INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

WRITTEN STATEMENT OF THE UNITED ARAB EMIRATES

22 March 2024

The Written Statement of the United Arab Emirates

I. INTRODUCTION

1. The United Arab Emirates ("**UAE**") has the honour to submit its written statement in respect of the questions contained in the request for an advisory opinion ("**Request**") addressed to the International Court of Justice (the "**Court**") by the General Assembly of the United Nations ("**General Assembly**") on 29 March 2023 in its Resolution 77/276, entitled "Obligations of States in Respect of Climate Change".[1]

2. The present written statement is submitted in accordance with Article 105 of the Rules of Court and pursuant to the Orders made by the Court dated 20 April 2023, 4 August 2023, and 15 December 2023, by the last of which the Court extended to 22 March 2024 the time-limit within which, pursuant to Article 66 of the Statute of the Court, Member States of the United Nations and international organizations considered likely to be able to furnish information may present their written statements on the questions submitted to the Court by the General Assembly.

A. The UAE's support for the present advisory proceedings on the obligations of States in respect of climate change

3. As a strong supporter of the international rule of law, and of the role of the Court as the principal judicial organ of the United Nations, the UAE firmly believes in the importance of the present advisory proceedings. The UAE is also mindful of the fact that climate change and its adverse effects on the environment represent an unprecedented existential threat for humanity that requires common solutions, including coordinated legal and practical responses. In this regard, the UAE is of the view that the rendering by the Court of an advisory opinion in response to the questions posed by the General Assembly will contribute to clarifying the international obligations of States in respect of climate change, and will provide guidance and additional impetus to the ongoing negotiations aimed at strengthening the protection of the environment and the global climate system from the adverse effects of greenhouse gases ("**GHGs**").

4. The UAE's resolve to assist the Court in the present advisory proceedings is in line with its commitment to climate action. That commitment is evidenced by the initiatives adopted by the UAE in response to climate change, as well as its role as the host of the twenty-eighth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change ("**COP28**").[2]

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[1] General Assembly Resolution 77/276, A/RES/77/276, 29 March 2023.

[2] Serving also as the eighteenth session of the meeting of the Parties to the 1997 Kyoto Protocol to the UNFCCC ("**CMP18**"), and the fifth session of the meeting of the Parties to the 2015 Paris Agreement under the UNFCCC ("**CMA5**").

5. The UAE considers that the jurisdiction of the Court to render an advisory opinion in the present instance, and the judicial propriety of it doing so, are beyond question.

6. The questions posed to the Court are "legal questions", as required by Article 96(1) of the Charter of United Nations and Article 65 of the Statute of the Court. As the Court has previously had occasion to observe, "questions 'framed in terms of law and rais[ing] problems of international law [...] are by their very nature susceptible of a reply based on law'".[3] That is the case in respect of the questions contained in the Request, which relate to the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of GHGs, and the legal consequences arising from a breach of such obligations.

7. The UAE is also convinced that the Court should exercise its jurisdiction to render an advisory opinion in response to the Request. The object of the Request is to obtain from the Court an advisory opinion in respect of a matter that has been, and remains, of specific concern to the General Assembly and to the United Nations as a whole.[4] It bears noting that the resolution calling for an advisory opinion by the Court was adopted by consensus. Further, the Court can provide a response to the Request without infringing the principle of judicial propriety; that is particularly the case insofar as, in the circumstances of the present proceedings, the rendering by the Court of an advisory opinion would not involve circumventing the principle that States are not obliged to allow their disputes to be submitted to judicial settlement without their consent.[5]

8. The UAE considers that the exercise by the Court of its jurisdiction to render an advisory opinion will provide important guidance that will support future negotiations concerning the obligations of States to reduce GHG emissions, and to preserve the climate system and ultimately the environment.

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[3] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 403, at pp. 414-415 (para. 25) (citing *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at p. 18 (para. 15)). See also ***Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004***, p. 136, at p. 153 (para. 37) (holding that a question "arising from a given factual situation considering the rules and principles of international law" was "by its very nature susceptible of a reply based on law; indeed it is scarcely susceptible of a reply otherwise than on the basis of law"). In the *Chagos* Advisory Opinion, the ICJ stated even more succinctly that "a request […] for an advisory opinion to examine a situation by reference to international law concerns a legal question": see *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports* 2019, p. 95, at p. 112 (para. 58).

[4] See e.g., General Assembly Resolution 76/205, A/RES/76/205, 5 January 2022; General Assembly Resolution 75/217, A/RES/75/217, 21 December 2020.

[5] See *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at p. 25 (para. 33); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, at pp. 157-158 (para. 47); *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports* 2019, p. 95, at pp. 117-118 (paras. 85-90).

B. The scientific consensus as to the causes of climate change

9. The UAE acknowledges and supports the findings of the Intergovernmental Panel on Climate Change ("**IPCC**") that human activities are the main driver of climate change and its adverse effects upon the environment.[6] There exists ample and overwhelming scientific evidence which demonstrates that the increasing concentration of GHGs from anthropogenic sources in the atmosphere is correlated to an unprecedented transformation of the climate system.[7] This has resulted in an increase in the global surface temperature, which in turn has caused, *inter alia*, changes in global weather systems, including precipitation patterns, the melting of glaciers and polar ice caps, resulting in rising sea levels, and an increased frequency and intensity of extreme weather and climate events, such as heatwaves, heavy precipitation, droughts, and tropical cyclones.[8] The IPCC has further observed that climate change has impacted human and natural systems on a global scale, affecting food and water security, and compromising human health, physical infrastructure, and economies.[9]

10. The IPCC predicts that, at least in the near term, global temperatures will increase, and that they will continue to do so in the longer term unless a drastic reduction of GHG emissions occurs over the coming decades.[10] According to the IPCC's projections, depending on the level of future GHG emissions, by 2081-2100 global surface temperatures are likely to rise between 1.4°C and 4.4°C compared to 1850-1900.[11] Every increment of warming will lead to a further increase of extreme climate events,[12] intensifying the global water cycle, monsoon precipitation, as well as very wet and very dry seasons.[13]

11. In this context it is important to note that, as a general matter, climate change disproportionately affects the populations of least developed countries as well as small island

[6] IPCC, 2023: Summary for Policymakers. In: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change ("**2023 IPCC Synthesis Report – Summary for Policymakers**"), p. 4, paras. A.1.-A.1.5.

[7] 2023 IPCC Synthesis Report – Summary for Policymakers, pp. 4-5, paras. A.1.-A. 1.5, A.2-A.2.3; IPCC, 2021: Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change ("**2021 IPCC The Physical Science Basis – Summary for Policymakers**"), pp. 6-8, Figures SPM.1, SPM.2, paras. A.2-A.2.4.

[8] 2021 IPCC The Physical Science Basis – Summary for Policymakers, pp. 8-9, paras. A.2.3-A.2.4, A.3-A.3.5; 2023 IPCC Synthesis Report – Summary for Policymakers, pp. 5-6, paras. A.2.-A.2.4.

[9] 2023 IPCC Synthesis Report – Summary for Policymakers, pp. 5-6, paras. A.2.2, A.2.4-A.2.7.

[10] IPCC, 2023: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change ("**2023 IPCC Synthesis Report**"), p. 68. See also 2021 IPCC The Physical Science Basis – Summary for Policymakers, pp. 14-15, paras. B.1-B.1.4.

[11] 2023 IPCC Synthesis Report – Summary for Policymakers, p. 12, paras. B1-B.1.1.

[12] 2023 IPCC Synthesis Report – Summary for Policymakers, pp. 12-13, paras. B.1-B.1.3. See also 2021 IPCC The Physical Science Basis – Summary for Policymakers, p. 15, paras. B.2-B.2.5.

[13] 2023 IPCC Synthesis Report – Summary for Policymakers, pp. 12-13, paras. B.1.3-B.1.5.

developing States ("**SIDS**"), which are highly vulnerable to its adverse impacts.[14] At the same time, those States have lower emissions (including lower historic emissions) compared to the global average.

12. The UAE fully subscribes to the existing scientific consensus that a combination of efforts to decrease anthropogenic GHG emissions (mitigation) and to adapt to the effects of climate change (adaptation) is material and necessary to limit the phenomenon, and its deleterious impacts upon the environment and, as a consequence, upon human life. These considerations are reflected in the international obligations that States have elaborated and undertaken through multilateral negotiations over the last three decades with a view to addressing climate change. Indeed, undertaking mitigation and adaptation actions constitutes the core of State obligations in respect of climate change, including notably under the United Nations Framework Convention on Climate Change ("**UNFCCC**"),[15] the 1997 Kyoto Protocol to the UNFCCC ("**Kyoto Protocol**"),[16] and the 2015 Paris Agreement under the UNFCCC ("**Paris Agreement**").[17]

13. While the fundamental scientific parameters of climate change are indisputable, including the role of anthropogenic GHG emissions, the UAE highlights that the character and effectiveness of particular mitigation and adaptation efforts are subject to the evolving scientific understanding of climate change and of the effects of global warming on the environment.

C. Overview and structure of the UAE's submission

14. The questions in the Request concern the identification of: (i) the obligations of States to protect the climate system and other parts of the environment from anthropogenic GHG emissions (**Question A**); and (ii) relevant legal consequences arising from the violations of such obligations when, through their acts or omissions, States have caused significant harm to the climate system and other parts of the environment with respect to States, people and individuals (**Question B**). To assist the Court in its response to these questions, the UAE's submission is intended to be a focused one, taking account of the particular character of climate change and of the existing legal obligations relevant to this phenomenon.

15. In this regard, the position of the UAE is that, while the legal framework concerning climate change has evolved over time and continues to evolve, the questions should be understood as focusing on the clarification of the current state of international law and obligations of States

[14] 2023 IPCC Synthesis Report – Summary for Policymakers, p. 6, para. A.2.5; 2023 IPCC Synthesis Report, p. 57.

[15] United Nations Framework Convention on Climate Change, 9 May 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107.

[16] Kyoto Protocol to the United Nations Framework Convention on Climate Change, 10 December 1997, 2303 U.N.T.S. 162.

[17] Paris Agreement to the United Nations Framework Convention on Climate Change, 12 December 2015, 3156 U.N.T.S. 79.

in the context of climate change, rather than upon their development *de lege ferenda*. The identification and articulation of their current relevant international obligations will guide and assist States in assessing the legality of their conduct so as to avoid significant harm to the climate system and the environment arising from anthropogenic GHG emissions. Likewise, a clear understanding of the existing parameters of relevant obligations will also assist States in identifying areas where further legal regulation may be desirable.

16. The UAE, in addition, notes that while the Request makes reference to numerous instruments and principles as potentially of relevance,[18] the questions do not presuppose the existence of relevant obligations in respect of climate change for all States deriving from these sources.[19]

17. The UAE is of the view that, in the context of the present questions, the central obligations related to protection of both the climate system and the environment more generally from the adverse effects of GHG emissions are those found in the UNFCCC, the Kyoto Protocol, and the Paris Agreement (hereinafter collectively referred to as the "**UN climate change régime**"). Those obligations are the principal focus of the present written submissions.

18. In light of the anticipated volume of written statements in these proceedings, the present written statement is not intended to be exhaustive, and will focus on certain selected issues specifically related to Question A. The remainder of this written statement is structured in the following manner:

    a. by way of illustration of the varied and context-specific character of climate change, **Section 2** highlights the exposure of the UAE to the effects of climate change, as well as the responses it has adopted.

    b. **Section 3** focuses on the central importance of inter-State cooperation for effective climate action, and the need for the Court to recognize and safeguard the processes of cooperation and negotiation under the UN climate change régime in rendering its opinion.

    c. **Section 4** then examines the existing legal framework applicable to climate change, namely the UN climate change régime, which gives effect to the principle of no-harm and the due diligence standard in this field, including by setting out:

[18] Request, p. 3, referring to, *inter alia*, the Charter of the United Nations, the International Covenant on Civil and Political Rights ("**ICCPR**"), the International Covenant on Economic, Social and Cultural Rights ("**ICESCR**"), the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea ("**UNCLOS**"), the rights recognized in the Universal Declaration of Human Rights, and the duty to protect and preserve the marine environment.

[19] The UAE is not a party to a number of the instruments to which reference is made, notably, the ICCPR, ICESCR and UNCLOS.

i. the obligation to implement measures to mitigate atmospheric concentrations of GHG emissions;

ii. the obligation to implement adaptation measures to protect and preserve the environment against the adverse effects of climate change;

iii. the relevance in this context of the principle of 'common but differentiated responsibilities and respective capabilities' (the "**CBDRRC principle**").

II. THE UAE AND CLIMATE CHANGE

19. Climate change is a matter of common concern for humankind. Its causes stem from human activity, and it has serious consequences for humanity as a whole. It has affected and continues to affect the social, environmental, and economic well-being of many States. The manner and extent to which it does so varies in light of each State's particular situation, and the steps that each State is able to take in combatting climate change will likewise vary. Equally, as a global problem, climate change demands global solutions.

20. The UAE has adopted extensive responsive measures locally and has steadfastly supported climate action globally. The present section outlines the consequences of climate change for the UAE and its broader region, as well as the steps the UAE has taken domestically and internationally to address the consequences of climate change, including its contribution to, and leadership in, climate action.

A. Vulnerability of the UAE to climate change

21. The geography and topography of the UAE expose it to an ever-increasing risk of adverse effects stemming from climate change. The two major catalysts of the impact likely to be experienced by the UAE are the extreme aridity of the region and its long coastline. The UAE's Ministry of Climate Change and Environment ("**MOCCAE**") has identified that the potential manifestations of climate change for the UAE include extreme heat, storm surges, sea level rise, water stress, dust and sand storms, and desertification, which even small variations in weather patterns could generate.[20]

1. Changes in temperature, sea level, and patterns of precipitation

22. Projections based on the analysis of past and present anthropogenic drivers and using climate models suggest that there will be an increase in the UAE's annual average temperature of 1.5-2°C by 2040,[21] and that average temperature increases are likely to be substantially higher in the UAE than the observed global average. It is estimated that by 2079, average air temperatures could increase by a further 2–3°C during summer months.[22] Further, average sea surface temperature in the region could rise by 1–2°C by the end of the century.[23]

[20] MOCCAE, National Adaptation Plan Roadmap for the United Arab Emirates, November 2023, p. 12; National Climate Change Plan of the United Arab Emirates 2017-2050, p. 20.

[21] MOCCAE, National Climate Change Plan of the United Arab Emirates 2017-2050, p. 20.

[22] MOCCAE, Accelerating Action Towards a Green, Inclusive and Resilient Economy: Third Update of Second Nationally Determined Contribution for the UAE, 2023 ("**UAE 2023 NDC**"), p. 37; MOCCAE, National Climate Change Adaptation Program, Adaptation of the UAE's Infrastructure to Climate Change Risk Assessment & Options for Action, 2019, p. 4.

[23] MOCCAE, National Adaptation Plan Roadmap for the United Arab Emirates, November 2023, p. 11.

23. The sea level along the UAE's coast, and in the Arabian Gulf generally, is expected to rise due to global deglaciation and thermal effects, increasing the threat of inundation along the UAE coastline. In addition to rises in sea level and water temperature, seawater salinity and acidity is projected to increase as a result of higher rates of evaporation and higher levels of dissolved CO_2.[24]

24. Current projections further indicate that extreme weather events will become more frequent, their intensity more severe, and their trajectories or pathways less predictable.[25]

25. Further, rainfall is expected to increase over much of the UAE,[26] including increases of 50-100% from current levels in Dubai, Sharjah, and the Northern Emirates by 2060-2079.[27] Atmospheric modelling predicts a 15-20% increase in rainfall over the Hajar Mountains by 2050. Despite the projected increases in rainfall, however, the number of wet days (i.e., days with over 1 mm of rainfall) is likely to decrease. This implies that more intense, and thus potentially more devastating, rainfall will occur during comparatively fewer rainfall events than currently observed. At the same time, any positive changes resulting from the increase in the volume of rainfall in some parts of the UAE are likely to be negated by higher rates of evaporation.[28]

2. Adverse impacts of climate change for the UAE

26. The UAE has around 200 islands, mostly small and flat, that are at risk of flooding and/or submersion due to sea level rise. Rising water temperatures may also permanently damage crucial ecosystems which serve as carbon sinks, thus further exacerbating climate change.[29] The UAE has assessed that the loss of coastal and terrestrial wetlands, as well as associated biodiversity and ecosystem services as a result of climate change constitutes a "high risk", and the increased incidence of coral bleaching as a "very high risk" with an "almost certain" likelihood of occurrence.[30]

27. As to the impact on the UAE's fauna, while certain migratory species may possess the capability to adapt to changing climate conditions by altering their migratory patterns,

[24] MOCCAE, National Adaptation Plan Roadmap for the United Arab Emirates, November 2023, p. 11; UAE 2023 NDC, p. 39.

[25] MOCCAE, National Climate Change Adaptation Program, Adaptation of the UAE's Infrastructure to Climate Change Risk Assessment & Options for Action, 2019, p. 4.

[26] MOCCAE, National Adaptation Plan Roadmap for the United Arab Emirates, November 2023, pp. 11-12.

[27] MOCCAE, National Adaptation Plan Roadmap for the United Arab Emirates, November 2023, p. 11.

[28] MOCCAE, National Climate Change Adaptation Program, Adaptation of the UAE's Infrastructure to Climate Change Risk Assessment & Options for Action, 2019, p. 4.

[29] UAE 2023 NDC, p.13.

[30] MOCCAE, National Climate Change Adaptation Program, Adaptation of the UAE's Environment to Climate Change Risk Assessment & Options for Action, 2019, p. 18, Table 6.

non-migratory species endemic to the Gulf are likely to be more severely affected in general, including because the alarming rate of climate change may prevent these species from adapting in a short span of time.[31]

28. As concerns flora, twelve critical habitats and eight environmentally sensitive habitats, covering 87% of the UAE's territory[32] are likely to be placed at risk and suffer harm due to the adverse impacts of climate change.

29. Moreover, around 85% of the UAE's population and more than 90% of its infrastructure are located in coastal areas, making them vulnerable to coastal erosion and flooding of low-lying areas. Rising sea-levels may result in the loss of a significant part of the UAE populated and developed coastline by the end of the century.[33] Further, extreme weather events, rising sea levels, and changes in seawater salinity and acidity are very likely to inflict damage and high strain on vital coastal and offshore infrastructure.[34]

30. The climate crisis also poses serious risks to the operations of domestic power systems, affecting their efficiency and reliability, as well as resulting in increased maintenance costs. Extreme weather events may also affect the uptime and functioning of power facilities, while sea level rise is likely to damage power infrastructure located in coastal areas.[35] In addition to significant economic consequences, reduced energy output threatens the ability of the UAE to meet the increased energy demands that are likely to result from global warming.

31. Finally, in hot and arid countries such as the UAE, very high temperatures are a key risk factor for the population, and can result in direct health impacts such as heat strokes, heat stress, and heat exhaustion. Rising temperatures, high humidity, extreme weather events, and related environmental degradation can also indirectly increase the incidence of cardiovascular, respiratory, and water-, food-, and vector-borne diseases.[36]

32. In light of the foregoing, from a purely pragmatic viewpoint, the UAE regards the adoption of extensive adaptation measures as part of its response to climate change not as an option, but as a necessity.[37] Even if the global community were to halt all anthropogenic GHG emissions immediately, the present levels of warming in the climate system due to cumulative historical

[31] UAE's Ministry of Energy & Infrastructure ("**MOEI**"), Fifth National Communications Report (NCR), submitted on 2 December 2023, p. 105.

[32] MOCCAE, National Climate Change Adaptation Program, Adaptation of the UAE's Environment to Climate Change Risk Assessment & Options for Action, 2019, p. 13.

[33] UAE 2023 NDC, pp. 38-39.

[34] UAE 2023 NDC, pp. 38-39.

[35] UAE 2023 NDC, p.38.

[36] MOCCAE, National Climate Change Adaptation Program, Adaptation of the UAE's Public Health to Climate Change Risk Assessment & Options for Action, 2019, pp. 5-8.

[37] MOCCAE, National Climate Change Plan of the United Arab Emirates 2017-2050, p. 38.

emissions will nevertheless have significant adverse impacts upon the well-being of the population of the UAE, its economic growth, and its environment. Accordingly, the need to embed climate resilience in its policies is central to the UAE's management of current and future risks and opportunities.

B. The UAE's domestic initiatives in response to climate change

33. The UAE has adopted a variety of domestic initiatives in response to the threat of climate change, comprising human-based interventions and nature-based solutions.

34. Consistent with the most recent iteration of its nationally determined contribution ("**NDC**") pursuant to the Paris Agreement,[38] the UAE is committed to implementing its Net Zero by 2050 Strategic Initiative — the first country in the Gulf region to commit to this goal — and to implementing its Long-Term Low Emissions Development Strategy,[39] both of which will contribute significantly to cutting GHG emissions.[40]

35. Moreover, taking account of its vulnerabilities to the adverse effects of climate change, the UAE has also implemented a variety of measures aimed at preserving biodiversity on land and at sea, and enhancing the resilience of its ecosystems and their ability to adapt to the effects of climate change. The UAE's climate agenda is guided by technological advancements and scientific understanding, and places particular emphasis on developing such capabilities locally.

1. Reduction of GHG emissions

i. Energy systems

36. As an oil-producing country, the UAE recognizes the potential for reductions in global GHG emissions through the adoption of measures relating to energy systems. The UAE has taken major steps towards ensuring cleaner fossil fuel production and consumption to minimize the use of unabated fossil fuels.[41]

37. In respect of energy supply – comprising the extraction, conversion, storage, transmission, and distribution of oil[42] – the UAE has, for example, reduced the flaring of gas, and adopted the

[38] UAE 2023 NDC.

[39] MOCCAE, The United Arab Emirates First Long-Term Strategy (LTS), Demonstrating Commitment to Net Zero by 2050.

[40] See UAE 2023 NDC, p. 7.

[41] The term "unabated fossil fuels" refers to "fossil fuels produced and used without interventions that substantially reduce the amount of GHG emitted throughout the life cycle": see 2023 IPCC Synthesis Report – Summary for Policymakers, p. 28, fn. 51.

[42] IPCC, 2014: Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, p. 518.

use of zero-carbon grid power.[43] Major carbon capture and storage ("**CCS**") projects have been developed in the UAE[44] and there exist plans to establish a CCS network with an installed capacity of 5 million metric tonnes of CO_2 equivalent ("**MMTCDE**") per year.[45] The UAE is also actively exploring other innovative measures, including 'Direct Air Capture' technology.[46]

38. Moreover, the UAE has a long history of engagement with the development of viable renewable sources of energy, and is committed to the global goal of tripling the share of renewable energy sources by 2030,[47] playing a prominent role in initiatives in this regard both domestically and abroad.[48] The UAE has invested in renewable energy projects across 70 countries and has plans for significant additional investments by 2035.[49] Domestically, the UAE has increased the local availability of renewable energy, including through large-scale projects to harness solar power,[50] nuclear power,[51] clean hydrogen,[52] and wind power.[53]

39. Further measures have been taken to make energy consumption in the UAE sustainable, including deregulation of fuel prices,[54] imposing high fuel quality standards,[55] and enhancing cleaner energy measures for heavy industries.[56]

40. In addressing the impact of climate change on its energy systems, in addition to energy security, the UAE has also taken into account considerations of equity and has adopted a number of policies to ensure a just transition towards clean sources of energy. These include diversifying its economy,[57] generating work opportunities and providing appropriate upskilling

[43] UAE 2023 NDC, p. 12.

[44] UAE 2023 NDC, p. 22.

[45] UAE 2023 NDC, p. 24. See also MOCCAE, A Guide to Climate Action in the UAE, May 2023, p. 19.

[46] MOCCAE, The United Arab Emirates First Long-Term Strategy (LTS), Demonstrating Commitment to Net Zero by 2050, pp. 29, 88.

[47] CMA, Decision 1/CMA.5, Outcome of the first Global Stocktake, FCCC/PA/CMA/2023/L.17, 13 December 2023, para. 28(a).

[48] MOCCAE, The United Arab Emirates First Long-Term Strategy (LTS), Demonstrating Commitment to Net Zero by 2050, pp. 36, 37, 39.

[49] UAE 2023 NDC, p. 12.

[50] UAE 2023 NDC, pp. 18-19.

[51] MOCCAE, A Guide to Climate Action in the UAE, May 2023, p. 16.

[52] MOEI, National Hydrogen Strategy, July 2023.

[53] MOCCAE, The United Arab Emirates First Long-Term Strategy (LTS), Demonstrating Commitment to Net Zero by 2050, p. 56.

[54] UAE, Government Portal, 'Deregulation of fuel prices' < https://u.ae/en/information-and-services/environment-and-energy/water-and-energy/energy-and-fuel-prices >.

[55] MOCCAE, A Guide to Climate Action in the UAE, May 2023, p. 17.

[56] MOCCAE, A Guide to Climate Action in the UAE, May 2023, p. 19.

[57] UAE 2023 NDC, p. 11.

and capability building,[58] and ensuring the availability of innovative, alternative sources of energy.[59]

ii. Buildings and infrastructure

41. GHG emissions from buildings constitute the third largest source of emissions in the UAE.[60] By improving the overall energy efficiency of buildings, and through its goal of decarbonizing power and water generation,[61] the UAE intends to reduce such emissions by 56% by 2030.[62] Measures adopted in this regard include promoting the use of more efficient cooling systems and the use of solar water heating, and pricing reform for residential, commercial, and industrial power consumption.[63] The UAE has further enacted regulations for sustainable building practices applicable to the public and private sectors.[64]

iii. Transport

42. The UAE is taking active steps towards the decarbonization of its transport sector. It intends to reduce emissions from this sector by, *inter alia*, further expanding the availability of public transportation, introducing electric vehicles, developing an integrated railway network, and implementing targets for fuel efficiency of vehicles.[65]

iv. Waste disposal

43. The waste sector contributes a significant amount of GHGs globally, the majority of which are released from landfills through the process of biodegradation.[66] The UAE has adopted a long-term plan to reduce its emissions in the waste sector drastically, including through: (i) reducing waste generation *per capita*; (ii) diverting waste from landfills into waste-to-energy plants; and (iii) its Circular Economy Policy 2031.[67] A significant aspect of the waste sector

[58] UAE 2023 NDC, p. 49. See also MOCCAE, The United Arab Emirates First Long-Term Strategy (LTS), Demonstrating Commitment to Net Zero by 2050, pp. 19, 117-118.

[59] UAE 2023 NDC, p. 30.

[60] UAE 2023 NDC, p. 17. See also UAE 2023 NDC, pp. 31-32.

[61] UAE 2023 NDC, pp. 31-32.

[62] UAE 2023 NDC, p. 31.

[63] UAE 2023 NDC, pp. 31-32.

[64] UAE, Government Portal, 'Increasing energy efficiency' <https://u.ae/en/information-and-services/environment-and-energy/climate-change/theuaesresponsetoclimatechange/increasing-energy-efficiency >.

[65] UAE 2023 NDC, pp. 25-27.

[66] IPCC, 2007: Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change ("**2007 IPCC The Physical Science Basis**"), p. 587.

[67] UAE 2023 NDC, pp. 28-30. See also MOCCAE, A Guide to Climate Action in the UAE, May 2023, pp. 18-19.

strategy is the establishment of several material recovery facilities to convert organic material waste into viable energy sources or recycled materials.[68]

2. Protection of carbon sinks, biodiversity, and resilience

i. Natural carbon sinks

44. Mangroves are important natural carbon sinks and have been recognized to deliver immediate carbon-capture benefits.[69] Mangroves can be found across the UAE coastline and the UAE currently has a stock of approximately 124 million mangroves, with an annual carbon sequestration potential of about 1 MMTCDE.[70] It is pursuing an ambitious plan to plant an additional 100 million mangroves by 2030 in order to increase sink capacity to 3 MMTDCE per year.

45. Other natural carbon sinks in the UAE can be found in wetlands,[71] covering around 391,655 km^2 of the State's territory, and its date palm trees, of which it has 100 million.[72] The UAE has implemented a number of measures to ensure the protection and effectiveness of these natural sinks, including by eliminating harmful diseases and parasites that otherwise fatally infect palm trees[73] and designating ten wetlands as "Ramsar sites", pursuant to the 1971 Ramsar Convention on Wetlands.[74]

ii. Biodiversity

46. It is widely accepted that safeguarding biodiversity in global ecosystems enhances their functionality as well as nature-based mitigation and adaptation efforts.[75]

47. The UAE has created specific strategies for the conservation of its diverse flora and fauna, such as encouraging forestation and the planting of local trees and plants.[76] In addition, recognizing their pivotal role in maintaining the health of marine life,[77] the UAE has invested

[68] UAE 2023 NDC, p. 30.

[69] 2023 IPCC Synthesis Report – Summary for Policymakers, p. 29, para. C.3.5.

[70] UAE 2023 NDC, p. 43.

[71] See, generally, IPCC 2014, 2013 Supplement to the 2006 IPCC Guidelines for National Greenhouse Gas Inventories: Wetlands.

[72] UAE 2023 NDC, p. 42.

[73] MOCCAE, The National Strategy to Combat Desertification, 2022, pp. 19-20.

[74] UAE 2023 NDC, p. 41; Convention on Wetlands of International Importance Especially as Waterfowl Habitat, 2 February 1971, 996 U.N.T.S. 245.

[75] 2023 IPCC Synthesis Report – Summary for Policymakers, pp. 29-30, para. C.3.6. See also IPCC, 2002: Climate Change and Biodiversity, Technical Paper V, pp. 3-4.

[76] MOCCAE, The National Strategy to Combat Desertification, 2022, p. 22.

[77] UAE 2023 NDC, p. 45.

extensively in coral reef rehabilitation projects,[78] the deployment of artificial coral reefs,[79] and in protecting reef-creating corals.[80]

48. Further, it has adopted measures against the over-exploitation of the UAE's fisheries resources,[81] and legislation to prevent the capture and sale of certain endangered species.[82] In line with international best practices, the UAE has also implemented strategies to protect local flora and fauna from invasive alien species.[83]

iii. Enhancing resilience

49. A core element of the UAE's response to the threat resulting from sea level rise due to climate change is its efforts to protect and expand its mangroves. In addition to acting as carbon sinks, mangroves hold sediments in place, slowing the pace of water, preventing erosion, and as a consequence, stabilizing the coastline.[84] Additional measures for protection include the implementation of coastal monitoring programs, the creation of early warning systems, and the construction of barriers to protect against flooding.[85]

50. The UAE has also operationalized initiatives to expand climate-resilient infrastructure, such as "future-proof" construction materials and developing "sea-level rise proofed infrastructure".[86]

51. In order to secure its food systems, the UAE has enacted a number of laws aimed at promoting sustainable herding and livestock farming, the objective of which is to balance herding against the protection of desert and local plants, and to minimize impacts on the soil.[87] The UAE has also taken steps to implement sustainable agricultural systems to reduce freshwater demand and food waste, as well as to promote food diversification, and the conservation of soil and water.[88]

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[78] UAE 2023 NDC, p. 43.

[79] MOCCAE, A Bridge to Greater Climate Ambition Updated Second Nationally Determined Contribution of the United Arab Emirates, 2022, p. 32.

[80] MOCCAE, UAE National Red List of Reef-Building Corals, Policy Brief, 2021; MOCCAE, UAE National Red List Synthesis Report, 2021, pp. 26, 31.

[81] UAE 2023 NDC, pp. 41, 45. UAE, Government Portal, 'Regulating Fishing Practices' <https://u.ae/en/information-and-services/environment-and-energy/regulating-fishing-practices>.

[82] MOCCAE, UAE National Red List of Cartilaginous Fishes, Policy Brief, 2021, pp. 11-12; MOCCAE, UAE National Red List of Select Bony Fishes, Policy Brief, 2021, p. 5.

[83] MOCCAE, The UAE National Invasive Species Strategy and Action plan, 2022-2026, Section 1.6, p. 19.

[84] UAE 2023 NDC, p. 43.

[85] UAE 2023 NDC, p. 40.

[86] UAE 2023 NDC, p. 39.

[87] MOCCAE, The National Strategy to Combat Desertification 2022-2030, pp. 22-25, referring to, *e.g.*, Federal Law No. (11) of 2020.

[88] UAE 2023 NDC, pp. 44-45.

3. Research and technology

52. The UAE recognizes that innovation and the continuous development of technology which is responsive to the evolving understanding of the impacts of climate change is critical for ambitious mitigation and adaptation policies.[89] It has accordingly, as part of its climate action agenda, prioritized research, innovation, and advanced monitoring processes, including by utilizing the UAE Space Agency for innovative data-collection processes to monitor emissions and contribute to the UAE's GHG and air quality inventories, and to improve waste and water quality monitoring.[90]

53. In addition, local research efforts have focused on distinct, targeted areas of opportunity, such as using biofuels to power commercial flights;[91] exploring transformative ways to meet the challenges of outdoor comfort in hot and humid outdoor spaces;[92] exploring next-generation, nutrient-rich alternatives to traditional food systems; and exploring smart grid integration and energy efficiency.[93]

54. The UAE has also established the UAE Climate Change Research Network to strengthen cross-border interaction between scientists and researchers in order to advance climate-research and policy making.[94]

C. The UAE's international engagement in response to climate change

1. The UAE's participation in relevant international treaty regimes

55. The UAE is a State party to the principal multilateral treaties which have as their object and purpose the protection of the climate system and other parts of the environment from the impact of anthropogenic GHGs, notably the UNFCCC, the Kyoto Protocol, and the Paris Agreement. The UAE is also party to the 1985 Vienna Convention for the Protection of the Ozone Layer[95] and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer.[96]

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[89] See, for example, 2023 IPCC Synthesis Report – Summary for Policymakers, pp. 30-31, 33, paras. C.4.2, C.5.4, C.7.

[90] UAE 2023 NDC, pp. 40, 48.

[91] The Sustainable Bioenergy Research Consortium and the Seawater Energy and Agriculture System, which successfully completed a biofuel-powered commercial flight in 2019. See Khalifa University, 'World's First Commercial Flight Fueled from Saltwater Plants', 16 January 2019 < https://www.ku.ac.ae/etihad-airways-flies-the-worlds-first-flight-using-fuel-made-in-the-uae-from-plants-grown-in-saltwater-by-khalifa-university > .

[92] UAE 2023 NDC, p. 39.

[93] UAE 2023 NDC, p. 44.

[94] UAE 2023 NDC, p. 49.

[95] Vienna Convention for the Protection of the Ozone Layer, 22 March 1985, 1513 U.N.T.S. 293.

[96] Montreal Protocol on Substances that Deplete the Ozone Layer, 16 September 1987, 1522 U.N.T.S. 3.

56. Furthermore, the UAE is party to the 1994 United Nations Convention to Combat Desertification ("**UNCCD**").[97] The States party to the UNCCD work to improve the living conditions of people in drylands by maintaining land productivity to build resilience, mitigate drought, and combat desertification and land degradation, including in a manner which responds and adapts to climate change.

57. In addition, the UAE is an active participant in various multilateral treaty-based organizations which, in support of the objectives of the UN climate change régime, have responsibility for the mitigation of GHG emissions in certain specific sectors.[98]

58. In this regard, the UAE is a party to the 1948 Convention on the International Maritime Organization,[99] and is a member of the Council of the International Maritime Organization ("**IMO**"). The UAE is also party to the 1973 International Convention for the Prevention of Pollution from Ships (**"MARPOL"**) and to its 1997 Protocol that resulted in Annex VI, containing Regulations for the Prevention of Air Pollution from Ships ("**MARPOL Annex VI**").[100] Pursuant to MARPOL Annex VI, the States parties have developed regulations for emissions certification standards for existing and new ships.[101] The 2023 IMO Strategy on Reduction of GHG Emissions from Ships sets out more broadly the implementation of the work of the IMO as the international body having responsibility for reducing emissions from international shipping.[102]

59. Similarly, the UAE is a party to the 1944 Chicago Convention which established the International Civil Aviation Organization ("**ICAO**")[103] and is a member of the ICAO Council. In 2017, ICAO adopted a CO_2 emission certification standard for the design of aeroplanes, which has subsequently been updated in 2020 and 2023.[104] Further, in 2022, the ICAO Assembly adopted two key resolutions elaborating upon the implementation of the work of

[97] United Nations Convention to Combat Desertification, 17 June 1994, 1954 U.N.T.S. 3.

[98] See, *e.g.*, Kyoto Protocol, Article 2(2).

[99] Convention on the International Maritime Organization, 6 March 1948, 289 U.N.T.S. 3.

[100] Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships of 2 November 1973, as modified by the Protocol of 17 February 1978 (New Annex VI - Regulations for the Prevention of Air Pollution from Ships), 26 September 1997, 2057 U.N.T.S. 68.

[101] Most recently, through requirements for both new and existing ships relating to the Existing Ship Energy Efficiency Index ("EEXI") and Operational Carbon Intensity Indicator ("CII"). See MARPOL Annex VI Regulations 23, 25, 28, pursuant to IMO Resolution MPEC.324(75), 20 November 2020.

[102] IMO, Marine Environment Protection Committee, Resolution MEPC.377(80), 7 July 2023.

[103] Chicago Convention on International Civil Aviation, 7 December 1944, 15 U.N.T.S. 295.

[104] ICAO Council, Decision of 17 March 2017, see Annex 16 to the Convention on International Civil Aviation, ICAO International Standards and Recommended Practices, Environmental Protection, Volume III, CO_2 Certification Requirement, First Edition March 2017; Amendment 1 (Aeroplane CO_2 Emissions), 20 July 2020; and Amendment 2 (Aeroplane CO_2 Emissions) dated 31 July 2023.

ICAO as the international organization with responsibility for reduction of emissions from international civil aviation.[105]

2. UAE leadership in enhancing climate ambition and financial assistance

60. The UAE has taken a leading role in promoting climate ambition and voluntary financial contributions to address climate change in vulnerable countries, both globally and in its broader region, and more generally has played a leadership role in respect of climate action. Notably, from 30 November to 13 December 2023, the UAE hosted the 28th annual COP meeting in Dubai. The UAE Consensus and other outcomes of COP28 represent a historic milestone in the international response to the climate crisis, and in the implementation of the UN climate change régime.

61. The UAE Consensus, adopted by Parties under the facilitation of the UAE Presidency of COP28, encompasses the outcome of the first Global Stocktake under the Paris Agreement.[106] This outcome, adopted by consensus, reflects a comprehensive assessment of progress against the Paris Agreement's long-term goals in accordance with its Article 14(1). It also sets out a roadmap to raise ambition over the coming decade and beyond with a view to keeping the 1.5°C temperature goal within reach. It includes, for the first time, a call for Parties to transition away from fossil fuels, as well as calling on Parties to accelerate efforts towards the phase-down of unabated coal, and substantially to reduce non-carbon-dioxide emissions globally, in particular methane emissions by 2030. In addition to the outcome of the first Global Stocktake, Parties adopted the UAE Just Transition Work Programme.[107]

62. The UAE Consensus constitutes an unprecedented outcome and represents a significant step towards achieving the temperature goals under the Paris Agreement, which was the product of significant diplomatic effort and ambition.

63. The UAE Presidency of COP28 also facilitated the agreement of the Parties to operationalize the Fund for Responding to Loss and Damage ("**Loss and Damage Fund**")[108] and, in relation

[105] ICAO Assembly, Resolution A41-21, A41-21: Consolidated statement of continuing ICAO policies and practices related to environmental protection - Climate change, adopted at the 41th Session, 27 September–7 October 2022; and ICAO Assembly, Resolution A41-22, A41-22: Consolidated statement of continuing ICAO policies and practices related to environmental protection – Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA), adopted at the 41th Session, 27 September–7 October 2022.

[106] CMA, Decision 1/CMA.5, Outcome of the first Global Stocktake, FCCC/PA/CMA/2023/L.17, 13 December 2023.

[107] COP, Decision 3/CMA.5, United Arab Emirates Just Transition Work Programme, FCCC/PA/CMA/2023/L.14, 13 December 2023.

[108] COP - CMA, Decision 1/CP.28 - 5/CMA.5, Operationalization of the new Funding Arrangements, Including a Fund, for Responding to Loss and Damage Referred to in Paragraphs 2-3 of Decisions 2/CP.27 and 2/CMA.4, FCCC/CP/2023/L.1−FCCC/PA/CMA/2023/L.1, 6 December 2023 ("**COP Decision on the Loss and Damage Fund, 6 December 2023**"); Fifth meeting of the Transitional Committee on the operationalization of the new funding arrangements for responding to loss and damage and the fund established in paragraph 3 of decisions 2/CP.27 and

to the Global Goal on Adaptation (the "**GGA**"), the adoption of the UAE Framework for Global Climate Resilience (the "**UAE Framework**").[109]

64. In respect of the Loss and Damage Fund, at COP28, the Parties adopted the Governing Instrument of the Fund, which foresees the hosting of the Fund by the World Bank, and outlines principles as to Funding Arrangements.[110] In order to kickstart the Fund's operation and encourage other States to contribute, the UAE made the first voluntary contribution of USD 100 million; in total, contributions of over USD 790 million to the funding arrangements were pledged during COP28, including over USD 660 million to capitalize the Fund itself.

65. At COP28, the Parties also took a significant step forward in implementing Article 7(1) of the Paris Agreement by reaching agreement on the UAE Framework for the GGA. The UAE Framework aims to guide States in their adaptation efforts aimed at protecting their populations and ecosystems from the adverse effects of climate change, including by taking action on themes that are critical to global climate resilience such as nature, food, health, water, and infrastructure.

66. Although under the UN climate change régime the obligation to provide financial resources to assist developing country Parties is limited to developed countries,[111] the UAE has taken a leadership role in providing assistance to those most in need. At COP28, the UAE announced the provision of USD 150 million in new funding for water security solutions in vulnerable countries. This pledge recognizes that many developing countries need support as they are extremely vulnerable to changes in temperature and rainfall resulting from climate change, including as regards their agricultural production.

67. In addition, the UAE made a Special Drawing Rights contribution of USD 200 million to the IMF Resilience and Sustainability Trust. The Trust supports climate resilience in low and middle-income countries vulnerable to the impacts of climate change. The UAE further announced a contribution of USD 100 million to the new Nature Finance Hub for nature-climate projects, with an initial USD 30 million investment in the Government of Ghana's 'Resilient Ghana' plan.

68. Further, at COP28 the UAE and United States of America jointly announced that funding for the Agriculture Innovation Mission for Climate ("**AIM for Climate**") initiative, which

2/CMA.4, Co-chairs' Summary, version of 23 November 2023, paras. 9-23; COP, Decision 1/CP.27, Sharm el-Sheikh Implementation Plan, FCCC/CP/2022/10/Add.1, 20 November 2022, paras. 25-28.

[109] CMA, Decision 1/CMA.5, Outcome of the first Global Stocktake, FCCC/PA/CMA/2023/L.17, 13 December 2023, paras. 62-65; COP Decision on the Loss and Damage Fund, 6 December 2023, Glasgow–Sharm el-Sheikh work programme on the global goal on adaptation referred to in decision 7/CMA.3.

[110] COP Decision on the Loss and Damage Fund, 6 December 2023, Annex I "Governing Instrument of the Fund", and Annex II "Funding Arrangements".

[111] Paris Agreement, Article 9(2).

promotes and advances climate-friendly farming globally, has grown to more than USD 17 billion. The funding committed has increased from USD 13 billion in May 2023, when the United States of America and UAE co-hosted an AIM for Climate summit in Washington D.C., and from USD 8 billion at COP27 in Egypt.

69. In addition, at COP28, the UAE announced the launch of ALTÉRRA, a USD30 billion catalytic private finance vehicle and fund based in Abu Dhabi, which seeks to mobilize a total of USD 250 billion for global climate action. This finance industry-led initiative will support acceleration of the global transition to a low-carbon economy and building climate resilience in developing countries.

70. Finally, the UAE is resolute in its support of developing the renewable energy sector. As noted above, it has invested significantly in the sector at home and abroad. Moreover, the UAE is the host and a significant supporter of the International Renewable Energy Agency ("**IRENA**"), which is based in Abu Dhabi, and of IRENA's work. In this context, the UAE has provided USD 950 million to the Energy Transition Accelerator Financing Platform ("**ETAF**") by which IRENA facilitates provision of capital for the renewable energy transition in developing countries.[112]

71. Further, between 2013 and 2020, the UAE provided USD 350 million towards the IRENA / Abu Dhabi Fund for Development ("**ADFD**") project facility, which supports 26 projects in 21 countries, with a generating capacity of 245 megawatts to meet the needs of more than 4.5 million households and businesses.[113] Projects funded by IRENA and ADFD span Asia, Africa, Latin America, and SIDS, encompassing the entire spectrum of renewable energy sources – wind, solar, hydro, geothermal and biomass technologies.

[112] IRENA, Press Release, Commitments by new partners grow the global ETAF platform in support of renewable energy investment in developing countries, 9 November 2022; IRENA, Press Release, Renewables Receive Major Boost with Pledges to IRENA's ETAF Platform Exceeding USD 4 Billion, 5 December 2023.

[113] IRENA, 'IRENA/ETAF Facility (2013-2020)' < https://www.irena.org/Energy-Transition/Partnerships/ETAF>.

III. CLIMATE CHANGE AND INTERNATIONAL COOPERATION

72. The UAE submits that, in identifying the legal obligations to ensure the protection of the climate system and other parts of the environment from GHG emissions, the Court should recognize and safeguard the processes of cooperation and negotiation that have shaped, and continue to inform, the obligations of States in this area.

73. Cooperation is central to the achievement of the shared goals of conservation, protection, and restoration of the global environment. As this Court has previously recognized, "it is by co-operating that States […] can jointly manage the risks of damage to the environment".[114] Cooperation has been described as the "*Grundnorm*" of customary international law relating to protection of the environment,[115] and as the "foundation" of legal regimes dealing with the environment.[116] Environmental treaties and legal instruments recognize the role of international cooperation both for the purpose of implementation[117] and for the development of new regulations.[118]

74. In this context, a crucial aspect of cooperation in the field of international environmental law is negotiation.[119] As reflected in the general practice of recent years, States continue to rely on multilateral negotiation to develop targeted legal rules for the protection and preservation of the environment.[120]

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[114] *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 14, at p. 49 (para. 77).

[115] *MOX Plant (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001,* p. 95 (Separate Opinion of Judge Wolfrum), at p. 135.

[116] *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), Judgment, I.C.J. Reports 2014*, p. 226 (Separate Opinion of Judge *ad hoc* Charlesworth), at p. 453 (para. 13). See also *MOX Plant (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001,* p. 95, at p. 110 (para. 82); Declaration of the United Nations Conference on the Human Environment, A/CONF.48/14/Rev.1, 16 June 1972 ("**Stockholm Declaration**"), Principle 24; Rio Declaration on Environment and Development, A/CONF.151/26 (Vol. I), 12 August 1992 ("**Rio Declaration**"), Principle 7.

[117] E.g., UNCCD, Articles 2(1), 3(b)-(c), 4(2), 12; Preamble, recitals 17 ("[r]ecognizing also the importance and necessity of international cooperation and partnership in combating desertification and mitigating the effects of drought"), 25 ("[r]ecognizing the urgent need to improve the effectiveness and coordination of international cooperation to facilitate the implementation of national plans and priorities"). See also Convention on Biological Diversity, 5 June 1992, 1760 U.N.T.S. 79 ("**Convention on Biological Diversity**"), Articles 5, 16(5); Stockholm Convention on Persistent Organic Pollutants, 22 May 2001, 2256 U.N.T.S. 119 ("**Stockholm Convention**"), Article 7(2); Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 22 March 1989, 1673 U.N.T.S. 125 ("**Basel Convention**"), Article 10.

[118] Vienna Convention for the Protection of the Ozone Layer, Article 2(2)(c); Basel Convention, Article 12.

[119] See Rio Declaration, Principle 12, expressly calling on States to explore multilateral solutions as opposed to unilateral ones ("[e]nvironmental measures addressing transboundary or global environmental problems should, as far as possible, be based on international consensus"). See also Agenda 21 of the United Nations Conference on Environment and Development, A/CONF.151/26, 14 June 1992, para. 2.22(i).

[120] For example, in 2013, States adopted the Minamata Convention on Mercury, a global treaty to protect human health and the environment from the adverse effects of mercury; see Minamata Convention on Mercury, 10 October 2013, 3202 U.N.T.S. 1. More recently, in 2023, States adopted an agreement on the conservation and sustainable use of

75. The UN climate change régime is explicitly premised on international cooperation. The UNFCCC expressly states that "the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response",[121] whilst the Paris Agreement acknowledges that climate change is a "common concern of humankind" and affirms the importance of "cooperation at all levels".[122] The framework for cooperation provided under this régime is crucial for the development of effective and just climate solutions in light of (i) the particularities of climate change and the scientific understanding thereof; and (ii) the unique role that international cooperation and negotiated outcomes play in the UN climate change régime.

A. Climate change requires collective, dynamic, and flexible action

76. Climate change has the characteristics of a "collective action problem" on a global scale as GHG emissions accumulate over time and mix globally, and emissions by any agent (individual, community, company, or country) affect others. Effective mitigation cannot be achieved if such agents advance their own interests independently, without consideration of the effects of their actions taken cumulatively. Thus, as emphasized by the IPCC, action necessary to counter climate change will not materialize without collective, cooperative efforts.[123]

77. Further, the climate system is a complex, interactive system that evolves with the passage of time owing to the influence of its internal dynamics as well as changes in external factors (including both natural and human-induced phenomena). The global climate system responds directly and indirectly to these changes through a variety of feedback mechanisms.[124] Scientific insight into climate change and its effects emerges gradually and at an uneven pace,[125] and

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marine biological diversity of areas beyond national jurisdiction; see United Nations Treaty Collection, 'Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction'. States have also agreed to forge, by 2024, an international legally binding agreement to end plastic pollution, addressing the full lifecycle of plastic, including its production, design and disposal; see United Nations Environment Programme, 'Historic day in the campaign to beat plastic pollution: Nations commit to develop a legally binding agreement', 2 March 2022 < https://www.unep.org/news-and-stories/press-release/historic-day-campaign-beat-plastic-pollution-nations-commit-develop>.

[121] UNFCCC, Preamble, recital 6, Articles 3(5), 4(1)(c)-(e), 4(1)(g)-(i), 5(c).

[122] Paris Agreement, Preamble, recitals 11, 14.

[123] IPCC, 2014: Summary for Policymakers. In: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change ("**2014 IPCC Synthesis Report – Summary for Policymakers**"), p. 17. See also Transforming Our World: The 2030 Agenda for Sustainable Development, A/RES/70/1, 21 October 2015, para. 31 ("[t]he global nature of climate change calls for the widest possible international co-operation aimed at accelerating the reduction of global greenhouse gas emissions and addressing adaptation to the adverse impacts of climate change").

[124] 2007 IPCC The Physical Science Basis, p. 96.

[125] 2007 IPCC The Physical Science Basis, pp. 95, 121.

there remain significant uncertainties regarding how future emissions will translate into climate change at global and regional levels.[126]

78. In light of the dynamic character of climate change and the evolving scientific understanding thereof, the action required of States to protect the climate system must adapt to changing circumstances and scientific developments. As climate change policies entail decision-making amid uncertainty about future challenges and impacts, they should also follow flexible pathways that allow for ongoing adjustment.[127] The UNFCCC itself recognizes that:

> the steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations, and *continually re-evaluated in light of new findings in these areas*.[128]

79. Finally, the opportunities for and constraints upon taking effective climate action are distributed unevenly among regions, communities, sectors, and ecological systems, as well as across different time periods.[129] Static and uniform approaches to the management of GHG emissions or adaptation to their effects are, therefore, unlikely to be effective or practicable.

B. The importance of cooperation and negotiated solutions under the UN climate change régime

80. The unprecedented nature and scale of the climate crisis calls for cooperation on a global scale. In its recent 2023 Synthesis Report, the IPCC identified international cooperation as among the "critical enablers" for achieving climate change mitigation and adaptation goals, as well as for climate resilient development. The IPCC notes, in particular, the role of international cooperation in mobilizing and enhancing financial, technology and capacity building support, and in facilitating sustainable transitions in emissions-intensive industries.[130]

81. To these ends, the UN climate change régime embraces an ongoing process of negotiation and decision-making.[131] In the context of a general framework for cooperation, the régime contemplates that more specific commitments will be identified by complementary bodies and in various instruments, agreements and decisions. In particular, the treaties provide that the Conference of the Parties (representing the supreme decision-making body under each

[126] IPCC 2014: Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change ("**2014 IPCC Impacts, Adaptation, and Vulnerability**"), p. 924.

[127] 2014 IPCC Impacts, Adaptation, and Vulnerability, p. 876.

[128] UNFCCC, Preamble, recital 16 (emphasis added).

[129] E.g., 2014 IPCC Impacts, Adaptation, and Vulnerability, p. 902.

[130] 2023 IPCC Synthesis Report, p. 112.

[131] UNFCCC, Article 7; Kyoto Protocol, Articles 13, 17; Paris Agreement, Article 16.

treaty)[132] will: (i) make decisions necessary to promote the effective implementation of the treaties;[133] and (ii) promote and facilitate the exchange of information on, and facilitate the coordination of, measures adopted by the Parties to address climate change and its effects.[134]

82. The annual Conference of the Parties is uniquely placed to make these decisions in a manner that responds to the dynamic character of climate change. Under the UNFCCC, the Conference of the Parties is specifically empowered to examine the obligations of the Parties in light of "the evolution of scientific and technological knowledge",[135] and has the benefit of access to the Subsidiary Body for Scientific and Technological Advice, which provides "timely information and advice on scientific and technological matters relating to the Convention".[136]

83. The UNFCCC also provides for the Conference of the Parties to engage in the review of commitments at regular intervals "until the objective of the Convention is met".[137] The Paris Agreement complements this by providing for a periodic "global stocktake" process to assess the collective progress towards achieving the Agreement's purpose and long-term goals, "in the light of equity and the best available science",[138] including with consideration to the social and economic consequences of response measures and appropriate provision for the loss and damage associated with the adverse effects of climate change.[139] The UN climate change régime thus creates a permanent forum for States to cooperate in the progressive negotiation and revision of their commitments.

84. Through the actions and decisions of the Conference of the Parties, States are developing forward-looking, balanced, and flexible solutions that are fit-for-purpose and address wide-ranging issues. At the time of writing, the Conference of the Parties had adopted by consensus more than 800 decisions aimed at the implementation of the UNFCCC, Kyoto Protocol, and Paris Agreement, and the development of standards, best practices, procedures, and other relevant guidance.[140] Each of these decisions is the product of lengthy negotiations

[132] Formally, the Parties to the treaties meet in three different settings: (i) the Conference of the Parties ("**COP**"); (ii) the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol ("**CMP**"); and (iii) the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement ("**CMA**"). For the sake of clarity, the UAE refers to COP, the CMP, and the CMA collectively as the "Conference of the Parties" in this submission.

[133] UNFCCC, Article 7(2); Kyoto Protocol, Article 13(4); Paris Agreement, Article 16(4).

[134] See e.g., UNFCCC, Article 7(2)(b)-(c); Kyoto Protocol, Article 13(4)(c)-(d).

[135] UNFCCC, Article 7(2)(a); see also Kyoto Protocol, Article 13(4)(b); Paris Agreement, Article 14(1).

[136] UNFCCC, Article 9(1); see also Kyoto Protocol, Article 15(1); Paris Agreement, Article 18(1).

[137] UNFCCC, Article 4(2)(d); see also Paris Agreement, Article 16(4).

[138] Paris Agreement, Article 14.

[139] Decision 19/CMA.1, Matters relating to Article 14 of the Paris Agreement and paragraphs 99–101 of decision 1/CP.21, FCCC/PA/CMA/2018/3/Add.2, 15 December 2018, paras. 2, 6.

[140] As of the end of 2019: see United Nations, 'The Global Negotiation Process', <https://unfccc.int/about-us/unfccc-archives/the-unfccc-archival-exhibition/the-global-negotiation-process>. The Conference of the Parties has consistently provisionally applied the draft Rules of Procedure, with the exception of draft Rule 42 on voting, and has

and careful compromise between States, and takes into account their varying capacities and constraints. Together these decisions have undoubtedly facilitated the global climate ambition of limiting temperature rise to 1.5°C above pre-industrial levels.

85. The unique role of negotiated solutions in the climate change context is exemplified by the agreement of the Conference of the Parties to create the Loss and Damage Fund. As noted above, during COP28, the Conference of the Parties adopted a historic decision resulting in the establishment and operationalization of a dedicated fund aimed at responding to the loss and damage incurred by particularly vulnerable developing countries as a result of climate change.[141] This decision is an essential step not only towards addressing the effects of locked-in levels of global warming, but also in enabling the Parties to focus on the strongest possible responses to climate change. The operationalization of the Loss and Damage Fund illustrates the potential for processes of multilateral negotiation to deliver tailored outcomes in response to climate change.

86. Whilst the Court's opinion is sure to provide helpful guidance to States, the UAE is of the view that, in order to remain relevant on an ongoing basis, its assessment of the obligations of States should accord due regard to the particular role that multilateral negotiation processes play. By safeguarding the framework for negotiated solutions enshrined in the UN climate change régime, and affirming the centrality of the corresponding duty to cooperate thereunder, the Court can preserve the ability of States to adopt and implement the most effective measures in relation to climate change.

87. The coordinated negotiation of progressive commitments constitutes the backbone of global climate governance. It reduces the risk of obligations becoming obsolete with evolutions in climate science and technology, and with changing economic conditions and emissions profiles of countries. Moreover, it allows States to tailor their commitments to their precise level of technical capability and development, with consideration for variations in their ability to apply measures for the protection of the climate system.

88. Through ongoing cooperation and negotiation, States expand the remit of climate action in a manner that allows for the harmonious elaboration and implementation of international rules. For example, these processes have enabled the development of sector-specific international rules to combat climate change within the framework of the IMO and ICAO, where States have agreed to targeted measures for the reduction of GHG emissions from international transport. Coordinated negotiations across international fora and treaty regimes further provide a means

therefore proceeded on the basis that decisions are to be adopted by consensus; see Organizational Matters: Adoption of the Rules of Procedure, FCCC/CP/1996/2, 22 May 1996, attaching the 'Draft Rules of Procedure of the Conference of the Parties and its Subsidiary Bodies'.

[141] COP Decision on the Loss and Damage Fund, 6 December 2023.

for States to carefully consider interactions of, and articulate the relation between, overlapping legal regimes.

89. Admittedly, achieving consensus – which is vital to fostering collective action – can result in extended negotiations. At the same time, while negotiations are ongoing, States continue to be bound by their obligations under the UN climate change régime, including in relation to the adoption of mitigation and adaptation measures, which provide a safeguard against aggravation of the climate crisis. As such, taken as a whole, the process of negotiated outcomes under the UN climate change régime should be seen as facilitating the protection of the climate system and other parts of the environment from anthropogenic GHG emissions.

IV. APPLICABLE LEGAL FRAMEWORK

A. Introduction

90. The UAE recognizes that, under general international law, States have an obligation to ensure that activities within their jurisdiction and control do not cause significant harm to the environment (the "**no-harm principle**").

91. The UAE is of the view that the instruments comprising the UN climate change régime give effect to the no-harm principle in the specific context of climate change, and that various provisions thereunder are to be understood as elaborating upon and providing content to the standard of due diligence required under that principle.

1. The no-harm principle

92. The no-harm principle finds recognition both in the foundational instruments of international environmental law,[142] as well as in the decisions of this Court. Notably, in the *Legality of the Threat or Use of Nuclear Weapons* Advisory Opinion, the Court recognized that

> 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.[143]

As the Court there made clear, the obligation applies not only where significant harm is caused to the environment of other States, but also where such harm occurs in areas beyond national jurisdiction.[144]

93. It is well-established that the no-harm principle:

a. does not impose an obligation of result, but rather entails an obligation of conduct, and is subject to a standard of due diligence;[145] and

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[142] See, e.g., Stockholm Declaration, Principle 21; Rio Declaration, Principle 2.

[143] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 226, at p. 241 (para. 29).

[144] Ibid; and see *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 7, at p. 41 (para. 53); *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 4, at p. 78 (para. 193), and see ibid., at p. 56 (para. 101); *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment, I.C.J. Reports 2015*, p. 665, at pp. 706 (para. 104), 711 (para. 118). See also Stockholm Declaration, Principle 21; Rio Declaration, Principle 2.

[145] *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 4, at pp. 55-56 (para. 101), 77, (para. 187), 83 (para. 204); *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v.*

b. as a consequence, requires a State "to use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment".[146]

94. In this regard, the due diligence standard under the no-harm principle — and "the duty of vigilance and prevention which it implies"[147] — requires States to adopt appropriate rules and measures with a view to achieving the aim of preventing significant environmental harm.[148] The adoption of appropriate rules, however, is not sufficient; rather, in order to comply with the standard of due diligence, States must also exercise vigilance in ensuring their enforcement, including through monitoring the activities of both public and private sector operators.[149]

95. In addition, where, notwithstanding a lack of scientific certainty, there are plausible indications of a risk that significant harm may be caused, due diligence requires the adoption of a precautionary approach.[150]

96. Further, States may be required to exchange information, consult, negotiate, and cooperate, as appropriate, in respect of matters concerning the prevention of environmental harm.[151] Such

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Nicaragua) and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment, I.C.J. Reports 2015*, p. 665, at pp. 706-707 (para. 104), 720 (para. 153), 724 (para. 168).

[146] *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 4, at pp. 55-56 (para. 101), and ibid., at p. 79 (197) ("all appropriate measures"); *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment, I.C.J. Reports 2015*, p. 665, at pp. 706 (para. 104), 711 (para. 118). See also *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, ITLOS Reports 2011*, p. 10, at p. 46 (para. 131) where the Seabed Disputes Chamber characterized an obligation of due diligence on sponsoring States as "requir[ing] them to take all appropriate measures to prevent damage from the activities of contractors that they sponsor".

[147] *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 4, at p. 83 (para. 204); see also ibid., at p. 79 (para. 197). See also the observation of the Court in *Gabčikovo-Nagymaros Project (HungarylSlovakia), Judgment, 1. C. J. Reports 1997*, p. 7, at p. 78 (para. 140) that "in the field of environmental protection, vigilance and prevention are required".

[148] *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 4, at pp. 76-77 (paras. 185, 187).

[149] *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 4, at p. 79 (para. 197); see also ibid., at pp. 76-77 (para. 185), citing *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 7, at p. 78 (para. 140).

[150] See *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, ITLOS Reports 2011*, p. 10, at p. 46 (para. 131); and ibid., at pp. 46-47 (paras. 132, 135); *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 4, at p. 71 (para. 164). See also Rio Declaration, Principle 15.

[151] *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 4, at p. 56 (para. 102); *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua); Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Merits, Judgment, I.C.J. Reports 2015,* p. 655, at p. 707 (para. 104).

cooperative measures are necessary to facilitate implementation of the objective of the no-harm principle, including by identifying risks of harm and preparing for them.

97. As a result of its character, what a State is required to do in order to comply with an obligation of due diligence is not monolithic. It is necessarily variable, insofar as the measures required may change over time, including as a consequence of changes in understanding of the level of risk involved.[152] Further, such measures may vary as between States in light of their particular situations, means, and interests.[153]

2. The relationship between the no-harm principle and the UN climate change régime

98. While the no-harm principle applies generally to the protection of the environment from significant harm, the phenomenon of climate change poses specific challenges. This is so both insofar as climate change is a global common problem of an evolving character, with multiple causes and diffuse effects, and because it implicates a wide variety of actors and competing priorities.

99. In that particular context, the position of the UAE is that the UN climate change régime must be regarded as informing and giving content to the broad no-harm principle under general international law. The UNFCCC, the Kyoto Protocol and the Paris Agreement have 198, 192 and 195 Parties, respectively;[154] accordingly, the treaties reflect the standards of conduct accepted by the international community as to what is required of States in their efforts to protect and preserve the environment from the adverse effects of climate change by preventing, reducing, and controlling GHG emissions and enhancing resilience to the effects of climate change.[155]

100. The inherent and fundamental link between the no-harm principle and the UN climate change régime is clearly evident in the principal treaties comprising the régime. Notably, the UNFCCC, in its preamble echoes the formulation of the no-harm principle contained in

[152] *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion of 1 February 2011, ITLOS Reports 2011*, p. 10, at p. 43 (para. 117).

[153] See, generally, Stockholm Declaration, Principle 23; Rio Declaration, Principle 11; *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania), Merits, I.C.J. Reports 1949*, p. 39, (Individual Opinion of Judge Alvarez), at p. 44.

[154] As regards the UNFCCC, this includes all 193 Member States of the United Nations, two Observer States (the State of Palestine and the Holy See), two non-member States (Niue and the Cook Islands), and the European Union. As regards the Kyoto Protocol, this similarly includes 191 Members States of the United Nations and the European Union, with the United States of America signing but not ratifying the Protocol. As regards the Paris Agreement, this includes all Parties to the UNFCCC, except Iran, Libya, and Yemen.

[155] The UAE considers that, in giving content to the no-harm principle and the due diligence standard thereunder, the UN climate change régime does not displace any obligations that States have or may undertake under other relevant international instruments pertaining to anthropogenic GHG emissions or the protection of the environment from the impact of such emissions; it is also of the view that, in certain circumstances, action taken under other instruments may contribute to the fulfilment of the obligations under the UN climate change régime.

Principle 2 of the Rio Declaration,[156] explicitly recalling the responsibility of States "to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".[157]

101. Building upon this, various provisions in the treaties comprising the UN climate change régime set out the actions that States should take in order to avoid harm to the global climate system. In doing so, these treaty provisions prescribe standards of conduct that are context-specific, continuing, and dynamic. Further, the UN climate change régime is based upon international cooperation in pursuing effective climate action. It recognizes that the long-term and enduring obligations incumbent upon States to avoid harm cannot be achieved without collective action and continuous cooperation.

102. In these circumstances, the UAE submits that what is required of States under the no-harm principle under general international law must be understood in light of, and as being given shape by, the provisions of the UN climate change régime. Accordingly, to the extent that a State complies with the UNFCCC, the Kyoto Protocol, and the Paris Agreement, and the specific commitments it has undertaken in that context, it should be regarded as complying with the no-harm principle under general international law with respect to climate change.

103. Against this background, the following sub-sections describe the main obligations under the UN climate change régime and elaborate on the manner in which they give effect to the no-harm principle under general international law in the specific context of climate change. *First*, the UAE describes in turn the principal normative elements contained in the UN climate change régime, namely to adopt measures in respect of mitigation (**Section B**) and adaptation (**Section C**), which constitute the core content of the obligations of States concerning the protection of the climate system and other parts of the environment from the adverse effects of climate change.

104. *Second*, the UAE will address the notion of common but differentiated responsibilities and respective capabilities, the key principle under the UN climate change régime by which the variability and necessarily contextual character of those obligations is given effect (**Section D**).

B. Obligations to mitigate atmospheric concentrations of GHGs

105. In pursuit of the goal of avoiding harm to the environment, States are under an obligation to take appropriate steps to mitigate atmospheric concentrations of GHGs. The international

[156] Rio Declaration, Principle 2 ("States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction").

[157] UNFCCC, Preamble, recital 8.

community has made significant progress in arriving at consensus in this respect, as embodied in the UN climate change régime and the progressive development of international standards thereunder relating to mitigation.

106. The UN climate change régime gives effect to the obligation to prevent significant harm to the climate system. Article 2 of the UNFCCC stipulates that the "ultimate objective" of the UNFCCC, and any related legal instruments that the Conference of the Parties may adopt, is to

> achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.[158]

107. It bears emphasis that the UNFCCC recognizes that this ultimate objective "should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened, and to enable economic development to proceed in a sustainable manner".[159] As such, the UN climate change régime as a whole is premised on a recognition that, at least under present circumstances, activities which result in GHG emissions remain necessary for vital societal functions as well as for sustainable development, especially for developing countries. As a result, the objective in Article 2 of the UNFCCC does not imply any obligation to undertake an immediate and complete reduction in GHG emissions, and recognizes that, in light of the available technology and energy sources, a certain level of continued emissions of GHGs is unavoidable.[160]

108. Article 3 of the UNFCCC sets out the principles which guide the Parties in their actions to achieve the central objective of the UNFCCC; in this regard, Article 3(3) reiterates that Parties should "take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects".[161]

109. With a view to achieving these ends, the Parties undertake to adopt measures to reverse the long-term trend of increasing GHG emissions as necessary to stabilize their atmospheric concentrations through the measures outlined in Article 4 of the UNFCCC.[162] Article 4 provides that all Parties "shall" adopt a variety of measures, which include the formulation and implementation of measures aimed at mitigating climate change through (i) developing national inventories of anthropogenic emissions by sources, and removals by sinks; (ii) the

[158] UNFCCC, Article 2.

[159] UNFCCC, Article 2. See also Paris Agreement, Article 4(1).

[160] See also Paris Agreement, Article 4(4).

[161] UNFCCC, Article 3(3), which further reflects the precautionary approach, recognizing that "[w]here there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures".

[162] UNFCCC, Article 4.

reduction and limitation of anthropogenic GHG emissions by sources; and (iii) the removal of atmospheric GHG concentrations, including through efforts to safeguard and increase carbon sinks.[163] The national inventories are to be published, periodically updated, and communicated to the Conference of the Parties together with information on the specific mitigation measures adopted by States.[164]

110. The Parties have further elaborated upon their duties in relation to mitigation of GHG emissions through successive decision-making under the UNFCCC. For example, Annex B to the Kyoto Protocol sets binding emission limitation and reduction targets for industrialized countries and economies in transition.[165] It also provides that these countries shall, in achieving their respective quantified emission limitation and reduction commitments, implement and elaborate relevant policies and measures, cooperate with other Parties to enhance the individual and combined effectiveness thereof, and strive to minimize adverse effects.[166]

111. The Paris Agreement has provided further normative guidance as to what is required to comply with the obligation to mitigate atmospheric concentrations of GHGs. Pursuant to Article 4 thereof, the Parties have committed to take measures to achieve the concrete goal contained in Article 2(1)(a) of "[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels".

112. In order to achieve this long-term temperature goal, and to allow the progressive realization of mitigation objectives over time, the Parties undertake to formulate and implement measures "to reach global peaking of greenhouse gas emissions as soon as possible […] and to undertake rapid reductions thereafter […] to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases".[167] Importantly, what is required of Parties is recognized to be dynamic rather than static, and to vary over time depending upon the "best available science".[168] In this regard, pursuant to Article 3, Parties must prepare, communicate and maintain successive nationally determined contributions ("**NDCs**"). In that connection, Article 4(3) of the Paris Agreement, establishes the twin expectations that each Party's NDCs

[163] See UNFCCC, Article 4(1)(a), (b), (d). See also UNFCCC, Article 4(2)(a), in respect of developed country Parties and other Parties included in Annex I.

[164] UNFCCC, Articles 4(1)(a), (j), 12. See also UNFCCC, Article 4(2)(b), for the specific obligations of developed Country parties and other Parties included in Annex I in respect of communication to the Conference of the Parties of measures adopted.

[165] Kyoto Protocol, Article 3 and Annex B. Following the initial commitment period, covering 2008-2012, the Parties to the Doha Amendment undertook revised quantified emission limitation and reduction commitments for a further period, covering 2013-2020. See CMP, Decision 1/CMP.8, Amendment to the Kyoto Protocol pursuant to its Article 3, paragraph 9, FCCC/KP/CMP/2012/13/Add.1, 8 December 2012.

[166] Kyoto Protocol, Article 2.

[167] Paris Agreement, Article 4(1).

[168] Paris Agreement, Article 4(1).

will: (i) represent "progression" in its level of ambition compared to its previous NDCs; and (ii) reflect its "highest possible ambition". Together, these parameters are intended to provide a floor for each State's successive NDCs at five-year intervals, to preclude regression in ambition, and demand continuous action so as to collectively achieve the Paris Agreement's long-term goals.

113. In terms of its implementation, elaborating and complying with NDCs involves elements of flexibility and variability based on Parties' particular circumstances. Article 4(3) of the Paris Agreement envisages that, within the parameters of progressiveness and ambition, Parties have a margin of discretion to determine NDCs' content and related measures based on the CBDRRC principle (*i.e.* on account of their "common but different responsibilities and respective capabilities, in the light of different national circumstances"). This provision needs to be read together with and in light of Article 4(4), which reiterates that developed countries Parties "should continue take the lead by undertaking economy-wide absolute emission reduction targets" whilst encouraging developing countries Parties "to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances".[169]

114. Further, recognition that what is required of Parties, both individually and collectively, may evolve with changing circumstances is provided by the periodic "global stocktake" process under the Paris Agreement, which is intended to inform the ambition of each Party, as well as to form a basis for enhancing international cooperation for climate action.[170]

115. As to the procedural obligations associated with the no-harm principle, they find concrete expression in the Paris Agreement, which couples each Party's commitments to mitigate atmospheric concentrations of GHGs with procedural mechanisms, including a benchmark-monitoring process, in order to ensure the suitability of the actions undertaken by individual Parties.

116. The Paris Agreement contains specific publication, reporting and monitoring obligations in relation to the preparation and assessment of NDCs,[171] and provides for a detailed transparency framework, requiring the submission of biennial reports.[172] Such procedural obligations are crucial to the progressive implementation of the "ambitious efforts" that States have agreed to undertake and communicate pursuant to Article 3 of the Paris Agreement.[173] They also materially contribute to international cooperation efforts of States.

[169] Paris Agreement, Article 4(4). See also Section IV.D below.

[170] Paris Agreement, Articles 4(9), 14.

[171] Paris Agreement, Articles 4, 6, 13.

[172] Paris Agreement, Article 13.

[173] Paris Agreement, Article 3.

117. Cooperation between Parties is a cornerstone of the UN climate change régime with respect to reduction of anthropogenic GHG emissions as well as their removal by sinks. In particular, the UNFCCC calls for cooperation in (i) the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce, or prevent GHG emissions; and (ii) the conservation and enhancement, as appropriate, of sinks and reservoirs.[174] Further, the Kyoto Protocol requires Annex I Parties, in achieving their quantified emission limitation and reduction commitments, to cooperate in order to enhance the individual and combined effectiveness of their policies and measures.[175]

118. Likewise, the Paris Agreement affirms the importance of "cooperation at all levels on the matters addressed in [the] Agreement",[176] including support to be provided to developing country Parties for the implementation of Article 4 pertaining to mitigation.[177] The Agreement also recognizes that voluntary cooperation in the implementation of Parties' NDCs may allow for higher ambition in their mitigation actions.[178]

119. In summary, the provisions of the UN climate change régime in respect of mitigating GHG emissions envisage the adoption of actionable measures by Parties in order to avoid environmental harm as a consequence of climate change. The UAE submits that the obligations of Parties in this regard should be regarded as giving effect to the standard of due diligence under the no-harm principle.

C. Obligations in respect of adaptation measures

120. In addition to the obligation to take measures to mitigate GHG emissions under the UN climate change régime, Parties are required to take actions aimed at minimizing the harm to the environment resulting from climate change. As with the obligations in respect of mitigation, the relevant substantive and procedural provisions relating to adaptation measures under the UNFCCC and Paris Agreement serve to inform and give content to what is required under the no-harm principle.

121. Adaptation constitutes one of the central pillars of the UN climate change régime. The term refers to "the process of adjustment to actual or expected climate and its effects in order to moderate or avoid harm or exploit beneficial opportunities".[179] Adaptation measures serve to

[174] UNFCCC, Articles 4(1)(c)-(d). This form of cooperation was reinforced in the Paris Agreement under, *inter alia*, Articles 10, 11.

[175] Kyoto Protocol, Article 2(1)(b).

[176] Paris Agreement, Preamble, recital 14.

[177] Paris Agreement, Article 4(5).

[178] Paris Agreement, Article 6(1).

[179] IPCC, 2022. In: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Annex II: Glossary.

reduce vulnerability and enhance resilience to the adverse effects of climate change, and in certain respects, can have co-benefits that contribute to mitigation outcomes. A key aspect of adaptation is the protection of ecosystems so as to avoid significant harm,[180] such as by preventing the extinction of local or global species as a result of loss of habitat, and by contributing to enhancing carbon sinks.

122. Given that the adverse effects of climate change have already been recorded across regions and in various sectors, any delay in undertaking adaptation actions is likely to undermine both the ability of States to respond effectively to climate change and the goal of avoiding or minimizing further harm to the global climate system and the environment.

123. Whilst the need for adaptation measures was already recognized in the UNFCCC,[181] further impetus was provided by the Paris Agreement. Article 7(2) of the Paris Agreement recognizes that "adaptation is a global challenge faced by all" and further emphasizes that adaptation is a key component of the long-term global response to climate change to protect "people, livelihoods and ecosystems". With a view to achieving the objectives of the Paris Agreement, one of which is "increasing the ability to adapt to the adverse impacts of climate change",[182] Article 7(1) of the Paris Agreement foresees the establishment of the GGA (i.e., global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change). The GGA is specified to be "with a view to contributing to sustainable development and ensuring an adequate adaptation response" in the context of the overall temperature goal embodied Article 2(1)(a) of the Paris Agreement.

124. In terms of the action required, the UN climate change régime envisages that each Party will adopt adaptation measures. Pursuant to Article 4(1)(b) of the UNFCCC, Parties undertake to formulate and implement national programs containing, amongst other things, measures to facilitate adequate adaptation, as well as to update such programs. Further, pursuant to Article 4(1)(e), Parties must "cooperate in preparing for adaptation to the impacts of climate change", and "develop and elaborate appropriate and integrated plans" for, *inter alia*, coastal zone management, water resources and agriculture, floods, and the protection and rehabilitation of areas affected by drought and desertification.

125. Building on these obligations, Article 7(9) of the Paris Agreement provides that "[e]ach Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions"; it thus imposes a positive obligation upon Parties to take actions relating to adaptation. Article 7(9) provides an illustrative list of measures, including implementation of adaptation actions, the process to formulate and implement national adaptation plans, assessment of climate change impacts and vulnerability with a view to formulate nationally

[180] Paris Agreement, Article 7(2).

[181] See UNFCCC, Article 4(1)(b), (e).

[182] Paris Agreement, Article 2(1)(b).

determined prioritized actions, monitoring and evaluating and learning from adaptation plans, and building the resilience of socioeconomic and ecological systems.

126. In order to comply with the obligation under Article 7(9), each Party must identify for itself the necessary range of actions in view of its capabilities, its needs, and the guidance provided under the Paris Agreement. The obligation does not (and could not) require any State to achieve full resilience, to eliminate a specific degree of climate risk, or to take steps fully to eliminate the adverse effects of climate change. The indication in Article 7(9) that measures are to be adopted "as appropriate" reflects the variable character of the obligation therein.

127. Articles 7(5) and 7(6) further inform the manner in which Parties should undertake their adaptation efforts. Pursuant to these provisions, adaptation should be based on a "country-driven" approach,[183] "taking into account the needs of developing country Parties",[184] and be guided by the "best available science".[185] The obligations under the Paris Agreement thus recognize that what is required is variable and depends upon the situation of individual Parties, including the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change.[186]

128. In terms of relevant procedural obligations, all Parties are under duties of transparency, including to formulate, publish and update their national programs containing measures to facilitate adequate adaptation.[187]

129. International cooperation forms a key part of the scheme of the UN climate change régime relating to adaptation. In particular, all Parties undertake to cooperate in preparing for adaptation to the impacts of climate change,[188] whilst pursuant to Articles 4(4) and 4(5) of the UNFCCC, developed country Parties and other developed Parties included in Annex II, are under an obligation to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change in "meeting costs of adaptation" and shall take all practicable steps to "promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how".[189]

[183] Paris Agreement, Article 7(5).

[184] Paris Agreement, Article 7(6).

[185] Paris Agreement, Article 7(5).

[186] See UNFCCC, Article 4(9)-(10); Paris Agreement, Article 7(5)-(6). In addition, UNFCCC, Article 4(1)(e) specifically recognizes the particular need for rehabilitation of areas in Africa which are affected by drought and desertification, and flooding.

[187] UNFCCC, Article 4(1)(b); Paris Agreement, Articles 7(10)-(12). Further, the periodic "global stocktake" process mandated pursuant to Article 14 of the Paris Agreement also includes assessment of matters relating to adaptation.

[188] UNFCCC, Article 4(1)(e).

[189] UNFCCC, Articles 4, 5.

130. Similarly, Article 7(7) of the Paris Agreement calls upon Parties to "strengthen their cooperation on enhancing action on adaptation" in a variety of ways, including through information sharing, strengthening of institutional arrangements, sharing of scientific knowledge, providing assistance to developing countries in respect of adaptation, and generally in improving the effectiveness and durability of adaptation actions. United Nations specialized organizations and agencies are encouraged to support the efforts of Parties in this regard.[190]

131. Further, pursuant to Article 7(13), "[c]ontinuous and enhanced international support" is to be provided to developing States in adopting adaptation measures. Such cooperation is to be undertaken within the context of the more general instances of cooperation mandated by Articles 9, 10, and 11 of the Paris Agreement in respect of making available financial resources, technology transfer and capacity building.

132. Accordingly, in requiring the adoption of measures to protect and preserve the environment and its resilience, as well as measures to mitigate atmospheric concentrations of GHGs, the UN climate change régime requires Parties to exercise due diligence to avoid significant harm. On this basis, the UAE submits that Parties pursuing appropriate action foreseen by the UN climate change régime in respect of mitigation and adaptation measures must be regarded as acting in line with the no-harm principle.

D. The principle of "common but differentiated responsibilities and respective capabilities"

133. Norms of differentiation are pivotal to international environmental law. In recognition of the requirements of equity, and in particular of the need to strike a balance between the development needs of emerging economies and their environmental concerns,[191] these norms affirm that what is required of individual States in order to comply with a particular obligation may vary based on their disparate development status, and related capabilities and circumstances. Such norms are present in various international instruments addressing global environmental problems, including a number of treaties with near-universal acceptance.[192]

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[190] Paris Agreement, Article 7(8).

[191] Stockholm Declaration, Preamble, recital 4, Principles 11, 12; Rio Declaration, Principle 6; General Assembly Resolution 44/228 of the United Nations Conference on Environment and Development, A/RES/44/228, 22 December 1989, Preamble, recital 13; General Assembly Resolution 2849, 'Development and Environment', A/RES/2849(XXVI), 20 December 1971, paras. 4(b), (e); UNFCCC, Preamble, recitals 10, 20-22.

[192] Namely, the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (198 Parties); Convention on Biological Diversity (196 Parties); UNFCCC (198 Parties); Kyoto Protocol (192 Parties); Paris Agreement (195 Parties); UNCCD (197 Parties); Basel Convention (191 Parties); Stockholm Convention (186 Parties). See also Stockholm Declaration, Principle 23; Rio Declaration, Principle 11; General Assembly Resolution 2849, A/RES/2849(XXVI), 20 December 1971, Preamble, recital 13, paras. 4-5; General Assembly Resolution 44/228, A/RES/44/228, 22 December 1989, paras. 7, 9; Agenda 21, A/CONF.151/26, 14 June 1992, paras. 1.6, 9.3; Johannesburg Plan of Implementation of the World Summit on Sustainable Development, A/CONF.199/20, 4 September 2002, paras. 2, 14, 20, 38, 39, 81; General Assembly

134. In the specific context of climate change, differentiation is crucial so as to foster outcomes that are substantively equitable (rather than merely formally equal), and in order to balance the overlapping interests implicated in climate action.

135. GHG emissions, the main driver of climate change, are distributed unevenly between States, and developed countries have contributed the largest share thereof up to the present day.[193] Vulnerability to climate change also varies among States based on their respective exposure, sensitivity, and adaptive capacity,[194] and is especially high among countries with historically low GHG emissions. Additionally, there are critical differences in the character of GHG emissions as between States, with emissions from less developed countries typically relating to the basic needs of their populations.[195] A further key consideration in this context is the need of developing countries for sustainable development.

136. To address such concerns, the UN climate change régime pursues differentiation through the CBDRRC principle. In this section, the UAE will address the significance of the CBDRRC principle in determining the obligations of States in respect of climate change, and of taking into account the historical contributions of developed States towards total global anthropogenic GHG emissions.

1. The importance of determining the relevant obligations of States in accordance with the CBDRRC principle

137. The CBDRRC principle finds its origins in the Rio Declaration, which refers to the principle of "common but differentiated responsibilities"; the Rio Declaration acknowledges the greater contribution made by developed countries to global environmental problems, such as climate change,[196] and their greater capabilities, and therefore places a commensurately greater burden on them:

> In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of

Resolution 66/288, A/RES66/288, 27 July 2012, paras. 15, 58, 191; General Assembly Resolution 70/1, A/RES/70/1, 25 September 2015, Declaration, para. 12; Commission on Sustainable Development, Rio Declaration on Environment and Development: Application and Implementation, Report of the Secretary-General, E/CN.17/1997/9, 10 February 1997, para. 46.

[193] IPCC, 2022: Summary for Policymakers. In: Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, p. 10.

[194] IPCC, 2007: Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, p. 883.

[195] IPCC, 1995: Climate Change 1995: Economic and Social Dimensions of Climate Change. Contribution of Working Group III to the Second Assessment Report of the Intergovernmental Panel on Climate Change, p. 92.

[196] See General Assembly Resolution 44/228 of the United Nations Conference on Environment and Development, A/RES/44/228, 22 December 1989, Preamble, recital 11, para. 12(a).

> sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.[197]

138. The Rio Declaration clearly links the CBDRRC principle to the notion of sustainable development.[198] The UAE notes that this Court has previously recognized the significance of the concept of sustainable development, including as reflecting norms or standards that must be "taken into consideration" and "given proper weight" in determining the obligations owed by States in respect of protection of the environment.[199]

139. Under the UN climate change régime, the CBDRRC principle is the cardinal reference point in determining the differentiated rights and duties of Parties. In this regard, Article 3(1) of the UNFCCC defines the principle in the following terms:

> The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.[200]

140. The CBDRRC principle permeates the burden-sharing arrangements under the UNFCCC, requiring developed country Parties to take greater action towards mitigating emissions and protecting and enhancing reservoirs, and to assist in the costs of adaptation.[201] Crucially, the UNFCCC also makes clear that the effectiveness of climate action by developing country

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[197] Rio Declaration, Principle 7. See also General Assembly Resolution 44/228 of the United Nations Conference on Environment and Development, A/RES/44/228, 22 December 1989, convening the Rio Conference, which affirmed the differentiated responsibilities of States based on "damage caused" and "respective capabilities and responsibilities" (Preamble, recital 15), noted that developed countries "have the main responsibility" for combatting emission of pollutants into the environment (paragraph 9), and linked developing countries' debt with their capacity to contribute to efforts to protect and enhance the environment (paragraph 11).

[198] See also Johannesburg Plan of Implementation of the World Summit on Sustainable Development, A/CONF.199/20, 4 September 2002, paras. 14, 38; Commission on Sustainable Development, Rio Declaration on Environment and Development: Application and Implementation, Report of the Secretary-General, E/CN.17/1997/9, 10 February 1997, para. 46.

[199] *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia), Judgment, I.C.J. Reports 1997*, p. 7, at p. 78 (para. 140).

[200] UNFCCC, Article 3(1); see also Article 3(2) calling for "[t]he specific needs and special circumstances of developing county Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and [those] that would have to bear a disproportionate or abnormal burden under the Convention" to be given "full consideration".

[201] See UNFCCC, Articles 4(2)-(4). Developed country Parties are identified in Annex I to the UNFCCC, along with certain "other Parties" (i.e., countries in the process of transitioning to a market economy) that have similarly committed themselves to greater climate action. Annex II lists developed country Parties and other developed Parties with specific responsibilities for *inter alia* financial assistance and transfer of technology and know-how.

Parties is linked to the fulfilment of commitments in respect of financing and technology transfer by developed country Parties.[202]

141. The Kyoto Protocol further developed and operationalized the CBDRRC principle by "strengthening the commitments" for the developed country Parties and other Parties listed in Annex I to the UNFCCC, without "introduc[ing] any new commitments for Parties not included in Annex I".[203] While all Parties are to "continue to advance the implementation" of commitments under the UNFCCC,[204] Annex I Parties undertook binding targets to limit and reduce their GHG emissions, as specified in Annex B to the Protocol.[205] The Protocol does not include similar targets for non-Annex I Parties, recognizing that "emissions originating in developing countries will grow to meet their social and developmental needs".[206]

142. The Paris Agreement is similarly guided by the principles of equity and CBDRRC, in the light of different national circumstances.[207] It provides for differentiation between developed and developing country Parties in, *inter alia*, the content and scope of their mitigation ambitions.[208] It further recognizes the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, in respect of adaptation.[209] Moreover, it entitles developing country Parties to continuous and enhanced support in taking mitigation and adaptation actions, associating such

[202] UNFCCC, Article 4(7). In addition, Article 4(8) states that in fulfilling their commitments, Parties should give full consideration to actions related to funding, insurance, and transfer of technology necessary to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures.

[203] COP, Decision 1/CP.1, Review of the adequacy of Art 4, paras. 2(a) and (b) under the Convention, including proposals related to a protocol and decisions on follow-up, FCCC/CP/1995/7/Add.1, 6 June 1995, paras. 2(a) and (b). See also CMP Decision 27/CMP.1, Procedures and mechanisms relating to compliance under the Kyoto Protocol, FCCC/KP/CMP/2005/8/Add.3, paras. IV, XIV.

[204] Kyoto Protocol, Article 10.

[205] Kyoto Protocol, Article 3, Annexes A-B; see also the related obligations of Annex I Parties in Kyoto Protocol, Articles 5, 7, 8; COP Decision 5/CP.6, Implementation of the Buenos Aires Plan of Action, FCCC/CP/2001/5, 25 July 2001, Annex. For the revised targets accepted by the Parties to the 'Doha Amendment to the Kyoto Protocol', see CMP, Decision 1/CMP.8, Amendment to the Kyoto Protocol pursuant to its Article 3, paragraph 9, FCCC/KP/CMP/2012/13/Add.1, 8 December 2012.

[206] COP, Decision 1/CP.1, Review of the adequacy of Art 4, paras. 2(a) and (b) under the Convention, including proposals related to a protocol and decisions on follow-up, FCCC/CP/1995/7/Add.1, 6 June 1995, paras. 1(d), 2(b).

[207] Paris Agreement, Preamble, recitals 3 and 5, and Article 2(2); COP, Decision 1/CP.20, Lima Call for Climate Action, FCCC/CO/2/ 2014/10/Add.1, 2 February 2015, para. 3; Decision 1/CP.21, Adoption of the Paris Agreement, FCCC/CP/2015/10/Add.1, 12 December 2015, Preamble, recital 8.

[208] Paris Agreement, Article 4(3) (providing for each Party's "nationally determined contribution[s]" to reflect its "common but differentiated responsibilities and respective capabilities, in the light of different national circumstances") and Article 4(4) (stipulating that developed country Parties should continue to take the lead by undertaking economy-wide absolute targets, whereas developing country Parties are "encouraged" to assume economy-wide targets in line with their circumstances). See also ibid., Article 4(19) (providing that the formulation of long-term strategies to lower GHG emissions should take into account the CBDDRC principle).

[209] See e.g., Paris Agreement, Articles 7(2), 7(6), 7(7)(d), 7(10).

support with their level of ambition,[210] and specifies corresponding binding commitments for developed country Parties.[211]

143. In addition, Parties to the UN climate change régime have confirmed through their subsequent decisions the importance of the CBDRRC principle, including as a concept which informs the obligations of States.[212]

144. The relevance of the CBDRRC principle is not restricted to the UN climate change régime. Similar differentiation between developing and developed countries in terms of their commitments, the implementation thereof, or the related provision of assistance is also a feature of other international agreements through which States are pursuing complementary environmental action that may contribute to the fulfilment of obligations under the UN climate change régime.[213]

145. In light of the foregoing, the UAE submits that the CBDRRC principle should be taken as informing the manner in which the obligation of due diligence under the no-harm principle in general international law operates in the context of climate change. While the notion of "common responsibility" affirms the shared duty to protect the climate system, including through cooperation,[214] and the adoption of mitigation and adaptation measures, the reference to "differentiated responsibilities" and "respective capabilities" signify that the obligations of Parties vary according to their relative contributions to climate harm, differing capacities, and circumstances. This includes, for instance, taking into consideration the situation of developing countries the economies of which are vulnerable to the adverse effects of the implementation of measures that respond to climate change.[215]

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[210] Paris Agreement, Articles 4(5), 7(13).

[211] Paris Agreement, Article 9(1). Conversely, the provision of support by "other Parties" is encouraged but voluntary. See ibid., Article 9(2).

[212] E.g., COP, Decision 5/CP.6, The Bonn Agreements on the implementation of the Buenos Aires Plan of Action, FCCC/CP/2001/5, Annex, Part VIII, para. 5; Decision 11/CP.8, New Delhi Work Programme on Article 6 of the Convention, FCCC/CP/2002/7/Add.1, 28 March 2003, Annex; Decision 2/CP.17, Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, FCCC/CP/2011/9/Add.1, 28 November 2011, p. 16-17, 28; Decision 1/CP.26 Glasgow Climate Pact, FCCC/CP/2021/12/Add.1, 13 November 2021, para. 18; Decision 1/CP.27, Sharm el-Sheikh Implementation Plan, FCCC/CP/2022/10/Add.1, 20 November 2022, para. 12.

[213] See e.g., 1985 Vienna Convention for the Protection of the Ozone Layer, preamble, recital 3, and Article 4(2); 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, preamble, and Articles 5,10, 10A; UNCCD, Articles 3(d), 4(3), 6, 18, 20(2), 21; Convention on Biological Diversity, preamble, recitals 16 and 17, and Articles 6, 16(2), 20(2), 20(4), 21; Stockholm Convention, preamble, recitals 11, 13, and Articles 4(7), 13(2), 13(4); Minamata Convention on Mercury, preamble, recital 4, and Articles 13(3), 13(4), 14(3).

[214] Rio Declaration, Principle 7. See also Rio Declaration on Environment and Development: Application and Implementation, Report of the Secretary-General, E/CN.17/1997/9, 10 February 1997, para. 44.

[215] UNFCCC, Article 4(10). See also Decision 1/CP.27, Sharm el-Sheikh Implementation Plan, FCCC/CP/2022/10/Add.1, 20 November 2022, para. 29, which emphasizes that a just and equitable transition to low emissions should serve to mitigate potential impacts associated with the transition; CMA, Decision 3/CMA.5, United Arab Emirates Just Transition Work Programme, 13 December 2023, para. 2.

2. The CBDRRC principle requires that due regard be had to the historical contributions of developed countries towards anthropogenic GHG emissions

146. Contributions to environmental degradation accumulate over time. As a consequence, the pressure that any country places on the global environment is necessarily a function of its cumulative historical contribution to such degradation.

147. There is scientific consensus as to the vastly higher contributions that developed countries have historically made towards total global anthropogenic GHG emissions. For instance, in the period between 1850 and 2019, net CO_2 emissions from North America and Europe alone amounted to 39% of global total CO_2 emissions, compared to 2% from the Middle East region in the same period.[216] In this connection, it bears emphasis that the findings of the IPCC evidence a near-linear relationship between cumulative CO_2 emissions and the increase in global surface temperature.[217]

148. The differentiated responsibilities of Parties under the UN climate change régime reflect these historic facts. In stressing "the need for developed countries to take immediate action […] with due consideration of their relative contributions to the enhancement of the greenhouse effect",[218] the UNFCCC explicitly recognizes that "the largest share of historical and current global emissions of greenhouse gases has originated in developed countries".[219]

149. It is for this reason that more extensive obligations are placed upon the developed country Parties identified in Annex I of the UNFCCC.[220] The list in Annex I corresponds to those countries that have historically released the largest amounts of GHGs into the atmosphere. Relatedly, the Paris Agreement aims to secure for developing country Parties an equitable share of the "remaining carbon budget";[221] it recognizes that, while Parties should aim to reach global peaking of GHG emissions as soon as possible in order to achieve the Agreement's

[216] IPCC, Climate Change 2022: Mitigation of Climate Change, Summary for Policymakers, Working Group III contribution to the Sixth Assessment Report of the IPCC, p. 10. The IPCC further notes that historical cumulative net CO_2 emissions between 1850 and 2019 amount to about four-fifths of the total carbon budget for a 50% probability of limiting global warming to 1.5°C, and to about two thirds of the total carbon budget for a 67% probability to limit global warming to 2°C. Ibid., p. 7.

[217] 2021 IPCC The Physical Science Basis – Summary for Policymakers, p. 28.

[218] UNFCCC, Preamble, recital 18.

[219] UNFCCC, Preamble, recital 3.

[220] UNFCCC, Articles 4(2); see also UNFCCC, Articles 4(3)-(4) with respect to developed country Parties and other developed Parties with specific financial responsibilities, as identified in Annex II of UNFCCC.

[221] Defined by the IPCC as the "[e]stimated cumulative net global anthropogenic CO_2 emissions from the start of 2018 to the time that anthropogenic CO_2 emissions reach net zero that would result, at some probability, in limiting global warming to a given level, accounting for the impact of other anthropogenic emissions": see IPCC, 2018: Annex I: Glossary. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty, p. 557.

long-term temperature goals, "peaking will take longer for developing country Parties" and that reductions by such countries thereafter with a view to reaching net-zero should be "on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty".[222]

150. The level of historical GHG emissions therefore forms a basis for differentiation between States in respect of their climate change obligations; this has also been recognized in decisions adopted by the Conference of the Parties.[223] The Rio Declaration, from which the CBDRRC principle originates, similarly links the greater responsibilities of developed countries in the international pursuit of sustainable development to the "pressures their societies place on the global environment". Such pressures have resulted from their cumulative, including historical, GHG emissions.

151. The "respective capabilities" component of the CBDRRC principle, which informs the level of climate ambition and action required from different Parties, is also relevant in this regard. Insofar as developed countries have enhanced capacities to combat climate change, including in terms of the technological and financial resources they command, this is a result of their early and large-scale industrialization, which in turn is the cause of their higher historical GHG emissions.[224]

152. Above all, bearing in mind that the relevant rules explicitly call for the application of equity, taking account of historical GHG contributions is pertinent and essential for the achievement of equitable outcomes.[225]

[222] Paris Agreement, Article 4(1).

[223] E.g., COP, Decision 1/CP.1, Review of the adequacy of Art 4, paras 2(a) and (b) under the Convention, including proposals related to a protocol and decisions on follow-up, FCCC/CP/1995/7/Add.1, 6 June 1995, Preamble, recital 3, para. 1(d); Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, FCCC/CP/2010/7/Add.1, 15 March 2011, p. 8.

[224] IPCC, 2001: Climate Change 2001: Mitigation. A Contribution of Working Group III to the Third Assessment Report of the Intergovernmental Panel on Climate Change, p. 88 ("the close relation between economic growth and carbon emissions" is a "fairly robust stylized fact of historical development"); see also Report and Working Papers of a Panel of Experts Convened by the Secretary-General of the United Nations Conference on the Human Environment, 'Development and Environment', 4-12 June 1971, para. 1.2.

[225] E.g., UNFCCC, Article 3(1); Paris Agreement, Article 2(2). In this regard, see *North Sea Continental Shelf (Germany v. Netherlands), Judgment, I.C.J. Reports 1969*, p. 3, at pp. 46-48 (paras. 85-88).

V. CONCLUSION

153. The UAE re-affirms its strong conviction that climate change has compromised, and will continue to compromise, the environment and ecosystems on a global scale, as well as adversely affect the life, health, and living conditions of billions of people around the world. The scientifically-established connection between GHG emissions and global warming confirms that the adverse effects of climate change are human-made. Climate change therefore necessitates a response by humanity as a whole.

154. States are under an existing duty not to cause harm to the environment pursuant to the no-harm principle under general international law. They are required accordingly to undertake serious efforts to reduce their GHG emissions and take measures to adapt to the effects of climate change in order to address its impact on the environment and human life. In view of the complexity and multifaceted character of the global threat posed by climate change, however, the required solution does not translate into a series of static and compartmentalized obligations that are to be carried out by States independently. To the contrary, the challenges posed by climate change require ongoing cooperation among States to negotiate, develop, and implement frameworks capable of adapting to evolving needs and necessities as well as to the relevant developments in scientific understanding of the phenomenon.

155. The UN climate change régime is specifically designed to meet the particular character of these challenges. While rooted in the central obligations of mitigation and adaptation, through the CBDRRC principle, it also takes into account the different situations and needs of States as well as their respective historic contributions to the cumulative increase of atmospheric GHG concentrations. As necessitated by the particularities of global climate action, the UN climate change régime embraces the need for international cooperation by creating a forum for continuing negotiation to elaborate, and reach consensus on, effective responses to climate change.

156. In light of these specific features, the obligations under the UN climate change régime are to be considered at the core of the obligations of States in relation to the protection of the climate system and the environment from the adverse effects of climate change. In formulating internationally-accepted standards of conduct required of States in their efforts to prevent, reduce, and control GHG emissions, as well as to adapt to impacts resulting from climate change, these obligations inform and give content to the no-harm principle and the resulting obligations of due diligence in this field.

157. As a consequence, the UAE submits that, to the extent that a Party complies with the terms of the UNFCCC, the Kyoto Protocol, and the Paris Agreement and the specific commitments it has undertaken in that context, it must be regarded as complying with its obligations deriving from the no-harm principle under general international law.

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