

REQUEST FOR ADVISORY OPINION

PROCEDURE FOLLOWED BY THE INTERNATIONAL COURT OF JUSTICE

I. The request for an advisory opinion

Advisory proceedings start with the filing of a request for an advisory opinion by any body authorized by or in accordance with the Charter of the United Nations to make such a request (Statute, Article 65, paragraph 1).

On receiving that request, the Registrar of the Court (hereinafter the “Registrar”), in accordance with Article 66, paragraph 1, of the Statute, gives notice of it, by letter, to all States entitled to appear before the Court (which includes all United Nations Member States — see Statute, Article 35, paragraph 1).

The request for an advisory opinion is accompanied by all documents likely to throw light upon the question (Statute, Article 65, paragraph 2; Rules, Article 104). In practice, the author of the request communicates to the Court, some time after the submission of the request itself, a “dossier” containing all the documents it considers relevant. On receiving those documents, the Registrar sends a letter to all interested parties informing them of this fact. The “dossier” is then posted on the Court’s website.

II. States and international organizations likely to be able to furnish information on the questions posed

Article 66, paragraph 2, of the Statute provides that the Registrar notify any State entitled to appear before the Court or international organization considered by the Court, or by the President if the Court is not sitting, as likely to be able to furnish information on the question, that the Court will be prepared to receive written statements, within a time-limit to be fixed by the President, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

A. Order of the Court

In practice, in the days following the receipt of the request for an advisory opinion, the Court (or the President if the Court is not sitting) adopts an order setting out which States and/or organizations are likely to be able to furnish information on the question or questions put to the Court (Statute, Article 66, paragraph 2). The time-limits within which that information should be communicated are also fixed (*ibid.*).

B. States and/or international organizations other than those referred to in the Court’s order

States and/or international organizations other than those referred to in the order may consider that they too are in a position to furnish information to the Court and may wish to take part in the proceedings.

In that event, should a State entitled to appear before the Court or an international organization express a desire to submit a written statement or to be heard, it must send a letter to the Registrar (either by mail, or by email to secretariatgreffier@icj-cij.org).

Its request will then be transmitted to the Court, which will consider it and decide (Statute, Article 66, paragraph 3). The Court will grant the request if it considers that the State or organization in question is “likely to be able to furnish information on the question” submitted to it.

The State or organization making the request will be duly informed of the Court's decision.

If the request is granted, the Court will also notify the author of the request for an advisory opinion, all States entitled to appear before the Court and any other organization whose participation in the proceedings the Court may already have authorized.

III. Requests to participate from non-governmental organizations

A non-governmental organization may, on its own initiative, submit a written statement and/or document in an advisory opinion case. Practice Direction XII reads as follows:

“1. Where an international non-governmental organization submits a written statement and/or document in an advisory opinion case on its own initiative, such statement and/or document is not to be considered as part of the case file.

2. Such statements and/or documents shall be treated as publications readily available and may accordingly be referred to by States and intergovernmental organizations presenting written and oral statements in the case in the same manner as publications in the public domain.

3. Written statements and/or documents submitted by international non-governmental organizations will be placed in a designated location in the Peace Palace. All States as well as intergovernmental organizations presenting written or oral statements under Article 66 of the Statute will be informed as to the location where statements and/or documents submitted by international non-governmental organizations may be consulted.”

IV. Communication of information to the Court

In an advisory opinion case, States and international organizations considered likely to be able to furnish information to the Court are invited to submit written statements and, in some cases, written comments on those written statements.

A. Procedure for written statements

1. *Filing of written statements*

An original copy of the written statement containing the handwritten signature of a duly authorized official must be filed in the Registry in person. It is for the government of the State concerned to determine the official empowered to this effect (for example, the Minister for Foreign Affairs, the Legal Adviser of the Ministry of Foreign Affairs or another duly authorized official).

Before filing, each submitting State or organization must contact the Office of the Registrar (by email to secretariatgreffier@icj-cij.org or by calling +31 70 302 2353) to set up an appointment for this purpose.

Submitting States and organizations are asked to provide the Registry with 30 paper copies of their statement in order that it may be immediately communicated to the judges and to the various departments and divisions of the Registry.

They are also asked to submit the document in electronic format (one USB drive containing the Word version of the statement and five USB drives containing the PDF version).

All statements must be drafted in either English or French (the two official languages of the Court under Article 39, paragraph 1, of the Statute). Statements submitted in both languages are greatly appreciated.

2. *Transmission of written statements*

(a) To States and organizations having submitted a written statement

Once the time-limit for the filing of written statements has expired, the Registry provides the States and organizations having submitted written statements with a list of the other submitting States and organizations.

Shortly thereafter, a complete set of the written statements is transmitted to them (Rules, Article 105).

(b) To States and organizations that have not submitted a written statement

States and organizations that have not presented written statements are, for their part, simply provided with a list of submitting States and organizations. The written statements are not communicated to them at this stage.

B. Procedure for written comments

In certain cases, the Court may authorize the filing of written comments in which the States or organizations having submitted written statements may comment on the statements made by other States and organizations (Statute, Article 66, paragraph 4).

1. *Filing of written comments*

Only States and organizations having filed a written statement may submit written comments (Statute, Article 66, paragraph 4).

Any such comments must be filed in the Registry in the same way as written statements (see previous section).

2. *Transmission of written comments to States and organizations having taken part in the written proceedings*

Written comments are communicated to submitting States and organizations in the same way as written statements.

C. Transmission of written statements and comments to States and organizations that have not taken part in the written proceedings

Some days after their filing, written comments are communicated, with a complete set of the written statements, to States and organizations considered likely to be able to furnish information that have not taken part in the written proceedings.

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It should be noted that, for the entire duration of the written proceedings, statements and comments must be treated as confidential documents. Under Article 106 of the Rules, the Court, or the President if the Court is not sitting, may decide that the written statements and annexed documents will be made accessible to the public on or after the opening of the oral proceedings. (If the request for an advisory opinion relates to a legal question actually pending between two or more States, the views of those States will first be ascertained.)

V. Oral proceedings

If the Court considers that hearings should be held on the question put to it for an advisory opinion, all States and organizations previously considered by the Court as likely to be able to furnish information will be informed of those hearings (Statute, Article 66, paragraph 2; Rules, Article 105, paragraph 2 (*b*)).

A State or organization that has not taken part in the written proceedings (i.e. that did not submit either a written statement or written comments) may take part in the oral proceedings.

The Registry sends an email to each State or organization deemed likely to be able to furnish information to ask whether it wishes to make an oral statement.

The Court then organizes the schedule of the hearings, taking into account, in particular, the number of States and organizations that have expressed a wish to be heard. The practical arrangements for the hearings are then communicated to the interested parties in due course.

The hearings are open to the public, unless the Court decides otherwise.

VI. The Court's opinion

Once the written and, where necessary, oral proceedings have concluded, the Court retires to begin its deliberation.

It then delivers its opinion in open court (Statute, Article 67; Rules, Article 107).

Notice is given to the Secretary-General and to the representatives of Members of the United Nations, of other States and of international organizations immediately concerned (Statute, Article 67; Rules, Article 108).

The text of the opinion is posted on the Court's website once the reading has ended.
