

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

CASE NO. 31

**REQUEST FOR AN ADVISORY
OPINION SUBMITTED BY THE
COMMISSION OF SMALL ISLAND
STATES ON CLIMATE CHANGE AND
INTERNATIONAL LAW (REQUEST
FOR ADVISORY OPINION SUBMITTED
TO THE TRIBUNAL)**

**RESPONSE OF THE DEMOCRATIC REPUBLIC OF TIMOR-LESTE TO COSIS'S
REPLY TO JUDGE KITTIChAISAREE'S QUESTION**

4 October 2023

1. On 11 September 2023, Judge Kittichaisaree posed the following question to COSIS:

*In light of Chapters 6, 7 and 8 of your Written Statement, could you please clarify further which specific obligations mentioned by you insofar as they are relevant to the Request for an Advisory Opinion are, in your view, obligations of conduct and which ones are obligations of result, and why?*¹

2. Timor-Leste wishes to respond to one point in COSIS's response provided on 24 September 2023. In the context of what COSIS suggests are difficulties in distinguishing between obligations of conduct and result, paragraph 15 of the response provides the following example as a breach of Article 192:²

... if a State omits to assess baseline or “starting-point” standards of pollution, biological health and biodiversity, and so on, in the seas around its coasts, it may prove impossible to make any proper assessments of the impact of subsequent human activities upon those waters. A State that knows nothing of the quality of the marine environment around its coasts can scarcely be said to be conducting itself in compliance with its Part XII obligations. ...

3. In Timor-Leste's oral statement we noted that “...there is very limited data as to the effects of climate change on Timor-Leste. As such, it is difficult to comprehensively report and monitor the impacts of climate change on its marine environment...”.³ Timor-Leste included this comment to emphasise the fact that Small Island Developing States often do not have access to the necessary financial, technical, or human resources required to scientifically quantify and monitor the impacts of climate change on its marine environment.

¹ Question from Judge Kittichaisaree (11 September 2023), available at: https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral_proceedings/C31_questions_individual_Judges_11.09.2023_Eng.pdf

² COSIS response to question from Judge Kittichaisaree (24 September 2023), para. 15, available at: https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral_proceedings/2023-09-24_COSIS_Response_to_Judge_s_Question.pdf

³ Oral submissions of Timor-Leste (20 September 2023, ITLOS/PV.23/C31/14), page 5, lines 16 – 20, available at: https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral_proceedings/ITLOS_PV23_C31_14_E.pdf

4. Timor-Leste also noted that its Nationally Determined Contribution stressed its urgent need for “*technical support and financing to establish a robust National Greenhouse-Gas (GHG) Inventory to support its ability to report to the UNFCCC and comply with the requirements of the Paris Agreement*”.⁴

5. COSIS’s example cited above does not, therefore, fully take into account the significant disparities between the resources of developed and developing countries. This was stressed in our submissions on the principle of common but differentiated responsibilities (CBDR), and the obligations of developed States to provide financial and technical assistance to developing States, including for the purpose of making ‘baseline’ or subsequent environmental assessments.⁵ This example demonstrates, more generally, the inherent dangers of taking an obligation of conduct and turning it into an obligation of result. If an obligation entails achieving a particular result, the ability to consider the principle of CBDR is naturally circumscribed. As was the virtual consensus during the proceedings, the obligations in Article 192 and 194 of UNCLOS are of a ‘due diligence’ character and are obligations of conduct, not result.



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⁴ Oral submissions of Timor-Leste (20 September 2023, ITLOS/PV.23/C31/14), page 19, line 31 – page 20, line 2, available at: https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral_proceedings/ITLOS_PV23_C31_14_E.pdf

⁵ Oral submissions of Timor-Leste (20 September 2023, ITLOS/PV.23/C31/14), available at: https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral_proceedings/ITLOS_PV23_C31_14_E.pdf