INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

2023

Public sitting
held on Tuesday, 19 September 2023, at 3 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,
President Albert J. Hoffmann presiding

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)

Verbatim Record

Uncorrected
**Present:**

<table>
<thead>
<tr>
<th>Role</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>President</td>
<td>Albert J. Hoffmann</td>
</tr>
<tr>
<td>Vice-President</td>
<td>Tomas Heidar</td>
</tr>
<tr>
<td>Judges</td>
<td>José Luís Jesus</td>
</tr>
<tr>
<td></td>
<td>Stanislaw Pawlak</td>
</tr>
<tr>
<td></td>
<td>Shunji Yanai</td>
</tr>
<tr>
<td></td>
<td>James L. Kateka</td>
</tr>
<tr>
<td></td>
<td>Boualem Bouguetaia</td>
</tr>
<tr>
<td></td>
<td>Jin-Hyun Paik</td>
</tr>
<tr>
<td></td>
<td>David Joseph Attard</td>
</tr>
<tr>
<td></td>
<td>Markiyan Z. Kulyk</td>
</tr>
<tr>
<td></td>
<td>Alonso Gómez-Robledo</td>
</tr>
<tr>
<td></td>
<td>Óscar Cabello Sarubbi</td>
</tr>
<tr>
<td></td>
<td>Neeru Chadha</td>
</tr>
<tr>
<td></td>
<td>Kriangsak Kittichaisaree</td>
</tr>
<tr>
<td></td>
<td>Roman Kolodkin</td>
</tr>
<tr>
<td></td>
<td>Liesbeth Lijnzaad</td>
</tr>
<tr>
<td></td>
<td>María Teresa Infante Caffi</td>
</tr>
<tr>
<td></td>
<td>Jielong Duan</td>
</tr>
<tr>
<td></td>
<td>Kathy-Ann Brown</td>
</tr>
<tr>
<td></td>
<td>Ida Caracciolo</td>
</tr>
<tr>
<td></td>
<td>Maurice K. Kamga</td>
</tr>
<tr>
<td>Registrar</td>
<td>Ximena Hinrichs Oyarce</td>
</tr>
</tbody>
</table>
List of delegations:

STATES PARTIES

Singapore
Mr Lionel Yee, Deputy Attorney-General, Attorney-General’s Chambers
Ms Amanda Chong, Deputy Senior State Counsel, Attorney-General’s Chambers
Mr Ashley Ong, Deputy Senior State Counsel, Attorney-General’s Chambers
Ms Jessie Lim, State Counsel, Attorney-General’s Chambers
Ms Jennifer Mary Dhanaraj, Second Secretary (Political), Embassy of the Republic of Singapore, Berlin
THE PRESIDENT: Please be seated. Good afternoon. The Tribunal will continue its hearing in the Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law. This afternoon we will hear an oral statement from Singapore.

I now give the to the representative of Singapore, Mr Yee, to make his statement.

You have the floor, Sir.

MR YEE: Mr President, distinguished members of the Tribunal, I am honoured to appear before you on behalf of Singapore in these proceedings today.

It is almost 20 years to the day that Singapore last had the privilege of addressing this Tribunal in the Case concerning Land Reclamation by Singapore in and around the Straits of Johor. That case concerned a matter of great significance to Singapore as a very small island State with no natural resources. Those realities have not changed, and they are the reason why climate change, which is the focus of the present proceedings, is also a matter of great importance to us.

Apart from causing profound consequences on the marine environment, climate change is also an existential threat to Singapore, with 30 per cent of our land area no higher than five metres above mean sea level and more than half of our population living within 3.5 kilometres from the coast. Singapore, therefore, has a vested interest in ensuring that all States do their part to mitigate and adapt to climate change because the consequences of inaction fall disproportionately on more vulnerable States. This is the motivation for our participation in these proceedings.

The Commission of Small Island States on Climate Change and International Law ("COSIS") has raised two important questions on how the United Nations Convention on the Law of the Sea ("UNCLOS") operates in the context of climate change.

The first question focuses on the specific obligations of UNCLOS States Parties to "prevent, reduce and control pollution". The second question speaks of specific obligations to "protect and preserve the marine environment", a term which includes but goes beyond the prevention, reduction and control of pollution.

Mr President, distinguished members of the Tribunal, Singapore’s statement will address these questions in turn. In doing so, I am conscious that 24 participants have already addressed the Tribunal. Singapore agrees with many of the points which they have made. I can therefore briefly indicate in this statement the points which we concur with, without fully repeating the reasons others have already given. Many of these are also covered in Singapore’s written statement of 16 June.

Singapore’s oral statement will focus on a specific issue which has arisen in a number of written and oral statements. It is how, in the context of climate change, UNCLOS provisions interact with norms established by other treaties and international law instruments, in particular the United Nations Framework Convention on Climate Change ("the UNFCCC") and the Paris Agreement, and specifically the global temperature goal articulated in the Paris Agreement.
Mr President, distinguished members of the Tribunal, with that introduction, I now turn to the first question posed by COSIS, which concerns the obligations of UNCLOS States Parties to prevent, reduce and control pollution of the marine environment in relation to climate change. As I indicated earlier, I will start by briefly stating Singapore’s views which we share with many other participants. I have seven points to make.

First, the key provisions of UNCLOS relating to question 1 are found in article 194, article 207 on pollution from land-based sources, article 212 on pollution from and through the atmosphere, and articles 213 and 222, which are their corresponding enforcement provisions.

Second, anthropogenic greenhouse gas emissions constitute “pollution of the marine environment” under article 1(1)(4) of UNCLOS and, therefore, where Part XII of UNCLOS refers to “pollution of the marine environment”, it covers climate change and its related processes and impacts. This conclusion is based on the scientific evidence found in the reports of the Intergovernmental Panel on Climate Change (“the IPCC”). These reports are authoritative, as COSIS and many participants have said.

Third, the obligation under article 194(1) of UNCLOS, for States to take all measures that are necessary to prevent, reduce and control these emissions, and the obligation under article 194(2) to take all measures necessary to ensure that activities under their jurisdiction or control are conducted so as not to cause damage to other States and their environment, are both due diligence obligations. They are obligations of conduct rather than result.

Fourth, as the International Court of Justice observed in the Pulp Mills case, due diligence requires “the adoption of appropriate rules and measures” as well as “vigilance in their enforcement and the exercise of administrative control applicable to public and private operators”.1

Fifth, as this Tribunal pointed out in the Area Advisory Opinion, due diligence is a variable concept and is context-specific.2 While it allows a degree of State discretion, the exercise of that discretion must take into account the individual capacities, capabilities and constraints of a State; the level of risk and nature of activities involved; as well as scientific knowledge and technological developments.

In addition, how States exercise that discretion must also be informed by international rules and standards, and that includes their obligations under the UNFCCC and the Paris Agreement.

My sixth point, as this Tribunal has stated, States must act in good faith, which means that “reasonableness and non-arbitrariness must remain the hallmarks of any

---

2 Responsibilities and Obligations of States with Respect to Activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10 (“The Area Advisory Opinion”), at p. 43, para. 117.
action taken”. Compliance with due diligence obligations under article 194 is not merely a self-judging exercise.

Seventh, due diligence requires the application of the precautionary approach. States therefore cannot disregard plausible indications of threats of serious or irreversible environmental damage, even when scientific evidence on the scope and impacts of an activity may be insufficient. Mr President, members of the Tribunal, I turn now to the question of how, in the context of climate change, the obligations under UNCLOS interact with other treaties and international law instruments.

Let me make two observations by way of introduction. My first observation is that, insofar as climate change is concerned, UNCLOS, and in particular its Part XII, exists as part of a wider body of international instruments with their respective norms and processes. The most notable of these are the UNFCCC and the Paris Agreement.

That UNCLOS forms part of this wider body reflects the fact that the causes and impacts of climate change extend well beyond the oceans to terrestrial and freshwater ecosystems, urban environments, and so on. And so must the global response. The interpretation and application of UNCLOS must, accordingly, seek harmony with, or as COSIS said last week, be complementary to, related legal regimes with neither regime undermining or supplanting the other.

Article 237 of UNCLOS recognizes the need to achieve this harmony. As Italy and New Zealand have stated, article 237 sets out “a double relationship of compatibility” by stipulating in paragraph 1 that Part XII does not prejudice obligations assumed by States under other treaties on the protection and preservation of the marine environment; and conversely, by providing in paragraph 2 that obligations assumed under these other treaties should be carried out consistently with the general principles and objectives of the Convention.

Second, what is remarkable about Part XII of UNCLOS is the multiple and variously formulated references to international rules, standards, practices and procedures. The slide on the screen lists various articles in Part XII where they can be found. I draw the Tribunal’s attention to these articles because they define obligations which expressly incorporate external treaties and instruments. Two implications flow from this.

First, Guatemala pointed out last Thursday that the Tribunal may interpret the Paris Agreement and other treaties if it is necessary to do so in order to meaningfully determine the content of obligations under UNCLOS. In the case of UNCLOS articles such as these, which expressly incorporate external instruments, it may be necessary for the Tribunal to interpret those instruments in order to determine the

---

4 *Area Advisory Opinion*, at p. 46, para. 131.
5 Articles 207(1), 211(2), 212(1), 213, 214, 216(1), 217(1), 218(1), 219, 220 and 222.
content of the UNCLOS obligations. That is what the ordinary meaning of these
UNCLOS articles requires us to do.

Secondly, it also means that to a large degree, we do not need to rely on provisions
like article 31(3)(c) of the Vienna Convention on the Law of Treaties or article 293 of
UNCLOS. The significant exceptions are, in the case of COSIS’s first question,
article 194 of UNCLOS, and, in the case of the second question, article 192, both of
which articulate due diligence obligations but do not explicitly incorporate external
norms by reference. I will address the extent to which article 31(3)(c) of the Vienna
Convention and article 293 can and cannot be used for interpreting article 192 in my
response to question 2.

Mr President, distinguished members of the Tribunal, how, then, do the obligations
under UNCLOS incorporate by reference other treaties and international law
instruments? The short answer is that they do so through various provisions using
different formulations, even if there are some common terms like “international rules”
and “standards”. The different formulations used reflect the different ways in which
States Parties to UNCLOS intended them to operate and therefore to be interpreted.

In Singapore’s view, there are four major gateways through which external normative
instruments are substantively incorporated into Part XII of UNCLOS. I will call them
“entry points”. Depending on the specific language used in the provisions which
govern these entry points, what norms are incorporated and what States are
supposed to do with these norms differ from one entry point to another.

The first entry point can be found in paragraph 1 of articles 207 and 212 on pollution
from land-based sources and atmospheric pollution, respectively. These provisions
are shown on the screen. What they require States to do is to adopt laws and
regulations to prevent, reduce and control such pollution. But they must do so “taking
into account internationally agreed rules, standards and recommended practices and
procedures”. I will call this Entry Point 1.

Of the four entry points, it is the widest in terms of the norms covered because it
refers to not just rules and standards, but also recommended practices and
procedures. It therefore covers not just legally binding rules and standards, but also
soft law norms that are not legally binding. However, these norms must be
“internationally agreed”. What this means is that there should be: first, broad
participation by States in their making; and, second, broad acceptance by States of
their normative status which may be evidenced by the number of States which are
parties to the instrument or have adopted or implemented the norm.

As for the action required of States under these articles, it is to take into account
these hard and soft law norms when they formulate laws and regulations. It is an
obligation relating to the process of law-making rather than prescribing a particular
outcome. States can adopt more or less stringent laws and regulations than what
these norms prescribe, but they must consider them and must do so in good faith.

Entry Point 2 is found in article 211(2), which is shown on the screen. It obliges flag
States to adopt laws and regulations pertaining to pollution from vessels which “at
least have the same effect as that of generally accepted international rules and
standards established through the competent international organization or general diplomatic conference.”

In terms of the range of norms it admits, Entry Point 2 is a little narrower than Entry Point 1, in that it only applies to international rules and standards, without mentioning recommended practices and procedures. In addition, these rules and standards must be “generally accepted”, in that there must be broad participation and acceptance by States, but they do not need to be formally accepted by the specific State concerned.

In the context of climate change, a treaty that may be incorporated through Entry Point 2 is Annex VI of the International Convention for the Prevention of Pollution from Ships (or MARPOL), which sets standards to minimize airborne greenhouse gas emissions from ships and the carbon intensity of global shipping. It was adopted by a diplomatic conference, and its membership represents more than 96 per cent of global tonnage.⁶

While the scope of norms covered by Entry Point 2 is narrower than Entry Point 1, the obligation under article 211(2) is more demanding. It is for States to adopt laws and regulations that at least have the same effect as these international rules and standards. It is not an obligation related to the process of law-making, but one which requires a minimum outcome.

Mr President, distinguished members of the Tribunal, I turn to Entry Point 3. This gateway is created by articles 213 and 222, which you now see on the screen. These are enforcement provisions that correspond to articles 207 and 212 on land-based and atmospheric pollution, respectively. They require States to “adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference”.

The range of external norms admitted through Entry Point 3 is the narrowest of all the entry points discussed so far. “Applicable international rules and standards” refers to rules and standards which are binding on the State concerned, either as treaty obligations or as customary law. As the Virginia Commentary and the Proelss Commentary recall, this was the general understanding of the negotiators in the Third Conference of UNCLOS.⁷ It accords with the ordinary meaning of the word “applicable”, where the relevant question is: What rules or standards apply to a particular situation? “Applicable” does not mean merely relevant, appropriate or material.

The narrow scope of the norms covered by Entry Point 3 also makes sense because the action demanded of States is to “adopt laws and regulations and take other measures necessary to implement” them. What articles 213 and 222 therefore require of States is the taking of all measures to implement their legally binding obligations in treaties addressing land-based pollution and atmospheric pollution. It is

---

⁶ See para. 55 of the International Maritime Organization’s written statement.

unlikely that the UNCLOS negotiators intended that States would be bound to implement present and future norms in instruments that they are not party to.

Finally, I turn to Entry Point 4, which is found in article 194(1) and (2). The screen shows these provisions. They do not expressly mention international rules and standards; however, as I indicated earlier, these provisions establish due diligence obligations which are informed by, *inter alia*, compliance by States with their legally binding obligations. In the climate change context, these include binding obligations under the Paris Agreement. Therefore, in this respect, Entry Points 3 and 4 are fairly similar.

Mr President, distinguished members of the Tribunal, I now turn to how the “entry points” apply in the context of the Paris Agreement, and in particular the temperature goal set out in that treaty.

Singapore would like to state at the outset that limiting global warming to 1.5ºC above pre-industrial levels is critical to the survival of Small Island Developing States, and the global community must correct its course towards a 1.5ºC resilient world.

At the same time, Singapore is mindful that, while that is our aspiration, this Tribunal’s opinion is sought on “the specific obligations of States Parties” to UNCLOS. What this calls for is the proper legal interpretation and application of the provisions of the Convention as well as any other treaties and sources of international law insofar as these are relevant.

But if I may begin with the conclusion before the explanation. Do one or more of the entry points I have just described allow the Paris Agreement to feature among the legal obligations imposed by UNCLOS? And, if so, do one or more of those entry points allow the 1.5ºC ambition in the Paris Agreement to feature among the legal obligations of UNCLOS? The answer to both questions is a clear “yes” through Entry Points 1, 3 and 4, although the effect is slightly different for each of these entry points. I will now elaborate.

Let me begin with Entry Point 1. As explained earlier, paragraph 1 of articles 207 and 212 oblige States to enact laws and regulations, taking into account “internationally agreed rules, standards and recommended practices and procedures” which may be legally binding or non-binding.

The Paris Agreement was negotiated with the widespread support of States and has no less than 195 Parties. It is clearly an “internationally agreed” instrument under both articles 207 and 212. The Agreement consists of some legally binding and some non-legally binding provisions, with the legally binding ones using operative words like “shall”, and the non-legally binding ones using words like “should” or “will”.

By way of illustration, article 4(2), which you see on the screen, uses the operative word “shall”, and therefore expresses a legally binding obligation to prepare, communicate and maintain successive nationally determined contributions.
By contrast, what is on the screen is article 2(1)(a), which is the provision that refers to 1.5°C or, more precisely, to "[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels".

This temperature goal set out in article 2(1)(a) is preceded by a chapeau which reads: “This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by …”, and the sub-paragraphs, including subparagraph (a) follow.

It is evident from the language used that article 2(1) articulates aims of the Paris Agreement. It is, in and of itself, not legally binding. Article 2 does, however, have legal effect in a different way, which I will explain when we get to Entry Points 3 and 4.

But this is not material as far as Entry Point 1 is concerned. This is because Entry Point 1 does not require the norm to be legally binding. It can, therefore, encompass the temperature goal in article 2(1)(a) as a standard which the Paris Agreement seeks to achieve. Through Entry Point 1, paragraph 1 of articles 207 and 212 of UNCLOS therefore impose obligations on States, when enacting laws and regulations, to take into account the Paris Agreement temperature goal, and that includes the pursuit of efforts to limit the temperature increase to 1.5°C.

Mr President, distinguished members of the Tribunal, I turn to the other entry points. Entry Point 2 is not relevant to the Paris Agreement because it largely concerns the International Maritime Organization’s international rules and standards which address pollution from vessels.

We now consider Entry Point 3. As explained earlier, articles 213 and 222 of UNCLOS require States to take all necessary measures, whether it is through adopting laws and regulations or otherwise, to implement their binding legal obligations contained in treaties which address land-based pollution or atmospheric pollution.

The binding legal obligations of the Paris Agreement clearly fall within the scope of both articles 213 and 222. But the question is: which are the binding obligations of that Agreement that are incorporated through this entry point?

As I explained when I addressed the Tribunal on Entry Point 1, the obligation on Parties to the Paris Agreement under article 4 to prepare, communicate and maintain successive nationally determined contributions is a binding obligation. But article 2, and in particular article 2(1)(a), which establishes the temperature goal of holding the increase in the global average temperature to well below 2°C and pursuing efforts to limit the temperature increase to 1.5°C, does not, by itself, articulate a binding obligation.

However, that is not the end of the inquiry. We have to examine other provisions of the Paris Agreement to determine if they do impose binding legal obligations that cover that temperature goal.
And it is article 3 which does that. The text of that article is on the screen and the relevant portion of it states that “all Parties are to undertake and communicate ambitious efforts as defined in articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in article 2.”

The use of the formulation “are to” in “all Parties are to undertake and communicate” may be different from the usual “shall” as the operative verb. But the ordinary meaning of the words “are to” as having a mandatory and not discretionary character is clear. If, Mr President, you were to say to me, “Counsel, you are to stop speaking by 4 o’clock,” I have no doubt that it is not a request which I can choose to comply with or not comply with.

The mandatory effect of article 3 is to add an additional element to the articles that it refers to. That additional element is that actions set out in those articles must be done with the view to achieving the purpose of the Agreement in article 2. And if those articles establish legally binding obligations, then Parties are bound to fulfil those obligations with the view to achieving that purpose.

Mr President, distinguished members of the Tribunal, it therefore follows that the legally binding obligation in article 4 of the Paris Agreement is to prepare, communicate and maintain successive nationally determined contributions with the view to achieving the article 2 purpose. It also means that articles 213 and 222 of UNCLOS must be interpreted as imposing an obligation on States to take necessary measures to implement, inter alia, article 4 of the Paris Agreement with the view to achieving the same purpose.

In other words, through article 3, article 2 features in the legally binding obligations of the Paris Agreement and therefore features in the legal obligations of articles 213 and 222 of UNCLOS. You can see this interaction depicted on the screen.

What, then, is the purpose of article 2 that Parties have to take into consideration? It is to strengthen the global response to climate change through a number of modalities. Among them is the temperature goal set out in paragraph 1(a). So 1.5°C falls within the ambit of the legal obligations created by articles 213 and 222, but it does so with the nuances of paragraph 1(a) as a whole, and it does so together with the other modalities set out in the rest of article 2.

These other modalities are set out on the screen. They include paragraphs 1(b) and (c); and significantly, under paragraph 2, to implement the Agreement “to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”

It is important that any incorporation of binding obligations under the Paris Agreement or indeed any other treaty through Entry Point 3 must be a faithful incorporation of those obligations, which often represent a careful balance of various interests that the negotiating parties intended to achieve in the legal texts.

Indeed, even the reference to 1.5°C reflects a compromise because, as Mozambique reminded us yesterday, and Sierra Leone this morning, the evidence from the IPCC is that even if global warming were limited to 1.5°C above pre-industrial levels, there
would still be very serious harm to the marine environment. This includes a 70-90 per cent decline in average coral cover.¹⁸

To conclude, 1.5°C in the context of article 2(1)(a) does feature in the legal obligations incorporated into UNCLOS through Entry Point 3. But also featuring are equity, the principle of common but differentiated responsibilities, and the respective capabilities and national circumstances of the States Parties. They reflect the fact that the Paris Agreement temperature goal is a collective aim that does not automatically or directly translate into specific measures for any one individual State. This is because different States face different constraints, whether in terms of capacity, access to technology or availability of alternative energy options.

I now turn to Entry Point 4. As explained earlier, the obligation of due diligence in article 194 of UNCLOS is informed by, inter alia, the fulfilment of legal obligations undertaken in relevant treaties. In the climate change context, these include the legal obligations under the Paris Agreement and, in this respect, my analysis on Entry Point 3 would largely apply.

There is, however, one other relevant and separate facet of due diligence, and that is the taking into account of scientific knowledge. As COSIS and others have described, there is an ample body of scientific evidence on the marine environmental impacts of global temperature increases at 1.5°C as compared with other temperature levels. The due diligence obligation to address greenhouse gas emissions imposed by article 194 of UNCLOS would, in Singapore’s view, require States Parties to take into account this body of evidence in determining what measures they should take.

Mr President, distinguished members of the Tribunal, I now turn to the second question on the obligations to protect and preserve the marine environment in relation to climate change impacts. I have five points to make and, with one exception, can be brief because Singapore’s views have already been addressed by many participants.

First, the obligations under articles 192, 194, 197 and 202 are relevant to answering this second question.

Second, article 192 imposes due diligence obligations and comprises the positive obligation to take active measures in good faith to protect and preserve the marine environment, and the negative obligation not to degrade the marine environment. I have identified the elements of due diligence earlier when addressing article 194, and they also apply in the context of article 192.

Third, the contours of the article 192 obligation are concretized by the subsequent provisions of Part XII, including article 194. Singapore draws particular attention to article 194(5), which requires that States consider measures necessary to protect

---

and preserve rare or fragile ecosystems and marine life threatened by climate change impacts and processes.

Mr President, distinguished members of the Tribunal, at this juncture, I would like to address the relationship between UNCLOS and international human rights law. There have been observations made that the corpus of international law relating to human rights informs the content of the general obligation in article 192. Some appear to suggest that international human rights obligations have been incorporated into article 192 through article 293 of UNCLOS, which is the provision titled “Applicable Law”, or through article 31(3)(c) of the Vienna Convention on the Law of Treaties.

Singapore fully agrees with the view that climate change does adversely affect the human rights of many. The failure to take adequate action to deal with climate change can amount to breaches of both UNCLOS obligations as well as international human rights treaty obligations.

Singapore also agrees that we must seek to interpret UNCLOS harmoniously with other international law obligations and if the notion of UNCLOS being “informed by” these other obligations is an expression of this principle, we fully agree. But whether we can go further to say that these obligations are substantively incorporated into UNCLOS, in the sense that a breach of these other obligations is necessarily a breach of UNCLOS provisions, requires an analysis of how article 293 and article 31(3)(c) operate.

As regards article 293, as the tribunal in the *Arctic Sunrise Arbitration* observed, it does not provide a means to obtain a determination that some treaty other than UNCLOS has been violated, unless that treaty directly applies pursuant to the Convention. Instead, article 293 enables resort to foundational or secondary rules of general international law, such as the law of treaties, or in the case of some broadly worded or general provisions, primary rules of international law in order to interpret or apply particular UNCLOS provisions.9

As for article 31(3)(c) of the Vienna Convention, it allows “relevant rules of international law applicable in the relations between the parties” to be taken into account in interpretation. “Relevant” is understood in the light of its ordinary meaning that the rules should relate to the treaty provision under interpretation.

If the UNCLOS provision to be interpreted is one like article 230(3), which requires that “recognized rights of the accused shall be observed” when penalties may be imposed on foreign vessels violating laws and regulations under Part XII, article 31(3)(c) and article 293 may permit recourse to international human rights treaties to interpret the term “recognized rights”, such that a breach of those treaty obligations is a breach of article 230.

But if, on the other hand, the provision to be interpreted is one like article 192, which refers to no more than “the obligation to protect and preserve the marine

---

environment”, it is doubtful if we can incorporate wholesale external rules of international law which do not address the protection and preservation of the marine environment. We need to appreciate that there are limits to incorporation.

For example, a State may decide that it is necessary to shut down a power plant as a due diligence measure under article 192. But its obligations relating to the expropriation of property under its bilateral investment treaties and its obligations against arbitrary deprivation of property under international human rights treaties are not incorporated into article 192. This does not detract from whether the State’s actions are in breach of its international economic law or international human rights law obligations, but they are not a breach of UNCLOS provisions.

Next, and this is my fourth point, I turn to article 197 which imposes a duty of cooperation in the climate change context. It is an obligation of conduct, is of a continuing nature and must be fulfilled in good faith. UNCLOS, therefore, requires States, in good faith, to participate and continue to participate, in international normative processes, with a view to establishing rules, standards and recommended practices and procedures for the protection and preservation of the marine environment from climate change impacts.

These include discussions under UNFCCC and Paris Agreement processes, as well as future cooperative work upon becoming States Parties to the BBNJ Agreement,¹⁰ which is open for signature tomorrow. The BBNJ Agreement provides for “vulnerability including to climate change and ocean acidification” as a criterion in the establishment of area-based management tools, including marine protected areas.¹¹

Finally, there is an obligation under article 202(a), for States to promote assistance programmes to developing States for the protection and preservation of the marine environment from climate change impacts.

Mr President, members of the Tribunal, in conclusion, Singapore invites the Tribunal to reply to question 1 as follows:

First, the references to “pollution of the marine environment” in Part XII of UNCLOS cover anthropogenic greenhouse gas emissions.

Second, article 194(1) and (2) impose due diligence obligations on States to prevent, reduce and control such emissions. Due diligence requires States to consider, in good faith, taking practicable measures within their capabilities to address such emissions from activities within their jurisdiction or control. In doing so, they must take into account scientific knowledge, including evidence on the marine environmental impacts of global temperature increases at 1.5ºC compared with other temperature levels. Due diligence is also informed by States’ legally binding obligations, including those of the Paris Agreement.

Third, under paragraph 1 of articles 207 and 212, States are obliged to adopt laws and regulations to prevent, reduce and control anthropogenic greenhouse gas emissions.

¹⁰ Agreement under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (“BBNJ Agreement”).

¹¹ See article 19(4)(a) and (b), as well as Annex I, paragraph (f) of the BBNJ Agreement.
emissions, taking into account binding and non-binding internationally agreed rules, standards and practices and procedures, including the temperature goal in article 2(1)(a) of the Paris Agreement.

Fourth, under article 211 paragraph 2, States are obliged to adopt laws and regulations for vessels flying their flag that at least have the same effect as generally accepted international rules and standards addressing greenhouse gas emissions from vessels.

Fifth, under articles 213 and 222, States are obliged to implement international rules and standards which are binding on the State concerned, including those under the Paris Agreement.

Singapore invites the Tribunal to reply to question 2 as follows:

First, article 192 imposes due diligence obligations similar to those under article 194 to take measures in good faith to protect and preserve the marine environment, and not to degrade it.

Second, article 194(5) requires States to consider measures necessary to protect and preserve all rare or fragile ecosystems and marine life threatened by climate change impacts and processes.

Third, article 197 requires States to cooperate and to participate in good faith and on a continuing basis to establish international rules, standards and recommended practices and procedures for the protection and preservation of the marine environment in relation to climate change impacts.

Finally, under article 202(a), States are obliged to promote assistance programmes to developing States for the protection and preservation of the marine environment from climate change impacts.

Mr President, distinguished members of the Tribunal, this concludes Singapore’s oral statement, which I hope will be of assistance to the Tribunal. I thank the Tribunal for its attention.

THE PRESIDENT: Thank you, Mr Yee. This brings us to the end of this afternoon’s sitting. The Tribunal will again sit tomorrow morning at 10:00 a.m. when it will hear oral statements made on behalf of Timor-Leste, the European Union and Viet Nam. The sitting is now closed.

(The sitting closed)