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The rediscovery of advisory opinions of the International Court of Justice as a tool for international public interest litigation

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Abstract: In the context of the growing judicialization of international relations, this study focuses on the resurgence of advisory opinions of the International Court of Justice as a legal tool for the protection of international public interest. It analyses three main dimensions: their role in the reaffirmation, consolidation and progressive development of the obligations to protect the general interests of the international community; their usefulness as an instrument available to international organizations particularly the United Nations General Assembly for the defence of these interests; and the increasing involvement of non-state actors in both the request for and the conduct of advisory proceedings.

Keywords: advisory opinions International Court of Justice international public interest-international litigation

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(A) INTRODUCTION

In the current international disorder,[1] some states are deliberately turning their backs on the international legal order based on rules created after the Second World War.[2] Others seem, paradoxically, to have rediscovered existing legal tools to claim their compliance, though they had not yet used them to their full potential. These legal tools are, among others, the compromissory clauses of certain international treaties for the protection of the general interests of the international community, *erga omnes* obligations, requests for provisional measures before international courts, interventions by third states in judicial proceedings or, the object of this paper, requests for advisory opinions.

Thus, a growing recourse to international judicial settlement can be observed, particularly in the context of armed conflicts, human rights violations and environmental degradation.[3] This judicialization of non-compliance with international law is used as a complement or last resort in the face of the failure of other mechanisms and multilateralism to prevent or mitigate international crises and to strengthen the international rule of law.

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1 J.M. Pureza and J. Alcaide-Fernández, 'La Guerra en Ucrania: ¿Qué (des)orden antecede a qué nuevo (des) orden)?', 44 *Revista Electrónica de Estudios Internacionales* (2022) [doi: 10.17103/reei.44.10].

2 Among others: A. Remiro Brotóns, 'La utopía de un nuevo orden basado en el derecho, el multilateralismo y la solidaridad', 13 *Paix et Sécurité Internationales* (2025) [doi: 10.25267/Paix_secur_int.2025.i13.xxxxx].

3 Among others: R. Fernández Egea y M. García Casas, 'La era de la judicialización del Derecho Internacional', *Aquiescencia. Blog de Derecho Internacional*, published on 31 March 2023, accessed 25 November 2025.

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But this phenomenon is not limited to contentious proceedings. It has also manifested in the use of quasi-jurisdictional mechanisms such as human rights treaty bodies or in a growing recourse to the advisory function of international tribunals.

We will focus on the advisory function of the International Court of Justice (ICJ), a court that has never had such an extensive list of cases pending before it more than twenty, including contentious and advisory proceedings. Nonetheless, the advisory function no longer operates under its exclusive purview. This function is gradually being extended to more courts, alongside an increase in its use. This trend can be clearly seen in the four recent requests for advisory opinions on climate change before: the International Tribunal for the Law of the Sea (ITLOS), adopted in July 2024;[4] the Inter-American Court of Human Rights (IACtHR), adopted in May 2025;[5] the ICJ itself, adopted in July 2025;[6] and the African Court on Human and Peoples' Rights, requested in May 2025.[7] These four proceedings also reflect the current furore in climate litigation, which has escalated from national to regional and international levels and from contentious and quasi-jurisdictional to advisory proceedings.[8]

The request for advisory opinions from the ICJ in the context of protecting public interests is not new, as shown by the well-known 1996 case concerning the legality of the threat and use of nuclear weapons,[9] but it has reemerged in recent years. The latest advisory opinions in response to requests submitted to this Court by the United Nations General Assembly (UNGA) illustrate this trend: the 2019 advisory opinion on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965;[10] the 2024 advisory opinion on those arising from Israel's policies and practices in the Occupied Palestinian Territories, including East Jerusalem;[11] the aforementioned 2025 advisory opinion on the obligations of states with regard to climate change; and, most recently, the 2025 advisory opinion on Israel's obligations concerning the presence and activities of the United Nations (UN), other international organizations and third states.[12]

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4 ITLOS, *Request for an Advisory Opinion submitted by The Commission of Small Island States on Climate Change and International Law, List of cases: No. 31, Advisory* Opinion, 21 May 2024.

5 IACtHR, *The Climate Emergency and Human Rights (Interpretation and scope of Articles 1(1), 2, 4(1), 5(1), 8, 11(2), 13, 17(1), 19, 21, 22, 23, 25 and 26 of the American Convention on Human Rights; 1, 2, 3, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador," and I, II, IV, V, VI, VII, VIII, XI, XII, XIII, XIV, XVI, XVIII, XX, XXIII, and XXVII, of the American Declaration of the Rights and Duties of Man)*. Advisory Opinion AO-32/25 of May 29, 2025. Series A No. 32.

6 ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion, 23 July 2025.

7 *Request for Advisory Opinion No.001 of 2025: In the matter of a request by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the obligations of States with respect to the climate change crisis*, 02 May 2025.

8 Among others: B. Mayer and H. Van Asselt, 'The rise of international climate litigation', 32(3) *Review of European, Comparative & International Environmental Law* (2023)175-184 [doi: 10.1111/reel.12515].

9 ICJ, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, ICJ Reports (1996) 226.

10 ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, ICJ Reports (2019) 95.

11 ICJ, *Legal consequences arising from the policies and practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion*, 19 July 2024.

12 ICJ, *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory, Advisory Opinion*, 22 October 2025.

In the following sections, we will analyse the main features of ICJ advisory opinions as a tool of international public interest litigation, with special emphasis on how the most recent cases have been approached and developed and the innovations that have occurred in them. After framing these cases in the context of the growing judicialization of efforts to protect the general interests of the international community, we will analyse their role in the reaffirmation, consolidation and progressive development of the obligations to protect these interests. We will then consider its usefulness as an instrument for their defence in the service of international organizations and, in particular, the UNGA. Finally, we will explore the rising role of non-state actors in the request and development of these advisory proceedings.

(B) INTERNATIONAL PUBLIC INTEREST LITIGATION BEFORE THE ICJ

The expression "international public interest litigation" refers to actions brought before international courts and tribunals to safeguard interests shared by the international community.[13] In contentious cases, they are brought by states that are not directly affected by the alleged damage but act in the common interest. The three contentious cases pending before the ICJ in which it has been asked to rule on breaches of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide are paradigmatic in this regard:[14] *The Gambia v. Myanmar*,[15] *South Africa v. Israel*[16] and *Nicaragua v. Germany*.[17]

The concept of "strategic litigation" is also frequently used in this context. It can be defined as litigation that seeks to promote structural change rather than the resolution of individual grievances[18] or the attempt to obtain a political or other advantage through the

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13 B. E. McGarry, 'Obligations Erga Omnes (Parties) and the Participation of Third States in Inter-State Litigation, 22(2) *The Law & Practice of International Courts and Tribunals* (2023) 273-300, at 274 [doi: 10.1163/15718034-bja10099].

14 Y. Suedi and J. Bendel, 'The Recent Genocide Cases and Public Interest Litigation: A Complicated Relationship', *Ejil:talk!*, published on 5 April 2024, accessed 25 November 2025.

15 ICJ, *Application instituting proceedings and request for provisional measures filed in the Registry of the Court on 11 November 2019. Application of The Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia V. Myanmar)*, General List No. 178, 2019.

16 ICJ, *Application instituting proceedings and request for the indication of provisional measures, 29 December 2023. Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel).* General List No. 192, 2023.

17 ICJ, *Application instituting proceedings and request for the indication of provisional measures, 1 March 2024. Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*. General List No. 193, 2024

18 Among others: M. Ramsden, 'Strategic Litigation before the International Court of Justice: Evaluating Impact in the Campaign for Rohingya Rights', 33(2) *European Journal of International Law* (2022) 441-472 [doi: 10.1093/ejil/chac025]; J. Almqvist, 'La Corte Internacional de Justicia como foro para el litigio estratégico de Derechos Humanos', in S. Torrecuadrada García-Lozano (dir), *Los desafíos de la Corte Internacional de Justicia y las sinergias entre la Corte y otros órganos jurisdiccionales* (Wolters Kluwer España, 2021) 215; or M. De Arcos Tejerizo, 'La fragmentación judicial en la resolución de disputas de derechos humanos ¿Qué rol puede ejercer la Corte Internacional de Justicia', in S. Torrecuadrada García-Lozano and C. Espósito (eds), *Los desafíos de la Corte Internacional de Justicia frente a los derechos humanos. III Jornadas sobre los nuevos retos de la Corte Internacional de Justicia*, (La Ley, 2022) 87.

law that would not otherwise be possible, given the imbalances of power in international relations.[19] Another close notion is the more generic and vague concept of "lawfare",[20] sometimes used with a negative connotation and insinuating an abusive recourse to jurisdictional mechanisms.

Regardless of the nuances these expressions may have, we refer to cases in which the international public interest or the general, common, collective or shared interests of the international community or a group of states are to be defended by jurisdictional means. In other words, these are interests protected by the community structure of international law, still in the process of crystallization, governed by the principle of solidarity[21] and which give international law its public dimension.[22] While international public interests may raise questions about their specific beneficiaries and the substantive international law they cover,[23] they can generally be understood in two ways: (1) as those that transcend the particular interests of each state and of the entities directly affected by the breach of the norms that protect them[24] or (2) as those about which there is a consensus that they should not be left to the free disposition of individual states or among them but instead should be recognized and sanctioned by international law as a matter that concerns all states.[25]

These interests have been created and protected through what Ángel Rodrigo has called the community toolbox.[26] Of particular relevance for international public interest litigation are: the multilateral treaties for protecting collective interests with particular characteristics in terms of conclusion, reservations and responsibility for breach; *erga omnes* obligations, especially *erga omnes partes* obligations; peremptory or *ius cogens norms*; and the extension of the standing to invoke the international responsibility of states in cases of breaches of obligations arising from these norms.

One of the limitations of the community structure of the international legal order is its institutional deficit. This leads to the paradox that, in order to defend the general interests of the international community, it is necessary to have recourse to the mechanisms for the application and guarantee of international norms existing in

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19 D. Guilfoyle, 'The Chagos Archipelago before International Tribunals: Strategic Litigation and the Production of Historical Knowledge', 21(3) *Melbourne Journal of International Law* (2021).

20 G.P. Noone, 'Lawfare or Strategic Communications?', 43(1-2) *Case Western Reserve Journal of International Law* (2010) 73-85.

21 Among others: M. Díez De Velasco, *Instituciones de Derecho Internacional Público* (18th ed.,Tecnos, 2013) at 92-93.

22 Among others: O. Casanovas y La Rosa, 'La dimensión pública del derecho internacional actual, in N. Bouza i Vidal *et al.* (eds), *La Gobernanza del Interés Público Global: XXV Jornadas de la Asociación Española de Profesores de Derecho Internacional y Relaciones Internacionales* (Tecnos, 2015) 57; or A.J. Rodrigo, 'Las normas de interés público en el Derecho Internacional', in N. Alonso Moreda, J. L. de Castro Ruano, I. Otaegui Aizpurúa (eds), *Cursos de Derecho internacional y Relaciones Internacionales de Vitoria-Gasteiz 2024* (Valencia, Tirant lo Blanch, Blanch, 2025) 273.

23 M. Esnault, 'On the pertinence of 'public interest' for international litigation', in J. Bendel and Y. Suedi (eds), *Public Interest Litigation in International Law* (Routledge, 2024) 9.

24 G. Gaja, 'The Protection of General Interests in the International Community. General Course on Public International Law (2011)', 364 *The Hague Academy Collected Courses* (Brill | Nijhoff 2014), at 21.

25 B. Simma, 'From Bilateralism to Community Interest in International Law', 250 *The Hague Academy Collected Courses* (Brill | Nijhoff, 1994), at 233.

26 Á.J. Rodrigo Hernández, 'Más allá del Derecho Internacional: el Derecho Internacional Público', in R. Méndez Silva (coord), *Derecho Internacional* (Universidad Nacional Autónoma de México, 2019) 57, at 91-92.

the bilateral structure, including its judicial means.[27] Tensions thus arise between these general interests and the bilateral and consensual nature of the international judicial system, originally designed for the defence of individual state interests.[28] This system will consequently impose important limitations on the defence of the public interest through contentious proceedings,[29] which mainly concern the need for states to accept the jurisdiction of international tribunals, and on their standing to bring a case before it, even in the case of violation of *ius cogens* norms or *erga omnes* obligations.

The ICJ recognised in an iconic *obiter dictum* from the 1970 Barcelona Traction case the existence of *erga omnes* obligations, namely, the obligations of a state towards the international community as a whole, and that given the importance of the rights involved, all states can be held to have a legal interest in their protection.[30] These obligations may originate in general international law as well as in international treaties. Obligations *erga omnes partes* are generally understood, as the *Institut de Droit international* (IDI) described them, as those "under a multilateral treaty that a state party to the treaty owes in any given case to all the other states parties to the same treaty, in view of their common values and concern for compliance, so that a breach of that obligation enables all these states to take action."[31] However, the existence of obligations *erga omnes partes* derived from customary international law has not been excluded by the International Law Commission (ILC).[32]

Ius cogens or peremptory norms of general international law were defined in Article 53 of the Vienna Convention on the Law of Treaties of 23 May 1969 as those accepted and recognized by the international community of states as a whole as norms from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.[33] Furthermore, in the event of serious breaches of these norms, a qualified regime of international responsibility of the state applies.[34] The most common basis of *ius cogens* norms is customary international law, though treaty provisions and general principles of law may also serve as their grounds.[35] Obligations deriving from peremptory norms will always be obligations *erga*

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27 *Ibid.* at 93-94; or R. Huesa Vinaixa, 'A bilateral dispute with a multilateral dimension: issues of jurisdiction and ius standi in Gambia v. Myanmar (provisional measures)', 39 *Revista Electrónica de Estudios Internacionales* (2020) [doi: 10.17103/reei.39.11].

28 Á. J. Rodrigo Hernández and B. Vázquez Rodríguez, 'International climate litigation as a case of international litigation in public interest', 28 *Spanish Yearbook of International Law* (2024) 209-216, at 210 [doi: 10.36151/SYBIL.28.10].

29 P. Wojcikiewicz Almeida, 'Enhancing ICJ Procedures in Order to Promote Fundamental Values: Overcoming the Prevailing Tension between Bilateralism and Community Interests Get access Arrow', in M. Iovane *et al.* (eds), *The Protection of General Interests in Contemporary International Law: A Theoretical and Empirical Inquiry* (Oxford University Press, 2021) 241-263, at 242-243.

30 ICJ, *Barcelona Traction, Light and Power Company, Limited, Judgment,* ICJ Reports (1970), at para. 33.

31 IDI, *Resolution 'Obligations Erga Omnes in International Law'*, Krakow Session, 2005, at Article 1(b).

32 ILC, 'Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries', in II(2) *Yearbook of the International Law Commission* (2001), at 126 (commentary to Article 48).

33 See also: ILC, 'Draft Conclusions on the identification and legal consequences of peremptory norms of general international law (jus cogens), adopted by the International Law Commission', in II(2) *Yearbook of the International Law Commission* (2022), at Conclusion 2; or R. Casado Raigón, 'Derecho dispositivo y derecho imperativo', in J. M. Beneyto Pérez and C. Jiménez Piernas (eds), *Concepto y Fuentes del Derecho Internacional* (Tirant lo Blanch, 2022) 274, at 286-288.

34 ILC, *supra* n. 33, at Conclusion 19; and Articles 40 and 41 ARSIWA.

35 ILC, *supra* n. 33, at Conclusion 5.

omnes, although not all obligations *erga omnes* derive from peremptory norms. However, the relationship between the two categories is still far from peaceful today and tends to overlap in ICJ jurisprudence.[36]

With regard to the consensual nature of its contentious jurisdiction, the ICJ has reiterated in case law after the *Barcelona Traction* judgement that the *erga omnes* nature of an obligation does not exempt the need for the state's consent to its jurisdiction.[37] As remarked, among others, by Professor Antoni Pigrau i Solé, in the current state of evolution of international law, not even an *ius cogens* norm is powerful enough to affect the right of a state not to give its consent to be judged by the ICJ.[38] Until now, it has only been possible to take international legal action for breach of *erga omnes partes* obligations. That is, in situations where the defendant States are parties to multilateral treaties and have accepted the jurisdiction of the Court, usually through the compromising clauses of those treaties.[39]

The ICJ's judgement in the *East Timor* case[40] made it clear that the *erga omnes* character of an obligation also does not affect the doctrine of the indispensable third party or Monetary Gold Principle — the case in which the ICJ first invoked it to determine that it could not rule on the merits of a case when the legal interests of a state that has not consented to the exercise of its jurisdiction constituted the very object of the decision sought.[41] However, it should be noted that subsequent case law, both from the ICJ and at other international tribunals, suggests that this principle would not apply either if the responsibility of the respondent state can be determined without the need for prior determination of that of another state,[42] or if the rights or obligations of the third state have already been determined by a competent international authority.[43]

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36 See, among others: M. Iovane & P. Rossi, 'International Fundamental Values and Obligations Erga Omnes', in M. Iovane *et al*. (eds), *The Protection of General Interests in Contemporary International Law: A Theoretical and Empirical Inquiry* (Oxford University Press, 2021) 46-67, at 54; E. Carli, 'Obligations Erga Omnes, Norms of Jus Cogens and Legal Consequences for "Other States" in the ICJ Palestine Advisory Opinion', *Ejil:talk!*, published on 26 August 2024, accessed 25 November 2025; or ICJ, *Obligations of States…*, *supra* n. 6. Declaration of Judge Tladi, at 10-11.

37 Among others: ICJ, *East Timor (Portugal v. Australia), Judgment*, ICJ Reports (1995) 90, para. 29.

38 A. Pigrau Solé, 'Reflections on the effectiveness of peremptory norms and erga omnes obligations before international tribunals, regarding the request for an advisory opinion from the International Court of Justice on the Chagos Islands', 55 *Questions of International Law*. Zoom-out (2018) 131-146, at 137.

39 Among others: ICJ, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment*, ICJ Reports (2012) 422; ICJ, *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), Judgment*, ICJ Reports (2014) 226; ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), Preliminary Objections,* Judgment, ICJ Reports (2022) 477. See also: E. Carli, 'Community Interests Above All: The Ongoing Procedural Effects of Erga Omnes Partes Obligations Before the International Court of Justice', *Ejil:talk!*, published on 29 December 2023, accessed 25 November 2025.

40 "(...) the Court considers that the *erga omnes* character of a norm and the rule of consent to jurisdiction are two different things. Whatever the nature of the obligations invoked, the Court could not rule on the lawfulness of the conduct of a State when its judgment would imply an evaluation of the lawfulness of the conduct of another State which is not a party to the case. Where this is so, the Court cannot act, even if the right in question is a right *erga omnes*" (ICJ, *East Timor*…., *supra* n. 37, at para. 29).

41 ICJ, *Case of the monetary gold removed from Rome in 1943 (Preliminary Question), Judgment of June 15th, 1954*, ICJ Reports (1954) 19.

42 Among others: ICJ, *Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment*, ICJ Reports (1992) 240.

43 Among others: PCA, *Larsen v. Hawaiian Kingdom, Award, 5 February 2001, Case No. 1999-01. Hawaiian Kingdom, Award*, 5 February 2001, Case No. 1999-01; or ITLOS, *Dispute concerning delimitation of the maritime*

Concerning standing to bring a case in defence of general interests, the ICJ expressly stated in its 1966 *South West Africa*[44] judgement that, given the state of development of international law at that time, there was no possibility of bringing an *actio popularis*, namely the right of any state to take legal action in vindication of a public interest,[45] as there was in some national systems. Nevertheless, since then, the crystallization of the notion of *erga omnes* obligations in ICJ jurisprudence, supported by other developments such as the inclusion of Article 48 in the ILC Draft Articles on Responsibility of States for internationally wrongful acts of 2001 (ARSIWA),[46] has consolidated the recognition of the standing of both injured and non-injured states to invoke the breach of *erga omnes* obligations. But, as we have already examined, it has so far only been possible to substantiate cases of this kind before the ICJ in relation to obligations *erga omnes partes* provided for in multilateral treaties, and not in connection with obligations *erga omnes partes* derived from customary international law or other sources of international law nor in relation to obligations *erga omnes stricto sensu*.[47]

In this context, the advisory function of the ICJ serves as an alternative or complement to its contentious function in the defence of the international public interest. This role is especially significant in view of the reduction of compromissory clauses in treaties referring contentious matters to the ICJ, as well as the withdrawal of some states' declarations accepting the Court's compulsory jurisdiction.[48] Furthermore, it could be argued that advisory opinions inherently involve a public interest element, as their primary purpose is to address legal issues arising from questions of international law.[49]

(C) THE ADVISORY FUNCTION OF THE ICJ

boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives), Preliminary Objections, Judgment (28 January 2021). In detail: B. McGarry and N. Zargarinejad, 'All that Glitters Is Not Monetary Gold. Indispensable Parties and Public Interest Litigation before International Tribunals, in J. Bendel and Y. Suedi (eds) *Public Interest Litigation in International Law* (Routledge, 2024) 137.

44 ICJ, *South West Africa, Second Phase, Judgment*, ICJ Reports (1966) 6, at para. 88.

45 *Ibid.*

46 Annex to GA Res. 56/83, 28 January 2022. According to Article 48(1) ARSIWA: "1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if: (a) The obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or (b) The obligation breached is owed to the international community as a whole".

47 See, among others: C. Espaliù Berdud, 'Locus standi de los estados y obligaciones erga omnes en la jurisdicción contenciosa de la Corte Internacional de Justicia', 72(2) *Revista Española de Derecho Internacional* (2020) 33-59 [doi: 10.17103/redi.72.2.2020.1a.01]; C. Gil Gandía, 'Momentum de la actio popularis y la Corte Internacional de Justicia', in S. Torrecuadrada García-Lozano and E.M. Rubio Fernández (dirs), *La contribución de la Corte Internacional de Justicia al imperio del derecho internacional en tiempos convulsos: Aproximaciones críticas* (Aranzadi, 2023)123; or Y. Suedi & J. Bendel, 'Public Interest Litigation. A Pipe Dream or the Future of International Litigation?', in J. Bendel and Y. Suedi (eds), *Public Interest Litigation in International Law* (Routledge, 2024) 34, at 55-58.

48 Among others: J. Crawford, F. Baetens, and R. Cameron, 'Functions of the International Court of Justice', in C. Espósito & K. Parlett (eds), *The Cambridge Companion to the International Court of Justice*, (Cambridge University Press, 2023)13, at 35; or P. Urs, 'Obligations *erga omnes* and the question of standing before the International Court of Justice', 34(2) *Leiden Journal of International Law* (2021) 505-525 [doi: 10.1017/S0922156521000091].

49 C.A. Cruz Carrillo, 'The role of advisory opinions in addressing public interest issues', in J. Bendel and Y. Suedi (eds), *Public Interest Litigation in International Law* (Routledge, 2024) 170, at 173.

Pursuant to Article 65(1) of the ICJ Statute, the Cout may give advisory opinions on any legal question at the request of any body authorized by or in accordance with the Charter of the UN (the Charter) to make such a request. This is a function inherited from its predecessor, the Permanent Court of International Justice (PCIJ), whose attribution of an advisory function was, at the time, an innovation in international practice.[50] In the case of the PCIJ, only the Council and the Assembly of the League of Nations — which never exercised this function — had the competence to request advisory opinions. In the context of the ICJ, the organs that can do so were expanded: the UNGA or the Security Council may request advisory opinions on any legal question, while other organs of the UN and the specialized agencies that the UNGA authorizes may do so on legal questions arising within the scope of their activities.[51]

For the Court to consider the admission of a request for an advisory opinion, the issues raised must be of a *legal nature*. In other words, the Court's advisory role does not require the consent of any particular state.[52] The approval of a request for an advisory opinion by a majority of the members of the UNGA — the organ that most frequently makes use of this power — would be indicative of a fairly general consensus that it is a matter of interest to the international community and that transcends the bilateral nature that a dispute may initially have. Moreover, the ICJ Rules of Court provide that if an advisory opinion is requested upon a legal question pending between two or more States, they may appoint *ad hoc* judges.[53]

However, the fact that the ICJ has jurisdiction to issue an advisory opinion does not mean it is obliged to exercise it.[54] Article 65 of the ICJ Statute reflects this discretionary power of the Court by establishing that it "may give advisory opinions", although it has not yet refrained from exercising its jurisdiction in any advisory case submitted to it.[55] According to its consistent jurisprudence, when faced with a request for an advisory opinion, the ICJ must first consider whether it has jurisdiction. If it does have jurisdiction, it then must ascertain whether there are any compelling reasons why, in the exercise of its discretion, it should decline to issue the advisory opinion.[56]

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50 M. Pomerance, 'The advisory role of the International Court of Justice and its "judicial" character: past and future prisms', in S. Muller, D. Raic, and J.M. Thuránszky (eds), *The International Court of Justice. Its Future Role After Fifty Years* (Brill, 1997) 271.

51 Article 96 of the Charter of the UN. See, in detail: C. D. Espósito, *Jurisdicción consultiva de la Corte Internacional de Justicia* (McGraw-Hill, Madrid, 1996); and M. Hinojo Rojas, *A propósito de la jurisdicción consultiva de la Corte Internacional de Justicia* (Universidad de Córdoba, Servicio de Publicaciones, 1997).

52 As the court stated in its Advisory Opinion on the interpretation of Peace Treaties with Bulgaria, Hungary and Romania: 'The consent of States, parties to a dispute, is the basis of the Court's jurisdiction in contentious cases. The situation is different in regard to advisory proceedings even where the Request for an Opinion relates to a legal question actually pending between States. The Court's reply is only of an advisory character: as such, it has no binding force. It follows that no State, whether a Member of the United Nations or not, can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take" (ICJ, *Interpretation of Peace Treaties*, Advisory Opinion. I.C.J. Reports 1950, p. 65 (first phase), at 71.

53 Article 102 of the Rules of Court.

54 ICJ, *Legal consequences arising…*, *supra* n. 11, at para. 31.

55 The former PCIJ refrained from adopting an advisory opinion on one occasion, in the case of Eastern Karelia (PCIJ, *Status of Eastern Karelia*, Advisory Opinion of 23 July 1923), on the grounds that it was a bilateral dispute between the parties involved.

56 Among others: ICJ, *Legal Consequences of the Separation…*, *supra* n. 10, at para. 65.

In this regard, in the context of the advisory opinion on Israel's policies and practices in the Occupied Palestinian Territories, adopted in 2024, the Court recalled that an example of a 'compelling reason' would be where an advisory opinion has 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.[57] However, the Court considered that the fact that, in order to answer the questions put to it, it may have to pronounce on legal issues on which Palestine and Israel have expressed divergent views did not turn the matter into a bilateral dispute.[58] Nevertheless, and especially in cases where it would be difficult to obtain the consent of the states involved to resort to the ICJ's contentious function, it is obvious that the advisory procedures are being used as a form of disguised contentious proceedings or a "soft" litigation strategy.[59] Also, in its recent 2025 advisory opinion on Israel's obligations concerning the presence and activities of the UN, other international organizations and third states in and in relation to the Occupied Palestinian Territories, the Court did not consider that issuing the opinion would prejudge any elements of the pending contentious case of *The Gambia v. Myanmar*, nor that this constituted a compelling reason to decline the request.[60]

The Court's settled jurisprudence has also clarified that the fact that the questions posed by an advisory opinion may contain political aspects is insufficient to exclude its character as a legal question. Possible political motives that may have inspired it, or the political implications that it may have, are also irrelevant.[61] Above all, it appears that the Court prioritizes advisory opinions as a tool to help international organizations fulfil their functions and advance public interests.[62]

(D) THE ROLE OF ICJ ADVISORY OPINIONS IN THE REAFFIRMATION, CONSOLIDATION, PROGRESSIVE DEVELOPMENT AND IMPLEMENTATION OF THE OBLIGATIONS TO PROTECT THE GENERAL INTERESTS OF THE INTERNATIONAL COMMUNITY

One of the great utilities of the advisory proceedings before the ICJ is the important role that these opinions may play in the reaffirmation, consolidation and progressive development of the obligations to protect the general interests of the international community. This is something that the ICJ also does through its contentious function. However, in the case of advisory opinions, it has the advantage, as we have just examined, that the exercise of its jurisdiction is, in principle, limited only by the fact that what must be submitted to it is a legal question. Moreover, as Alain Pellet has pointed out, the Court

57 *Ibid*. at para. 34.

58 *Ibid*.

59 M. Stavridi, 'The Advisory Function of the International Court of Justice: Are States Resorting to Advisory Proceedings as a "Soft" Litigation Strategy?', *JPIA*, published on 22 April 2024, accessed 25 November 2025.

60 ICJ, *Obligations of Israel…*, *supra* n. 12, at paras. 26-31.

61 Among others: ICJ, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, ICJ Reports (2010) 403, at para. 27.

62 Y. Suedi, 'Advisory Jurisdiction and Consent: the Thin Line between Advisory and Contentious Proceedings', 24(1) *The Law & Practice of International Courts and Tribunals* (2025) 31-54 [doi: 10.1163/15718034-bja10131].

probably feels freer to seek more imaginative solutions when it performs its advisory function than when it adopts judgements that are *res iudicata*.[63]

The ICJ's own website describes how, despite not being legally binding, advisory opinions carry great legal weight and moral authority. They also often constitute an instrument of preventive diplomacy and contribute to the maintenance of peace, as well as to the clarification and development of international law and, therefore, to the strengthening of peaceful relations between states.[64]

Indeed, unlike ICJ judgements, advisory opinions are not binding.[65] But all ICJ jurisprudence, both its judgements and its advisory opinions,[66] constitute, by virtue of Article 38 of the ICJ Statute, subsidiary means for the determination of rules of law. As aptly described by Antonio Remiro Brotóns, they constitute precedents, which do not bind but mark a path to follow unless there are solid reasons to deviate from it.[67] There is thus a clear tendency to equate the determinations made by the ICJ even those without binding force with international law itself.[68] Advisory opinions, in particular, are seen in practice as a kind of authoritative and objective interpretation of international law for the world[69] even more so when they concern the general interests of the international community.

A clear example of these legal effects were those given by the 2019 ICJ advisory opinion on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 by the subsequent decision of ITLOS regarding preliminary objections in the case concerning the delimitation of the maritime boundary between Mauritius and the Maldives in the Indian Ocean.[70] The Special Chamber of ITLOS observed that although ICJ advisory opinions cannot be considered legally binding, they constitute an authoritative statement of international law on the issues they address.[71] It also noted that the judicial determinations made therein carry no less weight and authority than those of judgements because they are taken with the same rigour and scrutiny by the principal judicial organ of the UN with competence in international law.[72]

Accordingly, in that particular case, the Special Chamber considered that the determinations made by the ICJ principally, that the process of decolonization of Mauritius was not legally completed when Mauritius acceded to independence in 1968,

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63 A. Pellet, 'Decisions of the ICJ as Sources of International Law?', in 2 *Gaetano Morelli Lectures Series* (International and European Papers Publishing, Rome, 2018) 7, at 20.

64 ICJ, Advisory Jurisdiction, accessed 25 November 2025.

65 However, it is possible to make them binding by virtue of an international treaty. See, P. D'Argent, 'Advisory Opinions, Article 65', in A. Zimmermann *et. al*. (eds), *The Statute of the International Court of Justice. A Commentary* (Oxford University Press, 2019) 1784, at 1810.

66 Pellet, *supra* n. 63, at 18.

67 A. Remiro Brotóns, 'Luces y sombras de la Corte Internacional de Justicia (1990-2021)', in J. Soroeta Liceras *et al*. (eds), *Cursos de Derecho Internacional y Relaciones Internacionales de Vitoria-Gasteiz 2021* (Tirant lo Blanch, 2022), 231, at 279.

68 V. Rezadoost, 'Unveiling the "author" of international law-The 'legal effect' of ICJ's advisory opinions', 15(4) *Journal of International Dispute Settlement* (2024) 506-533 [doi: 10.1093/jnlids/idae015].

69 See, among others: M.A. Tigre, 'It Is (Finally) Time for and Advisory Opinion on Climate Change: Challenges and Opportunities on a Trio of Initiatives', 17 *Charleston Law Review* (2024) 623-723, at 627.

70 ITLOS, *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives), Preliminary Objections, Judgment*, 28 January 2021.

71 *Ibid.* at para. 202.

72 *Ibid.* at para. 203

following the separation of the Chagos Archipelago and that the United Kingdom was under an obligation to terminate its administration of the Chagos Archipelago as soon as possible had legal effect in the case before it.[73] Thus, it did not accept the Maldives' preliminary objections to the jurisdiction and admissibility of Mauritius' claim relating to the indispensable third-party character of the United Kingdom,[74] nor that the sovereignty dispute between Mauritius and the United Kingdom remained unresolved, recognizing Mauritius as the coastal state with respect to the Chagos Archipelago for the purposes of delimiting a maritime boundary.[75]

The legal weight and moral authority of ICJ advisory opinions derive from the very organ from which they emanate. The Court, in the words, once again, of Remiro Brotóns, continues to be the solar centre of the judicial settlement of inter-state disputes because of its unique generalist (*ratione materiae*) and universal (*ratione personae*) character, its status as the principal judicial organ of the UN, its de facto concentration of the most important public disputes and the body of jurisprudence that has accumulated over decades.[76] The generalist nature of the ICJ also places it in a privileged position to carry out a systemic interpretation of principles and norms from different branches of international law.

ICJ advisory opinions can also contribute to the consolidation and progressive development of obligations to protect the general interests of the international community by helping to consolidate principles, clarifying the customary character of certain norms, or their status as *erga omnes* obligations or *ius cogens* norms. They are also better equipped to handle cases in which the breach of those obligations has not necessarily already occurred, or if the breaches have been committed by multiple parties.[77] These interpretations and developments may, in turn, feed back into the applicable law in future contentious cases before the Court itself or other international tribunals as in the aforementioned example of the *Chagos* case , regional and national courts, or quasi-jurisdictional mechanisms such as human rights committees.

Compared to contentious proceedings, ICJ advisory proceedings may have some disadvantages, such as more abstract fact-finding which will be carried out only to the extent necessary to answer the legal question submitted or less involvement of states in the proceedings, which are not of a controversial nature. In relation to the more abstract determination of the facts, ICJ Judge Georg Nolte recalled in his Separate Opinion to the 2024 Advisory Opinion on Israel's Policies and Practices in the Occupied

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73 *Ibid.* at para. 205-206.

74 *Ibid.* at para. 247-248.

75 *Ibid.* at paras. 250-251. See: S. Thin, 'The Curious Case of the 'Legal Effect' of ICJ Advisory Opinions in the Mauritius/Maldives Maritime Boundary Dispute', *EJIL:talk!*, published on 5 February 2021, accessed 25 November 2025. In a similar sense, the IACtHR has also stated that "(...) while an advisory opinion of the Court does not have the binding character of a judgment in a contentious case, it does have undeniable legal effects. Hence, it is evident that the State or organ requesting an advisory opinion of the Court is not the only one with a legitimate interest in the outcome of the procedure". IACtHR, *Reports of the Inter-American Commission on Human Rights (Art. 51 American Convention on Human Rights). Advisory Opinion OC-15/97 of November 14, 1997. Series A No. 15 "Reports of the Inter-American Commission on Human Rights" (Art. 51 American Convention on Human Rights), requested by the State of Chile*, at para. 26.

76 Remiro Brotóns, *supra* n. 67, at 232.

77 J. A. Hofbauer, "Not Just a Participation Trophy? Advancing Public Interests through Advisory Opinions at the International Court of Justice", 22(2) *The Law & Practice of International Courts and Tribunals* (2023) 234-272 [doi: 10.1163/15718034-bja10092].

Palestinian Territories that this circumstance, coupled with the consensual nature of the Court's jurisdiction, prevents such determinations from having the conclusive effect attributed to findings of fact for the purpose of determining state responsibility in a contentious proceeding.[78] However, advisory proceedings may complement, facilitate, or even constitute an alternative to the contentious function when the needed consent or standing for that function fails, although, obviously, they do not replace it.[79]

On the contrary, advisory proceedings could be an easier way of obtaining a court ruling on issues such as climate change, where the specific requirements on attribution and causal link in the context of international responsibility may make its determination quite complex in the context of contentious proceedings.[80] In this regard, in its recent *Climate Change* Advisory Opinion, the Court stated that it 'cannot, in the context of these advisory proceedings, specify precisely what consequences are entailed by the commission of an internationally wrongful act of breaching obligations to protect the climate system from anthropogenic GHG emissions, since such consequences depend on the specific breach in question and on the nature of the particular harm.'[81], and that 'the responsibility of individual States or groups of States requires an *in concreto* assessment that must be undertaken on a case-by-case basis.'[82] However, this did not prevent the Court from clarifying the general application of the rules on state responsibility for internationally wrongful acts in the context of climate change.[83]

In addition to paving the way for future legal action, advisory proceedings may do so in connection with political action or international negotiations.[84] As a former president of the Court has stated, they also constitute a privileged means for the Court to defuse tensions and prevent conflicts by applying the law.[85] Although advisory opinions are not a substitute for negotiations, they can also facilitate and strengthen them by clarifying their legal parameters. For example, the *Chagos* Advisory Opinion paved the way for the agreement between the United Kingdom and Mauritius, concluded in October

78 ICJ, *Legal consequences arising…*, *supra* n. 11. Separate Opinion of Judge Nolte, at para. 5, *in fine*.

79 *Ibid.* at para. 4.

80 See also in this regard: R. M. Fernández Egea, 'La función consultiva de la CIJ al servicio de la lucha contra el cambio climático', in S. Torrecuadrada García-Lozano and E.M. Rubio Fernández (dirs), *La contribución de la Corte Internacional de Justicia al imperio del derecho internacional en tiempos convulsos: Aproximaciones críticas* (Aranzadi, 2023) 209, at 229.

81 ICJ, *Obligations of States…*, *supra* n. 6, at para 445.

82 *Ibid*., at para. 106. Among others, see also, in Judge Jusuf's separate opinion to the *Climate Change* Advisory Opinion, a particular criticism of the fact that the Court 'missed a historic opportunity to clarify not only for all States but also, in particular, for those who have most suffered from the adverse effects of climate change, in a clear and tangible manner, the legal consequences of the failure of gross GHG-emitting States to take appropriate action to protect the climate system from such emissions, including through regulations of fossil fuel production, fossil fuel consumption and the granting of subsidies or exploration licenses for fossil fuel' (ICJ, *Obligations of States … supra* n. 6. *Separate Opinion of Judge Yusuf*, at para. 40).

83 ICJ, *Obligations of States…*, *supra* n. 6, at paras. 444-455.

84 As Professor Antonio Remiro Brotóns has pointed out, the Court's orders, judgements and advisory opinions point to the field of value judgments, beyond ethical principles, and are an instrument of pressure for politics (translation of the author). A. Remiro Brotóns, 'Un pueblo deambula en Gaza', 72(1) *Revista Española de Derecho Internacional* (2024) 307-328, at 326 [doi: 10.36151/REDI.76.1.15].

85 M. Bedjaoui, 'Posibilidades de la función consultiva de la Corte: balance y perspectivas', 4(8) *Relaciones Internacionales* (1995).

2024, on the exercise of sovereignty over the Chagos Archipelago.[86] Likewise, one of the arguments with which the promoters of the *Climate Change* Advisory Opinion justified their request was its potential to strengthen the negotiations under the UN Framework Convention on Climate Change and the Paris Agreement.[87] In this context, advisory opinions also provide an opportunity to scrutinize the arguments of states participating in the written and oral phases of the procedure, in contrast to the frequent opacity of multilateral negotiations on climate change.[88] Furthermore, submissions made by states in the context of advisory proceedings may be considered subsequent practice with regard to specific treaty obligations, or contribute to the development of practice or *opinion iuris* in connection with rules or principles of general international law.[89]

In other cases, when the ICJ's advisory function is exercised in more complex and entrenched situations, such as the Israeli-Palestinian conflict, it is more difficult to see an imminent practical effect. Indeed, it is simply disheartening to note that more than twenty years after the ICJ issued its Advisory Opinion on the legality of the wall built by Israel in the Occupied Palestinian Territories in 2004,[90] not only has the wall not been dismantled, but its construction continues, as does the expansion of settlements.[91] In these cases, the main value of advisory opinions remains that of reaffirmation, clarification and progressive development of international law, as well as the sedimentation of the legal parameters that should guide the cessation of breaches of international law and the patterns of conduct of the international community in these contexts.[92] This is a value that, indeed, is not so far removed from the actual value that ICJ judgements in contentious cases have in practice in many cases.

Advisory cases with a relevant scientific and technical component can also serve to settle scientific disputes and reinforce scientific consensus, as well as to confirm the interaction between science and international law, or even contribute to changing attitudes and behaviours in this regard.[93] This was the case in the recent *Climate Change* Advisory Opinion, which used the reports of the Intergovernmental Panel on Climate Change (IPCC) as a scientific parameter, considering them to 'constitute comprehensive

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86 J. Curtis, 'British Indian Ocean Territory: 2024 UK and Mauritius agreement', *Research Briefing, House of Commons Library*, published on 31 October 2024, accessed 25 November 2025.

87 See: *Vanuatu ICJ Initiative*, accessed 25 November 2025.

88 Remarks by Professor F. Sindico in I. Kaminski, 'Can law help us save the planet?', 3 *Unite for Nature* (2024) 14-17, at 17. Once the oral phase of the advisory proceedings has begun, the written statements (Article 106 of the Rules of Court) and the verbatim records and recordings of the oral interventions, which are often broadcast live, are usually made available to the public on the Court's website.

89 L. Vladyslav & M. Cohen, 'Climate Change Before International Courts and Tribunals: Reflections on the Role of Public Interest in Advisory Proceedings', 85(1) *Heidelberg Journal of International Law* (2025) 97-125, at 123 [doi: 10.17104/0044-2348-2025-1].

90 ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, ICJ Reports (2004) 136.

91 ICJ, *Legal consequences arising..., supra* n. 11, at para. 67.

92 See, among others, *ibid.* at para. 273-283.

93 P. Sands, 'Climate Change and the Rule of Law: Adjudicating the Future in International Law', 28(1) *Journal of Environmental Law* (2016)19-35 at 26 and 29 [doi: 10.1093/jel/eqw005]; or N. Ning & C. Yang, 'The judicial dimension of climate governance: The role of the International Court of Justice', 34 (1) *Review of European, Comparative and International Environmental Law* (2025) 194-209, at 205 [doi: 10.111/reel.12608].

and authoritative restatements of the best available science about climate change at the time of their publication'.[94]

Finally, advisory procedures can also indirectly contribute to the clarification and progressive development of international law in matters of public interest through their "media" dimension, helping to draw and maintain international attention to the issues they address.[95]

(E) THE ADVISORY OPINIONS OF THE ICJ AS AN INSTRUMENT AT THE SERVICE OF INTERNATIONAL ORGANIZATIONS, AND ESPECIALLY OF THE GENERAL ASSEMBLY, FOR THE DEFENCE OF THE GENERAL INTERESTS OF THE INTERNATIONAL COMMUNITY

International organizations, the highest expression of institutionalized multilateral cooperation,[96] are generally considered, at least in theory, as promoters of the international public interest or even directly embodying it. Some of the ways in which they can do so are by serving as a platform for the formulation of that interest; by developing ideas and consensus on it; by coercing their member states or others; or simply by fulfilling the functions for which they were created and which in many cases respond to that same idea of international public interest.[97] In addition, the bodies and agencies with the competence to do so also promote the general interests of the international community by requesting ICJ advisory opinions that deal with those interests.

Although the possibility of international organizations having access to the Court as parties to contentious proceedings was proposed and debated during the San Francisco Conference at which the Charter was negotiated,[98] the ICJ Statute makes it clear that only States may be parties in cases before it.[99] Nonetheless, the Court may request from "public international organizations" that is, from an international organization of states, according to Article 69(4) of the Statute information relevant to cases before it and shall receive information presented by such organizations on their own initiative.[100] Furthermore, when the interpretation of the constituent instrument of a public international organization or an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public

94 ICJ, *Obligations of States… supra* n. 6, at para 284.

95 As P. D'Argent has pointed out, "[t] To a certain degree, advisory opinions have attracted much more public attention than most of the bilateral disputes entertained by the Court under its contentious jurisdiction because issues 'of principle' are often put to the Court which may also explain the continued investment and scrutiny by Member States when it comes to the composition of the Court". D'Argent, *supra* n. 65, at 1810.

96 J. M Sobrino Heredia, 'El componente institucional de las organizaciones internacionales', in A. M. Badia Martí, L. Huici Sancho (dirs), A. Sánchez Cobaleda (ed), *Las Organizaciones Internacionales en el Siglo XXI* (Marcial Pons 2021) 45, at 45.

97 J. Klabbers, 'What Role for International Organizations in the Promotion of Community Interests', in E. Benvenisti and G. Nolte (eds), *Community Interests Across International Law* (Oxford University Press, 2018) 86.

98 M. N. Shaw, Rosenne's Law and Practice of the International Court: 1920-2015 online (Brill | Nijhoff 2016), at II (171).

99 Article 34(1) of the Statute of the ICJ.

100 Article 34(2) of the Statute of the ICJ and Articles 69(1) and 69(2) of the Rules of Court.

international organization concerned and shall communicate to it copies of all the written proceedings.[101]

Conversely, in advisory proceedings, international organizations play a leading role. On the Court's website, one can read in the description of its advisory jurisdiction that "[s]ince States alone are entitled to appear before the Court, public (governmental) international organizations cannot be parties to a case before it. However, a special procedure, the advisory procedure, is available to such organizations and to them alone."[102] Thus, international organizations have an indispensable role in the request for an advisory opinion and in the written and oral phases of the proceedings.

First, only certain international organizations can request these opinions. As the ICJ has repeatedly pointed out, advisory opinions are intended to assist the body requesting them by providing the elements of law necessary to carry out its functions.[103] Those bodies are, moreover, entitled to decide for themselves on the usefulness of an advisory opinion in light of their own needs.[104] Second, upon receipt of a request for an advisory opinion, the Registrar of the ICJ shall notify any international organization which, in the opinion of the Court, is likely to be able to furnish information on the question. The Court will be prepared to receive their written or oral statements during the advisory proceedings.[105] Those international organizations that have made such submissions may comment on the statements made by other states or international organizations.[106] Third, other international organizations that so request may also be authorized by the ICJ to submit written or oral submissions and to respond to those made by other states and international organizations, if they are considered able to provide information on the question within the meaning of Article 66 of the ICJ Statute.[107] A growing number of international organizations are seizing this opportunity, especially following the *Wall* Advisory Opinion, and as evidenced by the record number of 13 organizations authorised to participate in the *Climate Change* proceedings. Most of these organizations have intervened to represent general interests, particularly those of the Global South, where most of them are based. Among them, the African Union, the Organization of Islamic Cooperation and the League of Arab States have been especially active in advisory proceeding in recent years. In the context of the *Climate Change* Advisory Opinion, a significant number of intervening international organizations represented the interest of island states, including The Alliance of Small Island States, the Pacific Community, the Pacific Islands Forum, the Melanesian Spearhead Group, and the Parties to the Nauru agreement.[108]

None of this prevents states from also playing an important role in advisory proceedings, especially when the request comes from the UNGA. Although states cannot

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101 Article 34(3) of the Statute of the ICJ, Article 69(3) of the Rules of Court.

102 ICJ, *Advisory jurisdiction*, accessed 25 November 2025.

103 Among others: ICJ, *Legal consequences arising...*, *supra* n. 11, at para. 37.

104 *Ibid.*

105 Article 66(2). of the Statute of the ICJ.

106 Article 66(3) of the Statute of the ICJ.

107 ICJ, *Request for advisory opinion. Procedure followed by the International Court of Justice*, 2003, at 1(section II. B).

108 In detail: S. Thin, 'The Benefits of an Open-Door Policy: International Organisations and the Promotion of Common and Community Interests in ICJ Advisory Proceedings', 27(1-2) *International Community Law Review* (2025) 162-187 [doi: https://doi.org/10.1163/18719732-bja10139].

directly request an advisory opinion, they participate directly in the discussion of the legal issue and its adoption at the UNGA. As in the case of international organizations, once a request for an advisory opinion has been received, the Registrar will also notify all states entitled to appear before the Court. Any other state that has not received such a communication may also express its wish to submit a written statement or to be heard, and the Court will decide. The states that have submitted written or oral statements, or both, may comment on those submitted by other states or international organizations.[109]

In practice, the Court has been generous in inviting to these proceedings both states and international organizations,[110] which are increasingly participating in them. More than fifty did so in the proceedings on Israel's policies and practices in the occupied territories;[111] almost a hundred in the Climate Change proceedings — the highest number in the history of advisory proceedings before the ICJ[112]; and forty-five in the proceedings on Israel's obligations concerning the presence and activities of the UN, other international organizations and third states.[113]

As we have already discussed, advisory opinions may be requested by the UNGA or the Security Council on any legal question or by other bodies and specialized agencies of the UN authorized by the UNGA on legal questions arising within the scope of their activities. The UNGA has made and makes by far the greatest use of this prerogative. In a smaller number of cases, the Economic and Social Committee and specialized agencies have also requested advisory opinions, mainly on internal organizational matters.[114] It should be noted in this regard that the World Health Organization (WHO) had also requested an advisory opinion from the Court on the legality of the use by a state of nuclear weapons in armed conflicts, which clearly falls within the notion of international public interest litigation that we are examining. However, the Court considered that it lacked competence on the matter, since the request did not concern a question arising within the scope of that organization's activities, in accordance with Article 96(2) of the Charter.[115] The Security Council only requested one, the *Namibia* Advisory Opinion, adopted by the Court in 1971.[116]

Given the difficulty of decision-making in the outdated and dysfunctional Security Council, the request for an advisory opinion by this body, although it would be less representative in terms of the number of states participating in its formulation compared

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109 Article 66 of the Statute of the ICJ.

110 A. Paulus, 'Advisory Opinions, Article 66', in A. Zimmermann *et. al.* (eds), *The Statute of the International Court of Justice. A Commentary* (Oxford University Press, 2019) 1812, at 1819.

111 ICJ, *Legal consequences arising…*, *supra* n. 11, at para. 47.

112 ICJ, *Obligations of States in respect of Climate Change (Request for Advisory Opinion). Filing of written comments*, Press Release No. 2024/61,16 August 2024.

113 ICJ, *Obligations of Israel…*, *supra* n. 12, at para. 37.

114 The UN organs and agencies that have been authorized in this regard and the cases in which they have made use of this prerogative may be consulted at the *ICJ webpage*, accessed 25 November 2025.

115 ICJ, *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, I.C.J. Reports 1996, p. 66.

116 ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion*, ICJ Reports (1971)16. On other occasions, the Security Council has considered a request for an advisory opinion, but its members have been unable to reach an agreement. See, M. N. Shaw, Rosenne's Law and Practice of the International Court: 1920-2015 online (Brill Nijhoff, Leiden, 2016), at II (171).

to those of the UNGA, would certainly send a critical message of unanimity — or at least non-opposition, if some abstain — among the permanent members of the Security Council, which is becoming increasingly difficult. However, should such circumstances arise in the near future, it is safe to say that it will be a matter of public interest — the maintenance of international peace and security, the *raison d'être* of this body, certainly is — but one that will probably not involve or affect its permanent members very directly, who would otherwise probably exercise their right of veto. In any case, the limited practice of this body in this field generates uncertainty as to whether or not a request for an advisory opinion is subject to a veto under Article 27 of the Charter.[117]

For its part, the general mandate and universal membership of the UNGA make it a body with special legitimacy to protect the general interests of the international community.[118] According to the practice of this body, in order to request an advisory opinion, only a majority of votes from the members present and voting is required. In other words, advisory opinions have not been included among the important questions that must be decided by a two-thirds majority of the members present and voting according to Article 18(3) of the Charter, and Article 18(2) applies instead.[119]

The majority required for adopting the request at the UNGA endows it with legitimacy. At the same time, although the efforts of some states to obtain an advisory opinion on a legal issue of public interest may be frustrated if a significant proportion of other states do not support it, this voting system prevents possible vetoes by a small group of states. Thus, it has been possible to approve requests for advisory opinions — such as those on *Chagos* or those related to actions of Israel in the Occupied Palestinian Territories — without unanimity among UNGA member states. Obviously, the greater the majority of states voting in favour of an advisory opinion in the UNGA, the greater the legitimacy of

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117 D' Argent, *supra* n. 65, at 1791.

118 In Pierre D'Argent's words: "When requested by the GA, advisory proceedings may appear as a form democratic aspiration by the international community, providing an opportunity for a transparent public debate based on legal considerations, rather than power politics. The post-Cold War requests have also tended to be marked by a certain degree of activism, seeking authoritative confirmation of certain strongly held legal views in the furtherance of legal progress", *ibid.*, at 1810-1811.

119 *Ibid.* at 1790. According to Article 18(3), the UNGA could, by a majority of its members present and voting, include the request for advisory opinions in the category of questions to be decided by a two-thirds majority, but this has not yet been done (*ibid.*). Several controversial issues have arisen in relation to the exercise of this power to request advisory opinions by the UNGA, such as whether it is possible to request them if the Security Council is considering the matter or whether it can be done in the context of an emergency session convened in accordance with the *Uniting for Peace* Resolution (GA Res. 377A(V), 3 November 1950). These questions have been repeatedly clarified by the Court's jurisprudence. The Court has thus established, on the one hand, that the request for an advisory opinion does not in itself constitute a "recommendation" of the UNGA. Therefore, its adoption does not contravene Article 12 of the Charter, which precludes the UNGA from making recommendations with respect to a dispute or situation while the Security Council is exercising the functions assigned to it by the Charter with respect to that dispute or situation. On the other hand, the ICJ has also confirmed that the UNGA may request an advisory opinion in a session convened in accordance with *Uniting for Peace* Resolution if the Security Council, due to a lack of unanimity among its permanent members, fails to carry out its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace or act of aggression. The Court has further pointed out that it is not necessary for a proposal for such a request to have been submitted to the Security Council. In detail: *ibid.*, at 1769-1971.

that request. Notably, the request for the *Climate Change* Advisory Opinion was the first to be adopted unanimously by the UNGA.

This voting system can also make it possible to correct or counteract situations of power domination in international relations and give a voice, among others, to peoples struggling for the recognition and/or effectiveness of their right to self-determination as has been the case with the Saharawis,[120] the Palestinians,[121] or the Chagossians[122] as well as to the countries of the Global South. The *Climate Change* advisory proceedings illustrated this last assumption in a scenario in which multilateral negotiations are progressing slowly, ineffectively and without providing a satisfactory response to the claims of these countries, especially Small Island Developing States (SIDS). The latter had already attempted to initiate advisory proceedings before the ICJ without success in 2011. That year, Palau led the proposal for a request for an advisory opinion on the responsibilities of states under international law regarding activities causing greenhouse gas emissions under their jurisdiction or control that harm third states.[123] SIDS not only mobilized before the ICJ; the Commission of Small Island States on Climate Change and International Law (COSIS),[124] created at the initiative of Antigua and Barbuda and Tuvalu in 2021, also requested the advisory opinion on climate change adopted by ITLOS. COSIS includes Vanuatu among its members, the state that led the request for the *Climate Change* Advisory Opinion before the ICJ.

Finally, the role of the Secretary-General of the UN in advisory proceedings should not be overlooked. Although there have been discussions about this possibility, he does not have the competence to request advisory opinions.[125] Yet, given the Secretary-General's status as "a symbol of United Nations ideals and a spokesperson for the interests of the world's peoples, in particular the poor and vulnerable among them",[126] it would not be an entirely unrealistic proposal for advisory opinions dealing with the general interests of the international community. Nonetheless, he currently plays a dual role in these proceedings: first, he represents the UN in cases in which this international organization intervenes, and second, he acts as a more neutral representative of the public interest, providing the Court with the necessary information to enable it to decide on the issues before it.[127]

(F) THE ROLE OF NON-STATE ACTORS IN ICJ ADVISORY OPINIONS REQUESTS AND PROCEEDINGS

The increasing judicialization of the defence of the general interests of the international community has also been accompanied by greater media interest in both contentious

120 ICJ, *Western Sahara, Advisory Opinion*, ICJ Reports (1975) 12.
121 ICJ, *Legal Consequences of the Construction…*, *supra* n. 90; and ICJ, *Legal consequences arising …*, *supra* n. 11.
122 ICJ, *Legal Consequences of the Separation…*, *supra* n. 10.
123 See, among others: A. Pigrau i Solé, 'Cambio climático y responsabilidad internacional del Estado', 26 *Anuario de la Facultad de Derecho de la Universidad Autónoma de Madrid* (2022) 45-80, at 75; or Fernández Egea, *supra* n. 80, at 222.
124 In detail: *COSIS website*, accessed 25 November 2025.
125 They are formally transmitted to the Court by him or her or by the highest administrative officer of the body or agency authorized to request the opinion (Article 104 of the Rules of Court).
126 UN, *The role of the Secretary-General*, accessed 25 November 2025.
127 Paulus, *supra* n. 110, at pp. 1824-1825.

and advisory proceedings, as well as greater participation in them by states, international organizations and other actors. In the case of other actors, however, this participation is still mainly informal.[128]

Neither the individual, legal persons, nor non-governmental organizations (NGOs) have standing before the ICJ. They could intervene in a proceeding before the ICJ by means of Article 50 of its Statute, by virtue of which "[t]he The Court may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion". It has even been suggested that they could invoke this article to enable their participation as *amicus curiae*.[129] However, the ICJ has barely employed this article in practice and only to allow individual experts to participate.[130]

Sometimes, non-state actors or actors whose statehood may be controversial have been allowed to participate in advisory proceedings through what appears to be the ICJ's extensive interpretation of 'state' in the context of Article 66(2) of its Statute due to the unique circumstances of those cases.[131] For instance, Palestine was invited to participate in the advisory proceedings concerning the wall; Israel's policies and practices in the occupied territories; and Israel's obligations concerning the presence and activities of the UN, other international organizations and third states. This is due to Palestine's status as a UN observer state and co-sponsor of the resolutions requesting such advisory opinions.[132] Similarly, in the *Kosovo* Advisory Opinion, given that the question submitted to the ICJ concerned the unilateral declaration of independence of the Provisional Institutions of Self-Government of Kosovo on 17 February 2008, its authors were invited to submit written contributions.[133]

We have also examined how a request for an advisory opinion by the UNGA may serve, if approved by a majority of its members, to give a voice, among others, to countries of

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128 See, among others: P. Wojcikiewicz Almeida and M. Cohen, 'Mapping the 'public' in public interest litigation: an empirical analysis of 'participants' before the International Court of Justice', in J. Bendel and Y. Suedi (eds), *Public Interest Litigation in International Law* (Routledge, 2024) 98.

129 Wojcikiewicz Almeida, *supra* n. 29, at 260.

130 ICJ, *Corfu Channel case, Judgment of April 9th, 1949*, ICJ Reports (1949) 4I*; CJ, Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment*, ICJ Reports (1984) 246; ICJ, *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua) and Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua), Judgment*, ICJ Reports (2018) 139; ICJ, *Maritime Delimitation in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua), Judgment*, ICJ Reports (2018) 139.; ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Reparations, Judgment*, ICJ Reports (2022) 13.

131 Y. Suedi, *The Individual in the Law and Practice of the International Court of Justice* (Cambridge University Press, 2025) at 90-95; or G. Hernández, Gleider I., 'Non-state actors from the perspective of the International Cout of Justice', in J. D' Aspremont, Jean (ed.), *Participants in the international legal system: multiple perspectives on non-state actors in international law* (Routledge, 2011) 140, at 150-15.

132 ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Order of 19 December 2003*, ICJ Reports (2003) 428; ICJ, *Legal consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Order of 3 February 2023, ICJ Reports (2023) 6; and ICJ, *Obligations of Israel in relation to the presence and activities of The United Nations, other International Organizations and third States in and in relation to the Occupied Palestinian Territory (Request For Advisory Opinion). Order of 23 December 2024*, ICJ Reports (2024). See: Paulus, *supra* n. 110, at 1819-1820.

133 ICJ, *Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo, Order of 17 October 2008*, ICJ Reports (2008) 40. Note that the notion of "written intervention" does not appear in either the Statute or the Rules of Court of the ICJ. See: Paulus, *supra* n. 110, at 1819-1820.

the Global South or to certain peoples struggling for the recognition and/or realization of their right to self-determination. This body can also constitute an indirect channel for the intervention of non-state actors, including civil society and individuals. Although they cannot directly request an advisory opinion, they can play a significant role in campaigning in favour of their request, thereby attempting to influence the position and vote of states.[134]

The mobilization of civil society has been particularly noteworthy in the case of the *Climate Change* Advisory Opinion. Its request originated in a campaign launched by students at the University of the South Pacific for an advisory opinion on climate justice and seeking the support of Pacific Islands Forum (PIF) leaders. This initiative sparked a global youth movement looking for state support in their respective regions.[135] In 2021, Vanuatu[136] announced that it would lead the diplomatic process to support this request, and, in 2022, a global alliance of civil society organizations also joined this campaign. Ultimately, Vanuatu led a core of 18 states in drafting a resolution, which was eventually co-sponsored by 132 states and adopted by consensus.[137] This significant involvement of civil society in the process of requesting this advisory opinion is also reflected in the content of the opinion itself, which in many respects mirrors the demands of the campaign.[138]

This is not the only such example in the history of the ICJ's exercise of its advisory function. Notably, the *World Court Project* campaign,[139] initiated in 1992 by a group of NGOs, aimed to obtain a declaration from the Court on the total prohibition of nuclear weapons. It was at the germ of the subsequent adoption of UNGA Resolution 49/75 K to request from the ICJ the other major advisory opinion on environmental issues on which it has pronounced on the legality of the threat or use of nuclear weapons.[140] It should also be noted that there has been a shift in the perception of the role of NGOs and civil society by the judges of the Court. In the aforementioned *Nuclear Weapons* Advisory Opinion, some judges had argued that the Court should have refused to rule on the matter due to the influence that certain NGOs had exerted on the adoption of the resolution in the UNGA.[141] This concern seems to have dissipated in subsequent advisory cases, including the one relating to climate change.

Since NGOs do not enjoy standing before the ICJ, once an advisory proceeding is initiated, they can only submit their points of view to the Court extra-procedurally.

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134 In this sense: Cruz Carrillo, *supra* n. 49, at 179.

135 In detail: *World's Youth for Climate Justice*, accessed 25 November 2025.

136 E. Kosolapova, 'ICJ to Rule on States' Climate-related Obligations: How Did We Get Here', *SDG Knowledge Hub*, published on 20 March 2024, accessed 25 November 2025.

137 GA Res. 77/276, 29 March 2023. See also M. Wewerinke-Singh, J. E. Viñuales & J. Aguon, 'The Role of Advocates in the Conception of Advisory Opinion Requests' 117 *AJIL unbound* (2023) 277-281[doi:10.1163/15718034-bja10131].

138 S. A. Parmar, 'Beyond State Centrality and Positivism: Weighing the 2025 Advisory Opinion on Climate Change", *AsianSIL Voices*, published on 16 August 2025, accessed 25 November 2025; or L. Robb & V. Prasad, 'Both a 'Global' and an 'International' Court of Justice', *Völkerrechtsblog*, published on 15 August 2025, accessed 25 November 2025.

139 See: Disarmament and Security Centre, The World Court Project, accessed 25 November 2025.

140 ICJ, *Legality …*, *supra* n. 9.

141 ICJ, *Legality…*, *supra*, n. 9. Dissenting opinion of Judge Oda, at 128; or Separate Opinion of Judge Guillaume, at 65.

However, this has not prevented them, especially in cases where the general interests of the international community were at stake, from carrying out important *lobbying* activities in favour of the request for advisory opinions or the presentation of claims in contentious proceedings; sending communications to the Court on their own initiative; or having their materials included as part of the official documentation provided by the parties, or being referred to by the Court itself.[142]

In contentious proceedings, NGOs can only participate indirectly if the parties or the Court have recourse to their materials. Conversely, in advisory proceedings, following the adoption of the Court's Practice Direction XII, they may submit a written statement and/or a document on their own initiative. Although such statements and/or documents will not be considered part of the case file, they will be placed in a designated location in the Peace Palace and considered as publications readily available and States and intergovernmental organizations presenting written and oral statements in the case may refer to them. As Andreas Paulus has pointed out, the adoption of this Practice Direction was likely a response to the large number of *amicus curiae briefs* sent to the Court by NGOs in advisory cases, such as those concerning nuclear weapons or the wall.[143] This Practice Direction refers only to *international* NGOs, so those without such status would be excluded. This exclusion, together with the fact that their submissions are not part of the case file and are not published on the ICJ website, has generated mixed feelings about the usefulness and progressiveness of this provision.[144]

More recently, in the context of the *Climate Change* Advisory Opinion, for the first time, the ICJ has considered a non-purely intergovernmental organization as an international organization under Article 66 of its Statute and consequently authorized to participate in the proceedings.[145] This organization is the International Union for Conservation of Nature (IUCN), which is not constituted by states alone and was not created by an international treaty.[146] It has, therefore, not simply been treated as an NGO, which, as we

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142 Among others, in the Gabčíkovo-Nagymaros case, the annexes to the parties' briefs included materials prepared by NGOs (ICJ, *Gabcíkovo-Nagymaros Project (Hungary / Slovakia), Judgment*, ICJ Reports (1997) 7); while in the case of armed activities on the territory of the Congo between the Democratic Republic of the Congo and Uganda (ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment*, ICJ Reports (2005) 168, the Court referred to documentation from various NGOs. See: M. N. Shaw, Rosenne's Law and Practice of the International Court: 1920-2015 online (Brill | Nijhoff, 2016), at II (10).

143 Paulus, *supra* n. 110, at 1828.

144 V. Lanovoy, 'Access to and participation in proceedings before international courts and tribunals', in E. Sobenes, S. Mead, B. Samson (eds), *The Environment Through the Lens of International Courts and Tribunals* (Springer, 2022), 415, at 424; or Wojcikiewicz Almeida and Cohen, *supra* n. 128, at 123.

145 ICJ, *Obligations of States in respect of Climate Change (Request for Advisory Opinion) – The Court authorizes the International Union for Conservation of Nature to participate in the proceedings*, Press release 2023/29, 14 June 2023.

146 By virtue of Part III of its Statutes of 5 October 1948, revised on 22 October 1996, and last amended on 13 December 2023 (including Rules of Procedure of the World Conservation Congress, last amended on 13 December 2023), IUCN is composed of: A: (a) States, government agencies and subnational governments; (b) political and/or economic integration organizations; B: (c) national non-governmental organizations; (d) international non-governmental organizations; C: (e) indigenous peoples' organizations; and D: (f) affiliates-namely: 1400 governmental and civil society organizations, together with a worldwide network of more than 16,000 experts, and 160 countries. It is constituted in accordance with Article 60 of the Swiss Civil Code as an international association of governmental and non-governmental members (Part 1 of its Statutes).

have just examined, could only submit a written statement that would not be considered part of the case file. This is an innovation by the Court, since it had previously interpreted the term 'international organizations' as synonymous with a public international intergovernmental organization within the meaning of Article 34(2) of the Statute except on one occasion, which did not result in an actual intervention in the proceedings.[147]

In the case of individuals, while the question of their standing before the ICJ was examined by the Committee of Jurists established by the League of Nations to draft the Statute of the former PCIJ in 1920 and there were experiments in international law that granted international standing to individuals in the first half of the 20th century,[148] they had never enjoyed it before either the PCIJ or the current ICJ. This essential component of the humanization of international law, which has been possible in human rights courts and committees, is still incomplete when we refer to the highest international jurisdiction.[149]

It also entails a clear limitation in the role of the ICJ in human rights,[150] although these are increasingly prominent in its case law, which has integrated them into general international law and its various sectors.[151] The intervention of individuals as parties or non-parties in ICJ proceedings is thus not contemplated, except, generally, through states, as part of their delegations, or as witnesses or experts.[152] In advisory proceedings, for instance, statements from individuals have been included in the arguments of participating states, as in the *Chagos* case, where Mauritius included those of five Chagossians who had been forcibly removed to the United Kingdom. In addition, the

147 The International League of the Rights of Man was authorized to intervene in the proceedings concerning the international status of South-West Africa (ICJ, *International status of South-West Africa, Advisory Opinion*, ICJ Reports (1950) 128. However, the International League did not submit its written statement in time or in proper form. *Paulus, supra* n. 110; or D. B. Garrido Alves, 'The concept of international organization in the practice of the International Court of Justice', *Ejil: Talk!*, published on 27 July 2023, accessed 25 November 2025.

148 A. A. Cançado Trindade, *El acceso directo del individuo a los Tribunales Internacional de Derechos Humanos* (Universidad de Deusto, 2001), at 31-34. In detail on early examples of the attribution of international standing to the individual, such as the Rhine navigation system, the 1907 project for an International Court of Dams, the Inter-American Court of Justice or the League of Nations systems for the protection of minorities: A. A. Cançado Trindade, 'Exhaustion of Local Remedies in International Law Experiments Granting Procedural Status to Individuals in the First Half of the Twentieth Century', 24(3) *Netherlands International Law Review* (1977) 373-392 [doi: 10.1017/S0165070X00016375].

149 Among others: C. Jiménez Sánchez, 'El derecho humano de acceso a la justicia en tribunales internacionales: pasado y futuro del derecho internacional', in C. Jiménez Sánchez and C. M. Zamora Gómez (eds), *El derecho humano a la justicia en tribunales internacionales* (Editorial Comares, 2024) 1; R. Huesa Vinaixa, 'Los derechos humanos ante la Corte Internacional de Justicia (algunos problemas de acceso a la función contenciosa)', in J. Soroeta Liceras and N. Alonso Moreda (eds), *XIX Anuario de los Cursos de Derechos Humanos de Donostia-San Sebastián* (Aranzadi, 2019) 109; C. Gil Gandía, 'El despertar del individuo en la corte internacional de justicia', in S. Torrecuadrada García-Lozano (dir), *Los desafíos de la Corte Internacional de Justicia y las sinergias entre la Corte y otros órganos jurisdiccionales* (Wolters Kluwer España, 2021) 279; or Almqvist, *supra*, n. 18.

150 R. Higgins, 'Human Rights in the International Court of Justice', 20(4) *Leiden Journal of International Law* (2007) 745-751[doi: 10.1017/S0922156507004414]; or C. Esposito, 'Human Rights', in C. Espósito & K. Parlett (eds), *The Cambridge Companion to the International Court of Justice* (Cambridge University Press, 2023) 486, at 489.

151 B. Simma, 'Mainstreaming Human Rights: The Contribution of the International Court of Justice', 3(1) *Journal of International Dispute Settlement* (2012) 7-29 [doi: 10.1093/jnlids/idr022].

152 M. N. Shaw, Rosenne's Law and Practice of the International Court: 1920-2015 online (Brill | Nijhoff, 2016), at II(173).

tape recording of the testimony of one of them, Liseby Elysé, was presented during the oral hearings.[153] Similarly, in the *Nuclear Weapons* case, Lijong Eknilang, originally from the Marshall Islands, participated in the oral hearings in 1995, recounting the devastating effects of the Castle Bravo nuclear tests on the inhabitants of Rongelap Atoll.[154] In the recent *Climate Change* case, the intervention of representatives of the youth and vulnerable groups as part of the delegations of intervening states and international organizations, should also be highlighted.[155]

Finally, another innovation made by the ICJ in relation to the intervention of experts in the context of the *Climate Change* Advisory Opinion deserves to be emphasized. A few days before the oral hearings, members of the Court met with a group of past and present authors of the reports of the IPCC.[156] According to the press release issued by the Court, the purpose of this meeting was to enhance its understanding of the key scientific findings that the IPCC presented through periodic assessment reports covering scientific basis, the impacts and future risks of climate change, and adaptation and mitigation options.[157]

The ICJ has not specified the legal basis under which it made this invitation. It does not seem to fit *a priori* with the avenues of participation of experts or witnesses provided for in the ICJ Statute and its Rules of Court or the previous practice of this tribunal. These legal instruments do not contain a specific disposition for the treatment of evidence or the intervention of experts in advisory proceedings. However, Article 68 of the ICJ Statute provides that "[i]n the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable". In this sense, Article 30(2) contemplates the possibility — never used so far — of the Court appointing assessors to sit with it without the right to vote. There is no evidence that Article 50 has been used either. In practice, the Court consults experts who are not formally appointed. Known as *experts fantômes*, they provide opinions to certain judges or to the entire Court during deliberations and their identities and conclusions are not made public.[158] This form of

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153 ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius, Written Comments of the Republic of Mauritius*, ICJ Reports 2018, at para. 4.114.

154 ICJ, *Public sitting held on Tuesday 14 November 1995, at 10.35 a.m., at the Peace Palace, President Bedjaoui presiding in the case in Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request for Advisory Opinion Submitted by the World Health Organization) and in Legality of the Threat or Use of Nuclear Weapons (Request for Advisory Opinion Submitted by the General Assembly of the United Nations)*, Verbatim Record, Year 1995, CR 95/32, International Court of Justice, The Hague, at 24-28. See R. Dharia, 'Vanishing Yams: A Food Microhistory in the Climate Change Advisory Opinion', *Völkerrechtsblog*, published on 14 August 2025, accessed 25 November 2025.

155 Robb & Prasad, *supra*, n. 138.

156 The IPCC was established in 1988 by the World Meteorological Organization and the UN Environment Programme to provide comprehensive assessments of the state of scientific, technical and socioeconomic knowledge on climate change, its causes, potential impacts and response strategies. The IPCC currently has 195 members. Its assessment reports are based on an open and transparent review by experts and governments from around the world of the thousands of scientific papers published each year in this field. See: *IPPC Website*.

157 ICJ, *Obligations of States in respect of Climate Change (Request for Advisory Opinion) – The Court meets with scientists of the Intergovernmental Panel on Climate Change (IPCC), Press release 2024/75*, 26 November 2024.

158 See: C. O. Parseghian and B. K. Guthrie, 'The Role of Scientific and Technical Experts', in Stephen C. McCaffrey, C. Leb, and R. T. Denoon (eds), *Research Handbook on International Water Law* (2019) 301, at 306-

expert intervention does not appear to have been used in this case either, as the Court met with the IPCC experts prior to its deliberations and published their names.[159]

(G) FINAL CONSIDERATIONS

The current period of effervescence in international public interest litigation demonstrates the willingness of many states to provide a jurisdictional solution to serious problems facing the international community that involve breaches of international law. This phenomenon is a response to the international situation of systemic crisis and polycrisis of recent years and, at the same time, is a sign of the maturity of the international legal system. States or, at least, some of them are seeking to reaffirm and develop it in order to address the problems of international society.[160] Clearly, these proceedings alone will not solve these crises, but they can complement and reinforce political and diplomatic action.[161] This can be achieved mainly by clarifying and strengthening their legal bases and trying to eliminate the uncertainty or dispute surrounding the applicable international law or whether it has been violated.

The main stumbling block that judicial protection of public interest continues to encounter is its tension with the predominantly bilateral character of international jurisdictional mechanisms originally designed for the protection of the particular interests of states. In the current development of the international legal order, states other than the injured state in the context of violations of obligations to protect general interests have only been able to resort to the contentious function of the ICJ in relation to obligations *erga omnes partes* contained in multilateral treaties and when all states involved have accepted the jurisdiction of the ICJ.

In this context, the advisory function of the ICJ serves as an alternative or a complement to its contentious function in the defence of the general interests of the international community. Although advisory opinions are not legally binding, they carry great legal weight and moral authority and have important legal effects, particularly in relation to the reaffirmation, consolidation and progressive development of obligations to protect those interests. They help consolidate principles, clarifying the customary character of some norms or their status as *erga omnes* obligations or as *ius cogens* norms. The ICJ is also in a privileged position to carry out a systemic interpretation of the international legal order.

In addition, these reaffirmations, interpretations or developments of international law could feed back into applicable law in future contentious cases before the Court, other international and regional courts, or national courts or quasi-jurisdictional mechanisms,

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159 Among others: R. O. Franz Derler, 'Experts Fantômes at the ICJ', *Ejil:talk!*, published on 2 December 2024, accessed 25 November 2025. M. A. Becker and C. Rose, 'The Return of Not-Quite "Phantom Experts"? The ICJ Meets with IPCC Scientists', *VerfBlog*, published on 3 December 2024, accessed 25 November 2025.

160 In this regard, see also: V. Lanovoy, '*Guest Editorial by Vladyslav Lanovoy: The Importance of International Courts and Tribunals in a Troubled World*', *ESIL Newsletter*, Autumn 2023, accessed 25 November 2025.

161 In this regard, see also: C. Escobar Hernández, 'Una estrategia judicial para la Franja de Gaza', 76(1) *Revista Española de Derecho Internacional* (2024) 297-305 [doi: 10.36151/REDI.76.1.14].

such as human rights committees. They also establish legal parameters for political and multilateral action, helping to maintain media attention on the issues being addressed.

Advisory opinions are a particularly useful tool for bodies and specialized agencies of the UN in defence of the general interests of the international community. The UNGA is the body that makes the most use of this prerogative. Due to its composition and general competence, it is particularly well-placed to request advisory opinions. If provided with the necessary majority, the UNGA can also act as a spokesperson for countries in the Global South, peoples struggling for recognition and/or realization of their right to self-determination, and civil society.

Much remains to be done within the ICJ in terms of direct access by civil society and the individual, although non-state actors are increasingly present before the Court. For example, the ICJ can now formally receive NGO submissions in advisory proceedings, even if they are not considered part of the case file. In the context of the most recent advisory proceedings, the Court has also shown a certain flexibility and innovation – e.g. in considering the IUCN as an international organization that can thus intervene as such in the written and oral proceedings, or in meeting with IPCC experts. This shows its willingness to provide the best possible response with the means at its disposal, both to the growing public interest in these proceedings and to the scientific complexity of the issues on which it is sometimes called upon to pronounce.

Advisory opinions, therefore, offer advantages that deserve to be explored in depth in the context of strategic public interest litigation in an international context where the community structure of the international legal order – and, with it, the general interests of the international community – still has limited international jurisdictional means for their defence and protection. This growing public interest litigation is not without risks, including saturation of international tribunals, their politicization, and judicial pronouncements that are systematically disregarded and their consequent delegitimization. In the face of serious breaches of international law and the failure of political and diplomatic mechanisms, inaction is not an option either. International tribunals will also have to be up to the task – not an easy one – of adequately combining expectations about the protection and defence of the international public interest with an objective and rigorous interpretation and application of the international legal system and its progressive development. At the same time, this avalanche of public interest litigation cases could drive the reform of international judicial mechanisms, making them better suited to protecting the general interests of the international community.