

Procedural Issues related to the ICJ's advisory jurisdiction

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Introduction

In September 2011, the President of Palau made a statement to the UN General Assembly in which he asked the General Assembly to “seek, on an urgent basis ... an advisory opinion from the ICJ on the responsibilities of States under international law to ensure that activities carried out under their jurisdiction or control that emit greenhouse gases do not damage other States”.¹ If the initiative goes ahead, a resolution requesting the advisory opinion could be tabled in the General Assembly before the end of 2012, though the question asked may be amended as part of the negotiation process.

In this briefing paper, we set out:

- some background to the advisory jurisdiction of the International Court of Justice (ICJ or Court);
- the legal effect of advisory opinions;
- the procedure that is followed (including in relation to the request for an advisory opinion, written submissions, oral hearings and rendering of the opinion);
- the extent of non-state participation; and
- issues relating to jurisdiction and admissibility.

ICJ advisory opinions – background and legal effect

Authority of the ICJ to give an advisory opinion

An ICJ advisory opinion is an opinion of the ICJ on a question of international law. Pursuant to Article 96 of the Charter of the United Nations (UN Charter) and Article 65(1) of the Statute of the International Court of Justice (ICJ Statute), only UN organs and UN specialised agencies are eligible to request an advisory opinion from the ICJ. The UN General Assembly and the Security Council may request an advisory opinion in respect of “any legal question”² while other UN organs and agencies (which have been authorised to do so by the General Assembly)³ may request an advisory opinion on “legal questions arising within their scope of activities”.⁴ States as such may not request an advisory

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¹ See http://www.un.org/News/briefings/docs/2012/120203_ICJ.doc.htm.

² UN Charter, Article 96(1).

³ For a full list of UN organs and agencies authorised to request advisory opinions from the ICJ, please see: <http://www.ici-cij.org/jurisdiction/index.php?p1=5&p2=2&p3=1>.

⁴ UN Charter, Article 96(2).

opinion from the ICJ. Since its creation, the ICJ has been requested to provide an advisory opinion on 26 occasions including several cases in which the ICJ exercised its appellate jurisdiction (acting as a ‘court of appeal’ against decisions of, for example, the Administrative Tribunal of the International Labour Organisation (ILO) or the UN).

Legal effect of advisory opinions

Advisory opinions are addressed to the UN organ or agencies requesting them. As such, unlike judgments of the ICJ in contentious proceedings between states, advisory opinions do not, generally, have binding legal effect. The organ or agency requesting the opinion is free to give effect (or not) to the opinion. The exceptions are rare cases where it is stipulated beforehand that they shall have binding effect – for example, the Convention on the Privileges and Immunities of the United Nations or the Headquarters Agreement between the United Nations and the United States of America.

Although advisory opinions are not legally binding, the findings contained in them carry great legal weight and moral authority. They contain the “World Court’s” view on important issues of international law and contribute to the elucidation and development of international law. For example, the *Threat or Use of Nuclear Weapons* advisory opinion⁵ and, in particular, Judge Weeramantry’s Dissenting Opinion⁶ have contributed to the development of international environmental law, while the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* advisory opinion⁷ has been influential in relation to the applicability of international human rights law during times of war.⁸ Similarly, the *Reservations to the Convention on Genocide* advisory opinion⁹ developed the law in relation to the use and effect of reservations which subsequently became part of customary international law and was codified in Articles 19-21 of the 1969 Vienna Convention on the Law of Treaties.

The advisory opinion procedure

Request

The ICJ’s advisory opinion procedure, whilst influenced by its contentious procedure, is distinct from it due to the special nature and object of the ICJ’s advisory function. Advisory proceedings begin with the filing of a written request for an advisory opinion addressed to the Registrar by the UN Secretary General or the chief administrative officer of the body authorised to make the request.¹⁰ All documents submitted to the ICJ by anybody must be in either French or English (these being the ICJ’s official languages). Any documents likely to throw light upon the question being asked¹¹ must be transmitted to the ICJ by the requesting body at the same time as the request or as soon as possible thereafter.¹² In the *Wall* proceedings, for example, the request for an advisory opinion was submitted by the UN Secretary General on 8 December 2003, while the “documents likely to throw light upon the question” were filed subsequently on 19 January 2004.¹³

Such documents can include, but are not limited to, international, regional or bilateral treaties or declarations, resolutions, reports and *procès-verbaux* of meetings of organs of international organisations, reports of the UN Secretary General or special rapporteurs. In the context of climate change, decisions of the United Nations Framework Convention on Climate Change (UNFCCC) conference of the parties and declarations and reports of the UNFCCC Executive Secretary or

⁵ *Threat or Use of Nuclear Weapons*, Advisory Opinion, *ICJ Reports* 1996 p.226.

⁶ *Nuclear Weapons*, Dissenting Opinion of Judge Weeramantry, *ICJ Reports* 1996 pp.502-506.

⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, *ICJ Reports* 2004 p.136.

⁸ *Wall*, Advisory Opinion, para.106.

⁹ *Reservations to the Convention on Genocide*, Advisory Opinion, *ICJ Reports* 1951 p.15.

¹⁰ ICJ Rules, Article 104.

¹¹ These are required pursuant to Article 65(2) of the ICJ Statute.

¹² ICJ Rules, Article 104.

¹³ See “Request for Advisory Opinion”, available at <http://www.icj-cij.org/docket/files/131/1497.pdf> (accessed 30 April 2012).

secretariat are also likely to be relevant. Such supporting information is usually placed on the ICJ website.

Upon receipt of the request for an advisory opinion, the Registrar of the ICJ must give notice to all states entitled to appear before it.¹⁴ The Registrar should also invite any state entitled to appear before it or international organisations considered by the Court (such decision taken by way of an Order of the ICJ) as likely to be able to furnish information on the question, to submit to the Court written statements, or to make oral statements, relating to the question.¹⁵ In general, the relevant states will be those states which are members of the body requesting the advisory opinion. In the context of the potential advisory opinion sought by Palau, acting through the UN General Assembly, the states entitled to appear before the ICJ will be the UN member states. As for international organisations, the ICJ has generally interpreted this to mean intergovernmental organisations (as opposed to international non-governmental organisations) only and has rarely allowed intergovernmental organisations (save for the body requesting the opinion) to participate in advisory proceedings. The participation of civil society and other non-state actors is addressed in the “Non-state participation” section below.

Written submissions

The advisory opinion process usually consists of two written phases, followed by oral hearings.¹⁶ As a rule, organisations and states authorised to participate in the proceedings may submit “written statements in relation to the legal question before the Court”. The statements are communicated by the Registrar to the other states and international organisations that have also made written statements.¹⁷ If the Court considers it necessary, this can be followed by a second phase during which further comments (on the initial statements in the first phase) can be made.¹⁸ Whether there will be one or two written phases and the time-limits for the filing of written statements and comments is set by an Order of the Court.¹⁹ Such Orders are made within a short time of the request for an advisory opinion and are communicated to states and international organisations by the Registrar when inviting them to make submissions.

With respect to written submissions to the Court, there is no strict format but written statements typically include an opening statement and introduction, procedural sections on jurisdiction and admissibility, substantive sections on background facts, legal arguments and other information, followed finally by concluding remarks and submissions.²⁰ Were the Palau initiative to go ahead, the written statement would provide an important opportunity to input into the proceedings and submit climate related legal and scientific analysis to the Court.

The Court may decide that the written statements (and documents annexed thereto) and comments made by states should be made public. If it decides to do so, such statements, documents and comments will be made public only after the opening of oral proceedings.²¹ This means that states (or international organisations) that have not submitted written statements and non-governmental organisations that are interested in the case will be unaware of the contents of such statements and

¹⁴ ICJ Statute, Article 66(1).

¹⁵ ICJ Statute, Article 66(2). See, for example, *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 p.409.

¹⁶ In the *Wall* proceedings, pursuant to an Order of the Court, there was only one written phase, see Order of 19 December 2003, *ICJ Reports* 2003 p.428.

¹⁷ ICJ Rules, Article 105(1). The *Nuclear Weapons* and the *Kosovo* advisory proceedings consisted of two written phases.

¹⁸ ICJ Rules, Article 105(2)(a).

¹⁹ See, for example, *Nuclear Weapons*, Order of 1 February 1995, *ICJ Reports* 1995 p.3; *Wall*, Order of 19 December 2003; and *Kosovo*, Order of 17 October 2008.

²⁰ As examples, please see previous submissions in advisory proceedings on the Court’s website, available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=4>. For examples of written submissions by public international organisations, please refer to submissions by the League of Arab States and by Ireland on behalf of the European Union in the *Wall* Advisory Opinion.

²¹ ICJ Rules, Article 106.

subsequent comments until the case is being orally pleaded. This is of particular consequence for non-governmental organisations (“NGOs”) that are seeking to lobby states in connection with the written and oral statements and comments that those states may make. If they have not seen the statements of other states and are thus unaware of their positions, it will be more difficult for NGOs to engage with the advisory proceedings.

The ICJ Rules also provide scope for *amicus curiae* submissions to the Court. The Court or a party may request an intergovernmental or “public international organisation” to furnish (orally or in writing) information relevant to a case before the Court.²² A public international organisation may also furnish such information on its own initiative, subject to the Court’s right to request supplementary information and to authorise parties to comment on the information.²³ It is important to note that where a public international organisation furnishes information on its own initiative, the information must be submitted in writing before the close of the written phase.²⁴ Procedures and instructions on how to submit a brief are given in Article 69 of the Rules of the Court.

Information relating to the extent to which other non-state actors can participate in the ICJ proceedings is set out in the “Non-state Participation” section below.

Oral submissions

The written phases are usually followed by oral hearings, where states and (authorised) international organisations may make further statements and comments. These statements must be made either in English or French (though they are simultaneously translated into the other five official languages of the UN). Whether such hearings take place, and how long they should last, is decided by the Court.²⁵ On occasion, such a decision is made at the same time as the Court decides on the number of written phases.²⁶ More often, however, the Court sets the dates of the oral hearings at a later stage.²⁷

When the date for oral hearings is set, the Court invites those states and other parties that have been authorised to make oral statements, to inform it of whether they intend to do so. States that have not participated during the written phase are still entitled to present oral statements to the Court. The length of oral hearings depends to a large extent on the number of states and other participants that indicate their intention to make statements.²⁸ Once the Court has been informed, it issues a press release setting out those who intend to make oral statements and a schedule for the hearings (listing the states in order).

Although there is no fixed rule for how long states have to make oral submissions, recent practice²⁹ suggests that, save for states that are (or might be) directly affected by the opinion and the relevant international organisation requesting the opinion (who have a greater amount of time), states will have between 45 minutes and one hour. Notwithstanding the schedule set by the Court in advance, it is possible for other states, with the permission of the Court, to be added to the list of states making oral statements. For example, in the *Nuclear Weapons* proceedings, although the United States of America was scheduled to be the last state making oral statements, the Court agreed, during the hearings, to allow Zimbabwe to make oral statements after the United States.

²² ICJ Rules, Article 69(1); see also ICJ Statute, Article 34(2).

²³ ICJ Rules, Article 69(2); see also ICJ Statute, Article 34(2).

²⁴ ICJ Rules, Article 69(2); see also ICJ Statute, Article 34(2).

²⁵ ICJ Rules, Article 105(2)(b).

²⁶ See, for example, *Wall*, Order of 19 December 2003.

²⁷ See, for example, *Nuclear Weapons*, where the date for oral hearings was set after the receipt of written statements but before time-limit for written comments; and *Kosovo*, where the date for oral hearings was set after the receipt of both written statements and comments.

²⁸ The oral hearings for the *Wall* were completed in two and a half days. By contrast, the oral hearings for *Nuclear Weapons* lasted 11 days over two and a half weeks, while oral hearings for *Kosovo* lasted 9 days over two weeks.

²⁹ See, the *Wall* and *Kosovo* oral hearings.

States which are (or might be) directly affected by the opinion and the body requesting the opinion are usually scheduled to make oral statements first. Thereafter, states make statements in alphabetical order. On some occasions it is alphabetical order by the English name and on other occasions it is alphabetical order by the French name.

The judges are entitled to ask states to provide written answers to questions they pose during the oral hearings. Such questions, even if posed to specific states, are deemed by the Court as being addressed to any other state taking part in the proceedings. The judges posed questions in the *Nuclear Weapons* proceedings, but not in the *Wall* or *Kosovo* proceedings.

Rendering of the opinion

All advisory opinions given by the ICJ are read at a public sitting of the Court³⁰ and must contain the date on which it is delivered, the names of the judges participating, a summary of the proceedings, a statement of the facts, the reasons in point of law, the reply to the question put to the Court, the number and names of the judges constituting the majority and a statement as to the text of the opinion which is authoritative.³¹ Individual judges may attach a separate or dissenting declaration (where no reasons are given) or opinion to the advisory opinion.³²

The time between a request and the rendering of an opinion varies, as do the time limits set by the Court for the filing of written statements and comments and the length of oral hearings. The relevant timing depends to a large degree on the complexity of the question (or questions) put to the ICJ and the number of states that participate in the proceedings.

Pursuant to Article 103 of the ICJ Rules, where the request for an advisory opinion asks for the opinion to be given urgently (or where the ICJ finds that an early answer would be desirable), the Court is required to take all necessary steps to accelerate the procedure. In practice, this may mean that the Court decides to dispense with the second written phase (i.e. written comments).

By way of example, the time between the request and the rendering of an advisory opinion in the *Wall* case, where an urgent answer was requested, was seven months. States were given just under a month and a half to submit written statements and oral hearings lasted two and a half days. By contrast, the time between the request and the rendering of an advisory opinion in the *Kosovo* case, where an urgent answer was not requested, was just over 21 months, with states given six months to submit written statements, a further three months to submit written comments and with oral hearings lasting for nine days.

Costs

There are no administration or Court fees payable by the participants in advisory proceedings but each participant will be liable for its own legal fees. These fees can be substantial depending on the extent to which external counsel is involved in the preparation of the written and oral statements.

Non-state participation

Non-state actors have generally not been able to participate extensively in advisory proceedings. The Statute and the Rules of the ICJ allow for “international organisations” (i.e. intergovernmental organisations – IGO) to participate in proceedings if invited to do so by the Court. In practice, this has rarely happened. One example of IGO participation (at the written and oral stages) is the *Wall* advisory opinion.

³⁰ ICJ Rules, Article 107(1).

³¹ ICJ Rules, Article 107(2).

³² ICJ Rules, Article 107(3).

In its Order of 19 December 2003, the ICJ decided that given Palestine's special status as an observer in the UN General Assembly and as a co-sponsor of the resolution requesting an advisory opinion, it should be entitled to submit a written statement and participate in the oral hearings. In addition, the ICJ, pursuant to Article 66 of the ICJ Statute, authorised two international organisations, the League of Arab States and Organisation of the Islamic Conference, to submit written statements and participate in the oral hearings. The ICJ authorised both organisations to submit statements after they sent letters requesting that they be authorised to furnish information on the question submitted to the ICJ.

In the *Kosovo* proceedings, the ICJ authorised the authors of the declaration of independence (i.e. not an international organisation) to submit "written contributions" (in both written phases) on the grounds that they were considered likely to be able to furnish information on the question submitted to the ICJ.³³ The ICJ subsequently decided that the authors could also make "oral contributions". The designation of the authors' submissions as "contributions" rather than "statements" or "comments" distinguishes their role in proceedings from the role of states and international organisations.

NGOs, on the other hand, have been afforded much more limited rights of participation. In the *International status of South-West Africa* advisory opinion in 1950,³⁴ in response to a request to participate, the ICJ for the first time authorised an NGO, the International League of the Rights of Man, to submit "written statements". However, no such statements were ever made. Since then, the ICJ has not authorised NGOs to submit written statements or contributions which form part of the record of the case. In the *Nuclear Weapons* case, numerous *amicus curiae* briefs were submitted to the ICJ (without authorisation) but were not admitted as part of the record in the case. They were however, made available to the judges in their library. Reference to the extent of NGO submissions was made in the Dissenting Opinion of Judge Weeramantry,³⁵ but not in the opinion itself.

Recognising that NGOs were unlikely to stop sending in submissions, regardless of whether they were granted permission by the ICJ or not, in 2004 the ICJ adopted Practice Direction XII. It makes clear that a written statement or document sent in by an international NGO on its own initiative will be treated as publications readily available in the public domain and may be referred to in the written or oral statements made by states and international organisations.³⁶ NGO statements are not placed on the ICJ website but instead kept in the Peace Palace (where the ICJ is located) in the Hague, open for reference by states and international organisations.³⁷

In the context of the potential request for an advisory opinion related to climate change, it is possible that the Intergovernmental Panel on Climate Change and/or the UNFCCC Executive Secretary (on behalf of the UNFCCC conference of the parties) will be entitled to make written and/or oral statements in their capacity as international organisations. One consequence of the adoption of Practice Direction XII is that it is almost impossible for NGOs to submit written statements which become part of the official case file and/or participate in the oral hearings. Pursuant to Practice Direction XII, however, they will be entitled to submit statements and documents to the ICJ to which states and/or international organisations can refer.

Issues of jurisdiction and admissibility

In this section we provide an overview of the conditions for establishing the ICJ's jurisdiction to give an advisory opinion as well as considerations that may result in the ICJ declining to exercise its advisory jurisdiction.

³³ *Kosovo*, Order of 17 October 2008.

³⁴ *International status of South-West Africa*, Advisory Opinion, *ICJ Reports* 1950 p.128.

³⁵ *Nuclear Weapons*, Dissenting Opinion of Judge Weeramantry, *ICJ Reports* 1996 p.438

³⁶ ICJ Practice Direction XII, para.2.

³⁷ ICJ Practice Direction XII, para.3.

Jurisdiction to give advisory opinions

The UN Charter and the ICJ Statute give the ICJ the power to give advisory opinions. Generally speaking, the ICJ's advisory jurisdiction exists when three conditions are met: (i) the organ or agency making the request must be duly authorised under Article 96 of the UN Charter; (ii) the request must be in respect of a "legal question"; and (iii) if a request is made by an organ or agency other than the General Assembly or Security Council, the legal question must arise within the scope of activities of the organ or agency making the request.

The ICJ has declined to give an advisory opinion for lack of jurisdiction on only one occasion.³⁸ In that case, the World Health Organisation (WHO) requested an opinion on the legality of the use by a state of nuclear weapons in an armed conflict. The ICJ ruled that since the WHO's competence in this regard was restricted to matters related to "the effects on health of the use of nuclear weapons", it was not competent to request an advisory opinion which touched on issues related to the "legality of the use of such weapons *in view of their health and environmental effects*".³⁹ It should be noted, however, that although the request from the WHO was declined, the ICJ did give an advisory opinion in respect of a subsequent request from the General Assembly raising substantially the same legal question in the *Nuclear Weapons* case.

Since the initiative proposed by Palau contemplates a request made by the General Assembly, and the General Assembly may request an advisory opinion on *any* legal question, this briefing paper will not address the third condition for establishing jurisdiction, i.e. the issue of assessing the nexus between a question and the scope of activities of the organ or agency requesting it.⁴⁰

With respect to the nature of the question asked, the ICJ is primarily concerned with the legal nature of the question, i.e. whether in answering it the ICJ is essentially undertaking a judicial task.⁴¹ Questions framed in legal terms and raising problems of international law are more likely to appear to the ICJ as questions of legal character, thus engaging the Court's advisory jurisdiction.⁴²

Contentions about the political nature of a question have been raised to argue against the propriety of the ICJ giving an advisory opinion.⁴³ Where a question contains a political dimension, the ICJ, to date, has taken a flexible approach and taken care to identify and address only the legal elements of a question which invite it to "discharge an essentially judicial task."⁴⁴ A request for an advisory opinion is therefore valid and the ICJ has jurisdiction to provide an advisory opinion even in situations in which political considerations are prominent, provided that the question asked is a legal one.⁴⁵ Furthermore, the ICJ has repeatedly stated that the political nature of motives inspiring a request and the political implications of giving the opinion are of no relevance to establishing jurisdiction.⁴⁶

The abstract nature of a question also does not in and of itself require the ICJ to decline to give an advisory opinion. The ICJ has affirmed that it may give an advisory opinion on any legal question, abstract or otherwise and that nothing in the UN Charter or the ICJ Statute granting its advisory

³⁸ *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, *ICJ Reports* 1996 p.66.

³⁹ *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, p.76, para. 21.

⁴⁰ For more detail on this third condition, please see *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, pp.74-81 at para. 18-26.

⁴¹ *Nuclear Weapons*, Advisory Opinion, para.13.

⁴² *Western Sahara*, Advisory Opinion, *ICJ Reports* 1975, para. 15.

⁴³ *Wall*, Advisory Opinion, p.155.

⁴⁴ *Kosovo*, Advisory Opinion, para. 27.

⁴⁵ *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, *ICJ Reports* 1980, p. 87 at para. 33.

⁴⁶ *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, at para. 17; see also *Nuclear Weapons*, Advisory Opinion, para. 13.

jurisdiction imply otherwise.⁴⁷ Again, the ICJ has emphasised that its advisory jurisdiction hinges on whether the question is a legal one requiring it to perform a judicial task.⁴⁸

Admissibility of requests for advisory opinions

The ICJ's advisory jurisdiction is permissive in nature and gives the ICJ a discretionary power to decline to give an advisory opinion in reply to a request, even if it has jurisdiction.⁴⁹ However, the ICJ has itself stated that it should not, in principle, refuse to give an advisory opinion when requested.⁵⁰ The consistent jurisprudence of the ICJ has determined that only "compelling reasons" should lead the ICJ to refuse to exercise its advisory jurisdiction in response to a request falling within its jurisdiction,⁵¹ and the bar seems to have been set quite high as to what may satisfy the ICJ as being a compelling reason. No request for an advisory opinion has been declined on admissibility grounds. Further, the ICJ considers its authority to give advisory opinions as its participation in the activities of the UN, and an important responsibility and duty of the ICJ as the principal judicial organ of the UN.⁵²

Where a question may touch on an issue still pending or in contention between states, the ICJ's jurisdiction to give an advisory opinion may still be exercised.⁵³ In this respect, the advisory opinion is not given to any state but rather to the organ or agency authorised to request the opinion. Therefore, the ICJ does not require the consent of any state to provide an advisory opinion, nor can any state prevent an advisory opinion from being given.⁵⁴

Another important consideration is whether the General Assembly can request an advisory opinion on an issue in respect of which the Security Council is actively involved. While the ICJ has acknowledged that the General Assembly is, in certain circumstances, prevented from making recommendations to the Security Council with respect to any dispute or situation to which the Security Council is exercising its functions under the UN Charter,⁵⁵ the Court also stated that a "request for an advisory opinion is not in itself a 'recommendation' by the General Assembly 'with regard to [a] dispute or situation'."⁵⁶ Although climate change issues have been addressed by the Security Council twice now, it is unlikely to be considered to be actively involved in the issue. As such, this should not be a bar to the ICJ exercising its jurisdiction to give an advisory opinion.

⁴⁷ *Admission of a State to the United Nations (Charter, Art 4)*, Advisory Opinion, *ICJ Reports* 1948, p.61; see also *Nuclear Weapons*, Advisory Opinion, *ICJ Reports* 1995, p.237 at para. 15.

⁴⁸ *Kosovo*, Advisory Opinion, para. 27.

⁴⁹ ICJ Statute, Article 65(1); also see *Reservations to the Convention on Genocide*, Advisory Opinion, p.19.

⁵⁰ *Reservations to the Convention on Genocide*, Advisory Opinion, p.19.

⁵¹ *Judgments of the Administrative Tribunal of the ILO upon complaints made against the UNESCO*, Advisory Opinion, *ICJ Reports* 1956, p.86; see also *Wall*, Advisory Opinion, para. 44; and also *Nuclear Weapons*, Advisory Opinion, at para. 14.

⁵² *Peace Treaties*, Advisory Opinion, p.71; see also *Kosovo*, Advisory Opinion, paras. 29-30.

⁵³ *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Advisory Opinion, *ICJ Reports* 1950, p.71; see also *Wall*, Advisory Opinion, p.159 at para. 50.

⁵⁴ *Peace Treaties*, Advisory Opinion, p.71

⁵⁵ UN Charter, Article 12(1).

⁵⁶ *Wall*, Advisory Opinion, para. 25.