Not only does this article gives exclusive power to the Indian parliament to implement any treaty to which India is a party, it also provides no exception to this power of the parliament. As such, the SCI should not have taken it upon itself to domesticate India's international law obligations. Doing so was a wide usurpation of legislative power by the SCI, and it makes this otherwise well-intentioned judgment a legally flawed one. Almost a decade ago, V.G. Hegde asked the Indian courts to be flexible "to accommodate evolving and increasingly changing normative structures of international law."[32] Perhaps instead of flexibility, the court needs to limit its forays into legislative powers for incorporation of international law, keeping in mind the separation of powers between the three branches of the government. This will also inculcate a sense of accountability in both the legislature and the executive vis-à-vis signing any international treaty.

Nonetheless, this judgment must be appreciated for its recognition and enforceability of India's commitments for its NDCs. It also highlights how India, which is often criticized by the developed nations for not doing enough to mitigate climate change,[33] is moving ahead in its aim of transitioning from fossil fuel to renewable energy and focusing particularly on solar energy as mentioned in its updated NDC.

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ITLOS—UN Convention on the Law of the Sea—climate change mitigation—adaptation to climate change—due diligence obligations—Paris Agreement—temperature goal

Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law. *At* http://www.itlos.org. International Tribunal for the Law of the Sea, May 21, 2024.

On May 21, 2024, the International Tribunal for the Law of the Sea (ITLOS) delivered a unanimous advisory opinion on the obligations of states to mitigate climate change and to promote adaptation to the impacts of climate change. Following decisions by United Nations human rights treaty bodies[1] and the European Court of Human Rights,[2] the

[32] V.G. Hegde, *International Law in the Courts of India*, 19 Asian Y.B. Int'l L. 63, 87 (2013).

[33] Justin Rowlatt, *Can Paris Climate Talks Overcome the India Challenge?*, BBC News (Nov. 26, 2015), *at* https://bbc.com/news/world-asia-india-34929578.

[1] *E.g.,* Committee on the Rights of the Child, Decision Adopted by the Committee Under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Concerning Communication No. 104/2019, *Sacchi v. Argentina*, UN Doc. CRC/C/88/D/104/2019 (Sept. 22, 2021); Human Rights Committee, Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Communication No. 3624/2019, *Billy v. Australia*, UN Doc. CCPR/C/135/D/3624/2019 (July 21, 2022).

[2] *E.g.*, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, App. No. 53600/20, Judgment, (ECtHR Apr. 9, 2024), *at* https://hudoc.echr.coe.int/?i=001-233206.

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proceedings before ITLOS are a significant step in the rise of international climate litigation.[3] ITLOS identifies due diligence obligations on climate change under the United Nations Convention on the Law of the Sea (UNCLOS), independently of any under climate treaties. At the same time, the Opinion begs more questions than it answers about the content of these obligations and the way a court can assess compliance. The Opinion is a significant step in international law because it confirms that states have obligations on climate change mitigation arising from sources other than climate treaties and that climate treaties do not preclude the application of such obligations.

* * * *

On October 31, 2021, two small island states—Antigua and Barbuda, and Tuvalu—created the Commission of Small Island States on Climate Change and International Law (COSIS), an international organization whose main function is to request advisory opinions from ITLOS.[4] On December 12, 2022, COSIS filed a request for an advisory opinion before ITLOS, asking:

> What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea ("the UNCLOS"), including under Part XII:
>
> (a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere?
> (b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?[5]

ITLOS began by affirming its jurisdiction in the case at hand. UNCLOS does not explicitly give ITLOS jurisdiction to issue advisory opinions (except for a specialized procedure before the Seabed Disputes Chamber).[6] Annex VI of UNCLOS provides that ITLOS has jurisdiction in "all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal."[7] In *Sub-Regional Fisheries Commission*, the Tribunal had interpreted the word "matters" as including requests for advisory opinions, which led it to conclude that some "agreements" could give it advisory jurisdiction on certain requests.[8] The present Opinion reaffirms this reasoning, in spite of objections by some states and scholars, and holds that

[3] Benoit Mayer & Harro van Asselt, *The Rise of International Climate Litigation*, 32 REV. EUR. COMP. & INT'L ENVTL. L. 175 (2023).

[4] Agreement for the Establishment of the Commission of Small Island States on Climate Change and International Law, Art. 2(2), Ant. & Barb.–Tuvalu, Oct. 31, 2021, 3444 UNTS, 61 ILM 742.

[5] COSIS, Request for Advisory Opinion, 2 (Dec. 12, 2022), *at* https://www.itlos.org/fileadmin/itlos/documents/cases/31/Request_for_Advisory_Opinion_COSIS_12.12.22.pdf.

[6] United Nations Convention on the Law of the Sea (UNCLOS), Art. 191, Dec. 10, 1982, 1833 UNTS 3, *at* https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

[7] *Id.*, Annex VI, Art. 21. Statute of the International Tribunal for the Law of the Sea.

[8] Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC), Case No. 21, Advisory Opinion of Apr. 2, 2015, ITLOS Rep. 4, para. 56 [hereinafter *Sub-Regional Fisheries Commission*]. *See also* ITLOS, Rules of the Tribunal, Art. 138, UN Doc. ITLOS/8 (Oct. 28, 1997; amended Mar. 15, 2001, Sept. 21, 2001, Mar. 17, 2009).

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the COSIS Agreement confers advisory jurisdiction to ITLOS in the present case (paras. 84–109).

ITLOS then explains its decision not to exercise "its discretionary power to decline to render an advisory opinion" (para. 110). A prominent concern was that the request for an advisory opinion focused on determining the obligations of states that are not parties to the COSIS Agreement (i.e., major greenhouse gas (GHG) emitters) and, therefore, had not consented to conferring advisory jurisdiction to ITLOS.[9] ITLOS addressed this concern, as it did in *Sub-Regional Fisheries Commission*, by asserting that COSIS was merely seeking "enlightenment as to the course of action it should take" and that the Opinion would "assist[] [COSIS] in the performance of its activities" (paras. 114, 118).

ITLOS then turned to the two substantive questions at issue. The first revolves around the "specific obligations" of state parties to UNCLOS "to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change."[10] ITLOS characterizes anthropogenic GHG emissions as a form of pollution of the marine environment. These emissions fulfill the definition of marine pollution under UNCLOS because they introduce a substance (carbon dioxide) and a type of energy (heat) into the marine environment, with "multiple deleterious effects on the marine environment and beyond," such as acidification and warming of seawater (para. 175).[11] Consequently, the Opinion finds that GHG emissions are subject to various provisions of Part XII of UNCLOS relating to the pollution of the marine environment. These include general obligations to protect and preserve the marine environment (paras. 180–92)[12] and to take measures to prevent, reduce, and control pollution (paras. 197–258),[13] as well as specific obligations regarding particular sources of pollution (paras. 250–301),[14] international cooperation (paras. 294–321),[15] the provision of technical assistance (paras. 322–39),[16] and monitoring and environmental assessment (paras. 340–67).[17]

The second question concerns the "specific obligations" of states parties to UNCLOS "to protect and preserve the marine environment in relation to climate change impacts."[18] The Opinion presents the protection and preservation of the marine environment as encompassing the measures to prevent, reduce, and control pollution of the marine environment that it discussed in relation to the first question, but also some obligation of states to promote adaptation to the impacts of climate change. Under Article 192 of UNCLOS, ITLOS identifies a general obligation of due diligence that "may require restoring marine habitats and ecosystems" whenever "the marine environment has been degraded" (para. 400). Further, ITLOS identifies specific obligations regarding the preservation of rare or fragile ecosystems

[9] *See* Benoit Mayer, *International Advisory Proceedings on Climate Change*, 44 MICH. J. INT'L L. 41, 82 (2023), *citing* Status of Eastern Carelia, 1923 PCIJ (ser. B) No. 5, at 27–28.
[10] COSIS, Request for Advisory Opinion, *supra* note 5.
[11] UNCLOS, *supra* note 6, Art. 1, para. 1(4).
[12] *Id.* Arts. 192–93.
[13] *Id.* Art. 194(1)(2).
[14] *Id.* Arts. 207, 211–12.
[15] *Id.* Arts. 197–201.
[16] *Id.* Arts. 202–03.
[17] *Id.* Arts. 204–06.
[18] COSIS, Request for Advisory Opinion, *supra* note 5.

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(para. 406),[19] the conservation of living marine resources (para. 418),[20] cooperation on the management of straddling and highly migratory species (para. 428),[21] and the introduction of non-indigenous species (para. 436).[22] Thus, the Tribunal finds that UNCLOS requires state parties to promote adaptation to the impacts of climate change on the marine environment.

* * * *

The Opinion's most important contribution to the development of climate law is arguably its recognition that the Paris Agreement is not a *lex specialis* precluding the application of relevant obligations from other sources of international law. Thus, having noted that the Paris Agreement leaves it for "each Party to determine its own national contributions" to global efforts on climate change mitigation (para. 222), the Tribunal rejects the view that compliance with UNCLOS "would be satisfied simply by complying with" the Paris Agreement (para. 223).[23] The Opinion focuses on UNCLOS, but the Tribunal hints that the same reasoning could apply to customary law by highlighting that key provisions of UNCLOS reflect customary norms on harm prevention (para. 246), cooperation (para. 296), and the conduct of environmental impact assessment (para. 355).

While ITLOS affirms the relevance of multiple provisions of UNCLOS, it says little about their content and how they may complement or depart from climate treaties. For instance, the Tribunal finds that Article 194(1) requires states to seek "the reduction of anthropogenic GHG emissions" (para. 205), but this finding adds neither ambition nor clarity to the commitment of the parties to the United Nations Framework Convention on Climate Change to "implement . . . measures to mitigate climate change."[24] The Tribunal only states the obvious when observing that Article 194(1) "does not entail the immediate cessation of . . . GHG emissions" and requires "joint actions [to] be actively pursued" (paras. 199, 202).

The Tribunal interprets multiple provisions of UNCLOS as creating obligations "of conduct" or "due diligence," that is, obligations "to deploy adequate means, to exercise best possible efforts, to do the utmost" toward the goals of mitigating climate change and adapting to its impacts (para. 233).[25] The Tribunal insists that the standard of due diligence applicable to these obligations "is stringent, given the high risks of serious and irreversible harm to the marine environment from such emissions" (para. 243). It also affirms that the measures necessary for a state to comply with these obligations "should be determined objectively" (para. 206). However, the Tribunal does not clarify what a "stringent" due diligence standard is, what it means to assess compliance with obligations under that standard "objectively," or, for instance, how this due diligence standard relates to suggestion in the Paris Agreement

[19] UNCLOS, *supra* note 6, Art. 194(5).

[20] *Id.* Arts. 61, 119.

[21] *Id.* Arts. 63–64, 118

[22] *Id.* Art. 196.

[23] The Opinion, however, does not determine whether compliance with the UN Framework Convention on Climate Change would demonstrate compliance with climate obligations arising under UNCLOS.

[24] United Nations Framework Convention on Climate Change, Arts. 4(1)(b), 2(a), May 9, 1992, 1771 UNTS 107 [hereinafter UNFCCC]. *See also Verein KlimaSeniorinnen Schweiz and Others v. Switz.*, *supra* note 2, para. 546 (interpreting climate treaties as requiring parties to "put in place the necessary regulations and measures aimed at preventing" GHG emissions).

[25] Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Case No. 17, Advisory Opinion, ITLOS Rep. 10, para. 110 (Seabed Disputes Chamber Feb. 1, 2011).

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that a party's nationally determined contribution should reflect its "highest possible ambition."[26]

One key question when interpreting these obligations concerns their relationship with the global goals on climate action. The Paris Agreement defined the two goals of holding global warming "well below" 2°C or close to 1.5°C above pre-industrial temperatures,[27] and subsequent decisions by the Conference of the Parties (COP) put more emphasis on the 1.5°C goal.[28] The Tribunal characterizes the 1.5°C goal as "particularly relevant" to the assessment of national climate action (para. 215). However, it rejects the contention that states must act consistently with this goal on the ground that "other relevant factors . . . should be considered" along the 1.5°C goal (para. 212).

The Tribunal alludes to two such "other relevant factors": "[i]nternational rules and standards relating to climate change"; and the "available means and capabilities of the State concerned" (para. 207). In fact, these factors are already embedded in any putative requirement of consistency with the 1.5°C goal. First, the 1.5°C goal *is* an international standard, which arose from political negotiations, reflecting states' willingness to act to limit risks associated with higher levels of global warming,[29] rather than from a scientific safe limit as the Tribunal seems to believe.[30] Second, assessing the consistency of a state's action with this global goal would inevitably involve consideration of the means and capabilities available to that state, as reflected in the differentiation principles formulated in climate treaties.[31]

The conclusion that states do not have an obligation to act consistently with the 1.5°C goal might be correct on grounds other than those articulated by ITLOS. The adoption of an agreement on an aspirational goal does not necessarily indicate an intention to be bound to acting consistently with this goal, or even an understanding of, or agreement as to what, acting consistently with this goal would require.[32] In fact, state practice seems inconsistent with such

[26] Paris Agreement, Art. 4(3), Dec. 12, 2015, 3156 UNTS 79.

[27] *Id.* Art. 2(1)(a).

[28] *E.g.*, UNFCCC, Report of the Conference of the Parties on Its Twenty-Seventh Session, Held in Sharm el-Sheikh from 6 to 20 November 2022, Decs. 1/CP.27, para. 7, UN Doc. FCCC/CP/2022/10/Add.1 (Mar. 17, 2023); UNFCCC, Report of the Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement on Its Fifth Session, Held in the United Arab Emirates from 30 November to 13 December 2023, 1/CMA.5, para. 4, UN Doc. FCCC/PA/CMA/2023/16/Add.1 (Mar. 15, 2024).

[29] Reto Knutti, Joeri Rogelj, Jan Sedláček & Erich M. Fischer, *A Scientific Critique of the Two-Degree Climate Change Target*, 9 NATURE GEOSCIENCE 13 (2016); Samuel Randalls, *History of the 2°C Climate Target*, 1 WIREs CLIMATE CHANGE 598 (2010). Economists have arrived at vastly divergent estimates of the optimal level of climate action based on different assumptions, particularly regarding the present value of avoiding climate impacts unfolding in the distant future. *See* William Nordhaus, *Climate Change: The Ultimate Challenge for Economics*, 109 AM. ECON. REV. 1991, 2004–06 (2019).

[30] *See* ITLOS, Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, paras. 241 (attributing 1.5°C to a "broad agreement within the scientific community" and "best available science"), 209 (presenting 1.5°C as a limit beyond which "there is a high risk of a much worse outcome"). Similar confusion is frequent in climate law. *See, e.g.*, UNFCCC, Copenhagen Accord, Report of the Conference of the Parties on Its Fifteenth Session, Held in Copenhagen from 7 to 19 December 2009, Annex, para. 1, Dec. 2/CP.15, UN Doc. FCCC/CP/2009/11/Add.1 (Mar. 30, 2010); The State of the Netherlands v. Stichting Urgenda, Supreme Court of the Netherlands, Civil Division, ECLI:NL:HR:2019:2007, Judgment, para. 4.3 (Dec. 20, 2019), 59 ILM 811 (2020) [hereinafter *Urgenda*]. Science is a method to determine what *is*, but it is not sufficient to determine what *ought to be* (e.g., what states ought to do).

[31] *See, e.g.*, Paris Agreement, *supra* note 26, Art. 2(2).

[32] *See* Benoit Mayer, *Temperature Targets and State Obligations on the Mitigation of Climate Change*, 33 J. ENVTL. L. 585, 595–600 (2021).

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putative requirement, given the persistent gap between national policies and global pathways most likely to be consistent with the 1.5°C goal.[33] Thus, while a few national courts have asserted that a state must act consistently with the Paris temperature goals,[34] many others have found that such a requirement lacks any legal basis.[35] At any rate, it is unclear how consistency with the 1.5°C goal could be assessed in the absence of an agreed-upon formula or method to determine a state's "fair share" in global efforts.[36]

Instead of relying on a global goal as a benchmark for national ambition, a court could seek to substantiate states' general obligations by identifying the concrete steps that they should take when exercising due diligence. The Tribunal seems to go in this direction when suggesting that, to comply with a general due diligence obligation under Article 194(1), states must "put in place a national system, including legislation, administrative procedure, and an enforcement mechanism necessary to regulate the activities in question" (para. 235). The Tribunal further indicates that applying environmental impact assessments as a tool for climate change mitigation is a "crucial" component of this due diligence obligation (para. 354).

Yet the Opinion does not clarify whether or under what conditions the failure to take any of these steps would constitute a breach of the general due diligence obligation under Article 194(1). If these conditions are cumulative, the test would appear drastic and even somewhat arbitrary. For example, a state might implement an ambitious climate policy without legislation (e.g., through executive action).[37] On the other hand, almost every state would easily satisfy the test if these conditions were to be read as alternative: most states, for instance, do apply environmental impact assessment as a tool for climate change mitigation,[38] but to do so is plainly insufficient to observe obligations on climate change mitigation, even under a non-"stringent" due diligence standard.

Rather than alternative or cumulative conditions of compliance, such steps would best be approached as indicia of due diligence.[39] Thus, the European Court of Human Rights recently assessed Switzerland's compliance with its obligation to mitigate climate change through a test "of an overall nature, meaning that a shortcoming in one particular respect alone will not necessarily entail" the breach of the state's obligation.[40] Such a holistic approach would allow a court to apply a stringent due diligence obligation on a state without excessive interference with its freedom to choose the means of implementation.[41] A set of indicia test would likely be less "objective," in the sense that it would not follow a clearly

[33] *See* UNFCCC, Dec. 1/CMA.5, *supra* note 28, para. 24.

[34] *E.g.*, *Urgenda*, *supra* note 30, para. 7.2.1.

[35] *E.g.*, R (on the Application of Friends of the Earth Ltd. and Others) v. Heathrow Airport Ltd. [2020] UKSC 52 [71] (UK). *See generally* Benoit Mayer, *Prompting Climate Change Mitigation Through Litigation*, 72 INT'L & COMP. L. Q. 233, 237–43 (2023).

[36] *See* Benoit Mayer, *Interpreting States' General Obligations on Climate Change Mitigation: A Methodological Review*, 28 REV. EUR. COMP. & INT'L ENVTL. L. 107 (2019).

[37] Notably, none of the three largest GHG emitters (China, the United States, and India) have a dedicated legislative framework for climate action.

[38] *See* Benoit Mayer, *Climate Assessment as an Emerging Obligation Under Customary International Law*, 68 INT'L & COMP. L. Q. 271, 282–89 (2019).

[39] BENOIT MAYER, INTERNATIONAL LAW OBLIGATIONS ON CLIMATE CHANGE MITIGATION 281–320 (2022).

[40] *KlimaSeniorinnen*, *supra* note 2, para. 551.

[41] *See* UNFCCC, *supra* note 24, pmbl. para. 10.

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determined list of criteria in a mechanical way, but it may nonetheless be fairer and more effective.[42]

On a sidenote, the Opinion also raises several procedural issues. ITLOS says little to assuage persistent doubts about the cogency of its interpretation of Annex VI of UNCLOS as permitting other agreements to confer advisory jurisdiction on the full Tribunal.[43] Simply observing that "most participants in the current proceedings expressed the view that the Tribunal has jurisdiction" (para. 91) is not sufficient to address objections by the states that do not share this view.[44] In turn, when justifying the propriety of giving an advisory opinion, ITLOS does not explain what course of action or activities of COSIS this Opinion could "enlighten" (para. 114). COSIS's function is to request advisory opinions, not to implement climate action, and its members states (now extended to a dozen small-island developing states) are unlikely to make a significant contribution to global efforts to mitigate climate change. The case is conspicuously aimed—as COSIS itself put it—at interpreting the obligations of "major polluters" that are not members of COSIS.[45]

* * * *

This Opinion will inevitably inform further developments, most immediately the ongoing advisory proceedings on climate change before the International Court of Justice[46] and the Inter-American Court of Human Rights.[47] In particular, the Opinion narrows down the argumentative field by confirming that climate treaties do not preclude the application of other sources of international law. It could also inform state action and domestic litigation, for instance by implying that a state cannot evade all its obligations on climate change by withdrawing from climate treaties.[48]

ITLOS may not have said its last word on the subject. Nothing prevents COSIS—or any other organization established by two or more states—from requesting clarification by means

[42] Benoit Mayer, *The Judicial Assessment of States' Action on Climate Change Mitigation*, 35 LEIDEN J. INT'L L. 801 (2022).

[43] *See, e.g.*, Tom Ruys & Anemoon Soete, *"Creeping" Advisory Jurisdiction of International Courts and Tribunals? The Case of the International Tribunal for the Law of the Sea*, 29 LEIDEN J. INT'L L. 155 (2016); Massimo Lando, *The Advisory Jurisdiction of the International Tribunal for the Law of the Sea: Comments on the Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission*, 29 LEIDEN J. INT'L L. 441 (2016); Yoshifumi Tanaka, *The Role of an Advisory Opinion of ITLOS in Addressing Climate Change: Some Preliminary Considerations on Jurisdiction and Admissibility*, 31 REV. EUR. COMP. & INT'L ENVTL. L. 206, 208–09 (2023).

[44] See in particular Ministry of Foreign Affairs of the People's Republic of China, China's Written Statement in Request for an Advisory Opinion Submitted by COSIS (June 15, 2023), *at* https://www.itlos.org/fileadmin/itlos/documents/cases/31/written_statements/1/C31-WS-1-8-China__transmission_ltr._.pdf; and Statement of Mr. Ma (China), ITLOS, Minutes of Public Sittings Held from 11 to 25 September 2023 in Request for an Advisory Opinion Submitted by COSIS, 320–21, *at* https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral_proceedings/C31_Minutes.pdf.

[45] Payam Akhavan (representative of COSIS in the case), cited in COSIS on Climate Change and International Law Press Release, (@cosis_ccil), X (May 21, 2024, 7:36 a.m.), *at* https://twitter.com/cosis_ccil/status/1792882194811085207.

[46] GA Res. 77/276 (Mar. 29, 2023); *see also* Obligations of States in Respect of Climate Change (Request for Advisory Opinion), Order (ICJ May 30, 2024), *at* https://www.icj-cij.org/sites/default/files/case-related/187/187-20240531-ord-01-00-en.pdf (extending the deadline for written submissions to Aug. 15, 2024 at the request of multiple developing countries, including most COSIS member states, shortly after ITLOS delivered its opinion).

[47] Solicitud de Opinión Consultiva sobre Emergencia Climática y Derechos Humanos a la Corte Interamericana de Derechos Humanos de la República de Colombia y la República de Chile (Jan. 9, 2023), *at* https://www.minrel.gob.cl/minrel/site/docs/20230118/20230118172718/solicitud_corte_idh.pdf.

[48] *See* Evan J. Criddle & Evan Fox-Decent, *Mandatory Multilateralism*, 113 AJIL 272, 320–21 (2019).

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of additional advisory opinions. Further advisory proceedings could also explore other issues related to climate change, such as questions of responsibility and liability for climate impacts or the effects of sea-level rise on maritime entitlements. And the present Opinion could pave the way to contentious proceedings under UNCLOS.[49] A potential obstacle to such contentious cases, the condition of the existence of a legal dispute,[50] could be overcome if a state was to gather sufficient evidence of a positive opposition of views through bilateral diplomatic exchange before initiating contentious proceedings.[51]

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[49] *See* Rozemarijn J. Roland Holst, *Taking the Current When It Serves: Prospects and Challenges for an ITLOS Advisory Opinion on Oceans and Climate Change*, 32 Rev. Eur. Comp. & Int'l Envtl. L. 217, 225 (2023).

[50] *See* ITLOS, Request for an Advisory Opinion, *supra* note 30, para. 116 ("The Tribunal is not aware of any legal dispute between the members of the Commission and any other States relating to the subject matter of the advisory opinion."). *See also* Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marsh. Is. v. India), Jurisdiction and Admissibility, Judgment, 2016 ICJ Rep. 255, para. 52 (Oct. 5).

[51] *See* Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gam. v. Myan.), Preliminary Objections, Judgment, 2022 ICJ Rep. 477, paras. 502–06 (July 22).

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