

VALUE RECOGNIZATION AND NORMATIVE COMPATIBILITY IN THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA ADVISORY OPINION ON CLIMATE CHANGE

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TABLE OF CONTENTS

I. INTRODUCTION	86
II. OVERALL OBJECTIVE AND VALUE OF THE ADVISORY OPINION	89
<i>A. Clarifying the ‘Obligations Owed to the International Community as a Whole’ in Climate Responsibility</i>	89
<i>B. Reflecting the Value Claims of Climate Justice</i>	91
III. CONTROVERSIES SURROUNDING THE ADVISORY OPINION ON CLIMATE CHANGE OF THE ITLOS	94
<i>A. How to Establish a Causal Relationship Between Emissions and Damage</i>	94
<i>B. Due Diligence Obligation of States and the Delineation of Climate Responsibility</i>	96
<i>C. Key Factors for States in Fulfilling Climate Responsibilities Under the Advisory Opinion on Climate Change of the ITLOS</i>	98
IV. COMPATIBILITY BETWEEN MARITIME LAW AND CLIMATE LAW: ADDRESSING THE CHALLENGE OF LEGAL INTERPRETATION CONFLICT	100
<i>A. Establishing a Public Interest Climate Restoration Funding Mechanism for Marine Climate Damage</i>	101
<i>B. Legal Interpretation Model of Climate Liability Provisions by the ITLOS</i>	104
V. CONCLUSION	106

VALUE RECOGNIZATION AND NORMATIVE COMPATIBILITY IN THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA ADVISORY OPINION ON CLIMATE CHANGE

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The International Tribunal for the Law of the Sea (ITLOS) is requested to provide an advisory opinion on the specific obligations of states parties regarding climate change under the United Nations Convention on the Law of the Sea (UNCLOS). This opinion recognizes that greenhouse gas emissions constitute pollution of the marine environment and emphasizes the necessity for states to take measures to mitigate such pollution. Legally, this opinion clarifies the necessity of collective action in addressing climate change, thereby advancing the concept of climate justice. However, the advisory opinions serve merely as 'primary rules', failing to elaborate on how to demonstrate the causal link between mitigation actions and the harm suffered by other states, as well as the manner in which state responsibility for climate-induced loss and damage should be borne. Divergent views among states regarding the classification of greenhouse gases as pollutants highlight the complexities and uncertainties of climate policy. To promote compatibility between climate law and maritime law, this article argues that ITLOS should prioritize the establishment of an 'assistance-based' loss and damage compensation mechanism. This mechanism aims to support developing states severely affected by climate change through collective international efforts rather than solely through compensation. Furthermore, the advisory opinion is expected to play a crucial role in protecting marine environments and addressing climate change, to further clarify the duty of care that states must exercise in climate governance.

I. INTRODUCTION

The *United Nations Convention on the Law of the Sea* (UNCLOS) is often referred to as a 'living treaty', reflecting the dynamic and innovative

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nature of maritime law.¹ This field of research is essential for addressing emerging challenges; however, the capacity of legal frameworks to effectively govern the oceans is increasingly strained by climate change and the intensified use of marine spaces and resources. In response to these challenges, on April 9, 2024, the International Tribunal on the Law of the Sea (ITLOS) issued a long-awaited advisory opinion on climate change and international law, concluding that states party to the UNCLOS are subject to specific obligations to prevent, reduce, and control greenhouse gas (GHG) emissions and their adverse effect on the marine environment.² These obligations pertain to preventing, reducing, and controlling pollution of the marine environment due to climate change, as well as protecting and preserving the marine environment in light of its impacts. According to the advisory opinion on climate change from the ITLOS, states have the obligation under the UNCLOS to take all necessary measures to protect the marine environment. The ITLOS clarified that states must exercise due diligence based on the best available science and address the impacts of climate change on the ocean through mitigation, adaptation, cooperation, and assistance. This opinion provides a crucial legal basis for realizing intragenerational and intergenerational equity in climate action and strengthens the implementation of the principles of state sovereignty, the duty not to cause transboundary environmental harm, and sustainable development in global ocean governance.

The principle of state sovereignty and the principle of the responsibility of not causing environmental harm to other states, together with the principle of sustainable development, are fundamental legal principles for addressing international marine environmental issues.³ The core of the advisory opinion provided by the ITLOS on climate change revolves around the obligations that states should have to ensure intergenerational and intragenerational equity in the climate domain. Some noted that the principle of prevention is an integral part of the duty of due diligence, which is an obligation of conduct rather than of result.⁴ The advisory opinion emphasizes that the precautionary

1 See DAVID H ANDERSON, *PEACEFUL SETTLEMENT OF DISPUTES UNDER UNCLOS*, in *LAW OF THE SEA: UNCLOS AS A LIVING TREATY*, at 386 (Jill M. Barrett & Richard Barnes eds., The British Institute of International and Comparative Law, 2016).

2 ITLOS, *REQUEST FOR AN ADVISORY OPINION SUBMITTED BY THE COMMISSION OF SMALL ISLAND STATES ON CLIMATE CHANGE AND INTERNATIONAL LAW, ADVISORY OPINION*, at https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf (Last visited on November 26, 2025).

3 See Pierre Clément Mingozi, *The Contribution of ITLOS to Fight Climate Change: Prospects and Challenges of the COSIS Request for an Advisory Opinion*, 306 *The Italian Review of International and Comparative Law* 324 (2023).

4 See Leslie-Anne Duvic-Paoli & Mario Gervasi, *Harm to the Global Commons on Trial: The Role of the Prevention Principle in International Climate Adjudication*, 32 *Review of European Community and International Environmental Law* 226, 231 (2022).

principle constitutes an integral component of the due diligence obligation, which is of critical significance for protecting states from the adverse impacts of anthropogenic greenhouse gas emissions. The advisory opinion aims to address the urgent demands of least developed states and small island developing states that are severely affected by climate change, and seeks to clarify the potential legal consequences that states may face for their inaction leading to significant loss and damage to other states in the context of climate change. However, the advisory opinion has not adequately addressed a series of contentious legal issues. For instance, there are diverging views regarding the boundaries of applying the UNCLOS legal framework. The expansive interpretation of the definition of ‘marine pollution’ in the advisory opinion is seen as a breakthrough beyond the traditional scope of the law of the sea, but it has also sparked debate over whether it exceeds the reasonable limits of treaty interpretation.⁵ The implementation of the principle of common but differentiated responsibilities has become a focal point. Although the advisory opinion mentions this principle, it fails to clarify how it should be reconciled with the obligations under the UNCLOS, raising concerns among developing states about potential inequities in burden-sharing.⁶ Furthermore, the activation of compensation and liability mechanisms faces operational challenges. Key issues, such as how to establish causation between emission activities and specific damages, and how to quantify compensation, still lack operable rules.

Based on this, the present research is structured as follows. Section II provides an overview of the main content of the ITLOS advisory opinion on climate change. It analyzes the core arguments presented in the context of intergenerational equity, intragenerational equity, state sovereignty, and the principle of not causing environmental harm to other states. These arguments highlight the state obligations to address climate change. Section III shifts the focus to issues surrounding the elaboration of specific rules based on the advisory opinions of the ITLOS, particularly the challenge of establishing a causal relationship between a state’s emissions and the damage suffered by other states. It is noteworthy that most states do not classify greenhouse gases

5 AGREEMENT FOR THE ESTABLISHMENT OF A COMMISSION OF SMALL ISLAND STATES ON CLIMATE CHANGE AND INTERNATIONAL LAW (COSIS AGREEMENT), at <https://cpij-pciji.ca/wp-content/uploads/2021/11/Agreement-for-the-establishment-of-COSIS.pdf> (Last visited on November 26, 2025). See D. Freestone, R. Barnes & P. Akhavan, *Agreement for the Establishment of a Commission of Small Island States on Climate Change and International Law*, 37 *International Journal of Marine and Coastal Law* 1 (2022).

6 See Kong Lingjie & Shao Hongyan, *Diligence Standards for Marine Environmental Protection Obligations of the Convention on the Law of the Sea: Comments on the Factor-Oriented Approach in the ITLOS Advisory Opinions*, 4 *Wuhan University International Law Review* 15-16 (2025).

as pollutants in their domestic legislation, and no global treaty has made such a classification.⁷ Section IV explains the compatibility of the advisory opinion of the ITLOS with other climate treaties, such as the UNCLOS and the *Paris Agreement*. It discusses under the advisory opinion on climate change of the ITLOS, how the interpretation and application of the *Paris Agreement* can further relate to the UNCLOS and how conflicts between the UNCLOS and external regulations may be resolved. Section V concludes.

II. OVERALL OBJECTIVE AND VALUE OF THE ADVISORY OPINION

The ITLOS, as a principal judicial body for international maritime law, has significantly influenced the shaping and development of this field through its advisory opinions.⁸ In recent years, the escalating issue of climate change has had profound effects on the global marine environment.⁹ In 2021, the ITLOS issued an advisory opinion addressing climate change, marking a significant advancement in international maritime law's response to climate change and its impacts on the marine environment. This opinion not only provides a legal framework for the global community but also offers guidance for states in fulfilling their obligations for comprehensive emissions reduction concerning the marine environment while adhering to the principles of climate justice. The issuance of advisory opinions is fundamentally distinct from the primary function of court judgments in litigation. Typically, entities that request advisory opinions adjust their actions based on the belief that the views expressed in the opinion accurately reflect the legal situation. Advisory opinions play an invaluable role in clarifying, interpreting, confirming, and developing international law.

A. Clarifying the 'Obligations Owed to the International Community as a Whole' in Climate Responsibility

The advisory opinion of the ITLOS clarifies the 'obligations owed to the international community as a whole' that states bear in addressing climate change. These obligations represent duties that a state owes to all other states

⁷ See Philippe Sands, *Climate Change and the Rule of Law: Adjudicating the Future in International Law*, 1 Journal of Environmental Law 20 (2016).

⁸ See DECISIONS OF THE THIRD MEETING OF THE COMMISSION OF SMALL ISLAND STATES ON CLIMATE CHANGE AND INTERNATIONAL LAW, at https://www.itlos.org/fileadmin/itlos/documents/cases/31/Decision_of_COSIS_26.08.2022.pdf (Last visited on November 26, 2025).

⁹ See ALAN BOYLE, CATHERINE REDGWELL & PATRICIA BIRNIE ET AL., *INTERNATIONAL LAW AND THE ENVIRONMENT*, at 122 (Oxford University Press, 2021).

and the global community, distinguishing them from obligations owed to specific states or entities. Under the UNCLOS, states are responsible for the protection and preservation of the marine environment. The ITLOS emphasized that the impacts of climate change on marine ecosystems are global in nature, necessitating that states consider the effects of their climate change mitigation measures on the marine environment. Article 192 of the UNCLOS outlines a broad obligation to protect and preserve the marine environment, encompassing any type of damage or threat to it. According to this provision, contracting parties are specifically obliged to safeguard the marine environment from the effects of climate change and ocean acidification. In areas where the marine environment has already degraded, this obligation may require the implementation of measures to restore marine habitats and ecosystems. The ITLOS's advisory opinion not only reinforces the responsibilities of states in combating climate change but also advances the global community's recognition of 'obligations owed to the international community as a whole' related to climate issues. It underscores the importance of the collective obligation to maintain the integrity of the marine environment. Challenges such as rising sea levels, ocean acidification, and changes in ecosystems demand that states adopt policies that consider the marine environment's overall integrity. The opinion asserts that this is a due diligence obligation. Given the potential for severe and irreversible harm to the marine environment from climate change and ocean acidification, the standard for due diligence is stringent. States must implement comprehensive and coordinated measures to ensure the health and sustainability of marine ecosystems while fulfilling their international obligations.¹⁰ This requirement encourages states to adopt more systematic and holistic policy approaches in addressing climate change.

According to article 194(5) of the UNCLOS, contracting states have specific obligations to protect and preserve rare or fragile ecosystems, as well as the habitats of depleted, threatened, or endangered species and other forms of marine life. These efforts aim to mitigate the impacts of climate change and ocean acidification. Each source of greenhouse gas emissions should contribute to the global environmental protection process based on its historical responsibilities and current emissions. The advisory opinion from the ITLOS highlights that global community members have

10 See SECURITY COUNCIL REPORT, OPEN DEBATE ON SEA-LEVEL RISE AND ITS IMPLICATIONS FOR INTERNATIONAL PEACE AND SECURITY, at <https://www.securitycouncilreport.org/whatsinblue/2023/02/open-debate-on-sea-level-rise-and-its-implications-for-international-peace-and-security.php#:~:text=Tomorrow%20%2814%20February%29%2C%20the%20Security%20Council%20will%20convene,the%20signature%20events%20of%20the%20Maltese%20Council%20presidency> (Last visited on November 27, 2025).

a compensatory and restorative obligation towards the ‘climate public interest’, which represents global common interests. This advisory opinion also prompts deeper reflection on the relationship between obligations to combat climate change and the protection of human rights. As the effects of climate change on marine environments intensify, particularly in small island developing states and coastal communities, there is an increasing threat to human survival and development.¹¹ The ITLOS emphasized that while states are tasked with protecting the marine environment, they must also pay attention to the safeguarding of human rights. This perspective underscores the interdependence between environmental protection and human rights, thereby fostering further discussions on climate justice, intergenerational equity, and intragenerational equity.

B. Reflecting the Value Claims of Climate Justice

Climate justice, as a value system advocating for equitable treatment of all entities and individuals in the context of climate change, encompasses two fundamental types: substantive climate justice and procedural climate justice. Substantive climate justice focuses on the distribution and adjustment of benefits and burdens associated with climate change, while procedural climate justice emphasizes macro-level procedural issues such as the implementation and compliance of international climate negotiation mechanisms and legal frameworks.¹² The ITLOS’s advisory opinion represents a profound reflection and reconstruction of the global climate governance system within this value framework. From the perspective of substantive climate justice, the advisory opinion clarifies the fair distribution of benefits and burdens, embodying the principle of distributive justice.¹³ The ITLOS explicitly states in its advisory opinion that greenhouse gas emissions constitute marine environmental pollution, directly addressing the distribution of benefits and burdens in the context of climate change. Small island developing states, as vulnerable groups facing the impacts of climate change, have their rights to survival and development severely threatened. The ITLOS’s advisory opinion confirms the legitimate claims of these

11 A/CONF.151/26 (VOL. I) REPORT OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf (Last visited on November 27, 2025).

12 See Yang Bowen, *Review of the International Court of Justice’s Climate Change Advisory Opinion Case: Obligation Generation, Liability Judgment and Compliance Claims*, 2 *Journal of International Economic Law* 3 (2024).

13 See COP21: ‘STATES’ HUMAN RIGHTS OBLIGATIONS ENCOMPASS CLIMATE CHANGE’: UN EXPERT, at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16836&LangID=E> (Last visited on November 26, 2025).

states through legal channels, requiring all states, particularly major carbon emitters, to assume greater responsibilities for emissions reduction. This reflects the principle of equitable distribution of benefits and burdens inherent in substantive climate justice. Moreover, the ITLOS not only recognizes the polluting nature of greenhouse gas emissions but also emphasizes that states have an obligation to take all necessary measures to control these emissions. According to article 204(2) of the UNCLOS, contracting parties have a specific duty to continuously monitor the impacts of their permitted or undertaken activities to determine whether these activities may pollute the marine environment through anthropogenic greenhouse gas emissions. This statement further clarifies and strengthens the obligations for emissions reduction outlined in climate agreements such as the *Paris Agreement*.¹⁴ It requires states to consider not only their own interests but also the global common good, reflecting the pursuit of value adjustment regarding rights and obligations in substantive climate justice. From the perspective of procedural climate justice, the ITLOS's advisory opinion on climate change is not only a process for resolving legal issues but also a process for improving international climate negotiation mechanisms. This judicial approach to advancing climate governance injects new vitality into international climate negotiation mechanisms, reflecting the value pursuit of equal participation rights, the right to information, decision-making rights, and procedural remedies for all states in the negotiation and formulation of international climate legal documents. Although the ITLOS's advisory opinion did not possess binding legal force, it positively influences the implementation and compliance of international climate legal frameworks.¹⁵ On the one hand, it enhances global attention and awareness regarding climate change, prompting states to more actively fulfill their emissions reduction obligations. On the other hand, it serves as a legal warning and constraint for those states that have failed to meet their emissions reduction commitments, encouraging them to accelerate their actions. This judicial approach to promoting the implementation and compliance of international climate legal frameworks is a significant manifestation of procedural climate justice.¹⁶

In the context of addressing marine climate change from a justice perspective, the obligations arising from intergenerational and

14 Article 4(19) of the *Paris Agreement*.

15 See Zhang Hua, *Development and Reflection of the Climate Change Advisory Opinion of the International Tribunal for the Law of the Sea on the Obligation to Protect the Marine Environment*, 2 *Global Law Review* 166 (2025).

16 See Li Jie, *Institutional Challenges and Functional Positioning of the United Nations Convention on the Law of the Sea in the Context of Climate Change: Starting from the Climate Advisory Case of the International Tribunal for the Law of the Sea*, 1 *Chinese Journal of Maritime Law* 33 (2025).

intragenerational equity emphasize the overall benefits of substantive climate justice. This perspective encompasses not only the greenhouse gas emission sources and regions within the jurisdiction of sovereign states but also the global commons, which are not subject to any state sovereignty. The rise in global sea levels is a matter of common concern for all parties involved.¹⁷ Therefore, addressing the negative impacts of marine climate change and initiating mitigation actions align with the principle of common but differentiated responsibilities, which highlights shared obligations and responsibilities. Within the international legal framework of climate governance, the realization of distributive justice necessitates a reasonable differentiation among states in their assumption of mitigation and adaptation obligations. The principle of intergenerational equity not only addresses the future impacts of current emissions but also requires facing up to the responsibility disparities arising from historically accumulated emissions. Meanwhile, intragenerational equity must respond to the structural asymmetries between developed and developing states in terms of development stages, economic structures, and response capacities. In this context, a pivotal jurisprudential and practical question emerges: how should international judicial bodies identify and affirm the legal substance of such differentiated obligations in specific cases? Although the ITLOS does not directly set specific emission reduction targets for individual states in its advisory opinion proceedings, it can, through interpreting relevant provisions of the UNCLOS, provide an authoritative legal basis for implementing differentiated responsibilities in climate action.¹⁸ This would guide states to fully consider historical responsibilities and respective capabilities when undertaking emission reduction commitments. Such legal clarification not only helps rectify the current imbalance in the allocation of rights and responsibilities within climate governance but also preserves necessary policy space and the possibility for developing states to realize their right to development while pursuing low-carbon pathways. Consequently, the ITLOS's reasoning pertains not only to the specific obligations of marine environmental protection but also substantially contributes to shaping a more inclusive and equitable international legal order on climate change.

The obligations arising from climate change, based on intergenerational and intragenerational equity, encompass matters recognized by customary

17 See Ellycia R. Harrould-Kolieb, *The UN Convention on the Law of the Sea: A Governing Framework for Ocean Acidification?*, 2 Review of European Comparative & International Environmental Law 257 (2020).

18 See He Tiantian, *Impact of Scientific Development on Treaty Interpretation and Its Limits: Taking the International Tribunal for the Law of the Sea 'Climate Change Advisory Case' as the Entry Point*, 3 Journal of Boundary and Ocean Studies 23-24 (2024).

international law, as well as irreversible climate damages and risks. According to article 4 of the *United Nations Framework Convention on Climate Change* (UNFCCC), states are obligated to protect the climate system from anthropogenic changes. Once excessive greenhouse gas emissions are confirmed, states have the right to investigate and pursue judicial remedies to address climate change in the interest of collective action. The climate system is a crucial component of the human environment. The realization of environmental rights is explicitly outlined in the third generation of human rights. In the advisory opinion case concerning climate change at the ITLOS, it is essential to establish clear standards for recognizing the obligations and responsibilities of states in marine climate governance. This will help determine which issues fall within the scope of responsibilities related to the mitigation of marine climate change.¹⁹

III. CONTROVERSIES SURROUNDING THE ADVISORY OPINION ON CLIMATE CHANGE OF THE ITLOS

Paragraph 252 of the ITLOS's advisory opinion on climate change states that, 'Anthropogenic GHG emissions into the atmosphere fall under the definition of pollution of the marine environment. It is acknowledged that, given the diffused and cumulative causes and global effects of climate change, it would be difficult to specify how anthropogenic GHG emissions from activities under the jurisdiction or control of one state cause damage to other states. However, this difficulty has more to do with establishing the causation between such emissions of one state and damage caused to other states and their environment.'²⁰ Therefore, the ITLOS advisory opinion underscores the need to further clarify the distinction between climate-related 'losses' and 'damages' attributable to state conduct, and to delineate the resulting state responsibilities.

A. How to Establish a Causal Relationship Between Emissions and Damage

From the perspective of international legal responsibility, international liability encompasses both international wrongful acts and international

19 See Wang Jia & Pang Shansi, *Study on the Legal Qualitative Problem of Carbon Dioxide Emissions from Human Beings: From the Perspective of the International Tribunal for the Law of the Sea's Climate Change Advisory Case*, 4 *Journal of International Law* 21-22 (2024).

20 *Supra* note 2.

damage liability.²¹ The ITLOS has established a fundamental framework for addressing accountability for losses and damages arising from climate change. However, this framework remains relatively simplistic in nature. In practice, there is a pressing need for further elaboration concerning the specific circumstances under which states may bear climate responsibilities. Additionally, the determination of causality between state actions and the resultant climate change losses and damages remains a complex issue requiring refinement.²²

When addressing the advisory opinion on climate change, the ITLOS must confront a core legal dilemma: significant challenges arise in directly applying the no-harm principle, based on traditional transboundary pollution, and the state responsibility regime to greenhouse gas emissions, a global and cumulative phenomenon. Unlike traditional pollution sources, greenhouse gas emissions stem from historical and current activities of numerous states, with their impacts amalgamated and superimposed on a global scale. This makes it exceptionally difficult to legally establish a direct link between specific damages and the emissions of a particular state. The ITLOS noted that states should fulfill their obligations on the basis of their ‘available means and capabilities’ and recognized that developed states should bear greater responsibility. However, the advisory opinion does not further clarify how emissions reduction obligations are specifically allocated among states with different levels of development, energy mix and historical responsibilities.²³ Although the ITLOS has confirmed that failure to perform obligations will give rise to state responsibility, the advisory opinion has not put forward specific paths on how to pursue liability, how to assess damages, or how to achieve effective relief through existing mechanisms.²⁴ Therefore, although the ITLOS was requested to provide an advisory opinion, it has yet to offer a systematic response capable of breaking the current impasse in international law regarding how to concretize a state’s legal obligations within this highly fragmented structure of responsibility and how to

21 See Gong Wei, *Advisory Opinion of the International Tribunal for the Law of the Sea on State Obligations on Climate Change: Basis, Effectiveness and Possible Impacts*, 9 *Pacific Journal* 69 (2023).

22 See HUMAN RIGHTS AND CLIMATE CHANGE, RESOLUTION ADOPTED BY THE HUMAN RIGHTS COUNCIL, UNITED NATIONS GENERAL ASSEMBLY, at <https://digitallibrary.un.org/record/3984431?v=pdf> (Last visited on November 26, 2025).

23 See Que Zhanwen, *Legal Disputes over the Advisory Opinion on Climate Change and China’s Response*, 4 *Journal of Political Science and Law* 173 (2024).

24 See Li Wanqiang, Tian Haoyu & Guo Jianping, *Climate Advisory Case of the International Tribunal for the Law of the Sea: Background, Jurisprudence and Spillover Effects*, 4 *Qinghai Social Sciences* 174 (2023).

reconstruct the standards for establishing causality.²⁵ Moreover, when it comes to the question of whether the traditional, state-centric framework of environmental responsibility can effectively address the global and systemic challenges of climate change, particularly in the face of non-state actors and cross-border cumulative effects, the court's response has not yet fully transcended the constraints of the existing international legal system.

*B. Due Diligence Obligation of States and
the Delineation of Climate Responsibility*

Climate change, as a complex global issue, requires collaboration across multiple international legal frameworks and institutions, such as the UNFCCC and the *Paris Agreement*. These frameworks and agreements specifically address climate change, and provide a more appropriate legal basis for taking climate responsibility. The impacts of climate change vary significantly across different regions and states, necessitating the responses be tailored to specific circumstances. States must consider a range of factors, including the principle of common but differentiated responsibilities and the principle of respective capabilities, when addressing climate change. Given that the UNCLOS primarily focuses on maritime law, its provisions may have limited applicability and effectiveness in the context of climate change. Therefore, states should rely on specialized international legal frameworks to address climate change, rather than attempting to incorporate climate issues into the scope of UNCLOS discussions.²⁶ Therefore, while UNCLOS does not directly address climate change, this does not imply that there is no intersection between maritime law and climate issues. On the contrary, the implementation and development of maritime law should be integrated with the impacts of climate change to achieve the sustainable use and protection of marine resources. The obligation under paragraph 2 of article 194 of the UNCLOS requires states to take all measures necessary to ensure that activities under their jurisdiction do not cause damage by pollution to other states and their environment and that pollution arising from their activities does not spread beyond the limits of their states' jurisdiction. Within the frameworks of the maritime law and climate law, states have an obligation

25 See Yoshifumi Tanaka, *The Role of an Advisory Opinion of ITLOS in Addressing Climate Change: Some Preliminary Considerations on Jurisdiction and Admissibility*, 2 *Review of European Comparative & International Environmental Law* 32 (2023).

26 See Deng Yuncheng, Zhang Haiwen & Arti Pratap et al., *Integrating Climate Change into Global Ocean Governance: The ITLOS Advisory Opinion on the Specific Obligations of State Parties to the United Nations Convention on the Law of the Sea*, 1 *Journal of Island and Marine Studies* 5 (2024).

to take necessary measures to prevent, reduce, and control climate change and its adverse effects. This constitutes the core obligation of due diligence for states, as outlined in the ITLOS's advisory opinion on climate change. According to general international law, greenhouse gas emissions generally fall within the category of acts that are not prohibited by international law. However, when these emissions result in transboundary harm, the emitting state may incur corresponding legal responsibilities. In its advisory opinion, the ITLOS emphasizes the polluting nature of anthropogenic greenhouse gas emissions on the marine environment, thereby imposing an obligation on states to prevent, reduce, and control such emissions. If a state fails to fulfill this obligation and causes loss or damage to other states or regions, the emitting state may be liable for damage resulting from acts not prohibited by international law.

On the one hand, when a state fails to fulfill its obligation of due diligence regarding climate change and causes loss or damage to other states or regions, it may incur the responsibility to compensate for losses and take remedial measures. This responsibility may encompass providing compensation to victims, restoring damaged environments, and adopting preventive measures to prevent similar damage from occurring again. Within the framework of the ITLOS's advisory opinion on climate change, if a state fails to fulfill its obligation to prevent, reduce, and control greenhouse gas emissions, resulting in pollution or damage to the marine environment, it may be required to provide compensation to the affected states or regions and take necessary remedial measures to restore the damaged environment. On the other hand, in specific circumstances, a state's failure to fulfill its obligation of due diligence regarding climate change may constitute an internationally wrongful act. For instance, if a state intentionally or negligently violates its obligations under international treaties, causing severe loss or damage to other states or regions, it may face responsibility for an internationally wrongful act.

When guiding state practices in addressing climate change, the ITLOS's advisory opinion on climate change should consider the development and evolution of the law of the sea and the climate law, necessitating a more flexible and reasonable application of treaty provisions and a refinement of the circumstances in which states bear climate responsibility. However, this refined interpretation is not without limits. It must comply with the general principles and rules of treaty interpretation established in treaties such as the UNFCCC, the *Paris Agreement*, and the UNCLOS, particularly respecting the realization of the development rights of developing states and the original intent and purpose of global climate justice.

C. Key Factors for States in Fulfilling Climate Responsibilities Under the Advisory Opinion on Climate Change of the ITLOS

From the advisory opinion issued by the ITLOS on climate change, it is evident that there exist fundamental distinctions between loss and damage induced by climate change, and these distinctions have implications for the determination of state responsibility. In the legal context, loss and damage are not merely conceptual separations; these are crucial categories that require precise understanding in legal practice, as they entail distinct legal consequences and principles of liability allocation. Firstly, loss resulting from climate change primarily focuses on the deprivation of interests, manifesting as concrete and quantifiable economic or material damages, such as reduced agricultural production, infrastructure destruction, and residential property losses. These losses are characterized by their directness and measurability. Consequently, when the degree of loss reaches a certain threshold, it may trigger state compensation mechanisms. The application of state compensation in such cases aims to restore the legitimate rights and interests of the affected party and revert to the pre-damage state. In contrast to loss, damage pertains more to the long-term impacts on the property and persons of other states due to a state's negligence in addressing climate change or natural disasters. These impacts often involve more complex and profound legal repercussions. Damage emphasizes the consequences of wrongful conduct, meaning that a state must bear corresponding legal responsibility when it fails to fulfill its international legal obligations related to climate change or causes irreversible environmental damage to another state. For instance, the reduction in fishery resources due to ocean acidification not only affects the livelihoods of fishery workers but also potentially deals a devastating blow to the entire marine ecosystem. This kind of damage clearly transcends the scope of simple economic losses, touching upon the fundamental principles of environmental protection and sustainable development in international law.

The responsibility of states for loss and damage resulting from climate change finds its roots in article 3 of the *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities* formulated by the International Law Commission. This article emphasizes the obligation of states to take all necessary measures to prevent significant transboundary harm arising from activities under their jurisdiction or control to the territory of another state or to areas under its jurisdiction or control. On this basis, the determination of state responsibility hinges on the application

of the standard of ‘due diligence’. The standard of due diligence requires states, when engaging in activities that may cause transboundary harm, to exercise reasonable care and take necessary preventive measures to avoid the occurrence of damage. However, in practice, the specific application of the due diligence standard is controversial, particularly in assessing the proportionality of preventive measures, which necessitates comprehensive consideration of state-specific and case-specific circumstances.

From a practical perspective, the fulfillment of state responsibility not only necessitates the establishment of legal frameworks but also extends to the implementation of specific policies and administrative management.²⁷ States should actively formulate legislation and policies related to climate change, clarifying state obligations and responsibility entities in addressing climate change. Simultaneously, administrative bodies that complement these laws and policies should be established to conduct rigorous oversight and management of relevant activities. The establishment and operation of these bodies aim to ensure the effective implementation of state policies, prevent potential risks associated with climate change, and facilitate timely and effective response and compensation in the event of damage.²⁸

Notably, in the *Case of the Century* in France, the French courts assessed the government’s fault by interpreting the government-set ‘cap on total carbon emissions’ in conjunction with treaty obligations.²⁹ This ruling not only demonstrates the judicial activism of the courts in addressing climate change issues but also provides a valuable reference in handling similar cases. It emphasizes that in facing the challenges of climate change, states should adopt more proactive and effective measures to reduce greenhouse gas emissions and prevent damage based on international legal obligations and domestic policy commitments.

Determining the proportionality of state responsibilities in the context of diverse climate change responsibility entities and varying emission histories and intensities is undoubtedly a complex and arduous task. In this process, it is essential to fully consider the historical differences in greenhouse gas emissions between developed and developing states. Developed states bear

27 See YANG ANQI, RESEARCH ON THE INTERNATIONAL LEGAL MECHANISM FOR SHARING LOSS AND DAMAGE FROM CLIMATE CHANGE, at 7 (Chongqing University, 2023).

28 See Ginevra Le Moli, *The ICJ Advisory Opinion on Climate Change and the Paris Agreement*, 1 *Revue Européenne Du Droit* 51-52 (2025).

29 See CLIENT ALER, THE CASE OF THE CENTURY: THE FRENCH ADMINISTRATIVE COURT ISSUES A GROUNDBREAKING RULING ON STATE RESPONSIBILITY FOR CLIMATE CHANGE, <https://www.gibsondunn.com/the-case-of-the-century-the-french-administrative-court-issues-a-groundbreaking-ruling-on-state-responsibility-for-climate-change/> (Last visited on November 26, 2025).

a greater historical responsibility for global climate change due to their substantial emissions during the industrialization process. Conversely, developing states, constrained by their economic development levels and historical factors, are relatively weaker in building capacity to address climate change and should therefore be granted greater understanding and support in the allocation of responsibilities.

On this basis, the responsibility share of each state can be determined according to its emission share. States with higher emissions, which contribute more significantly to global climate change, should bear a larger proportion of responsibility. This principle embodies the principle of fairness and aligns with the intrinsic requirements of climate justice. Additionally, attention should be paid to states' Nationally Determined Contributions (NDCs) under the *Paris Agreement* and their domestic emission reduction standards. The level of NDCs reflects states' commitments and actions in addressing climate change and serves as an important indicator for assessing their fulfillment of responsibilities.

IV. COMPATIBILITY BETWEEN MARITIME LAW AND CLIMATE LAW: ADDRESSING THE CHALLENGE OF LEGAL INTERPRETATION CONFLICT

The relationship between the UNCLOS and other relevant international legal frameworks, referred to as 'external rules', is crucial in addressing the impacts of climate change on the oceans. The ITLOS emphasizes that the UNFCCC and the *Paris Agreement* are the primary legal instruments for addressing global climate change. It asserts that the provisions of the UNCLOS and external rules should be interpreted consistently whenever possible, thereby affirming the foundational role and primacy of international climate change law. Furthermore, the ITLOS states that the principle of common but differentiated responsibilities is a key tenet for the implementation of the UNFCCC and the *Paris Agreement*. Article 194(1) of the UNCLOS also encompasses elements that align with this principle. Thus, the ITLOS alleviates, to some extent, the fragmentation of international law and becomes the first international judicial body to explicitly recognize the status of the principle of common but differentiated responsibilities and its relevance to the UNCLOS. In judicial practice, the ITLOS should adopt a comprehensive and consistent approach to determine the interpretation and applicability of climate law in relation to maritime law.

A. Establishing a Public Interest Climate Restoration Funding Mechanism for Marine Climate Damage

The traditional international legal framework for addressing environmental issues primarily emphasizes the ‘polluter pays’ principle and state responsibility, which requires states causing environmental damage to bear corresponding compensation liabilities. However, this principle faces significant challenges in the context of climate change.³⁰ First, the causes of climate change are complex, involving emissions from numerous states and industries, making it difficult to attribute responsibility to a single state.³¹ Second, the impacts of climate change are global in nature, making it impossible for any state to isolate itself from the consequences; thus, relying solely on compensation mechanisms is inadequate. Finally, there are substantial disparities between developing and developed states in their capacities to address climate change. A strict focus on compensation may exacerbate the global divergence, hindering global climate governance efforts.

Taking into account the above factors, the ITLOS could advocate for the establishment of a unique ‘public interest climate restoration funding mechanism’. This mechanism aims to provide systematic support to states severely affected by climate change, assisting them in enhancing climate resilience, restoring ecological damage, and rebuilding sustainable development pathways through financial resources, technology transfer, and capacity building. COP29 of the UNFCCC concludes with the *Baku Climate Unity Pact*, further solidifying this direction by calling on the international community to establish inclusive and accessible financing arrangements based on the principles of solidarity, equity, and shared responsibility, with particular attention to the special circumstances of the least developed states and small island developing states.³²

The core orientation of this mechanism is ‘public welfare funding’, which means that its operation does not depend on the determination of state responsibility or compensation obligations, but on the common but differentiated moral responsibilities and solidarity obligations of the international community. As pointed out by the ITLOS in its advisory

30 See Robert Falkner, *The Paris Agreement and the New Logic of International Climate Politics*, 5 *International Affairs* 1107 (2016).

31 See E.L.F. Schipper, N.K. Dubash & Y. Mulugetta, *Climate Change Research and the Search for Solutions: Rethinking Interdisciplinarity*, 3 *Climatic Change* 18 (2021).

32 See NICOLE ROUGHAN, *AUTHORITIES: CONFLICTS, COOPERATION, AND TRANSNATIONAL LEGAL THEORY*, at 187 (Oxford University Press, 2013).

opinion, its functions do not involve the determination of state responsibility, but should focus on the supportive remedial route available to the affected state in the event that the state fails to fulfill its obligations to protect the marine environment.

Under the collaborative framework advocated by the *Baku Climate Unity Pact*, the international community should continue to jointly explore innovative financing instruments, technological cooperation models, and governance mechanisms to promote the continuous improvement and implementation of the ‘public-interest climate restoration funding mechanism’. By providing aid to affected states rather than merely assigning blame or demanding compensation, these mechanisms alleviate the economic pressures faced by developing states in addressing climate change.³³ This approach embodies the spirit of solidarity and cooperation within the international community when confronting global challenges, thereby enhancing mutual trust and collaboration among states. Furthermore, this mechanism strengthens the adaptive capacity of affected states. By offering financial resources, technology, and capacity-building support, these mechanisms enable states to improve their resilience to climate change. This includes initiatives such as developing more disaster-resistant infrastructure, enhancing agricultural resilience, and improving water resource management.³⁴ Consequently, these efforts mitigate the negative impacts of climate change on social and economic development, effectively advancing the achievement of sustainable development goals. Climate change is not only an environmental issue but also a developmental one.³⁵ The public interest climate restoration funding mechanism contributes to the realization of sustainable development goals in affected states, such as poverty alleviation, livelihood improvement, and environmental protection. This dual impact not only provides direct support to the affected states but also contributes to global sustainable development.³⁶ Within the framework of the mechanism, the international community must collaboratively explore effective funding strategies, pathways for technological innovation, and cooperative models.³⁷ Such efforts will facilitate communication and

33 See Benoit Mayer & J. Gupta, *Progression Requirements Applicable to State Action on Climate Change Mitigation Under Nationally Determined Contributions*, 23 *International Environmental Agreements: Politics, Law and Economics* 293 (2023).

34 See CINNAMON CARLARNE, KEVIN GRAY & RICHARD TARASOFKY, *INTERNATIONAL CLIMATE CHANGE LAW: MAPPING THE FIELD*, at 4 (Oxford University Press, 2016).

35 See Alice Pirlot, *Carbon Leakage and International Climate Change Law*, 1 *Transnational Environmental Law* 13 (2024).

36 See ALAN BOYLE & NAVRAJ SINGH GHALEIGH, *CLIMATE CHANGE AND INTERNATIONAL LAW BEYOND THE UNFCCC*, at 52 (Oxford University Press, 2016).

37 See Birsha Ohdedar, *Loss and Damage from the Impacts of Climate Change: A Framework for Implementation*, 1 *Journal of International Law* 32 (2016).

collaboration among states in the field of climate governance, promoting the continuous improvement and innovation of the global climate governance system.

In practice, the court, as a crucial institution for upholding the international legal order, should fully respect and reflect the mechanism for loss and damage under international climate change law. Specifically, when addressing relevant cases, the court must clearly distinguish between state responsibility and the boundaries of assistance-based remedies, avoiding the attribution of liability to a single state for the purpose of seeking compensation.³⁸ Furthermore, the court should actively advocate for and support the international community's assistance efforts for affected states, providing robust guarantees for the effective implementation of this mechanism through judicial rulings and interpretations.³⁹ For instance, when assessing whether a state has fulfilled its obligations to mitigate climate change under the UNCLOS, the court could evaluate whether the state has taken reasonable and appropriate measures to reduce greenhouse gas emissions, protect marine ecosystems, and enhance its adaptive capacity to climate change impacts. If a state has not completely prevented losses but has made significant efforts and demonstrated a strong willingness to cooperate, the court may consider mitigating its liability in its judgment and instead emphasize the international community's responsibility to assist the affected state.⁴⁰ The court can promote consensus within the international community on climate financing issues by issuing judicial opinions, providing legal consultations, and participating in international negotiations. It should underscore that climate financing is not only a moral obligation but also a necessary condition for achieving global climate governance goals and promoting sustainable development. By clarifying the legal status of climate financing, establishing stable funding sources, and optimizing funding allocation mechanisms, the court can provide clearer and more effective legal guidance to the international community.⁴¹ Within the framework of the assistance-based loss and damage mechanism, adaptation and prevention are two critical aspects. In handling related cases, the court should emphasize

38 See Kate Miles, *Arbitrating Climate Change: Regulatory Regimes and Investor-State Disputes*, 1 Climate Law 74 (2010).

39 See Zhu Mingzhe & Wang Lingyu, *Innovation of Climate Change Litigation on Traditional Human Rights Theory: From the Perspective of Intergenerational Equity*, 3 Chinese Journal of Human Rights 79 (2025).

40 See D. BODANSKY, THE OCEAN AND CLIMATE CHANGE LAW: EXPLORING THE RELATIONSHIPS, in *FRONTIERS IN INTERNATIONAL ENVIRONMENTAL LAW: OCEANS AND CLIMATE CHALLENGES*, at 316 (R. Barnes & R. Long eds., Brill, 2021).

41 See Jiang Xiaoyi, *Comparative Analysis of the Procedures for Settlement of Environmental Disputes Involving the Sea Under the United Nations Convention on the Law of the Sea*, 3 Journal of Boundary and Ocean Studies 68 (2018).

the responsibilities of state governments and the global community in promoting adaptation actions and preventive measures. Adaptation actions may include building resilient infrastructure, improving agricultural practices, and enhancing water resource management, all aimed at mitigating the negative impacts of climate change on socio-economic development.⁴² Preventive measures involve reducing greenhouse gas emissions, protecting natural ecosystems, and strengthening climate monitoring and early warning systems, with the goal of fundamentally curbing the trends of climate change.

B. Legal Interpretation Model of Climate Liability Provisions by the ITLOS

In the context of the current global challenges posed by climate change and marine ecological crisis, the ITLOS must consider the significant provisions of the *Paris Agreement* when interpreting article 194(1) of the UNCLOS. This requirement is not only relevant to the application of international law but also pertains to the responsibilities and obligations of states in addressing climate change and protecting the marine environment.⁴³ Article 194(1) of UNCLOS clearly stipulates that states shall take measures to prevent, reduce, and control marine pollution within their jurisdiction and in areas under their influence. The essence of this provision lies in emphasizing the responsibility of states to safeguard the marine environment. However, the implementation of these measures is complicated by the varying stages of development, state circumstances, and historical contexts of different states, making the interpretation and application of this provision multifaceted.

In its evolving interpretation, the ITLOS should recognize the importance of total carbon emissions control as a critical political commitment of the international community. When interpreting article 194(1), the ITLOS must thoroughly and accurately consider the significant provisions of the *Paris Agreement*. This includes accounting for various factors such as the developmental stages of states, their specific state circumstances, and historical accumulations, leading to comprehensive regulations.⁴⁴ Furthermore, articles 61 and 119 of the UNCLOS establish that contracting

42 See DAVOR VIDAS, CLIMATE CHANGE AND THE ANTHROPOCENE: IMPLICATIONS FOR THE DEVELOPMENT OF THE LAW OF THE SEA, at 33 (Cambridge University Press, 2020).

43 See Rozemarijn J. Roland Holst, *Taking the Current When It Serves: Prospects and Challenges for an ITLOS Advisory Opinion on Oceans and Climate Change*, 1 Review of European, Comparative & International Environmental Law 4-5 (2022).

44 See A. J. HOBDAY & R. J. MATEAR, THE IMPACT OF CLIMATE CHANGE ON OCEANS: PHYSICAL, CHEMICAL AND BIOLOGICAL RESPONSE, in RESEARCH HANDBOOK ON CLIMATE CHANGE, OCEANS AND COASTS, at 27 (J. Macdonald, J. Mcgee & R. Barnes eds., Edward Elgar, 2020).

parties have specific obligations to take necessary measures to conserve marine biological resources affected by climate change and ocean acidification. In undertaking such measures, parties should consider the best available scientific information, as well as relevant environmental and economic factors. This obligation necessitates the adoption of a precautionary approach and an ecosystem-based strategy.⁴⁵ Although the *Paris Agreement* does not impose specific legal obligations on states, such as binding emission reduction targets or timelines, it establishes a framework for global climate governance. It encourages states to formulate and implement their NDCs based on their state circumstances and capabilities, aiming for a gradual reduction in global carbon emissions.⁴⁶ This voluntary reduction mechanism reflects international cooperation and consensus, providing direction for states' efforts in marine environmental protection responsibility.

When coordinating the different definitions of climate responsibility between maritime law and climate law, the ITLOS must balance three objectives: avoiding policy choices, favoring maritime law values, and favoring climate law values (Table 1). In the normative tension between international law of the sea and climate law, the interpretation of climate responsibility rules by the ITLOS essentially constitutes a practice of normative coordination. Should the ITLOS adopt a conservative textualist approach, strictly anchoring itself to the original obligation framework of the UNCLOS, it may maintain the stability of the legal order of the oceans but struggle to respond to the dynamic obligations of 'enhancing ambition' established by the *Paris Agreement*. If inclined towards the inherent values of the law of the sea, the ITLOS would engage in a purposive expansion of provisions such as 'prevention of pollution of the marine environment,' constructing an interpretive chain that links emission activities with marine protection responsibilities. This approach essentially represents an attempt to embed climate governance requirements within the traditional framework of the law of the sea. Whereas, if guided by the value orientation of climate law, the interpretive activity advances further towards systemic integration, the ITLOS must not only address the normative equivalence of greenhouse gases and pollution sources, but also redefine the scope and extent of state obligations under principles of climate justice such as historical responsibility and intergenerational equity. These three pathways respectively reflect

45 PHILIPPE SANDS, JACQUELINE PEEL & ADRIANA FABRA ET AL., *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW*, at 229 (Cambridge University Press, 2018).

46 Articles 4(2) and 4(9) of the *Paris Agreement*. See Mayer B, *International Law Obligations Arising in Relation to Nationally Determined Contributions*, 2 *Transnational Environmental Law* 251 (2018).

legal efforts at three levels: normative reception, normative adaptation, and normative reconstruction. At their core lies the challenge of how to enable the maritime legal system, founded on maritime jurisdiction, to effectively bear the climate governance demands oriented towards the global common interest.

Table 1: Model of ITLOS Rule Interpretation to Enhance Compatibility Between Maritime Law and Climate Law

Rule Interpretation Goals	Avoidance of Rules Choices	Rules Choices Favoring Maritime Law Values	Rules Choices Favoring Climate Law Values
Promote Climate Dispute Resolution	●	●	○
Flexibility of Rules	●	●	●
Openness of Rules	○	●	●

Source: Compiled by the author based on literature.⁴⁷

V. CONCLUSION

The advisory opinion on climate change of the ITLOS marks a significant milestone, representing the first time an international judicial body has systematically applied the normative framework of the UNCLOS to the realm of global climate governance. The advisory opinion clearly establishes the specific obligations of states parties under the UNCLOS to prevent, reduce, and control anthropogenic greenhouse gas emissions, thereby inextricably linking marine environmental protection with climate action. By emphasizing the ‘due diligence obligation’ and invoking principles such as intergenerational equity, intragenerational equity, and common but differentiated responsibilities, it provides crucial legal support for holding

47 See Fan Xiaoying, *The Inner Logic and Target Selection of WTO Appellate Body Rules Interpretation*, 3 Wuhan University International Law Review 42-62 (2022).

states accountable for climate change and advancing climate justice under international law. Nevertheless, the advisory opinion also exposes the limitations of the current international legal system in addressing the global challenge of climate change, particularly regarding difficulties in establishing causation, quantifying responsibility, and operationalizing compensation mechanisms. These shortcomings urgently need to be addressed through subsequent legal practice and development.

The 30th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP30) provided a critical platform for the international community to build consensus and strengthen collective action. Building on previous outcomes, the conference achieved its primary outcome with the adoption of the *Global Mutirao: Uniting Humanity in a Global Mobilization Against Climate Change*.⁴⁸ Key progress was made on core issues, including operationalizing the funding arrangements for loss and damage, advancing the work on the global stocktake and adaptation, and setting the stage for the next round of NDCs. The international community should seize this opportunity to promote the establishment of a more equitable, practical, and effective ‘climate restoration funding mechanism for the public good.’ This would ensure that developing states most severely affected by climate change, particularly small island developing states and least developed states, can access adequate and accessible financial and technical assistance, rather than becoming mired in protracted disputes over attribution and claims for compensation.

Under this background, China, as a responsible major maritime state and an active participant in climate governance, finds its state strategy highly aligned with the direction of international efforts. The Fourth Plenary Session of the 20th Central Committee of the Communist Party of China explicitly set forth the goal of ‘stepping up efforts to build China into a strong maritime country’, emphasizing the need to protect the marine ecological environment and safeguard state maritime rights and interests. This deeply resonates with the philosophy of marine ecosystem protection and sustainable development advocated in the ITLOS’s advisory opinion. China is committed to the sustainable use of marine resources and the holistic protection of the marine ecological environment.

The ITLOS’s advisory opinion has injected new legal momentum into global climate governance, and China’s strategy for building a strong maritime country is converging historically with the global climate governance

48 UNFCCC, GLOBAL MUTIRAO: UNITING HUMANITY IN A GLOBAL MOBILIZATION AGAINST CLIMATE CHANGE. DRAFT DECISION-/CMA.7, at <https://unfccc.int/documents/654389> (Last visited on November 26, 2025).

process. Looking ahead to COP30 and beyond, China will continue to uphold the concept of a community with a shared future for mankind. Domestically, it will steadfastly advance green and low-carbon development and the construction of marine ecological civilization. On the international stage, it will actively promote the synergistic evolution of the law of the sea and climate law, support responsibility-sharing mechanisms based on assistance and solidarity, and contribute China's wisdom and strength to building a fair and equitable global climate governance system.

(Edited by Gong Li)

国际海洋法法庭气候变化咨询意见的价值认知与规范兼容

内容提要 国际海洋法法庭就《联合国海洋法公约》框架下缔约国在气候变化领域的具体义务发表咨询意见。该意见认定温室气体排放构成海洋环境污染，并强调各国必须采取措施减缓此类污染。在法律层面，该意见阐明了集体行动应对气候变化的必要性，由此推动气候正义理念的发展。但是咨询意见仅发挥“初步的、指引性的规则”功能，既未阐明如何证明减缓行动与他国所受损害之间存在因果关系，也未说明气候相关损失与损害的国家责任应如何承担。各国对温室气体是否属于污染物的分类分歧，凸显了气候政策的复杂性与不确定性。为促进气候法与海洋法的兼容性，本文主张，国际海洋法法庭应优先建立基于援助性的损失损害补偿机制，通过国际集体行动而非单纯赔偿方式，为受气候变化严重影响的发展中国家提供支持。此外，此项咨询意见有望在保护海洋环境与应对气候变化方面发挥关键作用，进而明晰各国在全球气候治理中须履行的注意义务。
