

Small Island Developing States' Use of Courts to Fight for Environmental Security

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Small states are increasingly demonstrating that international law is not merely a normative framework—it is a strategic instrument of power capable of challenging global hierarchies and advancing national interests. Since 2024, [two international](#) courts have issued advisory opinions on state obligations regarding climate change based upon requests spearheaded by small states in the Pacific. Before the recent cases, other Pacific states such as [Palau and the Marshall Islands](#) had already taken steps in this direction (Toribiong, 2011). In 2011, they jointly campaigned for a United Nations General Assembly (UNGA) resolution requesting an advisory opinion from the International Court of Justice (ICJ).

Small Island Developing States ([SIDS](#)) are a United Nations (UN) group composed of 39 states and 18 non-state entities (United Nations, 2025). Sixteen of these states and five of these non-state entities are [in the Pacific](#). Pacific SIDS clearly see international courts as an important strategy to fight for environmental security. We analyse why international courts appeal to Pacific SIDS, focusing on their ability to exert outsized influence in international relations. Drawing parallels with domestic legal strategies in the United States (U.S.), we show how courts can serve as vital tools for marginalized groups to assert and protect their rights. We also examine the recent cases in which Pacific SIDS employed innovative legal strategies to initiate proceedings, achieving partial but meaningful victories. In doing so, we highlight both the advantages and limitations that international courts present for SIDS, while also exploring how other small states might view this approach as a viable strategy across diverse policy areas.

Small States' Strategies

Small states employ various strategies to navigate the international system, given their material and diplomatic limitations ([Heng, 2024](#)). Traditional International Relations theories have mainly overlooked the agency of small states ([Willis, 2021](#)). However, small states have pioneered strategies promoting their interests and status internationally. Qatar presents itself as a mediator in the Middle East, playing a crucial role in facilitating negotiations between the [Taliban and the U.S.](#) in 2020 and resolving the crisis in [Lebanon](#) with Hezbollah in 2008 (Milton, 2025; Kamrava, 2011). Other small states, such as [Bhutan](#), have turned to soft power, promoting their Gross National Happiness index to carve out a distinctive niche in the international system (Theys, 2025). Some small states, like [Malta](#), utilise multilateral organisations as a means of expanding their influence (Lupel, 2024). In 2023, it postured itself as an agent of international peace and security by leading a ten-member delegation in the UN Security Council, seeking to bring humanitarian aid to civilians in Gaza. International organisations are key spaces for small states as they may [push back against larger states](#) through multilateral mechanisms where power asymmetries are less pronounced (Corbett, 2023). In a similar vein, legal mechanisms provide a viable means for exerting influence. They enable smaller actors to participate meaningfully in decision-making processes.

U.S. Domestic Parallels

Like small states internationally, Tribal Governments have struggled with power asymmetries vis-à-vis the U.S. The contentious history between the two is too long to cover in-depth, but it provides important context for SIDS' use of courts. We can understand this through two broad historical episodes: the development of sovereignty and citizenship rights leading to the American Indian Movement, and nuclear testing remediation in the Marshall Islands.

The [1871 Indian Appropriation Act](#) declared Tribal governments 'domestic dependent nations' (Colorado, n.d.). Tribal reservations had quasi-sovereignty but remained under the administrative control of the U.S. As U.S. wards, the question of citizenship and sovereignty over tribal lands became central to the nature of rights afforded through this domestic-dependent partnership. In [Standing Bear v. Crook](#) (1879), Standing Bear filed a lawsuit that gained recognition for indigenous people as 'persons' eligible for rights. This lawsuit became the legal framework for generations of resistance activists to gain self-rule ([Talton v. Mayes, 1896](#); Gillman, n.d.), as well as the protection of the environment and resources ([U.S. v. Shoshone, 1938](#)).

In 1947, the U.S. took administrative control of the Marshall Islands through the [United Nations Trust Territory](#). This relationship mirrored domestic-dependent nations. Between 1946 and 1958, the Enewetak were expropriated from Bikini Island, where the U.S. performed sixty-seven [nuclear tests](#) (Pevec, 2006). In 1979, the Marshall Islands repeatedly sued the U.S. in U.S. domestic courts, leading to the Nuclear Claims Tribunal compact between the U.S. and Marshall Islands and a \$341 million fund for restoration and damages.

Pacific SIDS and their Cases

Like Tribal Governments utilising courts to protect their rights, Pacific SIDS have turned to international courts to protect their environmental security. In 2021, Tuvalu, and Antigua and Barbuda signed a treaty creating the Commission of Small Island States on Climate Change and International Law ([COSIS](#)) to request an advisory opinion from the International Tribunal for the Law of the Sea (ITLOS). [ITLOS's Statute](#) only grants advisory jurisdiction in non-seabed-related cases when jurisdiction is 'specifically provided for in any other agreement.'

As two states had reached an agreement, Tuvalu, and Antigua and Barbuda, it created ITLOS's jurisdiction to hear an advisory case on climate change. This strategic use of the law succeeded, as under ITLOS's 2024 [opinion](#), states have an obligation to 'take all necessary measures' to prevent greenhouse gas pollution and to protect the oceans from the effects of climate change and ocean acidification. Thus, Pacific SIDS used legal technicalities to their advantage.

Before Tuvalu formed COSIS, [Vanuatu](#) began advocating for a UNGA request for an advisory opinion from the ICJ (Farran, 2023). Vanuatu brought the idea to the Pacific Forum in 2019 and 2022. By 2023, Vanuatu had secured sufficient support to put forward a draft resolution cosponsored by over 100 states. The [ICJ found in 2025](#) that states have obligations under

numerous forms of international law. This finding provided a win for Pacific SIDS and amplified their calls for environmental security.

Conclusion

Given that international courts' advisory opinions are non-binding, these wins must be qualified. Nevertheless, advisory cases have exerted political and legal pressure to compel compliance, even from major powers, as evident in the [UK's return of the Chagos Islands to Mauritius](#) (Lawal, 2024). While these cases may not always lead to immediate material changes in inter-state relations, they nonetheless play a crucial role in highlighting key policy issues. In doing so, they open policy windows and can shift alliances, positioning international courts as important arenas for political contestation. Understanding the dynamics within which SIDS utilise international law and the courts opens future research pathways connecting policymaking in response to international law, as well as how international courts *create* policy through these decisions.

Additionally, these cases help position Pacific SIDS as leaders in addressing climate change. [COSIS has outlived](#) its initial purpose and grown to nine members, including four Pacific SIDS. It participated in the ICJ advisory case and an advisory case before the Inter-American Court of Human Rights. Hence, actions by these states have created a new niche in international relations.

Thus, while this article has focused on environmental security, the strategic use of courts extends well beyond this issue area. The Chagos Islands case represents an African SIDS's use of the ICJ to ensure territorial integrity. Other states may well replicate the strategic creation of COSIS in other areas of the Law of the Sea. The latter may be of particular importance given the rise of the [Chinese distant water fishing fleet's](#) activities in the Pacific. Accordingly, the strategic engagement with international courts by small states is not limited to environmental security. Rather, it exemplifies a novel method for advancing a wide array of policy goals.

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