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The Contribution of ITLOS to the Development of International Law: From "the Ship as a Unit" to the Continental Shelf and Climate Change

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Excellencies, ladies and gentlemen,

At the outset, I would like to thank Director Nilüfer Oral and her team at the Centre for International Law for inviting me to beautiful Singapore to give a lecture in the CIL Distinguished Lectures Series. I am both delighted and honoured to do so.

Introduction

The International Tribunal for the Law of the Sea (ITLOS) has dealt with 31 cases in its 28-year history and has currently further two cases on the docket. It is interesting to note that of its first 15 cases, up to 2007, 13 were urgent

proceedings, that is nine prompt release cases and four provisional measures cases. Since then, however, the judicial activities of the Tribunal have diversified and included a number of cases on the merits, for example three cases concerning maritime delimitation, as well as three advisory opinions.

The main role of courts and tribunals under the Law of the Sea Convention is obviously to settle disputes concerning the interpretation or application of the Convention. However, in many cases, courts and tribunals are required to clarify provisions of the Convention and related international law, which not only benefits the parties to the relevant dispute but the international community as a whole. Consequently, these judicial activities are particularly important. This applies, in particular, to provisions that are vague or ambiguous or include undefined terms, which is sometimes the result of difficult compromises reached at the Third Law of the Sea Conference between States or groups of States with different views and interests. In such cases, it has sometimes been left to courts and tribunals to clarify the provisions and give them content. Articles 74 and 83 of the Convention, which address the delimitation of the exclusive

economic zone (EEZ) and the continental shelf, represent a primary example in this regard.

International courts and tribunals can also play an important role in interpreting, clarifying and developing the law of the sea in light of new scientific and technical knowledge and changing circumstances. In order to be a living instrument, the 1982 Law of the Sea Convention needs to be adapted to new scientific findings and changing environmental circumstances, such as climate change, and there courts and tribunals have a role to play

Courts and tribunals may of course clarify the law through the application of their contentious jurisdiction, but in my view advisory proceedings are particularly suitable in this respect.

Let me now mention a few examples of areas where the Tribunal has through its jurisprudence clarified, and thus developed, the law of the sea and related international law. Starting with the clarification of the Tribunal of “a ship as a unit”, I will address most of these examples only briefly but will give more focus to issues related to the most recent jurisprudence, in particular the *Mauritius/Maldives case* and the *Climate Change Advisory Opinion*.

1. The right of the flag State to make claims in respect of its vessels: *a ship as a unit*

ITLOS has dealt with three cases on the merits where the flag State claimed compensation for damage arising from the arrest and detention of the ship in question: 1) the *M/V "SAIGA" (No. 2) case*; 2) the *M/V "Virginia G" case*; and 3) the *M/V "Norstar" case.* In those cases, the Tribunal had the opportunity to clarify the legal notion of a ship and various related issues.

In all of these cases, the respondent filed several objections to admissibility of the flag State's claims. Those objections were, in particular, based on the nationality of claims. This is a fundamental question, because, if accepted, such objections terminate the proceedings before the merits of the case are examined. In all three cases, the Tribunal rejected the objections to admissibility of claims and examined the merits, including claims for reparation.

In these cases, ITLOS clarified the unique nature of *a ship as a unit* – a finding that has a particular relevance for the right of the flag State to seek redress for the ship's crew members who are not its nationals.

In response to the argument that the flag State has no right to seek redress for non-national crew members, the Tribunal, having examined the relevant provisions of the Convention, stated that “the Convention considers a ship as a unit, as regards the obligations of the flag State with respect to the ship and the right of a flag State to seek reparation for loss or damage caused to the ship by acts of other States … Thus the ship, every thing on it, and every person involved or interested in its operations are treated as an entity linked to the flag State. The nationalities of these persons are not relevant.”

The Tribunal supported this finding with practical considerations based on the realities of modern maritime transport; the transient and multinational composition of ship’s crews and the multiplicity of interests that may be involved in the cargo on board a single ship. It stated that “[i]f each person sustaining damage were obliged to look for protection from the State of which such person is a national, undue hardship would ensue.”

2. Prompt release of vessels and crews upon the posting of a reasonable bond

Under article 292 of the Convention, where the flag State of a vessel alleges that the coastal State has not complied with its prompt release obligations, for example under article 73, the question of release from detention may be submitted to ITLOS. If the Tribunal finds that the detaining State had an obligation for prompt release, it will determine whether the bond fixed by the detaining State was reasonable, or, if no bond has been fixed, the Tribunal will itself determine a reasonable bond.

Up to 2007, ITLOS heard nine applications for the prompt release of fishing vessels and crews, including its very first case, the *M/V "SAIGA" case*. However, interestingly, since 2007, no such case has been referred to the Tribunal. This may probably be explained by the fact that the Tribunal has developed comprehensive jurisprudence on various issues that may arise under article 292 of the Convention and clarified them. For example, in the *"Camuoco" case* between Panama and France, the Tribunal listed some of the factors it considers when assessing the reasonableness of a bond.

Apparently, the clarification of the law by the Tribunal has served to prevent the occurrence of disputes in this field.

3. Protection of the marine environment

ITLOS has dealt with a number of environmental cases and contributed to the protection of the marine environment. This has primarily occurred in the context of a number of proceedings for the prescription of provisional measures and in the three advisory opinions of the Tribunal and its Seabed Disputes Chamber.

ITLOS has reaffirmed and developed the basic principles of Part XII of the Convention relating to the protection and preservation of the marine environment, including the precautionary approach, the duty to cooperate, the duty to conduct environmental impact assessments, and the duty of due diligence, thereby contributing to the development of international environmental law. It has been commented that "the Tribunal has demonstrated its willingness to interpret and apply Part XII of the Convention consistently with the contemporary state of international environmental law." This reflects the notion that the Convention is a living instrument which must adapt to new developments.

In its jurisprudence, ITLOS has taken a broad view of what is meant by "the marine environment". Although Part

XII of the Convention focuses on marine pollution, it is clear from its section 1 as a whole that it was never intended to be limited to pollution and that it also encompasses protection of ecosystems and conservation of depleted and endangered species of marine life. The *Southern Bluefin Tuna cases* related to a fisheries dispute under Part VII of the Convention, rather than Part XII, but the Tribunal expressly stated in its Order that “the conservation of the living resources of the sea is an element in the protection and preservation of the marine environment.” This was later confirmed in the *SRFC Advisory Opinion*.

4. Bunkering fishing vessels in the exclusive economic zone

The *M/V “Virginia G” case* concerned a dispute relating to bunkering activities in support of foreign vessels fishing in the EEZ of a coastal State. The Tribunal found that “the regulation by a coastal State of bunkering of foreign vessels fishing in its [EEZ] is among those measures which the coastal State may take in its [EEZ] to conserve and manage its living resources under article 56 of the Convention read together with article 62, paragraph 4”. It added that this view

was also confirmed by State practice which had developed after the adoption of the Convention.

The Tribunal thus concluded that “the bunkering of foreign vessels engaged in fishing in the [EEZ] is an activity which may be regulated by the coastal State concerned.” It clarified, however, that the coastal State does not have such competence with regard to other bunkering activities, unless otherwise determined in accordance with the Convention.

5. Freedom of navigation

The Tribunal’s Judgment in the *M/V “Norstar” case* offered a rare opportunity to clarify the freedom of navigation under article 87 of the Convention. In particular, the Tribunal focused on the question of what acts could constitute a breach of the freedom of navigation.

The Tribunal held that, “[a]s no State may exercise jurisdiction over foreign ships on the high seas, … any act of interference with navigation of foreign ships or any exercise of jurisdiction over such ships on the high seas constitutes a breach of the freedom of navigation, unless justified by the Convention or other international treaties.” The Tribunal stated that “[i]t goes without saying that physical or material

interference with navigation of foreign ships on the high seas violates the freedom of navigation.” It added, however, that “even acts which do not involve physical interference or enforcement on the high seas may constitute a breach” of that freedom.

The Tribunal further stated that “any act which subjects activities of a foreign ship on the high seas to the jurisdiction of States other than the flag State constitutes a breach of the freedom of navigation, save in exceptional cases expressly provided for in the Convention or in other international treaties.” According to the Tribunal, “the principle of exclusive flag State jurisdiction is an inherent component of the freedom of navigation under article 87 of the Convention. This principle prohibits not only the exercise of enforcement jurisdiction on the high seas by States other than the flag State but also the extension of their prescriptive jurisdiction to lawful activities conducted by foreign ships on the high seas.”

6. Delimitation of the continental shelf beyond 200 nautical miles

In 2012, ITLOS delivered a ground-breaking Judgment in the *Bangladesh/Myanmar case.* The case concerned the delimitation of 1) the territorial sea; 2) the EEZ and continental shelf up to 200 nm; and 3) the continental shelf beyond 200 nm. Not only was this the first maritime delimitation case submitted to the Tribunal, but also the first case where a court delimits the boundary between the parties' respective continental shelves beyond 200 nm. The Tribunal's approach, which distinguishes between the functions of delimitation and delineation, was subsequently followed by other judicial bodies when dealing with the issue of delimitation of the outer continental shelf.

The Tribunal clarified, in particular, questions concerning jurisdiction to delimit the continental shelf beyond 200 nm and the legal status of the so-called "grey area".

6.1. Exercise of jurisdiction: question of entitlement

In cases concerning the delimitation of an outer continental shelf between States with opposite or adjacent coasts, questions concerning jurisdiction may arise. In the *Bangladesh/Myanmar case* of 2012, the Tribunal clarified the relationship between delimitation and delineation of the

continental shelf beyond 200 nm. As the Tribunal pointed out, these are distinct processes, delimitation governed by article 83 and delimitation by article 76 of the Convention. What they have in common, however, is the requirement of entitlement to a continental shelf beyond 200 nm. Without demonstrating such entitlement, there cannot be any delimitation or delineation of an outer continental shelf.

There are various circumstances in disputes regarding the delimitation of the outer continental shelf. In some cases, recommendations from the Commission on the Limits of the Continental Shelf (CLCS) may be available, and even final and binding outer limits established by the relevant coastal States on the basis of such recommendations. In other cases, where recommendations are not available, the relevant coastal States may be able to demonstrate entitlement to the outer continental shelf with different means, for example through submissions made to the CLCS.

In the *Bangladesh/Myanmar case*, both Parties had made submissions to the CLCS, but the Commission had not been in a position to consider the submissions due to a lack of consent by the two coastal States. Referring to the concept of a single continental shelf, the Tribunal clarified

that it had jurisdiction to delimit the continental shelf in its entirety, both within and beyond 200 nm. It also found that it was appropriate to exercise that jurisdiction in this case. Importantly, the Tribunal stated that it “would have been hesitant to proceed with the delimitation of the area beyond 200 [nm] had it concluded that there was *significant uncertainty* as to the existence of a continental margin in the area in question.” However, it noted the “unique situation” of the Bay of Bengal, as acknowledged in the course of the negotiations at the Third Law of the Sea Conference (Statement of Understanding), and took note of “uncontested scientific evidence” that there is a continuous and substantial layer of sedimentary rocks extending beyond 200 nm.

In the 2017 *Ghana/Côte d’Ivoire case*, the ITLOS Special Chamber noted that both Parties had made submissions to the CLCS and that Ghana had already received affirmative recommendations from the Commission and completed the procedure before it. Although Côte d’Ivoire had not yet received any recommendations from the CLCS, the Chamber had “no doubt” that an extended continental shelf existed for Côte d’Ivoire as well, “since its geological situation is identical to that of Ghana, for which affirmative recommendations of the CLCS exist.” The

Special Chamber therefore found that it was appropriate to exercise its jurisdiction to delimit the continental shelf between the two parties in its entirety.

On 28 April last year, an ITLOS Special Chamber rendered a Judgment in the *Mauritius/Maldives case*. This was the first case regarding delimitation between two archipelagic States – one located in Africa, the other in Asia. The case concerned the delimitation of the EEZ and the continental shelf within 200 nm, and of the continental shelf beyond 200 nm, between the Chagos Archipelago and the Maldives.

As far as the delimitation of the outer continental shelf is concerned, both Mauritius and the Maldives had filed submissions with the CLCS but no recommendations had been made by the Commission. The Special Chamber stated that, to this extent, the situation was similar to that in the *Bangladesh/Myanmar case*. Accordingly, it decided to apply the standard of "significant uncertainty" when assessing the existence of a continental margin beyond 200 nm, which the Tribunal had laid out and applied in *Bangladesh/Myanmar*. The Chamber explained the rationale for applying this standard: it "serves to minimize the risk that the CLCS might later take a different position regarding

entitlements in its recommendations from that taken by a court or tribunal in a judgment."

This figure shows the outer continental shelf claimed solely by the Maldives and the area of overlapping claims of Mauritius and the Maldives. And this figure shows a pronounced feature, the Chagos Trough, which lies from north to south to the east of the Chagos Archipelago and between the archipelago and the outer continental shelf claimed by Mauritius.

Mauritius had identified a foot of slope point, FOS VIT31B, on which its claim of entitlement to the outer continental shelf was based, and advanced three different routes for natural prolongation to this critical foot of slope point. As the first route presented by Mauritius passed within the uncontested continental shelf of the Maldives within 200 nm, the Chamber considered that it was "impermissible on legal grounds under article 76 of the Convention". The Chamber then found that there was "significant uncertainty as to whether the second and third routes could form a basis for Mauritius' natural prolongation".

The Special Chamber concluded that, given the significant uncertainty, it was not in a position to determine the entitlement of Mauritius to the outer continental shelf

and, consequently, did not proceed to delimit the continental shelf beyond 200 nm.

6.2. Legal status of the “grey area”

In the *Bangladesh/Myanmar case*, the Tribunal also clarified the legal status of the so-called “grey area”. The Tribunal stated that the delimitation of the continental shelf beyond 200 nm in this case “gives rise to an area of limited size located beyond 200 [nm] from the coast of Bangladesh but within 200 [nm] from the coast of Myanmar, yet on the Bangladesh side of the delimitation line.”

A grey area arises, in the delimitation of the continental shelf beyond 200 nm between States with adjacent coasts, whenever a delimitation line deviates from an equidistance line. In the *Bangladesh/Myanmar case*, a relatively small grey area was the consequence of the adjustment of the provisional equidistance line in favour of Bangladesh, which was required to achieve an equitable solution. The Tribunal explained that in the grey area in question, Bangladesh has continental shelf rights with respect to the seabed and subsoil and Myanmar EEZ rights with respect to the superjacent waters. Thus, there is an overlay of

Bangladesh’s continental shelf rights and Myanmar’s EEZ rights in the grey area.

The Tribunal pointed out that “[t]here are many ways in which the Parties may ensure the discharge of their obligations in this respect, including the conclusion of specific agreements or the establishment of appropriate cooperative arrangements. It is for the Parties to determine the measures that they consider appropriate for this purpose.”

7. Relevance of low-tide elevations in maritime delimitation

In the *Mauritius/Maldives* case, referred to earlier, the Special Chamber also addressed the question of the relevance of low-tide elevations in maritime delimitation. In that case, Blenheim Reef, a part of the Chagos Archipelago, constituted multiple low-tide elevations. As reflected on this figure, Mauritius wanted to take Blenheim Reef into account in the delimitation but the Maldives wanted to ignore it.

The Special Chamber did not consider that there was a general rule which requires that such a feature be disregarded in selecting base points for the purpose of

delimitation. Rather, it held that “[t]he selection of base points on a low-tide elevation depends on whether it would be appropriate to do so by reference to the geographical circumstances of the given case.” At the same time, the Special Chamber noted that international courts and tribunals have rarely placed base points on a low-tide elevation for the construction of the provisional equidistance line, and that it “would be hesitant to place base points on Blenheim Reef unless there is a convincing reason to do so.” Having considered the impact Blenheim Reef would have on the provisional equidistance line in the case before it, the Special Chamber found that Blenheim Reef, as low-tide elevations, was not a site for appropriate base points for the construction of the provisional equidistance line.

The Special Chamber then constructed a provisional equidistance line from the base points it had selected, ignoring Blenheim Reef at the first stage of the delimitation process. Thereafter, it proceeded to the second stage, namely to determine whether any relevant circumstances existed requiring an adjustment of the provisional equidistance line in order to achieve an equitable solution. In this respect, the Special Chamber considered that to ignore Blenheim Reef completely at this stage would not lead to an

equitable solution in this case, given the presence of extensive areas of drying reefs as shown by the geodetic survey carried out by Mauritius. It also noted that such drying reefs amount to “other natural features” within the meaning of article 46(b) of the Convention and, together with a group of islands and interconnecting waters, form the Chagos Archipelago. The Special Chamber thus found that Blenheim Reef constituted a relevant circumstance in this case and decided to give Blenheim Reef half effect and to adjust the provisional equidistance line accordingly. This aspect of the Judgment may be deemed an innovation in the case law of maritime delimitation.

8. Legal effect of advisory opinions

A further example from the jurisprudence in Hamburg regards a legal clarification that goes beyond the law of the sea and concerns the legal effect of advisory opinions of the International Court of Justice (ICJ). In the first phase of the *Mauritius/Maldives case*, devoted to the preliminary objections raised by the Maldives, the ITLOS Special Chamber based its findings, in particular, on the advisory opinion of the ICJ from 2019 on the *Legal Consequences of*

the Separation of the Chagos Archipelago from Mauritius in 1965, which had been requested by the UN General Assembly.

In its Judgment of 2021, the Special Chamber noted that “it is generally recognized that advisory opinions of the ICJ cannot be considered legally binding.” However, it added that “it is equally recognized that an advisory opinion entails an authoritative statement of international law on the questions with which it deals.” In this regard, the Chamber found it necessary to draw a distinction between the binding character and the authoritative nature of an advisory opinion of the ICJ. It stated that “[a]n advisory opinion is not binding because even the requesting entity is not obligated to comply with it in the same way as parties to contentious proceedings are obligated to comply with a judgment. However, judicial determinations made in advisory opinions carry no less weight and authority than those in judgments because they are made with the same rigour and scrutiny by the ‘principal judicial organ’ of the United Nations with competence in matters of international law.”

Therefore, the Special Chamber found that “determinations made by the ICJ in an advisory opinion cannot be disregarded simply because the advisory opinion

is not binding.” It stated that this was true of the ICJ’s determinations in the *Chagos Advisory Opinion*, which it considered to have legal effect. Accordingly, the Chamber “recognize[d] those determinations and [took] them into consideration in assessing the legal status of the Chagos Archipelago.”

9. Application of UNCLOS to anthropogenic GHG emissions into the atmosphere (climate change)

Finally, allow me to take up a recent and significant contribution of the Tribunal to the development of the law of the sea: the delivery on 21 May this year of its unanimous Advisory Opinion on the *Request submitted by the Commission of Small Island States on Climate Change and International Law*.

In what has been referred to as “a landmark ruling”, the Tribunal concluded that anthropogenic GHG emissions into the atmosphere constitute “pollution of the marine environment” within the meaning of article 1(1)(4) of the Convention. Thus, although the term is not to be found in the Convention, climate change has been brought into the realm

of the Convention, in particular Part XII on the protection and preservation of the marine environment.

It bears reiterating that on 26 August 2022, the Commission of Small Island States on Climate Change and International Law, which I will refer to as “COSIS”, decided to request an advisory opinion from the Tribunal on two questions.

The first question was formulated as follows:

> What are the specific obligations of State Parties to the [Convention}, 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?

The second question was phrased as follows:

> What are the specific obligations of State Parties to the [Convention}, including under Part XII:

(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 Advisory Opinion is more than 150 pages and rather than providing a summary of the Opinion here, I would like to shed light on its distinctive nature by drawing your attention to three points in particular.

The first notable aspect of the Advisory Opinion is the close attention paid to the science of climate change and its relationship with the ocean. Given that the phenomenon of climate change was central to the questions submitted by COSIS and necessarily involved scientific aspects, the Tribunal decided to devote an entire section of the Advisory Opinion to the scientific background of the case. In these paragraphs, the Tribunal made ample use of the reports of the Intergovernmental Panel on Climate Change, commonly abbreviated to “the IPCC”. Importantly, the Tribunal observed that most participants in the proceedings recognized these reports “as authoritative assessments of the scientific knowledge on climate change”. In addressing the most relevant reports, the Tribunal not only summarized

their content, but also explained methodological matters, such as their use of varying confidence levels, and how they are reviewed and subsequently endorsed by IPCC member countries. Moreover, it is worth mentioning that the notion of taking into account "the best available science" formed part of the legal analysis developed by the Tribunal in its replies to the two questions submitted by COSIS. On this topic, the Tribunal made an important connection between the latter notion and the IPCC by stating that "[w]ith regard to climate change and ocean acidification, the best available science is found in the works of the IPCC which reflect the scientific consensus."

Secondly, the Advisory Opinion offers a powerful illustration of the Convention's continued relevance in the face of contemporary challenges to the law of the sea. The Convention, as a constitutional framework, is often praised for its comprehensive scope as well as the general and open-ended terms found in many of its provisions. These features allow for the Convention to govern new ocean-related issues that were not necessarily in the minds of its drafters back in the 1970s and early 80s. Climate change is an excellent case in point. Although terms such as "climate change", "greenhouse gas emissions", also known as "GHG

emissions”, and “ocean acidification” do not appear in the Convention, the Advisory Opinion makes clear that this does not place such phenomena beyond the scope of the Convention. Allow me to demonstrate this point by referring to the Tribunal’s interpretation of the notion of “pollution of the marine environment” and its application to anthropogenic GHGs.

The Tribunal observed that the first question submitted to it by the Commission concerns the specific obligations of States Parties to the Convention to prevent, reduce and control marine pollution in relation to the deleterious effects that result or are likely to result from climate change and ocean acidification, which are caused by anthropogenic GHG emissions into the atmosphere. Noting that the first question is formulated on the premise that these obligations necessarily apply to climate change and ocean acidification, the Tribunal stated that the validity of this premise could not be presumed and therefore needed to be examined.

The Tribunal therefore considered whether anthropogenic GHG emissions meet the criteria of the definition of “pollution of the marine environment” in article 1(1)(4) of the Convention. I will read out the latter provision:

> For the purposes of this Convention … "pollution of the marine environment" means the **introduction by man**, directly or indirectly, of **substances or energy** into the marine environment, including estuaries, which results or is likely to result in such **deleterious effects** as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.

Following thorough examination, the Tribunal found 1) that anthropogenic GHGs are substances, 2) that their emissions are produced "by man" and 3) that, by introducing carbon dioxide and heat (energy) into the marine environment, they cause climate change and ocean acidification resulting in "deleterious effects". On this basis, having determined that all three criteria of the definition were satisfied, the Tribunal concluded that anthropogenic GHG emissions into the atmosphere constitute "pollution of the marine environment" within the meaning of article 1(1)(4) of the Convention.

The third and final aspect of the Advisory Opinion that I wish to underscore is the Tribunal's approach to the

interpretation of the Convention and the relationship between the Convention and other relevant rules of international law, referred to as "external rules". The Tribunal explicitly acknowledged the significance of coordination and harmonization between the Convention and external rules. Achieving this objective, in the view of the Tribunal, is important "to clarify, and to inform the meaning of, the provisions of the Convention and to ensure that the Convention serves as a living instrument." The relationship between the provisions of Part XII of the Convention, entitled "Protection and Preservation of the Marine Environment", and external rules was found to be of particular relevance in this case.

In the present case, relevant external rules may be found, in particular, in the extensive treaty regime addressing climate change, including the United Nations Framework Convention on Climate Change, or UNFCCC, and the Paris Agreement. An entire section of the Advisory Opinion was devoted to the climate change treaty regime as background of the case.

The Tribunal offered another useful clarification by clearly categorizing three distinct mechanisms through which a relationship between the provisions of Part XII of the

Convention and external rules is formed. These mechanisms are the rules of reference contained in Part XII of the Convention, article 237 of the Convention and the method of interpretation, as reflected in article 31, paragraph 3(c), of the Vienna Convention on the Law of Treaties, requiring that account be taken, together with the context, of any relevant rules of international law applicable in the relations between the parties (systemic integration).

The Tribunal also went beyond mere categorization by either expounding the rationale underlying these mechanisms or explaining their scope. Accordingly, article 237 of the Convention, which clarifies the relationship of Part XII of the Convention with other treaties relating to the protection and preservation of the marine environment, was described as "reflect[ing] the need for consistency and mutual supportiveness between the applicable rules." Furthermore, the Tribunal noted that the rules of reference contained in Part XII of the Convention and article 237 of the Convention "demonstrate the openness of Part XII to other treaty regimes." With respect to the method of interpretation reflected in article 31, paragraph 3(c), of the Vienna Convention, the Tribunal specified that the term "any

relevant rules of international law" includes both relevant rules of treaty law and customary law.

A primary example of how the relationship between the Convention and external rules operates in practice can be found in the Tribunal's assessment of the obligation to take necessary measures under article 194, paragraph 1, of the Convention.

Article 194(1) of UNCLOS reads:

> *States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for that purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.*

In the Tribunal's view, in the assessment of necessary measures, one should take into account 1) the science, in particular IPCC reports, 2) international rules and standards, in particular the Paris Agreement, and 3) other factors.

It was contented by some participants in the proceedings that the UNFCCC and the Paris Agreement are

lex specialis in respect of the obligations of States Parties under the more general provisions of the Convention. In the same vein, several participants took the view that, as concerns obligations regarding the effect of climate change, the Convention does not by itself impose more stringent commitments than those laid down in the UNFCCC and the Paris Agreement.

The Tribunal reached different conclusions on these matters. In this regard, I find it fitting to quote from a noteworthy passage of the Advisory Opinion, paragraph 223, which elucidates its reasoning in greater detail:

> The Tribunal does not consider that the obligation under article 194, paragraph 1, of the Convention would be satisfied simply by complying with the obligations and commitments under the Paris Agreement. The Convention and the Paris Agreement are separate agreements, with separate sets of obligations. While the Paris Agreement complements the Convention in relation to the obligation to regulate marine pollution from anthropogenic GHG emissions, the former does not supersede the latter. Article 194, paragraph 1, imposes upon States a legal obligation to take all necessary measures to prevent, reduce and control marine

pollution from anthropogenic GHG emissions, including measures to reduce such emissions. If a State fails to comply with this obligation, international responsibility would be engaged for that State.
(paragraph 223 of the Advisory Opinion)

Conclusion

I have now come to the end of my presentation. Building on a steady increase in its case law, with a clear uptick in recent times, the Tribunal has demonstrated its capacity and willingness to fulfil the mission entrusted to it by the States Parties to the Convention. In completing its task, the Tribunal has significantly contributed to the clarification and development of the law of the sea and related international law. As the most recent jurisprudence demonstrates, the Tribunal has not shied away from elucidating some of the most complex legal issues under the Convention. It can indeed be stated that the Tribunal stands ready to take on the full spectrum of issues concerning the law of the sea, ranging from “a ship as a unit” to the continental shelf and climate change. The achievements of the Tribunal place it in good stead to carry on its mandate

well into the 21st century as a leading forum for the peaceful settlement of ocean disputes.

Thank you for your kind attention.