JURIDICAL ANALYSIS OF INTERNATIONAL COURT OF JUSTICE: ADVISORY OPINION CONCERNING CHAGOS ARCHIPELAGO

A BACHELOR DEGREE THESIS

By:

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Student Number: 16410409

INTERNATIONAL PROGRAM

UNDERGRADUATE STUDY PROGRAM IN LAW

FACULTY OF LAW

UNIVERSITAS ISLAM INDONESIA

2023

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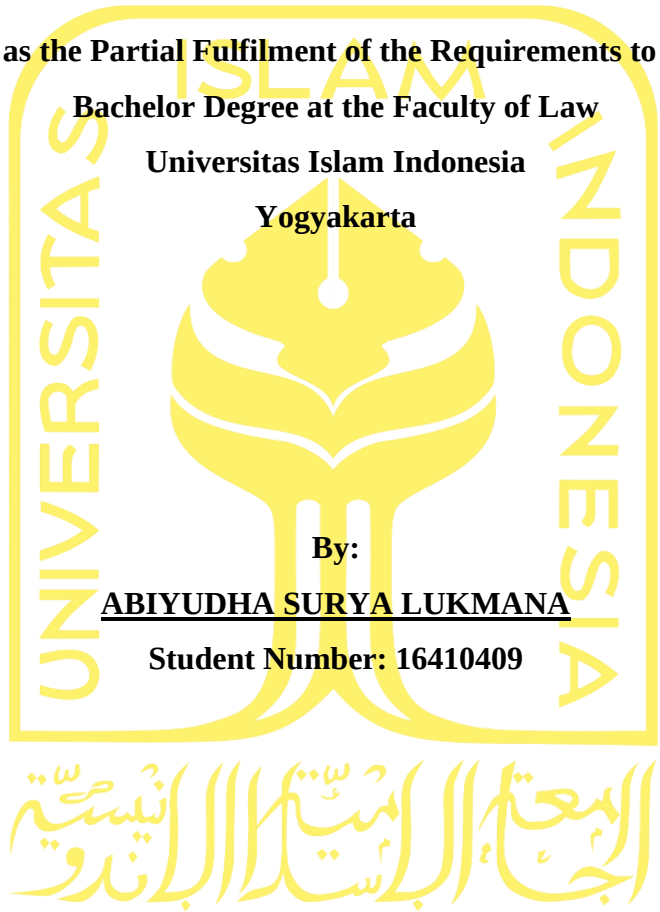
A BACHELOR DEGREE THESIS

Presented as the Partial Fulfilment of the Requirements to Obtain the Bachelor Degree at the Faculty of Law
Universitas Islam Indonesia
Yogyakarta



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بِسْمِ اللَّهِ الرَّحْمَٰنِ الرَّحِيمِ

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It has been checked and approved by the Final Project Supervisor for submission in the future the Examiner Team in the Awareness Examination on August 30, 2023

Yogyakarta, August 1, 2023
Thesis Supervisor,

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JURIDICAL ANALYSIS OF INTERNATIONAL COURT OF JUSTICE: ADVISORY OPINION CONCERNING CHAGOS ARCHIPELAGO

Has been proven and declared acceptable by the Language Advisor to be examined by the Board of Examiners at the Thesis Examination on

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FOREWORD

Bismillahirrahmaanirrahiim

Alhamdulillahirabbil'alamin, as this thesis marks the end of my undergraduate study, I would like the express my sincere gratitude to:

1. **Allah SWT** the Almighty God. My life, my death, my love, my days, my nights, and my prayers are only for you;
2. **Muhammad SAW**, the light of the universe, whose personality, love and leadership changes million lives. It is my wish that I can meet you in my dream and in hereafter;
3. **My mom, dad, and my brothers; Dzulqoiridho Senda Lukmana** whose overwhelming and tireless supports have made me who I am today. Thank you for every single kindness I could never mention in detail;
4. **Prof. Dr. Sefriani, S.H., M. Hum.,** my lecturer and thesis advisor, whose deep international law knowledge has grown my interest in this subject. She has obtained the title of professor where she clearly deserves the title. Thank you for all the lessons and discussions.
5. **Dra. Sri Wartini, S.H., M.H., Ph.D. and Christopher Cason, JD.,** my moot court supervisor who has taken the time to accompany and guide the team.
6. **Dodik Setiawan Nur Heriyanto, S.H., M.H., L.L.M., Ph.D.,** the secretary of international program of law, UII. His dedication for the program as well as for the Student Association of International law (SAIL)has eased me in many things. *Jazakallah khairan* Pak Dodik.
7. **Ms. Novera Widyarani,** her kind support and assistance for making every IP student easily deals with the campus bureaucracy.
8. **Prof. Dr. Budi Agus Riswandi, S.H., M.Hum.**, as the former Dean of Faculty of Law Universitas Islam Indonesia, who will not hesitate to support students and will constantly remind us of Islamic values

in all academic activities.

9. **Prof. Fathul Wahid, S.T., M.Sc., Ph.D.**, as the Rector of Universitas Islam Indonesia, his dedication and sacrifice to improve the quality of campus education in order to be able to compete internationally. The whole university should thank him for that.
10. **Fasya Addina, Saufa Ata Taqiyya, Ratu Wulandari, Aris Rahmat Julian, Vicky Van Winkelhoff, Ria Yanuarti, Reff, Hana and Rani**; my seniors, coaches and my partners, whose influences and contributions in my development as a law student are too many, with whom I went through all my moot competitions.
11. **Students Association of International Law (SAIL) FH UII family**, my international law and organisation experiences have gone further because of them.
12. **IP FH 2016 friends**, my classmates for the last few years. Thank you for the memories and joys.
13. **TMA FH UII, particularly *sinau neng masjid, makan bang* friends and *pasukan sayap kiri Masjid Al-Azhar***.They are all the most enjoyable community in have in my college life. I always enjoy the times with them. Hopefully Allah will unite us in *jannah*.
14. **Keluarga CDI TMA FH UII, especially; Mba Coco, Mas Habibie, Mba Banun, Mba Arijulita, Mba Nanda, Mba Dela (Alm.), Mas Riza, Mas Tommy, Hima, Siraj, Rosyid, Ahmad, Ardli, Etha, Feral, Ridho, Majid,** who has taught me about the meaning *ikhlas* to share with others.
15. **Keluarga Ceramah; Wafie, Addin, Udan, Rama, Aldino, Tommy, Faiz, Hanif, Riska, Kanza, Melina, Shilvi, Zulfa** with all the joy that has been created, accompanying my journey during my education at this campus.
16. **All Lecturers of IP FH UII**, their knowledge and lessons will always stayin every student mind, and it is only Allah‟s reward which can compensatethose sincere dedications.

17. **Ian Surya Prayoga,** as my friend from high school who is also struggling together with me to study in UII Yogyakarta.
18. **Mas tommy, Mas Yanuar, Mas Roviq, Wafie, Addin, Udan, Hima, Riska, Mba Banun, Mba Coco, Bila, Ditta, Firman, Adibil, Kide,** who has helped me through my difficult times at the end of my studies at this campus. Through this writing, I thank them very much.

And to everyone who had made me who I am today, I could only say thank you. As Allah says in his holy qur‟an, “is there any reward for good other than good?”

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MOTTO

Sebaik-baik manusia adalah yang bermanfaat bagi orang lain..

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ABSTRACT

In February 2019, the International Court of Justice issued its advisory opinion concerning Chagos islands. The Court considers that the conduct of UK in separation of Chagos islands from Mauritius's territory was unlawful under international law. The Court then urged the UK to withdraw its continued administration over the territory of Chagos islands. However, the UK refuse to follow the ICJ's advisory opinion by arguing that it has no binding force. Accordingly, the problems examined in this thesis include: First, Why the ICJ decides that the UK's administrative power in Chagos Islands is unlawful? Second, what could be done by Mauritius if the UK did not perform the ICJ's advisory opinion that has no binding force and insist to continue its administering power over Chagos Islands? us. The research methodology used in this paper is normative legal research. The results of this study concluded that: First, the decolonisation process of Mauritus between 1965-1968 conducted by the UK was incompatible with the law on self-determination. Second, the Mauritius may bring the dispute to the UN Security Council based on Article 33 and 37 of the Charter.

Keywords: Advisory Opinion, ICJ, Self-determination, Security Council.

CHAPTER I

A. Background of Study

Prior to the first World War, approximately seventy five percent of the world's population was under the control of foreign rule which was also known as colonialism.[1] The greatest extent of that colonialism was reached when European powers succeeded in having control over Asia and Africa continental at the end of the nineteenth century.[2] Indeed, the emergence of those colonialism acts was accompanied by the number of slavery, natural resources exploitations and even the worse thing such as the mass extermination of the population occurred in Africa. Accordingly, it is absolutely important to encourage decolonisation movement from international society in order to abolish slavery, exploitations and other inhumane acts conducted by foreign power.

In history, a massive decolonisation practice happened after the end of the second World War where the United Nations (UN) was founded and adopted the *Declaration on the Granting of Independence to Colonial Countries and Peoples* in 1960. The essential substance of the declaration is to assert the right of self-determination and proclaimed that colonialism must be ceased immediately and unconditionally.[3] Since the adoption of the Declaration, there is a significant number of nations which have gained

[1] Marion Mushkatt, "The Process of Decolonization International Legal Aspects", *University of Baltimore Law Review* Vol. 2, Issue 1, Art. 3 (1972): 16.

[2] *Ibid.*

[3] UN General Assembly, *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960, A/RES/1514(XV), available at: https://www.refworld.org/docid/3b00f06e2f.html (accessed 26 October 2020)

independence from its colonies and become UN members.[4] This roughly includes 126 former colonies especially in Asia and Africa[5] either through peaceful means or protracted revolutions.

Despite there being many countries which obtained independence after the establishment of the declaration, however, the practices of colonialism still exist at the present time. It is proven by several powerful countries such as the United Kingdom (UK), United States (US) and France which have strength to give such control over foreign territories. The UN Charter labeled such territories as Non-Self-Governing Territory (NSGT) which means "whose people have not yet attained a full measure of self-government".[6] Furthermore, seventeen territories remain listed as NSGT currently as referring to the data taken from UN's website.[7] For those reasons, the existence of the declaration is less effective and gravitates to the failure in abolishing the colonialism practice until today.

In relation to which, one of the groups of people who succeeded to liberate itself from the grip of foreign power was Mauritians community. They got their independence from the grasp of the UK on March 12, 1968 - presently known as Republic of Mauritius. Although the UK has granted its independence, however, both remain dragged into an on-off territorial dispute

[4] Yassin El-Ayouty, "The United Nations and Decolonisation, 1960-70", *The Journal of Modern African Studies* Vol. 8, No. 3 (1970): 464.

[5] *Ibid.*

[6] "Charter of the United Nations", signed on June 26, 1945, 1 UNTS XVI, available at: https://www.un.org/en/sections/un-charter/un-charter-full-text/. (accessed February 4, 2021).

[7] All data is taking from United Nations Secretariat 2020 Working Papers on Non-Self-Governing Territories, and for Western Sahara. Available at: https://www.un.org/dppa/decolonization/en/nsgt.

for decades. In 1965, the UK separated Chagos Islands from Mauritius before its independence and possessed the Islands which constituted under the administration of British Indian Ocean Territory (BIOT).[8] Moreover, the UK in conjunction with the US conducted a six-year long forced depopulation of the Chagos Islands in order to accommodate their military personnel live and work at its military base within the islands. In response to that detachment, Mauritius proposed legal proceedings to the Arbitral Tribunal by claiming that the UK had no sovereignty over the Islands[9] and argued that the separation of the Islands is not compatible with the international law on self-determination.[10] Nonetheless, the Arbitral Tribunal rejected Mauritius' submission for a reason that the tribunal has no jurisdiction to adjudicate the dispute.

For that reason, the United Nations as the organization which has the purposes to maintain and keep the peace and world order, tried to give its role to settle the Chagos Islands dispute. Through the General Assembly, the United Nations adopted its resolution 71/292 of 22 June 2017 to seek an advisory opinion of International Court of Justice (ICJ) regarding the legality towards the separation of Chagos Islands. The result for the voting of the

[8] Andrew Harding, "Chagos Islands Dispute: UK Misses Deadline to Return Control", *BBC News*, November 22, 2019. (Accessed November 2, 2020) https://www.bbc.com/news/uk-50511847.

[9] Nicolas A. Ioannides, "Why Mauritius and the UK are still Sparring over Decolonisation", *The Conversation*, May 28, 2015. (Accessed November 2, 2020) https://theconversation.com/why-mauritius-and-the-uk-are-still-sparring-over-decolonisation-40911.

[10] Neha Banka, "Explained: What is the Chagos Islands Dispute About?", *The Indian Express*, November 30, 2019. (Accessed November 2, 2020) https://indianexpress.com/article/explained/explained-why-mauritius-is-calling-uk-an-illegal-colonial-occupier-over-a-tiny-set-of-island-6142821/.

resolution is expected to be granted in order to show that UN always support the decolonisation movement. At the General Assembly, there are 94 countries voted in support of Mauritius' resolution to seek an advisory opinion on the legal status of the Chagos Islands. In contrast, 15 countries were voted against the resolution including the UK and the US and the rest 65 countries were abstained from voting of the resolution.[11] Accordingly, the Court was asked to answer whether the decolonisation of Mauritius was compatible with international law and how the legal consequences emerged from the continuation of UK' administration over the Chagos Islands.[12]

In February 2019, the ICJ issued its advisory opinion as the response to the questions raised from the UN General Assembly. As stated in *The Guardian*[13], the Court found that the separation process towards Chagos Islands before Mauritius decolonisation was not compatible with international law. Specifically, Judge Yusuf considered that the detachment of Chagos Islands from Mauritius was unlawful and the continuation of UK' administration over the island constitutes a wrongful act. Thus, as a consequence, the UK must cease its administration of the Chagos Islands as

[11] *Ibid.*

[12] UNGA, *Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965,* Issued in GAOR, 71st sess., Suppl. no. 49, A/RES/71/292, (June 22, 2017).

[13] Owen Bowcott, "UN Court Rejects UK's Claim of Sovereignty over Chagos Islands", *The Guardian*, February 25, 2019. (Accessed November 4, 2020), https://www.theguardian.com/world/2019/feb/25/un-court-rejects-uk-claim-to-sovereignty-over-chagos-Islands.

rapidly as possible and that all UN members must co-operate to complete the decolonisation of Mauritius.[14]

After the issuance of ICJ advisory opinion, the UN had given the UK six months to give up control of the Chagos Islands - but that period has now passed. The UK has ignored the Court's advisory opinion and insists to retain its control over the Chagos Islands. As its Foreign Office Ministers told to the *Courthouse News*[15], there is no doubt that the UK has sovereignty over Chagos Islands through BIOT's administration. Moreover, they also argued that it was only an advisory opinion which has no binding force claimed that "the defence facilities on the British Indian Ocean Territory help to protect people here in Britain and around the world from terrorist threats, organised crime and piracy".[16] As a result, a huge global reaction was raised which condemned the assertion of the UK government in relation to the Chagos Islands dispute.

For that purpose, this thesis will focus on discussing the reasons why the ICJ decides that the UK's administering power over Chagos Islands is unlawful. Furthermore, the research would also find out what could be done by Mauritius if the UK did not perform the ICJ's advisory opinion that has no binding force and insist to continue its administering power over Chagos Islands. Specifically, the analysis will be limited to international law

[14] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, I.C.J. Reports 2019, p. 95.

[15] Cain Burdeau, "UK Ignores United Nations and Keeps Chagos Islands", *Courthouse News*, November 22, 2019. (Accessed November 4, 2020), https://www.courthousenews.com/u-k-ignores-united-nations-and-keeps-chagos-islands/

[16] Neha Banka, *Op.Cit.*

perspective only. An international law point of view is essential in analysing this case, as it has shown that the dispute arises between two states subjected to international community. At the end of the discussion, hopefully the outcome of this research will offer both theoretical and practical advantages in relation to answering the legal questions arising from the dispute towards Chagos Islands above. The case is still relevant until today due to there is no meeting point between Mauritius as the challenger and UK as the administering power of Chagos Islands. Even if, the ICJ's advisory opinion urge the UK to withdraw from Chagos Islands within period of six months, however, almost four years on, the UK has still not done so.

B. Problem Formulations

1. Why the ICJ decides that the UK's administrative power in Chagos Islands is unlawful?
2. What could be done by Mauritius if the UK did not perform the ICJ's advisory opinion that has no binding force and insist to continue its administering power over Chagos Islands?

C. Research Objectives

1. To analyse the reasons why the ICJ decides that the UK's administrative power in Chagos Islands is unlawful.

2. To figure out what could be done by Mauritius if the UK did not perform the ICJ's advisory opinion that has no binding force and insist to continue its administering power over Chagos Islands.

D. Research Originality

	Title and Author(s)	Distinction of Discussed Problem	
		Author(s)	**Researcher**
	"The Chagos Advisory Opinion and the Law of Self-Determination", Victor Kattan.	The author only re-stating the content of the ICJ's advisory opinion regarding the issue of self-determination in Chagos Islands without any theoretical analysis on it.[17]	This research will analyse the reasons of ICJ's legal considerations in its advisory opinion which considers that the administering power of UK is unlawful under international law.

[17] Victor Kattan, "The Chagos Advisory Opinion and the Law of Self-Determination", *Asian Journal of International Law*, Vol. 10 (2020): 12-22.

	"Decolonisation revisited and the Obligation Not to Divide A Non-Self-Governing Territory", James Summers	The analysis focuses on the legality of the separation over Chagos Islands before Mauritius' independence conducted by the United Kingdom (UK).[18]	The proposed research will focus on answering the questions whether the UK's territorial occupation and its administering power were in accordance with the international law.
	"The Partial Promise of Rules-Based Order in the Indo-Pacific: A Case Study of the Chagos Archipelago", Peter Harris.	Based on the research, the author emphasized its analysis on the failure of the Indo-Pacific order and the implications of the Chagos Case to the international order.[19]	While this research will focus on the finding of solutions provided by Security Council as the UN organs who responsible for international peace and security.

[18] James Summers, "Decolonisation revisited and the Obligation Not to Divide A Non-Self Governing Territory", *Questions of International Law*, Vol. 55, (2018), p. 147-176.

[19] Peter Harris, "The Partial Promise of Rules-Based Order in the Indo-Pacific: A Case Study of the Chagos Archipelago", *Journal of Indo Pacific Affairs*, (2022).

	"Peoples' Right to Self-Determination: The Case of the Chagos Archipelago", Paul Weismann	It presents and discusses the facts of the case as well as its main legal aspects, which include material questions about peoples' right to self-determination, territorial integrity, and international responsibility, as well as procedural questions about the ICJ's jurisdiction.[20]	This research is not focus on the jurisdiction of the International Court of Justice as the body which has capability to settle the dispute. However, it will be focusing on the role of the Security Council within the Chagos Islands case.
	"Islands, Sovereignty and the Right to Return: An Analysis of the Chagos	Focuses on the analysis whether the UK actions related to the detachment of the Chagossian community were	It is different where this research will also conduct an analysis on the UK's territorial occupation which

[20] Paul Weismann, "Peoples' Right to Self-Determination: The Case of the Chagos Archipelago", *International Community Law Review*, Vol. 21 (2019), p. 463–479.

	Islands ICJ Advisory Opinion Request", Constantinos Yiallourides	violates the right to return and the principle of self-determination.[21]	implies to the administering power towards Chagos Islands. Furthermore, the research tries to answer what legal actions that can be done by Mauritius within this case.

In conclusion, this research stressed the legality of UK's administering power towards Chagos Islands under international law, specifically on the law of self-determination. In addition, the writer also enlarges the research about the possible steps that can be taken by Mauritius in challenging the ignorance of the UK to withdraw from Chagos Islands as already stated by ICJ through its Advisory Opinion.

E. Literature Review

1) United Nations

The United Nations has four goals: to maintain international peace and security; to foster good relations among nations; to collaborate in addressing

[21] Constantinos Yiallourides, *"Islands, Sovereignty and the Right to Return: An Analysis of the Chagos Islands ICJ Advisory Opinion Request"*, Journal of Territorial and Maritime Studies, (February 13, 2018).

international problems and promoting human rights; and to serve as a clearinghouse for nations' actions.[22] It is an organisation of equal sovereign states, and all states in the General Assembly have one vote regardless of size or money; nevertheless, certain states are more equal than others in the Security Council, which is the sole institution with binding powers.[23]

Ending colonial domination became critical for the UN in establishing global peace and growth. The UN has made history by liberating millions of people from foreign colonial rule. The United Nations' anti-colonial regions included two types of dependent populations. They were the trust regions over which the UN had direct control.[24] There is some misunderstanding that the fight against colonialism grants certain angry people the right to secede from their newly founded independent state. The right to 'self-determination' only extends to those living under foreign colonial control.

2) International Court of Justice

The International Court of Justice (ICJ) was founded in 1945, as the successor of the first existing "world court"[25] namely the Permanent Court of International Justice (PCIJ) which was established by the League of Nations after the end of the first World War.[26] The court is a principal organ of the United Nations which has authority to settle the disputes arising between

[22] Margaret P. Karns and Karen A. Mingst, "*Internatioanal Organisation: the Politics and Proccesses of Global Governance*", 2nd Ed, (London: Lynne Rienner Publisher, Inc., 2010), p. 27.

[23] Ibid.

[24] Ibid, p 28.

[25] Joan E. Donoghue, "The Effectiveness of the International Court of Justice", *Proceedings of the Annual Meeting (American Society of International Law)*, Vol. 108 (2014): 115.

[26] Mahasen M. Aljaghoub, "The Absence of State Consent to Advisory Opinions of the International Court of Justice: Judicial and Political Restraints", *Arab Law Quarterly*, Vol. 24 (2010): 192.

states in relation to international law.[27] Therefore, the correlation between the ICJ as the inseparable judicial organ with the United Nations makes the Court bound by the purposes and principles of the UN Charter in carrying out its duties and functions.[28]

As for its jurisdiction, there are two types of function that attached as the authority of the court itself. Firstly, a contentious case refers to the dispute settlement exercised by the court in relation to legal nature submitted by States in accordance with international law. However, there is no obligation for the members of the United Nations to bring their disputes before the ICJ which has no compulsory jurisdiction.[29] Thus, the court merely has jurisdiction in accordance with the desire of each state party. Secondly, the other function of the ICJ is to give their advisory opinion in relation to answer the legal questions proposed by the international organs. It is in accordance with Article 65(1) of the ICJ's Statute which stated that the Court "may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such request".[30] Hence, the Court always plays an important role as the judicial arm of the UN in developing the rules, particularly in International law.

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[27] Sefriani, *Hukum Internasional: Suatu Pengantar*, 2nd Ed. (Yogyakarta: Rajawali Press, 2016), p. 123.

[28] Joan E. Donoghue, *Loc.Cit.*

[29] Sefriani, *Op.Cit.*

[30] United Nations, *Statute of the International Court of Justice*, 18 April 1946, available at: https://www.refworld.org/docid/3deb4b9c0.html (accessed 3 February 2021).

The Statute of the ICJ regulates that the Court shall consists of 15 judges which have different nationality[31] in handling both contentious cases or an advisory opinion.[32] However, the number of judges sitting on any particular case can vary, from nine - as the quorum - to 17 with additional two *ad hoc* judges.[33] It was obvious that the odd number of judges is necessary to avoid possible deadlock in the settlement of the case.

3) Territorial Sovereignty

According to Brierly, territorial sovereignty refers to the existence of rights over a territory.[34] In other words, it gives a state the right to exercise its power over its territory. Furthermore, this principle has emerged either with a positive or negative aspect. The first term refers to the exclusivity of the competence of the state regarding its own territory, whereas the latter relates to the obligation to protect the rights of other states.[35]

For that reason, sovereignty constitutes the highest authority owned by a state to freely exercise its functions and wills based on its interest so long as it does not contradict with international law. Hence, it consists of three aspects; (i) external aspects where states are free to decide its international relations without intervention, (ii) internal aspects where states are free to

[31] *Ibid*, Article 3.
[32] Robert Kolb, *The International Court of Justice*, Bloomsbury Publishing, 2013, p. 109.
[33] *Ibid.*
[34] Malcolm N. Shaw, *International Law*, 6th Edition. (New York: Cambridge University Press, 2008), p. 490.
[35] *Ibid.*

determine its organs and enacting laws, (iii) sovereign territory aspects where states have full power over people and properties on its territory.[36]

Territorial sovereignty remains a big deal in international law issues. Since the law reflects political conditions and interests, in most cases, claims to territory may be based on a numerous of different grounds, ranging from the traditional method of occupation or prescription to the newer concepts such as self-determination, with relevant political and legal factors, for instance, geographical contiguity, historical demands and economic matters.[37]

Accordingly, this theory has an essential role as the fundamental question that arises while we are discussing whether the control of the British government over the Chagos Islands is compatible with international law.

4) The Acquisition of Territory

According to Professor Jennings, a state's title to territory is not simply a matter of ownership, however, it signifies the right to exercise sovereignty over the territory.[38] The exercise of sovereignty is a continuous phenomenon, and indeed, it expresses the very existence of a state. In the international system, there is relatively little scope for the title to subsist independently of possession.[39] Furthermore, there are known several "modes" of territorial

[36] *Ibid.*
[37] *Ibid.*
[38] R.Y. Jennings, "The Acquisition of Territory in International Law", The Modern Law Review, Jan., 1964, Vol. 27, No. 1, p.113.
[39] *Ibid.*

acquisition, namely occupation, conquest, accretion, prescription, cession and referendum.

a). Occupation

This term refers to the acquisition of the territory which was obtained through a discovery that has not been occupied or under the sovereignty of another state before (*terra nulius*).[40] There are three elements that must be fulfilled to legitimate the act of occupation: i). Discovery towards *terra nulius* territory, ii). The intention of the state to obtain the territory under its sovereignty and iii). The implementation of effectiveness principle.[41]

The element of discovery and the intention are cumulatively must be fulfilled where both are considered as objective and subjective elements. Meanwhile, the essential thing that arises from the effectiveness principle as the element of occupation is reflected by the international court decision in relation to the parameter of the state actions over a territory.

b). Conquest (Annexation)

In the classical era, conquest required something beyond mere seizure of territory by use of force. Likewise other modes of acquisition, it requires two core elements namely *corpus* and *animus*.[42] The first term refers to the circumstances where the territory has been conquered by the, while the second term constitutes an intention of the conqueror state to annex such

[40] Sefriani, *Op.Cit.*, p. 175.
[41] *Ibid.*
[42] R.Y. Jennings, *The Acquisition of Territory in International Law*, (Manchester: Manchester University Press, 1963) p. 52.

territory.[43] Accordingly, the existence of conquest act must be followed by the formal statement of intention and disclosed to the interested states.

c). Accretion

This scenario happens when there is a territorial change caused by the natural process without any intervention by human beings.[44] Specifically, it refers to the establishment or extension of an area that already connected with the existing territory before.[45] For instance, the emergence of islands within the territory of a country automatically becomes a part of that country. Moreover, there is no action needed in relation to the formal recognition as a requirement to obtain such rights over this new territory.[46]

d). Prescription

In this mode of acquisition, the state can obtain such sovereignty over a territory which is actually under the sovereignty of another state (*de jure)*, by means of carrying its control with a peace and long period of time (*de facto*).[47] However, the majority of international law experts deny the prescription as a mode of territorial acquisition. They argued that there is no international law principles or previous court decision as a precedence related to the prescription.

[43] *Ibid.*

[44] Jawahir Thontowi and Pranoto Iskandar, *Hukum Internasional Kontemporer*, (Bandung: Refika Aditama, 2006) p. 182.

[45] *Ibid.*

[46] J.G. Starke, *Pengantar Hukum Internasional*, (Jakarta: Sinar Grafika, 2006), p. 221.

[47] *Ibid.*

Meanwhile, Fauchille and Johnson stipulate the requirements of prescription consist of three circumstances.[48] First, the territory must be under the possession of a certain state *(titre de souverain)*. Second, the acquisition must be carried out with peace and continuity. Lastly, the acts must be publicly disclosed. In relation to which, the critical point arises in relation to the parameter of state actions and the period of time. Thus, the international court is charged to determine such measures in order to settle the disputes between states.

e). Cession

This mode of acquisition refers to the transfer of sovereignty which generally uses a treaty between states.[49] He made an illustration like the transfer of "ownership" between one and another as in the national law. As a consequence, it is applied the principle *nemo dat quod not habet* - a state cannot give what it does not have.[50] In other words, the acquiring state will only obtain sovereignty over a territory if the ceding state has legitimate sovereignty. Furthermore, the transfer of sovereignty can be obtained either through a peaceful act or by force such as a war.

f). Referendum

Beside above five modes of acquisition, there is also known a modern way in obtaining sovereignty over a territory namely referendum. The implementation of this scenario constitutes the manifestation or a follow-up

[48] Sefriani, *Op.Cit,* p. 178.

[49] Martin Dixon, *Textbook on International Law*, 4th Ed. (London: Blackstone Press Limited, 2000), p. 151.

[50] *Ibid*.

from the existence of self-determination rights under international law.[51] To be legitimate, the process of referendum must be done directly with "one man one vote" and supervised by an authorized international body. For example, the opinion poll conducted by East Timor in 1999 in terms of asking its citizens - whether they want independence or still be an integral part of Indonesia - was supervised by the United Nations Transitional Administration in East Timor (UNTAET).[52]

5) *Uti Possidetis*

The term *uti possidetis* was firstly emerging in the Latin America when the boundaries of newly independent state from Spanish empire followed its colonial administration divisions as the predecessor.[53] In other words, these boundaries were acknowledged as the territorial demarcation which became a basis for a valid statehood followed by its territorial integrity rights. Furthermore, the principle has eventually developed as general customary of international law to identify such defined territory of a state.

In Burkina Faso/Mali case, the chamber of ICJ had an opinion that the essence of *uti possidetis* principle aims to protect the newly independent states being endangered by the challenging stability from the withdrawal of its colonial power.[54] Accordingly, the chamber declared that the principle applied generally and was logically linked with the phenomenon of

[51] Sefriani, *Op.Cit*, p. 180.
[52] *Ibid.*
[53] Malcom N, Shaw, *Op.Cit,* p. 526.
[54] *Ibid,* p. 527.

independence wherever it occurred in order to secure the territorial integrity and stability of newly independent states.

6) State's Responsibility

The concept of state responsibility arises from the nature of state sovereignty and equality of states doctrines and principles under international law.[55] It reflects the limitation of external state sovereignty, in terms of establishing international responsibility when a state causes loss or damage to another state. Furthermore, a state is liable for the breach of international obligation where it is attributable to it. It is also noted that there is no distinction between contractual and tortious responsibility, meaning that any violation of whatever origin gives rise to state responsibility and consequently to the obligation of reparation.[56]

The nature of state responsibility comes from certain basic elements.[57] First, the existence of an international legal obligation between two particular states. Second, there is an act or omission which culminates to the violation of that obligation that is imputable to the responsible state. Lastly, that loss or damage has resulted from an unlawful act or omission. Accordingly, the existence of legal consequences for the wrongful act which leads to the breach of international obligation is parallel under the duty to cease that act and offer appropriate assurances and guarantees of non-repetition.[58]

[55] *Ibid*, p. 778
[56] *Ibid.*
[57] *Ibid*, p. 281.
[58] Milka Dimitrovska, "The Concept of International Responsibility of State in the International Public Law System", *Journal of Liberty and International Affairs* | Vol. 1, No. 2, 2015, p. 8.

In relation to that, there are known three basic forms of reparation for the internationally wrongful acts, namely restitution, compensation and satisfaction.[59] Restitution means returning the condition as original it is *(restitutio in integrum)*. Then, a compensation will be paid if the damages cannot be covered by restitution. Furthermore, in case that restitution and/or compensation cannot repair the damages, therefore, satisfaction will perform with public acknowledgement of the breach, an expression of regret and formal apology as moral responsibility arising from a wrongful act. The combination of those three kinds of reparation become a viable option to be implemented to the particular case due to material and moral damages often occurring simultaneously.

F. Operational Definitions

1. International Court of Justice : The court that was set up by the United Nations which has jurisdiction to settle legal disputes between nations and to give advisory opinions on matters of law and treaty construction when requested by an international organ authorized by the General Assembly to petition for such opinion.[60]
2. United Nations : An organization of sovereign states, which voluntarily join together to create a forum with the aspiration to maintain

[59] *Ibid.*

[60] Black's Law Dictionary, 4th edition, West Publishing, United States of America, 1968, p. 953.

international peace and security[61] through diplomacy and dialogue among nations.

3. Advisory Opinion : A formal opinion by a judge or judges or a court or a law officer upon a question of law submitted by a legislative body or a governmental official, but not actually presented in a concrete case at law.[62] To be more specific, this research will analyse the ICJ's advisory opinion titled "Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965".

G. Research Method

As quoted by Prof. Barda Nawawi Arief in his book[63], Robert R. Mayer and Ernest Greenwood defined the research method as a logic through which research is conducted. The most essential thing is the propriety between the method used and the research object as the research is aimed in revealing the truth methodologically, systematically and consistently.

1) Type of Research

This research is using normative legal research where a logical reasoning aspect becomes the basis in finding the truth as scientific research.[64] To be more specific, this typology is done by conducting normative studies

[61] Sefriani, *Peran Hukum Internasional Dalam Hubungan Internasional Kontemporer*, (Jakarta: Rajawali Press, 2016), p. 199.

[62] *Ibid.*

[63] Barda Nawawi Arief, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*, (Yogyakarta: Genta Publising, 2010), p. 61.

[64] Johnny Ibrahim, *Normative Law Research Theory & Methodology*, (Malang: Bayumedia Publishing, 2006), p. 57.

on legal principles, legal systematics, legal synchronization levels, legal history, and/or legal comparisons. Accordingly, this research will only concentrate on the implementation of legal norms.[65]

2) Research Approach

There are three models of research approach that will be used in this thesis. Firstly, it will use a conceptual approach in order to explain the concept of the existing rules and regulations or legal principles. Secondly, the juridical or statute approach will be used where in discussing the issue, it will involve the laws and regulations as the legal basis. Thirdly, a case approach will be applied in studying the implementation of legal norm within the real practice. Lastly, the historical approach will be used to reach the insights of past occurrences related to the present research.

3) Research Object

The object of this research is the International Court of Justice advisory opinion on the Separation of the Chagos Archipelago from Mauritius in 1965.

4) Source of Data

The sources of data that are used by the writer in this research are secondary sources of data which are divided into three categories, namely primary, secondary and tertiary legal materials.[66] Primary legal materials

[65] Suratman, Philips Dillah, *Legal Research Methods. Equipped with Procedures & Examples of Writing Scientific Papers in the Field of Law*, 3rd Ed. (Bandung: AlfaBeta, 2015), p. 45.

[66] Writing Manual's Drafting Team, *Writing Manual: Theses, Legal Memoranda and Legal Case Studies*, Faculty of Law, Universitas Islam Indonesia, Yogyakarta, 2019, p. 10.

constitute to the source of data that have legal force[67], in present case they include Vienna Convention on the Law of Treaties (VCLT), United Nations (UN) Charter, Statute of the International Court of Justice (ICJ), Customary of International Law and previous court decisions. As for the secondary legal materials, these sources of data have no legal binding power such as commentary of conventions, journals, books, documents, and news from reliable sources covering various aspects and written by relatively qualified writers.[68] Last but not least, tertiary legal materials include dictionaries or encyclopedies as the complementary for primary and secondary legal materials.

5) Data Collection Method

In accordance with the type and source of the data used in this research, the data is collected through library studies by obtaining information and knowledge in order to support the discussion within this research. Library study is a data collection method by elaborating various data sources and writing materials[69] such as from books, journals, articles, documents, and sources of law especially within an international legal order.

6) Data Analysis

The data analysis in this research is using descriptive qualitative data which include the classification activity, editing, presentation of research results in the narrative form and conclusion.

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[67] *Ibid.*

[68] *Ibid*, p. 11.

[69] Bambang Sunggono, *Metodologi Penelitian Hukum. Suatu Pengantar*, 4th Ed. (Jakarta: Raja Grafindo Persada, 2002), p. 117.

CHAPTER II

THEORIES ON THE RELATION OF-TERRITORIAL SOVEREIGNTY

A. The Territorial Sovereignty

i. Basic Concept of Territorial Sovereignty

Before we go further to analyse this topic, it is essential to understand the concept of territorial sovereignty which has a huge correlation with the statehood theories. The term "sovereignty" has a complex and various meanings within its history and development. In his book, Kamal Hossain defines sovereignty into three meanings:

1) Sovereignty as a distinctive characteristic of States as constituent units of the international legal system;
2) Sovereignty as freedom of action in respect of all matters with regard to which a State is not under any legal obligation; and
3) Sovereignty as the minimum amount of autonomy prerequisite to being accorded the status of a sovereign State.[70]

Those definitions reflect that the term sovereignty is notoriously difficult to define as the fundamental concept existing within statehood theories. However, in the *Island of Palmas case,* Max Huber emphasised that "*Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise*

[70] Hossain, K. 1964. "State Sovereignty and the UN Charter", at 27. Oxford, MS D.Phil., d 3227, as quoted in Crawford, J. 1979. The Creation of States in International Law, at 26. Oxford: Clarendon Press.

therein, to the exclusion of any other State, the functions of a State".[71] In relation to which, state territory constitutes a portion of an area of the globe that is subject to the sovereignty of a particular state.[72] Accordingly, territorial sovereignty relies on the principle where a state has authority to exercise its rights over its own territory.

ii. Territorial Sovereignty under International Legal Framework

The development of territorial sovereignty theories lead to the emergence of some legal instruments, especially within the scope of international law. It is expressed in the establishment of the UN Charter as the spirit to uphold peace and security for the international community. The Preamble and Article 1 of the Charter elaborate the limitations and scope of international concern on sovereignty.[73] Then, Article 2 emphasizes the concern and competence of the UN. For instance, Article 2(1) mentioned that the UN is "based on the principle of sovereign equality of all its Members."[74] Article 2(7) strengthening the definition of sovereignty by indicating that the UN has no authority to intervene "in matters which are essentially within the domestic jurisdiction of any state."[75] This Article could also be read by referring to Article 2(4), which prohibits the threat or use of force to attack

[71] Gunther Handl, Territorial Sovereignty and the Problem of Transnational Pollution, The American Journal of International Law, Vol. 69, No. 1 (Jan., 1975), pp. 50-76, p. 55. *Island of Palmas Case*, 1928. Permanent Court of Arbitration. 2 U.N. Rep. Intl. Arb. Awards 829, p. 838.

[72] Daud Hasan, Territorial Sovereignty and State Responsibility: An Environmental Perspective, Environmental Policy and Law, 45/3-4 (2015), p. 140

[73] UN Charter, Article 1.

[74] *Ibid*, Article 2(1).

[75] *Ibid*, Article 2(7).

the "territorial integrity or political independence of any state.[76] Accordingly, Article 2 expects that States are subject to a good faith obligation to respect the values contained within the UN Charter.[77]

Additionally, various territorial sovereignty principles have also been adopted in several international treaties such as the United Nation Convention on the Law of the Sea (UNCLOS) and Convention on International Civil Aviation (Chicago Convention). Both conventions are very concerned about the state's sovereignty, especially within the scope of maritime zones[78] and air space above its territory[79]. Therefore, those arrangements are expected to protect the territorial integrity from the external interference, give the highest role of the state to control and and manage its own existing resources within its territory.

B. Territorial Acquisition under International Law

As already known from the historical background of sovereignty disputes over the disputed islands, the main issue in determining whether an island belongs to a state lies in analyzing the evidence of possession and control over such islands under international law. Hence, this research tries to

[76] *Ibid*, Article 2(4).

[77] Winston P. Nagan & Craig Hammer, The Changing Character of Sovereignty in International Law and International Relations, 43 Colum. J. Transnat'l L. 141 (2004), p. 156. available at http://scholarship.law.ufl.edu/facultypub/595

[78] Marcellino Gonzales Sedyantoputro, The Role of UNCLOS 1982 in Protecting Indonesia's Sovereignty from Reclamation Threat, Indonesian Law Journal, Volume 13; No. 1; July 2020, p. 28.

[79] Adi Kusumaningrum, The Legal Analysis of "Teori Kedaulatan Nusantara" Towards the New Conception of Indonesia Airspace Sovereignty, Indonesian Journal of International Law (2017), Vol. 14 No. 4, pp. 514-542.

figure out modes of acquisition of territory and the relevant concepts to resolve territorial disputes under international law.

a). Occupation

The first mode of acquisition is occupation, which is obtaining a territory through a discovery that has not been occupied or under the sovereignty of another state before (*terra nulius*).[80] This situation requires three elements that must be fulfilled in order to legitimate such occupation: i). Discovery towards *terra nulius* territory, ii). The intention of the state to obtain the territory under its sovereignty and iii). The implementation of the effectiveness principle.[81]

Those elements of discovery and the intention are cumulatively must be satisfied where both are considered as objective and subjective elements. Meanwhile, the essential thing that arises from the effectiveness principle as the element of occupation is reflected by the international court decision in relation to the parameter of the state actions over a territory.

b). Conquest (Annexation)

In the classical era, conquest required something beyond mere seizure of territory by use of force. Similar to other modes of acquisition, there are two core elements that must be fulfilled, namely *corpus* and *animus*.[82] The first term constitutes a situation where the territory has been conquered by a

[80] Sefriani, *Op.Cit.*, p. 175.
[81] *Ibid.*
[82] R.Y. Jennings, *Op.Cit., p. 52.*

certain state, while the second term refers to an intention of the conqueror state to annex such territory.[83] Therefore, the existence of the conquest act must be followed by the formal statement of intention and disclosed to the interested states.

c). Accretion

The scenario of this acquisition refers to the circumstances when there is a territorial change caused by the natural process without any intervention by human beings.[84] To be more specific, it happens due to the establishment or extension of an area that was already connected with the existing territory before.[85] For example, the emergence of islands within the territory of a country automatically becomes a part of that country. In addition, there is no action needed for formal recognition as a requirement to obtain such rights over its new territory.[86]

d). Prescription

In prescription, a state can obtain such sovereignty over a territory which is actually under the sovereignty of another state (*de jure)*, by means of carrying its control with a peace and long period of time (*de facto*).[87] Nonetheless, numerous international law experts disagree that the prescription is a mode of territorial acquisition. They argued that there is no

[83] *Ibid.*
[84] Jawahir Thontowi and Pranoto Iskandar, *Op.Cit*, p. 182.
[85] *Ibid.*
[86] J.G. Starke, *Op.Cit*, p. 221.
[87] *Ibid.*

precedence of international law principles or previous court decisions which related to the prescription.

Nevertheless, Fauchille and Johnson require a prescription for three conditions.[88] First, there must be a possession of a state over a certain territory *(titre de souverain)*. Second, the acquisition must be carried out with peace and continuity. Lastly, the conduct of that state must be publicly disclosed. In relation to which, the fundamental question arises whether the parameter of state actions and the period of time are met. Thus, the international court is charged to determine such measures in order to settle the disputes between states.

e). Cession

International law acknowledges cession as a transfer of sovereignty over territory which generally uses a treaty between such states.[89] A sample illustration is like the transfer of "ownership" between one and another as in the national law. Consequently, it is applied the principle *nemo dat quod not habet* - a state cannot give what it does not have.[90] In other words, the acquiring state will only obtain sovereignty over a territory if the ceding state has legitimate sovereignty. Additionally, the transfer of sovereignty can be obtained either through a peaceful act or by force such as a war.

[88] Sefriani, *Op.Cit*, p. 178.
[89] Martin Dixon, *Op.Cit*, p. 151.
[90] *Ibid.*

f). Referendum

During its development, international law recognized another mode of acquisition in obtaining sovereignty over a territory, namely referendum. The practice of this scenario is a reflection of the manifestation or a follow-up from the existence of self-determination rights under international law.[91] To be legitimate, the process of referendum must be done directly with "one man one vote" and supervised by an authorised international body. One simple example is the opinion poll conducted by East Timor in 1999 in terms of asking its citizens to get an independence or still be an integral part of Indonesia. Then, it was supervised by the United Nations Transitional Administration in East Timor (UNTAET).[92]

C. United Nations

The United Nations was established on principles to protect future generations which derived from the end of World War II. Its mission and work are guided by the goals and principles outlined in its founding Charter and carried out through its numerous organs and specialised agencies. Maintaining international peace and security, defending human rights, giving humanitarian aid, promoting sustainable development, and upholding international law are among its activities.[93]

[91] Sefriani, *Op.Cit*, p. 180.
[92] *Ibid.*
[93] Harrington, Alexandra R., International Organizations and the Law, (New York: Routledge, 2018), p. 93.

Ending colonial dominance became crucial for the United Nations in achieving global peace and prosperity. The United Nations has made history by freeing millions of people from foreign colonial control. The anti-colonial zones of the United Nations contained two sorts of dependent populations. They were the trust zones over which the United Nations had direct control. Some people believe that the fight against colonialism gives them the right to secede from their newly formed independent state. The right to'self-determination' is limited to people living under foreign colonial domination.[94]

As an international organisation, the UN consist of several organs, such as:

a. General Assembly

This is the UN's main decision-making and representational Assembly. It is in charge of preserving UN ideals through its policies and recommendations. It is made up of all member countries, is led by a President elected by the members, and meets from September to December each year. It is expected to vote on critical topics with a 2/3 majority of those present. These include membership election, admission, suspension, and expulsion of members, as well as budgeting. Other matters are decided by majority vote.[95] It has the authority to offer recommendations on any subject, with the exception of issues concerning peace and security, which are the responsibility of the United Nations Security Council.

[94] Ibid.

[95] Dr. Rufai Muftau, *The United Nations at 70: The Journey So Far*, Journal of Education and Practice, Vol.7, No.3, 2016, p. 6.

b. Security Council

It is the UN's executive organ, and thus the most powerful of all the other organs. It is intended to make judgements promptly and effectively in order to put the UN Charter's Chapter vii enforcement measures into action whenever international peace and security are threatened. As a result, it has the authority to authorise the deployment of UN forces to areas where international peace is violated. It has the authority to order a cease-fire during hostilities and to impose sanctions on any country that fails to follow its instructions. It consists of five permanent and ten rotating members. The 10 members serve two-year terms, with member states elected on a regional basis by the General Assembly.

In terms of the veto, the five permanent members are responsible for ensuring international peace and security, and they have the final say on how that responsibility is carried out. The five permanent members have veto power over UN resolutions, allowing a permanent member to prevent the approval of any resolution. The ten non-permanent members are elected by the General Assembly for two years and are not immediately eligible for re-election. The election will be based on geographical distribution, with five representatives from Afro-Asia, one from Eastern Europe, two from Latin America, and two from Western Europe, among others. Furthermore, the General Assembly, the Secretary General, member states, and non-member states can bring disputes before it.

c. Secretariat

The Secretariat is in charge of carrying out the substantive and administrative work of the United Nations as instructed by the General Assembly, Security Council, and other organisations. The Secretary-General, who offers overall administrative leadership, is at the helm.

d. International Court of Justice

This body is in charge of judicial cases brought to it by any of its members. This Court was expected to carry on the work of the Permanent Court of International Justice (PCIJ), which was already in place under the former League of Nations Covenant. As a result, the ICJ is the UN's primary organ for conflict settlement in international issues. All UN members are ipso facto parties to the ICJ Statute under Article 93(1) of the Charter. According to Article 38 of the ICJ Statute, the Court's mission is to resolve any dispute submitted to it in accordance with international law.

e. Economic and Social Council

It contributes to the General Assembly's efforts to promote worldwide economic and social cooperation and development. It comprises 54 members that are elected for three years by the General Assembly. For a one-year term, the president is elected. Its responsibilities include gathering information, advising member countries, and making suggestions. Its subsidiaries include the United Nations Permanent Forum on Indigenous Issues, the United Nations Forum on Forests, the United Nations Statistical Commission, and the Commission on Sustainable Development.

f. Trusteeship Council

This body is one of the principal organs of the United Nations (UN), created to supervise the management of trust territories and to bring them to self-rule or independence. The council was formerly made up of governments that administered trust territories, permanent Security Council members who did not administer trust areas, and other members elected by the General Assembly. The council ceased activities upon Palau's independence in 1994.

D. The Principle of *Uti Possidetis Juris*

The doctrine of *uti possidetis juris* has been recognized under international law as a way in stipulating territories for newly independent states inherited from its colonial administrative borders at the time of independence.[96] The first idea was coming from Latin America, where the administrative division of the Spanish Empire in South America and reflected more precisely in the African states practise as contained in the resolution of the African Unity in 1964 explicitly.[97] Furthermore, the issue of this doctrine was discussed before the ICJ in the case of Burkina Faso vs Mali which has actually developed into the general concept of Customary of International Law.[98]

[96] Abraham Bell and Eugene Kontorovich, "Palestine, Uti Possidetis Juris, and The Borders of Israel", Arizona law review, Vol. 58:633, 2016, p. 635.

[97] Ria Tri Vinata, M.T. Kumala, P.J. Setyowati, *Implementation of the Uti Possidetis Principal as A Basic Claim For Determining Territorial Integrity of the Unitary State of Republic Indonesia*, International Journal of Business, Economics and Law, Vol. 24, Issue 2

[98] Ibid.

The Court specifically stated that *uti possidetis juris* is not a "special rule that is applicable to a specific system of international law" or to specific continents such as Latin America, where it originated, or post-colonial Africa. Rather, the principle is applicable to all situations involving the obtaining of a new independence.[99] For instance, the Court's statement has also been enriched by relevant state practice during the collapse of the Socialist Federal Republic of Yugoslavia (SFRY) and the Union of Soviet Socialist Republics (USSR). Another obvious example is the breakup of a unitary state, Czechoslovakia Federative Republic (CFR). The CFR ceased to exist on January 1, 1993, resulting in the formation of two independent states, the Czech Republic and the Slovak Republic.[100] As a result, it is clear in this case that the two former regions of a unitary state that was consensually dissolved agreed to apply *uti possidetis juris* and effectively delimited the international boundaries of the two new independent states based on their former administrative borders.

According to Prof. Chernichenko, such interpretation by the ICJ results in the creation of such new norms of customary international law. Furthermore, Prof. Lukashuk, another Russian scholar, argued that the ICJ's decisions and statements should be used as a primary source in interpreting existing norms of customary international law.[101] Accordingly, the application of *uti possidetis juris* beyond decolonisation to newly independent

[99] Burkina Faso v Mali.1986. – ICJ Reports. P. 566-583.

[100] Mirzayev F., "General principles of international law: principle of uti possidetis", Moscow Journal of International Law. 2017. No 3. P. 31-39.

[101] Ibid, p. 36.

states created as a result of the collapse of some states or separation from existing ones constituted a basis for the creation of a new customary international law norm at the time.

E. Self-Determination under International Legal Framework

It took considerable effort to settle the issue over whether self-determination was in actual fact a legal norm or merely a political notion. The view that "peoples must be able freely to express their views in subjects relating to their condition", which serves as a framework for a collection of more particular legal regulations, appears to be exact.[102] The United Nations Charter signed in 1945 demonstrated the commitment of the worldwide community of states to the self-determination of all peoples. Article 1(2) of the Charter specifies that a UN aim is to seek the establishment of good relations between nations “with respect for the principle of equal rights and people”.[103]

Furthermore, the International Trusteeship System, as regards Article 76, refers to the progressive growth of "self-government or independence" in the Trust Territory. The geographical component is significant, for Chapter XI as a declaration on non-self-governing territories which refers to "territories whose people have not attained a full measure of self-government" and the "the well-being of the inhabitants of these territories".[104]

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[102] Matthew Saul, *The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?*, Human Rights Law Review 11:4, Oxford University Press, 2011, p. 625.

[103] UN Charter, Article 1(2).

[104] Marija Batistich, *The Right to Self Determination and International Law*, Auckland University Law Review, no. 1013 (1995), p. 1019.

Beyond the UN Charter, the right to self-determination is a central part of a 1960 Declaration of the General Assembly on Colonial Countries and Peoples' Independence. This bold approach was based on the brief references in the Charter of Self-determination, which led to Resolution 1514 and 1541 (XV). The latter defined the role of the United Nations as being particularly relevant in the context of non-self-governmental territories, and in the former, the role was expanded to a requirement that such territories should be given rapid independence and that the State should refrain from using force against groups campaigning for that independence.[105] Other than that, the International Covenant on Civil and Political Rights (ICCPR) gives to inhabitants of independent states the right of self-determination. Article I set the right to participate in self-determination and Article 25 further describes the political involvement manner needed. Violation of these norms would allow a people to deny their right to self-determination, as "economic, social and cultural" institutions can only evolve through political engagement.[106]

In recent years, the UN General Assembly has requested two advisory opinions from the ICJ on issues concerning the right to self-determination. The first opinion addressed the legal implications of building a wall in occupied Palestinian territory.[107] The second opinion addressed the legality of Kosovo's unilateral declaration of independence under international law. Both requests allowed the ICJ to express its views on the scope and content

[105] *Ibid*, p. 1020.
[106] *Ibid.*
[107] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* Advisory Opinion, ICJ Reports 2004 136.

of the right. In the Wall Opinion, the Court did not provide a comprehensive account of the legal meaning of self-determination, it has been credited with confirming "previous jurisprudence concerning self-determination, reaffirming its status as an essential principle of international law and deeply rooted in the Charter itself".[108] While in the Kosovo Opinion, the Court highlighted the extensive debate over whether a right to secession exists as part of the law of self-determination "outside the context of non-self-governing territories and peoples subject to alien subjugation, domination, and exploitation".[109]

Hence, self-determination refers to people's legal right to decide their own destiny within international legal order. Moreover, self-determination is a fundamental principle of international law that stems from customary international law but is also recognized as a general principle of law and enshrined in a number of international treaties. The principle of self-determination outlines not only the obligation of states to respect and promote the right, but also the obligation to refrain from any forcible action that deprives peoples of such a right. The use of force to prevent a people from exercising their right to self-determination, in particular, is considered illegal and has been consistently condemned by the international community.

[108] See Gareau, '*Shouting at the Wall: Self-Determination and the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*' (2005) 18 Leiden Journal of International Law 489 at 505.

[109] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* Advisory Opinion, International Court of Justice, 22 July 2010, at para 82.

F. State Responsibility under International Law

The law of state responsibility deals with the provisions of whether there is a violation of international obligation conducted by a state and what are the consequences of such violation. In its development, the International Law Commission (ILC) had begun to formulate the provisions of state responsibility and produced the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) that had been circulated by the UN General Assembly in 2001.[110]

State responsibility is customary international law which is developed by state practices and judgment of international tribunals, of which numerous cases referred to the ARSIWA. The draft was adopted without a vote, with consensus on virtually all points and it has been followed closely by states. Despite the draft articles inevitably including progressive developments in international law, however, it is substantially a codification of customary international law. Furthermore, international courts and tribunals have cited the previous draft articles over the years. Hence, it continues to be influential with international courts and tribunals even though the ARSIWA are never turned into a new convention.[111]

The Concept of State Responsibility under ARSIWA

The existence of state responsibility is a reflection of the principles related to the notions of equality of states and external limitation towards

[110] Anthony Aust, *Handbook of International Law*, Second Edition, Cambridge University Press, 2010, p. 376.

[111] *Ibid*, p. 377.

sovereignty of the state, in terms of international responsibility when a state commits an internationally wrongful act which is causing loss or damage to another state.[112] The main point of ARSIWA is that the draft articles have a residual function. It means that they do not apply if there is specific international law regulating the matters of state's internationally wrongful acts.[113] One of examples of such *lex specialis* is Article of the Convention on the International Liability for Damage Caused by Space Objects 1972 which regulates joint and several liability for damage to a third state caused by a collision between space objects launched by two states.[114] Subsequently, Article 56 of ARSIWA upholds that the matters on state responsibility which are not regulated by the draft articles will be regulated by another applicable international law, including the liability for injurious activities that are not prohibited by international law.[115]

General Principles of ARSIWA

According to ARSIWA, an internationally wrongful act requires a breach of international obligation and such conduct or omission is attributable to the state under international law.[116] The draft articles also emphasize that the characterization of the state's conduct as an internationally wrongful act is regulated by international law, irrespective of its national law.[117] Therefore,

[112] Milka Dimitrovska, *The Concept of International Responsibility of State in the International Public Law System*, Institute for Research and European Studies, Journal of Liberty and International Affairs | Vol. 1, No. 2, 2015, p. 4.
[113] ARSIWA, art, 55.
[114] Anthony Aust, *Op.Cit*, p. 378.
[115] *Ibid.*
[116] ARSIWA, art. 2.
[117] ARSIWA, art. 3.

states cannot evade from a wrongful character of an act or omission on the pretext of complying with the national law.[118]

To be responsible, the conduct of the state must be attributable to it. The first and clearest circumstance is that the conduct of a State's organ of government or its agent on behalf of that state.[119] Next, the conduct of persons or entities that are not organs of state, however, is given power to exercise elements of governmental authority.[120] Other than those categories, an act may still be attributable to the state if such conduct or omission is directed or controlled by a state[121], exercising elements of governmental authority within the absence of constituted authority[122], or adopted by a state as its own.[123]

Notwithstanding that the conduct is attributable to the state, an internationally wrongful act will not be satisfied unless a breach of international obligation is established at the time of such conduct.[124] Article 14(1) stipulates that an internationally wrongful act has no continuing character. When a wrongful act is ceased but the effects continue, it is merely relevant to the amount of compensation.[125] The concept that a wrongful act has a continuing character is particularly important if a court has no jurisdiction when the act began but it acquires jurisdiction later.[126]

[118] ARSIWA Commentary, Art. 3, para. 1.
[119] ARSIWA, Art. 4; ARSIWA Commentary, Art 4, para. 1.
[120] ARSIWA, Art. 5.
[121] ARSIWA, Art. 8.
[122] ARSIWA, Art. 9.
[123] ARSIWA, Art. 11.
[124] *Ibid*, Art. 13.
[125] Anthony Aust, p. 383.
[126] *Ibid.*

Precluding Circumstances from Liability

There are certain circumstances that can be used by a state to defend itself from claimants of another party in relation to the state's responsibility.[127]

1. The implementation of sanctions on the basis of international law. The act of states is precluded from wrongfulness if it constitutes a lawful measure in conformity with the UN Charter. Chapter VII of the Charter is a strong basis for the use of force by states in order to end violation of international law conducted by a particular state.

2. *Force Majeure,* this exception applies when unforeseen events occur beyond the control of one state that make it materially harmful to another state.

3. State Necessity, this scenario can be used by states in facing a state emergency in order to minimize the possible loss. It may not be invoked as an excuse unless the act is the only way to safeguard an essential interest against a huge jeopardy. Thus, there is an element of intention and predictable measure which differentiate it from *force majeure.*

Consequences of International Wrongful Acts

The legal consequences of an internationally wrongful act do not affect the duty to comply with an international obligation that has been breached.[128] It means that the violation does not terminate the obligation. These obligations fall into two forms called cessation with the assurance of non-

[127] Sefriani, p. 270.
[128] ARSIWA, Article 29.

repetition[129] and reparation, including moral and material damages.[130] Furthermore, the forms of reparations covers "restitution, compensation and satisfaction, either singly or in combination."[131]

Restitution means that the state is responsible under an obligation to re-establish such circumstances that existed before the wrongful act was committed, in so far as does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.[132] Additionally, the release of detainees and the return of property are simple examples. Moving to the second form, compensation constitutes a reparation for actual losses when the damage is not made good by restitution.[133] For instance, compensation can be imposed to a state for the violation which is causing environmental damage. Lastly, satisfaction applies insofar as it cannot be made good by restitution or compensation. The State may have to provide an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality in discharge of its obligation to make full reparation, so long as it does not take a form humiliating to the responsible State.[134]

[129] *Ibid*, Article 30.
[130] *Ibid*, Article 31.
[131] *Ibid*, Article 34.
[132] ARSIWA, Art. 35.
[133] *Ibid*, Art. 36.
[134] *Ibid*, Art. 37.

G. Territorial Sovereignty in Islamic perspective

The characteristics of sovereignty under islamic teachings fall into two distinct features, which are based on trusteeship from Allah SWT and the rests on personal ties between the ruler/leader and umma (citizens).[135]

i. Trusteeship from Allah SWT

Islam has emphasized that sovereignty is in the hands of the Sharia, not in the hands of the leader or citizens. The basis of such sovereignty is mentioned in the following verses of the Quran:

قُلْ إِنِّى عَلَىٰ بَيِّنَةٍ مِّن رَّبِّى وَكَذَّبْتُم بِهِۦ ۚ مَا عِندِى مَا تَسْتَعْجِلُونَ بِهِۦٓ ۚ

إِنِ ٱلْحُكْمُ إِلَّا لِلَّهِ ۖ يَقُصُّ ٱلْحَقَّ ۖ وَهُوَ خَيْرُ ٱلْفَٰصِلِين

Say, ˹O Prophet,˺ "Indeed, I stand on a clear proof from my Lord—yet you have denied it. That ˹torment˺ you seek to hasten is not within my power. It is only Allah Who decides ˹its time˺. He declares the truth. And He is the Best of Judges" (QS. Al-An'am: 57)

قُلِ ٱللَّهُمَّ مَٰلِكَ ٱلْمُلْكِ تُؤْتِى ٱلْمُلْكَ مَن تَشَآءُ وَتَنزِعُ ٱلْمُلْكَ مِمَّن تَشَآءُ

ۖ وَتُعِزُّ مَن تَشَآءُ وَتُذِلُّ مَن تَشَآءُ ۖ بِيَدِكَ ٱلْخَيْرُ ۖ إِنَّكَ عَلَىٰ كُلِّ شَىْءٍ قَدِير

Say, ˹O Prophet,˺ "O Allah! Lord over all authorities! You give authority to whoever You please and remove it from who You please; You honour whoever You please and disgrace who You please—all good is in Your Hands. Surely You ˹alone˺ are Most Capable of everything". (QS. Ali 'Imran: 26)

[135] Emilia Justyna Powell and Steven McDowell, *Islamic Sovereignty Norms and Peaceful Settlement of Territorial Disputes*, iCourts Working Paper, No. 47, 2016, p.

From those two verses, a leader and its citizens within the state must comply with the Sharia in carrying out their duties. They are constrained to act as the vicegerent of Allah SWT and the ruler has no authority to make its own laws, but to implement God's laws instead. Hence, a sharia-based social order is the quintessence of Allah's sovereignty on earth where state sovereignty in islamic teachings is a form of trusteeship rather than absolute right.[136]

ii. Personal Ties between the Ruler and Umma

Unlike the Westphalian concept of sovereignty, islamic law embraces a sense of belonging that is not defined in territorial terms, but along religious lines instead. In other words, the essence of sovereignty is not concerned with effective control over territory within defined territory. However, such sovereignty follows persons as followers of a certain religion. Traditional Arab tribes in the pre-colonial Islamic world is an example where a possession of territory was inherently fuzzy due to they were bounded by the movements of nomadic tribes pledging for a certain religion. Accordingly, territorial sovereignty was justified by an environmental provision where the Muslim society can practice their faith at that time.[137]

iii. Territorial Disputes Settlement

The Islamic government may have disputes with the government with which it has diplomatic relations, or even the government which has no

[136] *Ibid*, p. 11.
[137] *Ibid.*

relationship with it. In this case, Islam, which does everything possible to save human and Muslim lives, should accept peaceful means in the first stage based on its principles; for example, Muslims should accept international arbitration.[138] The Islamic legal system provides for a type of institutional arbitration, which can be incorporated into international arbitration. In arbitration, it does not matter whether the parties are two people, two groups, or two countries.[139] Therefore, if the governments of the two countries freely choose individuals, groups or international organizations as judges in the dispute, both parties must submit the judgment to that person or authority after the Islamic judgment, and must accept the result of the arbitration.

[138] Omid Andalib Firoozabadi, *Resolving Disputes among Islamic Countries within the Framework of Organization of Islamic Conference*, Mediterranean Journal of Social Sciences, MCSER Publishing, Rome-Italy, Vol 7 No 4, 2016, p. 685.

[139] *Ibid.*

CHAPTER III

ANALYSIS OF INTERNATIONAL COURT OF JUSTICE ADVISORY OPINION CONCERNING CHAGOS ISLANDS

A. Legal Considerations of the ICJ

This section will elaborate on the decision of ICJ in upholding its jurisdiction towards the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in a 1965* advisory opinion, including its legal consideration according to international law. Thus, this section will discuss what are the legal considerations of the ICJ in making decisions within its advisory opinion.

I. The Separation of Chagos Islands is Contradict with the Right to Self Determination

In order to determine whether the decolonisation process of Mauritius was unlawful, it must consider the substance of the applicable law and the relevant period of time in identifying the applicable international law itself. Accordingly, this analysis will be elaborated into two discussions as follows:

1.) The Substance of the Applicable Law.

Based on this case, the ICJ is required to identify the applicable international law during the decolonisation process of Mauritus between the separation of Chagos Islands from its territory in 1965 and its independence in 1968. Then, when assessing the applicable rules of international law, the Court must determine the notion, scope and content regarding the right to self-determination during the decolonisation process of Mauritius itself. Within

this context, the Court plays a role to ensure when the right to self-determination crystallises as customary international law and binding to all states.

The notion was contained in the UN Charter, Article 1(2) recalls one of its purposes to respect the principle of equal rights and self-determination of peoples.[140] Furthermore, the adoption of resolution 1514 (XV) of 14 December 1960 clarifies the content and scope of the right to self-determination. Its preamble declares that "the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations".[141] The resolution further provides that "immediate 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".[142] Therefore, there is a clear relationship between resolution 1514 (XV) and the decolonisation process of Mauritus following the separation of Chagos Islands.

The resolution 1514 (XV) has a declaratory character with respect to the principle of the right to self-determination of peoples which was reiterated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States based on the UN Charter.[143] Hence,

[140] UN Charter, Article 1(2)
[141] UN Resolution 1514 (XV),
[142] *Ibid.*
[143] UN General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States*, A/RES/2625(XXV), 1971.

the declaration was confirming its normative character under customary international law by acknowledging the right to self-determination of peoples as one of the basic principles under international law.

Furthermore, Principle VI of General Assembly resolution 1541 (XV) mentioned the implementation of right to self-determination in a non-self-governing territory can be reached through: (a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State.[144] These provisions provide people of non-self-governing territory to exercise their rights freely and with genuine will of the people concerned which must be respected by administering power. As a consequence, any detachment of a non-self-governing territory conducted by administering power constitutes a violation of right to self-determination, unless based on free expression or genuine will of people concerned.

After the adoption of resolution 1514 (XV), the General Assembly also issued several resolutions concerning the decolonisation process particularly in relation to the Mauritius case. For instance, resolution 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967 noted 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[145]

[144] UNGA Resolution 1541 (XV), Principle VI.
[145] UNGA Resolution 2066(XX).

and the administering Power must take no action which would dismember the Territory of Mauritius and violate its territorial integrity.[146]

2.) The relevant period of time in identifying the applicable law.

In this matter, the General Assembly set the period of the decolonisation process of Mauritus between the separation of Chagos Islands from its territory in 1965 and its independence in 1968. Accordingly, the ICJ is required to identify the applicable international law during that process. Since the adoption of the UN Charter and the Resolution 1514 (XV) on 14 December 1960, the Court is of the view that the determination of the applicable law must focus on the development of the law on self-determination. Additionally, the Court may also refer to the legal instruments after the period in question, when those instruments confirm or interpret such pre-existing rules or principles.

According to UNGA Resolution 1514 (XV), all the peoples have the right to self-determination and stipulates that any step shall be taken immediately to enable all peoples whose territories which have not yet attained independence to enjoy complete independence and freedom. Furthermore, the Resolution 1514 (XV) also requires free expression and genuine will of the peoples to exercise their right to self-determination. In another provision, Resolution 2066 (XX) specifically invites the administering power within this case, which is the government of UK, to take no action which would dismember the Territory of Mauritius and violate its

[146] *Ibid*, Paragraph 6.

territorial integrity. Further, the resolution also suggests the UK's government to take effective measures with a view to the immediate and full implementation of resolution 1514 (XV).

During that process, the Premier and other representatives of Mauritus, which was still under the administering power of the UK, agreed in principle to the detachment of Chagos islands from Mauritus's territory under the condition that the islands could be returned later on. This consent was expressed through the Lancaster House agreement signed on 23 September 1965. However, such detachment was followed by the establishment of British Indian Ocean Territory (BIOT) which was actually the UK creating a new colony. Moreover, more than a thousand Chagossians were deported by force from their islands as part of the UK's policy to build military bases.[147]

From the above facts, it is concluded that the decolonisation process of Mauritius was unlawful due to the separation of Chagos Islands through Lancaster Agreement in 1965 was in contravention with UNGA Resolution 1514 (XV) and 2066 (XX).

II. Chagos Islands belong to Mauritius in Accordance with *Uti Possideetis Juris*

Uti possidetis juris is widely recognised as the customary international law doctrine that has been critical in defining territory sovereignty in the post-colonial age.[148] In the *Frontier Dispute*, the ICJ stated that the territorial

[147] Owen Bowcott, *UN court rejects UK's claim of sovereignty over Chagos Islands*, the Guardian, 25 February 2019.

[148] Malcolm N. Shaw, *The Heritage of States: The Principle of Uti Possidetis Today*, 67 BRIT. Y.B. INT'L L. 75, 115 (1996).

boundaries originating from the international borders established by the colonial countries must be respected and defended by the new countries that have gained independence.[149] Furthermore, outside of the case of Burkina Faso vs. Republic of Mali, the ICJ says that the *uti possidetis* concept can be applied to ex-colonial countries without respect to the legal and political status of the relevant border-side entities.

According to the facts, Chagos islands were obviously an integral part of Mauritius before its detachment in 1965. The detachment itself is considered unlawful due to contradict with the UN Resolution 1514.[150] Hence, Chagos Islands belongs to Mauritius which in line with the doctrine of *uti possidetis juris* that provides the territorial boundaries of a country following its colonies or predecessors before independence.

III. The Consequences of Continued Administration by UK of the Chagos Islands under International Law

Having regard to the conclusion that the decolonisation process of Mauritius in 1968 was unlawful under international law, it is further necessary to examine the consequences arising from the UK's continued administration of the Chagos islands. In this matter, the first thing is that the United Kingdom has an obligation to complete Mauritius' decolonisation, as well as a right on Mauritius' part to have its right to self-determination and territorial integrity fulfilled and maintained.

[149] ICJ Report, 1986, p. 556 Paragraph 24
[150] ICJ AO Chagos, para. 35.

In relation to which, the conduct of the UK within Chagos islands through its continued administration constitutes an internationally wrongful act entailing international responsibility. Under international law, reparations may be required whenever an existing international obligation is breached.[151] With respect to the present case, the law on state responsibility therefore applies within such circumstances where the UK is obliged to bring to an end its administration of the Chagos islands as rapidly as possible.

Since the right to self-determination is one of the fundamental principles under international law which is reflected in its *erga omnes* character, all states have to respect that right. The necessary measures should be taken by the UN General Assembly as its functions, for ensuring the completion of the right to self-determination related to the decolonisation process of Mauritius. Additionally, in order to exercise its substantive right, Mauritius' endeavours to settle the issue of the Chagos islands against the United Kingdom through bilateral and third-party procedures do not automatically change the core of the issue as a matter of decolonisation, nor do they deprive the General Assembly of its mandate on decolonisation under the UN Charter. Therefore, all member states must cooperate with the United Nations that should be addressed by the General Assembly to put those measures into effect with regard to the resettlement of the Chagos islands dispute.

[151] Malcolm N. Shaw, Op. Cit.

B. Possibility Legal Action Taken by Mauritius Against United Kingdom

It should be noted that the discussion below will only focus on the steps provided within international law irrespective of political situations and the existing international relations. In this section, the writer will deliver possible legal action that can be taken by Mauritius if the United Kingdom did not perform the ICJ's advisory opinion which has no binding force and insists on continuing its administering power over Chagos islands. The function of the Security Council as an organ of the UN still has a significant role to protect on behalf of the international community, especially a responsibility in maintaining international peace and security. Hence, finding the means and procedures of Security Council Resolution is needed in the present case. Indeed, such steps are necessary to build trust and reduce obfuscation in breaking the political impasse and reaching an overall settlement.

i. The Responsibility of Security Council over Chagos Islands Case

The increase of Security Council's activities since the end of the Cold War is perceived as positive development in the implementation of the international responsibility to protect peace and security. Article 24(1) of the Charter stipulates that the Security Council has the primary responsibility for the maintenance of international peace and security.[152] According to this Article, the word "responsibility" defines the authority and competence of the Security Council in matters related to the protection of international peace

[152] UN Charter, Article 24(1).

and security.[153] In other words, a Security Council declaration made in the exercise of its primary responsibility under Article 24 could constitute a decision under Article 25, with Member States expected to act in response to the declaration made on their behalf. Therefore, the Security Council would be failing to fulfil its responsibility if it did not perform any action as supposed or expected to do so.[154]

Furthermore, the provision of Article 25 was strengthened by the International Court of Justice through its Advisory Opinion in 1971. In *the Namibia Opinion*[155], the Court concluded that Article 25, which provides Security Council decisions with legal binding effect on Member States, applied not only to Chapter VII judgements but also to general implied powers decisions.[156]

In relation to which, the continued presence of the United Kingdom's administering power over Chagos Islands has violated the territorial integrity of Mauritius. A few steps have been taken by Mauritius including the request of ICJ's Advisory Opinion to construe the status of United Kingdom presence in Chagos Islands. However, the United Kingdom argued that such an opinion has no binding force and insisted on withdrawal from Chagos Islands. Accordingly, the Security Council must have the capability and power to

[153] J. Delbruck, "*The Charter of the United Nations: A Commentary*", 2nd Edition, 2002, p. 442.

[154] L. M. Goordich, E. Hambro and A.P. Simons, "*Charter of the United Nations: Commentary and Documents*", 3rd revised edition, 1969, p. 203.

[155] *Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970),* Adrisory Opinion, I.C.J. Reports 1971, p. 52.

[156] Ibid, p. 52-54.

decide on the necessary steps for the resolution of a given conflict and the restoration of international peace and security.[157]

ii. The Issuance of Security Council's Resolution as a Solution for Mauritius

As already mentioned above, Article 33 paragraph 1 of the Charter bound the parties to seek a peaceful solution to any dispute occurring to them. Article 33(1) of the UN Charter runs as follows:

> *The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.*

The purpose of this clause is to place a responsibility on the parties to a disagreement: first and foremost, the need to seek a solution to the issue by peaceful means of their own choosing. However, if the parties have failed to settle their dispute under the provision of such article, then Article 37 applies. It is stated that:

1. *Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.*
2. *If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.*

[157] Max Planc, *Yearbook of United Nations Law*, volume 12, 2008, p. 45-111. (p. 50)

Based on above provisions, when a complaint about a contested nation is presented to the UN Security Council, the first step is for the Council to recommend a method of resolving the problem to the parties involved, which may include a negotiation, so that a peaceful resolution can be made. In some circumstances, the Council conducts its own investigation and mediation. The Council has the authority to designate a special representative and suggest that the Secretary-General use his good office to mediate such disputes that threaten peace and security by assisting the parties in understanding the principles of peaceful settlement.

In the present case, Mauritius can refer to Article 37 as mentioned above to seek a solution through the UN Security Council who has capability and power to formulate a peaceful settlement toward the Chagos Islands dispute. It is necessary for the Security Council to issue its resolution containing recommendations or explicit means related to the continuance of United Kingdom's administering power within Chagos Islands. Furthermore, according to Article 25 of the Charter, all member states are obliged to carry out the decision of the Security Council. Indeed, such resolution has significant effect toward the present case due to it encouraging the international community to support Mauritius and push the United Kingdom to withdraw from Chagos Islands.

Accordingly, the provisions provided by the UN Charter mentioned above give the Security Council power and capability to issue recommendations or resolutions that can be carried out by the international

community. This gives great hope for Mauritius to fight for its rights to the Chagos Islands which have been under the administrative power of the United Kingdom.

CHAPTER IV

CLOSURE

A. Conclusion

The issuance of ICJ advisory opinion in February 2019 concerning Chagos Islands has triggered a numerous legal question, especially within the scope of international law. The Court determined that the United Kingdom was unlawfully separating the Chagos islands from Mauritius before its independence in 1968. Then, the Court also urged the United Kingdom to put an end its administrative power over Chagos islands as soon as possible. However, the United Kingdom refused the ICJ advisory opinion and insisted on continuing its administration over Chagos islands under the pretext that the advisory opinion has no binding force. For that reason, this thesis has examined the discussions based on two questions: why the ICJ determined that the UK's administrative power over Chagos islands is unlawful, and what are the legal actions that can be done by Mauritius related to the Chagos Islands. Hence, this study found that:

i. The Court has jurisdiction based on article 65(1) to give its advisory opinion having regard to the legal questions requested by the General Assembly through its resolution 71/292 concerning Chagos Islands. In relation to the legal considerations, the Court considers that the decolonisation process of Mauritius was incompatible with the law on self-determination and Chagos islands belong to Mauritius according to *uti possidetis* principle. The Lancaster agreement, which separated the

Chagos islands from Mauritius, violated Principle VI of General Assembly 1541 (XV), which demands free speech and the genuine will of Chagossians to exercise their right to self-determination. Furthermore, as the administering authority, the UK failed to respect Mauritius' territorial integrity, including the Chagos Islands, which was in accordance with Resolution 2066 (XX) as the obligations arising under international law. As a result, when Mauritius gained independence in 1968, the decolonisation process was not legally finished and Chagos island is considered as integral part of Mauritius.

ii. The legal action that can be taken by Mauritius is to ask Security Council to issue a resolution containing recommendations or peaceful settlement towards the dispute related to Chagos Islands. Such means are provided under article 33-37 of the Charter which also give capability and power to the Security Council plays its role to maintain international peace and security. Moreover, Article 25 also obliged all member states to carried out the decision that has been made by the Council so that the Security Council's resolution will give significant effect to the settlement of the dispute over Chagos Islands.

B. Recommendation

Based on the above legal issues, the author recommends that:

i. The United Kingdom must withdraw its administrative power from the Chagos islands as soon as possible. It is due to the decolonisation process of Mauritius is not compatible with the law on self-determination. Moreover, the continued administration of the UK's authority constitutes an internationally wrongful act which interfere territorial integrity of Mauritius. Therefore, United Kingdom has an obligation under the law on state responsibility to cease its administration in Chagos islands as a form of restitution.

ii. Urge the Security Council to make a draft resolution regarding the settlement of the dispute between Mauritius and United Kingdom over Chagos Islands. Further, inviting all member states to follow the resolution that has been made by the Council in order to uphold and maintain the international peace and security.

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