

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2023

Public sitting

held on Tuesday, 19 September 2023, at 3 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,
President Albert J. Hoffmann presiding

**REQUEST FOR AN ADVISORY OPINION SUBMITTED BY THE COMMISSION OF
SMALL ISLAND STATES ON CLIMATE CHANGE AND INTERNATIONAL LAW**

(REQUEST FOR ADVISORY OPINION SUBMITTED TO THE TRIBUNAL)

Verbatim Record

<i>Present:</i>	President	Albert J. Hoffmann
	Vice-President	Tomas Heidar
	Judges	José Lu�s Jesus
		Stanislaw Pawlak
		Shunji Yanai
		James L. Kateka
		Boualem Bouguetaia
		Jin-Hyun Paik
		David Joseph Attard
		Markiy�n Z. Kulyk
		Alonso G�mez-Robledo
		�scar Cabello Sarubbi
		Neeru Chadha
		Kriangsak Kittichaisaree
		Roman Kolodkin
		Liesbeth Lijnzaad
		Mar�a Teresa Infante Caffi
		Jielong Duan
		Kathy-Ann Brown
		Ida Caracciolo
		Maurice K. Kamga
	Registrar	Ximena Hinrichs Oyarce

List of delegations:

STATES PARTIES

Singapore

Mr Lionel Yee, Deputy Attorney-General, Attorney-General's Chambers

Ms Amanda Chong, Deputy Senior State Counsel, Attorney-General's Chambers

Mr Ashley Ong, Deputy Senior State Counsel, Attorney-General's Chambers

Ms Jessie Lim, State Counsel, Attorney-General's Chambers

Ms Jennifer Mary Dhanaraj, Second Secretary (Political), Embassy of the Republic of Singapore, Berlin

1 **THE PRESIDENT:** Good afternoon. The Tribunal will continue its hearing in the
2 *Request for an Advisory Opinion submitted by the Commission of Small Island*
3 *States on Climate Change and International Law*. This afternoon we will hear an oral
4 statement from Singapore.

5
6 I now give the to the representative of Singapore, Mr Yee, to make his statement.

7
8 You have the floor, Sir.

9
10 **MR YEE:** Mr President, distinguished members of the Tribunal, I am honoured to
11 appear before you on behalf of Singapore in these proceedings today.

12
13 It is almost 20 years to the day that Singapore last had the privilege of addressing
14 this Tribunal in the *Case concerning Land Reclamation by Singapore in and around*
15 *the Straits of Johor*. That case concerned a matter of great significance to Singapore
16 as a very small island State with no natural resources. Those realities have not
17 changed, and they are the reason why climate change, which is the focus of the
18 present proceedings, is also a matter of great importance to us.

19
20 Apart from causing profound consequences on the marine environment, climate
21 change is also an existential threat to Singapore, with 30 per cent of our land area no
22 higher than five metres above mean sea level and more than half of our population
23 living within 3.5 kilometres from the coast. Singapore, therefore, has a vested
24 interest in ensuring that all States do their part to mitigate and adapt to climate
25 change because the consequences of inaction fall disproportionately on more
26 vulnerable States. This is the motivation for our participation in these proceedings.

27
28 The Commission of Small Island States on Climate Change and International Law
29 (“COSIS”) has raised two important questions on how the United Nations Convention
30 on the Law of the Sea (“UNCLOS”) operates in the context of climate change.

31
32 The first question focuses on the specific obligations of UNCLOS States Parties to
33 “prevent, reduce and control pollution”. The second question speaks of specific
34 obligations to “protect and preserve the marine environment”, a term which includes
35 but goes beyond the prevention, reduction and control of pollution.

36
37 Mr President, distinguished members of the Tribunal, Singapore’s statement will
38 address these questions in turn. In doing so, I am conscious that 24 participants
39 have already addressed the Tribunal. Singapore agrees with many of the points
40 which they have made. I can therefore briefly indicate in this statement the points
41 which we concur with, without fully repeating the reasons others have already given.
42 Many of these are also covered in Singapore’s written statement of 16 June.

43
44 Singapore’s oral statement will focus on a specific issue which has arisen in a
45 number of written and oral statements. It is how, in the context of climate change,
46 UNCLOS provisions interact with norms established by other treaties and
47 international law instruments, in particular the United Nations Framework Convention
48 on Climate Change (“the UNFCCC”) and the Paris Agreement, and specifically the
49 global temperature goal articulated in the Paris Agreement.

1 Mr President, distinguished members of the Tribunal, with that introduction, I now
2 turn to the first question posed by COSIS, which concerns the obligations of
3 UNCLOS States Parties to prevent, reduce and control pollution of the marine
4 environment in relation to climate change. As I indicated earlier, I will start by briefly
5 stating Singapore's views which we share with many other participants. I have seven
6 points to make.

7
8 First, the key provisions of UNCLOS relating to question 1 are found in article 194,
9 article 207 on pollution from land-based sources, article 212 on pollution from and
10 through the atmosphere, and articles 213 and 222, which are their corresponding
11 enforcement provisions.

12
13 Second, anthropogenic greenhouse gas emissions constitute "pollution of the marine
14 environment" under article 1(1)(4) of UNCLOS and, therefore, where Part XII of
15 UNCLOS refers to "pollution of the marine environment", it covers climate change
16 and its related processes and impacts. This conclusion is based on the scientific
17 evidence found in the reports of the Intergovernmental Panel on Climate Change
18 ("the IPCC"). These reports are authoritative, as COSIS and many participants have
19 said.

20
21 Third, the obligation under article 194(1) of UNCLOS, for States to take all measures
22 that are necessary to prevent, reduce and control these emissions, and the
23 obligation under article 194(2) to take all measures necessary to ensure that
24 activities under their jurisdiction or control are conducted so as not to cause damage
25 to other States and their environment, are both due diligence obligations. They are
26 obligations of conduct rather than result.

27
28 Fourth, as the International Court of Justice observed in the *Pulp Mills* case, due
29 diligence requires "the adoption of appropriate rules and measures" as well as
30 "vigilance in their enforcement and the exercise of administrative control applicable
31 to public and private operators".¹

32
33 Fifth, as this Tribunal pointed out in the *Area Advisory Opinion*, due diligence is a
34 variable concept and is context-specific.² While it allows a degree of State discretion,
35 the exercise of that discretion must take into account the individual capacities,
36 capabilities and constraints of a State; the level of risk and nature of activities
37 involved; as well as scientific knowledge and technological developments.

38
39 In addition, how States exercise that discretion must also be informed by
40 international rules and standards, and that includes their obligations under the
41 UNFCCC and the Paris Agreement.

42
43 My sixth point, as this Tribunal has stated, States must act in good faith, which
44 means that "reasonableness and non-arbitrariness must remain the hallmarks of any

¹ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, at p. 79, para. 197.

² *Responsibilities and Obligations of States with Respect to Activities in the Area, Advisory Opinion*, 1 February 2011, ITLOS Reports 2011, p. 10 ("*The Area Advisory Opinion*"), at p. 43, para. 117.

1 action taken”.³ Compliance with due diligence obligations under article 194 is not
2 merely a self-judging exercise.

3
4 Seventh, due diligence requires the application of the precautionary approach.
5 States therefore cannot disregard plausible indications of threats of serious or
6 irreversible environmental damage, even when scientific evidence on the scope and
7 impacts of an activity may be insufficient.⁴

8
9 Mr President, members of the Tribunal, I turn now to the question of how, in the
10 context of climate change, the obligations under UNCLOS interact with other treaties
11 and international law instruments.

12
13 Let me make two observations by way of introduction. My first observation is that,
14 insofar as climate change is concerned, UNCLOS, and in particular its Part XII,
15 exists as part of a wider body of international instruments with their respective norms
16 and processes. The most notable of these are the UNFCCC and the Paris
17 Agreement.

18
19 That UNCLOS forms part of this wider body reflects the fact that the causes and
20 impacts of climate change extend well beyond the oceans to terrestrial and
21 freshwater ecosystems, urban environments, and so on. And so must the global
22 response. The interpretation and application of UNCLOS must, accordingly, seek
23 harmony with, or as COSIS said last week, be complementary to, related legal
24 regimes with neither regime undermining or supplanting the other.

25
26 Article 237 of UNCLOS recognizes the need to achieve this harmony. As Italy and
27 New Zealand have stated, article 237 sets out “a double relationship of compatibility”
28 by stipulating in paragraph 1 that Part XII does not prejudice obligations assumed by
29 States under other treaties on the protection and preservation of the marine
30 environment; and conversely, by providing in paragraph 2 that obligations assumed
31 under these other treaties should be carried out consistently with the general
32 principles and objectives of the Convention.

33
34 Second, what is remarkable about Part XII of UNCLOS is the multiple and variously
35 formulated references to international rules, standards, practices and procedures.
36 The slide on the screen lists various articles in Part XII where they can be found.⁵

37
38 I draw the Tribunal’s attention to these articles because they define obligations which
39 expressly incorporate external treaties and instruments. Two implications flow from
40 this.

41
42 First, Guatemala pointed out last Thursday that the Tribunal may interpret the Paris
43 Agreement and other treaties if it is necessary to do so in order to meaningfully
44 determine the content of obligations under UNCLOS. In the case of UNCLOS articles
45 such as these, which expressly incorporate external instruments, it may be
46 necessary for the Tribunal to interpret those instruments in order to determine the

³ Area Advisory Opinion, at p. 71, para. 230.

⁴ Area Advisory Opinion, at p. 46, para. 131.

⁵ Articles 207(1), 211(2), 212(1), 213, 214, 216(1), 217(1), 218(1), 219, 220 and 222.

1 content of the UNCLOS obligations. That is what the ordinary meaning of these
2 UNCLOS articles requires us to do.

3
4 Secondly, it also means that to a large degree, we do not need to rely on provisions
5 like article 31(3)(c) of the Vienna Convention on the Law of Treaties or article 293 of
6 UNCLOS. The significant exceptions are, in the case of COSIS's first question,
7 article 194 of UNCLOS, and, in the case of the second question, article 192, both of
8 which articulate due diligence obligations but do not explicitly incorporate external
9 norms by reference. I will address the extent to which article 31(3)(c) of the Vienna
10 Convention and article 293 can and cannot be used for interpreting article 192 in my
11 response to question 2.

12
13 Mr President, distinguished members of the Tribunal, how, then, do the obligations
14 under UNCLOS incorporate by reference other treaties and international law
15 instruments? The short answer is that they do so through various provisions using
16 different formulations, even if there are some common terms like "international rules"
17 and "standards". The different formulations used reflect the different ways in which
18 States Parties to UNCLOS intended them to operate and therefore to be interpreted.

19
20 In Singapore's view, there are four major gateways through which external normative
21 instruments are substantively incorporated into Part XII of UNCLOS. I will call them
22 "entry points". Depending on the specific language used in the provisions which
23 govern these entry points, what norms are incorporated and what States are
24 supposed to do with these norms differ from one entry point to another.

25
26 The first entry point can be found in paragraph 1 of articles 207 and 212 on pollution
27 from land-based sources and atmospheric pollution, respectively. These provisions
28 are shown on the screen. What they require States to do is to adopt laws and
29 regulations to prevent, reduce and control such pollution. But they must do so "taking
30 into account internationally agreed rules, standards and recommended practices and
31 procedures". I will call this Entry Point 1.

32
33 Of the four entry points, it is the widest in terms of the norms covered because it
34 refers to not just rules and standards, but also recommended practices and
35 procedures. It therefore covers not just legally binding rules and standards, but also
36 soft law norms that are not legally binding. However, these norms must be
37 "internationally agreed". What this means is that there should be: first, broad
38 participation by States in their making; and, second, broad acceptance by States of
39 their normative status which may be evidenced by the number of States which are
40 parties to the instrument or have adopted or implemented the norm.

41
42 As for the action required of States under these articles, it is to take into account
43 these hard and soft law norms when they formulate laws and regulations. It is an
44 obligation relating to the process of law-making rather than prescribing a particular
45 outcome. States can adopt more or less stringent laws and regulations than what
46 these norms prescribe, but they must consider them and must do so in good faith.

47
48 Entry Point 2 is found in article 211(2), which is shown on the screen. It obliges flag
49 States to adopt laws and regulations pertaining to pollution from vessels which "at
50 least have the same effect as that of generally accepted international rules and

1 standards established through the competent international organization or general
2 diplomatic conference.”

3
4 In terms of the range of norms it admits, Entry Point 2 is a little narrower than Entry
5 Point 1, in that it only applies to international rules and standards, without mentioning
6 recommended practices and procedures. In addition, these rules and standards must
7 be “generally accepted”, in that there must be broad participation and acceptance by
8 States, but they do not need to be formally accepted by the specific State concerned.

9
10 In the context of climate change, a treaty that may be incorporated through Entry
11 Point 2 is Annex VI of the International Convention for the Prevention of Pollution
12 from Ships (or MARPOL), which sets standards to minimize airborne greenhouse
13 gas emissions from ships and the carbon intensity of global shipping. It was adopted
14 by a diplomatic conference, and its membership represents more than 96 per cent of
15 global tonnage.⁶

16
17 While the scope of norms covered by Entry Point 2 is narrower than Entry Point 1,
18 the obligation under article 211(2) is more demanding. It is for States to adopt laws
19 and regulations that at least have the same effect as these international rules and
20 standards. It is not an obligation related to the process of law-making, but one which
21 requires a minimum outcome.

22
23 Mr President, distinguished members of the Tribunal, I turn to Entry Point 3. This
24 gateway is created by articles 213 and 222, which you now see on the screen.
25 These are enforcement provisions that correspond to articles 207 and 212 on land-
26 based and atmospheric pollution, respectively. They require States to “adopt laws
27 and regulations and take other measures necessary to implement applicable
28 international rules and standards established through competent international
29 organizations or diplomatic conference”.

30
31 The range of external norms admitted through Entry Point 3 is the narrowest of all
32 the entry points discussed so far. “Applicable international rules and standards”
33 refers to rules and standards which are binding on the State concerned, either as
34 treaty obligations or as customary law. As the Virginia Commentary and the Proelss
35 Commentary recall, this was the general understanding of the negotiators in the
36 Third Conference of UNCLOS.⁷ It accords with the ordinary meaning of the word
37 “applicable”, where the relevant question is: What rules or standards apply to a
38 particular situation? “Applicable” does not mean merely relevant, appropriate or
39 material.

40
41 The narrow scope of the norms covered by Entry Point 3 also makes sense because
42 the action demanded of States is to “adopt laws and regulations and take other
43 measures necessary to implement” them. What articles 213 and 222 therefore
44 require of States is the taking of all measures to implement their legally binding
45 obligations in treaties addressing land-based pollution and atmospheric pollution. It is

⁶ See para. 55 of the International Maritime Organization’s written statement.

⁷ Myron H. Nordquist, Satya Nandan and Shabtai Rosenne (eds.), *United Nations Convention on the Law of the Sea Commentary 1982 Online Publication* (Center for Oceans Law and Policy, University of Virginia) (Brill, 2013), at p. 220, para. 213.7(c). See also Alexander Proelss (ed.), *United Nations Convention on the Law of the Sea: A Commentary* (Nomos, 2017), at p. 1455, para. 10.

1 unlikely that the UNCLOS negotiators intended that States would be bound to
2 implement present and future norms in instruments that they are not party to.

3
4 Finally, I turn to Entry Point 4, which is found in article 194(1) and (2). The screen
5 shows these provisions. They do not expressly mention international rules and
6 standards; however, as I indicated earlier, these provisions establish due diligence
7 obligations which are informed by, *inter alia*, compliance by States with their legally
8 binding obligations. In the climate change context, these include binding obligations
9 under the Paris Agreement. Therefore, in this respect, Entry Points 3 and 4 are fairly
10 similar.

11
12 Mr President, distinguished members of the Tribunal, I now turn to how the “entry
13 points” apply in the context of the Paris Agreement, and in particular the temperature
14 goal set out in that treaty.

15
16 Singapore would like to state at the outset that limiting global warming to 1.5°C
17 above pre-industrial levels is critical to the survival of Small Island Developing
18 States, and the global community must correct its course towards a 1.5°C resilient
19 world.

20
21 At the same time, Singapore is mindful that, while that is our aspiration, this
22 Tribunal’s opinion is sought on “the specific obligations of States Parties” to
23 UNCLOS. What this calls for is the proper legal interpretation and application of the
24 provisions of the Convention as well as any other treaties and sources of
25 international law insofar as these are relevant.

26
27 But if I may begin with the conclusion before the explanation. Do one or more of the
28 entry points I have just described allow the Paris Agreement to feature among the
29 legal obligations imposed by UNCLOS? And, if so, do one or more of those entry
30 points allow the 1.5°C ambition in the Paris Agreement to feature among the legal
31 obligations of UNCLOS? The answer to both questions is a clear “yes” through Entry
32 Points 1, 3 and 4, although the effect is slightly different for each of these entry
33 points. I will now elaborate.

34
35 Let me begin with Entry Point 1. As explained earlier, paragraph 1 of articles 207 and
36 212 oblige States to enact laws and regulations, taking into account “internationally
37 agreed rules, standards and recommended practices and procedures” which may be
38 legally binding or non-binding.

39
40 The Paris Agreement was negotiated with the widespread support of States and has
41 no less than 195 Parties. It is clearly an “internationally agreed” instrument under
42 both articles 207 and 212. The Agreement consists of some legally binding and
43 some non-legally binding provisions, with the legally binding ones using operative
44 words like “shall”, and the non-legally binding ones using words like “should” or “will”.

45
46 By way of illustration, article 4(2), which you see on the screen, uses the operative
47 word “shall”, and therefore expresses a legally binding obligation to prepare,
48 communicate and maintain successive nationally determined contributions.

1 By contrast, what is on the screen is article 2(1)(a), which is the provision that refers
2 to 1.5°C or, more precisely, to “[h]olding the increase in the global average
3 temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit
4 the temperature increase to 1.5°C above pre-industrial levels”.

5
6 This temperature goal set out in article 2(1)(a) is preceded by a chapeau which
7 reads: “This Agreement, in enhancing the implementation of the Convention,
8 including its objective, aims to strengthen the global response to the threat of climate
9 change, in the context of sustainable development and efforts to eradicate poverty,
10 including by ...”, and the sub-paragraphs, including subparagraph (a) follow.

11
12 It is evident from the language used that article 2(1) articulates aims of the Paris
13 Agreement. It is, in and of itself, not legally binding. Article 2 does, however, have
14 legal effect in a different way, which I will explain when we get to Entry Points 3
15 and 4.

16
17 But this is not material as far as Entry Point 1 is concerned. This is because Entry
18 Point 1 does not require the norm to be legally binding. It can, therefore, encompass
19 the temperature goal in article 2(1)(a) as a standard which the Paris Agreement
20 seeks to achieve. Through Entry Point 1, paragraph 1 of articles 207 and 212 of
21 UNCLOS therefore impose obligations on States, when enacting laws and
22 regulations, to take into account the Paris Agreement temperature goal, and that
23 includes the pursuit of efforts to limit the temperature increase to 1.5°C.

24
25 Mr President, distinguished members of the Tribunal, I turn to the other entry points.
26 Entry Point 2 is not relevant to the Paris Agreement because it largely concerns the
27 International Maritime Organization’s international rules and standards which
28 address pollution from vessels.

29
30 We now consider Entry Point 3. As explained earlier, articles 213 and 222 of
31 UNCLOS require States to take all necessary measures, whether it is through
32 adopting laws and regulations or otherwise, to implement their binding legal
33 obligations contained in treaties which address land-based pollution or atmospheric
34 pollution.

35
36 The binding legal obligations of the Paris Agreement clearly fall within the scope of
37 both articles 213 and 222. But the question is: which are the binding obligations of
38 that Agreement that are incorporated through this entry point?

39
40 As I explained when I addressed the Tribunal on Entry Point 1, the obligation on
41 Parties to the Paris Agreement under article 4 to prepare, communicate and maintain
42 successive nationally determined contributions is a binding obligation. But article 2,
43 and in particular article 2(1)(a), which establishes the temperature goal of holding the
44 increase in the global average temperature to well below 2°C and pursuing efforts to
45 limit the temperature increase to 1.5°C, does not, by itself, articulate a binding
46 obligation.

47
48 However, that is not the end of the inquiry. We have to examine other provisions of
49 the Paris Agreement to determine if they do impose binding legal obligations that
50 cover that temperature goal.

1 And it is article 3 which does that. The text of that article is on the screen and the
2 relevant portion of it states that “all Parties are to undertake and communicate
3 ambitious efforts as defined in articles 4, 7, 9, 10, 11 and 13 with the view to
4 achieving the purpose of this Agreement as set out in article 2.”

5
6 The use of the formulation “are to” in “all Parties are to undertake and communicate”
7 may be different from the usual “shall” as the operative verb. But the ordinary
8 meaning of the words “are to” as having a mandatory and not discretionary character
9 is clear. If, Mr President, you were to say to me, “Counsel, you are to stop speaking
10 by 4 o’clock,” I have no doubt that it is not a request which I can choose to comply
11 with or not comply with.

12
13 The mandatory effect of article 3 is to add an additional element to the articles that it
14 refers to. That additional element is that actions set out in those articles must be
15 done with the view to achieving the purpose of the Agreement in article 2. And if
16 those articles establish legally binding obligations, then Parties are bound to fulfil
17 those obligations with the view to achieving that purpose.

18
19 Mr President, distinguished members of the Tribunal, it therefore follows that the
20 legally binding obligation in article 4 of the Paris Agreement is to prepare,
21 communicate and maintain successive nationally determined contributions with the
22 view to achieving the article 2 purpose. It also means that articles 213 and 222 of
23 UNCLOS must be interpreted as imposing an obligation on States to take necessary
24 measures to implement, *inter alia*, article 4 of the Paris Agreement with the view to
25 achieving the same purpose.

26
27 In other words, through article 3, article 2 features in the legally binding obligations of
28 the Paris Agreement and therefore features in the legal obligations of articles 213
29 and 222 of UNCLOS. You can see this interaction depicted on the screen.

30
31 What, then, is the purpose of article 2 that Parties have to take into consideration? It
32 is to strengthen the global response to climate change through a number of
33 modalities. Among them is the temperature goal set out in paragraph 1(a). So 1.5°C
34 falls within the ambit of the legal obligations created by articles 213 and 222, but it
35 does so with the nuances of paragraph 1(a) as a whole, and it does so together with
36 the other modalities set out in the rest of article 2.

37
38 These other modalities are set out on the screen. They include paragraphs 1(b)
39 and (c); and significantly, under paragraph 2, to implement the Agreement “to reflect
40 equity and the principle of common but differentiated responsibilities and respective
41 capabilities, in the light of different national circumstances.”

42
43 It is important that any incorporation of binding obligations under the Paris
44 Agreement or indeed any other treaty through Entry Point 3 must be a faithful
45 incorporation of those obligations, which often represent a careful balance of various
46 interests that the negotiating parties intended to achieve in the legal texts.

47
48 Indeed, even the reference to 1.5°C reflects a compromise because, as Mozambique
49 reminded us yesterday, and Sierra Leone this morning, the evidence from the IPCC
50 is that even if global warming were limited to 1.5°C above pre-industrial levels, there

1 would still be very serious harm to the marine environment. This includes a 70-90
2 per cent decline in average coral cover.⁸

3
4 To conclude, 1.5°C in the context of article 2(1)(a) does feature in the legal
5 obligations incorporated into UNCLOS through Entry Point 3. But also featuring are
6 equity, the principle of common but differentiated responsibilities, and the respective
7 capabilities and national circumstances of the States Parties. They reflect the fact
8 that the Paris Agreement temperature goal is a collective aim that does not
9 automatically or directly translate into specific measures for any one individual State.
10 This is because different States face different constraints, whether in terms of
11 capacity, access to technology or availability of alternative energy options.

12
13 I now turn to Entry Point 4. As explained earlier, the obligation of due diligence in
14 article 194 of UNCLOS is informed by, *inter alia*, the fulfilment of legal obligations
15 undertaken in relevant treaties. In the climate change context, these include the legal
16 obligations under the Paris Agreement and, in this respect, my analysis on Entry
17 Point 3 would largely apply.

18
19 There is, however, one other relevant and separate facet of due diligence, and that is
20 the taking into account of scientific knowledge. As COSIS and others have
21 described, there is an ample body of scientific evidence on the marine environmental
22 impacts of global temperature increases at 1.5°C as compared with other
23 temperature levels. The due diligence obligation to address greenhouse gas
24 emissions imposed by article 194 of UNCLOS would, in Singapore's view, require
25 States Parties to take into account this body of evidence in determining what
26 measures they should take.

27
28 Mr President, distinguished members of the Tribunal, I now turn to the second
29 question on the obligations to protect and preserve the marine environment in
30 relation to climate change impacts. I have five points to make and, with one
31 exception, can be brief because Singapore's views have already been addressed by
32 many participants.

33
34 First, the obligations under articles 192, 194, 197 and 202 are relevant to answering
35 this second question.

36
37 Second, article 192 imposes due diligence obligations and comprises the positive
38 obligation to take active measures in good faith to protect and preserve the marine
39 environment, and the negative obligation not to degrade the marine environment.
40 I have identified the elements of due diligence earlier when addressing article 194,
41 and they also apply in the context of article 192.

42
43 Third, the contours of the article 192 obligation are concretized by the subsequent
44 provisions of Part XII, including article 194. Singapore draws particular attention to
45 article 194(5), which requires that States consider measures necessary to protect

⁸ Hans-Otto Pörtner, Debra C. Roberts, *et al.* (eds.), IPCC Special Report on the Ocean and Cryosphere in a Changing Climate, Chapter 5, at p. 498, available at <<https://doi.org/10.1017/9781009157964>>; and Ove Hoegh-Guldberg, Daniela Jacob, *et al.* (eds.), IPCC Special Report on Global Warming of 1.5°C, at p. 254, available at <<https://doi.org/10.1017/9781009157940>>

1 and preserve rare or fragile ecosystems and marine life threatened by climate
2 change impacts and processes.

3
4 Mr President, distinguished members of the Tribunal, at this juncture, I would like to
5 address the relationship between UNCLOS and international human rights law.
6 There have been observations made that the corpus of international law relating to
7 human rights informs the content of the general obligation in article 192. Some
8 appear to suggest that international human rights obligations have been incorporated
9 into article 192 through article 293 of UNCLOS, which is the provision titled
10 “Applicable Law”, or through article 31(3)(c) of the Vienna Convention on the Law of
11 Treaties.

12
13 Singapore fully agrees with the view that climate change does adversely affect the
14 human rights of many. The failure to take adequate action to deal with climate
15 change can amount to breaches of both UNCLOS obligations as well as international
16 human rights treaty obligations.

17
18 Singapore also agrees that we must seek to interpret UNCLOS harmoniously with
19 other international law obligations and if the notion of UNCLOS being “informed by”
20 these other obligations is an expression of this principle, we fully agree. But whether
21 we can go further to say that these obligations are substantively incorporated into
22 UNCLOS, in the sense that a breach of these other obligations is necessarily a
23 breach of UNCLOS provisions, requires an analysis of how article 293 and
24 article 31(3)(c) operate.

25
26 As regards article 293, as the tribunal in the *Arctic Sunrise Arbitration* observed, it
27 does not provide a means to obtain a determination that some treaty other than
28 UNCLOS has been violated, unless that treaty directly applies pursuant to the
29 Convention. Instead, article 293 enables resort to foundational or secondary rules of
30 general international law, such as the law of treaties, or in the case of some broadly
31 worded or general provisions, primary rules of international law in order to interpret
32 or apply particular UNCLOS provisions.⁹

33
34 As for article 31(3)(c) of the Vienna Convention, it allows “relevant rules of
35 international law applicable in the relations between the parties” to be taken into
36 account in interpretation. “Relevant” is understood in the light of its ordinary meaning
37 that the rules should relate to the treaty provision under interpretation.

38
39 If the UNCLOS provision to be interpreted is one like article 230(3), which requires
40 that “recognized rights of the accused shall be observed” when penalties may be
41 imposed on foreign vessels violating laws and regulations under Part XII,
42 article 31(3)(c) and article 293 may permit recourse to international human rights
43 treaties to interpret the term “recognized rights”, such that a breach of those treaty
44 obligations is a breach of article 230.

45
46 But if, on the other hand, the provision to be interpreted is one like article 192, which
47 refers to no more than “the obligation to protect and preserve the marine

⁹ *The Arctic Sunrise Arbitration (Netherlands v. Russia)*, Award of 14 August 2015, PCA Case No. 2014-02, at p. 44, paras. 190–192.

1 environment”, it is doubtful if we can incorporate wholesale external rules of
2 international law which do not address the protection and preservation of the marine
3 environment. We need to appreciate that there are limits to incorporation.

4
5 For example, a State may decide that it is necessary to shut down a power plant as
6 a due diligence measure under article 192. But its obligations relating to the
7 expropriation of property under its bilateral investment treaties and its obligations
8 against arbitrary deprivation of property under international human rights treaties are
9 not incorporated into article 192. This does not detract from whether the State’s
10 actions are in breach of its international economic law or international human rights
11 law obligations, but they are not a breach of UNCLOS provisions.

12
13 Next, and this is my fourth point, I turn to article 197 which imposes a duty of
14 cooperation in the climate change context. It is an obligation of conduct, is of a
15 continuing nature and must be fulfilled in good faith. UNCLOS, therefore, requires
16 States, in good faith, to participate and continue to participate, in international
17 normative processes, with a view to establishing rules, standards and recommended
18 practices and procedures for the protection and preservation of the marine
19 environment from climate change impacts.

20
21 These include discussions under UNFCCC and Paris Agreement processes, as well
22 as future cooperative work upon becoming States Parties to the BBNJ Agreement,¹⁰
23 which is open for signature tomorrow. The BBNJ Agreement provides for
24 “vulnerability including to climate change and ocean acidification” as a criterion in the
25 establishment of area-based management tools, including marine protected areas.¹¹

26
27 Finally, there is an obligation under article 202(a), for States to promote assistance
28 programmes to developing States for the protection and preservation of the marine
29 environment from climate change impacts.

30
31 Mr President, members of the Tribunal, in conclusion, Singapore invites the Tribunal
32 to reply to question 1 as follows:

33
34 First, the references to “pollution of the marine environment” in Part XII of UNCLOS
35 cover anthropogenic greenhouse gas emissions.

36
37 Second, article 194(1) and (2) impose due diligence obligations on States to prevent,
38 reduce and control such emissions. Due diligence requires States to consider, in
39 good faith, taking practicable measures within their capabilities to address such
40 emissions from activities within their jurisdiction or control. In doing so, they must
41 take into account scientific knowledge, including evidence on the marine
42 environmental impacts of global temperature increases at 1.5°C compared with other
43 temperature levels. Due diligence is also informed by States’ legally binding
44 obligations, including those of the Paris Agreement.

45
46 Third, under paragraph 1 of articles 207 and 212, States are obliged to adopt laws
47 and regulations to prevent, reduce and control anthropogenic greenhouse gas

¹⁰ Agreement under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (“BBNJ Agreement”).

¹¹ See article 19(4)(a) and (b), as well as Annex I, paragraph (f) of the BBNJ Agreement.

1 emissions, taking into account binding and non-binding internationally agreed rules,
2 standards and practices and procedures, including the temperature goal in
3 article 2(1)(a) of the Paris Agreement.

4
5 Fourth, under article 211 paragraph 2, States are obliged to adopt laws and
6 regulations for vessels flying their flag that at least have the same effect as generally
7 accepted international rules and standards addressing greenhouse gas emissions
8 from vessels.

9
10 Fifth, under articles 213 and 222, States are obliged to implement international rules
11 and standards which are binding on the State concerned, including those under the
12 Paris Agreement.

13
14 Singapore invites the Tribunal to reply to question 2 as follows:

15
16 First, article 192 imposes due diligence obligations similar to those under article 194
17 to take measures in good faith to protect and preserve the marine environment, and
18 not to degrade it.

19
20 Second, article 194(5) requires States to consider measures necessary to protect
21 and preserve all rare or fragile ecosystems and marine life threatened by climate
22 change impacts and processes.

23
24 Third, article 197 requires States to cooperate and to participate in good faith and on
25 a continuing basis to establish international rules, standards and recommended
26 practices and procedures for the protection and preservation of the marine
27 environment in relation to climate change impacts.

28
29 Finally, under article 202(a), States are obliged to promote assistance programmes
30 to developing States for the protection and preservation of the marine environment
31 from climate change impacts.

32
33 Mr President, distinguished members of the Tribunal, this concludes Singapore's oral
34 statement, which I hope will be of assistance to the Tribunal. I thank the Tribunal for
35 its attention.

36
37 **THE PRESIDENT:** Thank you, Mr Yee. This brings us to the end of this afternoon's
38 sitting. The Tribunal will again sit tomorrow morning at 10:00 a.m. when it will hear
39 oral statements made on behalf of Timor-Leste, the European Union and Viet Nam.
40 The sitting is now closed.

41
42 *(The sitting closed)*