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# **FROM LEGAL ADVICE TO NORM CREATION: THE TRANSFORMATIVE ROLE OF ICJ ADVISORY OPINIONS IN THE DEVELOPMENT OF INTERNATIONAL LAW**

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## **Abstract**

The advisory jurisdiction of the International Court of Justice (ICJ) has traditionally been viewed as a mechanism through which the Court provides legal guidance to the United Nations and its specialized agencies. Unlike contentious judgments, advisory opinions are not legally binding upon states. Nevertheless, the practical influence of advisory opinions has extended far beyond mere legal advice. Over time, these opinions have contributed significantly to the clarification, interpretation, and progressive development of international legal norms. This article argues that ICJ advisory opinions have evolved from being consultative instruments into influential tools of norm creation within the international legal system. By examining landmark advisory opinions including *Reparation for Injuries*, *Namibia*, *Western Sahara*, *Wall in the Occupied Palestinian Territory*, and *Kosovo*, the article demonstrates how the Court has shaped principles relating to international legal personality, self-determination, non-recognition of unlawful situations, human rights, and state responsibility. The article further evaluates criticisms concerning judicial activism and the non-binding nature of advisory opinions while highlighting their continuing relevance in addressing contemporary global challenges.

**Keywords:** International Court of Justice, Advisory Opinions, International Law, Norm Creation, Self-Determination, United Nations.

## **Introduction**

The International Court of Justice occupies a unique position within the international legal order. Established under the Charter of the United Nations in 1945, the Court serves not only as a forum for resolving disputes between states but also as an advisory body capable of providing authoritative legal interpretations on questions referred by United Nations organs and specialized agencies.

The traditional understanding of advisory opinions suggests that they merely offer legal advice without creating binding obligations.<sup>1</sup> Such a perception, however, understates the actual impact of the Court's advisory function. Throughout its history, the ICJ has used advisory proceedings to clarify ambiguous legal principles, strengthen emerging norms, and influence the conduct of states and international organizations.

This article advances the argument that advisory opinions have become instruments of normative development within international law. Although lacking formal binding force, they often influence state practice, United Nations resolutions, judicial reasoning, and academic scholarship. Consequently, advisory opinions have become significant contributors to the evolution of international legal standards.

### **Research Objectives:**

1. To examine the legal framework governing ICJ advisory jurisdiction.
2. To evaluate the contribution of advisory opinions to the development of international law.
3. To assess whether advisory opinions function as instruments of norm creation.
4. To analyze the contemporary relevance and limitations of the advisory jurisdiction.

### **Legal Framework of ICJ Advisory Jurisdiction:**

The legal basis of advisory jurisdiction is found in Article 96 of the United Nations Charter and Articles 65–68 of the Statute of the International Court of Justice.<sup>2</sup> Article 96 authorizes the General Assembly and Security Council to request advisory opinions on legal questions. Other United Nations organs and specialized agencies may also seek advisory opinions when authorized by the General Assembly.<sup>3</sup>

Unlike contentious proceedings, advisory proceedings do not require state consent. This distinction reflects the broader institutional purpose of advisory jurisdiction, namely assisting international organizations in understanding and applying international law.<sup>4</sup>

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<sup>1</sup> Malcom N Shaw, *International Law* (9<sup>th</sup> edn, Cambridge University Press, 2021).

<sup>2</sup> Statute of the International Court of Justice 1945, arts 65-68.

<sup>3</sup> Charter of the United Nations 1945, art 96.

<sup>4</sup> Shabtai Rosenne, *The Law and Practice of the International Court 1920-2015* (Brill 2016)

The absence of state consent has occasionally generated controversy. Nevertheless, the Court has consistently maintained that the political dimensions of a dispute do not deprive a question of its legal character. As a result, advisory proceedings have enabled the Court to address issues of considerable international importance that might otherwise evade judicial scrutiny.

### **Contribution of ICJ Advisory Opinions to the Development of International Law and Norm Creation:**

The Court's 1949 advisory opinion in *Reparation for Injuries Suffered in the Service of the United Nations* represents one of the earliest examples of judicial norm development.<sup>5</sup> The issue before the Court concerned whether the United Nations could bring an international claim for injuries suffered by one of its officials.

The Court concluded that the United Nations possessed international legal personality and therefore enjoyed rights and duties under international law. This finding was not explicitly provided in the UN Charter. Instead, the Court derived the principle from the purposes and functions of the organization.

The significance of the opinion extends beyond the immediate dispute. It established the foundation for recognizing international organizations as subjects of international law and continues to influence institutional law today. The decision illustrates how advisory opinions can generate legal principles that subsequently become accepted components of international law.<sup>6</sup>

### **The Namibia Opinion and the Duty of Non-Recognition:**

The 1971 *Namibia Advisory Opinion* addressed the legality of South Africa's continued administration of Namibia following the termination of its mandate by the United Nations.<sup>7</sup>

The Court declared South Africa's presence unlawful and emphasized that states were under an obligation not to recognize or assist the continuation of the illegal situation. Although the principle of non-recognition existed in limited form before the opinion, the Court significantly

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<sup>5</sup> *Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion)* [1949] ICJ Rep 174.

<sup>6</sup> Ian Brownlie, *Principles of Public International Law* (8<sup>th</sup> edn, Oxford University Press 2012).

<sup>7</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) (Advisory Opinion)* [1971] ICJ Rep 16.

strengthened and clarified its application.

The advisory opinion transformed a developing legal concept into a more concrete obligation. Today, the duty of non-recognition forms an important element of international responsibility and has influenced responses to territorial occupations and unlawful annexations across the world.

### **Western Sahara and the Strengthening of Self-Determination:**

The principle of self-determination occupies a central position in modern international law. The Western Sahara Advisory Opinion contributed significantly to its development.<sup>8</sup>

The Court rejected arguments that historical ties automatically displaced the wishes of the people inhabiting the territory. Instead, it reaffirmed that the principle of self-determination requires the free and genuine expression of the will of the people concerned.

The opinion reinforced ongoing decolonization efforts and strengthened the legal status of self-determination. More importantly, it demonstrated how advisory opinions can influence political processes while remaining grounded in legal reasoning.

### **Human Rights and the Wall Advisory Opinion:**

The 2004 advisory opinion concerning the construction of a wall in the Occupied Palestinian Territory represents one of the most influential modern examples of advisory jurisdiction.<sup>9</sup>

The Court examined the relationship between international humanitarian law and international human rights law. It concluded that both bodies of law could operate simultaneously and that states remain bound by human rights obligations even in situations of armed conflict and occupation.

The opinion contributed to the growing convergence of humanitarian and human rights norms. Although its conclusions generated political controversy, the legal analysis has been widely cited by scholars, international organizations, and human rights bodies.

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<sup>8</sup> Western Sahara (Advisory Opinion) [1975] ICJ Rep 12.

<sup>9</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136.

The Wall Opinion illustrates the Court's capacity to shape international legal discourse beyond the confines of traditional dispute settlement.

### **Kosovo and the Limits of Territorial Integrity:**

The Kosovo Advisory Opinion of 2010 addressed whether Kosovo's unilateral declaration of independence violated international law.<sup>10</sup>

The Court concluded that international law contained no general prohibition against declarations of independence. While the Court deliberately avoided recognizing a general right of secession, the opinion clarified important aspects of international legal practice concerning independence movements.

The significance of the opinion lies less in what it expressly declared and more in the legal framework it established. It highlighted the Court's cautious approach to politically sensitive issues while simultaneously contributing to legal understanding in an area marked by uncertainty.

### **Contemporary Relevance of Advisory Opinions:**

The increasing reliance on advisory proceedings demonstrates their continuing importance. States, international organizations, and civil society actors increasingly seek judicial clarification on complex legal issues involving human rights, climate change, territorial disputes, and international responsibility.

Recent advisory proceedings concerning the legal consequences of Israeli policies and practices in the Occupied Palestinian Territory further illustrate the growing expectation that the Court should provide authoritative guidance on matters affecting the international community.

Advisory opinions also contribute to the legitimacy of international law. By providing reasoned legal analysis, the Court promotes consistency, predictability, and respect for legal principles in international relations.

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<sup>10</sup> Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Advisory Opinion) [2010] ICJ Rep 403.

### **Criticisms and Challenges:**

Despite their influence, advisory opinions face significant criticisms.

First, their non-binding nature may limit practical implementation. States may choose to disregard opinions that conflict with political interests.

Second, critics argue that advisory proceedings occasionally allow the Court to enter politically charged disputes without the consent of affected states. Such concerns raise questions regarding judicial legitimacy and institutional boundaries.

Third, there is an ongoing debate regarding whether the Court sometimes engages in judicial law-making. While supporters view advisory opinions as necessary instruments of legal development, critics caution against excessive judicial activism.

Nevertheless, the Court's advisory jurisprudence demonstrates that international law often develops through interpretation and clarification rather than formal legislation alone.<sup>11</sup>

### **Conclusion:**

The history of ICJ advisory opinions reveals a transformation from consultative legal advice to meaningful normative influence. Although advisory opinions are formally non-binding, their impact on international law is undeniable. Through landmark opinions concerning international organizations, self-determination, human rights, and state responsibility, the Court has clarified legal principles and guided the evolution of the international legal order.

The advisory function enables the Court to address pressing global issues that may not reach it through contentious proceedings. As international law confronts increasingly complex challenges, advisory opinions will likely continue to shape legal norms and influence international decision-making. Their significance lies not in coercive force but in the authority of legal reasoning and the persuasive power of judicial interpretation. Consequently, advisory opinions remain indispensable instruments in the progressive development of international law.

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<sup>11</sup> Antonio Cassese, *International Law* (2<sup>nd</sup> edn, Oxford University Press 2005).

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