



COMMISSION OF SMALL ISLAND STATES

ON CLIMATE CHANGE AND INTERNATIONAL LAW

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ITLOS MAKES HISTORY BY DELIVERING THE FIRST-EVER OPINION BY AN INTERNATIONAL TRIBUNAL ON CLIMATE CHANGE AND OCEAN

The International Tribunal for the Law of the Sea (ITLOS) has today delivered a historic advisory opinion in Case No. 31, *Request Submitted by the Commission of Small Island States on Climate Change and International Law (COSIS)*, in its Hamburg courtroom on the obligations of States under international law to protect and preserve the marine environment and to prevent, reduce, and control marine pollution. This is the first-ever decision by an international tribunal on climate change and the oceans and clarifies the legally binding obligations of 169 countries that are party to the 1982 United Nations Convention on the Law of the Sea (UNCLOS)—known as the Constitution of the Ocean.

COSIS was established by Antigua and Barbuda and Tuvalu at COP26 in Glasgow in 2021. The two nations currently serve as Co-Chairs of COSIS. The other members include The Bahamas, Niue, Palau, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Vanuatu. The Request for an advisory opinion was submitted by COSIS in December 2022. COSIS is also participating in the advisory opinion request of the United Nations General Assembly before the ICJ, led by its member Vanuatu.

Tuvalu High Commissioner to Fiji H.E. Eselealofa Apinelu, stated: “COSIS welcomes the ITLOS advisory opinion. It spells out the legally binding obligations of all States to protect the marine environment; to protect us against the existential threats posed by climate change. This is a historic moment for small island developing nations in their quest for climate justice; an important first step in holding the major polluters accountable, for the sake of all humankind.”

Prime Minister Gaston Browne of Antigua and Barbuda stated: “Small Island States are fighting for their survival. Some will become uninhabitable in the near future because of the failure to mitigate greenhouse gas emissions. We demand that the major polluters respect international law, and stop the catastrophic harm against us before it is too late. The ITLOS opinion will inform our future legal and diplomatic work in putting an end to the inaction that has brought us to the brink of an irreversible disaster.”

The legal counsel in the case see the opinion as a victory. Professor Payam Akhavan, Representative of COSIS to ITLOS, stated: “The Tribunal’s opinion is an historic legal victory for small island nations, demonstrating their global leadership on this crucial issue for the future of humankind. It is a manifest injustice that they make negligible contributions to the problem, but suffer the worst effects of rising sea-levels and extreme weather events that have brought some to the brink of extinction. As the guardian of the Ocean Treaty, ITLOS has taken a critical first step in recognizing that what small island nations have been fighting for at the COP negotiations for decades is already part of international law. The major polluters must prevent catastrophic harm to small island nations, and if they fail to do so, they must compensate for loss and damages.”

Catherine Amirfar, Co-Representative of COSIS to ITLOS stated: “The Tribunal’s decision today makes clear for the first time that it is the best available science—and not political considerations—that plays a ‘crucial role’ in determining what steps are required under international law to combat climate change. The opinion recognizes that greenhouse gas emissions are no different than any other form of pollution, and it is clear that, under Part XII of the Ocean Treaty, States must do what is necessary to protect and preserve the marine environment. It is not a matter of discretion. It is a reminder that the ocean is the biggest carbon sink, absorbing 93% of excess heat, and that ongoing inaction will result in a collapse of the global climate system with dire consequences. This landmark opinion is an important precedent that will no doubt influence what other international courts and tribunals have to say about climate change.”

The Tribunal concluded that obligations under UNCLOS apply to climate change and that countries must take necessary measures in line with the best available science and the global temperature goal of limiting the temperature increase to 1.5°Celsius above pre-industrial levels. Specifically, the Tribunal held:

- Greenhouse gas emissions constitute pollution of the marine environment within the meaning of UNCLOS.
- On the obligation to prevent, reduce, and control pollution of the marine environment, countries must take necessary measures, both individually and jointly, as defined “objectively” and driven by the “crucial role” of the best available science.
- In determining what steps are necessary, scientific certainty is not required and countries must take a precautionary approach to mitigating greenhouse gas emissions in the marine environment, as well as a “stringent” obligation of due diligence.
- It is not sufficient for countries to just meet their obligations under the Paris Agreement; UNCLOS contains independent obligations related to climate change that countries must implement.
- The obligations imposed under UNCLOS are a “means” of addressing an “inequitable situation” faced by developing and climate vulnerable countries—including small island nations—who have contributed the least but suffer the most from the deleterious effects of climate change.
- On the obligation to preserve and protect the marine environment, countries must ensure that non-State actors comply with national and other domestic measures taken to mitigate climate change.

Throughout its opinion, the Tribunal acknowledged the unequivocal scientific conclusions of the Intergovernmental Panel on Climate Change (“IPCC”) as “authoritative assessments” of the science on climate change.

This opinion places the ocean at the heart of legal and political discussions on climate change. It contributes to the development and clarification of international law in the context of the law of the sea and climate change law more broadly and provides authoritative guidance to States and courts on treaty obligations. It has the potential to strengthen

international climate negotiations and help cut through the political inertia that has hampered international and national climate action.

Building on the success of this landmark case, the co-chairs invite all small island state members of AOSIS to join COSIS in promoting the role of international law in the effort to combat global warming.

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A **press conference** will take place from 14:00 to 15:00 CET in the press conference room on the ground floor of the Tribunal's premises in Hamburg.

Interviews: The senior officials of the island countries who brought the case, as well as their co-counsel and a scientific expert author of the IPCC and the expert report in the case, will be available to answer questions from the press. They will present the Tribunal's main conclusions, their importance for the islands and the world's oceans, and why this constitutes a pivotal moment in the fight to solve the climate crisis. For any requests please email: press@cosis-ccil.org.

Notes to editors:

Established in 2021, COSIS is an intergovernmental organization with a mandate to promote and contribute to the definition, implementation, and progressive development of rules and principles of international law concerning climate change. It currently has nine member countries.

The COSIS island nations brought this case to ITLOS because they contribute only a fraction of global greenhouse gas emissions, but they are bearing the brunt of the consequences of climate change: in particular, they are increasingly affected by rising ocean temperatures, intensifying tropical cyclones and storm surges, droughts, rising sea levels, and coral bleaching.

COSIS submitted its request for an advisory opinion to ITLOS in December 2022, accompanied by the reports of two IPCC experts. Hearings were held in September 2023, after the Tribunal received an unprecedented number of supporting submissions from 34 States and 9 international governmental organizations. An unprecedented 33 States and 4 intergovernmental organizations participated in the hearing. Following the hearings, the Tribunal wrote its opinion in a record time of eight months.

For questions, please email press@cosis-ccil.org.