International Court of Justice (ICJ) Advisory Opinion

- Law
- Process
- Relevance/impact
- Science
- Other avenues
- Conclusions
Principle of prevention (no harm)

“The existence of the general obligation of states to ensure that activities within their jurisdiction and control respect the environment of other states or of areas beyond national control is now part of the corpus of international law relating to the environment.” (ICJ, Legality of the Threat or Use of Nuclear Weapons, 1996)

Legal issues

- Serious, significant, substantial etc. harm
- Legal consequence: Obligation to regulate and control with due diligence
- Trans-boundary and/or atmospheric pollution of different gases
- Justification, waiver or consent
- Balance with right to exploit natural resources, development and other interests
- Effect of climate negotiations
Questions

- Do states have a legal responsibility to ensure that any activities on their territory that emit greenhouse gases do not harm other states? (Palau in GA)
- What are the obligations and responsibilities under international law of a state for ensuring that activities under its jurisdiction or control that emit greenhouse gases do not cause, or substantially contribute to, damage to another state or states?

Or:
- Do Annex I countries have an obligation under international law to compensate developing country Parties for damages from climate change?
- Can states X and Y be held responsible for damages as a result of sea level rise in...?
- Do states have a duty to undertake a transboundary risk assessment...?
- Does the European Community have to apply the precautionary principle in determining their emission reduction and limitation targets?

Process

- Majority in the UN General Assembly
- Question: + areas beyond national jurisdiction?
- Political v. Legal
- Submissions by UN members and intergovernmental organisations
- Citizens’ submissions
Impact of previous advisory opinions

• Accordance with international law of the unilateral declaration of independence in respect of Kosovo (2008/2010)
• Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2003/2004)
• Legality of the threat or use of nuclear weapons (1994/1996)
• Western Sahara (1974/1975)

Nuclear Weapons Advisory Opinion

• Unilateral declarations by nuclear powers
• Treaty on the Non-Proliferation of Nuclear Weapons renewed indefinitely
• 5-year review process
• Political debate outside court room
• Development of international humanitarian law
• Domestic law and jurisprudence
Science/causation

• In Africa between 75 and 250 million people will be exposed to increased water stress by 2020 (IPCC)
• In 2008 over 20 million people were displaced by sudden-onset climate-related disasters (UN Office for the Coordination of Humanitarian Affairs)
• Per year climate change already causes 300,000 deaths throughout the world and seriously impacts on the lives of 325 million people (Global Humanitarian Forum)
• USD 70 to 100 billion per year by 2030 to deal with the worst impacts of climate change (UNFCCC) or true annual cost could reach USD 300 billion (others)
• A record draught in northern Mexico has prompted warnings that the region’s climate may have changed for good (Independent Newspaper)
• Global climate change has definitely contributed to the recent unprecedented flooding taking place in Thai south (Thailand’s deputy chief negotiator to the UNFCCC)

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<th>Global temperature change (relative to pre-industrial)</th>
<th>0°C</th>
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<td>Falling crop yields in many areas, particularly developing regions</td>
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<td>Small mountain glaciers disappear – water supplies threatened in several areas</td>
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<td>Significant decreases in water availability in many areas, including Mediterranean and Southern Africa</td>
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<td>Sea level rise threatens major cities</td>
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<td>Ecosystems way</td>
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<td>Extensive Damage to Coral Reefs</td>
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<td>Rising number of species face extinction</td>
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<td>Extreme Weather Events way</td>
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<td>Rising intensity of storms, forest fires, droughts, flooding and heat waves</td>
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<td>Risk of Abrupt and Major Irreversible Changes way</td>
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<td>Increasing risk of dangerous feedbacks and abrupt, large-scale shifts in the climate system</td>
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The 2010 Russian heat wave: 
~50,000 deaths, $15bn cost to Russian economy

Science

• “...the intense 2010 Russian heat wave was mainly due to natural internal atmospheric variability.”
• “we estimate ... an approximate 80% probability that the 2010 July heat record would not have occurred without climate warming.”
The role of large-scale warming in the 2010 Russian heat wave: 1960s versus 2000s

Not “impossible without warming”

“Mainly externally driven”

“Mainly internally generated”

Origins of the 2010 Russian heat wave

• The warming that occurred since 1960 increased the probability of a heat wave of this magnitude from one-percent-per-year to three-percent-per-year.

• So, two-thirds of current risk is attributable to the large-scale warming... and most of the large-scale warming is attributable to anthropogenic greenhouse gas emissions.
Alternative legal avenues

- Negotiations
- Mechanism for loss and damage
- International dispute settlement
- Human rights
- Domestic litigation

UNCLOS

Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (ITLOS) shall give advisory opinions at the request of the Assembly or the Council on legal questions arising within the scope of their activities. (Art.191 UNCLOS)
Statute of Tribunal

Article 20 - Access to the Tribunal
1. The Tribunal shall be open to States Parties.
2. The Tribunal shall be open to entities other than States Parties in any case expressly provided for in Part XI or in any case submitted pursuant to any other agreement conferring jurisdiction on the Tribunal which is accepted by all the parties to that case.

Article 21 - Jurisdiction
The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

Rules of the Tribunal

Article 138
1. The Tribunal may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion.
2. A request for an advisory opinion shall be transmitted to the Tribunal by whatever body is authorized by or in accordance with the agreement to make the request to the Tribunal.
Conclusions

- No silver bullet
- Create public awareness & political pressure
- Support and hinder the negotiations
- Potential damage limited
- Legal guidance and principles?
- Important legal building block

Suggestions

- Civil society organisations to lobby their governments
- States to support initiative in GA
- Science community to strengthen link between emissions and damage
- Collaborate to prepare submissions to ICJ