



**British Institute of
International and
Comparative Law**

Reflections on the ITLOS Advisory Opinion





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Comparative Law**

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Summary

On 21 May 2024, the International Tribunal for the Law of the Sea (ITLOS) ruled unanimously that ‘pollution of the marine environment’ includes anthropogenic greenhouse gas (GHG) emissions absorbed by the oceans, as GHG emissions have harmful effects on marine ecosystems and marine life.¹ The ruling covers all GHG emissions introduced directly or indirectly to oceans, regardless of the emission source or proximity to the ocean. ITLOS’s interpretation means that all GHG emissions constitute a form of ocean pollution that must be prevented, controlled, mitigated, and eventually reduced to the maximum extent possible.

The British Institute of International and Comparative Law (BIICL) held a Rapid Response Webinar Event on 30 May 2024, convening a panel of experts to discuss the legal implications of the ITLOS Advisory Opinion.² The discussion touched on the potential application of the advisory opinion in future and ongoing climate-related cases, and addressed the larger normative impact of the advisory opinion.

The event was convened by [Kristin Hausler](#), Dorset Senior Research Fellow in Public International Law and Director of the Centre for International Law at BIICL. The chair of the event was [Dr. Constantinos Yiallourides](#), Research Leader in Law of the Sea at BIICL. The session featured presentations from three experts before questions were taken from the audience. The speakers presented in the following order: [Prof. Dr. Christina Voigt](#), University of Oslo, chair of the IUCN World Commission on Environmental Law and lead legal counsel for the IUCN, laid out eight key aspects of the advisory opinion, highlighting how the ruling adds and maps onto the existing architecture of international conventions. [Monica FERIA-TINTA](#), Barrister at Twenty Essex, spoke on treaty interpretation with regards to UNCLOS. Finally, [Dr. Ivano Alogna](#), Research Leader in Environmental and Climate Change Law at BIICL, addressed the advisory opinion’s future connection and impact on corporate climate litigation.

This event report was prepared by Abigail Judge and Jenny Zhang. A draft of this report was circulated to the speakers for their endorsement and to make any clarifications or corrections prior to publication.

BIICL extends its gratitude to all the panellists for their outstanding contribution to the discussion and to all attendees for their support of the event.

This report is issued on the understanding that if any extract is used, BIICL should be credited, preferably with the date of the event as per the following suggested citation:

British Institute of International and Comparative Law, ‘[Reflections on the ITLOS Advisory Opinion](#)’ (30 May 2024).

¹ International Tribunal for the Law of the Sea Advisory Opinion, documents relating to the ruling available at <<https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/>>

² Video recording of the event available at <<https://www.biicl.org/events/11910/rapid-response-reflections-on-the-itlos-advisory-opinion?cookieset=1&ts=1717412357>>

Introduction by the Chair, Dr Constantinos Yiallourides

On 21 May 2024, ITLOS delivered an advisory opinion on states' obligations to protect and preserve the world's oceans from climate change impacts, such as ocean warming, sea level rise and ocean acidification. This is the first time that an international judicial body has addressed states' obligations to combat climate change within the framework of the UN Law of the Sea Convention. The Tribunal found unanimously that anthropogenic greenhouse gas emissions absorbed by the oceans constitute 'pollution of the marine environment' due to their harmful effects on marine ecosystems.³

Accordingly, states have specific obligations to take all measures 'necessary to prevent, reduce and control pollution of the marine environment from any source.'⁴ ITLOS is also the first international judicial body to deliver a climate-related advisory opinion. The Inter-American Court of Human Rights and the International Court of Justice are also expected to issue climate-related advisory opinions in the coming months.

Moreover, hundreds, if not thousands, of other climate litigation cases are ongoing across multiple jurisdictions seeking to hold governments and corporations into account for inadequate climate action. Thus, this much-awaited advisory opinion has generated significant attention, both in legal circles but also in the mainstream media.⁵

³ See Constantinos Yiallourides and Surya Deva, 'A Commentary on ITLOS' Advisory Opinion on Climate Change' (BIICL, 24 May 2024) <<https://www.biicl.org/blog/77/a-commentary-on-itlos-advisory-opinion-on-climate-change>>

⁴ United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 399 (UNCLOS) art 194, para 1.

⁵ David Fogarty, 'ST Explains: Why the climate ruling by the world's top court dealing with oceans is a game changer' *The Straits Times* (Singapore, 24 May 2024) <<https://www.straitstimes.com/world/st-explains-why-the-climate-ruling-by-the-world-s-top-court-dealing-with-oceans-is-a-game-changer>>

Prof. Dr. Christina Voigt: Overview and noteworthy elements of the advisory opinion

The ITLOS advisory opinion went beyond what many commentators expected it to do, both defining GHG emissions as marine pollutants and cementing UNCLOS as a legal basis for states' obligations to address climate change alongside the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement. With that in mind, eight distinct aspects of the opinion contribute to its potential ramifications on policy and legal work regarding climate change.

First, the opinion was unanimously adopted by all 21 judges. There was no substantive dissent, and five separate declarations by judges seemed to advocate for interpreting the treaty even more broadly by way of including considerations of human rights into the advisory opinion deliberations. This represents a remarkable, unanimous willingness among the judiciary to interpret UNCLOS in a dynamic manner in the context of climate change.

Second, the opinion's core legal finding held that anthropogenic GHG emissions constitute 'pollution,' either directly as substances in the ocean or indirectly as energy by contributing to global warming. This finding has immensely far-reaching consequences, as it covers all sources of GHG emissions within the parameters of UNCLOS, including from land-locked states or land-based activities.

Third, by finding that GHG emissions fall under the definition of pollutants, the Tribunal opened the legal gates to Article 194 of UNCLOS and those articles addressing specific sources of pollution. The Tribunal clearly specified that states must take all 'necessary measures' to prevent, reduce, and control pollution,⁶ as well as to avoid transboundary harm to other states and the marine environment.⁷ The Tribunal set out factors relevant in assessing 'necessary measures,' namely (i) science, pointing to the Intergovernmental Panel on Climate Change (IPCC) Report, and (ii) relevant international rules and standards, defining the primary legal instruments addressing climate change: UN Climate Treaties, the United Nations Framework Convention on Climate Change, and the Paris Agreement. In particular, the Tribunal referred to the 1.5 degree temperature goal of the Paris agreement and the corresponding timelines for emission pathways as most relevantly informing the substance of 'necessary measures.'

Fourth, the Tribunal notes that the nature of this obligation to take necessary measures is one of 'due diligence,' and sets out factors and objective criteria for determining due diligence. The Tribunal cites factors like risk of harm; the urgency involved; scientific and technological information; and relevant international rules and standards. This turns away from understanding 'due diligence' as subjectively determined by states. The Tribunal emphasizes a heightened, stringent understanding of 'due diligence' in the context of UNCLOS, most especially with regards to parties' transboundary obligations to other states.

Fifth, the Tribunal addresses the variation in states' respective capacities for environmental 'due diligence.' A state's responsibility might be informed by its capacity: the advisory opinion noted that 'due diligence' may vary according to states' different capabilities and available resources. While

⁶ UNQLOS art 194, para 2.

⁷ Ibid art 192; ibid art 194, para 2.

all states have a responsibility to do the best they can, states with greater capacity for climate intervention have a more stringent 'due diligence' responsibility.

Sixth, ITLOS established a systemic approach to international treaties, aiming to integrate different fields of international law. In interpreting UNCLOS, the Tribunal noted the relevance not only of other climate treaties but also of the Chicago Convention, The International Convention for the Prevention of Pollution from Ships (MARPOL), the Montreal Protocol, and others. These treaties' rules need to be taken into account when interpreting UNCLOS, which helps limit any further fragmentation or contradiction regarding states' international legal obligations.

Seventh, the Tribunal took a notably limited view of what the Paris Agreement requires. The advisory opinion seems to suggest that the Paris Agreement was a formality, leaving states to determine their own responsibility. This is an unfortunate reading of the Agreement, as it does not address the 'legal architecture' of the Paris Agreement, namely normative parameters like the progression that parties must put into their Nationally Determined Contributions (NDCs) and the need to reflect their highest possible ambition.

Finally, eighth, the Tribunal takes an expansive reading of Article 192 of UNCLOS. Article 192 provides a general responsibility for states to protect and preserve the marine environment. ITLOS interpreted this article to primarily focus on adaptation measures like preserving the marine environment, protecting ecosystem health, and restoring degraded ecosystems that have been impacted by climate change. This reading of Article 192 has far-reaching consequences in and of itself, as it provides a clear confirmation that UNCLOS is a legal basis of states' obligations to address climate change through both mitigation and adaptation. Ultimately, the advisory opinion has both legal and normative repercussions, and illuminates the legal and policy work to be done in the coming years.

Monica Feria-Tinta: Procedural highlights and treaty interpretation

The opinion has several procedural highlights. First, the Tribunal issued an opinion in just a year and five months. The timeline seems remarkable when compared to the *Torres Strait* case, which remained in front of the UN Human Rights Committee for over three years.⁸ That the opinion was released expeditiously not only indicates that the Tribunal treated this issue as an urgent matter, but also illustrates the procedural efficiency of an international tribunal in its adjudication of complex matters. Second, as previously mentioned, the advisory opinion was unanimous. Third, there was a wide range of participating parties, spanning from the 31 State parties, to intergovernmental organizations, to NGOs such as the World Wide Fund for Nature (WWF).

The Tribunal's interpretation of UNCLOS to include climate change obligations is also notable, as the term 'climate' does not appear in the 40-year-old treaty. The Tribunal applied the Vienna Convention on the Law of Treaties in its interpretation and concluded that Article 1(4) and the term 'pollution' should be construed to account for all sources of pollution (primarily identified as GHG), such as land-based sources, aircrafts, and vessels.⁹ This interpretation extended State obligations to every possible originator of GHG. The impact of this interpretation is significant—as oceans constitute 70% of the world, we now have a path to regulations under the obligations of UNCLOS that covers, with clarity, these dimensions of the globe.

The Tribunal placed science front and centre in its consideration of the issue. Importantly, ITLOS observed that none of the participants had challenged the authoritative value of the IPCC reports. The Tribunal's acknowledgement and emphasis on science will not only be relevant to the 168 parties under UNCLOS, but also impact other tribunals. Furthermore, the Tribunal acknowledged the declarations made by the 2022 United Nations Ocean Conference, which was deeply alarmed by the adverse effects of climate change on the ocean and marine life.¹⁰ The prior due diligence test was devised with the acknowledgement that our environment is in a high risk situation and experiencing a number of devastating effects, such as rising sea levels, increasing ocean heat content, marine heat waves, oxygenation, and ocean acidification. The urgency connoted by scientific evidence and the UN Ocean Conference was particularly relevant to the Tribunal's interpretation of UNCLOS and the States' obligations.

With this opinion, ITLOS became the first international Tribunal to clearly address the issue of transboundary harm in the context of climate change. *Torres Strait* dealt with non-transboundary harm, where the victims were within the territorial jurisdiction of the state that was held responsible.¹¹ The European system has addressed the issue of transboundary harm. This, on the other hand, is a clear statement of the wide obligations of the States regarding transboundary harm—obligations to activities within a State's jurisdiction and control in respect to the environments of other States and areas beyond its national control. This opinion implicates a myriad of GHG sources, as States control

⁸ *Daniel Billy et al. v. Australia* (22 September 2022) Communication No. 3624/2019 CCPR/C/135/D/3624/2019 <https://ccprcentre.org/files/decisions/CCPR_C_135_D_3624_2019_34335_E.pdf>

⁹ Consolidated version of the Treaty on the Functioning of the European Union [2016] OJ C202/01 art 14 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016E%2FTXT>>

¹⁰ United Nations, 'UN Ocean Conference' <<https://www.un.org/en/conferences/ocean2022>> accessed 05 June 2024.

¹¹ *Daniel Billy* (n 8).

land-based sources, aircrafts, and shipping. In addition, the obligations are extended to both public and private actors.

Regarding whether the Convention went beyond with its treaty interpretation, I agree with Vaughan Lowe, who submitted his analysis on behalf of the Commission of Small Island States (COSIS).¹² The language of UNCLOS was very clear. For example, the Tribunal asserted that there is an obligation of cooperation. The language of UNCLOS differs from the language of the Paris Agreement. While there is language such as “shall” in UNCLOS, there is language such as “should” in the Paris Agreement. It is notable that the 168 States Parties have more stringent obligations under UNCLOS, which is important to the interpretation of other treaties as well. Furthermore, this interpretation is relevant not only for issues of cooperation, but also reparation and state responsibility, which is not implicated in Paris. The Tribunal has been quite clear that it had not been asked about secondary rules. However, states may incur state responsibility if they do not comply with their obligations. It is also possible that breaching primary rules will have legal consequences. This links us to the question we now have before ICJ.

¹² Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Verbatim Record ITLOS/PV.23/C31/4 - 12 September 2023 p.m.) pg. 28-35
<https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral_proceedings/verbatim_records_rev/ITLOS_PV23_C31_4_Rev.1_E.pdf>

Dr. Ivano Alogna: Implications on corporate climate litigation

The advisory opinion has significant implications on the future of corporate climate litigation. In March 2024, BIICL launched a new knowledge platform called the Global Toolbox on Corporate Climate Litigation that is the product of a broader comparative research project involving more than 200 experts and representing 17 jurisdictions.¹³ We analysed the causes of action, procedures and evidence, and remedies that have been used in each target country. We also tried to identify the main challenges encountered and prospects for this new but rapidly growing field of litigation.

In the last few years, there has been a surge in climate litigation. Even though there are now more than 2500 cases against governments around the world, which we know from the database maintained by the Sabin Center of Columbia University, there are also many cases against private actors, such as fossil fuel firms and other polluting industries.¹⁴ In many cases, the plaintiffs challenged corporate inaction on the climate crisis and attempts to spread misinformation. Currently, there are more than 200 corporate committed cases around the world without counting those in the US, where we find some of the very first cases brought against corporations by local and national governments. While the most famous case is the *Village of Kivalina v. ExxonMobil*, we now see the emergence of new cases, such as the action filed in September by California against Exxon and other fossil fuel companies.¹⁵

The first successful case in corporate climate litigation is *Milieudefensie v. Royal Dutch Shell*, which is based on the duty of care provided by the Dutch Civic Code and further informed by Article 2 and 8 of the European Convention on Human Rights.¹⁶ In the first instance, The Hague District Court held Shell to slash emission by 45% by 2030, relative to 2019 levels across both emission from its own operations and from the use of the oil it produces.¹⁷ Shell appealed the decision, and the case was heard by the Court of Appeals last month. The UNCLOS advisory opinion may not only be used as a reference in this seminal case, but also in future climate litigations involving corporations across various jurisdictions.

First, the advisory opinion reinforced the international legal framework and held states and private entities accountable for environmental protection. The opinion can be cited in national courts to argue that corporations have an international duty to mitigate the climate related impacts. Moreover, it applied external rules, such as the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, and the Kyoto Protocol, in the interpretation of UNCLOS. It aimed to announce the harmonization and coordination between different international treaties and customs, and to address the fragmentations of international law. Furthermore, the Tribunal determined that necessary measures are determined by objective standards that are based on the

¹³ British Institute of International and Comparative Law, 'Corporate Climate Litigation Toolbox' <<https://www.biicl.org/ccl-toolbox>> accessed 05 June 2024.

¹⁴ Sabin Center for Climate Change Law, 'Climate Change Litigation Databases' <<https://climatecasechart.com/>> accessed 05 June 2024.

¹⁵ *Native Village of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012); Complaint for Abatement, Equitable Relief, Penalties, and Damages, *People v. Exxon Mobil Corp.*, CGC23609134 (Cal. Super. Ct. Sept. 15, 2023).

¹⁶ *Milieudefensie et al v. Royal Dutch Shell PLC*, The Hague District Court, 26 May 2021, C/09/571932/HA ZA 19-379 <https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210526_8918_judgment-1.pdf>; Dutch Civil Law, 'Dutch Civic Code' <<http://www.dutchcivillaw.com/civilcodegeneral.htm>> accessed 05 June 2024; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS. 221, E.T.S. 5 art 2, 8.

¹⁷ *Milieudefensie* (n 16) 4.4.39

best available scientific evidence and internationally agreed upon rules and standards. This opinion could weaken arguments built upon the broad discretion afforded to the states, and strengthen arguments in favour of reducing such broad discretion.

Second, corporations may face increased scrutiny regarding their environmental due diligence. The advisory opinion underscores the necessity for companies to assess and mitigate their contribution to marine pollution and climate change. However, the opinion can also influence courts to impose stricter liabilities on corporations, leading to higher compensation for damages caused by environmental degradation and climate impacts. Moreover, the Tribunal's findings regarding Article 194(2) of UNCLOS could have implications for climate change related litigation, specifically for states to take all measures necessary to ensure that activities under their jurisdiction or control do not cause damage through pollution.¹⁸ States could potentially have responsibility for any pollution arising out of incidents or activities under the jurisdiction of control, which extends to both public and private actors. This means that states must also act appropriately to ensure that any private entity that causes anthropogenic greenhouse gas emissions within their jurisdiction and control is effectively regulated. These findings put even more pressure on states to strengthen scrutiny on the activities of major carbon emitters in their countries, as they could face UNCLOS-based legal challenges such as lax regulatory standards and deficient oversight and enforcement.

Third, governments may revise regulatory frameworks to align with ITLOS advisory opinions. This could lead to stricter environmental regulations and enforcement mechanisms impacting corporate operation. By anticipating legal and regulatory shifts, corporations might proactively adopt more rigorous environmental policies and practices to comply with these evolving standards and mitigate litigation risk. ITLOS outlined specific pollution related obligations, including the enactment and enforcement of laws to control marine pollution from greenhouse gas emission, and these standards may improve legal arguments in domestic climate litigation when a state's climate policy is challenged as insufficient to satisfy the Paris Agreement temperature goals. Similar to how the Paris Agreement has been used to show that states are not doing enough, UNCLOS's specific obligations can urge states to make and enforce laws to reduce and stop anthropogenic greenhouse gas emission from polluting the marine environment. Among these obligations, UNCLOS Article 206 mandates the parties to conduct an environmental impact assessment for any planned activity that may cause significant pollution or challenges to the marine environment.¹⁹ The assessment must be conducted by parties under state control, and the results must be reported. This requirement could encourage climate litigation in domestic courts, as claimants could argue that failure to conduct adequate environmental impact assessment for activities contributing to significant greenhouse gas emission violates the specific obligation under UNCLOS, thus enforcing cases against states as well as corporations.

To conclude, we can say that the UNCLOS advisory opinion represents a significant milestone in the quest for environmental climate justice. It holds significant implications for corporations, underscores the evolving regulatory landscape concerning climate responsibility, and points to scrutiny and regulatory enforcement concerning greenhouse gas emissions and environmental preservation. Companies that operate in sectors with significant environmental footprints, such as the carbon majors, must anticipate the likelihood of regulatory changes and be prepared to proactively adapt their practice to align with evolving standards. The opinion adds to the growing body of international

¹⁸ UNQLOS (n 5) art 194(2).

¹⁹ *ibid* art 206.

case law on which claimants in domestic court litigation may rely when seeking to hold companies accountable for climate change.

Q&A

Following the panel discussion, the Chair fielded questions submitted by the audience that were put to members of the panel.

What could ITLOS have done better in linking UNCLOS with the climate regime, specifically the Paris Agreement?

Professor Voigt: The Tribunal looked at the Paris Agreement in its exercise of giving meaning to the terms of UNCLOS. In doing so, it only looked at two elements of the Paris Agreement: the temperature goal, in Article 2(1)(a), and the corresponding timeline for emission pathways (which the IPCC specifies net-zero CO₂ emissions by 2050), in Article 4(1). The Paris Agreement has more than those two provisions, and ITLOS could have used more elements to interpret or give meaning to the concept of ‘all necessary measures.’

As one example, developed states’ NDCs have to be economy-wide targets which cover the entire economy; NDCs also must progress every time they are put forward, and they have to be at the level of highest possible ambition. Additionally, state NDCs shall be informed by the outcome of the global stocktake which took place at last year’s climate meeting in Dubai. All these elements could have been used as additional normative parameters in the determination of ‘all necessary measures.’

However, ITLOS confined itself to the two referenced Paris Agreement parameters, temperature and timeline, without explaining why. If the tribunal had included others, it could have created an even higher harmony and consistency between the two agreements. Referencing more parameters would have also illuminated the relatively stringent compliance that Paris requires. Thus, more engagement with Paris might have better clarified the relationship between Paris and UNCLOS.

Monica Feria-Tinta: The role of the Tribunal was not to interpret Paris in any comprehensive manner. In fact, if we look at what the Tribunal was asked, it was to answer specific questions on UNCLOS. It is unlikely that focusing more on Paris would have changed the advisory opinion’s outcome.

By comparison, the ICJ has a different task. It’s possibly there, in the anticipated ICJ advisory opinion, where what Christina suggests will be more of an issue. The ICJ has a number of sources, all on *equal* basis, to draw from primary rules in order to determine the law. With regard to consulting sources, ITLOS was tasked with interpreting UNCLOS alone. To that end, the Tribunal used UNCLOS in its normative environment, including other treaties that the Tribunal thought were relevant. However, ITLOS intentionally avoided comprehensively addressing the obligations states have under Paris, because its task was only to clarify states’ obligations under UNCLOS. The ICJ will have a different task in its advisory opinion.

Professor Voigt: Regarding the discussion about UNCLOS and the Paris Agreement, the jurisdiction of ITLOS is, unquestionably, UNCLOS. But ITLOS itself ventured into interpreting Paris: it interpreted Article 2(1)(a) as holding temperature increases to 1.5 degrees (it did not even mention 2 degrees); it also interpreted Article 4(1) as net-zero CO₂ emissions by 2050. So ITLOS did go into interpreting the Paris Agreement in the context of giving meaning to the terms of UNCLOS. But it did not explain why it only went into these two provisions, and none of the others, any of which may have helped in informing the standard of ‘due diligence,’ or what ‘all necessary means’ are.

What are your views on the scope of environmental impact assessments under UNCLOS? Should the cumulative impact, including the carbon footprints of all planned projects on the ocean, be assessed, evaluated, identified, quantified, and publicized, as required by UNCLOS?

Ivano Alogna: Assessing the scope of emissions can be complex due to the need for extensive data collection. Also, it's important to analyse this across the entire value chain, which is a difficult task. Data collection requires coordination across multiple entities and transparency across the supply chain, all of which could be really challenging to achieve. Perhaps because of this, it hasn't been stringently mandated yet.

On the other hand, there are environmental standards, and practices are evolving. So this inclusion of 'cumulative impacts', including ocean impacts, in this kind of framework may follow as methodology and tools for measuring this emission become more robust and widely accepted. The emphasis by ITLOS on cumulative impacts opens the possibility for promoting what could be a more comprehensive approach to environmental assessment methodology.

Monica Feria-Tinta: The cumulative effect is crucial, and it is noteworthy that the Tribunal picked up that point made in the WWF submissions. It hasn't been raised before—making cumulative impact part of the environmental impact assessment puts us in a new era. The only tribunal that I know which has focused on the cumulative environmental impact is the Inter-American Court of Human Rights. Based on what the Tribunal has said in Article 194(2), it *definitely* covers indirect impact and cumulative emissions, because the only way to regulate activities carried out both by public and private actors is to know the impact of the private actor's emissions. To be able to consider the cumulative impact of various projects that may happen from public and private sources, you need to know the full impact, so that you might measure its emissions against the prohibitions that the Tribunal has interpreted from the convention. We are in a brave new world. It's going to be a major game changer for the way things have been operating on a regulatory basis.

Do you think perhaps major CO₂-emitting states will now start considering leaving UNCLOS to avoid future environmental litigation that may lead to UNCLOS proceedings?

Professor Voigt: The hope is not. State obligations in treaties are of an evolving nature. The Tribunal has thus interpreted the treaty in that living nature, with terms that can be determined and interpreted in evolving context. This is within the Tribunal's jurisdiction, and should not lead any state party to withdraw and say that an interpretation goes beyond the treaty. Legally, it is always possible for states to withdraw from the treaties. But it would come at significant reputational and political cost. Ideally, no state would leave a treaty that is now being interpreted in the context of the pressing global challenge of climate change, whether it is the European Convention on Human Rights, UNCLOS, or any other treaty. States should live up to their obligations, which by their nature evolve.

Geoengineering appears to lead to entanglement between two conflicting objectives: the objective of mitigating climate change, but also the objective of preventing environmental harm. Geoengineering and other ocean-based decarbonisation technologies to abate atmospheric CO₂ emissions and combat climate change appear to also implicate marine environmental obligations under UNCLOS. Do you have any views as to how to strike this balance between using ocean-based technologies to mitigate climate change, while at the same time protecting the oceans from the deleterious effects that these technologies may have?

Monica Feria-Tinta: The Tribunal mentioned the precautionary approach generally in the tests of 'due diligence' in its advisory opinion, and also the importance of applying the due diligence test, taking into account the high risks that we currently face when it comes to the situation of the oceans. There is also the issue of positive obligations when it comes to the protection of the oceans, including the obligation to protect rare ecosystems and threatened species. These two concepts interact. For example, in deep sea mining, the whole idea is to extract minerals for green technology to help transition to a different world, but based on how I am interpreting this advisory opinion, it cannot be done at the expense of destroying rare ecosystems or threatened species in the ocean.

As a result, it will be a large task to understand how to strike a balance. It is likely going to be done on a case-by-case basis, because there are going to be a lot of issues that will have to be taken into account, including, as mentioned earlier, environmental impact assessments. It's not just about the principle, it will have to also consider specific issues. This advisory opinion provides some guidance and a new approach, which was not the case before.

Christina Voigt: It really lies in the balance between Article 194 and Article 192, where we have that general obligation to protect and preserve the marine environment. The Tribunal went to great lengths to say that Article 192 is about protecting ecosystem health, the natural balance of the environment, restoring degraded ecosystem, and brought in the precautionary approach and even a link to the Convention on Biological Diversity.

All of this has to be seen in a comprehensive manner and to see where the balance lies, and to what extent geoengineering or even solar radiation activities which could affect the heat aspect of pollution now need to be balanced with the need to protect the ecosystem health of the marine environment. This must be assessed on a case-by-case basis. There lies a lot of research work ahead of us as to understand exactly how to strike that balance.

Ivano Alogna: In a way, what is suggested is also that we have to take into consideration existing principles of international environmental law: as we said, the precautionary principle, but also the obligation not to cause transboundary harm, and the duty to preserve and protect the marine environment. All of these apply to geoengineering and other ocean-based climate mitigation activities, and they also mean that such activities must be conducted with a high degree of caution and respect for environmental standards. This is really something that we need more research and monitoring of these kinds of techniques to understand the potential impacts better.

The event ended with closing remarks from the Chair and the convenor thanking participants for their excellent contributions.

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