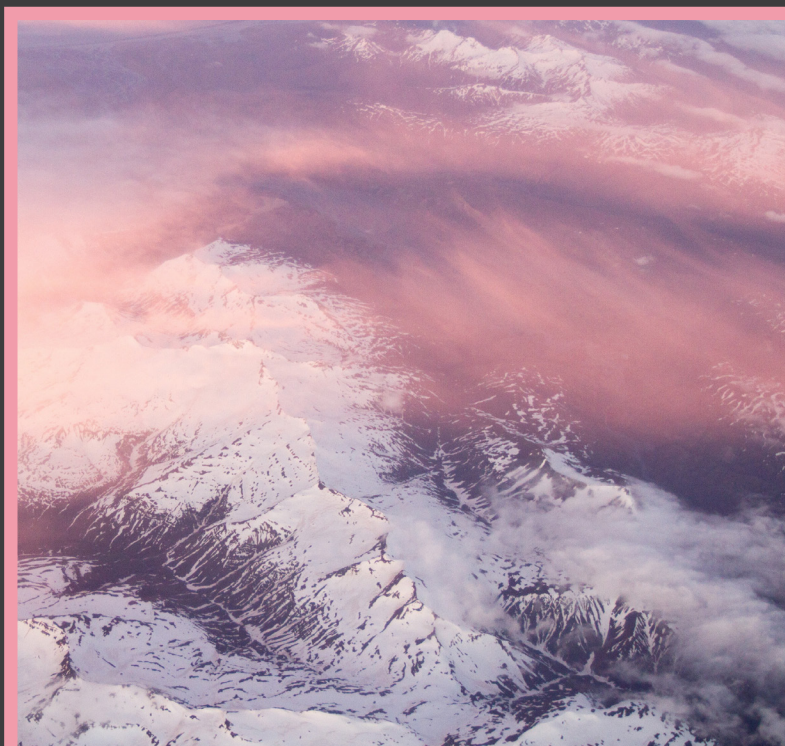


# THE ICJ'S ADVISORY OPINION ON CLIMATE CHANGE

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# Sea-Level Rise Reaches The Hague

*Findings in Relation to the Law of the Sea in the ICJ's Climate Change  
Advisory Opinion*





The advisory opinion rendered by the International Court of Justice (ICJ) on 23 July 2025 marks a pivotal moment in the articulation of States' obligations concerning climate change. While based on broader rules and principles of international law, the opinion foregrounded the United Nations Convention on the Law of the Sea (UNCLOS) as a key legal framework relevant to defining States' climate obligations. As the ICJ itself stated, UNCLOS "forms part of the most directly relevant applicable law" (para. 124). Thus, far from peripheral, the law of the sea emerged as a primary site for interpreting and enforcing States' climate obligations under international law.

This post examines the most salient features of the ICJ's assessment of the law of the sea in the context of climate change, namely (i) the manner in which the ICJ dialogued with the International Tribunal on the Law of the Sea (ITLOS), which issued its own advisory opinion on climate change last year,<sup>1</sup> (ii) the findings of that opinion that were confirmed by the ICJ; (iii) the ICJ's finding on the stability of States' maritime baselines, and (iv) the ICJ's findings on the presumption of continued statehood in the context of sea level rise.

## A two-way street from Hamburg to The Hague

The ICJ's opinion is evidence of a growing judicial dialogue between the ICJ and ITLOS, which strengthens a reading of UNCLOS as a source of States' obligations in the context of climate change. Such an alignment of views provides States with legal certainty and clarity regarding the sources and extent of their international obligations.

The dialogue between both courts was already starkly visible in ITLOS's 2021 judgment on preliminary objections in the *Maldives v*

*Mauritius* maritime boundary dispute.<sup>2</sup> Here, ITLOS directly engaged with the ICJ's *Chagos opinion* to affirm Mauritius' sovereignty over the Chagos archipelago. Remarkably, ITLOS emphasized the role of ICJ advisory opinions as a source of clarification and development of the existing law. As such, although they are formally non-binding, ITLOS acknowledged that the ICJ's advisory opinions carry legal weight equivalent to judgments, as the principal judicial organ of the United Nations with competence in matters of international law (paras. 203 and 246).

Similarly, the ICJ drew upon ITLOS's 2022 advisory opinion on climate change in several key passages of its own opinion on climate change, noting that it would "ascribe great weight to the interpretation adopted by the Tribunal" (para. 338). Thus, the ICJ did not look at the ITLOS opinion as peripheral commentary; rather, it integrated the reasoning of ITLOS into its own analysis, thereby affirming ITLOS's interpretive authority.

This growing trend of mutual borrowing<sup>3</sup> strengthens coherence across judicial bodies and reinforces the role of international courts in clarifying States' obligations in relation to climate change. It also paves the way for further legal action grounded in UNCLOS by small island states and other vulnerable actors.

## Confirming the findings of ITLOS

The ICJ largely confirmed the key findings of ITLOS in its 2022 advisory opinion. In essence, it confirmed that greenhouse gas emissions fall within the definition of "pollution of the marine environment" under Article 1(1)(4) of UNCLOS, thereby activating the application of Part XII of the Convention (para. 340). The ICJ found that Article 194 of UNCLOS establishes an obligation to take all necessary measures to prevent, reduce, and control marine

pollution (para. 346). It further affirmed that this is an obligation of conduct, rather than of result, characterized by a stringent due diligence standard (paras. 347 and 349). The ICJ also reiterated that this obligation includes duties to cooperate and to carry out environmental impact assessments (paras. 350-353). Finally, it emphasized that in implementing both UNCLOS and climate change-related treaties, States must interpret and apply their obligations in a mutually supportive manner, taking into account the requirements under both legal regimes (para. 354).

## Thou shalt not move! Sea level rise impact on baselines and maritime areas' outer limits

The ICJ took the opportunity in its advisory opinion to clarify some legal implications of sea level rise.<sup>4</sup> Being adopted in 1982, prior to scientific studies on climate change, UNCLOS is premised on the assumption of a stable global mean sea level. Unsurprisingly, no provision of UNCLOS contains any reference to sea level rise. The problem is that, under UNCLOS, maritime baselines are established along a State's coastlines and serve as a starting point for drawing the outer limits of its territorial sea, exclusive economic zone, continental shelf, and eventual archipelagic waters. If the coastline recedes as a result of sea level rise, the question arises whether these baselines and outer limits should also recede. A parallel question is whether certain geographic formations, such as islands, rocks, and low-tide elevations, need to be re-qualified as a result of sea level rise.

UNCLOS seems to be clear in setting the conditions for establishing states' maritime baselines and the outer limits of their maritime jurisdiction and implies their landward adjustment,

including definitions for islands, rocks, and low-tide elevations. These conditions and definitions may be clear, but they are not aligned with the interests of coastal States. As a result, a new rule has been emerging in recent years, based on State practice,<sup>5</sup> the works of the International Law Association (ILA) Committee on International Law and Sea Level Rise,<sup>6</sup> and the report of the International Law Commission (ILC) Study Group on Sea-Level Rise.<sup>7</sup> The ILC report, published earlier this year, noted a clear change in State practice (paras. 32, 36) and underscored that States are under “no obligation to update baselines, geographical coordinates or the outer limits of maritime zones to account for changes as a result of climate change-related sea-level rise” (para. 28). It suggested adopting an interpretation of UNCLOS “that allows for the preservation of baselines, the outer limits of maritime zones and associated entitlements notwithstanding changes to the coastline as a result of climate change-related sea-level rise” (para. 27).

In this context, the ICJ’s opinion remarked that several States and groups of States argued during the proceedings in favor of the stability of baselines and outer limits (para. 355)<sup>8</sup>. The ICJ also took note of the works of the ILA Committee and the ILC Study Group and the existing State practice. All of this led it to conclude that States do not bear an obligation under UNCLOS “to update their charts or lists of geographical co-ordinates that show the baselines and outer limit lines of their maritime zones once they have been duly established in conformity with the Convention” (para. 361). This implies the stability of baselines and maritime areas’ outer limits. And yet, somewhat surprisingly, the ICJ failed to say that explicitly.

Still, the ICJ’s opinion paves the way for ITLOS or another court (including the ICJ itself) to carve out the rule on the stability of baselines and outer limits more explicitly in the future.

## Thou shalt not disappear! A presumption of continued statehood of small island States

The same State practice and works of the ILC Committee and the ILC Study Group also point to an emerging presumption of continued statehood, despite the complete loss of a State's territory as a result of sea level rise. Such a rule is especially important for small island States, which do not contribute to global warming, but are uniquely affected by sea level rise. For these States, the ICJ's recognition offers a measure of legal stability and dignity, reinforcing the idea that sovereignty is not entirely contingent on geography. It affirms that the legal identity of a State can persist despite extreme environmental degradation, a point with profound implications for access to treaty rights, maritime entitlements, and participation in international institutions.

However, the tone and wording in the works of the ILC Committee and the ILC Study Group, as well as those used in the ICJ's advisory opinion, suggest this presumption is not yet fully developed. In fact, whilst the ICJ stated that, "once a State is established, the disappearance of one of its constituent elements *would not necessarily* entail the loss of its statehood" (para. 363, emphasis added, with a special highlight of the verb mode and the adverb used), it could only find an obligation of cooperation to take "appropriate measures to address the adverse effects of [sea level rise]" (para. 364). This latter obligation, moreover, was presented as being results-oriented, since States must "achiev[e] equitable solutions, taking into account the rights of affected States and those of their populations" (para. 365). Implied in the words of the ICJ is a very broad margin of discretion for States when implementing the

obligation. This lack of elaboration was expressly regretted in the declaration of Judge Tomka<sup>9</sup> and the separate opinion of Judge Aurescu, who argued for more detailed guidance on the criteria and mechanisms through which statehood continuity might be assessed.<sup>10</sup>

Still, the ICJ's caution is not without justification. Whilst the rules on the stability of baselines and maritime areas' outer limits are binary (i.e., baselines and outer limits either move or do not move), the obligations correlative to the presumption of continued statehood necessarily involve difficult trade-offs and a balancing of competing interests that belong to the political sphere. Nonetheless, the ICJ still highlighted that cooperation "is not a matter of choice for States but a legal obligation" (para. 364) and rendered an opinion that can be used in future pronouncements from ITLOS or the ICJ to clarify and develop these obligations correlative to the presumption of continued statehood.

## Concluding remarks

The advisory opinion clearly demonstrates that the ICJ remains – or strives to remain – a meaningful and authoritative actor in the evolving law of the sea landscape. By engaging deeply with UNCLOS and related maritime issues, the ICJ reinforced its central role in clarifying states' rights and obligations in the face of climate change, signaling that the law of the sea continues to be a vital arena for international legal development.

More importantly, the ICJ's advisory opinion reinforces the idea that international law is not merely a passive object of study, but an active, participatory process of claim-making aimed at shaping new rules and stabilizing expectations. International law is never fully settled; the law of the sea, in particular, exemplifies a legal

regime that must evolve in response to changing conditions. By clarifying existing norms and recognizing the development of emerging ones, the ICJ has made the law of the sea more attuned to principles of fairness and better equipped to address the challenges posed by sea level rise.

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