

DECLARATION OF JUDGE INFANTE CAFFI

1. I have voted in favour of the Advisory Opinion, which provides guidance by answering legal questions related to climate change from the perspective of the United Nations Convention on the Law of the Sea (UNCLOS) and “other rules of international law not incompatible with this Convention”, in conformity with article 293 of UNCLOS. The Tribunal had the opportunity to listen to representatives of States Parties, international organizations, non-governmental organizations and special rapporteurs, who submitted substantive and useful insights. The answers had to be within the scope of UNCLOS, an instrument that can raise the question of whether human rights concerns fall under its purview, in particular Part XII.

2. In this respect, the reasoning of the Advisory Opinion contained in paragraph 66, where it is noted that “climate change represents an existential threat and raises human rights concerns”, could have been supplemented by further arguments. The concern for human health, which may be impaired by pollution to the marine environment, is explicitly referenced in UNCLOS (article 1(1)(4)). It is also echoed and enhanced by the 2015 Paris Agreement, which provides in its preamble that States “should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities, and people in vulnerable situations”. The 1992 UNFCCC, for its part, had already defined adverse effects of climate change as being “changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare” (Article 1(1)).

3. Accordingly, States’ duties to address challenges posed by critical climate changes related to pollution of the marine environment, affecting the enjoyment of basic human rights, have been raised by the Committee on Economic, Social and Cultural Rights in a statement of 31 October 2018 (E/C.12/2018/1). This statement pointed out the link between the rights to health, food, water and sanitation. The Committee also advised that additional measures should be taken for those who are

particularly vulnerable to environmental degradation, which is among the issues that this Advisory Opinion sought to address from the law of the sea perspective.

4. The aim of these observations is not to alter the Tribunal's jurisdiction *ratione materiae* but rather to highlight the situations and problems being brought to the attention of international treaty bodies, specialized courts and tribunals that show the interlinkages between the protection of human health and the right to a healthy environment, including the marine environment. This is an instance in which legal regimes on human rights require law of the sea principles to be applied, and likewise, in which the law of the sea requires States to consider the human implications of regulatory measures, policies and enforcement actions.

5. A further reference in this matter may be found in the 2022 United Nations General Assembly resolution 76/300, entitled "The human right to a clean, healthy and sustainable environment".

(signed)

María Teresa Infante Caffi