



**EXPERT'S
REPORT**

**INTERNATIONAL
TRIBUNAL FOR THE
LAW OF THE SEA**

CHURKIN MOSCOW
INTERNATIONAL
MODEL UNITED NATIONS



The background of the page is white with several decorative purple elements. There are large, irregular purple shapes in the top-left and top-right corners. Scattered throughout the page are various sizes of solid purple circles. The text is centered in the middle of the page.

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

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INTRODUCTION

Climate change is creating legal challenges unlike anything seen before. For Small Island States (SIS), the threat is severe. Rising sea levels, acidifying oceans, and other results of climate change are putting their survival at risk. Facing an existential crisis, these nations are calling on the international community to work out clearer obligations. The Commission of Small Island States on Climate Change and International Law (COSIS), formed in October 2021, submitted a request for an advisory opinion (the “Request”) to the International Tribunal for the Law of the Sea (ITLOS) in December 2022¹. The Commission insisted on clarifying the international obligations under frameworks like the United Nations Convention on the Law of the Sea (UNCLOS).

COSIS made the Request, citing Article 21 of the Tribunal's Statute² and Article 138 of its Rules³. The Request focuses on the duties of States under UNCLOS that mostly concern preventing and controlling pollution from greenhouse gas emissions. Even though SIS contribute very little to global emissions, they suffer the brunt of the damage.

COSIS raises a fundamental issue: the world's duty to protect the marine environment while ensuring fair support for vulnerable nations. The Request urges ITLOS to explain the responsibilities of States under Part XII of UNCLOS, which deals with the warming of oceans,

¹Request for an Advisory Opinion submitted by COSIS. // URL: https://www.itlos.org/fileadmin/itlos/documents/cases/31/Request_or_Advisory_Opinion_COSIS_12.12.22.pdf.

²Statute of the International Tribunal for the Law of the Sea. // URL: https://www.itlos.org/fileadmin/itlos/documents/basic_texts/statute_en.pdf.

³Rules of the International Tribunal for the Law of the Sea. // URL: https://www.itlos.org/fileadmin/itlos/documents/basic_texts/Itlos_8_E_17_03_09.pdf.

sea-level rise, and acidification—all of which directly impact SIS.

UNCLOS, often called the "constitution of the oceans," provides a strong framework for managing maritime law. Its provisions call on States to "protect and preserve" the marine environment, while also obligating them to control pollution from any source. Yet, as climate change gets into full swing, UNCLOS is likely going to have to address the new normal.

The Agreement for the Establishment of COSIS (the "Edinburgh Agreement") underscores the need for stronger legal mechanisms to address the impact of climate change on SIS. The Edinburgh Agreement's preamble highlights the urgency of marine protection and calls for climate justice⁴. The "no harm" rule—stating that no state should use its resources to harm others—is especially relevant for SIS in the face of cross-border environmental damage.

While the international community has long recognized the vulnerability of SIS, existing frameworks have not been sufficient to meet the challenges these islands face. Though a significant step in global climate policy, the Paris Agreement does not impose binding obligations to protect SIS from irreversible damage caused by climate change. COSIS aims to bridge this gap by asking ITLOS to clarify whether UNCLOS obliges States to prevent and mitigate climate-related harm to marine ecosystems.

In seeking this opinion, COSIS hopes to strengthen the international legal framework for climate protection. This is to ensure that SIS receive the protection they deserve under UNCLOS and other frameworks. The Tribunal's advisory opinion could play a key role in shaping future climate-related litigation and advancing the enforcement of environmental laws worldwide.

⁴Agreement for the Establishment of COSIS (Oct 31, 2021). // URL: <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/56940/Part/I-56940-08000002805c2ace.pdf>.

CHAPTER 1. LEGAL FRAMEWORK GOVERNING CLIMATE CHANGE AND SMALL ISLAND STATES

The United Nations Convention on the Law of the Sea (UNCLOS), often described as the "constitution of the oceans," lays out a comprehensive framework for maritime governance. It establishes the rights and obligations of States concerning the management of ocean resources, territorial waters, and Exclusive Economic Zones (EEZs). For SIS, UNCLOS is a critical legal instrument, given their reliance on maritime resources and the existential threats posed by rising sea levels and other climate-induced environmental changes.

Small Island States rely heavily on their maritime zones-territorial waters and EEZs-for economic survival, access to marine resources, and national sovereignty. UNCLOS defines these zones based on the baseline of a state's coastal territory. Articles 3 and 57 of UNCLOS provide that States have sovereignty over their territorial waters (up to 12 nautical miles from the baseline) and exclusive rights to exploit resources within their EEZs (up to 200 nautical miles from the baseline).

As sea levels rise, the baselines used to determine maritime zones may shift, potentially reducing the territorial and economic jurisdiction of these States. This leads to a fundamental legal question: should maritime boundaries remain static or be adjusted as land territory erodes due to climate change? Currently, UNCLOS lacks explicit provisions addressing these changes.

Key Articles of UNCLOS to Consider⁵:

- **Article 3:** Defines the breadth of territorial seas.

⁵United Nations Convention on the Law of the Sea (1982). // URL: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

- **Article 57:** Establishes the EEZ and exclusive rights of coastal States.
- **Article 192:** Obligates States to "protect and preserve the marine environment."
- **Article 194:** Mandates States to prevent, reduce, and control pollution of the marine environment from any source.

Legal scholars have proposed that the principle of *uti possidetis juris*—where States retain their territorial boundaries despite changes in geographical circumstances—may be applied to maintain the maritime zones of SIS, even as their coastlines shrink. Alternatively, UNCLOS could be interpreted in a way that acknowledges the disproportionate impact of climate change on SIS and maintains their rights despite territorial losses.

UNCLOS also contains several provisions that relate directly to the protection of the marine environment. Article 192, for instance, imposes a general obligation on States to protect and preserve the marine environment, while Article 194 requires States to take measures to prevent, reduce, and control pollution from any source, including land-based activities contributing to ocean pollution and acidification.

The obligations under Article 194 are crucial in the context of climate change. The pollution resulting from anthropogenic greenhouse gas emissions has led to warming oceans and acidification, which severely affects marine ecosystems. For SIS, whose economies and food security depend on healthy marine environments, this presents an existential threat. Therefore, they may argue that States emitting significant amounts of greenhouse gases are in violation of UNCLOS's provisions requiring the protection of the marine environment.

Relevant Legal Questions:

- Are States, by failing to reduce their greenhouse gas emissions, violating their obligations under UNCLOS to protect the marine environment?
- Does the "no harm" principle apply to climate-induced harm to the marine environments of Small Island States?
- How does intergenerational equity—the responsibility to protect the environment for future generations—factor into the obligations of States under UNCLOS?

While UNCLOS provides a foundation for addressing the impacts of climate change on marine environments, the Paris Agreement plays a pivotal role in setting global targets for reducing greenhouse gas emissions and promoting climate resilience. The Paris Agreement under the United Nations Framework Convention on Climate Change (the "Paris Agreement"), adopted in 2015, establishes a global framework to combat climate change by limiting global temperature rise to well below 2°C (3.6°F) above pre-industrial levels and pursuing efforts to limit it to 1.5°C (2.7°F)⁶.

A critical element of the Paris Agreement is the principle of *common but differentiated responsibilities* (CBDR), which recognizes that while all States must act to mitigate climate change, developed nations—responsible for the bulk of historical emission—bear greater obligations to reduce their emissions and support vulnerable States in adaptation efforts.

For SIS, this principle is essential. These States contribute minimally to global emissions, yet they are among the most vulnerable to the impacts of climate change. Under the Paris Agreement, developed nations are expected to provide financial and technical support

⁶Paris Agreement under the United Nations Framework Convention on Climate Change (2015). https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

to assist vulnerable States in building climate resilience. Articles 9 and 11 of the Agreement focus on climate finance, specifically mandating that developed countries provide financial resources to help developing countries, including SIS, mitigate climate change and adapt to its impacts.

However, while the Paris Agreement encourages climate action, its non-binding nature creates challenges in ensuring compliance. The obligations for developed nations to provide "climate finance" and support are not enforceable through legal mechanisms.

Key Provisions of the Paris Agreement to Explore:

- Article 2: Sets the global temperature goal described above.
- Article 9: Obligates developed nations to provide financial support to help developing nations with climate mitigation and adaptation.
- Article 11: Calls for capacity-building initiatives to support developing countries in managing climate impacts.

The Paris Agreement also emphasizes the need for adaptation, particularly for States like SIS that are already facing severe impacts from climate change. Article 7 of the Agreement outlines a global goal on adaptation, which aims to enhance adaptive capacity, strengthen resilience, and reduce vulnerability to climate change.

For SIS, adaptation measures are crucial for their survival. These may include constructing sea walls, restoring mangroves, or relocating vulnerable populations. However, the lack of binding commitments in the Paris Agreement on both emissions reductions and financial support leaves these States without the necessary resources to fully implement adaptation strategies.

Moreover, the Paris Agreement's reliance on Nationally Determined Contributions (NDCs)—voluntary commitments by States to reduce emissions—means that there is no uniform or enforceable standard for ensuring that global emissions are sufficiently reduced to prevent catastrophic climate impacts. For SIS, whose futures depend on the global community's ability to limit temperature rise, this represents a significant gap in the current legal framework.

Legal and Practical Challenges:

- Can the principle of CBDR be enforced to ensure that developed nations fulfill their financial commitments to SIS?
- What are the legal implications of failing to meet the Paris Agreement's goals, particularly for vulnerable States like SIS?
- How can the adaptation needs of SIS be met within the current framework of international climate law?
- By addressing these challenges, the international community can close many gaps in maritime regulation.

CHAPTER 2. CLIMATE CHANGE AS A THREAT TO THE SOVEREIGNTY AND RIGHTS OF SMALL ISLAND STATES

Climate change is not just an environmental issue for Small Island States; it is a direct challenge to their sovereignty, territorial integrity, and human rights. These nations, with their relatively small land areas and high vulnerability to rising sea levels, face existential threats as their coastlines are eroded and their maritime boundaries called into question.

For most nations, the borders are established and maintained with a certain level of permanence. However, for SIS, whose territory is defined by their proximity to the sea, rising sea levels pose an unprecedented challenge. As the waterline creeps inland, SIS risk losing not only physical territory but also the sovereign rights that come with it, including control over their Exclusive Economic Zones (EEZs). The importance of these zones cannot be overstated, as they provide crucial access to marine resources, fishing grounds, and undersea oil and gas deposits. These resources are vital to the economies of SIS, many of which rely heavily on fishing, tourism, and the sustainable management of their surrounding waters.

The concept of sovereignty traditionally assumes that a state's territory is relatively stable. However, for Small Island States, rising sea levels are literally reshaping their landmass. This raises the question of how international law will address the shifting of maritime boundaries. As mentioned previously, EEZs are measured from a country's coastal baseline under UNCLOS provisions. But if the coastline changes, should the EEZ change as well? Currently, international law does not provide a clear answer. While there have been discussions about

freezing maritime boundaries to ensure that SIS do not lose their territorial rights as their coastlines shrink, no binding legal mechanism has been put in place to guarantee this protection.

It is worth looking into the case of Kiribati, an island nation in the Pacific. It has been projected that much of its territory could become uninhabitable by the end of the century. As the country's land erodes, its sovereignty is threatened, and with it, its EEZ, which is vital for both food security and economic stability. Without clear international agreements to safeguard these zones, Kiribati and other SIS could lose not only land but also control over the vast ocean resources they currently rely on.

The economic consequences of losing land to the sea are far-reaching. Beyond the immediate loss of habitable land, which could lead to forced migration, SIS could also lose access to critical natural resources. EEZs, which extend 200 nautical miles from the baseline, contain valuable resources that contribute significantly to the economies of many island nations. Fisheries, in particular, are essential for both local consumption and export. Moreover, EEZs also allow for exploration and extraction of underwater resources, including oil and natural gas. Without legal protection for their EEZs, SIS could see their economic foundations crumble.

In the case of the Maldives, rising sea levels threaten to submerge parts of the country, leading to potential displacement of communities. This would not only create a humanitarian crisis but also lead to the loss of tourism revenues, which make up a substantial portion of the nation's GDP. As such, the rising seas threaten both the land and the economies of these nations, pushing them toward a precarious future.

Beyond the loss of territory and economic challenges, climate change presents a serious human rights issue for Small Island States. The loss of land is not just a threat

to national borders—it is a threat to the very existence of entire cultures, communities, and ways of life. The right to life, the right to a healthy environment, and the right to self-determination are all threatened by the consequences of climate change.

At its core, the right to life is enshrined in numerous international human rights instruments, including the Universal Declaration of Human Rights (UDHR). For SIS, climate change has become a direct threat to this fundamental right. Rising sea levels lead to increased flooding, more frequent and intense storms, and the contamination of freshwater sources. These environmental changes have tangible impacts on human health and well-being. For example, saltwater intrusion into freshwater aquifers, a result of rising sea levels, has already begun to make drinking water scarce in some island nations, posing a severe health risk to their populations.

The right to a healthy environment, though not universally codified in binding international law, is increasingly recognized as essential to the enjoyment of all other human rights. For SIS, climate change has led to the degradation of both terrestrial and marine environments, endangering the ecosystems that sustain their communities. Coral reefs, which protect many island coasts from storm surges and provide food, are dying off due to rising ocean temperatures and acidification. As the reefs disappear, so too does the natural barrier that protects island populations from the full force of storms and rising waters. This environmental degradation severely limits the ability of SIS to enjoy their right to a healthy environment, further exacerbating the human costs of climate change.

Moreover, the forced relocation of island populations, often referred to as climate refugees, presents another human rights dilemma. International law currently provides little protection for individuals displaced

by climate change, as they do not fall under the traditional definition of refugees as outlined in the 1951 Refugee Convention⁷. This legal gap leaves many island populations in a vulnerable position, with no clear legal framework to protect their rights if they are forced to flee their homes due to rising seas.

Finally, it is important to consider the concept of intergenerational equity in the context of climate change and human rights. Intergenerational equity is the idea that current generations have a responsibility to protect the environment for future generations. For Small Island States, this principle takes on particular urgency. The actions (or inactions) of States, particularly those of high-emitting countries, will determine whether future generations of islanders will be able to continue living in their homelands or whether they will be forced to abandon their cultures and way of life. This raises profound moral and legal questions about the responsibilities of the international community to protect not only the rights of present-day islanders but also the rights of future generations.

The threat climate change poses to Small Island States is unlike any challenge the international community has faced. These nations are grappling with the potential loss of their territory and fundamental human rights as rising sea levels and environmental degradation reshape their realities. The international legal framework has yet to fully address these challenges, leaving SIS in a vulnerable position. Moving forward, the global community must engage with these complex issues to develop legal mechanisms that protect the rights and sovereignty of SIS.

⁷The Refugee Convention (1951). // URL: https://www.unhcr.org/sites/default/files/legacy_pdf/4ca34be29.pdf.

CHAPTER 3. INTERNATIONAL LEGAL OBLIGATIONS OF STATES CONTRIBUTING TO CLIMATE CHANGE

As the effects of climate change become more severe, the question of responsibility for these impacts has gained prominence in international law. States that contribute significantly to global greenhouse gas emissions face increasing scrutiny over their legal obligations, particularly in relation to the damage caused to vulnerable nations such as Small Island States (SIS). In this chapter, we will explore the principle of no harm in international law, examining its relevance to climate change, and delve into the potential state responsibility for the damages caused by these emissions, with a focus on legal precedents and frameworks.

The principle of no harm is a well-established norm in international law that holds that states must ensure that their activities do not cause harm to the territory or interests of other states. This principle is particularly relevant in the context of transboundary environmental harm, such as pollution or the emission of greenhouse gases that contribute to global climate change.

The no harm principle has long been recognized in international treaties, customary international law, and legal rulings. For instance, the 1992 Rio Declaration on Environment and Development explicitly states in Principle 2 that nations have "the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction."⁸ This language provides a solid foundation for applying the no

⁸Rio Declaration on Environment and Development (1992). // URL: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

harm principle to climate change, where the actions of major emitters directly affect the livelihoods, environments, and economies of vulnerable nations, particularly SIS.

In the context of climate change, the no harm principle can be interpreted to mean that states have a duty to reduce their greenhouse gas emissions and mitigate climate impacts that transcend borders. For SIS, the most pressing climate impacts—rising sea levels, ocean acidification, and extreme weather events—are largely caused by emissions from industrialized nations. Applying the no harm principle to climate change would hold these emitting states accountable for the transboundary harm their actions cause, even if the emissions occur within their own borders.

While no international court has yet issued a binding ruling that specifically applies the no harm principle to climate change, several cases offer useful precedents. For example, the Trail Smelter Arbitration (United States v. Canada, 1938-1941) involved transboundary air pollution from a smelter in Canada that caused damage to crops in the United States. The arbitral tribunal ruled that "no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another." This ruling reflects the broader application of the no harm principle and could be extended to climate-related emissions that cause harm to other states.

Furthermore, the International Court of Justice (ICJ) has recognized the no harm principle in its decisions, including the Nuclear Weapons Advisory Opinion (1996)⁹ and the Pulp Mills Case (Argentina v. Uruguay, 2010)¹⁰.

⁹ICJ. Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion, July 1996). // URL: <https://www.icj-cij.org/sites/default/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>.

¹⁰ICJ. Argentina v. Uruguay (2010). // URL: <https://www.icj-cij.org/sites/default/files/case-related/135/135-20100420-JUD-01-00-EN.pdf>.

In these cases, the ICJ reaffirmed that states are obligated to prevent transboundary environmental harm, a principle that could be increasingly relevant as the effects of climate change become more apparent.

However, the challenge lies in adapting this principle to global climate change, where the damage is diffuse, cumulative, and caused by the collective actions of many states. As such, while the no harm principle provides a useful framework for addressing state responsibility in the context of climate change, enforcing this principle in practice will require innovative legal solutions and potentially new international agreements.

Beyond the no harm principle, the concept of state responsibility in international law addresses the liability of states for internationally wrongful acts. In the context of climate change, this raises questions about whether states that contribute significantly to greenhouse gas emissions can be held liable for the harm caused to other nations, particularly vulnerable ones like SIS.

Under the Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), developed by the International Law Commission (ILC), a state is responsible for an internationally wrongful act if the act constitutes a breach of an international obligation and is attributable to the state¹¹. In the context of climate change, one could argue that failure to reduce emissions or mitigate the effects of climate change constitutes a breach of states' international obligations, particularly under agreements like the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.

However, the ARSIWA framework poses challenges for attributing specific harm from climate change to individual states. Climate change is a global

¹¹Draft articles on Responsibility of States for Internationally Wrongful Acts. // URL: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

phenomenon, and the damage is often caused by the cumulative actions of multiple states over an extended period of time. This complicates the process of establishing causality and attributing responsibility to particular states. Nevertheless, there is growing legal scholarship and activism focused on holding states accountable for their contributions to climate change, particularly when it comes to damages inflicted on vulnerable states like SIS.

The question of compensation for climate-related harm is central to discussions on state responsibility. According to ARSIWA, if a state is found to have breached an international obligation, it must make full reparation for the injury caused. This includes restitution, compensation, and satisfaction. In the case of climate change, compensation could take the form of financial reparations for the loss of land, livelihoods, and ecosystems in SIS.

In practice, this has been a contentious issue in international climate negotiations, particularly under the framework of loss and damage. The Warsaw International Mechanism for Loss and Damage was established under the UNFCCC in 2013 to address the adverse effects of climate change on vulnerable countries, including SIS. However, the mechanism remains limited in scope and lacks binding provisions for compensation, leaving SIS without adequate legal remedies for the harm they are experiencing.

Several SIS, alongside other vulnerable countries, have been advocating for stronger legal frameworks to hold high-emitting countries accountable for climate-related harm. They argue that the responsibility to provide compensation for loss and damage should be an integral part of global climate agreements. This remains a controversial issue, with many developed countries resisting the idea of compensation, fearing that it could lead to unlimited financial liability.

While climate litigation is still an evolving field, several cases have pushed the boundaries of state responsibility for climate-related harm. For example, in the Urgenda case (Netherlands, 2015), the Dutch government was found to have violated its duty of care by failing to take sufficient action to reduce greenhouse gas emissions, thus putting the population at risk¹². This case, while focused on domestic emissions, sets an important precedent for the role of courts in holding governments accountable for their contributions to climate change.

The principle of no harm and the concept of state responsibility provide important legal tools for addressing the damage caused by climate change, but there is still a long way to go in developing binding international mechanisms to hold states accountable for their contributions to this global crisis. Small Island States, which are among the most vulnerable to climate change, continue to push for stronger legal protections and compensation mechanisms under international law.

¹²Urgenda Foundation v State of the Netherlands (2019). // URL: <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:HR:2019:2007>.

CHAPTER 4. POTENTIAL RECOMMENDATIONS FOR ITLOS

The advisory opinion from the International Tribunal for the Law of the Sea on the legal obligations of states regarding climate change and its effects on Small Island States could have far-reaching implications for international law. By clarifying and potentially strengthening legal protections for SIS, ITLOS can provide a much-needed framework to help these vulnerable nations mitigate and adapt to the dire consequences of climate change. We will explore the ways in which ITLOS could strengthen international legal protections for SIS, as well as clarify state responsibilities for mitigation and adaptation under existing international instruments.

Small Island States are particularly vulnerable to the impacts of climate change, including rising sea levels, ocean acidification, and more frequent extreme weather events. These phenomena not only threaten their ecosystems but also jeopardize their territorial integrity and sovereignty. While UNCLOS provides a framework for maritime governance, it does not directly address the unique challenges posed by climate change for these nations. The ITLOS advisory opinion has the potential to introduce stronger legal protections for SIS through several key recommendations:

One potential recommendation ITLOS could make is the formal recognition of SIS as a category requiring special legal protections under UNCLOS. Given the existential threats they face, this recognition could ensure that their maritime rights, including control over their Exclusive Economic Zones, remain intact even as rising sea levels erode their landmasses. This could involve "freezing" the baselines used to determine maritime boundaries, preventing SIS from losing their EEZs as their coastlines recede.

By granting SIS special status under UNCLOS, ITLOS could also pave the way for international cooperation on matters of resource allocation and territorial sovereignty. Such recognition would reaffirm the international community's commitment to protecting the rights of these vulnerable nations, particularly in maintaining their access to vital marine resources.

Another way ITLOS could strengthen legal protections for SIS is by recommending the creation of new international mechanisms for compensation. This would address the issue of loss and damage, which has become a focal point in international climate negotiations. Loss and damage refer to the harms that are caused by climate change but are not adequately addressed by mitigation or adaptation efforts.

Currently, no binding international mechanisms exist to compensate countries for the losses they incur due to climate-related events, such as the destruction of infrastructure, displacement of populations, or loss of biodiversity. ITLOS could recommend the establishment of a fund or a formal legal process for states contributing significantly to climate change to compensate SIS for the damages caused by rising sea levels and other climate-induced events. This could be tied to the polluter pays principle, which holds that those responsible for pollution should bear the costs of managing its effects.

Such a recommendation would likely build on existing frameworks, such as the Warsaw International Mechanism for Loss and Damage under the UN Framework Convention on Climate Change (UNFCCC). However, unlike the Warsaw Mechanism, which focuses on technical support and risk management, a new compensation mechanism could be legally binding, ensuring that high-emitting nations are held accountable for their contributions to climate-related harm.

In addition to strengthening legal protections for SIS, the ITLOS advisory opinion could clarify the specific

responsibilities of states regarding climate change mitigation and adaptation. The Paris Agreement and other international treaties provide general guidelines on reducing emissions and supporting vulnerable nations, but the lack of specific legal obligations has made it difficult to hold states accountable. An advisory opinion from ITLOS could provide much-needed clarification on the following issues:

One of the most important contributions ITLOS could make is to clarify the responsibilities of developed states in supporting climate adaptation efforts in SIS. The Paris Agreement emphasizes the need for financial and technical support for adaptation, particularly for developing nations and small island states. However, these obligations are largely non-binding and have been implemented inconsistently.

ITLOS could assert that under existing international law, states have a clear responsibility to provide support for adaptation measures in SIS, such as the construction of sea walls, relocation of communities, and restoration of ecosystems. This could be framed as an extension of the no harm principle, as failing to assist SIS in adapting to climate change may result in further harm, exacerbating the effects of rising seas and extreme weather events.

While the Paris Agreement sets a target of limiting global temperature rise, it does not impose binding emission reduction targets on individual states. This has led to a situation in which high-emitting nations are not legally obligated to take aggressive action to reduce their greenhouse gas emissions, despite the disproportionate impact these emissions have on vulnerable countries like SIS.

ITLOS could help clarify state responsibilities by affirming that under international law, states have an obligation to reduce their greenhouse gas emissions to prevent further harm to the marine environment and

the sovereignty of SIS. This could be seen as a fulfillment of their duty under UNCLOS to "protect and preserve the marine environment" (Article 192). Additionally, ITLOS could build on existing case law, such as the *Urgenda* case in the Netherlands, to assert that states have a legal duty of care to prevent foreseeable harm caused by their emissions.

Such an opinion would likely emphasize the principle of common but differentiated responsibilities (CBDR), which acknowledges that developed nations with higher historical emissions bear a greater responsibility for addressing climate change. ITLOS could also highlight the importance of intergenerational equity, asserting that states have a duty to protect the rights of future generations by reducing emissions and preventing further environmental degradation.

There is great uncertainty as to when the aviation sector will recover from the effects of the current global supply chain disruption crisis. The constructed trends based on the current conditions and context allow us to present four alternative options for the future of civil aviation. However, none of the scenarios are designed to be absolutely realistic, but they serve as a means to explore options and ideas.

CONCLUSION

In this report, we have delved into several pressing legal issues concerning the vulnerability of Small Island States in the face of climate change. First and foremost, the existential threats posed by rising sea levels, ocean acidification, and extreme weather events are uniquely severe for SIS, endangering their territorial sovereignty and economic survival. These states depend heavily on their territorial waters and Exclusive Economic Zones for resources and income, and the potential loss of these zones due to climate-induced coastal erosion represents a serious legal and economic challenge.

We have also explored the responsibility of states whose actions contribute significantly to greenhouse gas emissions. The principle of no harm under international law obligates states to ensure that their activities do not cause environmental damage to other nations, particularly in cases where that harm crosses borders. Furthermore, the concept of state responsibility for climate-related harm provides a basis for holding high-emitting countries accountable for the disproportionate effects their emissions have on vulnerable nations like SIS. Current international legal frameworks, including the United Nations Convention on the Law of the Sea and the Paris Agreement, offer some guidance but remain insufficiently robust to address the unique challenges faced by SIS. This highlights the urgent need for strengthened legal protections and new mechanisms to ensure that the rights and interests of SIS are adequately safeguarded.

The advisory opinion from the International Tribunal for the Law of the Sea has the potential to significantly influence the future development of international law, particularly as it relates to climate change and the protection of vulnerable states like SIS. By clarifying the legal obligations of states under UNCLOS and other

international agreements, ITLOS could set a powerful precedent for how international law addresses climate-related harm and state responsibilities.

A key impact of the advisory opinion could be the formal recognition of the special status of SIS under international law, reinforcing their rights to retain sovereignty over their maritime zones, even as their coastlines recede. Additionally, the opinion could pave the way for the creation of new international mechanisms to compensate SIS for loss and damage caused by climate change, addressing the long-standing gap in international law on this issue.

Furthermore, the advisory opinion could clarify the specific responsibilities of high-emitting states to mitigate their emissions and provide financial and technical support to help SIS adapt to the impacts of climate change. This could lead to a more equitable distribution of the burdens of climate action, consistent with the principle of common but differentiated responsibilities (CBDR) under the Paris Agreement.

In conclusion, the ITLOS advisory opinion could play a pivotal role in safeguarding the rights and sovereignty of SIS, while also contributing to the broader fight against climate change by clarifying the legal responsibilities of states in reducing emissions and supporting climate adaptation efforts globally.

GLOSSARY

1. **United Nations Convention on the Law of the Sea (UNCLOS)**

An international treaty governing maritime rights and responsibilities, covering territorial waters, Exclusive Economic Zones (EEZs), and marine environmental protection.

2. **Principle of No Harm**

A legal principle requiring states to ensure their activities do not cause environmental harm to other states or beyond their borders.

3. **Common but Differentiated Responsibilities (CBDR)**

A principle in international law recognizing that all states must address climate change, but developed nations have a greater responsibility due to their historical emissions.

4. **Loss and Damage**

A concept addressing compensation for harm caused by climate change that cannot be mitigated or adapted to, especially relevant for SIS affected by rising sea levels and extreme weather.

5. **Intergenerational Equity**

A principle that stresses the responsibility of the current generation to protect the environment for future generations.