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Island Nations Ask UN Tribunal to Spell Out Large Countries' Obligations to Protect Oceans

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[The International Tribunal for the Law of the Sea](#) held a series of public hearings that started September 11, 2023 following a request submitted by [the Commission of Small Island States on Climate Change \(COSIS\)](#) to clarify large countries' obligations to protect the oceans—and the world's smallest island states—from the impact of pollution and climate change. COSIS is calling for a legally binding framework to protect its member states from the effects of climate change and is aiming to raise these issues at upcoming UN climate change and other conferences. Established in 2021 during COP 26 in Glasgow, COSIS currently has eight members: Antigua and Barbuda, Niue, Palau, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Tuvalu, and Vanuatu.

In its [request](#) in December 2022, COSIS asked the tribunal for an advisory opinion on the responsibilities of the 169 state parties to the United Nations Convention on the Law of the Sea (UNCLOS). Specifically, COSIS asked the judges of the Hamburg, Germany-based tribunal to decide if greenhouse gas emissions absorbed by the ocean can be considered pollution under UNCLOS and, if so, what state parties' responsibilities are to reduce or prevent such pollution. Climate change has resulted in rising sea levels, displacing low-lying populations and threatening the existence of some small states; ocean warming and acidification that harm marine ecosystems; and food insecurity and economic devastation, said COSIS.

In its [statement to the tribunal](#), COSIS said “[a]s the sole permanent dispute resolution forum established by UNCLOS and with its specialized competence in the law of the sea, the Tribunal is especially well placed to address the questions raised in the request for an advisory opinion.” “The Tribunal could assist States Parties by identifying obligations that are legally binding rather than discretionary, and defining with greater precision the specific obligations under UNCLOS with respect to climate change on the basis of established scientific evidence.”

Taking the Temperature: One of the issues likely to animate COP 28 later this month will be loss and damage for developing countries that have suffered the brunt of climate change. Although participants at COP 27 reached an agreement to establish a [dedicated fund](#) to assist developing countries respond to loss and damage caused by climate change, key questions remained unanswered, including which countries will pay into the fund and which countries can benefit from it. This debate will continue at COP 28. An advisory opinion issued by the International Tribunal for the Law of the Sea could be a significant development for the most vulnerable island states, some of which are in danger of being overwhelmed by rising sea levels. However, an advisory opinion is not binding and enforceable, unlike a legal judgment. While governments of UN State Parties will therefore not be obliged to take any action following the Tribunal's decision, the opinion would potentially impact international law. As UN Secretary-General António Guterres commented in the context of a previous request by Vanuatu (see below), advisory opinions can provide clarification on international legal obligations and encourage member states to take stronger climate action.

COSIS's request for an advisory opinion is not the first time small island nations have sought a ruling from an international legal tribunal on the obligations of developed countries. [As we previously reported](#), in March the United Nations General Assembly adopted a resolution requesting an advisory opinion from the International Court of Justice on the obligations of its 193 member states regarding climate change under international law. The resolution, organized by Vanuatu, specifically requested that the court render an opinion on the legal consequences for states where they, by their acts and/or omissions, have caused significant harm to the climate system and, in particular, to small island developing states. [Proceedings](#) in that case are ongoing.