INTERNATIONAL DECISIONS

EDITED BY HARLAN GRANT COHEN

International Court of Justice—decolonization—peoples' right of self-determination—advisory opinions—customary international law

LEGAL CONSEQUENCES OF THE SEPARATION OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS IN 1965. *At* http://www.icj-cij.org.
International Court of Justice, February 25, 2019.

Decolonization and its quite valid discontents lay at the center of this advisory opinion regarding the territory and populations of islands located in the Indian Ocean. Answering questions posed by the UN General Assembly, the International Court of Justice (ICJ or Court) concluded that because the Chagos Archipelago was detached from Mauritius as a condition of independence, the decolonization of Mauritius had not been completed in accordance with international law. The Court further ruled unlawful the United Kingdom's continued administration of the Chagos Archipelago and called upon all UN member states to aid completion of the decolonization process. Nearly unanimous—the sole dissenter on the merits was Judge Joan E. Donoghue of the United States[1]—the advisory opinion contained significant pronouncements on decolonization, on the right of all peoples to self-determination, and on the formation of customary rules respecting both. It did so in a manner that implicated the ICJ's role as the judicial organ of the United Nations, in whose General Assembly and other political bodies the next episodes in the Chagos controversy seem destined to unfold.

The Chagos Archipelago, the Court wrote, covers an area of 1,950 sq km, located about 2,200 km northeast of the Republic of Mauritius. Its largest island is Diego Garcia, at 27 sq km about one-sixth the size of the District of Columbia.[2] European occupation started with the arrival of the Dutch in 1638, and continued via French colonial administration from 1715 until France ceded control in the Treaty of 1814 (para. 27). For the next century and a half, the United Kingdom administered the Chagos Archipelago as a dependency of Mauritius, a British colony that was classified as a non-self-governing territory following adoption of the UN Charter (paras. 28–29). The United Kingdom inscribed the

[1] Diss. Op., Donoghue, J. Judge Peter Tomka of Slovakia agreed with Donoghue that the Court ought not to have exercised its discretion to comply with the General Assembly's request for an advisory opinion; however, he voted with the majority on all merits issues. Decl., Tomka, J.

[2] Paras. 25–26. The advisory opinion began with a summary of facts, later supplemented with a second factual account (paras. 25–53, 92–131). For ease of narration, the two sections are interwoven here.

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linkage between the archipelago and Mauritius in multiple official documents, including reports to the UN General Assembly (*id.*).

Things started to change in 1964, when the United Kingdom began two sets of negotiations. One was with the United States, which had expressed interest in building "a military communication facility on Diego Garcia" (para. 94). The other was with Mauritians whom the British colonial governor had appointed to a Council of Ministers, and from whom the United Kingdom sought approval of its plan to detach the Chagos Archipelago and thereafter administer it directly (paras. 98–100). The United Kingdom favored detachment in order to ensure installation of the proposed U.S. defense facility on an island "'free from local civilian inhabitants'" (para. 96). In 1965, the United Kingdom did detach the Chagos Archipelago from Mauritius, as well as other islands from Seychelles, to form "a new colony known as the British Indian Ocean Territory" (para. 33). A 1966 U.S.–UK agreement then followed, in which the latter made the new colony, often called BIOT, available to the former for defense purposes, and further agreed to "'resettling any inhabitants'" (paras. 36–37)—that is, the Chagossians, descendants of persons transported from Mozambique and Madagascar in the early 1800s and enslaved to work on British-owned coconut plantations (para. 113). From 1967 to 1973, "the entire population was either prevented from returning" to the Chagos Archipelago, the ICJ wrote, "or forcibly removed and prevented from returning" (para. 43). It added that at oral proceedings in the instant matter, the United Kingdom stated that it "'fully accepts'" and "'deeply regrets'" the Chagossians' forced removal and subsequent treatment, actions the United Kingdom labeled "'shameful and wrong'" (para. 116).

In the midst of the forced removal, in 1968, Mauritius gained independence and UN membership, its territory defined to exclude the Chagos Archipelago (para. 42). Of that territorial excision—to which Mauritius's appointed representatives initially objected but eventually agreed, in exchange for compensation and other promises set out in a 1965 Lancaster House Agreement—Mauritius's prime minister said years later, "'[W]e had no choice.'"[3] Later still, the prime minister called for restoration of the territory (para. 46). The ICJ wrote that "the Chagossians remain dispersed in several countries, including the United Kingdom, Mauritius and Seychelles" (para. 131). Meanwhile, British administration of BIOT, and U.S. use of Diego Garcia as a military base, continue to this day.[4]

These developments, the ICJ advisory opinion made clear, unfolded against the backdrop of actions by international bodies. The UN General Assembly voiced concern about the detachment as early as 1965, and a year later resolved that "'any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories and the establishment of military bases'" was "'incompatible'" with international law. Cited in particular were the UN Charter and the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, the latter set out in the Assembly's Resolution 1514 (XV).[5]

[3] Paras. 32, 44, 100–12, 117–19. Official documents quoted in the advisory opinion indicate British readiness to complete the detachment without consent, as well as plans "'to frighten'" Mauritius's leadership into acceding lest independence be denied. *See* paras. 103, 105–07.

[4] Paras. 51, 175–76. *See* British Indian Ocean Territory, *About*, *at* https://biot.gov.io/about; CNIC Naval Support Facility Diego Garcia, *About*, *at* https://www.cnic.navy.mil/regions/cnrj/installations/nsf_diego_garcia/about.html.

[5] Paras. 34–35 (quoting GA Res. 2232 (XXI) (Dec. 20, 1966) (citing this Declaration on Independence for Non-self-governing Territories, GA Res. 1514 (XV) (Dec. 14, 1960), which states, at paragraph 6: "Any attempt

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After detachment had taken place, an Assembly committee "[d]eplore[d]" it as a "dismemberment" violative of "territorial integrity," and urged the United Kingdom to reverse its action.[6]

The African Union and its predecessor, the Organization of African Unity, made similar statements (paras. 45, 47, 49, 52). Also weighing in was an arbitral tribunal established under the auspices of the UN Convention on the Law of the Sea. Its award, issued in a proceeding that Mauritius brought against the United Kingdom, stated that the latter's creation of a marine protected area in and around the Chagos Archipelago had breached several Convention provisions; the 2015 arbitral award further held the United Kingdom legally bound to return the islands to Mauritius "when no longer needed for defence purposes."[7]

It was in the wake of the arbitral award that the General Assembly sought an advisory opinion from the ICJ on two questions: first, whether "the process of decolonization of Mauritius" had been "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"; and second, "the consequences under international law" of the United Kingdom's "continued administration . . . 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."[8]

Deciding unanimously that it had jurisdiction to consider those legal questions (paras. 55–62, 183), the ICJ then considered whether it should exercise its discretion to decline to address them (paras. 63–91). The Court's "answer to a request for an advisory opinion represents its participation in the activities of the Organization, and, in principle, should not be refused," it wrote, except in the face of "compelling reasons" to do so.[9] Observing that some among the twenty-three participants in oral proceedings had argued the presence of compelling reasons, the Court addressed each proffered reason in turn.[10] First, it refuted the claim that the facts were too "complex and disputed" to permit judicial resolution; the ICJ noted the "abundance of material" before it, "including a voluminous dossier from the United Nations," participants' statements, and official records (paras. 69–74). Second, it dismissed the argument that an advisory opinion would not assist the General Assembly, reasoning that usefulness *vel non* was a question for the Assembly, not for the Court (paras. 75–78). Third, it rejected the notion that an advisory opinion would reopen the 2015 award by the arbitral tribunal, on the grounds both that the issues under review differed and that while the award had applied only to the two litigating states, the advisory opinion would be given to a UN organ (paras. 79–82).

aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.")).

[6] Resolution of 15, 17 and 19 June 1967 issued by the Committee of Twenty-Four, *quoted in* para. 39; *see also* paras. 38, 41.

[7] Paras. 48, 50; *see* Chagos Marine Protected Area Arbitration (Mauritius v. UK), Case No. 2011-03, Award (Mar. 18, 2015) [hereinafter Arbitral Award]. Over the years, the Chagos controversy surfaced in additional domestic and international fora besides those discussed in this report. *See* paras. 117–30; Diss. Op., Donoghue, J., para. 7.

[8] Paras. 1, 53 (internal quotation marks omitted).

[9] Para. 65 (internal quotation marks omitted).

[10] Para. 67. *See* para. 23 (listing as participants twenty-two UN member states, plus the African Union).

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The fourth argument, that "at the core of the advisory proceedings" was "a bilateral dispute between Mauritius and the United Kingdom regarding sovereignty over the Chagos Archipelago," received extended treatment (para. 83).[11] Quoting its own jurisprudence, the Court acknowledged that there would be a compelling reason to decline if an advisory opinion "'would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent.'"[12] But it found no such effect in this instance. The questions posed "relate to the decolonization of Mauritius," and "the General Assembly has a long and consistent record in seeking to bringing colonialism to an end," the ICJ reasoned (paras. 86–87). The Court further located the questions "in the broader frame of reference of decolonization, including the General Assembly's role," and thus concluded that its advisory opinion would not undermine the principle of state consent (paras. 88–91).

On the merits of the first question posed, the Court trained its focus on self-determination in the context of Mauritius's decolonization (para. 144). Resolution of the question required pinpointing "when the right to self-determination crystallized as a customary rule binding on all States"—whether, to quote Article 38 of the ICJ Statute, the right had become "'general practice accepted as law'" in the relevant period of 1965 to 1968 (paras. 148–49, 161). The Court identified as "a defining moment" the Assembly's adoption, by a vote of 89–0–9, of the 1960 resolution containing the Declaration on the Granting of Independence to Colonial Countries and Peoples: "Although resolution 1514 (XV) is formally a recommendation, it has a declaratory character with regard to the right to self-determination as a customary norm" (paras. 150–53). Buttressing that affirmation of the right of all peoples to self-determination were subsequent Assembly resolutions, including the one in 1966 that adopted the two international human rights covenants.[13]

The Court held not only that the right of peoples to self-determination constituted customary international law in the relevant period, but that the right of non-self-governing territories to territorial integrity did as well (paras. 159–61). With regard to these rights and the overall process of decolonization, the General Assembly has played a crucial role, the Court reiterated; with respect to the Chagos Archipelago, the Assembly's involvement included "inviting the United Kingdom to comply with its international obligations" regarding the process of decolonizing Mauritius (para. 167).

Applying these principles to the facts, the Court concluded that "at the time of its detachment from Mauritius in 1965, the Chagos Archipelago was clearly an integral part of that non-self-governing territory" (para. 170). Although Mauritius's representatives had "agreed in principle" to detachment in the 1965 Lancaster House Agreement, their assent

[11] In its 2015 award, the arbitral tribunal ruled it lacked jurisdiction to decide a Mauritian claim that it characterized as a "dispute regarding sovereignty over the Chagos Archipelago." Arbitral Award, *supra* note 7, para. 221, *quoted in* para. 50. Members of that tribunal included Sir Christopher Greenwood, then also an ICJ judge. The United Kingdom's 2017 bid for his reelection fell short, so that no British judge sat on the bench in the instant ICJ advisory proceedings. *See* Christine Gray, *The 2017 Judicial Activity of the International Court of Justice*, 112 AJIL 254, 254 (2018).

[12] Para. 85 (quoting Western Sahara, Advisory Opinion, 1975 ICJ Rep. 12, para. 33 (Oct. 16)).

[13] Paras. 154–55 (quoting Article 1, common to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XXI) (Dec. 16, 1966), as well as the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, annexed to GA Res. 2625 (XXV) (Oct. 24, 1970)).

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did not constitute an international agreement, the Court ruled, given that Mauritius was not yet independent, but rather still "under the authority" of the United Kingdom (paras. 171–72). Writing that this circumstance warranted "heightened scrutiny" on the issue of consent, the Court concluded that the excision of territory "was not based on the free and genuine expression of the will of the people concerned" (para. 172). In sum, on account of the 1965 separation of the archipelago and its inclusion in the newly created colony of BIOT, "the process of decolonization of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968" (para. 174).

The Court next turned to the Assembly's second question, about the consequences under international law of the United Kingdom's continued administration of the Chagos Archipelago. Participants' answers during the proceedings had spanned a spectrum. "[O]ne participant" argued that the United Kingdom had to do little more than return the archipelago after it was no longer needed for defense purposes;[14] others, that the United Kingdom must curtail administration at once, return the archipelago, and provide Mauritius with both compensation and help in resettling the Chagossians (para. 176).

The ICJ arrived at a result somewhere in the middle. It pronounced the continued administration "a wrongful act," "an unlawful act of a continuing character," for which the United Kingdom had incurred international state responsibility (para. 177). That administration must end "as rapidly as possible," the Court wrote, "thereby enabling Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self-determination" (para. 178). The ICJ declined to prescribe the means of completion, a task it said was in the province of the UN General Assembly (para. 179). Likewise, the resettlement of Chagossians was "an issue relating to the protection of the human rights of those concerned, which should be addressed by the General Assembly during the completion of the decolonization of Mauritius" (para. 181). Nevertheless the Court stressed that "respect for the right to self-determination is an obligation *erga omnes*," so that if the Assembly were to act, "all Member States must co-operate with the United Nations to put those modalities into effect" (para. 180).

The lone "no" vote on the merits belonged to Judge Donoghue, based on her conclusion that the Court should not have exercised its discretion to respond to the General Assembly's questions.[15] Donoghue acknowledged that "the events leading to the detachment of the Chagos Archipelago and the treatment of the Chagossians cry out for an authoritative judicial pronouncement," yet wrote that to give that pronouncement in the instant proceedings "undermines the integrity of the Court's judicial function" (Diss. Op., Donoghue, J., paras. 1, 3). She reasoned that the advisory opinion "has the effect of circumventing the absence of United Kingdom consent"—the absence of which it had reiterated in several fora, including a proposed contentious case before the ICJ and a submission presented to the arbitral

[14] Not surprisingly, that participant appears to have been the United Kingdom. *See* Public sitting held on Monday 3 September 2018, at 3 p.m., at the Peace Palace, President Yusuf presiding, on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, at 57 (arguing, in oral statement by Sir Michael Wood for the United Kingdom, that if the ICJ were to answer the Assembly's second question, it should follow the lead of the 2015 arbitral award, so that the obligation "to cede the Chagos Archipelago to Mauritius" would apply "when it is no longer needed for defence purposes"), *available at* https://www.icj-cij.org/files/case-related/169/169-20180903-ORA-02-00-BI.pdf.

[15] Diss. Op., Donoghue, J.; *see also* Decl., Tomka, J., paras. 2–10 (agreeing with this argument, yet voting "aye" on the merits). Theirs were two of ten separate opinions filed.

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tribunal—with respect to what Donoghue viewed as a "quintessentially bilateral . . . dispute over territorial sovereignty" (*id.*, paras. 1, 5–8, 21). "The questions of decolonization and sovereignty cannot be separated," she wrote (*id.*, para. 16).

Two months after the advisory opinion, the United Kingdom issued a statement repeating some of those views. Addressing Parliament, a British minister of state said that his government harbored "no doubt about our sovereignty over the Chagos Archipelago."[16] The United Kingdom stood by its 1965 commitment "to cede sovereignty of the territory to Mauritius when it is no longer required for defence purposes," he said, yet indicated those purposes persisted: "The joint United Kingdom–United States defence facility on Diego Garcia helps to keep people in Britain and around the world safe." The government, he added, was "continuing our work to design a support package" that would provide funds "to improve Chagossian livelihoods"—not in the archipelago, but "where they now live." Subsequent action by the UN General Assembly stood in stark contrast. By a vote of 116–6–56, in May 2019, it adopted a resolution that: affirmed all aspects of the ICJ advisory opinion; demanded that the United Kingdom "withdraw its colonial administration from the Chagos Archipelago unconditionally" within six months; urged the United Kingdom "to cooperate with Mauritius in facilitating the resettlement of Mauritian nationals, including those of Chagossian origin," in the archipelago; and called on UN member states, as well as the UN and other organizations, to assist in decolonization efforts.[17]

* * * *

In this advisory opinion, the International Court of Justice took a step forward in addressing a particularly egregious chapter in this era of decolonization under the UN Charter. At the same time, the ICJ held back, reserving judgment on how exactly to complete the decolonization of Mauritius—and by extension, how to respond to lingering discontents with respect to the processes of decolonization elsewhere.

The contention that the Court should not have answered the General Assembly's questions rests on an infirm foundation. It was argued that, at bottom, these were questions about territorial sovereignty, arising out of a bilateral dispute between the United Kingdom and Mauritius. Judicial resolution of that dispute could not be had, the argument continued, absent the consent of both sides. But far more than two states have a stake in resolution of the issues at hand. The fate of the Chagossians is of interest to those states and also, at the least, to Seychelles, where some Chagossians were taken and still remain. The uses to which the lands and waters of the Chagos Archipelago are put are of interest not only to those states, moreover, but to all states in the Indian Ocean region and beyond. The United Kingdom's own post-opinion statement admitted as much when its minister of state said that the Diego

[16] Sir Alan Duncan (Minister of State for Europe and the Americas), Written Statement, Foreign and Commonwealth Office, on the British Indian Ocean Territory, HCWS1528 (Apr. 30, 2019) [hereinafter UK Statement], *at* https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-04-30/HCWS1528. To similar effect is the statement made in the UN General Assembly the following month, on behalf of the United Kingdom. *See* UN General Assembly, Official Records, 73d Sess., 83d Plenary Meeting, A/73/PV.83, at 9–11 (May 22, 2019) [hereinafter Official Records], *at* https://undocs.org/en/A/73/PV.83.

[17] GA Res. 73/295, paras. 1–7 (May 22, 2019). On the vote, see Official Records, *supra* note 16, at 25.

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Garcia military base "has helped the United Kingdom, United States, other allies and our regional partners, including Mauritius, combat some of the most challenging threats to international peace and security, including those from terrorism, organised crime and piracy."[18] The prominence of the United States in the past fifty-five years' history of the archipelago, not to mention the ongoing U.S. sovereign interest in remaining on Diego Garcia, undercuts claims to a solely bilateral dispute.

As for consent, it must be noted that by ratifying the UN Charter, the United Kingdom gave its consent to the Court's advisory jurisdiction, jurisdiction the ICJ unanimously found present in this matter. The Court's opinion, moreover, made clear that more was at issue than the United Kingdom's consent. Much depended on whether Mauritius, such as it was before independence, had agreed to detachment. It had not; more precisely, the ICJ ruled that "the people concerned" had not given their "free and genuine" consent (para. 172). This finding brought to the fore an attribute unique to advisory proceedings: they permit the Court to evaluate the actions and intentions of nonstate actors, which often are integral to many contemporary disputes yet susceptible to disregard in a contentious, state-centered case. To appropriate a phrase from the opinion, advisory proceedings' broader frame of reference has permitted the Court to participate, as a judicial organ, in the work of the UN organization to which it belongs, on matters as varied as the effect of reservations on a treaty that aspires to universal ratification, the threat or use of nuclear weapons, the Kosovar declaration of independence, and, now, the relation of the Chagos Archipelago to the decolonization of Mauritius.[19]

Decolonization is a question that indeed can be separated from sovereignty, at least if "sovereignty" is meant to refer only to the prerogatives of a colonizing state. The right of peoples to self-determination alone compels a more liberal interpretation. The advisory opinion affirms self-determination "as a fundamental human right" (para. 144), and assertions of human rights prototypically stand at odds with assertions of state sovereignty. Also of significance is the ICJ's determination that the right had attained the status of customary international law by 1968. This finding hinged upon the declarative value of General Assembly resolutions adopted by lopsided margins; the advisory opinion thus reinforced the salience of this type of state practice in any inquiry respecting international custom. Additionally, it underscored the importance of the Assembly and the United Nations, as well as its member states, in effecting decolonization and ensuring human rights. Each has a role to play in these processes; the Court operated within the scope of its judicial role in setting wide parameters for completing Mauritius's decolonization, yet leaving the particulars to actors with political remits.

That said, prospects for speedy political resolution appear dim. The United Kingdom's post-opinion statement augured noncompliance with the General Assembly's post-opinion resolution, and given that both the United Kingdom and the United States hold Security Council veto power, resolution in that UN body is a nonstarter. Thus in the near term, those who favor the restoration of the Chagos Archipelago to Mauritius, and of the

[18] UK Statement, *supra* note 16.

[19] *See* Reservations to the Convention on Genocide, International Court of Justice, Advisory Opinion, 1951 ICJ Rep. 15 (May 28); Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 ICJ Rep. 226 (July 8); Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, 2010 ICJ Rep. 403 (July 22).

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Chagossian people to their archipelago, seem likely to continue to raise the issue in whatever domestic or international forum is willing to consider their complaint. No doubt they will rely in such future litigation on the ICJ's supportive opinion.

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Supreme Administrative Court of Egypt—peoples—sovereignty—natural resources—human rights—treaty-making powers

THE PRESIDENT OF THE REPUBLIC ET AL. V. ALI AYYOUB ET AL. Judgment, on appeal No. 74236/62 J S. *At* https://eastlaws.com.
Supreme Administrative Court of Egypt, January 16, 2017.

On April 8, 2016, the Egyptian government announced[1] the signing of a "Convention of Demarcation of the Maritime Border" with Saudi Arabia (Convention).[2] Under the Convention, the Red Sea Islands of Tiran and Sanafir lay in Saudi territory. The move was perceived by foreign and domestic observers as the abandonment by Egypt of a long-held territorial and maritime claim in exchange for a loan from Saudi Arabia,[3] and it was challenged before the Egyptian courts. On January 16, 2017, the Egyptian Supreme Administrative Court rendered a judgment annulling the act of cession of the islands[4] on the basis of the Egyptian people's entitlement over them (Judgment).[5] The Judgment triggered a domestic judicial saga, which only ended in 2018.[6] Aside from the intriguing political dimensions of this incident, the Judgment, while interpreting the Egyptian Constitution of 2014, sheds light on some fundamental aspects of international law, namely: the identity of the "holder" of sovereignty and its relations with the "delegatee," i.e., the government; the contribution of human rights as an analytical frame for this issue; and the validity of a treaty concluded in violation of a state's treaty-making powers, a question for which there is limited practice.

[1] *Government: Sanafir and Tiran Islands Within Saudi Territorial Waters*, ALMASRYALYOUM (Apr. 9, 2016), *at* https://www.almasryalyoum.com/news/details/926066.

[2] Convention of Demarcation of the Maritime Boundaries Between the Arab Republic of Egypt and the Kingdom of Saudi Arabia, Apr. 8, 2016 (Arabic original) [hereinafter Convention].

[3] Heba Saleh, *Egypt Parliament Approves Giving Red Sea Islands to Saudi Arabia*, FIN. TIMES (June 14, 2017), *at* https://www.ft.com/content/9aaf0e00-5113-11e7-bfb8-997009366969; Timothy E. Kaldas, Tahrir Institute for Middle East Policy, *Tiran, Sanafir, and the Island of Executive Power in Egypt* (Apr. 21, 2016), *at* https://timep.org/commentary/analysis/tiran-sanafir-and-the-island-of-executive-power-in-egypt.

[4] The President of the Republic et al. v. Ali Ayyoub et al., Judgment, 2017 Supreme Administrative Court, on appeal No. 74236/62 J S (Jan. 16, 2017) [hereinafter Judgment].

[5] The case-note is based on an unofficial translation of the Judgment made by a professional translator, to be found as an annex to the Communication 115, 2017 African Commission on Human and Peoples' Rights (ACHPR), ACHR/Comm/115/18 (Nov. 2). The document is on file with the author and the *AJIL* Editorial Board.

[6] Case No. 37 and 49, Judgment, 2018 Supreme Constitutional Court, Year 38 (Mar. 3) [hereinafter Judgment SCC 2018].