

STATEMENT BY

H.E. JUDGE TOMAS HEIDAR

PRESIDENT OF THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

ON

THE ANNUAL REPORT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF
THE SEA FOR 2023

FOR

THE THIRTY-FOURTH MEETING OF STATES PARTIES TO THE
UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

10 June 2024

Mr President, distinguished delegates,

1. I am honoured

6. I would now like to address a very recent, major development

12. As regards the issue of discretion, the Tribunal reiterated its earlier

Upon examination of

possible objections, the Tribunal found it appropriate to render the advisory opinion requested by the Commission. The Tribunal then went on to state that it was mindful that climate change is recognized internationally as a common concern of and was conscious of the deleterious effects climate change has on the marine environment and the devastating consequences it has and will continue to have on small island States, considered to be among the most vulnerable to such

13. The Tribunal turned its attention to the applicable law, which it found to cover the Convention, the COSIS Agreement and other relevant rules of international law not incompatible with the Convention. The focus of the Tribunal then shifted to the question of the interpretation of the Convention and the relationship between the Convention and other relevant rules of international law external rules. It expressed the view that, subject to article 293 of the Convention, the provisions of the Convention and external rules should, to the extent possible, be interpreted consistently. Having regard to the extensive treaty regime addressing climate change the present case, relevant external rules may be found, in particular, in those agreements. Such agreements include

, the Kyoto Protocol, the Paris Agreement, Annex VI to MARPOL, Annex 16 to the Chicago Convention, and the Montreal Protocol, including the Kigali Amendment.

14. Before responding to the questions submitted by the Commission, the Tribunal examined the scope of the Request, concluding that it was requested to render an advisory opinion on the specific obligations of States Parties under the Convention order to identify these obligations and clarify their content, it would have to interpret the Convention and, in doing so, also take into account external rules, as appropriate. The Tribunal also considered the relationship between the questions and stated that the obligation addressed in the second question is broader in scope than the obligation addressed in the first

question. It explained that the obligation to protect and preserve the marine environment encompasses and goes beyond the obligation to prevent, reduce and control marine pollution.

15. I will now cast light on responses to the questions in the Request. As the answers given by the Tribunal are rich in detail and span many provisions of the Convention, I can only offer a glimpse of what may be gleaned from carefully reading the Advisory Opinion in full.

16. The Tribunal observed that the first question posed to the Tribunal by the Commission concerns the specific obligations of States Parties to the Convention to prevent, reduce and control marine pollution in relation to the deleterious effects that result or are likely to result from climate change and ocean acidification, which are caused by anthropogenic GHG emissions into the atmosphere. Noting that the first question is formulated on the premise that these obligations necessarily apply to climate change and ocean acidification, the Tribunal stated that the validity of this premise could not be presumed and therefore needed to be examined.

17. The Tribunal therefore considered whether anthropogenic GHG emissions meet the criteria of in articleET7004C005D()]

21. As for the nature of this obligation to take all necessary measures, the Tribunal found that it is one of due diligence. The standard of due diligence in this regard is stringent, given the high risks of serious and irreversible harm to the marine environment from such emissions. However, the Tribunal held that the capabilities and available resources.

22. The obligation under article 194, paragraph 2, of the Convention in relation to anthropogenic GHG emissions was next to be considered by the Tribunal. This provision sets out the obligation of States in the situation of transboundary pollution.

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. Here too, the Tribunal found that it is an obligation of due diligence. According to the Tribunal, the standard of due diligence under article 194, paragraph 2, can be even more stringent than that under article 194, paragraph 1, because of the nature of transboundary pollution.

23. As to the first question focused on the obligations with respect to the specific sources of pollution provided for in sections 5 and 6 of Part XII and other relevant obligations under sections 2, 3 and 4 of Part XII. In terms of specific sources of pollution, the Tribunal found that marine pollution from anthropogenic GHG emissions can be characterized as pollution from land-based sources, pollution from vessels or pollution from or through the atmosphere. It is also worth noting that the Tribunal addressed duties to adopt national legislation and establish international rules and standards as well as their enforcement. With respect to other relevant obligations under sections 2, 3 and 4 of Part XII, the Tribunal opined on the specific obligations incumbent on States Parties in the areas of global and regional cooperation, technical assistance, and monitoring and environmental assessment.

30. The last judicial development to which I would like to draw your attention occurred only last week. On 3 June 2024, Luxembourg instituted proceedings before the Tribunal

I should note that both Luxembourg and Mexico have made declarations under article 287 of the Convention, recognizing the competence of the Tribunal as a means for the settlement of disputes concerning the interpretation or application of the Convention. The case has been entered in the

List of cases as Case No. 33. The Application instituting proceedings as well as a press release providing further information about this case have already been made available on our website.

31. In addition to reporting on judicial work, the Annual Report which is before you includes a review of organizational and administrative issues addressed by the Tribunal during two sessions held in 2023. The Registrar will address certain budgetary matters of the Tribunal in a separate statement.

32. The Tribunal is engaged in various capacity-building activities relating to its work with a view to increasing awareness of its role in the settlement of disputes. Allow me to provide you with an update on these activities.

33. The Tribunal regularly organizes regional workshops that enhance capacity building in the law of the sea. The sixteenth such regional workshop was held in 2023 in Nice, France, and was attended by representatives of 10 States Parties from the region. I wish to express my sincere appreciation to Cyprus, France and the Korea Maritime Institute for their generous support and to Côte d Azur University for its excellent cooperation in organizing the workshop.

34. During the period 2023-2024, for the seventeenth time a nine-month capacity-building and training programme on dispute settlement under the Convention was conducted with the support of the Nippon Foundation. Fellows from Malawi, Mauritius, Mexico, Peru, the Solomon Islands and Türkiye took part in the programme. The candidates for the eighteenth edition of

