

COMMENTS AND LETTERS



Happy New Year

Challenging world polluters

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Recently, a number of Pacific island states took the bold step to commit world polluters to the climate change process. The Commission of Small Island States on Climate Change and International Law (COSIS), represented by Antigua and Barbuda and Tuvalu, submitted a request for an advisory opinion to the International Tribunal on the Law of the Sea concerning climate change obligations under international law.

This initiative has long been in the pipeline. In 2011, Palau and the Marshall Islands had called on the General Assembly to seek an advisory opinion from the ICJ. Last year, Vanuatu made fresh calls for this to take place in the same forum. So, this comes as no surprise and it was not a question of how but when. It is regarded as a natural step by low-lying island states in the Pacific.

These states are facing the full impact of climate change. As Tuvalu's Prime Minister Kausea Natano stressed during

the signing of the accord establishing COSIS last year, "We see better than anyone else what is being done to our beautiful planet". Sea level rise is submerging their land and living conditions continue to deteriorate rapidly forcing inhabitants to leave their ancestral land.

Their aquifers are being intruded by seawater thereby contaminating drinking water; storm intensity flooding is on the increase, agricultural land is being submerged and the weakening of natural defences is destroying homes. As land becomes gradually uninhabitable, climate change threatens the very existence of the nation and the state.

These states argue that, while their responsibility towards greenhouse gas emissions is negligible, estimated to be around 0.03 per cent of global emissions, they are carrying the burden of the catastrophic effects of climate change. It is for this reason that COSIS has been specifically set up, namely to seek advisory opinions on the legal responsibility of states concerning sea level rise, carbon emissions and marine pollution.

Indeed, under the Law of the Sea Convention states are obliged to "protect and preserve the marine environment". They are to take all measures necessary "to prevent, reduce and control pollution of the marine environment from any source". Additionally, states are also

required to take "all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other states and their environment".

Consequently, environmental degradation has an impact not only on the climate but on the oceans. The oceans have an important role in regulating the climate. Some of the carbon dioxide is absorbed by the oceans. Had it not been so, carbon dioxide levels in the atmosphere would be higher.

However, this process adversely affects the marine environment in the form of ocean acidification, ocean deoxygenation and changing ocean circulations, just to mention a few examples. This will, in turn, displace marine species and impacts the health of ecosystems such as coral reefs. This in conjunction with the overall consequences brought about by global warming such as sea level rise.



Oceans have an important role in regulating climate

Indeed, recently it has been recognised that "climate action is ocean action".

The advisory opinion sought by COSIS relates to the legal responsibility of states for marine pollution and raises major issues in tackling matters related to the consequences of climate change. This initiative, if the advisory jurisdiction hurdle is overcome, may potentially be groundbreaking in terms of international climate litigation. This is achieved as long as it is deemed that questions posed are in relation to international law matters, particularly on the interpretation of the Law of the Sea Convention.

Requests for advisory opinions are not uncommon in international law. Their purpose is not to resolve disputes but they contribute to clarify international law and strengthen peace between states.

All state parties, like Malta, to the UNCLOS have been notified of this development and will have the opportunity to submit their views on this matter. The COSIS initiative may shortly be complemented by the Vanuatu initiative if the UN General Assembly members support a resolution which concerns the obligations of states in respect of climate change and the protection of vulnerable people.

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