



# Call for Papers

## *International Community Law Review*

### Special Issue: **The evolving role of international judicial advisory opinions**

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Advisory opinions of international courts and tribunals provide an avenue for States and international bodies to seek clarity on specific legal issues and interpretations, without inviting binding legal decisions. The scope, nature and process for seeking advisory opinions differs depending on the court or tribunal, however, their fundamental nature as non-binding guidance on legal questions of principle or substance remains fairly consistent. In May 2023, in the meeting for Subsidiary means for the determination of rules of international law, all the ILC members had taken the view that advisory opinions could be as authoritative as judicial decisions whilst observing that the International Court of Justice (ICJ) and other international courts, such as the International Tribunal for the Law of the Sea and the Inter-American Court of Human Rights (IAHR), referred to their own prior judgments and advisory opinions without distinction.<sup>1</sup>

Despite seeming to have no binding force, advisory opinions often carry great legal weight and moral authority. As a result, they have been controversial, especially in common law jurisdictions, as methods to circumvent the requirement of state consent for contentious litigation and as a means to enable judicial law-making.<sup>2</sup> Notwithstanding this controversy, advisory opinions are understood to shape and influence the development of international law, as well as impact the conduct of States, as noted by Lauterpacht as early as 1958.<sup>3</sup>

However, in the past few years a proliferation of requests for advisory opinions on increasingly wide-ranging issues has arisen. There are currently two requests pending before the ICJ. The first, requested in April 2023, concerns the obligations of States in respect of climate change. The second, requested in January 2023, concerns the effect of Israeli practises on the human rights of the Palestinian people. Previous decisions on the use of nuclear weapons and the building of the Wall on occupied Palestinian land have been similarly broad in scope and politically controversial. In addition, requests for advisory opinions currently before the Inter-American Court of Human Rights and the International Tribunal for the Law of the Sea (ITLOS) also request guidance on addressing

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<sup>1</sup> A/CN.4/SR.3633 Provisional summary record of the 3633rd meeting held at the Palais des Nations, Geneva, 26 May 2023.

<sup>2</sup> Christian R. Burset, 'Advisory Opinions and the Problem of Legal Authority' (2021) 74(3) *Vanderbilt Law Review* 621.

<sup>3</sup> H. Lauterpacht, *The Development of International Law by the International Court*, 1958, p.156; see for more recent discussion Teresa F. Mayr and Jelka Mayr-Singer, 'Keep the Wheels Spinning: The Contributions of Advisory Opinions of the International Court of Justice to the Development of International Law,' *ZaöRV* 76 (2016), 425-449.

climate change and the implications for human rights. Whilst the African Court of Human Rights and European Court of Human Rights appear to have maintained a narrower focus on advisory opinions, we can still see an increasing use of this mechanism to seek judicial guidance on political, and not solely legal, questions.<sup>4</sup>

This raises a number of questions that this special issue hopes to explore. There are currently three requests for advisory opinions on climate change pending before the ICJ, ITLOS and the IAHR. We invite authors to explore what has prompted this increase in advisory opinion requests. How will the advisory opinions of diverse international bodies interact with one another to develop the international legal response to climate change? What is the impact of advisory opinions on addressing global issues, for example, climate change.<sup>5</sup> Does this signal that the legal character of advisory opinions could be evolving and how is this affecting their practical usefulness? Whilst submissions should not be limited to discussions of advisory opinions in the context of climate change, we submit the current moment is exemplary of a general phenomenon of proliferation of requests for advisory opinions that needs to be considered.

A further issue that could be considered is the increasingly political nature of advisory opinion requests. In 2010, Aust wrote that the ICJ should exercise its discretion and refuse a request for an advisory opinion when the issue is politically controversial.<sup>6</sup> Authors could revisit this proposal in light of the recent requests for advisory opinions and consider the evolving role of international courts and tribunals in answering legal, and political, questions. They may also question the non-binding nature of advisory opinions, especially given that ITLOS has recently provided a novel interpretation of the legal effects of the ICJ advisory opinions as precedents and the recent comments from the ILC<sup>7</sup>.

We invite contributions from scholars at all stages of their academic careers and from within, as well as beyond, the legal field. Paper proposals should be 500 words in length and we ask authors to provide a brief biography indicating their expertise on the topic proposed. Proposals should be submitted to [iclr.managing.editor@gmail.com](mailto:iclr.managing.editor@gmail.com) by the 1 December 2023. We will contact authors with a decision in January with first drafts submitted for review by July 2024. The Special Issue will be published in the *International Community Law Review* in early 2025.

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<sup>4</sup> Protocol No. 16 extends the jurisdiction of the European Court of Human Rights, enabling the Court to give advisory opinions in response to requests from the highest courts or tribunals of States Parties to the Convention. Entered into force in 2018. 6 advisory opinions issued since with one pending; African Court has issued 15 advisory opinions since 2011, non pending. These include opinions on the relationship between a States obligations to the ICC and the AU, the human rights consequence of extreme poverty, the rights of women and of children.

<sup>5</sup> Bodansky, D. Advisory opinions on climate change: Some preliminary questions. *RECIEL*. 2023; 1- 8.

<sup>6</sup> Anthony Aust, Advisory Opinions, *Journal of International Dispute Settlement*, 1:1 (2010) 123–151.

<sup>7</sup> See n(1); Lanzoni, N. (2022). The Authority of ICJ Advisory Opinions as Precedents: The Mauritius/Maldives Case, *The Italian Review of International and Comparative Law*, 2(2), 296-322.

**Timetable:**

September 2023: Call for papers released

December 2023: Deadline for abstracts submissions

January 2024: Contact chosen authors

July 2024: Full length article deadline

August 2024: First reviews deadline

September 2024: Revised articles due

October 2024: Second reviews deadline

November 2024: Final versions of articles due

December 2024: Special Issue due with publisher