

The contribution of international courts and tribunals to the methodology of international law

OC - (ILA-14149) - THE EMPIRE STRIKES BACK – THE ICJ RULING ON THE CHAGOS ISLANDS AND ITS EVERLASTING CONSEQUENCES

Dr. Thamil Venthan Ananthavinayagan (Ireland)¹

1 - Griffith College Dublin

Dr. Thamil Venthan Ananthavinayagan

CURRENT POSITION: Lecturer in International Law at Griffith College Dublin

ACADEMIC QUALIFICATIONS: PhD (NUI Galway, Ireland), LL.M. (Maastricht University, The Netherlands), undergraduate degree in international law (University of Bonn, Germany)

RELEVANT WORK EXPERIENCE (selection)

- 14.10.2013 – 30.09.2017 National University of Galway, Ireland

Position: PhD-Researcher and research assistant to Prof. Michael,

O'Flaherty, Director of the Irish Centre for Human Rights, Galway, Ireland

- since January 2019 panel member of the International Protection Office, Department of Justice, Government of Ireland

RESEARCHING /CONSULTANCY (selection)

Publications

Peer-reviewed journal articles:

- Dum vivimus vivamus. The Tamils in Sri Lanka: a right to internal self-determination, in: Peace Human Rights Governance (PHRG) - <http://phrg.padovauniversitypress.it/2018/1/2>

- Uniting the nations or dividing and conquering: The United Nations' multilateralism questioned – a Third World Scholar's perspective, in: Irish Studies in International Affairs –

https://www.jstor.org/stable/10.3318/isia.2018.29.17?seq=1#page_scan_tab_contents

- This is America. Racial injustice in the United States and the international response, in: Hungarian Yearbook of International Law – (unpublished)

- The United Nations human rights machinery - too big to fail? An examination of the flaws of the machinery and proposals from a Third World Scholar's perspective, in: Nigerian Yearbook of International Law – (unpublished)

- Mother Courage and Her Fate - an examination of women's role in times of transitional justice. A case study from post-war Sri Lanka, in: Edited Collection 2019, British Academy and from the OpenUniversity Citizenship & Governance Strategic Research Area (unpublished)

Chapters:

- Title: Panem et circences? Peoples' Tribunals from a TWAIL perspective, (Publisher: Routledge, People's Tribunal (tentative title), Regina Pauloise (ed.) (unpublished)

- Critical Approaches to International Investment Law, (Publisher: Springer, New Global Handbook of International Investment Law, Leila Choukroune (ed.), - work in progress)

Monograph:

- Title: The United Nations, Sri Lanka and Human Rights. Human rights engagement with a Third World State (Publisher: Springer Series: International Law and the Global South, Leila Choukroune (ed.), forthcoming in June 2019)

Abstract

The International Court of Justice (ICJ) delivered its Chagos Advisory Opinion (AO). Briefly, the Court found that the separation of the Chagos archipelago from the British colony of Mauritius was contrary to the right to self-determination and that accordingly the decolonization of Mauritius was not completed in conformity with international law. As a consequence, the Court found that the United Kingdom's (UK) continuing administration of the archipelago, which includes the largest United States (US) naval base in the Indian Ocean, Diego Garcia, is a continuing internationally wrongful act, which the UK was under an obligation to cease as soon as possible.

The Chagos saga is, essentially, an everlasting story in international law and its complicit role in subjugating, oppressing and dominating an 'inferior' people. As Kanad Bagchi writes, '[I]t shows that the erstwhile colonial world order is neither really 'past' nor that modern international law, as it is often claimed, is necessarily a harbinger for emancipation and substantive equality'

In particular, Mauritius frame the questions before the ICJ in the following manner:

1. "Was the process of decolonization of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in General Assembly resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967?"
2. "What are the consequences under international law, including obligations reflected in the above-mentioned resolutions, arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin?"

International law hid behind the curtains of equal sovereignty and territorial integrity to distort and evade accountability, while depoliticizing its own gruesome imperial past embedded in inequality and injustice. The Chagoos AO is a adequate representation as how equality and consent rather were never means of freedom and reconciliation of the past, but ways to preserving Western hegemony, supremacy and post-colonial dominance within the international order. Official memorandums cited by the Court reveal the nonchalant position of UK and US in orchestrating the division of the Islands, uninhibited by either the authority of United Nations or the opposition from the Mauritius people.

Looking at the substance, the Chagos AO highlights yet again the nature and politics of 'custom' as a continuing source of international law. Painstaking studies from the Global South has shown how the doctrine of customary international law (CIL), with its twin requirements of attesting 'state practice' and 'opinio juris' has facilitated and advanced the imperial order. For instance, Prof. Chimni's recent work shows how on one hand, the identification of CIL has been predominantly on the basis of state practice of certain powerful states alone, given the paucity and unavailability of state practice of weaker players. While on the other hand, opinio juris of weaker states if at all gathered, have been consistently delegitimized on the basis of doctrines such as 'persistent objectors'.

To this end, the paper will examine following questions in light of the Chagos AO: what will be role of the international courts, in particular of the ICJ, in the everlasting process of decolonization and rectifying the pertaining ills of colonialism? Moreover, can the ICJ be helpful to empower the human rights of formerly colonized people through the remodeling of CIL?

Palavras-chave : colonialism, TWAIL, self-determination