

*Ministry of Foreign Affairs
Tokyo, Japan*

International Tribunal for the Law of the Sea

Request for an Advisory Opinion Submitted by the Commission of Small
Island States on Climate Change and International Law
(Case No. 31)

Written Statement of Japan

15 June 2023

1. Introduction

In accordance with the Order of the International Tribunal for the Law of the Sea (hereinafter “the Tribunal”) dated 16 December 2022, Japan submits this written statement on questions raised in the Request dated 12 December 2022, submitted to the Tribunal by the Commission of Small Island States on Climate Change and International Law (hereinafter “the Commission”) for an advisory opinion of the Tribunal. The questions read as follows:

What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea (the “UNCLOS”), 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?

(b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?

As to the Tribunal’s jurisdiction and discretionary power to render its advisory opinion in the present case, Japan expects the Tribunal to carefully consider written statements submitted by the States Parties to UNCLOS and also its advisory opinion in Case No. 21 in order to make an appropriate decision on whether the Tribunal has jurisdiction to entertain the Request submitted by the Commission, and in case the Tribunal finds itself having jurisdiction, whether it should exercise the discretionary power to render an advisory opinion, noting that the Tribunal stated in the advisory opinion in Case No. 21 as follows:¹

¹ *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4*

69. ... [T]he Tribunal finds that it has jurisdiction to entertain the Request submitted to it by the SRFC ... [T]he jurisdiction of the Tribunal in the present case is limited to the exclusive economic zones of the SRFC Member States.

...

74. ... The Tribunal also wishes to make it clear that it does not take a position on issues beyond the scope of its judicial functions.

75. It has been argued that in this case the Tribunal should not pronounce on the rights and obligations of third States not members of the SRFC without their consent. It has also been observed that the present Request for an advisory opinion does not involve an underlying dispute and that the issue of State consent simply does not arise in this advisory proceeding.

76. The Tribunal wishes to clarify in this regard that in advisory proceedings the consent of States not members of the SRFC is not relevant (...). The advisory opinion as such has no binding force and is given only to the SRFC, which considers it to be desirable "in order to obtain enlightenment as to the course of action it should take"...

Without prejudice to a decision as to whether the Tribunal has the jurisdiction and could exercise its discretionary power to render its advisory opinion, Japan would like to address a few points on the substance of the questions posed by the Commission.

2. Observations on the Substance of the Questions

Greenhouse gas emissions into the atmosphere affect the marine environment, and possible forms of their impacts include ocean warming, sea-level rise² and ocean acidification. Climate change also has impacts on marine biodiversity such as coral reefs. Article 192 of UNCLOS sets out the

² Sea-level rise caused by the climate change is becoming a serious concern especially for islands states. Japan, as a maritime state, takes the position that it is permissible for coastal states to preserve the existing baselines and maritime zones established in accordance with UNCLOS, notwithstanding the regression of coastlines caused by the climate change-related sea-level rise.

general obligation to 'protect and preserve the marine environment'. There are also several provisions in Part XII which refer to 'pollution of the marine environment', and Article 1. 1(4) also defines 'pollution of the marine environment'.

On the other hand, there is no provision in UNCLOS that stipulates specific obligations explicitly addressing the issue of climate change. Specific obligations of States to address climate change, such as by reducing greenhouse gas emissions, have been negotiated in the context of climate-related conventions including the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement. The International Maritime Organization (IMO) has also addressed issues relating to greenhouse gas emissions from ships. The UNFCCC and the Paris Agreement do not specifically mention UNCLOS, and their relationship with UNCLOS is not clarified in their provisions. Their interpretation should be discussed primarily among parties to these agreements. Whether these agreements should be considered to be relevant rules of international law applicable to the relations between the parties under Article 31.3 (C) of the Vienna Convention on the Law of Treaties, and if so, to what extent they should be taken into account must be carefully examined.



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