

## **Effectiveness of requests for advisory opinions to the International Court of Justice and of advisory opinions as such in international relations**

In cases of disputes to which solutions cannot be agreed for political reasons, states may be inclined to juridicize the dispute and engage an international court or committee in order to achieve a long-lasting solution. However, in case of inter-state disputes, there is no international court with obligatory jurisdiction which could deal with any legal dispute. The ICJ has a very limited contentious jurisdiction as it requires the consent of the state. Therefore, in order to circumvent the lack of consent of one of the sides in the dispute, the possibility to ask for advisory opinion through one of the organs of the United Nations or specialized agencies is tempting. Even if it means forging of coalition of dozens of states.

The most recent request for the advisory opinion was made by the UN General Assembly on 22 June 2017 on Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965. The case concerned a long-lasting dispute between Mauritius and the UK concerning the separation of the Chagos islands from Mauritius in 1965. This case demonstrates how wise shaping of the questions to the ICJ can help engaging the Court even in bilateral disputes which in theory can be only adjudicated on the basis of the consent. Currently, voices have appeared that some legal questions related to state's responsibility for the spread of the pandemic could be asked to the ICJ by the UN General Assembly or World Health Organization.

This supports the view that advisory opinion seems to be attractive as a tool of peaceful settlement of multilateral disputes or at least a tool of appeasing political tension. However, advisory opinions are not legally binding on state parties and it can be proven that advisory opinions were not effective tools to solve legal problems. In many situations, advisory opinions just blurred the legal framework and provoked further disputes among states (Kosovo opinion) or undermined the basic principles of particular branch of international law (Nuclear Weapon). Abuses (interpretation in bad faith) of the ICJ's statements expressed in advisory opinions are not rare (Kosovo opinion and the justification by Russia of the annexation of Crimea).

### **The project's aim is to prove the following hypotheses:**

- the current advisory procedure in the International Court of Justice is not an effective tool to solve legal disputes between specific states or state-like organizations
- the limitations of the advisory opinion procedure impact the value of the advisory opinions in other (not so obviously contentious) cases,
- the advisory opinions are disregarded by states in their practice so they have little impact on the development of the hard (treaty and customary) international law;
- the ICJ's narrow reading of questions and avoiding clear answers to legal problems behind particular not well phrased requests results in abuses in interpretation of the advisory opinions and fails to serve the purposes of states and organizations;
- these flaws explain the relatively insignificant interest of states in advisory proceedings;
- the practice of advisory opinion procedure proves that particular bodies of the UN do not have a consistent approach to its utility

**In result of the research,** the effectiveness of the advisory proceedings will be assessed in light of the goals of the states/organizations which were behind particular request and in light of the goals of the ICJ. Also failed attempts to submit requests will be analyzed and the full scope of contentious character of the advisory proceeding will be examined. Understanding the concept of the advisory opinion procedure and the flaws of the advisory proceedings would help states and international organizations to decide whether the request for advisory opinion is a useful option to settle disputes/to solve legal disputes within certain bodies. Results of the project will help to answer the question how the advisory opinions change international law, how they influence (or even foster) the entire process of the change. The project will clarify what the main obstacles are for achievement of the effectiveness of the advisory opinions, which will help to reassess the present procedure and indicate the need for specific changes.