

A Glimpse into More Equitable International Governance

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On March 29, the United Nations (UN) General Assembly passed a landmark [resolution](#) asking the International Court of Justice (ICJ) for an advisory opinion on state obligations relating to climate change and the consequences of breaching them under several sources of international law, including the UN Charter, human rights treaties, and international customary law. The import of both the request and the opinion, however, is not just about Earth's climate system and the extent of state obligations for protecting it; it is also about the potential for more equitable, just, and effective international governance.

An International Splash

As the ICJ will decline to exercise its advisory jurisdiction only for “[compelling reasons](#)” (and indeed has never done so), the Court will almost certainly grant the request. The opinion it issues will be even more momentous than the request for it, both because of the existential nature of the subject matter and the institutional nature of the Court and its relationship to the world community and to the General Assembly. The General Assembly, the body of the United Nations in which all states have equal representation, in sharp contrast to the unrepresentative Security Council, is fulfilling its [responsibility](#) for protecting international peace and security, not only by [condemning](#) Russia for its unlawful invasion of Ukraine, but also by requesting an authoritative statement from the World Court on this pressing international legal question.

Needless to say, with stakes such as those presented by state obligations to respond to climate change, the request has made an international splash, garnering significant attention from both the [media](#) and [legal scholars](#). Most commentators highlight the inspiring grassroots effort of the University of the South Pacific law students who [spearheaded](#) the initiative and of Vanuatu's years-long [advocacy](#) to garner the support of other states. They then focus on the possible significance of an ICJ opinion for the ever-growing body of [climate cases](#) across the globe or on the potential for judicial recognition of robust state legal climate obligations [weighed against](#) the risk that the ICJ might conclude merely that states have a duty to cooperate in negotiations on averting, in the words of UN Secretary-General António Guterres, “[climate catastrophe](#).” A similar conclusion by a unanimous Court in its advisory opinion on the [Legality of the Threat or Use of Nuclear Weapons](#) was, according to the highly respected international scholar and jurist Phillippe Sands, itself “[pretty catastrophic](#)”.

Less attention has been paid, however, to the broader international law and governance significance of an advisory opinion request by the General Assembly,

and, relatedly, to the unique role of the ICJ in weighing in on important questions of international law that no other court or governance institution – domestic or international – can serve. It is through this wider lens that I view the development here.

Advisory Opinion Requests as Tools of Governance Under the UN Charter

In the vast majority of cases the General Assembly's deliberations on myriad issues of relevance to the international community lead the body to consider resolutions making non-binding [recommendations](#) to member states. A resolution requesting an advisory opinion from the ICJ is another tool provided by the UN Charter for the General Assembly to use in carrying out its mandates. The General Assembly and the Security Council are the only UN bodies that the UN Charter authorizes to ask the ICJ for an advisory opinion "[on any legal question](#)" (emphasis added). Other UN bodies may also solicit an ICJ advisory opinion, but only on matters "within the scope of their activities." This broad authorization for the General Assembly makes sense given that the Charter [empowers](#) that body to deliberate on "any questions or matters within the scope of the ... Charter", including matters related to international peace and security.

The resolution asking the ICJ to weigh in on state climate obligations marks only the [20th time](#) that the General Assembly has used its advisory-opinion authority. Further, it did so by [consensus](#) – that is, all states agreed to adopt the text without a vote, which means some states may still have objections to aspects of the text or [wish to clarify their expectations](#) and state them for the record.

During the meeting, the vast majority of states voiced strong support of the text, but the US representative [expressed misgivings](#) on the ground that "a judicial process ... might not be conducive to supporting diplomatic processes", which are the best way, according to the United States, to address the climate crisis. This echoes the [response](#) of US Climate Envoy John Kerry to a reporter's question about the possibility of an advisory opinion a few weeks before the General Assembly vote. "[W]e're dealing with that with the (UN Framework Convention on Climate Change) COP process," he replied. Thus, he suggested that it was improper for "Vanuatu [to] just jump[] ahead and go[] to court".

This position misses two essential aspects of the General Assembly's authority to deliberate about and make advisory opinion requests that are particularly noteworthy in light of the United States' [strong support](#) of that body's Charter powers in the context of the UN's response to Russia's unlawful invasion of Ukraine.

First, the General Assembly meetings are *themselves* diplomatic processes. Of course, just like the diplomatic processes that take place within the UN Framework Convention on Climate Change or any other treaty regime, General Assembly diplomatic processes take place within a legal regime – that of the UN Charter, and particularly those provisions establishing the General Assembly and its relationship to other UN organs such as the ICJ.

Moreover, the Charter contains multiple [provisions](#) recognizing that diplomatic processes can and should often work in tandem with law and judicial proceedings to fulfill the UN's mission of maintaining international peace and security. Indeed, the establishment of the ICJ as the UN's "[principal judicial organ](#)" along with the political organs of the General Assembly and the Security Council represents such a recognition. Thus, a suggestion that judicial proceedings and diplomacy are somehow mutually exclusive is not only wrong; it risks undermining the essential interaction of multiple tools of international governance.

Second, Vanuatu did not – and indeed could not – “go to” the ICJ to ask for an advisory opinion, as only UN organs and other specialized agencies may do so. The Charter thereby limits the ICJ's advisory jurisdiction to questions that states have agreed to ask collectively. Further, those questions asked by the General Assembly – which like the Security Council can pose any legal question to the Court, but unlike the Security Council provides a governance venue in which all states have [equal representation](#) – necessarily represent questions that most of the world has decided need to be answered. That is unquestionably the case with the request for an advisory opinion on the question of state obligations and responsibility related to climate change.

In a world of accelerating climate devastation that is disproportionately borne by those countries that [contributed the least](#) to the problem, the historic advisory opinion request is an example of the Charter processes working well. That is both because of the global deliberative governance process it represented and because of the particular tool that the General Assembly decided to use – a request for an opinion from the World Court – to which I now turn.

Legal Application and Interpretation as Essential to Rule of Law

An essential, although not sufficient, pillar of establishing the rule of law is authoritative legal application and interpretation. That is because, although many legal obligations remain in force as facts continue to evolve, they must be applied and interpreted if they are to continue to have force and thereby serve the functions that drove their creation.

In the context of international law, the legal interpretations in the opinions of the ICJ, the “principal judicial organ” of the UN and the only international court with the authority to decide any question of international law, are [uniquely authoritative statements](#) of the law. They are thus highly influential, most immediately for regional and domestic courts and litigants, but also for the applications and invocations of international law in [myriad other](#) governance venues, from legislatures and executives to negotiations and other diplomatic interactions that assume certain international laws are in place (even if their content and applicability are contested, as they sometimes are, and hotly so).

Unlike the ICJ's decisions issued in the exercise of its contentious jurisdiction, which are [binding](#) on the state parties to the dispute, the Court's advisory opinions

are non-binding. Nevertheless, its advisory role is just as important as that in contentious cases. Indeed, as Mexico's UN Ambassador and ICJ nominee Juan Manuel Gómez-Robledo Verduzco [put](#) it: “[B]y answering [advisory opinion requests, the ICJ] provides a service to the entire [UN] membership acting through the General Assembly, the Security Council, or any other entity authorized to ask for an advisory opinion”. That is because such opinions can and often do support the rule of law, even if they are not alone adequate to realize it.

In the context of Russia's brutal invasion of Ukraine, the United States appears to be developing a tentative recognition that the rule of international law and international legal institutions such as the [General Assembly](#) and the [ICJ](#) are necessary to provide peace and security and justice. Whether the country will go far enough with its support to promote a true rule of law – which would mean subjecting itself to accountability for violations in future cases as well as myriad [past](#) and [ongoing](#) ones – remains to be seen.

Discouragingly, the United States' reaction during this same time period to the resolution for an advisory opinion on state obligations related to climate change indicates that it is not only selective about the countries it is willing to subject to law (it most notably [exempts itself](#)), but also about the subject matter to which it is willing to apply law.

That is a dangerous combination of selectivity. As tragic and worthy of attention as the Ukraine crisis is, for most of the world, the climate crisis is a [much bigger priority](#). Fortunately, however, the international legal system has the capacity to prioritize both. That capacity just needs to be marshalled and realized. The General Assembly resolution seeking an advisory opinion from the ICJ about what international law has to say about state obligations related to the greatest threat that the world has ever faced offers a glimpse into what it looks like to use international law and legal institutions to do what they formally purport to do: advance *global* peace and security.

