

INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)



Written Statement of the Alliance of Small
Island States

22 March 2024

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I. INTRODUCTION

1. Pursuant to the Order of the President of the Court of 20 April 2023, and Letter No. 160918, dated 15 December 2023, the Alliance of Small Island States hereby submits its Written Statement on the request for an advisory opinion contained in UN General Assembly Resolution 77/276, adopted by consensus on 29 March 2023.
2. The Written Statement is organised as follows: first, it provides background on the Alliance of Small Islands States (**AOSIS**) and its ability to furnish information on the question before the Court; second, it addresses matters relating to the jurisdiction of the Court to render the requested advisory opinion and the admissibility of the request in the formulation endorsed by consensus by all States of the General Assembly; and finally, it concludes.
3. Overall, AOSIS respectfully submits that the Court's answers to the question put to it should consider equity in interpreting international law in the context of climate change, and the relative contributions and historical responsibilities of states in this context and their relative abilities to effectively confront the climate crisis.

II. ABILITY OF THE ALLIANCE OF SMALL ISLAND STATES TO FURNISH INFORMATION

4. AOSIS consists of 39 small island and low-lying developing States that are members of the United Nations or its specialized agencies. Since 1990, it has represented the interests of these States in international negotiations on climate change, sustainable development and Ocean governance. In its representative capacity, AOSIS plays a fundamental role in the formation and development of international law through streamlining the collective interests of a diverse group of small island and low-lying developing States, and conveying their common priorities and agenda to the international community. It is governed by the biennial meeting of the Heads of State and Government of its Member States, and on an ongoing basis by the AOSIS Plenary body, consisting of all Permanent Representatives to the United Nations from Member States.
5. AOSIS has made significant achievements in the negotiation of global environmental law agreements. It was instrumental in the negotiation of the United Nations Framework Convention on Climate Change and its subsequent agreements. It was also centrally

involved in the negotiation of the new Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction. AOSIS also engages extensively in the work of the International Law Commission on sea-level rise, both collectively and in providing support to our members in their individual capacity. Similarly, it is substantially engaged in similar issues at the Sixth Committee of the United Nations General Assembly. Finally, at the United Nations Environment Assembly, AOSIS was a key proponent of Resolution 5/14 to begin negotiation on a new international legally binding instrument on plastic pollution, including in the marine environment, and AOSIS has continued to negotiate collectively at the resulting Intergovernmental Negotiating Committee.

6. In this regard, AOSIS encourages the Court to consider the statements that AOSIS has made collectively in the Sixth Committee on issues related to climate change and international law, particularly in relation to statehood and sovereignty, the duty of cooperation and the equitable interpretation of international environmental agreements, which it has annexed to this submission.

III. JURISDICTION AND ADMISSIBILITY OF THE REQUEST

7. AOSIS makes the following submissions:
 - a. the Court has the authority to render the advisory opinion requested;
 - b. there are no compelling reasons for the Court to not render the advisory opinion;
and
 - c. the question put to the Court is clear and was unanimously agreed by the UN General Assembly.

A. The Court has jurisdiction to render the requested advisory opinion

8. The Court's authority to render an advisory opinion on the request of the UN General Assembly is contained in Article 96(1) of the Charter of the United Nations and Chapter IV of the Statute of the International Court of Justice, particularly Article 65(1).

9. That the General Assembly requested this advisory opinion of the Court via a resolution in accordance with the General Assembly's rules of procedure is evidence of the validity of the adoption of the resolution by the General Assembly and goes towards meeting the requirements of Article 96(1) of the Charter of the United Nations for requesting an advisory opinion from the Court. The General Assembly and its Committees regularly address different matters relating to international law and climate change, including in its annual resolution on the "Protection of the global climate for present and future generations", the latest of which is resolution 78/153 adopted by consensus on 19 December 2023, and in the discussions of the Sixth Committee on the work of the International Law Commission's Study Group on sea-level rise in relation to international law.

10. The question asked by the General Assembly of the Court is clearly a legal question, with multiple inter-related parts that comprise a unitary whole. The question refers to the legal obligations of states in relation to climate change and the legal consequences that result from the breach of legal obligations. That the UN General Assembly adopted the resolution requesting the advisory opinion by consensus with the co-sponsorship of more than 130 States,¹ strongly suggests that all Member States themselves consider that the question is a legal question which the Court can address under its advisory jurisdiction.

¹ Co-sponsors: Afghanistan, Algeria, Andorra, Angola, Antigua and Barbuda, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Barbados, Belgium, Belize, Bolivia (Plurinational State of), Bosnia and Herzegovina, Botswana, Bulgaria, Burundi, Cabo Verde, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czechia, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guinea-Bissau, Guyana, Haiti, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kiribati, Kyrgyzstan, Latvia, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, Niger, North Macedonia, Norway, Palau, Panama, Papua New Guinea, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Tajikistan, Thailand, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Vanuatu, Viet Nam and State of Palestine.

B. There are no compelling reasons for the Court to exercise discretion not to render the requested advisory opinion

11. The Court has never refused to render an advisory opinion requested by the UN General Assembly. The Court’s reply to a request for an opinion “represents its participation in the activities of the UN and, in principle, should not be refused”.²
12. This is not a case in which the Court should exercise its discretion for the first time to decline a request from the General Assembly. As stated above, the relevant resolution was agreed by consensus, after considerable discussion amongst states, and with more than 130 co-sponsors representing every UN regional grouping.
13. The Court is not being asked to render an opinion on any disputed question of fact, even in relation to the science of climate change. There is clear scientific consensus on the facts of climate change as reflected in the Intergovernmental Panel on Climate Change’s (IPCC) reports. We also note the IPCC reports’ Summaries for Policymakers, which are approved by the member States of the IPCC.
14. We note that there are pending advisory opinions before the International Tribunal for the Law of the Sea (ITLOS)³ and the Inter-American Court of Human Rights (IACtHR).⁴ However, there are multiple reasons to consider the request of the General Assembly not duplicative of the other advisory opinions: (i) the subject-matter and questions asked of the relevant court or tribunal through these other initiatives are much narrower and more specific; (ii) the States or entities seeking advisory opinions from ITLOS and IACtHR are also party to the present request for an advisory opinion from

² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 136, para. 44;

³ *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)*, pending, available at: <https://www.itlos.org/en/main/cases/list-of-cases/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/>

⁴ *Solicitud de Opinión Consultiva presentada por Colombia y Chile ante la Corte Interamericana de Derechos Humanos*, 9 de enero de 2023, pending, available at: https://www.corteidh.or.cr/observaciones_oc_new.cfm?nId_oc=2634

the Court and therefore consider those proceedings to be distinct from this proceeding; (iii) only the Court has the general competence to provide the type of advice needed by the UN General Assembly, as made clear by the broad scope of the question posed; and (iv) the General Assembly itself did not consider the request duplicative when adopting the resolution by consensus.

C. The formulation of the question is clear and endorsed by consensus by all members of the UN General Assembly

15. Again, we recall the nature of the UN General Assembly resolution requesting the advisory opinion, the large and representative number of co-sponsors and that it was adopted by consensus. This suggests in principle that the States who adopted the resolution recognized that the question can be clearly answered “based on law”,⁵ and do not prejudge the legal issues to be addressed by the Court. The question posed reflects exactly what the General Assembly requires the Court to clarify.

IV. CONCLUSION

16. On the basis of the foregoing considerations, the Alliance of Small Island States respectfully submits that the Court use its discretion to render the advisory opinion requested by the UN General Assembly in Resolution 77/276.

22 March 2024

FOR THE ALLIANCE OF SMALL ISLAND STATES (AOSIS)

H.E. Ms Francella Strickland,
Ambassador Extraordinary and Plenipotentiary of Samoa to the Kingdom of Belgium ,

⁵ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 18, para. 15*

LIST OF ANNEXES

Annex 1: Statement by Belize on behalf of the Alliance of Small Island States (AOSIS) on Sixth Committee Agenda Item 80: Report of the International Law Commission on the work of its seventy-second session (27 October 2020)

Annex 2: Statement by Antigua & Barbuda on behalf of the Alliance of Small Island States (AOSIS) under Agenda Item 82 – Report of the International Law Commission on the work of its seventy-second session (28 October 2021)

Annex 3: Statement by Antigua and Barbuda on behalf of the Alliance of Small Island States (AOSIS) under Agenda Item 80 – Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm (19 October 2022)

Annex 4: Statement by Antigua and Barbuda on behalf of the Alliance of Small Island States (AOSIS) under Agenda Item 77 – Report of the International Law Commission on the work of its seventy-third session (1 November 2022)

Annex 5: Statement by Samoa on behalf of the Alliance of Small Island States (AOSIS) under Agenda Item 79 – Report of the International Law Commission on the work of its seventy-third and seventy-fourth sessions (27 October 2023)

Annex 6: Statement by Samoa on behalf of the Alliance of Small Island States (AOSIS) at the Informal Plenary Meeting of the General Assembly on Existential Threats of Sea-level Rise Amidst the Climate Crisis (3 November 2023)