

## INCOMPLETE DECOLONISATION WITHOUT SELF-DETERMINATION: THE CASE OF THE SEPARATION OF THE CHAGOS ARCHIPELAGO

*Eden Hb Chua\**

### ABSTRACT

On 25 February 2019, the *International Court of Justice* (ICJ) pronounced on questions relating to the separation of the Chagos Archipelago from Mauritius. The case raised a rare challenge over the lawfulness of the Mauritian decolonisation process. Of particular relevance in this inquiry was whether, in view of General Assembly Resolution 1514 (XV), the separation of the Chagos Archipelago had adversely affected the right of Mauritian peoples to self-determination. The ICJ affirmatively found that the right had been infringed as the separation was done without the Mauritian peoples' consent. This article comments on this decision, its implications on the development of the right of peoples to self-determination and its relevance on the understanding of the right in the situation of an incomplete decolonization. This article argues that even though the ICJ did not advance a broader notion of self-determination in this case, its decision represents an exciting development in the advancement of self-determination in the context of decolonisation and this relevance would only be felt in future similar cases.

### 1. INTRODUCTION

“No other concept is as powerful, visceral, emotional, unruly, as steep in creating aspirations and hopes as self-determination”, thus said Wolfgang Danspeckgruber.<sup>1</sup> The right of peoples to self-determination is enshrined in *International Covenant on Civil and Political Rights* (ICCPR) and *International Covenant on Economic, Social, and Cultural Rights*

---

\* Lawyer of the Supreme Court of New South Wales, Australia.

<sup>1</sup> Danspeckgruber, W. in M. C. van Walt van Praag and O. Seroo (eds.), ‘The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention. Report of the International Conference of Experts held in Barcelona from 21 to 27 November 1998, organized by the UNESCO Division of Human Rights Democracy and Peace and the UNESCO Centre of Catalonia’, Centre UNESCO de Catalunya, 1999, p. 10, cited in Christine Griffioen, *Self-Determination as a Human Right The Emergency Exit of Remedial Secession* (Science Shop of Law, Economics and Governance, Utrecht University 2010), p. 1.