

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2023

Public sitting

held on Wednesday, 13 September 2023, at 3 p.m.,
at the International Tribunal for the Law of the Sea, Hamburg,
President Albert J. Hoffmann presiding

**REQUEST FOR AN ADVISORY OPINION SUBMITTED BY THE COMMISSION OF
SMALL ISLAND STATES ON CLIMATE CHANGE AND INTERNATIONAL LAW**

(REQUEST FOR ADVISORY OPINION SUBMITTED TO THE TRIBUNAL)

Verbatim Record

<i>Present:</i>	President	Albert J. Hoffmann
	Vice-President	Tomas Heidar
	Judges	José Lu�s Jesus
		Stanislaw Pawlak
		Shunji Yanai
		James L. Kateka
		Boualem Bouguetaia
		Jin-Hyun Paik
		David Joseph Attard
		Markiy�n Z. Kulyk
		Alonso G�mez-Robledo
		�scar Cabello Sarubbi
		Neeru Chadha
		Kriangsak Kittichaisaree
		Roman Kolodkin
		Liesbeth Lijnzaad
		Mar�a Teresa Infante Caffi
		Jielong Duan
		Kathy-Ann Brown
		Ida Caracciolo
		Maurice K. Kamga
	Registrar	Ximena Hinrichs Oyarce

List of delegations:

STATES PARTIES

Argentina

Mr Gabriel Herrera, Minister, Legal Adviser, Ministry of Foreign Affairs, International Trade and Worship

Ms Maite Fernandez Garcia, Minister, General Consul of the Argentine Republic to Hamburg

Mr Mariano Pagliettini, Third Secretary, General Consulate of the Argentine Republic to Hamburg

Bangladesh

Mr Md. Khurshed Alam, Rear Admiral (Retd.), BN, Secretary, Maritime Affairs Unit, Ministry of Foreign Affairs

Mr Payam Akhavan, SJD OOnt FRSC, Professor of International Law, Chair in Human Rights, and Senior Fellow, Massey College, University of Toronto; member, Permanent Court of Arbitration; associate member, Institut de droit international; member, Bar of New York; member, Law Society of Ontario

Ms Catherine Amirfar, Debevoise & Plimpton LLP; member, Bars of New York and of the Supreme Court of the United States; Immediate Past President, American Society of International Law

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Ms Perpétua B. Chéry, Debevoise & Plimpton LLP, member, Bar of New York

Ms Sara Kaufhardt, Debevoise & Plimpton LLP, member, Bar of New York

Ms Evelin Caro Gutierrez, Debevoise & Plimpton LLP; member, Bar of New York

Ms Alix Meardon, Debevoise & Plimpton LLP; member, Bar of New York

1 **THE PRESIDENT:** Good afternoon. We will continue the hearing in the Request for
2 an Advisory Opinion submitted by the Commission of Small Island States on Climate
3 Change and International Law.

4
5 At the outset, I wish to note that we have been informed by Bolivia that they will not
6 be able to participate in the hearing. The schedule of this afternoon's sitting has
7 been revised to take this into account. Accordingly, we will hear oral statements from
8 two delegations: Argentina and Bangladesh.

9
10 You have the floor, Sir.

11
12 **MR HERRERA:** Mr President, Mr Vice-President, honourable members of the
13 Tribunal, it is a great honour for me to appear before this distinguished Tribunal
14 representing the Argentine Republic.

15
16 With your permission, I will be presenting to you the comments of the Argentine
17 Republic with regard to the Request for an Advisory Opinion submitted to the
18 Tribunal *en banc* by the Commission of Small Island States on Climate Change and
19 International Law ("COSIS") (Case No. 31), in response to the invitation to do so
20 circulated to the United Nations Convention on the Law of the Sea ("*UNCLOS*")
21 States Parties by Order 2023/4 dated 30 June 2023, of the President of the
22 International Tribunal for the Law of the Sea.

23
24 Mr President, distinguished members of the Tribunal, my presentation will be
25 structured in four parts, as follows. Firstly, I will be sharing Argentina's views and
26 comments on the jurisdictional matters of this Request; secondly, I will be
27 considering the applicable law; thirdly, I will be presenting Argentina's views and
28 comments on the two questions posed by COSIS to the Tribunal; and, finally, I will
29 be summarizing Argentina's conclusions and submissions.

30
31 Before that, allow me to briefly make some preliminary remarks, considering that
32 Argentina did not take part in the written phase of this Request. First of all, Argentina
33 would like to hereby ratify, once again, its full support to the International Tribunal for
34 the Law of the Sea and its judicial functions. The Argentine Republic firmly believes
35 that ITLOS is a fundamental institution of the contemporary Law of the Sea and we
36 attach utmost importance to its functions.

37
38 Secondly, the impacts and adverse effects of climate change on oceans represent
39 one of the most urgent challenges in particular for developing States, including Small
40 Island Developing States, with serious economic, social and environmental
41 consequences that must be considered in the appropriate contexts. In this regard,
42 Argentina, being a coastal and a developing State, shares the concern of the
43 Member States of COSIS. Argentina is convinced that if we do not take immediate
44 action as international community to mitigate and adapt to climate change, the lives
45 of people all around the world, especially in developing countries, will be deeply
46 impacted.

47
48 Argentina is fully committed to combating and mitigating climate change and its
49 adverse effects, as well as adapting to them: we have adopted internal policies in
50 this regard and we actively participate in the existing multilateral climate change

1 regime as a State Party to its conventions, such as the United Nations Framework
2 Convention on Climate Change (UNFCCC, 1992), its Kyoto Protocol (1997) and its
3 Paris Agreement (2015). We believe that international cooperation is paramount and,
4 particularly, we are committed to continuing our cooperation with the Small Island
5 Developing States on this common challenge of climate change and the protection
6 and preservation of our oceans.

7
8 Having made those preliminary remarks, I would like to turn now to the consideration
9 of the aspects related to the advisory jurisdiction of the full Tribunal in this Request.

10
11 According to the letter dated 12 December 2022, signed by the Co-Chairs of the
12 Commission of Small Island States on Climate Change and International Law, the
13 Request bases the Tribunal's jurisdiction on article 21 of the Statute of the Tribunal;
14 article 138 of the Rules of the Tribunal; and article 2(2) of the Agreement for the
15 Establishment of the Commission of Small Island States on Climate Change and
16 International Law.

17
18 Let us recall that in Case No. 21 *Request for an advisory opinion submitted by the*
19 *Sub-Regional Fisheries Commission (SRFC)*, Argentina expressed the view that no
20 clause in the Convention nor in the Statute of the Tribunal explicitly provides for an
21 advisory jurisdiction of a general scope for the Tribunal as a full court. Advisory
22 opinions are only mentioned in the Convention as procedures that may take place in
23 accordance with the relevant provisions of Part XI under the competence of the
24 Seabed Disputes Chamber.¹

25
26 We also state that we did not consider article 21 of the Statute as providing for an
27 advisory jurisdiction of a general scope for the Tribunal as a full court applicable to
28 all States Parties to UNCLOS² but that the rule specifically allowing for the possibility
29 of an advisory jurisdiction to be given by the Tribunal as a full court was article 138 of
30 its Rules, restricted to those cases in which “an international agreement related to
31 the purposes of the Convention specifically provides for the submission to the
32 Tribunal of a request for such an opinion”.³ We also add that if article 138 of the
33 Rules were to be considered as “a legitimate interpretation of article 21 of the
34 Statute”, then the request must necessarily relate to “matters specifically provided for
35 in any other agreement which confers jurisdiction on the Tribunal”.⁴ Finally, in our
36 oral statement we expressed the view that if the Tribunal concludes that it had
37 advisory jurisdiction, it should decide on the conditions under which such jurisdiction
38 should be exercised.

39

¹ ITLOS, Case No. 21 *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (Request for Advisory Opinion submitted to the Tribunal)*, Argentina's Written statement, November 28, 2013, para. 12.

² ITLOS, Case No. 21 *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (Request for Advisory Opinion submitted to the Tribunal)*, Argentina's Written statement, November 28, 2013, para. 12 *in fine*.

³ ITLOS, Case No. 21 *Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (Request for Advisory Opinion submitted to the Tribunal)*, Argentina's Written statement, November 28, 2013, para. 13.

⁴ P. Chandrasekhara Rao and Philippe Gautier, *The Rules of the International Tribunal for the Law of the Sea*, Martinus Nijhoff Publishers, p. 394.

1 Mr President, honourable members of the Tribunal, Argentina takes note on how the
2 Tribunal interpreted articles 16 and 21 of the Statute and article 138 of its Rules in its
3 advisory decision of 2 April 2015 and how it came to the conclusion that they give
4 the full Tribunal advisory jurisdiction under certain conditions.

5
6 In such Advisory Opinion, the Tribunal found that, and I quote, “*Article 21 and the*
7 *‘other agreement’ conferring jurisdiction on the Tribunal are interconnected and*
8 *constitute the substantive legal basis of the advisory jurisdiction of the Tribunal.*”⁵ It
9 also asserted that “*when the ‘other agreement’ confers advisory jurisdiction on the*
10 *Tribunal, the Tribunal then is rendered competent to exercise such jurisdiction with*
11 *regard to ‘all matters’ specifically provided for in the ‘other agreement’.*” And it
12 clarified that article 138 of the Rules does not afford alone the legal basis for
13 establishing the full Tribunal’s advisory jurisdiction as it only “*furnishes the*
14 *prerequisites that need to be satisfied before the Tribunal can exercise its advisory*
15 *jurisdiction*”.⁶

16
17 Then it recalled that requests for an advisory opinion may be submitted to it only if
18 three prerequisites are satisfied, namely, and I quote, “(1) an international agreement
19 related to the purposes of the Convention specifically provides for the submission to
20 the Tribunal of a request for an advisory opinion; (2) the request must be transmitted
21 to the Tribunal by a body authorized by or in accordance with the agreement
22 mentioned above; (3) and such opinion may be given on ‘a legal question’.”⁷

23
24 Mr President, distinguished members of the Tribunal, in this context, Argentina will
25 not object to an advisory jurisdiction of the full Tribunal in this particular case in light
26 of the provisions of UNCLOS, the ITLOS Rules, the COSIS Agreement and the
27 precedent set by ITLOS in the *SRFC* Advisory Opinion.

28
29 Notwithstanding that, in order to ensure the integrity of its judicial functions, the
30 Tribunal will have to proceed with caution with regard to the basis, the personal and
31 material scope, and the exercise of such jurisdiction as well as the framework of its
32 discretionary power to render the advisory opinion.

33
34 In fact, taking into account Member States’ statements in the written phase of this
35 case, it is evident that different interpretations about the legal basis and scope of the
36 advisory jurisdiction of the Tribunal as a full bench still subsist, mainly related to the
37 interpretation of article 21 of the Statute and its term “matters”, and on the
38 parameters of the exercise of its discretionary power.

39
40 In this framework, it is important to recall that, as the Tribunal held in its Case 21, the
41 exercise of the advisory function consists in enlightening the applicant “*as to [its]*

⁵ 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. 58.

⁶ 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. 59.

⁷ 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. 60.

1 *course of action*” by providing it with “guidance in respect of its own actions” and the
2 opinion “is given only to” the applicant.⁸

3
4 Besides, as it was recognized by the International Court of Justice (ICJ) in its case
5 on *The Legality of threat or the use of nuclear weapons* (Advisory Opinion, 1996) –
6 and by ITLOS itself – it is clear that the Tribunal, when answering to the questions,
7 cannot legislate, and I quote: “Rather, its task is to engage in its normal judicial
8 function of ascertaining the existence or otherwise of legal principles and rules (....) it
9 states the existing law and does not legislate”.⁹

10
11 Furthermore, it should be recalled as well that the rights of third States must be
12 guaranteed and respected: States’ consent to jurisdiction is a fundamental
13 principle.¹⁰ As the Tribunal is aware, the Argentine Republic is not a party to the
14 “Agreement for the Establishment of the Commission of Small Island States on
15 Climate Change and International Law”. That instrument is *res inter alios acta*
16 concerning Argentina. According to the well-established rule of general international
17 law reflected in article 34 of the Vienna Convention on the Law of the Treaties *pacta*
18 *tertiis nec nocent nec prosunt*, the above-mentioned convention “does not create
19 either obligations or rights for a third State without its consent.”

20
21 Mr President, distinguished members of the Tribunal, having considered the
22 jurisdictional aspects of the Request, I will now succinctly refer to the applicable law.

23
24 Article 2(2) of COSIS Agreement provides that, and I quote:

25
26 The Commission shall be authorized to request advisory opinions from the
27 International Tribunal for the Law of the Sea (...) on any legal question
28 within the scope of the 1982 United Nations Convention on the Law of the
29 Sea (...).

30
31 The questions posed to the Tribunal in this Request refer to specific obligations of
32 States Parties “to UNCLOS, including under Part XII.”

33
34 ITLOS’ jurisdiction in this Request is restricted to obligations due “under UNCLOS”,
35 and, in particular, its Part XII.

36
37 UNCLOS provides the legal framework within which all activities in the oceans and
38 seas must be carried out. As stated in its preamble, UNCLOS establishes “a legal
39 order for the seas and oceans”.

40

⁸ 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. 76.

⁹ Cf. ICJ, *Legality of threat or the use of nuclear weapons*, Advisory Opinion, *I.C.J. Reports 1996*, p. 237, para. 18; ICJ, *Western Sahara*, Advisory Opinion, *I.C.J. 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.*”)

¹⁰ ICJ, *Western Sahara*, Advisory Opinion, *I.C.J. Reports 1975*, para. 33.

1 Bearing that in mind, Article 293, paragraph 1, of UNCLOS provides that, and
2 I quote:

3
4 1. A court or tribunal having jurisdiction under this section shall apply this
5 Convention and other rules of international law not incompatible with this
6 Convention. (...)

7
8 It is important to recall that in Case 21, ITLOS relied on article 293 of UNCLOS,
9 article 23 of its Statute, and articles 130 and 138, paragraph 3, of its Rules, to
10 determine that it is empowered in advisory proceedings to apply UNCLOS and other
11 rules of international law not incompatible with this Convention.¹¹ That is to say,
12 article 293 enables ITLOS to apply in this Request not only UNCLOS but also other
13 rules of international law not incompatible with the Convention pertaining to the
14 protection and preservation of the marine environment that may shed light on the
15 States Parties' obligations under the Convention.

16
17 Besides, article 237 of UNCLOS, related to "Obligations under other conventions on
18 the protection and preservation of the marine environment", provides that, and
19 I quote:

20
21 1. The provisions of this Part [Part XII] are without prejudice to the specific
22 obligations assumed by States under special conventions and agreements
23 concluded previously which relate to the protection and preservation of the
24 marine environment and to agreements which may be concluded in
25 furtherance of the general principles set forth in this Convention.

26
27 2. Specific obligations assumed by States under special conventions, with
28 respect to the protection and preservation of the marine environment,
29 should be carried out in a manner consistent with the general principles and
30 objectives of this Convention.

31
32 The role of the Tribunal in this Request is the interpretation and application of
33 UNCLOS. Part XII of the Convention refers to the protection and preservation of the
34 marine environment and, taking into account the fact that Part XII contains
35 environmental obligations, and the provisions set forth in articles 293 and 237 cited
36 above, as well as the principle of systemic integration established by article 31 of the
37 1969 Vienna Convention on the Law of Treaties, these obligations under UNCLOS
38 need to be considered in light of the broader international environmental law.

39
40 In light of the fact that the questions posed refer specifically to climate change, and
41 that UNCLOS refers in general terms to the protection and preservation of the
42 marine environment in a broader sense, it is necessary to specifically take into
43 account the existing multilateral climate change regime, comprised primarily – as
44 mentioned by many States Parties in the written phase – of the United Nations
45 Framework Convention on Climate Change (UNFCCC, 1992), its Kyoto Protocol
46 (1997) and its Paris Agreement (2015).

47

¹¹ 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. 55; 80-84; 143.

1 That is to say that the interpretation of UNCLOS provisions in relation to the potential
2 adverse effects of climate change in the oceans and the States Parties' obligations
3 under UNCLOS need to be guided by the basic principles of the multilateral climate
4 change regime. We concur with the views exposed by Brazil in its written statement
5 in this regard.¹² This does not mean nor imply that ITLOS should directly interpret
6 climate change treaties, but, rather, that the principles underpinning the climate
7 change regime shed light on the relevant obligations contained in UNCLOS, under
8 the principle of systemic integration contained in article 31 of the 1969 Vienna
9 Convention on the Law of Treaties.¹³ Due regard must be given, however, to the fact
10 that not all States are parties to the same treaties.

11
12 Mr President, distinguished members of the Tribunal, I will proceed now with the
13 Argentine Republic's views and comments on the two questions submitted to the
14 Tribunal by COSIS.

15
16 Concerning the first question on the States Parties' obligations to prevent, reduce
17 and control pollution of the marine environment, article 1(1)(4) of the Convention
18 provides that, and I quote,

19
20 (4) "pollution of the marine environment" means the introduction by man,
21 directly or indirectly, of substances or energy into the marine environment,
22 including estuaries, which results or is likely to result in such deleterious
23 effects as harm to living resources and marine life, hazards to human
24 health, hindrance to marine activities, including fishing and other legitimate
25 uses of the sea, impairment of quality for use of sea water and reduction of
26 amenities;

27
28 Allow me to provide some brief comments about this article: it applies only to
29 pollution of anthropogenic origin; potential pollutants are an extremely wide category;
30 and any substance or form of energy introduced by humans into the marine
31 environment will constitute pollution within the meaning of UNCLOS and be
32 regulated by it if it has, or is likely to have, a "deleterious effect" of the kind referred
33 to in that article.¹⁴

34
35 The Convention then identifies six sources of marine pollution: pollution from land-
36 based sources; pollution from seabed activities subject to national jurisdiction;
37 pollution from activities in the Area; pollution by dumping; pollution from vessels; and
38 pollution from or through the atmosphere.

39
40 Part XII, headed "Protection and Preservation of the Marine Environment",
41 establishes the obligation for all UNCLOS States Parties to protect and preserve the
42 marine environment. Indeed, it provides the framework for tackling marine pollution
43 by calling on States Parties to adopt international rules and standards to address
44 pollution from each source; by requiring States to legislate to implement such rules
45 and standards and to enforce that legislation; by setting the jurisdictional parameter

¹² 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)*, Federative Republic of Brazil's Written statement, 15 June 2023, para. 20.

¹³ ICJ, *Case concerning Oil Platforms (Iran v United States of America)*, 42 ILM 1334 2003, para. 41.

¹⁴ Cf. Robin Churchill, Vaughan Lowe, Amy Sander, *The Law of the Sea*, Fourth Edition, Manchester University Press, 2022, p. 621.

1 for individual States to regulate marine pollution going beyond international rules and
2 standards; and by briefly addressing questions of liability and compensation.¹⁵

3
4 Article 194 of UNCLOS provides in this regard that:

5
6 1. States shall take, individually or jointly as appropriate, all measures
7 consistent with this Convention that are necessary to prevent, reduce and
8 control pollution of the marine environment from any source, using for this
9 purpose the best practicable means at their disposal and in accordance
10 with their capabilities.

11
12 This article sets forth the obligation for all States Parties to prevent, reduce and
13 control pollution of the marine environment from any source. The recognition that
14 States must act with “the best practicable means at their disposal” and “in
15 accordance with their capabilities” determines that this is an obligation of conduct
16 and “due diligence” and not of result.¹⁶

17
18 Besides, since it allows for a differentiation between States based on their national
19 capabilities, this is in line with a fundamental principle that must be considered by the
20 Tribunal: the principle of common but differentiated responsibilities. This principle, as
21 it was already mentioned by many States Parties in the written phase of these
22 proceedings, is a cornerstone within the multilateral climate change regime, and it
23 serves as a guiding principle when analysing State environmental obligations under
24 UNCLOS. This principle was first expressed as one of the principles of the Rio
25 Declaration (principle 7), and was expressly included in the UNFCCC (Art 3.1) and
26 its Paris Agreement (Art 2.2), along with the recognition of the special circumstances
27 of developing countries in the face of climate change (Principle 6 of the Rio
28 Declaration, article 3.2 of the UNFCCC and article 2.2 of its Paris Agreement).

29
30 Notwithstanding the clear fact that all States Parties have the obligation to prevent,
31 reduce and control pollution of the marine environment, there is a clear distinction
32 between the obligations of developed countries and developing countries within the
33 multilateral climate change regime. While all countries must take ambitious action to
34 combat climate change, the level of ambition will be determined by the different level
35 of responsibilities, and respective capacities, in light of different national
36 circumstances.

37
38 In this sense, given the recognition that the largest share of historical and current
39 global greenhouse gas emissions originated in developed countries, the latter have
40 the obligation to take the lead in the efforts to reduce emissions and to provide the
41 necessary means of implementation to developing countries, including financial
42 resources, technology transfer and capacity-building (articles 9, 10 and 11 of the
43 Paris Agreement). This principle is also reflected in other articles of UNCLOS like
44 article 207(4) that provides that in the case of pollution from land-based sources, any
45 international rules and standards adopted shall take “into account characteristic
46 regional features, the economic capacity of developing States and their need for

¹⁵ Cf. Robin Churchill, Vaughan Lowe, Amy Sander, *Op. Cit.*, p. 624.

¹⁶ 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, paras. 110-112.

1 economic development”; articles 202 and 203 that call for the provision of financial
2 and technical assistance to developing States for the protection and preservation of
3 the marine environment; and in its Part XIV that provides for the development and
4 transfer of marine technology.

5
6 Mr President, allow me to go back to article 194 and to continue with its
7 consideration. According to its paragraph 2, States shall also take all measures
8 necessary to ensure that activities under their jurisdiction or control are so conducted
9 as not to cause damage by pollution to other States and their environment, and that
10 pollution arising from incidents or activities under their jurisdiction or control does not
11 spread beyond the areas where they exercise sovereign rights in accordance with
12 the Convention. This is in line with the “no harm principle” recognized by the ICJ¹⁷
13 and by ITLOS itself.¹⁸ In addition to that, paragraph 3 of that article provides that,
14 and I quote, “[t]he measures taken pursuant to this Part [Part XII] shall deal with all
15 sources of pollution of the marine environment” and paragraph 5 makes a special
16 emphasis on the importance of protecting and preserving rare or fragile ecosystems,
17 and the habitat of threatened marine species.

18
19 On the other hand, just like in the global efforts to combat climate change,
20 international cooperation has a capital importance in the protection and preservation
21 of the marine environment.¹⁹ Indeed, article 197 of the Convention provides that, and
22 I quote:

23
24 States shall cooperate on a global basis and, as appropriate, on a regional
25 basis, directly or through competent international organizations, in
26 formulating and elaborating international rules, standards and
27 recommended practices and procedures consistent with [the] Convention,
28 for the protection and preservation of the marine environment, taking into
29 account characteristic regional features.

30
31 Along those same lines, ITLOS recognized, in the *MOX Plant* case that, and I quote,
32 “the duty to cooperate is a fundamental principle in the prevention of pollution of the
33 marine environment under Part XII of the Convention and general international law.”
34 This was recalled by the Tribunal in its Case 21²⁰ and the ICJ had expressed in the
35 *Pulp Mills* case that, and I quote, “(...) it is by co-operating that the States concerned
36 can jointly manage the risks of damage to the environment (...).”²¹

17 ICJ, *Legality of threat or the use of nuclear weapons*, Advisory Opinion, *I.C.J. Reports 1996*, p. 29; *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, 1997, para. 53.

18 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 (...).”).

19 Principles 7 and 27 of the Rio Declaration also set this principle.

20 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.

21 ICJ, *Pulp Mills on the River Uruguay* (Argentina v. Uruguay), Judgement, *I.C.J. Reports 2010*, para. 77.

1 In addition to that, Part XII contains numerous calls for cooperation in relation to
2 specific matters, for example, in relation to scientific research concerning protection
3 of the marine environment (articles 200, 201 and 202) and the development of
4 international rules and standards to prevent marine pollution (like in article 212 (3)).²²
5 As we underlined a few moments ago, these obligations are reinforced by the
6 principle of common but differentiated responsibilities that call for cooperation
7 between developed and developing countries in their efforts to protect and preserve
8 the marine environment, and by similar compatible obligations under the multilateral
9 climate change regime for developed countries.

10
11 Other obligations include those of articles 198 and 199. According to article 198 of
12 the Convention, when a State becomes aware of cases in which the marine
13 environment is in imminent danger of being damaged or has been damaged by
14 pollution, it shall immediately notify other States it deems likely to be affected by
15 such damage, as well as the competent international organizations. And article 199
16 of UNCLOS provides that in the cases referred to in article 198, States in the area
17 affected, in accordance with their capabilities, and the competent international
18 organizations shall cooperate, to the extent possible, in eliminating the effects of
19 pollution and preventing or minimizing the damage. To this end, States shall jointly
20 develop and promote contingency plans for responding to pollution incidents in the
21 marine environment.

22
23 According to article 206, there is also an obligation, as far as practicable, to assess
24 the potential effects on the marine environment of planned activities under their
25 jurisdiction or control. And I quote:

26
27 When States have reasonable grounds for believing that planned activities
28 under their jurisdiction or control may cause substantial pollution of or
29 significant and harmful changes to the marine environment, they shall, as
30 far as practicable, assess the potential effects of such activities on the
31 marine environment and shall communicate reports of the results of such
32 assessments in the manner provided in article 205.

33
34 In this regard, we should recall that in the multilateral climate change regime,
35 particularly in the Paris Agreement, States have recognized the need to respond to
36 the urgent threat of climate change on the basis of the best available scientific
37 knowledge and that this criteria should be considered when analysing the standard
38 of “reasonable grounds” in article 206 of UNCLOS, as well as the basis of all climate
39 action.

40
41 Particularly relevant to this first question is also the provision of article 212 of the
42 Convention that concerns pollution from or through the atmosphere. Article 212(3) of
43 UNCLOS calls on States, acting especially through competent international
44 organizations or diplomatic conference, to endeavour to establish global and regional
45 rules, standards and recommended practices and procedures to prevent, reduce and
46 control pollution from or through the atmosphere. Articles 212(1), (2) and 222 of
47 UNCLOS provide that States shall adopt and enforce laws, regulations and other
48 measures to prevent, reduce and control pollution of the marine environment from or
49 through the atmosphere, applicable to the air space under their sovereignty and to

²² Cf. Robin Churchill, Vaughan Lowe, Amy Sander, *Op. Cit.*, pp. 618-619.

1 vessels flying their flag or vessels or aircraft of their registry, taking into account
2 internationally agreed rules, standards and recommended practices and procedures
3 and the safety of air navigation. Under article 194(3)(a), such laws, regulations and
4 measures shall be designed to minimize to the fullest possible extent emissions of
5 “toxic, harmful or noxious substances, especially those which are persistent, from
6 land-based sources, from or through the atmosphere or by dumping.”
7

8 Summarizing, Mr President, it is clear from these articles that UNCLOS, in particular
9 its Part XII, does provide for a series of obligations for States Parties in regards to
10 climate change, aiming at the prevention, reduction and control of pollution of the
11 marine environment from all activities that contribute to exacerbating the effects of
12 climate change, in accordance with their capabilities, within a framework of
13 cooperation, and in light of the principle of common but differentiated responsibilities;
14 and that this interpretation is compatible with other obligations within UNCLOS, its
15 principles and objectives.
16

17 Concerning the second question posed to the Tribunal, article 192 of UNCLOS
18 imposes a general obligation on all States Parties in the following terms, and I quote:
19 “States have the obligation to protect and preserve the marine environment.”
20

21 Indeed, article 192 does impose a duty on States Parties, the content of which is
22 informed by the other provisions of Part XII and other applicable rules of international
23 law. This “general obligation” extends both to “protection” of the marine environment
24 from future damage and “preservation” in the sense of maintaining or improving its
25 present condition. Article 192 thus entails the positive obligations to take active
26 measures to protect and preserve the marine environment, and, by logical
27 implication, entails the negative obligation not to degrade the marine environment.
28

29 The content of the general obligation in article 192 is further detailed in the
30 subsequent provisions of Part XII, including article 194, as well as by reference to
31 specific obligations set out in other international agreements.
32

33 According to ITLOS, a State’s obligations under article 192 apply not only within its
34 own maritime zones (including internal waters) but also to areas within the
35 jurisdiction of other States and to areas beyond national jurisdiction.²³ Moreover, in
36 the *SFRC Advisory Opinion (2015)*, ITLOS stated that the reference to the “marine
37 environment” in article 192 included the conservation of the living resources of the
38 sea and other marine life.²⁴ In the *Southern Bluefin Tuna Cases*, the Tribunal
39 observed that “the conservation of the living resources of the sea is an element in
40 the protection and preservation of the marine environment.”²⁵
41

²³ 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.

²⁴ 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.

²⁵ 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.

1 There is also an obligation on States to exercise due diligence to prevent their
2 nationals from violating article 192. That obligation includes a duty to enact rules and
3 measures to prevent such violations, and to “maintain a level of vigilance in enforcing
4 those rules and measures”.²⁶

5
6 In summary, article 192 of UNCLOS establishes a general substantive obligation to
7 protect and preserve the marine environment which is widely regarded to reflect
8 customary international law. As with article 194, this obligation also needs to be
9 interpreted in light of the principle of common but differentiated responsibilities, and
10 with other obligations contained in UNCLOS, its principles and objectives.

11
12 Closely related to it, article 193 provides that, and I quote, “States have the
13 sovereign right to exploit their natural resources pursuant to their environmental
14 policies and in accordance with their duty to protect and preserve the marine
15 environment.” This means that the right of States to exploit the natural resources of
16 their maritime zones is subject to the obligation set forth in article 192 to protect and
17 preserve the marine environment.

18
19 Mr President, honourable members of the Tribunal, Argentina would like to briefly
20 refer now to the written statement submitted to the Tribunal in these proceedings by
21 the Republic of Nauru, dated 15 June 2023.²⁷

22
23 In footnotes 90 and 93 of its written statement,²⁸ the Republic of Nauru included a
24 reference to a letter dated 28 September 2010 from the Permanent Representative
25 of the United Kingdom of Great Britain and Northern Ireland to the United Nations,
26 addressed to the President of the General Assembly (A/65/513), 14 October 2010.

27
28 Argentina objects to the inclusion of that letter in both footnotes and any applicability
29 of it to these proceedings. Indeed, that letter included by Nauru concerns the
30 question of the Malvinas Islands. This question is a special and particular colonial
31 situation involving a sovereignty dispute recognized by the United Nations General
32 Assembly in Resolution 2065 (XX) and subsequent resolutions. In that context, and
33 concerning the exploration and exploitation of natural resources in the disputed area,
34 the United Nations General Assembly resolution 31/49 called upon Argentina and
35 the United Kingdom to refrain from taking decisions that would imply introducing
36 unilateral modifications in the situation while the Islands are going through the
37 negotiation process recommended by the General Assembly. Finally, in accordance
38 with the United Nations General Assembly resolutions, the sovereignty dispute
39 should be settled through negotiations between the two parties, bearing in mind the
40 interests of the population of the Islands; therefore, the principle of self-determination
41 of peoples is not applicable to this colonial case.

42

²⁶ 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.

²⁷ 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)*, Republic of Nauru’s Written Statement, 15 June 2023.

²⁸ 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)*, Republic of Nauru’s Written Statement, 15 June 2023, pages 19-20.

1 For all these reasons, Argentina objects to the inclusion of such reference and any
2 applicability of it to these proceedings, and requests the Tribunal not to consider it in
3 this case.

4
5 In conclusion, Mr President, Mr Vice-President, distinguished members of the
6 Tribunal: Argentina does not object to the advisory jurisdiction of the full Tribunal in
7 this particular case in light of the provisions of UNCLOS, the ITLOS Rules, the
8 COSIS Agreement, and the precedent set by ITLOS in the *SRFC* Advisory Opinion.
9 However, further clarifications and precisions on the basis, personal and material
10 scope of this advisory jurisdiction and a procedural framework on the exercise of the
11 Tribunal's discretionary power should be provided, taking into account Argentina's
12 comments in this regard.

13
14 Concerning the applicable law, in accordance with article 23 of ITLOS Statute,
15 articles 130 and 138, paragraph 3, of its Rules, and UNCLOS article 293, the
16 Tribunal should apply UNCLOS, in particular its Part XII, and may also rely on other
17 rules of international law not incompatible with the Convention pertaining to the
18 preservation of the marine environment that may shed light on the States Parties'
19 obligations under the Convention, including the other special conventions and
20 agreements that were referred to, in accordance with article 237 of the Convention.
21 Moreover, obligations under UNCLOS need to be considered and interpreted in light
22 of the broader international environmental law that contains key principles and
23 conventions, such as the principle of common but differentiated responsibilities.

24
25 States Parties to UNCLOS do have specific obligations under the Convention,
26 particularly under its Part XII, to prevent, reduce and control pollution of the marine
27 environment in relation to the deleterious effects that result or are likely to result from
28 climate change; and to protect and preserve the marine environment in relation to
29 climate change impacts, in particular in accordance with their national capabilities,
30 within a framework of cooperation, and in light of the principle of common but
31 differentiated responsibilities, as it was described in this presentation.

32
33 Finally, Argentina requests the Tribunal to not consider the referred letter contained
34 in the Republic of Nauru's written statement, footnotes 90 and 93, as applicable to
35 these proceedings.

36
37 Mr President, Mr Vice-President, distinguished members of the Tribunal, with this,
38 the Argentine Republic concludes its oral statement in these proceedings. Argentina
39 is grateful for having had the possibility of addressing the Tribunal in this case. I
40 thank you very much for your attention.

41
42 **THE PRESIDENT:** Thank you, Mr Herrera.

43
44 I now give the floor to the representative of Bangladesh, Mr Khurshed Alam, to make
45 his statement. You have the floor, Sir.

46
47 **MR ALAM:** Mr President, distinguished members of the Tribunal, ladies and
48 gentlemen, *Assalamu Alaikum* and good afternoon to you all.

1 My name is Rear Admiral Md Khurshed Alam, and I am the Secretary of the Maritime
2 Affairs Unit at the Ministry of Foreign Affairs of Bangladesh. It is my great privilege to
3 represent the Government of the People’s Republic of Bangladesh in these historic
4 proceedings.

5
6 Today, I appear before you on behalf of my country and my people because we are
7 victims of a grave injustice.

8
9 Despite our negligible contribution to global emissions,¹ we are ranked as the
10 seventh-most climate-affected country in the world, when accounting for fatalities,
11 economic losses and number of climatic events.²

12
13 Mr President, we are a nation of 170 million people, situated on the Bengal Delta,
14 where the mighty Ganges and Brahmaputra rivers have flowed into the sea for
15 countless millennia, sustaining the ancient civilizations that we have inherited in the
16 modern world. We are a resilient people who have survived many hardships in our
17 long history, but today we are faced with catastrophic climate change that threatens
18 our very existence.

19
20 My opening statement today will cover three topics: first, the vulnerability of
21 Bangladesh to the negative impacts of climate change on the ocean; second, our
22 response to the negative impacts of climate change as well as in mobilizing global
23 support for climate justice; and, third, our confidence in this Tribunal delivering a
24 strong advisory opinion commensurate with the immense scale and gravity of the
25 climate crisis.

26
27 At the outset, I wish to express my most sincere appreciations to the Commission on
28 Small Island States on Climate Change and International Law for initiating these
29 advisory proceedings. We fully support the Commission’s position in these
30 proceedings. And we stand in solidarity with Small Island Developing States as our
31 fates are linked in the face of constant and increasingly devastating impacts of
32 climate change.

33
34 Bangladesh as a climate-vulnerable State:

35
36 Mr President, I come from a beautiful land, bordered by the majestic Himalayas to
37 the north and the Bay of Bengal to the south; and crisscrossed by many rivers. This
38 geography, while making for an idyllic landscape, also exacerbates our vulnerability
39 to climate change.

40
41 The Ganges Delta, the world’s largest river delta, makes up over half of our territory,
42 including our entire southern coast on the Bay of Bengal. At its highest points, the
43 Ganges Delta is no more than five metres above sea level.

44
45 The satellite photograph on the screen shows the Ganges Delta, with rivers flowing
46 from the Himalayas to the Bay of Bengal. Two of these rivers, the Ganges and the
47 Brahmaputra, are among the largest in the world.

¹ Statement of H.E. Sheikh Hasina, COP26 (1 November 2021).

² See National Adaptation Plan of Bangladesh (2023–2050), p. i (citing Germanwatch, Global Climate Risk Index 2021: Who Suffers Most from Extreme Weather Events? (2021), p. 13).

1
2 Because of our low elevation and susceptibility to flooding, we suffer the worst
3 consequences of the deleterious effects of climate change, including sea-level rise,
4 coastal flooding, tropical cyclones and storm surges.

5
6 From 1973 to 2009, the land surface affected by encroaching seawater grew from
7 833,000 to 1.056 million hectares.³ By 2100, we estimate that sea-level rise will
8 submerge between 12 and 18 per cent of our coastal areas.⁴ Sea-level rise will
9 nearly double asset risks, currently about US\$ 300 million per annum, while
10 threatening agricultural production, water supplies and coastal ecosystems.

11
12 Already, we are experiencing more severe flooding due to sea-level rise, as well as
13 more frequent and intense storms. The map on your screen shows our regions which
14 are most vulnerable to flooding, drought and erosion. You will notice that the majority
15 of our territory is affected. The World Bank estimates that severe flooding could cost
16 Bangladesh's GDP to fall by as much as 9 per cent,⁵ causing further economic
17 hardships for everyday people. For instance, flash flooding during the heavy rains in
18 the August 2017 pre-monsoon season inundated some 200,000 hectares of
19 harvestable crops, leading to a 30 per cent rise in rice prices.⁶

20
21 We are also suffering more frequent cyclones, such as Cyclone Mocha in May 2023,
22 which brought heavy rains and winds of up to 115 kilometres per hour.⁷ Bangladesh
23 faces an estimated annual loss of approximately US\$1 billion (0.7 per cent of GDP)
24 from tropical cyclones. These losses have profound impacts on individual
25 Bangladeshis. For example, following Cyclone Sidr in 2007, two million people lost
26 their sources of income, and poverty rates were higher in the areas affected by the
27 cyclone than the national average.⁸

28
29 One critical and foreseeable impact of sea-level rise is seawater intrusion into
30 cultivable coastal territories. This will affect the livelihoods of coastal agricultural
31 populations, up to as much as one third of agricultural GDP by 2050. Scientific
32 experts have already noted high salinity levels in the Ganges Delta, with
33 corresponding effects on agriculture and freshwater fish.

34
35 Coastal flooding and weather events have also had serious impacts on critical
36 infrastructure. The photograph on the screen was taken in Sharaitala in 2018. It
37 shows two children playing in what remains of their former school, which once stood
38 in the middle of the village. A cyclone wiped away most of the village in 1991 and
39 repeated flooding led the remaining residents to abandon it entirely in 2015.

³ "Great Distress": Bangladesh Bears Brutal Cost of Climate Crisis, AL JAZEERA (3 November 2021).

⁴ MINISTRY OF ENVIRONMENT, FOREST, AND CLIMATE CHANGE, CLIMATE CHANGE INITIATIVES OF BANGLADESH: ACHIEVING CLIMATE RESILIENCE, p. 2.

⁵ WORLD BANK, COUNTRY CLIMATE AND DEVELOPMENT REPORT: BANGLADESH (October 2022), p. 52.

⁶ IPCC, *Chapter 6: Extremes, Abrupt Changes and Managing Risks*, SPECIAL REPORT ON THE OCEAN AND CRYOSPHERE IN A CHANGING CLIMATE (2019), p. 601.

⁷ UNITED NATIONS, *As Cyclone Mocha Damages Rohingya Refugee Camps, Aid and Support Is Urgently Needed* (15 May 2023).

⁸ THIRD NATIONAL COMMUNICATION OF BANGLADESH TO THE UNFCCC, p. 137.

1 The World Bank estimates that weather-related coastal destruction, like this one, cost
2 Bangladesh over US\$3 billion from 1994 to 2013, equal to 1.2 per cent of
3 Bangladesh's gross domestic product ("GDP").⁹

4
5 Another significant impact of sea-level rise and flooding is population displacement.
6 More than half of Bangladesh's 170 million residents live in the delta, and virtually all
7 rely on it for survival; furthermore, around 35 million people, which accounts for
8 29 per cent of the population, live in coastal areas with an average elevation under
9 1.5 metres.¹⁰

10
11 In 2019 alone, climate disasters displaced around 4.1 million persons in Bangladesh,
12 at least temporarily.¹¹ The number of internal climate change migrants in Bangladesh
13 may shoot up 13.3 million by 2050.

14
15 But it could be much worse. According to one study, a further increase of a single
16 degree Celsius in average global temperature above today's levels could lead to
17 sea-level rise that would displace 40 million residents of Bangladesh by 2100.¹²
18 Mr President, this is more than the entire population of Canada, or Morocco, or
19 Saudi Arabia or Ukraine.

20
21 As the honoured members of the Tribunal are aware, Bangladesh is currently
22 hosting approximately 1.2 million Rohingya refugees in temporary shelters in Cox's
23 Bazar, a coastal district which is already vulnerable to climate change, natural
24 disasters and the related hazards. Already victims of violent persecution in Myanmar,
25 these Rohingya families face double jeopardy owing to the impacts of climate
26 change in the coastal areas of Bangladesh.

27
28 Bangladesh as a leader in the global fight against climate change:

29
30 Mr President, I assure you that we have not sat idle in the face of this crisis. Under
31 the leadership of the Honourable Prime Minister Sheikh Hasina, Bangladesh has
32 become a leader in the fight against climate change both on the international stage
33 and at home.

34
35 Since Bangladesh ratified the UN Framework Convention on Climate Change in
36 1994,¹³ we have played a key role in negotiations on behalf of climate-vulnerable
37 States. From 2005 to 2006, we led negotiations for the group of Least Developed
38 Countries at UNFCCC and continue to play a vital role as a top-tier negotiator of that

⁹ Lia Sieghart & David Rogers, *Why Climate Change Is an Existential Threat to the Bangladesh Delta*, WORLD BANK BLOGS (21 October 2015).

¹⁰ Hafez Ahmad, *Bangladesh Coastal Zone Management Status and Future Trends*, 22 J. COASTAL ZONE MANAGEMENT 1 (30 January 2019), p. 1; see also Sowmen Rahman & Mohammed Ataur Rahman, *Climate Extremes and Challenges to Infrastructure Development in Coastal Cities in Bangladesh*, 7 WEATHER & CLIMATE EXTREMES 96 (March 2015).

¹¹ WORLD BANK, COUNTRY CLIMATE AND DEVELOPMENT REPORT: BANGLADESH (October 2022), p. 16.

¹² See *Climate Change*, PERMANENT MISSION OF THE PEOPLE'S REPUBLIC OF BANGLADESH TO THE UNITED NATIONS (citing data from the Ministry of Environment, Forest, and Climate Change), <https://bdun.org/bangladesh-priorities-at-the-un/climate-change/>.

¹³ UN Treaty Collection, UNFCCC Status List.

1 group. We ratified the Kyoto Protocol in 2001¹⁴ and signed the Paris Agreement in
2 2016.¹⁵

3
4 Bangladesh is a member of the Climate Vulnerable Forum. This partnership of
5 58 States particularly vulnerable to climate change works to “build cooperation,
6 knowledge and awareness on climate-change issues” and aims “to achieve maximal
7 resilience and to meet 100% domestic renewable energy production as rapidly as
8 possible.”¹⁶ We chaired this forum twice: from 2011 to 2013 and again from 2020 to
9 2022.

10
11 Bangladesh is also a member of the Vulnerable Twenty Group of Ministers of
12 Finance, which was created in 2015 to “strengthen economic and financial
13 responses to climate change.”¹⁷ Bangladesh chaired the V20 from 2020 to 2022.

14
15 At home, we have initiated a whole-of-government and whole-of-society approach to
16 strengthen our climate resiliency.¹⁸ This approach includes a number of forward-
17 looking policies and investments.

18
19 In 2009, we became among the first countries in the world to create a national
20 programme to determine how to adapt to climate change when we launched the
21 Bangladesh Climate Change Strategy and Action Plan. Since then, we have adopted
22 the Bangladesh Renewable Energy Policy, the National Disaster Management Plan
23 and Act, and other sectoral policies and strategies. These are widely recognized as
24 some of the world’s leading strategic plans for adaptation to climate change.

25
26 Most recently, we launched the Mujib Climate Prosperity Plan, which will guide the
27 country’s development trajectory to a strategic low carbon pathway during the next
28 decade.¹⁹

29
30 We have also made substantial financial investments in our mitigation efforts. From
31 2016 to 2021, we invested more than US\$ 6 billion in climate change adaptation
32 activities.

33
34 But the fight against climate change is not something that we can win by fighting
35 alone.

36
37 Despite our significant global and local efforts, we remain hostage to polluting States
38 that have not done nearly enough to address the negative impacts of anthropogenic
39 climate change.

40

¹⁴ UN Treaty Collection, Kyoto Protocol Status List.

¹⁵ UN Treaty Collection, Paris Agreement Status List.

¹⁶ CVF, Establishment, <https://thecvf.org/about/>.

¹⁷ V20, Establishment, <https://www.v-20.org/about>.

¹⁸ *Statement by H.E. Dr. A. K. Abdul Momen, M.P., Hon’ble Foreign Minister of Bangladesh at the High-level Thematic Debate by the President of the General Assembly on “Delivering Climate Action: for People, Planet & Prosperity”, 26 October 2021*, PERMANENT MISSION OF THE PEOPLE’S REPUBLIC OF BANGLADESH TO THE UNITED NATIONS (26 October 2021), <https://bdun.org/2021/10/26/statement-by-h-e-dr-a-k-abdul-momen-m-p-honble-foreign-minister-of-bangladesh-at-the-high-level-thematic-debate-by-the-president-of-the-general-assembly-on-delivering-climate-action-for/>

¹⁹ MUJIB CLIMATE PROSPERITY PLAN DECADE 3020 (September 2021).

1 Lack of political will on their part have often paralyzed the intergovernmental
2 processes, leading to repeated failures in adopting the most ambitious climate
3 actions at the global level. Furthermore, whatever commitments have so far been
4 made, have remained mostly unmet.

5
6 As such, we see these proceedings as an important means to redress the injustice
7 and to protect our present and future generations from the impending climate
8 catastrophe.

9
10 ITLOS' role in addressing this climate crisis:

11
12 This is why Bangladesh has taken the opportunity to participate in these
13 proceedings.

14
15 The science is clear: the ocean plays an outsized role as one of the largest global
16 sinks for both heat and carbon. Evident too are the devastating impacts of climate
17 change already felt by vulnerable States. Consequently, ITLOS – as the guardian of
18 UNCLOS, the constitution of the ocean – has a special role to play in combating
19 climate change.

20
21 We strongly believe that the Tribunal has the authority and the ability to provide
22 meaningful guidance on the obligations of States to protect and preserve the marine
23 environment, and to prevent, reduce and control greenhouse gas emissions in a way
24 that reflects scientific consensus and international agreement. Such obligations must
25 inform the conduct of States in the years ahead so that practical solutions are
26 adopted consistent with international law. The situation is now so alarming that
27 Bangladesh cannot accept that States have unlimited discretion in respect of
28 addressing climate change. This applies in particular to the major polluters who bear
29 the greatest share of responsibility.

30
31 Mr President, in 2009, Bangladesh placed its confidence in this Tribunal for
32 delimitation of its maritime boundary in the Bay of Bengal. In doing so, we became
33 the first State to ask this Tribunal to exercise jurisdiction in a maritime delimitation
34 case. It is with that same confidence that we stand in front of you once again in this
35 landmark proceeding.

36
37 Mr President, the time has come for this Tribunal, through a strong advisory opinion,
38 to establish a historic precedent of lasting significance for the protection and
39 preservation of the marine environment. The future survival of Bangladesh and of all
40 of humankind depends on it.

41
42 Now, with your permission, I will leave the floor to our distinguished counsel team:
43 Ms Catherine Amirfar and Professor Payam Akhavan who will address the need for
44 mitigation and adaptation to protect and preserve the marine environment from
45 climate change.

46
47 I thank you for your attention and have the honour to hand the podium to
48 Ms Catherine Amirfar, Bangladesh's co-representative in these proceedings. Thank
49 you, Sir. Thank you very much.

1 **THE PRESIDENT:** Thank you, Mr Khurshed Alam.

2

3 I now give the floor to Ms Amirfar to make her statement. You have the floor,
4 Madam.

5

6 **MS AMIRFAR:** Mr President, distinguished members of the Tribunal, it is an honour
7 and a privilege to appear before you again and to do so on behalf of the People's
8 Republic of Bangladesh. I have the privilege to open Bangladesh's legal submissions
9 in these historic proceedings.

10

11 Bangladesh is one of the States most affected by climate change. As you just heard
12 from Rear Admiral Alam, Bangladesh's nearly 170 million residents live between the
13 world's largest delta and its biggest stores of non-polar mountain ice. Rising seas
14 and melting glaciers make most of the country a giant floodplain. Large parts of
15 Bangladesh will become uninhabitable without drastic mitigation of greenhouse gas
16 emissions and assistance in adapting to the impacts of climate change. Bangladesh
17 welcomes these proceedings as an opportunity for the Tribunal to deliver specific,
18 authoritative guidance on States Parties' legal obligations in respect of climate
19 change.

20

21 I will begin by taking stock of where we stand on several key issues in these advisory
22 proceedings after the written phase. I will then turn to three points: first, I will analyse
23 the scope of the marine environment under Part XII of the Convention; second, I will
24 describe the deleterious effects on Bangladesh that result or are likely to result from
25 greenhouse gas emissions; finally, I will describe States Parties' specific obligations
26 to mitigate greenhouse gas emissions, and, in particular, with respect to rare and
27 fragile ecosystems and habitats of depleted, threatened or endangered species and
28 other forms of marine life.

29

30 Professor Payam Akhavan will then address States Parties' specific obligations
31 relating to adaptation of the marine environment to climate change and its impacts.

32

33 I begin, Mr President, with taking stock on five critical points in these proceedings.

34

35 First is jurisdiction and admissibility. The overwhelming majority of the written
36 statements concur that the Tribunal has jurisdiction and that the request is
37 admissible.¹ The isolated instances to the contrary do not comport with the Tribunal's
38 settled holding on the nature and scope of its advisory jurisdiction.² Bangladesh

¹ See Belize Written Statement, paras. 11–14; Chile Written Statement, paras. 9–22; Djibouti Written Statement, paras. 12–23; Democratic Republic of the Congo Written Statement, paras. 15–39; Germany Written Statement, ch. II § A; Indonesia Written Statement, § II; Latvia Written Statement, paras. 4–9; Mauritius Written Statement, § II; Micronesia Written Statement, paras. 4–10; Mozambique Written Statement, paras. 2.1–2.13; Nauru Written Statement, paras. 8–23; New Zealand Written Statement, paras. 14–25; Poland Written Statement, paras. 5–16; Rwanda Written Statement, paras. 32–53; Sierra Leone Written Statement, § II; Vietnam Written Statement, paras. 2.1–2.8; and the African Union Written Statement, § III.

² *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission*, Case No. 21, Advisory Opinion, 2015 ITLOS REP. 4 (2 April) (“SRFC Advisory Opinion”), paras. 54–58; cf. Brazil Written Statement paras. 5–9; China Written Statement § I; United Kingdom Written Statement paras. 13–25; India Written Statement, § II.A.

1 submits that the Tribunal’s jurisdiction is clear, and it is clear that it should be
2 exercised in this case.
3

4 The second critical point is whether greenhouse gas emissions constitute “pollution
5 of the marine environment” under article 1(1)(4) of the Convention. Again, there is an
6 overwhelming consensus here. Bangladesh joins the chorus of States and
7 international organizations confirming that the heat and carbon introduced by
8 greenhouse gas emissions into the marine environment clearly meet that definition.³
9

10 Not only is the consensus on this point overwhelming; the science is, too. The ocean
11 has absorbed over *90 per cent* of the heat that greenhouse gases have trapped in
12 the atmosphere since the pre-industrial era.⁴ That has amounted to 345 zettajoules
13 of heat energy from 1955 through 2022; in that same period, all of the world’s
14 nuclear power plants *combined* produced only around *one quarter of 1* zettajoule.⁵
15 The ocean also has absorbed around one quarter of the carbon dioxide that has
16 been emitted by human activities since 1850, or about 640 gigatonnes.⁶ To give you
17 some context, that’s 32 million times the weight of Hamburg’s Elbphilharmonie
18 concert hall.⁷
19

20 Third, it is also clear that States Parties have an array of specific obligations under
21 the Convention with respect to greenhouse gas emissions in articles 192 and 194 of
22 the Convention, and indeed that run through the entirety of Part XII. Bangladesh
23 concurs with the number of States and international organizations that States Parties
24 must be guided by the best available science in complying with these specific
25 obligations.⁸ That is to say, the precise scope of the specific obligations under
26 Part XII must be informed by the best available science.
27

³ See African Union Written Statement, paras. 152–159; Australia Written Statement, paras. 24–30; Bangladesh Written Statement, paras. 29–30; Belize Written Statement, paras. 48–52; Canada Written Statement, paras. 13–16; Democratic Republic of the Congo Written Statement, paras. 173–182; Egypt Written Statement, paras. 20–26; European Union Written Statement, paras. 42–52; France Written Statement, paras. 49–95; Germany Written Statement, para. 41 (referring the European Union’s position); International Seabed Authority Written Statement, paras. 19, 52; International Union for the Conservation of Nature Written Statement, paras. 52–65; Latvia Written Statement, paras. 15–18; Mauritius Written Statement, § V.A; Micronesia Written Statement, paras. 30–32; Mozambique Written Statement, paras. 3.7–3.19; Nauru Written Statement, paras. 37–38; the Netherlands Written Statement, paras. 4.6–4.7; New Zealand Written Statement, ch. 3, § II; Rwanda Written Statement, ch. 5, § I; Sierra Leone Written Statement, paras. 29–48; Singapore Written Statement, ch. 3; United Kingdom Written Statement, ch. 2, § II; and Vietnam Written Statement, § III.

⁴ IPCC, *Summary for Policymakers*, SPECIAL REPORT ON THE OCEAN AND CRYOSPHERE IN A CHANGING CLIMATE (2019), p. 9 (“It is virtually certain that the global ocean has warmed unabated since 1970 and has taken up more than 90% of the excess heat in the climate system (*high confidence*). Since 1993, the rate of ocean warming has more than doubled (*likely*).”).

⁵ WolframAlpha, “zettajoule”; *Vital Signs: Ocean Warming*, NASA: GLOBAL CLIMATE CHANGE (December 2022), <https://climate.nasa.gov/vital-signs/ocean-warming/>.

⁶ IPCC, Working Group I, *Chapter 5: Global Carbon and Other Biogeochemical Cycles and Feedback*, SIXTH ASSESSMENT REPORT: THE PHYSICAL SCIENCE BASIS (2021) p. 777–778.

⁷ See *Key Figures Elbphilharmonie*, ELBPHILHARMONIE <https://cdn.archilovers.com/projects/78e9fc7e-72d6-4db6-b0d4-56e6609c33e1.pdf>.

⁸ See e.g., Mauritius written statement, para. 91; Sierra Leone Written Statement, paras. 24–27; COSIS Written Statement, para. 398; International Union for the Conservation of Nature Written Statement, paras. 9, 15.

1 Fourth and finally, there is near universal agreement on the main, most authoritative
2 source of the best available science: the conclusions of the Intergovernmental Panel
3 on Climate Change (IPCC), the leading UN body on climate science, as expressed in
4 their periodic assessment reports, and in light of the input of over 195 Member
5 States. Bangladesh agrees that the current and best available science demonstrates
6 that States Parties have the obligation under articles 192, 194 and other provisions
7 in Part XII relating to the marine environment, to take all measures necessary to limit
8 average global temperature rise to no more than 1.5°C above pre-industrial levels.
9 This threshold is agreed by the 195 States Party to the Paris Agreement⁹ and
10 constitutes an agreed international standard relevant under articles 197, 207(4),
11 212(3) and 213 of the Convention.

12
13 Mr President, members of the Tribunal, now that I have set out the state of play, I will
14 turn to several discrete issues that, in Bangladesh’s submission, merit particular
15 attention.

16
17 One such issue is the meaning of “marine environment” under the Convention. The
18 definition is a critical gateway in two respects. The general obligation to “protect and
19 preserve” under article 192 applies to “the marine environment.” And a number of
20 core obligations in Part XII, including the strong obligation to take “all measures ...
21 necessary” under article 194(1), reference “pollution of the marine environment.”

22
23 The text of the Convention makes clear that the term “marine environment” is
24 broadly inclusive. The conclusion follows from the ordinary meaning of the term, as
25 well as the context. Per articles 194(5) and 211(1), the marine environment also
26 includes “coastlines,” “rare or fragile ecosystems,” and “the habitat of depleted,
27 threatened or endangered species and other forms of marine life.” Article 1(1)(4)
28 also refers to the “marine environment” as “including estuaries”, which are defined as
29 the “tidal mouth of a river, where the tide meets the current of fresh water.”¹⁰ This is
30 particularly important for Bangladesh given its extremely wide delta region – the
31 largest in the world – with 21 estuaries home to a remarkable array of over 800
32 species of marine flora and fauna.¹¹

33
34 I will not repeat today the textual analysis or the decisions of international tribunals in
35 support of this point,¹² but suffice it to say that the “marine environment” under the
36 Convention covers the entire marine ecosystem, including its living and non-living
37 resources, which extends to the ocean; estuaries; the marine cryosphere, including

⁹ Paris Agreement, article 2(1)(a); COP27, Decision 21/CP.27, UN Doc. FCCC/CP/2022/10/Add.2 (2023), paras. 7–8; COP27, Decision 2/CP.27, UN Doc. FCCC/CP/2022/10/Add.1 (2022).

¹⁰ Law of the Sea, Baselines: An Examination of the Relevant Provisions of the United Nations Convention on the Law of the Sea, Appendix I (Glossary of Technical Terms), pp. 47, 54 (UN Sales No. E.88.V.5* (1989)); VCLT, article 31(1).

¹¹ M. Refat Jahan Rakib et al., *Ecological features and biodiversity status of estuaries in Bengal delta, Bangladesh: A comprehensive review*, 10 FRONTIERS ENV'T SCI. (November 2022), <https://www.frontiersin.org/articles/10.3389/fenvs.2022.990099/full>.

¹² See *SRFC Advisory Opinion*, para. 216; *Chagos Marine Protected Area (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award (18 March 2015) (“*Chagos Award*”), para. 538; *South China Sea (Philippines v. China)*, PCA Case No. 2013-19, Award on the Merits (12 July 2016) (“*South China Sea Award*”), para. 945; Detlef Czybulka, *Article 192: General Obligation*, UNITED NATIONS CONVENTION ON THE LAW OF THE SEA: A COMMENTARY (Alexander Prölß ed. 2017), p. 1287.

1 ice shelves (floating glaciers) and sea ice (frozen seawater); the seabed; coastlines;
2 and living and non-living marine resources.

3
4 Mr President, members of the Tribunal, I now turn to a second point of focus for
5 Bangladesh in these oral submissions: the deleterious effects that Bangladesh is
6 suffering and will continue to suffer from climate change.

7
8 These deleterious effects trigger two key legal conclusions. First, as they are – as I
9 will explain – the actual or likely result of the introduction of massive amounts of heat
10 and carbon into the marine environment from greenhouse gas emissions, they
11 confirm that anthropogenic greenhouse gas emissions meet the definition of
12 “pollution of the marine environment” under the Convention. Second, these severe
13 harms to the marine environment inform the scope of the obligation to “protect and
14 preserve” the marine environment.

15
16 Rear Admiral Alam spoke about deleterious climate effects on Bangladesh, and
17 Section II of Bangladesh’s written statement sets them out in more detail. Here, I will
18 focus on the specific impacts on Bangladesh of sea-level rise, ocean warming and
19 ocean acidification.

20
21 As you saw from satellite photograph shown by Rear Admiral Alam, Bangladesh’s
22 geography makes it vulnerable to sea level rise: most of Bangladesh’s land territory
23 is a floodplain of which around 70 per cent of the total area is less than one metre
24 above sea level and 10 per cent of the land area is made up of lakes and rivers.¹³
25 Climate change causes coastal flooding as a result of the introduction of excessive
26 heat into the marine environment. Heat expands ocean water, which accounts for
27 about 50 per cent of sea-level rise.¹⁴ Melting of ice sheets and sea ice exacerbates
28 sea-level rise.¹⁵ The ocean floods coastlines as it rises, and it exacerbates flooding
29 caused by tropical cyclones, which ocean warming makes more extreme.¹⁶ Ocean
30 warming and acidification contribute to coastal flooding because they kill off reefs,
31 mangroves and seagrass meadows that protect coasts from storm surges.¹⁷ Global
32 warming also causes riverbank flooding in Bangladesh by accelerating the melting of
33 Himalayan glaciers.¹⁸

34
35 The model here from Bangladesh’s Center for Environmental and Geographic
36 Information Services (CEGIS) shows inundation levels from sea-level rise and storm
37 surges expected by the 2050s, according to IPCC projections. You can see here that
38 about 18 per cent of Bangladesh’s coastline could be underwater by that time.
39 Coastal flooding has a particular effect on estuaries: the IPCC has found that
40 salinization of estuaries degrades the habitats of marine flora and fauna living there.

¹³ BANGLADESH DELTA PLAN 2100 (Abridged Version) (October 2018), p. 9.
¹⁴ IPCC, Working Group I, *Chapter 9: Ocean, Cryosphere and Sea Level Change*, SIXTH ASSESSMENT REPORT: THE PHYSICAL SCIENCE BASIS (2021), p. 1292.
¹⁵ *Id.*, p. 1318.
¹⁶ IPCC, *Chapter 4: Sea Level Rise and Implications for Low-Lying Islands, Coasts and Communities*, SPECIAL REPORT ON THE OCEAN AND CRYOSPHERE IN A CHANGING CLIMATE (2019), pp. 360–361; IPCC, Working Group I, *Chapter 9: Ocean, Cryosphere and Sea Level Change*, SIXTH ASSESSMENT REPORT: THE PHYSICAL SCIENCE BASIS (2021), p. 1314.
¹⁷ IPCC, *Chapter 4: Sea Level Rise and Implications for Low-Lying Islands, Coasts and Communities*, SPECIAL REPORT ON THE OCEAN AND CRYOSPHERE IN A CHANGING CLIMATE (2019), pp. 379–380.
¹⁸ NATIONAL ADAPTATION PLAN OF BANGLADESH (2023-2050) (October 2022), pp. 21–22.

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This chart shows historical riverbank erosion in Bangladesh. It reflects erosion at a rate of over 10,000 hectares per year.¹⁹ The area around the Lower Meghna River alone, including its estuary at the Bay of Bengal, has lost 1,366 square kilometres of land to erosion. That’s almost twice the land area of the entire city of Hamburg.

Of course, flooding also impacts humans who live in and rely on the floodplains, as set out by Rear Admiral Alam. I will only add that Bangladesh is the country with the highest proportion of its population and the second highest number of residents who face very high risks of climate exposure.²⁰ Millions of Bangladeshis have already faced at least temporary displacement due to climate disasters. Analysis by experts from Bangladesh’s Ministry of Environment, Forest and Climate Change shows that a further 1°C rise in average global temperature would force up to 40 million Bangladeshis to leave their homes.²¹

With respect to Bangladesh’s marine ecosystems, the introduction of heat strains marine ecosystems with sea-level rise and ocean warming. It also reduces the mixing between warmer water at the surface and cooler water at lower depths, which inhibits the vertical circulation of life-sustaining oxygen and other nutrients throughout the ocean.²² And the absorption of excess carbon dioxide creates a chemical reaction that leaves the ocean more acidic.²³

All of these physical and chemical changes to the ocean have a dramatic impact on coastal ecosystems.

Take, for example, Bangladesh’s Sundarbans Reserve Forest, the world’s largest mangrove forest and a UNESCO World Heritage Site.²⁴ Home to a startling array of biodiversity, including 260 bird species, the endangered Bengal tiger and the estuarian crocodile, it is at risk of inundation by 2050 due to climate change.²⁵ Already, parts of the Sundarbans facing the sea have started losing their original banks, and seawater has caused many native Sundari trees to decay, as seen here. The complete inundation of the Sundarbans would swamp rare and fragile vegetation endemic to the region and the habitats of terrestrial animals.²⁶

Ocean warming, deoxygenation and acidification have also decreased offshore marine life abundance and biodiversity. For example, a recent study from Dhaka University revealed that, at current rates of warming and acidification, the reefs off of St Martin’s Island in the Bay of Bengal (seen here) would be depleted of coral by

¹⁹ NATIONAL ADAPTATION PLAN OF BANGLADESH (2023–2050 (October 2022), pp. 23–24.
²⁰ U.S. AGENCY FOR INT’L DEVELOPMENT, FRAGILITY AND CLIMATE RISKS IN BANGLADESH (2018), p. 4.
²¹ See Permanent Mission of the People’s Republic of Bangladesh to the United Nations, [Climate Change](https://bdun.org/bangladesh-priorities-at-the-un/climate-change/) (citing data from the Bangladesh Ministry of Environment, Forest, and Climate Change), <https://bdun.org/bangladesh-priorities-at-the-un/climate-change/>.
²² IPCC, Working Group I, *Chapter 5: Global Carbon and Other Biogeochemical Cycles and Feedbacks*, SIXTH ASSESSMENT REPORT: THE PHYSICAL SCIENCE BASIS (2021), p. 717–719.
²³ *Id.*, p. 717.
²⁴ THIRD NATIONAL COMMUNICATION OF BANGLADESH TO THE UNFCCC (June 2018), p. 76; *The Sundarbans*, UNESCO: WORLD HERITAGE CONVENTION, <https://whc.unesco.org/en/list/798/>.
²⁵ *The Sundarbans*, UNESCO: WORLD HERITAGE CONVENTION, <https://whc.unesco.org/en/list/798/>.
²⁶ THIRD NATIONAL COMMUNICATION OF BANGLADESH TO THE UNFCCC (June 2018), p. 184–186.

1 2045 at the latest.²⁷ Ocean deoxygenation will also harm fish and other marine life
2 living elsewhere in the Bay of Bengal.²⁸

3
4 Coastal flooding also has a particular impact on estuaries: the IPCC has found that
5 salinization of estuaries can degrade the habitats of marine flora and fauna living
6 there.²⁹

7
8 Mr President, members of the Tribunal, the deleterious effects that Bangladesh and
9 its marine environment are suffering as a result of climate change are catastrophic.
10 Urgent, ambitious measures are required to protect and preserve the marine
11 environment from those harms, both present and future.

12
13 This takes me to my final topic: States Parties' obligations under UNCLOS to
14 mitigate the greenhouse gas emissions that cause these deleterious effects in
15 Bangladesh, especially on rare and fragile ecosystems.

16
17 As many States Parties and international organizations explained in their written
18 statements, the core mitigation obligations under the Convention arises out of the
19 obligations under articles 192, 194(1) and 194(2).

20
21 In my time remaining today, I focus on the even more stringent obligations contained
22 in article 194(5) with respect to "rare or fragile ecosystems as well as the habitat of
23 depleted, threatened or endangered species and other forms of marine life."³⁰ That
24 article provides that the measures taken in accordance with Part XII "shall include
25 those necessary to protect and preserve" such ecosystems and habitats. This
26 obligation is particularly relevant when it comes to greenhouse gas emissions, given
27 the IPCC's 2018 finding that some "unique and threatened systems," such as coral
28 reefs like those around St Martin's Island, are at "risk from climate change at current
29 temperatures, with increasing numbers of systems at potential risk of severe
30 consequences at global warming of 1.6°C."³¹

31
32 The IPCC has also found that the generally applicable 1.5°C limit I and others have
33 told you about may not be enough to save some specific rare or fragile marine
34 ecosystems from the worst effects of climate change. Thus, the IPCC has warned
35 that "overshooting" 1.5°C – exceeding that limit, even for a short period of time –
36 would devastate corals and other fragile ecosystems.³²

²⁷ Md. Yousuf Gazi et al., *Detection of Coral Reefs Degradation Using Geospatial Techniques Around Saint Martin's Island, Bay of Bengal*, 55 OCEAN SCI. J. (2020), p. 8

²⁸ Hongsik Kim et al., *A Selected Review of Impacts of Ocean Deoxygenation on Fish and Fisheries*, 8 FISHES (2023), pp. 8–9, 14 (citing Elayaperumal Vivekanandan, Rudolf Hermes, Chris O'Brien, *Climate change effects in the Bay of Bengal Large Marine Ecosystem*, 17 ENV'T. DEV. (2016), pp. 46–56).

²⁹ IPCC, *Chapter 4: Sea Level Rise and Implications for Low-Lying Islands, Coasts and Communities*, SPECIAL REPORT ON THE OCEAN AND CRYOSPHERE IN A CHANGING CLIMATE (2019), p. 378.

³⁰ UNCLOS, Art. 194(5).

³¹ IPCC, *Chapter 3: Impacts of 1.5°C of Global Warming on Natural and Human Systems*, SPECIAL REPORT: GLOBAL WARMING OF 1.5°C (2018), p. 253.

³² IPCC, Working Group II, *Chapter 3: Ocean and Coastal Ecosystems and Their Services*, SIXTH ASSESSMENT REPORT: IMPACTS, ADAPTATION AND VULNERABILITY (2022), p. 382.

1 Mangroves and coastal wetlands like those in the Sundarbans, which are also rare
2 and fragile due to their vulnerability to sea-level rise and storm surges, and home to
3 endangered marine life, are critical to mitigation for another reason: they are
4 extremely efficient at removing carbon dioxide from the atmosphere. Mangroves, salt
5 marshes and seagrass beds can store up to five times the amount of carbon per
6 equivalent area compared to mature tropical forests. As a result, coastal wetlands
7 sequester carbon at 10 times the rate of those forests.³³ Widespread destruction of
8 coastal ecosystems, such as by sea-level rise or storm surges, would create what
9 climate scientists call a “positive feedback loop,” whereby one climate change impact
10 begets more climate change.

11
12 In sum, article 194 of UNCLOS requires States Parties to follow the science in
13 preventing, reducing and controlling greenhouse gas emissions, which at least
14 means mitigating these emissions to limit average global temperature rise to no
15 more than 1.5°C above pre-industrial levels, but may require more to protect and
16 preserve rare and fragile ecosystems.

17
18 Mr President, members of the Tribunal, this concludes my remarks on behalf of the
19 People’s Republic of Bangladesh. Thank you for your attention. May I ask that you
20 please invite Professor Payam Akhavan to address you.

21
22 **THE PRESIDENT:** Thank you, Ms Amirfar.

23
24 I would now like to give the floor to Mr Akhavan to make his statement.
25 You have the floor, Sir.

26
27 **MR AKHAVAN:** Mr President, members of the Tribunal, good afternoon. I am
28 honoured to appear before you on behalf of the People’s Republic of Bangladesh.

29
30 You have just heard from my colleague Ms Amirfar on Bangladesh’s positions on the
31 key issues that States Parties and international organizations raised during the
32 written phase, as well as on States Parties’ specific obligations under the Convention
33 to mitigate global greenhouse gas emissions. I will now address States Parties’
34 obligations to adapt to the harms that these emissions cause to the marine
35 environment.

36
37 But, first, I would like to highlight the critical interplay between adaptation and
38 mitigation in ensuring that climate-vulnerable marine ecosystems remain habitable
39 for marine life as the world warms. Specifically, the IPCC’s most recent assessment
40 report made clear that adaptation and mitigation must go hand in hand to maintain
41 any hope that the marine environment will avoid the worst consequences of climate
42 change. The IPCC noted that “[a]daptation options that are feasible and effective
43 today will become constrained and less effective with increasing global warming,”
44 and that the “effectiveness of adaptation, including ecosystem-based and most
45 water-related options, will decrease with increasing warming.”¹

46

³³ *Coastal Blue Carbon*, NAT’L OCEAN SERV. (13 August 2023),
<https://oceanservice.noaa.gov/ecosystems/coastal-blue-carbon/>

¹ IPCC, *Summary for Policymakers*, SIXTH ASSESSMENT SYNTHESIS REPORT (2023), p. 19.

1 In other words, time is running out to ensure that there will be a viable marine
2 environment left to “protect and preserve” by the time that even the most ambitious –
3 even the most ambitious – emission targets are reached. The IPCC concludes with
4 high confidence that, with any additional global warming above today’s levels, “limits
5 to adaptation and losses and damages, strongly concentrated among vulnerable
6 populations, will become increasingly difficult to avoid,” and that, above 1.5°C ,
7 “ecosystems such as some warm-water coral reefs [and] coastal wetlands ... will
8 have reached or surpassed hard adaptation limits.”²

9
10 For the balance of my time, I will show that UNCLOS’s general obligation on all
11 States Parties to protect and preserve the marine environment requires taking
12 measures not just to mitigate, but also to adapt to climate change. I will proceed in
13 two steps: first, I will address States Parties’ specific obligations under the
14 Convention to adapt to protect and preserve the marine environment, and, in
15 particular, rare and fragile ecosystems; and, second, I will highlight some of
16 Bangladesh’s groundbreaking efforts consistent with those adaptation goals.

17
18 Mr President, members of the Tribunal, adaptation did not receive as much attention
19 in the written phase as mitigation, but it is equally important to the continued survival
20 of the marine environment as a matter both of law and scientific fact. As with
21 mitigation, States Parties’ adaptation obligations are an expression of the general
22 obligation under article 192 to “protect and preserve the marine environment.” This is
23 clear from the ordinary meaning of “preserve”, which is “to keep in its original or
24 existing state” or “to make lasting”.³ Along these lines, the Virginia Commentary
25 notes that, “while the word ‘protect’ indicates measures relating to imminent or
26 existing danger or injury, the word ‘preserve’ conveys the meaning of conserving the
27 natural resources and retaining the quality of the [...] environment.”⁴ The
28 Commentary continues: “Preservation would seem to require active measures to
29 maintain, or improve, the present condition of the marine environment.”⁵

30
31 Improving the present condition of the marine environment in the face of climate
32 change is what the IPCC calls “adaptation”, defining it for natural systems as “the
33 process of adjustment to actual or expected climate change and its effects.”⁶ In the
34 context of the marine environment, that process entails what the *South China Sea*
35 tribunal called “active measures to protect and preserve the marine environment.”⁷

36
37 For these reasons, Bangladesh concurs with the conclusion in the written statements
38 of Mauritius, the Netherlands, Rwanda, Sierra Leone, the African Union and COSIS,

² IPCC, *Summary for Policymakers*, SIXTH ASSESSMENT SYNTHESIS REPORT (2023), p. 19.

³ OXFORD ENGLISH DICTIONARY, “preserve”.

⁴ *Part XII: Protection and Preservation of the Marine Environment*, UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY, vol. IV (Myron H. Nordquist et al. eds. 2013), p. 11.

⁵ *Article 192: General Obligation*, UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY, vol. IV (Myron H. Nordquist et al. eds. 2013), p. 40.

⁶ IPCC, Working Group II, *Annex II: Glossary*, SIXTH ASSESSMENT REPORT: IMPACTS, ADAPTATION AND VULNERABILITY (2022), p. 2898.

⁷ *South China Sea (Philippines v. China)*, PCA Case No. 2013-19, Award on the Merits (12 July 2016), para. 941.

1 that article 192 incorporates obligations to take measures to adapt the marine
2 environment to climate change impacts.⁸

3
4 It is also clear that the obligation in article 194(5) to “protect and preserve rare or
5 fragile ecosystems and the habitat of depleted, threatened or endangered species
6 and other forms of marine life” incorporates the general obligations under article 192
7 with respect to those ecosystems and habitats. The Virginia Commentary notes that
8 it is “self-explanatory” that paragraph 5 “*extends* the concept of the protection and
9 preservation of the marine environment”, as a whole, to “rare or fragile ecosystems”
10 and “the habitat of depleted, threatened or endangered species and other forms of
11 marine life.”⁹ That is exactly the approach that the Annex VII tribunal in the *Chagos*
12 *Marine Protected Area* arbitration took when it held that “Article 194 is ... not limited
13 to measures aimed strictly at controlling pollution and extends to measures focused
14 primarily on conservation and the preservation of ecosystems.”¹⁰

15
16 Similarly, the tribunal in the *South China Sea* arbitration found that the general
17 obligation to protect and preserve the marine environment was “given particular
18 shape in the context of fragile ecosystems by Article 194(5).”¹¹ The arbitral tribunal
19 thus held that “Article 192 imposes a due diligence obligation to take those measures
20 ‘necessary to protect and preserve rare or fragile ecosystems as well as the habitat
21 of depleted, threatened or endangered species and other forms of marine life’.”¹²

22
23 As Ms Amirfar explained, article 194(5) provides that any measures taken in
24 accordance with Part XII must include those “necessary to protect and preserve rare
25 or fragile ecosystems as well as the habitat of depleted, threatened or endangered
26 species and other forms of marine life.” As with the marine environment more
27 broadly, adaptation is necessary to protect and preserve these ecosystems and
28 habitats. The IPCC has specifically concluded, for example, that adaptation is
29 necessary to protect and preserve coral reefs, coastal wetlands and beaches to
30 prevent the most severe climate change impacts.¹³

31
32 Articles 198 and 199, which apply when “the marine environment is in imminent
33 danger of being damaged or has been damaged by pollution,” are also applicable.
34 Article 199 provides that, in such circumstances, “States in the area affected, in
35 accordance with their capabilities, and the competent international organizations
36 shall co-operate, to the extent possible, in eliminating the effects of pollution and
37 *preventing or minimizing the damage to this end.*” The Prölß commentary explains

⁸ Mauritius Written Statement, § V; Netherlands Written Statement, paras. 4.5–4.8; Sierra Leone Written Statement, paras. 78–79; Rwanda Written Statement, chs. 4, 6; African Union Written Statement, paras. 336–338; COSIS Written Statement, ch. 8.

⁹ *Article 194: Measures to Prevent, Reduce, and Control Pollution of the Marine Environment*, UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY, vol. IV (Myron H. Nordquist et al. eds. 2013), p. 68.

¹⁰ *Chagos Marine Protected Area (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award (18 March 2015), para. 538.

¹¹ *South China Sea (Philippines v. China)*, PCA Case No. 2013-19, Award on the Merits (12 July 2016), para. 959.

¹² *South China Sea (Philippines v. China)*, PCA Case No. 2013-19, Award on the Merits (12 July 2016), para. 959.

¹³ IPCC, *Summary for Policymakers*, SIXTH ASSESSMENT SYNTHESIS REPORT (2023), p. 19–20; see also IPCC, Working Group II, *Chapter 3: Ocean and Coastal Ecosystems and Their Services*, SIXTH ASSESSMENT REPORT: IMPACTS, ADAPTATION AND VULNERABILITY (2022), pp. 423–424.

1 that, “[w]here it is not possible to prevent pollutants escaping into the environment,”
2 article 199 requires that “efforts ... be made to prevent or minimize the damage
3 those pollutants cause”, which, in the context of greenhouse gas emissions, means
4 adaptation.¹⁴

5
6 But it would be unjust and contrary to UNCLOS to place that adaptation burden
7 exclusively on States like Bangladesh, whose marine environments are most
8 vulnerable to climate change, especially when they have made only marginal
9 contributions to climate change. The Preamble to the Convention reflects States
10 Parties’ belief that “the codification and progressive development of the law of the
11 sea ... will contribute to the strengthening of ... co-operation” in solving the
12 “problems of ocean space.”

13
14 The drafters codified that commitment in Part XII. Article 202, for example, requires
15 developed States Parties to provide scientific, technical and other assistance to
16 protect and preserve the marine environment. Such assistance includes: training
17 scientific and technical personnel; supplying developing States with necessary
18 equipment and facilities, or enhancing their capacity to manufacture such equipment;
19 and providing advice on research, monitoring, educational and other programmes.

20
21 In addition, articles 276 and 277 require States to “promote the establishment of
22 regional marine scientific and technological research centers, *particularly in*
23 *developing States*,” including to promote “study programmes related to the protection
24 and preservation of the marine environment and the prevention, reduction and
25 control of pollution.”

26
27 As the Pröls Commentary explains, article 202 is “one of the means of implementing
28 common but differentiated responsibilities in the context of the law of the sea by
29 encouraging the strengthening of the capabilities of developing countries.”¹⁵ This
30 principle is also reflected elsewhere in the Convention, namely in the Preamble,
31 which “takes into account ... the special interests and needs of developing
32 countries,” and throughout Part XII.¹⁶ Under the principle, in the words of the 1992
33 Rio Declaration on the Environment and Development, developed States
34 “acknowledge the responsibility that they bear” in efforts to achieve sustainable
35 development given the “pressures their societies place on the global environment”
36 and the “technologies and financial resources they command.” CBDR has emerged
37 as a well-established principle of international law, finding expression in and
38 informing a number of environmental treaties, such as the UNFCCC, the Kyoto
39 Protocol and the Paris Agreement, in addition to the Convention.¹⁷

40
41 In the context of climate change, CBDR acknowledges that developed States have
42 greater financial and technological capacity to mitigate and adapt to climate change

¹⁴ Tim Stephens, *Article 199: Contingency plans against pollution*, UNITED NATIONS CONVENTION ON THE LAW OF THE SEA: A COMMENTARY (Alexander Pröls ed. 2017), p. 1341.

¹⁵ James Harrison, *Article 202: Scientific and technical to developing States*, UNITED NATIONS CONVENTION ON THE LAW OF THE SEA: A COMMENTARY (Alexander Pröls ed. 2017), p. 1347.

¹⁶ See, e.g., UNCLOS, Arts. 203 and 207(4).

¹⁷ See, e.g., Convention on Biological Diversity, Preamble and article 20(4); Convention on Persistent Organic Pollutants, article 13(4); UNFCCC, article 3(1); Kyoto Protocol, article 3(1); Paris Agreement, Preamble and articles 2(2), 4(3); Montreal Protocol, article 5(1).

1 in part because of the historical benefits that they have reaped by burning fossil fuels
2 to run their economies. Thus, as Bangladesh stated in its Third National
3 Communication to the UNFCCC in June 2018, developed States must “ensure that
4 robust commitments are in place to push forward the mitigation actions and climate
5 financing needed for adaptation and mitigation efforts, and to shape low-carbon,
6 climate-resilient economies.”¹⁸ In this regard, Bangladesh concurs with the positions
7 taken by the African Union, Rwanda and Sierra Leone in their written statements.¹⁹
8

9 Bangladesh is dedicated to a carbon-free, sustainable future, and calls on developed
10 States Parties to comply with their assistance obligations and help Bangladesh and
11 all developing States to achieve that goal. Bangladesh has achieved impressive
12 economic growth over the last two decades, having gone from one of the world's
13 poorest countries in 1971 to being on track to becoming an upper-middle income
14 country by 2031, according to The World Bank.²⁰ Bangladesh is committed to
15 achieving its growth sustainably, as a model for other countries looking to build more
16 prosperous and equitable economies.
17

18 In this spirit, the words of Bangabandhu Sheikh Mujibur Rahman, the founding father
19 of Bangladesh, in his 1974 speech to the UN General Assembly just three years
20 after the country's founding, ring true still today. He said: “Our goal is self-reliance;
21 our chosen path is the united and collective efforts of our people. International
22 cooperation and the sharing of the resources and technology could no doubt make
23 our task less onerous and reduce the cost of human suffering.”²¹
24

25 Mr President, members of the Tribunal, I will now address the extensive efforts that
26 Bangladesh is already making to comply with its obligations to preserve its marine
27 environment against climate change and its effects.
28

29 Mr President, to the extent that the break is at issue, I think I should not be more
30 than 10 minutes in the conclusion of my statements.
31

32 **THE PRESIDENT:** You may proceed.
33

34 **MR AKHAVAN:** Thank you, Mr President.
35

36 Although all States Parties' national adaptation strategies must be tailored to their
37 particular circumstances, Bangladesh's truly outstanding efforts in this area serve as
38 both an inspiration and a model for the world.
39

40 As Rear Admiral Alam explained, in 2022, Bangladesh adopted its National
41 Adaptation Plan, which seeks to reduce risks and vulnerabilities to climate change
42 impacts and to provide a viable path to climate-resilient development.²² The National

¹⁸ THIRD NATIONAL COMMUNICATION OF BANGLADESH TO THE UNFCCC (June 2018), p. 6.

¹⁹ African Union Written Statement, paras. 240–242; Rwanda Written Statement, ch. 7; Sierra Leone Written Statement, paras. 62–63.

²⁰ *The World Bank in Bangladesh: Overview*, WORLD BANK (6 April 2023), <https://www.worldbank.org/en/country/bangladesh/overview>.

²¹ Address by Sheikh Mujibur Rahman, Prime Minister of Bangladesh, U.N. GAOR, 29th Sess., 2243rd plen. mtg. at 161, U.N. Doc. A/PV.2243 (September 25, 1974).

²² NATIONAL ADAPTATION PLAN OF BANGLADESH (2023–2050), MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH, p. ii. (October 2022).

1 Adaptation Plan built on the government’s earlier Bangladesh Delta Plan 2100,
2 adopted in 2018, which focused on adaptation strategies for the Ganges Delta.²³ The
3 IPCC favourably cited the Bangladesh Delta Plan in its most recent assessment
4 report, further highlighting its high scientific standards.²⁴ It is considered one of the
5 world’s leading strategies for climate adaptation.

6
7 The Bangladesh Delta Plan called for a number of critical adaptation techniques for
8 the Ganges Delta, including:

9
10 River management, excavation and smart dredging preceded by appropriate
11 feasibility studies;

12
13 Restoration, redesign, and modification of embankments and structures; and

14
15 Management of rivers and embankments with provision of fastest drainage of water
16 during monsoon and flood.²⁵

17
18 A key objective in the more recent National Adaptation Plan is to protect against
19 climate change effects on Bangladesh’s marine environment. For example, it calls
20 for the extension and expansion of the coastal greenbelt for protecting and restoring
21 coastal habitats, including the Sundarbans, mangroves and salt marshes.²⁶ And it
22 emphasizes the importance of ecosystem-based sediment management along
23 coasts and in estuaries.²⁷ It also calls for innovative adaptation strategies, such as:
24 coastal erosion protection with oyster reefs; robust monitoring of ecosystems and
25 biodiversity based on high-tech artificial intelligence and space technologies; and
26 provision of artificial oxygen supplies through oxygen cylinders and stop feed
27 supplies during heavy rains and in oxygen-depleted conditions.²⁸

28
29 In furtherance of these goals, Bangladesh has designated nearly 9 per cent of its
30 exclusive economic zone, including the waters around the Sundarbans and
31 St Martin’s Island, as Ecologically Critical and Marine Protected Areas.²⁹

32
33 The National Adaptation Plan also calls for extensive field research to develop new
34 ecosystem-based adaptation options suitable for Bangladesh’s marine
35 environment.³⁰

36
37 The plan, as shown here, envisions a total investment of US\$ 230 billion over
38 27 years, with 72.5 per cent of that total investment cost expected to be mobilized by

²³ BANGLADESH DELTA PLAN 2100, BANGLADESH PLANNING COMMISSION (October 2018).

²⁴ IPCC, Working Group II, *Chapter 10: Asia*, SIXTH ASSESSMENT REPORT: IMPACTS, ADAPTATION, AND VULNERABILITY (2022), p. 1513.

²⁵ Bangladesh Delta Plan 2100, BANGLADESH PLANNING COMMISSION (October 2018), pp. 16–18.

²⁶ *Id.*, pp. iii, 75–77.

²⁷ *Id.*, p. 95.

²⁸ National Adaptation Plan of Bangladesh (2023–2050), MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, GOVERNMENT OF THE PEOPLE’S REPUBLIC OF BANGLADESH, pp. 62–64 (October 2022).

²⁹ *The government of Bangladesh announces new Marine Protected Areas totaling about 8.8% of its Exclusive Economic Zone*, UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS: SUSTAINABLE DEVELOPMENT (4 January 2022).

³⁰ National Adaptation Plan of Bangladesh (2023–2050), MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, GOVERNMENT OF THE PEOPLE’S REPUBLIC OF BANGLADESH, pp. 65–66 (October 2022).

1 2040.³¹ This is an enormous investment for a country with a gross domestic product
2 of around US\$ 400 billion. It is deeply unfair for a country that has contributed tiny
3 amounts of greenhouse gases to global emissions – just 0.4 per cent since the pre-
4 industrial era – to make such enormous investments to adapt to the catastrophes
5 that others have caused.

6
7 Mr President, members of the Tribunal, we have reached the end of Bangladesh's
8 oral statements in these historic, landmark proceedings on *the* critical problem facing
9 the global ocean and all low-lying developing States.

10
11 The United Nations Convention on the Law of the Sea, the constitution of the ocean,
12 created with the express purpose of solving practical problems of ocean space,
13 must, and does, provide a legal framework for addressing the gravest threat that the
14 marine environment has faced in recorded history. The marine environment of
15 Bangladesh, including its estuaries, mangrove forests, reefs and fisheries, is
16 especially vulnerable. It has suffered, and will continue to suffer, devastating effects,
17 unless the major polluters assume responsibility for their actions.

18
19 In response to these challenges, UNCLOS tells us to look to the science. The current
20 scientific consensus, in turn, is equally clear: We can avoid the worst consequences
21 of climate change if we do everything in our power to hold global average
22 temperature rise to within 1.5°C of pre-industrial levels, while *also* working
23 cooperatively to mitigate and adapt to the effects of climate change that have already
24 arrived.

25
26 Bangladesh respectfully urges this Tribunal to render an opinion that makes these
27 obligations plain and specific in order to provide meaningful practical guidance to
28 States Parties on what international law requires of them at this critical moment for
29 the marine environment.

30
31 Mr President, members of the Tribunal, this concludes the oral statement of the
32 People's Republic of Bangladesh. Thank you for your attention.

33
34 **THE PRESIDENT:** Thank you, Mr Akhavan.

35
36 This brings to an end this afternoon's sitting. The Tribunal will sit again tomorrow
37 morning at 10:00 a.m. when it will hear oral statements made on behalf of Chile,
38 Portugal and Djibouti.

³¹ *Id.*, p. iv.