

INTRODUCTION TO SYMPOSIUM ON THE CONTOURS AND LIMITS OF ADVISORY OPINIONS

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International law is struggling, yet advisory opinions are surging. In the last year, the United Nations General Assembly has requested two advisory opinions from the International Court of Justice (ICJ); a coalition of two small island nations has sought an advisory opinion from the International Tribunal for the Law of the Sea (ITLOS); and several advisory proceedings have also begun at regional courts. At least three of these proceedings relate to climate. Given this momentum, this symposium on the contours and limits of advisory opinions could not be more timely. The five essays that follow are written by scholars and practitioners from around the globe. They provide important insights into the processes for seeking advisory opinions, into the legal and practical consequences of these opinions, and into the various choices faced along the way by different actors (including advocacy groups, states, and courts).

Among the current international and regional courts that issue advisory opinions, the ICJ is the oldest and most widely studied. Since it was established in 1945, it has resolved twenty-seven advisory proceedings.¹ Roughly a third of these proceedings occurred during the Court's first decade. Since then, the pace has been slower. The only advisory opinion issued by the Court in the last decade has been its 2019 decision on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, in which an overwhelming majority of the Court determined that the United Kingdom should return the Chagos Archipelago to Mauritius.

The *Chagos* opinion may well have inspired some of the newfound momentum around advisory opinions. It showed that the Court was open for advisory business, willing to tackle historical injustices tied to colonialism, and unhesitating in siding with a small nation from the Global South over a permanent member of the Security Council. As importantly, it showed that the General Assembly could be persuaded to make such a referral in the first place. And in the years since the opinion was issued, we have seen that it was an advisory opinion with teeth. It has triggered considerable further pressure on the United Kingdom to surrender its claim to the Archipelago. Indeed, at the time of this writing, news reports suggest that a negotiated settlement that favors Mauritius is near at hand.²

It remains to be seen whether *Chagos* marks a turning point in the frequency and importance of advisory opinions in international courts. The recent surge is suggestive, but it will take more time before we have a clear answer. Whatever the answer, the recent flurry of activity provides a particularly good moment to reflect on the contours and limits of advisory opinions in international courts—and also to consider these issues in the context of regional courts which also make considerable use of advisory opinions.

This symposium therefore brings together practitioners and scholars with expertise related to advisory opinions in international and regional courts. Their focus is on the *actors* engaged in the advisory opinion process and the

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¹ For a list of the advisory proceedings decided by the ICJ since its founding, see International Court of Justice, [Advisory Proceedings](#).

² Patrick Daly, [Foreign Office Rejects Boris Johnson's Chagos Islands Handover Fears](#), INDEPENDENT (Sept. 22, 2023).

choices that they must make. Who needs to do what—both legally and practically—to get an international court to issue an advisory opinion? How, if at all, do actors respond to advisory opinions in ways that generate change on the ground? What happens if multiple courts are asked for advisory opinions on overlapping issues? The essays in this symposium address all these issues and more.

Margaretha Wewerinke-Singh of the University of Amsterdam, Jorge Viñuales of the University of Cambridge, and Julian Aguon of Blue Ocean Law consider how advocates for change can pursue requests for advisory opinions. They focus in their contribution on the General Assembly's recent request to the ICJ for an advisory opinion related to climate change.³ Spearheaded by the small island nation of Vanuatu, this request asks what obligations states have to protect the climate—and what legal consequences follow for states that have harmed other states or peoples by failing to live up to these obligations. The authors discuss how this request unfolded and include discussion of the role of youth advocates, the challenges of coalition-building, and the intricacies of the drafting process. They do so from a unique vantage point, as they serve as counsel for Vanuatu in these proceedings. They emphasize the importance of ground-up, client-centered advocacy by lawyers embedded in affected communities. They also offer some fascinating insights into the strategic nuts and bolts of getting the General Assembly to approve a request for an advisory opinion without having it become too watered down in the process.

In his contribution, Massimo Lando of the University of Hong Kong, focuses on how states can pursue advisory opinions at ITLOS.⁴ Continuing with the climate theme, one issue discussed is the relative ease with which two small island countries—Tuvalu along with Antigua and Barbuda—were able to trigger ITLOS's advisory opinion jurisdiction through an agreement with each other. (Their agreement established a commission, which in turn asked ITLOS for an advisory opinion on the obligation of states under the Law of the Sea Convention regarding the marine environment as it relates to climate change.) He considers the pros and cons of this low threshold, including its implications for different types of legal questions. He repeatedly compares ITLOS with the ICJ to illustrate the consequences that flow from having different ground rules.

Maria Antonia Tigre of the Sabin Center for Climate Change Law at Columbia Law School and Armando Rocha of the University Católica Portuguesa bring a scholarly focus to the opportunities and challenges that arise when multiple international courts are asked for advisory opinions on overlapping issues.⁵ This fascinating question is squarely presented in the climate context because of the pending advisory opinion requests to the ICJ, to ITLOS, and to the regional Inter-American Court of Human Rights (IACtHR). A similar request may soon be before the African Court on Human and Peoples' Rights, and the European Court of Human Rights is also now grappling with various contentious cases related to climate. Focusing on courts as actors in a world of multiple courts, the authors discuss the possibility of outcomes ranging from harmony to disagreement. This contribution reminds us that the climate advisory opinions will be exceptionally important not just in their own right, but also as setting the tone for a future which may contain increasing numbers of overlapping advisory opinions.

Eran Sthoeger of Brooklyn Law School turns to the topic of how states can respond after advisory opinions are issued. He considers the uneasy balance between the formal status of advisory opinions as non-binding and their practical status as influential pronouncements regarding the law.⁶ A practitioner who worked with the United Kingdom during the *Chagos* proceedings, he focuses on advisory opinions that have outsized implications for

³ Margaretha Wewerinke-Singh, Jorge Viñuales & Julian Aguon, *The Role of Advocates in the Conception of Advisory Opinion Requests*, 117 AJIL UNBOUND 277 (2023).

⁴ Massimo Lando, *Three Goals of States as They Seek Advisory Opinions from ITLOS*, 117 AJIL UNBOUND 282 (2023).

⁵ Maria Antonia Tigre & Armando Rocha, *Competing Perspectives and Dialogue in Climate Change Advisory Opinions*, 117 AJIL UNBOUND 287 (2023).

⁶ Eran Sthoeger, *How Do States React to Advisory Opinions? Rejection, Implementation, and What Lies Between Them*, 117 AJIL UNBOUND 292 (2023).

particular states. He uses *Chagos* to analyze how such advisory opinions may in turn trigger further actions with legal or political significance.

Finally, Walter Arévalo Ramírez of the University del Rosario and Andrés Rousset Siri of the National University of Cuyo discuss how states and different branches of their governments can build compliance with advisory opinions of the Inter-American Court of Human Rights (IACtHR).⁷ These scholars emphasize that advisory opinions are a well-embedded part of the IACtHR's jurisprudence. These opinions can be requested by individual states, and indeed this is the main way in which the IACtHR has received its requests for advisory opinions over the years. Once the Court has issued an advisory opinion, states may comply with it through one of several pathways. The authors offer many notable examples of compliance, including by domestic courts, legislatures, and regulators. They emphasize that compliance may in fact flow more readily for advisory opinions than for contentious cases, at least in certain contexts.

Collectively, these five essays remind us of the importance of advisory opinions. The pending climate cases may not only provide valuable legal guidance on climate, but also raise the profile of advisory opinions still further. The more that other international institutions are paralyzed by inaction, the more we may see a turn to advisory opinions as a means of mobilizing change.

⁷ Walter Arévalo Ramírez & Andrés Rousset Siri, [*Understanding the Actors that Ensure Compliance with Advisory Opinions in the Inter-American Human Rights System*](#), 117 AJIL UNBOUND 298 (2023).