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Complementarity between Hamburg and The Hague: The Two Advisory Opinions on Climate Change

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Excellencies, distinguished guests,

It is an honour for me to deliver this lecture. I thank Mr Liu Nengye and Ms Tara Davenport, as well as the Singapore Management University's Centre for Commercial Law in Asia and the National University of Singapore's Centre for International Law for the kind invitation. I am grateful for the opportunity to speak here in Singapore, a country with a long record of contributions to the development of the law of the sea. From its pivotal role in negotiating the United Nations Convention on the Law of the Sea (the "Convention" or UNCLOS) to the recent conclusion of the Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (the "BBNJ Agreement"), which entered into force just ten days ago, Singapore has been at the forefront of developments in this field.

As Ambassador Tommy Koh, President of the Third United Nations Conference on the Law of the Sea, observed, the compulsory dispute settlement mechanism is "[o]ne of the unique and valuable features of UNCLOS".[1] The Convention indeed

[1] Statement by Ambassador Tommy Koh, President of the Third United Nations Conference on the Law of the Sea, at the commemoration of the 40th anniversary of the adoption and opening for signature of UNCLOS, General Assembly, 8 December 2022, para. 5.

provides for a plurality of dispute settlement fora. This multiplicity offers important advantages in terms of accessibility and flexibility. At the same time, however, it invites reflection on whether it may in certain circumstances contribute to judicial fragmentation.

Against this backdrop, my lecture today will examine how both the opportunities and potential challenges of this system are reflected in the case law of the International Tribunal for the Law of the Sea (the "Tribunal" or ITLOS) and the International Court of Justice (the "Court" or ICJ). I will focus in particular on their recent advisory opinions on climate change, drawing on these to examine how the Tribunal and the ICJ interact within the framework established by the Convention in addressing one of the most pressing challenges facing the international community today.

With that objective in mind, let me briefly outline how I will approach the topic. I will begin by reviewing the four means of dispute settlement entailing binding decisions under the Convention. I will then address the potential risk of fragmentation, illustrated by instances where the jurisprudence of the Tribunal and the ICJ may be perceived as diverging. Finally, I will focus on the complementary dimension of the system, including through their recent advisory opinions on climate change.

Excellencies, distinguished guests,

As you are well aware, under article 287 of the Convention, a State Party may, by declaration, indicate one or more preferred means for the settlement of disputes concerning the interpretation or application of the Convention, namely the Tribunal, the ICJ, Annex VII arbitration, or Annex VIII special arbitration, with Annex VII arbitration as the default where no declaration is made or the parties' choices do not coincide.

I will now briefly address the key characteristics of each of these four means. The ICJ, established under the Charter of the United Nations as its principal judicial organ, has the longest institutional experience and a well-established body of jurisprudence across many areas of international law, reflecting its role as a court of general international law rather than one devoted exclusively to the law of the sea.

Annex VII arbitration, as noted earlier, is the default procedure. This *ad hoc* mechanism affords parties a higher degree of procedural autonomy, including the appointment of arbitrators. Where the parties fail to agree, as is often the case, the necessary appointments are made by the President of ITLOS in consultation with the parties.

Another option is special arbitration pursuant to Annex VIII, designed to address technical disputes of a more specialized character, including those related to fisheries, marine environment protection, marine scientific research and navigation. So far, no dispute has been submitted to an Annex VIII special arbitration.

Among the four means of dispute settlement, the Tribunal holds a distinctive position as the only permanent judicial body created by UNCLOS and specialized in the law of the sea. It is entrusted with disputes concerning the interpretation and application of the Convention, as well as matters submitted under other agreements conferring jurisdiction upon it. The Tribunal may also prescribe provisional measures pending the constitution of an arbitral tribunal, exercise compulsory jurisdiction over prompt release cases, and, through its Seabed Disputes Chamber, deal with matters relating to activities in the Area.

Looking at developments over the past decade, we can observe how States have made use of these fora of dispute settlement. The ICJ received two contentious cases involving both territorial and maritime matters[2] and an advisory opinion request which included the interface between the law of the sea and climate change.[3] Meanwhile, six cases were brought before Annex VII arbitral tribunals, three of which were later transferred to the Tribunal.[4] With respect to the Tribunal, nine contentious

[2] *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea);* and *Guatemala's Territorial, Insular and Maritime Claim (Guatemala/Belize)*.

[3] *Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025*.

[4] *Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives); The M/T "San Padre Pio" (No. 2) Case (Switzerland/Nigeria);* and *The M/T "Heroic Idun" (No. 2) Case (Marshall Islands/Equatorial Guinea).*

cases[5] and one request for an advisory opinion[6] have been submitted since 2015. The Tribunal also delivered a judgment in a case that had been submitted prior to 2015.[7]

Viewed as a whole, this practice reveals a notable trend: transfers from Annex VII arbitration to the Tribunal have become increasingly common. Taking this development into account, it appears that most recent law of the sea disputes have ultimately been submitted to the Tribunal, either directly or indirectly. In my view, this reflects the growing confidence that States Parties place in the Tribunal.

Excellencies, distinguished guests,

Having considered the key features and actual use of the Convention's compulsory dispute settlement mechanism, I now turn to an issue that has attracted increasing attention: the potential risk of judicial inconsistency or fragmentation. As we have seen, the multiplicity of fora provided in article 287 of the Convention is, in many respects, a strength. It provides States Parties with more options and, as I will address later, allows for the development of complementary jurisprudence. At the same time, as in any system comprising multiple judicial and arbitral bodies, this diversity may give rise to questions about whether it could, in some circumstances, lead to inconsistency or fragmentation.

As the International Law Commission (ILC)'s Study Group on the Fragmentation of International Law observed, "fragmentation does create the danger of conflicting and incompatible rules, principles, rule-systems and institutional practices".[8] While this concern is not unique to the law of the sea, it assumes particular

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[5] *The "Enrica Lexie" Incident, Provisional Measures (Italy* v. *India); The M/V "Norstar" Case (Panama* v. *Italy); Case concerning the detention of three Ukrainian naval vessels, Provisional Measures (Ukraine* v. *Russian Federation); The M/T "San Padre Pio" Case, Provisional Measures (Switzerland* v. *Nigeria); Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives); The M/T "San Padre Pio" (No. 2) Case (Switzerland/Nigeria); The M/T "Heroic Idun" Case, Prompt Release (Marshall Islands* v. *Equatorial Guinea); The M/T "Heroic Idun" (No. 2) Case (Marshall Islands/Equatorial Guinea);* and *The "Zheng He" Case (Luxembourg* v. *Mexico).*

[6] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law.*

[7] *Dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean* (Ghana/Côte d'Ivoire).

[8] International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, A/CN.4/L.702 (18 July 2006), para. 9.

significance in the UNCLOS context, given the Convention's comprehensive and unified character and its nature and role as a package deal designed to serve as "the legal framework within which all activities in the oceans and seas must be carried out".[9]

With these considerations in mind, I will consider two pairs of cases decided respectively by the Tribunal and the ICJ on the delimitation of the continental shelf beyond 200 nautical miles (nm) to illustrate how the involvement of different courts and tribunals within a shared legal framework may, in certain circumstances, raise questions about fragmentation.

By way of background, article 76, paragraph 8, of the Convention, entrusts the Commission on the Limits of the Continental Shelf (CLCS) with making recommendations to coastal States on the establishment of the outer limits of their continental shelf beyond 200 nm, on the basis of which the coastal State may establish the limits of its shelf, which are "final and binding". This process, often referred to as "delineation", is distinct from the delimitation of the outer continental shelf, which under article 83 is assigned to the bodies provided for in Part XV, including the Tribunal and the ICJ.

This distinction came to the forefront in the *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*. In that case, both Parties had made submissions to the CLCS, but the Commission had not been in a position to consider them in the absence of mutual consent. The Tribunal therefore faced the question whether it should refrain from exercising jurisdiction until the CLCS had made its recommendations.

Reaffirming that the CLCS's function in delineation is without prejudice to the question of delimitation, and vice versa, the Tribunal acknowledged that it would have been hesitant to proceed with delimitation "had it concluded that there was significant uncertainty as to the existence of a continental margin in the area in question".[10]

[9] United Nations General Assembly, Resolution 79/144: Oceans and the law of the sea, UN Doc. A/RES/79/144 (12 December 2024), preambular para. 6.

[10] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment of 14 March 2012,* para. 443; see para. 379.

However, noting that "the Bay of Bengal presents a unique situation, as acknowledged in the course of negotiations at the Third United Nations Conference on the Law of the Sea",[11] and in light of the "uncontested scientific evidence regarding the unique nature of the Bay of Bengal", the Tribunal decided to proceed with delimitation.[12]

With this background in place, allow me to turn to the first pair of cases, namely, the Judgment in *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya)*, delivered by the ICJ on 12 October 2021, and the Judgment in *Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives)*, delivered by a Special Chamber of the Tribunal on 28 April 2023.

In *Somalia* v. *Kenya*, the ICJ was asked to determine the complete course of a single maritime boundary, including the continental shelf beyond 200 nm. Although the submissions by the Parties to the CLCS had not yet been considered by the Commission, the ICJ proceeded with delimitation beyond 200 nm,[13] noting that both Parties had claimed an outer continental shelf on the basis of scientific evidence and that neither questioned the existence or extent of the other's entitlement.[14] In this regard, some members of the Court raised questions about whether a more detailed assessment of the scientific material would have been warranted and about the potential implications for the interests of the international community in the Area.[15]

The Special Chamber of the Tribunal in the *Mauritius/Maldives* case was likewise asked to delimit the continental shelf beyond 200 nm in the absence of CLCS recommendations. Drawing on the Tribunal's earlier jurisprudence in *Bangladesh/Myanmar*, the Special Chamber applied and further clarified the "significant uncertainty" standard. In doing so, the Special Chamber reviewed the Parties' CLCS submissions and the evidence supporting their claims of natural

[11] *Ibid*., para. 444.

[12] *Ibid.*, para. 446.

[13] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Judgment of 21 October 2021*, para. 196.

[14] *Ibid*., para. 194.

[15] See *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya),* Separate Opinion of President Donoghue, para. 4; Individual Opinion of Judge Robinson, paras. 14 and 19. Judge Robinson further observed, in para. 16 of his Individual Opinion, that "[t]here is nothing in the Judgment that comes close to the categoric findings in the *Bangladesh/Myanmar* and *Bangladesh* v. *India* cases as to the existence of a continental shelf beyond 200 [nm]".

prolongation. It considered three possible routes of natural prolongation advanced by Mauritius. The first route was found "impermissible on legal grounds under article 76", as it traversed an area within 200 nm of the Maldives that Mauritius did not contest.[16] The second and third routes were found to involve "significant uncertainty" as to whether they could sustain Mauritius' claim of natural prolongation to the relevant foot-of-slope point.[17] In light of this "significant uncertainty", the Special Chamber declined to proceed with delimitation.[18]

In explaining its approach, the Special Chamber stated that the standard of significant uncertainty served to "minimize the risk that the CLCS might later take a different position regarding entitlements in its recommendations from that taken by a court or tribunal in a judgment".[19] It further noted that caution was warranted in view of the potential risk of prejudice to the interests of the international community in the international seabed area and to the common heritage principle.[20]

A further illustration of how considerations regarding potential fragmentation may arise concerns the question whether a State may have an entitlement to a continental shelf beyond 200 nm that lies within 200 nm of another State. This issue first arose before the Tribunal in *Bangladesh/Myanmar* and more recently before the ICJ in *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nm from the Nicaraguan Coast (Nicaragua* v. *Colombia)*.

In *Bangladesh/Myanmar*, the Tribunal faced what it termed a "grey area", namely an area "beyond 200 nm from the coast of Bangladesh but within 200 nm from the coast of Myanmar, yet on the Bangladesh side of the delimitation line".[21] The Parties advanced opposing views. Bangladesh argued that "there is no textual basis in the Convention to conclude that one State's entitlement within 200 nm will inevitably

[16] *Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives), Judgment of 28 April 2023,* paras. 444 and 449.

[17] *Ibid.*, paras. 448 and 449.

[18] *Ibid.*, para. 451.

[19] *Ibid.,* para. 433.

[20] *Ibid.*, para. 453.

[21] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment of 14 March 2012,* para. 463.

trump another State's entitlement in the continental shelf beyond 200 nm".[22] Myanmar, on the other hand, maintained that any allocation to Bangladesh beyond 200 nm "would trump Myanmar's rights [...] within 200 [nm]", in a manner "contrary to both the Convention and international practice".[23]

The Tribunal addressed the question by distinguishing between the seabed and the water column. It noted that in the "area beyond Bangladesh's exclusive economic zone that is within the limits of Myanmar's exclusive economic zone, the maritime boundary delimits the Parties' rights with respect to the seabed and subsoil of the continental shelf but does not otherwise limit Myanmar's rights with respect to the exclusive economic zone, notably those with respect to the superjacent waters".[24] It recalled that overlapping regimes are not unusual and that "each coastal State must exercise its rights and perform its duties with due regard to the rights and duties of the other".[25] In this way, the Tribunal accepted the possibility of an extended continental shelf of a State lying within 200 nm of another State. [26]

When the issue came before the ICJ in *Nicaragua* v. *Colombia*, and given that Colombia is not a State Party to the Convention, the Court framed the question as: "[u]nder customary international law, may a State's entitlement to a continental shelf beyond 200 [nm] […] extend within 200 [nm] from the baselines of another State?".[27] While considering the *Bangladesh/Myanmar* Judgment, the ICJ noted that the "grey area" in that case arose "as an incidental result" of adjusting the equidistance line between adjacent States, and that the circumstances were "distinct" from the present case, in which "one State claims an extended continental shelf that lies within 200 [nm] from the baselines of one or more other States".[28] Although recognizing the existence of a single continental shelf, the Court stated that the basis of entitlement differs within and beyond 200 nm.[29] It observed that the vast majority of States making submissions

[22] *Ibid.*, para. 466.
[23] *Ibid.*, para. 468.
[24] *Ibid.*, para. 474.
[25] *Ibid.*, para. 475.
[26] *Ibid.*, paras. 472 and 475.
[27] *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nm from the Nicaraguan Coast (Nicaragua* v. *Colombia), Judgment of 13 July 2023*, para. 35.
[28] *Ibid.*, para. 72.
[29] *Ibid.*, para. 75.

to the CLCS had not asserted outer limits within 200 nm of another State, a practice it considered "sufficiently widespread and uniform" and expressive of *opinio juris*.[30]

On that basis, the ICJ held that "under customary international law, a State's entitlement to a continental shelf beyond 200 [nm] … may not extend within 200 [nm] from the baselines of another State"[31] and, in the absence of overlapping entitlements, "the Court cannot proceed to a maritime delimitation".[32] This aspect of the Judgment prompted several dissenting and separate opinions, which raised, in particular, questions about drawing a hierarchy between a continental shelf entitlement based on the distance criterion and one based on natural prolongation.[33]

These two pairs of cases illustrate that international courts and tribunals may, at times, take approaches that might be viewed as different when addressing complex questions of entitlement to an outer continental shelf. While such differences might point to the possibility of inconsistency in the case law, they also underscore the importance of continued judicial dialogue in fostering greater coherence over time.

Excellencies, distinguished guests,

As I noted earlier, although questions regarding fragmentation may arise from the coexistence of multiple fora, the availability of several means of dispute settlement also presents valuable opportunities for complementarity. As former ICJ Judge Carl-August Fleischhauer observed, "where there is an overlapping competence, there is the possibility of conflict; but there also is the possibility of a respectful co-existence."[34] It is this dimension of respectful co-existence and complementarity between the Tribunal and the ICJ on which I would like to focus in the remainder of my remarks.

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[30] *Ibid.*, para. 77.

[31] *Ibid.*, para. 79.

[32] *Ibid.*, para. 82.

[33] See *ibid.,* Dissenting Opinions of Judges Tomko, Robinson and Charlesworth, and Judge *ad hoc* Skotnikov, and Separate Opinion of Judge Xue.

[34] Carl-August Fleischhauer, "The Relationship Between the International Court of Justice and the Newly Created International Tribunal for the Law of the Sea in Hamburg", *Max Planck Yearbook of United Nations Law* 1 (1997), p. 333.

To illustrate this complementarity, I will examine two recent instances of judicial dialogue between the Tribunal and the ICJ. The first relates to cross-references in their recent jurisprudence on maritime delimitation and in the ITLOS Special Chamber's Judgment on Preliminary Objections in the *Mauritius/Maldives* case. The second, which I will address later, concerns the complementarity exemplified by their recent climate change advisory opinions.

Let us first look at the recent jurisprudence of the ICJ and the Tribunal concerning the delimitation of the exclusive economic zone and the continental shelf. Before considering the case law, it is useful to recall articles 74(1) and 83(1) of the Convention, which establish identical rules for delimiting these maritime zones. Both provide that delimitation "shall be effected by agreement on the basis of international law […] in order to achieve an equitable solution".

This formulation originated from a proposal by President Tommy Koh at the Third United Nations Conference on the Law of the Sea. Seeking to strike a balance between differing approaches raised during the negotiations, the compromise avoided specifying a particular method of delimitation, focusing instead on the goal of achieving an "equitable" solution. These provisions therefore provide judicial bodies with a considerable degree of flexibility in determining the delimitation methods. In light of this context, it is unsurprising that concerns emerged in the 1990s that the multiple fora envisaged in UNCLOS might lead to divergent approaches to maritime delimitation.[35]

Those worries now appear unwarranted. The Tribunal and the ICJ have addressed numerous maritime delimitation disputes in a coherent and complementary manner. A clear illustration can be found in the Tribunal's 2012 Judgment in the *Bangladesh/Myanmar* case. In that case, the Tribunal drew on the three-stage methodology articulated by the ICJ in the *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine)* case and applied this methodology in delimiting the maritime boundary.[36] In turn, the ICJ referred to *Bangladesh/Myanmar* in its Judgment in the

[35] S. Oda, 'The ICJ Viewed from the Bench (1976–1993)' 244 *Recueil des cours* (1993), p. 9, 127–55; S. Oda, 'Dispute Settlement Prospects in the Law of the Sea' (1995) 44 *ICLQ* 863; G. Guillaume, 'The Future of International Judicial Institutions' (1995) 44 *ICLQ* 848.
[36] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment of 14 March 2012,* paras. 233, 239.

Territorial and Maritime Dispute (Nicaragua v. *Colombia)* case, also delivered in 2012, where it referred to the Tribunal's application of the third stage in the methodology.[37]

This practice of mutual reference has continued in more recent years. In its 2021 Judgment in *Somalia* v. *Kenya*, the ICJ again referred to *Bangladesh/Myanmar* in relation to delimitation methodology, [38] as well as to *Bangladesh/Myanmar* and *Ghana/Côte d'Ivoire* in addressing issues related to the cut-off effect. [39] In the *Mauritius/Maldives* case, the ITLOS Special Chamber in turn referred to the *Somalia v. Kenya* Judgment in its discussion of delimitation methodology.[40]

These cross-references reflect a mutually reinforcing jurisprudence, in which each judicial body draws on the other's case law when determining the applicable method of delimitation. As the Tribunal observed, this approach has reduced "the elements of subjectivity and uncertainty in the determination of maritime boundaries"[41] and enhanced "transparency and predictability" in the delimitation process.[42]

This dynamic of mutual reliance extends beyond the context of maritime delimitation and even beyond the law of the sea. It is evident in the 2021 Judgment on Preliminary Objections in the *Mauritius/Maldives* case, which demonstrates how the ITLOS Special Chamber engaged with the ICJ's 2019 Advisory Opinion on *the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*.

In that Judgment, the Special Chamber noted that while it is generally recognized that advisory opinions of the ICJ are not legally binding, "it is equally recognized that an advisory opinion entails an authoritative statement of international law on the questions with which it deals".[43] The Special Chamber added that such

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[37] *Territorial and Maritime Dispute (Nicaragua* v. *Colombia), Judgment of 19 November 2012*, para. 241.
[38] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Judgment of 21 October 2021*, para. 128.
[39] *Ibid.*, paras. 162, 170.
[40] *Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives), Judgment of 28 April 2023*, para. 96.
[41] *Delimitation of the maritime boundary in the Bay of Bengal (Bangladesh/Myanmar), Judgment of 14 March 2012,* para. 226.
[42] *Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives), Judgment of 28 April 2023*, para. 96.
[43] *Delimitation of the maritime boundary in the Indian Ocean (Mauritius/Maldives), Judgment of 28 January 2021 (Preliminary Objections)*, para. 202.

opinions “carry no less weight and authority than those in judgments, as they are made with the same rigour and scrutiny by the principal judicial organ of the United Nations with competence in matters of international law”.[44] On that basis, the Special Chamber concluded that “determinations made by the ICJ in an advisory opinion cannot be disregarded simply because the advisory opinion is not binding”,[45] and therefore “recognize[d] those determinations and [took] them into consideration in assessing the legal status of the Chagos Archipelago”.[46] Accordingly, the Special Chamber emphasized the importance of distinguishing the non-binding character of advisory opinions from their “authoritative nature”.[47] In this light, the Special Chamber considered that determinations made in advisory opinions may have legal effect.[48]

Excellencies, distinguished guests,

Having discussed these examples of cross-references between the Tribunal and the ICJ, I now wish to turn to the last part of my speech, namely the complementarity exemplified in the two recent *Climate Change* advisory opinions delivered by the Tribunal and the ICJ in connection with the interpretation of the Convention and beyond.

It might be recalled that, on 21 May 2024, the Tribunal delivered its Advisory Opinion in the *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (COSIS). This represented an important development in the Tribunal’s jurisprudence, as it was the first time an international court or tribunal addressed the specific obligations of States Parties under the Convention in the context of climate change.

The first key issue addressed by the Tribunal is whether anthropogenic greenhouse gas (GHG) emissions into the atmosphere meet the criteria of the definition of “pollution of the marine environment” in article 1, paragraph 1,

[44] *Ibid.*, para. 203.
[45] *Ibid.*, para. 205.
[46] *Ibid*., para. 206.
[47] *Ibid.*, para. 203.
[48] See *ibid.*, paras. 205-206.

subparagraph 4, of UNCLOS. Following thorough examination and drawing on the reports of the Intergovernmental Panel on Climate Change, the Tribunal found that GHG emissions satisfy all three criteria contained in the definition: that GHGs are substances; that their emissions are produced "by man"; and that they cause climate change and ocean acidification resulting in "deleterious effects". On this basis, the Tribunal concluded that anthropogenic GHG emissions constitute "pollution of the marine environment".[49] In doing so, the Tribunal reaffirmed the continuing relevance of the Convention and laid the groundwork to clarify States Parties' specific obligations under the Convention in relation to climate-related impacts on the marine environment.

Building on this interpretation, the Tribunal found that article 194, paragraph 1, of the Convention imposes an obligation on States to take all necessary measures to prevent, reduce and control marine pollution caused by anthropogenic GHG emissions.[50] Science, the Tribunal noted, plays a crucial role in determining what those necessary measures should be.[51] However, it also underlined that scientific certainty is not required. In the absence of scientific certainty, States must apply the precautionary approach.[52]

The Tribunal further clarified that relevant international rules and standards, including those contained in global climate treaties, inform the assessment of what constitutes necessary measures. In particular, it addressed the relationship between UNCLOS and the Paris Agreement, noting that while the latter complements the Convention in regulating marine pollution from anthropogenic GHG emissions, it does not supersede the Convention.[53] Compliance with the Paris Agreement alone therefore does not discharge a State's obligations under the Convention.[54]

The Tribunal also confirmed that the obligation under article 194, paragraph 1, is one of due diligence.[55] It noted that the best available science indicates that these emissions pose a high risk in terms of both foreseeability and severity of harm to the

[49] *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, *Advisory Opinion of 21 May 2024*, paras. 179 and 441(3)(a).
[50] *Ibid*., para. 197.
[51] *Ibid*., para. 212.
[52] *Ibid*., para. 213.
[53] *Ibid*., para. 223.
[54] *Ibid*.
[55] *Ibid.*, para. 233.

marine environment.[56] Accordingly, the standard of due diligence required of States in this context must be a stringent one.[57]

This due diligence standard also governs the obligation under article 194, paragraph 2. In light of the transboundary nature of the harm addressed by that provision, the Tribunal noted that the due diligence required under article 194, paragraph 2, may be even more stringent than that under article 194, paragraph 1.[58]

In relation to the duty to cooperate, the Tribunal found that the Convention imposes specific obligations on States Parties to cooperate in good faith to prevent, reduce and control marine pollution from anthropogenic GHG emissions.[59] The Tribunal also affirmed the obligations of developed States to assist developing States through capacity-building, scientific and technical expertise, and technology transfer.[60]

Finally, the Tribunal clarified that the obligation to protect and preserve the marine environment under article 192 extends to addressing the broader effects of climate change, including ocean warming and sea level rise, as well as ocean acidification. This obligation, like those under article 194, is one of due diligence and is subject to the same stringent standard, given the high risk of serious and potentially irreversible harm.[61]

It is against this backdrop that the ICJ's Advisory Opinion of 23 July 2025 may be appreciated. It invites reflection on how jurisprudence develops when the Tribunal and the ICJ, each acting within its own mandate, engage with the same Convention in responding to a global challenge.

As a starting point, it is noteworthy that in its Advisory Opinion, the ICJ drew on the Tribunal's interpretations in two key respects: first, in relation to the interpretation of specific obligations under the Convention; and second, with respect to rules of customary international law.

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[56] *Ibid.*, para. 241.
[57] *Ibid*.
[58] *Ibid.*, paras. 250 and 254.
[59] *Ibid.*, para. 321.
[60] *Ibid.*, para. 339.
[61] *Ibid.*, para. 400.

As regards the former, of particular significance is the ICJ's general acknowledgment of the Tribunal's case law at the outset of its analysis of the law of the sea. It observed that the Tribunal "has developed a considerable body of jurisprudence on UNCLOS, both in contentious and advisory proceedings", and stated that while it is not obliged to model its interpretation of the Convention on that of ITLOS, in so far as it is called upon to interpret the Convention, it should "ascribe great weight to the interpretation adopted by the Tribunal". [62] As the Court explained, "[t]he point here is to achieve the necessary clarity and the essential consistency of international law, as well as legal security".[63]

Consistent with this approach, the ICJ firstly addressed whether anthropogenic GHG emissions fall within the definition of marine pollution. Referring to the Tribunal's Advisory Opinion, it adopted the same analytical structure for the definition of "pollution of the marine environment" in article 1, paragraph 1, subparagraph 4, of the Convention. Having found that the three criteria were met, the Court agreed that anthropogenic GHG emissions "may be characterized as pollution of the marine environment" within the meaning of the Convention.[64] On this basis, the ICJ proceeded to analyse "the most relevant obligations of States under UNCLOS to ensure the protection of the climate system",[65] endorsing several of the Tribunal's findings.

With regard to article 194, paragraph 1, the Court cited the Tribunal that States are under a due diligence obligation to take all necessary measures to reduce and control pollution. [66] It further stressed that "it is not necessarily sufficient for States parties to fulfil their obligations under the UNFCCC and the Paris Agreement in order to satisfy the obligation laid down by Article 194, paragraph 1".[67] In this regard, it may be recalled that, when discussing the question of *lex specialis*, the Court found no inconsistency between the climate change treaties and other potentially applicable rules of international law and concluded that the *lex specialis* principle does not lead to

[62] *Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025*, para. 338.
[63] *Ibid*.
[64] *Ibid.*, para. 340.
[65] *Ibid.*, para. 341.
[66] *Ibid.*, para. 346.
[67] *Ibid.*, para. 347.

the general exclusion of other rules.[68] This conclusion is to a similar effect as the Tribunal's view that the Paris Agreement cannot be regarded as *lex specialis* and does not supersede, modify or limit the obligations contained in the Convention.

Furthermore, when examining article 194, paragraph 1, the Court agreed that the standard of due diligence is stringent and that "necessary measures" must be assessed according to objective criteria, "taking into account the best available science, international rules and standards [...], and the available means and capabilities of the States concerned".[69] Notably, these three factors mirror those identified by the Tribunal in its Advisory Opinion.[70]

Turning to article 194, paragraph 2, and article 192, the ICJ also observed that the applicable standard of due diligence is a stringent one.[71] It further agreed with the Tribunal that the obligation to protect and preserve the marine environment entails both positive and negative duties.[72] It also agreed that article 192 requires States to take measures "as far-reaching and efficacious as possible" to address the deleterious effects of climate change and ocean acidification.[73]

The Court then cited the Tribunal in addressing article 193, noting that the sovereign right of States Parties "to exploit their natural resources pursuant to their environmental policies" is subject to "their duty to protect and preserve the marine environment".[74]

With respect to the duty to cooperate, the Court agreed with the Tribunal that the obligation under article 197 is "an obligation of conduct which requires States to act with due diligence".[75] It further endorsed the Tribunal's view that article 197 does not exhaust the obligation to cooperate under Part XII and that States are required to

[68] *Ibid.*, paras. 168-171.
[69] *Ibid.*, para. 347.
[70] See *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, *Advisory Opinion of 21 May 2024*, para. 207.
[71] *Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025*, paras. 343, 349.
[72] *Ibid.*, para. 342.
[73] *Ibid.*
[74] *Ibid.*, para. 344.
[75] *Ibid.*, para. 351.

cooperate under articles 200 and 201 to promote studies, undertake research programmes, encourage the exchange of information and data and establish appropriate scientific criteria for regulations.[76]

Overall, on several key questions concerning the Convention, the ICJ followed the interpretation adopted by the Tribunal. It is also notable that the Court addressed certain additional matters under the law of the sea, including questions concerning the updating of charts or lists of geographical coordinates in the context of physical changes resulting from climate-change-related sea level rise, as well as questions of State responsibility and the legal consequences arising from wrongful acts, which did not fall within the scope of the Tribunal's Advisory Opinion as requested by COSIS, thereby providing a further illustration of complementarity.

Beyond the interpretation of the Convention, the Court also drew on the Tribunal's reasoning when assessing States' obligations under customary international law. With respect to both obligations identified by the Court as particularly relevant in the climate change context, namely the duty to prevent significant harm and the duty to cooperate, the Tribunal's Advisory Opinion was cited extensively.

In relation to the duty to prevent significant harm, having found that climate change "poses a quintessentially universal risk" of a general and urgent character, the Court agreed with the Tribunal that the standard of due diligence for preventing significant harm to the climate system is stringent.[77] The Court went on to identify two core elements of this customary obligation. The first concerns the environmental harm to be prevented, and the second pertains to the required standard of conduct. Regarding the first element, the Court relied on the Tribunal's reasoning to observe that whether an activity constitutes a risk of significant harm depends on both the foreseeability of harm and its severity.[78] The Court further drew on the Tribunal's reasoning when addressing environmental harm caused by the cumulative effect of different acts, noting that although such activities may not be environmentally

[76] *Ibid.*

[77] *Ibid.*, paras. 137-138.

[78] *Ibid.*, para. 275.

significant if taken in isolation, they may produce significant effects when evaluated in combination with other activities.[79]

Turning to the second element, namely the due diligence required in the climate change context, the Court again referred to the Tribunal's findings on several issues, including the scope and content of appropriate measures,[80] the relevance of current rules and standards,[81] the capabilities of a State,[82] and the precautionary approach.[83] Regarding the last point, the Court reaffirmed the Tribunal's view that where "plausible indications of potential risks" exist, a State cannot meet its due diligence obligation if it disregards those risks.[84]

The Court likewise relied on the Tribunal's Advisory Opinion in its analysis of the customary obligation to cooperate. Drawing on the Tribunal's findings, the Court recognized cooperation as a "fundamental principle" in preventing pollution from GHG emissions.[85] States must act in good faith to pursue collective action, including arrangements reflected in the Paris Agreement. However, the Court made clear, again echoing the Tribunal, that compliance with climate change treaties alone does not discharge this customary duty, as treaty performance is not sufficient, in itself, to fulfil obligations under customary international law.[86]

In short, through their advisory opinions on climate change, the Tribunal and the ICJ have shown how coherence may be fostered, and how complementarity can promote a consistent interpretation and application of the Convention and international law in addressing contemporary global challenges.

Excellencies, distinguished guests,

As I conclude, allow me to step back from the detail of these decisions and return to the broader picture. The examples discussed today do not suggest that

[79] *Ibid.*, para. 276.
[80] *Ibid.*, para. 281.
[81] *Ibid.*, para. 287.
[82] *Ibid.*, para. 291.
[83] *Ibid.*, para. 294.
[84] *Ibid*.
[85] *Ibid.*, para. 302.
[86] *Ibid.*, paras. 304, 314.

international courts and tribunals invariably speak with one voice, nor would that necessarily be expected. What they do indicate, however, is that when judicial bodies engage carefully with each other's reasoning, the result can be greater clarity and a strengthened sense of complementarity. In times of ongoing discussions about fragmentation, such judicial dialogue may reinforce coherence across different fora.

Looking ahead, the law of the sea questions confronting the international community will only become more complex, whether they concern maritime delimitation, the protection of the marine environment, sea level rise, deep seabed mining or emerging ocean technologies. The Convention has shown its capacity to guide the international community through successive generations of challenges. Ensuring that its interpretation remains coherent will be essential to sustaining that role.

I thank you for your kind attention.