



# SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



## ITLOS and IMO Climate Change Developments

The International Tribunal on the Law of the Sea (ITLOS) recently delivered a landmark advisory opinion on climate change. The request for an advisory opinion, which had been submitted by small island states, asked ITLOS to clarify the obligations of states parties to the United Nations Convention on the Law of the Sea (UNCLOS) regarding climate change, including its obligations to prevent, reduce and control pollution of the marine environment and to protect and preserve the marine environment.

ITLOS first held that anthropogenic greenhouse gas emissions were “pollution of the marine environment” as defined in UNCLOS. It found that these emissions introduced carbon dioxide and heat into the marine environment, causing climate change and ocean acidification, causing harmful effects on the marine environment.

ITLOS said that that states parties had an obligation to take all necessary measures to prevent, reduce and control marine pollution from greenhouse gas emissions. It described this as a “due diligence” obligation that in this context was “stringent, given the high risks of serious and irreversible harm to the marine environment ...”. States were required to put in place a national system to regulate these emissions. States with greater resources and capabilities had a responsibility to do more than those with lesser means.

ITLOS also stated that the general obligation under UNCLOS to protect and preserve the marine environment applied to climate change impacts, including ocean warming, sea level rise and ocean acidification. This too was a due diligence obligation. This obligation may include restoring marine habitats and ecosystems that have been degraded. The obligation also required states to ensure non-state actors under their jurisdiction or control complied with measures to protect and preserve the marine environment.



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### **IMO Greenhouse Gas Emissions Reduction Strategy**

Meanwhile, the International Maritime Organization (IMO) has been discussing how to implement the strategy for reducing greenhouse gas emissions from ships that it adopted last year. This strategy has the ambition of reaching net-zero greenhouse gas emissions from shipping by or around 2050. By 2030 it aims for a reduction of 20%-30% on 2008 levels, with 70%-80% reductions by 2040. It wants 5%-10% of global shipping energy to be zero emissions by 2030.

Short-term measures requiring ships to comply with energy efficiency and carbon intensity requirements have already entered into force. Medium-term measures are currently being discussed.

This will include a marine fuel standard, whereby the greenhouse gas intensity of marine fuel would be subject to phased reductions over time. However, some questions about how this will work still have to be resolved. One is whether the limit should apply only to the greenhouse gas intensity of the

fuel/energy use on the ship or also apply to the production and supply chain. Another is whether every ship would have to meet the fuel standard or whether it would be an average of the fleet, allowing emissions to be traded or pooled between ships.

The measures will also include some form of emissions pricing, but there are currently a number of proposals for how this would work. One is whether there should simply be a levy on fossil fuels or whether there should also be a rebate for zero-emission fuels. A simple levy currently seems to have more support. There is additionally debate about whether there should be an emissions trading component to the pricing mechanism.

An impact assessment of the various proposals will be completed later this year. After further discussion among states, the measures are due to be decided on and adopted in 2025. They will enter into force in 2027.

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