

Recent case-law of the ICJ and its significance for International Law

OC - (ILA-14120) - 'THE LAW-MAKING EFFECT OF THE ICJ ADVISORY OPINIONS: LESSONS FROM THE CHAGOS OPINION'

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PERSONAL INFORMATION Sex Female | Date of birth 07/06/1989 | Nationality Italian WORK EXPERIENCE 11/2017-present Research Assistant to Dr Philippa Webb. Providing research assistance (part-time) on issues of Public International Law, particularly on the international law of immunities, to Dr Philippa Webb, Barrister at 20 Essex St and Reader of Public International Law at King's College London. 11/09/2017–31/08/2018 Visiting Lecturer in Public International Law King's College London – Dickson Poon School of Law, London (United Kingdom). Part-time position, supervised by Dr. Philippa Webb. Taught one tutorial per week on Public International Law. Coached King's College team which won the 2018 "Day of Crisis" competition. Module Tutor and Convenor of some classes of the KCL Summer School on International Human Rights Law (2-20 July 2018). 09/03/2013–24/07/2014 Praticante Avvocato (Trainee Lawyer) Avvocatura Generale dello Stato (Office of the Attorney General of Italy). Enrolled in Registro Praticanti Avvocati, Consiglio dell'Ordine degli Avvocati di Roma. 07/01/2013–08/03/2013 Praticante Avvocato (Trainee Lawyer) Studio Legale Serra and Partners. Enrolled in Registro Praticanti Avvocati, Consiglio dell'Ordine degli Avvocati di Roma. EDUCATION AND TRAINING 15/01/2018–19/03/2018 Attendance Modern Language Centre - King's College London, London (United Kingdom) Study of Modern Greek - level A1. 08/10/2015–Present Superamento Esame per l'iscrizione nell'Albo degli Avvocati (Passed the Italian Bar Exam) Corte d'Appello di Roma. 01/11/2014–31/10/2017 Dottore di ricerca (PhD) Dottorato Europeo (European Doctorate Label) in Discipline Giuridiche-Curriculum Diritto Europeo su base storico-comparatistica. Università degli Studi Roma Tre. Visiting Research Student at King's College London (Dickson Poon School of Law) under the supervision of Dr. Philippa Webb (1/2/2017-31/10/2017). Winner of scholarship offered by Università degli Studi Roma Tre (until 08/2017). PIL thesis: "Albeit it does move. Revolving around a territorial offence exception to State officials' immunity *ratione materiae* from foreign criminal jurisdiction". 03/2014–11/2014 Consiglio dell'Ordine degli Avvocati di Roma-Scuola Forense 'Vittorio Emanuele Orlando' Theoretical and practical preparation on subjects tested in the Bar Exam. 09/2013–09/2014 Master of Laws in Public International Law; Grade: Merit; Queen Mary, University of London. Winner of scholarship covering the entire amount of tuition fees. Modules: - International Human Rights Law; - International and Comparative Social Justice; - Alternative Dispute Resolution. Final Dissertation in Public International Law. 09/2008–12/2012 Laurea Magistrale in Giurisprudenza LMG/01; grade: 110/110 cum laude. Dissertation awarded the Dissertation Award of the Italian Red Cross (Comitato Locale CRI di Chiavari) 'XII Premio di Laurea Giuseppe Barile e Pietro Verri'. Completed studies in 4 years and a half, instead of the scheduled 5. International-Comparative Curriculum. Winner of merit-based scholarship offered by Università degli Studi Roma Tre in order to research on the subject of final undergraduate dissertation ('The exceptions to the legal protection of cultural property in armed conflicts') at UNESCO in Paris. First classified amongst scholarship awardees. Member of Roma Tre team at: 2013 Transnational Intellectual Property Program, School of Law, University of Washington, CASRIP and Queen Mary, University of London; 2012 7th UNICA Students' Conference, University of Oslo; 2012 Philip C. Jessup International Law Moot Court Competition. Certificate of Attendance to 2011 First Training Seminar on the International Humanitarian Law Associazione Cantiere Europa, with Croce Rossa Italiana (Centro di Ricerca e Formazione). 02/2011–05/2012 Certificate of attendance Level B2, Centre Culturel Saint Louis de France Attendance of B1.1, B2.1, B2.2 level classes. 09/2003–07/2008 Diploma di Maturità classica; Final grade: 96/100 Liceo Ginnasio Statale Torquato Tasso. Participation in the 'Olimpiadi Internazionali di Filosofia', held in English, as a selected representative of the School. 10/2003–05/2008 Certificate of Proficiency in English C2 The British Council and University of Cambridge ESOL Examinations (English for Speakers of Other Languages). 1997–2003 Grade 8. Spoken English for Speakers of Other Languages Trinity School - Trinity. The International Examinations Board. PERSONAL SKILLS Languages: Italian (mother tongue); English C2; French B2 (written French: B1); also studied Modern Greek (A1). Digital skills: Good knowledge of Microsoft Office. Good knowledge of legal databases. ADDITIONAL INFORMATION Fulbright Scholarship Winner Winner of a Fulbright Scholarship worth \$ 38.000 for the attainment of an L.L.M. for the academic year 2014/2015 at: New York University School of Law; Georgetown University Law Center (+ additional Law School Scholarship of \$ 15.000); American University Washington College of Law (+ additional Law School Scholarship of \$ 24.331). I gave up the Scholarship because I sat and successfully passed the Italian Bar Exam in 2014/2015. Italian Red Cross Volunteer (9 May

2015-December 2017). Also passed the XLI course for 'Operatore Internazionale'. I suspended this activity in 2017 due to studies and work outside Italy. PUBLICATIONS Pending - Co-authoring a volume chapter. Pending – Journal Article with the Art, Antiquity and Law Journal. Pending - Book review with the British Yearbook of International Law. Pending - Journal Article submitted to the Leiden Journal of International Law. Pending – Post on Artij.org. Pending – Publication of the proceedings of the 2018 ILA Regional Conference. Published - Post 'Nobody's Land: Where All step but No One Settles. The ILC adopts draft art. 7 on Immunity of State officials from foreign criminal jurisdiction.' on ILawyerblog.com (10 December 2017). PRESENTATIONS Presented paper "International Courts and Cultural Heritage: Bridging the Gap" at the Workshop: Art and International Courts, 25-26 April 2019, iCourts, University of Copenhagen. Presented paper 'The Protection of Cultural Heritage and Municipal Law: The Italian Experience' at the Workshop: The Protection of Cultural Heritage and Municipal Law, 5 April 2019, Fordham University's School of Law, New York. Presented paper 'The interaction between States' and State officials' immunity through the lens of the work of the International Law Commission' at ILA Regional Conference (Brazilian and Portuguese Branches) 23-25 May 2018, Universidade Federal de Minas Gerais, Belo Horizonte (Brazil). Presented paper 'Mutatis mutandis: change as the constant of the international law of immunities' at the 2nd Postgraduate Conference in International Law and Human Rights: The Notion of Change in International Law and Human Rights 26-27 March 2018, Management School, University of Liverpool.

Abstract

ILA Regional Conference
Braga, Portugal, 19-20 September 2019
'The contribution of the case-law of international courts and tribunals
to the development of international law'

Session 4: Recent case-law of the ICJ and its significance for International Law

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**'The Law-making effect of the ICJ Advisory opinions:
Lessons from the Chagos Opinion'**

Earlier this year, on 25 February 2019, the International Court of Justice (hereinafter: ICJ or the Court) delivered its Advisory Opinion on 'Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965' (hereinafter: Chagos opinion). The Court reached its conclusions almost unanimously, both with regard to the decision to comply with the request for an advisory opinion and to the very substantial findings of the case. However, many judges appended their own declarations and separate opinions. The whole saga has attracted many comments from the international legal scholarship in various instances already. Some of them pertained to the discretion of the Court to decide whether or not it should render its opinion, some tackled the lawfulness of the process of decolonization of Mauritius, some focused on the consequences arising from the continued administration by the United Kingdom of the Chagos Archipelago. A lot of international legal issues came into play, spanning, *inter alia*, questions of self-determination and State responsibility.

An interesting aspect of advisory opinions concerns their law-making effect, their ability to 'create law' as such. By nature, all adjudicative *fora* somehow contribute to the 'making' of law through the exercise of their functions. Advisory powers are no exception to the rule. Within this framework,

this paper delves into the analysis of the Chagos opinion from this perspective and it determines its significance for the international legal system as a whole. It proceeds as follows.

First, I identify the precise meaning of the so-called ‘law-making effect’ of advisory opinions. What does the ‘making of law’ imply in concrete terms? To what extent can advisory opinions actually impact public international law? And, finally, how does this affect the structure of the international legal order, with its interplay of (un)balanced powers and forces? Additionally, this section addresses the topic of the legal weight and the moral authority of the ICJ advisory opinions and the extent to which such instruments contribute to the advancement of international law.

Second, this contribution provides for a comparative scrutiny of selected ICJ advisory opinions and tries to detect a leitmotif, if any, in the stance of the Court within them. The objective is to enquire into those opinions with an eye to the evolution of the use and application of the advisory opinions by the ICJ. Also some advisory opinions of the Permanent Court of International Justice will be taken into account.

Third, I turn to the law-making effect of the Chagos opinion itself and I look at the approach of the ICJ in the case at hand. More specifically, this work aims at understanding: *i*) the Court’s attitude towards the role of its advisory opinions from a formal viewpoint, within the sources of international law and beyond; and *ii*) the actual posture of the ICJ in the given scenario: its employment of the advisory capacity in practice and its implicit conception of the advisory jurisdiction between the lines. This part also allows this author to envisage further developments in the advisory activity of the ICJ for the near future.

In conclusion, the present investigation explores the Chagos opinion from a critical angle, for the changes it brought about within international legal matters and for the novelties it added to the context of the law-making effect of the ICJ advisory opinions. The trajectory is chronological and teleological at the same time: what can the Chagos opinion teach us and where will this lead us to?

Palavras-chave : Advisory opinions, Law-making, International Court of Justice