

TRAINING

Key Legal Findings: ITLOS Advisory Opinion on Climate Change and the Maritime Sector

9 July 2024, 3:00 pm

Opportunity Green & Cornerstone Climate Webinar

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Background

- October 2021: COSIS established at COP26
- December 2022: COSIS files request for advisory opinion
 - Obligations to **prevent, reduce and control** pollution of the marine environment caused by greenhouse gas emissions?
 - Obligations to **protect and preserve** the marine environment from climate change impacts?
- June 2023: written comments
- September 2023: hearings
- May 2024: ITLOS delivers landmark advisory opinion
 - First-ever advisory opinion on climate change and the ocean
 - Clarification of legally binding obligations under UNCLOS
 - Crucial role of best available science

Key Legal Findings

- Anthropogenic GHG emissions constitute “pollution of the marine environment” under UNCLOS
- States need to take “all necessary measures” to prevent, reduce and control marine pollution from “any source” under article 194(1) UNCLOS
 - This obligation cannot be discharged exclusively through participation in global efforts
 - States must take individual action as appropriate
- “All necessary measures”
 - Best available science
 - Relevant international rules and standards
 - Available means and capabilities
- Obligations under UNCLOS are not necessarily satisfied by simply complying with requirements under the Paris Agreement



Key Legal Findings

- An obligation of due diligence with a stringent standard, precautionary approach applies
- In the transboundary context, the standard of due diligence is even more stringent
- General obligation is complemented and elaborated upon by specific obligations that apply to particular sources of pollution, including shipping and aviation
 - Adoption of domestic legislation and establishment of international rules and standards
 - Enforcement obligations
- Failure to comply with the obligation to take “all necessary measures” could engage state responsibility



Discussion

- General obligation to take “all necessary measures”
- Obligations with respect to specific sources, e.g. shipping and aviation
- Interaction UNCLOS and climate change regime
- EIA and cumulative impacts
- Implications for policymaking
 - Domestic legislation and regulation
 - Upcoming round of NDCs
 - Cooperation at IMO and ICAO
 - Climate finance
- Outlook to other advisory opinions





Q&A

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