

ITLOS Advisory Opinion on Climate  
Change and Comments on the  
Proceedings before the ICJ

# Timelines for the Advisory Opinions

- ITLOS Advisory Opinion

- 12 Dec 2022: Commission of Small Island States submits request
- 16 June 2023: written statements deadline
- 11-25 Sep 2023: oral proceedings
- 21 May 2024: ITLOS gives advisory opinion

- ICJ Advisory Opinion

- 29 Mar 2023: UN General Assembly resolution 77/276 adopted
- 22 Mar 2024: written statements deadline
- 15 Aug 2024: written comments deadline
- 2-13 Dec 2024: oral proceedings

# ITLOS Advisory Opinion

- Unanimous
- Key findings:
  - UN Framework Convention on Climate Change (UNFCCC) and Paris Agreement are not *lex specialis* to UNCLOS
  - UNCLOS obligations apply to climate change

# UNCLOS Article 1(1)(4)

"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;

# UNCLOS Article 194(1)

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

# Other “marine pollution” obligations

- Ensure that greenhouse gas emissions do not cause transboundary harm (Article 194(2))
- For land-based pollution and pollution from or through the atmosphere (Articles 207, 212, 213, 222)
  - Adopt laws and regulations
  - Endeavour to establish international rules, standards etc.
  - Enforce laws and regulations
  - Take other measures necessary to implement “applicable rules and standards”
- For vessel pollution (Articles 211, 217)
  - Adopt laws and regulations at least meeting “generally accepted international rules and standards”
  - Ensure compliance

# Other “marine pollution” obligations

- Cooperate to establish international rules, standards etc. “for the protection and preservation of the marine environment” (Article 197)
- Provide appropriate assistance to developing states (Article 202)
- Undertake environmental impact assessments for any planned activity under their jurisdiction or control which may cause substantial pollution or significant and harmful changes to the marine environment through greenhouse gas emissions (Article 206)

# UNCLOS Article 192

States have the obligation to protect and preserve the marine environment.

- Obligation is not premised on climate impacts being regarded as “pollution of the marine environment”

# UNCLOS Article 213

States ..... shall ..... take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce and control pollution of the marine environment from land-based sources.

# ICJ Advisory Opinion – possible issues

- Whether UNFCCC and Paris Agreement are *lex specialis*
- Paris Agreement Article 4(2) obligation to “prepare, communicate and maintain successive nationally determined contributions” – the extent to which it is discretionary
- Paris Agreement Article 4(3) requirement that nationally determined contributions reflect a party’s “common but differentiated responsibilities and respective capabilities, in the light of different national circumstances” – the relevance of historical responsibility
- Responsibility and liability
- Human rights obligations