INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

WRITTEN STATEMENT OF THE

ARGENTINE REPUBLIC

22 March 2024

TABLE OF CONTENTS

I. Introduction

1. The present written statement is filed pursuant to the Court's Orders of 20 April 2023, 4 August 2023 and 15 December 2023 upon the request for an advisory opinion made by the General Assembly of the United Nations in its Resolution A/RES/77/276, adopted on 29 March 2023 at the 64th meeting of its Seventy-seventh Session.

2. In that Resolution, the General Assembly decided, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following questions:

> *"Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,*
>
> *(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;*
>
> *(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:*
>
> > *(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?*
> >
> > *(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?"*

3. The request for an advisory opinion was transmitted to the Court by the Secretary-General of the United Nations by a letter dated 12 April 2023, which was received in the Registry on 17 April 2023.

4. By letters dated 17 April 2023, the Deputy-Registrar gave notice of the request for an advisory opinion to all States entitled to appear before the Court, pursuant to Article 66, paragraph 1, of the Statute.

5. By an Order dated 20 April 2023, the President of the International Court of Justice decided that the United Nations and its Member States were considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion and might do so within the time-limits fixed in that Order; fixed 20 October 2023 as the time-limit within which written statements on the questions might be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute; fixed 22 January 2024 as the time-limit within which States and organizations having presented written statements might submit written comments on the written statements made by other States or organizations, in accordance with Article 66, paragraph 4, of the Statute; and reserved the subsequent procedure for further decision.

6. By an Order dated 4 August 2023, the President of the International Court of Justice extended to 22 January 2024 the time-limit within which all written statements on the questions might be presented to the Court in accordance with Article 66, paragraph 2, of the Statute; extended to 22 April 2024 the time-limit within which States and organizations having presented written statements might submit written comments on the other written statements in accordance with Article 66, paragraph 4, of the Statute; and reserved the subsequent procedure for further decision.

7. Lastly, by an Order dated 15 December 2023, the President of the International Court of Justice extended to 22 March 2024 the time-limit within which all written statements on the questions may be presented to the Court in accordance with Article 66, paragraph 2, of the Statute; extended to 24 June 2024 the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements in accordance with Article 66, paragraph 4, of the Statute; and reserved the subsequent procedure for further decision.

8. The present written statement constitutes the Argentine Republic's (hereinafter, "Argentina") contribution to the Court in these advisory proceedings notwithstanding any further comments and remarks that it could present in accordance with Article 66, paragraph 4, and/or during its oral phase.

9. Argentina joined consensus in favour of this Resolution because it considers that the impacts and adverse effects of climate change in our planet represent one of the most urgent challenges in particular for developing countries, including Small Island Development States, with serious economic, social and environmental consequences that must be considered in the appropriate contexts. As stated in UN Resolution A/RES/77/276, "*climate change is an unprecedented challenge of civilizational proportions and (…) the*

well-being of present and future generations of humankind depends on our immediate and urgent response to it".[1]

In this regard, Argentina would like to commend this initiative and its proponents who took the lead in preparing the draft resolution through several rounds of informal consultations with wide UN membership. Argentina – being a coastal State and a developing country – shares the concerns that derive from the above mentioned Resolution. This request for an advisory opinion is timely, necessary and the guidance that it seeks to get from the Court will be extremely useful in the current global context and for the future. Argentina is convinced that if the international community does not take immediate action to mitigate and adapt to climate change, the lives of people all around the world, especially in developing countries, will be deeply impacted.

10. Argentina is fully committed to combating and mitigating climate change and its adverse effects, as well as adapting to them: it has adopted internal policies in this regard and it actively participates in the existing multilateral climate change regime as a State Party to its conventions such as the United Nations Framework Convention on Climate Change (hereinafter, UNFCCC, 1992), its Kyoto Protocol (1997) and its Paris Agreement (2015). Argentina firmly believes that international cooperation is paramount on this common challenge of climate change and to ensure the protection of the climate system and other parts of the environment.

11. This written statement is divided into four main sections. The first section will address the competence of the General Assembly to request an advisory opinion and the reasons for the Court to exercise its jurisdiction in this regard. The second section is devoted to the applicable law while the third section will present Argentina's views and comments on the questions posed to the Court. Finally, a conclusion states the submissions of Argentina.

[1] UN General Assembly Resolution A/RES/77/276, *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*, adopted on 29 March 2023, first preambular paragraph.

Section I

Jurisdiction of the Court and the Propriety of its Exercise

12. In this section, it will be shown that the General Assembly has competence to request the present advisory opinion, since it raises legal questions falling within the scope of its powers and functions. Likewise, this section addresses the jurisdiction of the Court and the absence of compelling reasons for the Court to use its discretionary power not to exercise its advisory jurisdiction.

A. The Court has jurisdiction to give the advisory opinion requested

13. The competence of the General Assembly to request an advisory opinion of the International Court of Justice is derives directly from Article 96 (1) of the UN Charter, which reads as follows:

> *"The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question."*

14. Both the reference to the General Assembly as one of the two named principal organs of the United Nations and the phrase "any legal question" cast little doubt on the competence of the Assembly to request this advisory opinion.

15. In this regard, the Court has stated that "[i]*t is (...) a precondition of the Court's competence that the advisory opinion be requested by an organ duly authorized to seek it under the Charter, that it be requested on a legal question, and that, except in the case of the General Assembly or the Security Council, that question should be one arising within the scope of the activities of the requesting organ."*[2]

(1) The General Assembly has competence to request the advisory opinion

16. The Court has noted that Article 10 of the Charter "*has conferred upon the General Assembly a competence relating to 'any questions or any matters' within the scope of the Charter*."[3]

17. The request for an advisory opinion by the General Assembly concerns obligations of States under international law to ensure the protection of the climate system and other parts of the environment and the legal consequences under these obligations for States. This

[2] *Application for Review of Judgment No. 273 of the United Nations Administrative* Tribunal, Advisory Opinion, I.C.J. Reports 1982, pp. 333-334, para. 21; see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 144, para. 14, *Legality of the Threat or Use of Nuclear Weapons*, pp. 232-234, paras. 10-13.

[3] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 233, para. 11; Legal Consequences of the construction of a Wall in Occupied Palestinian Territory,* Advisory Opinion, I.C.J. Reports 2004, p. 145, para. 17.

matter relates to compliance with international law and also to issues related to sustainable development, economic growth and climate change.

In this regard, the Charter of the United Nations calls on States to promote "conditions of economic and social progress and development" (Art. 55(a)). In its Declaration on the Right to Development, the General Assembly describes development as "*an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized*" (art. 1). In that Declaration, the General Assembly underscores that States should work individually and collectively to create a locally and globally enabling environment for development in which the benefits of development are equitably shared by all. The emphasis on equity in the right to development provides a direct linkage to sustainable development, which is particularly relevant in the climate change context. In the 2030 Agenda for Sustainable Development, combating climate change is recognized as instrumental in sustainable development (Goal 13), highlighting the importance of addressing climate change to secure sustainable, inclusive and equitable development that benefits all persons.

All this is clearly within the framework of the Charter purposes and principles, and it is of interest for decisions of the United Nations organs and its States Members. In conformity with Chapter IV of the Charter, the General Assembly has the competence to deal with these issues.

18. It should also be noted that the General Assembly has specifically dealt in the past with sustainable development and, in particular, with climate change and the protection of the global climate for humankind in its Resolutions 43/53 of 6 December 1988, 54/222 of 22 December 1999, 62/86 of 10 December 2007, 63/32 of 26 November 2008, 64/73 of 7 December 2009, 65/159 of 20 December 2010, 66/200 of 22 December 2011, 67/210 of 21 December 2012, 68/212 of 20 December 2013, 69/220 of 19 December 2014, 70/205 of 22 December 2015, 71/228 of 21 December 2016, 72/219 of 20 December 2017, 73/232 of 20 December 2018, 74/219 of 19 December 2019, 75/217 of 21 December 2020 and 76/205 of 17 December 2021, Resolution 77/165 of 14 December 2022, Resolution 76/300 of 28 July 2022 on the human right to a clean, healthy and sustainable environment, Resolution 70/1 of 25 September 2015, entitled "*Transforming our world: the 2030 Agenda for Sustainable Development*", among other resolutions and decisions.

19. The General Assembly has a direct interest in ensuring respect for international law in general, in sustainable development, climate change and, and all the more so if the matter is of direct concern to the Organisation as it is reflected on the many Resolutions that it adopted on similar issues.

20. Consequently, Argentina considers that the competence of the General Assembly to request this advisory opinion is well established.

(2) By definition, the question raised is a legal one

21. The second requirement for granting advisory jurisdiction to the Court through the General Assembly is that the question raised is a legal one. According to the Court, questions "*framed in terms of law and rais[ing] problems of international law ... are by their very nature susceptible of a reply based on law ... [and] appear... to be questions of a legal character*".[4]

Along those same lines, the Court stated that it "*can give an advisory opinion only on a legal question. If a question is not a legal one, the Court has no discretion in the matter; it must decline to give the opinion requested*".[5]

22. The questions submitted to the Court for advice in the present case are clearly framed in terms of law and raise problems of international law, relating as they do to some particular obligations of States under international law and to the legal consequences for States under these obligations. As such, *"[they are] by [their] very nature susceptible of a reply based on law; indeed it is scarcely susceptible of a reply otherwise than on the basis of law.*"[6]

23. Therefore, it is hereby submitted that the questions raised are legal ones.

B. There are no compelling reasons preventing the Court to exercise its jurisdiction

24. The Court stated that "[w]*hen seized of a request for an advisory opinion, the Court must first consider whether it has jurisdiction to give the opinion requested and whether, should the answer be in the affirmative, there is any reason why the Court, in its discretion, should decline to exercise any such jurisdiction in the case before it.*"[7]

25. Indeed, "[t]*he Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met. The Court however is mindful of the fact that its answer to a request for an advisory opinion 'represents its participation in the activities of the Organization, and, in principle, should not be refused'. Given its responsibilities as the 'principal judicial organ of the United Nations' (Article 92 of the*

[4] See *Western Sahara, Advisory Opinion, ICJ Reports 1975*, p. 18, para. 15 and *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996*, p. 233, para. 11.
[5] *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion,* 1962, p. 155.
[6] *Legal Consequences of the construction of a Wall in Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, p. 153, para. 37.
[7] *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, *Advisory Opinion*, I.C.J. Reports 2010, para 17.

Charter), the Court should in principle not decline to give an advisory opinion. In accordance with its consistent jurisprudence, only 'compelling reasons' should lead the Court to refuse its opinion. […] The present Court has never, in the exercise of this discretionary power, declined to respond to a request for an advisory opinion. Its decision not to give the advisory opinion on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict requested by the World Health Organization was based on the Court's lack of jurisdiction, and not on considerations of judicial propriety."[8]

26. Within that framework, it should be considered if there are any "compelling reasons" that could lead the Court to refuse its opinion in the present case.

27. As it was previously stated, the issues related to the questions posed to the Court have been of the United Nations' concern for a long time. In that context, the exercise of the advisory jurisdiction should not be refused since "[b]*y lending its assistance in the solution of a problem confronting the General Assembly, the Court would discharge its functions as the principal judicial organ of the United Nations*."[9] The purpose of the advisory jurisdiction is to enable organs of the United Nations and other authorized bodies to obtain opinions from the Court which will assist them in the future exercise of their functions.[10] As such, it is for the Court to provide legal guidance to the General Assembly in this particular matter of direct UN concern.

28. Besides, the Court's advisory opinion will have concrete consequences for the future action of the UN and other international organisations, as well as UN member States.

When explaining the purpose of the exercise of its advisory jurisdiction, the Court has stated: "*The function of the Court is to give an opinion based on law, once it has come to the conclusion that the questions put to it are relevant and have a practical and contemporary effect and, consequently, are not devoid of object or purpose."*[11]

This is the case with the present request of advisory opinion. The question put by the General Assembly is relevant and not one of pure academic interest. Indeed, Argentina is convinced that the advisory opinion that the Court will render with regard to the questions posed will be of practical importance.

The Court has also stated that "*as is clear from the Court's jurisprudence, advisory opinions have the purpose of furnishing to the requesting organs the elements of law necessary for them in their action. […] It follows that the Court cannot decline to answer the question posed based on the ground that its opinion would lack any useful purpose. The*

[8] *Legal Consequences of the construction of a Wall in Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, para. 44.
[9] *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 21, para. 23.
[10] *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, *Advisory Opinion*, I.C.J. Reports 2010, para. 44.
[11] *Western Sahara, Advisory Opinion*, I.C.J. Reports *1975*, p. 37, para. 73.

Court cannot substitute its assessment of the usefulness of the opinion requested for that of the organ that seeks such opinion, namely the General Assembly."[12]

29. It should also be recalled that up to today, the Court has never declined to render an advisory opinion requested by the General Assembly.

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30. For the abovementioned reasons, Argentina considers that the Court has jurisdiction to render an advisory opinion. Furthermore, there are not compelling reasons for the Court not to give its answer. On the contrary, the request by the General Assembly raises fundamental issues that would benefit from the guidance of the Court in its advisory opinion.

[12] *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, *Advisory Opinion*, I.C.J. Reports 2010, paras. 60, 62.

Section II

Applicable law

31. The question submitted by the General Assembly concerns the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations; and the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment.

32. In order to respond to it, "*the Court must identify the existing principles and rules, interpret them and apply them […], thus offering a reply to the question posed based on law*."[13]

It is well known that, in view of the Court, "[i]*n seeking to answer the question put to it by the General Assembly, the Court must decide, after consideration of the great corpus of international law norms available to it, what might be the relevant applicable law*".[14]

33. The questions posed require the Court to have "*particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment (…)".*

34. In light of Article 96 of the United Nations Charter, Articles 38 and 65, paragraph 1, of the Statute of the Court, the Court will then have to apply not only the legal instruments and principles identified in the previous paragraph, as requested by the UN General Assembly, but also any other source of international law that the Court considers to be applicable, to render its advisory opinion.

Taking into account that the questions are related to climate change, of particular relevance will be the Principles of the Rio Declaration on Environment and Development, the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement, adopted under the UNFCCC, and the United Nations Convention on the Law of the Sea.

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[13] *Legal Consequences of the construction of a Wall in Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, para. 13.

[14] *Legal Consequences of the construction of a Wall in Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, para. 23.

35. Notwithstanding that, it should be recalled, as it was recognized by the Court in its case on *The Legality of threat or the use of nuclear weapons*, that the Tribunal, when answering to the questions, cannot legislate: "*Rather its task is to engage in its normal judicial function of ascertaining the existence or otherwise of legal principles and rules (...) it states the existing law and does not legislate*".[15]

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[15] Cf. ICJ, *Legality of threat or the use of nuclear weapons*, Advisory Opinion, ICJ Reports 1996, p. 237, para 18.; ICJ, *Western Sahara*, Advisory Opinion, ICJ Reports 1975, 12, para 33; ITLOS, *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (Request for Advisory Opinion submitted to the Tribunal)*, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, para. 73-74. (Para. 74: "*The Tribunal also wishes to make it clear that it does not take a position on issues beyond the scope of its judicial functions*.")

Section III

Argentina's views and comments on the questions posed to the Court

36. On a preliminary basis, Argentina would like to stress the importance of considering both, the preambular and the operative sections of Resolution A/RES/77/276 adopted by the General Assembly, as a whole. In this regard, it should be noted that United Nations' Member States joined consensus on the grounds that both sections represented a delicate balance and that the preambular section contextualizes and gives framework to the questions.

37. Having stated that, Argentina would like to convey hereby some general remarks and comments for the Court to take into consideration when rendering its advisory opinion:

38. *The right to a clean, healthy and sustainable environment is critical to the enjoyment of all human rights*

As stated by the Court "*the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn.*"[16]

Human Rights Council resolution 48/13 of 8 October 2021, entitled "*The human right to a clean, healthy and sustainable environment*"[17], recognized the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights.

It also noted that the right to a clean, healthy and sustainable environment is related to other rights and existing international law.

On the other hand, it affirmed that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law.

Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy human rights, including the right to life.

The Inter-American Court of Human Rights stated that "[o]*wing to the close connection between environmental protection, sustainable development and human rights*

[16] ICJ, *Legality of threat or the use of nuclear weapons*, Advisory Opinion, ICJ Reports 1996, pp. 241-242, para. 29.

[17] Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 53A (A/76/53/Add.1), chap. II (Argentina voted in favour of this Resolution). Also UN General Assembly Resolution A/76/L.75, Seventy-sixth session, 26 July 2022.

(supra paras. 47 to 55), currently (i) numerous human rights protection systems recognize the right to a healthy environment as a right in itself, particularly the Inter-American human rights system, while it is evident that (ii) numerous other human rights are vulnerable to environmental degradation, all of which results in a series of environmental obligations for States to comply with their duty to respect and to ensure those rights."[18]

In this context, States have the obligation to respect, protect and promote human rights, including in all actions undertaken to address environmental challenges, and to take measures to protect the human rights of all, as recognized in different international instruments, and additional measures should be taken for those who are particularly vulnerable to environmental degradation, noting the framework principles on human rights and the environment.[19]

States also have to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.

39. *The principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) is the core guiding principle of the whole climate change regime*

One of the main reasons why Argentina joined the consensus in Resolution A/RES/77/276 adopted by the General Assembly was the recognition in of the Principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC) in its Preamble. This principle is paramount and should be reaffirmed since it is the core guiding principle of the whole climate change regime.

In this regard, even though the questions posed to the Court do not explicitly refer to it, it is imperative that when addressing the questions and the responsibilities of States, this principle be considered and that it guides the considerations of the Court. Moreover, the obligations of States under international law must be considered bearing in mind the CBDR-RC principle, which is recognized in the United Nations Framework Convention on Climate Change and its Paris Agreement.

This principle is a direct corollary of the historical responsibilities of developed countries concerning environmental degradation, and of the recognition that the largest share of historical and current global emissions of greenhouse gases was originated by developed countries. It also reflects the acknowledgement of the specific needs and special circumstances of developing countries, and is inextricably linked to the right to sustainable development, which is an overriding priority of developing countries.

[18] Inter-American Court Of Human Rights, *Advisory Opinion Oc-23/17*, requested by the Republic of Colombia, 15 November 2017, paragraph 55.
[19] UN General Assembly Resolution A/76/L.75, Seventy-sixth session, 26 July 2022.

It is important to underline that all State obligations regarding climate change must be interpreted in light of this principle, which clearly differentiates between the responsibilities and obligations of "developed countries" and "developing countries", while it is the basis of the specific substantive obligations for developed countries, as it is evidenced in the UNFCCC, its Paris Agreement and the Kyoto Protocol.

The principle of "Common but Differentiated Responsibilities" should be understood as defined in principle 7 of the Rio Declaration on the Environment and Development:

> *"States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command."*

The CBDR principle is also reaffirmed in the United Nations 2030 Agenda for Sustainable Development. The 2030 Agenda is the current overarching and guiding framework for the achievement of sustainable development by the international community, and should be seen as the "umbrella" of the implementation of all multilateral environmental agreements, including the UNFCCC and its Paris Agreement. Its paragraph 12 provides the following:

> *"We reaffirm all the principles of the Rio Declaration on Environment and Development, including,* inter alia*, the principle of common but differentiated responsibilities, as set out in principle 7 thereof".*

Moreover, this principle is recognized in the preambular paragraph 6 and in the first paragraph of Article 3.1 of the UNFCCC, as the first Principle:

> *"The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities."*

In a similar manner, the Paris Agreement reiterates this core principle in its Article 2, which refers to its objectives:

> *"This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances."*

It is should be noted that this article also adds the expression "*in light of different national circumstances*", so as to explicitly recognize the different starting points between States in their efforts to address climate change.

As a logical consequence of this guiding principle, the UNFCCC further provides in its Article 3.1, second paragraph, that:

> *"Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof."*

This obligation is reiterated in its Article 4.1, which applies to *"all countries taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances"*, as well as in Art 4.4, which provides that:

> *"Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances."*

Developed countries have additional obligations towards developing countries, as a corollary of the recognition of the considerably greater responsibility of developed countries. Not only do developed countries have the obligation to take the lead in climate action and ambition, but they must also provide the necessary means of implementation to developing countries, which includes financial resources, technology transfer and capacity-building. This is reflected in Articles 4.2, 4.3, 4.4, 4.5 of the UNFCCC, that specify commitments that apply only to "developed country Parties", which include - among others - adopting policies and measures to demonstrate that they are effectively taking the lead in their efforts (4.1), as well as the provision of new and additional financial resources to developing countries to comply with their own respective obligations (4.3), and to take steps to promote, facilitate and finance the transfer of technology and support the development and enhancement of endogenous capacities of developing country parties (4.5).

Similar obligations can be found in the Paris Agreement: its Article 9 refers to the provision of financial resources from developed countries to developing countries, as well as to their leading role in mobilizing climate finance from other sources; Article 10 refers to technology transfer, including the provision of support for developing countries; and Article 11 refers to capacity-building, which should enhance the capacity and ability of developing country parties.

Accordingly, the UNFCCC recognizes in its Article 4.7 that "*The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology*" and that this must also "*take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.*"

However, it is important to note that these obligations of developed countries to provide means of implementation to developing countries have not yet been fulfilled, which poses a challenge for developing countries to fully achieve our collective ambition in this matter. In this very same sense, the preambular paragraph 12 of the UN Resolution A/RES/77/276 expresses "*serious concern that the goal of developed countries to mobilize jointly USD 100 billion per year by 2020 in the context of meaningful mitigation actions and transparency on implementation has not yet been met, and [urges] developed countries to meet the goal* (…)" The lack of provision of means of implementation from developed countries to developing countries could be particularly relevant when considering the legal consequences of the obligations referred to in the questions posed to the Court.

Notwithstanding that, many developing countries worldwide – which are also among the most affected by the negative impacts of climate change – are adopting ambitious goals for emission reductions that surpass their respective share of responsibility on climate change. Argentina, for example, being a marginal emitter worldwide (0.8% of global emissions) has increased its ambition to reduce emissions by 27.7% in its latest Nationally Determined Contribution (NDC, 2021) considering our previous NDC (2016), and has developed and continues to undertake sectorial plans, strategies and policies to implement its goals, even in the context of limited fiscal space.

40. *No new categorization of countries*

Countries' categorization as was agreed in the UNFCCC and its Paris Agreement must be respected.

Moreover, the special needs and circumstances of developing countries must be considered and any new category of countries that do not reflect the consensus of the international community shall be avoided.

The first and biggest categories of countries in UNFCCC are "developed" and "developing countries". While "developed countries" are included under "Annex I", "developing countries" are "Non-Annex I".

Under its Article 4.8 the following sub-categories of developing countries are identified:

"In the implementation of the commitments in this Article, the Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on:

(a) Small island countries;

(b) Countries with low-lying coastal areas;

(c) Countries with arid and semi-arid areas, forested areas and areas liable to forest decay;

(d) Countries with areas prone to natural disasters;

(e) Countries with areas liable to drought and desertification;

(f) Countries with areas of high urban atmospheric pollution;

(g) Countries with areas with fragile ecosystems, including mountainous ecosystems;

(h) Countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products; and

(i) Landlocked and transit countries"

Likewise, under the Paris Agreement general acknowledgements of the special needs of developing countries are included several times. It also lists the following sub-categories of developing countries: Least Developed Countries and Small Island Developing States.

41. *Not threatening food production imperative*

Any response to climate change, in line with the UNFCCC and its Paris Agreement, must recognize and take into account the fundamental priorities of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change. As a consequence, they have to ensure that food production is not threatened.

The UNFCCC expressly provides in its Article 2 that its objective is the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference in the climate system, and that "*such a level*

would be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner."

The Preamble of the Paris Agreement also contains a reference to this priority and to the particular vulnerabilities of food production systems to the adverse impacts of climate change in its preambular paragraph 9 that reads as follows:

> *"Recognizing the fundamental priority of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change."*

Moreover, its Article 2 clearly provides that, "*in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by: (...) (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production…*"

As one of the major world producers and exporters of quality, safe and nutritious food, Argentina highlights the imperative role of food production for humanity, contributing to eradicate hunger and poverty, overriding priorities of the international community according to the United Nations 2030 Agenda and its Sustainable Development Goals, in particular SDGs 1 and 2.

According to the Food and Agriculture Organization (FAO) latest report on "*The State of the World Food Security and Nutrition (2023)*" (2023 SOFI Report), "*global hunger is still far above pre-pandemic levels. It is estimated that between 690 and 783 million people in the world faced hunger in 2022. This is 122 million more people than before the COVID-19 pandemic.*" In this scenario, where about one-tenth of the global population faces hunger, in order to meet the increasing demand for food globally, the Court should duly consider that it is critical to find strategies to produce more and better food, while addressing the adverse impacts of climate change on agriculture and food production.

At the same time, the particular vulnerability of agriculture and food production systems to the adverse effects of climate change needs to be duly considered: adaptation of agriculture to those impacts – including droughts, fires, flooding and other extreme climatic events – is an urgent task in the context of the need to feed a growing world population.

In this scenario, it is essential not only to advance the adaptation of agriculture to the impacts of climate change, but also to conclude the World Trade Organization (WTO) negotiations to reform the multilateral trade agricultural rules, whose unfulfilled mandate

already exceeds more than a quarter of a century. Recent reports from the FAO, WTO, the Organization for Economic Cooperation and Development (OECD) and other international organizations highlight that agricultural subsidies applied by some developed countries not only lead to inefficiency in production, but are also harmful to the environment and they contribute to climate change. It is therefore essential to ensure a transparent, open and equitable international trading system for agricultural products, which will in turn contribute to the fight against climate change, considering the effect that agricultural subsidies have on the overexploitation of natural resources.

42. *Sovereign right to exploit own resources*

It should be duly taken into account that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies. In this regard, principle 2 of the Rio Declaration on Environment and Development states that:

> *"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."*

In a similar sense, Preambular Paragraph 8 of the UNFCCC states:

> *"Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction"*

43. *The priority of developing countries to eradicate poverty and to achieve sustainable development must be considered*

As stated in Preambular Paragraph 8 of Resolution A/RES/77/276 adopted by the General Assembly, when considering the different obligations of States the Court must take into account the urgent need of developing countries to eradicate poverty in all its forms and dimensions and to achieve sustainable development. The different starting point between developed countries and developing countries in the fight against climate change is undeniable in this regard and must be duly taken into account.

Along the same lines, the Preamble of the UNFCCC provides as follows:

"Affirming that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty" (paragraph 21).

44. *Measures should not constitute a means of arbitrary or unjustifiable discrimination*

According to principle 12 of Rio Declaration on Environment and Development:

"States should co-operate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus."

The spirit of this principle was also included in the UNFCCC in its Article 3.5:

"The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade."

In this context, it is important to avoid a "green protectionism" on grounds related to climate change, including unilateral measures which could constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade, in a manner inconsistent with the principles contained in articles 3.1 and 3.5 of the UNFCCC.

The fight against climate change should not penalize global trade, considering that it is an engine of development and for the fight against poverty and hunger, as recognized in paragraph 68 of the 2030 United Nations Agenda: *"International trade is an engine for inclusive economic growth and poverty reduction, and contributes to the promotion of sustainable development."*

Moreover, the need to avoid and minimize the adverse economic and social effects of response measures on developing countries, in line with Articles 4.8, 4.9 and 4.10 of the

UNFCCC, articles 2.3 and 3.14 of the Kyoto Protocol and Article 4.15 of the Paris Agreement, should be also duly taken into consideration. The concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties, cannot be disregarded. Therefore, it is important to ensure that response measures be the most effective to achieve the objective of combatting climate change and the least restrictive of international trade. At the same time, they should contribute to safeguard food security and to achieve a just transition of the workforce. They should also promote the creation of decent work and quality jobs, in accordance with nationally defined development priorities. Finally, States must be guided in their response to climate change by the best available science, as provided for by the Paris Agreement, in particular its Articles 4.1, 7.5, and 14.1.

45. *Importance of international cooperation*

International cooperation, on the basis of mutual respect, in full compliance with the principles and purposes of the UN Charter, with full respect for the sovereignty of States while taking into account national priorities, is also of paramount importance.

International cooperation has an essential role in assisting developing countries, including highly indebted poor countries, least developed countries, landlocked developing countries, Small Island Developing States, as well as the specific challenges faced by middle-income countries, in strengthening their human, institutional and technological capacity.

46. Having conveyed these remarks and comments of a general character, Argentina would like to share now some comments in relation to the questions posed to the Court in particular.

47. Concerning the first question posed to the Court, related to the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations, it should be duly taken into account that its subject matter is related to climate change and that there is a specific legal regime that governs the matter. In this framework, the main sources of international law that the Court should consider when answering to this question are those of this specific regime, that is to be: the principles of the Rio Declaration on Environment and Development, including its principle 2 on the sovereign right of States to exploit their own resources, principle 3 on the Right to Development, principle 7 on the common but differentiated responsibilities and respective capabilities (CBDR-RC), and principle 12 on a supportive and open international economic system; as well as the UNFCCC, the Kyoto Protocol and the Paris Agreement, adopted under the UNFCCC.

48. Likewise, when it comes to the duty to protect and preserve the marine environment in the face of the protection of the climate system in particular, there is also a specific legal regime that governs the matter: the United Nations Convention on the Law of the Sea (hereinafter, "UNCLOS").

Preliminarily, it should be noted that the International Tribunal for the Law the Sea (ITLOS) is currently deliberating on the duties of States to protect the marine environment in the face of climate change under its Case 31 "*Request for an Advisory Opinion submitted to the Tribunal en banc by the Commission of Small Island States on Climate Change and International Law (COSIS)*". The request to render an advisory opinion on such matters was presented to the International Tribunal for the Law of the Sea by the Commission of Small Island States on Climate Change and International Law on 12 December 2022.

Argentina participated in those proceedings sharing its views and comments during the oral phase. In this regard, Argentina stated its position with an oral statement that was delivered on 13 September 2023.[20] Notwithstanding that, Argentina would like to hereby ratify and reiterate its position on this matter.

In this regard, Argentina considers that States Parties to UNCLOS have specific obligations under the Convention, particularly under its Part XII, 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; and to protect and preserve the marine environment in relation to climate change impacts, in particular in accordance with their national capabilities, within a framework of cooperation, and in light of the principle of common but differentiated responsibilities.

Article 1, 1 (4) of the Convention provides that

> *(4) "pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;(…)"*

It is important to note that this Article applies only to pollution of anthropogenic origin; potential pollutants are an extremely wide category; and any substance or form of

[20] ITLOS, *Request for an Advisory Opinion submitted to the Tribunal en banc by the Commission of Small Island States on Climate Change and International Law (COSIS) (Case No 31),* Argentine Republic Oral Statement, 13 September 2023, available at: https://www.itlos.org/fileadmin/itlos/documents/cases/31/Oral_proceedings/verbatim_records_rev/ITLOS_PV23_C31_6_Rev.1_E.pdf

energy introduced by humans into the marine environment will constitute pollution within the meaning of UNCLOS and be regulated by it if it has, or is likely to have, a "deleterious effect" of the kind referred to in that Article.[21]

The UNCLOS Convention then identifies six sources of marine pollution: pollution from land-based sources; pollution from sea-bed activities subject to national jurisdiction; pollution from activities in the Area; pollution by dumping; pollution from vessels; and pollution from or through the atmosphere (Articles 207 to 212 of UNCLOS).

Part XII – headed "Protection and Preservation of the Marine Environment" – establishes the obligation for all UNCLOS States Parties to protect and preserve the marine environment. Indeed, it provides the framework for tackling marine pollution by calling on States Parties to adopt international rules and standards to address pollution from each source; by requiring States to legislate to implement such rules and standards and to enforce that legislation; by setting the jurisdictional parameter for individual States to regulate marine pollution going beyond international rules and standards; and by briefly addressing questions of liability and compensation.[22]

Article 194 of UNCLOS provides in this regard that:

> *"1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities".*

This Article sets forth the obligation for all States Parties to prevent, reduce and control pollution of the marine environment from any source. The recognition that States must act with "*the best practicable means at their disposal*" and "*in accordance with their capabilities*" determines that this is an obligation of conduct and "due diligence" and not of result.[23]

Besides, since it allows for a differentiation between States based on their national capabilities, this is in line with the principle of common but differentiated responsibilities. This principle is also reflected in other Articles of UNCLOS like Article 207 (4), that provides that in the case of pollution from land-based sources, any international rules and standards adopted shall take "into account characteristic regional features, the economic capacity of developing States and their need for economic development"; Articles 202 and

[21] Cf. Robin Churchill, Vaughan Lowe, Amy Sander, *The Law of the Sea*, Fourth Edition, Manchester University Press, 2022, p. 621.
[22] Cf. Robin Churchill, Vaughan Lowe, Amy Sander, *Op. Cit.*, p. 624.
[23] ITLOS, *Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber)*, ITLOS Seabed Chamber, February 2011, para. 110-112.

203 that call for the provision of financial and technical assistance to developing States for the protection and preservation of the marine environment; and in its Part XIV that provides for the development and transfer of marine technology.

According to paragraph 2 of Article 194 States shall also take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with the Convention. This is in line with the "no harm principle" recognized by the Court[24] and by ITLOS.[25] In addition to that, paragraph 3 of that Article provides that "[t]*he measures taken pursuant to this Part* [Part XII] *shall deal with all sources of pollution of the marine environment*" and paragraph 5 makes special emphasis on the importance of protecting and preserving rare or fragile ecosystems, and the habitat of threatened marine species.

On the other hand, just like in the global efforts to combat climate change, international cooperation has a capital importance in the protection and preservation of the marine environment.[26] Indeed, Article 197 of the Convention provides that "*States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with [the] Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.*" Along those same lines, ITLOS recognized in the MOX Plant Case that "*the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law*." This was recalled by ITLOS in its Case 21[27] and the Court had expressed in the *Pulp Mills* Case that "(…) *it is by co-operating that the States concerned can jointly manage the risks of damage to the environment* (…)"[28]

In addition to that, Part XII contains numerous calls for cooperation in relation to specific matters, for example in relation to scientific research concerning protection of the

[24] ICJ, *Legality of threat or the use of nuclear weapons*, Advisory Opinion, ICJ Reports 1996, p. 29; *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, 1997, para. 53.
[25] ITLOS, *Dispute concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean*, Order of 25 April 2016, ITLOS Reports 2016, para. 71: ("*Considering further that: [t]he existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment (…)"*).
[26] Principles 7 and 27 of the Rio Declaration also set this principle.
[27] ITLOS, *MOX Plant* (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, p. 95, at p. 110, para. 82. ITLOS also cited this para. 82 in its Advisory Opinion, 2 April 2015, *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (Request for Advisory Opinion submitted to the Tribunal)*, ITLOS Reports 2015, para. 140.
[28] ICJ, *Pulp Mills on the River Uruguay* (Argentina v. Uruguay), Judgement, ICJ Reports 2010, para. 77.

marine environment (Articles 200, 201 and 202) and the development of international rules and standards to prevent marine pollution (like in Article 212 (3))[29]. As it was previously underlined, these obligations are reinforced by the principle of common but differentiated responsibilities that call for cooperation between developed and developing countries in their efforts to protect and preserve the marine environment, and by similar compatible obligations under the multilateral climate change regime for developed countries.

Other obligations include those of Articles 198 and 199. According to Article 198 of the Convention, when a State becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution, it shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations. And Article 199 of UNCLOS provides that in the cases referred to in Article 198, States in the area affected, in accordance with their capabilities, and the competent international organizations shall cooperate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. To this end, States shall jointly develop and promote contingency plans for responding to pollution incidents in the marine environment.

According to Article 206, there is also an obligation, as far as practicable, to assess the potential effects on the marine environment of planned activities under their jurisdiction or control:

> *"When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205."*

In this regard, it should be recalled that in the multilateral climate change regime, particularly in the Paris Agreement, States have recognized the need to respond to the urgent threat of climate change on the basis of the best available scientific knowledge (Preamble Para. 4, Art. 4.1, Art 7.5, Art 14.1 of the Paris Agreement), and that this criteria should be considered when analyzing the standard of "reasonable grounds" in Article 206 of UNCLOS, as well as the basis of all climate action.

Particularly relevant to the first question is also the provision of Article 212 of the Convention that concerns pollution from or through the atmosphere. Article 212 (3) of UNCLOS calls on States, acting especially through competent international organizations or diplomatic conference, to endeavour to establish global and regional rules, standards and recommended practices and procedures to prevent, reduce and control pollution from or

[29] Cf. Robin Churchill, Vaughan Lowe, Amy Sander, *Op. Cit.*, p. 618-619.

through the atmosphere. Articles 212 (1), (2) and 222 of UNCLOS provide that States shall adopt and enforce laws, regulations and other measures to prevent, reduce and control pollution of the marine environment from or through the atmosphere, applicable to the air space under their sovereignty and to vessels flying their flag or vessels or aircraft of their registry, taking into account internationally agreed rules, standards and recommended practices and procedures and the safety of air navigation. Under Article 194 (3) (a), such laws, regulations and measures shall be designed to minimize to the fullest possible extent emissions of "toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping."

Summarizing, it is clear from these Articles that UNCLOS, in particular its Part XII, does provide for a series of obligations for States Parties in regards to the protection of the climate system, aiming at the prevention, reduction and control of pollution of the marine environment from all activities that contribute to exacerbating the effects of climate change, in accordance with their capabilities, within a framework of cooperation, and in light of the principle of common but differentiated responsibilities; and that this interpretation is compatible with other obligations within UNCLOS, its principles and objectives.

Besides, Article 192 of UNCLOS imposes a general obligation on all States Parties in the following terms: "*States have the obligation to protect and preserve the marine environment*."

Indeed, Article 192 does impose a duty on States Parties, the content of which is informed by the other provisions of Part XII and other applicable rules of international law. This "general obligation" extends both to "protection" of the marine environment from future damage and "preservation" in the sense of maintaining or improving its present condition. Article 192 thus entails the positive obligations to take active measures to protect and preserve the marine environment, and by logical implication, entails the negative obligation not to degrade the marine environment.

The content of the general obligation in Article 192 is further detailed in the subsequent provisions of Part XII, including Article 194, as well as by reference to specific obligations set out in other international agreements.

According to ITLOS, a State's obligations under Article 192 apply not only within its own maritime zones (including internal waters) but also to areas within the jurisdiction of other States and to areas beyond national jurisdiction.[30] Moreover, in the SFRC Advisory Opinion (2015), ITLOS stated that the reference to the "marine environment" in Article 192

[30] ITLOS, *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (Request for Advisory Opinion submitted to the Tribunal)*, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, para. 120. Cf. Robin Churchill, Vaughan Lowe, Amy Sander, *Op. Cit.*, p. 618-619.

included the conservation of the living resources of the sea and other marine life.[31] In the *Southern Bluefin Tuna Cases*, that Tribunal observed that "the conservation of the living resources of the sea is an element in the protection and preservation of the marine environment."[32]

There is also an obligation on States to exercise due diligence to prevent their nationals from violating Article 192. That obligation includes a duty to enact rules and measures to prevent such violations, and to "maintain a level of vigilance in enforcing those rules and measures".[33]

In summary, Article 192 of UNCLOS establishes a general substantive obligation to protect and preserve the marine environment which is widely regarded to reflect customary international law. As with Article 194, this obligation also needs to be interpreted in light of the principle of common but differentiated responsibilities, and with other obligations contained in UNCLOS, its principles and objectives.

Closely related to it and in line with the general remark previously stated, Article 193 provides that "*States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment*." This means that the right of States to exploit the natural resources of their maritime zones is subject to the obligation set forth in Article 192 to protect and preserve the marine environment.

49. Concerning the second question posed to the Court, related to the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, Argentina, as a developing country, would like to highlight that, when referring to the responsibilities of States, not all of them can be treated equally. As it has been previously explained, a differentiation between the responsibilities of developed countries and those from developing countries is necessary and cannot be ignored.

In addition to that, not only Small Island Developing States but also developing countries should be particularly considered since they have specific needs, circumstances and priorities and they are all also affected by or are particularly vulnerable to the adverse effects of climate change.

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[31] ITLOS, *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (Request for Advisory Opinion submitted to the Tribunal)*, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, paras. 120 and 216.

[32] ITLOS, *Southern Bluefin Tuna* (New Zealand v. Japan; Australia v. Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999, p. 280, at p. 295, para. 70.

[33] ITLOS, *Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (Request for Advisory Opinion submitted to the Tribunal)*, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, paras. 120, 124, 131 and 136.

Conclusions and submissions

50. On the basis of the arguments set out above, Argentina respectfully submits that the following elements should be part of the answers of the Court to the questions raised by the General Assembly in its request for an advisory opinion contained in Resolution A/RES/77/276:

(a) The Court has jurisdiction to answer the questions raised by the General Assembly;

(b) There are not compelling reasons preventing the Court from exercising its advisory jurisdiction;

(c) The right to a clean, healthy and sustainable environment is critical to the enjoyment of all human rights, and its promotion requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;

(d) The principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) is paramount and must be taken in account as the core guiding principle of the whole climate change regime;

(e) Countries' categorization as was agreed in the UNFCCC and its Paris Agreement must be respected and the special needs and circumstances of developing countries must be considered;

(f) Any response to climate change, in line with the UNFCCC and its Paris Agreement, must recognize and take into account the fundamental priorities of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change. As a consequence, they have to ensure that food production is not threatened;

(g) States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies;

(h) When considering the different obligations of States, the urgent need of developing countries to eradicate poverty in all its forms and dimensions and to achieve sustainable development must be taken into account, as well as the different starting point between developed countries and developing countries in the fight against climate change;

(i) The fight against climate change should not penalize global trade and measures taken to combat climate change, including unilateral ones, should not constitute a

means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade;

(j) International cooperation, on the basis of mutual respect, in full compliance with the principles and purposes of the UN Charter, with full respect for the sovereignty of States while taking into account national priorities, is also of paramount importance and has an essential role in assisting developing countries. States should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all States, particularly developing countries, thus enabling them better to address the problems of climate change;

(k) There is a specific legal regime that governs issues related to climate change and the main sources of international law that the Court should consider when rendering its advisory opinion are: the principles of the Rio Declaration on Environment and Development, including its principle 2 on the sovereign right of States to exploit their own resources, principle 3 on the Right to Development, principle 7 on the common but differentiated responsibilities and respective capabilities (CBDR-RC), and principle 12 on a supportive and open international economic system; as well as the UNFCCC, the Kyoto Protocol and the Paris Agreement, adopted under the UNFCCC;

(l) Concerning the duty to protect and preserve the marine environment, States Parties to the United Convention on the Law of the Sea have specific obligations under the Convention, particularly under its Part XII, 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; and to protect and preserve the marine environment in relation to climate change impacts, in particular in accordance with their national capabilities, within a framework of cooperation, and in light of the principle of common but differentiated responsibilities.

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Minister Rosa Delia GÓMEZ DURÁN

Legal Adviser - Ministry of Foreign Affairs,

International Trade and Worship

Argentine Republic