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Climate Law and Litigation Blog – Issue No. 3 (2026)

Editor's Note to the Third Issue of the BIICL Climate Law and Litigation Blog Series

Holding the line as the seas rise: Climate, Biodiversity, and the Future of Low-lying States

By Anthony Wenton



This issue of the BIICL Climate Law and Litigation Blog focuses on a range of highly innovative and transformative international and domestic legal responses to the impacts of climate change on our seas, from evolutive interpretations of the United Nations Convention on the Law of the Sea (UNCLOS) to protect the marine environment from greenhouse gas (GHG) emissions, to revisiting foundational concepts of statehood in light of sea level rise that threatens to render some small island States uninhabitable.

The ITLOS Advisory Opinion

On 12 December 2022, the Commission of Small Island States on Climate Change and International Law (COSIS) requested an advisory opinion from the International Tribunal for the Law of the Sea (ITLOS), seeking clarification on the specific obligations of UNCLOS States Parties (a) to prevent, reduce, and control pollution of the marine environment in relation to climate change impacts caused by anthropogenic GHG emissions, and (b) to protect and preserve the marine environment in relation to climate change impacts.



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67 States Parties and 13 intergovernmental organisations made oral or written submissions to ITLOS, an unprecedented number of interventions in the Tribunal's history and a clear reflection of the importance of this issue for the international community.

The resulting [Advisory Opinion](#) was rendered unanimously on 21 May 2024. It is a landmark achievement, marking the first time an international tribunal has given an advisory opinion clarifying States' obligations to combat climate change under UNCLOS.

The innovative interpretation of UNCLOS by ITLOS in its Advisory Opinion is carefully analysed by several authors in this issue of the BIICL Climate Law and Litigation Blog. We are particularly honoured to present the analysis of one of the Opinion's chief architects, ITLOS President **Judge Tomas Heidar**. Judge Heidar zooms in on three core themes:

First, Judge Heidar highlights the close attention the Tribunal paid to scientific evidence on the impacts of climate change on oceans. The Tribunal dedicated an entire section of the Opinion to the scientific background of the case and Judge Heidar considers science to be a 'leitmotif throughout the Opinion'.

Second, the willingness of the Tribunal to interpret UNCLOS in light of the new challenges posed by climate change, making clear that the Convention is a living instrument capable of meeting new environmental threats. Judge Heidar explains that although terms such as 'climate change', 'greenhouse gas emissions', and 'ocean acidification' are not included in the Convention and may not have been envisaged by the drafters of UNCLOS, the Opinion is clear that these climate issues are certainly not beyond the scope of the Convention. Most notably, the Tribunal found that, although not explicitly identified as a form of pollution in UNCLOS, anthropogenic GHG emissions met the definition of 'pollution of the marine environment' in Article 1(1)(4) of UNCLOS. Consequently, the pollution-related provisions of UNCLOS apply to these emissions, including the obligation on States Parties under Article 194 to take 'all necessary measures' to prevent, reduce and control marine pollution caused by these emissions.

Third, the Tribunal was mindful of the need to interpret UNCLOS in line with other rules of international law, including the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, so as to create a coherent framework. Indeed, an entire section of the Advisory Opinion was devoted to the climate change treaty regime. The Tribunal considered that these 'external rules are important to clarify, and to inform the meaning of, the provisions of the Convention'.

Dr Eduardo Jimenez Pineda, University of Cordoba, builds on Judge Heidar's analysis of the Advisory Opinion and expands on the obligations of States to cooperate directly and indirectly through international organisations to prevent, reduce and



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control marine pollution caused by anthropogenic GHG emissions, including the specific duty to assist developing States in these efforts. Furthermore, Dr Pineda examines how ITLOS considered the obligation to prevent, reduce and control as imposing a stringent duty of due diligence on States Parties, given the high risks of serious and irreversible harm to the marine environment.

Professor Malgosia Fitzmaurice and **Yoana Ivanova**, Queen Mary University London, adopt a broad approach that situates the ITLOS Opinion within recent developments in international climate law, biodiversity protection, and the pursuit of climate justice. The authors consider the far reaching implications of the Opinion, including clarifying that States are responsible for extraterritorial impacts of emissions and thus addressing the highly contentious issue of transboundary harm in international environmental law; strengthening the legal position of Small Island Developing States (SIDS) which may assist them with claims for adaptation funding, loss and damage compensation, and recognition of climate-induced displacement; and effectively linking the obligation to prevent marine pollution with climate mitigation obligations and biodiversity conservation, thus contributing to the systemic integration of different legal regimes in the climate context.

The ICJ Advisory Opinion

A year after ITLOS, the International Court of Justice (ICJ) issued its Advisory Opinion on the obligations of States in respect of climate change.

Following a campaign primarily led by Vanuatu and a coalition of small island developing States, on 29 March 2023, the UN General Assembly adopted a resolution requesting the ICJ to provide an advisory opinion to clarify (a) States' obligations under international law to ensure protection of the climate system and environment from anthropogenic GHG emissions, and (b) the legal consequences for States whose acts and omissions cause significant harm to the climate system and environment, with respect to States, in particular small island developing States, and with respect to peoples and individuals of present and future generations.

On 23 July 2025, the ICJ delivered its [Advisory Opinion in respect of climate change](#). As with the ITLOS Opinion before it, the ICJ delivered its Opinion unanimously — only the fifth time in the ICJ's history that all 15 judges have delivered a unanimous advisory opinion. Again, the level of intervention was unprecedented. During the written phase of the proceedings, 91 written statements and 62 written comments were filed by States and international organisations. During the public hearings, 96 States and 11 international organisations presented oral statements.

Crisela Bernardino, Research Fellow at BIICL, reflects on the prospects of the ICJ Advisory Opinion to shape future climate action. The article distils and builds on insights gleaned from a recent [webinar](#) hosted by BIICL and C2LI, which was chaired by **Prof**



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Malgosia Fitzmaurice, with panellists including **Prof Nilufer Oral**, **Prof Christina Voigt**, **Prof Surya Deva**, **Prof Francesco Sindico**, **Dr Kate McKenzie**, and **Monica Feria-Tinta**.

Similar to the ITLOS Advisory Opinion, a key achievement of the ICJ Advisory Opinion is the way it integrates different regimes of international law, including climate change treaties, environmental treaties, human rights instruments, the law of the sea, and customary international law, in order to create a 'harmonious canvas of rules' to address the climate crisis. The ICJ Opinion also builds upon the ITLOS Opinion by re-affirming that anthropogenic GHGs are a form of marine pollution that UNCLOS States Parties are obliged to take all necessary measures to prevent, reduce and control, particularly in light of the scientific consensus that GHGs are destroying ecosystems and causing sea level to rise. The ICJ made clear that States must act with stringent due diligence to reduce GHG emissions in line with the 1.5°C target from the Paris Agreement, and that fossil fuel production, consumption, licensing and subsidies could be an 'internationally wrongful act' attributable to the State. The ICJ also made important findings on sea level rise, including highlighting that UNCLOS does not oblige States to update their established baselines, and stating that loss of territory would not necessarily entail loss of statehood.

Undoubtedly, the ICJ Advisory Opinion is a landmark achievement in clarifying States' legal duties. However, the failure to agree on meaningful commitments at COP30, such as phasing out fossil fuels, demonstrates how difficult it is to operationalise these duties without political will. Ultimately, it may be the influence the Advisory Opinion has on domestic courts and legislatures that has the greatest chance of changing behaviour.

Brazilian Federal Court Judges Gabriel Wedy and Rafael Martins Costa Moreira consider how the ICJ and ITLOS advisory opinions are likely to impact domestic court judgments, particularly in Brazil. In particular, by providing greater clarity on the obligation of due diligence, the advisory opinions may empower domestic courts to hold States responsible for climate-related harm that results from failures to adopt precautionary measures or implement regulatory instruments. This may push States to change their behaviours, including with respect to greater protection of the marine environment and for countries and populations most vulnerable to sea level rise.

Integrated Ocean Management

The recognition by ITLOS and the ICJ that GHG emissions constitute a form of marine pollution that needs to be limited to protect the marine environment can be seen as an endorsement of the principles of integrated ocean management (IOM). IOM is a holistic approach to ocean governance that aims to reconcile human activities with the health of marine ecosystems.

Dr Rosa Manzo, University of South-Eastern Norway, takes us through the historical evolution of IOM. Dr Manzo traces three key phases in the conceptual development



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of IOM, including Ecosystem-Based Management (EBM), the understanding of the oceans as complex ecosystems of which human beings are a part; Integrated Coastal Zone Management (ICZM), balancing environmental protection with sustainable development in coastal areas; and, most recently, the integration into IOM of climate change, biodiversity loss and marine pollution.

Since the 1960s, IOM has steadily matured. First through soft law instruments; then through interpretation of UNCLOS in line with IOM principles, including in the 2024 ITLOS Advisory Opinion, which integrates climate considerations with marine policies; and eventually the explicit recognition of IOM as a guiding principle in the 2023 Agreement on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ). The incorporation into binding agreements cements IOM as the cornerstone of global ocean governance. This progressive acceptance and institutionalisation of IOM is also reflected at the national level. In particular, Canada and Norway have developed pioneering integrated management frameworks.

Sea Level Rise and the Statehood of Small Island Developing States

According to the [Intergovernmental Panel on Climate Change](#), global sea levels are rising more than twice as fast as during the 20th Century and the pace is accelerating. For small island developing States, home to roughly 65 million people, climate change-induced sea level rise can pose an existential threat. States like [Tuvalu](#) are expected to be rendered almost entirely uninhabitable by 2100, and already by 2050, half the land area of Tuvalu's capital, Funafuti, will be flooded by tidal waters. Faced with this stark reality, urgent consideration must now be given to how to safeguard the statehood of SIDS that are at risk of being rendered uninhabitable or even totally submerged, and how to ensure the protection of populations and their rights to self-determination and cultural identity.

Professor Aniruddha Rajput, Distinguished Professor of Law at National Law University Delhi, and a former member of the UN International Law Commission, expertly unpicks the complexities around attempts to protect the citizens and preserve the statehood of SIDS. In particular, the post analyses the [Falepili Union Treaty](#), recently entered into by Tuvalu and Australia. Under the Treaty, Australia has agreed to allow citizens of Tuvalu to gradually relocate to Australia where they will enjoy rights to live, study and work, and access education, health, and income and family support services. Moreover, the Treaty affirms that the sovereignty and statehood of Tuvalu will continue despite the impacts of sea level rise.

Prof Rajput explains that the Treaty is an important first step that provides a useful template for negotiations between host States and de-territorialised States. However, the practicalities of how statehood can be exercised within a host State are yet to be determined. Further, given the extremely vulnerable and desperate position of SIDS, there is likely to be a great power asymmetry in any bilateral negotiations with host States. Therefore, multilateral agreements through the UN will be necessary to



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effectively protect SIDS and their populations, which may begin with resolutions of the UN General Assembly and eventually a new multilateral treaty framework on these unprecedented issues.

Sea Level Rise and Coastal Communities

[680 million](#) people live in low lying coastal areas and half of the world's mega cities, home to almost 2 billion people, are located along coastlines. Even if extreme cuts in GHG emissions are made immediately, sea level rise of 29cm to 59cm by 2100 is already inevitable, and [by 2050](#) annual occurrences of hitherto once in a century extreme sea level events will impact many coastal areas. If no action is taken, then in the worst-case scenario, sea levels could rise by as much as 238cm which would destroy mega cities around the world.

Dr Elisa Fiorini Beckhauser, Researcher at the Euro-Mediterranean Center on Climate Change (CMCC), assesses the role of climate litigation as a tool to empower coastal communities to hold public and private actors accountable for the impacts of climate change on coastal areas, including forced displacement, as well as property damage, and loss of biodiversity and cultural heritage. The blog post examines findings contained in a new practical guide issued by the Sea Level Rise Project: ['Fostering Coastal Resilience in Europe Using Climate Litigation as an Empowering Legal Tool: A Toolkit for Civil Society in Coastal Areas'](#). This guide analyses climate litigation in coastal zones in France, Germany, Ireland, the UK, Norway, as well as the European level more broadly, primarily by analysing case law of the European Court of Human Rights. It then provides a toolkit for civil society, local communities, lawyers, and other stakeholders, to better understand the legal grounds that can be invoked in climate litigation; key arguments that may be raised; how courts are likely to interpret these arguments; potential remedies that may be sought; and the main obstacles litigants encounter in these lawsuits.

One of the most challenging aspects of these cases is establishing the causal chain between specific actions or omissions of the defendant and the harm to individual victims and to communities. Therefore, the development and entrenchment of accurate attribution science is expected to play a critical role in empowering coastal communities to demand climate justice.

Dr Masako Ichihara presents impacts of sea level rise for Japan, including the protection of its maritime zones, nuclear power plants, and coastal populations.

Japan is an island nation with an extensive coastline of 35,641km and 14,125 islands. Japan's position is that even if coastlines recede and islands become submerged, the baselines it has already fixed in line with UNCLOS should be maintained. Dr Ichihara notes that this legal position has been strengthened by the recent ICJ Advisory Opinion, which acknowledges that there is no provision in UNCLOS that obliges States Parties to update their maritime zones in light of new geographic realities created by



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climate change-induced sea level rise. The ICJ Advisory Opinion therefore leaves it at the discretion of States whether they update charts or lists of geographical coordinates.

Another challenge posed by sea level rise is the need to move infrastructure inland. Of particular concern in the Japanese context is that nuclear power plants are typically located near coastlines. This may become a political and legal flashpoint in Japan as relocating plants in urban areas will face strong opposition from residents. At the same time, the Nuclear Regulation Authority is expected to both refuse to issue permits for new construction of plants in areas at risk of sea level rise, and to start to revoke permits for plants currently operating in such areas.

A further contentious issue posed by sea level rise is forced migration. It is possible that displaced people in Japan may bring climate litigation seeking damages in tort from corporations responsible for emissions and/or from the State for failing to adequately regulate emissions. Adaptation measures imposed by the government to address sea level rise could also give rise to climate litigation as to whether the measures are adequate or appropriate, which brings us to the issue of green vs green conflicts.

Green vs Green Conflicts

Chun-Yuan Lin, Associate Professor of National Taiwan University, College of Law, explores so-called green vs green conflicts, where efforts to address the climate crisis have negative impacts for other aspects of the environment. The post takes as a case study recent debates over the construction of a liquefied natural gas terminal (to help phase out coal) in Taiwan, which threatened a 7,000-year-old algal reef that supports endangered species.

Local residents and conservation NGOs used multiple strategies to halt the project, including participating in administrative mechanisms during the Environmental Impact Assessment (EIA) and coastal zone management review processes; then bringing legal challenges against the project's approval, arguing flaws in the EIA and the decision to grant a coastal zone development permit; then, as a final avenue, using direct democracy by calling for a national referendum on whether the project should be relocated.

Although officially the campaigners were not successful via any avenue, their multi-pronged campaign forced the Ministry of Economic Affairs and the State-owned developer to make significant changes to the project, including reducing the development area, using less invasive construction measures, relocating infrastructure further offshore, and introducing ecological compensation and restoration measures. Thus, this sort of multi-front campaigning, sustained over years, even when formally unsuccessful, can generate enough pressure to force significant alterations to resolve green vs green conflicts.

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Climate Washing

Less directly related to the theme of climate and the seas, but closely aligned with the broader analytical framework developed in BIICL's [Global Toolbox on Corporate Climate Litigation](#), we present a post by **Dr Monika Feigerlová**, Research Fellow at the Institute of State and Law of the Czech Academy of Sciences, which provides a study of the first climate-washing case in the Czech Republic. The core of the case is that an environmental association, *Dobře zapsaný spolek*, brought legal action against the supermarket Lidl, on the basis that Lidl falsely promoted itself as climate responsible, while at the same time running a promotion that distributed plastic toys, which the claimant alleged would produce 78 tons of carbon dioxide and other harmful substances. 78 tons of carbon dioxide and other harmful substances.

Although the litigation was not successful, it set important precedents. In particular, the High Court clarified that entities could bring unfair competition claims on behalf of consumers if the entity's founding statute specifies consumer protection as one of its activities. Furthermore, that such entities should be presumed to have standing to represent collective consumer interests. The Court also clarified that environmental statements made by a company impact consumers' purchasing decisions. Therefore, aside from environmental protection, climate washing also raises issues of unfair competition in the marketplace and thus unfair competition rules apply to environmental statements. It is anticipated that these precedents may lead to further climate washing litigation in the Czech Republic.

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