INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

2023

Public sitting
held on Monday, 11 September 2023, at 10 a.m.,
at the International Tribunal for the Law of the Sea, Hamburg,
President Albert J. Hoffmann presiding

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)

Verbatim Record
**Present:**

President        Albert J. Hoffmann
Vice-President   Tomas Heidar
Judges           José Luís Jesus
                  Stanislaw Pawlak
                  Shunji Yanai
                  James L. Kateka
                  Boualem Bouguetaia
                  Jin-Hyun Paik
                  David Joseph Attard
                  Markiyan Z. Kulyk
                  Alonso Gómez-Robledo
                  Óscar Cabello Sarubbi
                  Neeru Chadha
                  Kriangsak Kittichaisaree
                  Roman Kolodkin
                  Liesbeth Lijnzaad
                  María Teresa Infante Caffi
                  Jielong Duan
                  Kathy-Ann Brown
                  Ida Caracciolo
                  Maurice K. Kamga

Registrar        Ximena Hinrichs Oyarce
List of delegations:

REQUESTING ORGANIZATION

Commission of Small Island States on Climate Change and International Law (COSIS)
Mr Gaston Browne, Prime Minister of Antigua and Barbuda, Co-Chair of COSIS
Mr Kausea Natano, Prime Minister of Tuvalu, Co-Chair of COSIS
Mr Arnold Kiel Loughman, Attorney General, Republic of Vanuatu
Mr Ronald Sanders, Ambassador to the United States of America and the Organization of American States and High Commissioner to Canada of Antigua and Barbuda
Mr Tufoua Panapa, Chief Advisor to the Prime Minister, Tuvalu
Mr Kevon Chand, Senior Legal Advisor, Permanent Mission of Vanuatu to the United Nations
Mr Payam Akhavan, SJD OOnt FRSC, Professor of International Law, Chair in Human Rights, and Senior Fellow, Massey College, University of Toronto; member, Permanent Court of Arbitration; associate member, Institut de droit international; member, Bar of New York; member, Law Society of Ontario
Ms Catherine Amirfar, Debevoise & Plimpton LLP; member, Bars of New York and of the Supreme Court of the United States; Immediate Past President, American Society of International Law
Mr Conway Blake, Debevoise & Plimpton LLP; solicitor advocate of the senior courts of England and Wales; member, Bar of the Eastern Caribbean Supreme Court
Ms Jutta Brunnée, Dean, Faculty of Law, University of Toronto; University Professor; associate member, Institut de droit international
Mr Eden Charles, Special Representative of the Secretary-General, International Seabed Authority; Lecturer of Law, University of the West Indies; Chair, Advisory Board, One Ocean Hub, UK Research and Innovation
Ms Naima Te Maile Fifita, Founder, Moana Tasi Project; 2023 Sue Taei Ocean Fellow
Mr Vaughan Lowe KC, Emeritus Chichele Professor of International Law, University of Oxford; barrister, Essex Court Chambers; member, Institut de droit international; member, Bar of England and Wales
Mr Makane Moïse Mbengue, Professor of International Law, University of Geneva; member, Curatorium of the Hague Academy of International Law; associate member, Institut de droit international
Mr Brian McGarry, Assistant Professor of Public International Law, Grotius Centre for International Legal Studies, Leiden University; member, Bar of New York
Ms Phoebe Okowa, Professor of International Law, Queen Mary University, London; member, International Law Commission; advocate, High Court of Kenya
Ms Nilüfer Oral, Director, Center for International Law, National University of Singapore; member, International Law Commission; associate member, Institut de droit international
Mr Zachary Phillips, Crown Counsel, Attorney General’s Chambers, Ministry of Legal Affairs, Antigua and Barbuda; member, Bar of Antigua and Barbuda
Mr Jean-Marc Thouvenin, Professor, University Paris Nanterre; Secretary-General, The Hague Academy of International Law; associate member, Institut de droit international; member, Paris Bar; Sygna Partners
Ms Philippa Webb, Professor of Public International Law, King’s College, London; Barrister, Twenty Essex; member, Bar of England and Wales; member, Bar of New York; member, Bar of Belize
Ms Margaretha Wewerinke-Singh, Associate Professor of Sustainability Law, University of Amsterdam; Adjunct Professor of Law, University of Fiji; member, Bar of Vanuatu; Blue Ocean Law
Ms Sarah Cooley, Director of Climate Science, Ocean Conservancy
Ms Shohba Maharaj, Science Director, Terraformation
Mr Falefou Tapugao, Private Secretary to the Prime Minister, Tuvalu
Mr Penivao Penete, Private Secretary to the Prime Minister, Tuvalu
Mr David Freestone, Adjunct Professor and Visiting Scholar, George Washington University School of Law; Co-Rapporteur of the International Law and Sea-Level Rise Committee, International Law Association; Executive Secretary, Sargasso Sea Commission
Ms Rozemarijn Roland-Holst, Assistant Professor in International Environmental Law, Durham Law School
Ms Jessica Joly Hébert, Ph.D. candidate, Université Paris Nanterre; member, Bar of Quebec
Ms Charlotte Ruzzica de la Chaussée, member, Bar of New York
Mr Jack McNally, Solicitor, Supreme Court, New South Wales; Research Fellow, University of New South Wales
Ms Melina Antoniadis, barrister and solicitor, Law Society of Ontario; transferring lawyer, Bar of England and Wales
Mr Romain Zamour, Debevoise & Plimpton LLP; member, Bar of New York; member, Paris Bar
Mr Duncan Pickard, Debevoise & Plimpton LLP; member, Bar of New York
Ms Perpétua B. Chéry, Debevoise & Plimpton LLP; member, Bar of New York
Ms Sara Kaufhardt, Debevoise & Plimpton LLP; member, Bar of New York
Ms Evelin Caro Gutierrez, Debevoise & Plimpton LLP; member, Bar of New York
Ms Alix Meardon, Debevoise & Plimpton LLP; member, Bar of New York
THE PRESIDENT: Good morning.

I wish to welcome you to this hearing. Before we begin, may I kindly ask that everyone to ensure that their mobile phones are on silent, please. Thank you.

At its third meeting on 26 August 2022, the Commission of Small Island States on Climate Change and International Law decided to request an advisory opinion from the Tribunal.

This decision was adopted in accordance with article 2, paragraph 2, of the agreement for the establishment of the Commission of Small Island States on Climate Change and International Law of 31 October 2021.

By letter dated 12 December 2022, the Co-Chairs of the Commission of Small Island States on Climate Change and International Law transmitted the request for an advisory opinion to the Tribunal. The letter was received by the Registry on the same day. By the same letter, the Co-Chairs of the Commission transmitted to the Tribunal documents likely to throw light upon the questions contained in the request for an advisory opinion, pursuant to article 131 of the Rules of the Tribunal. The request and the additional documents have been posted on the Tribunal's website.

The case which has been entered in the list of cases as Case No. 31, is named Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law.

I now call on the Registrar to summarize the procedure and to read out the questions on which the Tribunal is called to give an advisory opinion on the basis of the decision of the Commission of Small Island States on Climate Change and International Law. Madam Registrar.

THE REGISTRAR: Thank you, Mr President. The questions read as follows:

What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea (the '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 likely to result from the climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by the 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?

By Order dated 16 December 2022, the President decided that the intergovernmental organizations listed in the annex to that Order are likely to be able to furnish information on the questions submitted to the Tribunal for an advisory opinion.

By that same Order, the President invited the State Parties to the Convention, the Commission of Small Island States on Climate Change and International Law
(COSIS) and the said intergovernmental organizations to present written statements on the questions submitted to the Tribunal for an advisory opinion.

This Order initially fixed 16 May 2023 as the time-limit for the submission of written statements.

This time-limit was subsequently extended to 16 June 2023 by Order of the President dated 15 February 2023.

Further to requests from the African Union, the International Seabed Authority and the Pacific Community, the President decided to consider all these intergovernmental organizations as likely to be able to furnish information on the questions submitted to the Tribunal and, therefore, invited them to do so within the extended time-limit.

Within the time-limit of 16 June 2023, written statements were filed by 31 State Parties to the Convention. These are, in order of receipt: Democratic Republic of the Congo, Poland, New Zealand, Japan, Norway, Germany, Italy, China, European Union, Mozambique, Australia, Mauritius, Indonesia, Latvia, Singapore, Republic of Korea, Egypt, Brazil, France, Chile, Bangladesh, Nauru, Belize, Portugal, Canada, Guatemala, United Kingdom, Netherlands, Sierra Leone, Micronesia, Djibouti.

Within the same time-limit, written statements were also submitted by the following eight intergovernmental organizations, in the order of receipt: United Nations, International Union for the Conservation of Nature, International Maritime Organization, Commission of Small Island States on Climate Change and International Law, Pacific Community, United Nations Environment Programme, African Union, International Seabed Authority.

After the expiry of the time-limit, further written statements were received in the following order of receipt: Rwanda, the Food and Agricultural Organization of the United Nations, Viet Nam and India. Further to decisions of the President and the Tribunal, these statements were admitted and included in the case file.

In addition, statements were submitted to the Tribunal from the following: the United Nations Special Rapporteurs on Human Rights & Climate Change, Toxics & Human Rights and Human Rights & the Environment, the High Seas Alliance, ClientEarth, Opportunity Green, the Center for International Environmental Law and Greenpeace International, the Advisory Committee on Protection of the Sea, the Worldwide Fund for Nature, the Our Children’s Trust and Oxfam International, the Observatory for Marine and Costal Governance and the One Ocean Hub.

Further to decisions of the President, these statements were not included in the case file since they were not submitted pursuant to articles 138, paragraph 3, and 133, paragraph 3, of the Rules.

All the statements have been posted on the website of the Tribunal. Special sections have been set up on the website for statements received after the expiry of the time-limit as well as for statements that were not included in the case file.
By order of the President of 30 June 2023, the date for the opening of the hearing was fixed as 11 September 2023, that is, today. Pursuant to the Order, oral statements may be made by the State Parties to the Convention, the Commission of Small Island States on Climate Change and International Law, the other intergovernmental organizations listed in the annex to the Order of 16 December 2022, as well as by the African Union, the International Seabed Authority and the Pacific Community. The State Parties and the said organizations were invited to indicate their intention to make oral statements not later than 4 August 2023.

Within this time-limit, 34 State Parties, COSIS and three further intergovernmental organizations indicated such intention. Further to a request received from Belize after the date fixed in the Order of the President of 30 June 2023, the Tribunal decided that an oral statement may also be presented by Belize during the hearing.

THE PRESIDENT: Thank you, Madam Registrar.

As indicated, the Tribunal is meeting today to hear statements relating to the request for an advisory opinion. In this regard, the Tribunal has been informed that representatives of the following States and organizations, in addition to the Commission of Small Island States on Climate Change and International Law, wish to take the floor during the current oral proceedings. I will list them in alphabetical order:

Argentina, Australia, Bangladesh, Belize, Bolivia, Chile, China, Comoros, Democratic Republic of the Congo, Djibouti, European Union, France, Germany, Guatemala, India, Indonesia, Italy, Latvia, Mauritius, Mexico, Federated States of Micronesia, Mozambique, Nauru, Netherlands, New Zealand, Norway, Philippines, Portugal, Republic of Korea, Saudi Arabia, Sierra Leone, Singapore, Timor-Leste, United Kingdom, Viet Nam, African Union, International Union for Conservation of Nature and Natural Resources, and Pacific Community.

The specific arrangements for the meeting have been made known by the Registry to the participating delegations. The schedule of the hearing has also been made public by a press release and a revised schedule was issued last Friday, 8 September.

Today and tomorrow, both during the morning and afternoon sittings, the Tribunal will hear the Commission of Small Island States on Climate Change and International Law. And from Wednesday, 13 until Monday, 25 September, the other delegations I have mentioned will address the Tribunal.

This morning’s sitting, in the course of which the Commission of Small Island States on Climate Change and International Law will present the first part of its statement, will last until one o’clock, and there will be a 30-minute break between 11:15 and 11:45, approximately.

I now give the floor to the first representative, Mr Gaston Alfonso Browne, Prime Minister of Antigua and Barbuda, to speak on behalf of the Commission of Small Island States on Climate Change and International Law. Your Excellency, you have the floor.
MR BROWNE: Good morning. Mr President, members of the Tribunal, I am
honoured to appear before you to open the oral pleadings of the Commission of
Small Island States on Climate Change and International Law in these historic
advisory proceedings.

As Prime Minister of Antigua and Barbuda, I serve as Co-Chair to the Commission,
also referred to as COSIS, alongside by dear friend, the Honourable Kausea Natano,
the Prime Minister of Tuvalu, who will be addressing you shortly.

Antigua and Barbuda and Tuvalu concluded the Agreement establishing COSIS on
31 October 2021 on the eve of the 26th Conference of the Parties to the United
Nations Framework Convention on Climate Change, or the UNFCCC, held in
Glasgow, United Kingdom. On 5 November 2021, at COP26, the Republic of Palau
became the first State to deposit its instrument of accession. This is followed, in
chronological order, by Niue in September 2022, the Republic of Vanuatu and Saint
Lucia in December 2022, and Saint Vincent in the Grenadines, Saint Christopher,
that’s Saint Kitts and Nevis, and the Commonwealth of The Bahamas in June 2023.
The nine Member States of COSIS are scattered across the globe but are united by
a deep connection to and dependence on the marine environment and its resources.

We also note with gratitude the supportive written statements in these proceedings
by other members of Alliance of Small Island States to include: Belize, the Republic
of Mauritius, the Federated States of Micronesia, the Republic of Nauru and the
Republic of Singapore.

Mr President, COSIS is an unprecedented intergovernmental organization. Its
purpose is to harness the potential of international law to protect the most climate
vulnerable States against existential threats.

It is no exaggeration to speak of existential threats, when some of these nations may
vanish in the foreseeable future because of rising sea levels. The scientific evidence
leaves no doubt that this situation has arisen because of the failure of major polluters
to effectively mitigate greenhouse gas emissions.

This inaction, this failure of political will, has brought humankind to a perilous
juncture with catastrophic consequences. It is because of this reality that COSIS has
brought this vital matter before you.

In view of this reality, one can scarcely imagine a more compelling reason to
establish an intergovernmental organization. As the Preamble to the Agreement
states, COSIS members are “alarmed by the catastrophic effects of climate change
which threaten the survival of Small Island States, and in some cases, their very
existence.”

It is for this purpose that the Commission’s mandates is “to promote and contribute to
the definition, implementation, and progressive development of rules and principles
of international law concerning climate change.”
These advisory proceedings before your Tribunal are the first, but certainly not the last, initiative of COSIS. The Commission has also been authorized to submit a written statement for the ICJ advisory opinion on climate change requested by the UN General Assembly on 29 March 2023; a historic resolution adopted by consensus under the leadership of Republic of Vanuatu, with the active support of numerous small island States, including Antigua and Barbuda.

COSIS will also submit a written statement for the advisory opinion proceedings before the Inter-American Court of Human Rights, requested by Chile and Colombia on 9 January 2023. And there will be yet more initiatives as small island States join forces to protect their rights and very existence by building a rule-oriented international order in which the major polluters are held accountable for the harm they have caused and continue to cause. It cannot be expected that our peoples will remain silent as their homes are irretrievably destroyed.

Despite these multiple initiatives, this initial request before ITLOS is particularly significant.

This is the opening chapter in the struggle to change the conduct of the international community by clarifying the obligation of States to protect the marine environment.

We are, after all, peoples of the ocean, whether in the Caribbean or the Pacific, in the Atlantic or Indian Oceans, surrounded by the vast expanses of water that have sustained us from time immemorial.

In this regard, the COSIS Agreement explicitly acknowledges the fundamental importance of oceans as sinks and reservoirs of greenhouse gases, and the direct relevance of the marine environment to the adverse effects of climate change on small island States.

The ocean is fundamental to the climate system of Earth, so it is befitting that the first in these series of proceedings should be before ITLOS, the guardian of the 1982 UN Convention on the Law of the Sea.

It is befitting no less, because in the past few weeks this summer we have witnessed the highest ocean temperatures on record.

Mr President, Members of the Tribunal, we are here today because over a century and a half of anthropogenic greenhouse gas emissions have polluted our precious oceans and devastated the marine environment.

Those emissions have fundamentally changed Earth's climate and are posing an existential threat to vulnerable communities worldwide.

My country is one of those communities, and we stand in solidarity with all small island and coastal States facing the devastating consequences of climate change.

Despite our negligible emissions of greenhouse gases, COSIS members have suffered and continue to suffer the overwhelming burden of climate change’s adverse impacts.
Indeed, the catastrophic effects of climate change threaten the survival, and in some cases, the very existence of COSIS Members States.

Without rapid and ambitious remedial action, climate change may prevent my children and my grandchildren from living on the island of their ancestors, the island that we call home. We cannot remain silent in the face of such injustice. We cannot abandon our peoples to such a cruel fate.

We have come before this Tribunal in the belief that international law must play a central role in addressing the catastrophe that we witness unfolding before our eyes.

Your authoritative guidance on the specific obligations of States Parties to UNCLOS to protect the marine environment, is the much-needed corrective to a process that has manifestly failed to arrest climate change. We cannot simply continue with endless negotiations and empty promises. The political process must be informed by existing binding obligations under international law.

I emphasize existing obligations, Mr President. We have not come before to you create new law. All that we ask is for the Tribunal to clarify what UNCLOS requires of States Parties. Mr President, for decades, small island States have been stating these truths in international gatherings concerning climate change, including at successive Conferences of the Parties to the UNFCCC.

We have talked ourselves hoarse since the 1990s, pointing to the perilous circumstances into which our people and our countries are being plunged.

Year after year, we listened as promises to mitigate climate change were made, and year after year, we watched as those promises went unfulfilled.

We have patiently listened and waited. We have ardently urged and pleaded, but with little avail.

As I told the 27th Conference of the Parties to the United Nations Framework Convention on Climate Change in Sharm el-Sheikh, Egypt, last year, the soliloquy in William Shakespeare’s *Macbeth* resonates with a hammering significance for us small island States. And I quote:

“Tomorrow, and tomorrow, and tomorrow,
creeps in this petty pace from day to day,
to the last syllable of recorded time;
and all our yesterdays have lighted fools the way to dusty death.” End of quote.

But we were not willing to resign our peoples to this death sentence, occasioned by the continuing failure to take effective action against climate change.

On 26 August 2022, the then three members of COSIS, Prime Minister Natano of Tuvalu and President Whipps of Palau, and myself, adopted a historic decision authorizing the Commission to request an advisory opinion from ITLOS.
On 12 December 2022, the Commission requested the advisory opinion from this Tribunal, referring the two legal questions that are at issue in these proceedings.

We did so based on the advice of a distinguished Committee of Legal Experts; dedicated men and women from across the world who have worked diligently and voluntarily to assist small island States in the pursuit of climate justice.

I will leave it to our esteemed counsel team to take you to the precise wording of those questions, but the essence is as follows:

Given climate change’s harmful effects on the ocean and the ocean’s vital role in Earth’s climate system what does the constitution of the law of the sea have to say about the climate crisis?

What are the specific obligations of States Parties?

Mr President, members of the Tribunal, we are in dire, urgent need of an answer; an answer that is based on science rather than abstract principles; an answer that will provide meaningful guidance to States Parties to UNCLOS. And we must hope that States Parties will act in good faith to ensure that, moving forward, their conduct is consistent with the content of their obligations, as set out in your advisory opinion.

Mr President, members of the Tribunal, I will turn now to speak not only as the Co-Chair of COSIS, but also as Prime Minister of Antigua and Barbuda.

Specifically, I will address in more detail the devastating consequences that my country has suffered and will continue to suffer in the absence of swift and dramatic reductions in greenhouse gas emissions and robust, comprehensive adaptation efforts.

In 2017 alone, three major hurricanes – Irma, Harvey and Maria – battered the Caribbean, displacing over 3 million people in a single month.\(^1\)

Our sister island, Barbuda, was the first island hit by Hurricane Irma, a Category 5 storm, which damaged an estimated 90 per cent of all properties on the island. The damage required the evacuation of all residents from Barbuda to Antigua.\(^2\) It further required the central government to provide accommodation and sustenance to the population of Barbuda for three years on Antigua, while Barbuda was painstakingly rebuilt.

Had Antigua and Barbuda not been a unitary state, the inhabitants of Barbuda would have become climate migrants, or perhaps refugees, dependent on the voluntary generosity of several countries among whom they would have had to be scattered with no obligations for their safety or well-being.

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\(^1\) Ama Francis, FREE MOVEMENT AGREEMENTS & CLIMATE-INDUCED MIGRATION: A CARIBBEAN CASE STUDY, SABIN CENTER FOR CLIMATE CHANGE LAW (September 2019).

\(^2\) The night Barbuda died: how Hurricane Irma created a Caribbean ghost town, THE GUARDIAN (20 November 2017).
Many previous storms have persistently destroyed Antigua and Barbuda’s economy, infrastructure, utilities, public services and cultural heritage sites.\(^3\)

After Hurricane Irma alone, our recovery needs totalled 222.2 million US dollars, or roughly one sixth of our entire gross domestic product.\(^4\) The government incurred heavy debts to borrow the proceeds needed to cover these costs. However, repayment of those debts has placed a heavy toll on public finances. The government now has extremely limited funds to pay for social services, let alone climate adaptation and mitigation measures.

The dangers of sea-level rise are also acute. Current projections show that by the end of this century, the Caribbean Sea could rise almost half a metre over levels from the early 1990s.\(^5\)

This sea-level rise and storms are likely to salinate our remaining freshwater resources and much of our agricultural land. This would exacerbate an already dire crisis in the availability of ground and surface water and food insecurity.\(^6\)

Increases in sea levels will also damage coastal infrastructure, as well as the critical habitats of marine turtles, shorebirds and many other species dependent on coastal ecosystems.

Sea-level rise has already damaged priceless cultural and natural landmarks, including the Antigua Naval Dockyard, a UNESCO World Heritage site.\(^7\)

Beyond sea-level rise, ocean warming and acidification cause coral bleaching and degrade mangroves and seagrass.

These ecosystems are critical to Antigua and Barbuda’s coastal livelihoods and marine biodiversity.\(^8\) Reduction of mangroves, reefs and seagrasses also makes it harder for our islands to resist storm surges.\(^9\)

Antigua and Barbuda is a world-renowned tourism destination because of its tropical climate, beautiful beaches, pristine coastline and ocean-based recreation.

But the consequences of climate change jeopardize Antigua and Barbuda’s tourism economy, which accounts for 60 per cent of our gross domestic product. Increased natural hazards, sea-level rise and ocean acidification and warming, all risk coastal

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5 Id.
6 Kevin Headley and Maureen Valmond, Agriculture in the Caribbean facing destructive climate impacts, CLIMATE TRACKER (2023).
destruction and the collapse of marine ecosystems that support tourism attractions and recreation.

We are far from alone in this. The Caribbean region ranks first globally in terms of the relative contribution of tourism to gross domestic product.¹⁰

It is no exaggeration to say that its island States cannot sustain themselves if this sector continues to be compromised by the effects of climate change.

In summary, the impacts of climate change on Antigua and Barbuda are nothing short of catastrophic. We are working desperately to adapt to these changes but we cannot keep up with the frequency, the ferociousness and the extent of the harm that they create. To have any chance of survival, Antigua and Barbuda and all other small island States need the world to mitigate greenhouse gas emissions while simultaneously helping them to cope with the effects of climate change.

We firmly believe that international law is an important part of the equation and that the time has come to speak in terms of legally binding obligations rather than empty promises that go unfulfilled, abandoning peoples to suffering and destruction.

Mr President, members of the Tribunal, as I hope my remarks have made clear, the impacts of climate change on the members of COSIS are ongoing, devastating and will continue to worsen in the near future.

Small island States may be the first to fall – through no fault of our own – but we will not be the last, for no country on Earth can escape the deadly grasp of climate change. The world is teetering dangerously on the precipice of a climate catastrophe. We need your help. We need your guidance.

I respectfully request that the honourable members of this Tribunal consider the significance of the advisory opinion, not only for COSIS, but for the protection of our planet and of human civilization.

I thank you very much for your kind attention and I now have the honour to hand the podium to my esteemed Co-Chair, the Honourable Kausea Natano, the Prime Minister of Tuvalu. Thank you.

THE PRESIDENT: Thank you, Mr Browne. I now give the floor to Mr Kausea Natano, Prime Minister of Tuvalu to make his statement. Your Excellency, you have the floor.

MR NATANO: Good morning. Mr President, members of the Tribunal. It is my great privilege to address you today in these historic advisory proceedings. As Prime Minister of Tuvalu, I serve as Co-Chair of the Commission of Small Island States on Climate Change and International Law, or COSIS, alongside my honourable friend, Gaston Alfonso Browne, Prime Minister of Antigua and Barbuda, who has just addressed the Tribunal.

Mr President, members of the Tribunal, the climate crisis currently threatens the very existence and habitability of small island States. We are peoples of the ocean and particularly vulnerable to changes in the marine environment. For us, the 1982 UN Convention on the Law of the Sea is especially important. Sea levels are rising rapidly, threatening to sink our lands below the ocean. Extreme weather events, which grow in number and intensity with each passing year, are killing our people and destroys our infrastructure. Entire marine and coastal ecosystems are dying in waters that are becoming warmer and more acidic.

The science is clear and undisputed: these impacts are the result of climate change brought on by greenhouse gas emissions. Some of them are irreversible.

Small island States are not the only States to feel the wrath of climate change. No State on Earth is immune to its relentless advance or its destructive impacts, but we bear a disproportionate and overwhelming burden of the adverse effects of greenhouse gas emissions despite contributing negligibly to such emissions.

We, along with other small island States, are on the frontlines of the battle against climate change, exhausted and without reinforcements. This reality, Mr President, is profoundly unfair, and it leaves small island States with no choice. We must unite and join forces to defend our very survival and existence. Remaining silent is not an option.

This is why Tuvalu co-founded COSIS with Antigua and Barbuda at COP 26. We are very pleased that we are now nine small island States and no doubt our numbers will increase further as the urgency of climate justice becomes increasingly apparent.

My friend, Prime Minister Browne of Antigua and Barbuda, has already spoken to you about the founding, aims and activities of COSIS as well as the significance of these advisory proceedings, and I echo his remarks and will add a few of my own.

Small island States, Mr President, have been at the forefront of climate action for decades. Even before COSIS, small island States came together in 1990 to lead international climate discussions as part of the Alliance of Small Island States, or the AOSIS. Through that organization, we advocated for the rights of small island States during the negotiation of key treaties including the UN Framework Convention of Climate Change and the Paris Agreement. We kept international climate talks on track and focused on the monumental threat that climate change poses.

We pushed for recognition of the fact that climate action by every State is an absolute necessity. But, despite those efforts, we saw no real change in international commitment to combating the climate crisis. We did not see the far-reaching measures that are necessary if we are to avert catastrophe. This lack of political will endangers all of humankind and it is unacceptable for small island States like my own, which are already teetering on the brink of extinction.

So, on 31 October 2021, Tuvalu formed COSIS with Antigua and Barbuda to achieve meaningful change. “Recalling the urgent actions” of AOSIS which “called repeatedly
to address the urgency and fundamental injustice” of climate change, we sought to
further amplify the voice of small island States.¹

COSIS’s mission is grounded in the recognition of the “fundamental importance of
oceans as sinks and reservoirs of greenhouse gases and the devastating impact for
Small Island States of related change in the marine environment.”²

Ocean environments are crucial to the climate’s system of Earth and are the life
blood that sustains small island States. This is why we must protect them as fiercely
as we do our own lives. To that end, COSIS is mandated to “promote and contribute
to the definition, implementation, and progressive development of rules and
principles of international law concerning climate change, including as they relate to
the marine environment.”³

The work of this Tribunal is essential to accomplishing this objective. COSIS’s
advisory request represents the first opportunity for a definitive, incontrovertible
statement clarifying the specific obligations of States to protect the marine
environment.

As the custodian of the 1982 UN Convention on the Law of the Sea, this Tribunal is
uniquely positioned to provide such a statement, which would be an invaluable
resource to revive a failing political process that is mired in uncertainty and that has
left small island States stranded.

Here I wish to be absolutely clear, Mr President. We are not asking the honourable
members of this Tribunal to impose new strictures on the States Parties to UNCLOS.
We ask only that you make plain the contents of the legal obligations that the States
Parties have already agreed to uphold.

Mr President, members of the Tribunal, I will now turn to speak not only as Co-Chair
of COSIS, but also as Prime Minister of Tuvalu. Tuvalu’s fate is fused with that of the
marine environment. Tuvalu’s is a small island that comprises nine coral atolls in the
South Pacific Ocean, about halfway between Hawaii and Australia. Tuvalu’s capital,
Funafuti, is one of these atolls and is the most populous area of Tuvalu.

Together, the islands of Tuvalu encompass 26 square kilometres of land and
24 kilometres of coastline. It is a country rich in culture and tradition. However, as the
years go by, we see the shoreline getting closer to our homes. We watch as the
ocean washes away our livelihoods, infrastructures and traditions that have been
cultivated across centuries. Tuvalu has been devastated by climate change.

Like with many of the other COSIS Member States, Tuvalu is low lying, with
populations concentrated close to the shorelines. In fact, Tuvaluan homes sit, on
average, about 100 metres away from the shore. Sea-level rise is, therefore, an
omnipresent threat.

¹ COSIS Agreement, Preamble.
² COSIS Agreement, Preamble.
³ COSIS Agreement, Preamble.
During this century, several small island States will become mostly uninhabitable as a result of sea-level rise, if not fully submerged.

With an average land elevation of 1.9 metres above sea level, Tuvalu is expected to be one of the first countries in the world to be completely lost to sea-level induced climate change. This could happen in the next two to three decades.

All of the more than 10,000 residents of Tuvalu would be forced to leave the country, but Tuvalu will likely become uninhabitable long before complete submergence. All of Tuvalu’s human settlements, industry and vital infrastructure lies close to the shoreline. Already around 40 per cent of Tuvalu’s capital, Funafuti, is underwater at high tide. Even at the current pace of climate change, in a matter of years, Funafuti will be inundated along with the rest of Tuvalu’s inhabited regions.4

Just a few years. That’s all we have before the ocean consumes everything my people built across centuries. Tuvalu is pressing forward efforts towards protecting its statehood, preserving its sovereignty and safeguarding the rights and cultural heritage of its peoples despite impacts of climate change and sea-level rise.

Nevertheless, displaced Tuvaluans and the generations who follow them will suffer a loss of place, property, identity, culture, lifestyle and tradition tied to the islands. Critically low quantities of potable water, already a scarce resource on Tuvalu, are already making it difficult to live there. Rising sea levels have already caused saltwater to permeate into our limited fresh water aquifers. As a result, my country is now entirely dependent on rainwater catchment, but this too is vulnerable to climate-driven droughts which have already caused critical water shortages in many COSIS Member States.5

Sea-level rise also threatens our food security, it destroys our agriculture, as salt from the ocean salinizes our soils and reduces crop yields. We now have to import many foods like taro or cassava that we once, in what feels like a lifetime ago, grew locally.6 Given Tuvalu’s geographical location, surrounded by water in an intemperate climate, we are also susceptible to extreme weather events. We are facing tropical cyclones with increasing frequency and intensity. The South Pacific alone has experienced a fourfold increase in high-intensity cyclones in recent years.7 These tropical cyclones have devastating impacts on peoples and economies.

In 2015, widespread flooding occurred in Tuvalu due to the strong swells generated by Tropical Cyclone Pam and the exceptionally high sea levels surrounding our country.8 This Category 5 cyclone displaced my people and destroyed my country’s infrastructure. It demolished public utilities and agricultural infrastructure and cut Tuvaluans off from power, Internet, water and food.9 It also destroyed the country’s

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4 UNFCCC, CLIMATE CHANGE, SMALL ISLAND DEVELOPING STATES (2005), p. 21.
5 ‘One day we’ll disappear’: Tuvalu’s sinking islands, THE GUARDIAN (16 May 2019).
6 ‘One day we’ll disappear’: Tuvalu’s sinking islands, THE GUARDIAN (16 May 2019).
7 See, e.g., Julio T. Bacmeister et al., Projected changes in tropical cyclone activity under future warming scenarios using a high-resolution climate model, 146 CLIMATE CHANGE 547 (2018); see also COSIS Written Statement, Annex 5, Maharaj Report, paras. 66, 77.
8 COSIS Written Statement, Annex 5, Maharaj Report, para. 32.
9 Tuvalu: Tropical Cyclone Pam Situation Report No. 1, RELIEFWEB (22 March 2015).
community health centres, leaving many Tuvaluans on the outer islands without access to vital healthcare.\textsuperscript{10} Over half of the residents of the island of Nui and Nukufetau had to flee.\textsuperscript{11}

Estimates place the cost to rebuild in Tuvalu after Cyclone Pam at over 30 per cent of Tuvalu’s gross domestic product.\textsuperscript{12} This is money that we cannot afford to keep spending. To make matters worse, like in other small island States, ocean acidification and warming caused by climate change are stressing, bleaching, calcifying and killing Tuvalu’s coral reefs. Around Tuvalu, up to 70 per cent of reef species are dying off. Such a substantial decline will have catastrophic effects on my people.

The collapse of coral reefs will devastate marine biodiversity and fish stocks, which will jeopardize my people’s food security. At present, Tuvalu is on track to experience a more than 50 per cent decline in maximum catch potential by the end of the century – an especially high number among a population that consumes most of its animal protein from fish.\textsuperscript{13}

Declines in coral reefs will also ruin our economy. Fishing accounts for nearly all of Tuvalu’s exports and most Tuvaluans engage in subsistence fishing as their source of livelihood. Coral reefs also support sea-related tourism, the largest driver of Tuvalu’s economy. Without healthy coral reefs, tourism and fishing will decline and many Tuvaluans will lose their jobs. The impacts of climate change are wide-ranging and calamitous. My people will starve. My people will die. As things stand, we cannot survive this catastrophe. Worrying about the future of our children and future generations takes a severe psychological toll on all Tuvaluans.

We come here seeking urgent help, in the strong belief that international law is an essential mechanism for correcting the manifest injustice that our people are suffering as a result of climate change. We are confident that international courts and tribunals will not allow this injustice to continue unchecked.

We are confident that this Tribunal will issue a strong advisory opinion that will spell out in detail the obligations of States in preventing further catastrophic harm to marine environment. My people will rightfully ask, if international law has nothing to say about an entire country going under the water as a result of harmful conduct, then what purpose does it serve?

Mr President, members of the Tribunal, the preamble to the UN Convention on the Law of the Sea makes clear that it was established to “facilitate international communication” and “promote the peaceful uses of the seas and oceans, equitable and efficient utilization of their resources, the conservation of their living resources and the study, protection and preservation of marine environment” “for all people of the world.” And we are also people of the world and seek the equity that is the fundamental purpose of international law.

\textsuperscript{10} A story from Tuvalu: 1.5 to stay alive, WHO (10 December 2015).
\textsuperscript{11} Tuvalu: Tropical Cyclone Pam Situation Report No. 1, RELIEFWEB (22 March 2015).
\textsuperscript{12} Tuvalu Gets Continued Support for Cyclone Pam Recovery, WORLD BANK (15 September 2015).
We persist in the belief that a well-reasoned advisory opinion will facilitate international cooperation between UNCLOS States Parties and encourage a broader discussion amongst world leaders about State obligations and climate change. It will help clarify the existing obligations that States, major polluters in particular, should have complied with all these years, and which remain both legally binding and an immediate imperative to prevent calamity.

At the most recent COP27 meeting in Sharmel-Sheikh, Egypt, I reiterated the same request that I and my forebears have made repeatedly for decades. As I said there and I quote: “Today’s climate emergency can be reduced to two basic concepts: time and temperature. It’s getting too hot, and there is barely time to slow and reverse the increasing temperature. Therefore, it is essential to prioritize fast-acting strategies that avoid the most warming.”

I urge all world leaders to recognize the critical urgency of the climate change crisis and act rather than equivocate. Make headway rather than fail to deliver. Still, nothing has changed.

All signs point towards warming almost twice above 1.5°C Paris Agreement limit, and climate change remains the single greatest existential threat that Small Island Developing States face.

Members of the Tribunal, you have a key role to play. We need clarity and specificity on the obligations under UNCLOS to take all measures necessary to prevent, reduce and control pollution of the marine environment by greenhouse gas emissions. You are in a position to be part of the solution to the climate crisis and make real differences for small island States and our people.

I have every faith that you will take full advantage of this historic opportunity. Thank you for your time and attention, and I now have the pleasure to hand the podium over to the Honourable Arnold Kiel Loughman, Attorney General of the Republic of Vanuatu. And I thank you, Mr President, members of the Tribunal. God bless you all.

THE PRESIDENT: Thank you, Mr Natano. I now give the floor to Mr Arnold Kiel Loughman, Attorney General of the Republic of Vanuatu, to make your statement. Your Excellency, you have the floor.

MR LOUGHMAN: Good morning. Good morning, Mr President, members of the Tribunal. It is my great honour and privilege to address you today on behalf of the Republic of Vanuatu, a proud Member State of the Commission of Small Island States on Climate Change and International Law, and a State that has played a leadership role in seeking climate justice.

Our government and our people look to this Tribunal with expectant eyes because, for us, time is running out. The ocean is our mother, the source of life. Yet it is being destroyed by the failure of major greenhouse gas emitters to take seriously their obligation to protect and preserve the marine environment. Catastrophic climate change cannot be averted by empty promises. The peoples of small island States cannot be expected to sit silently as the homes of both their children and ancestors...
are being destroyed. The natural world is out of balance and a great injustice is
being committed against us. We look to you, the distinguished Judges of this
Tribunal, to render an advisory opinion that will persuade UNCLOS State Parties to
transform their behaviour, because continuing business as usual is no longer an
option. States must immediately comply with their binding obligations before it is too
late, and it is for this Tribunal to say with specificity what those obligations are.

Mr President, I will begin by explaining why Vanuatu joined COSIS.

Vanuatu has participated for decades in multilateral climate negotiations with good
faith, ambition and the hope that nations would be able to work together to address
the single greatest obstacle to the security and well-being of humankind. We have
participated vigorously in deliberations of the UNFCCC and at each and every COP.
We have raised the alarm at the United Nations and its specialized agencies, and at
a wide range of other regional and international fora and institutions. We have
listened time and again as major polluters have pledged to address our concerns to
do what is necessary to put an end to the nightmare that is unfolding before our
eyes, as our islands and our homes are battered by extreme weather events, rising
sea levels and myriad of other disasters that are slowly and surely bringing about our
demise.

We have been patient, but to little avail. We now feel that our good faith has been
exploited. Our ambition has been sidelined. Our voices have been ignored and our
hope is now hanging by a thread.

Time and time again, we have been disappointed by the absence of concrete action
at the international level. The debilitating consequences of the climate crisis are
worsening with every second of every day. The spirit of international collaboration
has not translated into real and necessary benefits for our nation and its citizens.

Already, we are measuring climate change not in degrees or in tons of carbon, but in
human lives. Action is required now, and the call for action is not just a matter of lofty
ideals; it is a matter of legally binding obligations. Had States taken seriously their
obligations, we would not be here today.

Mr President, Vanuatu joined COSIS on 2 December 2022 because climate change
is the plague of humankind, and small island nations must either join forces or
perish.

Climate change is both our legacy and our doom unless we act together in pursuit of
climate justice. We believe that working in solidarity with our fellow small island
States is the best path towards our end goal of a safe planet for all of humanity.

A question that you may find yourselves asking is: why? Why would a handful of
small, developing islands that barely contribute to greenhouse gas emissions place
themselves at the spearhead of this global problem? The answer is simple: we
cannot afford to be anywhere else.
Climate change is an existential threat for the people of Vanuatu and for all of our small island brethren. We can leave no words left unsaid, no stone unturned and no road left untaken in the search for solutions to the climate crisis.

And it should not be imagined that, just because we are among the smallest of nations, we cannot rise to the greatest of challenges. We are determined, we are united and we will not abandon our peoples to a tragic fate without doing everything we can to persuade the major polluters to change course. We persist in the belief that the fundamental principles of international law, including the 1982 UN Convention on the Law of the Sea, were intended exactly for such circumstances, when the very survival of humankind is at stake.

The small island States are leading the way, not only for themselves and their particularly vulnerable populations, but for all States and peoples who prefer a peaceful and prosperous future rather than a dystopian world ravaged by unimaginable disasters and widespread suffering.

This Tribunal could provide a road map or perhaps a navigation chart, since it is the law of the sea, so that States Parties could find a way out of the current gloom simply by respecting their existing obligations to protect and preserve the marine environment.

Mr President, to give you a sense of why climate action and this request for an advisory opinion are so important, I want to briefly tell you about my country. Vanuatu is breathtakingly beautiful. It is vibrant, rich in life and culture, with strong communal bonds and a deep sense of belonging. It is an enchanting home to myself and approximately 320,000 others. Our territory comprises over 83 islands, more than 60 of which are inhabited. The islands are spread over an ocean territory of approximately 680,000 square kilometres. Most of our people practise subsistence agriculture and reside in coastal areas.¹ Our diverse tropical ecosystems, both terrestrial and offshore, provide habitats for myriad of flora and fauna, including hundreds of endemic species. Crucially, our very existence depends on the health of these ecosystems, and climate change is destroying them.

Climate change already impacts nearly every facet of Vanuatu life. Rising sea levels, increasing frequency and severity of storm surges, changing weather patterns, and ocean warming and acidification are causing widespread losses and damage to our nation.

Sea-level rise in Vanuatu averaged 6 millimetres per year between 1990 and 2010, which is nearly double the global average of 3.4 millimetres per year over the same period.² This has profound and far-reaching effects.

Ocean encroachment will destroy essential habitats for many of Vanuatu’s plant and animal species, including species endemic to the islands. And, in doing so, it will decimate the biodiversity that has historically thrived in the region.³

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² World Bank, Climate Risk Country Profile: Vanuatu (2021), p. 12; Seas are now rising faster than they have in 2,800 years, scientists say, WASH. POST (22 February 2016).
Rising sea levels also steal lands from indigenous “ni-Vanuatu” peoples, eviscerate cultural resources and inundate spiritual sites. Inundation of coastal areas in Vanuatu has already necessitated relocation of entire communities and threatens to forcibly displace many more from their homes and ancestral lands.\(^4\)

Climate change has also brought more intense tropical storms. The South Pacific region has experienced a fourfold increase in high-intensity cyclones in recent years,\(^5\) and Vanuatu has been ravaged by two Category 5 cyclones (the highest there is) in the past eight years. These include Category 5 Cyclone Pam, one of the worst and most powerful natural disasters in history, which devastated our country in 2015. It killed 16 people, damaged 50 to 90 per cent of our infrastructure, left 166,000 in need of immediate food aid and destroyed the homes of a further 75,000 of our people.\(^6\) The storm also contaminated many of our water sources and wiped out the agricultural plots that our peoples depend on for food.\(^7\)

In 2020, we were hit by another Category 5 cyclone, Cyclone Harold, causing similar damage. And the attacks continue. In the first three months of 2021, we experienced three Category 4 cyclones. Two Category 4 cyclones hit our country within 72 hours earlier this year.

These climate disasters not only imperil the lives of our citizens, they also impede sustainable development and destroy critical coastal infrastructure, costing an average estimated 6 per cent of GDP per year.\(^8\)

Ocean acidification and warming further damage ecosystems and resources of immense environmental and economic value, causing rapid declines in fish stocks that are a mainstay of Vanuatu’s food supply.

Scientists predict that our coral reefs will be completely eviscerated by the end of the century.\(^9\) This collapse of coral reef ecosystems will not only eliminate our ocean biodiversity altogether, but it will also create widespread food insecurity, with 66 per cent of our people engaged in subsistence fishing.\(^10\)

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\(^7\) Cyclone Pam, ENCYCLOPEDIA BRITANNICA, https://www.britannica.com/topic/Cyclone-Pam.

\(^8\) WORLD BANK, CLIMATE RISK COUNTRY PROFILE: VANUATU (2021), p. 3.


Along with other climate impacts, ocean warming and acidification threaten to destroy our beaches and rainforests; our most important tourism assets that supply roughly 65 per cent of our gross domestic product.

Mr President, our people seek to live in harmony with nature because we understand in our culture that we are part of the universe, not on top of it. We know from ancient wisdom that if we respect the Earth, then the Earth will respect us. Science has long confirmed these realities, and it must inform the content of international obligations.

Mr President, climate change not only threatens to destroy my country; it is coming for us all. But we will not go down without fighting. We will continue to stand up against the conduct that has caused climate change and is now leading us all towards catastrophe.

We will keep fighting for the survival of our invaluable ecosystem and its more-than-human inhabitants, and for the health, livelihoods and very survival of us, as peoples.

We will not shy away from asking for the help and guidance that we and so many others very much need. This is why my country recently spearheaded the adoption by the United Nations General Assembly of an historic resolution requesting an advisory opinion from the International Court of Justice that will clarify States’ obligations and responsibility for climate change. We did so in solidarity with COSIS and numerous other climate-vulnerable States.

This request for an advisory opinion from the ICJ is separate from the request that this Tribunal must now consider. But it is also complementary. This specialized tribunal is focused on the marine environment, while the ICJ will address climate change under general international law. But since ITLOS will go first, it will establish the precedent that will shape what will follow.

Our respectful message to this Tribunal, and the ICJ, is that to be meaningful, the advisory opinion must go beyond abstract principles. To be meaningful, it must be based on the irrefutable scientific knowledge and it must provide specific content so that all UNCLOS States Parties have clarity as to their precise obligations. The time for vacillation has passed. We ask you respectfully to see the reality of climate catastrophe and to say what needs to be said, because time is running out. We ask you to give us hope and guidance, to help humankind out of the abyss.

Mr President, both the ITLOS and ICJ requests reflect our resolve to ensure compliance with States’ legal obligations under a range of international laws to protect the rights of present and future generations.

We are confident that the international courts and tribunals established to dispense global justice will not fall short of doing what is necessary, commensurate with the gravity of the challenge before us.

Mr President, the need for clear advice as to the contours and substance of these specific obligations has never been so urgent. More than three decades have passed since the international community began discussing the process of stabilizing
greenhouse gas emissions to prevent climate change. More than three decades have passed and yet, still today, my people are watching as their futures slip away from them like grains of sand through an hourglass. This cannot continue. The fate of our small island nations is in your hands.

We recognize that this is a monumental challenge and responsibility, and we ardently hope that you will rise to the occasion.

Mr President, members of the Tribunal, that concludes my statement. Thank you for your attention. I would ask that you please call Professor Akhavan, the representative of the Commission in this proceeding, to the floor to introduce the legal pleadings after the break, which I understand will start now. Thank you.

THE PRESIDENT: Thank you, Mr Loughman. We have now reached 11.15. At this stage, the Tribunal will withdraw for a break of 30 minutes, and we will continue our hearing at 11.45 when I will call on Mr Akhavan.

(Short break)

THE PRESIDENT: I now give the floor to Mr Akhavan to make his statement. You have the floor, sir.

MR AKHAVAN: Mr President, distinguished members of the Tribunal, good morning. I am honoured to appear before this Tribunal once again, and I am especially privileged to do so in this historic proceeding, on behalf of the Commission of Small Island States on Climate Change and International Law. Its nine members are, in order of signature and accession, Antigua and Barbuda, Tuvalu, the Republic of Palau, Niue, the Republic of Vanuatu, Saint Lucia, Saint Vincent and the Grenadines, Saint Christopher and Nevis, and the Commonwealth of The Bahamas.

My task today is: first, to address the circumstances that have given rise to the Commission’s request for an advisory opinion; second, to identify the principal issues arising from the written statements submitted to the Tribunal; and, third, to introduce the pleadings of our legal team over the course of the next two days.

Mr President, the ocean is the cradle of life on Earth. Evidence demonstrates that the first organic molecules emerged in the ocean some 3.5 billion years ago. It then took hundreds of millions of years for enough oxygen to build up in the atmosphere and ocean to support more complex and diverse forms of life. Today, the ocean, which covers three quarters of the Earth’s surface, remains vital to sustaining human life on Earth. It is home to myriad ecosystems and it is the foundation of the global climate system upon which the existence and continuation of human civilization depends.

Ocean currents are a critical element of the ocean’s life-sustaining function. They act like a conveyor belt, carrying warm water from the tropics towards the poles and cold water from the poles back to the tropics. They thus regulate the global climate through a complex and delicate distribution of solar radiation across the planet. They also circulate nutrients throughout the marine environment.
The animation shows that conveyor belt in what oceanographers call the “global thermohaline circulation”, an enormous current that moves water throughout the world.

The ocean is also home to a breathtaking array of biodiversity. It contains some 250,000 known species, and many more have yet to be discovered. The ocean, and the flora and fauna within it, especially plankton, supply half of the oxygen that we breathe.

These facts are a stark reminder that all humankind shares a single home; a single planet that has sustained life against overwhelming odds in an inhospitable universe. These facts are a stark reminder that our existence depends upon a miraculous balance reflecting the inscrutable perfection of nature. Yet, now, for the first time in history, this delicate balance has been imperilled by the excesses of humankind.

Global warming, caused by anthropogenic greenhouse gas emissions, have brought us to the brink of an unprecedented catastrophe. The ocean has absorbed not just one quarter of the carbon dioxide that we emit into the atmosphere, but also a staggering 90 per cent of the excess heat that has been trapped in the climate system since the pre-industrial era. The ocean is by far the largest carbon and heat sink on Earth.

Mr President, to put matters in perspective, the ocean absorbs the energy equivalent of seven Hiroshima bombs every second. It has fallen victim to an alarming deterioration that has only intensified in recent years. This past July was the hottest month in recorded history, for both the ocean and the climate system as a whole.

This chart shows the dramatic increase in average ocean surface temperature through early August of this year. Just last month we hit record temperatures in what has been by far the hottest year for the ocean. And we are seeing alarming levels of ocean warming worldwide. This warming results in marine heatwaves that are longer, more frequent and more intense.

As seen in the map here, this is a global phenomenon and it is the cause of extensive, interrelated and potentially irreversible harms. For example, this July, the water temperature around The Bahamas was above 38 degrees Celsius – 38 degrees Celsius – for several consecutive days, up from a monthly average of around 30 degrees Celsius. This has had a devastating effect on corals, bleaching and killing them, on such an extensive scale that these fragile ecosystems may be wiped out entirely.

Pacific islands, too, have experienced similarly catastrophic phenomena over sustained periods. Palau, for example, which consists of around 340 islands along a barrier reef, has experienced extensive coral bleaching and death in recent years.

The time-lapse video on the screen illustrates this process. It was taken in 2019 over the course of two months in Hawaii. It is the first time that scientists have captured such images of corals bleaching and dying in real time. You can see here in vivid

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1 John Abraham, “We Study Ocean Temperatures. The Earth Just Broke a Heat Increase Record”, THE GUARDIAN (11 January 2022).
detail the devastating effect of ocean warming on corals and the diverse ecosystems
that they support. The Intergovernmental Panel on Climate Change, the source of
the best available science, projects that, at a temperature rise of just 1.5 degrees
Celsius above pre-industrial levels, 70 to 90 per cent of coral reefs will disappear.\(^2\)

Mr President, the bleaching and eventual death of coral reefs cause significant harm
to nearby islands. They result in the loss of biodiversity, the destruction of entire
ecosystems and the disintegration of important barriers against storm surges. But
marine heatwaves also jeopardize, with similar effects, other species fundamental to
marine ecosystems, such as kelp, seagrass and mangroves. They play an important
role in absorbing carbon dioxide.

The destruction of marine flora thus creates a devastating feedback loop, a vicious
cycle that compounds the harmful effects of global warming on the marine
environment.\(^3\)

Marine heatwaves also generate more intense tropical cyclones with devastating
consequences for small island States. As Prime Minister Browne mentioned, in 2017
Hurricane Irma destroyed almost all infrastructure in Barbuda. It became a ghost
town as the entire population was forced to evacuate.\(^4\) It took two years for them to
return. Similarly, Cyclone Heta destroyed Niue’s capital of Alofi in 2004, leaving
much of its population homeless. Elsewhere, in 2015 Cyclone Pam devastated
Vanuatu, leaving people without water, homes and livelihoods. The loss and damage
amounted to over 64 per cent of the gross domestic product.\(^5\)

As Attorney-General Loughman noted earlier, Vanuatu was hit by yet another
Category 5 cyclone, Harold, in 2020. In Tuvalu as well, nearly half the
population — half the population — was displaced as a result of cyclones, and several
islets of the capital Funafuti became completely submerged.\(^6\)

Climate scientists warn that extensive warming is pushing the ocean to tipping points
beyond which there may be no return: some key currents — some key ocean
currents — are nearing collapse. This will result in extreme weather events that are
even more intense. It is especially alarming that the Arctic is warming at four times
the world average. Irreversible melting of polar ice in the Arctic and the Antarctic,
together with thermal expansion of water, has caused significant sea-level rise,
posing existential risks to islands and coastal communities.

As Prime Minister Natano explained, for low-lying islands like Tuvalu, shown here,
the consequences of sea-level rise and storm surges are nothing short of
catastrophic. At its highest point, the island is only 4.6 meters above sea level. If

\(^2\) IPCC, Working Group II, Chapter 15: Small Islands, SIXTH ASSESSMENT REPORT: IMPACTS,
\(^3\) IPCC, Working Group I, Chapter 5: Global Carbon and Other Biogeochemical Cycles and
\(^4\) The Night Barbuda Died: How Hurricane Irma Created a Caribbean Ghost Town, THE GUARDIAN
(20 November 2017).
\(^6\) Tuvalu, Second National Communication of Vanuatu, UNFCCC (December 2015), p. 3.
current trends continue, Tuvalu will be fully submerged by the end of the century; its entire land territory will disappear under the sea.

The Intergovernmental Panel warns that the ocean may be reaching its maximum capacity to absorb heat. Equally concerning, the massive amounts of carbon dioxide the ocean has absorbed may soon reduce its ability to trap and store carbon. Instead of being the biggest sink and reservoir, the ocean could soon become part of a feedback loop that actually increases the pace of global warming.

Mr President, the significance of this advisory opinion must be appreciated against this stark reality. It is no exaggeration – no exaggeration – to say that climate change is an existential threat.

The UN Secretary-General has not minced his words. The “alarm bells are deafening”, he has said. Global warming is “code red for humanity”; it is a “death sentence” for vulnerable States. In July of this year, he warned that we have shifted from global warming to “global boiling”, and just last week, following the hottest summer on record, he warned that “climate breakdown has begun.”

Yet, the Secretary-General also underscored that it is not too late for the international community to change course, to act swiftly through collective concerted action to mitigate greenhouse gas emissions. He referred to the findings of the Intergovernmental Panel on Climate Change, which the 196 States Parties to the Paris Agreement have confirmed; that, although every increment of warming is harmful, we can avoid the worst consequences if we hold the average global temperature rise to within 1.5°C above pre-industrial levels. But time is running out.

In a sobering report released this past Friday, the Intergovernmental Panel’s first global stocktake of States’ commitments following the Paris Agreement concluded that “much more is needed now on all fronts” to achieve that 1.5°C limit.

By providing authoritative guidance on the specific obligations of States under UNCLOS, this Tribunal could contribute to avoiding even more catastrophic consequences than that which the world has already witnessed.

I should note that the gravity of the problem is underscored by the other advisory proceedings before the International Court of Justice, which has authorized the Commission to submit a written statement, and the advisory proceedings in the Inter-American Court of Human Rights, in which the Commission will also participate.

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7 Tuvalu, UNGA 2022 Statement, p. 4; see also IPCC, Chapter 4: Sea Level Rise and Implications for Low-lying Islands, Coasts, and Communities, SPECIAL REPORT ON THE OCEAN AND CRYOSPHERE IN A CHANGING CLIMATE (2019), pp. 342, 357.
8 Secretary-General Calls Latest IPCC Climate Report ‘Code Red for Humanity,’ Stressing ‘Irrefutable’ Evidence of Human Influence, UN NEWS (9 August 2021); Current climate policies ‘a death sentence’ for the world, warns Guterres, UN NEWS (20 April 2023).
9 Hottest July ever signals ‘era of global boiling has arrived’ says UN chief, UN NEWS (27 July 2023).
10 Secretary-General’s message on the Hottest Summer on Record, UN Secretary General (6 September 2023).
11 Secretary-General’s video message to the Major Economies Forum, UN NEWS (20 April 2023).
12 IPCC, Global Stock-Take.
As the first to be seized of such a request, however, ITLOS will speak first. Your opinion will set the stage for what follows.

Mr President, these are the circumstances leading to the establishment of the Commission, and to its request for this advisory opinion of unprecedented urgency and importance. Small island States are facing threats to their very existence.

Moving to the questions put to the Tribunal, they are as follows:

What are the specific obligations of State Parties to 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?

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

As the Commission will show over the course of the next two days, the answers to these questions are straightforward and are to be found in UNCLOS itself.

After all, the Convention is the constitution of the ocean. In fact, the protection of the marine environment was seen as an essential issue during the Third Conference on the Law of the Sea, which began in 1973.

The Stockholm Declaration had been adopted a year earlier in 1972. It influenced the drafters of UNCLOS, who recognized the global dimensions of environmental protection and the consequent need for a comprehensive regime. In the words of the preamble, ‘the problems of ocean space are closely interrelated and need to be considered as a whole.’ This is reflected in the wide scope of Part XII, comprising all sources of pollution and all maritime zones.

The travaux préparatoires indicate the drafters’ intention to adopt a “comprehensive approach … to the protection and preservation of the marine environment.”13 Moreover, from the outset, the Tribunal itself has been conscious – in the words of its first President Judge Thomas Mensah – “of the special role it may be called upon to play in interpreting the provisions of the Convention on the protection and preservation of the marine environment.”14 ITLOS is, after all, the guardian of UNCLOS, and now it is called upon to address the most significant threat that the marine environment has ever faced.

Mr President, the Commission notes that thirty-four UNCLOS States Parties from across the world, nine intergovernmental organizations, three UN experts and nine non-governmental organizations have submitted written statements to the Tribunal. Seven more States Parties will participate in this hearing, not having previously submitted written statements. That is a total of 50 participants, not including the non-governmental organizations.

13 Virginia Commentary, Article 192, p. 36.
You have now studied the written statement of COSIS. In addition to its nine members, five other members of the Alliance of Small Island States – Belize, the Republic of Mauritius, the Republic of Nauru, the Federated States of Micronesia and the Republic of Singapore – have taken positions largely consistent with the Commission.

We note, in addition, that two other members of the Alliance – Comoros and Timor Leste – will also appear in this hearing.

Even beyond these small island States, which face similar circumstances, there is remarkable consensus among all the written statements, to which I now turn.

To begin with, there is no question as to the advisory jurisdiction of the Tribunal under article 21 of its Statute and article 138 of its Rules. Article 21 expressly includes all matters specifically provided in any other agreement which confers jurisdiction on the Tribunal. Its meaning is plain and clear. It is a broad, residual clause, and it makes no distinction between contentious disputes and advisory proceedings. The 2013 request for an advisory opinion by the Sub-Regional Fisheries Commission has already confirmed the Tribunal’s jurisdiction in this regard.¹⁵

The Agreement establishing the Commission is plainly an international agreement within the scope of article 21, duly registered with and published by the UN Secretariat pursuant to article 102 of the UN Charter. Article 2, paragraph 2, of the Agreement, furthermore, specifically authorizes the Commission to request advisory opinions from ITLOS. The requirements of article 21 are clearly satisfied.

The request of the Commission, moreover, concerns a legal question, and one that clearly falls within the Commission’s mandate. Its request is thus admissible, and there is no compelling reason – indeed no reason whatsoever – to decline to answer the questions presented. The fact that not all States Parties participated in requesting the advisory opinion is inapposite. The Tribunal is called upon to provide guidance on questions of international law; not to settle a dispute.

In respect of the merits of the two questions posed by the Commission, there is overwhelming consensus in the written statements on the principal issues before the Tribunal.

First, the irrefutable scientific facts are not in dispute: that temperature rise must remain within 1.5°C, which requires rapid and radical mitigation of greenhouse gas emissions, failing which there will be catastrophic consequences. None of the written statements questioned the scientific validity of the reports of the Intergovernmental Panel on Climate Change, nor could they. Indeed, most of the written statements relied affirmatively on the Panel’s findings.

Second, there is no question as to whether atmospheric greenhouse gas emissions constitute pollution of the marine environment within the meaning of article 1(1)(4) of

¹⁵ ITLOS, SRFC Advisory Opinion, § II.
the Convention. Such emissions are plainly – in the words of that provision – “introduction by man, directly or indirectly, of substances or energy into the marine environment … which results or is likely to result in deleterious effects.” All 50 States Parties and intergovernmental organizations that addressed article 1(1)(4) – with only two isolated exceptions – agreed with this critical and inevitable conclusion. A conclusion, I would add, which triggers a wide range of specific obligations under Part XII. That overwhelming consensus itself is a crucial contribution to the interpretation of UNCLOS.

Third, and flowing from this, there is no question that UNCLOS States Parties have exacting obligations under Part XII. This includes, in particular, the obligation to “protect and preserve” the marine environment under article 192, to “take … all measures … necessary to prevent, reduce and control pollution of the marine environment from any source” under article 194, paragraph 1, and to ensure, to “ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other states and their environment” under article 194, paragraph 2. The text is absolutely clear.

These are not merely obligations of conduct arising from the principle of due diligence. They plainly require States to do what is necessary to ensure, to ensure that no harm is done.

In the words of Professor Alan Boyle – a distinguished member of the Commission’s Committee of Legal Experts – who sadly is unable to be with us here today – Part XII of the Convention “requires States to take the necessary measures to protect the marine environment from the harmful effects of anthropogenic climate change.”

Fourth and finally, there is no question among the written statements that, although small island States make a negligible contribution to greenhouse gas emissions, they disproportionately suffer the consequences; nor is there any question that although global warming is the common concern of humankind, there are common but differentiated responsibilities, with the greatest burden falling on developed States to take the necessary measures.

But we note that the major polluters are not limited to developed States. And given how close we are to the brink of disaster, that differential burden cannot become a pretext for developing States not to do their fair share to protect the marine environment.

There is thus an overwhelming consensus on several fundamental issues upon which the Tribunal could formulate its advisory opinion.

Nonetheless, some written statements raise an important question as to whether the obligations of States Parties under UNCLOS go beyond obligations assumed under the 1992 UN Framework Convention on Climate Change and the 2015 Paris Agreement. We respectfully submit that the answer is obvious. UNCLOS is the applicable law in relation to the marine environment, and the global climate change

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The regime does not in any way displace or dilute its application. Indeed, it would be misplaced to refer to the general hortatory provisions of the Paris Agreement as *lex specialis* when there is so little in the way of binding obligations.

Moreover, to the extent that there is a specialized regime for protection of the marine environment, it is found in Part XII of UNCLOS, which sets out detailed and specific obligations. There is in fact no identifiable normative conflict between competing regimes. To the contrary, there is a complementary relationship between UNCLOS and the global climate regime – including the implementation of the procedural and reporting obligations under the Paris Agreement.

But what answers the question most clearly as to whether UNCLOS goes beyond obligations under the Paris Agreement is the scientific assessment of the Intergovernmental Panel on Climate Change. Namely, that with the current commitments under the Paris Agreement, the world is set to reach average warming of 2.8°C above pre-industrial levels by the year 2100. That is almost twice, twice the maximum temperature rise of 1.5°C that is necessary to avert catastrophic consequences. This would spell the end of many small island States. If this trajectory continues, most will become uninhabitable or simply disappear. They will become a sacrifice zone for the major polluters. But if this trajectory continues, it will also result in mass extinction and the collapse of civilization. Ultimately, all nations, large and small, will suffer the same fate because humankind shares the same planet. It is not unreasonable to conclude that States must do what is necessary to avoid an apocalypse. By clearly spelling out the exacting and binding obligations of States Parties under the Convention, this Tribunal would contribute to our common survival.

Mr President, distinguished members of the Tribunal, in an attempt to assist you in answering the momentous questions before you, the Commission will organize its oral pleadings as follows.

Following my introduction, Ms Naima Te Maile Fifita will address the significance of the establishment of the Commission for the peoples of small island States, and the role of the global youth movement in the advisory opinion proceedings currently before international courts and tribunals.

She will be followed by Professor Phoebe Okowa, who will spell out the need for a science-based approach with respect to the interpretation and application of UNCLOS provisions on the protection of the marine environment and the special vulnerability of Small Island Developing States to climate change.

You will then hear from two eminent scientific experts, Dr Sarah Cooley and Dr Shobha Maharaj, who played leading roles in the most recent assessment cycle of the Intergovernmental Panel on Climate Change. They will explain the deleterious effects that greenhouse gas emissions and climate change have upon the marine environment, with particular reference to small island States.

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They will be followed by Professor Margaretha Wewerinke-Singh, who will address the critical point that greenhouse gas emissions constitute pollution of the marine environment within the meaning of article 1(1)(4) of the Convention.

To conclude the first day of the Commission’s submissions, Professor Makane Moïse Mbengue will address UNCLOS as the applicable law in this proceeding and its complementary relationship with the global climate regime.

At the beginning of the second day, tomorrow morning, Professor Brian McGarry will briefly address questions of jurisdiction and admissibility, which are largely uncontested in these proceedings.

You will then hear a series of three speeches that will address the first of two questions posed by the Commission.

First, Professor Jutta Brunnée will elaborate on the general scope and content of the due diligence obligations under Part XII, including the exacting obligations arising from an extremely high risk of catastrophic harm in the context of climate change impacts.

Second, Professor Jean-Marc Thouvenin will provide a detailed analysis of article 194 of the Convention, including the core obligations in paragraph 1 to take all measures necessary to prevent, reduce, and control pollution of the marine environment, and in paragraph 2, to prevent any harm by pollution to other States.

Third, applying the best available scientific evidence to the Part XII provisions, Ms Catherine Amirfar, the Co-Representative of the Commission in these proceedings, will identify the specific obligations of UNCLOS States Parties in relation to greenhouse gas emissions.

You will then hear two speeches addressing the second question before you.

First, Professor Philippa Webb will analyse article 192, focusing on obligations relating to the protection, preservation and mitigation of harm to the marine environment.

Second, Professor Nilüfer Oral will apply the article 192 obligations to climate change impacts, with a specific focus on adaptation and resilience.

She will be followed by Dr Conway Blake, who will address the duty of States Parties to cooperate, which applies to the entirety of Part XII.

You will then hear from Mr Eden Charles, who will demonstrate that the request for an advisory opinion before you, far from undermining ongoing diplomatic efforts regarding the climate crisis, in fact complements and reinforces such efforts by allowing States to negotiate a more ambitious climate regime consistent with both UNCLOS and the Paris Agreement.
Then, in a penultimate speech, Mr Zachary Phillips will address the requirement under the Convention to support educational programmes about climate change and the fundamental role that equity must play in responding to the climate crisis.

Last, but certainly not least, Mr Vaughan Lowe KC will offer concluding remarks on the position of the Commission.

Mr President, distinguished members of the Tribunal, one can scarcely imagine an advisory opinion of greater importance. As the International Court of Justice has observed, “the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn.”

As climate change accelerates, and its consequences become increasingly obvious, all of us assembled in this courtroom today must ask, how will this proceeding be viewed by future generations? Will our children and grandchildren and those after them look back at a robust and courageous opinion that said what needs to be said? Will States Parties take seriously their legal obligations to ensure our common survival? Whatever the legacy of this proceeding in the years to come, one thing is clear: either a unified humankind does what is necessary now to address climate change, or it will be forced to do so after unimaginable catastrophes leave no other choice.

Mr President, that concludes the Commission’s introductory remarks. I thank you for your patience and ask that you now call Ms Naima Te Maile Fifita to the podium.

THE PRESIDENT: Thank you, Mr Akhavan.

I now give the floor to Ms Naima Te Maile Fifita to make a statement. You have the floor, Madam.

MS FIFITA: Mr President, distinguished members of the Tribunal, it is a great privilege and honour to appear before you as counsel to COSIS, as an indigenous Tuvaluan, as a youth and as a mother to a daughter of the Pacific who opened her eyes to this world just a year ago.

As I address this distinguished Tribunal at this historic proceeding, my fears are for the kind of world she will inherit when the land of her ancestors is taken by the rising sea.

Mr President, my brief presentation reflects on the significance of this proceeding for the peoples of Small Island Developing States, or SIDS. First, I will address what an advisory opinion from this Tribunal would mean for the protection and survival of present and future generations living in the shadow of catastrophic climate change; and second, I will address the grassroots leadership of youth in calling for climate justice before international courts and tribunals. After all, it is future generations that will have to live with the consequences of choices that are made today; and it is

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future generations that will look back to the legacy of this Tribunal in addressing the
most pressing issue of our time.

We offer this context to explain to this distinguished Tribunal just how important this
proceeding is for small island peoples, especially their youth, who have made an
insignificant contribution to greenhouse gas emissions, but who must now, in the
prime of their lives, suffer the worst of its impacts. The world can witness this
unfolding tragedy in real time as our home – and those of our ancestors and our
children – is enveloped by the ocean.

For us, international law, and in particular the obligations of States to protect and
preserve the marine environment, is not an abstraction. Our survival depends upon
it.

Mr President, as the Honourable Prime Ministers of Antigua and Barbuda and Tuvalu
stated at the outset of this hearing, COSIS was established at COP26 because the
time is long overdue to address climate change in terms of immediate and binding
obligations. For highly vulnerable small island States, the concept of time has a
completely different meaning. It spells doom and the end of their existence.

Our generation has watched as empty promises and inaction have slowly but surely
destroyed our future, and now we witness an extraordinary acceleration of that
process. It is for this purpose that small island States have joined forces to create an
unprecedented inter-governmental organization, dedicated to the clarification of
State obligations under international law, dedicated to climate justice, dedicated to
the survival of our peoples. This Commission does not seek to create new law on
climate change; rather, it seeks to elucidate existing obligations of States relating to
the protection and preservation of the marine environment.

The Commission is now at the forefront of international legal action on climate
change. In addition to initiating these proceedings before ITLOS, the Commission
has been authorized to participate in the pending ICJ advisory proceedings on the
obligations of States with respect to climate change, with COSIS Member States,
such as Vanuatu, having played a leadership role in the adoption of the General
Assembly resolution requesting the opinion. COSIS will also participate in the
advisory proceedings requested by Chile and Colombia before the Inter-American
Court of Human Rights. It is a source of pride that the smallest of nations on Earth
have exercised such global leadership in bringing international law to life before
international courts and tribunals, with a view to placing existing binding obligations
at the centre of deliberations on climate action.

Mr President, I emphasize existing obligations because it cannot be that international
law as it exists today has nothing to say on the most pressing challenge of our times.
It cannot be that island peoples must simply accept that their homelands will be
uninhabitable because of the failures of others to take seriously their legal
obligations. We have the right, and indeed the responsibility, to invoke fundamental
legal principles to demand that major polluters change course, to put an end to the
harm that is now threatening our very existence. And, as people of the ocean, who
have navigated its vast expanse and lived off its bountiful resources since time
immemorial, we see particular significance in the obligations of State Parties to the

An advisory opinion by this Tribunal – an authoritative clarification of the specific and
immediate obligations to protect and preserve the marine environment under
Part XII, an opinion based on irrefutable scientific knowledge – would have
far-reaching consequences in guiding the conduct of UNCLOS States Parties in the
coming years as the grim consequences of inaction of the face of climate change
becomes increasing apparent.

Surely, the cumulative jurisprudence of international courts and tribunals cannot
simply be disregarded by the international community as it deliberates on the
collective action that is necessary to avert unimaginable disasters.

Mr President, over 20 years ago in 2001, the Intergovernmental Panel on Climate
Change, or IPCC, explained how “the countries with the fewest resources are likely
to bear the greatest burden of climate change in terms of loss of life and relative
effect on investment and economy.”1

It was a prediction that is now manifest. It is now apparent that, if unchecked, climate
change will particularly devastate two groups: the poorest of the poor and those
living in island States.2 These groups are “set to suffer first and worst”3 despite their
negligible contributions to the climate crisis. Climate vulnerability – or “susceptibility
to damage — is fundamentally shaped not only by physical exposure to
environmental harms, but by pre-existing power dynamics as well as social political
and economic realities.”4 Therein lies the moral crux intrinsic to the climate issue:
climate change presents not only an environmental crisis but a crisis of inequity on
multiple levels. The effects are, and will continue to be, unevenly suffered.

Mr President, for many small island communities and low-lying atoll nations like
Tuvalu, where most islands sit barely three metres above sea level, rising tides
threaten to make the lands completely uninhabitable – gone with the tide. Crops
cannot grow in saltwater. In this context, the failure to comply with obligations to
protect and preserve the marine environment is, quite simply, a death sentence for
entire peoples and their way of life.

In some Pacific cultures, the word for placenta, island and soil are the same: fenua.
All of these terms represent home and connection. The island and the islander are
one and the same. The relationship between the two is a deeply spiritual and
reciprocal bond reliant on the other’s existence, a bond that shapes every aspect of
a Pacific person’s individual and collective identity. Likewise, land and culture are
inextricably linked. Thus, forced migration to a foreign land represents a “threat to

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1 POVERTY AND CLIMATE CHANGE: REDUCING VULNERABILITY OF THE POOR THROUGH ADAPTATION,
2 Climate Change and the Poor: Adapt or Die, ECONOMIST: INT’L (Sept. 11, 2008),
4 Autumn Bordner, Climate Migration & Self-Determination, 51 COLUM. HUM. RTS. L. REV. 183 (2019),
p. 186.
the continued identity and culture of a people”, essentially a form of extinction.

Though standing optimistic and resilient, a solemn question lingers for those facing potential climate induced statelessness and upheaval: what will become of us absent our island home?

In the face of existential threat to small island States, the Commission urges this Tribunal to clarify for UNCLOS States Parties their immediate obligations to protect the marine environment based on scientific knowledge. Such clarification would give these populations affirmation of their inherent right to security, peace and a sustainable livelihood.

COSIS seeks to harness the potentialities of international law, to create greater awareness, to mobilize more vigorous action before it is too late. In this respect, Small Island Developing States have established themselves as climate leaders, both to mitigate greenhouse gas emissions and to adapt to the adverse effects of climate change.

Unfortunately, such leadership is unmatched by developed nations and the major polluters, but climate change is universal. Ultimately, no nation will be spared its catastrophic consequences. That is why the guidance provided by this Tribunal will be of benefit to all mankind. Aggravated nature has no consideration for the artificial boundaries that we have created. The international community should heed the cry of small island States because it is in essence an appeal to the common interest of all peoples inhabiting a single planet with a common destiny.

Mr President, across the globe young people are intensely aware of the myriad challenges resulting from climate change and how they relate to the well-being of their communities. They are receptive to new ways of organizing society, eager to learn through frontline action, and prepared to steel themselves to noble causes that put the needs of human beings and the environment above those of narrow economic conceptions. They appreciate how inextricably interconnected the world is and are sensitive to the ripple effect of positive change and just solutions. They have already devoted their energies to reimagining what climate action looks like.

In fact, they have played an important role in making possible the engagement of international courts and tribunals that has brought us here today.

COSIS enjoys the support of youth among the small island nations because it is an expression of their aspiration for a future free from the catastrophic effects of climate change. A world in which the rule of international law ensures that justice prevails.

Like the ITLOS proceedings, the ICJ advisory opinion too has been inspired by

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6 Majuro Declaration for Climate Leadership, PACIFIC ISLANDS FORUM SECRETARIAT. (Sep. 5, 2013); Margaretha Wewerinke-Singh & Sarah Mead, Climate Change Law in the Pacific Islands, in ENV’T LAW & GOVERNANCE IN THE PAC., 29 (Margaretha Wewerinke-Singh et al., eds. 2020); Maxine Burkett, Reading Between the Red Lines: Loss and Damage and the Paris Outcome, 6 CLIMATE L. 118, 122 (2016); Suva Declaration on Climate Change, PAC. ISLANDS DEV. F. (Sept. 4, 2015); Pacific Islands Nations Consider World’s First Treaty to Ban Fossil Fuels, GUARDIAN (July 14, 2016).

7 See Sally Neas et al., Young people’s climate activism: A review of the literature, 4 FRONTIERS POL. SCI. (2022).
youth. In 2021, a group of Pacific law students from Vanuatu, along with other youth
groups operating at the grass roots, spearheaded a campaign to request an advisory
opinion from the ICJ on the issue of climate change and human rights.\(^8\) Against what
many consider to be overwhelming odds and after no more than a year of global
consultations, the United Nations General Assembly adopted the resolution by
consensus in March of this year.\(^9\)

It is befitting that youth have been at the forefront of these initiatives because it is
their lives and their future that are at stake. They look to international courts and
tribunals, and to this Tribunal in particular, which will be the first to render an
advisory opinion. They look to you for hope and justice, in the belief that the
international legal order has a vital role to play in ensuring the survival of the most
disadvantaged and vulnerable.

As youth, we stand in a unique generational position wherein we are both attuned to
the sense of impending loss weighted on the shoulders of our elders, and the bleak
possibility future generations might face in losing their country. Our dedication,
commitment and effort towards climate justice are in both the name of our ancestors
and generations yet unborn.

It is we who will inherit the decisions made by those before us. Therefore,
international law must evince an intergenerational perspective in which the security
of future inhabitants is taken into account at all levels of decision-making. We have a
duty, both moral and legal, towards others yet to come.

Mr President, States have fundamental and binding obligations under UNCLOS to
protect and preserve the marine environment, and compliance with those obligations
is imperative for future generations. There is a clear call for clarification of the law to
sustain the balance and mutual relationship upon which our existence largely
depends, one that is held sacred by many in the Pacific. By providing concrete and
specific guidance to States Parties – guidance rooted in science – this Tribunal can
be an instrumental part of the change in consciousness that is required for
humankind to steer the course away from self-destruction to harmony with nature. A
harmony that our ancestors understood so well but that the present generation
seems to have forgotten.

I am here before you today, Mr President, because of an exchange I had with my
grandfather at 12 years of age. I had asked him how he felt about the idea that
Tuvalu, his homeland, could soon disappear due to sea level rise. After a moments
reflection he responded, “It will never be gone.” Only five years later, however, he
relayed to me with great sadness that one of the islands in Tuvalu where he spent
many of his childhood years had completely disappeared under the sea. Climate
change is already wreaking havoc on our precious ancestral lands.

Mr President, to ensure that my grandfather’s declaration holds true, to ensure that
Tuvalu never disappears, I endeavour to do my part. In 10 years from now I hope to

\(^8\) See The General Assembly of the United Nations requests an advisory opinion from the Court on
the obligations of States in respect of climate change, ICJ Press Release 2023/20 (19 April 2023).
\(^9\) Maria Antonia and Jorge Alejandro Carrillo Bañuelos, The ICJ's Advisory Opinion on Climate
still be able to take my daughter to the island in Tuvalu after which he named me: Te Maile.

By delivering a robust advisory opinion, this Tribunal will not only make a historic contribution to the protection and preservation of the marine environment, but also to the continuity of entire civilizations and ancestral connections. This matter is truly a question of life and death. Therefore, I respectfully urge you, Mr President, to consider the profound and timely impact this advisory opinion would have on those vulnerable communities who are deserving of clarity and justice.

Mr President, honourable members of this Tribunal, I now conclude my presentation and thank you sincerely for your time and attention.

I now ask that you invite Professor Okowa to the podium.

THE PRESIDENT: Thank you, Ms Fifita. This brings us to the end of this morning's sitting. The hearing will be resumed at 3:00 pm when the next speaker will take the floor.

(Lunch adjournment)