

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

OC - (ILA-14123) - THE INTERNATIONAL COURT OF JUSTICE AND DECOLONIZATION: AN UNATTAINED POTENTIAL

Dana Farraj (Palestine)¹

1 - Birzeit University

Dana Farraj

I'm a Legal Researcher with Dr. Asem Khalil, Faculty of Law and Public Administration at Birzeit University (Part time job), as well I'm the coordinator of Right to Education Campaign in the Public Relations Office at Birzeit University (Part time job).

I obtained my Master's degree in International Humanitarian Law from Aix-Marseille University in France, and my bachelor's degree from Birzeit University with a major of law and minor of political science. I have a degree of Diploma of humanitarian and international field jurist from Aix-Marseille University in France.

I did an internship in the Republic of Colombia for five months through Projet Accompagnement Solidarité Colombie (PASC); a Canadian organization located in Quebec that works to create a direct solidarity network with Colombian communities. In France, I was a member of the legal clinic for international human rights law at the institute of international humanitarian studies at Aix-Marseille University.

Since March 2018, I have enrolled in the DAAD project "Violence, Forced Migration and Exile: Trauma in the Arab World and in Germany" at Ludwig-Maximilians-University. I assisted different workshops targeting collection, analysis of data and critical workshops in the field of International Humanitarian and Human Rights law, which developed enormously my researching skills. On the other hand, in the past 5 years, I have built my professional self-development and capacity in debating, advocacy, communication and presentation skills, by being a keen debater with different organization, including Falistiniyat, with whom I was a debate trainer and still am I a General Assembly Member.

I'm a Palestinian Barrister by October 2019.

Abstract

Suggestion: The International Court of Justice and Decolonization: an unattained potential

The ICJ Rejects the UK Position on the Chagos Islands

On 25 February, 2019, the ICJ^[1] provided an Advisory Opinion that cited international law in support of its claim that the decolonization of Mauritius was not lawfully complete when it acceded to independence in 1968. The Court concluded that Mauritius did not genuinely consent to the separation of Chagos, and questioned the right of a subordinate administration to intercede on this matter. This appeared to imply that the Court believed that only a measure such as a referendum could sufficiently express the people's free will. The Court also maintained that consequences arising from the colonization of Mauritius were a matter of state responsibility, and it noted that "the United Kingdom's continued administration of the Chagos Archipelago constitutes **a wrongful act entailing the international responsibility of that State**". The Court then stated:

[T]he UK is under an obligation to bring an end to its administration of the Chagos Archipelago as rapidly as possible, thereby enabling Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self-determination.^[2]

It also added that member states are obliged to cooperate with the UN in order to complete the decolonization of Mauritius. In addition, it also reiterated that when a member state breaches an obligation arising from the UN charter, it breaches an obligation that is owed to all (*obligation erga omnes*).^[3] Accordingly, the UNGA should ensure that the human rights of the expelled Chagossians are respected: this applies

because this international organization has a responsibility not to extend legal recognition to member state breach of established obligations.[4]

A brief perusal of the ICJ's case history identifies four decolonization cases and one external self-determination case. The South-West Africa decolonization cases clearly demonstrate how the UN organs efficiently implemented the different resolutions. The UNGA and UNSC had issued a series of related resolutions that clearly condemned the South African government's "*attempts [to] assimilate*" South-West Africa. The UNGA imposed voluntary military sanctions (an arms embargo) and economic sanctions (a petroleum embargo) on the South African government. On June 21, 1971, the ICJ ruled that South Africa's administration of Namibia was illegal. It was considered that in particular any dealings with the Government of South Africa implying the recognition of the legality of South Africa's presence and administration[5]. The various forms of support and assistance were provided until Namibia became formally independent on March 21, 1990.[6]

The Palestinian example is clearly different, as an immense number of UN resolutions, in addition to the ICJ Advisory Opinion of 2004, have had little concrete impact. The lack of implementation mechanisms has been a clear impediment in this regard. This is shown by the repeated failure to implement UNGA Resolution 194, which upholds the Palestinian '*Right of Return*'. While the ICJ's Advisory Opinion on the Chagos islands has clear potential, this tragic precedent, along with all the other unimplemented 'Palestinian' resolutions, should be remembered and recalled.

Although this opinion is not legally binding, it can still function as a major development in international law, and has potentially far-reaching implications. It was therefore significant that the UK's stated opposition to having the case heard by the ICJ, which was supported by powerful allies, was eventually overcome.[7] In the immediate context, there is still the prospect that the opinion will contribute to the outlawing of the UK-US lease agreement, which originally enabled the military base to be established on the island[8].

[1] For further details, refer to the full text of the Advisory Opinion. Available at : <https://www.icj-cij.org/files/case-related/169/169-20190225-01-00-EN.pdf>

[2] For further detail, see <https://www.ejiltalk.org/icj-delivers-chagos-advisory-opinion-uk-loses-badly/>

[3] "A norm which is accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."(Vienna Convention on the Law of Treaties, Art 53 - 23 May 1969.

[4] For further details, see: <http://dergipark.gov.tr/download/article-file/481252>

[5] Stefan Talmon. The Duty Not to 'Recognize as Lawful' a Situation Created by the Illegal Use of Force or Other Serious Breaches of a Jus Cogens Obligation: An Obligation without Real Substance? Chapitre VI: The Fundamental Rules of the International Legal Order, Jus Cogens and Obligations Erga Omnes. Brill | Nijhoff. 2005.

[6] For further details, see: <https://uca.edu/politicalscience/dadm-project/sub-saharan-africa-region/south-africanamibia-1920-1990/>

[7] For further details, see: <https://www.aljazeera.com/indepth/opinion/180912074522547.html>

[8] For further details, see: <https://www.newsclick.in/uk-should-immediately-return-chagos-mauritius-said-international-court-justice>

Palavras-chave : Right of Return, Decolonization, Chagos Islands