



Legal Backgrounder

Advisory Opinion: I am Climate Justice (ICJ)



I. Introduction¹

Climate change threatens the health, security, and livelihoods of millions around the world; these threats are greatest for today's youth and future generations. The 2018 Intergovernmental Panel on Climate Change ("IPCC") Special Report on Global Warming stated that 1.5°C of global warming would bring severe impacts, including warmer extreme temperatures, increases in the frequency, intensity, and/or amount of heavy precipitation, and increases in the intensity and frequency of drought.² In stark contrast to the clear warning by the IPCC of the harms of warming of even 1.5°C, the preliminary calculation of mitigation efforts under Nationally Determined Contributions under the Paris Agreement puts the world on a pathway towards an increase in global average temperature rise of more than 3°C.³

In light of the limited time left to reduce emissions sufficient to avoid even more perilous effects of climate change, civil society and concerned youth are requesting the International Court of Justice ("ICJ") to issue an Advisory Opinion on the duties of States to present and future generations with respect to climate change.

II. International Environmental Law and the International Court of Justice

The preservation of the environment for future generations have always been at the core of international environmental law.⁴ Intergenerational equity anchors the definition of sustainable development, as provided for by the Brundtland Report: "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."⁵ It is also codified in numerous treaties.

While internationally recognized as a legal principle, the specific obligations of States to future generations can be difficult to discern and implement. Significantly, the International Union for the Conservation of Nature ("IUCN"), the world's largest and most diverse environmental network composed of both government and civil society organizations, issued a resolution in 2016 calling upon the United Nations General Assembly ("UNGA") to request an Advisory Opinion from the ICJ on the "legal status and content of the principle of sustainable development taking the needs of future generations into particular account."⁶

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² INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE ("IPCC"), Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by governments (Oct. 2018), <https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/>.

³ Climate Action Tracker, *2100 Warming Projections*, (Sept. 2019), <https://climateactiontracker.org/global/temperatures/>.

⁴ PATRICIA BIRNIE, ET AL., *INTERNATIONAL LAW & THE ENVIRONMENT* 119 (Oxford University Press, 3d ed. 2009).

⁵ World Commission on Environment and Development, *Our Common Future* (1987).

⁶ International Union for the Conservation of Nature, *Request for an Advisory Opinion of the International Court of Justice on the Principle of Sustainable Development in the View of the Needs of Future Generations*, (September 1-10, 2016), WCC_2016_RES_079_EN.

An ICJ Advisory Opinion holds significant legal weight as it will likely focus on prospective obligations of all States, over and beyond the current obligations of States under various treaties that have proven to be inefficient to solve the climate crisis. It will be a good opportunity to clarify the status and extent of a number of environmental law principles such as the right to a safe and healthy environment, sustainable development, transboundary harm, and polluter pays principle as it relates to specific rights and obligations of States. The Advisory Opinion can also utilize international human rights law as mechanism that binds States to ensure a healthy environment for current and future generations.

III. Procedural Process

As the judiciary organ of the UN, the ICJ is also authorized to give an Advisory Opinion on “any legal questions” to bodies that are authorized by the UN Charter.⁷ The UNGA is one such body expressly identified as having the authority to request an Advisory Opinion from the ICJ through a resolution.⁸ A UN member state must first submit a draft resolution. Once a nation introduces a resolution, UN members will vote on whether the resolution passes, with each member state having one vote each.⁹ The resolution will pass with a majority voting in favor.¹⁰ Once a resolution is passed, a written request to the UN Secretary-General is needed by the entity authorized to request the opinion.¹¹ Questions upon which the Advisory Opinion of the Court is asked shall contain an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.¹²

IV. Progress

The initiative has already seen progress in various ways. In 2016, the 1st Tony Oposa Intergenerational Moot Court was held where students from various law schools simulated ICJ deliberations on the legal question. During this time, the IUCN resolution urging the UNGA to request the ICJ to address the issue was passed at the 2016 World Conservation Congress. From then, numerous consultations have been held with allies from governments, academic institutions, and civil society organizations, including the Elisabeth Haub School of Law at Pace University, Columbia University Law School, Harvard Law School, and Boston College Law School.

Students have generated widespread support through various channels, including the creation of an online petition, the coordinated sending of letters to Permanent Representatives to the UN, and additional research for legal support. A website and central email has also been created to facilitate coordination and ensure that those interested in the campaign will be kept informed of the developments. Moving forward, students plan to initiate a Side Event with IUCN Endorsement at the UN to find dedicated allied State Parties to push the advocacy forward.

V. Concluding Remarks

Overall, the Advisory Opinion can be utilized as a tool for climate activists all around the world if the court finds for concrete obligations that States have to present and future generations in light of the climate catastrophe.

⁷ Art. 65(1), I.C.J.

⁸ Art. 96(1), I.C.J.

⁹ U.N. Charter art. 18(1).

¹⁰ Rules of Procedure of the General Assembly, 81.

¹¹ Art. 65 ¶1, I.C.J.

¹² *Id.*