The 50th anniversary of the Declaration on Friendly Relations and its Role in the Jurisprudence of the International Court of Justice

El 50º aniversario de la Declaración sobre las Relaciones de amistad y su papel en la Jurisprudencia de la Corte Internacional de Justicia

Ángela Trujillo del Arco
PhD en Derecho Internacional Público
Universidad Carlos III de Madrid
antruarc@gmail.com
http://orcid.org/0000-0002-5347-4571

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Abstract: In commemoration of the fifty-year anniversary of the adoption of the United Nations General Assembly resolution 2625 (XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, it is fitting to assess the current relevance of this document in the international legal order. An in-depth study of the contentious cases and the advisory opinions of the International Court of Justice allows to demonstrate that this instrument is not a mere declaration. On the contrary, it will be shown that, in the present day, it is a key instrument in the resolution of disputes between States.

Keywords: Declaration on Friendly Relations, United Nations General Assembly Resolutions, Customary International Law, International Court of Justice.

Resumen: En conmemoración de los cincuenta años de la adopción de la resolución 2625 (XXV) de la Asamblea General de las Naciones Unidas, *Declaración sobre los principios de derecho internacional referentes a las relaciones de amistad y a la cooperación entre los Estados de conformidad con la Carta de las Naciones Unidas*, es pertinente valorar la relevancia actual de este documento en el ordenamiento jurídico internacional. Un detallado estudio de los casos contenciosos y las opiniones consultivas de la Corte Internacional de Justicia permite demostrar que este instrumento no es una mera declaración. Muy por el contrario, se demostrará que, hoy en día, es un instrumento clave en la resolución de disputas entre los Estados.

Palabras clave: Declaración sobre las Relaciones de Amistad, Resoluciones de la Asamblea General de las Naciones Unidas, Costumbre Internacional, Corte Internacional de Justicia.

Summary: 1. INTRODUCTION. 2. THE BIRTH OF THE DECLARATION ON FRIENDLY RELATIONS. 3. THE DECLARATION ON FRIENDLY RELATIONS AND THE ICJ: MORE THAN A MERE DECLARATION. 3.1. Western Sahara Advisory Opinion. 3.2. Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). 3.3. Advisory opinion on the Legality of the Threat or Use of Nuclear Weapons. 3.4. Advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. 3.5. Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda). 3.6. Advisory Opinion on the Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo. 3.7. Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965. 4. CONCLUSIONS. 5. BIBLIOGRAPHIC REFERENCES.

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1. Introduction

The year 2020 marked the 50th anniversary of the adoption of the General Assembly resolution 2625 (XXV), which contains the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*.[1] The Declaration lists seven basic principles of international law and develops its content with the aim, expressed within its preamble, to constitute a landmark in the development of international law and relations among States. Nonetheless, the document was conceived as a declaration contained in a resolution of the General Assembly of the United Nations, which was not initially perceived to be very encouraging from a legal point of view in terms of its binding nature. Certainly, detractors had a point to make. However, time has passed and it is worth re-evaluating this issue since, half a century after its approval, this assessment does not seem to hold true anymore. In effect, an in-depth analysis of the jurisprudence of the International Court of Justice (ICJ) will show that the role that the Declaration on Friendly Relations was to play in the international legal order has taken an unexpected turn.

2. The birth of the Declaration on Friendly Relations

In the year 1962, the General Assembly of the United Nations echoed the vital significance of the purposes and principles enshrined in Articles 1 and 2 of the Charter of the United Nations and their application to ensure peaceful international coexistence. In particular, the body stressed the paramount importance of the principles of international law concerning friendly relations and co-operation among States and, making use of the prerogative attributed by the Charter in its Article 13, resolved to undertake a study of them «with a view to their progressive development and codification, so as to secure their more effective application».[2]

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[1] United Nations General Assembly resolution 2625 (XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, A/RES/25/2625 (24 October 1970), (hereinafter, the Declaration, the Declaration on Friendly Relations or the resolution 2625 (XXV)).

[2] United Nations General Assembly resolution 1815 (XVII), *Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations*, A/RES/17/1815 (18 December 1962).

To accomplish the task, the General Assembly established a *Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States* composed of Member States appointed by the President of the former body. The Special Committee was first requested to draw up a report on four principles, namely, the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; the principle that States shall settle their international disputes by peaceful means in such a manner that international peace, security and justice are not endangered; the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter; and the principle of sovereign equality of States.[3] The first meeting took place in Mexico City in 1964 and resulted in the adoption of a report where it soon became clear that there would be work to do in order to reach a consensus on the scope and content of these principles. At its twentieth session, the General Assembly decided to reconstitute the Special Committee enlarging the number of countries[4] and the object of study which would encompass thereafter the three principles remaining, to wit, the duty of States to co-operate with one another in accordance with the Charter; the principle of equal rights and self-determination of peoples; and the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter. The expected outcome was to submit a comprehensive report which would enable the General Assembly to adopt a declaration containing an enunciation of the seven principles.[5]

At the time, this initiative did not go unnoticed. In the 1960s, the work proposed by the General Assembly awakened interest within the scientific community where it was said that «[t]here can no longer be doubt that a signif-

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[3] United Nations General Assembly resolution 1966 (XVIII), *Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations*, A/RES/18/1966 (16 December 1963).

[4] The new Special Committee, as reconstituted, was composed of the following thirty-one Member States: Algeria, Argentina, Australia, Burma, Cameroon, Canada, Chile, Czechoslovakia, Dahomey, France, Ghana, Guatemala, India, Italy, Japan, Kenya, Lebanon, Madagascar, Mexico, Netherlands, Nigeria, Poland, Romania, Sweden, Syria, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela and Yugoslavia.

[5] United Nations General Assembly resolution 2103 A (XX), *Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations*, A/RES/20/2103 (20 December 1965).

icant segment of mankind is in search of new law» and that the enumeration of principles of international law under study indicated the «dissatisfaction with existing international law as to what constitutes aggression; what constitutes domestic jurisdiction; existing mechanisms for peaceful settlement of disputes; and what remains as the vestige of colonialism».[6] In this arena, it also raised the question of the appropriateness on the fact that the preparatory work of the codification of international law was carried out by an *ad hoc* body of the General Assembly and not by the International Law Commission (ILC).[7] In this respect, it was highlighted that, although the work was a legal one, it was «inextricably linked to the realities of international policies» and that the fact that it was performed by representatives of States, rather than independent experts as in the ILC, underscored the political significance of the work.[8] Those State representatives came from different regions, including non-western ones which held different interests and saw the need to «draw up instruments with which to reassess some of the fundamental assumptions of international law». For example, developing nations seeking further decolonisation were aiming to set up guarantees safeguarding international respect for their sovereignty whilst Communist nations would had been «eager to eliminate 'the remnants of inequality in the relations between states' because they, like the 'new' states, had not or had not sufficiently participated in the formation and development of the law governing those relations».[9] This plurality has been pointed out as an interestingly distinctive feature of that context given that it gathered participants in the world power process «other than the two main original protagonists over coexistence, the Soviet bloc and the West, to enter the debate and to make of the concept of coexistence (friendly relations) an intellectual-ideological base for re-writing or re-ordering, in present-day terms, of old international institutions and old international law doctrine».[10] In any case,

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[6] HAZARD, J.N., «The Sixth Committee and New Law», *The American Journal of International Law*, vol. 57, 1963, pp. 604-13, pp. 604, 608.

[7] LEE, L.T., «The Mexico City Conference of the United Nations Special Committee on Principles of International Law Concerning Friendly Relations and Co-Operation among States», *International & Comparative Law Quarterly*, vol. 14, 1965, pp. 1296-310, p. 1306.

[8] STARR, R., «United Nations Affairs: 'Frendly Relations' in the United Nations», *The International Lawyer*, vol. 2, n.º 3, 1968, pp. 519-542, p. 542.

[9] HOUBEN, P-H., «Principles of International Law Concerning Friendly Relations and Co-Operation Among States», *The American Journal of International Law*, vol. 61, n.º 3, 1967, pp. 703-736, p. 703.

[10] MCWHINNEY, E., «The 'New' Countries and the 'New' International Law: The United Nations' Special Conference on Friendly Relations and Cooperation among States», *The American Journal of International Law*, vol. 60, 1966, pp. 1-33, p. 2.

back then, there was the feeling that, «whatever its shortcomings», the Special Committee could register a significant achievement by providing a statement on the manner in which the Member States of the United Nations were willing to respect certain basic principles of the Charter.[11]

Six sessions took place between 1964 and 1970 where many difficulties were experienced in reaching agreed formulations in view that the list of principles involved «most of the fundamental areas of inter-state relationships» and that the Special Committee worked in the base of unanimity so that the final document would «be regarded as an authoritative statement of key principles of the Charter».[12] The *travaux* resulted in the adoption of the General Assembly resolution 2625 (XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*. The fact that the General Assembly looked to expedite the work of the Special Committee with a view to adopt the document during the commemorative session of the twenty-fifth anniversary of the United Nations is a clear indication of the significance that was attributed to the Declaration in the realm of the international organization.[13] Nonetheless, even if its relevance was undeniable, opinions were not aligned as to whether the document represented a mere recommendation or a statement of binding legal rules.

In effect, differences of opinion among Members of the United Nations were raised as soon as it was expressed that the formulations prepared by the Special Committee could serve as a basis for preparing separate conventions. Some representatives were in favour of the production of a declaration codifying and developing certain Charter Articles under the consideration that the adoption of such a kind of instrument would not raise objections and that they had proved to be of great practical importance becoming, in some instances, part of the common law of mankind through general acceptance. Other expressed doubts about the utility of non-binding declarations proclaiming principles already binding upon States under the Charter. The ones who held

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11 Starr, R., *op. cit*., footnote 8, p. 542.

12 Rosenstock, R., «The Declaration of Principles of International Law concerning Friendly Relations: a Survey», *American Journal of International Law*, vol. 65, 1971, pp. 713-35, pp. 713 y 714.

13 See, United Nations General Assembly resolution 2533 (XXIV), *Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations*, A/RES/2533(XXIV) (8 December 1969).

this position maintained that where there had been failures on the observance of the Charter principles, this had not been due to its lack of clarity but to the fact that certain States were not resolved to support any international system of law, which is why mere declarations would not be enough to strengthen the application of the principles. Finally, it was also said that the Special Committee had to remember the distinction between the *lex data* and the *lex ferenda* and, thus, keep in mind that it was legitimated to explain and comment on the principles, but it could not go beyond that function and distort the meaning of the Charter.[14]

As it is now well known, the result of the sessions was a declaration containing the seven principles approved through a resolution of the General Assembly which, as such, there was recognition that, from a legal point of view, it had to be considered as an instrument of a purely hortatory value.[15] Nonetheless, it has been highlighted how, at the time of the adoption of the Declaration, even if all delegates knew that the document would be regarded as legally non-binding, «they were also aware that it would have a significant degree of symbolic power».[16] Effectively, the instrument was received in the 1970s as representing a «very substantial contribution to clarification of the key concepts of international law», which was highlighted in the United Nations as an example of the type of evolution that better served the needs of the international community in those days.[17] In a similarly positive fashion, it was said that the practice of the political organs of the United Nations could contribute to the development of customary international law.[18] That vision should not be disregarded as in time it would be proven to be right.

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[14] United Nations, General Assembly, *Consideration of principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations: Report of the Special Committee on Principles of International Law converning Friendly Relations and Co-operation among States*, Nineteenth session, A/5746 (16 November 1964), paras. 19-24.

[15] ARANGIO-RUIZ, G., *The UN Declaration on Friendly Relations and the System of the Sources of International Law*, Netherlands, Sijthoff & Noordhoff, 1979, p. 71.

[16] MOYN, S.; ÖZSU, U., «The Historical Origins and Setting of the Friendly Relations Declaration», in *The Friendly Relations Declaration at 50: A Study of the Fundamental Principles of International Law After Half a Century*, Jorge E. Viñuales (ed.), Cambridge, Cambridge University Press, 2020, pp. 23-47, p. 32.

[17] ROSENSTOCK, R., *op. cit.*, footnote 12, p. 735.

[18] HIGGINS, R., «The United Nations and Lawmaking: The Political Organs», *The American Journal of International Law*, vol. 64, n.º 4, pp. 37-48, p. 48.

3. The Declaration on Friendly Relations and the ICJ: more than a mere Declaration

The Declaration on Friendly Relations was initially considered as legally non-binding and the principles of international law enshrined therein are also contained in other instruments.[19] However, this does not mean that it is powerless. Certainly, its use has shown that it is more than a mere declaration and that it is able to play a crucial role in ensuring coexistence between States. Undoubtedly, its recourse by the International Court of Justice proves this.

3.1. *Western Sahara Advisory Opinion*

The first time the ICJ resorted to the Declaration on Friendly Relations was when the Court issued the *Western Sahara Advisory Opinion* of 1975. In the facts, the General Assembly requested the ICJ to give an advisory opinion on the question of whether Western Sahara was, at the time of colonisation by Spain, a territory belonging to no one and on what were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity. The Court would conclude affirming that the materials and information presented did not establish any tie of territorial sovereignty between any of them and the territory of Western Sahara. But what is more relevant here is that the Court, during its analysis, sets out the basic principles governing the decolonisation policy of that body including, among them, those established on the Declaration on Friendly Relations. Specifically, the Court first stated that the basis of the process of decolonisation was provided by General Assembly resolution 1514 (XV), complemented in certain aspects by resolution 1541 (XV) which contemplates for non-self-governing territories more than one possibility, namely, independence, association or integration. And then, it included the principle of equal rights and self-determination of peoples according to the Declaration, by virtue of which, States have the duty to promote an end to

[19] Thus, for example, prior to the adoption of the Declaration on Friendly Relations, the Charter of the Organization of American States (Organization of American States (OAS), *Charter of the Organisation of American States*, 30 April 1948) already contained certain principles enshrined in the resolution 2625 (XXV) and, following its approval, the same is true of the Helsinki Final Act of 1975 (Organization for Security and Co-operation in Europe (OSCE), *Conference on Security and Co-operation in Europe (CSCE): Final Act of Helsinki*, 1 August 1975).

colonialism, having regard to the freely expressed will of the peoples to choose independence, association, integration or to emerge into any other political status.[20]

It is certainly interesting to see that the rules of the Declaration were used to point out which basic principles govern relations between States. However, the outstanding importance of the role that the instrument has to play was first highlighted in 1986 on the occasion of the resolution of the *Nicaragua v. United States of America* Case.[21]

3.2. *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*

This contentious case was initiated by the application of the Ambassador of the Republic of Nicaragua to the Netherlands instituting proceedings against the United States of America concerning their responsibility for military and paramilitary activities in and against Nicaragua. As a matter of law, the country claimed that the United States had acted in violation of Charter and treaty obligations and that, in breach of its obligations under general and customary international law, had violated the sovereignty of Nicaragua, the obligations to refrain from the threat or use of force and the obligation of non-intervention in the internal affairs of another State. In view of the breaches of the foregoing legal obligations, Nicaragua requested the Court to declare that the United States was under a duty to cease and desist immediately.[22]

It is noteworthy to mention that the United States had made a multilateral treaty reservation by which the acceptance of jurisdiction would be excluded when disputes arise under a multilateral treaty – unless two circumstances met that were not present in the case[23]. However, Nicaragua did not confine its claims to breaches of multilateral treaties and also invoked principles of general and customary international law that remained binding as such,

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[20] *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, 16 October 1975, p. 12, paras. 57, 58, 162.

[21] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. Merits, Judgment. I.C.J. Reports 1986, 27 June 1986, p. 14.

[22] *Ibid.*, pp. 8, 9.

[23] The multilateral treaty reservation applies to any dispute arising under a multilateral treaty, «unless (1) al1 parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction» (*Ibid*. para. 42).

although they were also enshrined in treaty law provisions. In effect, when the Court turned its attention to the question of the law applicable to the dispute, it reached the conclusion that it must refrain from applying the multilateral treaties invoked by Nicaragua in support of its claims, without prejudice of the content of the customary law which remains applicable and that continues to exist alongside treaty law.[24]

The Court then proceeded to elucidate the practice and *opinio juris* of States in order to ascertain what were the rules of customary international law applicable to the dispute, as evidence of a general practice accepted as law. Firstly, regarding the principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, the ICJ found that there exists in customary international law an *opinio juris* as to the binding character of such abstention which may be deduced from the attitude of States towards, particularly, the General Assembly resolution 2625 (XXV) on the Declaration on Friendly Relations. The effect of consent to the text of that resolution – the Court continued – may be understood as an acceptance of the validity of the set of rules declared therein, and not as merely a reiteration or elucidation of the treaty commitment undertaken under the Article 2 paragraph 4 of the United Nations Charter, and it seems apparent that such an attitude expresses an *opinio juris* that the principle of non-use of force may be regarded as a principle of customary international law.[25] Going even further, it is not only the principle in itself but also the terms on which it has been defined within the Declaration that represent customary international law. In this regard, when determining its content, the Court would say that distinction has to be made between the most grave forms of the use of force – those constituting and armed attack – and other less grave forms, and that the legal rules which applies to these latter forms can be seen on the Declaration on Friendly Relations formulations. Therefore, the adoption by States of this text provided an indication of their *opinio juris* as to customary law on the question according to which, alongside aggression, less grave forms of the use of force are included. Thus, following the content of the resolution 2625 (XXV), the principle of non-use of force as a principle of customary international law will be that by which States have the duty to refrain, one, from the threat or use of force to violate

[24] *Ibid.*, paras. 42, 43, 172, 176.
[25] *Ibid.*, paras. 183, 184, 188.

the existing international boundaries of another State or as a means of solving international disputes; two, from acts of reprisal involving force; three, from any forcible action which deprives peoples of the principle of equal rights and self-determination and freedom and Independence; four, from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State; and, five, from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when that acts involve a threat or use of force.[26]

Similarly, regarding the allowable exceptions to the general rule prohibiting force, the ICJ will say that the wording of certain General Assembly declarations adopted by States demonstrated their recognition of the right of self-defence, collective and individual. In particular, the Declaration on Friendly Relations, which states that «nothing in the foregoing paragraphs shall be construed as enlarging or diminishing in any way the scope of the provisions of the Charter concerning cases in which the use of force is lawful», demonstrates that the States represented in the General Assembly regarded the right of self-defence as a matter of customary international law.[27]

Likewise, the Court would then say that there are numerous expressions of an *opinio juris* concerning the existence of the principle of non-intervention in customary international law, which is also backed by established practice and it has been presented as a corollary of the principle of the sovereign equality of States, being the General Assembly resolution 2625 (XXV) an instance of this. In fact, the Court would point out the decisive importance of the Declaration on Friendly Relations in comparison with other General Assembly resolutions when it comes to ascertaining customary international law. Interestingly, the ICJ would say that even if that principle has been reflected in numerous declarations in which the United States has participated, e.g., General Assembly resolution 2131 (XX) – Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty –, and that when the State voted in its favour also declared at the time of the adoption that it considered this to be «only a statement of politic intention and not a formulation of law», however, the fact that the essentials

[26] *Ibid*., para. 191.
[27] *Ibid*., para. 193.

of that resolution are repeated in the Declaration approved by resolution 2625 (XXV), «which set out principles which the General Assembly declared to be 'basic principles' of international law», where no analogous statement was made, it is proof of its plain recognition as customary international law.[28]

Therefore, after the *Nicaragua v. United States Case*, the adoption of the Declaration on Friendly Relations would constitute evidence that certain principles enshrined therein are understood as customary international law, and this being so regardless of the fact that States could have denied the legal character of equivalent content in previous General Assembly resolutions. Also, as it was shown when analysing the principle of non-use of force, the features attributed to those principles within the Declaration – and not only the principle in itself – would represent customary international law. In effect, as it did before, the Court turned to resolution 2625 (XXV) to determine the exact substance – as far at it was relevant to the dispute – of the principle of non-intervention. In doing so, the body would say that this principle forbids States to intervene directly or indirectly in internal or external affairs of other States and that an intervention is wrongful when bearing on matters in which each State is permitted, by the principle of State sovereignty, to decide freely, without coercion, on the choice of a political, economic, social and cultural system, and the formulation of foreign policy. The element of coercion forms the essence of the prohibited intervention and it is particularly obvious in the case of an intervention which uses force, either in the direct form of military action or in an indirect form supporting subversive or terrorist armed activities in another State. This kind of intervention – the Court continued – is equated by the General Assembly resolution 2625 (XXV) with the use of force, and then these forms of action are wrongful in the light of both the principle of-non use of force and that of non-intervention.[29] The outcome is clear, in accordance with the Declaration, in customary international law, activities of intervention which use force, directly or indirectly, may constitute simultaneously a breach of the principle of the non-use of force in internal relations and of the principle of non-intervention in the internal affairs of a State.

With all of the above, it can be said that the resolution of this case highlights the importance of the Declaration, both in recognising that certain principles enshrined in it are then considered customary international law and

[28] *Ibid.*, paras. 202, 203.

[29] *Ibid.*, paras. 192, 205, 209, 247.

in identifying which of its contents hold the same status. The relevance of this statement is not a trivial matter. For example, finding that certain provisions of the Declaration on Friendly Relations enjoy the necessary *opinio juris* and the confirming practice to be considered customary content, served the ICJ to determine that, under the law, by virtue of customary international law – insofar as the application of multilateral treaties was not possible due to the United States reservation –, the United States had violated a number of principles of customary international law, namely, the principle prohibiting recourse to the threat or use of force, the obligation not to intervene in the affairs of another State and its obligation not to violate the sovereignty of another State; consequently being under the obligation to make reparations to Nicaragua for these breaches of obligations under customary international law.[30]

The conclusion is significant. This case shows the importance of the coexistence of customary international law rules with rules of similar content enshrined in treaty law because – in line with the 1969 *Vienna Convention on the Law of Treaties*[31] – the latter provides for exceptions to compliance with a treaty, which is not a possibility in the realms of international custom. This being so, it is crucial to recognise the importance of the codification contained in the Declaration on Friendly Relations to assist in the dissemination of the knowledge of a part of customary international law.

3.3. *Advisory opinion on the Legality of the Threat or Use of Nuclear Weapons*[32]

One decade later, in 1996, the ICJ had to resolve the question submitted by the General Assembly as to whether the threat or use of nuclear weapons in any circumstance is permitted under international law, that is, to determine the legality or illegality of the threat or use of nuclear weapons. After thoughtful consideration of the applicable international law – the extensive list examined included, *grosso modo*, provisions on environmental law, the right to life, the prohibition against genocide, the United Nations Charter law on

30 *Ibid.*, paras. 227, 228, 238, 290.

31 *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331.

32 *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, 8 July 1996, p. 226.

the threat or use of force, conventional law, customary international law and humanitarian law – the Court had to conclude that even though in the view of the unique characteristics of nuclear weapons their use seems scarcely reconcilable with respect to many requirements of the analysed law, nevertheless, it considered not to possess sufficient elements to decide with certainty their incompatibility with the use of nuclear weapons.[33]

However, despite that whilst at the time the Court did not find a firm answer to the original inquiry of the General Assembly, it considered that a further aspect of the question had to be examined, seen in a broader context. Specifically, it would say that international law and the stability of the international order are bound to suffer from the difference of views on the legal status of deadly weapons such as nuclear ones and, consequently, it is important to put an end to this state of affairs through a complete nuclear disarmament. To support that, the body referred to the legal obligation enshrined in the Article VI of the *Treaty on the Non-Proliferation of Nuclear Weapons*[34] by which the States Parties have to pursue negotiations in good faith to achieve the result of nuclear disarmament and, to back up the fact that the said obligation had to be fulfilled in accordance with the principle of good faith, the ICJ would add that this basic principle is reflected in the Declaration on Friendly Relations.[35]

Although the reference to the Declaration is brief, its relevance is twofold. On one hand, resolution 2625 (XXV) shows, once again, its importance in identifying basic principles that should govern relations between States. In this particular case, the instrument is used to justify the applicability of one principle contained therein that had not been mentioned before in that context, the principle of good faith. On the other hand, the fact that the Declaration is used to give weight to the argument put forward in the advisory opinion is particularly symbolic because, in the same report, the Court had previously underlined that not all General Assembly resolutions are customary international law and, thus, not all of them can be used as such to support a decision on a question put before it. In particular, when the Court turned to examine the applicable customary international law to determine whether a prohibition of the threat or use of nuclear weapons flowed from that source of

[33] *Ibid.*, paras. 20, 95.

[34] *Treaty on the Non-Proliferation of Nuclear Weapons*, United Nations, Treaty Series, vol. 729, p. 169.

[35] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, *op. cit.*, footnote 32, paras. 98, 99, 102.

law, it would find that there is an important series of General Assembly resolutions that deal with nuclear weapons and that affirm their illegality. Nevertheless, the ICJ noted that, even if in certain circumstances General Assembly resolutions can provide evidence for establishing the existence of a rule or the emergence of an *opinio juris*, in the present case, the resolutions under consideration were adopted with a substantial number of negative votes and abstentions, and so they fall short of establishing the existence of an *opinio juris* on the illegality of the use of nuclear weapons.[36] Hence, not in every General Assembly resolution a conventional rule is found and, certainly, that shows the specific value of certain rules contained in the resolution 2625 (XXV), which position the Declaration on Friendly Relations as a key instrument to ascertain the content of law.

3.4. *Advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*[37]

In December 2003, the General Assembly expressed in resolution ES-10/14 its concerns about the commencement and continuation of construction by Israel (the occupying Power) of a Wall in the Occupied Palestinian Territory, including East Jerusalem. That action was a departure from the Armistice Line of 1949, known as the Green Line, and had involved the confiscation and destruction of Palestinian land and resources, the disruption of lives of thousands of civilians and *de facto* annexation of large areas of territory. Expressing worry towards the prospect of solving the Palestinian-Israeli conflict, the General Assembly requested clarification from the ICJ about the legal consequences stemming from the construction of the wall being built by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem.[38]

The Court gave its advisory opinion some months later on July of the following year addressing the question put to it in two steps. First, it focused on determining whether or not the construction of the wall breaches international law and, second, it dealt with the consequences of that construction. In

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[36] *Ibid.*, paras. 64, 68-71.

[37] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I. C. J. Reports 2004, 9 July 2004, p. 136.

[38] *Ibid.*, pp. 8, 9.

order to provide a solution to this, the Court began by determining the rules and principles of international law which were relevant in assessing the legality of the measures taken by Israel, pointing out that they can be found, among others, in customary international law. Notably, within the enumeration of the pertinent law, it would refer to the resolution 2625 (XXV) to emphasise that «[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal» and that, as it was stated in the Judgement in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the principle of non-use of force and its corollary entailing the illegality of territorial acquisition resulting from the threat or use of force, is a reflection of customary international law. Equally, consolidating the use of the Declaration within its jurisprudence in line with the *Western Sahara Advisory Opinon*, the Court brought the principle of self-determination of peoples as it has been reaffirmed by the resolution 2625 (XXV) pursuant to which «[e]very State has the duty to refrain from any forcible action which deprives peoples referred to [in that resolution] (...) of their right to self-determination».[39] Looking at this construction made by the Court, there is no doubt that this advisory opinion is a good illustration of how the understanding of certain content of the Declaration as international custom – and its use as such – is consolidated in the jurisprudence of the ICJ in such a way that, when the matter has required it, its use is usually resorted to for the resolution of new cases.

Once it was determined that these and other rules and principles of international law were relevant in reply to the question posed, the Court concluded that both the construction of the wall and the settlements in the Occupied Palestinian Territory and East Jerusalem constituted actions not in conformity with various international legal obligations incumbent upon Israel. As a consequence of those breaches of international law, Israel had to fulfil its obligations under international humanitarian law, international human rights law and, specifically in regard to the obligation that was identified under, *inter alia*, the resolution 2625 (XXV), the State was bound to comply with its obligation to respect the right of the Palestinian people to self-determination.[40]

However, this would not be the end of the matter, and the fact that the breach of certain content of the resolution 2625 (XXV) was involved in the case would broaden the scope of the issue. In effect, after having pointed out

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[39] *Ibid.*, paras. 86, 87, 88.

[40] *Ibid.*, paras. 120, 138, 142, 149, 150, 151, 152.

Israel's responsibility, the ICJ evaluated the legal consequences of the internationally wrongful acts flowing from the State's construction of the wall as regards other States. It would be so because some obligations violated by Israel were obligations *erga omnes*, specifically, the obligation to respect the right of Palestinian people to self-determination and certain obligations under humanitarian law. As such, as indicated by the Court in the *Barcelona Traction* Case,[41] these obligations are by their very nature «the concern of all States» and «[i] n view of the importance of the rights involved all States can be held to have a legal interest in their protection». With regard to the obligation to respect the right to self-determination the ICJ would say that it has an *erga omnes* character which can be recognised under, *inter alia*, the terms of the Declaration on Friendly Relations by which «[e]very State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle (...)». Consequently, given the character and the importance of the rights and obligations involved, the Court found that all States were under certain obligations, namely, the obligation not to recognise the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory and East Jerusalem, the obligation not to render aid or assistance in maintaining such situation and, importantly, it highlighted that it was for all States to see to it that any impediment to the Palestinian people in exercising their right to self-determination, resulting from the construction of the wall, was brought to an end.[42]

The message brought by this advisory opinion in respect of the role that the Declaration on Friendly Relations is able to perform is paramount. Here, the Court reached the conclusion that the construction of the wall by Israel in the Occupied Palestinian Territory was contrary to international law using some of the content of the Declaration. However, although at this point this is not new to the ICJ, it certainly will be the fact that the resolution 2625 (XXV) has been specifically brought up to point out that one of the principles

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[41] *Barcelona Traction, Light and Power Company, Limited, Second Phase*, Judgment, I.C.J. Reports 1970, 5 February 1970, p. 32, para. 33.

[42] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, op. cit.*, footnote 37, paras. 154, 155, 156, 159.

applicable under it, insofar as it is an *erga omnes* obligation, will have legal consequences for all the States in the international community, and not just for the State on which the advisory opinion was requested.

3.5. *Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*[43]

The following year, in 2005, the Court resolved the contentious case concerning armed activities carried out on the territory of the Democratic Republic of the Congo (hereinafter, the DRC) by the Republic of Uganda (hereinafter, Uganda). The former filed an application instituting proceedings against the latter and requesting the Court to adjudge that Uganda was guilty of acts of aggression and violations of elementary rules of international humanitarian law and massive human rights violations because, allegedly, the State had engaged in military and paramilitary activities against DRC; occupying its territory; actively extending military, logistic, economic and financial support to irregular forces operating there; engaging in the illegal exploitation of Congolese natural resources and pillaging its assets and wealth; and committing acts of oppression against the nationals.[44]

When assessing whether Uganda had violated principles of conventional and customary law, the Court – regarding what is relevant here – presented its findings of law on the prohibition of the use of force. The ICJ stated that the evidence had shown that Uganda engaged in the use of force for purposes and in locations for which it had no consent and where its recourse was not justified in the name of the principle of self-defence. Uganda's armed forces, the Uganda Peoples' Defence Forces (UPDF), had traversed vast areas of the DRC violating its sovereignty, engaging in military operations in a multitude of locations and launching an offensive to overthrow the Government of the DRC. Noticeably, Uganda acknowledged giving training and military support to the rebel group the Congo Liberation Movement (MLC) opposed to DRC's Government, however, even if so, the Court pointed out some difficulties in considering the State responsible on that account based on the

[43] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, Judgment, I.C.J. Reports 2005, 19 December 2005, p. 168.
[44] *Ibid.*, para. 24.

basic rules of international law on attributing responsibility to States for its internationally wrongful acts. Particularly, the requisites that such attribution demands in accordance to the 2001 International Law Commission *Draft Articles on Responsibility of States for internationally wrongful acts*[45] were not found insofar there was not probative evidence that Uganda controlled, or could control, the manner in which the leader of the MLC utilised such assistance; nor that the conduct of the rebel group was that of «an organ» of Uganda or of an entity exercising elements of governmental authority on its behalf, nor was «on the instructions of, or under the direction or control of» that State.[46]

Nonetheless, even if the evidence did not suggest that the MLC's conduct was attributable to the State, the Court would see that the training and military support given, violated certain obligations of international law. In particular, the ICJ highlighted the importance to the case of two provisions of the Declaration on Friendly Relations which were declaratory of customary international law and by which:[47]

> «Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force».

And, further provides that:

> «[N]o State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State».

With that being so, it would be on those grounds that the Court found Uganda responsible. Especially, it considered that the obligations arising under the principles of non-use of force and non-intervention were violated by that State and, this would be the case, even if – as alleged by the country – its

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45 ILC, *Report of the International Law Commission on the work of its fifty-third session (23 April-1June and 2 July-10 August 2001*, Yearbook of the International Law Commission, 2001, vol. II, Part Two, A/CN.4/SER.A/2001/Add.1 (Part 2), pp. 26-143.

46 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, *op. cit.*, 43, paras. 149, 153, 155, 160.

47 *Ibid.*, paras. 161, 162.

objective was not to overthrow the President or its actions were based on security needs. To sustain such an assertion, the ICJ would bring its jurisprudence established in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)* to make it clear that the principle of non-intervention prohibits a State «to intervene, directly or indirectly, with or without armed force, in support of an internal opposition in another State» and, noting that in the case at stake the military intervention had been proven, it has to be remembered that acts which breach the principle of non-intervention «will also, if they directly or indirectly involve the use of force, constitute a breach of the principle of non-use of force in international relations». Accordingly, the Court concluded that Uganda's actions constituted an interference in the internal affairs of the DRC and that its unlawful military intervention was a grave violation of the prohibition of the use of force, these breaches being part of the basis in finding that the State was under the obligation to make reparation to the DRC for the injury caused.[48]

Equally by virtue of the Declaration on Friendly Relations, the Court conversely next found that one of the counter-claims submitted by Uganda against the DRC could not be upheld. Concerning the one which is pertinent here – the other counter-claim concerned the *Vienna Convention on Diplomatic Relations* of 1961[49] –, Uganda contended that from 1994 to 1997 the Congolese government breached, among others, its duty of vigilance by allowing anti-Ugandan rebel groups to use its territory to launch attacks against Uganda. In that regard, the ICJ noted that tolerating is a different issue from active support for the rebels and that, in that respect, there are also provisions declaratory of customary international law under the Declaration which state that «'every State has the duty to refrain from (...) acquiescing in organized activities within its territory directed towards the commission of such acts' (e.g., terrorist acts, acts of internal strife) and also 'no State shall (...) tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State'». Even so, the Court noted that, in the present case, the absence of action by the DRC – Zaire at the time – was not tantamount to «tolerating» or «acquiescing», but was due to the characteristics of the mountainous and remote terrain and to the complete lack of central

[48] *Ibid.*, paras. 163, 164, 165 and p. 281.
[49] *Vienna Convention on Diplomatics Relations*, 18 April 1961, United Nations, Treaty Series, vol. 500, p. 95.

government presence or authority at the time. Thus, before the absence of the requirements demanded by the rule contained in the Declaration, the Court concluded that the counter-claim submitted by Uganda had failed.[50]

Taking the above into account, there is no doubt of the progressive significance of the Declaration on Friendly Relations and this judgement proves so. Once again, the resolution 2625 (XXV) has been shown to enjoy a consolidated recognition as a codification of certain principles of customary international law and its features, presenting itself as a compilation that facilitates knowledge of the characteristics of the obligations incumbent upon States in the areas concerned therein. Its central importance in the ICJ's jurisprudence is demonstrable by the fact that its use, far from being residual, is principal in the resolution of the issues to be resolved by the Court where its content is concerned, having generated over the years a solid jurisprudence on its applicability. Notably, the Declaration, as an authoritative collection of customary law, has revealed itself to be of a great utility in backing up the application of the principles there enshrined when the attribution of responsibility to States was not possible on the grounds of other international rules, particularly – according to ICJ case law –, either because the Court could not apply conventional rules to the specific case – see, *Nicaragua v. United States* Case – or because the requirements for attribution of responsibility to States for their internationally wrongful acts were not meet – *Democratic Republic of the Congo v. Uganda* Case.

3.6. *Advisory Opinion on the Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*[51]

In October 2008, the General Assembly had found that the declaration of independence of Kosovo from Serbia had received varying reactions by the Members of the United Nations as to its compatibility with the international legal order. Hence, it decided to request the ICJ to render an advisory opinion on the question of whether the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo was in accordance with international law.

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[50] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*, *op. cit.*, 43, paras. 297, 300, 301, 305.

[51] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, 22 July 2010, p. 403.

In the factual background, *grosso modo*, the Security Council adopted resolution 1244 (1999) under Chapter VII of the United Nations Charter on June 1999 with the purpose of resolving the grave humanitarian situation in Kosovo and to put an end to the armed conflict. An international civil presence in Kosovo had to be established in order to provide a transitional administration while overseeing the development of provisional democratic self-governing institutions, meanwhile, the – at the time – Federal Republic of Yugoslavia had to put an immediate end to violence and to withdraw all military, police and paramilitary forces. In the year 2006, rounds of negotiations commenced between delegations of Serbia and Kosovo addressing, among others, the decentralisation of Kosovo's governmental and administrative functions. However, no agreement on Kosovo's status was reached by the parties and international observers pointed out that it had become clear that they would not. It was against this backdrop that the declaration of independence was adopted on 17 February 2008. In reaction to that, Serbia informed that the declaration of Kosovo as an independent and sovereign State represented a forceful and unilateral secession of a part of its territory.[52]

Taking due account of the context, the Court emphasised that the answer to the question posed hinged exclusively on whether or not the applicable international law to the events – i.e., international general law and the Security Council resolution – prohibited the declaration of independence. When assessing its lawfulness under international general law, the ICJ highlighted the perceived collision of two principles reigning over the international order. On one hand, the international law of self-determination has developed creating a right for the peoples of non-self-governing territories, subject to alien subjugation, domination and exploitation. Conversely, on the other hand, some States had pointed out that a prohibition of unilateral declarations of independence is implicit in the principle of territorial integrity. To resolve this dichotomy, the Court would say that the principle of territorial integrity is an important part of the international legal order and that the General Assembly resolution 2625 (XXV), which reflects customary international law, reiterates the principle enshrined in the Charter of United Nations by virtue of which «States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State». As seen before, the Court would additionally refer to the content of the prin-

[52] *Ibid.*, paras. 58, 67, 69, 71, 72, 77.

ciple as customary law and would add that the Declaration enumerates various obligations incumbent upon States to refrain from violating the territorial integrity of other sovereign States. Consequently, the adoption of the declaration of independence was not in violation of this international framework given that the scope of the principle of territorial integrity is confined to the sphere of relations between States.[53]

On this occasion, as the General Assembly only requested whether or not the declaration of independence of Kosovo was in accordance with international law, the Court considered it was not necessary to resolve debates regarding the extent of the right of self-determination because that issue would go beyond the scope of the question posed. Thus, it considered that general international law contained no applicable prohibition towards declarations of independence and, accordingly, the declaration of independence of 17 February 2008 did not violate general international law nor any applicable rule of international law.[54] As far as it is relevant here, this advisory opinion shows that the Declaration on Friendly Relations has irrefutably become an established code of customary law to settle disputes between States where its content is concerned. Far from being considered obsolete, the content of resolution 2625 (XXV) is a reference text when the subject matter requires it, most recently in 2019, one year before of its 50th anniversary.

3.7. *Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*[55]

In the year 2019, the ICJ rendered an advisory opinion resolving a series of questions posed by the General Assembly related to the separation of the Chagos Archipelago from Mauritius and the legal consequences arising from the continued administration by the United Kingdom of the archipelago.

The analysis of the factual circumstances pinpointed a number of events to be taken into account. On one hand, the United Kingdom and the United States concluded in 1966 an Agreement for the establishment of a military base by the United States on the Chagos Archipelago. The talks on the

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[53] *Ibid.*, paras. 56, 78, 79, 80.
[54] *Ibid.*, paras. 83, 84, 122.
[55] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, *Advisory Opinion*, I.C.J. Reports 2019, 25 February 2019, p. 95.

«strategic use of certain small British-owned islands in the Indian Ocean» for defence purposes commenced two years before and, there, the United Kingdom was of the view that the course of action would be to detach Diego Garcia – the largest island – and other islands in the Chagos Archipelago from Mauritius prior to the latter's independence, and to place them under the direct administration of the United Kingdom. On the other hand, also in 1964, the United Kingdom began discussions with the representatives of the Colony of Mauritius where the former promoted the idea of detaching the archipelago and the latter opted for a long-term lease. Nonetheless, a lease was not acceptable for the United Kingdom and, one year later, after pressuring Mauritius to accept «the best solution» of independence and detachment of the Chagos Archipelago, the Lancaster House agreement was concluded and the Government of the United Kingdom announced that it was in favour of granting independence to Mauritius, which then obtained its independence in 1968. Finally, as a consequence of the new situation, the inhabitants of the Chagos Archipelago – the Chagossians – were forcibly removed or prevented from returning to the islands and, to date, they remain dispersed across several countries and not allowed to return.[56]

The first question put forward by the General Assembly was that of whether the process of decolonisation of Mauritius was lawfully completed in 1968 having regard to international law, following the separation of the Chagos Archipelago in 1965. The Court highlighted the fact that, although the determination of the applicable law had to focus on the period from 1965 to 1968, this would not prevent from considering the evolution of the law of self-determination in the context of decolonisation when customary rules are concerned. In this respect, some participants in the advisory proceedings maintained that this right was not an integral part of customary international law during the period at stake. In response to this concern, the Court proceeded to ascertain exactly when the right crystallised as a customary rule binding on all States. To that end, the ICJ pointed out that the adoption of General Assembly resolution 1514 (XV), of 14 December 1960, represented a defining moment in the consolidation of State practice on decolonisation and that it clarifies the content and scope of the right to self-determination. This would be so because, although this resolution is formally a recommendation and was adopted with some abstentions, however, the fact that the nature and scope of the right to self-deter-

[56] *Ibid.*, paras. 94, 95, 97, 98, 99, 100, 104, 107, 108, 109, 114, 122, 126, 129, 131.

mination of peoples and the «national unity and territorial integrity of a State or country» were reiterated in the Declaration on Friendly Relations, and that this right was recognized therein as one of the «basic principles of international law», confirms its normative character under customary law.[57]

Consequently, once it was confirmed that the content of the resolution 1514 (XV) is customary international law, by its virtue, the Court resolved the first General Assembly question saying that, at the time of the detachment from Mauritius in 1965, the Chagos Archipelago was part of its non-self-governing territory and that, even if Mauritius ceded the territory to the United Kingdom, it is not possible to talk of an international agreement based on free and genuine expression of the will of the people concerned when the former was under the authority of the latter. Therefore, the process of decolonisation of Mauritius was not lawfully completed when it acceded to independence in 1968.[58]

The second question posed by the General Assembly focused on the consequences, under international law, arising from the United Kingdom's continued administration of the Chagos Archipelago. On that point, as the decolonisation of Mauritius was not consistent with the rights of people to self-determination, the ICJ found that the United Kingdom's administration of the archipelago constitutes a wrongful act entailing the international responsibility of the State. Accordingly, such an administration has to come to an end under the modality decided by the General Assembly, which should also address the issue of the protection of human rights of the Chagossians. Additionally, since the respect for the right to self-determination is an obligation *erga omnes* and all the States have then a legal interest in protecting that right, the Court would point that, as recalled in the Declaration on Friendly Relations, all Member States must co-operate with the United Nations to put into effect the completion of the decolonisation of Mauritius coherently with the content of that right as enshrined within resolution 2625 (XXV) where:[59]

> «Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle».

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[57] *Ibid.*, paras. 136, 140, 142, 144, 150, 152, 155.
[58] *Ibid.*, paras. 157, 160, 170, 172, 174.
[59] *Ibid.*, paras. 175, 177, 178, 180. 181.

Unquestionably, this last decision of the ICJ constitutes irrefutable evidence of the contemporary relevance of the Declaration on Friendly Relations in the international legal order on the eve of its 50th anniversary. In this particular case, the resolution 2625 (XXV) has shown its capability to identify normative content in other General Assembly resolutions and to delimit *erga omnes* obligations which are mandatory to all States when the principles enshrined therein are concerned. As it was pointed out by the Special Committee in 1964 during the first session of the *travaux*, «[r]esolutions of the General Assembly did not in themselves constitute international law, but they might represent an important step in the process of making international law».[60] Clearly, it turns out that, in that case, it did.

4. Conclusions

A comprehensive and thorough analysis of the ICJ jurisprudence has revealed that, 50 years on from its approval, the Declaration on Friendly Relations is a fundamental instrument in the international legal system for resolving disputes between States. The original doubts as to whether or not the Declaration had a legal binding character have been dispelled. In effect, after an initial reference to its text during the resolution of the *Western Sahara Advisory Opinion* in 1975, the resolution 2625 (XXV) has been used by the Court on several occasions until today as a code of norms to resolve contentious cases and to provide the main legal basis for its advisory opinions.

Throughout the pronouncements delivered between the resolution of the *Nicaragua v. United States of America Case* in 1986 and the *Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* in 2019, the role of the Declaration has been consolidated and, currently, both certain principles contained therein and its content have been considered international customary law.

The consequences of that recognition are exceptional. Importantly, the resolution 2625 (XXV) has proven to be a key instrument in furnishing a legal framework able to resolve cases where treaty law was not applicable – see, *Nicaragua v. United States of America* Case – or where the attribution of responsibility to the States could not be sustained on the ILC *Draft Articles on*

[60] General Assembly, *op. cit.*, footnote 14, para. 25.

Responsibility of States for internationally wrongful acts – see, *Democratic Republic of the Congo v. Uganda* Case. Likewise, the Court has shown the specialty of resolution 2625 (XXV) since, *per se*, General Assembly resolutions are not considered to have a binding character – see, *Advisory opinion on the legality of the threat or use of nuclear weapons* – and, in fact, it has been used to confirm that other resolutions also enshrine customary international law – see, *Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* or *Nicaragua v. United States of America* Case. Finally, the resolution 2625 (XXV), far from just being a source of obligations towards the States concerned in the specific case, contains a catalogue of obligations *erga omnes* on its principles that, as such, all States must observe – see, *Advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* and *Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*.

With the above taken into consideration, the main conclusion is clear. The Declaration on Friendly Relations is not a mere declaration nor is its content obsolete. On the contrary, this instrument has become an established code of customary international law used on a regular basis by the ICJ which has been positioned by the Court as a paramount representation of the international law that it enshrines – e.g., *Advisory Opinion on the Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*. Henceforth, it just remains to be seen which new disputes between States will be settled when its content is concerned again.

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