

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



STATEMENT BY

H.E. JUDGE NEERU CHADHA

VICE-PRESIDENT OF THE

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

AGENDA ITEM 75 (a) "OCEANS AND THE LAW OF THE SEA"

FOR

THE PLENARY OF THE SEVENTY-NINTH SESSION OF THE

UNITED NATIONS GENERAL ASSEMBLY

10 DECEMBER 2024

Mr President,
Distinguished delegates,

It is an honour for me to address the General Assembly this year on behalf of the International Tribunal for the Law of the Sea. Allow me first to congratulate you, Mr President, on your election as President of the General Assembly. I wish you every success for your term in this distinguished office.

At the request of the President of the Tribunal, who is unfortunately unable to be here today, I will report on the main judicial and organizational developments which have taken place at the Tribunal since the last meeting of the General Assembly in December 2023. Before referring to substantive matters concerning the Tribunal, I must inform you with deep regret of the passing of a former judge of the Tribunal, Judge Tafsir Malick Ndiaye of Senegal, in March of this year. Judge Ndiaye served as a member of the Tribunal from 1996 until 2020. He was involved, throughout his long, distinguished career, in the development of the law of the sea and the peaceful settlement of disputes. On behalf of the Tribunal, I wish to pay tribute to Judge Ndiaye for his important contribution to the work of the Tribunal.

Starting with our judicial work, this year the Tribunal delivered its historic Advisory Opinion on climate change and the law of the sea, adopted one order on provisional measures and saw developments in a further case. I will first apprise you regarding the Advisory Opinion.

It bears recalling that, on 12 December 2022, the Commission of Small Island States on Climate Change and International Law transmitted to the Tribunal a request for an advisory opinion on two questions:

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?

[and]

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

In these proceedings, written statements from 34 States Parties and nine intergovernmental organizations formed part of the case file. A public hearing was held from 11 to 25 September 2023, and I am pleased to inform you that delegations from 33 States Parties and four intergovernmental organizations made oral statements in these historic proceedings. On 21 May 2024, the Tribunal delivered its unanimous Advisory Opinion. This is the first time that an international judicial body has identified States Parties' obligations to combat climate change within the framework of the United Nations Convention on the Law of the Sea (hereinafter "the Convention").

In its Advisory Opinion, the Tribunal was mindful that "climate change is recognized internationally as a common concern of humankind."¹ It noted that the questions posed to it necessarily had scientific aspects and, in this respect, relied on the reports of the Intergovernmental Panel on Climate Change ("IPCC"), which were recognized by most of the participants in the proceedings as "authoritative assessments of the scientific knowledge on climate change".²

The Tribunal also underlined the relevance of external rules in interpreting the Convention, observing that external rules may be found in the extensive treaty regime addressing climate change. In the Tribunal's view, "coordination and harmonization between the Convention and external rules are important to clarify, and to inform the meaning of, the provisions of the Convention and to ensure that the Convention serves as a living instrument."³

¹ Advisory Opinion of 21 May 2024, para. 122.

² Advisory Opinion of 21 May 2024, para. 51.

³ Advisory Opinion of 21 May 2024, para. 130.

One of the key legal findings of the Advisory Opinion is the Tribunal's conclusion that "anthropogenic GHG emissions into the atmosphere constitute pollution of the marine environment within the meaning of article 1, paragraph 1, subparagraph 4, of the Convention."⁴ On this basis, the Tribunal proceeded to examine in great detail the relevant legal provisions and the ensuing obligations of States Parties under the Convention.

Importantly, the Tribunal held that under article 194, paragraph 1, of the Convention, "States Parties to the Convention have the specific obligations to take all necessary measures to prevent, reduce and control marine pollution from anthropogenic GHG emissions and to endeavour to harmonize their policies in this connection." It further held that "[s]uch measures should be determined objectively, taking into account, *inter alia*, the best available science and relevant international rules and standards contained in climate change treaties such as the UNFCCC and the Paris Agreement, in particular the global temperature goal of limiting the temperature increase to 1.5°C above pre-industrial levels and the timeline for emission pathways to achieve that goal." The Tribunal moreover stated that "the scope and content of necessary measures may vary in accordance with the means available to States Parties and their capabilities" and that the necessary measures "include, in particular, those to reduce GHG emissions."⁵ In the context of marine pollution from anthropogenic GHG emissions, "States with greater means and capabilities must do more to reduce such emissions than States with less means and capabilities."⁶ In respect of the nature of this obligation, the Tribunal found that it is one of due diligence and that the standard of due diligence in this regard is stringent. According to the Tribunal, if a State fails to comply with this obligation under article 194, paragraph 1, international responsibility would be engaged for that State.

In this context, the Tribunal also addressed the relationship between the Convention and the Paris Agreement, finding that they are separate agreements, with separate sets of obligations. Therefore, the obligation under article 194, paragraph 1, of the Convention would not be satisfied "simply by complying with the

⁴ See Advisory Opinion of 21 May 2024, para. 179.

⁵ Advisory Opinion of 21 May 2024, para. 441(3)(b).

⁶ Advisory Opinion of 21 May 2024, para. 227.

obligations and commitments under the Paris Agreement.”⁷ According to the Tribunal, the Paris Agreement complements the Convention and does not supersede it; it does not modify or limit the obligation under the Convention and is not *lex specialis* to the Convention.⁸

As regards transboundary pollution, the Tribunal determined that under article 194, paragraph 2, of the Convention, States Parties have the specific obligation to “take all measures necessary to ensure that anthropogenic GHG emissions under their jurisdiction or control do not cause damage to other States and their environment, and that pollution from such emissions under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights.”⁹

Among its other conclusions, the Tribunal held that under article 192 of the Convention, States Parties have “the specific obligation to protect and preserve the marine environment from climate change impacts and ocean acidification” and that “[w]here the marine environment has been degraded, this obligation may call for measures to restore marine habitats and ecosystems.”¹⁰ This obligation was also found by the Tribunal to be one of due diligence, the standard of which is stringent.

Although still fairly recent, the Advisory Opinion of the Tribunal has already been hailed as a landmark ruling that will serve to strengthen States Parties’ obligations to prevent, reduce and control marine pollution from anthropogenic GHG emissions and to protect and preserve the marine environment from climate change and ocean acidification.

Mr President,
Distinguished delegates,

I will now briefly report on the two cases currently on our docket, the first being *The M/T “Heroic Idun” (No. 2) Case (Marshall Islands/Equatorial Guinea)*. The

⁷ Advisory Opinion of 21 May 2024, para. 223.

⁸ Advisory Opinion of 21 May 2024, para. 224.

⁹ Advisory Opinion of 21 May 2024, para. 258.

¹⁰ Advisory Opinion of 21 May 2024, para. 441(4)(b).

dispute concerns the *M/T "Heroic Idun"*, a vessel flying the flag of the Marshall Islands, and her crew. By Order of 27 April 2023, the Tribunal acceded to a request of the Parties to form a special chamber of the Tribunal composed of five members to deal with the case. Following the filing of a Memorial and a Counter-Memorial, the President of the Special Chamber authorized and fixed the time limits for the submission of a Reply and a Rejoinder, with the Reply having been filed on 25 November 2024.

The other pending case is *The "Zheng He" Case (Luxembourg v. Mexico)*. On 3 June 2024, Luxembourg instituted proceedings against Mexico before the Tribunal concerning a dispute regarding the detention of the *"Zheng He"*, a dredger flying the flag of Luxembourg. On 7 June 2024, Luxembourg submitted a request to the Tribunal for the prescription of provisional measures under article 290, paragraph 1, of the Convention. During a hearing held on 11 and 12 July 2024, Luxembourg requested the Tribunal to prescribe several provisional measures, whereas Mexico sought the rejection of Luxembourg's request.

On 27 July 2024, the Tribunal delivered its Order concerning the request for provisional measures. In its Order, the Tribunal concluded that *prima facie* it had jurisdiction over the submitted dispute and that "the rights claimed by Luxembourg in the present case on the basis of article 131 of the Convention are plausible."¹¹ Turning to the question of urgency in these proceedings, the Tribunal considered that "there is at present no urgency, in the sense that there is no real and imminent risk of irreparable prejudice to the rights claimed by Luxembourg."¹² It found that "the circumstances, as they now present themselves to the Tribunal, are not such as to require the exercise of its powers to prescribe provisional measures under article 290, paragraph 1, of the Convention."¹³ By Order dated 8 August 2024, the President of the Tribunal fixed the time limits for the filing of the Memorial of Luxembourg and the Counter-Memorial of Mexico.

¹¹ Order of 27 July 2024, paras. 106, 124-125.

¹² Order of 27 July 2024, para. 143.

¹³ Order of 27 July 2024, para. 149.

Mr President,
Distinguished delegates,

As you are aware, alongside its judicial work, the Tribunal is also active in the field of capacity-building aimed at promoting and disseminating knowledge about the Convention and in particular the dispute settlement procedures enshrined in its Part XV.

In that respect, in September 2024, the Tribunal held the third ITLOS Workshop for Legal Advisers (sponsored by the Republic of Korea). This workshop was designed for legal advisers of Latin American and Caribbean States. The Tribunal's Nippon programme, internship programme and the IFLOS Summer Academy are likewise all efforts in that direction. I wish to thank the Ministry of Foreign Affairs of the People's Republic of China, the Republic of Korea, the Nippon Foundation and the Korea Maritime Institute for their commitment to the Tribunal's capacity-building programmes.

Finally, regarding organizational matters, I am happy to inform that on 18 September, Ms Ximena Hinrichs Oyarce was re-elected Registrar of the Tribunal, a position she has held since 2019.

On behalf of the Tribunal I wish to thank the Secretary-General of the United Nations, the Legal Adviser and the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs for their continued cooperation and support for the Tribunal.

Thank you for your attention.