International Tribunal for Law of the Sea Recognizes States Must Prevent Greenhouse Gas Pollution but Falls Short on Requiring Sufficient Action to Protect Oceans

Hamburg, Germany—The International Tribunal for the Law of the Sea (ITLOS) today issued an Advisory Opinion on climate change that affirms States’ obligations to prevent, reduce, and control greenhouse gas pollution but fails to require sufficient action to protect the world’s oceans. The opinion recognizes that the current level of greenhouse gas pollution has caused “substantial damages and increasingly irreversible losses” to “ocean ecosystems” and underscores that countries must take “all necessary measures” to prevent greenhouse gas emissions based on best available science, but fails to indicate what those measures are. While the opinion advises states to “take into account” the Paris Agreement goal of limiting global temperatures to 1.5°C above pre-industrial levels, it emphasizes the Agreement as not sufficient to protect the marine environment. Ultimately, the opinion leaves it to States to determine what measures are “necessary”.

The opinion underscores that UNCLOS imposes a separate “legal obligation to take all necessary measures to prevent, reduce, and control marine pollution from anthropogenic greenhouse gas emissions, including measures to reduce such emissions. If a State fails to comply with this obligation, international responsibility would be engaged for that State.”

The Tribunal found that States have the specific obligation to take “all measures necessary” to ensure that anthropogenic greenhouse gas emissions under their jurisdiction or control do not cause damage by pollution to other States and their environment. These obligations are of due diligence, and the standard is stringent. The Tribunal repeatedly emphasized that States must take a
precautionary approach in regulating marine pollution—that is, preventing harm even when there is scientific uncertainty about the level of harm that could result from the pollution.

Our Children’s Trust Deputy Director of Global Climate Litigation, Kelly Matheson, was present in Hamburg for the reading of the opinion. “Today’s opinion represents the first time an international court has issued an advisory opinion on the climate crisis,” Matheson said. “The unequivocal recognition that greenhouse gas emissions are a pollutant and a core driver of damage to our ocean and marine environments confirms countries can be held to account for their emissions. The next step is for courts worldwide to clarify that ‘all necessary measures’ means States must return atmospheric CO₂ to 350 ppm rather than strive for the political target of 1.5°C, and phase out fossil fuels in the next two decades. To do otherwise threatens all rights but especially the rights of our youngest generations.”

Ashfaq Khalfan, Climate Justice Director at Oxfam America, said, “Today’s opinion rejects the view expressed by some governments that the Paris Agreement is the only treaty that matters on climate. It also goes further than the Paris Agreement, specifying that countries have a due diligence obligation to take all necessary measures they can to prevent greenhouse gas emissions because they pollute the oceans on which we, and all living things on the planet depend upon. Although it does not set a sufficiently strong standard, it represents progress that national and international courts can and must build upon.”

**Background:**

The request for the Advisory Opinion on countries’ obligations was brought by the Commission of Small Island States on Climate Change and International Law (COSIS) in December 2022. COSIS member countries are: Antigua, Barbuda, Tuvalu, Vanuatu, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Saint Lucia, Niue, Palau, and the Bahamas—all countries that contributed very little to the climate crisis yet endure some of the most devastating consequences stemming from climate pollution. COSIS asked the Tribunal to clarify whether greenhouse gas emissions qualify as marine pollution under the UN Convention on the Law of the Sea (UNCLOS), and if so, what actions countries should take to address the climate crisis and protect the marine environment from ocean warming, sea level rise, and ocean acidification.

Our Children’s Trust and Oxfam submitted an *Amicus Curiae* or “friend of the Court” brief on behalf of 24 American and Canadian children and youth in June 2023. The submission explains that the Paris Agreement 1.5°C temperature target does not protect oceans, as the Intergovernmental Panel on Climate Change (IPCC) has confirmed. Instead of focusing on temperature targets, Our Children’s Trust and Oxfam argued, the Tribunal should obligate States to use best available science and what
is necessary to stabilize the Earth’s current energy imbalance. This imbalance is driven by elevated atmospheric concentrations of greenhouse gases—mainly carbon dioxide measured in parts per million or ppm. The best available science today shows that we need to reduce atmospheric carbon dioxide to less than 350 ppm this century to drastically reduce the amount of greenhouse gas pollution absorbed by our oceans, cool them, correct the Earth’s energy imbalance, and make the climate safe. There remains a narrow window of opportunity to do this and protect and preserve the ocean and marine environments—by rapidly phasing out fossil fuels by 2035, and 2050 at the latest, with lower-income countries being provided the necessary financial resources to fund a fast and just transition.

Two other major international courts—the Inter-American Court of Human Rights and International Court of Justice—are in the process of developing advisory opinions on the climate crisis, due to be released late this year and next year respectively. They represent important additional opportunities to clarify the obligations governments have to take sufficient climate action to protect people and planet.

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**Our Children’s Trust** was founded in 2010 on the idea that courts are vital to democracy and empowered to protect our children and the planet. Without a stable climate system, every natural resource we rely upon to exercise our basic human rights—life, liberty, home, happiness—is under threat. Our work will be achieved when there is universal recognition of children’s climate rights by courts around the world and children’s fundamental rights to life on this planet are protected. [ourchildrenstrust.org](http://ourchildrenstrust.org)

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