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Turning Opinions into Obligations: The Role of Courts in Enforcing Climate Commitments

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Introduction

Climate change poses an unprecedented challenge to international law, as most climate-related rules are soft law—meaning they lack binding force—unlike treaties such as the UNFCCC (1992), Kyoto Protocol (1997), and Paris Agreement (2015), whereas instruments like the Rio Declaration (1992) and Copenhagen Accord (2009) remain soft in nature. This attempts comment on how such commitments can be made enforceable in order to open new avenues of climate litigation. To that extent, the Advisory Opinion of the International Court of Justice (ICJ) on climate change has a significant likelihood of becoming a force that will affect and influence the responsibilities of states in international law. Even though advisory opinions are non-binding in nature, they can influence the interpretation of the existing legal requirements, and lead to conformity by normative and political coercion. This contribution examines the role of international and domestic courts in strengthening climate governance by giving legal weight to the advisory opinion. It also discusses the opportunities and limitations of judicial activism and suggests avenues for courts to compel action related to policy and promote accountability.

To Coax to Compel: The Legal Force of Climate Advisory Opinions

International law has a special place for international judgments of advisory opinions, such as the International Court of Justice (ICJ). Whereas they have a great persuasive force and are also instruments through which states are guided, they, in themselves, do not bring about legally binding obligations. They are used mainly to give answers to law-related questions, interpret a treaty or give advice on a complex international question, including one relating to climate change. But these views typically are soft law, which limits their enforceability.

However, states are free to agree with the court's argument without a legal obligation to do so, and thus there is a discrepancy between normative expectations and actual conduct. This deficiency is especially apparent in

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dealing with climate change, in which there is a real urgency to action, but in which advisory opinions are not strong enough to pressure governments into doing anything in particular. There are a number of precedents of this dynamic. The nuclear weapons issue (1996) Advisory opinion of the ICJ is an example. Furthermore, the Legal Consequences of the Building of a Wall in the Occupied Palestinian Territory (2004) has been known to have applied international law authoritatively. But their influence on the conduct of the state was so inseparably involved in political good will and internal enforcement measures, which explains the extremely hard character of the problem of translating persuasive opinion into binding obligation.

By placing climate advisory opinions in this broad legal context, it is clear that, even though they influence international norms and serve as moral and legal guidance, their effectiveness depends on judicial and political procedures to make them effective. While this paper situates climate advisory opinions within the broader international climate framework, its focus is specifically on these opinions—how they influence norms and how judicial and political processes are needed to turn their guidance into effective, enforceable action.

It has been demonstrated by domestic and regional courts that the sources of soft law can still establish binding commitments. In Asghar Leghari v. Federation of Pakistan (2015), the Lahore High Court made a call to the government to adopt its climate policy and establish a Climate Change Commission using constitutional rights and national climate frameworks, This example indicates that though advisory opinions and other soft law mechanisms are not binding in and of themselves, they may be effective interpretive resources and allow courts to close the gap between international normative guidance and domestic obligations which are enforceable.

The Role of International and Domestic Courts: Advisory Guidance to Binding Climate Accountability:

Although advisory opinions do not accept the force of law in and of themselves, the real power of judicial intervention is how international, regional and domestic courts are able to turn such guidance into a binding requirement.

Climate obligations are not always directly enforced by international and hybrid courts; however, they frequently rely on norms expounded in advisory opinions to make binding decisions. As an example, domestic and regional tribunals are starting to find post-ICJ advisory rulings as authoritative in their interpretation. With the climate advisory opinion issued by the ICJ, Columbia Law has reported that the legal basis of how national and regional courts will initiate holistic and ambitious remedies to emissions obligation will be enhanced.

Courts may utilize the rationale of advisory opinions to augment their decisions, even in the absence of binding enforcement. Although a court is not able to give sweeping mandatory orders, it exerts normative pressure through its judgments.

A sound judicial decision possesses both moral and legal persuasive power. Governments may become subject to domestic and international scrutiny; civil society actors may rely on such decisions in subsequent litigation; and policymakers may be prompted to act to avoid future judicial censure. An illustrative example is *Milieudefensie v. Shell (2021), the Dutch court ordered the company to cut emissions Shell (2021*) in which a Dutch court ordered Shell to reduce its emissions. Although the enforceability and durability of that ruling were contested—and the Dutch Court of Appeal overturned the specific obligation to reduce emissions by 45 per cent by 2030 in November 2024—the case nevertheless served as an influential normative reference at the global level. Accordingly, even where courts lack the capacity to exercise coercive power to its full extent, they may still shape state and corporate behaviour by embedding advisory-opinion principles within binding judgments or by issuing incremental orders.

International and advisory norms would be best translated into domestic obligations through domestic courts that operate best at the domestic level. Courts have been able to induce governments to put in place climate policies through Public Interest Litigation (PIL). The model example is the case of Urgenda Foundation v. State of the Netherlands (2015-2019). The Dutch courts requested the government to cut the amount of greenhouse gas at least by 25 per cent by 2020, relying on international climate principles, human rights norms, and state obligations of care.

Equally, the inaction of the government is now subject to scrutiny by the courts of different jurisdictions, and the government is forced to adopt mitigation and adaptation measures, particularly where the statutory or constitutional law places an obligation to protect life, health or environment. According to a survey conducted by the Environmental Law Institute, domestic or international commitments are being translated by national courts into the creation of tools to order governments to make tangible steps to prevent climate change.

Altogether, there is an overlay of international, regional, and domestic courts where the advisory opinion can be converted into enforceable climate commitments. The ways these courts achieve these include the issuance of binding judgments that incorporate advisory reasoning, by establishing precedents within regional systems of human rights, by using normative pressure and compelling governments to take action through domestic litigation.

Yet, as courts use advisory opinions to shape enforceable climate duties, key challenges still limit their impact. Courts have been brought to the limelight to provide the advisory opinions with a binding nature of climate provisions but they are not devoid of limitations. Firstly, the issue of justiciability is one of the primary ones: the majority of climate claims presuppose the complex scientific and policy argument that falls into the jurisdiction of legislative or executive agencies. It is this clash of judicial intervention and separation of powers that normally makes the courts act reservedly and limits the form of remedies that they are willing to provide. Secondly, the issue of proving causation and standing. Plaintiffs are required to show the direct relation between some government action or inaction and some environmental or social harm, which is made difficult in many cases by the long-term and diffuse effects of climate. Thirdly, constraint on monitoring and enforcement by the courts is a lack of resources and capacity. Though the ruling may mandate the decisions that will necessitate a massive decrease in emissions or modification of policy, the fact is that they must be implemented using administrative instruments and political goodwill, which might be many steps behind the court order.

Despite such difficulties, there are large prospects for the judicial sector to be innovative and influential. Firstly, in the interest of achieving greater access, optimizing dogmas of standing, and remedies that favour incremental compliance over imposing a particular policy response, courts can get creative in their procedure. This is one of the means of allowing the courts to exercise a normative type of control over institutional boundaries without intersecting the boundaries and borders. Secondly, dependency of the courts and the civil society where there is a cycle of reinforcement. The decision of courts enables communities, advocacy groups and stakeholders to hold the governments accountable and continue to build momentum on climate action. The incorporation of the moral and legal authority of the advisory opinions with the soft law guidance provided by courts can help to transform the guidance into tangible and enforceable outcomes and will enhance the management of climate and bring change to the system.

Conclusion

Courts have the transformative job of filling in the gap between the advisory guidance and enforceable climate action. In spite of the normative pressure, institutional constraints and standing issues, judicial intervention imposes, creates policy change and empowers civil society. In a soft law context, and by relying on the principles of international law, the courts make abstractions and commitments concrete and bring about accountability. This changing jurisprudence reveals that the judiciary cannot solve the climate crisis on its own, but it is essential in influencing the behaviour of states, promoting climate justice and ensuring that commitments are

put into action through meaningful and practical action.

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