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FOREWORD

Message from COSIS Co-Chairs

In the second year since its establishment, the Commission of Small Island States on Climate Change and International Law (COSIS) has achieved what few could have imagined when the Agreement to establish this novel inter-governmental organisation was first signed at COP26 on October 31st, 2021. From that humble beginning in Edinburgh, and amidst scepticism about the success of this unprecedented initiative for Small Island Developing States (SIDS) to join forces in pursuit of climate justice, the nine members of COSIS — from the Caribbean and Pacific — have now made history by initiating and litigating the first ever inter-state advisory proceeding on climate change and international law.

At the historic hearing before the International Tribunal for the Law of the Sea (ITLOS) September 11th to 25th in Hamburg, and with the participation of some 50 UN Convention on the Law of the Sea (UNCLOS) States Parties and inter-governmental organisations, COSIS led the way by opening the case with two days of truly exceptional pleadings, combining the reality of the unfolding catastrophe for SIDS as they face existential threats to their survival, with irrefutable scientific evidence and compelling legal argument from distinguished legal scholars from around the world.

The degree of consensus around central issues, namely that greenhouse gas emissions constitute pollution under UNCLOS, thus triggering the exacting obligations to protect the marine environment under Part XII of the Convention, has set the stage for what COSIS hopes will be a robust opinion, anticipated to be delivered in early 2024. This comes in tandem with the parallel proceedings before the International Court of Justice (ICJ), following the historic initiative of Vanuatu for the adoption by consensus of a resolution by the General Assembly to request an advisory opinion from the principal judicial organ of the UN in The Hague. Those proceedings will open the way, beyond the law of the sea, to consider the obligation of States in respect of climate change under general international law.
The leadership of COSIS is an exercise in planetary politics, for the threats that we face today will be the fate of all humankind tomorrow, if the international community — and the major polluters in particular — fail to change course. The smallest of nations have risen to the greatest of challenges, and COSIS moves forward in its third year with ever greater confidence and determination to achieve climate justice for those most vulnerable, whose people have already suffered enough from the catastrophic effects of global warming.

The Co-Chairs of COSIS

_________________________
Hon. Gaston Alfonso Browne
Prime Minister of Antigua and Barbuda

_________________________
Hon. Kausea Natano
Prime Minister of Tuvalu

Prime Minister Browne and Prime Minister Natano establishing COSIS
in Edinburgh, 31 October 2021
COSIS’ Vision

To take collective action to protect and preserve the climate system, including the marine environment, through the promotion, progressive development, and implementation of rules and principles of international law concerning climate change.
The scientific consensus is clear. Extensive warming caused by anthropogenic emissions is pushing our stable climate and oceans to dangerous tipping points. Despite their negligible contributions to these emissions, SIDS are at the forefront of the climate crisis and withstanding some of its worst consequences — including the total loss of territory.

Facing this existential threat, as well as inertia on the international stage, the Prime Ministers of Antigua and Barbuda and Tuvalu signed the Agreement for the Establishment of COSIS on the eve of COP26 in October 2021. Since then, seven more States have acceded to the Agreement.

The Republic of Palau, Niue, the Republic of Vanuatu, Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, and The Bahamas have joined COSIS during 2021-23. Membership is open to any State in the Alliance of Small Island States (AOSIS).

It has been a transformative year in which COSIS has stood before ITLOS in Hamburg to make its case for the obligations of States to prevent, reduce and control marine pollution and to protect and preserve the marine environment from the deleterious effects of climate change.

"We, along with other small island States, are on the frontlines of the battle against climate change, exhausted and without reinforcements... We must unite and join forces to defend our very survival and existence. Remaining silent is not an option”.

- Hon. Kausea Natano, Prime Minister of Tuvalu
“THE WORLD IS IN THE MIDDLE OF AN UNPRECEDENTED REVOLUTION... AND THAT REVOLUTION IS AMONG THE GRASSROOTS, IT’S FROM THE BOTTOM UP ... THOSE WHO HAVE TRADITIONALLY BEEN ON THE MARGINS OF POWER ARE RISING UP, THEY’RE UNITING, AND THEY’RE MAKING THEIR VOICES HEARD.”

- PAYAM AKHAVAN, CHAIR OF THE COMMITTEE OF LEGAL EXPERTS AND LEAD COUNSEL

Mandate

According to Article 1(3) of the Agreement establishing COSIS:

“The mandate of the Commission shall be to promote and contribute to the definition, implementation, and progressive development of rules and principles of international law concerning climate change, including, but not limited to, the obligations of States relating to the protection and preservation of the marine environment and their responsibility for injuries arising from internationally wrongful acts in respect of the breach of such obligations.”
MEMBERSHIP AND ORGANISATION

The Co-Chairs have appointed committees to advise them on the exercise of the Commission’s mandate and conduct of its activities.

<table>
<thead>
<tr>
<th>Committee of Legal Experts</th>
<th>Committee on Strategy, Management, and Outreach</th>
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<tr>
<td>Payam Akhavan*</td>
<td>Co-chairs</td>
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<td>14 legal experts</td>
<td>David Freestone*</td>
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<td>Alan Boyle</td>
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<td>Jutta Brunée</td>
<td>Shaista Shameem</td>
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<td>Vaughan Lowe</td>
<td>Margaretha Wewerinke-Singh</td>
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*—chair

Subcomm. on the Marine Environment

| Jean Marc Thouvenin* |
| Alan Boyle |
| Jutta Brunée |
| Vaughan Lowe |

Subcomm. on Loss and Damages

| Margaretha Wewerinke-Singh* |
| Makane Moïse Mbengue |

Subcomm. on Sea-Level Rise

| Nilüfer Oral* |
| Catherine Amirfar |
| Eden Charles |
| David Freestone |

Subcomm. on Human Rights

| Shaista Shameem* |
| Payam Akhavan |
| Phoebe Okowa |
| Philippa Webb |

Subcomm. on Litigation Management

| Catherine Amirfar* |
| Makane Moïse Mbengue |
| Phoebe Okowa |
| Philippa Webb |
| Margaretha Wewerinke-Singh |

Committee on Strategy, Management, and Outreach

| Co-chairs |
| David Freestone* |
| Eden Charles |
| Nilüfer Oral |
| Shaista Shameem |
| Margaretha Wewerinke-Singh |

Fae Sapsford (Assistant to the Chair)

The Committee of Legal Experts (CoLE) comprises 14 legal scholars and practitioners. Collectively, they bring decades of expertise on the law of the sea and international environmental law.

The Committee is gender balanced with representatives from climate-affected States on six continents.

Drafting Working Group

| Jessica Holy Hébert |
| Rozemarijn Roland Holst |
| Brian K. McGarry |
| Jack McNally |
| Zachary Phillips |
| Duncan Pickard |
| Charlotte Ruzzica de La Chaussée |
| Naima Te Maile |
| Romain Zamour |

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Meetings of COSIS and CoLE

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<th>Event Description</th>
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<td>11/7/22</td>
<td>COSIS held a meeting at COP27 to confirm its plan of action and next steps.</td>
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<td>12/13/22</td>
<td>COSIS held a scoping meeting.</td>
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<td>1/17/23</td>
<td>CoLE held a meeting and discussed the following:</td>
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<td></td>
<td>• A draft working group was set up to work on the written statement.</td>
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<td></td>
<td>• Committee on Strategy, Management and Outreach gave a report on increasing</td>
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<td>membership and media work.</td>
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<tr>
<td>5/22/23</td>
<td>The draft working group of COSIS met to finalise the Commission’s written</td>
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<td>statement for submission to ITLOS.</td>
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<tr>
<td>7/22/23</td>
<td>COSIS held a meeting in The Hague to prepare for the ITLOS Advisory Proceedings.</td>
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<tr>
<td>8/16/23</td>
<td>CoLE met to discuss the planning and drafting of speeches for the ITLOS Advisory</td>
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<td>Proceedings.</td>
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**Significant Growth in Membership**

In the past year, the membership of COSIS significantly expanded, welcoming five new States. This brings total membership to nine States in less than two years.

Membership is open to any State in the Alliance of Small Island States (AOSIS).

- **OCT. 31ST 2021**: Antigua and Barbuda and Tuvalu conclude the Agreement
- **NOV. 4TH 2021**: Palau becomes the third member of COSIS
- **SEPT. 13TH 2022**: Niue becomes the fourth member of COSIS
- **DEC. 2ND 2022**: Vanuatu becomes the fifth member of COSIS
- **DEC. 7TH 2022**: Saint Lucia becomes the sixth member of COSIS
- **JUN. 9TH 2023**: Saint Vincent and the Grenadines becomes the seventh member of COSIS
- **JUN. 13TH 2023**: Saint Kitts and Nevis becomes the eighth member of COSIS
- **JUN. 15TH 2023**: The Bahamas becomes the ninth member of COSIS
In its historic request for an advisory opinion submitted to ITLOS on December 12th 2022, COSIS asked the Tribunal to answer two questions:

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

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

The breadth and depth of diversity, representation, and expertise in public international law of the Commission’s advocates before ITLOS was without precedent in an international judicial proceeding. COSIS’ twenty speakers included the Prime Ministers of Antigua and Barbuda and Tuvalu, and the Attorney General of Vanuatu; two members of the International Law Commission; six members of the Institut de Droit International; the Immediate Past President of the American Society of International Law; and two leading scientists who authored the most recent assessment report of the Intergovernmental Panel on Climate Change (IPCC). All told, the COSIS team of 20 included nine women; fourteen persons of colour; and eight people from Small Island States.
ITLOS Advisory Opinion Milestones

12/12/22
COSIS submits a request for an advisory opinion on climate change and the marine environment. [Available here](#)

5/22/23
The committee of legal experts meets to finalise the commission’s written statement for submission to ITLOS.

6/16/23
COSIS submits its written statement for the ITLOS advisory opinion. [Available here](#)

7/22/23
COSIS committee holds a meeting in The Hague to prepare for the ITLOS advisory opinion hearing.

9/11/23 - 9/25/23
Hearings in Hamburg for COSIS advisory opinion. COSIS, 34 states and 4 intergovernmental organisations presented at the hearings. More than 50 states and international organisations participated in the written and oral pleadings.
Submissions in the ITLOS Advisory Proceedings

COSIS’ submissions focused on the profound impacts that climate change has on the ocean. Climate change is, after all, primarily a marine phenomenon. The ocean — which is by far the largest carbon and heat sink on earth — has absorbed not just one-quarter of the carbon dioxide that we emit into the atmosphere but also a staggering 90 percent of the excess heat that has been trapped in the climate system since the pre-industrial era. In 2022, the ocean absorbed the energy equivalent of seven Hiroshima bombs every second.

COSIS submitted evidence on the devastating harm caused by the ocean’s absorption of excess heat and carbon dioxide, especially on Small Island Developing States. Prime Ministers Browne and Natano and Attorney General Loughman described rising sea levels and tropical cyclones that threaten habitability of coastal communities and, in at least the case of Tuvalu, risk completely submerging islands’ land territory. They and the IPCC experts presented evidence on the devastation of marine ecosystems, especially coral reefs, caused by ocean warming and acidification and the corresponding impacts on island societies that depend on those ecosystems. Beyond islands, excess warming threatens to change global ocean currents with unpredictable consequences for weather patterns around the world.

COSIS then turned to States Parties’ specific obligations under UNCLOS to prevent, reduce, and control pollution of the marine environment by greenhouse gas emissions, and to protect and preserve the marine environment from climate change and its effects. COSIS tied its submissions to the Convention’s commitment to science in giving content to its specific obligations. Specifically, COSIS showed that the best available science — reflected in the reports of the IPCC and repeatedly confirmed by the parties to the Paris Agreement — demonstrates that avoiding the worst consequences of climate change on the marine environment requires limiting average global temperature rise to no more than 1.5ºC above pre-industrial levels.
Thus, the Commission demonstrated that States Parties must, individually or jointly as appropriate, take all measures necessary to prevent, reduce, and control pollution of the marine environment from greenhouse gas emissions, using the best practicable means at their disposal and in accordance with their capabilities. States Parties must do so on the basis of the best available scientific and international standards, which require, at a minimum, taking all measures objectively necessary to (1) limit average global temperature rise to no more than 1.5°C above pre-industrial levels, without overshoot, and taking into account any current emission gaps; and (2) reach global peaking of greenhouse gas emissions as soon as possible and undertake rapid reductions thereafter in accordance with the best available science.

The Commission also argued that, pursuant to their broad obligation to protect and preserve the marine environment, States Parties must promote measures to adapt to climate change and its effects at the same time that they pursue mitigation of greenhouse gas emissions. This is necessary to ensure that marine habitats build resilience to the effects of ocean warming and acidification now and in the future.

Finally, COSIS underscored the importance of cooperation among States Parties in fulfilling their obligations under UNCLOS with respect to climate change. This includes working together to solve the global problem of greenhouse gas emissions, with the largest burden falling on high-emitting States; promoting adaptation in developing States, including small islands, that are suffering worst and first from climate change despite having contributed negligibly to historic greenhouse gas emissions; and promoting research and education around climate change and its impacts.
Hon. Gaston Browne, Prime Minister of Antigua and Barbuda, Co-Chair of COSIS

“It is no exaggeration to speak of existential threats, when some of these nations may vanish in the foreseeable future because of rising sea-levels. The scientific evidence leaves no doubt that this situation has arisen because of the failure of major polluters to effectively mitigate greenhouse gas emissions. This inaction, this failure of political will, has brought humankind to a perilous juncture with catastrophic consequences. It is because of this reality that COSIS has brought this vital matter before you.”

Hon. Kausea Natano, Prime Minister of Tuvalu, Co-Chair of COSIS

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

Hon. Arnold Kiel Loughman, Attorney General, Republic of Vanuatu

“More than three decades have passed since the international community began discussing the process of stabilising greenhouse gas emissions to prevent climate change. More than three decades have passed, and yet still today my people are watching as their futures slip away from them like grains of sand through an hourglass. This cannot continue. The fate of our small island nations is in your hands. We recognise that this is a monumental challenge and responsibility, and we ardently hope that you will rise to the occasion.”

Payam Akhavan, Professor of International Law, Senior Fellow and Human Rights Chair, 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

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

Members of CoLE and other experts working with COSIS made submissions to ITLOS.
"Our generation has watched as empty promises and inaction have slowly but surely destroyed our future, and now we witness an extraordinary acceleration of that process. It is for this purpose that small island States have joined forces to create this unprecedented inter-governmental organisation, dedicated to the clarification of State obligations under international law, dedicated to climate justice, dedicated to the survival of our peoples."

Naima Te Maile Fifita, Founder, Moana Tasi Project; 2023
Sue Taei Ocean Fellow
“Both adaptation to climate impacts and mitigation of anthropogenic greenhouse gas emissions must occur simultaneously to safeguard people and natural systems from worsening climate damage.”

Sarah Cooley, Director of Climate Science, Ocean Conservancy

“The Commission respectfully submits that the specific obligations of States Parties under the Convention must be interpreted consistent with and as informed by the international standard set by the best available science, and currently that means doing all that is necessary to stay at least within the 1.5°C limit.”

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

Shobha Maharaj, Science Director, Terraformation

- Phoebe Okowa, Professor of International Law, Queen Mary University, London; member, International Law Commission; advocate, High Court of Kenya
- 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
- 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
- Brian Mc Garry, Assistant Professor of Public International Law, Grotius Centre for International Legal Studies, Leiden University; member, Bar of New York
- Jutta Brunée, Dean, Faculty of Law, University of Toronto; University Professor; associate member, Institut de Droit International
- 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
- 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
- Nilüfer Oral, Director, Center for International Law, National University of Singapore; member, International Law Commission; associate member, Institut de Droit International
- Conway Blake, Debevoise & Plimpton LLP; solicitor advocate of the senior courts of England and Wales; member, Bar of the Eastern Caribbean Supreme Court
- 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
Reflecting on this two-week hearing — for the first climate change case to be heard by an international tribunal — COSIS expresses gratitude for the participation of Small Island States, including Belize, Nauru, Mauritius, the Federated States of Micronesia, Singapore, Timor-Leste and the Comoros, of other numerous UNCLOS States Parties, as well as the participation of intergovernmental organisations, including the UN and its agencies, the African Union, the European Union, and the Pacific Community.

Over 50 States and international organisations participated in the written and oral pleadings:


"In making this request, COSIS is asking the Tribunal to do what only courts and tribunals can do: to state, clearly and objectively, what the existing legal duties of States Parties are under UNCLOS, in relation to the impact of climate change on the marine environment."

Zachary Phillips, Crown Counsel, Attorney General’s Chambers, Ministry of Legal Affairs, Antigua and Barbuda; member, Bar of Antigua and Barbuda

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

"The island nations have been doing all that we can to keep our heads above water and we will never stop that fight, but we acknowledge and accept that the more persons worldwide who are aware of this fight, the more persons will be able to assist. Education is the tool that will spread the message to far corners of the globe."

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COSIS in the news

Over the past year, COSIS has had a strong presence in the media, including, for example, CNN, Le Monde, the New York Times, the Guardian, Reuters, RNZ, Der Spiegel, France 24 and Hindustan Times. Coverage has reached over 270 outlets, with over 100 million views.

A short video of the historic hearing is available here.
TRIBUTE TO PROFESSOR ALAN BOYLE

It was with great sadness that COSIS learnt of the passing of Professor Emeritus Alan Boyle, distinguished member of its Committee of Legal Experts, on September 14th, shortly after presentation of its pleadings before the Tribunal. Professor Boyle made immense contributions to international environmental law and promoted the negotiations that led to the creation of COSIS. It was poignant that he stayed with us until the closure of COSIS’ submissions before ITLOS. He will be greatly missed.

Professor Boyle’s work featured heavily in the submissions before ITLOS, “demonstrating his enduring influence in the area”.¹ Professor Boyle explained the significance of the proceedings: “[i]f the judges conclude that the causes of ocean warming can be defined as marine pollution”, it “would open the way to bringing successful proceedings for claims here or in other international courts”.²

Professor Alan Boyle speaking at the ITLOS 20th Anniversary Ceremony, 2016
Professor Alan Boyle

Influential international lawyer and academic who pioneered the field of environmental law


Professor Alan Boyle was among the most influential international lawyers of his generation. Perhaps best known for his pioneering work on international environmental law, Alan's interests were far wider and he preferred to be considered a general international lawyer.

Alan Edward Boyle was born in Belfast on 28 March 1953, where he grew up with his parents and sister. He was educated at the Royal Belfast Academical Institution. While he would leave Northern Ireland after his schooling, he retained a deep interest in Northern Irish affairs throughout his life, contributing later in his legal career to debates about the Northern Ireland Protocol and the legality of the British government's approach to this issue. This was just one of his contributions to UK constitutional debates of recent years, notably also writing, with James Crawford SC, a 2012 legal opinion for the UK Government on the international legal aspects of Scottish Independence.

Law was not his only passion. As a young man, Alan developed an interest in aeroplanes. Though he did not pursue his youthful ambition to join the Royal Air Force, he did take to the skies as a glider pilot, and subsequently as a gliding instructor. In this latter role, he helped a younger generation of air cadets to fulfill their own ambitions to join the service. Profinitely, however, he substituted a pilot's goggles and helmet, first for the wig and gown of the English bar, and thereafter for academic robes.

Alan had left Northern Ireland in 1972 to take up a place at Pembroke College, Oxford, where he read law, graduating from the MA in 1975 and the BCL a year later. His next step was a pupillage at the commercial bar in London, although his initial stint as a barrister was short-lived and he never actually appeared before an English court. One reason for not pursuing this route was a debilitating stammer, with which he had suffered since he was young. Later in life he managed to overcome this impediment, but in these early stages of his career he sought to develop his interest in the law in ways that relied more on his attention to detail and analytical rigour than his ability to verbally spar in a courtroom. Thus, Alan turned to academia.

Having briefly taught in Oxford, he successfully applied for a lectureship at the Faculty of Law at Queen Mary University of London. It was at this point that his interest in international law was truly developed. Along with Patricia Birnec, who had joined the London School of Economics in 1985, Alan created a new LLM course on international environmental law. Teaching this subject allowed the pair to develop the ideas which would form the basis for their later co-written book, Alan often recalled how the general editor at Oxford University Press had been sceptical of their proposed title of "International Environmental Law", as this was then widely recognised as a field of international law. As a compromise, the book was published under the title "International Law and the Environment". Yet, the book was timely, coming as it did in the year of the Rio Conference on Environment and Development, which would spur a growth of interest in the subject. The first edition was dedicated to "past, present, and future generations of our students" and there is little doubt that the book, through its successive editions, has had an immense influence. Now in its fourth edition, the book has become a pillar of international environmental legal education, a mainstream topic in law schools around the world.

Alan moved away from London in 1995 to take up the new Chair of Public International Law at the University of Edinburgh. Here he continued his teaching of international environmental law, as well as more general teaching on the LLB and LLM degrees. He took up the general editorship of the International and Comparative Law Quarterly from 1998 to 2006, cementing his place as a leading figure in the UK international law community. It was also during this time that he resumed legal practice through advising and representing governments in international disputes.

While he once described his first steps into international litigation as a matter of luck, his reputation as a first-class litigator grew and Alan became a regular figure in hearings at the ICJ, the International Tribunal for the Law of the Sea, and the Permanent Court of Arbitration, a testament not only to his advocacy skills, but to his determination and success in overcoming the stammer that had stalled his earlier efforts to enter the legal profession. In 2011, Alan was awarded the Elisabeth Haub Award for Environmental Law and Diplomacy for his outstanding and sustained contribution to environmental law.

This practical experience of international litigation fed back into his academic work and teaching, with tales from his latest case often being uprisings. Alan was always a highly popular teacher and, throughout his career, was a true supporter of countless young researchers. Alan was always curious and enjoyed challenging existing views, and being challenged himself, as the purpose was never to be right, but to get to the right answer.

Neither his retirement from the University of Edinburgh in 2017, nor the onset of serious illness in 2020 stopped Alan from contributing to the development of the field. In particular, Alan supported the negotiation of the 2021 Agreement for the Establishment of the Commission of Small Island States on Climate Change and International Law, which led to the request for an advisory opinion from the International Tribunal for the Law of the Sea in late 2022. Even though he was not able to personally participate due to illness, Alan's work has been cited extensively in these proceedings to date, demonstrating his enduring influence in the area. He leaves a giant legacy in international legal scholarship, which will continue to inspire generations to come.

Alan Boyle passed away, aged 70, at his home in Perthshire on 14 September 2023. He had been diagnosed with glioblastoma multiforme in June 2020. He is survived by his wife Caroline.

James Harrison & Justine Bendel
NEXT STEPS

ITLOS Advisory Opinion expected in 2024

2024 is likely to be an important year for Climate Change and International Law — the advisory requests on climate change are making their way through international courts and tribunals.

The Advisory Opinion of ITLOS in these proceedings is expected to be issued in 2024.

COSIS awaits this Opinion and will continue its work to “protect and preserve” the climate system by promoting the rules and principles of international law so these may be our guiding lights in the global effort to address climate change.
COSIS members unanimously co-sponsored the Resolution A/77/L.58 by Vanuatu at the UN General Assembly, requesting the first ever climate advisory opinion from the International Court of Justice.

Stressing the complementary and mutually reinforcing nature of these initiatives, on May 15th 2023, COSIS announced its unanimous decision to participate in the advisory proceedings on climate change before the Inter-American Court of Human Rights (IACtHR) and before the International Court of Justice (ICJ) as an inter-governmental organisation (as authorised by the ICJ on June 22nd 2023). The COSIS Committee of Legal Experts will assist the Commission in its submissions to the two international courts. The Commission will submit its written statement for the IACtHR advisory opinion before December 18th 2023 and its written statement for the ICJ advisory opinion before January 22nd 2024. COSIS calls on all States to submit their written statements in both proceedings.

ICJ and IACtHR Advisory Opinions

COSIS members unanimously co-sponsored the Resolution A/77/L.58 by Vanuatu at the UN General Assembly, requesting the first ever climate advisory opinion from the International Court of Justice.

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Participation of Co-Chairs at COP28

COSIS will be represented at COP28 in Dubai, building on the momentum of its historic hearing on climate change before the International Tribunal for the Law of the Sea. Members of COSIS will speak about their experience with the Advisory Opinion Request, continue their collaborative work with the States presenting advisory opinions to the ICJ and IACtHR, and spread the message of Small Island States on the need to help island nations mitigate and adapt to climate change. COSIS looks forward to engaging with other States and stakeholders on these issues and sharing insights about its work and future projects.

Continued focus on increasing membership

COSIS has grown into an organisation of nine States from across the Caribbean and Pacific regions. Recognising the need for concerted global action and to amplify the voices of those most impacted by climate change, the Co-Chairs of COSIS invite all members of AOSIS to join COSIS to promote the role of international law in addressing the climate crisis. COSIS members’ commitment to protect people and the planet is unwavering and they are more determined than ever to see vague promises become solid and science-based targets tied to binding legal obligations.
"The nine Member States of COSIS are scattered across the globe but are united by a deep connection to and dependence on the marine environment and its resources".

Hon. Gaston Browne, Prime Minister of Antigua and Barbuda

"These islands are spiritual extensions of ourselves. These islands represent home, a sense of belonging and connection. You carry that source of mana, that power.

Without them... we are not sure what will happen to us as a people.

I’m also a mother to a one-year-old daughter of the Pacific. I’m hopeful that she will be able to return to her ancestral homeland and know that she still has a place there.

That it still exists for her to enjoy".

Naima Te Maile Fifita, Sue Taei Ocean Fellow, Tuvalu

"From my childhood to now... storms are getting stronger and more frequent.

That’s why we are here; we have to protect the people that we love.

I also think about the long-term. We cannot just haphazardly react every time we see a storm — because another storm will be coming. We cannot just respond, we have to also think forward.

We have to change what is causing the problem”.

Zachary Philipps, Crown Counsel, Antigua and Barbuda
"...as the years go by, we see the shoreline getting closer to our homes. We watch as the ocean washes away our livelihoods, infrastructures and traditions...

Just a few years. That’s all we have before the ocean consumes everything my people built across centuries.

My people will rightfully ask, if international law has nothing to say about an entire country going under the water as a result of harmful conduct, then what purpose does it serve?"

Hon. Kausea Natano, Prime Minister of Tuvalu

"...our mandate is to address a fundamental inequity... these Small Island States contribute minimal levels of GHG emissions. They’re contributing minuscule amounts to the problem, and yet they are experiencing the most cataclysmic, catastrophic and even existential harm. ...The difference between then and now is that we are in a unique moment, a historic moment — what we have now on the record on climate change is the unequivocal science. Reasonable minds cannot differ”.

Catherine Amirfar, Co-Counsel

"We believe international law is authoritative, that it should guide the conduct of States and that there is in fact a common interest. The point here is that what is happening to the Small Island States will happen to all other nations, including the major polluters.

...It is remarkable that the smallest nations on Earth have risen to the greatest of challenges. History will say that it was the Small Island States that said what needed to be said for the survival of humankind”.

Payam Akhavan, Chair of the Committee of Legal Experts and Lead Counsel
Both Prime Minister Browne and Prime Minister Natano addressed the 78th Session of the UN General Assembly on September 22nd 2023. Prime Minister Browne highlighted that COSIS went to ITLOS “to seek legal clarity on the obligations of states to protect our marine environment” and stressed that “all nations must act now to safeguard the Oceans as a critical component of the Earth’s climate system”.

HON. GASTON BROWNE, PRIME MINISTER OF ANTIGUA AND BARBUDA

OUTREACH

Both Prime Minister Browne and Prime Minister Natano addressed the 78th Session of the UN General Assembly on September 22nd 2023. Prime Minister Browne highlighted that COSIS went to ITLOS “to seek legal clarity on the obligations of states to protect our marine environment” and stressed that “all nations must act now to safeguard the Oceans as a critical component of the Earth’s climate system”.

3
“SIDS cannot sit idly while our countries sink beneath our feet or are crippled by a burden of debt, as we are left — abandoned by the international system — to rebuild within our own limited means, one disaster after another.”

- Prime Minister Browne, UNGA 78

“I had the privilege of appearing before the esteemed judges of ITLOS... Tuvalu urges all UN members to support Vanuatu, Antigua & Barbuda and Tuvalu, by ... com[ing] together in pursuit of climate justice.”

- Prime Minister Natano, UNGA 78
## Conferences

COSIS’ mandate is to assist Small Island Developing States by promoting and contributing to the definition, implementation and progressive development of rules and principles of international law concerning climate change. To that end, the members of CoLE and experts working with COSIS have been involved in a number of events over the past year, discussing COSIS’ work and purpose. Below is a brief summary of these events.

<table>
<thead>
<tr>
<th>Date</th>
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<tbody>
<tr>
<td>11/11/22</td>
<td>Payam Akhavan and Zachary Phillips (Crown Counsel within the Attorney General’s Chambers of Antigua and Barbuda) were panelists at an event during COP27 entitled &quot;Small Island States, Climate Justice and International Law&quot;, hosted by the Commonwealth Foundation.</td>
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<tr>
<td>12/12/22</td>
<td>Payam Akhavan delivered a keynote speech entitled &quot;Climate Change Litigation before International Courts and Tribunals&quot; at the Canadian branch of the International Law Association.</td>
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<tr>
<td>1/18/23</td>
<td>Catherine Amirfar participated in a United Nations Coordination Meeting on Advisory Opinions in International Law, hosted by New Zealand and Vanuatu at UN Headquarters.</td>
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<tr>
<td>1/25/23</td>
<td>Nilüfer Oral participated in a webinar on &quot;Advisory Opinions on Climate Change: Initiatives, Expectations and Possibilities&quot;, hosted by the International Union for Conservation of Nature World Commission on Environmental Law. The session in which she was a panelist was entitled &quot;International Tribunal for the Law of the Sea (ITLOS): Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law&quot;.</td>
</tr>
<tr>
<td>3/30/23</td>
<td>Payam Akhavan participated in a policy forum entitled &quot;Legal Avenues to Fight Climate Change&quot;, hosted by the International Peace Institute and the Permanent Mission of the Principality of Liechtenstein to the UN.</td>
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COSIS' mandate is to assist Small Island Developing States by promoting and contributing to the definition, implementation and progressive development of rules and principles of international law concerning climate change. To that end, the members of CoLE and experts working with COSIS have been involved in a number of events over the past year, discussing COSIS’ work and purpose. Below is a brief summary of these events.
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| 3/29/23 – 4/1/23   | **Catherine Amirfar, Payam Akhavan and Margaretha Wewerinke-Singh** participated in relevant panel discussions at the *American Society of International Law’s* Annual Meeting. The two sessions were as follows:  
  - “Pushing the Limits of the Judicial Function: Advisory Opinions as Instruments of Dispute Settlement” on 30th March;  
  - “The Reach and Limits of International Courts and Tribunals in Resolving the Climate Crisis” on 31st March. |
<p>| 4/27/23            | <strong>Payam Akhavan and Margaretha Wewerinke-Singh</strong> spoke at an event organised by the <em>Sabin Center for Climate Change Law at Columbia University</em> on &quot;Advisory Opinions on Climate Change, an Overview of a Quartet of Simultaneous Requests&quot;. |
| 5/12/23            | <strong>Nilüfer Oral and Jean-Marc Thouvenin</strong> spoke at a conference entitled &quot;Le Droit International de L'environnement Face au Défi de L'effectivité&quot; at the <em>Collège de France</em>. Nilüfer spoke at Session one on &quot;What Can International Law do to Address the Challenges of Climate Change: The Case of Sea Level Rise&quot; and Jean-Marc delivered the closing remarks to the conference. |
| 5/19/23            | <strong>Payam Akhavan and Margaretha Wewerinke-Singh</strong> spoke at a webinar organised by <em>AOSIS</em> and <em>Vanuatu</em> entitled “ITLOS and ICJ Advisory Opinions — Background, the Legal Questions and Procedure”. |
| 7/24/23            | <strong>Catherine Amirfar and Margaretha Wewerinke-Singh</strong> spoke at an event entitled “The Climate Science and State Responsibility Dimensions in the ICJ Advisory Opinion Request on Climate Change”, co-hosted by <em>Liechtenstein, Vanuatu</em> and the <em>UN Foundation</em>. |
| 7/24/23 – 7/26/23  | <strong>David Freestone</strong> spoke virtually at the <em>Regional Writeshop for Pacific Island Countries’ Submissions to the ICJ Advisory Opinion on Climate Change</em>. It was attended by Attorneys General and Legal Drafting Officers from 16 nations and territories. |
| 8/23/23            | <strong>Nilüfer Oral</strong> took part in the <em>Center for International Law</em>’s discussion on “Small States, Legal Argument and International Disputes”. |</p>
<table>
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<td>10/16/23</td>
<td><strong>Zachary Phillips</strong> presented at the Caribbean Community (CARICOM)’s preparatory COP meetings to regional counterparts on Advisory Opinions and the opportunities and challenges. All Small Island Developing State in the Caribbean Community were represented.</td>
</tr>
<tr>
<td>10/23/23</td>
<td><strong>Payam Akhavan</strong> and <strong>Zachary Phillips</strong> participated in a roundtable discussion entitled “AO’s United: A Gathering of Like-minded States for Advancing Climate Justice and Action through Advisory Opinions” for International Law Week at UN Headquarters.</td>
</tr>
<tr>
<td>10/23/23 – 10/24/23</td>
<td><strong>Catherine Amirfar</strong> spoke on a panel at the 33rd Informal Meeting of Legal Advisers on The Interdependence and Interconnectedness of International Law. The Panel was entitled “Pacific Settlement of Disputes beyond Contentious Settlement: Alternative Dispute Resolution (ADR) in International Law, Conciliation and Mediation Efforts”.</td>
</tr>
<tr>
<td>10/24/23</td>
<td><strong>Nilüfer Oral</strong> took part in a roundtable entitled “Small States as Catalysts for Change and Champions of International Law” at the International Peace Institute.</td>
</tr>
</tbody>
</table>
SOURCES

1 James Harrison and Justine Bendel, “Scotsman Obituaries: Professor Alan Boyle, international lawyer and academic who pioneered environmental law”, (5 October 2023) The Scotsman


3 United Nations, “Antigua and Barbuda - Prime Minister Addresses General Debate, 78th Session”, (22 September 2023) UN Web TV
United Nations, “Tuvalu - Prime Minister Addresses United Nations General Debate, 78th Session”, (22 September 2023) UN Web TV

Credits for photos from the hearing at ITLOS: © ITLOS Press Office
ANNEX: AGREEMENT FOR THE ESTABLISHMENT OF COSIS

AGREEMENT FOR THE ESTABLISHMENT OF
THE COMMISSION OF SMALL ISLAND STATES
ON CLIMATE CHANGE AND INTERNATIONAL LAW

PREAMBLE

The Parties to this Agreement,

Alarmed by the catastrophic effects of climate change which threaten the survival of Small Island States, and in some cases, their very existence,

Recognizing that Climate Change is the Common Concern of Humanity,

Mindful of the fundamental importance of the oceans as sinks and reservoirs of greenhouse gases and the devastating impact for Small Island States of related changes in the marine environment,

Acknowledging the importance of maritime zones and the significant reliance of Small Island States on marine living resources within such zones, as well as the impacts of climate change on the marine environment including marine living resources,

Affirming that maritime zones, as established and notified to the Secretary-General of the United Nations in accordance with the 1982 United Nations Convention on the Law of the Sea, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise,

Considering that the emission of greenhouse gases by Small Island States is negligible but that they bear a disproportionate and overwhelming burden of the adverse effects thereof,
Recalling the urgent actions for which the Alliance of Small Island States have called repeatedly to address the urgency and fundamental injustice of this situation,

Determined to take immediate action to protect and preserve the climate system and marine environment based on equity and the common but differentiated responsibilities of States to combat climate change,

Recognizing the imperative necessity of pursuing climate justice in accordance with the principles and progressive development of international law in response to the unprecedented crisis facing humankind,

Having regard to the obligations of States under the 1992 United Nations Framework Convention on Climate Change and related instruments, the 1982 United Nations Convention on the Law of the Sea, and other conventions and principles of international law applicable to the protection and preservation of the climate system and marine environment,

Noting the obligation of States to provide compensation for injuries arising from internationally wrongful acts,

Have agreed as follows:

Article 1
Establishment and Mandate of the Commission

(1) The Commission of Small Island States on Climate Change and International Law (“the Commission”) is hereby established.

(2) The Commission shall have international legal personality.
(3) The mandate of the Commission shall be to promote and contribute to the definition, implementation, and progressive development of rules and principles of international law concerning climate change, including, but not limited to, the obligations of States relating to the protection and preservation of the marine environment and their responsibility for injuries arising from internationally wrongful acts in respect of the breach of such obligations.

Article 2

Activities and authority of the Commission

(1) The activities of the Commission shall include *inter alia* assisting Small Island States to promote and contribute to the definition, implementation, and progressive development of rules and principles of international law concerning climate change, in particular the protection and preservation of the marine environment, including through the jurisprudence of international courts and tribunals.

(2) Having regard to the fundamental importance of oceans as sinks and reservoirs of greenhouse gases and the direct relevance of the marine environment to the adverse effects of climate change on Small Island States, the Commission shall be authorized to request advisory opinions from the International Tribunal for the Law of the Sea ("ITLOS") on any legal question within the scope of the 1982 United Nations Convention on the Law of the Sea, consistent with Article 21 of the ITLOS Statute and Article 138 of its Rules.

(3) The Commission may appoint experts and advisors as necessary in furtherance of its mandate.

(4) The Commission may take on such other tasks and responsibilities as the Parties may determine from time to time, including representing the interests of the Parties in international fora.
Article 3
Membership and Structure of the Commission

(1) All members of the Alliance of Small Island States may become Parties to this Agreement.

(2) All Parties to this Agreement shall be Members of the Commission.

(3) The Commission shall be represented by a Chair, or by co-Chairs, among the Parties, who shall be elected by majority vote among its Members, beginning with the entry into force of this Agreement and once every two years thereafter.

(4) The Commission may adopt its rules and procedures, establish committees and sub-committees, appoint a Secretariat, and make such other decisions that are necessary and appropriate for the discharge of its functions.

(5) Decisions of the Commission shall be made in principle by consensus, or otherwise by a majority of Members present and voting.

(6) Member States of the Commission shall bear the costs of the Commission’s activities in an equitable manner.

Article 4
Signature, Entry into Force, depository, accession, reservations

(1) This Agreement shall be open to signature by all States that are members of the Alliance of Small Island States.

(2) The Agreement shall enter into force upon signature by two or more States.
(3) This Agreement shall be deposited with the Government of Antigua and Barbuda which shall be responsible for its registration with the United Nations in accordance with Article 102 of the Charter of the United Nations.

(4) Following entry into force, this Agreement shall be open for accession by other States that are Members of the Alliance of Small Island States. For each State acceding to this Agreement, the Agreement shall enter into force on the day after deposit by such State of its instrument of accession.

(5) Reservations to this Agreement shall not be permitted.

IN WITNESS WHEREOF, the undersigned being duly authorized by their respective Governments, have signed this Agreement.

FOR THE GOVERNMENT OF
ANTIGUA AND BARBUDA

[Signature]
Hon. Gaston Alfonso Browne
Prime Minister

FOR THE GOVERNMENT OF
TUVALU

[Signature]
Hon. Kausea Natano
Prime Minister

DONE in Edinburgh, United Kingdom of Great Britain and Northern Ireland this 31st day of October Two Thousand and Twenty-One.
Certificate of registration

The Secretary-General of the United Nations hereby certifies that the following international agreement has been registered with the Secretariat, in accordance with Article 102 of the Charter of the United Nations:

No. 56940. Multilateral

Agreement for the establishment of the Commission of Small Island States on Climate Change and International Law. Edinburgh, 31 October 2021

Registration with the Secretariat of the United Nations: Antigua and Barbuda, 31 October 2021

Done at New York on 3 February 2022

For the Secretary-General

Certificat d’enregistrement

Le Secrétaire général de l’Organisation des Nations Unies certifie par la présente que l’accord international indiqué ci-après a été enregistré au Secrétariat, conformément à l’Article 102 de la Charte des Nations Unies :

No. 56940. Multilatéral

Accord pour la création de la Commission des petits États insulaires sur le changement climatique et le droit international. Édimbourg, 31 octobre 2021


Fait à New York le 3 février 2022

Pour le Secrétaire général
CONTACT INFORMATION

For all inquiries, please email us at: info@cosis-ccil.org

Website: https://www.cosis-ccil.org/
X (formerly known as Twitter): @cosis_ccil

For last year’s Annual Report, click here or visit our website.

COSIS gratefully acknowledges the work of Professor Philippa Webb, Lucia Saborio Perez, and Chloe Gershon in the preparation of this Annual Report.