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The Implications of the ITLOS Advisory Opinion on Climate Change: International Law, Biodiversity, and the Existential Threat to Low-Lying Nations

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Introduction

Climate change is fundamentally reshaping the legal and moral fabric of international relations. Its consequences are disproportionately borne by the most vulnerable, particularly low-lying coastal and island nations whose very existence is threatened by sea-level rise, ocean acidification, and extreme weather. In this context, the 2024 Advisory Opinion by the International Tribunal for the Law of the Sea (ITLOS) marks a watershed moment in the interpretation of States' environmental obligations under international law.

This article examines the legal, environmental, and geopolitical implications of the ITLOS opinion, focusing on its affirmation that climate change constitutes a form of marine pollution under UNCLOS. It also situates the opinion within broader developments in international climate law, biodiversity protection, and the pursuit of climate justice.



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Background: COSIS and the Request for an Advisory Opinion

The Commission of Small Island States on Climate Change and International Law (COSIS) submitted a request for an advisory opinion to ITLOS in December 2022. The request sought clarification on the obligations of States under UNCLOS to prevent, reduce, and control pollution of the marine environment resulting from greenhouse gas emissions (GHGs).

31 States, seven intergovernmental organizations (IGOs) and COSIS submitted timely written statements by 16 June 2023. ITLOS also received late statements from a few States and from the Food and Agriculture Organization, as well as a number of unsolicited submissions.

ITLOS issued its opinion on 21 May 2024, affirming that anthropogenic greenhouse gas emissions that result in adverse impacts on the marine environment—such as warming, acidification, and deoxygenation—fall within the definition of “pollution” under Article 1(1)(4) of UNCLOS. The Tribunal further concluded that States are under binding obligations to take necessary measures to prevent such pollution.

Greenhouse Gas Emissions as Marine Pollution, Obligations of States and Low-Lying Nations

ITLOS relied on science in delivering its opinion, in particular the findings of the Intergovernmental Panel on Climate Change (IPCC) (para. 47). It also followed the Framework Convention on Climate Change and the Paris Agreement in addressing climate change as a “common concern of mankind” (para. 47).

A pivotal finding of the opinion is that climate change-related emissions are legally recognized as marine pollution. This interpretation places climate action firmly within the law of the sea framework, elevating the ocean’s central role in climate governance. According to Article 194 of UNCLOS, States must take all measures necessary to prevent, reduce, and control pollution of the marine environment.

ITLOS acknowledged that rising levels of anthropogenic GHGs in the atmosphere had adverse impacts on the ocean (para. 57 et seq.), including sea-level rise, ocean warming and acidification. ITLOS emphasised that vulnerable communities (which have historically contributed the least to climate change) are the most affected by these climate change impacts. ITLOS found that the obligation to protect and preserve the marine environment encompasses the obligation to prevent, reduce and control marine pollution (para. 152). Furthermore, that States have a duty to cooperate in fulfilling this obligation, and this duty permeates the entirety of Part XII of UNCLOS (para. 297). The Tribunal stressed, in particular, the importance of providing scientific, technical, educational and other assistance to vulnerable, developing States (para. 327).



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Assistance measures that were identified by ITLOS for the Global South can be categorised as follows, subject to the discretion of States: (1) promotion of programmes of scientific, educational, technical, and other assistance to developing States; (2) provision of appropriate assistance in order to minimize the effects of major incidents which may cause serious marine pollution; and (3) provision of “appropriate assistance” with the preparation of environmental assessments (paras. 332–335).

Such measures must co-exist with the measures set out in Articles 6, 9, 10 and 11 of the Paris Agreement to support capacity building, technical development and transfer, and the financial capabilities of developing States (para. 329). UNCLOS aims can be achieved through contributing “to the realization of a just and equitable international economic order which takes into account ... the special interests and needs of developing countries”, as set out in the fifth paragraph of the Preamble to UNCLOS (para. 328).

The Legal Standard of Due Diligence

ITLOS reaffirmed that the obligation to prevent marine pollution is subject to a “due diligence” standard. This means that States must take appropriate and effective measures based on current scientific knowledge and technological capabilities. While UNCLOS does not set explicit emissions targets, due diligence implies that national climate policies should be aligned with global temperature goals, such as those found in the Paris Agreement. A key innovation of the ITLOS opinion is to stipulate that the standard of due diligence must be “stringent”. The Tribunal stated as follows: “the standard of due diligence States must exercise in relation to marine pollution from anthropogenic GHG emissions needs to be stringent. However, its implementation may vary according to States’ capabilities and available resources. Such implementation requires a State with greater capabilities and sufficient resources to do more than a State not so well placed” (para. 241). ITLOS linked the due diligence obligation with the precautionary approach (para. 242).

Importantly, the Tribunal clarified that extraterritorial emissions—those impacting areas beyond national jurisdiction—still fall within a State’s responsibility. This broadens the scope of accountability and establishes a pathway for potentially addressing transboundary harm, long a contested issue in international environmental law.

Climate Justice and the Rights of Small Island States

The impacts of climate change on Small Island Developing States (SIDS) have garnered wide recognition in various international fora recently.

The ITLOS opinion provides critical support for SIDS, which are among the most climate-vulnerable countries in the world. Sea-level rise threatens to submerge entire nations, displacing populations, destroying freshwater resources, and jeopardizing sovereign control over maritime zones.



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The Advisory Opinion contributes in a significant way to the integration of international law of the sea, international environmental law and global climate governance. It crystallizes, for the first time, States' obligations under the Law of the Sea Convention to combat pollution of the marine environment and mitigate the impacts of climate change. The opinion offers, furthermore, clear direction and standards in the interpretation of States' duties, especially in relation to SIDS.

For these nations, the Advisory Opinion serves as a legal affirmation that climate inaction by major emitters violates international law. Although non-binding, the opinion enhances the legal position of SIDS in future negotiations, climate litigation, and diplomatic engagements, reinforcing claims to adaptation funding, loss and damage compensation, and recognition of climate-induced displacement.

Biodiversity Protection and Ocean Ecosystems

The opinion also has significant ramifications for marine biodiversity, which is under immense threat from climate-induced changes. Ocean warming and acidification contribute to coral bleaching, habitat degradation, and species extinction. ITLOS emphasized that State obligations to prevent marine pollution must also include ecosystem protection, linking climate mitigation with biodiversity conservation.

This view aligns with recent international developments, such as the 2022 Kunming–Montreal Global Framework of the Biodiversity Convention, which calls for the protection of 30% of marine areas by 2030. Furthermore, the opinion supports the goals of the BBNJ Treaty (Biodiversity Beyond National Jurisdiction) by framing biodiversity loss as a consequence of pollution that States are obligated to prevent under UNCLOS.

The Advisory Opinion found that States have a legal obligation to protect the world's oceans and marine biodiversity from climate change. In particular, ITLOS mentioned, in relation to biodiversity, the 1992 Convention on Biological Diversity (CBD) and the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES):

With regard to the phrase 'the habitat of depleted, threatened or endangered species and other forms of marine life', the Tribunal notes that Article 2 of the CBD provides a generally accepted definition of the term '[h]abitat' as 'the place or type of site where an organism or population naturally occurs.' ... The Tribunal notes that the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter 'CITES') ... classifies species threatened with extinction and those likely to become endangered in the absence of trade regulations. CITES is an agreement to which there is near-universal adherence. The Tribunal considers that the classification of species in the appendices to CITES provides guidance in interpreting the term 'depleted, threatened or endangered species' in article 194, paragraph 5 (para. 404).



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The above considerations signify the importance of the principle of systemic integration, as applied in the ITLOS Advisory Opinion.

Synergies with Other Legal Forums

While ITLOS's opinion is advisory and non-binding, it nonetheless contributes to the evolving fabric of international law. Its reasoning has influenced the International Court of Justice's (ICJ) Advisory Opinion of 23 June 2025 on the Obligations of States in respect of Climate Change. The ICJ relied significantly on the findings of ITLOS and articulated the same standard of stringent due diligence.

Implications for International Cooperation and Finance

The opinion also underscores the necessity of international cooperation. ITLOS called on States to work collaboratively, including through technology transfer, climate finance, and capacity building, particularly for developing and vulnerable nations. It strengthens the case for enhanced commitments under mechanisms like the Loss and Damage Fund, established at COP27.

Furthermore, it sets a precedent for future State responsibility claims, including the potential for litigation based on breaches of UNCLOS obligations, especially where national efforts fail to meet the standards of due diligence and international cooperation.

Conclusion

The 2024 ITLOS Advisory Opinion stands as a landmark development in the field of international environmental and climate law. By interpreting climate change as a form of marine pollution, the Tribunal has clarified the legal obligations of States under UNCLOS, expanded the toolkit for small island States seeking justice, and helped embed biodiversity protection within the broader framework of ocean governance.

Though not enforceable as a judicial ruling, the opinion has normative authority. It helps to define the standard of care States owe to the planet, reinforces the legal obligations tied to climate action, and advances the principle that climate justice is not only a political demand but a legal imperative.

As the world confronts worsening climate impacts, the ITLOS opinion offers both a blueprint for lawful action and a foundation for hope—especially for those whose homes, cultures, and sovereignty are most at risk.

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She was invited to deliver the General Course at The Hague Academy of International Law in 2028. She participates in the United Nations International Law Fellowship Programme, teaching the course on International Environmental Law. She is a part time Nippon Foundation Professor of Marine Environmental Protection at the International Maritime Law Institute of the International Maritime Organization. She also supervises PhD students and is Editor in Chief of the International Community Law Review journal and of the book series published by Brill/Nijhoff *Queen Mary Studies in International Law*. She has also advised on the law of treaties and international environmental law and served as an expert in her areas of expertise. She was part of the legal team representing the Republic of the Marshall Islands in relation to the Advisory Opinion on climate change before the International Court of Justice.



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International Law (CeLLa), which aims to bring together leading scholarly expertise, research, and teaching to critically analyse and engage with pressing contemporary global issues. In addition to fostering extensive collaborative research, the Centre offers postgraduate supervision and organizes a wide range of events, including annual lectures, seminar series, conferences, book launches, and reading groups.

Miss Ivanova is a Co-Managing Editor and Co-Author of a seminal book project on the Sami Peoples of the Nordic Countries. The project is an ongoing collaboration between leading academics with anthropological and legal backgrounds from the United Kingdom, Sweden, Norway, Finland and Italy.