

The background of the slide is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (ITLOS) AND CLIMATE CHANGE

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LOSC DISPUTE RESOLUTION



UN CHARTER

ARTICLE 33

THE PARTIES TO ANY DISPUTE, THE CONTINUANCE OF WHICH IS LIKELY TO ENDANGER THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY, SHALL, FIRST OF ALL, SEEK A SOLUTION BY **NEGOTIATION, ENQUIRY, MEDIATION, CONCILIATION, ARBITRATION, JUDICIAL SETTLEMENT**, RESORT TO REGIONAL AGENCIES OR ARRANGEMENTS, OR OTHER PEACEFUL MEANS OF THEIR OWN CHOICE

ICJ AND LAW OF THE SEA DISPUTES

- ICJ HAS HAD A LONG HISTORY IN RESOLVING LOS DISPUTES
 - *CORFU CHANNEL* (1949)
- PARTICULAR EXPERTISE IN MARITIME BOUNDARY CASES
 - CONTINENTAL SHELF/EEZ BOUNDARY DELIMITATIONS
- RELATED ROLE IN TERRITORIAL DISPUTES
 - INDONESIA/MALAYSIA – *LIGITAN AND SIPADAN* (2002)
 - SINGAPORE/MALAYSIA – *SOVEREIGNTY OVER PEDRA BRANCA, /PULAU, MIDDLE ROCKS AND SOUTH LEDGE* (2008)

ICJ AND LOS DISPUTE RESOLUTION

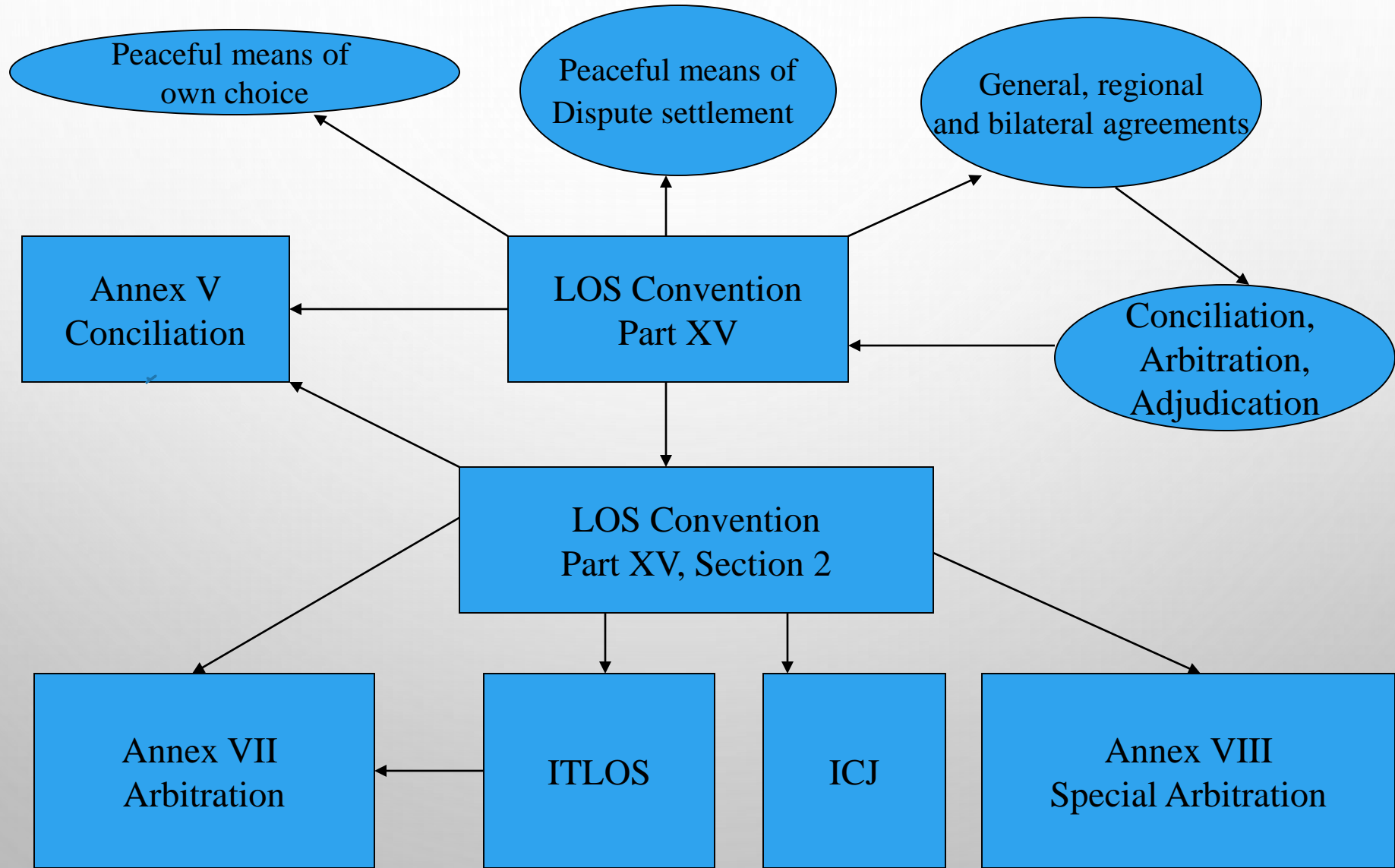
WILL ICJ HAVE JURISDICTION?

1. IF THE STATES ARE PARTIES TO A TREATY WHICH CONFERS JURISDICTION ON THE COURT
2. IF THE STATES HAVE LODGED AN ART 36 (2) DECLARATION ACCEPTING DETERMINATION OF DISPUTES WHICH ARE REFERRED TO THE COURTS UNILATERALLY
3. IF STATES MUTUALLY REFER A DISPUTE TO THE COURT IE. STATES A & B AGREE TO SEND A DISPUTE TO THE COURT FOR RESOLUTION

LOS CONVENTION AND SETTLEMENT OF DISPUTES

- GENERAL PROVISIONS: PART XV, SECTION I
 - PEACEFUL SETTLEMENT
 - CHOICE OF MEANS
 - EXCHANGE OF VIEWS: ART 283
 - OTHER MULTILATERAL, REGIONAL OR BILATERAL AGREEMENTS: ART 282
 - RELATED TO LOS CONVENTION?
 - INDEPENDENT AGREEMENTS?

THE PART XV FRAMEWORK



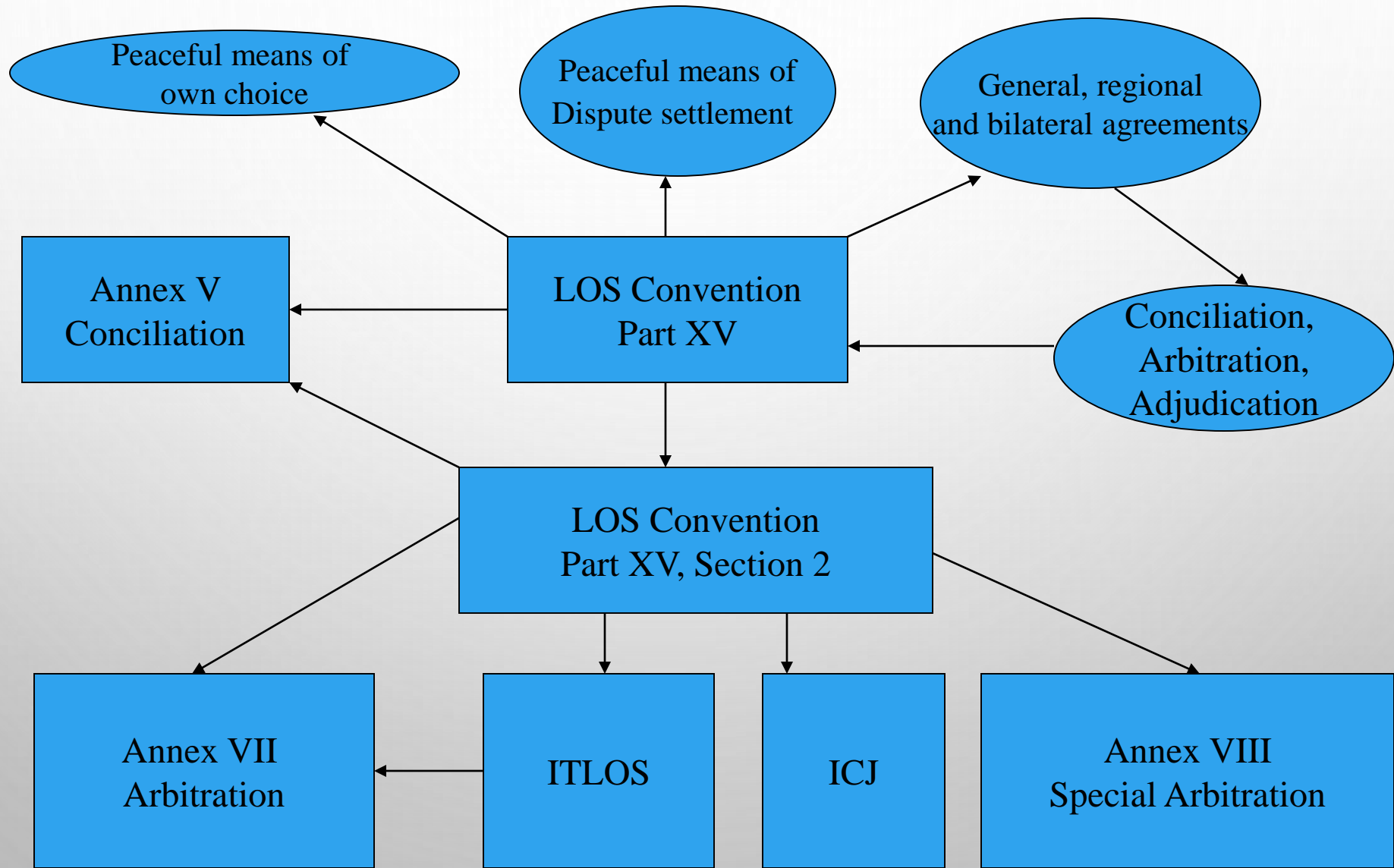
COMPULSORY MEANS OF DISPUTE SETTLEMENT: PART XV, SECTION II

- DEFAULT WHERE NO SETTLEMENT OTHERWISE REACHED: ART 286
- CHOICE OF PROCEDURE: ART 287
 - ITLOS
 - ICJ
 - ANNEX VII ARBITRATION
 - ANNEX VII SPECIAL ARBITRATION
- STATE DECLARATION ACCEPTING PROCEDURE
- DECISIONS ARE FINAL AND BINDING
- NO APPEAL

OPTIONAL ARTICLE 298 JURISDICTIONAL LIMITATIONS

- a) “DISPUTES CONCERNING THE INTERPRETATION AND APPLICATION OF ARTICLES 15, 74 AND 83 RELATING TO SEA BOUNDARY DELIMITATIONS, OR THOSE INVOLVING HISTORIC BAYS OR TITLES”
- b) DISPUTES CONCERNING MILITARY ACTIVITIES
- c) DISPUTES IN WHICH THE UN SECURITY COUNCIL IS EXERCISING ITS FUNCTIONS
- ❖ 38 STATES HAVE LODGED ARTICLE 298 (1) DECLARATIONS

LOSC PART XV FRAMEWORK



ITLOS

- LOSC INSTITUTION
- PERMANENT TRIBUNAL IN HAMBURG
- PLENARY PROCEEDINGS: 21 JUDGES + AD HOC JUDGES
- CHAMBERS
 - SEA-BED DISPUTES (2011 ADVISORY OPINION)
 - SPECIALIST
 - MARINE ENVIRONMENT
 - FISHERIES
- 32 CASES: 1996-2023
 - PROMPT RELEASE – 10
 - PROVISIONAL MEASURES - 8

ANNEX VII ARBITRATION

- PROVIDED FOR UNDER ARTICLE 297 & ESTABLISHED UNDER ANNEX VII
- NOT A STANDING BODY OR COURT – PCA HAS ACTED AS REGISTRY
- 19 ANNEX VII ARBITRATIONS BETWEEN 2000-2020
- 3 DETERMINATIONS ON JURISDICTION AND ADMISSIBILITY
 - **SOUTHERN BLUEFIN TUNA** (2000), **SOUTH CHINA SEA** (2015)
- 7 AWARDS ON MERITS
 - **ARCTIC SUNRISE** (2015), **SOUTH CHINA SEA** (2016)
- 2 DEFAULT OF APPEARANCE

PERMANENT COURT OF ARBITRATION

- PERMANENT INSTITUTION
 - THE HAGUE
 - MAURITIUS & SINGAPORE
- ROLE AS REGISTRY (2023)
 - 6 INTER-STATE PROCEEDINGS,
 - 103 INVESTOR-STATE ARBITRATIONS,
 - 94 CASES UNDER CONTRACTS (STATE OR OTHER PUBLIC ENTITY), AND
 - 3 OTHER DISPUTES



THE PEACE PALACE



PHILIPPINES V. CHINA





ADVISORY OPINIONS



1. ADVISORY OPINIONS: PAST
2. ADVISORY OPINIONS: PRESENT
3. ITLOS CLIMATE CHANGE ADVISORY OPINION: 2023
4. CONCLUSIONS

ADVISORY OPINIONS: PAST

➤ ADVISORY OPINIONS AND INTERNATIONAL LAW

➤ PCIJ AND ICJ

➤ GENERAL ADVISORY FUNCTIONS OF THE PCIJ AND ICJ

➤ **ICJ: 28 APPLICATIONS - ONLY 1 DECLINED***

➤ *NUCLEAR WEAPONS ADVISORY OPINION: WHO REQUEST (1996)*

➤ **PCIJ: 29 APPLICATIONS - ONLY 1 DECLINED**

➤ PCIJ ADVISORY OPINIONS AND LAW OF THE SEA

ADVISORY OPINIONS: PRESENT

THE LOSC AND ADVISORY OPINIONS

3 APPLICATIONS – NONE DECLINED*

ITLOS AND THE SEABED DISPUTES CHAMBER: ARTICLE 191

“ THE SEA-BED DISPUTES CHAMBER SHALL GIVE ADVISORY OPINIONS AT THE REQUEST OF THE ASSEMBLY OR THE COUNCIL ON LEGAL QUESTIONS ARISING WITHIN THE SCOPE OF THEIR ACTIVITIES. SUCH OPINIONS SHALL BE GIVEN AS A MATTER OF URGENCY”



ADVISORY OPINIONS: PRESENT

PROCEDURES AND MECHANISMS

STATUTE OF ITLOS: ANNEX VI

- ORGANIZATION OF ITLOS, COMPETENCE, PROCEDURE
- SEA-BED DISPUTES CHAMBER
 - ARTICLE 40 (2)

“IN THE EXERCISE OF ITS FUNCTIONS RELATING TO ADVISORY OPINIONS, THE CHAMBER SHALL BE GUIDED BY THE PROVISIONS OF THIS ANNEX RELATING TO PROCEDURE BEFORE THE TRIBUNAL TO THE EXTENT TO WHICH IT RECOGNIZES THEM TO BE APPLICABLE.”

ADVISORY OPINIONS: PRESENT

ITLOS: RULES OF THE TRIBUNAL

ARTICLE 138 (1)

THE TRIBUNAL MAY GIVE AN ADVISORY OPINION ON A LEGAL QUESTION IF AN INTERNATIONAL AGREEMENT RELATED TO THE PURPOSES OF THE CONVENTION SPECIFICALLY PROVIDES FOR THE SUBMISSION TO THE TRIBUNAL OF A REQUEST FOR SUCH AN OPINION

ADVISORY OPINIONS: PRESENT

2011 SEABED DISPUTES CHAMBER ADVISORY OPINION

THE COUNCIL OF THE INTERNATIONAL SEABED AUTHORITY, CONSIDERING THE FACT THAT DEVELOPMENTAL ACTIVITIES IN THE AREA HAVE ALREADY COMMENCED, BEARING IN MIND THE EXCHANGE OF VIEWS ON LEGAL QUESTIONS ARISING WITHIN THE SCOPE OF ACTIVITIES OF THE COUNCIL, DECIDES, IN ACCORDANCE WITH **ARTICLE 191** OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (“THE CONVENTION”), TO REQUEST THE SEABED DISPUTES CHAMBER OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA, PURSUANT TO **ARTICLE 131 OF THE RULES** OF THE TRIBUNAL, TO RENDER AN ADVISORY OPINION...

ADVISORY OPINIONS: PRESENT

2011 SEABED DISPUTES CHAMBER ADVISORY OPINION

1. UNANIMOUSLY, DECIDES THAT IT HAS JURISDICTION TO GIVE THE ADVISORY OPINION REQUESTED.
2. UNANIMOUSLY, DECIDES TO RESPOND TO THE REQUEST FOR AN ADVISORY OPINION.

CHAMBER ADDRESSES THE THREE QUESTIONS IT WAS ASKED AND RESPONDED UNANIMOUSLY

KEY ISSUES

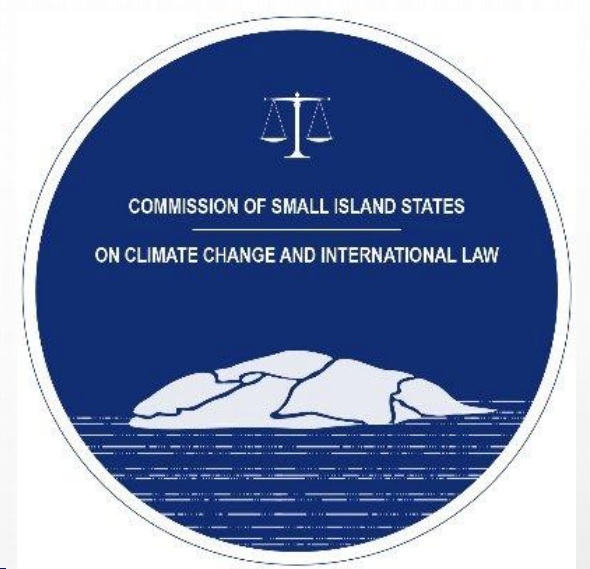
1. JURISDICTION
2. ADMISSIBILITY
3. APPLICABLE RULES



2015 REQUEST FOR AN ADVISORY OPINION SUBMITTED BY THE SUB-REGIONAL FISHERIES COMMISSION (SRFC)

- STATUS OF THE SRFC
 - CONVENTION ON THE DETERMINATION OF THE MINIMAL CONDITIONS FOR ACCESS AND EXPLOITATION OF MARINE RESOURCES WITHIN THE MARITIME AREAS UNDER JURISDICTION OF THE MEMBER STATES OF THE SRFC (MCA CONVENTION)
- MEMBERSHIP: CAPE VERDE, GAMBIA, GUNIEA-BISSAU, GUINEA, MAURITANIA, SENEGAL, SIERRA LEONE
- CAPACITY TO REQUEST AN ITLOS AO
 - “THE CONFERENCE OF MINISTERS MAY AUTHORIZE THE PERMANENT SECRETARY OF THE SRFC TO BRING A GIVEN LEGAL MATTER BEFORE THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA FOR ADVISORY OPINION” (ART 33)
 - FOURTEENTH EXTRAORDINARY SESSION, 25-29 MARCH 2013, DAKAR, SENEGAL
- APPLICATION OF ARTICLE 138 (1) ITLOS RULES

ADVISORY OPINIONS: 2022-2023 DEVELOPMENTS



REQUEST FOR AN ADVISORY OPINION SUBMITTED BY THE COMMISSION OF SMALL ISLAND STATES ON CLIMATE CHANGE AND INTERNATIONAL LAW (CASE NO 31)

- REQUEST OF 12 DECEMBER 2022
- 2021 AGREEMENT FOR THE COMMISSION OF SMALL ISLANDS STATES ON CLIMATE CHANGE AND INTERNATIONAL LAW (EDINBURGH, 31 OCTOBER 2021; EIF 31 OCTOBER 2021; UN REG 31 OCTOBER 2021 – NO 56940)
- COMMISSION MEMBERS (9)
 - 2 X ORIGINAL PARTIES: ANTIGUA AND BARBUDA + TUVALU
 - 7 X ACCESSION: BAHAMAS, NIUE, PALAU, ST LUCIA, ST VINCENT & THE GRENADINES, ST KITTS & NEVIS, VANUATU

THE AO REQUEST (2022)

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?

CAPACITY OF COSIS TO MAKE THE AO REQUEST

ARTICLE 2(2) OF THE AGREEMENT PROVIDES (EMPHASIS ADDED):

HAVING REGARD TO THE FUNDAMENTAL IMPORTANCE OF OCEANS AS SINKS AND RESERVOIRS OF GREENHOUSE GASES AND THE DIRECT RELEVANCE OF THE MARINE ENVIRONMENT TO THE ADVERSE EFFECTS OF CLIMATE CHANGE ON SMALL ISLAND STATES, THE COMMISSION SHALL BE AUTHORIZED TO REQUEST ADVISORY OPINIONS FROM THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA ("ITLOS") ON ANY LEGAL QUESTION WITHIN THE SCOPE OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, CONSISTENT WITH ARTICLE 21 OF THE ITLOS STATUTE AND ARTICLE 138 OF ITS RULES.

COSIS AO TIMELINE

- REQUEST – 12 DECEMBER 2022
- WRITTEN SUBMISSIONS – 16 MAY 2023
 - EXTENDED TO 16 JUNE 2023
- ORAL PHASE – 11-25 SEPTEMBER 2023
- ITLOS DELIBERATIONS – CURRENT
- ITLOS AO DELIVERY – TO BE CONFIRMED



COSIS AO PARTICIPANTS

- WRITTEN SUBMISSIONS
 - 34 LOSC STATE PARTIES
 - 9 INTERGOVERNMENTAL ORGANIZATIONS
 - 10 OTHER SUBMISSIONS
[NOT PART OF THE CASE FILE]
- ORAL SUBMISSIONS
 - COSIS
 - 34 LOSC STATE PARTIES
 - 4 INTERGOVERNMENTAL ORGNIZATIONS



ITLOS AO – ORAL PHASE (SEPTEMBER 2023)

DELEGATION OF THE
COMMISSION OF
SMALL ISLAND STATES



ITLOS AO – ORAL PHASE



KEY ITLOS ISSUES

COSIS SUBMISSION: Q1

- DEFINITION OF MARINE POLLUTION: ART 1(1)(4)
 - LANGUAGE IS INCLUSIVE “GHG EMISSIONS...EASILY MEET THE DEFINITION OF “POLLUTION OF THE MARINE ENVIRONMENT” UNDER THE CONVENTION”
 - MARINE ENVIRONMENT “ENCOMPASSES THE ENTIRE MARINE ECOSYSTEM, INCLUDING ITS LIVING AND NON-LIVING RESOURCES”
 - ITLOS/ANNEX VII TRIBUNALS HAVE TAKEN A WIDE VIEW OF THE TERM: *CHAGOS, SOUTHERN BLUEFIN TUNA, ARCTIC SUNRISE, SOUTH CHINA SEA*
- ANTHROPOGENIC GHG EMISSIONS RESULT OR ARE LIKELY TO RESULT IN DELETERIOUS EFFECTS AS DEFINED IN ART 1 (1)(4)
- LEGAL OBLIGATIONS TO PREVENT, REDUCE AND CONTROL POLLUTION: ART 194 (1)
 - STANDARD OF IMPLEMENTATION: ALL MEASURES NECESSARY/BEST PRACTICABLE MEANS AT THEIR DISPOSAL

KEY ITLOS ISSUES

COSIS SUBMISSION: Q1

- LOSC OBLIGATION ON STATES TO EXERCISE DUE DILIGENCE TO PREVENT, REDUCE, AND CONTROL ANTHROPOGENIC GHG EMISSIONS CONSTITUTING POLLUTION OF THE MARINE ENVIRONMENT
 - DUE DILIGENCE AND LOSC, PART XII
 - DIRECT AND MINIMUM OBLIGATIONS, INCLUDING LOSC, ART 194
 - STATE MUST ADDRESS ALL SOURCES OF MARINE POLLUTION WITHIN STATE JURISDICTION AND CONTROL, INCLUDING THE ACTIONS OF NON-STATE ACTORS

KEY ITLOS ISSUES

COSIS SUBMISSION: Q2

- SPECIFIC MEASURES TO PROTECT THE MARINE ENVIRONMENT
 - LOSC, ART 192: “PROTECT AND PRESERVE” AND LOSC, PART XII
 - *SOUTH CHINA SEA*: THE GENERAL OBLIGATION EXTENDS TO BOTH PROTECTION AND PRESERVATION
 - CONVENTION ON BIOLOGICAL DIVERSITY: OBLIGATION TO REHABILITATE AND RESTORE DEGRADED ECOSYSTEMS
- PROPOSED SPECIFIC OBLIGATIONS
 1. MITIGATE EMISSIONS TO PROTECT THE MARINE ENVIRONMENT
 2. PROMOTE RESILIENCE OF THE MARINE ENVIRONMENT

KEY ITLOS ISSUES

COSIS SUBMISSIONS - CONCLUSION

PART XII OF THE CONVENTION—AND IN PARTICULAR ARTICLE 194—IMPOSES SPECIFIC OBLIGATIONS ON STATES PARTIES TO TAKE MEASURES TO PREVENT, REDUCE AND CONTROL POLLUTION OF THE MARINE ENVIRONMENT, WHICH ENCOMPASSES ANTHROPOGENIC GHG EMISSIONS RESPONSIBLE FOR CLIMATE CHANGE. THESE SPECIFIC OBLIGATIONS ARE INFORMED BY THE STANDARD OF DUE DILIGENCE AND REQUIRE TAKING ACCOUNT OF THE BEST PRACTICABLE MEANS, LEVEL OF RISK AND FORESEEABILITY OF HARM, A STATE'S CAPABILITIES, THE BEST AVAILABLE SCIENTIFIC AND TECHNICAL KNOWLEDGE, AND APPLICABLE INTERNATIONAL RULES AND STANDARDS. THE IRREFUTABLE SCIENTIFIC EVIDENCE—GENERALLY ACCEPTED BY THE GLOBAL COMMUNITY—CLEARLY DEMONSTRATES THAT EVERY INCREMENT OF WARMING INTENSIFIES THE RISKS AND HARMS OF CLIMATE CHANGE, BUT THAT LIMITING AVERAGE GLOBAL TEMPERATURE RISE TO 1.5°C ABOVE PRE-INDUSTRIAL LEVELS WOULD SIGNIFICANTLY REDUCE THEM. IN ANSWER TO THE FIRST QUESTION BEFORE THE TRIBUNAL, AT A MINIMUM, THE SPECIFIC OBLIGATIONS OF PART XII...REQUIRE STATES PARTIES TO TAKE ALL NECESSARY MEASURES, INCLUDING ADOPTING LEGISLATIVE AND REGULATORY MEASURES, AIMED AT REDUCING GHG EMISSIONS FROM ALL SOURCES AND LIMITING AVERAGE GLOBAL TEMPERATURE RISE TO 1.5°C ABOVE PRE-INDUSTRIAL LEVELS.

KEY ITLOS ISSUES COSIS SUBMISSIONS - CONCLUSION

IN ANSWER TO THE SECOND QUESTION BEFORE THE TRIBUNAL, THE SPECIFIC OBLIGATIONS UNDER ARTICLE 192 FALL INTO THREE CATEGORIES: TO MITIGATE CLIMATE CHANGE, TO IMPLEMENT RESILIENCE AND ADAPTATION MEASURES, AND TO PROTECT MARINE ECOSYSTEMS THAT SEQUESTER CARBON DIOXIDE.

COSIS DELEGATION AT ITLOS



CONCLUSIONS

1. WHAT ARE THE POSSIBLE OUTCOMES OF THE ITLOS AO?
2. WHAT ISSUES COULD ARISE FOLLOWING A REQUEST FOR AN ADVISORY OPINION?
3. WHAT IMPACT WOULD SUCH AN ADVISORY OPINION HAVE ON LAW OF THE SEA?
4. WILL ITLOS/SEA-BED DISPUTE CHAMBER ADVISORY OPINIONS GAIN PROMINENCE?
5. IN THE ALTERNATIVE, WILL ICJ ADVISORY OPINIONS BE REVERTED TO?
6. WILL ITLOS AND THE ICJ COMPETE FOR LAW OF THE SEA ADVISORY OPINIONS?