



International Tribunal for the Law of the Sea Advisory Opinion: Two Pager

Key Messages

1. Greenhouse gas emissions are to be understood as pollution under the United Nations Convention on the Law of the Sea (UNCLOS), and states are under the obligation to 'protect and preserve marine environment', which includes the prevention, reduction and control of pollution.
2. UNCLOS legally obliges state parties to reduce their greenhouse gas emissions in line with the temperature goal set out in the Paris Agreement.
3. Harmonious and systematic interpretation entails that the Tribunal takes into account other legal frameworks, including the human rights law regime.

Background on the case

On 12 December 2022, the Commission of Small Island States on Climate Change and International Law (COSIS; the Commission) submitted a request to the International Tribunal for the Law of the Sea (ITLOS; the Tribunal), to clarify State obligations under UNCLOS to prevent, reduce and control pollution to the marine environment resulting from climate change.¹

"What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea ('UNCLOS'), including under Part XII:

(a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere?

(b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?"

(ITLOS Case No. 31, Request for Advisory Opinion by the Commission of Small Island States on Climate Change and International Law (12 December 2022) available at: https://itlos.org/fileadmin/itlos/documents/cases/31/Request_for_Advisory_Opinion_COSIS_12.12.22.pdf)

Why is this case important for youth and civil society?

- Opportunity for the tribunal to lay progressive groundwork for the upcoming advisory opinions before other courts
- Interesting for civil society to monitor state's submissions (written and oral) to identify key arguments they are likely to raise in other courts and in the UNFCCC process; champions and the opponents
- Opportunity for clarification on international state obligations in relation to the environment, biodiversity protection, climate change and human rights

¹ I-56940, Agreement for the establishment of the Commission of Small Island States on Climate Change and International Law. Edinburgh, 31 October 2021. Available at: https://itlos.org/fileadmin/itlos/documents/cases/31/COSIS_Agreement_E_Fr_.pdf.



What can an Advisory Opinion from ITLOS do?

- **Advisory opinions** are a means to obtain legal advice/clarification from an international court or tribunal. They do not have binding force, nonetheless are recognised as “an authoritative statement of international law.”² Thereby, advisory opinions are **important tools**, as they provide **crucial clarification** of the law and **contribute to the development of international law** and inter-State relations.
- Authoritative pronouncement on the law → providing clarity on the existing international legal frameworks, such as the Law of the Sea Convention.
- **Inform principles** such as due diligence obligations that are impacted by and have to be read in light of the adverse effects of the climate crisis.
- Finding from ITLOS that State Parties are under an obligation to mitigate against climate change, and must do so in line with the best-available science.
- **Support the harmonisation of international law** relating to the protection of the (marine) environment.
- **Support efforts to encourage the increase in State ambition** in line with the terms of the Paris Agreement.

Hearings and Proceedings

All parties to UNCLOS and intergovernmental organisations were entitled to file submissions by 16 June 2023. States and the international organizations who filed written submissions are now entitled to appear in the oral phase before the judges, traditionally for about 45 min. The hearing will commence on Monday 11 September and run until Monday 25 September. The advisory opinion from ITLOS is expected to come out in February 2024..

What you can do

- Build momentum around the hearing 11th September using social media messages
- Engage in academic and legal debate by writing articles, organize events and follow up on the outcome (keep the pressure high!)
- Monitor the hearings for recurring themes; in-person or online
- Join us outside the court room for daily actions. Follow us at @wy4cj for more updates.

Social Media messages

- “The seas are rising and so are we.”

This two-pager was prepared with kind reference to the ClientEarth ITLOS AO briefing available [here](#).

Want to learn more? Contact us at hi@wy4cj.org or via our socials.

² https://www.clientearth.org/media/c1spsafh/itlosao_legal-briefing_final.pdf