate to end the unlawful situation by ... rendering moral and material help to the people of Zimbabwe in their struggle for independence. These duties were nearly universally observed by states and the people of Southern Rhodesia ultimately achieved independence in 1980 and became the Republic of Zimbabwe. Thus, South West Africa and Southern Rhodesia are both examples of the General Assembly invoking the universal co-operation and non-recognition duties associated with the breach of a peremptory norm due to violations of the territorial integrity of a self-determination unit.

The General Assembly also has a history of implying the special character of the territorial integrity rule. In Resolution 35/118, the General Assembly "[c]ategorically reject[ed] any agreement, arrangement or unilateral action by colonial and racist powers which ignores, violates, denies or conflicts with the inalienable rights of peoples under colonial domination to self-determination and independence". Its characterizations of self-determination as an "inalienable right" in a long string of resolutions concerning the territorial integrity of a self-determination unit imply that that right has a peremptory character in this context. If the rule protecting the

territorial integrity of a self-determination unit is inalienable, it is difficult to imagine any circumstance under which its derogation would be permitted. The United Nations has also repeatedly characterized any attempt by a colonial administration to annex territory during the decolonization process as an act of aggression within the meaning of the United Nations Charter. The rule prohibiting aggression, or the unlawful use of force, has been widely recognized as a peremptory norm. Thus, when the General Assembly equates self-determination to non-aggression, it implies that self-determination also has a peremptory character.

Judge Sebutinde next argued that the United Kingdom's actions are a serious breach of a peremptory norm:

There can be no doubt that the United Kingdom's breach of the peremptory rule requiring respect for the territorial integrity of Mauritius during the decolonization process is serious. The United Kingdom used its position as the administering power for the purposes of territorial aggrandizement at the expense of the people of Mauritius. Its actions amounted to a *de facto* annexation that subverted the right of the people of Mauritius to self-determination by denying them any opportunity to express their will as to the fate of the Chagos Archipelago. This conduct is wholly irreconcilable with the right to territorial integrity. It negates the very *raison d'être* of Article 73 of the Charter — “to develop self-government [with] due account of the political aspirations of the peoples”.

Finally, Judge Sebutinde specified what she believed were the consequences of the UK's actions. In particular, she mentioned the implications of her argument for the US:

Having failed to recognize the peremptory status of the territorial integrity rule in the context of decolonization, the Court has failed to properly articulate the consequences of the United Kingdom's internationally wrongful conduct. Any treaty that conflicts with the right of the Mauritian people to exercise their right to self-determination with respect to the Chagos Archipelago is void. This has clear implications for the agreement between the United Kingdom/United States. Further consequences flow from the serious nature of the United Kingdom's internationally wrongful conduct. All states are under an obligation to co-operate to bring an end to the United Kingdom's unlawful administration of the Chagos Archipelago. Moreover, all states are under an obligation not to recognize as lawful the situation created by the

United Kingdom's continued administration of the Chagos Archipelago and not to render aid or assistance in maintaining the illegal situation.

The consequences prescribed for serious breaches of peremptory norms reflect the special interest that the international community has in guaranteeing that they are honoured. Without the right to self-determination the entire international legal order would crumble. It is a bedrock principle on which so many rights that the international community holds dear are built. It is regrettable that almost six decades after the General Assembly passed Resolution 1514 ..., the odious institution of colonization is yet to be eradicated and the right to self-determination is yet to be universally recognized ...

Judge Sebutinde concluded her opinion by re-iterating the various strands of her argument.

The right of non-self-governing countries and peoples to self-determination existed under customary international law as a peremptory norm (*jus cogens*) by 1965 when the United Kingdom as administering power, separated the Chagos Archipelago from Mauritius. The right inhered in the Mauritian peoples, including the Chagossians, as a single non-self-governing territorial unit. The preservation of the territorial integrity of Mauritius as a single unit, prior to the attainment of independence, was an integral part of her right to self-determination. That right gave rise to a corresponding obligation upon the United Kingdom as administering power, not to take any measure that would dismember the territory of Mauritius or prevent her peoples (including the Chagossians) from being able to freely and genuinely express and implement their will concerning their political future with respect to the whole of their territory.

By detaching the Chagos Archipelago from Mauritius in 1965 and establishing a new colony ... prior to ascertaining the free and genuine will of the Mauritian people in that regard, the United Kingdom violated its obligation *erga omnes*, not just to Mauritius, but to the international community as a whole, not to take any measure that would prevent the Mauritian people from freely exercising their right to self-determination with respect to the whole of their territorial unit to which that right related. As a result, the process of decolonization of Mauritius was not lawfully completed when she attained independence in 1968.

Accordingly the people of Mauritius still possess the right to self-determination in relation to the whole of their territory (including with respect to the Chagos Archipelago) and the United

Kingdom's continued administration of the Chagos Archipelago ... constitutes a continuing wrongful act in international law, entailing the international responsibility of that state. The United Kingdom remains under an obligation first, not to take any measure that would prevent the people of Mauritius from freely exercising their right to self-determination in relation to the whole of their territory; secondly, to immediately bring to an end its administration over the Chagos Archipelago and to return it to Mauritius. Thirdly, the United Kingdom is under an obligation to "as far as possible, wipe out all the consequences of the unlawful act" (including the forcible displacement of the Chagossians), and to "reestablish the situation which would, in all probability, have existed if that [unlawful] act had not been committed".

Since the obligation to respect the right to self-determination, including the obligation to respect the territorial integrity of the non-self-governing territory as a single unit, is an obligation *erga omnes*, all states have an obligation to co-operate to bring an end to the United Kingdom's unlawful administration of the Chagos Archipelago. Moreover, all states are under an obligation not to recognize as lawful the situation created by the United Kingdom's continued administration of the Chagos Archipelago and not to render aid or assistance in maintaining the illegal situation.