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# A push for more climate action

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Paper - III (Environment)

International climate change litigation reached a milestone on May 21, 2024 when the International Tribunal for the Law of the Sea (ITLOS) delivered an advisory opinion (the Opinion) sought by the Commission of Small Island States on Climate Change and International Law (COSIS) concerning the specific obligations of the Parties to the United Nations Convention on the Law of the Sea (UNCLOS) on climate change mitigation. The COSIS is an association of small island states set up in 2021. The ITLOS advisory opinion generates more attention in the context of the advisory proceedings to be decided by the International Court of Justice (ICJ) in the near future on the "Obligations of States in respect of Climate Change".

**New elements:**

The ITLOS took a radical step by accepting the request of COSIS with the aim of identifying the obligations of states that are not parties to the COSIS Agreement. That is when the request touches principally upon the obligations of states that are not party to the agreement authorising the request. The Tribunal, in its Opinion, laid down very clearly that under Article 194(1) of the UNCLOS, "the Parties have specific obligations to take all necessary measures to prevent, reduce and control marine pollution from anthropogenic greenhouse gas emissions (GHG)".

The Opinion has also removed doubts whether the release of carbon dioxide by man, directly or indirectly, into the marine environment qualifies to be in the category of substance or energy having potential deleterious effects on the marine environment within the meaning of Article 1(1)(4) of the UNCLOS.

The ITLOS clarification on carbon as pollutant bolsters the position taken by the scientific community that the surface ocean absorbs around a quarter of the CO2 emitted into the atmosphere, at increasingly rapid rates, resulting in the progressive acidification of sea water. Other greenhouse gases (GHGs) do not have this effect. In addition, the sea also absorbs over 90% of the excess heat ('energy') generated by global warming, resulting in higher ocean temperatures and, ultimately, in sea-level rise.

**Understanding its legal importance:**

The principle of prevention or no harm rule which governs state behaviour towards regulation of shared natural resources (between two or more states) so as to avoid transboundary harm of a significant nature in another state has its two main limitations when the rule is sought to be applied to regulate climate crisis: its anchoring in a bilateral frame, and, the principle is not helped due to obstacles relating to attribution and standing in establishing a breach of obligation to climate change.

The Opinion, by siding with the principle for climate change (which is a collective interest as compared to bilateral ones), adds a new chapter. The necessary measures are to be decided in the light of the best available science and the relevant international rules and standards contained in the United Nations Framework Convention on Climate Change, the Paris Climate Change Agreement 2015, and also 1.5° Celsius rather than 2° C as the global average temperature goal.

The Opinion describes the obligation relating to the taking of necessary measures as due diligence obligation but the standard of it in the eyes of the Opinion is stringent one given the high risks of serious and irreversible harm to the marine environment from such emissions. But the Parties' obligations in terms of taking all necessary measures to reduce anthropogenic GHG emissions within Article 194 (1) are very general in nature. This can be interpreted to

mean that neither the release of all pollution (GHGs) must be prevented nor that anthropogenic GHG emissions must cease immediately or even eventually.

Measures that gradually reduce marine pollution by lowering GHG emissions over a period of time would be sufficient. Still, the identification of a general obligation by the ITLOS underlines one thing — that states do not have unfettered discretion in addressing climate change. Mere identification of general obligation will be of symbolic value and is inadequate.

Christina Voigt, an expert on environmental law, says as “most states are already implementing some action on climate change mitigation, the crux of the matter is not the existence of an obligation to mitigate climate change, but rather its content, in particular the standard of conduct applicable in relation to this obligation”. The example to substantiate this point is the decision of the Netherlands Supreme Court, in Urgenda Foundation vs The Netherlands, where the court held that to comply with a general mitigation obligation inferred from the European Convention on Human Rights (ECHR) in light of the standard of due care, the Netherlands had to reduce GHG emissions to 25% below 1990 levels by 2020 (as opposed to the government’s insufficient existing pledge of 17%).

The court identified this target largely by relying on scientific estimates and the least cost method of achieving the 2° C temperature goal in the Paris Agreement. The Opinion has not been able to identify the methodology concretely that can be used to assess a state’s requisite level of mitigation action — as in the Urgenda judgment. Moreover, the necessary measures to be taken, as per the Opinion, are to be subject to the means available to the states and their capabilities, which means that the principle of equity cannot be ignored in deciding the requisite level of mitigation action, if any.

Though advisory opinion lacks legal force, it does not necessarily affect its political pull as authoritative judicial pronouncements.

## Expected Question for Prelims

**Que.** Consider the following statements with reference to the International Tribunal for the Law of the Sea (ITLOS):

1. It is an independent judicial body established by the United Nations Convention.
2. There are 21 independent members in the tribunal.

Which of the statements given above is/are correct?

(a) Only 1 (b) Only 2
(c) Both 1 and 2 (d) Neither 1 nor 2

**Answer : C**

## Mains Expected Question & Format

**Que.: Discuss the role of the International Tribunal for the Law of the Sea and what else needs to be done for climate action?**

**Answer's Approach:**

- In the first part of the answer, discuss the role of the International Tribunal for the Law of the Sea.
- In the second part, discuss the need for more efforts for climate action. Also mention these efforts.
- Finally give a conclusion giving suggestions.

**Note: -** The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.