

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

<i>Present:</i>	President	Albert J. Hoffmann
	Vice-President	Tomas Heidar
	Judges	José Lu�s Jesus
		Stanislaw Pawlak
		Shunji Yanai
		James L. Kateka
		Boualem Bouguetaia
		Jin-Hyun Paik
		David Joseph Attard
		Markiy�n Z. Kulyk
		Alonso G�mez-Robledo
		�scar Cabello Sarubbi
		Neeru Chadha
		Kriangsak Kittichaisaree
		Roman Kolodkin
		Liesbeth Lijnzaad
		Mar�a 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 Shobha 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

1 **THE PRESIDENT:** Good morning.

2

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

5

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

9

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

13

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

21

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

25

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

30

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

32

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

35

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

40

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

43

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

48

49 By that same Order, the President invited the State Parties to the Convention, the
50 Commission of Small Island States on Climate Change and International Law

1 (COSIS) and the said intergovernmental organizations to present written statements
2 on the questions submitted to the Tribunal for an advisory opinion.

3
4 This Order initially fixed 16 May 2023 as the time-limit for the submission of written
5 statements.

6
7 This time-limit was subsequently extended to 16 June 2023 by Order of the
8 President dated 15 February 2023.

9
10 Further to requests from the African Union, the International Seabed Authority and
11 the Pacific Community, the President decided to consider all these
12 intergovernmental organizations as likely to be able to furnish information on the
13 questions submitted to the Tribunal and, therefore, invited them to do so within the
14 extended time-limit.

15
16 Within the time-limit of 16 June 2023, written statements were filed by 31 State
17 Parties to the Convention. These are, in order of receipt: Democratic Republic of the
18 Congo, Poland, New Zealand, Japan, Norway, Germany, Italy, China, European
19 Union, Mozambique, Australia, Mauritius, Indonesia, Latvia, Singapore, Republic of
20 Korea, Egypt, Brazil, France, Chile, Bangladesh, Nauru, Belize, Portugal, Canada,
21 Guatemala, United Kingdom, Netherlands, Sierra Leone, Micronesia, Djibouti.

22
23 Within the same time-limit, written statements were also submitted by the following
24 eight intergovernmental organizations, in the order of receipt: United Nations,
25 International Union for the Conservation of Nature, International Maritime
26 Organization, Commission of Small Island States on Climate Change and
27 International Law, Pacific Community, United Nations Environment Programme,
28 African Union, International Seabed Authority.

29
30 After the expiry of the time-limit, further written statements were received in the
31 following order of receipt: Rwanda, the Food and Agricultural Organization of the
32 United Nations, Viet Nam and India. Further to decisions of the President and the
33 Tribunal, these statements were admitted and included in the case file.

34
35 In addition, statements were submitted to the Tribunal from the following: the United
36 Nations Special Rapporteurs on Human Rights & Climate Change, Toxics & Human
37 Rights and Human Rights & the Environment, the High Seas Alliance, ClientEarth,
38 Opportunity Green, the Center for International Environmental Law and Greenpeace
39 International, the Advisory Committee on Protection of the Sea, the Worldwide Fund
40 for Nature, the Our Children's Trust and Oxfam International, the Observatory for
41 Marine and Coastal Governance and the One Ocean Hub.

42
43 Further to decisions of the President, these statements were not included in the case
44 file since they were not submitted pursuant to articles 138, paragraph 3, and 133,
45 paragraph 3, of the Rules.

46
47 All the statements have been posted on the website of the Tribunal. Special sections
48 have been set up on the website for statements received after the expiry of the
49 time-limit as well as for statements that were not included in the case file.

1 By order of the President of 30 June 2023, the date for the opening of the hearing
2 was fixed as 11 September 2023, that is, today. Pursuant to the Order, oral
3 statements may be made by the State Parties to the Convention, the Commission of
4 Small Island States on Climate Change and International Law, the other
5 intergovernmental organizations listed in the annex to the Order of 16 December
6 2022, as well as by the African Union, the International Seabed Authority and the
7 Pacific Community. The State Parties and the said organizations were invited to
8 indicate their intention to make oral statements not later than 4 August 2023.

9
10 Within this time-limit, 34 State Parties, COSIS and three further intergovernmental
11 organizations indicated such intention. Further to a request received from Belize
12 after the date fixed in the Order of the President of 30 June 2023, the Tribunal
13 decided that an oral statement may also be presented by Belize during the hearing.

14
15 **THE PRESIDENT:** Thank you, Madam Registrar.

16
17 As indicated, the Tribunal is meeting today to hear statements relating to the request
18 for an advisory opinion. In this regard, the Tribunal has been informed that
19 representatives of the following States and organizations, in addition to the
20 Commission of Small Island States on Climate Change and International Law, wish
21 to take the floor during the current oral proceedings. I will list them in alphabetical
22 order:

23
24 Argentina, Australia, Bangladesh, Belize, Bolivia, Chile, China, Comoros, Democratic
25 Republic of the Congo, Djibouti, European Union, France, Germany, Guatemala,
26 India, Indonesia, Italy, Latvia, Mauritius, Mexico, Federated States of Micronesia,
27 Mozambique, Nauru, Netherlands, New Zealand, Norway, Philippines, Portugal,
28 Republic of Korea, Saudi Arabia, Sierra Leone, Singapore, Timor-Leste, United
29 Kingdom, Viet Nam, African Union, International Union for Conservation of Nature
30 and Natural Resources, and Pacific Community.

31
32 The specific arrangements for the meeting have been made known by the Registry
33 to the participating delegations. The schedule of the hearing has also been made
34 public by a press release and a revised schedule was issued last Friday,
35 8 September.

36
37 Today and tomorrow, both during the morning and afternoon sittings, the Tribunal
38 will hear the Commission of Small Island States on Climate Change and
39 International Law. And from Wednesday, 13 until Monday, 25 September, the other
40 delegations I have mentioned will address the Tribunal.

41
42 This morning's sitting, in the course of which the Commission of Small Island States
43 on Climate Change and International Law will present the first part of its statement,
44 will last until one o'clock, and there will be a 30-minute break between 11:15 and
45 11:45, approximately.

46
47 I now give the floor to the first representative, Mr Gaston Alfonso Browne, Prime
48 Minister of Antigua and Barbuda, to speak on behalf of the Commission of Small
49 Island States on Climate Change and International Law. Your Excellency, you have
50 the floor.

1
2 **MR BROWNE:** Good morning. Mr President, members of the Tribunal, I am
3 honoured to appear before you to open the oral pleadings of the Commission of
4 Small Island States on Climate Change and International Law in these historic
5 advisory proceedings.
6

7 As Prime Minister of Antigua and Barbuda, I serve as Co-Chair to the Commission,
8 also referred to as COSIS, alongside my dear friend, the Honourable Kausea Natano,
9 the Prime Minister of Tuvalu, who will be addressing you shortly.
10

11 Antigua and Barbuda and Tuvalu concluded the Agreement establishing COSIS on
12 31 October 2021 on the eve of the 26th Conference of the Parties to the United
13 Nations Framework Convention on Climate Change, or the UNFCCC, held in
14 Glasgow, United Kingdom. On 5 November 2021, at COP26, the Republic of Palau
15 became the first State to deposit its instrument of accession. This is followed, in
16 chronological order, by Niue in September 2022, the Republic of Vanuatu and Saint
17 Lucia in December 2022, and Saint Vincent in the Grenadines, Saint Christopher,
18 that's Saint Kitts and Nevis, and the Commonwealth of The Bahamas in June 2023.
19 The nine Member States of COSIS are scattered across the globe but are united by
20 a deep connection to and dependence on the marine environment and its resources.
21

22 We also note with gratitude the supportive written statements in these proceedings
23 by other members of Alliance of Small Island States to include: Belize, the Republic
24 of Mauritius, the Federated States of Micronesia, the Republic of Nauru and the
25 Republic of Singapore.
26

27 Mr President, COSIS is an unprecedented intergovernmental organization. Its
28 purpose is to harness the potential of international law to protect the most climate
29 vulnerable States against existential threats.
30

31 It is no exaggeration to speak of existential threats, when some of these nations may
32 vanish in the foreseeable future because of rising sea levels. The scientific evidence
33 leaves no doubt that this situation has arisen because of the failure of major polluters
34 to effectively mitigate greenhouse gas emissions.
35

36 This inaction, this failure of political will, has brought humankind to a perilous
37 juncture with catastrophic consequences. It is because of this reality that COSIS has
38 brought this vital matter before you.
39

40 In view of this reality, one can scarcely imagine a more compelling reason to
41 establish an intergovernmental organization. As the Preamble to the Agreement
42 states, COSIS members are "alarmed by the catastrophic effects of climate change
43 which threaten the survival of Small Island States, and in some cases, their very
44 existence."
45

46 It is for this purpose that the Commission's mandate is "to promote and contribute to
47 the definition, implementation, and progressive development of rules and principles
48 of international law concerning climate change."
49

1 These advisory proceedings before your Tribunal are the first, but certainly not the
2 last, initiative of COSIS. The Commission has also been authorized to submit a
3 written statement for the ICJ advisory opinion on climate change requested by the
4 UN General Assembly on 29 March 2023; a historic resolution adopted by
5 consensus under the leadership of Republic of Vanuatu, with the active support of
6 numerous small island States, including Antigua and Barbuda.

7
8 COSIS will also submit a written statement for the advisory opinion proceedings
9 before the Inter-American Court of Human Rights, requested by Chile and Colombia
10 on 9 January 2023. And there will be yet more initiatives as small island States join
11 forces to protect their rights and very existence by building a rule-oriented
12 international order in which the major polluters are held accountable for the harm
13 they have caused and continue to cause. It cannot be expected that our peoples will
14 remain silent as their homes are irretrievably destroyed.

15
16 Despite these multiple initiatives, this initial request before ITLOS is particularly
17 significant.

18
19 This is the opening chapter in the struggle to change the conduct of the international
20 community by clarifying the obligation of States to protect the marine environment.

21
22 We are, after all, peoples of the ocean, whether in the Caribbean or the Pacific, in
23 the Atlantic or Indian Oceans, surrounded by the vast expanses of water that have
24 sustained us from time immemorial.

25
26 In this regard, the COSIS Agreement explicitly acknowledges the fundamental
27 importance of oceans as sinks and reservoirs of greenhouse gases, and the direct
28 relevance of the marine environment to the adverse effects of climate change on
29 small island States.

30
31 The ocean is fundamental to the climate system of Earth, so it is befitting that the
32 first in these series of proceedings should be before ITLOS, the guardian of the 1982
33 UN Convention on the Law of the Sea.

34
35 It is befitting no less, because in the past few weeks this summer we have witnessed
36 the highest ocean temperatures on record.

37
38 Mr President, Members of the Tribunal, we are here today because over a century
39 and a half of anthropogenic greenhouse gas emissions have polluted our precious
40 oceans and devastated the marine environment.

41
42 Those emissions have fundamentally changed Earth's climate and are posing an
43 existential threat to vulnerable communities worldwide.

44
45 My country is one of those communities, and we stand in solidarity with all small
46 island and coastal States facing the devastating consequences of climate change.

47
48 Despite our negligible emissions of greenhouse gases, COSIS members have
49 suffered and continue to suffer the overwhelming burden of climate change's
50 adverse impacts.

1
2 Indeed, the catastrophic effects of climate change threaten the survival, and in some
3 cases, the very existence of COSIS Members States.

4
5 Without rapid and ambitious remedial action, climate change may prevent my
6 children and my grandchildren from living on the island of their ancestors, the island
7 that we call home. We cannot remain silent in the face of such injustice. We cannot
8 abandon our peoples to such a cruel fate.

9
10 We have come before this Tribunal in the belief that international law must play a
11 central role in addressing the catastrophe that we witness unfolding before our eyes.

12
13 Your authoritative guidance on the specific obligations of States Parties to UNCLOS
14 to protect the marine environment, is the much-needed corrective to a process that
15 has manifestly failed to arrest climate change. We cannot simply continue with
16 endless negotiations and empty promises. The political process must be informed by
17 existing binding obligations under international law.

18
19 I emphasize existing obligations, Mr President. We have not come before to you
20 create new law. All that we ask is for the Tribunal to clarify what UNCLOS requires of
21 States Parties. Mr President, for decades, small island States have been stating
22 these truths in international gatherings concerning climate change, including at
23 successive Conferences of the Parties to the UNFCCC.

24
25 We have talked ourselves hoarse since the 1990s, pointing to the perilous
26 circumstances into which our people and our countries are being plunged.

27
28 Year after year, we listened as promises to mitigate climate change were made, and
29 year after year, we watched as those promises went unfulfilled.

30
31 We have patiently listened and waited. We have ardently urged and pleaded, but
32 with little avail.

33
34 As I told the 27th Conference of the Parties to the United Nations Framework
35 Convention on Climate Change in Sharm el-Sheikh, Egypt, last year, the soliloquy in
36 William Shakespeare's *Macbeth* resonates with a hammering significance for us
37 small island States. And I quote:

38
39 "Tomorrow, and tomorrow, and tomorrow,
40 creeps in this petty pace from day to day,
41 to the last syllable of recorded time;
42 and all our yesterdays have lighted fools the way to dusty death." End of quote.

43
44 But we were not willing to resign our peoples to this death sentence, occasioned by
45 the continuing failure to take effective action against climate change.

46
47 On 26 August 2022, the then three members of COSIS, Prime Minister Natano of
48 Tuvalu and President Whipps of Palau, and myself, adopted a historic decision
49 authorizing the Commission to request an advisory opinion from ITLOS.

1 On 12 December 2022, the Commission requested the advisory opinion from this
2 Tribunal, referring the two legal questions that are at issue in these proceedings.

3
4 We did so based on the advice of a distinguished Committee of Legal Experts;
5 dedicated men and women from across the world who have worked diligently and
6 voluntarily to assist small island States in the pursuit of climate justice.

7
8 I will leave it to our esteemed counsel team to take you to the precise wording of
9 those questions, but the essence is as follows:

10
11 Given climate change's harmful effects on the ocean and the ocean's vital role in
12 Earth's climate system what does the constitution of the law of the sea have to say
13 about the climate crisis?

14
15 What are the specific obligations of States Parties?

16
17 Mr President, members of the Tribunal, we are in dire, urgent need of an answer; an
18 answer that is based on science rather than abstract principles; an answer that will
19 provide meaningful guidance to States Parties to UNCLOS. And we must hope that
20 States Parties will act in good faith to ensure that, moving forward, their conduct is
21 consistent with the content of their obligations, as set out in your advisory opinion.

22
23 Mr President, members of the Tribunal, I will turn now to speak not only as the
24 Co-Chair of COSIS, but also as Prime Minister of Antigua and Barbuda.

25
26 Specifically, I will address in more detail the devastating consequences that my
27 country has suffered and will continue to suffer in the absence of swift and dramatic
28 reductions in greenhouse gas emissions and robust, comprehensive adaptation
29 efforts.

30
31 In 2017 alone, three major hurricanes – Irma, Harvey and Maria – battered the
32 Caribbean, displacing over 3 million people in a single month.¹

33
34 Our sister island, Barbuda, was the first island hit by Hurricane Irma, a Category 5
35 storm, which damaged an estimated 90 per cent of all properties on the island. The
36 damage required the evacuation of all residents from Barbuda to Antigua.² It further
37 required the central government to provide accommodation and sustenance to the
38 population of Barbuda for three years on Antigua, while Barbuda was painstakingly
39 rebuilt.

40
41 Had Antigua and Barbuda not been a unitary state, the inhabitants of Barbuda would
42 have become climate migrants, or perhaps refugees, dependent on the voluntary
43 generosity of several countries among whom they would have had to be scattered
44 with no obligations for their safety or well-being.

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).

1 Many previous storms have persistently destroyed Antigua and Barbuda’s economy,
2 infrastructure, utilities, public services and cultural heritage sites.³

3
4 After Hurricane Irma alone, our recovery needs totalled 222.2 million US dollars, or
5 roughly one sixth of our entire gross domestic product.⁴ The government incurred
6 heavy debts to borrow the proceeds needed to cover these costs. However,
7 repayment of those debts has placed a heavy toll on public finances. The
8 government now has extremely limited funds to pay for social services, let alone
9 climate adaptation and mitigation measures.

10
11 The dangers of sea-level rise are also acute. Current projections show that by the
12 end of this century, the Caribbean Sea could rise almost half a metre over levels
13 from the early 1990s.⁵

14
15 This sea-level rise and storms are likely to salinate our remaining freshwater
16 resources and much of our agricultural land. This would exacerbate an already dire
17 crisis in the availability of ground and surface water and food insecurity.⁶

18
19 Increases in sea levels will also damage coastal infrastructure, as well as the critical
20 habitats of marine turtles, shorebirds and many other species dependent on coastal
21 ecosystems.

22
23 Sea-level rise has already damaged priceless cultural and natural landmarks,
24 including the Antigua Naval Dockyard, a UNESCO World Heritage site.⁷

25
26 Beyond sea-level rise, ocean warming and acidification cause coral bleaching and
27 degrade mangroves and seagrass.

28
29 These ecosystems are critical to Antigua and Barbuda’s coastal livelihoods and
30 marine biodiversity.⁸ Reduction of mangroves, reefs and seagrasses also makes it
31 harder for our islands to resist storm surges.⁹

32
33 Antigua and Barbuda is a world-renowned tourism destination because of its tropical
34 climate, beautiful beaches, pristine coastline and ocean-based recreation.

35
36 But the consequences of climate change jeopardize Antigua and Barbuda’s tourism
37 economy, which accounts for 60 per cent of our gross domestic product. Increased
38 natural hazards, sea-level rise and ocean acidification and warming, all risk coastal

³ IPCC, Working Group II, *Chapter 15: Small Islands*, SIXTH ASSESSMENT REPORT: IMPACTS, ADAPTATION AND VULNERABILITY (2022), pp. 2069–2071.

⁴ World Health Organization, *Health & Climate Change: Antigua and Barbuda Country Profile 2020*.

⁵ *Id.*

⁶ Kevin Headley and Maureen Valmond, *Agriculture in the Caribbean facing destructive climate impacts*, CLIMATE TRACKER (2023).

⁷ *Antigua Naval Dockyard and Related Archaeological Sites*, UNESCO, <https://whc.unesco.org/en/list/1499>.

⁸ IPCC, Working Group II, *Chapter 15: Small Islands*, SIXTH ASSESSMENT REPORT: IMPACTS, ADAPTATION AND VULNERABILITY (2022), pp. 2056–2057.

⁹ IPCC, Working Group II, *Chapter 15: Small Islands*, SIXTH ASSESSMENT REPORT: IMPACTS, ADAPTATION AND VULNERABILITY (2022), p. 2046.

1 destruction and the collapse of marine ecosystems that support tourism attractions
2 and recreation.

3
4 We are far from alone in this. The Caribbean region ranks first globally in terms of
5 the relative contribution of tourism to gross domestic product.¹⁰

6
7 It is no exaggeration to say that its island States cannot sustain themselves if this
8 sector continues to be compromised by the effects of climate change.

9
10 In summary, the impacts of climate change on Antigua and Barbuda are nothing
11 short of catastrophic. We are working desperately to adapt to these changes but we
12 cannot keep up with the frequency, the ferociousness and the extent of the harm that
13 they create. To have any chance of survival, Antigua and Barbuda and all other
14 small island States need the world to mitigate greenhouse gas emissions while
15 simultaneously helping them to cope with the effects of climate change.

16
17 We firmly believe that international law is an important part of the equation and that
18 the time has come to speak in terms of legally binding obligations rather than empty
19 promises that go unfulfilled, abandoning peoples to suffering and destruction.

20
21 Mr President, members of the Tribunal, as I hope my remarks have made clear, the
22 impacts of climate change on the members of COSIS are ongoing, devastating and
23 will continue to worsen in the near future.

24
25 Small island States may be the first to fall – through no fault of our own – but we will
26 not be the last, for no country on Earth can escape the deadly grasp of climate
27 change. The world is teetering dangerously on the precipice of a climate
28 catastrophe. We need your help. We need your guidance.

29
30 I respectfully request that the honourable members of this Tribunal consider the
31 significance of the advisory opinion, not only for COSIS, but for the protection of our
32 planet and of human civilization.

33
34 I thank you very much for your kind attention and I now have the honour to hand the
35 podium to my esteemed Co-Chair, the Honourable Kausea Natano, the Prime
36 Minister of Tuvalu. Thank you.

37
38 **THE PRESIDENT:** Thank you, Mr Browne. I now give the floor to Mr Kausea
39 Natano, Prime Minister of Tuvalu to make his statement. Your Excellency, you have
40 the floor.

41
42 **MR NATANO:** Good morning. Mr President, members of the Tribunal. It is my great
43 privilege to address you today in these historic advisory proceedings. As Prime
44 Minister of Tuvalu, I serve as Co-Chair of the Commission of Small Island States on
45 Climate Change and International Law, or COSIS, alongside my honourable friend,
46 Gaston Alfonso Browne, Prime Minister of Antigua and Barbuda, who has just
47 addressed the Tribunal.

¹⁰ Davina Layne, *Impacts of Climate Change on Tourism in the Coastal and Marine Environments of Caribbean Small Island Developing States (SIDS)*, SCIENCE REVIEW (2017), p. 174.

1
2 Mr President, members of the Tribunal, the climate crisis currently threatens the very
3 existence and habitability of small island States. We are peoples of the ocean and
4 particularly vulnerable to changes in the marine environment. For us, the 1982 UN
5 Convention on the Law of the Sea is especially important. Sea levels are rising
6 rapidly, threatening to sink our lands below the ocean. Extreme weather events,
7 which grow in number and intensity with each passing year, are killing our people
8 and destroys our infrastructure. Entire marine and coastal ecosystems are dying in
9 waters that are becoming warmer and more acidic.

10
11 The science is clear and undisputed: these impacts are the result of climate change
12 brought on by greenhouse gas emissions. Some of them are irreversible.

13
14 Small island States are not the only States to feel the wrath of climate change. No
15 State on Earth is immune to its relentless advance or its destructive impacts, but we
16 bear a disproportionate and overwhelming burden of the adverse effects of
17 greenhouse gas emissions despite contributing negligibly to such emissions.

18
19 We, along with other small island States, are on the frontlines of the battle against
20 climate change, exhausted and without reinforcements. This reality, Mr President, is
21 profoundly unfair, and it leaves small island States with no choice. We must unite
22 and join forces to defend our very survival and existence. Remaining silent is not an
23 option.

24
25 This is why Tuvalu co-founded COSIS with Antigua and Barbuda at COP 26. We are
26 very pleased that we are now nine small island States and no doubt our numbers will
27 increase further as the urgency of climate justice becomes increasingly apparent.

28
29 My friend, Prime Minister Browne of Antigua and Barbuda, has already spoken to
30 you about the founding, aims and activities of COSIS as well as the significance of
31 these advisory proceedings, and I echo his remarks and will add a few of my own.

32
33 Small island States, Mr President, have been at the forefront of climate action for
34 decades. Even before COSIS, small island States came together in 1990 to lead
35 international climate discussions as part of the Alliance of Small Island States, or the
36 AOSIS. Through that organization, we advocated for the rights of small island States
37 during the negotiation of key treaties including the UN Framework Convention of
38 Climate Change and the Paris Agreement. We kept international climate talks on
39 track and focused on the monumental threat that climate change poses.

40
41 We pushed for recognition of the fact that climate action by every State is an
42 absolute necessity. But, despite those efforts, we saw no real change in international
43 commitment to combating the climate crisis. We did not see the far-reaching
44 measures that are necessary if we are to avert catastrophe. This lack of political will
45 endangers all of humankind and it is unacceptable for small island States like my
46 own, which are already teetering on the brink of extinction.

47
48 So, on 31 October 2021, Tuvalu formed COSIS with Antigua and Barbuda to achieve
49 meaningful change. “Recalling the urgent actions” of AOSIS which “called repeatedly

1 to address the urgency and fundamental injustice” of climate change, we sought to
2 further amplify the voice of small island States.¹

3
4 COSIS’s mission is grounded in the recognition of the “fundamental importance of
5 oceans as sinks and reservoirs of greenhouse gases and the devastating impact for
6 Small Island States of related change in the marine environment.”²

7
8 Ocean environments are crucial to the climate's system of Earth and are the life
9 blood that sustains small island States. This is why we must protect them as fiercely
10 as we do our own lives. To that end, COSIS is mandated to “promote and contribute
11 to the definition, implementation, and progressive development of rules and
12 principles of international law concerning climate change, including as they relate to
13 the marine environment.”³

14
15 The work of this Tribunal is essential to accomplishing this objective. COSIS’s
16 advisory request represents the first opportunity for a definitive, incontrovertible
17 statement clarifying the specific obligations of States to protect the marine
18 environment.

19
20 As the custodian of the 1982 UN Convention on the Law of the Sea, this Tribunal is
21 uniquely positioned to provide such a statement, which would be an invaluable
22 resource to revive a failing political process that is mired in uncertainty and that has
23 left small island States stranded.

24
25 Here I wish to be absolutely clear, Mr President. We are not asking the honourable
26 members of this Tribunal to impose new strictures on the States Parties to UNCLOS.
27 We ask only that you make plain the contents of the legal obligations that the States
28 Parties have already agreed to uphold.

29
30 Mr President, members of the Tribunal, I will now turn to speak not only as Co-Chair
31 of COSIS, but also as Prime Minister of Tuvalu. Tuvalu’s fate is fused with that of the
32 marine environment. Tuvalu's is a small island that comprises nine coral atolls in the
33 South Pacific Ocean, about halfway between Hawaii and Australia. Tuvalu’s capital,
34 Funafuti, is one of these atolls and is the most populous area of Tuvalu.

35
36 Together, the islands of Tuvalu encompass 26 square kilometres of land and
37 24 kilometres of coastline. It is a country rich in culture and tradition. However, as the
38 years go by, we see the shoreline getting closer to our homes. We watch as the
39 ocean washes away our livelihoods, infrastructures and traditions that have been
40 cultivated across centuries. Tuvalu has been devastated by climate change.

41
42 Like with many of the other COSIS Member States, Tuvalu is low lying, with
43 populations concentrated close to the shorelines. In fact, Tuvaluan homes sit, on
44 average, about 100 metres away from the shore. Sea-level rise is, therefore, an
45 omnipresent threat.

1 COSIS Agreement, Preamble.

2 COSIS Agreement, Preamble.

3 COSIS Agreement, Preamble.

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

3
4 With an average land elevation of 1.9 metres above sea level, Tuvalu is expected to
5 be one of the first countries in the world to be completely lost to sea-level induced
6 climate change. This could happen in the next two to three decades.

7
8 All of the more than 10,000 residents of Tuvalu would be forced to leave the country,
9 but Tuvalu will likely become uninhabitable long before complete submergence. All
10 of Tuvalu's human settlements, industry and vital infrastructure lies close to the
11 shoreline. Already around 40 per cent of Tuvalu's capital, Funafuti, is underwater at
12 high tide. Even at the current pace of climate change, in a matter of years, Funafuti
13 will be inundated along with the rest of Tuvalu's inhabited regions.⁴

14
15 Just a few years. That's all we have before the ocean consumes everything my
16 people built across centuries. Tuvalu is pressing forward efforts towards protecting
17 its statehood, preserving its sovereignty and safeguarding the rights and cultural
18 heritage of its peoples despite impacts of climate change and sea-level rise.

19
20 Nevertheless, displaced Tuvaluans and the generations who follow them will suffer a
21 loss of place, property, identity, culture, lifestyle and tradition tied to the islands.
22 Critically low quantities of potable water, already a scarce resource on Tuvalu, are
23 already making it difficult to live there. Rising sea levels have already caused
24 saltwater to permeate into our limited fresh water aquifers. As a result, my country is
25 now entirely dependent on rainwater catchment, but this too is vulnerable to climate-
26 driven droughts which have already caused critical water shortages in many COSIS
27 Member States.⁵

28
29 Sea-level rise also threatens our food security, it destroys our agriculture, as salt
30 from the ocean salinizes our soils and reduces crop yields. We now have to import
31 many foods like taro or cassava that we once, in what feels like a lifetime ago, grew
32 locally.⁶ Given Tuvalu's geographical location, surrounded by water in an
33 temperate climate, we are also susceptible to extreme weather events. We are
34 facing tropical cyclones with increasing frequency and intensity. The South Pacific
35 alone has experienced a fourfold increase in high-intensity cyclones in recent years.⁷
36 These tropical cyclones have devastating impacts on peoples and economies.

37
38 In 2015, widespread flooding occurred in Tuvalu due to the strong swells generated
39 by Tropical Cyclone Pam and the exceptionally high sea levels surrounding our
40 country.⁸ This Category 5 cyclone displaced my people and destroyed my country's
41 infrastructure. It demolished public utilities and agricultural infrastructure and cut
42 Tuvaluans off from power, Internet, water and food.⁹ It also destroyed the country's

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).

1 community health centres, leaving many Tuvaluans on the outer islands without
2 access to vital healthcare.¹⁰ Over half of the residents of the island of Nui and
3 Nukufetau had to flee.¹¹

4
5 Estimates place the cost to rebuild in Tuvalu after Cyclone Pam at over 30 per cent
6 of Tuvalu's gross domestic product.¹² This is money that we cannot afford to keep
7 spending. To make matters worse, like in other small island States, ocean
8 acidification and warming caused by climate change are stressing, bleaching,
9 calcifying and killing Tuvalu's coral reefs. Around Tuvalu, up to 70 per cent of reef
10 species are dying off. Such a substantial decline will have catastrophic effects on my
11 people.

12
13 The collapse of coral reefs will devastate marine biodiversity and fish stocks, which
14 will jeopardize my people's food security. At present, Tuvalu is on track to experience
15 a more than 50 per cent decline in maximum catch potential by the end of the
16 century – an especially high number among a population that consumes most of its
17 animal protein from fish.¹³

18
19 Declines in coral reefs will also ruin our economy. Fishing accounts for nearly all of
20 Tuvalu's exports and most Tuvaluans engage in subsistence fishing as their source
21 of livelihood. Coral reefs also support sea-related tourism, the largest driver of
22 Tuvalu's economy. Without healthy coral reefs, tourism and fishing will decline and
23 many Tuvaluans will lose their jobs. The impacts of climate change are wide-ranging
24 and calamitous. My people will starve. My people will die. As things stand, we cannot
25 survive this catastrophe. Worrying about the future of our children and future
26 generations takes a severe psychological toll on all Tuvaluans.

27
28 We come here seeking urgent help, in the strong belief that international law is an
29 essential mechanism for correcting the manifest injustice that our people are
30 suffering as a result of climate change. We are confident that international courts and
31 tribunals will not allow this injustice to continue unchecked.

32
33 We are confident that this Tribunal will issue a strong advisory opinion that will spell
34 out in detail the obligations of States in preventing further catastrophic harm to
35 marine environment. My people will rightfully ask, if international law has nothing to
36 say about an entire country going under the water as a result of harmful conduct,
37 then what purpose does it serve?

38
39 Mr President, members of the Tribunal, the preamble to the UN Convention on the
40 Law of the Sea makes clear that it was established to “facilitate international
41 communication” and “promote the peaceful uses of the seas and oceans, equitable
42 and efficient utilization of their resources, the conservation of their living resources
43 and the study, protection and preservation of marine environment” “for all people of
44 the world.” And we are also people of the world and seek the equity that is the
45 fundamental purpose of international law.

¹⁰ *A story from Tuvalu: 1.5 to stay alive*, WHO (10 December 2015).

¹¹ *Tuvalu: Tropical Cyclone Pam Situation Report No. 1*, RELIEFWEB (22 March 2015).

¹² *Tuvalu Gets Continued Support for Cyclone Pam Recovery*, WORLD BANK (15 September 2015).

¹³ IPCC, Working Group II, *Chapter 15: Small Islands*, SIXTH ASSESSMENT REPORT—CLIMATE CHANGE 2022: IMPACTS, ADAPTATION AND VULNERABILITY (2022), p. 2066.

1
2 We persist in the belief that a well-reasoned advisory opinion will facilitate
3 international cooperation between UNCLOS States Parties and encourage a broader
4 discussion amongst world leaders about State obligations and climate change. It will
5 help clarify the existing obligations that States, major polluters in particular, should
6 have complied with all these years, and which remain both legally binding and an
7 immediate imperative to prevent calamity.

8
9 At the most recent COP27 meeting in Sharmel-Sheikh, Egypt, I reiterated the same
10 request that I and my forebearers have made repeatedly for decades. As I said there
11 and I quote: "Today's climate emergency can be reduced to two basic concepts: time
12 and temperature. It's getting too hot, and there is barely time to slow and reverse the
13 increasing temperature. Therefore, it is essential to prioritize fast-acting strategies
14 that avoid the most warming."

15
16 I urge all world leaders to recognize the critical urgency of the climate change crisis
17 and act rather than equivocate. Make headway rather than fail to deliver. Still,
18 nothing has changed.

19
20 All signs point towards warming almost twice above 1.5°C Paris Agreement limit, and
21 climate change remains the single greatest existential threat that Small Island
22 Developing States face.

23
24 Members of the Tribunal, you have a key role to play. We need clarity and specificity
25 on the obligations under UNCLOS to take all measures necessary to prevent, reduce
26 and control pollution of the marine environment by greenhouse gas emissions. You
27 are in a position to be part of the solution to the climate crisis and make real
28 differences for small island States and our people.

29
30 I have every faith that you will take full advantage of this historic opportunity. Thank
31 you for your time and attention, and I now have the pleasure to hand the podium
32 over to the Honourable Arnold Kiel Loughman, Attorney General of the Republic of
33 Vanuatu. And I thank you, Mr President, members of the Tribunal. God bless you all.

34
35 **THE PRESIDENT:** Thank you, Mr Natano. I now give the floor to Mr Arnold Kiel
36 Loughman, Attorney General of the Republic of Vanuatu, to make your statement.
37 Your Excellency, you have the floor.

38
39 **MR LOUGHMAN:** Good morning. Good morning, Mr President, members of the
40 Tribunal. It is my great honour and privilege to address you today on behalf of the
41 Republic of Vanuatu, a proud Member State of the Commission of Small Island
42 States on Climate Change and International Law, and a State that has played a
43 leadership role in seeking climate justice.

44
45 Our government and our people look to this Tribunal with expectant eyes because,
46 for us, time is running out. The ocean is our mother, the source of life. Yet it is being
47 destroyed by the failure of major greenhouse gas emitters to take seriously their
48 obligation to protect and preserve the marine environment. Catastrophic climate
49 change cannot be averted by empty promises. The peoples of small island States
50 cannot be expected to sit silently as the homes of both their children and ancestors

1 are being destroyed. The natural world is out of balance and a great injustice is
2 being committed against us. We look to you, the distinguished Judges of this
3 Tribunal, to render an advisory opinion that will persuade UNCLOS State Parties to
4 transform their behaviour, because continuing business as usual is no longer an
5 option. States must immediately comply with their binding obligations before it is too
6 late, and it is for this Tribunal to say with specificity what those obligations are.

7
8 Mr President, I will begin by explaining why Vanuatu joined COSIS.

9
10 Vanuatu has participated for decades in multilateral climate negotiations with good
11 faith, ambition and the hope that nations would be able to work together to address
12 the single greatest obstacle to the security and well-being of humankind. We have
13 participated vigorously in deliberations of the UNFCCC and at each and every COP.
14 We have raised the alarm at the United Nations and its specialized agencies, and at
15 a wide range of other regional and international fora and institutions. We have
16 listened time and again as major polluters have pledged to address our concerns to
17 do what is necessary to put an end to the nightmare that is unfolding before our
18 eyes, as our islands and our homes are battered by extreme weather events, rising
19 sea levels and myriad of other disasters that are slowly and surely bringing about our
20 demise.

21
22 We have been patient, but to little avail. We now feel that our good faith has been
23 exploited. Our ambition has been sidelined. Our voices have been ignored and our
24 hope is now hanging by a thread.

25
26 Time and time again, we have been disappointed by the absence of concrete action
27 at the international level. The debilitating consequences of the climate crisis are
28 worsening with every second of every day. The spirit of international collaboration
29 has not translated into real and necessary benefits for our nation and its citizens.

30
31 Already, we are measuring climate change not in degrees or in tons of carbon, but in
32 human lives. Action is required now, and the call for action is not just a matter of lofty
33 ideals; it is a matter of legally binding obligations. Had States taken seriously their
34 obligations, we would not be here today.

35
36 Mr President, Vanuatu joined COSIS on 2 December 2022 because climate change
37 is the plague of humankind, and small island nations must either join forces or
38 perish.

39
40 Climate change is both our legacy and our doom unless we act together in pursuit of
41 climate justice. We believe that working in solidarity with our fellow small island
42 States is the best path towards our end goal of a safe planet for all of humanity.

43
44 A question that you may find yourselves asking is: why? Why would a handful of
45 small, developing islands that barely contribute to greenhouse gas emissions place
46 themselves at the spearhead of this global problem? The answer is simple: we
47 cannot afford to be anywhere else.

1 Climate change is an existential threat for the people of Vanuatu and for all of our
2 small island brethren. We can leave no words left unsaid, no stone unturned and no
3 road left untaken in the search for solutions to the climate crisis.

4
5 And it should not be imagined that, just because we are among the smallest of
6 nations, we cannot rise to the greatest of challenges. We are determined, we are
7 united and we will not abandon our peoples to a tragic fate without doing everything
8 we can to persuade the major polluters to change course. We persist in the belief
9 that the fundamental principles of international law, including the 1982 UN
10 Convention on the Law of the Sea, were intended exactly for such circumstances,
11 when the very survival of humankind is at stake.

12
13 The small island States are leading the way, not only for themselves and their
14 particularly vulnerable populations, but for all States and peoples who prefer a
15 peaceful and prosperous future rather than a dystopian world ravaged by
16 unimaginable disasters and widespread suffering.

17
18 This Tribunal could provide a road map or perhaps a navigation chart, since it is the
19 law of the sea, so that States Parties could find a way out of the current gloom
20 simply by respecting their existing obligations to protect and preserve the marine
21 environment.

22
23 Mr President, to give you a sense of why climate action and this request for an
24 advisory opinion are so important, I want to briefly tell you about my country.
25 Vanuatu is breathtakingly beautiful. It is vibrant, rich in life and culture, with strong
26 communal bonds and a deep sense of belonging. It is an enchanting home to myself
27 and approximately 320,000 others. Our territory comprises over 83 islands, more
28 than 60 of which are inhabited. The islands are spread over an ocean territory of
29 approximately 680,000 square kilometres. Most of our people practise subsistence
30 agriculture and reside in coastal areas.¹ Our diverse tropical ecosystems, both
31 terrestrial and offshore, provide habitats for myriad of flora and fauna, including
32 hundreds of endemic species. Crucially, our very existence depends on the health of
33 these ecosystems, and climate change is destroying them.

34
35 Climate change already impacts nearly every facet of Vanuatu life. Rising sea levels,
36 increasing frequency and severity of storm surges, changing weather patterns, and
37 ocean warming and acidification are causing widespread losses and damage to our
38 nation.

39
40 Sea-level rise in Vanuatu averaged 6 millimetres per year between 1990 and 2010,
41 which is nearly double the global average of 3.4 millimetres per year over the same
42 period.² This has profound and far-reaching effects.

43
44 Ocean encroachment will destroy essential habitats for many of Vanuatu's plant and
45 animal species, including species endemic to the islands. And, in doing so, it will
46 decimate the biodiversity that has historically thrived in the region.³

¹ *Vanuatu Country Profile*, BBC, <https://www.bbc.com/news/world-asia-16426193>.

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).

³ WORLD BANK, CLIMATE RISK COUNTRY PROFILE: VANUATU (2021), p. 14.

1
2 Rising sea levels also steal lands from indigenous “ni-Vanuatu” peoples, eviscerate
3 cultural resources and inundate spiritual sites. Inundation of coastal areas in
4 Vanuatu has already necessitated relocation of entire communities and threatens to
5 forcibly displace many more from their homes and ancestral lands.⁴
6

7 Climate change has also brought more intense tropical storms. The South Pacific
8 region has experienced a fourfold increase in high-intensity cyclones in recent
9 years,⁵ and Vanuatu has been ravaged by two Category 5 cyclones (the highest
10 there is) in the past eight years. These include Category 5 Cyclone Pam, one of the
11 worst and most powerful natural disasters in history, which devastated our country in
12 2015. It killed 16 people, damaged 50 to 90 per cent of our infrastructure, left
13 166,000 in need of immediate food aid and destroyed the homes of a further 75,000
14 of our people.⁶ The storm also contaminated many of our water sources and wiped
15 out the agricultural plots that our peoples depend on for food.⁷
16

17 In 2020, we were hit by another Category 5 cyclone, Cyclone Harold, causing similar
18 damage. And the attacks continue. In the first three months of 2021, we experienced
19 three Category 4 cyclones. Two Category 4 cyclones hit our country within 72 hours
20 earlier this year.
21

22 These climate disasters not only imperil the lives of our citizens, they also impede
23 sustainable development and destroy critical coastal infrastructure, costing an
24 average estimated 6 per cent of GDP per year.⁸
25

26 Ocean acidification and warming further damage ecosystems and resources of
27 immense environmental and economic value, causing rapid declines in fish stocks
28 that are a mainstay of Vanuatu’s food supply.
29

30 Scientists predict that our coral reefs will be completely eviscerated by the end of the
31 century.⁹ This collapse of coral reef ecosystems will not only eliminate our ocean
32 biodiversity altogether, but it will also create widespread food insecurity, with 66 per
33 cent of our people engaged in subsistence fishing.¹⁰
34

⁴ IPCC, Working Group II, *Chapter 29: Small Islands*, FIFTH ASSESSMENT REPORT — CLIMATE CHANGE 2014: IMPACTS, ADAPTATION AND VULNERABILITY, p. 1620; WORLD BANK, CLIMATE RISK COUNTRY PROFILE: VANUATU (2021), p. 17.

⁵ 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); Henderson-Sellers *et al.*, *Tropical Cyclones and Global Climate Change: A Post-IPCC Assessment*, 79 BULLETIN OF THE AMERICAN METEOROLOGICAL SOCIETY 19 (1998).

⁶ *Cyclone Pam*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Cyclone-Pam>; *Vanuatu: Tropical Cyclone Pam Situation Report No. 9 (as of 23 March 2015)*, RELIEFWEB (23 March 2015).

⁷ *Cyclone Pam*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Cyclone-Pam>.

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

⁹ See, e.g., Van der Zande RM *et al.*, *Paradise lost: End-of-century warming and acidification under business-as-usual emissions have severe consequences for symbiotic corals*, 26 GLOB CHANGE BIOL. (2020), pp. 2203–2219.

¹⁰ See, e.g., Van der Zande RM *et al.*, *Paradise lost: End-of-century warming and acidification under business-as-usual emissions have severe consequences for symbiotic corals*, 26 GLOB CHANGE BIOL. (2020), pp. 2203–2219.

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

4
5 Mr President, our people seek to live in harmony with nature because we understand
6 in our culture that we are part of the universe, not on top of it. We know from ancient
7 wisdom that if we respect the Earth, then the Earth will respect us. Science has long
8 confirmed these realities, and it must inform the content of international obligations.

9
10 Mr President, climate change not only threatens to destroy my country; it is coming
11 for us all. But we will not go down without fighting. We will continue to stand up
12 against the conduct that has caused climate change and is now leading us all
13 towards catastrophe.

14
15 We will keep fighting for the survival of our invaluable ecosystem and its
16 more-than-human inhabitants, and for the health, livelihoods and very survival of us,
17 as peoples.

18
19 We will not shy away from asking for the help and guidance that we and so many
20 others very much need. This is why my country recently spearheaded the adoption
21 by the United Nations General Assembly of an historic resolution requesting an
22 advisory opinion from the International Court of Justice that will clarify States'
23 obligations and responsibility for climate change. We did so in solidarity with COSIS
24 and numerous other climate-vulnerable States.

25
26 This request for an advisory opinion from the ICJ is separate from the request that
27 this Tribunal must now consider. But it is also complementary. This specialized
28 tribunal is focused on the marine environment, while the ICJ will address climate
29 change under general international law. But since ITLOS will go first, it will establish
30 the precedent that will shape what will follow.

31
32 Our respectful message to this Tribunal, and the ICJ, is that to be meaningful, the
33 advisory opinion must go beyond abstract principles. To be meaningful, it must be
34 based on the irrefutable scientific knowledge and it must provide specific content so
35 that all UNCLOS States Parties have clarity as to their precise obligations. The time
36 for vacillation has passed. We ask you respectfully to see the reality of climate
37 catastrophe and to say what needs to be said, because time is running out. We ask
38 you to give us hope and guidance, to help humankind out of the abyss.

39
40 Mr President, both the ITLOS and ICJ requests reflect our resolve to ensure
41 compliance with States' legal obligations under a range of international laws to
42 protect the rights of present and future generations.

43
44 We are confident that the international courts and tribunals established to dispense
45 global justice will not fall short of doing what is necessary, commensurate with the
46 gravity of the challenge before us.

47
48 Mr President, the need for clear advice as to the contours and substance of these
49 specific obligations has never been so urgent. More than three decades have
50 passed since the international community began discussing the process of stabilizing

1 greenhouse gas emissions to prevent climate change. More than three decades
2 have passed and yet, still today, my people are watching as their futures slip away
3 from them like grains of sand through an hourglass. This cannot continue. The fate
4 of our small island nations is in your hands.

5
6 We recognize that this is a monumental challenge and responsibility, and we
7 ardently hope that you will rise to the occasion.

8
9 Mr President, members of the Tribunal, that concludes my statement. Thank you for
10 your attention. I would ask that you please call Professor Akhavan, the
11 representative of the Commission in this proceeding, to the floor to introduce the
12 legal pleadings after the break, which I understand will start now. Thank you.

13
14 **THE PRESIDENT:** Thank you, Mr Loughman. We have now reached 11.15. At this
15 stage, the Tribunal will withdraw for a break of 30 minutes, and we will continue our
16 hearing at 11.45 when I will call on Mr Akhavan.

17
18 (Short break)

19
20 **THE PRESIDENT:** I now give the floor to Mr Akhavan to make his statement. You
21 have the floor, sir.

22
23 **MR AKHAVAN:** Mr President, distinguished members of the Tribunal, good morning.
24 I am honoured to appear before this Tribunal once again, and I am especially
25 privileged to do so in this historic proceeding, on behalf of the Commission of Small
26 Island States on Climate Change and International Law. Its nine members are, in
27 order of signature and accession, Antigua and Barbuda, Tuvalu, the Republic of
28 Palau, Niue, the Republic of Vanuatu, Saint Lucia, Saint Vincent and the
29 Grenadines, Saint Christopher and Nevis, and the Commonwealth of The Bahamas.

30
31 My task today is: first, to address the circumstances that have given rise to the
32 Commission's request for an advisory opinion; second, to identify the principal issues
33 arising from the written statements submitted to the Tribunal; and, third, to introduce
34 the pleadings of our legal team over the course of the next two days.

35
36 Mr President, the ocean is the cradle of life on Earth. Evidence demonstrates that
37 the first organic molecules emerged in the ocean some 3.5 billion years ago. It then
38 took hundreds of millions of years for enough oxygen to build up in the atmosphere
39 and ocean to support more complex and diverse forms of life. Today, the ocean,
40 which covers three quarters of the Earth's surface, remains vital to sustaining human
41 life on Earth. It is home to myriad ecosystems and it is the foundation of the global
42 climate system upon which the existence and continuation of human civilization
43 depends.

44
45 Ocean currents are a critical element of the ocean's life-sustaining function. They act
46 like a conveyor belt, carrying warm water from the tropics towards the poles and cold
47 water from the poles back to the tropics. They thus regulate the global climate
48 through a complex and delicate distribution of solar radiation across the planet. They
49 also circulate nutrients throughout the marine environment.

1 The animation shows that conveyor belt in what oceanographers call the “global
2 thermohaline circulation”, an enormous current that moves water throughout the
3 world.

4
5 The ocean is also home to a breathtaking array of biodiversity. It contains some
6 250,000 known species, and many more have yet to be discovered. The ocean, and
7 the flora and fauna within it, especially plankton, supply half of the oxygen that we
8 breathe.

9
10 These facts are a stark reminder that all humankind shares a single home; a single
11 planet that has sustained life against overwhelming odds in an inhospitable universe.
12 These facts are a stark reminder that our existence depends upon a miraculous
13 balance reflecting the inscrutable perfection of nature. Yet, now, for the first time in
14 history, this delicate balance has been imperilled by the excesses of humankind.
15 Global warming, caused by anthropogenic greenhouse gas emissions, have brought
16 us to the brink of an unprecedented catastrophe. The ocean has absorbed not just
17 one quarter of the carbon dioxide that we emit into the atmosphere, but also a
18 staggering 90 per cent of the excess heat that has been trapped in the climate
19 system since the pre-industrial era. The ocean is by far the largest carbon and heat
20 sink on Earth.

21
22 Mr President, to put matters in perspective, the ocean absorbs the energy equivalent
23 of seven Hiroshima bombs every second.¹ It has fallen victim to an alarming
24 deterioration that has only intensified in recent years. This past July was the hottest
25 month in recorded history, for both the ocean and the climate system as a whole.

26
27 This chart shows the dramatic increase in average ocean surface temperature
28 through early August of this year. Just last month we hit record temperatures in what
29 has been by far the hottest year for the ocean. And we are seeing alarming levels of
30 ocean warming worldwide. This warming results in marine heatwaves that are
31 longer, more frequent and more intense.

32
33 As seen in the map here, this is a global phenomenon and it is the cause of
34 extensive, interrelated and potentially irreversible harms. For example, this July, the
35 water temperature around The Bahamas was above 38 degrees Celsius – 38
36 degrees Celsius – for several consecutive days, up from a monthly average of
37 around 30 degrees Celsius. This has had a devastating effect on corals, bleaching
38 and killing them, on such an extensive scale that these fragile ecosystems may be
39 wiped out entirely.

40
41 Pacific islands, too, have experienced similarly catastrophic phenomena over
42 sustained periods. Palau, for example, which consists of around 340 islands along a
43 barrier reef, has experienced extensive coral bleaching and death in recent years.

44
45 The time-lapse video on the screen illustrates this process. It was taken in 2019 over
46 the course of two months in Hawaii. It is the first time that scientists have captured
47 such images of corals bleaching and dying in real time. You can see here in vivid

¹ John Abraham, “We Study Ocean Temperatures. The Earth Just Broke a Heat Increase Record”, THE GUARDIAN (11 January 2022).

1 detail the devastating effect of ocean warming on corals and the diverse ecosystems
2 that they support. The Intergovernmental Panel on Climate Change, the source of
3 the best available science, projects that, at a temperature rise of just 1.5 degrees
4 Celsius above pre-industrial levels, 70 to 90 per cent of coral reefs will disappear.²

5
6 Mr President, the bleaching and eventual death of coral reefs cause significant harm
7 to nearby islands. They result in the loss of biodiversity, the destruction of entire
8 ecosystems and the disintegration of important barriers against storm surges. But
9 marine heatwaves also jeopardize, with similar effects, other species fundamental to
10 marine ecosystems, such as kelp, seagrass and mangroves. They play an important
11 role in absorbing carbon dioxide.

12
13 The destruction of marine flora thus creates a devastating feedback loop, a vicious
14 cycle that compounds the harmful effects of global warming on the marine
15 environment.³

16
17 Marine heatwaves also generate more intense tropical cyclones with devastating
18 consequences for small island States. As Prime Minister Browne mentioned, in 2017
19 Hurricane Irma destroyed almost all infrastructure in Barbuda. It became a ghost
20 town as the entire population was forced to evacuate.⁴ It took two years for them to
21 return. Similarly, Cyclone Heta destroyed Niue's capital of Alofi in 2004, leaving
22 much of its population homeless. Elsewhere, in 2015 Cyclone Pam devastated
23 Vanuatu, leaving people without water, homes and livelihoods. The loss and damage
24 amounted to over 64 per cent of the gross domestic product.⁵

25
26 As Attorney-General Loughman noted earlier, Vanuatu was hit by yet another
27 Category 5 cyclone, Harold, in 2020. In Tuvalu as well, nearly half the
28 population — half the population — was displaced as a result of cyclones, and several
29 islets of the capital Funafuti became completely submerged.⁶

30
31 Climate scientists warn that extensive warming is pushing the ocean to tipping points
32 beyond which there may be no return: some key currents — some key ocean
33 currents — are nearing collapse. This will result in extreme weather events that are
34 even more intense. It is especially alarming that the Arctic is warming at four times
35 the world average. Irreversible melting of polar ice in the Arctic and the Antarctic,
36 together with thermal expansion of water, has caused significant sea-level rise,
37 posing existential risks to islands and coastal communities.

38
39 As Prime Minister Natano explained, for low-lying islands like Tuvalu, shown here,
40 the consequences of sea-level rise and storm surges are nothing short of
41 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, ADAPTATION AND VULNERABILITY (2022), p. 2048.

³ IPCC, Working Group I, *Chapter 5: Global Carbon and Other Biogeochemical Cycles and Feedbacks*, CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS (2021), pp. 743–46.

⁴ The Night Barbuda Died: How Hurricane Irma Created a Caribbean Ghost Town, THE GUARDIAN (20 November 2017).

⁵ Vanuatu, *Third National Communication of Vanuatu*, UNFCCC (December 2020), pp. 122, 125–127, 129.

⁶ Tuvalu, *Second National Communication of Vanuatu*, UNFCCC (December 2015), p. 3.

1 current trends continue, Tuvalu will be fully submerged by the end of the century;⁷ its
2 entire land territory will disappear under the sea.

3
4 The Intergovernmental Panel warns that the ocean may be reaching its maximum
5 capacity to absorb heat. Equally concerning, the massive amounts of carbon dioxide
6 the ocean has absorbed may soon reduce its ability to trap and store carbon. Instead
7 of being the biggest sink and reservoir, the ocean could soon become part of a
8 feedback loop that actually increases the pace of global warming.

9
10 Mr President, the significance of this advisory opinion must be appreciated against
11 this stark reality. It is no exaggeration – no exaggeration – to say that climate change
12 is an existential threat.

13
14 The UN Secretary-General has not minced his words. The “alarm bells are
15 deafening”, he has said. Global warming is “code red for humanity”; it is a “death
16 sentence” for vulnerable States.⁸ In July of this year, he warned that we have shifted
17 from global warming to “global boiling”,⁹ and just last week, following the hottest
18 summer on record, he warned that “climate breakdown has begun.”¹⁰

19
20 Yet, the Secretary-General also underscored that it is not too late for the
21 international community to change course, to act swiftly through collective concerted
22 action to mitigate greenhouse gas emissions.¹¹ He referred to the findings of the
23 Intergovernmental Panel on Climate Change, which the 196 States Parties to the
24 Paris Agreement have confirmed; that, although every increment of warming is
25 harmful, we can avoid the worst consequences if we hold the average global
26 temperature rise to within 1.5°C above pre-industrial levels. But time is running out.

27
28 In a sobering report released this past Friday, the Intergovernmental Panel’s first
29 global stocktake of States’ commitments following the Paris Agreement concluded
30 that “much more is needed now on all fronts” to achieve that 1.5°C limit.¹²

31
32 By providing authoritative guidance on the specific obligations of States under
33 UNCLOS, this Tribunal could contribute to avoiding even more catastrophic
34 consequences than that which the world has already witnessed.

35
36 I should note that the gravity of the problem is underscored by the other advisory
37 proceedings before the International Court of Justice, which has authorized the
38 Commission to submit a written statement, and the advisory proceedings in the
39 Inter-American Court of Human Rights, in which the Commission will also participate.

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.

1 As the first to be seized of such a request, however, ITLOS will speak first. Your
2 opinion will set the stage for what follows.

3
4 Mr President, these are the circumstances leading to the establishment of the
5 Commission, and to its request for this advisory opinion of unprecedented urgency
6 and importance. Small island States are facing threats to their very existence.

7
8 Moving to the questions put to the Tribunal, they are as follows:

9
10 What are the specific obligations of State Parties to UNCLOS, including under
11 Part XII (a) to prevent, reduce and control pollution of the marine environment in
12 relation to the deleterious effects that result or are likely to result from climate
13 change, including through ocean warming and sea level rise, and ocean acidification,
14 which are caused by anthropogenic greenhouse gas emissions into the atmosphere?

15
16 And (b) to protect and preserve the marine environment in relation to climate change
17 impacts, including ocean warming and sea level rise, and ocean acidification?

18
19 As the Commission will show over the course of the next two days, the answers to
20 these questions are straightforward and are to be found in UNCLOS itself.

21
22 After all, the Convention is the constitution of the ocean. In fact, the protection of the
23 marine environment was seen as an essential issue during the Third Conference on
24 the Law of the Sea, which began in 1973.

25
26 The Stockholm Declaration had been adopted a year earlier in 1972. It influenced
27 the drafters of UNCLOS, who recognized the global dimensions of environmental
28 protection and the consequent need for a comprehensive regime. In the words of the
29 preamble, ‘the problems of ocean space are closely interrelated and need to be
30 considered as a whole.’ This is reflected in the wide scope of Part XII, comprising all
31 sources of pollution and all maritime zones.

32
33 The *travaux préparatoires* indicate the drafters’ intention to adopt a “comprehensive
34 approach ... to the protection and preservation of the marine environment.”¹³
35 Moreover, from the outset, the Tribunal itself has been conscious – in the words of
36 its first President Judge Thomas Mensah – “of the special role it may be called upon
37 to play in interpreting the provisions of the Convention on the protection and
38 preservation of the marine environment.”¹⁴ ITLOS is, after all, the guardian of
39 UNCLOS, and now it is called upon to address the most significant threat that the
40 marine environment has ever faced.

41
42 Mr President, the Commission notes that thirty-four UNCLOS States Parties from
43 across the world, nine intergovernmental organizations, three UN experts and nine
44 non-governmental organizations have submitted written statements to the Tribunal.
45 Seven more States Parties will participate in this hearing, not having previously
46 submitted written statements. That is a total of 50 participants, not including the
47 non-governmental organizations.

¹³ Virginia Commentary, Article 192, p. 36.

¹⁴ T.A. Mensah, *The International Tribunal for the Law of the Sea and the Protection and Preservation of the Marine Environment*, 8 REV. EUR. COMMUNITY & INT’L ENV’T L. (1999), 1, 5.

1
2 You have now studied the written statement of COSIS. In addition to its nine
3 members, five other members of the Alliance of Small Island States – Belize, the
4 Republic of Mauritius, the Republic of Nauru, the Federated States of Micronesia
5 and the Republic of Singapore – have taken positions largely consistent with the
6 Commission.

7
8 We note, in addition, that two other members of the Alliance – Comoros and Timor
9 Leste – will also appear in this hearing.

10
11 Even beyond these small island States, which face similar circumstances, there is
12 remarkable consensus among all the written statements, to which I now turn.

13
14 To begin with, there is no question as to the advisory jurisdiction of the Tribunal
15 under article 21 of its Statute and article 138 of its Rules. Article 21 expressly
16 includes all matters specifically provided in any other agreement which confers
17 jurisdiction on the Tribunal. Its meaning is plain and clear. It is a broad, residual
18 clause, and it makes no distinction between contentious disputes and advisory
19 proceedings. The 2013 request for an advisory opinion by the Sub-Regional
20 Fisheries Commission has already confirmed the Tribunal's jurisdiction in this
21 regard.¹⁵

22
23 The Agreement establishing the Commission is plainly an international agreement
24 within the scope of article 21, duly registered with and published by the UN
25 Secretariat pursuant to article 102 of the UN Charter. Article 2, paragraph 2, of the
26 Agreement, furthermore, specifically authorizes the Commission to request advisory
27 opinions from ITLOS. The requirements of article 21 are clearly satisfied.

28
29 The request of the Commission, moreover, concerns a legal question, and one that
30 clearly falls within the Commission's mandate. Its request is thus admissible, and
31 there is no compelling reason – indeed no reason whatsoever – to decline to answer
32 the questions presented. The fact that not all States Parties participated in
33 requesting the advisory opinion is inapposite. The Tribunal is called upon to provide
34 guidance on questions of international law; not to settle a dispute.

35
36 In respect of the merits of the two questions posed by the Commission, there is
37 overwhelming consensus in the written statements on the principal issues before the
38 Tribunal.

39
40 First, the irrefutable scientific facts are not in dispute: that temperature rise must
41 remain within 1.5°C, which requires rapid and radical mitigation of greenhouse gas
42 emissions, failing which there will be catastrophic consequences. None of the written
43 statements questioned the scientific validity of the reports of the Intergovernmental
44 Panel on Climate Change, nor could they. Indeed, most of the written statements
45 relied affirmatively on the Panel's findings.

46
47 Second, there is no question as to whether atmospheric greenhouse gas emissions
48 constitute pollution of the marine environment within the meaning of article 1(1)(4) of

¹⁵ ITLOS, SRFC Advisory Opinion, § II.

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

9
10 Third, and flowing from this, there is no question that UNCLOS States Parties have
11 exacting obligations under Part XII. This includes, in particular, the obligation to
12 “protect and preserve” the marine environment under article 192, to “take ... all
13 measures ... necessary to prevent, reduce and control pollution of the marine
14 environment from any source” under article 194, paragraph 1, and to ensure, to
15 “ensure that activities under their jurisdiction or control are so conducted as not to
16 cause damage by pollution to other states and their environment” under article 194,
17 paragraph 2. The text is absolutely clear.

18
19 These are not merely obligations of conduct arising from the principle of due
20 diligence. They plainly require States to do what is necessary to ensure, to ensure
21 that no harm is done.

22
23 In the words of Professor Alan Boyle – a distinguished member of the Commission’s
24 Committee of Legal Experts – who sadly is unable to be with us here today – Part XII
25 of the Convention “requires States to take the necessary measures to protect the
26 marine environment from the harmful effects of anthropogenic climate change.”¹⁶

27
28 Fourth and finally, there is no question among the written statements that, although
29 small island States make a negligible contribution to greenhouse gas emissions, they
30 disproportionately suffer the consequences; nor is there any question that although
31 global warming is the common concern of humankind, there are common but
32 differentiated responsibilities, with the greatest burden falling on developed States to
33 take the necessary measures.

34
35 But we note that the major polluters are not limited to developed States. And given
36 how close we are to the brink of disaster, that differential burden cannot become a
37 pretext for developing States not to do their fair share to protect the marine
38 environment.

39
40 There is thus an overwhelming consensus on several fundamental issues upon
41 which the Tribunal could formulate its advisory opinion.

42
43 Nonetheless, some written statements raise an important question as to whether the
44 obligations of States Parties under UNCLOS go beyond obligations assumed under
45 the 1992 UN Framework Convention on Climate Change and the 2015 Paris
46 Agreement. We respectfully submit that the answer is obvious. UNCLOS is the
47 applicable law in relation to the marine environment, and the global climate change

¹⁶ Alan Boyle, *Protecting the Marine Environment from Climate Change: The LOSC Part XII Regime*, THE LAW OF THE SEA AND CLIMATE CHANGE: SOLUTIONS AND CONSTRAINTS (2021), p. 84.

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

4
5 Moreover, to the extent that there is a specialized regime for protection of the marine
6 environment, it is found in Part XII of UNCLOS, which sets out detailed and specific
7 obligations. There is in fact no identifiable normative conflict between competing
8 regimes. To the contrary, there is a complementary relationship between UNCLOS
9 and the global climate regime – including the implementation of the procedural and
10 reporting obligations under the Paris Agreement.

11
12 But what answers the question most clearly as to whether UNCLOS goes beyond
13 obligations under the Paris Agreement is the scientific assessment of the
14 Intergovernmental Panel on Climate Change. Namely, that with the current
15 commitments under the Paris Agreement, the world is set to reach average warming
16 of 2.8°C above pre-industrial levels by the year 2100.¹⁷ That is almost twice, twice
17 the maximum temperature rise of 1.5°C that is necessary to avert catastrophic
18 consequences. This would spell the end of many small island States. If this trajectory
19 continues, most will become uninhabitable or simply disappear. They will become a
20 sacrifice zone for the major polluters. But if this trajectory continues, it will also result
21 in mass extinction and the collapse of civilization. Ultimately, all nations, large and
22 small, will suffer the same fate because humankind shares the same planet. It is not
23 unreasonable to conclude that States must do what is necessary to avoid an
24 apocalypse. By clearly spelling out the exacting and binding obligations of States
25 Parties under the Convention, this Tribunal would contribute to our common survival.

26
27 Mr President, distinguished members of the Tribunal, in an attempt to assist you in
28 answering the momentous questions before you, the Commission will organize its
29 oral pleadings as follows.

30
31 Following my introduction, Ms Naima Te Maile Fifita will address the significance of
32 the establishment of the Commission for the peoples of small island States, and the
33 role of the global youth movement in the advisory opinion proceedings currently
34 before international courts and tribunals.

35
36 She will be followed by Professor Phoebe Okowa, who will spell out the need for a
37 science-based approach with respect to the interpretation and application of
38 UNCLOS provisions on the protection of the marine environment and the special
39 vulnerability of Small Island Developing States to climate change.

40
41 You will then hear from two eminent scientific experts, Dr Sarah Cooley and
42 Dr Shobha Maharaj, who played leading roles in the most recent assessment cycle
43 of the Intergovernmental Panel on Climate Change. They will explain the deleterious
44 effects that greenhouse gas emissions and climate change have upon the marine
45 environment, with particular reference to small island States.

17 IPCC, *Summary for Policymakers*, SIXTH ASSESSMENT SYNTHESIS REPORT (2023), p. 11.

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

4
5 To conclude the first day of the Commission's submissions, Professor Makane
6 Moïse Mbengue will address UNCLOS as the applicable law in this proceeding and
7 its complementary relationship with the global climate regime.

8
9 At the beginning of the second day, tomorrow morning, Professor Brian McGarry will
10 briefly address questions of jurisdiction and admissibility, which are largely
11 uncontested in these proceedings.

12
13 You will then hear a series of three speeches that will address the first of two
14 questions posed by the Commission.

15
16 First, Professor Jutta Brunnée will elaborate on the general scope and content of the
17 due diligence obligations under Part XII, including the exacting obligations arising
18 from an extremely high risk of catastrophic harm in the context of climate change
19 impacts.

20
21 Second, Professor Jean-Marc Thouvenin will provide a detailed analysis of
22 article 194 of the Convention, including the core obligations in paragraph 1 to take all
23 measures necessary to prevent, reduce, and control pollution of the marine
24 environment, and in paragraph 2, to prevent any harm by pollution to other States.

25
26 Third, applying the best available scientific evidence to the Part XII provisions,
27 Ms Catherine Amirfar, the Co-Representative of the Commission in these
28 proceedings, will identify the specific obligations of UNCLOS States Parties in
29 relation to greenhouse gas emissions.

30
31 You will then hear two speeches addressing the second question before you.

32
33 First, Professor Philippa Webb will analyse article 192, focusing on obligations
34 relating to the protection, preservation and mitigation of harm to the marine
35 environment.

36
37 Second, Professor Nilüfer Oral will apply the article 192 obligations to climate
38 change impacts, with a specific focus on adaptation and resilience.

39
40 She will be followed by Dr Conway Blake, who will address the duty of States Parties
41 to cooperate, which applies to the entirety of Part XII.

42
43 You will then hear from Mr Eden Charles, who will demonstrate that the request for
44 an advisory opinion before you, far from undermining ongoing diplomatic efforts
45 regarding the climate crisis, in fact complements and reinforces such efforts by
46 allowing States to negotiate a more ambitious climate regime consistent with both
47 UNCLOS and the Paris Agreement.

1 Then, in a penultimate speech, Mr Zachary Phillips will address the requirement
2 under the Convention to support educational programmes about climate change and
3 the fundamental role that equity must play in responding to the climate crisis.

4
5 Last, but certainly not least, Mr Vaughan Lowe KC will offer concluding remarks on
6 the position of the Commission.

7
8 Mr President, distinguished members of the Tribunal, one can scarcely imagine an
9 advisory opinion of greater importance. As the International Court of Justice has
10 observed, “the environment is not an abstraction but represents the living space, the
11 quality of life and the very health of human beings, including generations unborn.”¹⁸

12
13 As climate change accelerates, and its consequences become increasingly obvious,
14 all of us assembled in this courtroom today must ask, how will this proceeding be
15 viewed by future generations? Will our children and grandchildren and those after
16 them look back at a robust and courageous opinion that said what needs to be said?
17 Will States Parties take seriously their legal obligations to ensure our common
18 survival? Whatever the legacy of this proceeding in the years to come, one thing is
19 clear: either a unified humankind does what is necessary now to address climate
20 change, or it will be forced to do so after unimaginable catastrophes leave no other
21 choice.

22
23 Mr President, that concludes the Commission’s introductory remarks. I thank you for
24 your patience and ask that you now call Ms Naima Te Maile Fifita to the podium.

25
26 **THE PRESIDENT:** Thank you, Mr Akhavan.

27
28 I now give the floor to Ms Naima Te Maile Fifita to make a statement. You have the
29 floor, Madam.

30
31 **MS FIFITA:** Mr President, distinguished members of the Tribunal, it is a great
32 privilege and honour to appear before you as counsel to COSIS, as an indigenous
33 Tuvaluan, as a youth and as a mother to a daughter of the Pacific who opened her
34 eyes to this world just a year ago.

35
36 As I address this distinguished Tribunal at this historic proceeding, my fears are for
37 the kind of world she will inherit when the land of her ancestors is taken by the rising
38 sea.

39
40 Mr President, my brief presentation reflects on the significance of this proceeding for
41 the peoples of Small Island Developing States, or SIDS. First, I will address what an
42 advisory opinion from this Tribunal would mean for the protection and survival of
43 present and future generations living in the shadow of catastrophic climate change;
44 and second, I will address the grassroots leadership of youth in calling for climate
45 justice before international courts and tribunals. After all, it is future generations that
46 will have to live with the consequences of choices that are made today; and it is

¹⁸ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 ICJ Rep 226 (“*Nuclear Weapons Advisory Opinion*”), para. 29.

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

3
4 We offer this context to explain to this distinguished Tribunal just how important this
5 proceeding is for small island peoples, especially their youth, who have made an
6 insignificant contribution to greenhouse gas emissions, but who must now, in the
7 prime of their lives, suffer the worst of its impacts. The world can witness this
8 unfolding tragedy in real time as our home – and those of our ancestors and our
9 children – is enveloped by the ocean.

10
11 For us, international law, and in particular the obligations of States to protect and
12 preserve the marine environment, is not an abstraction. Our survival depends upon
13 it.

14
15 Mr President, as the Honourable Prime Ministers of Antigua and Barbuda and Tuvalu
16 stated at the outset of this hearing, COSIS was established at COP26 because the
17 time is long overdue to address climate change in terms of immediate and binding
18 obligations. For highly vulnerable small island States, the concept of time has a
19 completely different meaning. It spells doom and the end of their existence.

20
21 Our generation has watched as empty promises and inaction have slowly but surely
22 destroyed our future, and now we witness an extraordinary acceleration of that
23 process. It is for this purpose that small island States have joined forces to create an
24 unprecedented inter-governmental organization, dedicated to the clarification of
25 State obligations under international law, dedicated to climate justice, dedicated to
26 the survival of our peoples. This Commission does not seek to create new law on
27 climate change; rather, it seeks to elucidate existing obligations of States relating to
28 the protection and preservation of the marine environment.

29
30 The Commission is now at the forefront of international legal action on climate
31 change. In addition to initiating these proceedings before ITLOS, the Commission
32 has been authorized to participate in the pending ICJ advisory proceedings on the
33 obligations of States with respect to climate change, with COSIS Member States,
34 such as Vanuatu, having played a leadership role in the adoption of the General
35 Assembly resolution requesting the opinion. COSIS will also participate in the
36 advisory proceedings requested by Chile and Colombia before the Inter-American
37 Court of Human Rights. It is a source of pride that the smallest of nations on Earth
38 have exercised such global leadership in bringing international law to life before
39 international courts and tribunals, with a view to placing existing binding obligations
40 at the centre of deliberations on climate action.

41
42 Mr President, I emphasize existing obligations because it cannot be that international
43 law as it exists today has nothing to say on the most pressing challenge of our times.
44 It cannot be that island peoples must simply accept that their homelands will be
45 uninhabitable because of the failures of others to take seriously their legal
46 obligations. We have the right, and indeed the responsibility, to invoke fundamental
47 legal principles to demand that major polluters change course, to put an end to the
48 harm that is now threatening our very existence. And, as people of the ocean, who
49 have navigated its vast expanse and lived off its bountiful resources since time

1 immemorial, we see particular significance in the obligations of State Parties to the
2 1982 UN Convention on the Law of the Sea.

3
4 An advisory opinion by this Tribunal – an authoritative clarification of the specific and
5 immediate obligations to protect and preserve the marine environment under
6 Part XII, an opinion based on irrefutable scientific knowledge – would have
7 far-reaching consequences in guiding the conduct of UNCLOS States Parties in the
8 coming years as the grim consequences of inaction on the face of climate change
9 becomes increasingly apparent.

10
11 Surely, the cumulative jurisprudence of international courts and tribunals cannot
12 simply be disregarded by the international community as it deliberates on the
13 collective action that is necessary to avert unimaginable disasters.

14
15 Mr President, over 20 years ago in 2001, the Intergovernmental Panel on Climate
16 Change, or IPCC, explained how “the countries with the fewest resources are likely
17 to bear the greatest burden of climate change in terms of loss of life and relative
18 effect on investment and economy.”¹

19
20 It was a prediction that is now manifest. It is now apparent that, if unchecked, climate
21 change will particularly devastate two groups: the poorest of the poor and those
22 living in island States.² These groups are “set to suffer first and worst”³ despite their
23 negligible contributions to the climate crisis. Climate vulnerability – or “susceptibility
24 to damage – is fundamentally shaped not only by physical exposure to
25 environmental harms, but by pre-existing power dynamics as well as social political
26 and economic realities.”⁴ Therein lies the moral crux intrinsic to the climate issue:
27 climate change presents not only an environmental crisis but a crisis of inequity on
28 multiple levels. The effects are, and will continue to be, unevenly suffered.

29
30 Mr President, for many small island communities and low-lying atoll nations like
31 Tuvalu, where most islands sit barely three metres above sea level, rising tides
32 threaten to make the lands completely uninhabitable – gone with the tide. Crops
33 cannot grow in saltwater. In this context, the failure to comply with obligations to
34 protect and preserve the marine environment is, quite simply, a death sentence for
35 entire peoples and their way of life.

36
37 In some Pacific cultures, the word for placenta, island and soil are the same: fenua.
38 All of these terms represent home and connection. The island and the islander are
39 one and the same. The relationship between the two is a deeply spiritual and
40 reciprocal bond reliant on the other’s existence, a bond that shapes every aspect of
41 a Pacific person’s individual and collective identity. Likewise, land and culture are
42 inextricably linked. Thus, forced migration to a foreign land represents a “threat to

¹ POVERTY AND CLIMATE CHANGE: REDUCING VULNERABILITY OF THE POOR THROUGH ADAPTATION, AFRICAN DEVELOPMENT BANK (2003), p. 10.

² *Climate Change and the Poor: Adapt or Die*, ECONOMIST: INT’L (Sept. 11, 2008), <https://www.economist.com/international/2008/09/11/adapt-or-die>.

³ Maxine Burkett, *Climate Reparations*, 10 MELBOURNE J. INT’L LAW. 1 (2009).

⁴ Autumn Bordner, *Climate Migration & Self-Determination*, 51 COLUM. HUM. RTS. L. REV. 183 (2019), p. 186.

1 the continued identity and culture of a people”,⁵ essentially a form of extinction.
2 Though standing optimistic and resilient, a solemn question lingers for those facing
3 potential climate induced statelessness and upheaval: what will become of us absent
4 our island home?

5
6 In the face of existential threat to small island States, the Commission urges this
7 Tribunal to clarify for UNCLOS States Parties their immediate obligations to protect
8 the marine environment based on scientific knowledge. Such clarification would give
9 these populations affirmation of their inherent right to security, peace and a
10 sustainable livelihood.

11
12 COSIS seeks to harness the potentialities of international law, to create greater
13 awareness, to mobilize more vigorous action before it is too late. In this respect,
14 Small Island Developing States have established themselves as climate leaders,
15 both to mitigate greenhouse gas emissions and to adapt to the adverse effects of
16 climate change.

17
18 Unfortunately, such leadership is unmatched by developed nations and the major
19 polluters,⁶ but climate change is universal. Ultimately, no nation will be spared its
20 catastrophic consequences. That is why the guidance provided by this Tribunal will
21 be of benefit to all mankind. Aggravated nature has no consideration for the artificial
22 boundaries that we have created. The international community should heed the cry
23 of small island States because it is in essence an appeal to the common interest of
24 all peoples inhabiting a single planet with a common destiny.

25
26 Mr President, across the globe young people are intensely aware of the myriad
27 challenges resulting from climate change and how they relate to the well-being of
28 their communities. They are receptive to new ways of organizing society, eager to
29 learn through frontline action, and prepared to steel themselves to noble causes that
30 put the needs of human beings and the environment above those of narrow
31 economic conceptions.⁷ They appreciate how inextricably interconnected the world is
32 and are sensitive to the ripple effect of positive change and just solutions. They have
33 already devoted their energies to reimagining what climate action looks like.

34
35 In fact, they have played an important role in making possible the engagement of
36 international courts and tribunals that has brought us here today.

37
38 COSIS enjoys the support of youth among the small island nations because it is an
39 expression of their aspiration for a future free from the catastrophic effects of climate
40 change. A world in which the rule of international law ensures that justice prevails.
41 Like the ITLOS proceedings, the ICJ advisory opinion too has been inspired by

⁵ Tony Weir *et al.*, *Social and Cultural Issues Raised by Climate Change in Pacific Island Countries: An Overview*, 17 REGIONAL ENV'T. CHANGE 1017 (2017), p. 1024.

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).

1 youth. In 2021, a group of Pacific law students from Vanuatu, along with other youth
2 groups operating at the grass roots, spearheaded a campaign to request an advisory
3 opinion from the ICJ on the issue of climate change and human rights.⁸ Against what
4 many consider to be overwhelming odds and after no more than a year of global
5 consultations, the United Nations General Assembly adopted the resolution by
6 consensus in March of this year.⁹

7
8 It is befitting that youth have been at the forefront of these initiatives because it is
9 their lives and their future that are at stake. They look to international courts and
10 tribunals, and to this Tribunal in particular, which will be the first to render an
11 advisory opinion. They look to you for hope and justice, in the belief that the
12 international legal order has a vital role to play in ensuring the survival of the most
13 disadvantaged and vulnerable.

14
15 As youth, we stand in a unique generational position wherein we are both attuned to
16 the sense of impending loss weighted on the shoulders of our elders, and the bleak
17 possibility future generations might face in losing their country. Our dedication,
18 commitment and effort towards climate justice are in both the name of our ancestors
19 and generations yet unborn.

20
21 It is we who will inherit the decisions made by those before us. Therefore,
22 international law must evince an intergenerational perspective in which the security
23 of future inhabitants is taken into account at all levels of decision-making. We have a
24 duty, both moral and legal, towards others yet to come.

25
26 Mr President, States have fundamental and binding obligations under UNCLOS to
27 protect and preserve the marine environment, and compliance with those obligations
28 is imperative for future generations. There is a clear call for clarification of the law to
29 sustain the balance and mutual relationship upon which our existence largely
30 depends, one that is held sacred by many in the Pacific. By providing concrete and
31 specific guidance to States Parties – guidance rooted in science – this Tribunal can
32 be an instrumental part of the change in consciousness that is required for
33 humankind to steer the course away from self-destruction to harmony with nature. A
34 harmony that our ancestors understood so well but that the present generation
35 seems to have forgotten.

36
37 I am here before you today, Mr President, because of an exchange I had with my
38 grandfather at 12 years of age. I had asked him how he felt about the idea that
39 Tuvalu, his homeland, could soon disappear due to sea level rise. After a moments
40 reflection he responded, “It will never be gone.” Only five years later, however, he
41 relayed to me with great sadness that one of the islands in Tuvalu where he spent
42 many of his childhood years had completely disappeared under the sea. Climate
43 change is already wreaking havoc on our precious ancestral lands.

44
45 Mr President, to ensure that my grandfather’s declaration holds true, to ensure that
46 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 Change: What Happens Now?*, CLIMATE LAW: A SABIN CENTER BLOG (Mar. 29, 2023).

1 still be able to take my daughter to the island in Tuvalu after which he named me: Te
2 Maile.

3

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

10

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

13

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

15

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

19

20

(Lunch adjournment)