Annex 1

20 APRIL 2023

ORDER

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

_____

OBLIGATIONS DES ÉTATS À L'ÉGARD DES CHANGEMENTS CLIMATIQUES

(REQUÊTE POUR AVIS CONSULTATIF)

20 AVRIL 2023

ORDONNANCE

INTERNATIONAL COURT OF JUSTICE

YEAR 2023

2023
20 April
General List
No. 187

20 April 2023

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

ORDER

The President of the International Court of Justice,

Having regard to Articles 48, 65 and 66 of the Statute of the Court and to Articles 104 and 105 of the Rules of Court;

Whereas on 29 March 2023 the United Nations General Assembly adopted, at the 64th meeting of its Seventy-seventh Session, resolution 77/276, by which it decided, pursuant to Article 65 of the Statute of the Court, to request the International Court of Justice to render an advisory opinion;

Whereas certified true copies of the English and French texts of that resolution were transmitted to the Court under cover of a letter from the Secretary-General of the United Nations dated 12 April 2023 and received on 17 April 2023;

Whereas the operative paragraph of this resolution reads as follows:

"*The General Assembly*,

. . . . . .

Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question:

‘Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?’”;

Whereas the Secretary-General indicated in his letter that, pursuant to Article 65, paragraph 2, of the Statute, all documents likely to throw light upon the questions would be transmitted to the Court in due course;

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

1. *Decides* that the United Nations and its Member States are considered likely to be able to furnish information on the questions submitted to the Court for an advisory opinion and may do so within the time-limits fixed in this Order;

2. *Fixes* 20 October 2023 as the time-limit within which written statements on the questions may be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute;

3. *Fixes* 22 January 2024 as the time-limit within which States and organizations having presented written statements may submit written comments on the written statements made by other States or organizations, in accordance with Article 66, paragraph 4, of the Statute; and

Reserves the subsequent procedure for further decision.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twentieth day of April, two thousand and twenty-three.

Joan E. DONOGHUE,
President.

Philippe GAUTIER,
Registrar.

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Annex 2

15 DÉCEMBRE 2023

ORDONNANCE

OBLIGATIONS DES ÉTATS EN MATIÈRE DE CHANGEMENT CLIMATIQUE

(REQUÊTE POUR AVIS CONSULTATIF)

_____

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

15 DECEMBER 2023

ORDER

INTERNATIONAL COURT OF JUSTICE

YEAR 2023

2023
15 December
General List
No. 187

15 December 2023

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

ORDER

The President of the International Court of Justice,

Having regard to Articles 66 and 68 of the Statute of the Court and to Articles 44, 102 and 105 of the Rules of Court;

Whereas on 29 March 2023 the United Nations General Assembly adopted, at the 64th meeting of its Seventy-seventh Session, resolution 77/276, by which it decided, pursuant to Article 65 of the Statute of the Court, to request the International Court of Justice to render an advisory opinion;

Whereas certified true copies of the English and French texts of that resolution were transmitted to the Court under cover of a letter from the Secretary-General of the United Nations dated 12 April 2023 and received on 17 April 2023;

Whereas the operative paragraph of this resolution reads as follows:

"*The General Assembly,*

. . . . . .

Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question:

‘Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?’”;

Whereas the Secretary-General indicated in his letter that, pursuant to Article 65, paragraph 2, of the Statute, all documents likely to throw light upon the questions would be transmitted to the Court in due course;

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

Whereas, by an Order dated 20 April 2023, the President of the Court decided that the United Nations and its Member States are likely to be able to furnish information on the questions submitted to the Court for an advisory opinion, and fixed 20 October 2023 as the time-limit within which written statements on the questions may be presented to it, in accordance with Article 66, paragraph 2, of the Statute, and 22 January 2024 as the time-limit within which States and organizations having presented written statements may submit written comments on the written statements made by other States and organizations, in accordance with Article 66, paragraph 4, of the Statute;

Whereas, ruling on requests submitted subsequently by the International Union for the Conservation of Nature, the Commission of Small Island States on Climate Change and International Law, the European Union and the African Union, the Court decided, in accordance with Article 66 of its Statute, that those international organizations are likely to be able to furnish information on the questions submitted to the Court, and that consequently they may for that purpose submit written statements by 20 October 2023 at the latest, and written comments on the written statements made by other States or organizations by 22 January 2024 at the latest, in accordance with the time-limits fixed by the Order of the President of the Court of 20 April 2023;

Whereas, under cover of a letter dated 30 June 2023 from the Legal Counsel, the United Nations Secretariat communicated to the Court, pursuant to Article 65, paragraph 2, of the Statute, a dossier of documents likely to throw light upon the questions submitted to the Court, which was received in the Registry on 3 July 2023;

Whereas, by a letter dated 24 July 2023, the Permanent Representative of the Republic of Vanuatu to the United Nations communicated to the Court that his Government requested, together with 14 co-signatory States, an extension "of three months for the time-limits for the two rounds of submissions of written statements" fixed by the Order of the President of 20 April 2023;

Whereas, by a letter dated 28 July 2023, the Commission of Small Island States on Climate Change and International Law also requested, in support of the aforementioned letter from the Republic of Vanuatu and the 14 co-signatory States, that the time-limits fixed by the President in her Order of 20 April 2023 for the submission of written statements and written comments be extended by three months;

Whereas, by a letter dated 31 July 2023, the chargé d'affaires *ad interim* at the Embassy of the Republic of Chile also requested, in support of the aforementioned letter from the Republic of Vanuatu and the 14 co-signatory States, that the time-limits fixed by the President in her Order of 20 April 2023 for the submission of written statements and written comments be extended by three months;

Whereas, by an Order dated 4 August 2023, the President of the Court extended to 22 January 2024 the time-limit within which written statements on the questions may be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute, and to 22 April 2024 the time-limit within which States and organizations having presented written statements may submit written comments on the written statements made by other States and organizations, in accordance with Article 66, paragraph 4, of the Statute;

Whereas, ruling on requests submitted subsequently by the Organization of the Petroleum Exporting Countries, the Organisation of African, Caribbean and Pacific States, the Melanesian Spearhead Group, the Forum Fisheries Agency and the Pacific Community, the Court decided, in accordance with Article 66 of its Statute, that those international organizations are likely to be able to furnish information on the questions submitted to the Court, and that consequently they may for that purpose submit written statements by 22 January 2024 at the latest, and written comments on the written statements made by other States and organizations by 22 April 2024 at the latest, in accordance with the time-limits extended by the Order of the President of the Court of 4 August 2023;

Whereas, under cover of a letter dated 30 October 2023 from the Legal Counsel, the United Nations Secretariat communicated to the Court additional documents to be included in the dossier of documents likely to throw light upon the questions submitted to the Court, which was transmitted pursuant to Article 65, paragraph 2, of the Statute and received in the Registry on 3 July 2023;

Whereas, by a letter dated 22 November 2023 and received in the Registry of the Court on 3 December 2023, the Director-General of the Melanesian Spearhead Group requested, on behalf of the Organization, that the Court grant an additional extension of four months, to 22 May 2024, of the time-limit for the submission of written statements;

Whereas, by a letter dated 28 November 2023 and received in the Registry on 30 November 2023, the Secretary-General of the Organisation of African, Caribbean and Pacific States requested, on behalf of the Organisation, that the Court grant "an additional extension of at least four months";

Whereas, by a letter dated 30 November 2023, the Director-General of the Pacific Community requested, on behalf of the Organization, that the Court grant a further extension "by at least four months" of the time-limit for the submission of written statements;

Whereas, by a letter dated 5 December 2023, the Minister for Justice of Kiribati requested, on behalf of his Government, that the Court grant "an extension of the time-limits for the submission of written statements by at least an additional four months";

Whereas, by a letter dated 11 December 2023, the Acting Legal Counsel of the African Union requested, on its behalf, that the Court grant "an extension of at least four months from the already extended time-limits for the submission of written statements and written comments";

Whereas, by a letter dated 12 December 2023, the Permanent Representative of Nauru to the United Nations requested, on behalf of her Government, that the Court grant an extension of the time-limit for the submission of written statements "by at least four months";

Taking into account the above-mentioned requests for a further extension of the time-limits for the submission of written statements and written comments, as well as the importance of the Court giving an advisory opinion on the legal questions submitted to it by the United Nations General Assembly in a timely manner,

Extends to 22 March 2024 the time-limit within which all written statements on the questions may be presented to the Court in accordance with Article 66, paragraph 2, of the Statute;

Extends to 24 June 2024 the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements in accordance with Article 66, paragraph 4, of the Statute; and

Reserves the subsequent procedure for further decision.

Done in French and in English, the French text being authoritative, at the Peace Palace, The Hague, this fifteenth day of December, two thousand and twenty-three.

(Signed) Joan E. DONOGHUE,
President.

(Signed) Philippe GAUTIER,
Registrar.

Annex 3

United Nations A/77/L.58

General Assembly

Distr.: Limited
1 March 2023

Original: English

Seventy-seventh session
Agenda item 70
Report of the International Court of Justice

Algeria, Andorra, Angola, Antigua and Barbuda, Australia, Austria, Azerbaijan, Bahamas, Bangladesh, Barbados, Belgium, Belize, Bulgaria, Cabo Verde, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czechia, Denmark, Djibouti, Dominican Republic, Eritrea, Estonia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guinea-Bissau, Guyana, Hungary, Iceland, Ireland, Italy, Jamaica, Kiribati, Latvia, Lebanon, Libya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Maldives, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, North Macedonia, Norway, Palau, Panama, Papua New Guinea, Portugal, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Tuvalu, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Vanuatu, Viet Nam and State of Palestine:* draft resolution

Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change

The General Assembly,

Recognizing that climate change is an unprecedented challenge of civilizational proportions and that the well-being of present and future generations of humankind depends on our immediate and urgent response to it,

Recalling its resolution 77/165 of 14 December 2022 and all its other resolutions and decisions relating to the protection of the global climate for present and future generations of humankind, and its resolution 76/300 of 28 July 2022 on the human right to a clean, healthy and sustainable environment,

Recalling also its resolution 70/1 of 25 September 2015 entitled “Transforming our world: the 2030 Agenda for Sustainable Development”,

* Any changes to the list of sponsors will be reflected in the official record of the meeting.

Recalling further Human Rights Council resolution 50/9 of 7 July 2022[1] and all previous resolutions of the Council on human rights and climate change, and Council resolution 48/13 of 8 October 2021,[2] as well as the need to ensure gender equality and empowerment of women,

Emphasizing the importance of the Charter of the United Nations, the Universal Declaration of Human Rights,[3] the International Covenant on Civil and Political Rights,[4] the International Covenant on Economic, Social and Cultural Rights,[5] the Convention on the Rights of the Child,[6] the United Nations Convention on the Law of the Sea,[7] the Vienna Convention for the Protection of the Ozone Layer,[8] the Montreal Protocol on Substances that Deplete the Ozone Layer,[9] the Convention on Biological Diversity[10] and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa,[11] among other instruments, and of the relevant principles and relevant obligations of customary international law, including those reflected in the Declaration of the United Nations Conference on the Human Environment[12] and the Rio Declaration on Environment and Development,[13] to the conduct of States over time in relation to activities that contribute to climate change and its adverse effects,

Recalling the United Nations Framework Convention on Climate Change,[14] the Kyoto Protocol[15] and the Paris Agreement,[16] as expressions of the determination to address decisively the threat posed by climate change, urging all parties to fully implement them, and noting with concern the significant gap both between the aggregate effect of States' current nationally determined contributions and the emission reductions required to hold the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels, and between current levels of adaptation and levels needed to respond to the adverse effects of climate change,

Recalling also that the United Nations Framework Convention on Climate Change and the Paris Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,

Noting with profound alarm that emissions of greenhouse gases continue to rise despite the fact that all countries, in particular developing countries, are vulnerable to the adverse effects of climate change and that those that are particularly vulnerable

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[1] See *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 53* (A/77/53), chap. VIII, sect. A.

[2] Ibid., *Seventy-sixth Session, Supplement No. 53A* (A/76/53/Add.1), chap. II.

[3] Resolution 217 A (III).

[4] Resolution 2200 A (XXI), annex.

[5] Ibid.

[6] United Nations, *Treaty Series*, vol. 1577, No. 27531.

[7] Ibid., vol. 1833, No. 31363.

[8] Ibid., vol. 1513, No. 26164.

[9] Ibid., vol. 1522, No. 26369.

[10] Ibid., vol. 1760, No. 30619.

[11] Ibid., vol. 1954, No. 33480.

[12] *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972* (A/CONF.48/14/Rev.1), part one, chap. I.

[13] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.

[14] United Nations, *Treaty Series*, vol. 1771, No. 30822.

[15] Ibid., vol. 2303, No. 30822.

[16] See FCCC/CP/2015/10/Add.1, decision 1/CP.21, annex.

to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, are already experiencing an increase in such effects, including persistent drought and extreme weather events, land loss and degradation, sea level rise, coastal erosion, ocean acidification and the retreat of mountain glaciers, leading to displacement of affected persons and further threatening food security, water availability and livelihoods, as well as efforts to eradicate poverty in all its forms and dimensions and achieve sustainable development,

Noting with utmost concern the scientific consensus, expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change, including that anthropogenic emissions of greenhouses gases are unequivocally the dominant cause of the global warming observed since the mid-20th century, that human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people, beyond natural climate variability, and that across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected,

Acknowledging that, as temperatures rise, impacts from climate and weather extremes, as well as slow-onset events, will pose an ever-greater social, cultural, economic and environmental threat,

Emphasizing the urgency of scaling up action and support, including finance, capacity-building and technology transfer, to enhance adaptive capacity and to implement collaborative approaches for effectively responding to the adverse effects of climate change, as well as for averting, minimizing and addressing loss and damage associated with those effects in developing countries that are particularly vulnerable to these effects,

Expressing serious concern that the goal of developed countries to mobilize jointly USD 100 billion per year by 2020 in the context of meaningful mitigation actions and transparency on implementation has not yet been met, and urging developed countries to meet the goal,

Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question:

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

injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”

United Nations A/RES/77/276

General Assembly

Distr.: General
4 April 2023

Seventy-seventh session
Agenda item 70
Report of the International Court of Justice

Resolution adopted by the General Assembly on 29 March 2023

[*without reference to a Main Committee (A/77/L.58)*]

77/276. Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change

The General Assembly,

Recognizing that climate change is an unprecedented challenge of civilizational proportions and that the well-being of present and future generations of humankind depends on our immediate and urgent response to it,

Recalling its resolution 77/165 of 14 December 2022 and all its other resolutions and decisions relating to the protection of the global climate for present and future generations of humankind, and its resolution 76/300 of 28 July 2022 on the human right to a clean, healthy and sustainable environment,

Recalling also its resolution 70/1 of 25 September 2015 entitled "Transforming our world: the 2030 Agenda for Sustainable Development",

Recalling further Human Rights Council resolution 50/9 of 7 July 2022[1] and all previous resolutions of the Council on human rights and climate change, and Council resolution 48/13 of 8 October 2021,[2] as well as the need to ensure gender equality and empowerment of women,

Emphasizing the importance of the Charter of the United Nations, the Universal Declaration of Human Rights,[3] the International Covenant on Civil and Political Rights,[4] the International Covenant on Economic, Social and Cultural Rights,[5] the Convention on the Rights of the Child,[6] the United Nations Convention on the Law

[1] See *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 53* (A/77/53), chap. VIII, sect. A.
[2] Ibid., *Seventy-sixth Session, Supplement No. 53A* (A/76/53/Add.1), chap. II.
[3] Resolution 217 A (III).
[4] Resolution 2200 A (XXI), annex.
[5] Ibid.
[6] United Nations, *Treaty Series*, vol. 1577, No. 27531.

of the Sea,[7] the Vienna Convention for the Protection of the Ozone Layer,[8] the Montreal Protocol on Substances that Deplete the Ozone Layer,[9] the Convention on Biological Diversity[10] and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa,[11] among other instruments, and of the relevant principles and relevant obligations of customary international law, including those reflected in the Declaration of the United Nations Conference on the Human Environment[12] and the Rio Declaration on Environment and Development,[13] to the conduct of States over time in relation to activities that contribute to climate change and its adverse effects,

Recalling the United Nations Framework Convention on Climate Change,[14] the Kyoto Protocol[15] and the Paris Agreement,[16] as expressions of the determination to address decisively the threat posed by climate change, urging all parties to fully implement them, and noting with concern the significant gap both between the aggregate effect of States' current nationally determined contributions and the emission reductions required to hold the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels, and between current levels of adaptation and levels needed to respond to the adverse effects of climate change,

Recalling also that the United Nations Framework Convention on Climate Change and the Paris Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,

Noting with profound alarm that emissions of greenhouse gases continue to rise despite the fact that all countries, in particular developing countries, are vulnerable to the adverse effects of climate change and that those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, are already experiencing an increase in such effects, including persistent drought and extreme weather events, land loss and degradation, sea level rise, coastal erosion, ocean acidification and the retreat of mountain glaciers, leading to displacement of affected persons and further threatening food security, water availability and livelihoods, as well as efforts to eradicate poverty in all its forms and dimensions and achieve sustainable development,

Noting with utmost concern the scientific consensus, expressed, inter alia, in the reports of the Intergovernmental Panel on Climate Change, including that anthropogenic emissions of greenhouses gases are unequivocally the dominant cause of the global warming observed since the mid-20th century, that human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people,

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[7] Ibid., vol. 1833, No. 31363.
[8] Ibid., vol. 1513, No. 26164.
[9] Ibid., vol. 1522, No. 26369.
[10] Ibid., vol. 1760, No. 30619.
[11] Ibid., vol. 1954, No. 33480.
[12] *Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972* (A/CONF.48/14/Rev.1), part one, chap. I.
[13] *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*, vol. I, *Resolutions Adopted by the Conference* (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.
[14] United Nations, *Treaty Series*, vol. 1771, No. 30822.
[15] Ibid., vol. 2303, No. 30822.
[16] See FCCC/CP/2015/10/Add.1, decision 1/CP.21, annex.

beyond natural climate variability, and that across sectors and regions the most vulnerable people and systems are observed to be disproportionately affected,

Acknowledging that, as temperatures rise, impacts from climate and weather extremes, as well as slow-onset events, will pose an ever-greater social, cultural, economic and environmental threat,

Emphasizing the urgency of scaling up action and support, including finance, capacity-building and technology transfer, to enhance adaptive capacity and to implement collaborative approaches for effectively responding to the adverse effects of climate change, as well as for averting, minimizing and addressing loss and damage associated with those effects in developing countries that are particularly vulnerable to these effects,

Expressing serious concern that the goal of developed countries to mobilize jointly USD 100 billion per year by 2020 in the context of meaningful mitigation actions and transparency on implementation has not yet been met, and urging developed countries to meet the goal,

Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question:

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

64th plenary meeting
29 March 2023

United Nations A/77/PV.64

General Assembly

Seventy-seventh session

Official Records

64th plenary meeting
Wednesday, 29 March 2023, 10 a.m.
New York

President: Mr. Kőrösi . . . . . (Hungary)

The meeting was called to order at 10 a.m.

In the absence of the President, Mr. Dang (Viet Nam), Vice-President, took the Chair.

Agenda item 70 (*continued*)

Report of the International Court of Justice

Draft resolution (A/77/L.58)

The Acting President: I would like to acknowledge the presence at this meeting of the Secretary-General of the United Nations and His Excellency Mr. Alatoi Ishmael Kalsakau, Prime Minister of the Republic of Vanuatu.

I now give the floor to the Secretary-General of the United Nations, His Excellency Mr. António Guterres.

The Secretary-General: Earlier this month, the Intergovernmental Panel on Climate Change (IPCC) confirmed that humans are responsible for virtually all global heating over the past 200 years. The IPCC report showed that limiting the overall temperature rise to 1.5°C is achievable, but time is running out. The window for averting the worst effects of the climate crisis is closing rapidly. This is the critical decade for climate action. It must happen on our watch. And those who have contributed the least to the climate crisis are already facing both climate hell and high sea levels. For some countries, climate threats are a death sentence. Indeed, it is the initiative of those countries, joined by so many others — along with the efforts of young people all over the world — that is bringing us together. Together, we are making history.

The General Assembly is meeting today to consider draft resolution A/77/L.58, which requests that the International Court of Justice render an advisory opinion on the obligations of States in respect of climate change. Advisory opinions of the Court — the principal judicial organ of the United Nations — have tremendous importance and can have a long-standing impact on the international legal order. Advisory opinions can provide much-needed clarification on existing international legal obligations. If issued, such an opinion would assist the General Assembly, the United Nations and Member States in taking the bolder and stronger climate action that our world so desperately needs. It would also guide the actions and conduct of States in their relations with one another, as well as towards their own citizens, and that is essential. Climate justice is both a moral imperative and a prerequisite for effective global climate action. The climate crisis can be overcome only through cooperation between peoples, cultures, nations and generations. But festering climate injustice feeds divisions and threatens to paralyse global climate action.

For those on the front lines, already paying the price for global warming that they did nothing to cause, climate justice is both a vital recognition and a tool. It is a recognition that all people on our planet are of equal worth, and it is a tool for building resilience to the spiralling effects of climate change. I have presented an acceleration agenda aimed at closing the emissions gap and massively fast-tracking climate action by every country and every sector in every time frame. We have

23-08930 (E)

never been better equipped to solve the climate crisis. Let us work together to get the job done. It has been said that there is nothing more powerful than an idea whose time has come, and now is the time for climate action and climate justice.

The Acting President: I thank the Secretary-General for his statement.

I now invite His Excellency Mr. Alatoi Ishmael Kalsakau, Prime Minister of the Republic of Vanuatu, to introduce draft resolution A/77/L.58.

Mr. Kalsakau (Vanuatu): I am making this statement on behalf of a core group of States that includes Angola, Antigua and Barbuda, Bangladesh, Costa Rica, Germany, Liechtenstein, the Federated States of Micronesia, Morocco, Mozambique, New Zealand, Portugal, Romania, Samoa, Sierra Leone, Singapore, Uganda, Viet Nam and my own country, Vanuatu.

We are pleased to introduce draft resolution A/77/L.58, entitled "Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change". We would also like to express our gratitude and deep appreciation to the membership for its active engagement and support as we navigated the drafting process.

Climate change is the defining existential challenge of our times. The science is settled. In its *Sixth Assessment Report*, the Intergovernmental Panel on Climate Change (IPCC) states, in the clearest terms, that anthropogenic emissions of greenhouse gases are unequivocally the dominant cause of the global warming that has been observed since the mid-twentieth century. The evidence demonstrates that climate impacts and risks are already advanced, including in low-lying coastal cities and settlements and small islands. At the same time, the IPCC underlines that in all sectors, options exist to at least halve emissions by 2030, thereby paving the way for a long-term and sustainable limiting of global warming to 1.5°C, as well as reducing the impact of climate change.

The global impact of climate change has been devastating to many countries and populations around the world, and the prospect that in the absence of bold and immediate action the situation may become much worse is profoundly unsettling. Earlier this month, my own country, Vanuatu, was struck by two consecutive category 4 cyclones within days of each other. Mere weeks ago, Cyclone Freddy battered Mozambique, making landfall twice in the space of a month and breaking records for the duration and strength of tropical storms in the southern hemisphere.

Moreover, there have been continued droughts in the Horn of Africa and the Sahel, centenary floods in Bangladesh, Pakistan and Viet Nam, and, last summer, extreme heat in Canada and Southern Europe, not to mention the floods in Germany — all causing death and destruction. The countries hit the hardest are often those contributing least to global greenhouse-gas emissions. Sadly, catastrophic and compounding impacts of climate change like this are growing in number around the world.

Faced with challenges of such magnitude, it is the firm belief of the core group that we must use all the tools at our disposal to address the climate crisis and its threats to human, national and international security. The United Nations Framework Convention on Climate Change and the Paris Agreement have provided an invaluable platform for cooperation and action on climate change. But as we all know, the level of ambition under current nationally determined contributions is still far from what is needed to achieve its target of limiting the increase of global average temperature to 1.5°C above pre-industrial levels.

It is in this context that the core group is leading the initiative to seek an advisory opinion from the International Court of Justice to clarify the rights and obligations of States under international law in relation to the adverse effects of climate change, especially with respect to small island developing States and other developing countries particularly vulnerable to the adverse effects of climate change, and importantly to achieve climate justice. As the principal judicial organ of the United Nations, and a judicial body considered as a World Court, the International Court of Justice is uniquely positioned to make this contribution. An advisory opinion is a constructive and unconfrontational route to pursue such an initiative. It is not legally binding; however, it does carry enormous legal weight and moral authority. We believe the clarity it will bring can greatly benefit our efforts to address the climate crisis and further bolster global and multilateral cooperation and State conduct in addressing climate change.

The core group is in many ways representative of the United Nations membership: cross-regional, with wide-ranging interests, perspectives and levels

of development. A task of this core group was to conceptualize and balance the text of the draft resolution and legal questions to go to the International Court of Justice. The core group deliberated in great depth and at great length on the draft resolution before sharing it with United Nations membership in November 2022. This then led to the core group presenting the draft text, which was followed by three rounds of informal consultations and several informal expert consultations and engagements with the broader membership. These consultations were used to gather comments and feedback to put into what is now the final text we have introduced in the General Assembly. The intense and engaged negotiations within the core group and with the broader United Nations membership were an indication of both the importance of this initiative and the collective desire to work towards addressing the climate crisis. This is not a silver bullet, but it can make an important contribution to climate action, including by catalysing much higher ambition under the Paris Agreement.

The legal questions contained in the draft resolution represent a careful balance achieved after extensive consultations while safeguarding its integrity. At the heart of the question is a desire to further strengthen our collective efforts to deal with climate change, give climate justice the importance it deserves and bring the entirety of international law to bear on this unprecedented challenge. We believe the International Court of Justice can do this.

This initiative builds upon prior endeavours, and in our efforts, we stand on the shoulders of those who first began this conversation. I also wish to highlight the important role of the young law students in the Pacific who inspired this initiative and who brought it to the attention of the Vanuatu Government in 2019. This initiative has spurred a movement around the world, and we celebrate the efforts of these groups in broadening awareness and mobilizing support for the initiative.

The world is at a crossroads, and we, as representatives of the international community, have an obligation to take urgent action to protect the planet. We believe in and are committed to the values of multilateralism, values that bring us together at the United Nations to work for a better future. This initiative is an embodiment of those values.

We seek the support of all Member States present today to adopt this draft resolution. It and the advisory opinion it seeks will have a powerful and positive impact on how we address climate change and ultimately protect present and future generations. Together, we will send a loud and clear message, not only around the world, but far into the future, that on this very day, the peoples of the United Nations, acting through their Governments, decided to set aside differences and work together to tackle the defining challenge of our times, climate change.

Finally, we take this opportunity to thank the 121 countries that have joined in co-sponsoring draft resolution A/77/L.58, and we humbly encourage all others to do so as well. I pray that we may be bound in one accord.

The Acting President: We shall now proceed to consider the draft resolution A/77/L.58. There are no statements in explanation of position before action is taken on the draft resolution.

The Assembly will now take a decision on draft resolution A/77/L.58, entitled “Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change”.

I now give the floor to the representative of the Secretariat.

Mr. Abelian (Department for General Assembly and Conference Management): The present statement pertaining to the relevant operative paragraph of the current draft resolution, A/77/L.58, is made in the context of rule 153 of the rules and procedures of the General Assembly. The present statement has also been distributed to Member States.

The request contained in the operative paragraph would constitute an addition to the workload of the International Court of Justice and entail additional resource requirements in the amount of $236,000 net of staff assessments in 2024. Detailed cost estimates and their underlying assumptions for the requirements are provided in the annex to this statement as distributed. Accordingly, should the General Assembly adopt draft resolution A/77/L.58, additional resource requirements estimated in the amount of $236,000 for 2024. $57,200 for 2025 and $3,000 for 2026 would be included in the respective proposed programme budgets under section 7, International Court of Justice, for the consideration of the General Assembly at its seventy-eighth, seventy-ninth and eightieth sessions, respectively.

The statement I have just read out will also be available in the United Nations Journal under the e-statements link for today's meeting.

The Acting President: I thank the representative of the Secretariat.

For the Assembly's information, the draft resolution has closed for e-sponsorship.

I now give the floor to the representative of the Secretariat.

Mr. Abelian (Department for General Assembly and Conference Management): I should like to announce that, since the submission of the draft resolution, and in addition to those delegations listed in document A/77/L.58, the following countries have also become sponsors of the draft resolution: Afghanistan, Armenia, the Plurinational State of Bolivia, Bosnia and Herzegovina, Botswana, Burundi, Dominica, Ecuador, El Salvador, Equatorial Guinea, Ghana, Haiti, Indonesia, Israel, Japan, Kyrgyzstan, Malaysia, Mali, Mongolia, Niger, Peru, the Philippines, Poland, the Republic of Korea, San Marino, Tajikistan, Thailand, Timor-Leste and Uruguay.

The Acting President: May I take it that the General Assembly decides to adopt draft resolution A/77/L.58?

Draft resolution A/77/L.58 was adopted (resolution 77/276).

The Acting President: Before giving the floor for explanations of position after adoption, may I remind delegations that explanations are limited to 10 minutes and should be made by representatives from their seats.

Mr. Alwasil (Saudi Arabia) (*spoke in Arabic*): I deliver this statement on behalf of the delegations of Iraq and of my own country, the Kingdom of Saudi Arabia.

The delegations of our two countries decided to join the consensus on resolution 77/276, entitled "Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change". Our decision reflects our acknowledgement of and firm support for the inherent right of States to request the International Court of Justice to set forth an advisory opinion on important and controversial issues.

We recognize the importance of uniting efforts to implement the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement. We attach great importance to climate issues and are making every effort to limit the causes of climate change. We are committed to implementing international standards and conventions. We also acknowledge that requesting an advisory opinion from the International Court of Justice on the obligations of States in respect of climate change reflects the desire of the requesting countries for Member States to live up to their international legal obligations. We participated in the negotiations on the resolution and provided our comments and observations.

Accordingly, we stress the need for having multifaceted solutions to address the problem of climate change and climate issues in accordance with the international climate conventions, foremost among which are the UNFCCC and the Paris Agreement. The principle of common but differentiated responsibilities and capabilities among States requires that we take into consideration the special circumstances of the least developed countries when implementing the aforementioned international principles and conventions, as noted in the seventh preambular paragraph of resolution.

We must work together to support States in addressing the negative effects of climate-change policies. We must also take into account historical responsibility for emissions which should not adversely affect the efforts of States to achieve development.

Mr. Al-edwan (Jordan): We would like to thank the Permanent Missions of Vanuatu and Morocco for facilitating the informal meetings, and we wish also to extend our thanks to the core group for their tireless efforts.

Jordan considers resolution 77/276 to be of utmost importance and timely, as it touches upon a significant topic that our world and future generations face. This unprecedented challenge will tremendously affect the small island developing States in the near future, in addition to having negative impacts on other States, including landlocked States. In this regard, Jordan reiterates its unwavering support for the resolution.

We wish to underscore the urgency of tackling the issue of climate change globally. We therefore urge the International Court of Justice to consider, in accordance with the relative operative paragraph of the resolution, the legal consequences for States' acts and omissions that have caused significant harm to the climate system, with respect to all States, in particular

small island developing States, regardless of any State's degree of development or geographic circumstances.

The Acting President: We have heard the last speaker in explanation of position after adoption.

We will now hear statements after the adoption of the resolution.

Mr. Momen (Bangladesh): I wish to begin by congratulating the President of the General Assembly as well as all the members of the Assembly on this historic day. We have just adopted, without a vote, a resolution requesting an advisory opinion from the International Court of Justice on the obligations of States in respect of climate change (resolution 77/276). This is an important milestone in our decades-long struggle for climate justice, and Bangladesh, having been part of this historic process, is both proud and grateful. We thank all members of the General Assembly for supporting the resolution as a strong signal of unity in our common fight against global warming.

I wish to take this opportunity to express our most sincere appreciation to the Government of Vanuatu for its extraordinary leadership. I also thank all the fellow members of the core group for their commitment, passion and tenacity in drafting the resolution just adopted.

Climate change is an existential challenge for Bangladesh. We are a low-lying coastal State with great exposure to the hazards caused by climate change, sea-level rise and associated disasters. Apart from the increased frequency and intensity of floods, cyclones, droughts and loss of biodiversity, climate change is severely affecting our food, energy, water, health and economic security. The economic loss for Bangladesh is grossly disproportionate to its contribution to the problem of climate change. Climate-change-related weather events account for the loss of at least 2 per cent of our gross domestic product every year, whereas our carbon footprint is negligible, contributing less than 0.6 tons per capita emissions as compared to a global average of 4.5 tons. Climate change has also been directly or indirectly forcing millions of people to leave their homes and livelihoods, leading to widespread displacement and migration within and across borders.

Successive reports of the Intergovernmental Panel on Climate Change have alerted us to the risks that climate change poses to humanity. The latest synthesis report published this month, says,

> "risks ... and projected adverse impacts and related losses and damages [from climate change] escalate with every increment of global warming".

Moreover, it adds,

> "[c]limate change impacts and risks are becoming increasingly complex and more difficult to manage... [M]ultiple climatic and non-climatic risks will interact, resulting in compounding overall risk and risks cascading across sections and regions".

Those statements are based on the estimate of reaching the 1.5°C target in the near term in considered scenarios and projections. A greater rise in the global temperature is also being predicted, something the Secretary-General has called a road to climate hell. If we look at the current scenario of extreme weather events and losses and damages caused by climate change, it is easy to conclude that the implications of continued temperature rise will be deadly for the planet and its inhabitants. For Bangladesh, with its limited capacity as a least developed country to adapt, the questions of equity, justice and a just transition are not mere words, but questions of our very existence.

Bangladesh has demonstrated a strong commitment to fighting the impacts of climate change within its own means. That has led us to take many transformative measures to tackle the perilous impacts of climate change consistent with implementing the Paris Agreement and achieving the Sustainable Development Goals. During our term as Chair of the Climate Vulnerable Forum, we launched the Mujib Climate Prosperity Plan, which is aimed at putting Bangladesh on a sustainable trajectory from vulnerability to resilience and climate prosperity.

However, given the enormity of this global challenge, the efforts of Bangladesh, with a very low carbon footprint, can only be considered a drop in the ocean. We are deeply concerned that the global response to climate change is nowhere close to what is needed for the survival of humanity. There are serious gaps between projected emissions from implemented policies and those from nationally determined contributions, and financing flows fall far short of the levels needed to meet climate goals across all sectors and regions, particularly in adaptation efforts in developing countries.

We are still far removed from a convergence of views on the issue of climate displacements. There is also a huge trust deficit when it comes to climate financing.

There is no agreed definition of climate financing. Furthermore, despite greater needs in financing just transition and adaptation, we see growing expenditure in military budgets and armaments and in funding wars and conflicts, or even bailing out companies during financial crises.

Against this backdrop, resolution 77/276 presents a defining moment for us. We hope the resolution and the resultant advisory opinion will provide a better understanding of the legal implications of climate change under international law and the rights of present and future generations to be protected from climate change.

As a member of the core group, we will remain engaged throughout the process, including by making submissions to the Court, as and when invited to do so. We call upon all States Members of the United Nations to do the same.

Before I conclude allow me to repeat what Prime Minister Sheikh Hasina said in the General Assembly,

> "The impact of climate change is one of the biggest threats to humankind. In the past, we have seen a vicious cycle of promises being made and broken. We must now change this course." (*A/77/PV.11., p. 12*)

We believe resolution 77/276, adopted today, is an important step in that direction.

Mr. Lippwe (Federated States of Micronesia): I make this statement on behalf of the 12 Pacific small island developing States represented in New York. I align our statement with the one to be delivered by the representative of Tonga on behalf of the Pacific Islands Forum.

On this momentous occasion, we warmly welcome one of our leaders from our region, His Excellency Mr. Alatoi Ishmael Kalsakau, Prime Minister of the Republic of Vanuatu, and his delegation from the capital to our meeting today. We thank the Prime Minister for his introductory remarks on this very important resolution just adopted (resolution 77/276) and for Vanuatu's excellent leadership and commendable work. We also want to thank the members of the core group for their leadership and commitment to the principles contained in the resolution.

We wish to draw particular attention to the following major elements of the resolution: climate justice and equity, including in the context of legal consequences for loss and damage caused by climate change; the centrality of scientific consensus for climate action; the need for legal clarity on obligations to address climate change arising from multiple multilateral instruments and intergovernmental processes in addition to the United Nations Framework Convention on Climate Change; the key interlinkages under international law between climate change and the enjoyment of human rights by individuals and peoples, including by indigenous peoples and local communities; the status of small island developing States under international law as specially affected States in the context of their particular vulnerabilities to the adverse effects of climate change; and the need for urgent and ambitious action to counter the existential threat of climate change, including by limiting global average temperature increase to no more than 1.5°C above pre-industrial levels. These elements are important not only for the Pacific but for the world, and we urge the International Court of Justice to address these elements, among others, in the eventual advisory opinion.

Resolution 77/276 was born out of a call from Pacific youth to our leaders to use international law as an instrument to further highlight the pressing need to undertake ambitious action on climate change. I would also like to recognize the members of World Youth for Climate Justice for their passion and for bringing out this important issue in their own countries.

This call has been accepted and echoed at all levels in the Pacific, from our youth to our civil society organizations to our leaders, and we are heartened that it reverberates today in this great Assembly Hall through the sponsorship of more than 130 countries. We thank all delegations that co-sponsored the resolution and those that did not co-sponsor but supported it.

We commend the approach by Vanuatu and the core group in conducting open, consultative and transparent consultations that have enabled the wide participation of the entire United Nations membership. The remarkable attendance at all the informal consultations demonstrates not only the importance of this critical issue to the wider United Nations membership but also our increased willingness to work together as a global family.

Today's adoption comes at a pivotal moment, at a time when multilateralism is regaining momentum. In November 2021 and 2022, we saw the successful

adoption by consensus of major cover decisions for the twenty-sixth and twenty-seventh sessions of the Conference of the Parties to the United Nations Framework Convention on Climate Change, in Glasgow and Sharm El-Sheikh, respectively, which create a path forward on climate ambitions. In December 2022, parties to the Convention on Biological Diversity agreed to the Kunming-Montreal Global Biodiversity Framework to halt and reverse biodiversity loss. And earlier this month, States agreed on the text for an international legally binding instrument 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.

The adoption of this resolution is yet another marker that multilateralism is still one of our most effective tools to solve the problems we have together. The fact that the resolution was adopted with such wide support sends a powerful, unambiguous signal to the Court of the strong interest and commitment of Member States to protect the climate system and give confidence to the Court to provide a comprehensive and robust answer to the international community.

In conclusion, we want to remind all Member States that today's adoption, while important, is just the beginning of the process, and we call on all States and stakeholders at this meeting today to begin preparing for the next phase of submissions. We encourage good faith submissions done in concert and constructively that will support and assist the Court in answering the question that we, the General Assembly, have asked of it. Climate change affects us all, and we should ensure all our voices and concerns are heard by the Court to enable a robust and effective advisory opinion on climate change.

This is a significant moment for all of us as we steer the world from climate devastation. We call on all States to turn their attention to the essential actions that we need to address the existential threat of climate crisis and to create a world where our children and future generations can live and thrive in a clean, safe and healthy environment.

Mr. Skoog (European Union): It is an honour to address the General Assembly on a historic day such as this one, and I will do it on behalf of the European Union (EU) and its 27 member States.

The candidate countries North Macedonia, Montenegro, Serbia, Albania, Ukraine, the Republic of Moldova and Bosnia and Herzegovina; the potential candidate country Georgia; as well as Monaco and San Marino align themselves with this statement.

We would like to extend our appreciation to Vanuatu for its leadership and the core group as a whole for the initiative and the extensive consultation process that led to resolution 77/276 being adopted today. The EU and its member States are united in their support for the strict observance and the development of international law. We are also committed to promoting the individual and collective action of States to prevent and respond to the threat of climate change and to show solidarity with those particularly vulnerable to the impacts of climate change.

The EU is at the forefront of climate action. Strong and ambitious mitigation action is the best tool to prevent increased adaptation needs and to reduce loss and damage associated with the adverse effects of climate change. In the light of the findings of the Intergovernmental Panel on Climate Change (IPCC), we have been taking determined and decisive action to reduce our net greenhouse-gas emissions by at least 55 per cent by 2030 as compared to 1990 levels to reach and achieve climate neutrality by 2050 at the latest and to aim for negative emissions thereafter.

At the same time, we are the world's biggest contributors of climate financing to developing countries. The EU Strategy on Adaptation to Climate Change contains a strong international dimension, in particular in terms of increasing support, including financial, for international climate resilience and preparedness and strengthening global engagement and exchanges. Lastly, the EU is and will remain committed to scaling up assistance to developing countries that are particularly vulnerable to the adverse effects of climate change in responding to loss and damage. For those reasons, we supported the decision to establish new funding arrangements responding to loss and damage at the twenty-seventh Conference of the Parties to the United Nations Framework Convention on Climate Change and look forward to contributing to the work of the Transitional Committee.

Although legally non-binding, the requested advisory opinion of the International Court of Justice has the potential to make a significant contribution to the clarification of the current state of international law. The EU and its member States appreciate the choice of engaging the Court through advisory proceedings,

whose non-contentious nature avoids disputes and encourages the continued pursuit by the international community of further ambitious and effective action, including through international negotiations, to tackle climate change.

We recall in that regard the pre-eminent role of the Paris Agreement on Climate Change and the regular meetings of the Conference of the Parties in reflecting the most recent and dynamic expression of States' understandings of their commitments and their nature, as well as their responsibilities in respect of climate change. That includes the unique legal character of each provision of the Paris Agreement.

States' obligations and State practice under treaties other than the Paris Agreement may contribute, within their respective scope of application, to achieving the Paris Agreement goals. They can further shed light on how those goals are to be achieved.

With the aforementioned in mind, the EU and its member States welcome the explanation provided by Vanuatu that its intention in leading this effort has been that the Court "will not place additional obligations or responsibilities" on States, but rather "provide legal motivation for all nations, including emerging and high-emitting developing countries, to build greater ambition into their Paris Agreement nationally determined contributions and to take meaningful action to curb emissions and protect human rights".

Thus, in line with the aim and the content of the resolution, we expect the advisory opinion to, first, answer the legal questions on the basis of the current state of international law and with regard to all States; secondly, identify and, to the extent possible, clarify the obligations of States under applicable international law and the legal consequences for all States for the breach of those obligations. The resolution does not prejudge whether and when breaches have occurred, are occurring or will occur in the future but rather focuses on the consequences thereof for all States.

The EU and its member States have an unwavering commitment to limiting global warming to 1.5°C, which is the best way to mitigate climate change and its effects, as the recent IPCC synthesis reminded us. In the pursuit of those objectives, we are determined to deepen international cooperation. While the present statement of the EU and its member States is naturally without prejudice to the content of our possible submissions before the International Court of Justice and other courts and tribunals, our eventual involvement in the advisory proceedings initiated by the resolution will be guided by that commitment and by our understanding of the applicable law, as well as the aim and content of the resolution.

The EU and its member States are pleased to have constructively engaged in the process that led to the adoption of this resolution by consensus and commend Vanuatu once again for its leadership. All EU countries have co-sponsored the resolution. As an intergovernmental organization that is also a party to the Paris Agreement and other international agreements referred to directly and indirectly in the request, we look forward to contributing to the proceedings before the International Court of Justice.

We see today's resolution as another step adding urgency and unity to our collective action.

Ms. Vea (Tonga): I have the honour to deliver these remarks on behalf of the members of the Pacific Islands Forum with presence at the United Nations, namely, Australia, the Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Palau, Papua New Guinea, the Republic of Marshall Islands, Samoa, Solomon Islands, Tuvalu, Vanuatu, and my own country, Tonga. We also acknowledge the guidance and support of the Cook Islands as Chair of the Pacific Islands Forum (PIF).

In their 2022 communiqué, our leaders called on the General Assembly to adopt a resolution requesting the International Court of Justice to provide an advisory opinion on the obligations of States under international law to protect the rights of present and future generations against the adverse impacts of climate change and looked forward to close collaboration on the development of the specific question to ensure maximum impact in terms of limiting emissions to 1.5°C, including the obligations of all major emitters past, present and future.

I would like to express the gratitude of our PIF member States to fellow Forum member Vanuatu for its commendable and wide-ranging efforts which have brought us from that call to the historic adoption today. We recognize the significant engagement and coordination efforts undertaken by all members of the International Court of Justice core group in support of Vanuatu, including the Federated States of Micronesia, New Zealand and Samoa, members of our Forum family and fellow stewards of our Blue Pacific continent.

We welcome the sovereign recognition by the more than 120 sponsors of resolution 77/276 of this important endeavour and the utmost urgency of this cause. We are optimistic that today will join other landmark junctures of global leadership in accelerating deeper global cooperation on climate change, which our leaders have confirmed as the single greatest existential threat facing the Blue Pacific.

Our leaders have accordingly declared a climate emergency in our region, underscoring the urgency of limiting global warming to 1.5°C through rapid, deep and sustained reductions in greenhouse-gas emissions. Our resolve has been further demonstrated in the PIF Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-level Rise and the currently under way regional Conference on Preserving Statehood and Protecting Persons which explores legal options and institutional responses to the impacts of sea-level rise in the context of international law.

While we sit in the General Assembly today, our Forum is conscious of the many individuals and groups who have brought us to this point. We recognize that much of this work began with our Pacific youth, whose energy and vision we continue to draw inspiration from, but who also stand to lose the most if we let the goal of 1.5°C slip from our collective grasp.

We further recognize our civil society representatives who have worked at the margins of society to mainstream the voices of women and girls, minorities, the disabled, the disadvantaged and otherwise too often unheard into our regional perspective, further legitimizing our Blue Pacific narrative.

We pay tribute to the voices of indigenous peoples in the Pacific region and to those in local and coastal Pacific communities who face the reality of a warming climate every day. We pay further tribute to our scientists and the holders of traditional knowledge in the Pacific region who continue to work tirelessly to harness our collective wisdom in the fight against climate change.

Much work remains to be done, and the Pacific calls on the global community to embrace the spirit of solidarity demonstrated by today's adoption. Our Forum family remains committed to fully implementing the Paris Agreement on Climate Change, including our collective aim to achieve carbon neutrality in the Pacific by 2050. And we invite development partners to commit to providing more support to Forum Island countries in reaching that goal in line with our 2050 Strategy for the Blue Pacific Continent endorsed by PIF leaders.

In conclusion, our members look ahead to the twenty-eighth conference of the parties to the United Nations Framework Convention on Climate Change in Dubai with great anticipation and to working alongside our United Arab Emirates hosts and the global community to continue this most important work of combating the climate crisis for the sake of present and future generations.

Ms. Chan Valverde (Costa Rica) (*spoke in Spanish*): Costa Rica is proud of the historic adoption of resolution 77/276. It is a milestone for multilateralism in the fight against climate change and a giant step forward for international law, climate justice and human rights.

Today we are concluding a process that was inspired by the youth of the world. It is the largest generation of young people in the history of humankind, and they are calling for a radical change of course, for a better future and, especially, a viable future for their generation and future generations.

Costa Rica had the honour of endorsing the initiative of the Republic of Vanuatu from its very early stages, convinced of the legal and moral value of the draft resolution. It was also honoured to have contributed to the core group that led the intergovernmental negotiations to ensure a resolution that was balanced and inclusive, and above all ambitious and visionary, in line with the magnitude of the challenge posed by the triple planetary crisis of climate change — pollution of the land, sea and air — and the accelerated loss of biodiversity

My country thanks the Assembly for its support and welcomes the co-sponsorship of a strong majority of Member States, reflecting a clear resolve to intensify climate and environmental action, as well as to obtain clear, comprehensive and fundamental answers based on international law and human rights to the crucial questions raised in the draft resolution.

I come from a small country whose first line of defence is international law, and which, like other small and large States, has placed in it its hopes and political will for the determination of its obligations and rights, the peaceful settlement of disputes, human rights and peace.

Costa Rica today welcomes the decision made by consensus in the General Assembly to entrust the principal judicial organ of the United Nations with addressing the existential issue of climate change in an unprecedented context and with an unequivocal focus on human rights, redistributive justice and intergenerational equity.

Indeed, the fight against climate change concerns us all, but it also affects us differently. In its sixth and most recent assessment report, the Intergovernmental Panel on Climate Change gave us a final warning to reduce emissions by half by 2030 if we want to avoid what, in the words of the Secretary-General, would be a "death sentence", especially for countries whose geographic circumstances and level of development are particularly vulnerable to climate change.

Actions taken and commitments made at the global level remain inadequate to achieve our climate goals and will lead to a catastrophic rise in temperature by at least 3°C by the end of the century. Paradoxically, it is the most vulnerable countries that are stepping up their adaptation and mitigation efforts, while the largest carbon emitters and those responsible for the climate disaster continue to perpetuate a status quo that, according to science, we know is unsustainable.

The climate crisis is undoubtedly the greatest threat to the enjoyment and realization of all human rights, be they health, food, water or adequate housing. However, even in the midst of this bleak context we can see signs of hope. Less than a year ago, the General Assembly recognized through resolution 76/300 the universal human right to a clean, healthy and sustainable environment, solidifying a long history of linking human rights and environmental law. The recognition of that fundamental right affirmed the transformative potential of adopting a human rights approach to climate change.

At the most recent Conference of the Parties to the United Nations Framework Convention on Climate Change (COP), COP 27, we reached a landmark agreement to establish and operationalize a loss and damage fund, which was a crucial step towards climate justice.

Just a few weeks ago, the United Nations agreed on another historic treaty on the biodiversity of the high seas, after nearly two decades of negotiations, which keeps alive the promise to protect 30 per cent of the world's oceans by 2030. Those milestones form a multilateralism that is more relevant than ever and more focused on addressing, from a human rights-based perspective, the greatest existential threat to humankind. It also reflects the international community's willingness to act, with all the tools available, to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, as stated in the Preamble of the Charter of the United Nations, and to promote social progress and better standards of life in larger freedom.

The adoption of the resolution therefore is a giant step forward when it comes to clarifying the legal obligations of States in addressing climate change. The request for an advisory opinion will provide the International Court of Justice with the opportunity to consider, through the lens of human rights, the experience of those people most affected by climate change, as well as the obligations of Governments to protect their rights. We hope that the understanding of those legal consequences will contribute to States ramping up their efforts, for example, to put an end to the dependence on fossil fuels that have caused and continue to exacerbate the climate emergency.

The gap between the current promises of the States and what is actually needed to address the warnings of science is a source of serious concern, especially for present and future generations in the communities and nations geographically most vulnerable to the effects of climate change.

The Court's advisory opinion could help guide other courts that are ruling in cases of climate disputes on whether the commitments of nations under the Paris Agreement on Climate Change are sufficiently robust and what would be needed to strengthen human rights and international justice.

The questions posed to the Court in the resolution are complementary and comprehensive, with the promising potential to establish a common language that facilitates more ambitious commitments by States in future climate negotiations.

Finally, the advisory opinion of the International Court of Justice could clarify what happens in circumstances of the potential death of a State due to loss of territory as a result of climate change, as stated years ago by the Head of State of Palau, and address the obligations of the nations that are causing global

warming for those that are already bearing that burden, as well as for future generations.

For all those reasons, Costa Rica reaffirms its full support for the resolution and its hope in the next stages of the request for an advisory opinion to the International Court of Justice.

We affirm, together with the youth of the world, that we are all Vanuatu. And we urge the international community to redouble its commitment in words and actions with truly transformative climate action anchored in human rights for our brothers and sisters, our children and future generations.

Mr. Browne (Trinidad and Tobago): Trinidad and Tobago is pleased to have joined the overwhelming majority of Member States that have co-sponsored resolution 77/276 to seek an advisory opinion from the International Court of Justice on one of the most significant challenges of our time — climate change.

I would like to express my delegation's deepest appreciation to the core group for meaningfully engaging the membership in bringing forward this request to the General Assembly for consideration, and I commend Vanuatu for its outstanding leadership throughout this process.

At the outset, I wish to underscore that this initiative has been fully endorsed at the highest levels of the Government of Trinidad and Tobago from its inception. We firmly believe that the adverse impacts of climate change not only threaten lives and livelihoods, but also directly impede our aspirations to achieve sustainable development.

The most recent report of the Intergovernmental Panel on Climate Change, released just last week, issued a dire warning to world. We are running out of time. Global emissions have continued to increase, extreme weather events and climate extremes have worsened. Accordingly, in the absence of deep, rapid and sustained reductions in carbon emissions, global warming is likely to exceed 1.5°C, with catastrophic consequences, especially for vulnerable communities. We remain extremely concerned that the climate financing commitments made by developed countries have not materialized.

We must act now. The urgent need to scale up climate action and support, through financing, capacity-building and technology transfer, to address the adverse effects of climate change, as well as to minimize the associated loss and damage, particularly in small island developing States, such as Trinidad and Tobago, cannot be overstated, as the very existence and viability of small island States are being threatened.

While the Court's opinion is non-binding, Trinidad and Tobago is of the view that such an represents a major step in gaining greater understanding and clarity on how international law can promote climate justice, especially for those on the front line of this existential threat, many of whom are already disproportionately shouldering this heavy burden.

For many small island nations, who have contributed little or nothing to climate change and sea level rise but who are the most affected, today's landmark adoption by the General Assembly restores faith in the multilateral process. It is our hope that the Court's opinion can lend weight to strengthening international law and the obligations of Member States to ensure the protection of the global climate system for present and future generations.

On that note, and in conclusion, I would like to reassure Member States of Trinidad and Tobago's commitment, as a responsible member of the international community, in ensuring that our obligations under the Paris Agreement on Climate Change remains unwavering.

Ms. Ershadi (Islamic Republic of Iran): At the outset, I would like to begin by thanking the core group, especially Vanuatu, for submitting resolution 77/276 on the request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change.

Extreme climate change can undermine the sustainable development of all countries. The international community has been striving to address that challenge through the actions and measures contained in various agreements, particularly the United Nations Framework Convention on Climate Change (UNFCCC), as the cornerstone of actions and commitments, and the Paris Agreement under the UNFCCC, in pursuit of the objective of the Convention and its principles, in particular the principle of common but differentiated responsibilities and respective capabilities.

Like other developing countries, climate change has taken its toll on Iran. A serious decline in rainfall and an increase in temperature and the incidence of dust storms and sandstorms, thereby exposing Iran to the adverse

impacts of climate change and affecting the country. The sustainable use of scarce water resources, together with protecting wetlands and combating dust storms and sandstorms with mainly transboundary origins, are among the relevant pressing national challenges.

Iran attaches great importance to combating severe climate change and its environmental ramifications. In that regard, our Supreme Leader endorsed the general policies for the protection of the environment, a forward-looking manifesto for sustainable development with significant impacts on the environment in Iran. It also serves as a strong sign of commitment to the protection of our planet Earth. It is obvious that humankind is facing a global crisis, which not only is all-consuming, complex and multifaceted but also has immense impacts on all aspects of human life, as well as global affairs. Such a cross-border and common challenge requires common solutions and joint efforts in order to be tackled. The nature, scope and consequences of the challenge have an immediate and direct linkage with the nature, scope and level of the commitments and responsibilities of States. The Paris Agreement has recognized the differentiation among developed and developing countries in terms of their specific needs and different levels of capacities to deal with the major areas, such as mitigation, adaptation, technology transfer and development, financing and capacity-building.

In addition, there are situations and circumstances that prevent States from fulfilling their environmental obligations in full or in part. Bearing that in mind, it is up to the Court to consider the well-established principle of common but differentiated responsibilities, as set out in principle 7 of the Rio Declaration on Environment and Development.

We regret that the final text does not incorporate my delegation's suggestion to explicitly request the Court to identify and consider situations and circumstances that also preclude States' required actions. It also unduly focuses on one assumed cause of climate change. We believe that it is necessary for the resolution to ask comprehensive questions and for the Court to consider the matter holistically and comprehensively. The current resolution does not bring such clarity and therefore lacks the much-needed balance.

On global issues such as climate change, we all are in the same boat. We are facing the same crises and are condemned to the same destiny, but all do not share the same capacities and capabilities to counter that common challenge. Furthermore, all do not have similar roles and responsibilities regarding the challenge and its elusive future. We can forgive those who were historically involved in degrading our planet and its environment, but we cannot ignore their historical responsibilities and subsequent obligations to fulfil their commitments to redressing it.

It is unfortunate that those in the global North who have the historical responsibility for the emerging global challenge continue to disregard their international responsibilities through their actions or omissions, especially towards developing countries. In addition to the lack of development, technology, know-how and adequate financial resources, the imposition of unilateral coercive measures is the most crucial barrier, preventing targeted countries from meeting their environmental obligations. Unilateral coercive measures prevent us from accessing the relevant technologies, knowledge and financial resources. As an example, my country has been denied Global Environment Facility resources during its recent cycles simply through the pressures exerted on the implementing agencies to withhold from and refuse Iran's projects. There are clear and specific reasons as to why we proposed an amendment to the draft resolution during the negotiations and what we expect the International Court of Justice to take into consideration when reflecting on the obligations of States and their legal consequences.

Even in the absence of unilateral coercive measures, it is hard for developing countries to fulfil their environmental obligations if the means of implementation are not adequately available. While we have previously highlighted the nature of environmental crises and the challenges that the world continues to face, there is a dire need to be clear: we are not talking about the voluntary commitment of or contributions by the global North. It is the obligation of developed countries to provide the means of implementation, such as capacity-building, the transfer of technologies related to the mitigation of the environmental crisis to fulfil international obligations and the provision of support, as well as the mobilization of climate financing for developing countries.

In addition, all protections emanating from intellectual property rights for environmental inventions and technologies, which significantly contribute towards mitigating climate change and helping countries to meet their environmental obligations,

must be removed. We expect the International Court of Justice to address the obligatory nature of developed countries' international commitments when it comes to their environmental obligations towards the rest of the world. The Court is also expected to stand by the principle of the sovereignty of States, while also taking into consideration their national priorities in State policy-making.

While recognizing the mutually reinforcing link between the need for a healthy environment and the realization of economic, social and cultural rights, as well as the right to development, the Islamic Republic of Iran underlines that the linkage between human rights and the environment lacks not only a clear definition but also an understanding among States and does not appear at the core of international human rights treaties.

In conclusion, the Islamic Republic of Iran has announced its readiness to mitigate its greenhouse-gas emissions, as compared to the business-as-usual scenario, subject to the termination of all sanctions and access to financial resources and the required technologies. Accordingly, Iran welcomes cooperation and partnership in the implementation of our globally agreed agenda.

Mr. Wenaweser (Liechtenstein): The International Court of Justice, the principal judicial organ of the United Nations, is often called the world's court. In its important role, it is able to give advisory opinions when requested by the main organs of the United Nations authorized to do so, including the General Assembly. That provides the Assembly with a key tool to promote the rule of law and help to provide the international community with clearer legal understandings.

The importance of the International Court of Justice's advisory role is mirrored in the relevance of its engagement with pressing issues of global concern. Indeed, the historic resolution 77/276, which we adopted this morning, begins, in its first preambular paragraph, by:

> "Recognizing that climate change is an unprecedented challenge of civilizational proportions and that the well-being of present and future generations of humankind depends on our immediate and urgent response to it".

There is no issue of more pressing global concern than climate change, which is in many ways the defining crisis of our time. The report of the Intergovernmental Panel on Climate Change issued last week is an urgent reminder of the limited window that we have to deal with the climate crisis. From weather extremes to sea level rise, all regions of the world are affected by the devastating consequences of climate change. In the words of Secretary-General Guterres, "we are in the fight of our lives".

The 2030 Agenda for Sustainable Development provides us with a blueprint for the prosperity of our planet and recognizes the interlinkage between the fight against climate change and tackling poverty, hunger and other challenges. Recent meetings of the Conference of the Parties to the United Nations Framework Convention on Climate Change have fallen short of the promise to build on the Paris Agreement. It is clear that an exclusive focus on that path, as indispensable as it remains, will nevertheless not be enough. We therefore also need to pursue other avenues. In that respect, many stakeholders have already chosen different legal avenues at the national, regional and international levels in order to move forward in the fight against climate change.

Today we opened a new legal avenue together. That is why Liechtenstein was proud to be a member of Vanuatu's core group on this initiative. The group was responding to a global youth movement, in particular to act, and to act ambitiously. We commend the youth for calling on all of us to take up this issue, and we thank Vanuatu for its leadership in mobilizing support for this initiative. In many ways, the core group is a testament to effective multilateralism. It was small enough to be effective, but at the same time representative of the United Nations membership, and both cross-regional and inclusive in terms of national perspectives, as well as deliberative and thorough in its approach. The engaged negotiations within the core group and with the broader United Nations membership should be a model to follow for similar international initiatives. Last but not least, the initiative is further testament to the ability of small States to place crucially important initiatives before the General Assembly. We thank our friends from Vanuatu for that as well.

We are confident that the International Court of Justice will provide us with clarity regarding the complex questions of international law pertaining to climate change through its advisory function. The advisory opinion of the International Court of Justice will provide important authoritative guidance, including on questions at the intersection of climate change and

human rights. Climate change is indeed one of the greatest threats to the human rights of our generation, posing a serious risk to the fundamental rights to life, health, food and an adequate standard of living for individuals and communities across the world.

We are encouraged that the resolution, adopted by consensus today, prominently references the Universal Declaration of Human Rights and recalls the relevant resolutions of the Human Rights Council on climate change and human rights. It is in that vein that Liechtenstein strongly supports this resolution, which we hope will result in one of the landmark decisions in the long and rich history of the International Court of Justice.

Mr. Fepuleai (New Zealand): New Zealand associates itself with the statement made by the representative of Tonga on behalf of the Pacific Islands Forum members with a presence at the United Nations and the Cook Islands as Chair of the Pacific Islands Forum.

Aotearoa New Zealand is pleased to be a member of the core group supporting the International Court of Justice advisory opinion and commends Vanuatu for its leadership on this important initiative. The sheer number of co-sponsors reflects a growing international consensus that climate change requires us to develop global solutions.

The best available science is unequivocal. Human influence is warming the atmosphere, ocean and land. That is causing wide-ranging harmful impacts, from sea level rise to the increased frequency and intensity of extreme weather events.

New Zealanders are acutely aware of the devastating impacts that such events can have. Just last month, Cyclone Gabrielle caused widespread damage and displacement across our country, leading to New Zealand declaring a national state of emergency for just the third time in our history.

In our broader region, the Blue Pacific, climate change remains the single-greatest threat to livelihoods, security and well-being. Globally, more than 3 billion people live in contexts that are highly vulnerable to climate change.

Addressing those pressing challenges requires the collective ambition of all countries. It is critical that the international community employ all the tools at its disposal. Utilizing the advisory jurisdiction of the International Court of Justice is one such tool. New Zealand considers that an advisory opinion can play a helpful role by bringing clarity and coherence to international climate law. In doing so, it can help to ensure ongoing compliance with international obligations, lift ambition and inspire action.

The request for an advisory opinion is not about the merits of climate science. The science is unequivocal. Rather, it is about States' obligations under international law.

The question before the General Assembly reflects months of careful deliberation by the membership of the core group, in consultation with a wide range of other States Members of the United Nations. That group includes a diverse range of interests and perspectives, but the common goal of finding global solutions to climate change.

The scope of the question is intended to empower the Court to consider the full slate of relevant international law, consistent with its mandate. The question is broad, but climate change is broad too. It impacts every aspect of the world in which we live.

In that context, Aotearoa New Zealand is pleased that resolution 77/276 was adopted by consensus. In this Hall today, we took an important step towards a safer, more prosperous and more sustainable future.

Mr. Fifield (Australia): What an important day this is. Climate change is an urgent global challenge and the single-greatest threat to the livelihoods, security and well-being of the Pacific. That is why it is so important that Pacific voices are at the centre of international climate discussions. We commend Vanuatu's climate leadership, including in driving this important initiative, in partnership with the core group, for an International Court of Justice advisory opinion on climate change.

We know that climate change is increasing the frequency and severity of disasters globally. Indeed, as we meet today, Vanuatu is recovering from the devastating impacts of two consecutive category 4 cyclones earlier this month. Our hearts are with Vanuatu. Together with the rest of the Pacific family, Australia will continue to support the Ni-Vanuatu people as they recover and strengthen their resilience to the increasing impacts of climate change.

Today's request for the International Court of Justice to clarify the obligations and the related legal consequences for all States under international law to

ensure the protection of the climate system can provide impetus for global efforts to accelerate climate action in order to keep the 1.5°C temperature goal within reach.

As Pacific Islands Forum leaders called for in their July 2022 communiqué, and as they reaffirmed in February, the International Court of Justice will provide an advisory opinion on the obligations of all States, including all major past, present and future emitters.

The broad co-sponsorship of resolution 77/276 affirms that there is a shared responsibility for all States to act on climate change and a shared commitment to do so. We strongly welcome the resolution's priority focus on small island developing States and least developed countries, given their particular vulnerability to the impacts of climate change.

We recognize that climate change has broad and cross-cutting impacts and requires action across a range of international agreements and initiatives. In that regard, we note that the United Nations Framework Convention on Climate Change remains the central, indispensable forum for international cooperation on, and commitments to, climate action.

We welcome the resolution's potential to make a real contribution to achieving the goals of the Paris Agreement on Climate Change and accelerating ambitious climate action. Australia is proud to co-sponsor this resolution. We urge all Member States to support a strong, forward-looking and collective outcome today and in the process ahead.

Mr. Gafoor (Singapore): Singapore aligns itself with the statement that was delivered by the Prime Minister of Vanuatu on behalf of the core group of countries. Singapore fully supported resolution 77/276, adopted today, and we welcome the fact that it was adopted by consensus. The resolution that we adopted requests the International Court of Justice to provide an advisory opinion on States' obligations in relation to climate change, especially with respect to small island developing States. We are honoured to have been part of the core group of countries that drafted the resolution and that led that initiative. We are happy that the resolution enjoyed overwhelming support in the General Assembly today. On this significant and historic occasion, I wish to make three points.

First, Singapore is confident that the resolution will result in an advisory opinion that will advance our collective, multilateral and rules-based efforts to address climate change. Like other small island developing States, Singapore is disproportionately vulnerable to the impacts of climate change, and we have consistently advocated for solutions founded on international law to address that most existential of global challenges.

Secondly, the request for an advisory opinion on climate change is very timely. The recently released sixth assessment report of the Intergovernmental Panel on Climate Change makes it abundantly clear that there is an urgent need to accelerate action and raise the level of ambition. There is therefore no doubt that the planet is at a crossroads with respect to the climate crisis. The increasing frequency of extreme weather events around the world and rising sea levels are clear warnings that time is running out. We must therefore use all available tools to assist us in our efforts to address the climate crisis. At this stage, one of the most important potential tools that had not been utilized was the advisory jurisdiction of the International Court of Justice. The resolution adopted today is therefore significant because it seeks an advisory opinion from the International Court of Justice, which will help to clarify the state of international law and thereby provide impetus for further climate action.

The third point that I want to make today is that the request for an advisory opinion seeks to clarify the law, having regard to all relevant sources, including the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement on Climate Change. The resulting advisory opinion will therefore be complementary to the existing climate regime. That is very important for Singapore, as we fully support the multilateral framework of cooperation on climate change under the UNFCCC. We are confident that the advisory opinion of the International Court of Justice will have a positive impact on the ongoing processes within the UNFCCC framework, including by accelerating mitigation action, climate financing and the political will for increased climate ambition to meet the goals of the Paris Agreement.

I wish to conclude by highlighting the fact that the adoption of the resolution today takes place shortly after the successful conclusion of the negotiations on an international legally binding instrument on the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (BBNJ). The conclusion of the BBNJ treaty a few weeks ago and today's consensus adoption of a resolution seeking

an advisory opinion from the International Court of Justice are small steps of victory for multilateralism and a victory for the United Nations and the governance of the global commons. Our successes in recent weeks send a clear and positive signal that the United Nations can deliver results when nations work together for the common good. But we cannot take our successes and become complacent. We must continue to work together here in the General Assembly in order to achieve results for our people.

Mrs. Le (Viet Nam): Never before was a resolution requesting an advisory opinion of the International Court of Justice adopted by consensus (resolution 77/276). Never before was such a resolution co-sponsored by such a large number of States Members of the United Nations. Rarely did such a resolution command so much attention and support worldwide, from communities in Vanuatu to victims of the unprecedented floods in Pakistan. Such a phenomenon speaks volumes.

First, it speaks of the magnitude of the consequences of climate change — an existential threat that knows no borders. As the Prime Minister of Vanuatu just said, those impacts have been devastating to many countries and populations around the world. They threaten the well-being of future generations. The latest report of the Intergovernmental Panel on Climate Change, issued just a few days ago, made it clear that the impacts and risks of climate change have already increased, including in low-lying coastal cities and settlements and small islands.

Secondly, such a phenomenon speaks of the urgency for further bold actions. Under international frameworks, including the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement on Climate Change, countries have strived to strengthen the global response to the threat of climate change by mitigating greenhouse-gas emissions and increasing support and cooperation in national adaptation efforts. National and international commitments were made. Several States, including Viet Nam, issued net-zero commitments. However, the situation is getting worse.

Thirdly, it speaks of the belief and high expectation of the international community in the legal authority and moral weight of the International Court of Justice, the world court. This landmark resolution adopted by the General Assembly is fully in accordance with the Charter of the United Nations and the Statute of the International Court of Justice. On that basis, the Court is requested to give an advisory opinion on an issue of long-term magnitude that touches the future of Member States and future generations. Such an opinion will be able to provide even greater momentum to global climate action. It will clarify our obligations under existing international law regarding climate change. In that regard, Viet Nam believes that this resolution could also help us to reaffirm the critical role of international law in addressing the most pressing global issues of our time.

Fourthly, the overwhelming support for this resolution stems, in large part, from the meticulous efforts and able leadership of Vanuatu since the very beginning. Viet Nam is proud to join other members of the core group in supporting Vanuatu's initiative. We are grateful for the active engagement of all Member States, especially those that co-sponsored the resolution. We are also deeply thankful to the Secretary-General for his leadership on climate action, and for his valuable support for this resolution in particular.

This resolution will be another clarion call for further actions and for support to all actors that strive tirelessly for our planet and future generations. Our consensus today sends a powerful message to the international community that we are committed to those ends.

However, this resolution is just the beginning of a longer process. It is now up to us to ensure that the International Court of Justice is able to carry out its work effectively and efficiently. Like other members of the core group, we call for, and look forward to, the active participation of Member States in the proceedings of the International Court of Justice so that the Court is presented with evidence and submissions to the greatest possible extent when it takes up this request in the months ahead.

Let me conclude by reiterating Viet Nam's consistent commitment to stronger climate action for the well-being of our world and future generations.

Mr. Turay (Sierra Leone): The delegation of Sierra Leone aligns itself with the statement delivered by Mr. Alatoi Ishmael Kalsakau, Prime Minister of the Republic of Vanuatu, on behalf of the core group of States, including Sierra Leone.

Sierra Leone thanks the Government and the people, in particular the young people, of Vanuatu for

conceiving of and leading the initiative that culminated in the submission and adoption of resolution 77/276. Acting on behalf of the people of Sierra Leone, in particular its young people, the Government of Sierra Leone is honoured to be part of the core group of States, recognizing the importance for States to take action to address the adverse effects of climate change, compelled by the principle of intergenerational equity. As the resolution outlines, climate change is an unprecedented challenge of civilizational proportions, and the well-being of current and future generations of humankind depends on our immediate and urgent response to it. The science is incontrovertible. Anthropogenic emissions of greenhouse gases have unequivocally been the dominant cause of the global warming observed since the mid-twentieth century.

Sierra Leone faces multiple risks from climate change. We are ranked as the third-most vulnerable nation to the adverse effects of climate change. It has been noted that our vulnerable population has a low capacity to adapt to climate change, and the rural population is the most affected because of its high dependence on rain-led agriculture and natural resource-based livelihoods. According to the science of climate change, those impacts are likely to continue to affect Sierra Leone in the future, despite it being least responsible for the problem, since Sierra Leone's contribution to global emissions of greenhouse gases is negligible. Sea level rise threatens low-lying coastal areas and will cause coastal regions to experience more frequent coastal flooding events and an increase in average precipitation. Heavy rainfall events may induce more flooding and increase stream-flow rates. Regrettably, on 14 August 2017, for instance, a mudslide reportedly killed more than 1,000 people in the mountain parts of the capital of Freetown, sweeping away houses and leaving residents desperate and extremely vulnerable. The mudslide occurred after three days of torrential rain.

A core function of the International Court of Justice is to render advisory opinions on the legal questions put to it by the General Assembly, in accordance with Article 96 of the Charter of the United Nations. As such, in delivering advisory opinions in accordance with its Statute, the Court contributes to promoting and clarifying international law and strengthening the multilateral international legal order. The importance of the advisory opinions on legal questions referred to the International Court of Justice, including the request contained in resolution 77/276 for an advisory opinion on the obligations of States in respect of climate change, cannot be overstated, as the recognition of the urgency of the climate crisis must at least be matched by the level of climate action necessary to prevent a civilizational catastrophe. Fully respecting the rules and working methods of the Court, Sierra Leone will appeal to the Court to adopt the level of efficiency, rigour and judiciousness it would accord to a request of that nature by General Assembly.

Let me conclude by thanking all co-sponsoring delegations and all Member States for adopting resolution 77/276 by consensus.

Ms. Leendertse (Germany): This is a historic and hopeful moment for both multilateralism and climate action. After a long process, the General Assembly today adopted by consensus resolution 77/276 to seek an advisory opinion from the International Court of Justice.

Germany aligns itself with the statement made by the Prime Minister of Vanuatu on behalf of the core group and the statement made by the observer of the European Union.

Climate change is the defining challenge of our time, posing a grave threat to humankind as a whole and an existential threat to the most vulnerable populations. Sea level rise, for instance, threatens to render low-lying island nations uninhabitable, while more frequent and severe extreme weather events have already resulted in immense suffering throughout the world. While the international community has recognized the urgency of the climate crisis, our progress to date has fallen far short of achieving the level of climate action necessary to prevent environmental catastrophes. Germany takes that challenge very seriously. In the Federal Climate Change Act, Germany committed to achieving greenhouse-gas neutrality by 2045. In addition, emissions in Germany must be reduced, as compared to 1990 levels, by at least 65 per cent by 2030, and by at least 80 per cent by 2040.

Germany is a proud member of the core group leading the initiative to seek an advisory opinion from the International Court of Justice to clarify the rights and obligations of States under international law in relation to the adverse effects of climate change. We trust that seeking an advisory opinion is a constructive route to addressing the climate crisis and shaping States' conduct as it pertains to dealing

with climate change. That trust is based on the firm belief in the crucial contribution that the Court, when asked to give its advisory opinion, can make to clarify the extent and status of relevant obligations under international law with regard to all States. Given the urgency of taking climate action that keeps a warming limit of 1.5°C within reach, we especially share Vanuatu's intention to provide a legal motivation for all nations, including emerging and high-emitting developing countries, to build greater ambition into the Paris Agreement on Climate Change and nationally determined contributions and take meaningful action to curb emissions and protect human rights. Germany hopes that the initiative will contribute to further strengthening international cooperation, which is key for achieving the Paris Agreement objectives. Such cooperation is possible even in politically sensitive areas, as the Global Shield Against Climate Risks, jointly initiated by the Vulnerable 20 and the Group of Seven, has shown.

Vanuatu deserves recognition for bringing together a representative core group, encompassing various perspectives and interests. Vanuatu is to be commended for steering a process that today allowed us to adopt a critical initiative by consensus. In that process, Germany's goal was to formulate paragraphs and questions for submission to the Court that are future-oriented. The aim was to produce a text that clearly addresses the current obligations of all States on the basis of the current state of the law with regard to future developments on the issue of climate change. While the resolution does not limit the Court in its analysis, especially with regard to the time horizon, we believe that the core group could have gone further in that respect in order to make the initiative even stronger in its potential to promote climate action. At the same time, we fully recognize the enormous success reflected in the number of sponsors, and we reiterate our trust in the Court's deliberations. The adoption of resolution 77/276 by consensus sends a strong and clear message underlining our collective preparedness to address climate change. It attests convincingly to our commitment to the values of multilateralism.

Mr. Ikondere (Uganda): My delegation aligns itself with the statement delivered by the Prime Minister of Vanuatu, Mr. Alatoi Ishmael Kalsakau, on behalf of the core group, of which Uganda is a member.

We would first like to express our thanks and deep appreciation to the United Nations membership for its active engagement and support as we navigated the process.

Climate change is a defining challenge of our times and one of the greatest challenges we face. Our collective effort to fight climate change is an irreversible process that must continue. However, we are compelled to point out that despite contributing an insignificant amount of global greenhouse-gas emissions, the African continent — like many developing regions of the world — suffers the effects of climate change to a disproportionate degree. Uganda, for instance, continues to experience prolonged droughts, the melting of ice caps on its highest mountain, Mount Ruwenzori, floods, erratic rainfall patterns and landslides. Uganda is extremely vulnerable to climate change and variability. Its economy and its people's well-being are inextricably linked to climate. Climate change caused by humans has the potential to halt or reverse the country's development trajectory in the coming century. In particular, it is likely to result in increased food insecurity, shifts in soil erosion and land degradation, flood damage to infrastructure and settlements and shifts in agricultural and natural resource productivity.

The request for an advisory opinion allows the International Court of Justice to make a unique contribution to the issue of climate change. As the principal judicial organ of the United Nations, the Court is uniquely positioned to make that contribution and the General Assembly must give it the opportunity to do so. To be clear, an advisory opinion is the most constructive and non-confrontational route within the entire palette of international adjudication for pursuing such an initiative. An advisory opinion could give clarity and greatly benefit our efforts to address the climate crisis. Furthermore, the legal weight and moral authority of such an advisory opinion could further bolster State conduct as it pertains to dealing with climate change.

The legal questions contained in resolution 77/276 represent a careful balance achieved after extensive consultations. At the heart of the question is a desire to further strengthen our efforts to deal with climate change, give climate justice the importance it deserves and bring the entirety of international law to bear on that unprecedented challenge.

In conclusion, Uganda is committed to the values of multilateralism — values that bring us together at the

United Nations to work for a better future. This initiative is an embodiment of those values. Uganda thanks all Member States for their support in adopting today's resolution, which will have a strong and positive impact on how we address climate change and ultimately on our ability to protect present and future generations.

Mr. Pildegovičs (Latvia): Latvia aligns itself with the statement delivered on behalf of the European Union and appreciates the contribution of the core group of States.

Today is truly historic. The adoption by consensus of resolution 77/276 has shown that Vanuatu and other small island developing States and vulnerable countries around the world are not alone in their fight against the effects of climate change. Vanuatu has played a unique role in shaping the response to the global climate crisis by demonstrating that climate change is an environmental issue that unquestionably reaches beyond the legal framework on international environmental law.

International courts and tribunals can play an important role in the formulation and development of the rules of international law that guide the conduct of States and other actors in dealing with the causes and implications of the climate crisis. We appreciate Vanuatu's historic initiative in requesting an advisory opinion on climate change from the International Court of Justice on climate change and international law. Latvia was proud to be a sponsor of the resolution and is seriously considering involvement in the advisory proceedings in order to contribute to the development of international law.

The International Court of Justice has made landmark contributions to the development of the rules of international law addressed by the request. As long ago as 1996, in its advisory opinion on the *Legality of the threat or use of nuclear weapons* (A/51/218, annex), the Court recognized that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment. In later decisions, the Court has explained and developed international law on the environment, the law of the sea and human rights law in other important respects. We are confident that the requested International Court of Justice advisory opinion will bring greater legal clarity on the climate crisis.

As we continue to respond to the crises unfolding across the world, we must not lose sight of the commitment to working together to create a sustainable and resilient world for all nations, large or small.

Mr. Feruță (Romania): Romania aligns itself with the statement delivered on behalf of the European Union. I would also like to thank the Prime Minister of Vanuatu for the statement he delivered on behalf of the core group of States and to put on record our appreciation for the important role that Vanuatu played in the lead-up to today's adoption of resolution 77/276. The adoption that we have just witnessed in the General Assembly is a major achievement, and its success is made even greater by the fact that it was adopted by consensus. Romania is proud to have been able to contribute directly and substantially to that extensive effort as a member of the core group of initiators, led by Vanuatu. The significance of our actions today is twofold.

First, the resolution we just adopted reflects the united voice of the General Assembly and the international community in recognizing the importance of fighting climate change and standing up for the most vulnerable countries and peoples. Romania has long recognized the negative effects of climate change and their wider implications for peace and security around the world. Our interest and efforts have especially targeted the legal aspects of climate change and its effects, including from the perspective of sea level rise. While debates on connected topics are ongoing in the International Law Commission and the Legal Committee of the Assembly, today we have added a missing link by entrusting the International Court of Justice with clarifying existing obligations in connection with climate change.

Secondly, placing the responsibility of analysing that crucial topic on the International Court of Justice is a very clear sign of the full trust of the international community in the activity and professionalism of the Court. The advisory jurisdiction of the Court is a very important tool at our disposal and the General Assembly has once again shown its willingness to make good use of it. Beyond its advisory function, the Court is being asked more often than ever to play a role in the overall international community's efforts to preserve peace and security and stability. In our view, this is a momentous

time to look into ways of encouraging wider use of the Court's jurisdiction.

With that goal in mind, Romania has presented an initiative to promote the broader recognition of the International Court of Justice's jurisdiction, building on previous efforts in the area. Together with a group of supporting countries, we have formulated and issued a declaration that lists the main arguments for accepting the Court's contentious jurisdiction and encourages States to confer jurisdiction on the International Court of Justice by any of the means envisaged in its Statute, as deemed appropriate. The document reaffirms the Court's important contribution to the peaceful settlement of disputes and the promotion of the rule of law globally and invites States to make better use of that potential. The text is open for endorsement by all States as a renewed expression of their adherence to international law. And we would like to take advantage of this occasion to renew our call to all States to sign the declaration and take an additional step in support of the Court, following the historic resolution we have just adopted today.

Mr. Kariuki (United Kingdom): We thank Vanuatu and the core group of States that presented resolution 77/276 for the positive and constructive approach they took towards negotiations. We particularly welcome the presence of Prime Minister Kalsakau at this meeting.

The United Kingdom is committed to taking ambitious action to tackle climate change, biodiversity loss and environmental degradation. We were proud to host the twenty-sixth Conference of the Parties to the United Nations Framework Convention on Climate Change (COP26) in Glasgow, where all 197 parties agreed to the Glasgow climate pact. At COP26, nature also moved from the margins of the debate on climate change to the heart of it. The United Kingdom will continue to lead and engage with regard to climate change and nature to ensure that promises are kept and delivered to the highest standards, working with all partners to maintain momentum.

The United Kingdom is especially proud of its work with small island developing States (SIDS) and least-developed countries, both in its capacity as President of COP26 and beyond. The United Kingdom recognizes that all States are vulnerable to the impacts of climate change and that SIDS are some of the most vulnerable. In that regard, the United Kingdom set up climate and development ministerial meetings to focus on the priorities of climate-vulnerable States. We co-lead with Fiji the Taskforce on Access to Climate Finance to improve access for SIDS and climate-vulnerable States. We have also created programmes such as the Small Island Developing State Capacity and Resilience programme and the Infrastructure for Resilient Island States facility. In addition, the United Kingdom was instrumental in securing agreements and funding to set up and develop the Santiago Network to provide technical assistance for the implementation of approaches for averting, minimizing and addressing loss and damage.

We welcome the International Court of Justice considering the current obligations of all States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases, as well as the legal consequences when States, by their acts or omissions, breach such obligations, causing significant harm. By looking at the obligations as they are today, the questions are clearly focused on assisting States in understanding their obligations under international law so that they are able to comply with them in the future and understand the consequences if they breach them. In particular, we are pleased to make the following four observations on the questions. First, they are not determinative of whether there are obligations or where they flow from. Secondly, they do not prejudge whether breaches have occurred, are occurring or will occur, but look at the consequences if and when they do. Thirdly, they are not limited to considering the obligations and legal consequences for any specific State or States. Fourthly and lastly, they are not determinative of whether any States have been specially affected or injured.

The United Kingdom's sponsorship of the resolution today is without prejudice to its position on, and interpretation of, the obligations, instruments and concepts to which resolution 77/276 refers, or to any submissions by His Majesty's Government before the International Court of Justice and other courts and tribunals. We also note that the first question is focused on the obligations relating specifically to anthropogenic emissions of greenhouse gases. Increasing climate action is a top priority for the United Kingdom. The Intergovernmental Panel on Climate Change says that, in order to keep the 1.5°C target alive, we need emissions to peak in 2025, halve by 2030 and reach net zero by 2050. We recognize the United Nations

Framework Convention on Climate Change (UNFCC) as the primary intergovernmental negotiating forum for climate action. An advisory opinion of the International Court of Justice may help us refocus efforts to deliver on climate commitments in this critical decade, which would support the agenda of the UNFCCC. We are pleased to have sponsored resolution 77/276 today.

Mr. De la Fuente Ramírez (Mexico) (*spoke in Spanish*): Mexico welcomes the request for an advisory opinion from the International Court of Justice that we adopted in resolution 77/276, which will surely make it possible to determine with greater precision the legal regime relating to the legal obligations and consequences of States with respect to climate change. The adoption of that resolution reflects the importance that the international community attaches to climate change in particular, and to the climate crisis in general. It is also a reaffirmation of our confidence in the International Court of Justice as the principal judicial organ of the United Nations. Furthermore, we are strengthening today the trend of resorting to international law to better deal with the various issues that, as a result of their global nature, concern us all, as they affect us all. That holds especially true with regard to environmental matters. A few days ago, we were able to reach a historic agreement on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. We are confident that the implementation agreement under the United Nations Convention on the Law of the Sea will soon be translated into a legally binding instrument.

Moreover, the International Law Commission is working on sea level rise in relation to international law. At the same time, the International Tribunal for the Law of the Sea has also received a request for an advisory opinion on the impact of climate change on the oceans, while the Inter-American Court of Human Rights has received a request for an advisory opinion on the effects of the climate emergency on human rights. All those processes, including the one that concerns us today, are specific in character but have complementary effects. They also send a clear and forceful message: we must urgently address the climate crisis, and international law is one of the best tools available to us for that purpose. Everything I just said takes on greater importance in the light of the most recent alarming report by the Intergovernmental Panel on Climate Change.

Mexico appreciates the advisory powers of the International Court of Justice and its capacity to prevent and resolve conflicts. Despite 29 appeals in its entire history, its advisory jurisdiction can play an extremely meaningful role in moving forward issues that are of pressing concern for the international community and preventing new disputes by strengthening the rule of law at the international level. As we have repeatedly stated, that is why we believe that the Secretary-General must have the authority to request advisory opinions from the Court. That option, which was originally proposed by former Secretary-General Javier Pérez de Cuéllar, is perhaps today even more urgent, as it involves a mechanism for strengthening the Secretary-General's preventive diplomacy efforts. We must also prioritize expanding the Court's jurisdiction to settle disputes. Therefore, we urge those States that have not yet done so to recognize its jurisdiction as compulsory, withdraw their reservations, negotiate and accept the provisions that grant it jurisdiction under international treaties, and join the declaration on promoting the jurisdiction of the International Court of Justice, which 33 countries have already signed.

In conclusion, Mexico reiterates its support for the International Court of Justice in both its advisory and judicial work, and acknowledges its valuable contribution to the peaceful settlement of disputes and the progressive development of international law.

Mr. Moon (Republic of Korea): First of all, the Republic of Korea appreciates the work done by Vanuatu and the core group. We welcome today's consensus adoption of resolution 77/276, which requests the International Court of Justice's advisory opinion on climate change, in which we are pleased to have participated as a sponsor.

No one in the world is immune to the impact of climate change. No State is free from the burden of tackling that global crisis, which poses existential threats, especially to small island developing States. The recently published report of the Intergovernmental Panel on Climate Change warns — alarmingly — that limiting warming below 1.5°C will not be possible with the nationally determined contributions announced at the twenty-sixth Conference of the Parties to the United Nations Framework Convention on Climate Change. It is undeniable that more ambitious and coordinated efforts from the international community are essential. The Republic of Korea has been doing everything it can to contribute to strengthening climate action. Our

Government recently drafted our first national plan for carbon neutrality and green growth, based on our framework act on carbon neutrality and green growth for coping with the climate crisis, which lays out our climate action by sector and year. In line with that, we will expand our green official development assistance with our financial contributions to the Global Climate Partnership Fund, the Global Green Growth Institute, the Adaptation Fund and others. In Seoul in 2021 we also hosted the P4G Summit, with a declaration that reiterates the importance of public-private partnerships and green recovery from the pandemic. We will strengthen our international engagement with multilateral initiatives, including the Global Methane Pledge, the Partnership for Action on Green Economy and the Rising Nations Initiative.

The international community has been working to address the climate crisis on multiple fronts, and the Republic of Korea supports climate action by the international community through the United Nations Framework Convention on Climate Change, the primary intergovernmental forum for such action. In that regard, my delegation would like to mention a few points.

First, just as the questions in the resolution we have just adopted are framed in terms of law, the opinion that the resolution seeks from the Court is firmly based on law. The applicable law in this case is meant to be existing international law rather than law in the making. My delegation is of the view that the established distinction between *lex lata* and *lex ferenda* still remains valid in this evolving area of international law. We therefore expect the Court to maintain a clear legal focus and uphold judicial integrity, distancing itself from any legislative moves.

Secondly, it should be noted that the questions in the resolution do not presuppose any existence of obligation or breach. Moreover, the second question addresses the issue of legal consequences, if and when any breaches of obligation occur, and serves as a forward-looking catalyst. We trust that the endeavour is not intended to apportion responsibility for the past but to find collective wisdom for the future from legal sources in order to galvanize our resolve to tackle the challenge common to all of us.

Thirdly, we recognize that resolution 77/276 is intended to help us better understand legal aspects of the area of climate change, especially the obligations of States. The ensuing process will be advisory in nature, with a non-binding outcome, but its opinion will be far-reaching in its implications beyond any limited disputants. In the absence of any disputing parties in its advisory proceedings, the Court is supposed to arrive at an opinion with the help of all the elements of the information available to it. Given the complexity of the issues, my delegation hopes that the Court will draw on sound scientific and technical expertise, and when necessary obtain the views of States with regard to their practices and *opinio juris*.

I would be remiss if I did not mention the other international legal bodies working in parallel. The International Law Commission has been working on the topic of sea level rise in relation to international law. The International Tribunal for the Law of the Sea recently received a request for an advisory opinion with regard to that issue. While no entity has an exclusive mandate on climate-related legal matters, we hope that some convergence will ultimately emerge.

The resolution's significant number of sponsors and adoption by consensus are a demonstration of the common understanding of Member States that the climate crisis should be addressed with all the tools at our disposal. After all, it is our collective resolve that is fundamental to overcoming the climate crisis. The Republic of Korea will continue to engage in every effort by the international community, including the advisory proceedings of the International Court of Justice.

Mr. Hilale (Morocco) (*spoke in French*): First of all, my delegation would like to thank the Prime Minister of Vanuatu for his statement made earlier on behalf of the core group.

In its latest report, entitled *Provisional State of the Global Climate 2022*, the World Meteorological Organization notes that the last eight years have been the warmest on record. The degradation of the environment is an undisputed fact, including with regard to the effects of climate change that threaten us all and that the international community must face together. The various scientific reports of recent years are extremely alarming, and all indicate that climate change is the number-one existential challenge of our time. Morocco is concerned about the current and future adverse effects of climate change, such as rising ocean temperatures, ocean deoxygenation, sea level rise and ocean acidification. Despite the fact that my country is a low emitter of greenhouse gases, through

its non-financial defined contribution the Kingdom of Morocco is committed to reducing its greenhouse-gas emissions by 42 per cent by 2030 and hopes to exceed that threshold. Likewise, we are resolutely committed to the renewable energy sector. Morocco has set a goal of ensuring that such sources account for 52 per cent of its national electricity production by 2030.

The consequences of inaction in the face of the climate crisis will be disastrous for current and future generations. By 2030, as many as 118 million of Africa's poorest people could be directly threatened by extreme weather events. That is why, as Member States, we now have an opportunity and a duty to support resolution 77/276, so as to demonstrate the shared and collective commitment of the States Members of the United Nations to human rights and the environment. It was based on those beliefs that Morocco joined the core group that submitted the draft of today's resolution, entitled "Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change".

As the principal judicial organ of the United Nations, the International Court of Justice is called on to contribute to clarifying the rights and obligations of States under international law with regard to the adverse effects of climate change. Resolution 77/276 is the result of negotiations among geographically diverse countries in both the northern and southern hemispheres, including both States that are vulnerable to the climate crisis and some of the historically largest emitters. It represents the culmination of the best kind of multilateral effort, in which compromise is key, as we saw in the fact that it was sponsored by 130 delegations and adopted by consensus. The resolution thereby strikes a delicate balance between climate justice and a forward-looking perspective. It acknowledges that we must learn from the past if we are to build a just and sustainable future and that international law has a role to play in righting our current course. It is because we believe in the power of multilateralism that we helped to bring this initiative forward, in order to clarify this important issue for current and future generations. We earnestly hope that the Court's response will strengthen the negotiating position of developing countries and solidarity with those that are most vulnerable to the effects of climate change.

Lastly, it is important to underscore that the view of the Court could highlight the issue of compensating victims of climate disasters for loss and damage, which was a key multilateral topic of the twenty-seventh Conference of the Parties to the United Nations Framework Convention on Climate Change . It is now our collective duty to continue working together on the progress that has been made and supporting the countries most vulnerable to climate change.

Mr. Valtýsson (Iceland): At the outset, let me thank Vanuatu and other core group members for this important initiative and the constructive approach that they took to the negotiations on the text of resolution 77/276.

Iceland became a sponsor of the resolution in recognition of the fact that climate change is the defining issue of our time and of how important it is for small island developing States and other States that are particularly vulnerable to the effects of climate change. Throughout the process leading up to the adoption of the resolution, it has been clear that more than anything else, our hope is that the initiative becomes part of a collective push towards greater climate action. Likewise, in response to the report of the Intergovernmental Panel on Climate Change released earlier this month, the Secretary-General submitted a plan to supercharge efforts — namely, the Acceleration Agenda. The time to act is now. Iceland is committed to climate action. Our Government has set an ambitious emissions reduction goal, as well as a national carbon neutrality target, through climate legislation. That means that our laws state that Iceland must achieve carbon neutrality no later than 2040. In addition, Iceland must reach full energy conversion no later than 2040, which will make Iceland fully free of fossil fuels. Also, our Government will not issue any licences for oil exploration in our exclusive economic zone. Internationally, Iceland has stepped up its contributions to climate financing by doubling its commitment to the Green Climate Fund during the past two years and joining the Adaptation Fund. We thereby recognize the crucial role of adaptation, for which the need can be most dire within the States and among the people who have least contributed to climate change. Our multilateral development cooperation is also increasingly focused on climate financing.

Regarding the text of resolution 77/276, we welcome the request for an advisory opinion of the International Court of Justice to shed light on the obligations of States under applicable international law and the legal consequences for all States for breaching those obligations. We expect the Court to answer the legal questions on the basis of the current obligations of

all States to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases. The questions to the International Court of Justice and the resolution as a whole do not prejudge the nature of such obligations and do not pertain to whether breaches have occurred, are occurring or will occur. Furthermore, we note that the preambular part refers to a number of matters that are not related to legal obligations, and as such would not be expected to have any bearing on the Court's advisory opinion. Our sponsorship is without prejudice to our position on, and interpretation of, the obligations, instruments and concepts that the resolution refers to, or to any eventual submissions before the International Court of Justice and other courts and tribunals.

Iceland actively and constructively participated in the process that led to the adoption of resolution 77/276 today. We were positive about the idea from the outset and happy to have become one of the resolution's sponsors. We remain committed to climate action and recall the primary role of the United Nations Framework Convention on Climate Change and the Paris Agreement, in that regard.

Ms. Zacarias (Portugal): I would like to align my statement with the statements delivered by the representative of the European Union in its capacity of observer and the representative of Vanuatu, and I would like to add a few remarks in my national capacity.

Climate change is the defining issue of our time. As highlighted by the Secretary-General, now is the defining moment to do something about it. As we learned just a few days ago from the most recent synthesis report of the Intergovernmental Panel on Climate Change, time is running out. There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all. There is still a feasible pathway to avoid humankind's defeat, but it will require accelerated, bold and effective climate action on all fronts. The initiative led by Vanuatu, which Portugal is proud to have supported from its inception as a member of the core group that developed resolution 77/276, is yet another important tool — a tool to promote climate action, incentivize cooperation at all levels, raise the level of ambition in our collective efforts and further advance the crucial dimension of climate justice and solidarity, which is particularly crucial with respect to those most affected and most vulnerable to the effects of climate change, especially small island developing States. In doing so, the initiative supports the concurrent efforts being carried out within the framework of the United Nations Framework Convention on Climate Change, the Paris Agreement on Climate Change and discussions in forums such as the International Law Commission.

Portugal is a staunch supporter of international law, the peaceful settlement of disputes and the key role played by the International Court of Justice, as a bedrock that both upholds and promotes the multilateral order underpinned by those core tenets. We therefore recognize the Court's ability to support the fight against climate change and the promotion of climate justice. By contributing to the clarification and development of international law, the Court's advisory jurisdiction is a tool that, coupled with other instruments developed by the international community to that end, can encourage further action to tackle climate change and bring justice to its victims. The historic adoption by consensus of resolution 77/276 and the fact that more than 120 States co-sponsored it are a clear testament to the significance of the initiative, the crucial role that the international community ascribes to the International Court of Justice and the urgency of taking further and accelerated action to address climate change for present and future generations.

Ms. Morel (Seychelles): Seychelles commends the Republic of Vanuatu and the core group for the notable initiative taken to seek an advisory opinion on climate change from the International Court of Justice, especially at a time when the urgency of this existential crisis is becoming ever-more accentuated.

The most recent — sixth — assessment report of the Intergovernmental Panel on Climate Change sounds the alarm on the dismal realities of our world today and the calamitous future that we could face if we do not take action now. The report warns us that the current pace and scale of climate action are insufficient and that extreme risks escalate with every increment of global warming. Climate change is having detrimental impacts on planetary health and human well-being everywhere, but it is the most vulnerable populations, which historically contributed the least to the unfolding climate calamity, that are being disproportionately affected by its consequences. Small island developing States such as Seychelles face both immediate and slow-onset impacts from the rise in temperatures, ranging from extreme weather events to coastal erosion and sea level rise. Undoubtedly, that renders us the

least resilient and the least able to respond to the severe threats posed by climate change.

Such an important advisory opinion will put a spotlight on the obligation of States to ensure that we all have the right to a clean, healthy and sustainable environment. The process being proposed today through resolution 77/276 reminds us that the inextricable link between climate change and human rights exists and that States have an obligation to protect our precious planet. Seychelles stands behind the resolution, and we are encouraged to see that the General Assembly has given it the broadest possible support, which it deserves, as a symbol of our commitment to incite transformative climate action that will give the next generations the promise of a sustainable future.

Mr. Ruidíaz Pérez (Chile) (*spoke in Spanish*): Chile thanks Vanuatu and the core group for submitting the important resolution 77/276, which my country co-sponsored. We believe that it strikes a balance among the various positions of delegations. We therefore commend the General Assembly for having adopted it by consensus. Chile believes that requesting an advisory opinion on climate change from the International Court of Justice is timely and useful, as it will make way for important clarifications on the obligations of the States on that subject, which will ultimately have the significant effect of enabling the promotion of greater cooperation among States in order to respond more decisively to the climate emergency. My delegation would like to make three general remarks.

First, for Chile, there is a very clear link between human rights and the obligations of States to address climate change. We therefore support the references in the resolution on the human right to a clean, healthy and sustainable environment, as well as other universal human rights instruments. In that regard, I would like to mention that on 9 January Chile and Colombia requested an advisory opinion from the Inter-American Court of Human Rights on the climate emergency and human rights, which we will provide to the International Court of Justice as a precedent for its consideration. That request is in addition to the request submitted by the Commission of Small Island States to the International Tribunal for the Law of the Sea, and both initiatives complement the request that has been submitted to the main judicial organ of the United Nations.

Chile believes that the human right to a clean, healthy and sustainable environment derives from the principle of respect for human rights and is consistent with the obligation to prevent transboundary damage. Both of those are relevant principles that can be used to apply general international law to inter-State relations on climate change.

The second aspect that I would like to highlight is that it is relevant for the International Court of Justice to enlighten us on the obligations of States in this matter. To that end, in addition to considering the various treaties identified in the resolution, the Court may inquire into the legal value and content of other sources of international law, including general principles and norms of customary international law, such as the international responsibility of States, the duty of due diligence and the duty to cooperate, from all of which derive general and specific obligations for States in the context of the climate emergency.

It is also relevant for the Court to bear in mind other principles such as equity, the principle that the polluter pays and the principle of territorial integrity and legal stability in relation to the maintenance of baselines and the outer limits of maritime zones in accordance with the United Nations Convention on the Law of the Sea, as well as the non-refoulement obligations of third States with respect to persons affected by sea level rise, which have also been discussed by the Study Group of the International Law Commission on sea level rise in relation to international law.

Finally, I would like to highlight adaptation, which within the response to climate change should be seen not as an option but an imperative need. The climate crisis forces us to look carefully at our jurisdictional obligations to protect the most vulnerable. What is essential for those groups is the ability to adapt to the new realities imposed by global warming, which threatens their food security, housing, access to water, health and ultimately their lives. It is important to analyse the obligation of States to take public action vis-à-vis their own inhabitants in situations of vulnerability, but also to ensure that the developed countries honour their obligation to mobilize funding for developing countries in a way that maintains a balance between mitigation and adaptation.

Chile trusts that the International Court of Justice will thoroughly review the practice and opinions of the States on these matters, and in that regard it will certainly be able to count on the assistance of States,

which we hope will actively intervene both in writing and in future oral debates held before the Court.

Ms. Juul (Norway): As one of the sponsors of resolution 77/276, Norway would like to thank Vanuatu and the core group for this important and timely initiative and to congratulate them on its successful adoption.

Climate change poses an existential threat to both current and future generations. Protecting the climate system and the environment from human-made emissions of greenhouse gases, will be, to quote the Secretary-General, "the defining issue of our age". Addressing that issue is a top priority for Norway.

All States are vulnerable to the impacts of climate change, and we recognize that small island developing States will be among those especially affected. In its sixth and most recent Assessment Report, the Intergovernmental Panel on Climate Change estimates that 896 million people from low-lying coastal zones will be particularly exposed to changes in the ocean and the cryosphere, notably through sea level rise and the associated loss of biodiversity. The factual consequences of those changes prompt important and complex questions of international law. The changing coastlines may affect the location of maritime limits. National boundaries may be affected, and in certain instances particularly vulnerable States risk losing the land territory that is the basis for their existence. People may be forced to leave their homes to find assistance and protection abroad. Those issues pertaining to sea-level rise in relation to international law are on the agenda of the International Law Commission, and we welcome the Commission's contribution to assisting States in clarifying and exploring the international law relating to this pressing and topical issue.

Norway welcomes the consideration by the International Court of Justice of the current obligations of States under international law to ensure the protection of the climate system and the environment, as well as the legal consequences where by their acts or omissions States breach such obligations, causing significant harm. We believe that improved legal clarity is important to strengthening our shared ability to comply with those obligations in the future. From Norway's perspective, the greatest value of the resolution is in the elaboration it presents on current obligations, and through that, its ability to lay a foundation for improved future compliance and great0er ambition on climate action.

We are therefore pleased that the questions posed to the Court are focused on improving the understanding of existing obligations under international law with a view to preventing future breaches. We also welcome that the questions are related to obligations and possible legal consequences for all States, and are not limited to a specific State or group of States. We note that the questions are not determinative of whether there are such obligations or where they flow from. We also note that the questions posed to the Court do not prejudge the nature of such obligations or their consequences, but are openly paraphrased. Furthermore, we note that the questions do not assume that breaches of any relevant obligations have already occurred or are occurring now, but look rather to clarify the existence and content of obligations and the legal consequences if breaches occur.

Norway's sponsorship of the resolution is without prejudice to its position on or interpretation of the obligations, instruments and concepts to which the resolution refers. It is also without prejudice to any submission made by Norway before the International Court of Justice or any other court, tribunal, or treaty body on the issues to which the resolution refers.

Responding to climate change will require both practical and legal solutions. Discussions about the legal consequences of climate change must therefore be conducted in tandem with our political determination to address this pressing issue, and must not overshadow it. Recognizing that the United Nations Framework Convention on Climate Change, together with the Paris Agreement on Climate Change, is the primary negotiating forum for developing and implementing international climate framework, it is our hope that the Court's consideration of the questions put to it through the resolution will contribute constructively to strengthening both global and national climate action and raising our ambitions.

Mr. Mead (Canada) (*spoke in French*): Canada recognizes that climate change is one of the major global challenges of our times. All actors should take concrete and ambitious action to address this immense challenge and build a more sustainable world. We are doing our part by taking ambitious measures at the national level and supporting international cooperation.

(*spoke in English*)

At home, we are advancing a broad range of measures to reduce Canada's emissions by 40 to 45 per

cent by 2030, and have enshrined our commitment to meet net-zero emissions by 2050 into domestic law. Internationally, we support the full and effective implementation of the Paris Agreement on Climate Change and work with global partners to promote concrete action, including through the Global Carbon Pricing Challenge and the Powering Past Coal Alliance. Canada also doubled the amount of its international climate financing to $5.3 billion over the period 2021–2026 in order to support developing countries in the fight against climate change, which includes a commitment of 40 per cent for adaptation financing, supporting local action on the ground, women's rights and the rights of indigenous peoples.

Canada joined others in co-sponsoring resolution 77/276, on the request for an advisory opinion from the International Court of Justice on the obligations of States in respect of climate change. In Canada's view, it is important that the Court look at States' obligations in the context of the instruments and principles mentioned in the resolution. Due regard needs to be given to whether the instruments mentioned are binding or not, the fact that States are bound only by those treaties to which they are parties and the specific temporal and territorial limits of certain obligations. Canada would also like to note that there is currently no common, internationally agreed understanding of a number of concepts referred to in the resolution, such as the right to a clean, healthy and sustainable environment. Canada's co-sponsorship of resolution 77/276 is without prejudice to its position on the various instruments and aspects mentioned therein, or to any submissions Canada may eventually present to the International Court of Justice or other adjudicative bodies.

Resolution 77/276 seeks the advice of the International Court of Justice with regard to what obligations and legal consequences for current or future breaches States face, or could face, pursuant to both various international treaties and the well-established obligations of customary international law. The Paris Agreement on Climate Change is built on the need to mitigate future emissions, because that is the only way to avert the worsening impacts of climate change.

(*spoke in French*)

Canada hopes that the opinion rendered by the International Court of Justice will contribute to advancing the negotiations of the United Nations Framework Convention on Climate Change, the Paris Agreement and other forums. We hope that the opinion will enable all States to enhance their ambition to combat climate change so that we can all collectively focus on addressing that global challenge.

Mr. Hill (United States of America): Addressing the climate crisis is of the highest priority for the United States, both at home and abroad. In that context, the United States reaffirms its fundamental view that diplomacy is the best pathway for achieving our shared climate goals. Domestically, President Biden has taken the strongest climate action in United States history. Through the Inflation Reduction Act and other efforts, we are on track to achieve our ambitious nationally determined contribution under the Paris Agreement, which is consistent with keeping a 1.5°C temperature limit within reach.

Internationally, the United States has put the climate crisis at the centre of our foreign policy and diplomacy. President Biden, Secretary of State Blinken, Special Presidential Envoy for Climate John Kerry, Cabinet officials across the United States Government and our diplomats around the world have worked tirelessly to advance global climate ambitions in order to keep a 1.5°C limit on temperature rise within reach and help countries adapt to and manage climate impacts, and more. That has taken many diplomatic forms.

For instance, President Biden has convened fellow leaders of the world's largest economies three times since taking office — and will do so again in April — to press for countries to enhance their ambitions in line with what the science tells us is needed to keep the 1.5°C limit within reach, complementing our broader efforts to drive the ambitious implementation of the Paris Agreement on Climate Change at the meetings of the Conference of the Parties to the United Nations Framework Convention on Climate Change and other key milestone events to be held throughout the year. We have also been promoting emission reductions in sectoral forums such as the International Civil Aviation Organization and the International Maritime Organization, spearheading bilateral and multilateral cooperative initiatives, such as the Global Methane Pledge and the Green Shipping Challenge and launching the President's Emergency Plan for Adaptation and Resilience — PREPARE — initiative, aimed at working together with developing countries to help more than 500 million people worldwide adapt to climate change.

And we are focused on mobilizing resources to support developing countries as they address the climate crisis, not only by providing assistance with our own public resources but also by mobilizing support from the private sector and the multilateral development banks — including by holding critical and ongoing discussions about their reform and evolution — and other sources and by working to align broader global financing flows with the goals of the Paris Agreement. We are also focused on minimizing the risks of sea-level rise for small island and low-lying States and working to address its impacts through our policies and support. That includes our commitment to preserving the legitimacy of States' maritime zones and the associated rights and entitlements that have been established consistent with international law. In that context, the United States engaged in the discussions on resolution 77/276 with a view to considering how best we can advance our collective efforts. We considered that carefully, recognizing the priority that Vanuatu and other small island developing States have placed on seeking an advisory opinion from the International Court of Justice with the aim of advancing progress towards climate goals.

However, we have serious concerns that that process could complicate our collective efforts and will not bring us closer to achieving those shared goals. We believe that launching a judicial process, especially given the broad scope of the questions, will likely accentuate disagreements and not be conducive to advancing ongoing diplomatic and other processes. In the light of those concerns, the United States disagrees that the initiative is the best approach to achieving our shared goals and takes this opportunity to reaffirm our view that diplomatic efforts are the best means by which to address the climate crisis.

While we recognize that this process will go forward, in the light of the significant support enjoyed by the resolution, we underscore our continuing belief that successfully tackling the climate crisis is best achieved by doubling down on the types of diplomatic efforts that we are engaged in, including multilateral engagement under the Paris Agreement and other forums, plurilateral initiatives and bilateral efforts that advance solutions to the multifaceted challenges caused by the climate crisis. The United States will welcome the opportunity to share our legal views and engage with States and the Court on the questions posed. For now, we would like to share a few observations with respect to the text of resolution 77/276.

First, with respect to the chapeau of the question, while the Paris Agreement sets forth a number of climate change obligations, as well as many non-binding provisions, the reference to other treaties should not be understood to imply that each of those treaties contains obligations to ensure the protection of the climate system. In addition, we emphasize that references to certain principles and duties should not be understood as reflecting any conclusion about the nature, scope or application of any such principles or duties to the question at hand.

Secondly, we note that the question asks about obligations and the related legal consequences under those obligations for all States. The question does not prejudge the nature of any such obligations or the legal consequences for any breaches of those obligations. Neither does it presuppose that such breaches have occurred or are occurring, but asks about the consequences if and when they do, whether now or in the future.

Thirdly and lastly, with respect to the preambular paragraphs, we note that several of them, such as those related to non-binding goals, address matters that are not related to legal obligations, and therefore are not relevant to the questions posed. In that regard, the matters addressed in the preambular paragraphs should not be assumed to have any bearing on the Court's advisory opinion.

Mr. Luteru (Samoa): Today is a historic day for climate justice. As a member of the core group, Samoa aligns itself with the statement made by the Prime Minister of Vanuatu. Samoa fully supports the Assembly's historic consensus adoption of resolution 77/276, which seeks an advisory opinion from the International Court of Justice on the obligations of States in respect of climate change. The key principles of human rights and justice are well enshrined in our Charter of the United Nations and supported by international treaties — principles and values that bind us as citizens and custodians of planet Earth.

We are currently witnessing unprecedented and unparalleled changes in our climate system that will have long-lasting effects if we do not come together and reverse the current trend in greenhouse-gas emissions. The Sixth Assessment Report of the Intergovernmental Panel on Climate Change is yet another stark reminder

of how urgent it is that we act now. The science is clear and irrefutable.

Vanuatu's initiative in bringing resolution 77/276 to the General Assembly is timely. It is also an urgent global call to action. The right to the environment is now accepted as a universal human right by the Human Rights Council and by the Assembly through its resolution 76/300, which recognized the right to a clean, healthy and sustainable environment. This is about climate justice, and it is a human rights issue that will affect both current and future generations. At the moment, the financial burden of climate change falls almost entirely on the nations affected and not on those most responsible for its adverse effects. Seeking an advisory opinion to clarify the rights and obligations of States under international law pertaining to climate change is morally the right thing to do. As a small, vulnerable State, Samoa relies on the rule of law as one of the few shields we have to protect its people. We firmly believe that the rule of law will also assist in the future work of the United Nations and the United Nations Framework Convention on Climate Change.

I commend Vanuatu and all Member States for championing this vitally important initiative for all of us, and I assure the Assembly of Samoa's continued unwavering support. We encourage Member States to stay engaged in the next phase and to share their ideas and comments with the International Court of Justice in due course. As members of the global community affected by climate change in one way or another, let us move forward together, in line with the principles of climate justice and human rights. I call for the Assembly's continued valuable support for this initiative.

Mr. Marschik (Austria): Austria aligns itself with the statement delivered on behalf of the European Union.

First, let me join others in congratulating Vanuatu on starting and leading this successful initiative. We appreciate that Vanuatu, together with a core group of States, conducted an extensive and inclusive consultation process resulting in our adoption today of resolution 77/276. For Austria, the possibility for the real involvement of all interested parties is essential to the legitimacy and success of such an initiative. As the Assembly is aware, Austria is a steadfast supporter of multilateralism and international law. The resolution before us strengthens both of those, with the objective of countering climate change altogether. Climate change is the prime example of a challenge that we cannot address alone — we know that. We need concerted global action and multilateral coordination, and we need international legal clarity.

As a small, independent country, Austria relies on other States' compliance with international law for security. In short, international law keeps our citizens safe. We therefore have full sympathy and understanding for States whose existence and security depend on global efforts to address climate change and that want to make use of the obligatory power of international law to help keep their citizens safe and make life on their territories sustainable. International law should keep their citizens safe too.

Austria has been and will remain a steadfast supporter of strong global action on climate change and the environment. Last year we supported the Assembly's landmark resolution 76/300, which recognized the right to a safe, healthy and sustainable environment. Today's resolution will help generate further legal clarity with regard to States' obligations on climate change. The commitment to international law and the rule of law includes the strict observance and equal application of existing laws and norms and the continued development of the law, principles that we have agreed must be respected and implemented by all States, large and small, developed and developing. Advisory opinions of the International Court of Justice can be useful in clarifying legal obligations, and since the process leading to today's adoption was inclusive and transparent, enabling all interested parties to participate, we expect that a subsequent advisory opinion will have a positive impact by clarifying the legal obligations of all States in respect to climate change, which in turn will help us all meet those obligations.

Mr. Rai (Papua New Guinea): Let me begin by extending Papua New Guinea's warm welcome to Prime Minister Kalsakau and the delegation of the Republic of Vanuatu, our fellow Melanesian Wantoks and Pacific neighbours, to today's very important meeting. We thank Vanuatu for its excellent leadership and work on the landmark initiative on requesting an advisory opinion on climate change by the International Court of Justice. We welcomed Mr. Kalsakau's resounding statement today. I also want to recognize the important role played by the members of the core group of countries, as well as the many other delegations, including my own, that have supported Vanuatu and the core group in this process. And I would like to say

a special word of thanks to the young people of the Pacific region, supported by their peers around the world, who sowed the seeds of this initiative, which has so remarkably sprouted and been given life. It augurs well for intergenerational equity and leadership on the climate agenda, which must be further encouraged. We would also like to convey our profound appreciation to all the sponsors of resolution 77/276 — a two-thirds majority — and for the support of others who may not be sponsors. Their support for today's resolution is a distinct legacy on the right side of history.

Today is indeed a historic day, with the resounding consensus adoption for the very first time in this Hall of a General Assembly resolution (resolution 77/276) on an advisory opinion on climate change from the principal judicial organ of the United Nations, namely, the International Court of Justice. The outcome today also attests to what multilateralism can deliver when it is inclusive and consultative and leaves no one behind. From that standpoint, we appreciate the inclusive, open and transparent manner of the process and the adequate time afforded to progressing such important work. That historic outcome today will no doubt set the stage for the important days ahead.

The climate change narrative for all of us, in particular small island developing States (SIDS), including those from our Blue Pacific continent, is well known. Suffice it to say that, as canaries in the coal mine, the strong commitment and advocacy of Papua New Guinea and our other Pacific SIDS in combating climate change with a sense of urgency and comprehensively — including through partnerships under the multilateral architecture, such as the United Nations Framework Convention on Climate Change, the Paris Agreement on Climate Change and similar important forums — will remain steadfast, consistent and unrelenting, given our lived reality today. For us, the stakes are too high. That is not only due to our vulnerabilities and constraints in how we respond to climate change and the serious consequences for our sustainable development that stem from it, but more important, for some of our low-lying atoll members it is also an existential threat to their survival as peoples and nations. That is why the leaders of the Blue Pacific continent have declared climate change as the single-greatest threat to the livelihoods, security and well-being of the peoples of the Pacific. It is therefore critically important and urgent to address our vulnerabilities and build resilience through mitigation and adaptation measures in cooperation with each other and with other development partners.

It is also why today, as we usher in this landmark development in our Blue Pacific continent, our leaders, officials and partners are now convening to discuss and plan for our increasing serious concerns over the question of statehood and the protection of persons affected by sea-level rise, given the increasing serious challenges posed by rising sea levels to our peoples' lives and livelihoods and the security of our communities and countries. We therefore welcome and strongly support today's milestone consensus by the General Assembly to request an advisory opinion of the International Court of Justice on the questions posed to it on climate change.

My delegation recognizes the critical importance of the mandate of the International Court of Justice. Since its establishment, the International Court of Justice has made significant contributions to the rule of law at the international level. It has a critical role to play in promoting stability, equity and the peaceful settlement of disputes. Its decisions and opinions, including its advisory opinions, have important implications for the international community, as they develop and clarify international law and strengthen the international legal system. Papua New Guinea therefore appreciates and strongly supports the work of the International Court of Justice.

Papua New Guinea notes that the advisory opinions of the International Court of Justice are not binding and that the Court has no enforcement power. However, they can have great impact. We are firmly supportive of the role of the International Court of Justice in issuing advisory opinions in accordance with its mandate. The important role of the International Court of Justice is particularly critical with regard to legal questions relating to the existential threat of climate change, by which Pacific small island developing States, including my own country of Papua New Guinea, are especially affected. An advisory opinion of the International Court of Justice on climate change could be the most authoritative statement to date of the obligations that international law imposes on States with respect to greenhouse-gas emissions. States that care about international law and international opinion will take that very seriously.

We also note that an increasing number of domestic courts around the world are considering the issue of

climate change and citing international agreements and the decisions of other countries' courts. An advisory opinion of the International Court of Justice could become the leading authority to which those domestic courts would look in framing their own decisions. Such an opinion would also be looked to by the international human rights bodies and tribunals that are considering climate change and its impacts. Going forward, we are committed to the important work in the next phase ahead of us, and to the final outcome of that process.

In conclusion, I align my delegation's remarks with those made by the representatives of the countries of the Pacific region.

Ms. Kabua (Marshall Islands): The Republic of the Marshall Islands aligns itself with the statements delivered by the representative of the Federated States of Micronesia, on behalf of the Pacific small island developing States, and by the representative of Tonga, on behalf of the Pacific Islands Forum.

The Marshall Islands is pleased to have joined as a co-sponsor of resolution 77/276 and congratulates Vanuatu and the other core group members on successfully facilitating a resolution that ultimately serves to strengthen understanding of the obligations and actions of States with regard to climate change under international law. It is important that the resolution was adopted with the strong support of the General Assembly. Even if there are reservations by some participants on the exact references or detailed terms, it is nonetheless imperative that the United Nations not shirk its wider global responsibility for enriching and engaging with international law. Such an outcome could be an important reference point and marker for future action between States. We must all look to a deeper responsibility and look past the divisions at the negotiating table. The advisory opinion is not an exercise in which the International Court of Justice will go further than where we ourselves, as Member States, have been able to reach. Without dispute and as emphasized repeatedly by the Secretary-General, global efforts are falling well short of what was agreed. The years of repetition have proved inadequate in implementing common obligations as the global community. Despite a stronger structure, ambition has repeatedly fallen short. Atoll nations such as my own are now the first to face some of the sharpest and harshest impacts of a wider global threat and crisis.

In the 1992 United Nations Framework Convention on Climate Change, States parties agreed to "prevent dangerous anthropogenic interference with the climate system". Those cannot be empty words, and they are not general terms, but that obligation in particular remains unmet, even though it serves as a driver for a stronger multilateral effort. While the international community has expanded its understanding into the Human Rights Council and its core treaties, the law of the sea and the Security Council, much more remains to be done to connect and better realize the common threads across international law.

As the Marshall Islands, we will remain as we are now on the political map under our boundaries and baselines. Even as seas rise, our Government is tirelessly committed to ensuring our right to remain, as well as the right of our youngest and future generations to live in and know our proud island nation and culture. Those are inalienable rights that cannot be denied. But the best protection of our population may demand complex outcomes and actions, locally and globally — and our pathway to achieving those is uncertain at best.

From the perspective of a low-lying atoll State and small island developing State, the current projections of sea level rise threaten to overtop our land with no higher ground. That certainly seems to be the result of the "dangerous interference" that the world is obligated to prevent. Even if it is difficult to understand further under international law what else, beyond the direct terms of international conventions, is a legal obligation, we should at least be able to comprehend that the dramatic scale of the projections for the Marshall Islands and other atoll nations ought not to happen. Everyone in this Hall today knows that such an outcome is wrong, unjust and beyond a lawful basis.

Today it is long overdue for the General Assembly to forge an opportunity to initiate strong and effective international action that may spur greater political will. We cannot afford to stay silent, no matter how complex the issue. As we look ahead to the comprehensive process of involving Member States in addressing an advisory opinion, we urge their wide and robust participation in the multilateral process. Whatever the different interpretations of law or negotiations may be, all of us Members of this organ should remind ourselves that we are all underpinned by an international rules-based order and that our collective progress must be driven by international law. We owe it to the world to spare no effort in achieving a strong and responsive

outcome. Today's adoption reminds all of us that this is exactly why the United Nations exists.

Mrs. González López (El Salvador) (*spoke in Spanish*): The Republic of El Salvador welcomed the presentation of resolution 77/276, which the General Assembly has just adopted by consensus. We consider it an important milestone in international environmental law, as well as a contribution to international efforts to fight against climate change.

My delegation recognizes that the triple planetary crisis of climate change, pollution and the loss of nature and biodiversity has many repercussions, including for the enjoyment of the human right to a clean, healthy and sustainable environment. Recognizing the importance of protecting the global climate for humankind's present and future generations, as well as the need to address its impact on our planet, is therefore of fundamental importance and should be a priority for the international community. With that in mind, El Salvador decided to become a sponsor of the resolution, in the light of our country's location in Central America's Dry Corridor, an area that is highly vulnerable to the effects of climate change and that is continually experiencing the kinds of loss and damage that mainly affect vulnerable populations.

We believe that clarifying the scope of States' obligations with regard to guaranteeing the protection of the climate system under international law, both conventional and customary, will facilitate the interpretation of how compliance with those commitments can systematically support the protection of the human rights of peoples, taking into account the various specificities of their regions. In that context, if we are to respond effectively to the adverse effects of climate change we must not forget the urgent need to scale up action and support — including through financing, capacity-building and the transfer of technology — to enhance adaptive, mitigation and resilience capacities and implement collaborative approaches.

Given the enormous benefit that the study of the legal issues raised in the resolution represents, El Salvador would like to emphasize the importance of acknowledging that the advisory opinion is not a form of judicial recourse for States, nor is it intended to be functionally equivalent to it. It therefore represents the means by which the General Assembly and the Security Council, as well as other organs of the United Nations and those bodies specifically permitted to do so, in accordance with Article 96, paragraph 2, of the Charter of the United Nations, may seek an advisory opinion from the International Court of Justice to assist or facilitate their activities. In issuing an advisory opinion on the interpretation of the legal issues raised for consideration in the resolution, my delegation hopes that the International Court of Justice will always keep in mind the general and customary rule of the interpretation of international treaties that implies the simultaneous and joint application in good faith of the ordinary meaning of the terms used in the treaty concerned, as well as their context, object and purpose.

El Salvador also encourages the promotion of dialogue in the international court system so that the exercise of its advisory function may be carried out in a harmonized manner by providing the relevant clarifications to requests filed by States — for example, the efforts that have been promoted by the inter-American system to request an advisory opinion on climate emergency and human rights.

Finally, we express our support for the efforts of the Court in the exercise of its advisory function to provide elementary clarifications on matters of international law. However, let us not forget that the primary commitment to undertaking action-oriented measures and responding effectively to the adverse effects of climate change, as well as avoiding, minimizing and addressing loss and damage related to those effects, lies with us, the States Members of this Organization.

The Acting President: We have heard the last speaker for this meeting. I would like to thank the interpreters for extending their services to this late hour. We shall hear the remaining speakers this afternoon, immediately after the consideration of agenda item 29, entitled "The role of diamonds in fuelling conflict", at 3 p.m. in this Hall.

The General Assembly has thus concluded this stage of its consideration of agenda item 70.

The meeting rose at 1.20 p.m.

Annex 4

No. 30822

MULTILATERAL

United Nations Framework Convention on Climate Change (with annexes). Concluded at New York on 9 May 1992

Authentic texts: Arabic, Chinese, English, French, Russian and Spanish.
Registered ex officio *on 21 March 1994.*

MULTILATÉRAL

Convention-cadre des Nations Unies sur les changements climatiqnes (avec annexes). Conclue à New York le 9 mai 1992

Textes authentiques : arabe, chinois, anglais, français, russe et espagnol.
Enregistrée d'office le 21 mars 1994.

UNITED NATIONS FRAMEWORK CONVENTION[1] ON CLIMATE CHANGE

The Parties to this Convention,

Acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind,

[1] Came into force on 21 March 1994, i.e., the ninetieth day after the date of deposit with the Secretary-General of the United Nations of the fiftieth instrument of ratification, acceptance, approval or accession, in accordance with article 23 (1):

Participant	*Date of deposit of the instrument of ratification, accession* (a), *acceptance* (A) *or approval* (AA)
Algeria	9 June 1993
Antigua and Barbuda	2 February 1993
Armenia	14 May 1993 *A*
Australia	30 December 1992
Burkina Faso	2 September 1993
Canada	4 December 1992
China	5 January 1993
Cook Islands	20 April 1993
Czech Republic	7 October 1993 *AA*
Denmark	21 December 1993
Dominica	21 June 1993 *a*
Ecuador	23 February 1993
European Community*	21 December 1993 *AA*
Fiji	25 February 1993
Germany	9 December 1993
Guinea	7 May 1993
Iceland	16 June 1993
India	1 November 1993
Japan	28 May 1993 *A*
Jordan	12 November 1993
Maldives	9 November 1992
Marshall Islands	8 October 1992
Mauritius	4 September 1992
Mexico	11 March 1993
Micronesia (Federated States of)	18 November 1993
Monaco*	20 November 1992
Mongolia	30 September 1993
Nauru	11 November 1993
Netherlands	20 December 1993 *A*
(For the Kingdom in Europe.)	
New Zealand	16 September 1993
Norway	9 July 1993
Papua New Guinea	16 March 1993
Peru	7 June 1993
Portugal	21 December 1993
Republic of Korea	14 December 1993
Saint Kitts and Nevis	7 January 1993
Saint Lucia	14 June 1993
Seychelles	22 September 1992
Spain	21 December 1993
Sri Lanka	23 November 1993
Sudan	19 November 1993
Sweden	23 June 1993
Switzerland	10 December 1993
Tunisia	15 July 1993
Tuvalu	26 October 1993
Uganda	8 September 1993
United Kingdom of Great Britain and Northern Ireland	8 December 1993
(In respect of Great Britain and Northern Ireland, the Bailiwick of Jersey and the Isle of Man.)	
United States of America	15 October 1992
Uzbekistan	20 June 1993 *a*
Vanuatu	25 March 1993
Zambia	28 May 1993
Zimbabwe	3 November 1992

In addition, and prior to the entry into force of the Convention, the following States also deposited instruments of ratification, in accordance with article 23 (2):

Participant	*Date of deposit of the instrument of ratification*
Argentina	11 March 1994
(With effect from 9 June 1994.)	
Austria	28 February 1994
(With effect from 29 May 1994.)	
Botswana	27 January 1994
(With effect from 27 April 1994.)	
Brazil	28 February 1994
(With effect from 29 May 1994.)	
Cuba*	5 January 1994
(With effect from 5 April 1994.)	
Hungary*	24 February 1994
(With effect from 25 May 1994.)	
Malta	17 March 1994
(With effect from 15 June 1994.)	
Mauritania	20 January 1994
(With effect from 20 April 1994.)	
Paraguay	24 February 1994
(With effect from 25 May 1994.)	

* See p. 319 of this volume for the texts of the declarations made upon ratification and approval.

Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind,

Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs,

Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases,

Noting that there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof,

Acknowledging 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, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions,

Recalling the pertinent provisions of the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972,[1]

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

Reaffirming the principle of sovereignty of States in international cooperation to address climate change,

Recognizing that States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries,

Recalling the provisions of General Assembly resolution 44/228 of 22 December 1989 on the United Nations Conference on Environment and

[1] United Nations, *Official Records of the General Assembly, Forty-eighth Session* (A/CONF.48/14/Rev.1).

Development,[1] and resolutions 43/53 of 6 December 1988,[2] 44/207 of 22 December 1989,[3] 45/212 of 21 December 1990[4] and 46/169 of 19 December 1991 on protection of globel climate for present and future generations of mankind,[5]

Recalling also the provisions of General Assembly resolution 44/206 of 22 December 1989 on the possible adverse effects of sealevel rise on islands and coastal areas, particularly low-lying coastal areas[6] and the pertinent provisions of General Assembly resolution 44/172 of 19 December 1989 on the implementation of the Plan of Action to Combat Desertification,[7]

Recalling further the Vienna Convention for the Protection of the Ozone Layer, 1985,[8] and the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987,[9] as adjusted and amended on 29 June 1990,[10]

Noting the Ministerial Declaration of the Second World Climate Conference adopted on 7 November 1990,

Conscious of the valuable analytical work being conducted by many States on climate change and of the important contributions of the World Meteorological Organization, the United Nations Environment Programme and other organs, organizations and bodies of the United Nations system, as well as other international and intergovernmental bodies, to the exchange of results of scientific research and the coordination of research,

Recognizing that steps required to understand and address climate change will be environmentally, socially and economically most effeotive if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas,

Recognizing that various actions to address climate change can be justified economically in their own right and can also help in solving other environmental problems,

Recognizing also the need for developed countries to take immediate action in a flexible manner on the basis of clear priorities, as a first step towards comprehensive response strategies at the global, national and, where agreed, regional levels that take into account all greenhouse gases, with due consideration of their relative contributions to the enhancement of the greenhouse effect,

Recognizing further that low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas

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[1] United Nations, *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 49* (A/44/49), p. 151.
[2] *Ibid., Forty-third Session, Supplement No. 49* (A/43/49), p. 133.
[3] *Ibid., Forty-fourth Session, Supplement No. 49* (A/44/49), p. 130.
[4] *Ibid., Forty-fifth Session, Supplement No. 49* (A/45/49), p. 147.
[5] *Ibid., Forty-sixth Session, Supplement No. 49* (A/46/49), p. 130.
[6] *Ibid., Forty-fourth Session, Supplement No. 49* (A/44/49), p. 129.
[7] *Ibid.*, p. 120.
[8] *Ibid., Treaty Series*, vol. 1513, No. I-26164.
[9] *Ibid.*, vol. 1522, No. I-26369.
[10] *Ibid.*, vol. 1684, No. A-26369.

liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change,

Recognizing the special difficulties of those countries, especially developing countries, whose economies are particularly dependent on fossil fuel production, use and exportation, as a consequence of action taken on limiting greenhouse gas emissions,

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

Recognizing that all countries, especially developing countries, need access to resources required to achieve sustainable social and economic development and that, in order for developing countries to progress towards that goal, their energy consumption will need to grow taking into account the possibilities for achieving greater energy efficiency and for controlling greenhouse gas emissions in general, including through the application of new technologies on terms which make such an application economically and socially beneficial,

Determined to protect the climate system for present and future generations,

Have agreed as follows:

ARTICLE 1

DEFINITIONS*

For the purposes of this Convention:

1. "Adverse effects of climate change" means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.

2. "Climate change" means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.

3. "Climate system" means the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.

4. "Emissions" means the release of greenhouse gases and/or their precursors into the atmosphere over a specified area and period of time.

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* Titles of articles are included solely to assist the reader.

5. "Greenhouse gases" means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.

6. "Regional economic integration organization" means an organization constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention or its protocols and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the instruments concerned.

7. "Reservoir" means a component or components of the climate system where a greenhouse gas or a precursor of a greenhouse gas is stored.

8. "Sink" means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere.

9. "Source" means any process or activity which releases a greenhouse gas, an aerosol or a precursor of a greenhouse gas into the atmosphere.

ARTICLE 2

OBJECTIVE

The ultimate objective of this Convention 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. Such a level 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.

ARTICLE 3

PRINCIPLES

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

1. 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.

2. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.

3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.

4. The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.

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

ARTICLE 4

COMMITMENTS

1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:

(a) Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties;

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;

(c) Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors,

including the energy, transport, industry, agriculture, forestry and waste management sectors;

(d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems;

(e) Cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods;

(f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change;

(g) Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies;

(h) Promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies;

(i) Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations; and

(j) Communicate to the Conference of the Parties information related to implementation, in accordance with Article 12.

2. The developed country Parties and other Parties included in annex I commit themselves specifically as provided for in the following:

(a) Each of these Parties shall adopt national 1/ policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with

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1/ This includes policies and measures adopted by regional economic integration organizations.

the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to such modification, and taking into acoount the differences in these Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph;

(b) In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in subparagraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in subparagraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7;

(c) Calculations of emissions by sources and removals by sinks of greenhouse gases for the purposes of subparagraph (b) above should take into account the best available scientific knowledge, including of the effective capacity of sinks and the respective contributions of such gases to climate change. The Conference of the Parties shall consider and agree on methodologies for these calculations at its first session and review them regularly thereafter;

(d) The Conference of the Parties shall, at its first session, review the adequacy of subparagraphs (a) and (b) above. Such review shall be carried out in the light of the best available scientific information and assessment on climate change and its impacts, as well as relevant technical, social and economic information. Based on this review, the Conference of the Parties shall take appropriate action, which may include the adoption of amendments to the commitments in subparagraphs (a) and (b) above. The Conference of the Parties, at its first session, shall also take decisions regarding criteria for joint implementation as indicated in subparagraph (a) above. A second review of subparagraphs (a) and (b) shall take place not later than 31 December 1998, and thereafter at regular intervals determined by the Conference of the Parties, until the objective of the Convention is met;

(e) Each of these Parties shall:

(i) coordinate as appropriate with other such Parties, relevant economic and administrative instruments developed to achieve the objective of the Convention; and

(ii) identify and periodically review its own policies and practices which encourage activities that lead to greater levels of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol than would otherwise occur;

(f) The Conference of the Parties shall review, not later than 31 December 1998, available information with a view to taking decisions regarding such amendments to the lists in annexes I and II as may be appropriate, with the approval of the Party concerned;

(g) Any Party not included in annex I may, in its instrument of ratification, acceptance, approval or accession, or at any time thereafter, notify the Depositary that it intends to be bound by subparagraphs (a) and (b) above. The Depositary shall inform the other signatories and Parties of any such notification.

3. The developed country Parties and other developed Parties included in annex II shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1. They shall also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by paragraph 1 of this Article and that are agreed between a developing country Party and the international entity or entities referred to in Article 11, in accordance with that Article. The implementation of these commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among the developed country Parties.

4. The developed country Parties and other developed Parties included in annex II shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.

5. The developed country Parties and other developed Parties included in annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies.

6. In the implementation of their commitments under paragraph 2 above, a certain degree of flexibility shall be allowed by the Conference of the Parties to the Parties included in annex I undergoing the process of transition to a market economy, in order to enhance the ability of these Parties to address climate change, including with regard to the historical level of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol chosen as a reference.

7. The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.

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

(a) Small island countries;

(b) Countries with low-lying coastal areas;

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

(d) Countries with areas prone to natural disasters;

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

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

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

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

(i) Land-locked and transit countries.

Further, the Conference of the Parties may take actions, as appropriate, with respect to this paragraph.

9. The Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology.

10. The Parties shall, in accordance with Article 10, take into consideration in the implementation of the commitments of the Convention the situation of Parties, particularly developing country Parties, with economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change. This applies notably to Parties with economies that are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive products and/or the use of fossil fuels for which such Parties have serious difficulties in switching to alternatives.

ARTICLE 5

RESEARCH AND SYSTEMATIC OBSERVATION

In carrying out their commitments under Article 4, paragraph 1 (g), the Parties shall:

(a) Support and further develop, as appropriate, international and intergovernmental programmes and networks or organizations aimed at defining, conducting, assessing and financing research, data collection and systematic observation, taking into account the need to minimize duplication of effort;

(b) Support international and intergovernmental efforts to strengthen systematic observation and national scientific and technical research capacities and capabilities, particularly in developing countries, and to promote access to, and the exchange of, data and analyses thereof obtained from areas beyond national jurisdiction; and

(c) Take into account the particular concerns and needs of developing countries and cooperate in improving their endogenous capacities and capabilities to participate in the efforts referred to in subparagraphs (a) and (b) above.

ARTICLE 6

EDUCATION, TRAINING AND PUBLIC AWARENESS

In carrying out their commitments under Article 4, paragraph 1 (i), the Parties shall:

(a) Promote and facilitate at the national and, as appropriate, subregional and regional levels, and in accordance with national laws and regulations, and within their respective capacities:

(i) the development and implementation of educational and public awareness programmes on climate change and its effects;

(ii) public access to information on climate change and its effects;

(iii) public participation in addressing climate change and its effects and developing adequate responses; and

(iv) training of scientific, technical and managerial personnel.

(b) Cooperate in and promote, at the international level, and, where appropriate, using existing bodies:

(i) the development and exchange of educational and public awareness material on climate change and its effects; and

(ii) the development and implementation of education and training programmes, including the strengthening of national institutions and the exchange or secondment of personnel to

train experts in this field, in particular for developing countries.

ARTICLE 7

CONFERENCE OF THE PARTIES

1. A Conference of the Parties is hereby established.

2. The Conference of the Parties, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and any related legal instruments that the Conference of the Parties may adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention. To this end, it shall:

(a) Periodically examine the obligations of the Parties and the institutional arrangements under the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge;

(b) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention;

(c) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention;

(d) Promote and guide, in accordance with the objective and provisions of the Convention, the development and periodic refinement of comparable methodologies, to be agreed on by the Conference of the Parties, inter alia, for preparing inventories of greenhouse gas emissions by sources and removals by sinks, and for evaluating the effectiveness of measures to limit the emissions and enhance the removals of these gases;

(e) Assess, on the basis of all information made available to it in accordance with the provisions of the Convention, the implementation of the Convention by the Parties, the overall effects of the measures taken pursuant to the Convention, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;

(f) Consider and adopt regular reports on the implementation of the Convention and ensure their publication;

(g) Make recommendations on any matters necessary for the implementation of the Convention;

(h) Seek to mobilize financial resources in accordance with Article 4, paragraphs 3, 4 and 5, and Article 11;

(i) Establish such subsidiary bodies as are deemed necessary for the implementation of the Convention;

(j) Review reports submitted by its subsidiary bodies and provide guidance to them;

(k) Agree upon and adopt, by consensus, rules of procedure and financial rules for itself and for any subsidiary bodies;

(l) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and

(m) Exercise such other functions as are required for the achievement of the objective of the Convention as well as all other functions assigned to it under the Convention.

3. The Conference of the Parties shall, at its first session, adopt its own rules of procedure as well as those of the subsidiary bodies established by the Convention, which shall include decision-making procedures for matters not already covered by decision-making procedures stipulated in the Convention. Such procedures may include specified majorities required for the adoption of particular decisions.

4. The first session of the Conference of the Parties shall be convened by the interim secretariat referred to in Article 21 and shall take place not later than one year after the date of entry into force of the Convention. Thereafter, ordinary sessions of the Conference of the Parties shall be held every year unless otherwise decided by the Conference of the Parties.

5. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one-third of the Parties.

6. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not Party to the Convention, may be represented at sessions of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one-third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

ARTICLE 8

SECRETARIAT

1. A secretariat is hereby established.

2. The functions of the secretariat shall be:

(a) To make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required;

(b) To compile and transmit reports submitted to it;

(c) To facilitate assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;

(d) To prepare reports on its activities and present them to the Conference of the Parties;

(e) To ensure the necessary coordination with the secretariats of other relevant international bodies;

(f) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and

(g) To perform the other secretariat functions specified in the Convention and in any of its protocols and such other functions as may be determined by the Conference of the Parties.

3. The Conference of the Parties, at its first session, shall designate a permanent secretariat and make arrangements for its functioning.

ARTICLE 9

SUBSIDIARY BODY FOR SCIENTIFIC AND TECHNOLOGICAL ADVICE

1. A subsidiary body for scientific and technological advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely information and advice on scientific and technological matters relating to the Convention. This body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the guidance of the Conference of the Parties, and drawing upon existing competent international bodies, this body shall:

(a) Provide assessments of the state of scientific knowledge relating to climate change and its effects;

(b) Prepare scientific assessments on the effects of measures taken in the implementation of the Convention;

(c) Identify innovative, efficient and state-of-the-art technologies and know-how and advise on the ways and means of promoting development and/or transferring such technologies;

(d) Provide advice on scientific programmes, international cooperation in research and development related to climate change, as well as on ways and means of supporting endogenous capacity-building in developing countries; and

(e) Respond to scientific, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.

3. The functions and terms of reference of this body may be further elaborated by the Conference of the Parties.

ARTICLE 10

SUBSIDIARY BODY FOR IMPLEMENTATION

1. A subsidiary body for implementation is hereby established to assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention. This body shall be open to participation by all Parties and comprise government representatives who are experts on matters related to climate change. It shall report regularly to the Conference of the Parties on all aspects of its work.

2. Under the guidance of the Conference of the Parties, this body shall:

(a) Consider the information communicated in accordance with Article 12, paragraph 1, to assess the overall aggregated effect of the steps taken by the Parties in the light of the latest scientific assessments concerning climate change;

(b) Consider the information communicated in accordance with Article 12, paragraph 2, in order to assist the Conference of the Parties in carrying out the reviews required by Article 4, paragraph 2 (d); and

(c) Assist the Conference of the Parties, as appropriate, in the preparation and implementation of its decisions.

ARTICLE 11

FINANCIAL MECHANISM

1. A mechanism for the provision of financial resources on a grant or concessional basis, including for the transfer of technology, is hereby defined. It shall function under the guidance of and be accountable to the Conference of the Parties, which shall decide on its policies, programme priorities and eligibility criteria related to this

Convention. Its operation shall be entrusted to one or more existing international entities.

2. The financial mechanism shall have an equitable and balanced representation of all Parties within a transparent system of governance.

3. The Conference of the Parties and the entity or entities entrusted with the operation of the financial mechanism shall agree upon arrangements to give effect to the above paragraphs, which shall include the following:

(a) Modalities to ensure that the funded projects to address climate change are in conformity with the policies, programme priorities and eligibility criteria established by the Conference of the Parties;

(b) Modalities by which a particular funding decision may be reconsidered in light of these policies, programme priorities and eligibility criteria;

(c) Provision by the entity or entities of regular reports to the Conference of the Parties on its funding operations, which is consistent with the requirement for accountability set out in paragraph 1 above; and

(d) Determination in a predictable and identifiable manner of the amount of funding necessary and available for the implementation of this Convention and the conditions under which that amount shall be periodically reviewed.

4. The Conference of the Parties shall make arrangements to implement the above-mentioned provisions at its first session, reviewing and taking into account the interim arrangements referred to in Article 21, paragraph 3, and shall decide whether these interim arrangements shall be maintained. Within four years thereafter, the Conference of the Parties shall review the financial mechanism and take appropriate measures.

5. The developed country Parties may also provide and developing country Parties avail themselves of, financial resources related to the implementation of the Convention through bilateral, regional and other multilateral channels.

ARTICLE 12

COMMUNICATION OF INFORMATION RELATED TO IMPLEMENTATION

1. In accordance with Article 4, paragraph 1, each Party shall communicate to the Conference of the Parties, through the secretariat, the following elements of information:

(a) A national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, to the extent its capacities permit, using comparable methodologies to be promoted and agreed upon by the Conference of the Parties;

(b) A general description of steps taken or envisaged by the Party to implement the Convention; and

(c) Any other information that the Party considers relevant to the achievement of the objective of the Convention and suitable for inclusion in its communication, including, if feasible, material relevant for calculations of global emission trends.

2. Each developed country Party and each other Party included in annex I shall incorporate in its communication the following elements of information:

(a) A detailed description of the policies and measures that it has adopted to implement its commitment under Article 4, paragraphs 2 (a) and 2 (b); and

(b) A specific estimate of the effects that the policies and measures referred to in subparagraph (a) immediately above will have on anthropogenic emissions by its sources and removals by its sinks of greenhouse gases during the period referred to in Article 4, paragraph 2 (a).

3. In addition, each developed country Party and each other developed Party included in annex II shall incorporate details of measures taken in accordance with Article 4, paragraphs 3, 4 and 5.

4. Developing country Parties may, on a voluntary basis, propose projects for financing, including specific technologies, materials, equipment, techniques or practices that would be needed to implement such projects, along with, if possible, an estimate of all incremental costs, of the reductions of emissions and increments of removals of greenhouse gases, as well as an estimate of the consequent benefits.

5. Each developed country Party and each other Party included in annex I shall make its initial communication within six months of the entry into force of the Convention for that Party. Each Party not so listed shall make its initial communication within three years of the entry into force of the Convention for that Party, or of the availability of financial resources in accordance with Article 4, paragraph 3. Parties that are least developed countries may make their initial communication at their discretion. The frequency of subsequent communications by all Parties shall be determined by the Conference of the Parties, taking into acoount the differentiated timetable set by this paragraph.

6. Information communicated by Parties under this Article shall be transmitted by the secretariat as soon as possible to the Conference of the Parties and to any subsidiary bodies concerned. If necessary, the procedures for the communication of information may be further considered by the Conference of the Parties.

7. From its first session, the Conference of the Parties shall arrange for the provision to developing country Parties of technical and financial support, on request, in compiling and communicating information under this Article, as well as in identifying the technical and financial

needs associated with proposed projects and response measures under Article 4. Such support may be provided by other Parties, by competent international organizations and by the secretariat, as appropriate.

8. Any group of Parties may, subject to guidelines adcpted by the Conference of the Parties, and to prior notification to the Conference of the Parties, make a joint communication in fulfilment of their obligations under this Article, provided that such a communication includes information on the fulfilment by each of these Parties of its individual obligations under the Convention.

9. Information received by the secretariat that is designated by a Party as confidential, in accordance with criteria to be established by the Conference of the Parties, shall be aggregated by the secretariat to protect its confidentiality before being made available to any of the bodies involved in the communication and review of information.

10. Subject to paragraph 9 above, and without prejudice to the ability of any Party to make public its communication at any time, the secretariat shall make communications by Parties under this Article publicly available at the time they are submitted to the Conference of the Parties.

ARTICLE 13

RESOLUTION OF QUESTIONS REGARDING IMPLEMENTATION

The Conference of the Parties shall, at its first session, consider the establishment of a multilateral consultative process, available to Parties on their request, for the resolution of questions regarding the implementation of the Convention.

ARTICLE 14

SETTLEMENT OF DISPUTES

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice, and/or

(b) Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on arbitration.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph (b) above.

3. A declaration made under paragraph 2 above shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

4. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the arbitral tribunal, unless the parties to the dispute otherwise agree.

5. Subject to the operation of paragraph 2 above, if after twelve months following notification by one Party to another that a dispute exists between them, the Parties concerned have not been able to settle their dispute through the means mentioned in paragraph 1 above, the dispute shall be submitted, at the request of any of the parties to the dispute, to conciliation.

6. A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a recommendatory award, which the parties shall consider in good faith.

7. Additional procedures relating to conciliation shall be adopted by the Conference of the Parties, as soon as practicable, in an annex on conciliation.

8. The provisions of this Article shall apply to any related legal instrument which the Conference of the Parties may adopt, unless the instrument provides otherwise.

ARTICLE 15

AMENDMENTS TO THE CONVENTION

1. Any Party may propose amendments to the Convention.

2. Amendments to the Convention shall be adopted at an ordinary session of the Conference of the Parties. The text of any proposed amendment to the Convention shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to the Convention and, for information, to the Depositary.

3. The Parties shall make every effort to reach agreement on any proposed amendment to the Convention by consensus. If all efforts at

consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three-fourths of the Parties to the Convention.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

6. For the purposes of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.

ARTICLE 16

ADOPTION AND AMENDMENT OF ANNEXES TO THE CONVENTION

1. Annexes to the Convention shall form an integral part thereof and, unless otherwise expressly provided, a reference to the Convention constitutes at the same time a reference to any annexes thereto. Without prejudice to the provisions of Article 14, paragraphs 2 (b) and 7, such annexes shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.

2. Annexes to the Convention shall be proposed and adopted in accordance with the procedure set forth in Article 15, paragraphs 2, 3, and 4.

3. An annex that has been adopted in accordance with paragraph 2 above shall enter into force for all Parties to the Convention six months after the date of the communication by the Depositary to such Parties of the adoption of the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex. The annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

4. The proposal, adoption and entry into force of amendments to annexes to the Convention shall be subject to the same procedure as that for the proposal, adoption and entry into force of annexes to the Convention in accordance with paragraphs 2 and 3 above.

5. If the adoption of an annex or an amendment to an annex involves an amendment to the Convention, that annex or amendment to an annex shall not enter into force until such time as the amendment to the Convention enters into force.

ARTICLE 17

PROTOCOLS

1. The Conference of the Parties may, at any ordinary session, adopt protocols to the Convention.

2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such a session.

3. The requirements for the entry into force of any protocol shall be established by that instrument.

4. Only Parties to the Convention may be Parties to a protocol.

5. Decisions under any protocol shall be taken only by the Parties to the protocol concerned.

ARTICLE 18

RIGHT TO VOTE

1. Each Party to the Convention shall have one vote, except as provided for in paragraph 2 below.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

ARTICLE 19

DEPOSITARY

The Secretary-General of the United Nations shall be the Depositary of the Convention and of protocols adopted in accordance with Article 17.

ARTICLE 20

SIGNATURE

This Convention shall be open for signature by States Members of the United Nations or of any of its specialized agencies or that are Parties to the Statute of the International Court of Justice and by regional economic integration organizations at Rio de Janeiro, during the United Nations Conference on Environment and Development, and thereafter at United Nations Headquarters in New York from 20 June 1992 to 19 June 1993.

ARTICLE 21

INTERIM ARRANGEMENTS

1. The secretariat functions referred to in Article 8 will be carried out on an interim basis by the secretariat established by the General Assembly of the United Nations in its resolution 45/212 of 21 December 1990, until the completion of the first session of the Conference of the Parties.

2. The head of the interim secretariat referred to in paragraph 1 above will cooperate closely with the Intergovernmental Panel on Climate Change to ensure that the Panel can respend to the need for objective scientific and technical advice. Other relevant scientific bodies could also be consulted.

3. The Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development shall be the international entity entrusted with the operation of the financial mechanism referred to in Article 11 on an interim basis. In this connection, the Global Environment Facility should be appropriately restructured and its membership made universal to enable it to fulfil the requirements of Article 11.

ARTICLE 22

RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

1. The Convention shall be subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organization which bacomes a Party to the Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to the Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

ARTICLE 23

ENTRY INTO FORCE

1. The Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.

2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

ARTICLE 24

RESERVATIONS

No reservations may be made to the Convention.

ARTICLE 25

WITHDRAWAL

1. At any time after three years from the date on which the Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it is a Party.

ARTICLE 26

AUTHENTIC TEXTS

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at New York this ninth day of May one thousand nine hundred and ninety-two.

[*For the signatures, see p. 269 of this volume.*]

ANNEX I

Australia
Austria
Belarus a/
Belgium
Bulgaria a/
Canada
Czechoslovakia a/
Denmark
European [Economic][1] Community
Estonia a/
Finland
France
Germany
Greece
Hungary a/
Iceland
Ireland
Italy
Japan
Latvia a/
Lithuania a/
Luxembourg
Netherlands
New Zealand
Norway
Poland a/
Portugal
Romania a/
Russian Federation a/
Spain
Sweden
Switzerland
Turkey
Ukraine a/
United Kingdom of Great Britain and Northern Ireland
United States of America

a/ Countries that are undergoing the process of transition to a market economy.

[1] Text between brackets reflects corrections effected by procès-verbal of 22 June 1993.

ANNEX II

Australia
Austria
Belgium
Canada
Denmark
European [Economic][1] Community
Finland
France
Germany
Greece
Iceland
Ireland
Italy
Japan
Luxembourg
Netherlands
New Zealand
Norway
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland
United States of America

[1] Text between brackets reflects corrections effected by procès-verbal of 22 June 1993.

UNITED NATIONS NATIONS UNIES

(XXVII.7)

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE: C.N.148.1993.TREATIES-4 (Depositary Notification)

UNITED NATIONS FRAMEWORK CONVENTION
ON CLIMATE CHANGE
CONCLUDED AT NEW YORK ON 9 MAY 1992

ACCEPTANCE OF THE PROPOSED CORRECTIONS AND TRANSMISSION OF THE RELEVANT PROCES-VERBAL

The Secretary-General of the United Nations, acting in his capacity as depositary, and in reference to depositary notification C.N.429.1992.TREATIES-7 of 19 February 1993 concerning proposed corrections to the original of the above-mentioned Convention and to the certified true copies thereof, communicates the following:

On 20 May 1993, that is within the period of 90 days from the date of the above-mentioned depositary notification, no objection was raised to the proposed corrections.

Consequently, the Secretary-General has effected the said corrections in the English text of the original of the Convention as well as in the certified true copies thereof. The relevant ..... procès-verbal of rectification is transmitted herewith.

12 July 1993

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

UNITED NATIONS FRAMEWORK CONVENTION
ON CLIMATE CHANGE
CONCLUDED AT NEW YORK ON 9 MAY 1992

PROCES-VERBAL OF RECTIFICATION OF THE ORIGINAL OF THE CONVENTION

THE SECRETARY-GENERAL OF THE UNITED NATIONS, acting in his capacity as depositary of the United Nations Framework Convention on Climate Change, concluded at New York on 9 May 1992,

WHEREAS it appears that the original of the Convention contains a number of inaccuracies,

WHEREAS the corresponding proposed corrections were communicated to all States concerned by depositary notification C.N.429.1992.TREATIES-7 of 19 February 1993,

WHEREAS at the end of a period of 90 days from the date of that communication, no objection had been notified,

HAS CAUSED the corrections indicated in the annex to this Procès-verbal to be effected in the original of the Convention, which corrections also apply to the certified true copies of the Convention established on 1 July 1992.

IN WITNESS WHEREOF, I, Ralph Zacklin, Director and Deputy to the Under-Secretary-General in charge of the Office of Legal Affairs, have signed this Procès-verbal at the Headquarters of the United Nations, New York, on 22 June 1993.

CONVENTION-CADRE DES NATIONS UNIES
SUR LES CHANGEMENTS CLIMATIQUES
CONCLUE A NEW YORK LE 9 MAI 1992

PROCES-VERBAL DE RECTIFICATION DE L'ORIGINAL DE LA CONVENTION

LE SECRETAIRE GENERAL DE L'ORGANISATION DES NATIONS UNIES, agissant en sa qualité de dépositaire de la Convention-cadre des Nations Unies sur les changements climatiques, conclue à New York le 9 mai 1992,

CONSIDERANT que l'original de la Convention comporte un certain nombre d'inexactitudes,

CONSIDERANT que la proposition de corrections correspondantes a été communiqué à tous les Etats intéressés par notification dépositaire C.N.429.1992.TREATIES-7 du 19 février 1993,

CONSIDERANT que dans le délai de 90 jours à compter de la date de cette communication, aucune objection n'a été notifiée,

A FAIT PROCEDER dans l'original de la Convention auxdites corrections telles qu'indiquées en annexe au présent procès-verbal, lesquelles s'appliquent également a exemplaires certifiés conformes de la Convention établis le 1er juillet 1992.

EN FOI DE QUOI, Nous, Ralph Zacklin, Directeur et Adjoint du Secrétaire général adjoint chargé du Bureau des affaires juridiques, avons signé le présent procès-verbal au Siège de l'Organisation des Natio Unies, à New York, le 22 juin 1993.

Ralph Zacklin

C.N.148.1993.TREATIES-4 (Annex 1)

تصويبات للنص العربي من اتفاقية الأمم المتحدة
الإطارية بشأن تغير المناخ
(صورة طبق الأصل من (XXVII.7) تموز/يوليه ١٩٩٢)

المادة ٤، الفقرة ٣

يستعاض عن نص الفقرة بالنص التالي:

٣ - تقوم البلدان المتقدمة النمو الأطراف والأطراف المتقدمة النمو الأخرى المدرجة في المرفق الثاني، بتوفير موارد مالية جديدة واضافية لتغطية التكاليف الكاملة المتفق عليها التي تتكبدها البلدان النامية الأطراف في الامتثال لالتزاماتها بموجب الفقرة ١ من المادة ١٢. وتقوم تلك البلدان أيضا بتوفير الموارد المالية المذكورة، بما في ذلك موارد لنقل التكنولوجيا، اللازمة للبلدان النامية الأطراف لتغطية التكاليف الإضافية الكاملة المتفق عليها لتنفيذ التدابير المشمولة بالفقرة ١ من هذه المادة والتي يتفق عليها بين البلد النامي الطرف والكيان الدولي أو الكيانات الدولية ١١ المادة ١١، وفقا لتلك المادة. ويراعى في تنفيذ هذه إلى توفير قدري الكفاية والقابلية للتنبؤ في تحد التقاسم المناسب للأعباء فيما بين البلدان المتقد الاطراف.

RECTIFICATIONS DU TEXTE FRANCAIS
DE LA CONVENTION-CADRE DES NATIONS UNIES
SUR LES CHANGEMENTS CLIMATIQUES
(Copie certifiée conforme (XXVII.7) juillet 1992)

Article 4.1(b), dernière ligne:

remplacer "voulue" par "appropriée".

Article 4.1(c), sixième ligne:

remplacer "en particulier" par "y compris".

Article 4.1(f), troisième ligne:

remplacer "écologiques" par "environnementales".

Article 4.2(a), cinquième ligne avant la fin:

remplacer "...l'action mondiale entreprise pour..." par
"... l'effort entrepris à l'échelle mondiale pour..."

Article 4.2(b), huitième ligne:

remplacer "en vue de" par "dans le but de".

Article 4.2(e) (ii), deuxième à quatrième lignes:

lire "... pratiques qui encouragent des activités élevant le niveau des émissions anthropiques de gaz à effet de serre non réglementées par le Protocole de Montréal à un niveau supérieur à celui où il serait autrement."

Article 4.3, cinquième à neuvième lignes:

lire "Ils fournissent également aux pays en développement Parties, notamment aux fins de transferts de technologie, les ressources financières en question, qui leur sont nécessaires pour couvrir la totalité des coûts supplémentaires convenus entraînés par l'application des mesures visées au paragraphe 1 du présent article et...".

Article 4.8(g):

lire "Les pays ayant des écosystèmes fragiles, notamment des écosystèmes montagneux;..."

Article 10.1, deuxième ligne:

remplacer "... la Conférence des Parties à assurer l'application et le suivi de la..." par "...la Conférence des Parties à suivre et évaluer l'application effective de la..."

Article 11.1, première ligne:

remplacer "Le mécanisme" par "Un mécanisme".

Article 11.1, cinquième ligne:

remplacer "d'agrément" par "d'éligibilité".

Article 11.3(d), première ligne:

remplacer "Le calcul" par "La détermination".

Article 12.4, première à troisième lignes:

lire "Les pays en développement Parties pourront, sur une base volontaire, proposer des projets à financer, incluant les technologies, les matériaux, l'équipement, les techniques ou les pratiques spécifiques qu'il faudrait pour les..."

Article 12.4, cinquième et sixième lignes:

lire "... supplémentaires de ces projets, des progrès escomptés dans la réduction des émissions et dans l'augmentation de l'absorption des gaz à effet de serre ainsi qu'une estimation des..."

Article 12.6, quatrième ligne:

remplacer "... révisera au besoin..." par "... pourra au besoin revoir..."

Article 14.3 deuxième ligne:

rajouter "propres" entre "...ses" et "termes...".

Article 14.6, dernière ligne:

remplacer "... présente..." par "...émet..."

Annexes 1 et 2:

rajouter "économique" entre "Communauté" et "européenne".

RECTIFICACIONES AL TEXTO EN ESPAÑOL DE LA CONVENCION MARCO DE LAS NACIONES UNIDAS SOBRE EL CAMBIO CLIMATICO
(Copia certificada conforme (XXVII.7) julio 1992)

Sección preambular, página 3, séptimo párrafo, quinta línea:

Reemplazar "tomando en cuenta" por "teniendo en cuenta".

Artículo 1.9, segunda y tercera líneas:

Reemplazar "gas de invernadero" por "gas de efecto invernadero".

Artículo 3.2, primera línea:

Reemplazar "Deberían tomarse plenamente en cuenta" por "Deberían tenerse plenamente en cuenta".

Artículo 3.3, quinta línea;
Artículo 3.4, quinta línea; y
Artículo 4.1(b), tercera línea:

Reemplazar "tomando en cuenta" por "teniendo en cuenta".

Artículo 4.1(e), tercera línea:

Reemplazar "ordenación de las zonas costeras" por "gestión de las zonas costeras".

Artículo 4.2(a), duodécima línea:

Reemplazar "tomando en cuenta" por "teniendo en cuenta".

Artículo 4.3, sexta línea:

Reemplazar "los" entre "proporcionarán" y "recursos" por "tales".

Artículo 4.5, primera línea:

La frase introductoria debe leerse: "Las Partes que son países desarrollados ..."

Artículo 5(a), quinta línea; y
Artículo 7.2(c), tercera línea:

Reemplazar "tomando en cuenta" por "teniendo en cuenta".

Artículo 11.1, sexta línea;
Artículo 11.3(a), tercera línea; y
Artículo 11.3(b), tercera línea:

Reemplazar: "criterios de aceptabilidad" por "criterios de eligibilidad".

Artículo 11.4, tercera línea:

Reemplazar "tomando en cuenta" por "teniendo en cuenta".

Artículo 12.1(c), tercera línea:

Debe leerse: "...con inclusión, si fuese factible, de datos pertinentes..."

Artículo 12.5, primera línea:

La frase introductoria debe leerse: "Cada una de las Partes que sea un país desarrollado..."

C.N.148.1993.TREATIES-4 (Annex 2)

UNITED NATIONS FRAMEWORK CONVENTION
ON CLIMATE CHANGE

CONCLUDED AT NEW YORK ON 9 MAY 1992

Arabic Text:

المرفقان ١ و ٢ :

تدرج لفظة "الاقتصادي" بين لفظتي "الاتحاد" و "الأوروبي" .

Chinese Text:

附件1和2

在“欧洲”与“共同体”之间加插“经济”。

English Text:

Annexes I and II - Add "Economic" between "European" and "Community".

French Text:

Annexes 1 et 2:

rajouter "économique" entre "Communauté" et "européenne".

Russian Text:

Приложения 1 и 2:

вставить слово "экономическое" между словами "Европейское" и "сообщество".

Spanish Text:

Anexos I y II: Añadir "Económica" entre "Comunidad" y "Europea".

C.N.148.1993.TREATIES-4 (Annexe 2)

CONVENTION CADRE DES NATIONS UNIES
SUR LES CHANGEMENTS CLIMATIQUES

CONCLUE A NEW YORK LE 9 MAI 1992

Texte arabe :

المرفقان ١ و ٢ :

تدرج لفظة "الاقتصادي" بين لفظتي "الاتحاد" و "الأوروبي" .

Texte chinois :

附件1和2

在“欧洲”与“共同体”之间加插“经济”。

Texte anglais :

Annexes I and II:

Add "Economic" between "European" and "Community".

Texte français :

Annexes 1 et 2:

rajouter "économique" entre "Communauté" et "européenne".

Texte russe :

Приложения 1 и 2:

вставить слово "экономическое" между словами "Европейское" и "сообщество".

Texte espagnol :

Anexos I y II : Añadir "Económica" entre "Comunidad" y "Europea".

93/856

UNITED NATIONS NATIONS UNIES

(XXVII.7)

POSTAL ADDRESS--ADRESSE POSTALE UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

REFERENCE C.N.247.1993.TREATIES-6 (Depositary Notification)

UNITED NATIONS FRAMEWORK CONVENTION
ON CLIMATE CHANGE
CONCLUDED AT NEW YORK ON 9 MAY 1992

RECTIFICATION OF THE CONVENTION (FRENCH TEXT)
AND TRANSMISSION OF THE RELEVANT PROCES-VERBAL

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

It has come to the attention of the Secretary-General that, in the original of the French text of the above-mentioned Convention, as corrected (reference in this connection is made to depositary notification 148.1993.TREATIES-4 of 12 July 1993):

a) There is a spelling error in the French text of article 4 (2) (e) (ii). The said sub-paragraph should in fact read as follows:

ii) Recense et examine périodiquement celles de ses politiques et pratiques qui encouragent des activités ajoutant aux émissions anthropiques de gaz à effet de serre non réglementés par le Protocole de Montréal; (underlining added)

b) In article 11 (3) (a), the word "agrément" should be replaced by the word "éligibilité".

A copy of the corresponding procès-verbal of rectification is attached.

24 November 1993 SJ

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS--ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS--ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE CONCLUDED AT NEW YORK ON 9 MAY 1992

PROCES-VERBAL OF RECTIFICATION OF THE FRENCH ORIGINAL TEXT OF THE CONVENTION

THE SECRETARY-GENERAL OF THE UNITED NATIONS, acting in his capacity as depositary of the United Nations Framework Convention on Climate Change, concluded at New York on 9 May 1992,

WHEREAS it appears that owing to spelling and editing oversights, the French text of the above-mentioned Convention as corrected (see depositary notification C.N.148.1993.TREATIES-4 of 12 July 1993) contains two obvious grammatical and editing errors which should be corrected as follows:

(a) Article 4 (2) (e) (ii)

Replace the word "réglementées" by the word "réglementés".

(b) Article 11 (3) (a)

Replace the word "agrément" by the word "éligibilité".

HAS CAUSED the corresponding corrections to be effected in the said French original text of the Convention.

IN WITNESS WHEREOF, I, Carl-August Fleischhauer, Under-Secretary-General, the Legal Counsel, have signed this Procès-verbal.

Done at the Headquarters of the United Nations, New York, on 29 November 1993.

Carl-August Fleischhauer

CONVENTION-CADRE DES NATIONS UNIES SUR LES CHANGEMENTS CLIMATIQUES CONCLUE A NEW YORK LE 9 MAI 1992

PROCES-VERBAL DE RECTIFICATION DE L'ORIGINAL FRANCAIS DE LA CONVENTION

LE SECRETAIRE GENERAL DE L'ORGANISATION DES NATIONS UNIES, agissant en sa qualité de dépositaire de la Convention-cadre des Nations Unies sur les changements climatiques, conclue à New York le 9 mai 1992,

CONSIDERANT qu'il apparaît que par suite d'inadvertances dactylographiques, le texte français de la Convention susmentionnée telle que corrigée (voir notification dépositaire C.N.148.1993.TREATIES-4 du 12 juillet 1993) comporte deux erreurs évidentes de nature grammaticale et éditoriale qu'il convient de rectifier comme indiqué ci-après :

(a) Article 4 2) e) ii)

Remplacer le mot "réglementées" par le mot "réglementés".

(b) Article 11 3) a)

Remplacer le mot "agrément" par le mot "éligibilité".

A FAIT PROCEDER dans ledit texte original français de la Convention aux corrections correspondantes.

EN FOI DE QUOI, Nous, Carl-August Fleischhauer, Secrétaire général adjoint, Conseiller juridique, avons signé le présent procès-verbal.

Fait au Siège de l'Organisation des Nations Unies, à New York, le 29 novembre 1993.

Carl-August Fleischhauer

94/68

(XXVII.7)

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE: C.N.462.1993.TREATIES-13 (Depositary Notification)

UNITED NATIONS FRAMEWORK CONVENTION
ON CLIMATE CHANGE
CONCLUDED AT NEW YORK ON 9 MAY 1992

CORRIGENDUM TO DEPOSITARY NOTIFICATION
C.N.247.1993.TREATIES-6
OF 24 NOVEMBER 1993

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

In C.N.247.1993.TREATIES-6 of 24 November 1993, the French text of article 4 (2) (e) (ii) should be corrected to read as follows:

ii) Recense et examine périodiquement celles de ses politiques et pratiques qui encouragent des activités élevant le niveau des émissions anthropiques de gaz à effet de serre non réglementés par le Protocole de Montréal à un niveau supérieur à celui où il serait autrement;

30 December 1993

ST

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

98/157

(XXVII.7)

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

REFERENCE: C.N.544.1997.TREATIES-6 (Depositary Notification)

UNITED NATIONS FRAMEWORK CONVENTION
ON CLIMATE CHANGE
CONCLUDED AT NEW YORK ON 9 MAY 1992

ADOPTION OF AMENDMENTS TO THE LIST IN ANNEX I TO THE CONVENTION IN ACCORDANCE WITH ARTICLE 4.2(f) OF THE CONVENTION

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

On 30 January 1998, the Executive Secretary of the Climate Change Secretariat notified the Secretary-General that, at the third session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Kyoto, Japan from 1 to 11 December 1997, the Parties adopted Amendments to the list in Annex I to the Convention by decision 4/CP.3, in accordance with Article 4.2(f) of the Convention.

..... A copy of the authentic text of the Amendments in six languages is attached.

Pursuant to Article 16(4) of the Convention, "the [...] entry into force of amendments to annexes to the Convention shall be subject to the same procedure as that for the [...] entry into force of annexes to the Convention in accordance with its paragraphs 2 and 3."

In accordance with the procedure set forth in Article 16 (3) of the Convention, the Amendments to the list in Annex I to the Convention, shall enter into force for all Parties to the Convention six months after the date of the communication by the Depositary to such Parties of the adoption of the Amendments, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the Amendments. The Amendments shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

13 February 1998

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned

C.N.544.1997.TREATIES-6 (Annex)

ENGLISH TEXT

[...]

"*Noting* that the Parties concerned have granted their approval to be included in the list in Annex I to the Convention,

"*Bearing in mind* the procedure in Article 4.2(f) of the Convention,

1. *Decides* to amend the list in Annex I to the Convention by:

(a) Deleting the name of Czechoslovakia;

(b) Including the names of Croatia[a], the Czech Republic[a], Liechtenstein, Monaco, Slovakia[a] and Slovenia[a];

[...]

[a] Countries that are undergoing transition to a market economy

98/6/13

(XXVII.7)

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

REFERENCE: C.N.377.1998.TREATIES-5 (Depositary Notification)

UNITED NATIONS FRAMEWORK CONVENTION
ON CLIMATE CHANGE
CONCLUDED AT NEW YORK ON 9 MAY 1992

ENTRY INTO FORCE OF THE AMENDMENTS TO THE LIST IN ANNEX I TO THE CONVENTION

The Secretary-General of the United Nations, acting in his capacity as depositary, refers to depositary notification C.N.544.1997.TREATIES-6 of 13 February 1998, transmitting the text of the Amendments to the list in Annex I to the above Convention, in six languages, in accordance with its article 4.2(f), and communicates the following:

On the expiry of a period of six months from the date of the above depositary notification, i.e. on 13 August 1998, the Amendments entered into force, in accordance with article 16 (3) of the above Convention.

7 September 1998

Attention: Treaty Services of Ministries and Foreign Affairs and of international organizations concerned

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

Reference: C N.1478.2001.TREATIES-2 (Depositary Notification)

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE
NEW YORK, 9 MAY 1992

ADOPTION OF AMENDMENT TO THE LIST IN ANNEX II TO THE CONVENTION

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

On 13 December 2001, the Executive Secretary of the Climate Change Secretariat notified the Secretary-General that, at the seventh session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Marrakesh, Morocco, from 26 October to 10 November 2001, the Parties adopted on 9 November 2001 the Amendment to the list in Annex II to the Convention (Decision 26/CP.7), in accordance with article 16, paragraph 4 of the Convention.

A copy of the authentic text of the Amendment in the Arabic, Chinese, English, French, Russian and Spanish languages is attached (hard copy format only).

Pursuant to article 16 (4) of the Convention, "the [...] entry into force of amendments to annexes to the Convention shall be subject to the same procedure as that for the [...] entry into force of annexes to the Convention in accordance with its paragraphs 2 and 3."

In accordance with the procedure set forth in article 16 (3) of the Convention, the Amendment to the list in Annex II to the Convention, shall enter into force for all Parties to the Convention six months after the date of the communication by the Depositary to such Parties of the adoption of the Amendment, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the Amendment. The Amendment shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

28 December 2001

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned.

Amendment to the list in Annex II to the Convention

The Conference of the Parties,

Welcoming the intention expressed by Turkey to accede to the Convention,

Recalling Article 4, paragraph 2 (f), of the Convention,

Recalling further its decision 15/CP.4,

Recalling also the conclusions of the Conference of the Parties as agreed at its fifth session and the first part of its sixth session, in the light of the new request by Turkey,[1]

Recalling also the amendments proposed by Azerbaijan and Pakistan concerning the deletion of the name of Turkey from the lists in Annexes I and II to the Convention,

Taking note of the information contained in documents FCCC/CP/1997/MISC.3 and FCCC/CP/2001/11,

Underlining that 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,

Having considered the request put forward by Turkey, in particular the new proposal presented at the first part of the sixth session of the Conference of the Parties, that its name should be deleted from Annex II to the Convention,

1. *Decides* to amend the list in Annex II to the Convention by deleting the name of Turkey;

2. *Notes* that the entry into force of this amendment to the list in Annex II to the Convention shall be subject to the same procedure as that for the entry into force of annexes to the Convention in accordance with Article 16, paragraph 3, of the Convention;

3. *Invites* the Parties to recognize the special circumstances of Turkey, which place Turkey, after becoming a Party, in a situation different from that of other Parties included in Annex I to the Convention.

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[1] See FCCC/CP/2000/5/Add.1, paras. 83 to 85 and FCCC/CP/2001/11.

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.237.2010.TREATIES-2 (Depositary Notification)

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

NEW YORK, 9 MAY 1992

ADOPTION OF AMENDMENT TO ANNEX I TO THE CONVENTION IN ACCORDANCE WITH ARTICLE 16 (3) OF THE CONVENTION

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

On 22 April 2010, the Executive Secretary of the Climate Change Secretariat notified the Secretary-General that, at the fifteenth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Copenhagen, Denmark, from 7 to 18 December 2009, the Parties adopted an Amendment to the list in Annex I to the Convention by decision 3/CP.15, in accordance with article 16 of the Convention.

….. A copy of the authentic text of the Amendment in six languages is attached.

Pursuant to Article 16 (4) of the Convention, “the […] entry into force of amendments to annexes to the Convention shall be subject to the same procedure as that for the […] entry into force of annexes to the Convention in accordance with its paragraphs 2 and 3”.

In accordance with the procedure set forth in Article 16 (3) of the Convention, the amendments to the list in annex I to the Convention, shall enter into force for all Parties to the Convention six months after the date of the communication by the Depositary to such Parties of the adoption of the Amendments, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the Amendments. The Amendments shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

26 April 2010

Attention:Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are issued in electronic format only. Depositary notifications are made available to the Permanent Missions to the United Nations in the United Nations Treaty Collection on the Internet at http://treaties.un.org, under "Depositary Notifications (CNs)". In addition, the Permanent Missions, as well as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty Section's "Automated CN Subscription Service", which is also available at http://treaties.un.org.

C.N.237.2010.TREATIES-2 (Annex/Annexe)

DECISION 3/CP.15 – Amendment to Annex I to the Convention

DÉCISION 3/CP.15 – Modification de l’annexe I de la Convention

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.355.2012.TREATIES-XXVII.7 (Depositary Notification)

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE
NEW YORK, 9 MAY 1992

ADOPTION OF AMENDMENTS TO ANNEX I TO THE CONVENTION

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

On 5 July 2012, the Executive Secretary of the Climate Change Secretariat notified the Secretary-General that, at the seventeenth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Durban, 28 November to 11 December 2011, the Parties adopted an Amendment to Annex I to the Convention by decision 10/CP.17, in accordance with article 16 of the Convention.

….. A copy of the authentic text of the Amendment in six languages is attached.

Pursuant to Article 16 (4) of the Convention, "the […] entry into force of amendments to annexes to the Convention shall be subject to the same procedure as that for the […] entry into force of annexes to the Convention in accordance with its paragraphs 2 and 3".

In accordance with the procedure set forth in Article 16 (3) of the Convention, the amendments to the list in annex I to the Convention shall enter into force for all Parties to the Convention six months after the date of the communication by the Depositary to such Parties of the adoption of the Amendments, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the Amendments. The Amendments shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

9 July 2012

[redacted]

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are issued in electronic format only. Depositary notifications are made available to the Permanent Missions to the United Nations in the United Nations Treaty Collection on the Internet at http://treaties.un.org, under "Depositary Notifications (CNs)". In addition, the Permanent Missions, as well as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty Section's "Automated Subscription Services", which is also available at http://treaties.un.org.

Decision 10/CP.17

Amendment to Annex I to the Convention

The Conference of the Parties,

Recalling Articles 15 and 16 of the Convention,

Taking note of the proposal from Cyprus and the European Union to amend Annex I to the Convention by adding the name of Cyprus,[1]

1. *Decides* to amend Annex I to the Convention by including the name of Cyprus;

2. *Notes* that in accordance with Article 16, paragraph 4, the entry into force of this amendment to Annex I to the Convention shall be subject to the same procedure as that for the entry into force of annexes to the Convention provided for in Article 16, paragraph 3, of the Convention;

3. *Requests* the secretariat to communicate to the Depositary the amendment to Annex I to the Convention, not before 1 July 2012, so that the amendment enters into force on 1 January 2013 or on a later date.

10th plenary meeting
11 December 2011

[1] FCCC/CP/2011/3.

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.81.2013.TREATIES-XXVII.7 (Depositary Notification)

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE
NEW YORK, 9 MAY 1992

ENTRY INTO FORCE OF AMENDMENTS TO ANNEX I TO THE CONVENTION[1]

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

By 9 January 2013, none of the Contracting Parties to the above-mentioned Convention had communicated to the Secretary-General an objection to the proposal of amendments to Annex I of the Convention, which were adopted by the Parties to the United Nations Framework Convention on Climate Change at its seventeenth session, held in Durban on 28 November to 11 December 2011. Consequently, in accordance with the provisions of article 16 (3) of the Convention, the amendments will enter into force on 9 January 2013 for all Contracting Parties.

14 January 2013

[redacted]

[1] Refer to depositary notification C.N.355.2012.TREATIES-1 of 9 July 2012 (Adoption of Amendments to Annex I to the Convention).

KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (WITH ANNEXES). KYOTO, 11 DECEMBER 1997

Entry into force : 16 February 2005, in accordance with article 25 (1) in accordance with article 25 which reads as follows: "1. This Protocol shall enter into force on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in Annex 1 which accounted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in Annex 1, have deposited their instruments of ratification, acceptance, approval or accession. 2. For the purposes of this Article, 'the total carbon dioxide emissions for 1990 of the Parties included in Annex I' means the amount communicated on or before the date of adoption of this Protocol by the Parties included in Annex 1 in their first national communications submitted in accordance with Article 12 of the Convention. 3. For each State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the conditions set out in paragraph 1 above for entry into force have been fulfilled, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification acceptance, approval or accession. 4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization. " (see following page)

Autheutic texts : Arabic, Chinese, English, French, Russian and Spanish

Registratiou with the Secretariat of the United Natious : ex officio, 16 February 2005

PROTOCOLE DE KYOTO À LA CONVENTION-CADRE DES NATIONS UNIES SUR LES CHANGEMENTS CLIMATIQUES (AVEC ANNEXES). KYOTO, 11 DÉCEMBRE 1997

Entrée en vignenr : 16 février 2005, conformément au paragraphe 1 de l'article 25 conformément à l'article 25 qui se lit comme suit : "1. Le présent Protocole entre en vigueur le quatre-vingt-dixième jour qui suit la date du dépôt de leurs instruments de ratification, d'acceptation, d'approbation ou d'adhésion par 55 Parties à la Convention au minimum, parmi lesquelles les Parties visées à l'annexe I dont les émissions totales de dioxyde de carbone représentaient en 1990 au moins 55 % du volume total des émissions de dioxyde de carbone de l'ensemble des Parties visées à cette annexe. 2. Aux fins du présent article, 'le volume total des émissions de dioxyde de carbone en 1990 des Parties visées à l'annexe I' est le volume notifié par les Parties visées à l'annexe 1, à la date à laquelle elles adoptent le présent Protocole ou à une date antérieure, dans leur communication nationale initiale présentée au titre de l'article 12 de la Convention. 3. À l'égard de chaque Partie ou organisation régionale d'intégration éonomique qui ratifie, accepte ou approuve le présent Protocole ou y adhère une fois que les conditions requises pour l'entrée en vigueur énoncée au paragraphe 1 ci-dessus ont été remplies, le présent Protocole entre en vigueur le quatre-vingt-=dixième jour qui suit la date du dépôt par cet État ou cette organisation de son instrument de ratification, d'acceptation, d'approbation ou d'adhésion. 4. Aux fins du présent article, tout instrument déposé par une organisation d'intégration économique ne s'ajoute pas à ceux qui sont déposés par les États membres de cette organisation. " (voir la page suivante)

Textes authentiqnes : arabe, chinois, anglais, français, russe et espagnol

Enregistrement auprès dn Secrétariat des Nations Unies : d'office, 16 février 2005

[ENGLISH TEXT — TEXTE ANGLAIS]

KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

The Parties to this Protocol,

Being Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as "the Convention",

In pursuit of the ultimate objective of the Convention as stated in its Article 2,

Recalling the provisions of the Convention, Being guided by Article 3 of the Convention,

Pursuant to the Berlin Mandate adopted by decision 1/CP.1 of the Conference of the Parties to the Convention at its first session,

Have agreed as follows:

Article 1

For the purposes of this Protocol, the definitions contained in Article 1 of the Convention shall apply. In addition:

1. "Conference of the Parties" means the Conference ox the Parties to the Convention.

2. "Convention8 means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992.

3. "Intergovernmental Panel on Climate Change" means the Intergovernmental Panel on Climate Change established in 1988 jointly by the World Meteorological Organization and the United Nations Environment Programme.

4. "Montreal Protocol" means the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in Montreal on 16 September 1987 and as subsequently adjusted and amended.

5. "Parties present and voting" means Parties present and casting an affirmative or negative vote.

6. "Party" means, unless the context otherwise indicates, a Party to this Protocol.

7. "Party included in Annex I" means a Party included in Annex I to the Convention, as may be amended, or a Party which has made a notification under Article 4, paragraph 2 (g), of the Convention.

Article 2

1. Each Party included in Annex I, in achieving its quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development, shall:

(a) Implement and/or further elaborate policies and measures in accordance with its national circumstances, such as:

(i) Enhancement of energy efficiency in relevant sectors of the national economy;

(ii) Protection and enhancement of sinks and reservoirs of

greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements; promotion of sustainable forest management practices, afforestation and reforestation;

(iii) Promotion of sustainable forms of agriculture in light of climate change considerations;

(iv) Research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies;

(v) Progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention and application of market instruments;

(vi) Encouragement of appropriate reforms in relevant sectors aimed at promoting policies and measures which limit or reduce emissions of greenhouse gases not controlled by the Montreal Protocol;

(vii) Measures to limit and/or reduce emissions of greenhouse gases not controlled by the Montreal Protocol in the transport sector;

(viii) Limitation and/or reduction of methane emissions through recovery and use in waste management, as well as in the production, transport and distribution of energy;

(b) Cooperate with other such Parties to enhance the individual and combined effectiveness of their policies and measures adopted under this Article, pursuant to Article 4, paragraph 2 (e) (i), of the Convention. To this end, these Parties shall take steps to share their experience and exchange information on such policies and measures, including developing ways of improving their comparability, transparency and effectiveness. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, consider ways to facilitate such cooperation, taking into account all relevant information.

2. The Parties included in Annex I shall pursue limitation or reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, working through the International Civil Aviation Organization and the International Maritime Organization, respectively.

3. The Parties included in Annex I shall strive to implement policies and measures under this Article in such a way as to minimize adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties and in particular those identified in Article 4, paragraphs 8 and 9, of the Convention, taking into account Article 3 of the Convention. The Conference of the Parties serving as the meeting of the Parties to this Protocol may take further action, as appropriate, to promote the implementation of the provisions of this paragraph.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol, if it decides that it would be beneficial to coordinate any of the policies and measures in paragraph 1 (a) above, taking into account different national circumstances and potential effects, shall consider ways and means to elaborate the coordination of such policies and measures.

Article 3

1. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2003 to 2012.

2. Each Party included in Annex I shall, by 2005, have made demonstrable progress in achieving its commitments under this Protocol.

3. The net changes in greenhouse gas emissions by sources and removals by sinks resulting from direct human-induced land-use change and forestry activities, limited to afforestation, reforestation and deforestation since 1990, measured as verifiable changes in carbon stocks in each commitment period, shall be used to meet the commitments under this Article of each Party included in Annex I. The greenhouse as emissions by sources and removals by sinks associated with those activities shall be reported in a transparent and verifiable manner and reviewed in accordance with Articles 7 and 8.

4. Prior to the first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol, each Party

included in Annex I shall provide, for consideration by the Body for Scientific and Technological Advice, data to establish its level of carbon stocks in 1990 and to enable an estimate to Subsidiary be made of its changes in carbon stocks in subsequent years. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, decide upon modalities, rules and guidelines as to how, and which, additional human-induced activities related to changes in greenhouse gas emissions by sources and removals by sinks in the agricultural soils and the land-use change and forestry categories shall be added to, or subtracted from, the assigned amounts for Parties included in Annex I, taking into account uncertainties, transparency in reporting, verifiability, the methodological work of the Intergovernmental Panel on Climate Change, the advice provided by the Subsidiary Body for Scientific and Technological Advice in accordance with Article 5 and the decisions of the Conference of the Parties. Such a decision shall apply in the second and subsequent commitment periods. A Party may choose to apply such a decision on these additional human-induced activities for its first commitment period, provided that these activities have taken place since 1S90.

5. The Parties included in Annex I undergoing the process of transition to a market economy whose base year or period was established pursuant to decision 9/CP.2 of the Conference of the Parties at its second session shall use that base year or period for the implementation of their commitments under this Article. Any other Party included in Annex

I undergoing the process of transition to a market economy which has not yet submitted its first national communication under Article 12 of the Convention may also notify the Conference of the Parties serving as the meeting of the Parties to this Protocol that it intends to use an historical base year or period other than 1990 for the implementation of its commitments under this Article. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall decide on the acceptance of such notification.

6. Taking into account Article 4, paragraph 6, of the Convention, in the implementation of their commitments under this Protocol other than those under this Article, a certain degree of flexibility shall be allowed by the Conference of the Parties serving as the meeting of the Parties to this Protocol to the Parties included in Annex I undergoing the process of transition to a market economy.

7. In the first quantified emission limitation and reduction commitment period, from 2008 to 2012, the assigned amount for each Party included in Annex I shall be equal to the percentage inscribed for it in Annex B of its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A in 1990, or the base year or period determined in accordance with paragraph 5 above, multiplied by five. Those Parties included in Annex I for whom land-use change and forestry constituted a net source of greenhouse gas emissions in 1990 shall include in their 1990 emissions base year or period the aggregate anthropogenic carbon dioxide equivalent emissions by sources minus removals by sinks in 1990 from land-use change for the purposes of calculating their assigned amount.

8. Any Party included in Annex I may use 1995 as its base year for hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride, for the purposes of the calculation referred to in paragraph 7 above.

9. Commitments for subsequent periods for Parties included in Annex I shall be established in amendments to Annex B to this Protocol, which shall be adopted in accordance with the provisions of Article 21, paragraph 7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall initiate the consideration of such commitments at least seven years before the end of the first commitment period referred to in paragraph 1 above.

10. Any emission reduction units, or any part of an assigned amount, which a Party acquires from another Party in accordance with the provisions of Article 6 or of Article 17 shall be added to the assigned amount for the acquiring Party.

11. Any emission reduction units, or any part of an assigned amount, which a Party transfers to another Party in accordance with the provisions of Article 6 or of Article 17 shall be subtracted firom the assigned amount for the transferring Party.

12. Any certified emission reductions which a Party acquires from another Party in accordance with the provisions of Article 12 shall be added to the assigned amount for the acquiring Party.

13. If the emissions of a Party included in Annex I in a commitment period are less than its assigned amount under this Article, this difference shall, on request of that Party, be added to the assigned amount for that Party for subsequent commitment periods.

14. Each Party included in Annex I shall strive to implement the Among the commitments mentioned in paragraph 1 above in such a way as to minimize adverse social, environmental and economic impacts on developing country Parties, particularly those identified in Article 4, paragraphs 8 and 9, of the Convention. In line with relevant decisions of the Conference of the Parties on the implementation of those paragraphs, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, consider what actions are necessary to minimize the adverse effects of climate change and/or the impacts of response measures on Parties referred to in those paragraphs, issues to be considered shall be the establishment of funding and transfer of technology.

Article 4

1. Any Parties included in Annex I that have reached an agreement to fulfil their commitments under Article 3 jointly, shall be deemed to have met those commitments provided that their total combined aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of Article 3. The respective emission level allocated to each of the Parties to the agreement shall be set out in that agreement.

2. The Parties to any such agreement shall notify the secretariat of the terms of the agreement on the date of deposit of their instruments of ratification, acceptance or approval of this Protocol, or accession thereto. The secretariat shall in turn inform the Parties and signatories to the Convention of the terms of the agreement.

3. Any such agreement shall remain in operation for the duration of the commitment period specified in Article 3, paragraph 7.

4. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization, any alteration in the composition of the organization after adoption of this Protocol shall not affect existing commitments under this Protocol. Any alteration in the composition of the organization shall only apply for the purposes of those commitments under Article 3 that are adopted subsequent to that alteration.

5. In the event of failure by the Parties to such an agreement to achieve their total combined level of emission reductions, each Party to that agreement shall be responsible for its own level of emissions set out in the agreement.

6. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization which is itself a Party to this Protocol, each member State of that regional economic integration organization individually, and together with the regional economic integration organization acting in accordance with Article 24, shall, in the event of failure to achieve the total combined level of emission reductions, be responsible for its level of emissions as notified in accordance with this Article.

Article 5

1. Each Party included in Aımex I shall have in place, no later than one year prior to the start of the first commitment period, a national system for the estimation of anthropo-

genic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol. Guidelines for such national systems, which shall incorporate

the methodologies specified in paragraph 2 below, shall be by the Conference of the Parties serving as the meeting of to this Protocol at its first session decided upon the Parties

2. Methodologies for estimating anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Where such methodologies are not used, appropriate adjustments shall be applied according to methodologies agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session. Based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise such methodologies and adjustments, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to methodologies or adjustments shall be used only for the purposes of ascertaining compliance with commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.

3. The global warming potentials used to calculate the carbon dioxide equivalence of anthropogenic emissions by sources and removals by sinks of greenhouse gases listed in Annex A shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the this Protocol shall regularly review and, as appropriate, revise the global warming potential of each such greenhouse gas, taking fully into account any relevant decisions by the Conference of the Parties. Any Parties to revision to a global warming potential shall apply only to under Article 3 in respect of any commitment period adopted subsequent to that revision commitments

Article 6

1. For the purpose of meeting its commitments under Article 3, any Party included in Annex I may transfer to, or acquire from, any other such Party emission reduction units resulting from projects aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks of greenhouse gases in any sector of the economy, provided that:

(a) Any such project has the approval of the Parties involved;

(b) Any such project provides a reduction in emissions by sources, or an enhancement of removals by sinks, that is additional to any that would otherwise occur;

(c) It does not acquire any emission reduction units if it is not in compliance with its obligations under Articles 5 and 7; and

(d) The acquisition of emission reduction units shall be supplemental to domestic actions for the purposes of meeting commitments under Article 3.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol may, at its first session or as soon as practicable thereafter, further elaborate guidelines for the implementation of this Article, including for verification and reporting.

3. A Party included in Annex I may authorize legal entities to participate, under its responsibility, in actions leading to the generation, transfer or acquisition under this Article of emission reduction units.

4. If a question of implementation by a Party included in Annex I of the requirements referred to in this Article is identified in accordance with the relevant provisions of Article 8, transfers and acquisitions of emission reduction units may continue to be made after the question has been identified, provided that any such units may not be used by a Party to meet its commitments under Article 3 until any issue of compliance is resolved.

Article 7

1. Each Party included in Annex I shall incorporate in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the relevant decisions of the Conference of the Parties, the necessary supplementary information for the purposes of ensuring compliance with Article 3, to be determined in accordance with paragraph 4 below.

2. Each Party included in Annex I shall incorporate in its national communication, submitted under Article 12 of the Convention, the supplementary information necessary to demonstrate compliance with its commitments under this Protocol, to be determined in accordance with paragraph 4 below.

3. Each Party included in Annex I shall submit the information required under paragraph 1 above annually, beginning with the first inventory due under the Convention for the first year of the commitment period after this Protocol has entered into force for that Party. Each such Party shall submit the information required under paragraph 2 above as part of the first national communication due under the Convention after this Protocol has entered into force for it and after the adoption of guidelines as provided for in paragraph 4 below. The frequency of subsequent submission of information required under this Article shall be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, taking into account any timetable for the submission of national communications decided upon by the Conference of the Parties.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the preparation of the information required under this Article, taking into account guidelines for the preparation of national communications by Parties included in Annex I adopted by the Conference of the Parties. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall also, prior to the first commitment period, decide upon modalities for the accounting of assigned amounts.

Article 8

1. The information submitted under Article 7 by each Party included in Annex I shall be reviewed by expert review teams pursuant to the relevant decisions of the Conference of the Parties and in accordance with guidelines adopted for this purpose by the Conference of the Parties serving as the meeting of the Parties to this Protocol under paragraph 4 below. The information submitted under Article 7, paragraph 1, by each Party included in Annex I shall be reviewed as part of the annual compilation and accounting of emissions inventories and assigned amounts. Additionally, the information submitted under Article 7, paragraph 2, by each Party included in Annex I shall be reviewed as part of the review of communications.

2. Expert review teams shall be coordinated by the secretariat and shall be composed of experts selected from those nominated by Parties to the Convention and, as appropriate, by intergovernmental organizations, in accordance with guidance provided for this purpose by the Conference of the Parties.

3. The review process shall provide a thorough and comprehensive technical assessment of all aspects of the implementation by a Party of this Protocol. The expert review teams shall prepare a report to the Conference of the Parties serving as the meeting of the Parties to this Protocol, assessing the implementation of the commitments of the Party and identifying any potential problems in, and factors influencing, the fulfilment of commitments. Such reports shall be circulated by the secretariat to all Parties to the Convention. The secretariat shall list those questions of implementation indicated in such reports for further consideration by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the review of implementation of this Protocol by expert review teams taking into account the relevant decisions of the Conference of the Parties.

5. The Conference of the Parties serving as the meeting of the Parties Body f o: Scienti

(a reports

(b) Those questions of implementation listed by the secretariat under paragraph 3 above, as well as any questions raised by Parties.

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1. The Parties to this Protocol shall, with the assistance of the Subsidiary

Implenventation and, as appropriate, the Subsidiary Body for ic and Technological Advice, consider:

The information submitted by Parties under Article 7 and the of the expert reviews thereon conducted under this Article; and

Pursuant to its consideration of the information referred to in >h 5 above, the Conference of the Parties serving as the meeting >arties to this Protocol shall take decisions on any matter l for the implementation of this Protocol.

Article 9

1. The Conference of the Parties serving as the meeting of the to this Protocol shall periodically review this Protocol in the light of the best available scientific information and assessments on climate change and its impacts, as well as relevant technical, social and economic information. Such reviews shall be coordinated with pertinent reviews under the Convention, in particular those required by Articles 4, paragraph 2 (d), and Article 7, paragraph 2 (a), of the Convention. Based on these reviews, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take appropriate action.

2. The first review shall take place at the second session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Further reviews shall take place at regular intervals and in a timely manner.

Article 10

All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, without introducing any new commitments for Parties not included in Annex I, but reaffirming existing commitments under Article 4, paragraph 1, of the Convention, and continuing to advance the implementation of these commitments in order to achieve sustainable development, taking into account Article 4, paragraphs 3, 5 and 7, of the Convention, shall:

(a) Formulate, where relevant and to the extent possible, cost-effective national and, where appropriate, regional programmes to improve the quality of local emission factors, activity data and/or models which reflect the socio-economic conditions of each Party for the preparation and periodic updating of national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties, and consistent with the guidelines for the preparation of national communications adopted by the Conference of the Parties;

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change:

(i) Such programmes would, inter alia, concern the energy, transport and industry sectors as well as agriculture, forestry and waste management. Furthermore, adaptation technologies and methods, for improving spatial planning would improve adaptation to climate change; and

(ii) Parties included in Annex I shall submit information on action under this Protocol, including national programmes, in accordance with Article 7; and other Parties shall seek to include in their national communications, as appropriate, information on programmes which contain measures that the Party believes contribute to addressing climate change and its adverse impacts, including the abatement of increases in greenhouse gas emissions, and enhancement of and removals by sinks, capacity building and adaptation measures;

(c) Cooperate in the promotion of effective modalities for the development, application and diffusion of, and take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies, know-how, practices and processes pertinent to climate change, in particular to developing countries, including the formulation of policies and programmes for the effective transfer of environmentally sound technologies that are publicly owned or in the public domain and the creation of an enabling environment for the private sector, to promote and enhance the transfer of, and access to, environmentally sound technologies;

(d) Cooperate in scientific and technical research and promote the maintenance and the development of systematic observation systems and development of data archives to reduce uncertainties related to the climate system, the adverse impacts of climate change and the economic and social consequences of various response strategies, and promote the development and strengthening of endogenous capacities and capabilities to participate in international arid intergovernmental efforts, programmes and networks on research and systematic observation, taking into account Article 5 of the Convention;

(e) Cooperate in and promote at the international level, and, where appropriate, using existing bodies, the development and implementation of education and training programmes, including the strengthening of national capacity building, in particular human and institutional capacities and the exchange or secondment of personnel to train experts in this field, in particular for developing countries, and facilitate at the national level public awareness of, and public access to information on, climate change. Suitable modalities should be developed to implement these activities through the relevant bodies of the Convention, taking into account Article 6 of the Convention;

(f) Include in their national communications information on programmes and activities undertaken pursuant to this Article in accordance with relevant decisions of the Conference of the Parties; and

(g) Give full consideration, in implementing the commitments under this Article, to Article 4, paragraph 8, of the Convention.

Article 11

1. In the implementation of Article 10, Parties shall take into account the provisions of Article 4, paragraphs 4, 5, 7, 8 and 9, of the Convention.

2. In the context of the implementation of Article 4, paragraph 1, of the Convention, in accordance with the provisions of Article 4, paragraph 3, and Article 11 of the Convention, and through the entity or entities entrusted with the operation of the financial mechanism of the Convention, the developed country Parties and other developed Parties included in Annex II to the Convention shall:

(a) Provide new and additional financial resources to meat the agreed full costs incurred by developing country Parties in advancing the implementation of existing commitments under Article 4, paragraph 1 (a), of the Convention that are covered in Article 10, subparagraph (a); and

(b) Also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of ad-

vancing the implementation of existing commitments under Article 4, paragraph 1, of the Convention that are covered by Article 10 and that are agreed between a developing country Party and the international entity or entities referred to in Article 11 of the Convention, in accordance with that Article.

The implementation of these existing commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among developed country Parties. The guidance to the entity or entities entrusted with the operation of the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply mutatis mutandis to the provisions of this paragraph.

3. The developed country Parties and other developed Parties in Annex II to the Convention may also provide, and developing country Parties avail themselves of, financial resources for the implementation of Article 10, through bilateral, regional and other multilateral channels.

Article 12

1. A clean development mechanism is hereby defined.

2. The purpose of the clean development mechanism shall be to assist Parties not included in Annex I in achieving sustainable development and in contributing to the ultimate objective of the Convention, and to assist Parties included in Annex I in achieving compliance with their quantified emission limitation and reduction commitments under Article 3.

3. Under the clean development mechanism:

(a) Parties not included in Annex I will benefit from project activities resulting in certified emission reductions; and

(b) Parties included in Annex I may use the certified emission reductions accruing from such project activities to contribute to compliance with part of their quantified emission limitation and reduction commitments under Article 3, as determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

4. The clean development mechanism shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Protocol and be supervised by an executive board of the clean development mechanism.

5. Emission reductions resulting from each project activity shall be certified by operational entities to bo designated by the Conference of the Parties serving as the meeting of the Parties to this Protocol, on the basis of:

(a) Voluntary participation approved by each Party involved;

(b) Real, measurable, and long-term benefits related to the mitigation of climate change; and

(c) Reductions in emissions that are additional to any that would occur in the absence of the certified project activity.

6. The clean development mechanism shall assist in arranging funding of certified project activities as necessary.

7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, elaborate modalities and procedures with the objective of ensuring transparency, efficiency and accountability through independent auditing and verification of project activities.

8. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall ensure that a share of the proceeds from certified project activities is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.

9. Participation under the clean development mechanism, including in activities mentioned in paragraph 3 (a) above and in the acquisition of certified emission reductions, may involve private and/or public entities, and is to be subject to whatever guidance may be provided by the executive board of the clean development mechanism.

10. Certified emission reductions obtained during the period from the year 2000 up to the beginning of the first commitment period can be used to assist in achieving compliance in the first commitment period.

Article 13

1. The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Protocol.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.

3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It ,h?,ll perform the functions assigned to it by this Protocol and shall:

(a) Assess, on the basis of all information made available to it in accordance with the provisions of this Protocol, the implementation of this Protocol by the Parties, the overall effects of the measures taken pursuant to this Protocol, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;

(b) Periodically examine the obligations of the Parties under this Protocol, giving due consideration to any reviews required by Article 4, paragraph 2 (d), and Article 7, paragraph 2, of the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge,

and in this respect consider and adopt regular reports on the implementation of this Protocol;

(c) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;

(d) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;

(e) Promote and guide, in accordance with the objective of the Convention and the provisions of this Protocol, and taking fully into account the relevant decisions by the Conference of the Parties, the development and periodic refinement of comparable methodologies for the effective implementation of this Protocol, to be agreed on by the Conference of the Parties serving as the meeting of the Parties to this Protocol;

(f) Make recommendations on any matters necessary for the implementation of this Protocol;

(g) Seek to mobilize additional financial resources in accordance with Article 11, paragraph 2;

(h) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;

(i) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and

(j) Exercise such other functions as may be required for the implementation of this Protocol, and consider any assignment resulting from a decision by the Conference of the Parties.

5. The rules of procedure of the Conference of the Parties and financial procedures applied under the Convention shall be applied mutatis mutandis under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

6. The first session of the Conference of the Parties serving a^s the meeting of the Parties to this Protocol shall be convened by the secretariat in conjunction with the first session of the Conferer.ee of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held every year and in conjunction with ordinary sessions of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary sessions of the Conference of the Parties serving 51 the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Partie serving as the meeting of the Parties to this rrocGcol, or at th written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented at sessions of the Conference of the Parties serving as the meeting of the Parties to

this Protocol as observers. Any body or agency, whether nations international, governmental or non-governmental, which is quail matters covered by this Protocol and which has informed the secretariat of its wish to be represented at a session of the Conference of Parties serving as the meeting of the Parties to this Protocol 1 or ied in the observer, may be so admitted unless at least one third of the Parties an present object. The admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

Article 14

1. The secretariat established by Article 8 of the Convention shall serve as the secretariat of this Protocol.

2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and Article 8, paragraph 3, of the Convention on arrangements made for the functioning of the secretariat, shall apply mutatis mutandis to this Protocol. The secretariat shall, in addition, exercise the functions assigned to it under this Protocol.

Article 15

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation established by Articles 9 and 10 of the Convention shall serve as, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol. The provisions relating to the functioning of these two bodies under the Convention shall apply mutatis mutandis to this Protocol. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol shall be held in conjunction with the meetings of, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary bodies serve as the subsidiary bodies of this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.

3. When the subsidiary bodies established by Articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Protocol, any member of the Bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.

Article 16

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, as soon as practicable, consider the application to this Protocol of, and modify as appropriate, the multilateral consultative process referred to in Article 13 of the Convention, in the light of any relevant decisions that may be taken by the Conference of the Parties. Any multilateral consultative process that may be applied to this Protocol shall operate without prejudice to the procedures and mechanisms established in accordance with Article IS,

Article 17

The Conference of the Parties shall define the relevant principles, modalities, rules and guidelines, in particular for verification, reporting and accountability for emissions trading. The Parties included in Annex B may participate in emissions trading for the purposes of fulfilling their commitments under Article 3. Any such trading shall be supplemental to domestic actions for the purpose of meeting quantified emission limitation and reduction commitments under that Article.

Article 18

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance. Any procedures and mechanisms under this Article entailing binding consequences shall be adopted by means of an amendment to this Protocol.

Article 19

The provisions of Article 14 of the Convention on settlement of disputes shall apply mutatis mutandis to this Protocol.

Article 20

1. Any Party may propose amendments to this Protocol.

2. Amendments to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed amendments to the Parties and signatories to the Convention and, for information, to the Depositary.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Protocol by consensus. If all efforts at consensus have been exhausted, and no agree-

ment reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to this Protocol.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

Article 21

1. Annexes to this Protocol shall form an integral part thereof and, unless otherwise expressly provided, a reference to this Protocol constitutes at the same time a reference to any annexes thereto. Any annexes adopted after the entry into force of this Protocol shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.

2. Any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol.

3. Annexes to this Protocol and amendments to annexes to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed annex or amendment to an annex shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed annex or amendment to an annex to the Parties and signatories to the Convention and, for information, to the Depositary.

4. The Parties shall make every effort to reach agreement on any proposed annex or amendment to an annex by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the annex or amendment to an annex shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted annex or amendment to an annex shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

5. An annex, or amendment to an annex other than Annex Aor B, that has been adopted in accordance with paragraphs 3 and 4 above shall enter into force for all Parties to this Protocol six months after the date of the communication by the Depositary to such Parties of the adoption of the annex or adoption of the amendment to the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex or amendment to the annex. The annex or amendment to an annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

6. If the adoption of an annex or an amendment to an annex involves an amendment to this Protocol, that annex or amendment to an annex shall not enter into force until such time as the amendment to this Protocol enters into force.

7. Amendments to Annexes A and B to this Protocol shall be adopted and enter into force in accordance with the procedure set wUt in Article 20, provided that any amendment to Annex B shall be adopted only with the written consent of the Party concerned.

Article 22

1. Each Party shall have one vote, except as provided for in paragraph 2 below.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to this Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 23

The Secretary-General of the United Nations shall be the Depositary of this Protocol.

Article 24

1. This Protocol shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations which are Parties to the Convention. It shall be open for signature at United Nations Headquarters in New York from 16 March 1998 to 15 March 1999. This Protocol shall be open for accession from the day after the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organization which becomes a Party to this Protocol without any of its member States being a Party shall be bound by all the obligations under this Protocol. In the case of such organizations, one or more of whose member States is a Party to this Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under this Protocol concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

Article 25

1. This Protocol shall enter into force on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in Annex I which ac-

counted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in Annex I, have deposited their instruments of ratification, acceptance, approval or accession.

2. For the purposes of this Article, "the total carbon dioxide emissions for 1990 of the Parties included in Annex I" means the amount communicated on or before the date of adoption of this Protocol by the Parties included in Annex I in their first national communications submitted in accordance with Article 12 of the Convention.

3. For each State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the conditions set out in paragraph 1 above for entry into force have been fulfilled, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

Article 26

No reservations may be made to this Protocol.

Article 27

1. At any time after three years from the date on which this Protocol has entered into force for a Party, chat Party may withdraw from this Protocol by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Protocol.

Article 28

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

DONE at Kyoto this eleventh day of December one thousand nine hundred and ninety-seven.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have affixed their signatures to this Protocol on the dates indicated.

ANNEX A

Greenhouse gases
Carbon dioxide (C02)
Methane (CH4)
Nitrous oxide (N20)
Hydrofluorocarbons (HFCs)
Perfluorocarbons (PFCs)
Sulphur hexafluoride (SF6)
Sectors/source categories
Energy
Fuel combustion
Energy industries
Manufacturing industries and construction
Transport
Other sectors
Other
Fugitive emissions from fuels
Solid fuels
Oil and nalural gas
Other
Industrial processes
Mineral products
Chemical industry
Metal production
Other production
Production of halocarbons and sulphur hexafluoride
Consumption of halocarbons and sulphur hexafluoride
Other
Solvent and other product use
Agriculture
Enteric fermentation
Manure management
Rice cultivation

Agricultural soils
Prescribed burning of savannas
Field burning of agricultural residues
Other
Waste
Solid waste disposal on land
Wastewater handling
Waste incineration
Other
ANNEX B
Party Quantified emission limitation or reduction commitment
(percentage of base year or period)
Australia 108
Austria 92
Belgium 92
Bulgaria* 92
Canada 94
Croatia* 95
Czech Republic* 92
Denmark 92
Estonia* 92
European Community 92
Finland 92
France 92
Germany 92
Greece 92
Hungary* 94
Iceland 110
Ireland 92
Italy 92
Japan 94
Latvia* 92
Liechtenstein 92
Lithuania* 92
Luxembourg 92

Monaco 92
Netherlands 92
New Zealand 100
Norway 101
Poland* 94
Portugal 92
Romania* 92
Russian Federation* 100
Slovakia* 92
Party Quantified emission limitation or
reduction commitment
(percentage of base year or period)
Slovenia* 92
Spain 92
Sweden 92
Switzerland 92
Ukraine* 100
United Kingdom of Great Britain and Northern Ireland 92
United States of America93 93
* Countries that are undergoing the process of transition to a market economy.

Reference: C.N.439.2004.TREATIES-4 (Depositary Notification)

KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

KYOTO, 11 DECEMBER 1997

CORRECTIONS TO THE ORIGINAL TEXTS OF THE PROTOCOL (ARABIC AND FRENCH VERSIONS) AND TO THE CERTIFIED TRUE COPIES[i]

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

By 11 May 2004, the date on which the period specified for the notification of objection to the proposed corrections expired, no objection had been notified to the Secretary-General.

Consequently, the Secretary-General has effected the required corrections to the original of the Protocol (authentic Arabic and French texts) as well as in the certified true copies. The ..... corresponding procès-verbal of rectification is transmitted herewith.

12 May 2004

[1] Refer to depositary notification C.N.101.2004.TREATIES-1 of 11 February 2004 (Proposed corrections to the original texts of the Protocol (Arabic and French versions) and to the certified true copies).

ANNEXE

Amendement à l'Annexe B du Protocole de Kyoto

Entre <<Autriche>> et <<Belgique>>, insérer ce qui suit[1] :

Bélarus *	92

[1] L'astérisque indique que le Bélarus est un pays en transition vers une économie de marché.

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.718.2012.TREATIES-XXVII.7.c (Depositary Notification)

KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

KYOTO, 11 DECEMBER 1997

DOHA AMENDMENT TO THE KYOTO PROTOCOL

DOHA, 8 DECEMBER 2012

ADOPTION OF AMENDMENT TO THE PROTOCOL

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

On 8 December 2012, at the eighth session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP), held in Doha, Qatar, the Parties adopted, in accordance with Articles 20 and 21 of the Protocol, an Amendment to the Kyoto Protocol by Decision 1/CMP.8.

Pursuant to Article 20, paragraph 4, and Article 21, paragraph 7 of the Kyoto Protocol, the Amendment shall enter into force for those Parties having accepted it, on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to the Kyoto Protocol.

In paragraph 5 of decision 1/CMP.8, the CMP recognized that Parties may provisionally apply the Amendment pending its entry into force in accordance with Articles 20 and 21 of the Kyoto Protocol. The Parties intending to provisionally apply the Amendment pending its entry into force in accordance with Articles 20 and 21 of the Protocol may provide notification to the Depositary of their intention to provisionally apply the Amendment.

… A copy of the authentic text of the Amendment in the Arabic, Chinese, English, French, Russian and Spanish languages is attached.

21 December 2012

[redacted]

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are issued in electronic format only. Depositary notifications are made available to the Permanent Missions to the United Nations in the United Nations Treaty Collection on the Internet at http://treaties.un.org, under "Depositary Notifications (CNs)". In addition, the Permanent Missions, as well as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty Section's "Automated Subscription Services", which is also available at http://treaties.un.org.

Doha amendment to the Kyoto Protocol

Article 1: Amendment

A. Annex B to the Kyoto Protocol

The following table shall replace the table in Annex B to the Protocol:

1	*2*	*3*	*4*	*5*	*6*
Party	*Quantified emission limitation or reduction commitment (2008–2012) (percentage of base year or period)*	*Quantified emission limitation or reduction commitment (2013–2020) (percentage of base year or period)*	*Reference year*[1]	*Quantified emission limitation or reduction commitment (2013–2020) (expressed as percentage of reference year)*[1]	*Pledges for the reduction of greenhouse gas emissions by 2020 (percentage of reference year)*[2]
Australia	108	99.5	2000	98	–5 to –15% or –25%[3]
Austria	92	80[4]	NA	NA	
Belarus[5]*		88	1990	NA	–8%
Belgium	92	80[4]	NA	NA	
Bulgaria*	92	80[4]	NA	NA	
Croatia*	95	80[6]	NA	NA	–20%/–30%[7]
Cyprus		80[4]	NA	NA	
Czech Republic*	92	80[4]	NA	NA	
Denmark	92	80[4]	NA	NA	
Estonia*	92	80[4]	NA	NA	
European Union	92	80[4]	1990	NA	–20%/–30%[7]
Finland	92	80[4]	NA	NA	
France	92	80[4]	NA	NA	
Germany	92	80[4]	NA	NA	
Greece	92	80[4]	NA	NA	
Hungary*	94	80[4]	NA	NA	
Iceland	110	80[8]	NA	NA	
Ireland	92	80[4]	NA	NA	
Italy	92	80[4]	NA	NA	
Kazakhstan*		95	1990	95	–7%
Latvia*	92	80[4]	NA	NA	
Liechtenstein	92	84	1990	84	–20%/–30%[9]
Lithuania*	92	80[4]	NA	NA	
Luxembourg	92	80[4]	NA	NA	
Malta		80[4]	NA	NA	

1	*2*	*3*	*4*	*5*	*6*
Party	*Quantified emission limitation or reduction commitment (2008–2012) (percentage of base year or period)*	*Quantified emission limitation or reduction commitment (2013–2020) (percentage of base year or period)*	*Reference year*[1]	*Quantified emission limitation or reduction commitment (2013–2020) (expressed as percentage of reference year)*[1]	*Pledges for the reduction of greenhouse gas emissions by 2020 (percentage of reference year)*[2]
Monaco	92	78	1990	78	–30%
Netherlands	92	80[4]	NA	NA	
Norway	101	84	1990	84	–30% to –40%[10]
Poland*	94	80[4]	NA	NA	
Portugal	92	80[4]	NA	NA	
Romania*	92	80[4]	NA	NA	
Slovakia*	92	80[4]	NA	NA	
Slovenia*	92	80[4]	NA	NA	
Spain	92	80[4]	NA	NA	
Sweden	92	80[4]	NA	NA	
Switzerland	92	84.2	1990	NA	–20% to –30%[11]
Ukraine*	100	76[12]	1990	NA	–20%
United Kingdom of Great Britain and Northern Ireland	92	80[4]	NA	NA	

Party	*Quantified emission limitation or reduction commitment (2008–2012) (percentage of base year or period)*
Canada[13]	94
Japan[14]	94
New Zealand[15]	100
Russian Federation[16]*	100

Abbreviation: NA = not applicable.

* Countries that are undergoing the process of transition to a market economy.

All footnotes below, except for footnotes 1, 2 and 5, have been provided through communications from the respective Parties.

1 A reference year may be used by a Party on an optional basis for its own purposes to express its quantified emission limitation or reduction commitment (QELRC) as a percentage of emissions of that year, that is not internationally binding under the Kyoto Protocol, in addition to the listing of its QELRC(s) in relation to the base year in the second and third columns of this table, which are internationally legally binding.

2 Further information on these pledges can be found in documents FCCC/SB/2011/INF.1/Rev.1 and FCCC/KP/AWG/2012/MISC.1, Add.1 and Add.2.

[3] Australia's QELRC under the second commitment period of the Kyoto Protocol is consistent with the achievement of Australia's unconditional 2020 target of 5 per cent below 2000 levels. Australia retains the option later to move up within its 2020 target of 5 to 15, or 25 per cent below 2000 levels, subject to certain conditions being met. This reference retains the status of these pledges as made under the Cancun Agreements and does not amount to a new legally binding commitment under this Protocol or its associated rules and modalities.

[4] The QELRCs for the European Union and its member States for a second commitment period under the Kyoto Protocol are based on the understanding that these will be fulfilled jointly with the European Union and its member States, in accordance with Article 4 of the Kyoto Protocol. The QELRCs are without prejudice to the subsequent notification by the European Union and its member States of an agreement to fulfil their commitments jointly in accordance with the provisions of the Kyoto Protocol.

[5] Added to Annex B by an amendment adopted pursuant to decision 10/CMP.2. This amendment has not yet entered into force.

[6] Croatia's QELRC for a second commitment period under the Kyoto Protocol is based on the understanding that it will fulfil this QELRC jointly with the European Union and its member States, in accordance with Article 4 of the Kyoto Protocol. As a consequence, Croatia's accession to the European Union shall not affect its participation in such joint fulfilment agreement pursuant to Article 4 or its QELRC.

[7] As part of a global and comprehensive agreement for the period beyond 2012, the European Union reiterates its conditional offer to move to a 30 per cent reduction by 2020 compared to 1990 levels, provided that other developed countries commit themselves to comparable emission reductions and developing countries contribute adequately according to their responsibilities and respective capabilities.

[8] The QELRC for Iceland for a second commitment period under the Kyoto Protocol is based on the understanding that it will be fulfilled jointly with the European Union and its member States, in accordance with Article 4 of the Kyoto Protocol.

[9] The QELRC presented in column three refers to a reduction target of 20 per cent by 2020 compared to 1990 levels. Liechtenstein would consider a higher reduction target of up to 30 per cent by 2020 compared to 1990 levels under the condition that other developed countries commit themselves to comparable emission reductions and that economically more advanced developing countries contribute adequately according to their responsibilities and respective capabilities.

[10] Norway's QELRC of 84 is consistent with its target of 30 per cent reduction of emissions by 2020, compared to 1990. If it can contribute to a global and comprehensive agreement where major emitting Parties agree on emission reductions in line with the 2° C target, Norway will move to a level of 40 per cent reduction for 2020 based on 1990 levels. This reference retains the status of the pledge made under the Cancun Agreements and does not amount to a new legally binding commitment under this Protocol.

[11] The QELRC presented in the third column of this table refers to a reduction target of 20 per cent by 2020 compared to 1990 levels. Switzerland would consider a higher reduction target up to 30 per cent by 2020 compared to 1990 levels subject to comparable emission reduction commitments from other developed countries and adequate contribution from developing countries according to their responsibilities and capabilities in line with the 2° C target. This reference retains the status of the pledge made under the Cancun Agreements and does not amount to a new legally binding commitment under this Protocol or its associated rules and modalities.

[12] Should be full carry-over and there is no acceptance of any cancellation or any limitation on use of this legitimately acquired sovereign property.

[13] On 15 December 2011, the Depositary received written notification of Canada's withdrawal from the Kyoto Protocol. This action will become effective for Canada on 15 December 2012.

[14] In a communication dated 10 December 2010, Japan indicated that it does not have any intention to be under obligation of the second commitment period of the Kyoto Protocol after 2012.

[15] New Zealand remains a Party to the Kyoto Protocol. It will be taking a quantified economy-wide emission reduction target under the United Nations Framework Convention on Climate Change in the period 2013 to 2020.

[16] In a communication dated 8 December 2010 that was received by the secretariat on 9 December 2010, the Russian Federation indicated that it does not intend to assume a quantitative emission limitation or reduction commitment for the second commitment period.

B. Annex A to the Kyoto Protocol

The following list shall replace the list under the heading "Greenhouse gases" in Annex A to the Protocol:

Greenhouse gases

Carbon dioxide (CO_2)

Methane (CH_4)

Nitrous oxide (N_2O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur hexafluoride (SF_6)

Nitrogen trifluoride (NF_3)[1]

C. Article 3, paragraph 1 bis

The following paragraph shall be inserted after paragraph 1 of Article 3 of the Protocol:

1 bis. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in the third column of the table contained in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 18 per cent below 1990 levels in the commitment period 2013 to 2020.

D. Article 3, paragraph 1 ter

The following paragraph shall be inserted after paragraph 1 bis of Article 3 of the Protocol:

1 ter. A Party included in Annex B may propose an adjustment to decrease the percentage inscribed in the third column of Annex B of its quantified emission limitation and reduction commitment inscribed in the third column of the table contained in Annex B. A proposal for such an adjustment shall be communicated to the Parties by the secretariat at least three months before the meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol at which it is proposed for adoption.

E. Article 3, paragraph 1 quater

The following paragraph shall be inserted after paragraph 1 ter of Article 3 of the Protocol:

1 quater. An adjustment proposed by a Party included in Annex I to increase the ambition of its quantified emission limitation and reduction commitment in accordance with Article 3, paragraph 1 ter, above shall be considered adopted by the Conference of the Parties serving as the meeting of the Parties to this Protocol unless more than three-fourths of the Parties present and voting object to its adoption. The adopted adjustment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties, and

[1] Applies only from the beginning of the second commitment period.

shall enter into force on 1 January of the year following the communication by the Depositary. Such adjustments shall be binding upon Parties.

F. Article 3, paragraph 7 bis

The following paragraphs shall be inserted after paragraph 7 of Article 3 of the Protocol:

7 bis. In the second quantified emission limitation and reduction commitment period, from 2013 to 2020, the assigned amount for each Party included in Annex I shall be equal to the percentage inscribed for it in the third column of the table contained in Annex B of its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A in 1990, or the base year or period determined in accordance with paragraph 5 above, multiplied by eight. Those Parties included in Annex I for whom land-use change and forestry constituted a net source of greenhouse gas emissions in 1990 shall include in their 1990 emissions base year or period the aggregate anthropogenic carbon dioxide equivalent emissions by sources minus removals by sinks in 1990 from land-use change for the purposes of calculating their assigned amount.

G. Article 3, paragraph 7 ter

The following paragraph shall be inserted after paragraph 7 bis of Article 3 of the Protocol:

7 ter. Any positive difference between the assigned amount of the second commitment period for a Party included in the Annex I and average annual emissions for the first three years of the preceding commitment period multiplied by eight shall be transferred to the cancellation account of that Party.

H. Article 3, paragraph 8

In paragraph 8 of Article 3 of the Protocol, the words:

> calculation referred to in paragraph 7 above

shall be substituted by:

> calculations referred to in paragraphs 7 and 7 bis above

I. Article 3, paragraph 8 bis

The following paragraph shall be inserted after paragraph 8 of Article 3 of the Protocol:

8 bis. Any Party included in Annex I may use 1995 or 2000 as its base year for nitrogen trifluoride for the purposes of the calculation referred to in paragraph 7 bis above.

J. Article 3, paragraphs 12 bis and ter

The following paragraphs shall be inserted after paragraph 12 of Article 3 of the Protocol:

12 bis. Any units generated from market-based mechanisms to be established under the Convention or its instruments may be used by Parties included in Annex I to assist them in achieving compliance with their quantified emission limitation and reduction commitments under Article 3. Any such units which a Party acquires from another Party to the

Convention shall be added to the assigned amount for the acquiring Party and subtracted from the quantity of units held by the transferring Party.

12 ter. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall ensure that, where units from approved activities under market-based mechanisms referred to in paragraph 12 bis above are used by Parties included in Annex I to assist them in achieving compliance with their quantified emission limitation and reduction commitments under Article 3, a share of these units is used to cover administrative expenses, as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation if these units are acquired under Article 17.

K. Article 4, paragraph 2

The following words shall be added to the end of the first sentence of paragraph 2 of Article 4 of the Protocol:

, or on the date of deposit of their instruments of acceptance of any amendment to Annex B pursuant to Article 3, paragraph 9

L. Article 4, paragraph 3

In paragraph 3 of Article 4 of the Protocol, the words:

, paragraph 7

shall be substituted by:

to which it relates

Article 2: Entry into force

This amendment shall enter into force in accordance with Articles 20 and 21 of the Kyoto Protocol.

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017

Reference: C.N.425.2020.TREATIES-XXVII.7.c (Depositary Notification)

DOHA AMENDMENT TO THE KYOTO PROTOCOL
DOHA, 8 DECEMBER 2012

ENTRY INTO FORCE

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

On 2 October 2020, the conditions for the entry into force of the above-mentioned Amendment were met. Accordingly, the Amendment shall enter into force on 31 December 2020, in accordance with its article 2, which reads as follows:

"This amendment shall enter into force in accordance with Articles 20 and 21 of the Kyoto Protocol."

Pursuant to Article 20, paragraph 4, and Article 21, paragraph 7 of the Kyoto Protocol, the Amendment shall enter into force for those Parties having accepted it, on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to the Kyoto Protocol.

2 October 2020

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.741.2014.TREATIES-XXVII.7.c (Depositary Notification)

DOHA AMENDMENT TO THE KYOTO PROTOCOL
DOHA, 8 DECEMBER 2012

PROPOSAL OF CORRECTIONS TO THE ARABIC, FRENCH, SPANISH AND RUSSIAN AUTHENTIC TEXTS

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The attention of the Secretary-General has been drawn to errors in the Arabic, French, Spanish and Russian authentic texts of the Doha Amendment to the Kyoto Protocol.

The Annex to this notification contains the proposed corrections to the Arabic, French, Spanish … and Russian authentic texts.

In accordance with the established depositary practice, and unless there is an objection to effecting a particular correction from a Signatory State or a Contracting State, the Secretary-General proposes to effect, in the authentic text of the Doha Amendment to the Kyoto Protocol, the proposed corrections to the Arabic, French, Spanish and Russian authentic texts.

Any objection should be communicated to the Secretary-General within 90 days from the date of this notification, i.e., no later than 22 February 2015.

24 November 2014

[redacted]

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are issued in electronic format only. Depositary notifications are made available to the Permanent Missions to the United Nations in the United Nations Treaty Collection on the Internet at https://treaties.un.org, under "Depositary Notifications (CNs)". In addition, the Permanent Missions, as well as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty Section's "Automated Subscription Services", which is also available at https://treaties.un.org.

C.N.741.2014.TREATIES-XXVII.7.c

Annex/Annexe

Reference/Référence	*Authentic Arabic text/Texte authentique arabe*	*Proposat of corrections to authentic Arabic text/Proposition de corrections du texte authentique arabe*
١– الحاشية ٣	(٣) الالتزام الكمي لأستراليا في فترة الالتزام الثانية لبروتوكول كيوتو يتسق مع تحقيق أستراليا لهدفها غير المشروط لعام ٢٠٢٠ المتمثل في بلوغ خفض نسبته ٥ في المائة دون مستويات عام ٢٠٠٠. وتحتفظ أستراليا بخيار الانتقال لاحقاً، في إطار هدفها لعام ٢٠٢٠ المتمثل في نسبة ٥ في المائة، إلى نسبة ١٥ في المائة أو ٢٥ في المائة دون مستويات عام ٢٠٠٠، رهناً بتحقق بعض الشروط. ويظل هذا المرجع محتفظاً بالوضع المرتبط بالوعود المندرجة في إطار اتفاقات كانكون ولا يرقى إلى التزام جديد ملزم قانونياً في إطار هذا البروتوكول أو ما يتصل به من قواعد وطرائق.	(٣) الالتزام الكمي لأستراليا في فترة الالتزام الثانية لبروتوكول كيوتو يتسق مع تحقيق أستراليا لهدفها غير المشروط لعام ٢٠٢٠ المتمثل في بلوغ خفض نسبته ٥ في المائة دون مستويات عام ٢٠٠٠. وتحتفظ أستراليا بخيار الانتقال لاحقاً، في إطار هدفها لعام ٢٠٢٠ المتمثل في نسبة ٥ في المائة، إلى نسبة ١٥ في المائة أو ٢٥ في المائة دون مستويات عام ٢٠٠٠، رهناً بتحقق بعض الشروط. ~~ويظل هذا المرجع محتفظاً~~ ويبقى لهذه الإشارة بالوضع ~~المرتبط~~ الوعود المندرجة في إطار سياق اتفاقات كانكون ولا يرقى إلى التزام جديد ملزم قانونياً في إطار هذا البروتوكول أو ما يتصل به من قواعد وطرائق.
٢– الحاشية ٩	(٩) الالتزام الكمي الوارد في العمود الثالث يشير إلى هدف خفض بنسبة ٢٠ في المائة بحلول عام ٢٠٢٠ مقارنة بمستويات عام ١٩٩٠. وقد تنظر ليختنشتاين في هدف خفض أعلى يعادل نسبة ٣٠ في المائة بحلول عام ٢٠٢٠ مقارنة بمستويات عام ١٩٩٠، بشرط أن تلتزم البلدان المتقدمة الأخرى بخفض مماثل للانبعاثات وأن تساهم البلدان النامية الأكثر تقدماً من الناحية الاقتصادية مساهمة مناسبة وفق مسؤولياتها وقدرات كل منها.	(٩) الالتزام الكمي الوارد في العمود الثالث يشير إلى هدف خفض بنسبة ٢٠ في المائة بحلول عام ٢٠٢٠ مقارنة بمستويات عام ١٩٩٠. وقد تنظر ليختنشتاين في هدف خفض أعلى ~~يعادل~~ يصل إلى نسبة ٣٠ في المائة بحلول عام ٢٠٢٠ مقارنة بمستويات عام ١٩٩٠، بشرط أن تلتزم البلدان المتقدمة الأخرى بخفض مماثل للانبعاثات وأن تساهم البلدان النامية الأكثر تقدماً من الناحية الاقتصادية مساهمة مناسبة وفق مسؤولياتها وقدرات كل منها.
٣– الحاشية ١٠	(١٠) الالتزام الكمي للترويج المتمثل في نسبة ٨٤ في المائة يتسق مع هدفها المتمثل في خفض بنسبة ٣٠ في المائة بحلول عام ٢٠٢٠ مقارنة بعام ١٩٩٠. وإذا كان بإمكان الترويج الإسهام في اتفاق عالمي شامل تتفق فيه الأطراف الرئيسية من حيث انبعاثاتها على خفض الانبعاثات بما يتماشى وهدف الدرجتين المئويتين من مقياس الحرارة، فستنتقل الترويج إلى مستوى خفض بنسبة ٤٠ بحلول عام ٢٠٢٠ مقارنة بمستويات عام ١٩٩٠. ويظل هذا المرجع محتفظاً بالوضع المرتبط بالوعود المندرجة في إطار اتفاقات كانكون ولا يرقى إلى التزام جديد ملزم قانونياً في إطار هذا البروتوكول أو ما يتصل به من قواعد وطرائق.	(١٠) الالتزام الكمي للترويج المتمثل في نسبة ٨٤ في المائة يتسق مع هدفها المتمثل في خفض بنسبة ٣٠ في المائة بحلول عام ٢٠٢٠ مقارنة بعام ١٩٩٠. وإذا كان بإمكان الترويج الإسهام في اتفاق عالمي شامل تتفق فيه الأطراف الرئيسية من حيث انبعاثاتها على خفض الانبعاثات بما يتماشى وهدف الدرجتين المئويتين من مقياس الحرارة، فستنتقل الترويج إلى مستوى خفض بنسبة ٤٠ في المائة بحلول عام ٢٠٢٠ مقارنة بمستويات عام ١٩٩٠. ~~ويظل هذا المرجع محتفظاً~~ ويبقى لهذه الإشارة ~~وضع المرتبط بالوعود~~ الوعد المندرجة في إطار سياق اتفاقات كانكون ولا يرقى إلى التزام جديد ملزم قانونياً في إطار هذا البروتوكول أو ما يتصل به من قواعد وطرائق.

Reference/Référence	*Authentic Arabic text/Texte authentique arabe*	*Proposal of corrections to authentic Arabic text/Proposition de corrections du texte authentique arabe*
١- الحاشية ١١	(١١) الالتزام الوارد في العمود الثالث من هذا الجدول يشير إلى خفض للانبعاثات بنسبة ٢٠ في المائة بحلول عام ٢٠٢٠ مقارنة بمستويات عام ١٩٩٠. وقد تنظر سويسرا في هدف خفض أعلى يصل إلى نسبة ٣٠ في المائة بحلول عام ٢٠٢٠ مقارنة بمستويات عام ١٩٩٠، رهناً بحصول التزامات خفض مماثلة من جانب البلدان المتقدمة الأخرى ومساهمة مناسبة من جانب البلدان النامية وفقاً لمسؤولياتها وقدراتها بما يتماشى مع هدف الدرجتين المئويتين من مقياس الحرارة. ويظل هذا المرجع محتفظاً بالوضع المرتبط بالوعود المندرجة في إطار الاتفاقات كانكون ولا يرقى إلى التزام جديد ملزم قانونياً في إطار هذا البروتوكول أو ما يتصل به من قواعد وطرائق.	(١١) الالتزام الكمي الوارد في العمود الثالث من هذا الجدول يشير إلى هدف خفض للانبعاثات بنسبة ٢٠ في المائة بحلول عام ٢٠٢٠ مقارنة بمستويات عام ١٩٩٠. وقد تنظر سويسرا في هدف خفض أعلى يصل إلى نسبة ٣٠ في المائة بحلول عام ٢٠٢٠ مقارنة بمستويات عام ١٩٩٠، رهناً بحصول التزامات خفض مماثلة من جانب البلدان المتقدمة الأخرى ومساهمة مناسبة من جانب البلدان النامية وفقاً لمسؤولياتها وقدراتها بما يتماشى مع هدف الدرجتين المئويتين من مقياس الحرارة. ~~ويظل هذا المرجع محتفظاً بال~~ ويبقى هذه الإشارة ~~وضع المرتبط بالوعود~~ الوعد المندرجة في إطار سياق الاتفاقات كانكون ولا ترقى إلى التزام جديد ملزم قانونياً في إطار هذا البروتوكول ما يتصل به من قواعد وطرائق.

Reference/Référence	*Authentic French text/ Texte authentique français*	*Proposal of corrections to the authentic French text/ Proposition de corrections du texte authentique français*
Annexe I, note 1	[1] Une année de référence peut être utilisée facultativement par toute Partie pour son propre usage afin d'exprimer **ses objectifs chiffrés** de limitation ou de réduction des émissions en pourcentage des émissions de l'année en question, sans que cela relève d'une obligation internationale au titre du Protocole de Kyoto, en sus de la liste indiquant **ses objectifs chiffrés** de limitation ou de réduction des émissions **pour** l'année de référence dans les deuxième et troisième colonnes **du** tableau, qui relèvent d'une obligation internationale.	[1] Une année de référence peut être utilisée facultativement par toute Partie pour son propre usage afin d'exprimer **son engagement chiffré** de limitation ou de réduction des émissions en pourcentage des émissions de l'année en question, sans que cela relève d'une obligation internationale au titre du Protocole de Kyoto, en sus de la liste indiquant **son (ses) engagement(s) chiffré(s)** de limitation ou de réduction des émissions **par rapport à** l'année de référence dans les deuxième et troisième colonnes **de ce** tableau, qui relèvent d'une obligation internationale.
Annexe I, note 3	[3] L'engagement chiffré de limitation et de réduction des émissions de l'Australie pour la deuxième période d'engagement au titre du Protocole de Kyoto est conforme à l'objectif inconditionnel pour 2020 de l'Australie d'une réduction de 5 % par rapport au niveau de 2000. L'Australie conserve la possibilité de relever ultérieurement son objectif de réduction pour 2020 de 5 % à 15 %, voire 25 % par rapport au niveau de 2000, à condition que certaines conditions soient remplies. **Ce niveau de** référence maintient le **statu quo quant aux** annonces faites au titre des accords de Cancún et ne relève pas **d'une nouvelle obligation internationale** au titre du présent Protocole ou des règles et modalités connexes.	[3] L'engagement chiffré de limitation et de réduction des émissions de l'Australie pour la deuxième période d'engagement au titre du Protocole de Kyoto est conforme à l'objectif inconditionnel pour 2020 de l'Australie d'une réduction de 5 % par rapport au niveau de 2000. L'Australie conserve la possibilité de relever ultérieurement son objectif de réduction pour 2020 de 5 % à 15 %, voire 25 % par rapport au niveau de 2000, à condition que certaines conditions soient remplies. **Cette** référence maintient le **statut des** annonces faites au titre des accords de Cancún et ne relève pas **d'un nouvel engagement juridiquement contraignant** au titre du présent Protocole ou des règles et modalités connexes.
Annexe I, note 7	[7] Dans le cadre d'un accord mondial et global pour la période postérieure à 2012, l'Union européenne renouvelle son offre d'opter pour une réduction de 30 % des émissions par rapport au niveau de 1990 d'ici à 2020, à condition que **les** autres pays développés s'engagent eux-mêmes à procéder à des réductions comparables et que les pays en développement contribuent de manière adéquate en fonction de leurs responsabilités et de leurs capacités respectives.	[7] Dans le cadre d'un accord mondial et global pour la période postérieure à 2012, l'Union européenne renouvelle son offre d'opter pour une réduction de 30 % des émissions par rapport au niveau de 1990 d'ici à 2020, à condition que **d'**autres pays développés s'engagent eux-mêmes à procéder à des réductions comparables et que les pays en développement contribuent de manière adéquate en fonction de leurs responsabilités et de leurs capacités respectives.
Annexe I, note 9	[9] L'engagement chiffré de limitation ou de réduction des émissions présenté dans la troisième colonne correspond à un objectif de réduction de 20 % d'ici à 2020 par rapport au niveau de 1990. Le Liechtenstein est disposé à **envisager** un objectif plus élevé de réduction **de 30 %** des émissions par rapport au niveau de 1990 d'ici à 2020 à condition que d'autres pays développés s'engagent	[9] L'engagement chiffré de limitation ou de réduction des émissions présenté dans la troisième colonne correspond à un objectif de réduction de 20 % d'ici à 2020 par rapport au niveau de 1990. Le Liechtenstein est disposé à **étudier l'option d'**un objectif plus élevé de réduction **de 30 % au plus** des émissions par rapport au niveau de 1990 d'ici à 2020 à condition que d'autres pays développés

Reference/Référence	*Authentic French text/ Texte authentique français*	*Proposal of corrections to the authentic French text/ Proposition de corrections du texte authentique français*
	eux-mêmes à opérer des réductions comparables et que les pays en développement économiquement plus avancés contribuent de manière adéquate en fonction de leurs responsabilités et de leurs capacités respectives.	s'engagent eux-mêmes à opérer des réductions comparables et que les pays en développement économiquement plus avancés contribuent de manière adéquate en fonction de leurs responsabilités et de leurs capacités respectives.
Annexe I, note 10	[10] L'engagement chiffré de limitation et de réduction des émissions de 84 de la Norvège est conforme à son objectif d'une réduction de 30 % des émissions par rapport à 1990 d'ici à 2020. Si elle peut contribuer à un accord mondial et global par lequel les Parties qui sont de grands pays émetteurs s'accorderaient sur des réductions d'émissions conformes à l'objectif de 2° C, la Norvège optera pour une réduction de 40 % des émissions pour 2020 par rapport au niveau de 1990. **Ce niveau de** référence maintient **le statu quo quant à** l'annonce faite au titre des accords de Cancún et ne relève pas **d'une nouvelle obligation internationale** au titre du présent Protocole.	[10] L'engagement chiffré de limitation et de réduction des émissions de 84 de la Norvège est conforme à son objectif d'une **réduction** de 30 % des émissions par rapport à 1990 d'ici à 2020. Si elle peut contribuer à un accord mondial et global par lequel les Parties qui sont de grands pays émetteurs s'accorderaient sur des réductions d'émissions conformes à l'objectif de 2° C, la Norvège optera pour une réduction de 40 % des émissions pour 2020 par rapport au niveau de 1990. Cette référence maintient le **statut de** l'annonce faite au titre des accords de Cancún et ne relève pas **d'un nouvel engagement juridiquement contraignant** au titre du présent Protocole.
Annexe I, note 11	[11] L'engagement chiffré de limitation ou de réduction des émissions présenté dans la troisième colonne correspond à un objectif de réduction de 20 % par rapport au niveau de 1990 d'ici à 2020. La Suisse est disposée à **envisager** un objectif plus élevé de réduction de 30 % des émissions par rapport au niveau de 1990 d'ici à 2020, à condition que les autres pays développés s'engagent eux-mêmes à procéder à des réductions comparables et que les pays en développement **économiquement plus avancés** contribuent de manière adéquate en fonction de leurs responsabilités et de leurs capacités **respectives** et de l'objectif de 2 °C. **Ce niveau de** référence maintient **le statu quo quant à** l'annonce faite au titre des accords de Cancún et ne relève pas **d'une nouvelle obligation internationale** au titre du présent Protocole ou des règles et modalités connexes.	[11] L'engagement chiffré de limitation ou de réduction des émissions présenté dans la troisième colonne **de ce tableau** correspond à un objectif de réduction de 20 % par rapport au niveau de 1990 d'ici à 2020. La Suisse est disposée à **étudier l'option d'**un objectif plus élevé de réduction de 30 % **au plus** des émissions par rapport au niveau de 1990 d'ici à 2020, à condition que d'autres pays développés s'engagent eux-mêmes à procéder à des réductions comparables et que les pays en développement contribuent de manière adéquate en fonction de leurs responsabilités et capacités et de l'objectif de 2 °C. Cette référence maintient le **statut de** l'annonce faite au titre des accords de Cancún et ne relève pas **d'un nouvel engagement juridiquement contraignant** au titre du présent Protocole ou des règles et modalités connexes.

Reference/Référence	*Authentic Spanish text/Text authentique espagnol*	*Proposal of corrections of the authentic Spanish text/Proposition de corrections du texte authentic espagnol*
nota 3	[3] El CCLRE de Australia para el segundo período de compromiso del Protocolo de Kyoto es coherente con el logro de la meta incondicional de Australia para el año 2020 del 5% con respecto a los niveles de 2000. Australia se reserva la opción de elevar ulteriormente su meta para 2020 del 5% **al** 15% o **al** 25% con respecto a los niveles de 2000, con sujeción a que se cumplan determinadas condiciones. Esta indicación mantiene el carácter de las promesas formuladas en el marco de los Acuerdos de Cancún, y no constituye un nuevo compromiso jurídicamente vinculante con arreglo al presente Protocolo o a sus normas y modalidades conexas.	[3] El CCLRE de Australia para el segundo período de compromiso del Protocolo de Kyoto es coherente con el logro de la meta incondicional de Australia para el año 2020 del 5% con respecto a los niveles de 2000. Australia se reserva la opción de elevar ulteriormente su meta para 2020 del 5% hasta el ~~al~~ 15%, o ~~a~~el 25%, con respecto a los niveles de 2000, con sujeción a que se cumplan determinadas condiciones. Esta indicación mantiene el carácter de las promesas formuladas en el marco de los Acuerdos de Cancún, y no constituye un nuevo compromiso jurídicamente vinculante con arreglo al presente Protocolo o a sus normas y modalidades conexas.
nota 9	[9] El CCLRE que figura en la tercera columna se refiere a una meta de reducción del 20% para **el año** 2020 con respecto a los niveles de 1990. Liechtenstein estudiaría la posibilidad de elevar su meta de reducción de las emisiones **al** 30% para 2020 con respecto a los niveles de 1990, a condición de que otros países desarrollados se comprometieran a aplicar reducciones comparables de sus emisiones y los países en desarrollo más avanzados económicamente hicieran una contribución adecuada con arreglo a sus responsabilidades y sus capacidades respectivas.	[9] El CCLRE que figura en la tercera columna se refiere a una meta de reducción del 20% para ~~el año~~ 2020 con respecto a los niveles de 1990. Liechtenstein estudiaría la posibilidad de elevar su meta de reducción de las emisiones ~~al~~ hasta el 30% para 2020 con respecto a los niveles de 1990, a condición de que otros países desarrollados se comprometieran a aplicar reducciones comparables de sus emisiones y los países en desarrollo más avanzados económicamente hicieran una contribución adecuada con arreglo a sus responsabilidades y sus capacidades respectivas.
nota 11	[11] El CCLRE que figura en la tercera columna de este cuadro se refiere a una meta de reducción del 20% para 2020 con respecto a los niveles de 1990. Suiza estudiaría la posibilidad de elevar su meta de reducción de las emisiones **al** 30% para 2020 con respecto a los niveles de 1990, con sujeción a que otros países desarrollados se comprometieran a aplicar reducciones comparables de sus emisiones y los países en desarrollo hicieran una contribución adecuada con arreglo	[11] El CCLRE que figura en la tercera columna de este cuadro se refiere a una meta de reducción del 20% para 2020 con respecto a los niveles de 1990. Suiza estudiaría la posibilidad de elevar su meta de reducción de las emisiones ~~al~~ hasta el 30% para 2020 con respecto a los niveles de 1990, con sujeción a que otros países desarrollados se comprometieran a aplicar reducciones comparables de sus emisiones y los países en desarrollo hicieran una contribución adecuada con arreglo a sus responsabilidades

Reference/Référence	*Authentic Spanish text/Text authentique espagnol*	*Proposal of corrections of the authentic Spanish text/Proposition de corrections du texte authentic espagnol*
	a sus responsabilidades y capacidades, en consonancia con la meta de los 2 °C. Esta indicación mantiene el carácter de la promesa formulada en el marco de los Acuerdos de Cancún, y no constituye un nuevo compromiso jurídicamente vinculante con arreglo al presente Protocolo o a sus normas y modalidades conexas.	y capacidades, en consonancia con la meta de los 2 °C. Esta indicación mantiene el carácter de la promesa formulada en el marco de los Acuerdos de Cancún, y no constituye un nuevo compromiso jurídicamente vinculante con arreglo al presente Protocolo o a sus normas y modalidades conexas.

Reference/ Référence	*Authentic Russian text/Texte authentique russe*	*Proposal of corrections to the authentic Russian text/Proposition de corrections du texte authentique russe*
Сноска 1	[1] Исходный год может использоваться Стороной в качестве факультативной основы для ее собственных целей, с тем чтобы выразить ее определенное количественное обязательство по ограничению или сокращению выбросов (ОКООСВ) в качестве процентной доли выбросов за этот год, которая не носит международно обязательного характера согласно Киотскому протоколу, в дополнение к перечислению ОКООСВ по отношению к базовому году во второй и третьей колонках настоящей таблицы, которые являются юридически обязательными на международном уровне.	[1] Исходный год может использоваться Стороной в качестве факультативной основы для ее собственных целей, с тем чтобы выразить ее определенное количественное обязательство по ограничению или сокращению выбросов (ОКООСВ) в качестве процентной доли выбросов за этот год, которая не имеет обязательного характера на международном уровне согласно Киотскому протоколу, в дополнение к перечислению ОКООСВ по отношению к базовому году во второй и третьей колонках настоящей таблицы, которые имеют юридически обязательный характер на международном уровне.
Сноска 3	[3] ОКООСВ Австралии на второй период действия обязательств по Киотскому протоколу согласуется с выполнением Австралией безусловного достижения в 2020 году целевого показателя в 5% ниже уровней 2000 года. Австралия сохраняет за собой возможность позднее повысить свой целевой показатель на 2020 год с 5 до 15 или 25% ниже уровней 2000 года, если будут выполнены определенные условия. Данная ссылка показывает состояние этих обещаний, сделанных согласно Канкунским договоренностям, и не представляет собой новые юридические обязательства согласно настоящему Протоколу или связанным с ними правилам и условиям.	[3] ОКООСВ Австралии на второй период действия обязательств по Киотскому протоколу согласуется с выполнением Австралией безусловного достижения в 2020 году целевого показателя в 5% ниже уровней 2000 года. Австралия сохраняет за собой возможность позднее повысить свой целевой показатель на 2020 год с 5 до 15 или 25% ниже уровней 2000 года, если будут выполнены определенные условия. Эта сноска отражает состояние этих обещаний, сделанных согласно Канкунским договоренностям, и не представляет собой новое обязательство, имеющее юридически обязательный характер, согласно настоящему Протоколу или связанным с ними правилам и условиям.

Reference/ Référence	*Authentic Russian text/Texte authentique russe*	*Proposal of corrections to the authentic Russian text/Proposition de corrections du texte authentique russe*
Сноска 10	[10] ОКООСВ Норвегии в размере 84 соответствует ее целевому показателю сокращения выбросов к 2020 году на 30% по сравнению с 1990 годом. Если она может способствовать достижению глобального и всеобъемлющего соглашения, в рамках которого основные страны, являющиеся источниками выбросов, согласятся на сокращение выбросов, отвечающее целевому показателю в 2 °C, Норвегия повысит уровень сокращений к 2020 году до 40% по сравнению с уровнями 1990 года. Данная ссылка отражает состояние обещания, сделанного согласно Канкунским договоренностям, и представляет собой новое юридическое обязательство согласно настоящему Протоколу.	[10] ОКООСВ Норвегии в размере 84 соответствует ее целевому показателю сокращения выбросов к 2020 году на 30% по сравнению с 1990 годом. Если она может способствовать достижению глобального и всеобъемлющего соглашения, в рамках которого основные страны, являющиеся источниками выбросов, согласятся на сокращение выбросов, отвечающее целевому показателю в 2 °C, Норвегия повысит уровень сокращений к 2020 году до 40% по сравнению с уровнями 1990 года. Эта сноска отражает состояние обещания, сделанного согласно Канкунским договоренностям, и не представляет собой новое обязательство, имеющее юридически обязательный характер, согласно настоящему Протоколу.

Reference/ Référence	*Authentic Russian text/Texte authentique russe*	*Proposal of corrections to the authentic Russian text/Proposition de corrections du texte authentique russe*
Сноска 11	[11] ОКООСВ, указанное в колонке 3 настоящей таблицы, отражает целевой показатель сокращения до 2020 года на 20% по сравнению с уровнями 1990 года. Швейцария могла бы рассмотреть вопрос о повышении целевого показателя сокращений вплоть до 30% до 2020 года по сравнению с уровнями 1990 года при условии наличия сопоставимых обязательств по сокращению выбросов со стороны развитых стран и адекватного вклада со стороны других развивающихся стран в соответствии с их обязательствами и возможностями. Эта ссылка имеет статус обещания, сделанного согласно Канкунским договоренностям, и не представляет собой новое юридическое обязательство согласно настоящему Протоколу или связанным с ним правилам и условиям.	[11] ОКООСВ, указанное в колонке 3 настоящей таблицы, отражает целевой показатель сокращения до 2020 года на 20% по сравнению с уровнями 1990 года. Швейцария могла бы рассмотреть вопрос о повышении целевого показателя сокращений вплоть до 30% до 2020 года по сравнению с уровнями 1990 года при условии наличия сопоставимых обязательств по сокращению выбросов со стороны других развитых стран и адекватного вклада со стороны развивающихся стран в соответствии с их обязательствами и возможностями, отвечающих целевому показателю в 2 °C. Эта сноска отражает состояние обещания, сделанного согласно Канкунским договоренностям, и не представляет собой новое обязательство, имеющее юридически обязательный характер, согласно настоящему Протоколу или связанным с ним правилам и условиям.

[redacted]

Reference: C.N.147.2015.TREATIES-XXVII.7.c (Depositary Notification)

DOHA AMENDMENT TO THE KYOTO PROTOCOL
DOHA, 8 DECEMBER 2012

CORRECTIONS TO THE ARABIC, FRENCH, SPANISH AND RUSSIAN AUTHENTIC TEXTS [1]

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

By 22 February 2015, the date on which the period specified for the notification of objection to the proposed corrections expired, no objection had been notified to the Secretary-General. Consequently, the Secretary-General has effected the required corrections to the original text of the Amendment (Arabic, French, Spanish and Russian versions) circulated by depositary notification C.N.741.2014.TREATIES- XXVII.7.c of 24 November 2014.[1]

….. The Procès-verbal of rectification is transmitted herewith.

27 February 2015

[redacted]

[1] Refer to depositary notification C.N.741.2014.TREATIES-XXVII.7.c of 24 November 2014 (Proposal of corrections to the Arabic, French, Spanish and Russian authentic texts).

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.92.2016.TREATIES-XXVII.7.d (Depositary Notification)

PARIS AGREEMENT
PARIS, 12 DECEMBER 2015

ISSUANCE OF CERTIFIED TRUE COPIES

The Secretary-General of the United Nations, acting in his capacity as depositary and with reference to depositary notification C.N.63.2016.TREATIES-XXVII.7.d of 16 February 2016 announcing the opening for signature of the above Agreement, has the honour to transmit herewith a certified true copy of the Agreement.

The Secretary-General takes this opportunity to call the attention of the competent authorities to the fact that certified true copies are established specifically for the purpose of enabling the Governments concerned to complete the internal procedures required for participation in the Agreement at the international level. For budgetary reasons, certified true copies are printed in limited numbers, and it is expected that any additional copies that may be required could be reproduced by the authorities concerned themselves on the basis of the copy accompanying the present notification. Electronic copies are also available on the United Nations Treaty Collection website at the following address: https://treaties.un.org/doc/Treaties/2016/02/20160215%2006-03%20PM/Ch_XXVII-7-d.pdf.

17 March 2016

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are issued in electronic format only. Depositary notifications are made available to the Permanent Missions to the United Nations in the United Nations Treaty Collection on the Internet at https://treaties.un.org, under "Depositary Notifications (CNs)". In addition, the Permanent Missions, as well as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty Section's "Automated Subscription Services", which is also available at https://treaties.un.org.

I hereby certify that the foregoing text is a true copy of the Paris Agreement, done at Paris on 12 December 2015, the original of which is deposited with the Secretary-General of the United Nations.

Je certifie que le texte qui précède est une copie conforme de l'Accord de Paris, fait à Paris le 12 décembre 2015, dont l'original se trouve déposé auprès du Secrétaire général des Nations Unies.

For the Secretary-General,
Under-Secretary-General
for Legal Affairs and
United Nations Legal Counsel

Pour le Secrétaire général,
Le Secrétaire général adjoint
aux affaires juridiques et
Conseiller juridique des Nations Unies

United Nations
New York, 14 March 2016

Organisation des Nations Unies
New York, le 14 mars 2016

Certified true copy (XXVII-7-d)
Copie certifiée conforme (XXVII-7-d)
March 2016/mars 2016

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS—ADRESSE POSTALE: UNITED NATIONS, N.Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE: UNATIONS NEWYORK

Reference: C.N.735.2016.TREATIES-XXVII.7.d (Depositary Notification)

PARIS AGREEMENT
PARIS, 12 DECEMBER 2015

ENTRY INTO FORCE

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

On 5 October 2016, the conditions for the entry into force of the above-mentioned Agreement were met. Accordingly, the Agreement shall enter into force on 4 November 2016, in accordance with its article 21, paragraph 1, which reads as follows:

"This Agreement shall enter into force on the thirtieth day after the date on which at least 55 Parties to the Convention accounting in total for at least an estimated 55 per cent of the total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval or accession."

5 October 2016

[redacted]

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depositary notifications are issued in electronic format only. Depositary notifications are made available to the Permanent Missions to the United Nations in the United Nations Treaty Collection at https://treaties.un.org, under "Depositary Notifications (CNs)". In addition, the Permanent Missions, as well as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty Section's "Automated Subscription Services", which is also available at https://treaties.un.org/Pages/Login.aspx?lang=_en.

Annex 5

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO

(DEMOCRATIC REPUBLIC OF THE CONGO *v.* UGANDA)

JUDGMENT OF 19 DECEMBER 2005

2005

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE DES ACTIVITÉS ARMÉES SUR LE TERRITOIRE DU CONGO

(RÉPUBLIQUE DÉMOCRATIQUE DU CONGO c. OUGANDA)

ARRÊT DU 19 DÉCEMBRE 2005

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JUDGMENT

ARMED ACTIVITIES
ON THE TERRITORY OF THE CONGO
(DEMOCRATIC REPUBLIC OF THE CONGO *v.* UGANDA)

ACTIVITÉS ARMÉES
SUR LE TERRITOIRE DU CONGO
(RÉPUBLIQUE DÉMOCRATIQUE DU CONGO c. OUGANDA)

19 DÉCEMBRE 2005

ARRÊT

INTERNATIONAL COURT OF JUSTICE

2005
19 December
General List
No. 116

YEAR 2005

19 December 2005

CASE CONCERNING ARMED ACTIVITIES ON THE TERRITORY OF THE CONGO

(DEMOCRATIC REPUBLIC OF THE CONGO *v.* UGANDA)

Situation in the Great Lakes region — Task of the Court.

* * *

Issue of consent.

The DRC consented to presence of Ugandan troops in eastern border area in period preceding August 1998 — Protocol on Security along the Common Border of 27 April 1998 between the DRC and Uganda — No particular formalities required for withdrawal of consent by the DRC to presence of Ugandan troops — Ambiguity of statement by President Kabila published on 28 July 1998 — Any prior consent withdrawn at latest by close of Victoria Falls Summit on 8 August 1998.

*

Findings of fact concerning Uganda's use of force in respect of Kitona.

Denial by Uganda that it was involved in military action at Kitona on 4 August 1998 Assessment of evidentiary materials in relation to events at Kitona — Deficiencies in evidence adduced by the DRC — Not established to the Court's satisfaction that Uganda participated in attack on Kitona.

*

Findings of fact concerning military action in the east of the DRC and in other areas of that country.

Determination by the Court of facts as to Ugandan presence at, and taking

of, certain locations in the DRC — Assessment of evidentiary materials — Sketch-map evidence — Testimony before Porter Commission — Statements against interest — Establishment of locations taken by Uganda and corresponding "dates of capture".

*

Did the Lusaka, Kampala and Harare Agreements constitute any consent of the DRC to the presence of Ugandan troops?

Contention of Uganda that the Lusaka, Kampala and Harare Agreements constituted consent to presence of Ugandan forces on Congolese territory — Nothing in provisions of Lusaka Agreement can be interpreted as affirmation that security interests of Uganda had already required the presence of Ugandan forces on territory of the DRC as from September 1998 — Lusaka Agreement represented an agreed modus operandi *for the parties, providing framework for orderly withdrawal of all foreign forces from the DRC — The DRC did not thereby recognize situation on ground as legal — Kampala and Harare Disengagement Plans did not change legal status of presence of Ugandan troops — Luanda Agreement authorized limited presence of Ugandan troops in border area — None of the aforementioned Agreements (save for limited exception in the Luanda Agreement) constituted consent by the DRC to presence of Ugandan troops on Congolese territory for period after July 1999.*

*

Self-defence in light of proven facts.

Question of whether Ugandan military action in the DRC from early August 1998 to July 1999 could be justified as action in self-defence — Ugandan High Command document of 11 September 1998 — Testimony before Porter Commission of Ugandan Minister of Defence and of commander of Ugandan forces in the DRC — Uganda regarded military events of August 1998 as part of operation "Safe Haven" — Objectives of operation "Safe Haven", as stated in Ugandan High Command document, not consonant with concept of self-defence — Examination of claim by Uganda of existence of tripartite anti-Ugandan conspiracy between the DRC, the ADF and the Sudan — Evidence adduced by Uganda lacking in relevance and probative value Article 51 of the United Nations Charter — No report made by Uganda to Security Council of events requiring it to act in self-defence — No claim by Uganda that it had been subjected to armed attack by armed forces of the DRC — No satisfactory proof of involvement of Government of the DRC in alleged ADF attacks on Uganda — Legal and factual circumstances for exercise of right of self-defence by Uganda not present.

*

Findings of law on the prohibition against the use of force.

Article 2, paragraph 4, of United Nations Charter — Security Council resolutions 1234 (1999) and 1304 (2000) — No credible evidence to support allegation by DRC that MLC was created and controlled by Uganda — Obligations arising under principles of non-use of force and non-intervention violated by Uganda — Unlawful military intervention by Uganda in the DRC constitutes grave violation of prohibition on use of force expressed in Article 2, paragraph 4, of Charter.

* *

The issue of belligerent occupation.

Definition of occupation — Examination of evidence relating to the status of Uganda as occupying Power — Creation of new province of "Kibali-Ituri" by commander of Ugandan forces in the DRC — No specific evidence provided by the DRC to show that authority exercised by Ugandan armed forces in any areas other than in Ituri — Contention of the DRC that Uganda indirectly controlled areas outside Ituri administered by Congolese rebel groups not upheld by the Court — Uganda was the occupying Power in Ituri — Obligations of Uganda.

* *

Violations of international human rights law and international humanitarian law: contentions of the Parties.

Contention of the DRC that Ugandan armed forces committed wide-scale human rights violations on Congolese territory, particularly in Ituri — Contention of Uganda that the DRC has failed to provide any credible evidentiary basis to support its allegations.

*

Admissibility of claims in relation to events in Kisangani.

Contention of Uganda that the Court lacks competence to deal with events in Kisangani in June 2000 in the absence of Rwanda — Jurisprudence contained in Certain Phosphate Lands in Nauru *case applicable in current proceedings — Interests of Rwanda do not constitute "the very subject-matter" of decision to be rendered by the Court — The Court is not precluded from adjudicating on whether Uganda's conduct in Kisangani is a violation of international law.*

*

Violations of international human rights law and international humanitarian law: findings of the Court.

Examination of evidence relating to violations of international human rights law and international humanitarian law — Findings of fact — Conduct of UPDF and of officers and soldiers of UPDF attributable to Uganda — Irrelevant whether UPDF personnel acted contrary to instructions given or

exceeded their authority — Applicable law — Violations of specific obligations under Hague Regulations of 1907 binding as customary international law — Violations of specific provisions of international humanitarian law and international human rights law instruments — Uganda is internationally responsible for violations of international human rights law and international humanitarian law.

* *

Illegal exploitation of natural resources.

Contention of the DRC that Ugandan troops systematically looted and exploited the assets and natural resources of the DRC — Contention of Uganda that the DRC has failed to provide reliable evidence to corroborate its allegations.

*

Findings of the Court concerning acts of illegal exploitation of natural resources.

Examination of evidence relating to illegal exploitation of Congolese natural resources by Uganda — Findings of fact — Conduct of UPDF and of officers and soldiers of UPDF attributable to Uganda — Irrelevant whether UPDF personnel acted contrary to instructions given or exceeded their authority — Applicable law — Principle of permanent sovereignty over natural resources not applicable to this situation — Illegal acts by UPDF in violation of the jus in bello *— Violation of duty of vigilance by Uganda with regard to illegal acts of UPDF — No violation of duty of vigilance by Uganda with regard to illegal acts of rebel groups outside Ituri — International responsibility of Uganda for acts of its armed forces — International responsibility of Uganda as an occupying Power.*

* *

Legal consequences of violations of international obligations by Uganda.

The DRC's request that Uganda cease continuing internationally wrongful acts — No evidence to support allegations with regard to period after 2 June 2003 — Not established that Uganda continues to commit internationally wrongful acts specified by the DRC — The DRC's request cannot be upheld.

The DRC's request for specific guarantees and assurances of non-repetition of the wrongful acts — Tripartite Agreement on Regional Security in the Great Lakes of 26 October 2004 — Commitments assumed by Uganda under the Tripartite Agreement meet the DRC's request for specific guarantees and assurances of non-repetition — Demand by the Court that the Parties respect their obligations under that Agreement and under general international law.

The DRC's request for reparation — Obligation to make full reparation for the injury caused by an international wrongful act — Internationally wrongful acts committed by Uganda resulted in injury to the DRC and persons on its territory — Uganda's obligation to make reparation accordingly — Question of reparation to be determined by the Court, failing agreement between the Parties, in a subsequent phase of the proceedings.

* *

Compliance with the Court's Order on provisional measures.

Binding effect of the Court's orders on provisional measures — No specific evidence demonstrating violations of the Order of 1 July 2000 — The Court's previous findings of violations by Uganda of its obligations under international human rights law and international humanitarian law until final withdrawal of Ugandan troops on 2 June 2003 — Uganda did not comply with the Court's Order on provisional measures of 1 July 2000 — This finding is without prejudice to the question as to whether the DRC complied with the Order.

* * *

Counter-claims: admissibility of objections.

Question of whether the DRC is entitled to raise objections to admissibility of counter-claims at current stage of proceedings — The Court's Order of 29 November 2001 only settled question of a "direct connection" within the meaning of Article 80 — Question of whether objections raised by the DRC are inadmissible because they fail to conform to Article 79 of the Rules of Court — Article 79 inapplicable to the case of an objection to counter-claims joined to the original proceedings — The DRC is entitled to challenge admissibility of Uganda's counter-claims.

* *

First counter-claim.

Contention of Uganda that the DRC supported anti-Ugandan irregular forces — Division of Uganda's first counter-claim into three periods by the DRC: prior to May 1997, from May 1997 to 2 August 1998 and subsequent to 2 August 1998 — No obstacle to examining the first counter-claim following the three periods of time and for practical purposes useful to do so — Admissibility of part of first counter-claim relating to period prior to May 1997 — Waiver of right must be express or unequivocal — Nothing in conduct of Uganda can be considered as implying an unequivocal waiver of its right to bring a counter-claim relating to events which occurred during the Mobutu régime — The long period of time between events during the Mobutu régime and filing of Uganda's counter-claim has not rendered inadmissible Uganda's first counter-claim for the period prior to May 1997 — No proof that Zaire provided political and military support to anti-Ugandan rebel groups — No breach of duty of vigilance by Zaire — No evidence of support for anti-Ugandan rebel groups by the DRC in the second period — Any military action taken by the DRC against Uganda in the third period could not be deemed wrongful since it would be justified as

action in self-defence — No evidence of support for anti-Ugandan rebel groups by the DRC in the third period.

* *

Second counter-claim.

Contention of Uganda that Congolese armed forces attacked the premises of the Ugandan Embassy, maltreated diplomats and other Ugandan nationals present on the premises and at Ndjili International Airport — Objections by the DRC to the admissibility of the second counter-claim — Contention of the DRC that the second counter-claim is not founded — Admissibility of the second counter-claim — Uganda is not precluded from invoking the Vienna Convention on Diplomatic Relations — With regard to diplomats Uganda claims its own rights under the Vienna Convention on Diplomatic Relations — Substance of the part of the counter-claim relating to acts of maltreatment against other persons on the premises of the Embassy falls within the ambit of Article 22 of the Vienna Convention on Diplomatic Relations — The part of the counter-claim relating to maltreatment of persons not enjoying diplomatic status at Ndjili International Airport is based on diplomatic protection — No evidence of Ugandan nationality of persons in question — Sufficient evidence to prove attacks against the Embassy and maltreatment of Ugandan diplomats — Property and archives removed from Ugandan Embassy — Breaches of the Vienna Convention on Diplomatic Relations.

The DRC bears responsibility for violation of international law on diplomatic relations — Question of reparation to be determined by the Court, failing agreement between the Parties, in a subsequent phase of the proceedings.

JUDGMENT

Present: *President* SHI; *Vice-President* RANJEVA; *Judges* KOROMA, VERESHCHETIN, HIGGINS, PARRA-ARANGUREN, KOOIJMANS, REZEK, AL-KHASAWNEH, BUERGENTHAL, ELARABY, OWADA, SIMMA, TOMKA, ABRAHAM; *Judges* ad hoc VERHOEVEN, KATEKA; *Registrar* COUVREUR.

In the case concerning armed activities on the territory of the Congo,

between

the Democratic Republic of the Congo,

represented by

H.E. Mr. Honorius Kisimba Ngoy Ndalewe, Minister of Justice, Keeper of the Seals of the Democratic Republic of the Congo,

as Head of Delegation;

H.E. Mr. Jacques Masangu-a-Mwanza, Ambassador Extraordinary and Plenipotentiary to the Kingdom of the Netherlands,

as Agent;

Maître Tshibangu Kalala, member of the Kinshasa and Brussels Bars,

as Co-Agent and Advocate;

Mr. Olivier Corten, Professor of International Law, Université libre de Bruxelles,
Mr. Pierre Klein, Professor of International Law, Director of the Centre for International Law, Université libre de Bruxelles,
Mr. Jean Salmon, Professor Emeritus, Université libre de Bruxelles, Member of the Institute of International Law and of the Permanent Court of Arbitration,
Mr. Philippe Sands, Q.C., Professor of Law, Director of the Centre for International Courts and Tribunals, University College London,

as Counsel and Advocates;

Maître Ilunga Lwanza, Deputy *Directeur de cabinet* and Legal Adviser, *cabinet* of the Minister of Justice, Keeper of the Seals,
Mr. Yambu A. Ngoyi, Chief Adviser to the Vice-Presidency of the Republic,

Mr. Mutumbe Mbuya, Legal Adviser, *cabinet* of the Minister of Justice, Keeper of the Seals,
Mr. Victor Musompo Kasongo, Private Secretary to the Minister of Justice, Keeper of the Seals,
Mr. Nsingi-zi-Mayemba, First Counsellor, Embassy of the Democratic Republic of the Congo in the Kingdom of the Netherlands,
Ms Marceline Masele, Second Counsellor, Embassy of the Democratic Republic of the Congo in the Kingdom of the Netherlands,

as Advisers;

Maître Mbambu wa Cizubu, member of the Kinshasa Bar, Tshibangu and Partners,
Mr. François Dubuisson, Lecturer, Université libre de Bruxelles,

Maître Kikangala Ngole, member of the Brussels Bar,
Ms Anne Lagerwal, Assistant, Université libre de Bruxelles,
Ms Anjolie Singh, Assistant, University College London, member of the Indian Bar,

as Assistants,

and

the Republic of Uganda,

represented by

The Honourable E. Khiddu Makubuya S.C., M.P., Attorney General of the Republic of Uganda,

as Agent, Counsel and Advocate;

Mr. Lucian Tibaruha, Solicitor General of the Republic of Uganda,

as Co-Agent, Counsel and Advocate;

Mr. Ian Brownlie, C.B.E, Q.C., F.B.A., member of the English Bar, member of the International Law Commission, Emeritus Chichele Professor of Public International Law, University of Oxford, Member of the Institute of International Law,

Mr. Paul S. Reichler, Foley Hoag LLP, Washington D.C., member of the Bar of the United States Supreme Court, member of the Bar of the District of Columbia,

Mr. Eric Suy, Emeritus Professor, Catholic University of Leuven, former Under-Secretary-General and Legal Counsel of the United Nations, Member of the Institute of International Law,

The Honourable Amama Mbabazi, Minister of Defence of the Republic of Uganda,

Major General Katumba Wamala, Inspector General of Police of the Republic of Uganda,

as Counsel and Advocates;

Mr. Theodore Christakis, Professor of International Law, University of Grenoble II (Pierre Mendès France),

Mr. Lawrence H. Martin, Foley Hoag LLP, Washington D.C., member of the Bar of the District of Columbia,

as Counsel;

Captain Timothy Kanyogonya, Uganda People's Defence Forces,

as Adviser,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 23 June 1999, the Democratic Republic of the Congo (hereinafter "the DRC") filed in the Registry of the Court an Application instituting proceedings against the Republic of Uganda (hereinafter "Uganda") in respect of a dispute concerning "acts of *armed aggression* perpetrated by Uganda on the territory of the Democratic Republic of the Congo, in flagrant violation of the United Nations Charter and of the Charter of the Organization of African Unity" (emphasis in the original).

In order to found the jurisdiction of the Court, the Application relied on the declarations made by the two Parties accepting the Court's compulsory jurisdiction under Article 36, paragraph 2, of the Statute of the Court.

2. Pursuant to Article 40, paragraph 2, of the Statute, the Application was immediately communicated to the Government of Uganda by the Registrar; and, pursuant to paragraph 3 of that Article, all States entitled to appear before the Court were notified of the Application.

3. By an Order of 21 October 1999, the Court fixed 21 July 2000 as the time-limit for the filing of the Memorial of the DRC and 21 April 2001 as the time-

limit for the filing of the Counter-Memorial of Uganda. The DRC filed its Memorial within the time-limit thus prescribed.

4. On 19 June 2000, the DRC submitted to the Court a request for the indication of provisional measures pursuant to Article 41 of the Statute of the Court. By an Order dated 1 July 2000, the Court, after hearing the Parties, indicated certain provisional measures.

5. Uganda filed its Counter-Memorial within the time-limit fixed for that purpose by the Court's Order of 21 October 1999. That pleading included counter-claims.

6. Since the Court included upon the Bench no judge of the nationality of the Parties, each Party availed itself of its right under Article 31 of the Statute of the Court to choose a judge *ad hoc* to sit in the case. By a letter of 16 August 2000 the DRC notified the Court of its intention to choose Mr. Joe Verhoeven and by a letter of 4 October 2000 Uganda notified the Court of its intention to choose Mr. James L. Kateka. No objections having been raised, the Parties were informed by letters dated 26 September 2000 and 7 November 2000, respectively, that the case file would be transmitted to the judges *ad hoc* accordingly.

7. At a meeting held by the President of the Court with the Agents of the Parties on 11 June 2001, the DRC, invoking Article 80 of the Rules of Court, raised certain objections to the admissibility of the counter-claims set out in the Counter-Memorial of Uganda. During that meeting the two Agents agreed that their respective Governments would file written observations on the question of the admissibility of the counter-claims; they also agreed on the time-limits for that purpose.

On 28 June 2001, the Agent of the DRC filed his Government's written observations on the question of the admissibility of Uganda's counter-claims, and a copy of those observations was communicated to the Ugandan Government by the Registrar. On 15 August 2001, the Agent of Uganda filed his Government's written observations on the question of the admissibility of the counter-claims set out in Uganda's Counter-Memorial, and a copy of those observations was communicated to the Congolese Government by the First Secretary of the Court, Acting Registrar. On 5 September 2001, the Agent of the DRC submitted his Government's comments on Uganda's written observations, a copy of which was transmitted to the Ugandan Government by the Registrar.

Having received detailed written observations from each of the Parties, the Court considered that it was sufficiently well informed of their respective positions with regard to the admissibility of the counter-claims.

8. By an Order of 29 November 2001, the Court held that two of the three counter-claims submitted by Uganda in its Counter-Memorial were admissible as such and formed part of the current proceedings, but that the third was not. It also directed the DRC to file a Reply and Uganda to file a Rejoinder, addressing the claims of both Parties, and fixed 29 May 2002 and 29 November 2002 as the time-limits for the filing of the Reply and the Rejoinder respectively. Lastly, the Court held that it was necessary, "in order to ensure strict equality between the Parties, to reserve the right of the Congo to present its views in writing a second time on the Ugandan counter-claims, in an additional pleading which [might] be the subject of a subsequent Order". The DRC duly filed its Reply within the time-limit prescribed for that purpose.

9. By an Order of 7 November 2002, at the request of Uganda, the Court

extended the time-limit for the filing of the Rejoinder of Uganda to 6 December 2002. Uganda duly filed its Rejoinder within the time-limit as thus extended.

10. By a letter dated 6 January 2003, the Co-Agent of the DRC, referring to the above-mentioned Order of 29 November 2001, informed the Court that his Government wished to present its views in writing a second time on the counter-claims of Uganda, in an additional pleading. By an Order of 29 January 2003 the Court, taking account of the agreement of the Parties, authorized the submission by the DRC of an additional pleading relating solely to the counter-claims submitted by Uganda and fixed 28 February 2003 as the time-limit for the filing of that pleading. The DRC duly filed the additional pleading within the time-limit as thus fixed and the case became ready for hearing.

11. At a meeting held by the President of the Court with the Agents of the Parties on 24 April 2003, the Agents presented their views on the organization of the oral proceedings on the merits. Pursuant to Article 54, paragraph 1, of the Rules, the Court fixed 10 November 2003 as the date for the opening of the oral proceedings. The Registrar informed the Parties accordingly by letters of 9 May 2003.

12. Pursuant to the instructions of the Court under Article 43 of the Rules of Court, the Registry sent the notification referred to in Article 63, paragraph 1, of the Statute to all States parties to the Chicago Convention on International Civil Aviation of 7 December 1944, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, the Additional Protocol I of 8 June 1977 to the Geneva Conventions of 12 August 1949, the Vienna Convention on Diplomatic Relations of 18 April 1961, the International Covenant on Civil and Political Rights of 19 December 1966, the African Charter on Human and Peoples' Rights of 27 June 1981 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984.

Pursuant to the instructions of the Court under Article 69, paragraph 3, of the Rules of Court, the Registry addressed the notifications provided for in Article 34, paragraph 3, of the Statute and communicated copies of the written proceedings to the Secretary-General of the United Nations in respect of the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Secretary-General of the International Civil Aviation Organization in respect of the Chicago Convention on International Civil Aviation; and the President of the African Union's Commission in respect of the African Charter on Human and Peoples' Rights. The respective organizations were also asked whether they intended to present written observations within the meaning of Article 69, paragraph 3, of the Rules of Court. None of those organizations expressed a wish to submit any such observations.

13. By a letter dated 2 October 2003 addressed to the Registry, the Agent of the DRC requested that Uganda provide the DRC with a number of case-related documents which were not in the public domain. Copies of the requested documents were received in the Registry on 17 October 2003 and transmitted to the Agent of the DRC. By a letter dated 13 October 2003 addressed to the Registry, the Agent of Uganda asked the DRC to furnish certain documents relevant to the issues in the case that were not in the public domain. Copies of

the requested documents were received in the Registry on 31 October 2003 and transmitted to the Agent of Uganda. On 5 November 2003, the Registrar informed the Parties by letter that the Court had decided that those documents did not form part of the case file and that accordingly, pursuant to paragraph 4 of Article 56, they should not be referred to in oral argument, except to the extent that they "form[ed] part of a publication readily available".

14. On 17 October 2003, the Agent of Uganda informed the Court that his Government wished to submit 24 new documents, in accordance with Article 56 of the Rules of Court. As provided for in paragraph 1 of that Article, those documents were communicated to the DRC. On 29 October 2003, the Agent of the DRC informed the Court that his Government did not intend to raise any objection to the production of those new documents by Uganda. By letters of 5 November 2003, the Registrar informed the Parties that the Court had taken note that the DRC had no objection to the production of the 24 new documents and that counsel would be free to make reference to them in the course of oral argument.

15. On 17 October 2003, the Agent of Uganda further informed the Court that his Government wished to call two witnesses in accordance with Article 57 of the Rules of Court. A copy of the Agent's letter and the attached list of witnesses was transmitted to the Agent of the DRC, who conveyed to the Court his Government's opposition to the calling of those witnesses. On 5 November 2003, the Registrar informed the Parties by letter that the Court had decided that it would not be appropriate, in the circumstances, to authorize the calling of those two witnesses by Uganda.

16. On 20 October 2003, the Agent of Uganda informed the Court that his Government wished, in accordance with Article 56 of the Rules of Court, to add two further documents to its request to produce 24 new documents in the case. As provided for in paragraph 1 of that Article, those documents were communicated to the DRC. On 6 November 2003, the Agent of the DRC informed the Court that his Government had no specific comments to make with regard to the additional two documents.

On 5 November 2003, the Agent of the DRC made a formal application to submit a "small number" of new documents in accordance with Article 56 of the Rules of Court, and referred to the Court's Practice Direction IX. As provided for in paragraph 1 of Article 56, those documents were communicated to Uganda. On 5 November 2003, the Agent of Uganda indicated that his Government did not object to the submission of the new documents by the DRC.

By letters dated 12 November 2003, the Registrar informed the Parties that the Court had taken note, firstly, that the DRC did not object to the production of the two further new documents which Uganda sought to produce in accordance with Article 56 of the Rules of Court, and secondly, that Uganda had no objection to the production of the documents submitted by the DRC on 5 November 2003, and that counsel would be free to quote from both sets of documents during the oral proceedings.

17. On 5 November 2003, the Agent of the DRC enquired whether it might be possible to postpone to a later date, in April 2004, the opening of the hearings in the case originally scheduled for 10 November 2003, "so as to permit the diplomatic negotiations engaged by the Parties to be conducted in an atmosphere of calm". By a letter of 6 November 2003, the Agent of Uganda informed the Court that his Government "supporte[d]the proposal and adopt[ed] the request".

On 6 November 2003, the Registrar informed both Parties by letter that the Court, "taking account of the representations made to it by the Parties, [had] decided to postpone the opening of the oral proceedings in the case" and that the new date for the opening of the oral proceedings would be fixed in due course. By a letter of 9 September 2004, the Agent of the DRC formally requested that the Court fix a new date for the opening of the oral proceedings. By letters of 20 October 2004, the Registrar informed the Parties that the Court had decided, in accordance with Article 54 of the Rules of Court, to fix Monday 11 April 2005 for the opening of the oral proceedings in the case.

18. On 1 February 2005, the Agent of the DRC informed the Court that his Government wished to produce certain new documents, in accordance with Article 56 of the Rules of Court. As provided for in paragraph 1 of that Article, those documents were communicated to Uganda. On 16 February 2005, the Co-Agent of Uganda informed the Court that his Government did not intend to raise any objection to the production of one of the new documents by the DRC, and presented certain observations on the remaining documents. On 21 February 2005, the Registrar informed the Parties by letter that the Court had decided to authorize the production of the document to which the Ugandan Government had raised no objection, as well as the production of the other documents. With regard to those other documents, which came from the Judicial Commission of Inquiry into Allegations of Illegal Exploitation of Natural Resources and Other Forms of Wealth in the Democratic Republic of the Congo set up by the Ugandan Government in May 2001 and headed by Justice David Porter (hereinafter "the Porter Commission"), the Parties were further informed that the Court had noted, *inter alia*, that only certain of them were new, whilst the remainder simply reproduced documents already submitted on 5 November 2003 and included in the case file.

19. On 15 March 2005, the Co-Agent of Uganda provided the Registry with a new document which his Government wished to produce under Article 56 of the Rules of Court. No objection having been made by the Congolese Government to the Ugandan request, the Registrar, on 8 April 2005, informed the Parties that the Court had decided to authorize the production of the said document.

20. Pursuant to Article 53, paragraph 2, of the Rules, the Court, after ascertaining the views of the Parties, decided that copies of the pleadings and documents annexed would be made available to the public at the opening of the oral proceedings.

21. Public sittings were held from 11 April to 29 April 2005, at which the Court heard the oral arguments and replies of:

For the DRC: H.E. Mr. Jacques Masangu-a-Mwanza,
H.E. Mr. Honorius Kisimba Ngoy Ndalewe,
Maître Tshibangu Kalala,
Mr. Jean Salmon,
Mr. Philippe Sands,
Mr. Olivier Corten,
Mr. Pierre Klein.

For Uganda: The Honourable E. Khiddu Makubuya,
Mr. Paul S. Reichler,
Mr. Ian Brownlie,
The Honourable Amama Mbabazi,
Mr. Eric Suy.

22. In the course of the hearings, questions were put to the Parties by Judges Vereshchetin, Kooijmans and Elaraby.

Judge Vereshchetin addressed a separate question to each Party. The DRC was asked: "What are the respective periods of time to which the concrete submissions, found in the written pleadings of the Democratic Republic of the Congo, refer?"; and Uganda was asked: "What are the respective periods of time to which the concrete submissions relating to the first counter-claim, found in the written pleadings of Uganda, refer?"

Judge Kooijmans addressed the following question to both Parties:

> "Can the Parties indicate which areas of the provinces of Equateur, Orientale, North Kivu and South Kivu were in the relevant periods in time under the control of the UPDF and which under the control of the various rebellious militias? It would be appreciated if sketch-maps would be added."

Judge Elaraby addressed the following question to both Parties:

> "The Lusaka Agreement signed on 10 July 1999 which takes effect 24 hours after the signature, provides that:
>
> > 'The final orderly withdrawal of all foreign forces from the national territory of the Democratic Republic of Congo shall be in accordance with Annex "B" of this Agreement.' (Annex A, Chapter 4, para. 4.1.)
>
> Subparagraph 17 of Annex B provides that the 'Orderly Withdrawal of all Foreign Forces' shall take place on 'D-Day + 180 days'.
>
> Uganda asserts that the final withdrawal of its forces occurred on 2 June 2003.
>
> What are the views of the two Parties regarding the legal basis for the presence of Ugandan forces in the Democratic Republic of the Congo in the period between the date of the 'final orderly withdrawal', agreed to in the Lusaka Agreement, and 2 June 2003?"

The Parties provided replies to these questions orally and in writing, pursuant to Article 61, paragraph 4, of the Rules of Court. Pursuant to Article 72 of the Rules of Court, each Party presented written observations on the written replies received from the other.

*

23. In its Application, the DRC made the following requests:

> "Consequently, and whilst reserving the right to supplement and amplify the present request in the course of the proceedings, the Democratic Republic of the Congo requests the Court to:
>
> *Adjudge and declare that*:
>
> *(a)* Uganda is guilty of an act of aggression within the meaning of Article 1 of resolution 3314 of the General Assembly of the United Nations of 14 December 1974 and of the jurisprudence of the International Court of Justice, contrary to Article 2, paragraph 4, of the United Nations Charter;
>
> *(b)* further, Uganda is committing repeated violations of the Geneva Conventions of 1949 and their Additional Protocols of 1977, in

flagrant disregard of the elementary rules of international humanitarian law in conflict zones, and is also guilty of massive human rights violations in defiance of the most basic customary law;

(c) more specifically, by taking forcible possession of the Inga hydroelectric dam, and deliberately and regularly causing massive electrical power cuts, in violation of the provisions of Article 56 of the Additional Protocol of 1977, Uganda has rendered itself responsible for very heavy losses of life among the 5 million inhabitants of the city of Kinshasa and the surrounding area;

(d) by shooting down, on 9 October 1998 at Kindu, a Boeing 727 the property of Congo Airlines, thereby causing the death of 40 civilians, Uganda has also violated the Convention on International Civil Aviation signed at Chicago on 7 December 1944, the Hague Convention of 16 December 1970 for the Suppression of Unlawful Seizure of Aircraft and the Montreal Convention of 23 September 1971 for the Suppression of Unlawful Acts against the Safety of Civil Aviation.

Consequently, and pursuant to the aforementioned international legal obligations, to adjudge and declare that:

(1) all Ugandan armed forces participating in acts of aggression shall forthwith vacate the territory of the Democratic Republic of the Congo;

(2) Uganda shall secure the immediate and unconditional withdrawal from Congolese territory of its nationals, both natural and legal persons;

(3) the Democratic Republic of the Congo is entitled to compensation from Uganda in respect of all acts of looting, destruction, removal of property and persons and other unlawful acts attributable to Uganda, in respect of which the Democratic Republic of the Congo reserves the right to determine at a later date the precise amount of the damage suffered, in addition to its claim for the restitution of all property removed."

24. In the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of the DRC,

in the Memorial:

"The Democratic Republic of the Congo, while reserving the right to supplement or modify the present submissions and to provide the Court with fresh evidence and pertinent new legal arguments in the context of the present dispute, requests the Court to adjudge and declare:

(1) that the Republic of Uganda, by engaging in military and paramilitary activities against the Democratic Republic of the Congo, by occupying its territory and by actively extending military, logistic, economic and financial support to irregular forces operating there, has violated the following principles of conventional and customary law:

— the principle of non-use of force in international relations, including the prohibition of aggression;
— the obligation to settle international disputes exclusively by peace-

ful means so as to ensure that international peace and security, as well as justice, are not placed in jeopardy;
— respect for the sovereignty of States and the rights of peoples to self-determination, and hence to choose their own political and economic system freely and without outside interference;
— the principle of non-interference in matters within the domestic jurisdiction of States, which includes refraining from extending any assistance to the parties to a civil war operating on the territory of another State;

(2) that the Republic of Uganda, by engaging in the illegal exploitation of Congolese natural resources and by pillaging its assets and wealth, has violated the following principles of conventional and customary law:

— respect for the sovereignty of States, including over their natural resources;
— the duty to promote the realization of the principle of equality of peoples and of their right of self-determination, and consequently to refrain from exposing peoples to foreign subjugation, domination or exploitation;
— the principle of non-interference in matters within the domestic jurisdiction of States, including economic matters;

(3) that the Republic of Uganda, by committing acts of oppression against the nationals of the Democratic Republic of the Congo, by killing, injuring, abducting or despoiling those nationals, has violated the following principles of conventional and customary law:

— the principle of conventional and customary law involving the obligation to respect and ensure respect for fundamental human rights, including in times of armed conflict;
— the entitlement of Congolese nationals to enjoy the most basic rights, both civil and political, as well as economic, social and cultural;

(4) that, in light of all the violations set out above, the Republic of Uganda shall, to the extent of and in accordance with, the particulars set out in Chapter VI of this Memorial, and in conformity with customary international law:

— cease forthwith any continuing internationally wrongful act, in particular its occupation of Congolese territory, its support for irregular forces operating in the Democratic Republic of the Congo, its unlawful detention of Congolese nationals and its exploitation of Congolese wealth and natural resources;

— make reparation for all types of damage caused by all types of wrongful act attributable to it, no matter how remote the causal link between the acts and the damage concerned;
— accordingly make reparation in kind where this is still physically possible, in particular restitution of any Congolese resources, assets or wealth still in its possession;

— failing this, furnish a sum covering the whole of the damage

suffered, including, in particular, the examples mentioned in paragraph 6.65 of this Memorial;
— further, in any event, render satisfaction for the insults inflicted by it upon the Democratic Republic of the Congo, in the form of official apologies, the payment of damages reflecting the gravity of the infringements and the prosecution of all those responsible;

— provide specific guarantees and assurances that it will never again in the future commit any of the above-mentioned violations against the Democratic Republic of the Congo";

in the Reply:

"The Democratic Republic of the Congo, while reserving the right to supplement or modify the present submissions and to provide the Court with fresh evidence and pertinent new legal arguments in the context of the present dispute, requests the Court to adjudge and declare:

(1) that the Republic of Uganda, by engaging in military and paramilitary activities against the Democratic Republic of the Congo, by occupying its territory and by actively extending military, logistic, economic and financial support to irregular forces operating there, has violated the following principles of conventional and customary law:
   — the principle of non-use of force in international relations, including the prohibition of aggression;
   — the obligation to settle international disputes exclusively by peaceful means so as to ensure that peace, international security and justice are not placed in jeopardy;
   — respect for the sovereignty of States and the rights of peoples to self-determination, and hence to choose their own political and economic system freely and without outside interference;
   — the principle of non-interference in matters within the domestic jurisdiction of States, which includes refraining from extending any assistance to the parties to a civil war operating on the territory of another State;

(2) that the Republic of Uganda, by engaging in the illegal exploitation of Congolese natural resources and by pillaging its assets and wealth, has violated the following principles of conventional and customary law:
   — respect for the sovereignty of States, including over their natural resources;
   — the duty to promote the realization of the principle of equality of peoples and of their right of self-determination, and consequently to refrain from exposing peoples to foreign subjugation, domination or exploitation;
   — the principle of non-interference in matters within the domestic jurisdiction of States, including economic matters;

(3) that the Republic of Uganda, by committing abuses against nationals of the Democratic Republic of the Congo, by killing, injuring, and abducting those nationals or robbing them of their property, has violated the following principles of conventional and customary law:

— the principle of conventional and customary law involving the obligation to respect and ensure respect for fundamental human rights, including in times of armed conflict;
— the principle of conventional and customary law whereby it is necessary, at all times, to make a distinction in an armed conflict between civilian and military objectives;
— the entitlement of Congolese nationals to enjoy the most basic rights, both civil and political, as well as economic, social and cultural;

(4) that, in light of all the violations set out above, the Republic of Uganda shall, in accordance with customary international law:

— cease forthwith all continuing internationally wrongful acts, and in particular its occupation of Congolese territory, its support for irregular forces operating in the Democratic Republic of the Congo and its exploitation of Congolese wealth and natural resources;

— make reparation for all types of damage caused by all types of wrongful act attributable to it, no matter how remote the causal link between the acts and the damage concerned;
— accordingly, make reparation in kind where this is still physically possible, in particular in regard to any Congolese resources, assets or wealth still in its possession;

— failing this, furnish a sum covering the whole of the damage suffered, including, in particular, the examples set out in paragraph 6.65 of the Memorial of the Democratic Republic of the Congo and restated in paragraph 1.58 of the present Reply;
— further, in any event, render satisfaction for the injuries inflicted upon the Democratic Republic of the Congo, in the form of official apologies, the payment of damages reflecting the gravity of the violations and the prosecution of all those responsible;

— provide specific guarantees and assurances that it will never again in the future perpetrate any of the above-mentioned violations against the Democratic Republic of the Congo;

(5) that the Ugandan counter-claim alleging involvement by the DRC in armed attacks against Uganda be dismissed, on the following grounds:

— to the extent that it relates to the period before Laurent-Désiré Kabila came to power, the claim is inadmissible because Uganda had previously waived its right to lodge such a claim and, in the alternative, the claim is unfounded because Uganda has failed to establish the facts on which it is based;
— to the extent that it relates to the period after Laurent-Désiré Kabila came to power, the claim is unfounded because Uganda has failed to establish the facts on which it is based.

(6) that the Ugandan counter-claim alleging involvement by the DRC in

an attack on the Ugandan Embassy and on Ugandan nationals in Kinshasa be dismissed, on the following grounds:

— to the extent that Uganda is seeking to engage the responsibility of the DRC for acts contrary to international law allegedly committed to the detriment of Ugandan nationals, the claim is inadmissible because Uganda has failed to show that the persons for whose protection it claims to provide are its nationals or that such persons have exhausted the local remedies available in the DRC; in the alternative, this claim is unfounded because Uganda has failed to establish the facts on which it is based;
— that part of the Ugandan claims concerning the treatment allegedly inflicted on its diplomatic premises and personnel in Kinshasa is unfounded because Uganda has failed to establish the facts on which it is based";

in the additional pleading entitled "Additional Written Observations on the Counter-Claims presented by Uganda":

"The Democratic Republic of the Congo, while reserving the right to supplement or modify the present submissions and to provide the Court with fresh evidence and pertinent new legal arguments in the context of the present dispute, requests the Court, pursuant to the Rules of Court, to adjudge and declare:

As regards the *first counter-claim presented by Uganda:*

(1) to the extent that it relates to the period before Laurent-Désiré Kabila came to power, the claim is inadmissible because Uganda had previously waived its right to lodge such a claim and, in the alternative, the claim is unfounded because Uganda has failed to establish the facts on which it is based;
(2) to the extent that it relates to the period from when Laurent-Désiré Kabila came to power until the onset of Ugandan aggression, the claim is unfounded in fact because Uganda has failed to establish the facts on which it is based;
(3) to the extent that it relates to the period after the onset of Ugandan aggression, the claim is founded neither in fact nor in law because Uganda has failed to establish the facts on which it is based, and because, from 2 August 1998, the DRC was in any event in a situation of self-defence.

As regards the *second counter-claim presented by Uganda:*

(1) to the extent that it is now centred on the interpretation and application of the Vienna Convention of 1961 on Diplomatic Relations, the claim presented by Uganda radically modifies the subject-matter of the dispute, contrary to the Statute and Rules of Court; this aspect of the claim must therefore be dismissed from the present proceedings;
(2) the aspect of the claim relating to the inhumane treatment allegedly suffered by certain Ugandan nationals remains inadmissible, as Uganda has still not shown that the conditions laid down by international law for the exercise of its diplomatic protection have been met;

in the alternative, this aspect of the claim is unfounded, as Uganda is still unable to establish the factual and legal bases for its claims;

(3) the aspect of the claim relating to the alleged expropriation of Ugandan public property is unfounded, as Uganda is still unable to establish the factual and legal bases for its claims."

On behalf of the Government of Uganda,

in the Counter-Memorial:

"Reserving its right to supplement or amend its requests, the Republic of Uganda requests the Court:

(1) To adjudge and declare in accordance with international law:

(A) that the requests of the Democratic Republic of the Congo relating to activities or situations involving the Republic of Rwanda or its agents are inadmissible for the reasons set forth in Chapter XV of the present Counter-Memorial;

(B) that the requests of the Democratic Republic of the Congo that the Court adjudge that the Republic of Uganda is responsible for various breaches of international law, as alleged in the Application and/or the Memorial of the Democratic Republic of Congo, are rejected; and

(C) that the Counter-claims presented in Chapter XVIII of the present Counter-Memorial be upheld.

(2) To reserve the issue of reparation in relation to the Counter-claims for a subsequent stage of the proceedings";

in the Rejoinder:

"Reserving her right to supplement or amend her requests, the Republic of Uganda requests the Court:

1. To adjudge and declare in accordance with international law:

(A) that the requests of the Democratic Republic of the Congo relating to activities or situations involving the Republic of Rwanda or her agents are inadmissible for the reasons set forth in Chapter XV of the present Counter-Memorial;

(B) that the requests of the Democratic Republic of the Congo that the Court adjudge that the Republic of Uganda is responsible for various breaches of international law, as alleged in the Memorial and/or the Reply of the Democratic Republic of Congo, are rejected; and

(C) that the Counter-claims presented in Chapter XVIII of the Counter-Memorial and reaffirmed in Chapter VI of the present Rejoinder be upheld.

2. To reserve the issue of reparation in relation to the Counter-claims for a subsequent stage of the proceedings."

25. At the oral proceedings, the following final submissions were presented by the Parties:

On behalf of the Government of the DRC,

at the hearing of 25 April 2005, on the claims of the DRC:

"The Congo requests the Court to adjudge and declare:

1. That the Republic of Uganda, by engaging in military and paramilitary activities against the Democratic Republic of the Congo, by occupying its territory and by actively extending military, logistic, economic and financial support to irregular forces having operated there, has violated the following principles of conventional and customary law:
   — the principle of non-use of force in international relations, including the prohibition of aggression;
   — the obligation to settle international disputes exclusively by peaceful means so as to ensure that international peace and security, as well as justice, are not placed in jeopardy;
   — respect for the sovereignty of States and the rights of peoples to self-determination, and hence to choose their own political and economic system freely and without outside interference;
   — the principle of non-intervention in matters within the domestic jurisdiction of States, including refraining from extending any assistance to the parties to a civil war operating on the territory of another State.
2. That the Republic of Uganda, by committing acts of violence against nationals of the Democratic Republic of the Congo, by killing and injuring them or despoiling them of their property, by failing to take adequate measures to prevent violations of human rights in the DRC by persons under its jurisdiction or control, and/or failing to punish persons under its jurisdiction or control having engaged in the above-mentioned acts, has violated the following principles of conventional and customary law:
   — the principle of conventional and customary law imposing an obligation to respect, and ensure respect for, fundamental human rights, including in times of armed conflict, in accordance with international humanitarian law;
   — the principle of conventional and customary law imposing an obligation, at all times, to make a distinction in an armed conflict between civilian and military objectives;
   — the right of Congolese nationals to enjoy the most basic rights, both civil and political, as well as economic, social and cultural.
3. That the Republic of Uganda, by engaging in the illegal exploitation of Congolese natural resources, by pillaging its assets and wealth, by failing to take adequate measures to prevent the illegal exploitation of the resources of the DRC by persons under its jurisdiction or control, and/or failing to punish persons under its jurisdiction or control having engaged in the above-mentioned acts, has violated the following principles of conventional and customary law:
   — the applicable rules of international humanitarian law;
   — respect for the sovereignty of States, including over their natural resources;
   — the duty to promote the realization of the principle of equality of peoples and of their right of self-determination, and consequently

to refrain from exposing peoples to foreign subjugation, domination or exploitation;
— the principle of non-interference in matters within the domestic jurisdiction of States, including economic matters.

4. *(a)* That the violations of international law set out in submissions 1, 2 and 3 constitute wrongful acts attributable to Uganda which engage its international responsibility;
(b) that the Republic of Uganda shall cease forthwith all continuing internationally wrongful acts, and in particular its support for irregular forces operating in the DRC and its exploitation of Congolese wealth and natural resources;

(c) that the Republic of Uganda shall provide specific guarantees and assurances that it will not repeat the wrongful acts complained of;
(d) that the Republic of Uganda is under an obligation to the Democratic Republic of the Congo to make reparation for all injury caused to the latter by the violation of the obligations imposed by international law and set out in submissions 1, 2 and 3 above;

(e) that the nature, form and amount of the reparation shall be determined by the Court, failing agreement thereon between the Parties, and that the Court shall reserve the subsequent procedure for that purpose.

5. That the Republic of Uganda has violated the Order of the Court on provisional measures of 1 July 2000, in that it has failed to comply with the following provisional measures:

'(1) both Parties must, forthwith, prevent and refrain from any action, and in particular any armed action, which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve;

(2) both Parties must, forthwith, take all measures necessary to comply with all of their obligations under international law, in particular those under the United Nations Charter and the Charter of the Organization of African Unity, and with United Nations Security Council resolution 1304 (2000) of 16 June 2000;

(3) both Parties must, forthwith, take all measures necessary to ensure full respect within the zone of conflict for fundamental human rights and for the applicable provisions of humanitarian law'";

at the hearing of 29 April 2005, on the counter-claims of Uganda:

"The Congo requests the International Court of Justice to adjudge and declare:

As regards the *first counter-claim submitted by Uganda:*

(1) to the extent that it relates to the period before Laurent-Désiré Kabila came to power, Uganda's claim is inadmissible because Uganda had previously renounced its right to lodge such a claim: in the alternative, the claim is unfounded because Uganda has failed to establish the facts on which it is based;
(2) to the extent that it relates to the period from the time when Laurent-Désiré Kabila came to power to the time when Uganda launched its armed attack, Uganda's claim is unfounded in fact because Uganda has failed to establish the facts on which it is based;
(3) to the extent that it relates to the period subsequent to the launching of Uganda's armed attack, Uganda's claim is unfounded both in fact and in law because Uganda has failed to establish the facts on which it is based and, in any event, from 2 August 1998 the DRC was in a situation of self-defence.

As regards the *second counter-claim submitted by Uganda:*

(1) to the extent that it now relates to the interpretation and application of the Vienna Convention of 1961 on Diplomatic Relations, the claim submitted by Uganda radically changes the subject-matter of the dispute, contrary to the Statute and to the Rules of Court; that part of the claim must therefore be dismissed from the present proceedings;
(2) that part of the claim relating to the alleged mistreatment of certain Ugandan nationals remains inadmissible because Uganda has still failed to show that the requirements laid down by international law for the exercise of its diplomatic protection were satisfied; in the alternative, that part of the claim is unfounded because Uganda is still unable to establish the factual and legal bases of its claims.

(3) that part of the claim relating to the alleged expropriation of Uganda's public property is unfounded because Uganda is still unable to establish the factual and legal bases of its claims."

On behalf of the Government of Uganda,

at the hearing of 27 April 2005, on the claims of the DRC and the counter-claims of Uganda:

"The Republic of Uganda requests the Court:

(1) To adjudge and declare in accordance with international law:
  (A) that the requests of the Democratic Republic of the Congo relating to the activities or situations involving the Republic of Rwanda or her agents are inadmissible for the reasons set forth in Chapter XV of the Counter-Memorial and reaffirmed in the oral pleadings;
  (B) that the requests of the Democratic Republic of the Congo that the Court adjudge and declare that the Republic of Uganda is responsible for various breaches of international law, as alleged in the Memorial, the Reply and/or the oral pleadings are rejected; and
  (C) that Uganda's counter-claims presented in Chapter XVIII of the

Counter-Memorial, and reaffirmed in Chapter VI of the Rejoinder as well as the oral pleadings be upheld.

(2) To reserve the issue of reparation in relation to Uganda's counter-claims for a subsequent stage of the proceedings."

* * *

26. The Court is aware of the complex and tragic situation which has long prevailed in the Great Lakes region. There has been much suffering by the local population and destabilization of much of the region. In particular, the instability in the DRC has had negative security implications for Uganda and some other neighbouring States. Indeed, the Summit meeting of the Heads of State in Victoria Falls (held on 7 and 8 August 1998) and the Agreement for a Ceasefire in the Democratic Republic of the Congo signed in Lusaka on 10 July 1999 (hereinafter "the Lusaka Agreement") acknowledged as legitimate the security needs of the DRC's neighbours. The Court is aware, too, that the factional conflicts within the DRC require a comprehensive settlement to the problems of the region.

However, the task of the Court must be to respond, on the basis of international law, to the particular legal dispute brought before it. As it interprets and applies the law, it will be mindful of context, but its task cannot go beyond that.

* * *

27. The Court finds it convenient, in view of the many actors referred to by the Parties in their written pleadings and at the hearing, to indicate the abbreviations which it will use for those actors in its judgment. Thus the Allied Democratic Forces will hereinafter be referred to as the ADF, the Alliance of Democratic Forces for the Liberation of the Congo (Alliance des forces démocratiques pour la libération du Congo) as the AFDL, the Congo Liberation Army (Armée de libération du Congo) as the ALC, the Congolese Armed Forces (Forces armées congolaises) as the FAC, the Rwandan Armed Forces (Forces armées rwandaises) as the FAR, the Former Uganda National Army as the FUNA, the Lord's Resistance Army as the LRA, the Congo Liberation Movement (Mouvement de libération du Congo) as the MLC, the National Army for the Liberation of Uganda as the NALU, the Congolese Rally for Democracy (Rassemblement congolais pour la démocratie) as the RCD, the Congolese Rally for Democracy-Kisangani (Rassemblement congolais pour la démocratie-Kisangani) as the RCD-Kisangani (also known as RCD-Wamba), the Congolese Rally for Democracy-Liberation Movement (Rassemblement congolais pour la démocratie-Mouvement de libération) as the RCD-ML, the Rwandan Patriotic Army as the RPA, the Sudan People's Liberation Movement/Army as the SPLM/A, the Uganda

National Rescue Front II as the UNRF II, the Uganda Peoples' Defence Forces as the UPDF, and the West Nile Bank Front as the WNBF.

* * *

28. In its first submission the DRC requests the Court to adjudge and declare:

> "1. That the Republic of Uganda, by engaging in military and paramilitary activities against the Democratic Republic of the Congo, by occupying its territory and by actively extending military, logistic, economic and financial support to irregular forces having operated there, has violated the following principles of conventional and customary law:
>
> — the principle of non-use of force in international relations, including the prohibition of aggression;
> — the obligation to settle international disputes exclusively by peaceful means so as to ensure that international peace and security, as well as justice, are not placed in jeopardy;
>
> — respect for the sovereignty of States and the rights of peoples to self-determination, and hence to choose their own political and economic system freely and without outside interference;
> — the principle of non-intervention in matters within the domestic jurisdiction of States, including refraining from extending any assistance to the parties to a civil war operating on the territory of another State."

29. The DRC explains that in 1997 Laurent-Désiré Kabila, who was at the time a Congolese rebel leader at the head of the AFDL (which was supported by Uganda and Rwanda), succeeded in overthrowing the then President of Zaire, Marshal Mobutu Ssese Seko, and on 29 May 1997 was formally sworn in as President of the renamed Democratic Republic of the Congo. The DRC asserts that, following President Kabila's accession to power, Uganda and Rwanda were granted substantial benefits in the DRC in the military and economic fields. The DRC claims, however, that President Kabila subsequently sought a gradual reduction in the influence of these two States over the DRC's political, military and economic spheres. It was, according to the DRC, this "new policy of independence and emancipation" from the two States that constituted the real reason for the invasion of Congolese territory by Ugandan armed forces in August 1998.

30. The DRC maintains that at the end of July 1998 President Kabila learned of a planned coup d'état organized by the Chief of Staff of the FAC, Colonel Kabarebe (a Rwandan national), and that, in an official statement published on 28 July 1998 (see paragraph 49 below), President

Kabila called for the withdrawal of foreign troops from Congolese territory. Although his address referred mainly to Rwandan troops, the DRC argues that there can be no doubt that President Kabila intended to address his message to "all foreign forces". The DRC states that on 2 August 1998 the 10th Brigade assigned to the province of North Kivu rebelled against the central Government of the DRC, and that during the night of 2 to 3 August 1998 Congolese Tutsi soldiers and a few Rwandan soldiers not yet repatriated attempted to overthrow President Kabila. According to the DRC, Uganda began its military intervention in the DRC immediately after the failure of the coup attempt.

31. The DRC argues that on 4 August 1998 Uganda and Rwanda organized an airborne operation, flying their troops from Goma on the eastern frontier of the DRC to Kitona, some 1,800 km away on the other side of the DRC, on the Atlantic coast. The DRC alleges that the aim was to overthrow President Kabila within ten days. According to the DRC, in the advance towards Kinshasa, Ugandan and Rwandan troops captured certain towns and occupied the Inga Dam, which supplies electricity to Kinshasa. The DRC explains that Angola and Zimbabwe came to the assistance of the Congolese Government to help prevent the capture of Kinshasa. The DRC also states that in the north-eastern part of the country, within a matter of months, UPDF troops had advanced and had progressively occupied a substantial part of Congolese territory in several provinces.

32. The DRC submits that Uganda's military operation against the DRC also consisted in the provision of support to Congolese armed groups opposed to President Kabila's Government. The DRC thus maintains that the RCD was created by Uganda and Rwanda on 12 August 1998, and that at the end of September 1998 Uganda supported the creation of the new MLC rebel group, which was not linked to the Rwandan military. According to the DRC, Uganda was closely involved in the recruitment, education, training, equipment and supplying of the MLC and its military wing, the ALC. The DRC alleges that the close links between Uganda and the MLC were reflected in the formation of a united military front in combat operations against the FAC. The DRC maintains that in a number of cases the UPDF provided tactical support, including artillery cover, for ALC troops. Thus, the DRC contends that the UPDF and the ALC constantly acted in close co-operation during many battles against the Congolese regular army. The DRC concludes that Uganda, "in addition to providing decisive military support for several Congolese rebel movements, has been extremely active in supplying these movements with a political and diplomatic framework".

33. The DRC notes that the events in its territory were viewed with grave concern by the international community. The DRC claims that at the Victoria Falls Summit, which took place on 7 and 8 August 1998, and

was attended by representatives of the DRC, Uganda, Namibia, Rwanda, Tanzania, Zambia and Zimbabwe,

> "member countries of the SADC [Southern African Development Community], following the submission of an application by the Democratic Republic of the Congo, unequivocally condemned the aggression suffered by the Congo and the occupation of certain parts of its national territory".

The DRC further points out that, in an attempt to help resolve the conflict, the SADC, the States of East Africa and the Organization of African Unity (OAU) initiated various diplomatic efforts, which included a series of meetings between the belligerents and the representatives of various African States, also known as the "Lusaka Process". On 18 April 1999 the Sirte Peace Agreement was concluded, in the framework of the Lusaka peace process, between President Kabila of the DRC and President Museveni of Uganda. The DRC explains that, under this Agreement, Uganda undertook to "cease hostilities immediately" and to withdraw its troops from the territory of the DRC. The Lusaka Agreement was signed by the Heads of State of the DRC, Uganda and other African States (namely, Angola, Namibia, Rwanda and Zimbabwe) on 10 July 1999 and by the MLC and RCD (rebel groups) on 1 August 1999 and 31 August 1999, respectively. The DRC explains that this Agreement provided for the cessation of hostilities between the parties' forces, the disengagement of these forces, the deployment of OAU verifiers and of the United Nations Mission in the Democratic Republic of the Congo (hereinafter "MONUC"), to be followed by the withdrawal of foreign forces. On 8 April 2000 and 6 December 2000 Uganda signed troop disengagement agreements known as the Kampala plan and the Harare plan.

34. According to the DRC, following the withdrawal of Ugandan troops from its territory in June 2003, Uganda has continued to provide arms to ethnic groups confronting one another in the Ituri region, on the boundary with Uganda. The DRC further argues that Uganda "has left behind it a fine network of warlords, whom it is still supplying with arms and who themselves continue to plunder the wealth of the DRC on behalf of Ugandan and foreign businessmen".

*

35. Uganda, for its part, claims that from early 1994 through to approximately May 1997 the Congolese authorities provided military and logistical support to anti-Ugandan insurgents. Uganda asserts that from the beginning of this period it was the victim of cross-border attacks from these armed rebels in eastern Congo. It claims that, in response to these attacks, until late 1997 it confined its actions to its own side of the

Congo-Uganda border, by reinforcing its military positions along the frontier.

36. According to Uganda, in 1997 the AFDL, made up of a loose alliance of the combined forces of the various Congolese rebel groups, together with the Rwandan army, overthrew President Mobutu's régime in Zaire. Uganda asserts that upon assuming power on 29 May 1997, President Kabila invited Uganda to deploy its own troops in eastern Congo in view of the fact that the Congolese army did not have the resources to control the remote eastern provinces, and in order to "eliminate" the anti-Ugandan insurgents operating in that zone and to secure the border region. According to Uganda, it was on this understanding that Ugandan troops crossed into eastern Congo and established bases on Congolese territory. Uganda further alleges that in December 1997, at President Kabila's further invitation, Uganda sent two UPDF battalions into eastern Congo, followed by a third one in April 1998, also at the invitation of the Congolese President. Uganda states that on 27 April 1998 the Protocol on Security along the Common Border was signed by the two Governments in order to reaffirm the invitation of the DRC to Uganda to deploy its troops in eastern Congo as well as to commit the armed forces of both countries to jointly combat the anti-Ugandan insurgents in Congolese territory and secure the border region. Uganda maintains that three Ugandan battalions were accordingly stationed in the border region of the Ruwenzori Mountains within the DRC.

37. However, Uganda claims that between May and July 1998 President Kabila broke off his alliances with Rwanda and Uganda and established new alliances with Chad, the Sudan and various anti-Ugandan insurgent groups.

With regard to the official statement by President Kabila published on 28 July 1998 calling for the withdrawal of Rwandan troops from Congolese territory, Uganda interprets this statement as not affecting Uganda, arguing that it made no mention of the Ugandan armed forces that were then in the DRC pursuant to President Kabila's earlier invitation and to the Protocol of 27 April 1998.

38. Uganda affirms that it had no involvement in or foreknowledge of the FAC rebellion that occurred in eastern Congo on 2 August 1998 nor of the attempted coup d'état against President Kabila on the night of 2-3 August 1998. Uganda likewise denies that it participated in the attack on the Kitona military base. According to Uganda, on 4 August 1998 there were no Ugandan troops present in either Goma or Kitona, or on board the planes referred to by the DRC.

39. Uganda further claims that it did not send additional troops into the DRC during August 1998. Uganda states, however, that by August-September 1998, as the DRC and the Sudan prepared to attack Ugandan forces in eastern Congo, its security situation had become untenable. Uganda submits that "[i]n response to this grave threat, and in the lawful exercise of its sovereign right of self-defence", it made a decision on

11 September 1998 to augment its forces in eastern Congo and to gain control of the strategic airfields and river ports in northern and eastern Congo in order to stop the combined forces of the Congolese and Sudanese armies as well as the anti-Ugandan insurgent groups from reaching Uganda's borders. According to Uganda, the military operations to take control of these key positions began on 20 September 1998. Uganda states that by February 1999 Ugandan forces succeeded in occupying all the key airfields and river ports that served as gateways to eastern Congo and the Ugandan border. Uganda maintains that on 3 July 1999 its forces gained control of the airport at Gbadolite and drove all Sudanese forces out of the DRC.

40. Uganda notes that on 10 July 1999 the on-going regional peace process led to the signing of a peace agreement in Lusaka by the Heads of State of Uganda, the DRC, Rwanda, Zimbabwe, Angola and Namibia, followed by the Kampala (8 April 2000) and Harare (6 December 2000) Disengagement Plans. Uganda points out that, although no immediate or unilateral withdrawal was called for, it began withdrawing five battalions from the DRC on 22 June 2000. On 20 February 2001 Uganda announced that it would withdraw two more battalions from the DRC. On 6 September 2002 Uganda and the DRC concluded a peace agreement in Luanda (Agreement between the Governments of the Democratic Republic of the Congo and the Republic of Uganda on Withdrawal of Ugandan Troops from the Democratic Republic of the Congo, Co-operation and Normalisation of Relations between the two Countries, hereinafter "the Luanda Agreement"). Under its terms Uganda agreed to withdraw from the DRC all Ugandan troops, except for those expressly authorized by the DRC to remain on the slopes of Mt. Ruwenzori. Uganda claims that, in fulfilment of its obligations under the Luanda Agreement, it completed the withdrawal of all of its troops from the DRC in June 2003. Uganda asserts that "[s]ince that time, not a single Ugandan soldier has been deployed inside the Congo".

41. As for the support for irregular forces operating in the DRC, Uganda states that it has never denied providing political and military assistance to the MLC and the RCD. However, Uganda asserts that it did not participate in the formation of the MLC and the RCD.

> "[I]t was only *after* the rebellion had broken out and *after* the RCD had been created that Uganda began to interact with the RCD, and, even then, Uganda's relationship with the RCD was strictly political until after the middle of September 1998." (Emphasis in the original.)

According to Uganda, its military support for the MLC and for the RCD began in January 1999 and March 1999 respectively. Moreover, Uganda argues that the nature and extent of its military support for the Congolese rebels was consistent with and limited to the requirements of self-defence. Uganda further states that it refrained from providing the rebels

with the kind or amount of support they would have required to achieve such far-reaching purposes as the conquest of territory or the overthrow of the Congolese Government.

* *

ISSUE OF CONSENT

42. The Court now turns to the various issues connected with the first submission of the DRC.

43. In response to the DRC's allegations of military and paramilitary activities amounting to aggression, Uganda states that from May 1997 (when President Laurent-Désiré Kabila assumed power in Kinshasa) until 11 September 1998 (the date on which Uganda states that it decided to respond on the basis of self-defence) it was present in the DRC with the latter's consent. It asserts that the DRC's consent to the presence of Ugandan forces was renewed in July 1999 by virtue of the terms of the Lusaka Agreement and extended thereafter. Uganda defends its military actions in the intervening period of 11 September 1998 to 10 July 1999 as lawful self-defence. The Court will examine each of Uganda's arguments in turn.

44. In a written answer to the question put to it by Judge Vereshchetin (see paragraph 22 above), the DRC clarified that its claims relate to actions by Uganda beginning in August 1998. However, as the Parties do not agree on the characterization of events in that month, the Court deems it appropriate first to analyse events which occurred a few months earlier, and the rules of international law applicable to them.

45. Relations between Laurent-Désiré Kabila and the Ugandan Government had been close, and with the coming to power of the former there was a common interest in controlling anti-government rebels who were active along the Congo-Uganda border, carrying out in particular cross-border attacks against Uganda. It seems certain that from mid-1997 and during the first part of 1998 Uganda was being allowed to engage in military action against anti-Ugandan rebels in the eastern part of Congolese territory. Uganda claims that its troops had been invited into eastern Congo by President Kabila when he came to power in May 1997. The DRC has acknowledged that "Ugandan troops were present on the territory of the Democratic Republic of the Congo with the consent of the country's lawful government". It is clear from the materials put before the Court that in the period preceding August 1998 the DRC did not object to Uganda's military presence and activities in its eastern border area. The written pleadings of the DRC make reference to authorized Ugandan operations from September 1997 onwards. There is reference to such authorized action by Uganda on 19 December 1997, in early February 1998 and again in early July 1998, when the DRC author-

ized the transfer of Ugandan units to Ntabi, in Congolese territory, in order to fight more effectively against the ADF.

46. A series of bilateral meetings between the two Governments took place in Kinshasa from 11 to 13 August 1997, in Kampala from 6 to 7 April 1998 and again in Kinshasa from 24 to 27 April 1998. This last meeting culminated in a Protocol on Security along the Common Border being signed on 27 April 1998 between the two countries, making reference, *inter alia*, to the desire "to put an end to the existence of the rebel groups operating on either side of the common border, namely in the Ruwenzori". The two parties agreed that their respective armies would "co-operate in order to insure security and peace along the common border". The DRC contends that these words do not constitute an "invitation or acceptance by either of the contracting parties to send its army into the other's territory". The Court believes that both the absence of any objection to the presence of Ugandan troops in the DRC in the preceding months, and the practice subsequent to the signing of the Protocol, support the view that the continued presence as before of Ugandan troops would be permitted by the DRC by virtue of the Protocol. Uganda told the Court that

> "[p]ursuant to the Protocol, Uganda sent a third battalion into eastern Congo, which brought her troop level up to approximately 2,000, and she continued military operations against the armed groups in the region both unilaterally and jointly with Congolese Government forces".

The DRC has not denied this fact nor that its authorities accepted this situation.

47. While the co-operation envisaged in the Protocol may be reasonably understood as having its effect in a continued authorization of Ugandan troops in the border area, it was not the legal basis for such authorization or consent. The source of an authorization or consent to the crossing of the border by these troops antedated the Protocol and this prior authorization or consent could thus be withdrawn at any time by the Government of the DRC, without further formalities being necessary.

48. The Court observes that when President Kabila came to power, the influence of Uganda and in particular Rwanda in the DRC became substantial. In this context it is worthy of note that many Rwandan officers held positions of high rank in the Congolese army and that Colonel James Kabarebe, of Rwandan nationality, was the Chief of Staff of the FAC (the armed forces of the DRC). From late spring 1998, President Kabila sought, for various reasons, to reduce this foreign influence; by mid-1998, relations between President Kabila and his former allies had

deteriorated. In light of these circumstances the presence of Rwandan troops on Congolese territory had in particular become a major concern for the Government of the DRC.

49. On 28 July 1998, an official statement by President Kabila was published, which read as follows:

> "The Supreme Commander of the Congolese National Armed Forces, the Head of State of the Republic of the Congo and the Minister of National Defence, advises the Congolese people that he has just terminated, with effect from this Monday 27 July 1998, the Rwandan military presence which has assisted us during the period of the country's liberation. Through these military forces, he would like to thank all of the Rwandan people for the solidarity they have demonstrated to date. He would also like to congratulate the democratic Congolese people on their generosity of spirit for having tolerated, provided shelter for and trained these friendly forces during their stay in our country. This marks the end of the presence of all foreign military forces in the Congo." *[Translation by the Registry.]*

50. The DRC has contended that, although there was no specific reference to Ugandan troops in the statement, the final phrase indicated that consent was withdrawn for Ugandan as well as Rwandan troops. It states that, having learned of a plotted coup, President Kabila "officially announced . . . the end of military co-operation with Rwanda and asked the Rwandan military to return to their own country, adding that this marked the end of the presence of foreign troops in the Congo". The DRC further explains that Ugandan forces were not mentioned because they were "very few in number in the Congo" and were not to be treated in the same way as the Rwandan forces, "who in the prevailing circumstances, were perceived as enemies suspected of seeking to overthrow the régime". Uganda, for its part, maintains that the President's statement was directed at Rwandan forces alone; that the final phrase of the statement was not tantamount to the inclusion of a reference to Ugandan troops; and that any withdrawal of consent for the presence of Ugandan troops would have required a formal denunciation, by the DRC, of the April 1998 Protocol.

51. The Court notes, first, that for reasons given above, no particular formalities would have been required for the DRC to withdraw its consent to the presence of Ugandan troops on its soil. As to the content of President Kabila's statement, the Court observes that, as a purely textual matter, the statement was ambiguous.

52. More pertinently, the Court draws attention to the fact that the consent that had been given to Uganda to place its forces in the DRC, and to engage in military operations, was not an open-ended consent. The DRC accepted that Uganda could act, or assist in acting, against rebels on the eastern border and in particular to stop them operating across the common border. Even had consent to the Ugandan military

presence extended much beyond the end of July 1998, the parameters of that consent, in terms of geographic location and objectives, would have remained thus restricted.

53. In the event, the issue of withdrawal of consent by the DRC, and that of expansion by Uganda of the scope and nature of its activities, went hand in hand. The Court observes that at the Victoria Falls Summit (see paragraph 33 above) the DRC accused Rwanda and Uganda of invading its territory. Thus, it appears evident to the Court that, whatever interpretation may be given to President Kabila's statement of 28 July 1998, any earlier consent by the DRC to the presence of Ugandan troops on its territory had at the latest been withdrawn by 8 August 1998, i.e. the closing date of the Victoria Falls Summit.

54. The Court recalls that, independent of the conflicting views as to when Congolese consent to the presence of Ugandan troops might have been withdrawn, the DRC has informed the Court that its claims against Uganda begin with what it terms an aggression commencing on 2 August 1998.

* *

FINDINGS OF FACT CONCERNING UGANDA'S USE OF FORCE IN RESPECT OF KITONA

55. The Court observes that the dispute about the commencement date of the military action by Uganda that was not covered by consent is, in the most part, directed at the legal characterization of events rather than at whether these events occurred. In some instances, however, Uganda denies that its troops were ever present at particular locations, the military action at Kitona being an important example. The DRC has informed the Court that from 2 August 1998 Uganda was involved in military activities in the DRC that violated international law, and that these were directed at the overthrow of President Kabila. According to the DRC, Ugandan forces (together with those of Rwanda) were involved on 4 August in heavy military action at Kitona, which lies in the west of the DRC some 1,800 km from the Ugandan frontier. Virtually simultaneously Uganda engaged in military action in the east, first in Kivu and then in Orientale province. The DRC contends that this was followed by an invasion of Equateur province in north-west Congo. The DRC maintains that "[a]fter a few months of advances, the Ugandan army had thus conquered several hundred thousand square kilometres of territory". The DRC provided a sketch-map to illustrate the alleged scope and reach of Ugandan military activity.

56. Uganda characterizes the situation at the beginning of August

1998 as that of a state of civil war in the DRC — a situation in which President Kabila had turned to neighbouring Powers for assistance, including, notably, the Sudan (see paragraphs 120-129 below). These events caused great security concerns to Uganda. Uganda regarded the Sudan as a long-time enemy, which now, as a result of the invitation from President Kabila, had a free rein to act against Uganda and was better placed strategically to do so. Uganda strongly denies that it engaged in military activity beyond the eastern border area until 11 September. That military activity by its troops occurred in the east during August is not denied by Uganda. But it insists that it was not part of a plan agreed with Rwanda to overthrow President Kabila: it was rather actions taken by virtue of the consent given by the DRC to the operations by Uganda in the east, along their common border.

57. In accordance with its practice, the Court will first make its own determination of the facts and then apply the relevant rules of international law to the facts which it has found to have existed. The Court will not attempt a determination of the overall factual situation as it applied to the vast territory of the DRC from August 1998 till July 2003. It will make such findings of fact as are necessary for it to be able to respond to the first submission of the DRC, the defences offered by Uganda, and the first submissions of Uganda as regards its counter-claims. It is not the task of the Court to make findings of fact (even if it were in a position to do so) beyond these parameters.

58. These findings of fact necessarily entail an assessment of the evidence. The Court has in this case been presented with a vast amount of materials proffered by the Parties in support of their versions of the facts. The Court has not only the task of deciding which of those materials must be considered relevant, but also the duty to determine which of them have probative value with regard to the alleged facts. The greater part of these evidentiary materials appear in the annexes of the Parties to their written pleadings. The Parties were also authorized by the Court to produce new documents at a later stage. In the event, these contained important items. There has also been reference, in both the written and the oral pleadings, to material not annexed to the written pleadings but which the Court has treated as "part of a publication readily available" under Article 56, paragraph 4, of its Rules of Court. Those, too, have been examined by the Court for purposes of its determination of the relevant facts.

59. As it has done in the past, the Court will examine the facts relevant to each of the component elements of the claims advanced by the Parties. In so doing, it will identify the documents relied on and make its own clear assessment of their weight, reliability and value. In accordance with

its prior practice, the Court will explain what items it should eliminate from further consideration (see *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 50, para. 85; see equally the practice followed in the case concerning *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 3).

60. Both Parties have presented the Court with a vast amount of documentation. The documents advanced in supporting findings of fact in the present case include, *inter alia*, resolutions of the United Nations Security Council, reports of the Special Rapporteur of the Commission on Human Rights, reports and briefings of the OAU, communiqués by Heads of State, letters of the Parties to the Security Council, reports of the Secretary-General on MONUC, reports of the United Nations Panels of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (hereinafter "United Nations Panel reports"), the White Paper prepared by the Congolese Ministry of Human Rights, the Porter Commission Report, the Ugandan White Paper on the Porter Commission Report, books, reports by non-governmental organizations and press reports.

61. The Court will treat with caution evidentiary materials specially prepared for this case and also materials emanating from a single source. It will prefer contemporaneous evidence from persons with direct knowledge. It will give particular attention to reliable evidence acknowledging facts or conduct unfavourable to the State represented by the person making them (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 41. para. 64). The Court will also give weight to evidence that has not, even before this litigation, been challenged by impartial persons for the correctness of what it contains. The Court moreover notes that evidence obtained by examination of persons directly involved, and who were subsequently cross-examined by judges skilled in examination and experienced in assessing large amounts of factual information, some of it of a technical nature, merits special attention. The Court thus will give appropriate consideration to the Report of the Porter Commission, which gathered evidence in this manner. The Court further notes that, since its publication, there has been no challenge to the credibility of this Report, which has been accepted by both Parties.

62. The Court will embark upon its task by determining whether it has indeed been proved to its satisfaction that Uganda invaded the DRC in early August 1998 and took part in the Kitona airborne operation on 4 August 1998. In the Memorial the DRC claimed that on 4 August 1998 three Boeing aircraft from Congo Airlines and Blue Airlines, and a Con-

golese plane from Lignes Aériennes Congolaises (LAC), were boarded by armed forces from "aggressor countries", including Uganda, as they were about to leave Goma Airport. It was claimed that, after refuelling and taking on board ammunition in Kigali, they flew to the airbase in Kitona, some 1,800 km from Uganda's border, where several contingents of foreign soldiers, including Ugandans, landed. It was claimed by the DRC that these forces, among which were Ugandan troops, took Kitona, Boma, Matadi and Inga, which they looted, as well as the Inga Dam. The DRC claimed that the aim of Uganda and Rwanda was to march to Kinshasa and rapidly overthrow President Kabila.

63. Uganda for its part has denied that its forces participated in the airborne assault launched at Kitona, insisting that at the beginning of August the only UPDF troops in the DRC were the three battalions in Beni and Butembo, present with the consent of the Congolese authorities. In the oral pleadings Uganda stated that it had been invited by Rwanda to join forces with it in displacing President Kabila, but had declined to do so. No evidence was advanced by either Party in relation to this contention. The Court accordingly does not need to address the question of "intention" and will concentrate on the factual evidence, as such.

64. In its Memorial the DRC relied on "testimonies of Ugandan and other soldiers, who were captured and taken prisoners in their abortive attempt to seize Kinshasa". No further details were provided, however. No such testimonies were ever produced to the Court, either in the later written pleadings or in the oral pleadings. Certain testimonies by persons of Congolese nationality were produced, however. These include an interview with the Congo airline pilot, in which he refers — in connection with the Kitona airborne operation — to the presence of both Rwandans and Ugandans at Hotel Nyira. The Court notes that this statement was prepared more than three years after the alleged events and some 20 months after the DRC lodged with the Court its Application commencing proceedings. It contains no signature as such, though the pilot says he "signed on the manuscript". The interview was conducted by the Assistant Legal Adviser at the Service for the Military Detection of Unpatriotic Activities in the DRC. Notwithstanding the DRC's position that there is nothing in this or other such witness statements to suggest that they were obtained under duress, the setting and context cannot therefore be regarded as conducive to impartiality. The same conclusion has to be reached as regards the interview with Issa Kisaka Kakule, a former rebel. Even in the absence of these deficiencies, the statement of the airline pilot cannot prove the arrival of Ugandan forces and their participation in the military operation in Kitona. The statement of Lieutenant Colonel Viala Mbeang Ilwa was more contemporaneous (15 October 1998) and is of some particular interest, as he was the pilot of the plane said to have been hijacked. In it he asserts that Ugandan officers at the hotel informed him

of their plan to topple President Kabila within ten days. There is, however, no indication of how this statement was provided, or in what circumstances. The same is true of the statement of Commander Mpele-Mpele regarding air traffic allegedly indicating Ugandan participation in the Kitona operation.

65. The Court has been presented with some evidence concerning a Ugandan national, referred to by the DRC as Salim Byaruhanga, said to be a prisoner of war. The record of an interview following the visit of Ugandan Senator Aggrey Awori consists of a translation, unsigned by the translator. Later, the DRC produced for the Court a video, said to verify the meeting between Mr. Awori and Ugandan prisoners. The video shows four men being asked questions by another addressing them in a language of the region. One of these says his name is "Salim Byaruhanga". There is, however, no translation provided, nor any information as to the source of this tape. There do exist letters of August 2001 passing between the International Committee of the Red Cross (ICRC) and the Congolese Government on the exchange of Ugandan prisoners, one of whom is named as Salim Byaruhanga. However, the ICRC never refers to this person as a member of the UPDF. Uganda has also furnished the Court with a notarized affidavit of the Chief of Staff of the UPDF saying that there were no Ugandan prisoners of war in the DRC, nor any officer by the name of Salim Byaruhanga. This affidavit is stated to have been prepared in November 2002, in view of the forthcoming case before the International Court of Justice. The Court recalls that it has elsewhere observed that a member of the government of a State engaged in litigation before this Court — and especially litigation relating to armed conflict — "will probably tend to identify himself with the interests of his country" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 43, para. 70). The same may be said of a senior military officer of such a State, and "while in no way impugning the honour or veracity" of such a person, the Court should "treat such evidence with great reserve" *(ibid.)*.

66. The Court observes that, even if such a person existed and even if he was a prisoner of war, there is nothing in the ICRC letters that refers to his participation (or to the participation of other Ugandan nationals) at Kitona. Equally, the PANA Agency press communiqué of 17 September 2001 mentions Salim Byaruhanga when referring to the release of four Ugandan soldiers taken prisoner in 1998 and 1999 — but there is no reference to participation in action in Kitona.

67. The press statements issued by the Democratic Party of Uganda on 14 and 18 September 1998, which refer to Ugandan troops being

flown to western Congo from Gala Airport, make no reference to the location of Kitona or to events there on 4 August.

68. Nor can the truth about the Kitona airborne operation be established by extracts from a few newspapers, or magazine articles, which rely on a single source (Agence France Presse, 2 September 1998); on an interested source (Integrated Regional Information Networks (hereinafter IRIN)), or give no sources at all (Pierre Barbancey, *Regards 41*). The Court has explained in an earlier case that press information may be useful as evidence when it is "wholly consistent and concordant as to the main facts and circumstances of the case" (*United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 10, para. 13), but that particular caution should be shown in this area. The Court observes that this requirement of consistency and concordance is not present in the journalistic accounts. For example, while Professor Weiss referred to 150 Ugandan troops under the command of the Rwandan Colonel Kaberebe at Kitona in an article relating to the events in the DRC, the Belgian journalist Mrs. Braekman wrote about rebels fleeing a Ugandan battalion of several hundred men.

69. The Court cannot give weight to claims made by the DRC that a Ugandan tank was used in the Kitona operation. It would seem that a tank of the type claimed to be "Ugandan" was captured at Kasangulu. This type of tank a — T-55 — was in fact one used also by the DRC itself and by Rwanda. The DRC does not clarify in its argument whether a single tank was transported from Uganda, nor does it specify, with supporting evidence, on which of the planes mentioned (a Boeing 727, Ilyushin 76, Boeing 707 or Antonov 32) it was transported from Uganda. The reference by the DRC to the picture of Mr. Bemba, the leader of the MLC, on a tank of this type in his book *Le choix de la liberté*, published in 2001, cannot prove its use by Ugandan forces in Kitona. Indeed, the Court finds it more pertinent that in his book Mr. Bemba makes no mention of the involvement of Ugandan troops at Kitona, but rather confirms that Rwanda took control of the military base in Kitona.

70. The Court has also noted that contemporaneous documentation clearly indicated that at the time the DRC regarded the Kitona operation as having been carried out by Rwanda. Thus the White Paper annexed to the Application of the DRC states that between 600 and 800 Rwandan soldiers were involved in the Kitona operation on 4 August. The letter sent by the Permanent Representative of the DRC on 2 September 1998 to the President of the Security Council referred to 800 soldiers from Rwanda being involved in the Kitona operation on 4 August 1998. This perception seems to be confirmed by the report of the Special Rapporteur

of the Commission on Human Rights in February 1999, where reference is made to Rwandan troops arriving in Kitona on 4 August in order to attack Kinshasa. The press conference given at United Nations Headquarters in New York by the Permanent Representative of the DRC to the United Nations on 13 August 1998 only referred to Rwandan soldiers conducting the Kitona airborne operation on 4 August, and to Ugandan troops advancing upon Bunia on 9 August.

71. The Court thus concludes that, on the basis of the evidence before it, it has not been established to its satisfaction that Uganda participated in the attack on Kitona on 4 August 1998.

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Findings of Fact: Military Action in the East of the DRC and in Other Areas of That Country

72. The Court will next analyse the claim made by the DRC of military action by Uganda in the east of the DRC during August 1998. The facts regarding this action are relatively little contested between the Parties. Their dispute is as to how these facts should be characterized. The Court must first establish which relevant facts it regards as having been convincingly established by the evidence, and which thus fall for scrutiny by reference to the applicable rules of international law.

73. The Court finds it convenient at this juncture to explain that its determination of the facts as to the Ugandan presence at, and taking of, certain locations is independent of the sketch-map evidence offered by the Parties in support of their claims in this regard. In the response given by the DRC to the question of Judge Kooijmans, reference was made to the sketch-map provided by the DRC (see paragraph 55 above) to confirm the scope of the Ugandan "invasion and occupation". This sketch-map is based on a map of approximate deployment of forces in the DRC contained in a Report (Africa Report No. 26) prepared by International Crisis Group (hereinafter ICG), an independent, non-governmental body, whose reports are based on information and assessment from the field. On the ICG map, forces of the MLC and Uganda are shown to be "deployed" in certain positions to the north-west (Gbadolite, Zongo, Gemena, Bondo, Buta, Bumba, Lisala, Bomongo, Basankusu, and Mbandaka); and Ugandan and "RCD-Wamba" (officially known as RCD-Kisangani) forces are shown as "deployed" on the eastern frontier at Bunia, Beni and Isiro. The presence of Uganda and RCD-Wamba forces is shown at two further unspecified locations.

74. As to the sketch-maps which Uganda provided at the request of Judge Kooijmans, the DRC argues that they are too late to be relied on and were unilaterally prepared without any reference to independent source materials.

75. In the view of the Court, these maps lack the authority and credibility, tested against other evidence, that is required for the Court to place reliance on them. They are at best an aid to the understanding of what is contended by the Parties. These sketch-maps necessarily lack precision. With reference to the ICG map (see paragraph 73 above), there is also the issue of whether MLC forces deployed in the north-west may, without yet further findings of fact and law, be treated as "Ugandan" forces for purposes of the DRC's claim of invasion and occupation. The same is true for the RCD-Wamba forces deployed in the north-east.

76. Uganda has stated, in its response to the question put to it during the oral proceedings by Judge Kooijmans (see paragraph 22 above), that as of 1 August 1998

> "there were three battalions of UPDF troops — not exceeding 2,000 soldiers — in the eastern border areas of the DRC, particularly in the northern part of North Kivu Province (around Beni and Butembo) and the southern part of Orientale Province (around Bunia)".

Uganda states that it "modestly augmented the UPDF presence in the Eastern border" in response to various events. It has informed the Court that a UPDF battalion went into Bunia on 13 August, and that a single battalion had been sent to Watsa "to maintain the situation between Bunia and the DRC's border with Sudan". Uganda further states in its response to Judge Kooijmans' question that by the end of August 1998 there were no Ugandan forces present in South Kivu, Maniema or Kasai Oriental province; "nor were Ugandan forces present in North Kivu Province south of the vicinity of Butembo".

77. The DRC has indicated that Beni and Butembo were taken by Ugandan troops on 6 August 1998, Bunia on 13 August and Watsa on 25 August.

78. The Court finds that most evidence of events in this period is indirect and less reliable than that which emerges from statements made under oath before the Porter Commission. The Court has already noted that statements "emanating from high-ranking official political figures, sometimes indeed of the highest rank, are of particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 41, para. 64). The Court believes the same to be the case when such statements against interest are made by senior military officers given the objective circumstances in which those statements were taken. Accordingly, the Court finds it relevant that before the Porter Commission, Brigadier General Kazini, who was commander of the Ugandan forces in the DRC, referred

to "the capture of Beni, that was on 7 August 1998".

79. He also referred to 8 August 1998 as the date of capture of Beni, 7 August being the date "that was the fighting (when it took place) and our troops occupied Beni". The Court is satisfied that Beni was taken on 7 August, and Bunia on 13 August. There is some small uncertainty about the precise date of the taking of Watsa, though none as to the fact of its being taken in this period. A report by Lieutenant Colonel Waswa (Annexure G, Porter Commission Report) asserts that the "7[th] infantry B[attalio]n operational force" entered the DRC at Aru on 10 August, leaving there on 14 August, and "went to Watsa via Duruba 250 km away from the Uganda-Congo border. The force spent one day at Duruba, i.e., 23 August 1998 and proceeded to Watsa which is 40 km where we arrived on 24 August 1998." Twenty days were said by him to have been spent at Watsa, where the airport was secured. Notwithstanding that this report was dated 18 May 2001, the Court notes that it is detailed, specific and falls within the rubric of admission against interest to which the Court will give weight. However, Justice Porter refers to 29 August as the relevant date for Watsa; whereas, in its response to the question of Judge Kooijmans, the DRC gives the date of 25 August for the "prise de Watsa" (taking of Watsa).

80. The Court will now consider the events of September 1998 on the basis of the evidence before it. Uganda acknowledges that it sent part of a battalion to Kisangani Airport, to guard that facility, on 1 September 1998. It has been amply demonstrated that on several later occasions, notably in August 1999 and in May and June 2000, Uganda engaged in large-scale fighting in Kisangani against Rwandan forces, which were also present there.

81. The Court notes that a schedule was given by the Ugandan military to the Porter Commission containing a composite listing of locations and corresponding "dates of capture". The Court observes that the period it covers stops short of the period covered by the DRC's claims. This evidence was put before the Court by Uganda. It includes references to locations not mentioned by the DRC, whose list, contained in the response to Judge Kooijmans's question, is limited to places said to have been "taken". The Court simply observes that Ugandan evidence before the Porter Commission in relation to the month of September 1998 refers to Kisangani (1 September); Munubele (17 September); Bengamisa (18 September); Banalia (19 September); Isiro (20 September); Faladje (23 September); and Tele Bridge (29 September). Kisangani (1 September) and Isiro (20 September) are acknowledged by Uganda as having been "taken" by its forces (and not just as locations passed through).

82. As for the events of October 1998, Uganda has confirmed that it was at Buta on 3 October and Aketi on 6 October. The DRC lists the taking of Aketi as 8 November (response to the question put by Judge Kooijmans), but the Court sees no reason for this date to be preferred.

Both Parties agree that Buta was taken on 3 October and Dulia on 27 October. The Porter Commission was informed that Ugandan troops were present at Bafwasende on 12 October.

83. The DRC has alleged that Kindu was taken by Ugandan troops on 20 October 1998; this was denied in some detail by Uganda in its Rejoinder. No response was made in the oral pleadings by the DRC to the reasons given by Uganda for denying it had taken Kindu. Nor is Kindu in the listing given by the Ugandan military authorities to the Porter Commission. The Court does not feel it has convincing evidence as to Kindu having been taken by Ugandan forces in October 1998.

84. There is agreement between the Parties that Bumba was taken on 17 November 1998.

85. Uganda claims that Lisala was taken on 12 December 1998. The list contained in the Porter Commission exhibits makes reference to the location of Benda, with the date of 13 December. Also listed are Titure (20 December) and Poko (22 December). Uganda insists it "came to" Businga on 28 December 1998 and not in early February 1999 as claimed by the DRC; and to Gemena on 25 December 1998, and not on 10 July 1999 as also claimed by the DRC.

These discrepancies do not favour the case of Uganda and the Court accepts the earlier dates claimed by Uganda.

86. The DRC claims that Ango was taken on 5 January 1999, and this is agreed by Uganda. There also appears in the Ugandan "location/dates of capture" list, Lino-Mbambi (2 January 1999) and Lino (same date), Akula Port (4 February); Kuna (1 March); Ngai (4 March); Bonzanga (19 March); Pumtsi (31 March); Bondo (28 April); Katete (28 April); Baso Adia (17 May); Ndanga (17 May); Bongandanga (22 May); Wapinda (23 May); Kalawa Junchai (28 May); Bosobata (30 May); Bosobolo (9 June); Abuzi (17 June); Nduu (22 June); Pimu Bridge (27 June); Busingaloko Bridge (28 June); Yakoma (30 June); and Bogbonga (30 June). All of these appear to be locations which Ugandan forces were rapidly traversing. The sole place claimed by the DRC to have been "taken" in this period was Mobeka — a precise date for which is given by Uganda (30 June 1999).

87. The DRC claims Gbadolite to have been taken on 3 July 1999 and that fact is agreed by Uganda. The Ugandan list refers also to Mowaka (1 July); Ebonga (2 July); Pambwa Junction (2 July); Bosomera (3 July); Djombo (4 July); Bokota (4 July); Bolomudanda Junction (4 July); the crossing of Yakoma Bridge (4 July); Mabaye (4 July); Businga (7 July); Katakoli (8 July); Libenge (29 July); Zongo (30 July); and Makanza (31 July).

88. The DRC also claims Bongandanga and Basankusu (two locations in the extreme south of Equateur province) to have been taken on 30 November 1999; Bomorge, Moboza and Dongo at unspecified dates

in February 2000; Inese and Bururu in April 2000; and Mobenzene in June 2000.

89. There is considerable controversy between the Parties over the DRC's claim regarding towns taken after 10 July 1999. The Court recalls that on this date the Parties had agreed to a ceasefire and to all the further provisions of the Lusaka Agreement. Uganda has insisted that Gemena was taken in December 1998 and the Court finds this date more plausible. Uganda further states in its observations on the DRC's response to the question of Judge Kooijmans that "there is no evidence that Ugandan forces were ever in Mobenzene, Bururu, Bomongo, and Moboza at any time". The Court observes that Uganda's list before the Porter Commission also makes no reference to Dongo at all during this period.

90. Uganda limits itself to stating that equally no military offensives were initiated by Uganda at Zongo, Basankusu and Dongo during the post-Lusaka periods; rather, "the MLC, with some limited Ugandan assistance, repulsed [attacks by the FAC in violation of the Lusaka Agreement]".

91. The Court makes no findings as to the responsibility of each of the Parties for any violations of the Lusaka Agreement. It confines itself to stating that it has not received convincing evidence that Ugandan forces were present at Mobenzene, Bururu, Bomongo and Moboza in the period under consideration by the Court for purposes of responding to the final submissions of the DRC.

* *

Did the Lusaka, Kampala and Harare Agreements Constitute any Consent of the DRC to the Presence of Ugandan Troops?

92. It is the position of Uganda that its military actions until 11 September 1998 were carried out with the consent of the DRC, that from 11 September 1998 until 10 July 1999 it was acting in self-defence, and that thereafter the presence of its soldiers was again consented to under the Lusaka Agreement.

The Court will first consider whether the Lusaka Agreement, the Kampala and Harare Disengagement Plans and the Luanda Agreement constituted consent to the presence of Ugandan troops on the territory of the DRC.

93. The Court issued on 29 November 2001 an Order regarding counter-claims contained in the Counter-Memorial of Uganda. The Court found certain of Uganda's counter-claims to be admissible as such. However, it found Uganda's third counter-claim, alleging violations by the DRC of the Lusaka Agreement, to be "not directly connected with the subject-matter of the Congo's claims". Accordingly, the Court found this counter-claim not admissible under Article 80, paragraph 1, of the Rules of Court.

94. It does not follow, however, that the Lusaka Agreement is thereby excluded from all consideration by the Court. Its terms may certainly be examined in the context of responding to Uganda's contention that, according to its provisions, consent was given by the DRC to the presence of Ugandan troops from the date of its conclusion (10 July 1999) until all the requirements contained therein should have been fulfilled.

95. The Lusaka Agreement does not refer to "consent". It confines itself to providing that "[t]he final withdrawal of all foreign forces from the national territory of the DRC shall be carried out in accordance with the Calendar in Annex 'B' of this Agreement and a withdrawal schedule to be prepared by the UN, the OAU and the JMC [Joint Military Commission]" (Art. III, para. 12). Under the terms of Annex "B", the Calendar for the Implementation of the Ceasefire Agreement was dependent upon a series of designated "Major Events" which were to follow upon the official signature of the Agreement ("D-Day"). This "Orderly Withdrawal of all Foreign Forces" was to occur on "D-Day plus 180 days". It was provided that, pending that withdrawal, "[a]ll forces shall remain in the declared and recorded locations" in which they were present at the date of signature of the Agreement (Ann. A, Art. 11.4).

96. The Court first observes that nothing in the provisions of the Lusaka Agreement can be interpreted as an affirmation that the security interests of Uganda had already required the presence of Ugandan forces on the territory of the DRC as from September 1998, as claimed by Uganda in the oral proceedings.

97. The Lusaka Agreement is, as Uganda argues, more than a mere ceasefire agreement, in that it lays down various "principles" (Art. III) which cover both the internal situation within the DRC and its relations with its neighbours. The three annexes appended to the Agreement deal with these matters in some considerable detail. The Agreement goes beyond the mere ordering of the parties to cease hostilities; it provides a framework to facilitate the orderly withdrawal of all foreign forces to a stable and secure environment. The Court observes that the letter from the Secretary-General of the United Nations to the President of Uganda of 4 May 2001, calling for Uganda to adhere to the agreed timetable for orderly withdrawal, is to be read in that light. It carries no implication as to the Ugandan military presence having been accepted as lawful. The overall provisions of the Lusaka Agreement acknowledge the importance of internal stability in the DRC for all of its neighbours. However, the Court cannot accept the argument made by Uganda in the oral proceedings that the Lusaka Agreement constituted "an acceptance by all parties of Uganda's justification for sending additional troops into the DRC between mid-September 1998 and mid-July 1999".

98. A more complex question, on which the Parties took clearly

opposed positions, was whether the calendar for withdrawal and its relationship to the series of "Major Events", taken together with the reference to the "D-Day plus 180 days", constituted consent by the DRC to the presence of Ugandan forces for at least 180 days from 10 July 1999 — and indeed beyond that time if the envisaged necessary "Major Events" did not occur.

99. The Court is of the view that, notwithstanding the special features of the Lusaka Agreement just described, this conclusion cannot be drawn. The Agreement took as its starting point the realities on the ground. Among those realities were the major Ugandan military deployment across vast areas of the DRC and the massive loss of life over the preceding months. The arrangements made at Lusaka, to progress towards withdrawal of foreign forces and an eventual peace, with security for all concerned, were directed at these factors on the ground and at the realities of the unstable political and security situation. The provisions of the Lusaka Agreement thus represented an agreed *modus operandi* for the parties. They stipulated how the parties should move forward. They did not purport to qualify the Ugandan military presence in legal terms. In accepting this *modus operandi* the DRC did not "consent" to the presence of Ugandan troops. It simply concurred that there should be a process to end that reality in an orderly fashion. The DRC was willing to proceed from the situation on the ground as it existed and in the manner agreed as most likely to secure the result of a withdrawal of foreign troops in a stable environment. But it did not thereby recognize the situation on the ground as legal, either before the Lusaka Agreement or in the period that would pass until the fulfilment of its terms.

100. In resolution 1234 of 9 April 1999 the Security Council had called for the "immediate signing of a ceasefire agreement" allowing for, *inter alia*, "the orderly withdrawal of all foreign forces". The Security Council fully appreciated that this withdrawal would entail political and security elements, as shown in paragraphs 4 and 5 of resolution 1234 (1999). This call was reflected three months later in the Lusaka Agreement. But these arrangements did not preclude the Security Council from continuing to identify Uganda and Rwanda as having violated the sovereignty and territorial integrity of the DRC and as being under an obligation to withdraw their forces "without further delay, in conformity with the timetable of the Ceasefire Agreement" (Security Council resolution 1304, 16 June 2000), i.e., without any delay to the *modus operandi* provisions agreed upon by the parties.

101. This conclusion as to the effect of the Lusaka Agreement upon the legality of the presence of Ugandan troops on Congolese territory did not change with the revisions to the timetable that became necessary. The

Kampala Disengagement Plan of 8 April 2000 and the Harare Disengagement Plan of 6 December 2000 provided for new schedules for withdrawal, it having become apparent that the original schedule in the Annex to the Lusaka Agreement was unrealistic. While the status of Ugandan troops remained unchanged, the delay in relation to the D-Day plus 180 days envisaged in the Lusaka Agreement likewise did not change the legal status of the presence of Uganda, all parties having agreed to these delays to the withdrawal calendar.

102. The Luanda Agreement, a bilateral agreement between the DRC and Uganda on "withdrawal of Ugandan troops from the Democratic Republic of the Congo, co-operation and normalisation of relations between the two countries", alters the terms of the multilateral Lusaka Agreement. The other parties offered no objection.

103. The withdrawal of Ugandan forces was now to be carried out "in accordance with the Implementation Plan marked Annex "A' and attached thereto" (Art. 1, para. 1). This envisaged the completion of withdrawal within 100 days after signature, save for the areas of Gbadolite, Beni and their vicinities, where there was to be an immediate withdrawal of troops (Art. 1, para. 2). The Parties also agreed that

> "the Ugandan troops shall remain on the slopes of Mt. Ruwenzori until the Parties put in place security mechanisms guaranteeing Uganda's security, including training and co-ordinated patrol of the common border".

104. The Court observes that, as with the Lusaka Agreement, none of these elements purport generally to determine that Ugandan forces had been legally present on the territory of the DRC. The Luanda Agreement revised the *modus operandi* for achieving the withdrawal of Ugandan forces in a stable security situation. It was now agreed — without reference to whether or not Ugandan forces had been present in the area when the agreement was signed, and to whether any such presence was lawful — that their presence on Mount Ruwenzori should be authorized, if need be, after the withdrawal elsewhere had been completed until appropriate security mechanisms had been put in place. The Court observes that this reflects the acknowledgment by both Parties of Uganda's security needs in the area, without pronouncing upon the legality of prior Ugandan military actions there or elsewhere.

105. The Court thus concludes that the various treaties directed to achieving and maintaining a ceasefire, the withdrawal of foreign forces and the stabilization of relations between the DRC and Uganda did not (save for the limited exception regarding the border region of the Ruwenzori Mountains contained in the Luanda Agreement) constitute consent by the DRC to the presence of Ugandan troops on its territory for the period after July 1999, in the sense of validating that presence in law.

* *

SELF-DEFENCE IN THE LIGHT OF PROVEN FACTS

106. The Court has already said that, on the basis of the evidence before it, it has not been established to its satisfaction that Uganda participated in the attack on Kitona on 4 August 1998 (see paragraph 71 above). The Court has also indicated that with regard to the presence of Ugandan troops on Congolese territory near to the common border after the end of July 1998, President Kabila's statement on 28 July 1998 was ambiguous (see paragraph 51 above). The Court has further found that any earlier consent by the DRC to the presence of Ugandan troops on its territory had at the latest been withdrawn by 8 August 1998 (see paragraph 53 above). The Court now turns to examine whether Uganda's military activities starting from this date could be justified as actions in self-defence.

107. The DRC has contended that Uganda invaded on 2 August 1998, beginning with a major airborne operation at Kitona in the west of the DRC, then rapidly capturing or taking towns in the east, and then, continuing to the north-west of the country. According to the DRC, some of this military action was taken by the UPDF alone or was taken in conjunction with anti-government rebels and/or with Rwanda. It submits that Uganda was soon in occupation of a third of the DRC and that its forces only left in April 2003.

108. Uganda insists that 2 August 1998 marked the date only of the beginning of civil war in the DRC and that, although Rwanda had invited it to join in an effort to overthrow President Kabila, it had declined. Uganda contends that it did not act jointly with Rwanda in Kitona and that it had the consent of the DRC for its military operations in the east until the date of 11 September 1998. 11 September was the date of issue of the "Position of the High Command on the Presence of the UPDF in the DRC" (hereinafter "the Ugandan High Command document") (see paragraph 109 below). Uganda now greatly increased the number of its troops from that date on. Uganda acknowledges that its military operations thereafter can only be justified by reference to an entitlement to act in self-defence.

109. The Court finds it useful at this point to reproduce in its entirety the Ugandan High Command document. This document has been relied on by both Parties in this case. The High Command document, although mentioning the date of 11 September 1998, in the Court's view, provides the basis for the operation known as operation "Safe Haven". The document reads as follows:

> "WHEREAS for a long time the DRC has been used by the enemies of Uganda as a base and launching pad for attacks against Uganda;

AND

WHEREAS the successive governments of the DRC have not been in effective control of all the territory of the Congo;

AND

WHEREAS in May 1997, on the basis of a mutual understanding the Government of Uganda deployed UPDF to jointly operate with the Congolese Army against Uganda enemy forces in the DRC;

AND

WHEREAS when an anti-Kabila rebellion erupted in the DRC the forces of the UPDF were still operating along side the Congolese Army in the DRC, against Uganda enemy forces who had fled back to the DRC;

NOW THEREFORE the High Command sitting in Kampala this 11th day of September, 1998, resolves to maintain forces of the UPDF in order to secure Uganda's legitimate security interests which are the following:

1. To deny the Sudan opportunity to use the territory of the DRC to destabilize Uganda.
2. To enable UPDF neutralize Uganda dissident groups which have been receiving assistance from the Government of the DRC and the Sudan.
3. To ensure that the political and administrative vacuum, and instability caused by the fighting between the rebels and the Congolese Army and its allies do not adversely affect the security of Uganda.
4. To prevent the genocidal elements, namely, the Interahamwe, and ex-FAR, which have been launching attacks on the people of Uganda from the DRC, from continuing to do so.
5. To be in position to safeguard the territory integrity of Uganda against irresponsible threats of invasion from certain forces."

110. In turning to its assessment of the legal character of Uganda's activities at Aru, Beni, Bunia and Watsa in August 1998, the Court begins by observing that, while it is true that those localities are all in close proximity to the border, "as per the consent that had been given previously by President Kabila", the nature of Ugandan action at these locations was of a different nature from previous operations along the common border. Uganda was not in August 1998 engaging in military operations against rebels who carried out cross-border raids. Rather, it was engaged in military assaults that resulted in the taking of the town of Beni and its airfield between 7 and 8 August, followed by the taking of the town of Bunia and its airport on 13 August, and the town of Watsa and its airport at a date between 24 and 29 August.

111. The Court finds these actions to be quite outside any mutual understanding between the Parties as to Uganda's presence on Congolese territory near to the border. The issue of when any consent may have terminated is irrelevant when the actions concerned are so clearly beyond co-operation "in order to ensure peace and security along the common border", as had been confirmed in the Protocol of 27 April 1998.

112. The Court observes that the Ugandan operations against these eastern border towns could therefore only be justified, if at all, as actions in self-defence. However, at no time has Uganda sought to justify them on this basis before the Court.

113. Operation "Safe Haven", by contrast, was firmly rooted in a claimed entitlement "to secure Uganda's legitimate security interests" rather than in any claim of consent on the part of the DRC. The Court notes, however, that those most intimately involved in its execution regarded the military actions throughout August 1998 as already part and parcel of operation "Safe Haven".

114. Thus Mr. Kavuma, the Minister of State for Defence, informed the Porter Commission that the UPDF troops first crossed the border at the beginning of August 1998, at the time of the rebellion against President Kabila, "when there was confusion inside the DRC" (Porter Commission document CW/01/02 23/07/01, p. 23). He confirmed that this "entry" was "to defend our security interests". The commander of the Ugandan forces in the DRC, General Kazini, who had immediate control in the field, informing Kampala and receiving thereafter any further orders, was asked "[w]hen was 'Operation Safe Haven'? When did it commence?" He replied "[i]t was in the month of August. That very month of August 1998. 'Safe Haven' started after the capture of Beni, that was on 7 August 1998." (CW/01/03 24/07/01, p. 774.) General Kazini emphasized that the Beni operation was the watershed: "So before that . . . 'Operation Safe Haven' had not started. It was the normal UPDF operations — counter-insurgency operations in the Rwenzoris before that date of 7 August, 1998." (CW/01/03 24/07/01, p. 129.) He spoke of "the earlier plan" being that both Governments, in the form of the UPDF and the FAC, would jointly deal with the rebels along the border. "But now this new phenomenon had developed: there was a mutiny, the rebels were taking control of those areas. So we decided to launch an offensive together with the rebels, a special operation we code-named 'Safe Haven'." General Kazini was asked by Justice Porter what was the objective of this joint offensive with the rebels. General Kazini replied "[t]o crush the bandits together with their FAC allies" and confirmed that by "FAC" he meant the "Congolese Government Army" (CW/01/03 24/07/01, p. 129).

115. It is thus clear to the Court that Uganda itself actually regarded the military events of August 1998 as part and parcel of operation "Safe Haven", and not as falling within whatever "mutual understandings" there had previously been.

116. The Court has noted that within a very short space of time Ugandan forces had moved rapidly beyond these border towns. It is agreed by all that by 1 September 1998 the UPDF was at Kisangani, very far from the border. Furthermore, Lieutenant Colonel Magenyi informed the Porter Commission, under examination, that he had entered the DRC on 13 August and stayed there till mid-February 1999. He was based at Isiro, some 580 km from the border. His brigade had fought its way there: "we were fighting the ADFs who were supported by the FAC".

117. Accordingly, the Court will make no distinction between the events of August 1998 and those in the ensuing months.

118. Before this Court Uganda has qualified its action starting from mid-September 1998 as action in self-defence. The Court will thus examine whether, throughout the period when its forces were rapidly advancing across the DRC, Uganda was entitled to engage in military action in self-defence against the DRC. For these purposes, the Court will not examine whether each individual military action by the UPDF could have been characterized as action in self-defence, unless it can be shown, as a general proposition, that Uganda was entitled to act in self-defence in the DRC in the period from August 1998 till June 2003.

119. The Court first observes that the objectives of operation "Safe Haven", as stated in the Ugandan High Command document (see paragraph 109 above), were not consonant with the concept of self-defence as understood in international law.

120. Uganda in its response to the question put to it by Judge Kooijmans (see paragraph 22 above) confirms that the changed policies of President Kabila had meant that co-operation in controlling insurgency in the border areas had been replaced by "stepped-up cross-border attacks against Uganda by the ADF, which was being re-supplied and re-equipped by the Sudan and the DRC Government". The Court considers that, in order to ascertain whether Uganda was entitled to engage in military action on Congolese territory in self-defence, it is first necessary to examine the reliability of these claims. It will thus begin by an examination of the evidence concerning the role that the Sudan was playing in the DRC at the relevant time.

121. Uganda claimed that there was a tripartite conspiracy in 1998 between the DRC, the ADF and the Sudan; that the Sudan provided military assistance to the DRC's army and to anti-Ugandan rebel groups; that the Sudan used Congo airfields to deliver materiel; that the Sudan airlifted rebels and its own army units around the country; that Sudanese aircraft bombed the UPDF positions at Bunia on 26 August 1998; that a

Sudanese brigade of 2,500 troops was in Gbadolite and was preparing to engage the UPDF forces in eastern Congo; and that the DRC encouraged and facilitated stepped-up cross border attacks from May 1998 onwards.

122. The Court observes, more specifically, that in its Counter-Memorial Uganda claimed that from 1994 to 1997 anti-Ugandan insurgents "received direct support from the Government of Sudan" and that the latter trained and armed insurgent groups, in part to destabilize Uganda's status as a "good example" in Africa. For this, Uganda relied on a Human Rights Watch (hereinafter HRW) report. The Court notes that this report is on the subject of slavery in the Sudan and does not assist with the issue before the Court. It also relied on a Ugandan political report which simply claimed, without offering supporting evidence, that the Sudan was backing groups launching attacks from the DRC. It further relies on an HRW report of 2000 stating that the Sudan was providing military and logistical assistance to the LRA, in the north of Uganda, and to the SPLM/A (by which Uganda does not claim to have been attacked). The claims relating to the LRA, which are also contained in the Counter-Memorial of Uganda, have no relevance to the present case. No more relevant is the HRW report of 1998 criticizing the use of child soldiers in northern Uganda.

123. The Court has next examined the evidence advanced to support the assertion that the Sudan was supporting anti-Ugandan groups which were based in the DRC, namely FUNA, UNRF II and NALU. This consists of a Ugandan political report of 1998 which itself offers no evidence, and an address by President Museveni of 2000. These documents do not constitute probative evidence of the points claimed.

124. Uganda states that President Kabila entered into an alliance with the Sudan, "which he invited to occupy and utilise airfields in north-eastern Congo for two purposes: delivering arms and other supplies to the insurgents; and conducting aerial bombardment of Uganda towns and villages". Only President Museveni's address to Parliament is relied on. Certain assertions relating to the son of Idi Amin, and the role he was being given in the Congolese military, even were they true, prove nothing as regards the specific allegations concerning the Sudan.

125. Uganda has informed the Court that a visit was made by President Kabila in May 1998 to the Sudan, in order to put at the Sudan's disposal all the airfields in northern and eastern Congo, and to deliver arms and troops to anti-Ugandan insurgents along Uganda's border. Uganda offered as evidence President Museveni's address to Parliament, together with an undated, unsigned internal Ugandan military intelligence document. Claims as to what was agreed as a result of any such meeting that might have taken place remain unproven.

126. Uganda informed the Court that Uganda military intelligence reported that in August 1998 the Sudan airlifted insurgents from the WNBF and LRA to fight alongside Congolese forces against RPA and RCD rebels. The Court observes that, even were that proven (which in the Court's view is not the case), the DRC was entitled so to have acted. This invitation could not of itself have entitled Uganda to use force in self-defence. The Court has not been able to verify from concordant evidence the claim that the Sudan transported an entire Chadian brigade to Gbadolite (whether to join in attacks on Uganda or otherwise).

127. The Court further observes that claims that the Sudan was training and transporting FAC troops, at the request of the Congolese Government, cannot entitle Uganda to use force in self-defence, even were the alleged facts proven. In the event, such proof is not provided by the unsigned Ugandan military intelligence document, nor by a political report that Uganda relies on.

128. Article 51 of the Charter refers to the right of "individual or collective" self-defence. The Court notes that a State may invite another State to assist it in using force in self-defence. On 2 August 1998 civil war had broken out in the DRC and General Kazini later testified to the Porter Commission that operation "Safe Haven" began on 7-8 August 1998. The Ugandan written pleadings state that on 14 August 1998 Brigadier Khalil of the Sudan delivered three planeloads of weapons to the FAC in Kinshasa, and that the Sudan stepped up its training of FAC troops and airlifted them to different locations in the DRC. Once again, the evidence offered to the Court as to the delivery of the weapons is the undated, unsigned, internal Ugandan military intelligence report. This was accompanied by a mere political assertion of Sudanese backing for troops launching attacks on Uganda from the DRC. The evidentiary situation is exactly the same as regards the alleged agreement by President Kabila with the Sudanese Vice-President for joint military measures against Uganda. The same intelligence report, defective as evidence that the Court can rely on, is the sole source for the claims regarding the Sudanese bombing with an Antonov aircraft of UPDF positions in Bunia on 26 August 1998; the arrival of the Sudanese brigade in Gbadolite shortly thereafter; the deployment of Sudanese troops, along with those of the DRC, on Uganda's border on 14 September; and the pledges made on 18 September for the deployment of more Sudanese troops.

129. It was said by Uganda that the DRC had effectively admitted the threat to Uganda's security posed by the Sudan, following the claimed series of meetings between President Kabila and Sudanese officials

in May, August and September 1998. In support of these claims Uganda referred the Court to a 1999 ICG report, "How Kabila Lost His Way"; although not provided in the annexes, this report was in the public domain and the Court has ascertained its terms. Reliance is also placed on a political statement by the Ugandan High Command. The Court observes that this does not constitute reliable evidence and in any event it speaks only of the reason for the mid-September deployment of troops. The Court has also found that it cannot rely as persuasive evidence on a further series of documents said to support these various claims relating to the Sudan, all being internal political documents. The Court has examined the notarized affidavit of 2002 of the Ugandan Ambassador to the DRC, which refers to documents that allegedly were at the Ugandan Embassy in Kinshasa, showing that "the Sudanese government was supplying ADF rebels". While a notarized affidavit is entitled to a certain respect, the Court must observe that it is provided by a party in the case and provides at best indirect "information" that is unverified.

130. The Court observes that it has not been presented with evidence that can safely be relied on in a court of law to prove that there was an agreement between the DRC and the Sudan to participate in or support military action against Uganda; or that any action by the Sudan (of itself factually uncertain) was of such a character as to justify Uganda's claim that it was acting in self-defence.

131. The Court has also examined, in the context of ascertaining whether Uganda could have been said to have acted in self-defence, the evidence for Uganda's claims that from May 1998 onwards the frequency, intensity and destructiveness of cross-border attacks by the ADF "increased significantly", and that this was due to support from the DRC and from the Sudan.

132. The Court is convinced that the evidence does show a series of attacks occurring within the relevant time-frame, namely: an attack on Kichwamba Technical School of 8 June 1998, in which 33 students were killed and 106 abducted; an attack near Kichwamba, in which five were killed; an attack on Benyangule village on 26 June, in which 11 persons were killed or wounded; the abduction of 19 seminarians at Kiburara on 5 July; an attack on Kasese town on 1 August, in which three persons were killed. A sixth attack was claimed at the oral hearings to have occurred at Kijarumba, with 33 fatalities. The Court has not been able to ascertain the facts as to this latter incident.

133. The DRC does not deny that a number of attacks took place, but its position is that the ADF alone was responsible for them. The documents relied on by Uganda for its entitlement to use force in self-defence against the DRC include a report of the interrogation of a captured ADF rebel, who admits participating in the Kichwamba attack and refers to an "intention" to obtain logistical support and sanctuary from the Congolese Government; this report is not signed by the person making the statement, nor does it implicate the DRC. Uganda also relies on a document entitled "Chronological Illustration of Acts of Destabilisation by Sudan and Congo Based Dissidents", which is a Ugandan military document. Further, some articles in newspapers relied on by Uganda in fact blame only the ADF for the attacks. A very few do mention the Sudan. Only some internal documents, namely unsigned witness statements, make any reference to Congolese involvement in these acts.

134. The Court observes that this is also the case as regards the documents said to show that President Kabila provided covert support to the ADF. These may all be described as internal documents, often with no authenticating features, and containing unsigned, unauthenticated and sometimes illegible witness statements. These do not have the quality or character to satisfy the Court as to the matters claimed.

135. In oral pleadings Uganda again referred to these "stepped up attacks". Reference was made to an ICG report of August 1998, "North Kivu, into the Quagmire". Although not provided in the annexes, this report was in the public domain and the Court has ascertained its terms. It speaks of the ADF as being financed by Iran and the Sudan. It further states that the ADF is "[e]xploiting the incapacity of the Congolese Armed Forces" in controlling areas of North Kivu with neighbour Uganda. This independent report does seem to suggest some Sudanese support for the ADF's activities. It also implies that this was not a matter of Congolese policy, but rather a reflection of its inability to control events along its border.

136. Uganda relies on certain documents annexed by the DRC to its Reply. However, the Court does not find this evidence weighty and convincing. It consists of a bundle of news reports of variable reliability, which go no further than to say that unconfirmed reports had been received that the Sudan was flying military supplies to Juba and Dungu. The Court has therefore not found probative such media reports as the IRIN update for 12 to 14 September 1998, stating that Hutu rebels were being trained in southern Sudan, and the IRIN update for 16 September 1998, stating that "rebels claim Sudan is supporting Kabila at Kindu".

Neither has the Court relied on the (unreferenced and unsourced) claim that President Kabila made a secret visit to Khartoum on 25 August 1998 nor on the extract from Mr. Bemba's book *Le choix de la liberté* stating that 108 Sudanese soldiers were in the DRC, under the command of the Congolese army, to defend the area around Gbadolite.

137. Nor has the Court been able to satisfy itself as to certain internal military intelligence documents, belatedly offered, which lack explanations as to how the information was obtained (e.g. Revelations of Commander Junju Juma (former commanding officer in the ADF) of 17 May 2000, undated Revelations by Issa Twatera (former commanding officer in the ADF)).

138. A further "fact" relied on by Uganda in this case as entitling it to act in self-defence is that the DRC incorporated anti-Ugandan rebel groups and Interahamwe militia into the FAC. The Court will examine the evidence and apply the law to its findings.

139. In its Counter-Memorial, Uganda claimed that President Kabila had incorporated into his army thousands of ex-FAR and Interahamwe *génocidaires* in May 1998. A United States State Department statement in October 1998 condemned the DRC's recruitment and training of former perpetrators of the Rwandan genocide, thus giving some credence to the reports internal to Uganda that were put before the Court, even though these lacked signatures or particulars of sources relied on. But this claim, even if true, seems to have relevance for Rwanda rather than Uganda.

140. Uganda in its oral pleadings repeated the claims of incorporation of former Rwandan soldiers and Interahamwe into special units of the Congolese army. No sources were cited, nor was it explained to the Court how this might give rise to a right of self-defence on the part of Uganda.

141. In the light of this assessment of all the relevant evidence, the Court is now in a position to determine whether the use of force by Uganda within the territory of the DRC could be characterized as self-defence.

142. Article 51 of the United Nations Charter provides:

> "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and

shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

143. The Court recalls that Uganda has insisted in this case that operation "Safe Haven" was not a use of force against an anticipated attack. As was the case also in the *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)* case, "reliance is placed by the Parties only on the right of self-defence in the case of an armed attack which has already occurred, and the issue of the lawfulness of a response to the imminent threat of armed attack has not been raised" (*I.C.J. Reports 1986*, p. 103, para. 194). The Court there found that "[a]ccordingly [it] expresses no view on that issue". So it is in the present case. The Court feels constrained, however, to observe that the wording of the Ugandan High Command document on the position regarding the presence of the UPDF in the DRC makes no reference whatever to armed attacks that have already occurred against Uganda at the hands of the DRC (or indeed by persons for whose action the DRC is claimed to be responsible). Rather, the position of the High Command is that it is necessary "to secure Uganda's legitimate security interests". The specified security needs are essentially preventative — to ensure that the political vacuum does not adversely affect Uganda, to prevent attacks from "genocidal elements", to be in a position to safeguard Uganda from irresponsible threats of invasion, to "deny the Sudan the opportunity to use the territory of the DRC to destabilize Uganda". Only one of the five listed objectives refers to a response to acts that had already taken place — the neutralization of "Uganda dissident groups which have been receiving assistance from the Government of the DRC and the Sudan".

144. While relying heavily on this document, Uganda nonetheless insisted to the Court that after 11 September 1998 the UPDF was acting in self-defence in response to attacks that had occurred. The Court has already found that the military operations of August in Beni, Bunia and Watsa, and of 1 September at Kisangani, cannot be classified as coming within the consent of the DRC, and their legality, too, must stand or fall by reference to self-defence as stated in Article 51 of the Charter.

145. The Court would first observe that in August and early September 1998 Uganda did not report to the Security Council events that it had regarded as requiring it to act in self-defence.

146. It is further to be noted that, while Uganda claimed to have acted in self-defence, it did not ever claim that it had been subjected to an armed attack by the armed forces of the DRC. The "armed attacks" to

which reference was made came rather from the ADF. The Court has found above (paragraphs 131-135) that there is no satisfactory proof of the involvement in these attacks, direct or indirect, of the Government of the DRC. The attacks did not emanate from armed bands or irregulars sent by the DRC or on behalf of the DRC, within the sense of Article 3 *(g)* of General Assembly resolution 3314 (XXIX) on the definition of aggression, adopted on 14 December 1974. The Court is of the view that, on the evidence before it, even if this series of deplorable attacks could be regarded as cumulative in character, they still remained non-attributable to the DRC.

147. For all these reasons, the Court finds that the legal and factual circumstances for the exercise of a right of self-defence by Uganda against the DRC were not present. Accordingly, the Court has no need to respond to the contentions of the Parties as to whether and under what conditions contemporary international law provides for a right of self-defence against large-scale attacks by irregular forces. Equally, since the preconditions for the exercise of self-defence do not exist in the circumstances of the present case, the Court has no need to enquire whether such an entitlement to self-defence was in fact exercised in circumstances of necessity and in a manner that was proportionate. The Court cannot fail to observe, however, that the taking of airports and towns many hundreds of kilometres from Uganda's border would not seem proportionate to the series of transborder attacks it claimed had given rise to the right of self-defence, nor to be necessary to that end.

* *

Findings of Law on the Prohibition against the Use of Force

148. The prohibition against the use of force is a cornerstone of the United Nations Charter. Article 2, paragraph 4, of the Charter requires that:

> "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

Article 51 of the Charter may justify a use of force in self-defence only within the strict confines there laid down. It does not allow the use of force by a State to protect perceived security interests beyond these

parameters. Other means are available to a concerned State, including, in particular, recourse to the Security Council.

149. The Court has found that, from 7 August 1998 onwards, Uganda engaged in the use of force for purposes and in locations for which it had no consent whatever. The Court has also found that the events attested to by Uganda did not justify recourse to the use of force in self-defence.

150. The long series of resolutions passed by the Security Council (1234 (1999), 1258 (1999), 1273 (1999), 1279 (1999), 1291 (2000), 1304 (2000), 1316 (2000), 1323 (2000), 1332 (2000), 1341 (2001), 1355 (2001), 1376 (2001), 1399 (2002), 1417 (2002), 1445 (2002), 1457 (2003), 1468 (2003), 1484 (2003), 1489 (2003), 1493 (2003), 1499 (2003), 1501 (2003), 1522 (2004), 1533 (2004), 1552 (2004), 1555 (2004), 1565 (2004), 1592 (2005), 1596 (2005), 1616 (2005) and 1621 (2005)) and the need for the United Nations to deploy MONUC, as well as the prolonged efforts by the United Nations to restore peace in the region and full sovereignty to the DRC over its territory, testify to the magnitude of the military events and the attendant suffering. The same may be said of the need to appoint a Special Rapporteur on the situation of human rights, a Special Envoy of the Secretary-General for that region, and the establishment of a panel (later reconstituted) to report on certain of the categories of facts relating to natural resources.

151. The Court recalls that on 9 April 1999 the Security Council determined the conflict to constitute a threat to peace, security and stability in the region. In demanding an end to hostilities and a political solution to the conflict (which call was to lead to the Lusaka Agreement of 10 July 1999), the Security Council deplored the continued fighting and presence of foreign forces in the DRC and called for the States concerned "to bring to an end the presence of these uninvited forces" (United Nations doc. S/RES/1234, 9 April 1999).

152. The United Nations has throughout this long series of carefully balanced resolutions and detailed reports recognized that all States in the region must bear their responsibility for finding a solution that would bring peace and stability. The Court notes, however, that this widespread responsibility of the States of the region cannot excuse the unlawful military action of Uganda.

153. The evidence has shown that the UPDF traversed vast areas of the DRC, violating the sovereignty of that country. It engaged in military operations in a multitude of locations, including Bunia, Kisangani, Gbadolite and Ituri, and many others. These were grave violations of Article 2, paragraph 4, of the Charter.

154. The Court notes that the Security Council, on 16 June 2000, expressed "outrage at renewed fighting between Ugandan and Rwandan

forces in Kisangani", and condemned it as a "violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo" (United Nations doc. S/RES/1304 (2000)).

155. The Court further observes that Uganda — as is clear from the evidence given by General Kazini and General Kavuma to the Porter Commission (see above, paragraph 114) — decided in early August 1998 to launch an offensive together with various factions which sought to overthrow the Government of the DRC. The DRC has in particular claimed that, from September 1998 onwards, Uganda both created and controlled the MLC rebel group led by Mr. Bemba.

156. The DRC also points to the book written by Mr. Bemba (see paragraph 69 above) to support this contention, as well as to the fact that in the Harare Disengagement Plan the MLC and UPDF are treated as a single unit.

157. For its part, Uganda acknowledges that it assisted the MLC during fighting between late September 1998 and July 1999, while insisting that its assistance to Mr. Bemba "was always limited and heavily conditioned". Uganda has explained that it gave "just enough" military support to the MLC to help Uganda achieve its objectives of driving out the Sudanese and Chadian troops from the DRC, and of taking over the airfields between Gbadolite and the Ugandan border; Uganda asserts that it did not go beyond this.

158. The Court observes that the pages cited by the DRC in Mr. Bemba's book do not in fact support the claim of "the creation" of the MLC by Uganda, and cover the later period of March-July 1999. The Court has noted the description in Mr. Bemba's book of the training of his men by Ugandan military instructors and finds that this accords with statements he made at that time, as recorded in the ICG report of 20 August 1999. The Court has equally noted Mr. Bemba's insistence, in November 1999, that, while he was receiving support, it was he who was in control of the military venture and not Uganda. The Court is equally of the view that the Harare Disengagement Plan merely sought to identify locations of the various parties, without passing on their relationships to each other.

159. The Court has not relied on various other items offered as evidence on this point by the DRC, finding them, uncorroborated, based on second-hand reports, or not in fact saying what they are alleged to say by the DRC, or even in some cases partisan. The Court has for such reasons set aside the ICG report of 17 November, the HRW Report of March 2001, passages from the Secretary-General's report on MONUC of 4 September 2000 (where reliance on second-hand reports is acknowledged); articles in the IRIN bulletin and *Jeune Afrique*; and the statement of a

deserter who was co-operating with the Congolese military commission in preparing a statement for purposes of the present proceedings.

160. The Court concludes that there is no credible evidence to suggest that Uganda created the MLC. Uganda has acknowledged giving training and military support and there is evidence to that effect. The Court has not received probative evidence that Uganda controlled, or could control, the manner in which Mr. Bemba put such assistance to use. In the view of the Court, the conduct of the MLC was not that of "an organ" of Uganda (Article 4, International Law Commission Draft Articles on Responsibility of States for internationally wrongful acts, 2001), nor that of an entity exercising elements of governmental authority on its behalf (Art. 5). The Court has considered whether the MLC's conduct was "on the instructions of, or under the direction or control of" Uganda (Art. 8) and finds that there is no probative evidence by reference to which it has been persuaded that this was the case. Accordingly, no issue arises in the present case as to whether the requisite tests are met for sufficiency of control of paramilitaries (see *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, pp. 62-65, paras. 109-115).

161. The Court would comment, however, that, even if the evidence does not suggest that the MLC's conduct is attributable to Uganda, the training and military support given by Uganda to the ALC, the military wing of the MLC, violates certain obligations of international law.

162. Thus the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (hereinafter "the Declaration on Friendly Relations") provides that:

> "Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to in the present paragraph involve a threat or use of force." (General Assembly resolution 2625 (XXV), 24 October 1970.)

The Declaration further provides that

> "no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State" *(ibid.)*.

These provisions are declaratory of customary international law.

163. The Court considers that the obligations arising under the principles of non-use of force and non-intervention were violated by Uganda even if the objectives of Uganda were not to overthrow President Kabila, and were directed to securing towns and airports for reason of its perceived security needs, and in support of the parallel activity of those engaged in civil war.

164. In the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America)*, the Court made it clear that the principle of non-intervention prohibits a State "to intervene, directly or indirectly, with or without armed force, in support of an internal opposition in another State" (*I.C.J. Reports 1986*, p. 108, para. 206). The Court notes that in the present case it has been presented with probative evidence as to military intervention. The Court further affirms that acts which breach the principle of non-intervention "will also, if they directly or indirectly involve the use of force, constitute a breach of the principle of non-use of force in international relations" (*ibid.*, pp. 109-110, para. 209).

165. In relation to the first of the DRC's final submissions, the Court accordingly concludes that Uganda has violated the sovereignty and also the territorial integrity of the DRC. Uganda's actions equally constituted an interference in the internal affairs of the DRC and in the civil war there raging. The unlawful military intervention by Uganda was of such a magnitude and duration that the Court considers it to be a grave violation of the prohibition on the use of force expressed in Article 2, paragraph 4, of the Charter.

* * *

166. Before turning to the second and third submissions of the DRC, dealing with alleged violations by Uganda of its obligations under international human rights law and international humanitarian law and the illegal exploitation of the natural resources of the DRC, it is essential for the Court to consider the question as to whether or not Uganda was an occupying Power in the parts of Congolese territory where its troops were present at the relevant time.

* *

The Issue of Belligerent Occupation

167. The DRC asserts that the border regions of eastern Congo were attacked by Ugandan forces between 7 and 8 August 1998, and that more areas fell under the control of Ugandan troops over the following months with the advance of the UPDF into Congolese territory. It further points

out that "the territories occupied by Uganda have varied in size as the conflict has developed": the area of occupation initially covered Orientale province and part of North Kivu province; in the course of 1999 it increased to cover a major part of Equateur province. The DRC specifies that the territories occupied extended from Bunia and Beni, close to the eastern border, to Bururu and Mobenzene, in the far north-western part of the DRC; and that "the southern boundary of the occupied area [ran] north of the towns of Mbandaka westwards, then [extended] east to Kisangani, rejoining the Ugandan border between Goma and Butembo". According to the DRC, the occupation of its territory ended with the withdrawal of the Ugandan army on 2 June 2003.

168. The DRC contends that "the UPDF set up an occupation zone, which it administered both directly and indirectly", in the latter case by way of the creation of and active support for various Congolese rebel factions. As an example of such administration, the DRC refers to the creation of a new province within its territory. In June 1999, the Ugandan authorities, in addition to the existing ten provinces, created an 11th province in the north-east of the DRC, in the vicinity of the Ugandan frontier. The "Kibali-Ituri" province thus created was the result of merging the districts of Ituri and Haut-Uélé, detached from Orientale province. On 18 June 1999 General Kazini, commander of the Ugandan forces in the DRC, "appointed Ms Adèle Lotsove, previously Deputy Governor of Orientale Province, to govern this new province". The DRC further asserts that acts of administration by Uganda of this province continued until the withdrawal of Ugandan troops. In support of this contention, the DRC states that Colonel Muzoora, of the UPDF, exercised *de facto* the duties of governor of the province between January and May 2001, and that "at least two of the five governors who succeeded Ms Lotsove up until 2003 were relieved of their duties by the Ugandan military authorities, sometimes under threat of force". The DRC claims that the Ugandan authorities were directly involved "in the political life of the occupied regions" and, citing the Ugandan daily newspaper *New Vision*, that "Uganda has even gone so far as to supervise local elections". The DRC also refers to the Sixth report of the Secretary-General on MONUC, which describes the situation in Bunia (capital of Ituri district) in the following terms: "[s]ince 22 January, MONUC military observers in Bunia have reported the situation in the town to be tense but with UPDF in effective control".

169. Finally, according to the DRC, the fact that Ugandan troops were not present in every location in the vast territory of the north and east of the DRC "in no way prevents Uganda from being considered an occupying power in the localities or areas which were controlled by its armed forces". The DRC claims that the notion of occupation in inter-

national law, as reflected in Article 42 of the Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907 (hereinafter "the Hague Regulations of 1907"), is closely tied to the control exercised by the troops of the State operating on parts, extensive or not, of the territory of the occupied State. Thus, "rather than the omnipresence of the occupying State's armed forces, it is that State's ability to assert its authority which the Hague Regulations look to as the criterion for defining the notion of occupying State".

*

170. For its part, Uganda denies that it was an occupying Power in the areas where UPDF troops were present. It argues that, in view of the small number of its troops in the territory of the DRC, i.e. fewer than 10,000 soldiers "at the height of the deployment", they could not have occupied vast territories as claimed by the DRC. In particular, Uganda maintains that its troops "were confined to the regions of eastern Congo adjacent to the Uganda border and to designated strategic locations, especially airfields, from which Uganda was vulnerable to attack by the DRC and her allies". Thus, there was "no zone of Ugandan military occupation and there [was] no Ugandan military administration in place". Uganda points out, moreover, that it "ensured that its troops refrained from all interferences in the local administration, which was run by the Congolese themselves". Uganda further notes that "it was the rebels of the Congo Liberation Movement (MLC) and of the Congolese Rally for Democracy (RDC) which controlled and administered these territories, exercising *de facto* authority".

171. As for the appointment of a governor of Ituri district, which Uganda characterizes as "the only attempt at interference in this local administration by a Ugandan officer", Uganda states that this action was "motivated by the desire to restore order in the region of Ituri in the interests of the population". Furthermore, Uganda emphasizes that this step was "immediately opposed and disavowed by the Ugandan authorities" and that the officer in question, General Kazini, was firmly reprimanded by his superiors, who instituted disciplinary measures against him.

* *

172. The Court observes that, under customary international law, as reflected in Article 42 of the Hague Regulations of 1907, territory is considered to be occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised (see *Legal Con-*

sequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 167, para. 78, and p. 172, para. 89).

173. In order to reach a conclusion as to whether a State, the military forces of which are present on the territory of another State as a result of an intervention, is an "occupying Power" in the meaning of the term as understood in the *jus in bello*, the Court must examine whether there is sufficient evidence to demonstrate that the said authority was in fact established and exercised by the intervening State in the areas in question. In the present case the Court will need to satisfy itself that the Ugandan armed forces in the DRC were not only stationed in particular locations but also that they had substituted their own authority for that of the Congolese Government. In that event, any justification given by Uganda for its occupation would be of no relevance; nor would it be relevant whether or not Uganda had established a structured military administration of the territory occupied.

174. The Court will now ascertain whether parts of the territory of the DRC were placed under the authority of the Ugandan army in the sense of Article 42 of the Hague Regulations of 1907. In this regard, the Court first observes that the territorial limits of any zone of occupation by Uganda in the DRC cannot be determined by simply drawing a line connecting the geographical locations where Ugandan troops were present, as has been done on the sketch-map presented by the DRC (see paragraphs 55 and 73 above).

175. It is not disputed between the Parties that General Kazini, commander of the Ugandan forces in the DRC, created the new "province of Kibali-Ituri" in June 1999 and appointed Ms Adèle Lotsove as its Governor. Various sources of evidence attest to this fact, in particular a letter from General Kazini dated 18 June 1999, in which he appoints Ms Adèle Lotsove as "provisional Governor" and gives suggestions with regard to questions of administration of the new province. This is also supported by material from the Porter Commission. The Court further notes that the Sixth report of the Secretary-General on MONUC (S/2001/128 of 12 February 2001) states that, according to MONUC military observers, the UPDF was in effective control in Bunia (capital of Ituri district).

176. The Court considers that regardless of whether or not General Kazini, commander of the Ugandan forces in the DRC, acted in violation of orders and was punished as a result, his conduct is clear evidence of the fact that Uganda established and exercised authority in Ituri as an occupying Power.

177. The Court observes that the DRC makes reference to "indirect administration" through various Congolese rebel factions and to the supervision by Ugandan officers over local elections in the territories under UPDF control. However, the DRC does not provide any specific evidence to show that authority was exercised by Ugandan armed forces

in any areas other than in Ituri district. The Court further notes that, although Uganda recognized that as of 1 September 1998 it exercised "administrative control" at Kisangani Airport, there is no evidence in the case file which could allow the Court to characterize the presence of Ugandan troops stationed at Kisangani Airport as occupation in the sense of Article 42 of the Hague Regulations of 1907. Neither can the Court uphold the DRC's contention that Uganda was an occupying Power in areas outside Ituri controlled and administered by Congolese rebel movements. As the Court has already indicated, the evidence does not support the view that these groups were "under the control" of Uganda (see paragraph 160 above).

178. The Court thus concludes that Uganda was the occupying Power in Ituri at the relevant time. As such it was under an obligation, according to Article 43 of the Hague Regulations of 1907, to take all the measures in its power to restore, and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force in the DRC. This obligation comprised the duty to secure respect for the applicable rules of international human rights law and international humanitarian law, to protect the inhabitants of the occupied territory against acts of violence, and not to tolerate such violence by any third party.

179. The Court, having concluded that Uganda was an occupying Power in Ituri at the relevant time, finds that Uganda's responsibility is engaged both for any acts of its military that violated its international obligations and for any lack of vigilance in preventing violations of human rights and international humanitarian law by other actors present in the occupied territory, including rebel groups acting on their own account.

180. The Court notes that Uganda at all times has responsibility for all actions and omissions of its own military forces in the territory of the DRC in breach of its obligations under the rules of international human rights law and international humanitarian law which are relevant and applicable in the specific situation.

* * *

Violations of International Human Rights Law and International Humanitarian Law: Contentions of the Parties

181. It is recalled (see paragraph 25 above) that in its second submission the DRC requests the Court to adjudge and declare:

"2. That the Republic of Uganda, by committing acts of violence against nationals of the Democratic Republic of the Congo, by killing and injuring them or despoiling them of their property, by failing to take adequate measures to prevent violations of human rights in the DRC by persons under its jurisdiction or control, and/or failing to punish persons under its jurisdiction or control having engaged in the above-mentioned acts, has violated the following principles of conventional and customary law:

— the principle of conventional and customary law imposing an obligation to respect, and ensure respect for, fundamental human rights, including in times of armed conflict, in accordance with international humanitarian law;
— the principle of conventional and customary law imposing an obligation, at all times, to make a distinction in an armed conflict between civilian and military objectives;
— the right of Congolese nationals to enjoy the most basic rights, both civil and political, as well as economic, social and cultural."

182. The DRC cites various sources of evidence in support of its claims, including the 2004 MONUC report on human rights violations in Ituri, reports submitted by the Special Rapporteur of the United Nations Commission on Human Rights, and testimony gathered on the ground by a number of Congolese and international non-governmental organizations. The DRC argues that it has "presented abundant evidence of violations of human rights attributable to Uganda, based on reliable, varied and concordant sources". In particular, it notes that many of the grave accusations are the result of careful fieldwork carried out by MONUC experts, and attested to by other independent sources.

183. The DRC claims that the Ugandan armed forces perpetrated wide-scale massacres of civilians during their operations in the DRC, in particular in the Ituri region, and resorted to acts of torture and other forms of inhumane and degrading treatment. The DRC claims that soldiers of the UPDF carried out acts of reprisal directed against the civilian inhabitants of villages presumed to have harboured anti-Ugandan fighters. In the specific context of the conflict in Ituri, the DRC argues that the findings of the 2004 MONUC report on human rights violations in Ituri clearly establish the fact that the Ugandan armed forces participated in the mass killings of civilians.

184. The DRC maintains that, in the areas occupied by the UPDF, Ugandan soldiers plundered civilian property for their "personal profit" and engaged in the deliberate destruction of villages, civilian dwellings

and private property. With regard to the clashes between Uganda and Rwanda in the city of Kisangani in 1999 and 2000, the DRC refers, in particular, to Security Council resolution 1304 (2000), in which the Council deplored, *inter alia*, "the damage to property inflicted by the forces of Uganda and Rwanda on the Congolese population". The DRC also alleges that the property and resources of the civilian populations in the eastern Congolese regions occupied by the Ugandan army were destroyed on certain occasions by UPDF soldiers as part of a "scorched earth" policy aimed at combating ADF rebels.

185. The DRC claims that several hundred Congolese children were forcibly recruited by the UPDF and taken to Uganda for ideological and military training in the year 2000. In particular, according to the DRC, many children were abducted in August 2000 in the areas of Bunia, Beni and Butembo and given military training at the Kyankwanzi camp in Uganda with a view to incorporating them into the Ugandan armed forces. The DRC maintains that the abducted children were only able to leave the Kyankwanzi training camp for final repatriation to the DRC at the beginning of July 2001 after persistent efforts by UNICEF and the United Nations to ensure their release.

186. The DRC contends that the Ugandan armed forces failed to protect the civilian population in combat operations with other belligerents. Thus it alleges that attacks were carried out by the UPDF without any distinction being made between combatants and non-combatants. In this regard, the DRC makes specific reference to fighting between Ugandan and Rwandan forces in Kisangani in 1999 and 2000, causing widespread loss of life within the civilian population and great damage to the city's infrastructure and housing. In support of its claims, the DRC cites various reports of Congolese and international non-governmental organizations and refers extensively to the June 2000 MONUC Report and to the December 2000 report by the United Nations inter-agency assessment mission, which went to Kisangani pursuant to Security Council resolution 1304 (2000). The DRC notes that the latter report referred to "systematic violations of international humanitarian law and indiscriminate attacks on civilians" committed by Uganda and Rwanda as they fought each other.

187. The DRC claims that Ugandan troops were involved in ethnic conflicts between groups in the Congolese population, particularly between Hema and Lendu in the Ituri region, resulting in thousands of civilian casualties. According to the DRC, UPDF forces openly sided with the Hema ethnic group because of "alleged ethnic links between its members and the Ugandan population". In one series of cases, the DRC alleges that Ugandan armed forces provided direct military support to Congolese factions and joined with them in perpetrating massacres of

civilians. The DRC further claims that Uganda not only supported one of the groups but also provided training and equipment for other groups over time, thereby aggravating the local conflicts.

188. The DRC also asserts that, on several occasions, Ugandan forces passively witnessed atrocities committed by the members of local militias in Ituri. In this connection, the DRC refers to various incidents attested to by reports emanating from the United Nations and MONUC, and from Congolese and international non-governmental organizations. In particular, the DRC refers to a massacre of ethnic Lendu carried out by ethnic Hema militias in Bunia on 19 January 2001. The DRC states that similar events occurred in other localities.

189. The DRC charges that Uganda breached its obligation of vigilance incumbent upon it as an occupying Power by failing to enforce respect for human rights and international humanitarian law in the occupied regions, and particularly in Ituri. The DRC argues that the need to ensure full respect for fundamental rights in the territories occupied by the Ugandan army was similarly emphasized by the United Nations Commission on Human Rights.

190. The DRC argues that, by its actions, Uganda has violated provisions of the Hague Regulations of 1907; the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949; the International Covenant on Civil and Political Rights; the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977; the African Charter on Human and Peoples' Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the African Charter on the Rights and Welfare of the Child.

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191. Uganda contends that the DRC has consistently failed to provide any credible evidentiary basis to support its allegations of the involvement of Ugandan troops in massacres, torture and ill-treatment of Congolese civilians, supposed acts of plunder and scorched earth policy, destruction of Congolese villages and civilian dwellings, and looting of private property. In this regard, Uganda refers to each of the incidents alleged by the DRC and argues that the documentation relied upon by the DRC to prove its claims either fails to show that the incident occurred, or fails to show any involvement of Ugandan troops. In more general terms, Uganda points to the unreliability of the evidence adduced by the DRC, claiming that it does not distinguish between the various armies operating in eastern Congo during the relevant period. Uganda also maintains that the DRC relies on partisan sources of information,

such as the *Association africaine des droits de l'homme* (ASADHO), which Uganda describes as a pro-Congolese non-governmental organization. Uganda further asserts that the 2004 MONUC report on human rights violations in Ituri, heavily relied on by the DRC to support its various claims in connection with the conflict in Ituri, "is inappropriate as a form of assistance in any assessment accompanied by judicial rigour". Uganda states, *inter alia*, that in its view, "MONUC did not have a mission appropriate to investigations of a specifically legal character" and that "both before and after deployment of the multinational forces in June 2003, there were substantial problems of access to Ituri".

192. Uganda contends that the DRC's allegations regarding the forced recruitment of child soldiers by Uganda are "framed only in general terms" and lack "evidentiary support". According to Uganda, the children "were rescued" in the context of ethnic fighting in Bunia and a mutiny within the ranks of the RCD-ML rebel group, and taken to the Kyankwanzi Leadership Institute for care and counselling in 2001. Uganda states that the children were subsequently repatriated under the auspices of UNICEF and the Red Cross. In support of its claims, Uganda refers to the Fifth and Sixth reports on MONUC of the Secretary-General of the United Nations. Uganda also maintains that it received expressions of gratitude from UNICEF and from the United Nations for its role in assisting the children in question.

193. Uganda reserves its position on the events in Kisangani in 2000 and, in particular, on the admissibility of issues of responsibility relating to these events (see paragraphs 197-198 below).

194. Uganda claims that the DRC's assertion that Ugandan forces incited ethnic conflicts among groups in the Congolese population is false and furthermore is not supported by credible evidence.

195. Uganda argues that no evidence has been presented to establish that Uganda had any interest in becoming involved in the civil strife in Ituri. Uganda asserts that, from early 2001 until the final departure of its troops in 2003, Uganda did what it could to promote and maintain a peaceful climate in Ituri. Uganda believes that its troops were insufficient to control the ethnic violence in that region, "and that only an international force under United Nations auspices had any chance of doing so".

* *

ADMISSIBILITY OF CLAIMS IN RELATION TO EVENTS IN KISANGANI

196. Before considering the merits of the DRC's allegations of violations by Uganda of international human rights law and international humanitarian law, the Court must first deal with a question raised by Uganda concerning the admissibility of the DRC's claims relating to Uganda's responsibility for the fighting between Ugandan and Rwandan troops in Kisangani in June 2000.

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197. Uganda submits that

> "the Court lacks competence to deal with the events in Kisangani in June 2000 in the absence of consent on the part of Rwanda, and, in the alternative, even if competence exists, in order to safeguard the judicial function the Court should not exercise that competence".

Moreover, according to Uganda, the terms of the Court's Order of 1 July 2000 indicating provisional measures were without prejudice to issues of fact and imputability; neither did the Order prejudge the question of the jurisdiction of the Court to deal with the merits of the case.

198. Concerning the events in Kisangani, Uganda maintains that Rwanda's legal interests form "the very subject-matter" of the decision which the DRC is seeking, and that consequently a decision of the Court covering these events would infringe the "indispensable third party" principle referred to in the cases concerning *Monetary Gold Removed from Rome in 1943 (Italy* v. *France, United Kingdom and United States of America)* (*Judgment, I.C.J. Reports 1954*, p. 19, and *East Timor (Portugal* v. *Australia)* (*Judgment, I.C.J. Reports 1995*, p. 90). According to Uganda, the circumstances in the present case produce the same type of dilemma faced by the Court in those cases. In particular, Uganda states that "[t]he culpability or otherwise of Uganda, as a consequence of the conduct of its armed forces, can only be assessed on the basis of appropriate legal standards if the conduct of the armed forces of Rwanda is assessed at the same time". Uganda further argues that, "[i]n the absence of evidence as to the role of Rwanda, it is impossible for the Court to know whether the justification of self-defence is available to Uganda or, in respect of the quantum of damages, how the role of Rwanda is to be taken into account". Uganda contends that, "[i]f the conflict was provoked by Rwanda, this would materially and directly affect the responsibility of Uganda vis-à-vis the DRC". Uganda also claims that the necessity to safeguard the judicial function of the Court, as referred to in the case concerning *Northern Cameroons* (*Preliminary Objections, Judgment,*

I.C.J. Reports 1963, pp. 33-34, 37, 38), would preclude the Court from exercising any jurisdiction it might have in relation to the events that occurred in Kisangani.

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199. With reference to the objection raised by Uganda regarding the Court's jurisdiction to rule on the events in Kisangani in the absence of Rwanda from the proceedings, the DRC asserts that "Rwanda's absence from these proceedings is totally irrelevant and cannot prevent the Court from ruling on the question of Uganda's responsibility". According to the DRC,

> "[t]he purpose of the DRC's claim is simply to secure recognition of *Uganda's sole* responsibility for the use of force by its own armed forces in Congolese territory . . . in and around Kisangani, as well as for the serious violations of essential rules of international humanitarian law committed on those occasions" (emphasis in original).

200. The DRC argues that the Court is competent to adjudicate on the events in Kisangani "without having to consider the question of whether it should be Rwanda or Uganda that is held responsible for initiating the hostilities that led to the various clashes". The DRC refers to the case concerning *Certain Phosphate Lands in Nauru (Nauru* v. *Australia)* in support of its contention that there is nothing to prevent the Court from "exercising its jurisdiction with regard to a respondent State, even in the absence of other States implicated in the Application". The DRC argues that the *Monetary Gold* and *East Timor* cases, relied on by Uganda to support its arguments, are fundamentally different from the present case. According to the DRC, the application which it filed against Uganda "is entirely autonomous and independent" and does not bear on any separate proceedings instituted by the DRC against other States. The DRC maintains that "[i]t is Uganda's responsibility which is the subject-matter of the Congolese claim, and there is no other 'indispensable party' whose legal interests would form 'the very subject-matter of the decision', as in the *Monetary Gold* or *East Timor* precedents".

201. The DRC points out that the Court, in its Order of 1 July 2000 indicating provisional measures, "refused to accept Uganda's reasoning and agreed to indicate certain measures specifically relating to the events in Kisangani despite the absence of Rwanda from the proceedings".

202. In light of the above considerations, the DRC argues that Uganda's objection must be rejected.

* *

203. The Court has had to examine questions of this kind on previous

occasions. In the case concerning *Certain Phosphate Lands in Nauru (Nauru* v. *Australia)*, the Court observed that it is not precluded from adjudicating upon the claims submitted to it in a case in which a third State "has an interest of a legal nature which may be affected by the decision in the case", provided that "the legal interests of the third State which may possibly be affected do not form the very subject-matter of the decision that is applied for". The Court further noted that:

> "In the present case, the interests of New Zealand and the United Kingdom do not constitute the very subject-matter of the judgment to be rendered on the merits of Nauru's Application and the situation is in that respect different from that with which the Court had to deal in the *Monetary Gold* case. In the latter case, the determination of Albania's responsibility was a prerequisite for a decision to be taken on Italy's claims. In the present case, the determination of the responsibility of New Zealand or the United Kingdom is not a prerequisite for the determination of the responsibility of Australia, the only object of Nauru's claim . . . In the *Monetary Gold* case the link between, on the one hand, the necessary findings regarding, Albania's alleged responsibility and, on the other, the decision requested of the Court regarding the allocation of the gold, was not purely temporal but also logical . . .
>
> . . . . . .
>
> In the present case, a finding by the Court regarding the existence or the content of the responsibility attributed to Australia by Nauru might well have implications for the legal situation of the two other States concerned, but no finding in respect of that legal situation will be needed as a basis for the Court's decision on Nauru's claims against Australia. Accordingly the Court cannot decline to exercise its jurisdiction." (*Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, pp. 261-262, para. 55.)

204. The Court considers that this jurisprudence is applicable in the current proceedings. In the present case, the interests of Rwanda clearly do not constitute "the very subject-matter" of the decision to be rendered by the Court on the DRC's claims against Uganda, nor is the determination of Rwanda's responsibility a prerequisite for such a decision. The fact that some alleged violations of international human rights law and international humanitarian law by Uganda occurred in the course of hostilities between Uganda and Rwanda does not impinge on this finding. Thus it is not necessary for Rwanda to be a party to this case for the Court to be able to determine whether Uganda's conduct was a violation of these rules of international law.

* *

VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND INTERNATIONAL HUMANITARIAN LAW: FINDINGS OF THE COURT

205. The Court will now examine the allegations by the DRC concerning violations by Uganda of its obligations under international human rights law and international humanitarian law during its military intervention in the DRC. For these purposes, the Court will take into consideration evidence contained in certain United Nations documents to the extent that they are of probative value and are corroborated, if necessary, by other credible sources.

In order to rule on the DRC's claim, it is not necessary for the Court to make findings of fact with regard to each individual incident alleged.

206. The Court first turns to the DRC's claims that the Ugandan armed forces caused loss of life to the civilian population, committed acts of torture and other forms of inhumane treatment, and destroyed villages and dwellings of civilians. The Court observes that the report of the Special Rapporteur of the Commission on Human Rights of 18 January 2000 (E/CN/4/2000/42, para. 112) refers to massacres carried out by Ugandan troops in Beni on 14 November 1999. The Secretary-General in his Third Report on MONUC concluded that Rwandan and Ugandan armed forces "should be held accountable for the loss of life and the property damage they inflicted on the civilian population of Kisangani" (doc. S/2000/566 of 12 June 2000, para. 79). Security Council resolution 1304 (2000) of 16 June 2000 deplored "the loss of civilian lives, the threat to the civilian population and the damage to property inflicted by the forces of Uganda and Rwanda on the Congolese population". Several incidents of atrocities committed by Ugandan troops against the civilian population, including torture and killings, are referred to in the report of the Special Rapporteur of the Commission on Human Rights of 1 February 2001 (E/CN/4/2001/40, paras. 112, 148-151). MONUC's special report on the events in Ituri, January 2002-December 2003 (doc. S/2004/573 of 16 July 2004, paras. 19, 42-43, 62) contains much evidence of direct involvement by UPDF troops, in the context of the Hema-Lendu ethnic conflict in Ituri, in the killings of civilians and the destruction of their houses. In addition to particular incidents, it is stated that "[h]undreds of localities were destroyed by UPDF and the Hema South militias" (para. 21); "UPDF also carried out widespread bombing and destruction of hundreds of villages from 2000 to 2002" (para. 27).

207. The Court therefore finds the coincidence of reports from credible sources sufficient to convince it that massive human rights violations and grave breaches of international humanitarian law were committed by the UPDF on the territory of the DRC.

208. The Court further finds that there is sufficient evidence of a reliable quality to support the DRC's allegation that the UPDF failed to protect the civilian population and to distinguish between combatants and non-combatants in the course of fighting against other troops, especially the FAR. According to the report of the inter-agency assessment mission to Kisangani (established pursuant to paragraph 14 of Security Council resolution 1304 (2000) (doc. S/2000/1153 of 4 December 2000, paras. 15-16)), the armed conflict between Ugandan and Rwandan forces in Kisangani led to

> "fighting spreading into residential areas and indiscriminate shelling occurring for 6 days . . .
>
> Over 760 civilians were killed, and an estimated 1,700 wounded. More than 4,000 houses were partially damaged, destroyed or made uninhabitable. Sixty-nine schools were shelled, and other public buildings were badly damaged. Medical facilities and the cathedral were also damaged during the shelling, and 65,000 residents were forced to flee the fighting and seek refuge in nearby forests."

MONUC's special report on the events in Ituri, January 2002-December 2003 (doc. S/2004/573 of 16 July 2004, para. 73) states that on 6 and 7 March 2003,

> "during and after fighting between UPC [Union des patriotes congolais] and UPDF in Bunia, several civilians were killed, houses and shops were looted and civilians were wounded by gunshots . . . Stray bullets reportedly killed several civilians; others had their houses shelled." (Para. 73.)

In this context, the Court notes that indiscriminate shelling is in itself a grave violation of humanitarian law.

209. The Court considers that there is also persuasive evidence that the UPDF incited ethnic conflicts and took no action to prevent such conflicts in Ituri district. The reports of the Special Rapporteur of the Commission on Human Rights (doc. A/55/403 of 20 September 2000, para. 26 and E/CN/4/2001/40 of 1 February 2001, para. 31) state that the Ugandan presence in Ituri caused a conflict between the Hema (of Ugandan origin) and the Lendu. According to these reports, land was seized from the Lendu by the Hema with the encouragement and military support of Ugandan soldiers. The reports also state that the confrontations in August 2000 resulted in some 10,000 deaths and the displacement of some 50,000 people, and that since the beginning of the conflict the UPDF had failed to take action to put an end to the violence. The Sixth Report of the Secretary-General on MONUC (doc. S/2001/128 of 12 February 2001, para. 56) stated that "UPDF troops stood by during the killings and failed to protect the civilians". It is also indicated in MONUC's special

report on the events in Ituri, January 2002-December 2003 (doc. S/2004/573 of 16 July 2004, para. 6), that

> "Ugandan army commanders already present in Ituri, instead of trying to calm the situation, preferred to benefit from the situation and support alternately one side or the other according to their political and financial interests".

The above reports are consistent in the presentation of facts, support each other and are corroborated by other credible sources, such as the HRW Report "Ituri: Covered in Blood. Ethnically Targeted Violence in Northeastern DR Congo", July 2003 (available at http://hrw.org/reports/2003/ituri0703/).

210. The Court finds that there is convincing evidence of the training in UPDF training camps of child soldiers and of the UPDF's failure to prevent the recruitment of child soldiers in areas under its control. The Fifth Report of the Secretary-General on MONUC (doc. S/2000/1156 of 6 December 2000, para. 75) refers to the confirmed "cross-border deportation of recruited Congolese children from the Bunia, Beni and Butembo region to Uganda". The Eleventh Report of the Secretary-General on MONUC (doc. S/2002/621 of 5 June 2002, para. 47) points out that the local UPDF authorities in and around Bunia in Ituri district "have failed to prevent the fresh recruitment or re-recruitment of children" as child soldiers. MONUC's special report on the events in Ituri, January 2002-December 2003 (doc. S/2004/573 of 16 July 2004, para. 148) refers to several incidents where Congolese children were transferred to UPDF training camps for military training.

211. Having examined the case file, the Court considers that it has credible evidence sufficient to conclude that the UPDF troops committed acts of killing, torture and other forms of inhumane treatment of the civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, incited ethnic conflict and took no steps to put an end to such conflicts, was involved in the training of child soldiers, and did not take measures to ensure respect for human rights and international humanitarian law in the occupied territories.

212. With regard to the claim by the DRC that Uganda carried out a

deliberate policy of terror, confirmed in its view by the almost total impunity of the soldiers and officers responsible for the alleged atrocities committed on the territory of the DRC, the Court, in the absence of specific evidence supporting this claim, does not consider that this allegation has been proven. The Court, however, wishes to stress that the civil war and foreign military intervention in the DRC created a general atmosphere of terror pervading the lives of the Congolese people.

*

213. The Court turns now to the question as to whether acts and omissions of the UPDF and its officers and soldiers are attributable to Uganda. The conduct of the UPDF as a whole is clearly attributable to Uganda, being the conduct of a State organ. According to a well-established rule of international law, which is of customary character, "the conduct of any organ of a State must be regarded as an act of that State" (*Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999 (I)*, p. 87, para. 62). The conduct of individual soldiers and officers of the UPDF is to be considered as the conduct of a State organ. In the Court's view, by virtue of the military status and function of Ugandan soldiers in the DRC, their conduct is attributable to Uganda. The contention that the persons concerned did not act in the capacity of persons exercising governmental authority in the particular circumstances, is therefore without merit.

214. It is furthermore irrelevant for the attribution of their conduct to Uganda whether the UPDF personnel acted contrary to the instructions given or exceeded their authority. According to a well-established rule of a customary nature, as reflected in Article 3 of the Fourth Hague Convention respecting the Laws and Customs of War on Land of 1907 as well as in Article 91 of Protocol I additional to the Geneva Conventions of 1949, a party to an armed conflict shall be responsible for all acts by persons forming part of its armed forces.

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215. The Court, having established that the conduct of the UPDF and of the officers and soldiers of the UPDF is attributable to Uganda, must now examine whether this conduct constitutes a breach of Uganda's international obligations. In this regard, the Court needs to determine the rules and principles of international human rights law and international humanitarian law which are relevant for this purpose.

216. The Court first recalls that it had occasion to address the issues of the relationship between international humanitarian law and interna-

tional human rights law and of the applicability of international human rights law instruments outside national territory in its Advisory Opinion of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. In this Advisory Opinion the Court found that

> "the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights. As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law." (*I.C.J. Reports 2004*, p. 178, para. 106.)

It thus concluded that both branches of international law, namely international human rights law and international humanitarian law, would have to be taken into consideration. The Court further concluded that international human rights instruments are applicable "in respect of acts done by a State in the exercise of its jurisdiction outside its own territory", particularly in occupied territories (*ibid.*, pp. 178-181, paras. 107-113).

217. The Court considers that the following instruments in the fields of international humanitarian law and international human rights law are applicable, as relevant, in the present case:

— Regulations Respecting the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 October 1907. Neither the DRC nor Uganda are parties to the Convention. However, the Court reiterates that "the provisions of the Hague Regulations have become part of customary law" (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 172, para. 89) and as such are binding on both Parties;
— Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949. The DRC's (at the time Republic of the Congo (Léopoldville)) notification of succession dated 20 February 1961 was deposited on 24 February 1961, with retroactive effect as from 30 June 1960, the date on which the DRC became independent; Uganda acceded on 18 May 1964;
— International Covenant on Civil and Political Rights of 19 December 1966. The DRC (at the time Republic of Zaire) acceded to the Covenant on 1 November 1976; Uganda acceded on 21 June 1995;
— Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. The DRC (at the time Republic of

Zaire) acceded to the Protocol on 3 June 1982; Uganda acceded on 13 March 1991;
— African Charter on Human and Peoples' Rights of 27 June 1981. The DRC (at the time Republic of Zaire) acceded to the Charter on 20 July 1987; Uganda acceded on 10 May 1986;
— Convention on the Rights of the Child of 20 November 1989. The DRC (at the time Republic of Zaire) ratified the Convention on 27 September 1990 and Uganda on 17 August 1990;
— Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict of 25 May 2000. The Protocol entered into force on 12 February 2002. The DRC ratified the Protocol on 11 November 2001; Uganda acceded on 6 May 2002.

218. The Court moreover emphasizes that, under common Article 2 of the four Geneva Conventions of 12 August 1949,

> "[i]n addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.
>
> The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance."

219. In view of the foregoing, the Court finds that the acts committed by the UPDF and officers and soldiers of the UPDF (see paragraphs 206-211 above) are in clear violation of the obligations under the Hague Regulations of 1907, Articles 25, 27 and 28, as well as Articles 43, 46 and 47 with regard to obligations of an occupying Power. These obligations are binding on the Parties as customary international law. Uganda also violated the following provisions of the international humanitarian law and international human rights law instruments, to which both Uganda and the DRC are parties:

— Fourth Geneva Convention, Articles 27 and 32 as well as Article 53 with regard to obligations of an occupying Power;

— International Covenant on Civil and Political Rights, Articles 6, paragraph 1, and 7;
— First Protocol Additional to the Geneva Conventions of 12 August 1949, Articles 48, 51, 52, 57, 58 and 75, paragraphs 1 and 2;
— African Charter on Human and Peoples' Rights, Articles 4 and 5;

— Convention on the Rights of the Child, Article 38, paragraphs 2 and 3;
— Optional Protocol to the Convention on the Rights of the Child, Articles 1, 2, 3, paragraph 3, 4, 5 and 6.

220. The Court thus concludes that Uganda is internationally responsible for violations of international human rights law and international humanitarian law committed by the UPDF and by its members in the territory of the DRC and for failing to comply with its obligations as an occupying Power in Ituri in respect of violations of international human rights law and international humanitarian law in the occupied territory.

221. The Court finally would point out that, while it has pronounced on the violations of international human rights law and international humanitarian law committed by Ugandan military forces on the territory of the DRC, it nonetheless observes that the actions of the various parties in the complex conflict in the DRC have contributed to the immense suffering faced by the Congolese population. The Court is painfully aware that many atrocities have been committed in the course of the conflict. It is incumbent on all those involved in the conflict to support the peace process in the DRC and other peace processes in the Great Lakes area, in order to ensure respect for human rights in the region.

* * *

Illegal Exploitation of Natural Resources

222. In its third submission the DRC requests the Court to adjudge and declare:

> "3. That the Republic of Uganda, by engaging in the illegal exploitation of Congolese natural resources, by pillaging its assets and wealth, by failing to take adequate measures to prevent the illegal exploitation of the resources of the DRC by persons under its jurisdiction or control, and/or failing to punish persons under its jurisdiction or control having engaged in the above-mentioned acts, has violated the following principles of conventional and customary law:
>
> — the applicable rules of international humanitarian law;
> — respect for the sovereignty of States, including over their natural resources;
> — the duty to promote the realization of the principle of equality of peoples and of their right of self-determination, and consequently to refrain from exposing peoples to foreign subjugation, domination or exploitation;
> — the principle of non-interference in matters within the domestic jurisdiction of States, including economic matters."

223. The DRC alleges that, following the invasion of the DRC by

Uganda in August 1998, the Ugandan troops "illegally occupying" Congolese territory, acting in collaboration with Congolese rebel groups supported by Uganda, systematically looted and exploited the assets and natural resources of the DRC. According to the DRC, after the systematic looting of natural resources, the Ugandan military and the rebel groups which it supported "moved on to another phase in the expropriation of the wealth of Congo, by direct exploitation of its resources" for their own benefit. The DRC contends that the Ugandan army took outright control of the entire economic and commercial system in the occupied areas, with almost the entire market in consumer goods being controlled by Ugandan companies and businessmen. The DRC further claims that UDPF forces have engaged in hunting and plundering of protected species. The DRC charges that the Ugandan authorities did nothing to put an end to these activities and indeed encouraged the UPDF, Ugandan companies and rebel groups supported by Uganda to exploit natural resources on Congolese territory.

224. The DRC maintains that the highest Ugandan authorities, including President Museveni, were aware of the UPDF forces' involvement in the plundering and illegal exploitation of the natural resources of the DRC. Moreover, the DRC asserts that these activities were tacitly supported or even encouraged by the Ugandan authorities, "who saw in them a way of financing the continuation of the war in the DRC, 'rewarding' the military involved in this operation and opening up new markets to Ugandan companies".

225. The DRC claims that the illegal exploitation, plundering and looting of the DRC's natural resources by Uganda have been confirmed in a consistent manner by a variety of independent sources, among them the Porter Commission Report, the United Nations Panel reports and reports of national organs and non-governmental organizations. According to the DRC, the facts which it alleges are also corroborated by the economic data analysed in various reports by independent experts.

226. The DRC contends that illegal exploitation, plundering and looting of the DRC's natural resources constitute violations by Uganda of "the sovereignty and territorial integrity of the DRC, more specifically of the DRC's sovereignty over its natural resources". In this regard the DRC refers to the right of States to their natural resources and cites General Assembly resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources, adopted on 14 December 1962; the Declaration on the Establishment of a New International Economic Order contained in United Nations General Assembly resolution 3201 (S.VI) of 1 May 1974 and the Charter of Economic Rights and Duties of States, adopted by the United Nations General Assembly in its resolution 3281 (XXIX) of 12 December 1974.

227. The DRC claims that Uganda in all circumstances is responsible

for acts of plunder and illegal exploitation of the resources of the DRC committed by officers and soldiers of the UPDF as an organ of the Republic of Uganda. For the DRC it is not relevant whether members of the Ugandan army acted under, or contrary to, official orders from their Government or in an official or private capacity.

228. Turning to the duty of vigilance, the DRC argues that, in relation to the obligation to respect the sovereignty of States over their natural resources, this duty implies that a State should take adequate measures to ensure that its military forces, nationals or groups that it controls do not engage in illegal exploitation of natural resources on the territory of another State. The DRC claims that all activities involving exploitation of natural resources conducted by Ugandan companies and nationals and rebel movements supported by Uganda were acts of illegal exploitation. The DRC further contends that Uganda took no proper steps to bring to an end the illegal exploitation of the natural resources of the DRC by members of Ugandan military, private companies or nationals and by the Congolese rebel movements that it controlled and supported, thus violating its duty of vigilance.

229. The DRC asserts that, by engaging in the illegal exploitation, plundering and looting of the DRC's natural resources, Uganda also violated its obligations as an occupying Power under the *jus in bello*. According to the DRC, "the detailed rules of the law of armed conflict in relation to the exploitation of natural resources have to be considered against the background of this fundamental principle of permanent sovereignty over natural resources". This principle, in the view of the DRC, continues to apply at all times, including during armed conflict and occupation.

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230. For its part, Uganda maintains that the DRC has not provided reliable evidence to corroborate its allegations regarding the looting and illegal exploitation of natural resources of the DRC by Uganda. It claims that neither the United Nations Panel reports nor the Porter Commission Report can be considered as supporting the DRC's allegations. Moreover, according to Uganda, the limited nature of its intervention is inconsistent with the DRC's contention that Uganda occupied the eastern Congo in order to exploit natural resources. Nor, in view of this fact, could Uganda exercise the pervasive economic control required to exploit the areas as alleged by the DRC.

231. Uganda further denies that it has violated the principle of the Congolese people's sovereignty over its natural resources. It maintains that this principle, "which was shaped in a precise historical context (that of decolonization) and has a very precise purpose", cannot be applicable in the context of the present case. Uganda claims that individual acts of

members of the Ugandan military forces committed in their private capacity and in violation of orders and instructions cannot serve as basis for attributing to Uganda a wrongful act violating the principle of the permanent sovereignty of Congolese people over their natural resources.

232. Uganda likewise denies that it violated its duty of vigilance with regard to acts of illegal exploitation in the territories where its troops were present. Uganda does not agree with the contention that it had a duty of vigilance with regard to the Congolese rebel groups, asserting that it did not control those groups and had no power over their administrative acts. Uganda also maintains that, "within the limits of its capabilities, it exercised a high degree of vigilance to ensure that its nationals did not, through their actions, infringe the Congolese people's right to control their natural resources".

233. Uganda also contests the view that the alleged breach of its "duty of vigilance" is founded on Uganda's failure to prohibit trade "between its nationals and the territories controlled by the rebels in eastern Congo". In Uganda's view, the *de facto* authority of Congolese rebel movements established in eastern Congo could not affect the commercial relations between the eastern Congo, Uganda and several other States, which were maintained in the interests of the local populations and essential to the populations' survival, and therefore "did not impose an obligation to apply commercial sanctions".

234. Uganda states that the DRC's contentions that Uganda failed to take action against illegal activity are without merit. In this regard it refers to a radio broadcast by President Museveni in December 1998, which made "it clear that no involvement of the members of the Ugandan armed forces in commercial activities in eastern Congo would be tolerated". Furthermore, Uganda points out that "the Porter Commission found that there was no Ugandan governmental policy to exploit the DRC's natural resources". It maintains that the Porter Commission confirmed that the Ugandan Government's policy was to forbid its officers and soldiers from engaging in any business or commercial activities in the DRC. However, in cases where the Porter Commission found that there was evidence to support allegations that individual soldiers engaged in commercial activities and looting "acting in a purely private capacity for their personal enrichment", the Government of Uganda accepted the Commission's recommendations to initiate criminal investigations against the alleged offenders.

235. Uganda recognizes that, as found by the Porter Commission, there were instances of illegal commercial activities or looting committed by certain members of the Ugandan military forces acting in their private capacity and in violation of orders and instructions given to them "by the highest State authorities". However, Uganda maintains that these individual acts cannot be characterized as "internationally wrongful acts" of

Uganda. For Uganda, violations by Ugandan nationals of the internal law of Uganda or of certain Congolese rules and practices in the territories where rebels exercised *de facto* administrative authority, referred to by the Porter Commission, do not necessarily constitute an internationally wrongful act, "for it is well known that the originating act giving rise to international responsibility is not an act characterized as 'illegal' by the domestic law of the State but an 'internationally wrongful act' imputable to a State".

236. Finally, Uganda asserts that the DRC neither specified precisely the wrongful acts for which it seeks to hold Uganda internationally responsible nor did it demonstrate that "it suffered *direct injury* as a result of acts which it seeks to impute to Uganda". In this regard Uganda refers to the Porter Commission, which, according to Uganda, concluded that "the overwhelming majority, if not all, of the allegations concerning the exploitation of the DRC's forest and agricultural resources by Uganda or by Ugandan soldiers", were not proven; that several allegations of looting were also unfounded; and that Uganda "had at no time intended to exploit the natural resources of the DRC or to use those resources to 'finance the war' and that it did not do so".

* *

Findings of the Court concerning Acts of Illegal Exploitation of Natural Resources

237. The Court observes that in order to substantiate its allegations the DRC refers to the United Nations Panel reports and to the Porter Commission Report. The Court has already expressed its view with regard to the evidentiary value of the Porter Commission materials in general (see paragraph 61 above) and considers that both the Porter Commission Report, as well as the United Nations Panel reports, to the extent that they have later proved to be probative, furnish sufficient and convincing evidence for it to determine whether or not Uganda engaged in acts of looting, plundering and illegal exploitation of the DRC's natural resources. Taking this into account, in order to rule on the third submission of the DRC, the Court will draw its conclusions on the basis of the evidence it finds reliable.

In reaching its decision on the DRC's claim, it is not necessary for the Court to make findings of fact with regard to each individual incident alleged.

238. According to the Porter Commission Report, the written message sent by General Kazini in response to the radio message broadcast by the Ugandan President in December 1998 demonstrated that the General was aware of problems of conduct of some UPDF officers, that he did not take any "real action until the matter became public" and that he did

not inform the President. The Commission further states that it follows from General Kazini's message that he, in point of fact, admitted that the allegation that "some top officers in the UPDF were planning from the beginning to do business in Congo was generally true"; "that Commanders in business partnership with Ugandans were trading in the DRC, about which General Kazini took no action"; and that Ugandan "military aircraft were carrying Congolese businessmen into Entebbe, and carrying items which they bought in Kampala back to the Congo". The Commission noted that, while certain orders directed against the use of military aircraft by businessmen were made by General Kazini, that practice nonetheless continued. The Commission also referred to a radio message of General Kazini in which he said that "officers in the Colonel Peter Kerim sector, Bunia and based at Kisangani Airport were engaging in business contrary to the presidential radio message". The Commission further stated that General Kazini was aware that officers and men of the UPDF were involved in gold mining and trade, smuggling and looting of civilians.

239. The Commission noted that General Kazini's radio messages in response to the reports about misconduct of the UPDF did not intend, in point of fact, to control this misconduct. It stated as follows:

> "There is no doubt that his purpose in producing these messages was to try to show that he was taking action in respect of these problems . . . There appears to have been little or no action taken as a result of these messages . . . all this correspondence was intended by General Kazini to cover himself, rather than to prompt action. There also appears to be litle or no follow up to the orders given."

240. The Commission found that General Kazini was "an active supporter in the Democratic Republic of the Congo of Victoria, an organization engaged in smuggling diamonds through Uganda: and it is difficult to believe that he was not profiting for himself from the operation". The Commission explained that the company referred to as "Victoria" in its Report dealt "in diamonds, gold and coffee which it purchased from Isiro, Bunia, Bumba, Bondo, Buta and Kisangani" and that it paid taxes to the MLC.

241. The Commission further recognized that there had been exploitation of the natural resources of the DRC since 1998, and indeed from before that. This exploitation had been carried out, *inter alia*, by senior army officers working on their own and through contacts inside the DRC; by individual soldiers taking advantage of their postings; by cross-border trade and by private individuals living within Uganda. There were instances of looting, "about which General Kazini clearly knew as he sent a radio message about it. This Commission is unable to exclude the possibility that individual soldiers of the UPDF were involved, or that they

were supported by senior officers." The Commission's investigations "reveal that there is no doubt that both RCD and UPDF soldiers were imposing a gold tax, and that it is very likely that UPDF soldiers were involved in at least one mining accident".

242. Having examined the case file, the Court finds that it does not have at its disposal credible evidence to prove that there was a governmental policy of Uganda directed at the exploitation of natural resources of the DRC or that Uganda's military intervention was carried out in order to obtain access to Congolese resources. At the same time, the Court considers that it has ample credible and persuasive evidence to conclude that officers and soldiers of the UPDF, including the most high-ranking officers, were involved in the looting, plundering and exploitation of the DRC's natural resources and that the military authorities did not take any measures to put an end to these acts. (Such acts are referred to in a number of paragraphs in the Porter Commission Report, in particular, paragraphs 13.1. "UPDF Officers conducting business", 13.2. "Gold Mining", 13.4. "Looting", 13.5. "Smuggling", 14.4. "Allegations against top UPDF Officers", 14.5. "Allegations against General Kazini", 15.7. "Organised Looting", 20.3. "General James Kazini" and 21.3.4. "The Diamond Link: General Kazini".)

243. As the Court has already noted (see paragraph 213 above), Uganda is responsible both for the conduct of the UPDF as a whole and for the conduct of individual soldiers and officers of the UPDF in the DRC. The Court further recalls (see paragraph 214 above) that it is also irrelevant for the purposes of attributing their conduct to Uganda whether UPDF officers and soldiers acted contrary to instructions given or exceeded their authority. Thus the Court must now examine whether acts of looting, plundering and exploitation of the DRC's natural resources by officers and soldiers of the UPDF and the failure of the Ugandan authorities to take adequate measures to ensure that such acts were not committed constitute a breach of Uganda's international obligations.

244. The Court finds that it cannot uphold the contention of the DRC that Uganda violated the principle of the DRC's sovereignty over its natural resources (see paragraph 226 above). The Court recalls that the principle of permanent sovereignty over natural resources is expressed in General Assembly resolution 1803 (XVII) of 14 December 1962 and further elaborated in the Declaration on the Establishment of a New International Economic Order (General Assembly resolution 3201 (S.VI) of 1 May 1974) and the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX) of 12 December 1974). While recognizing the importance of this principle, which is a principle of customary international law, the Court notes that there is nothing in these General Assembly resolutions which suggests that they are applicable to

the specific situation of looting, pillage and exploitation of certain natural resources by members of the army of a State militarily intervening in another State, which is the subject-matter of the DRC's third submission. The Court does not believe that this principle is applicable to this type of situation.

245. As the Court has already stated (see paragraph 180 above), the acts and omissions of members of Uganda's military forces in the DRC engage Uganda's international responsibility in all circumstances, whether it was an occupying Power in particular regions or not. Thus, whenever members of the UPDF were involved in the looting, plundering and exploitation of natural resources in the territory of the DRC, they acted in violation of the *jus in bello*, which prohibits the commission of such acts by a foreign army in the territory where it is present. The Court notes in this regard that both Article 47 of the Hague Regulations of 1907 and Article 33 of the Fourth Geneva Convention of 1949 prohibit pillage.

The Court further observes that both the DRC and Uganda are parties to the African Charter on Human and Peoples' Rights of 27 June 1981, which in paragraph 2 of Article 21, states that "[i]n case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation".

246. The Court finds that there is sufficient evidence to support the DRC's claim that Uganda violated its duty of vigilance by not taking adequate measures to ensure that its military forces did not engage in the looting, plundering and exploitation of the DRC's natural resources. As already noted, it is apparent that, despite instructions from the Ugandan President to ensure that such misconduct by UPDF troops cease, and despite assurances from General Kazini that he would take matters in hand, no action was taken by General Kazini and no verification was made by the Ugandan Government that orders were being followed up (see paragraphs 238-239 above). In particular the Court observes that the Porter Commission stated in its Report that

> "[t]he picture that emerges is that of a deliberate and persistent indiscipline by commanders in the field, tolerated, even encouraged and covered by General Kazini, as shown by the incompetence or total lack of inquiry and failure to deal effectively with breaches of discipline at senior levels".

(Also of relevance in the Porter Commission Report are paragraphs 13.1 "UPDF Officers conducting business", 13.5 "Smuggling" and 14.5 "Allegations against General Kazini"). It follows that by this failure to act Uganda violated its international obligations, thereby incurring its international responsibility. In any event, whatever measures had been taken by its authorities, Uganda's responsibility was nonetheless engaged by the fact that the unlawful acts had been committed by members of its

armed forces (see paragraph 214 above).

247. As for the claim that Uganda also failed to prevent the looting, plundering and illegal exploitation of the DRC's natural resources by rebel groups, the Court has already found that the latter were not under the control of Uganda (see paragraph 160 above). Thus, with regard to the illegal activities of such groups outside of Ituri, it cannot conclude that Uganda was in breach of its duty of vigilance.

248. The Court further observes that the fact that Uganda was the occupying Power in Ituri district (see paragraph 178 above) extends Uganda's obligation to take appropriate measures to prevent the looting, plundering and exploitation of natural resources in the occupied territory to cover private persons in this district and not only members of Ugandan military forces. It is apparent from various findings of the Porter Commission that rather than preventing the illegal traffic in natural resources, including diamonds, high-ranking members of the UPDF facilitated such activities by commercial entities. In this regard, the Report of the Commission mentions a company referred to as "Victoria" (see paragraph 240 above), which operated, *inter alia*, in Bunia. In particular the Report indicates that "General Kazini gave specific instructions to UPDF Commanders in Isiro, Bunia, Beni, Bumba, Bondo and Buta to allow the Company to do business uninterrupted in the areas under their command". (Also of relevance in the Report of the Commission are paragraphs 18.5.1 "Victoria Group", 20.3 "General James Kazini" and 21.3 "The Diamond Link".)

249. Thus the Court finds that it has been proven that Uganda has not complied with its obligations as an occupying Power in Ituri district. The Court would add that Uganda's argument that any exploitation of natural resources in the DRC was carried out for the benefit of the local population, as permitted under humanitarian law, is not supported by any reliable evidence.

250. The Court concludes that it is in possession of sufficient credible evidence to find that Uganda is internationally responsible for acts of looting, plundering and exploitation of the DRC's natural resources committed by members of the UPDF in the territory of the DRC, for violating its obligation of vigilance in regard to these acts and for failing to comply with its obligations under Article 43 of the Hague Regulations of 1907 as an occupying Power in Ituri in respect of all acts of looting, plundering and exploitation of natural resources in the occupied territory.

* * *

LEGAL CONSEQUENCES OF VIOLATIONS OF INTERNATIONAL OBLIGATIONS BY UGANDA

251. The Court, having established that Uganda committed internationally wrongful acts entailing its international responsibility (see paragraphs 165, 220 and 250 above), turns now to the determination of the legal consequences which such responsibility involves.

252. In its fourth submission the DRC requests the Court to adjudge and declare:

> "4. *(a)* . . . . . ;
>
> *(b)* that the Republic of Uganda shall cease forthwith all continuing internationally wrongful acts, and in particular its support for irregular forces operating in the DRC and its exploitation of Congolese wealth and natural resources;
>
> *(c)* that the Republic of Uganda shall provide specific guarantees and assurances that it will not repeat the wrongful acts complained of;
>
> *(d)* that the Republic of Uganda is under an obligation to the Democratic Republic of the Congo to make reparation for all injury caused to the latter by the violation of the obligations imposed by international law and set out in submissions 1, 2 and 3 above;
>
> *(e)* that the nature, form and amount of the reparation shall be determined by the Court, failing agreement thereon between the Parties, and that the Court shall reserve the subsequent procedure for that purpose."

253. The DRC claims that, as the first legal consequence of the establishment of Uganda's international responsibility, the latter is under an obligation to cease forthwith all continuing internationally wrongful acts. According to the DRC's Memorial, this obligation of cessation covers, in particular, the occupation of Congolese territory, the support for irregular forces operating in the DRC, the unlawful detention of Congolese nationals and the exploitation of Congolese wealth and natural resources. In its Reply the DRC refers to the occupation of Congolese territory, the support for irregular forces operating in the DRC and the exploitation of Congolese wealth and natural resources. In its final submission presented at the end of the oral proceedings, the DRC, in view of the withdrawal of Ugandan troops from the territory of the DRC, asks that Uganda cease from providing support for irregular forces operating in the DRC and cease from exploiting Congolese wealth and natural resources.

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254. In answer to the question by Judge Vereshchetin (see para-

graph 22 above), the DRC explained that, while its claims relating to the occupation of the territory of the DRC covered the period from 6 August 1998 to 2 June 2003, other claims including those of new military actions, new acts of support to irregular forces, as well as continuing illegal exploitation of natural resources, covered the period from 2 August 1998 until the end of the oral proceedings. The Court notes, however, that it has not been presented with evidence to support allegations with regard to the period after 2 June 2003.

In particular, the Court observes that there is no evidence in the case file which can corroborate the DRC's allegation that at present Uganda supports irregular forces operating in the DRC and continues to be involved in the exploitation of Congolese natural resources. Thus, the Court does not find it established that Uganda, following the withdrawal of its troops from the territory of the DRC in June 2003, continues to commit the internationally wrongful acts specified by the DRC. The Court thus concludes that the DRC's request that Uganda be called upon to cease the acts referred to in its submission 4 *(b)* cannot be upheld.

* *

255. The DRC further requests the Court to rule that Uganda provide specific guarantees and assurances of non-repetition of the wrongful acts complained of. The DRC claims that this request is justified by "the threats which accompanied the troop withdrawal in May 2003". In this regard it alleges that in April 2003 Mr. James Wapakhabulo, the then Minister for Foreign Affairs of Uganda, made a statement "according to which 'the withdrawal of our troops from the Democratic Republic of the Congo does not mean that we will not return there to defend our security!' ". As to the form of the guarantees and assurances of non-repetition, the DRC, referring to existing international practice, requests from Uganda "a solemn declaration that it will in future refrain from pursuing a policy that violates the sovereignty of the Democratic Republic of the Congo and the rights of its population"; in addition, it "demands that specific instructions to that effect be given by the Ugandan authorities to their agents".

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256. In this respect the Court has taken judicial notice of the Tripartite Agreement on Regional Security in the Great Lakes, signed on 26 October 2004 by the DRC, Rwanda and Uganda. In the Preamble of this Agreement the Parties emphasize "the need to ensure that the principles of good neighbourliness, respect for the sovereignty, territorial integrity, and non-interference in the internal affairs of sovereign states are

respected, particularly in the region". Article I indicates that one of the objectives of the Agreement is to "[e]nsure respect for the sovereignty and territorial integrity of the countries in the region and cessation of any support for armed groups or militias, in accordance with relevant resolutions of the United Nations and other rules of international law". Finally, in paragraph 1 of Article II, "[t]he Parties reiterate their commitment to fulfil their obligations and undertakings under existing agreements and the relevant resolutions of the United Nations Security Council". The Parties further agreed to establish a Tripartite Joint Commission, which, *inter alia*, "shall implement the terms of this Agreement and ensure that the objectives of this Agreement are being met".

257. The Court considers that, if a State assumes an obligation in an international agreement to respect the sovereignty and territorial integrity of the other States parties to that agreement (an obligation which exists also under general international law) and a commitment to cooperate with them in order to fulfil such obligation, this expresses a clear legally binding undertaking that it will not repeat any wrongful acts. In the Court's view, the commitments assumed by Uganda under the Tripartite Agreement must be regarded as meeting the DRC's request for specific guarantees and assurances of non-repetition. The Court expects and demands that the Parties will respect and adhere to their obligations under that Agreement and under general international law.

* *

258. The DRC also asks the Court to adjudge and declare that Uganda is under an obligation to make reparation to the DRC for all injury caused by the violation by Uganda of its obligations under international law. The DRC contends that the internationally wrongful acts attributable to Uganda which engaged the latter's international responsibility, namely "years of invasion, occupation, fundamental human rights violations and plundering of natural resources", caused "massive war damage" and therefore entail an obligation to make reparation. The DRC acknowledges that "for the purposes of determining the extent of reparation it must specify the nature of the injury and establish the causal link with the initial wrongful act". However, at this stage of the proceedings the DRC requests a general declaration by the Court establishing the principle that reparation is due, with the determination of the exact amount of the damages and the nature, form and amount of the reparation, failing agreement between the Parties, being deferred until a later stage in the proceedings. The DRC points out that such a procedure is "in accordance with existing international jurisprudence" and refers, in particular, to the Court's Judgment on the merits in the case concerning

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. *United States of America)*.

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259. The Court observes that it is well established in general international law that a State which bears responsibility for an internationally wrongful act is under an obligation to make full reparation for the injury caused by that act (see *Factory at Chorzów, Jurisdiction, 1927, P.C.I.J., Series A, No. 9*, p. 21; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 81, para. 152; *Avena and Other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2004*, p. 59, para. 119). Upon examination of the case file, given the character of the internationally wrongful acts for which Uganda has been found responsible (illegal use of force, violation of sovereignty and territorial integrity, military intervention, occupation of Ituri, violations of international human rights law and of international humanitarian law, looting, plunder and exploitation of the DRC's natural resources), the Court considers that those acts resulted in injury to the DRC and to persons on its territory. Having satisfied itself that this injury was caused to the DRC by Uganda, the Court finds that Uganda has an obligation to make reparation accordingly.

260. The Court further considers appropriate the request of the DRC for the nature, form and amount of the reparation due to it to be determined by the Court, failing agreement between the Parties, in a subsequent phase of the proceedings. The DRC would thus be given the opportunity to demonstrate and prove the exact injury that was suffered as a result of specific actions of Uganda constituting internationally wrongful acts for which it is responsible. It goes without saying, however, as the Court has had the opportunity to state in the past, "that in the phase of the proceedings devoted to reparation, neither Party may call in question such findings in the present Judgment as have become *res judicata*" (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 143, para. 284).

261. The Court also notes that the DRC has stated its intention to seek initially to resolve the issue of reparation by way of direct negotiations with Uganda and to submit the question to the Court only "failing agreement thereon between the parties". It is not for the Court to determine the final result of these negotiations to be conducted by the Parties. In such negotiations, the Parties should seek in good faith an agreed solution based on the findings of the present Judgment.

* * *

COMPLIANCE WITH THE COURT'S ORDER ON PROVISIONAL MEASURES

262. In its fifth submission the DRC requests the Court to adjudge and declare

> "5. That the Republic of Uganda has violated the Order of the Court on provisional measures of 1 July 2000, in that it has failed to comply with the following provisional measures:
>
> "(1) both Parties must, forthwith, prevent and refrain from any action, and in particular any armed action, which might prejudice the rights of the other Party in respect of whatever judgment the Court may render in the case, or which might aggravate or extend the dispute before the Court or make it more difficult to resolve;
>
> (2) both Parties must, forthwith, take all measures necessary to comply with all of their obligations under international law, in particular those under the United Nations Charter and the Charter of the Organization of African Unity, and with United Nations Security Council resolution 1304 (2000) of 16 June 2000;
>
> (3) both Parties must, forthwith, take all measures necessary to ensure full respect within the zone of conflict for fundamental human rights and for the applicable provisions of humanitarian law'."

263. The Court observes that its "orders on provisional measures under Article 41 [of the Statute] have binding effect" (*LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 506, para. 109). The Court recalls that the purpose of provisional measures is to protect the rights of either party, pending the determination of the merits of the case. The Court's Order of 1 July 2000 on provisional measures created legal obligations which both Parties were required to comply with.

264. With regard to the question whether Uganda has complied with the obligations incumbent upon it as a result of the Order of 1 July 2000, the Court observes that the Order indicated three provisional measures, as referred to in the DRC's fifth submission. The Court notes that the DRC put forward no specific evidence demonstrating that after July 2000 Uganda committed acts in violation of each of the three provisional measures indicated by the Court. The Court however observes that in the present Judgment it has found that Uganda is responsible for acts in violation of international human rights law and international humanitarian law carried out by its military forces in the territory of the DRC (see paragraph 220 above). The evidence shows that such violations were com-

mitted throughout the period when Ugandan troops were present in the DRC, including the period from 1 July 2000 until practically their final withdrawal on 2 June 2003 (see paragraphs 206-211 above). The Court thus concludes that Uganda did not comply with the Court's Order on provisional measures of 1 July 2000.

265. The Court further notes that the provisional measures indicated in the Order of 1 July 2000 were addressed to both Parties. The Court's finding in paragraph 264 is without prejudice to the question as to whether the DRC did not also fail to comply with the provisional measures indicated by the Court.

* * *

COUNTER-CLAIMS: ADMISSIBILITY OF OBJECTIONS

266. It is recalled that, in its Counter-Memorial, Uganda submitted three counter-claims (see paragraph 5 above). Uganda's counter-claims were presented in Chapter XVIII of the Counter-Memorial. Uganda's first counter-claim related to acts of aggression allegedly committed by the DRC against Uganda. Uganda contended that the DRC had acted in violation of the principle of the non-use of force incorporated in Article 2, paragraph 4, of the United Nations Charter and found in customary international law, and of the principle of non-intervention in matters within the domestic jurisdiction of States. Uganda's second counter-claim related to attacks on Ugandan diplomatic premises and personnel in Kinshasa, and on Ugandan nationals, for which the DRC is alleged to be responsible. Uganda contended that the acts of the DRC amounted to an illegal use of force, and were in breach of certain rules of conventional or customary international law relating to the protection of persons and property. Uganda's third counter-claim related to alleged violations by the DRC of specific provisions of the Lusaka Agreement. Uganda also requested that the Court reserve the issue of reparation in relation to the counter-claims for a subsequent stage of the proceedings (see *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Counter-Claims, Order of 29 November 2001, I.C.J. Reports 2001*, p. 664, para. 4).

267. By an Order of 29 November 2001 the Court found, with regard to the first and second counter-claims, that the Parties' respective claims in both cases related to facts of the same nature and formed part of the same factual complex, and that the Parties were moreover pursuing the same legal aims. The Court accordingly concluded that these two

counter-claims were admissible as such (*I.C.J. Reports 2001*, pp. 678-682, paras. 38-41, 45 and 51). By contrast, the Court found that Uganda's third counter-claim was inadmissible as such, since it was not directly connected with the subject-matter of the DRC's claims (*ibid.*, pp. 680-682, paras. 42-43, 45 and 51).

* *

268. The DRC maintains that the joinder of Uganda's first and second counter-claims to the proceedings does not imply that preliminary objections cannot be raised against them. The DRC contends that it is therefore entitled to raise objections to the admissibility of the counter-claims at this stage of the proceedings. Furthermore, the DRC states that it had "clearly indicated in its written observations on Uganda's counter-claims, in June 2001, that is to say *prior to* the Order made by the Court in November 2001, that it reserved the right to submit preliminary objections in its Reply" (emphasis in the original). As it was unable to comply literally with Article 79, which does not expressly contemplate the submission of preliminary objections in respect of counter-claims, the DRC states that it applied the principle of that provision, *mutatis mutandis*, to the situation with which it was confronted, i.e. it submitted the objections in the first written pleading following both the submission of counter-claims by Uganda in its Counter-Memorial and the Order whereby the Court ruled on the admissibility of those claims as counter-claims. According to the DRC, the Court only ruled in its Order of 29 November 2001 "on the admissibility of this claim *as a counter-claim*, without prejudging any other question which might arise with respect to it" (emphasis in the original). The DRC further argues that the Court's decision is limited to the context of Article 80 of its Rules, and in no way "constitutes a ruling on the admissibility of the counter-claims as new claims joined to the proceedings".

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269. Uganda asserts that the DRC is no longer entitled at this stage of the proceedings to plead the inadmissibility of the counter-claims, since the Court's Order of 29 November 2001 is a definitive determination on counter-claims under Article 80 of the Rules of Court and precludes any discussion on the admissibility of the counter-claims themselves. Uganda further contends that the DRC never submitted its preliminary objections in the form or within the time-limit prescribed by Article 79 of the Rules of Court.

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270. In its consideration of the counter-claims submitted by Uganda, the Court must first address the question whether the DRC is entitled to challenge at this stage of the proceedings the admissibility of the counter-claims.

271. The Court notes that in the *Oil Platforms* case it was called upon to resolve the same issue now raised by Uganda. In that case, the Court concluded that Iran was entitled to challenge the admissibility of the United States counter-claim in general, even though the counter-claim had previously been found admissible under Article 80 of the Rules (*Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, p. 210, para. 105). Discussing its prior Order, the Court declared:

> "When in that Order the Court ruled on the 'admissibility' of the counter-claim, the task of the Court at that stage was only to verify whether or not the requirements laid down by Article 80 of the Rules of Court were satisfied, namely, that there was a direct connection of the counter-claim with the subject-matter of the [principal] claims . . ." *(Ibid.)*

272. There is nothing in the facts of the present case that compels a different conclusion. On the contrary, the language of the Court's Order of 29 November 2001 clearly calls for the same outcome as the Court reached in the *Oil Platforms* case. After finding the first and second counter-claim admissible under the Article 80 connection test, the Court emphasized in its Order of 29 November 2001 that "a decision given on the admissibility of a counter-claim taking account of the requirements of Article 80 of the Rules of Court in no way prejudges any question with which the Court would have to deal during the remainder of the proceedings" (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Counter-Claims, Order of 29 November 2001, I.C.J. Reports 2001*, p. 681, para. 46).

273. The enquiry under Article 80 as to admissibility is only in regard to the question whether a counter-claim is directly connected with the subject-matter of the principal claim; it is not an over-arching test of admissibility. Thus the Court, in its Order of 29 November 2001, intended only to settle the question of a "direct connection" within the meaning of Article 80. At that point in time it had before it only an objection to admissibility founded on the absence of such a connection.

274. With regard to Uganda's contention that the preliminary objections of the DRC are inadmissible because they failed to conform to Article 79 of the Rules of Court, the Court would observe that Article 79 concerns the case of an "objection by the respondent to the jurisdiction of the Court or to the admissibility of the application, or other objection the decision upon which is requested before any further proceedings on

the merits". It is inapplicable to the case of an objection to counter-claims which have been joined to the original proceedings. The Court notes that nonetheless, the DRC raised objections to the counter-claims in its Reply, i.e., the first pleading following the submission of Uganda's Counter-Memorial containing its counter-claims.

275. In light of the findings above, the Court concludes that the DRC is still entitled, at this stage of the proceedings, to challenge the admissibility of Uganda's counter-claims.

* *

FIRST COUNTER-CLAIM

276. In its first counter-claim, Uganda contends that, since 1994, it has been the victim of military operations and other destabilizing activities carried out by hostile armed groups based in the DRC (which between 1971 and 1997 was called Zaire) and either supported or tolerated by successive Congolese governments. Uganda asserts that elements of these anti-Ugandan armed groups were supported by the Sudan and fought in co-operation with the Sudanese and Congolese armed forces. Uganda further claims that the DRC cultivated its military alliance with the Government of the Sudan, pursuant to which the Sudanese army occupied airfields in north-eastern Congo for the purpose of delivering arms, supplies and troops to the anti-Ugandan rebels.

277. Uganda maintains that actions taken in support of the anti-Ugandan insurgents on the part of the Congolese authorities constitute a violation of the general rule forbidding the use of armed force in international relations, as well as a violation of the principle of non-intervention in the internal affairs of a State. Uganda recalls in particular that

> "[i]n the *Corfu Channel* case, the International Court of Justice pointed out that 'every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States' is a 'general and well-recognized principle' (*I.C.J. Reports 1949*, pp. 22-23)".

In Uganda's view, from this principle there flows not only a duty to refrain from providing any support to groups carrying out subversive or terrorist activities against another State, but also a duty of vigilance to ensure that such activities are not tolerated. In the present case, Uganda contends that "the DRC not only tolerated the anti-Ugandan rebels, but also supported them very effectively in various ways, before simply incorporating some of them into its armed forces".

278. In the context of the DRC's alleged involvement in supporting anti-Ugandan irregular forces from May 1997 to August 1998, Uganda contends that it is not necessary to prove the involvement of the DRC in each attack; it suffices to prove that "President Kabila and his government were co-ordinating closely with the anti-Ugandan rebels prior to August 1998".

279. According to Uganda, the DRC's support for anti-Ugandan armed irregular forces cannot be justified as a form of self-defence in response to the alleged armed aggression by Uganda, since the DRC's military alliances with the rebel groups and the Sudan and their activities preceded Uganda's decision of 11 September 1998 to send its troops into the DRC (see paragraphs 37, 39 and 121 above).

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280. In rebutting Uganda's first counter-claim, the DRC divides it into three periods of time, corresponding to distinct factual and legal situations: *(a)* the period prior to President Laurent-Désiré Kabila coming to power; *(b)* the period starting from the accession to power of President Kabila until 2 August 1998, the date on which Uganda's military attack was launched; and *(c)* the period subsequent to 2 August 1998. It submits that, in so far as the alleged claim that the DRC was involved in armed attacks against Uganda covers the first period, it is inadmissible and, in the alternative, groundless. It further asserts that the claim has no basis in fact for the second period and that it is not founded in fact or in law regarding the third period.

281. With regard to the first period, before President Kabila came to power in May 1997, the DRC contends that the Ugandan counter-claim is inadmissible on the basis that Uganda renounced its right to invoke the international responsibility of the DRC (Zaire at the time) in respect of acts dating back to that period. In particular, the DRC contends that "Uganda never expressly imputed international responsibility to Zaire" and did not "express any intention of formally invoking such responsibility". The DRC further states that the close collaboration between the two States after President Kabila came to power, including in the area of security, justifiably led the Congolese authorities to believe that "Uganda had no intention of resurrecting certain allegations from the period concerned and of seeking to engage the Congo's international responsibility on that basis".

282. In the alternative, the DRC claims that the first Ugandan counter-claim in respect of this period is devoid of foundation, since the documents presented in support of Uganda's contention, "emanating

unilaterally from Uganda, fail to meet the judicial standard of proof" and that Uganda has made no efforts to provide further proof.

283. In any event, the DRC denies having breached any duty of vigilance, during the period when Marshal Mobutu was in power, by having failed to prevent Ugandan rebel groups from using its territory to launch attacks in Uganda. The DRC also denies having provided political and military support to those groups during the period concerned.

284. Regarding the second period, from May 1997 to early August 1998, the DRC reiterates that it has always denied having provided military support for Ugandan rebel groups or having participated in their military operations. According to the DRC, Uganda has failed to demonstrate not only that the rebel groups were its *de facto* agents, but also that the DRC had planned, prepared or participated in any attack or that the DRC had provided support to Ugandan irregular forces.

285. The DRC further contends that no evidence has been adduced to support the claim that, in early August 1998, the DRC entered into a military alliance with the Sudan. In the view of the DRC, Uganda has failed to provide proof either of the alleged meeting which was said to have taken place between the President of the DRC and the President of the Sudan in May 1998, or of the alleged agreement concluded between the DRC and the Sudan that same month and designed to destabilize Uganda.

286. With regard to the third period, the DRC maintains that the documents presented by Uganda, which were prepared by the Ugandan authorities themselves, are not sufficient to establish that the DRC was involved in any attacks against Uganda after the beginning of August 1998. Likewise, the DRC states that the allegations of general support by the DRC for the anti-Ugandan rebels cannot be substantiated by the documents submitted by Uganda.

287. The DRC argues in the alternative that, in any event, from a legal perspective it was in a position of self-defence from that date onwards; and that, in view of the involvement of the UPDF in the airborne operation at Kitona on 4 August 1998, the DRC would have been entitled to use force to repel the aggression against it, as well as to seek support from other States.

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288. In response to the foregoing arguments of the DRC as set out in paragraphs 280 to 281 above, Uganda states the following.

289. It disagrees that the first counter-claim should be divided into three historical periods, namely, from 1994 to 1997 (under Mobutu's presidency), from May 1997 to 2 August 1998, and the period beginning

on 2 August 1998. Uganda argues that in its Order of 29 November 2001 the Court found that "Uganda's counter-claim satisfied the direct connection requirement laid down by Article 80 of the Rules of Court and did so for the entire period since 1994". In Uganda's view, this shows that the Court "refuses to accept the DRC's argument that three periods should be distinguished in the history of recent relations between the Congo and Uganda". Uganda further asserts that by attempting to "slice" a continuing wrongful act into separate periods the DRC is seeking to "limit Uganda's counter-claim". Uganda maintains that Zaire and the DRC "are not distinct entities" and that "by virtue of the State continuity principle, it is precisely the same legal person" which is responsible for the acts complained of in the first counter-claim.

290. With reference to the objection raised by the DRC that Uganda is precluded from filing a claim in relation to alleged violations of its territorial sovereignty on the grounds that it renounced its right to do so, Uganda argues that the conditions required in international law for the waiver of an international claim to be recognized are not satisfied in the present case. In terms of fact, Uganda asserts that, during the Mobutu years, it repeatedly protested against Zaire's passive and active support of anti-Ugandan forces directly to Zaire and to the United Nations. Uganda also repeatedly informed the United Nations of Zaire's joint efforts with the Sudan to destabilize Uganda. Uganda further argues that its co-operation with Laurent-Désiré Kabila's AFDL movement, aimed at improving security along the common border area, did not amount to a waiver of any earlier claims against Zaire. In terms of law, Uganda asserts that in any event the absence of protest does not validate illegal acts and that any failure to address complaints to the Security Council should not be regarded as a cause of inadmissibility. Uganda concludes that the DRC's objections to its first counter-claim should therefore be dismissed.

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291. The Court has taken note that Uganda disagrees with the division of the first counter-claim of Uganda into three periods as argued by the DRC. The Court recalls that, in paragraph 39 of its Order on Counter-Claims of 29 November 2001, it considered that "the first counter-claim submitted by Uganda is . . . directly connected, in regard to the entire period covered, with the subject-matter of the Congo's claims". The DRC does not contest this finding, but rather argues that the first counter-claim is partially inadmissible and not founded as to the merits. The Court observes that its Order of 29 November 2001 does not deal with questions of admissibility outside the scope of Article 80 of the

Rules, nor does it deal with the merits of the first counter-claim. Neither does the Order prejudge any question as to the possibility of dividing this counter-claim according to specific periods of time. The Court is not therefore precluded, if it is justified by the circumstances of the case, from considering the first counter-claim following specific time periods. In the present case, in view of the fact that the historical periods identified by the DRC indeed differ in their factual context and are clearly distinguishable, the Court does not see any obstacle to examining Uganda's first counter-claim following these three periods of time and for practical purposes deems it useful to do so.

292. The Court now turns to the question of admissibility of the part of the first counter-claim of Uganda relating to the period prior to May 1997. The Court observes that the DRC has not presented any evidence showing an express renunciation by Uganda of its right to bring a counter-claim in relation to facts dating back to the Mobutu régime. Rather, it argues that Uganda's subsequent conduct amounted to an implied waiver of whatever claims it might have had against the DRC as a result of the actions or inaction of the Mobutu régime.

293. The Court observes that waivers or renunciations of claims or rights must either be express or unequivocally implied from the conduct of the State alleged to have waived or renounced its right. In the case concerning *Certain Phosphate Lands in Nauru (Nauru* v. *Australia)*, the Court rejected a similar argument of waiver put forth by Australia, which argued that Nauru had renounced certain of its claims; noting the absence of any express waiver, the Court furthermore considered that a waiver of those claims could not be implied on the basis of the conduct of Nauru (*Preliminary Objections, Judgment, I.C.J. Reports 1992*, pp. 247-250, paras. 12-21). Similarly, the International Law Commission, in its commentary on Article 45 of the Draft Articles on Responsibility of States for internationally wrongful acts, points out that "[a]lthough it may be possible to infer a waiver from the conduct of the States concerned or from a unilateral statement, the conduct or statement must be unequivocal" (ILC report, doc. A/56/10, 2001, p. 308). In the Court's view, nothing in the conduct of Uganda in the period after May 1997 can be considered as implying an unequivocal waiver of its right to bring a counter-claim relating to events which occurred during the Mobutu régime.

294. The period of friendly relations enjoyed between the DRC and Uganda between May 1997 and July 1998 does nothing to affect this outcome. A period of good or friendly relations between two States should not, without more, be deemed to prevent one of the States from raising a pre-existing claim against the other, either when relations between the two States have again deteriorated or even while the good relations

continue. The political climate between States does not alter their legal rights.

295. The Court further observes that, in a situation where there is a delay on the part of a State in bringing a claim, it is "for the Court to determine in the light of the circumstances of each case whether the passage of time renders an application inadmissible" (*Certain Phosphate Lands in Nauru (Nauru* v. *Australia)*, *Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 254, para. 32). In the circumstances of the present case, the long period of time between the events at stake during the Mobutu régime and the filing of Uganda's counter-claims has not rendered inadmissible Uganda's first counter-claim for the period prior to May 1997.

296. The Court accordingly finds that the DRC's objection cannot be upheld.

297. Regarding the merits of Uganda's first counter-claim for the period prior to May 1997, Uganda alleges that the DRC breached its duty of vigilance by allowing anti-Ugandan rebel groups to use its territory to launch attacks on Uganda, and by providing political and military support to those groups during this period.

298. The Court considers that Uganda has not produced sufficient evidence to show that the Zairean authorities were involved in providing political and military support for specific attacks against Ugandan territory. The bulk of the evidence submitted consists of uncorroborated Ugandan military intelligence material and generally fails to indicate the sources from which it is drawn. Many such statements are unsigned. In addition, many documents were submitted as evidence by Uganda, such as the address by President Museveni to the Ugandan Parliament on 28 May 2000, entitled "Uganda's Role in the Democratic Republic of the Congo", and a document entitled "Chronological Illustration of Acts of Destabilization by Sudan and Congo based Dissidents". In the circumstances of this case, these documents are of limited probative value to the extent that they were neither relied on by the other Party nor corroborated by impartial, neutral sources. Even the documents that purportedly relate eyewitness accounts are vague and thus unconvincing. For example, the information allegedly provided by an ADF deserter, reproduced in Annex 60 to the Counter-Memorial, is limited to the following: "In 1996 during Mobutu era before Mpondwe attack, ADF received several weapons from Sudan government with the help of Zaire government." The few reports of non-governmental organizations put forward by Uganda (e.g. a report by HRW) are too general to support a claim of Congolese involvement rising to a level engaging State responsibility.

299. In sum, none of the documents submitted by Uganda, taken

separately or together, can serve as a sound basis for the Court to conclude that the alleged violations of international law occurred. Thus Uganda has failed to discharge its burden of proof with regard to its allegation that Zaire provided political and military support to anti-Ugandan rebel groups operating in its territory during the Mobutu régime.

300. As to the question of whether the DRC breached its duty of vigilance by tolerating anti-Ugandan rebels on its territory, the Court notes that this is a different issue from the question of active support for the rebels, because the Parties do not dispute the presence of the anti-Ugandan rebels on the territory of the DRC as a factual matter. The DRC recognized that anti-Ugandan groups operated on the territory of the DRC from at least 1986. Under the Declaration on Friendly Relations, "every State has the duty to refrain from . . . acquiescing in organized activities within its territory directed towards the commission of such acts" (e.g., terrorist acts, acts of internal strife) and also "no State shall . . . tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State . . .". As stated earlier, these provisions are declaratory of customary international law (see paragraph 162 above).

301. The Court has noted that, according to Uganda, the rebel groups were able to operate "unimpeded" in the border region between the DRC and Uganda "because of its mountainous terrain, its remoteness from Kinshasa (more than 1,500 km), and the almost complete absence of central government presence or authority in the region during President Mobutu's 32-year term in office".

During the period under consideration both anti-Ugandan and anti-Zairean rebel groups operated in this area. Neither Zaire nor Uganda were in a position to put an end to their activities. However, in the light of the evidence before it, the Court cannot conclude that the absence of action by Zaire's Government against the rebel groups in the border area is tantamount to "tolerating" or "acquiescing" in their activities. Thus, the part of Uganda's first counter-claim alleging Congolese responsibility for tolerating the rebel groups prior to May 1997 cannot be upheld.

302. With regard to the second period, from May 1997 until 2 August 1998, the DRC does not contest the admissibility of Uganda's counter-claim. Rather, it argues simply that the counter-claim has no basis in fact.

303. In relation to this period, the Court finds that Uganda has failed to provide conclusive evidence of actual support for anti-Ugandan rebel groups by the DRC. Whereas in the first period the counter-claim suffered from a general lack of evidence showing the DRC's support for anti-Ugandan rebels, the second period is marked by clear action by the DRC against the rebels. Relations between the DRC and Uganda during

this second period improved and the two Governments undertook joint actions against the anti-Ugandan rebels. The DRC consented to the deployment of Ugandan troops in the border area. In April 1998 the DRC and Uganda even concluded an agreement on security along the common border (see paragraph 46 above). The DRC was thus acting against the rebels, not in support of them. It appears, however, that, due to the difficulty and remoteness of the terrain discussed in relation to the first period, neither State was capable of putting an end to all the rebel activities despite their efforts in this period. Therefore, Uganda's counter-claim with respect to this second period also must fail.

304. In relation to the third period, following 2 August 1998, the Court has already found that the legal situation after the military intervention of the Ugandan forces into the territory of the DRC was, after 7 August, essentially one of illegal use of force by Uganda against the DRC (see paragraph 149 above). In view of the finding that Uganda engaged in an illegal military operation against the DRC, the Court considers that the DRC was entitled to use force in order to repel Uganda's attacks. The Court also notes that it has never been claimed that this use of force was not proportionate nor can the Court conclude this from the evidence before it. It follows that any military action taken by the DRC against Uganda during this period could not be deemed wrongful since it would be justified as action taken in self-defence under Article 51 of the United Nations Charter. Moreover, the Court has already found that the facts alleged by Uganda in its counter-claim in respect of this period, namely the participation of DRC regular troops in attacks by anti-Ugandan rebels against the UPDF and the training, arming, equipping, financing and supplying of anti-Ugandan insurgents, cannot be considered as proven (see paragraphs 121-147 above). Consequently, Uganda's first counter-claim cannot be upheld as regards the period following 2 August 1998.

305. The Court thus concludes that the first counter-claim submitted by Uganda fails in its entirety.

* *

SECOND COUNTER-CLAIM

306. In its second counter-claim, Uganda claims that Congolese armed forces carried out three separate attacks on the Ugandan Embassy in Kinshasa in August, September and November 1998; confiscated

property belonging to the Government of Uganda, Ugandan diplomats and Ugandan nationals; and maltreated diplomats and other Ugandan nationals present on the premises of the mission.

307. In particular, Uganda contends that on or around 11 August 1998 Congolese soldiers stormed the Ugandan Embassy in Kinshasa, threatened the ambassador and other diplomats, demanding the release of certain Rwandan nationals. According to Uganda, the Congolese soldiers also stole money found in the Chancery. Uganda alleges that, despite protests by Ugandan Embassy officials, the Congolese Government took no action.

308. Uganda further asserts that, prior to their evacuation from the DRC on 20 August 1998, 17 Ugandan nationals and Ugandan diplomats were likewise subjected to inhumane treatment by FAC troops stationed at Ndjili International Airport. Uganda alleges that, before releasing the Ugandans, the FAC troops confiscated their money, valuables and briefcases. Uganda states that a Note of protest with regard to this incident was sent by the Embassy of Uganda to the Ministry of Foreign Affairs of the DRC on 21 August 1998.

309. Uganda claims that in September 1998, following the evacuation of the remaining Ugandan diplomats from the DRC, FAC troops forcibly seized the Ugandan Chancery and the official residence of the Ugandan Ambassador in Kinshasa. Uganda maintains that the Congolese troops stole property from the premises, including four embassy vehicles. According to Uganda, on 23 November 1998 FAC troops again forcibly entered the Ugandan Chancery and the official residence of the Ugandan Ambassador in Kinshasa and stole property, including embassy furniture, household and personal effects belonging to the Ambassador and to other diplomatic staff, embassy office equipment, Ugandan flags and four vehicles belonging to Ugandan nationals. Uganda alleges that the Congolese army also occupied the Chancery and the official residence of the Ugandan Ambassador.

310. Uganda states that on 18 December 1998 the Ministry of Foreign Affairs of Uganda sent a Note of protest to the Ministry of Foreign affairs of the DRC, in which it referred to the incidents of September 1998 and 23 November 1998 and demanded, *inter alia*, that the Government of the DRC return all the property taken from the Embassy premises, that all Congolese military personnel vacate the two buildings and that the mission be protected from any further intrusion.

311. Uganda alleges, moreover, that "[t]he Congolese government permitted WNBF commander Taban Amin, the son of former Ugandan dictator Idi Amin, to occupy the premises of the Uganda Embassy in Kinshasa and establish his official headquarters and residence at those facilities". In this regard, Uganda refers to a Note of protest dated 21 March 2001, whereby the Ministry of Foreign Affairs of Uganda

requested that the Government of the DRC ask Mr. Taban Amin to vacate the Ugandan Embassy's premises in Kinshasa.

312. Uganda further refers to a visit on 28 September 2002 by a joint delegation of Ugandan and Congolese officials to the Chancery and the official residence of the Ambassador of Uganda in Kinshasa. Uganda notes that the Status Report, signed by the representatives of both Parties following the visit, indicates that "at the time of the inspection, both premises were occupied" and that the joint delegation "did not find any movable property belonging to the Uganda embassy or its former officials". Uganda states that the joint delegation also "found the buildings in a state of total disrepair". As a result of that situation, Uganda claims that it was recently obliged to rent premises for its diplomatic and consular mission in Kinshasa.

313. Uganda argues that the DRC's actions are in breach of international diplomatic and consular law, in particular Articles 22 (inviolability of the premises of the mission), 29 (inviolability of the person of diplomatic agents), 30 (inviolability of the private residence of a diplomatic agent) and 24 (inviolability of archives and documents of the mission) of the 1961 Vienna Convention on Diplomatic Relations. In addition, Uganda contends that,

> "[t]he inhumane treatment and threats to the security and freedom of nationals of Uganda . . . constitute a series of breaches of the international minimum standard relating to the treatment of foreign nationals lawfully on State territory, which standard forms a part of customary or general international law";

and that, in respect of the seizure of the Embassy of Uganda, the official residence of the Ambassador and official cars of the mission, these actions constitute an unlawful expropriation of the public property of Uganda.

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314. The DRC contends that Uganda's second counter-claim is partially inadmissible on the ground that Uganda has ascribed new legal bases in its Rejoinder to the DRC's responsibility by including claims based on the violation of the Vienna Convention on Diplomatic Relations. According to the DRC, Uganda thus breaks the connection with the principal claim, which refers to "the violation of the United Nations Charter provisions on the use of force and on non-intervention, as well as the Hague and Geneva Conventions on the protection of persons and property in time of occupation and armed conflict". The DRC also asserts that the alleged modification of the subject-matter of this part of the dispute is manifestly incompatible with the Court's Order of 29 November 2001.

315. The DRC further argues that the claim based on the inhumane treatment of Ugandan nationals cannot be admitted, because the requirements for admissibility of a diplomatic protection claim are not satisfied. As for the first condition relating to the nationality of the alleged victims, the DRC claims that Uganda has not shown that the persons on whose behalf it is claiming to act are of Ugandan nationality and not Rwandan or of any dual nationality. Regarding the second condition relating to the exhaustion of local remedies, the DRC contends that,

> "since it seems that these individuals left the Democratic Republic of the Congo in a group in August 1998 and that is when they allegedly suffered the unspecified, unproven injuries, it would not appear that the requirement of exhaustion of local remedies has been satisfied".

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316. Uganda, for its part, claims that Chapter XVIII of its Counter-Memorial "clearly shows, with no possibility of doubt, that since the beginning of the dispute Uganda has invoked violation of the 1961 Vienna Convention in support of its position on the responsibility of the Congo". Uganda further notes that in its Order of 29 November 2001, in the context of Uganda's second counter-claim, the Court concluded that the Parties were pursuing the same legal aims by seeking "to establish the responsibility of the other by invoking, in connection with the alleged illegal use of force, certain rules of conventional or customary international law relating to the protection of persons and property" (*I.C.J. Reports 2001*, p. 679, para. 40). Uganda contends that the reference to "conventional . . . law" must necessarily relate to the Vienna Convention on Diplomatic Relations, "the only conventional instrument expressly named in that part of the Counter-Memorial devoted to the second claim". Thus Uganda argues that it has not changed the subject-matter of the dispute.

317. As to the inadmissibility of the part of the claim relating to the alleged maltreatment of certain Ugandan nationals, according to Uganda it is not linked to any claims of Ugandan nationals; its claim is based on violations by the DRC, directed against Uganda itself, of general rules of international law relating to diplomatic relations, of which Ugandan nationals present in the premises of the mission were indirect victims. Uganda considers that local remedies need not be exhausted when the individual is only the indirect victim of a violation of a State-to-State obligation. Uganda states that "[t]he breaches of the Convention also constitute direct injury to Uganda and the local remedies rule is therefore inapplicable". Uganda contends that, even assuming that this aspect of the second claim could be interpreted as the exercise by Uganda of diplomatic protection, the local remedies rule would not in any event

be applicable because the principle is that the rule can only apply when effective remedies are available in the national system. In this regard, Uganda argues that any remedy before Congolese courts would be ineffective, due to the lack of impartiality within the Congolese justice system. Additionally, Uganda contends that

> "[t]he inhumane treatment and threats to the security and freedom of nationals of Uganda . . . constitute a series of breaches of the international minimum standard relating to the treatment of foreign nationals lawfully on State territory, which standard forms a part of customary or general international law".

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318. As to the merits of the second counter-claim, the DRC, without prejudice to its arguments on the inadmissibility of the second counter-claim, argues that in any event Uganda has been unable to establish the factual and legal bases of its claims. According to the DRC, "none of these accusations made against [the DRC] by the Respondent has any serious and credible factual basis". The DRC also challenges the evidentiary value "in law" of the documents adduced by Uganda to support its claims.

319. The DRC denies having subjected Ugandan nationals to inhumane treatment during an alleged attack on the Ugandan Embassy in Kinshasa on 11 August 1998 and denies that further attacks occurred in September and November 1998. According to the DRC, the Ugandan diplomatic buildings in Kinshasa were never seized or expropriated, nor has the DRC ever sought to prevent Uganda from reoccupying its property. The DRC further states that it did not expropriate Ugandan public property in Kinshasa in August 1998, nor did it misappropriate the vehicles of the Ugandan diplomatic mission in Kinshasa, or remove the archives or seize movable property from those premises.

320. The DRC likewise contests the assertion that it allowed the commander of the WNBF to occupy the premises of the Ugandan Embassy in Kinshasa and to establish his official headquarters and residence there. The DRC also refutes the allegation that on 20 August 1998 various Ugandan nationals were maltreated by the FAC at Ndjili International Airport in Kinshasa.

321. The DRC contends that the part of the claim relating to the alleged expropriation of Uganda's public property is unfounded because Uganda has been unable to establish the factual and legal bases of its claims. According to the DRC, Uganda has not adduced any credible evidence to show that either the two buildings (the Embassy and the

Ambassador's residence) or the four official vehicles were seized by the DRC.

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322. The Court will first turn to the DRC's challenge to the admissibility of the second counter-claim on the grounds that, by formally invoking the Vienna Convention on Diplomatic Relations for the first time in its Rejoinder of 6 December 2002, Uganda has "[sought] improperly to enlarge the subject-matter of the dispute, contrary to the Statute and Rules of Court" and contrary to the Court's Order of 29 November 2001.

323. The Court first recalls that the Vienna Convention on Diplomatic Relations continues to apply notwithstanding the state of armed conflict that existed between the Parties at the time of the alleged maltreatment. The Court recalls that, according to Article 44 of the Vienna Convention on Diplomatic Relations:

> "The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property."

324. Further, Article 45 of the Vienna Convention provides as follows:

> "If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:
>
> *(a)* the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;
>
> *(b)* the sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;
>
> *(c)* the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State."

In the case concerning *United States Diplomatic and Consular Staff in Tehran*, the Court emphasized that

> "[e]ven in the case of armed conflict or in the case of a breach in diplomatic relations those provisions require that both the inviolability of the members of a diplomatic mission and of the premises, . . . must be respected by the receiving State" (*Judgment, I.C.J. Reports 1980*, p. 40, para. 86).

325. In relation to the DRC's claim that the Court's Order of 29 November 2001 precludes the subsequent invocation of the Vienna

Convention on Diplomatic Relations, the Court recalls the language of this Order:

> "each Party holds the other responsible for various acts of oppression allegedly accompanying an illegal use of force . . . each Party seeks to establish the responsibility of the other by invoking, in connection with the alleged illegal use of force, certain rules of conventional or customary international law *relating to the protection of persons and property*" (*I.C.J. Reports 2001*, p. 679, para. 40; emphasis added).

326. The Court finds this formulation sufficiently broad to encompass claims based on the Vienna Convention on Diplomatic Relations, taking note that the new claims are based on the same factual allegation, i.e. the alleged illegal use of force. The Court was entirely aware, when making its Order, that the alleged attacks were on Embassy premises. Later reference to specific additional legal elements, in the context of an alleged illegal use of force, does not alter the nature or subject-matter of the dispute. It was the use of force on Embassy premises that brought this counter-claim within the scope of Article 80 of the Rules, but that does not preclude examination of the special status of the Embassy. As the jurisprudence of the Court reflects, counter-claims do not have to rely on identical instruments to meet the "connection" test of Article 80 (see *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria), Preliminary Objections, Judgment, I.C.J. Reports 1998*, pp. 318-319).

327. The Court therefore finds that Uganda's second counter-claim is not rendered inadmissible in so far as Uganda has subsequently invoked Articles 22, 24, 29, and 30 of the Vienna Convention on Diplomatic Relations.

328. The Court will now consider the DRC's challenge to the admissibility of the second counter-claim on the ground that it is in reality a claim founded on diplomatic protection and as such fails, as Uganda has not shown that the requirements laid down by international law for the exercise of diplomatic protection have been satisfied.

329. The Court notes that Uganda relies on two separate legal bases in its allegations concerning the maltreatment of persons. With regard to diplomats, Uganda relies on Article 29 of the Vienna Convention on Diplomatic Relations. With regard to other Ugandan nationals not enjoying diplomatic status, Uganda grounds its claim in general rules of international law relating to diplomatic relations and in the international minimum standard relating to the treatment of foreign nationals who are present on a State's territory. The Court will now address both of these bases in turn.

330. First, as to alleged acts of maltreatment committed against Ugan-

dan diplomats finding themselves both within embassy premises and elsewhere, the Court observes that Uganda's second counter-claim aims at obtaining reparation for the injuries suffered by Uganda itself as a result of the alleged violations by the DRC of Article 29 of the Vienna Convention on Diplomatic Relations. Therefore Uganda is not exercising diplomatic protection on behalf of the victims but vindicating its own rights under the Vienna Convention. Accordingly, the Court finds that the failure to exhaust local remedies does not pose a barrier to Uganda's counter-claim under Article 29 of the Vienna Convention on Diplomatic Relations, and the claim is thus admissible.

331. As to acts of maltreatment committed against other persons on the premises of the Ugandan Embassy at the time of the incidents, the Court observes that the substance of this counter-claim currently before the Court as a direct claim, brought by Uganda in its sovereign capacity, concerning its Embassy in Kinshasa, falls within the ambit of Article 22 of the Vienna Convention on Diplomatic Relations. Consequently, the objection advanced by the DRC to the admissibility of this part of Uganda's second counter-claim cannot be upheld, and this part of the counter-claim is also admissible.

332. The Court turns now to the part of Uganda's second counter-claim which concerns acts of maltreatment by FAC troops of Ugandan nationals not enjoying diplomatic status who were present at Ndjili International Airport as they attempted to leave the country.

333. The Court notes that Uganda bases this part of the counter-claim on the international minimum standard relating to the treatment of foreign nationals who are present on a State's territory. The Court thus considers that this part of Uganda's counter-claim concerns injury to the particular individuals in question and does not relate to a violation of an international obligation by the DRC causing a direct injury to Uganda. The Court is of the opinion that in presenting this part of the counter-claim Uganda is attempting to exercise its right to diplomatic protection with regard to its nationals. It follows that Uganda would need to meet the conditions necessary for the exercise of diplomatic protection as recognized in general international law, namely the requirement of Ugandan nationality of the claimants and the prior exhaustion of local remedies. The Court observes that no specific documentation can be found in the case file identifying the individuals concerned as Ugandan nationals. The Court thus finds that, this condition not being met, Uganda's counter-claim concerning the alleged maltreatment of its nationals not enjoying diplomatic status at Ndjili International Airport is inadmissible.

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334. Regarding the merits of Uganda's second counter-claim, the Court finds that there is sufficient evidence to prove that there were attacks against the Embassy and acts of maltreatment against Ugandan diplomats at Ndjili International Airport.

335. The Court observes that various Ugandan diplomatic Notes addressed to the Congolese Foreign Ministry or to the Congolese Embassy in Kampala make reference to attacks by Congolese troops against the premises of the Ugandan Embassy and to the occupation by the latter of the buildings of the Chancery. In particular, the Court considers important the Note of 18 December 1998 from the Ministry of Foreign Affairs of Uganda to the Ministry of Foreign Affairs of the DRC, protesting against Congolese actions in detriment of the Ugandan Chancery and property therein in September and November 1998, in violation of international law and the 1961 Vienna Convention on Diplomatic Relations. This Note deserves special attention because it was sent in duplicate to the Secretary-General of the United Nations and to the Secretary-General of the OAU, requesting them to urge the DRC to meet its obligations under the Vienna Convention. The Court takes particular note of the fact that the DRC did not reject this accusation at the time at which it was made.

336. Although some of the other evidence is inconclusive or appears to have been prepared unilaterally for purposes of litigation, the Court was particularly persuaded by the Status Report on the Residence and Chancery, jointly prepared by the DRC and Uganda under the Luanda Agreement. The Court has given special attention to this report, which was prepared on site and was drawn up with the participation of both Parties. Although the report does not offer a clear picture regarding the alleged attacks, it does demonstrate the resulting long-term occupation of the Ugandan Embassy by Congolese forces.

337. Therefore, the Court finds that, as regards the attacks on Uganda's diplomatic premises in Kinshasa, the DRC has breached its obligations under Article 22 of the Vienna Convention on Diplomatic Relations.

338. Acts of maltreatment by DRC forces of persons within the Ugandan Embassy were necessarily consequential upon a breach of the inviolability of the Embassy premises prohibited by Article 22 of the Vienna Convention on Diplomatic Relations. This is true regardless of whether the persons were or were not nationals of Uganda or Ugandan diplomats. In so far as the persons attacked were in fact diplomats, the DRC further breached its obligations under Article 29 of the Vienna Convention.

339. Finally, there is evidence that some Ugandan diplomats were maltreated at Ndjili International Airport when leaving the country. The

Court considers that a Note of Protest sent by the Embassy of Uganda to the Ministry of Foreign Affairs of the DRC on 21 August 1998, i.e. on the day following the incident, which at the time did not lead to a reply by the DRC denying the incident, shows that the DRC committed acts of maltreatment of Ugandan diplomats at Ndjili International Airport. The fact that the assistance of the dean of the diplomatic corps (Ambassador of Switzerland) was needed in order to organize an orderly departure of Ugandan diplomats from the airport is also an indication that the DRC failed to provide effective protection and treatment required under international law on diplomatic relations. The Court therefore finds that, through acts of maltreatment inflicted on Ugandan diplomats at the airport when they attempted to leave the country, the DRC acted in violation of its obligations under international law on diplomatic relations.

340. In summary, the Court concludes that, through the attacks by members of the Congolese armed forces on the premises of the Ugandan Embassy in Kinshasa, and their maltreatment of persons who found themselves at the Embassy at the time of the attacks, the DRC breached its obligations under Article 22 of the Vienna Convention on Diplomatic Relations. The Court further concludes that by the maltreatment by members of the Congolese armed forces of Ugandan diplomats on Embassy premises and at Ndjili International Airport, the DRC also breached its obligations under Article 29 of the Vienna Convention.

341. As to the claim concerning Ugandan public property, the Court notes that the original wording used by Uganda in its Counter-Memorial was that property belonging to the Government of Uganda and Ugandan diplomats had been "confiscated", and that later pleadings referred to "expropriation" of Ugandan public property. However, there is nothing to suggest that in this case any confiscation or expropriation took place in the technical sense. The Court therefore finds neither term suitable in the present context. Uganda appears rather to be referring to an illegal appropriation in the general sense of the term. The seizures clearly constitute an unlawful use of that property, but no valid transfer of the title to the property has occurred and the DRC has not become, at any point in time, the lawful owner of such property.

342. Regarding evidentiary issues, the Status Report on the Residence and Chancery, jointly prepared by the DRC and Uganda under the Luanda Agreement, provides sufficient evidence for the Court to conclude that Ugandan property was removed from the premises of the official residence and Chancery. It is not necessary for the Court to make a determination as to who might have removed the property reported missing. The Vienna Convention on Diplomatic Relations not only prohibits any infringements of the inviolability of the mission by the receiving State

itself but also puts the receiving State under an obligation to prevent others — such as armed militia groups — from doing so (see *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, pp. 30-32, paras. 61-67). Therefore, although the evidence available is insufficient to identify with precision the individuals who removed Ugandan property, the mere fact that items were removed is enough to establish that the DRC breached its obligations under the Vienna Convention on Diplomatic Relations. At this stage, the Court considers that it has found sufficient evidence to hold that the removal of Ugandan property violated the rules of international law on diplomatic relations, whether it was committed by actions of the DRC itself or by the DRC's failure to prevent such acts on the part of armed militia groups. Similarly, the Court need not establish a precise list of items removed — a point of disagreement between the Parties — in order to conclude at this stage of the proceedings that the DRC breached its obligations under the relevant rules of international law. Although these issues will become important should there be a reparation stage, they are not relevant for the Court's finding on the legality or illegality of the acts of the DRC.

343. In addition to the issue of the taking of Ugandan public property described in paragraph 309, above, Uganda has specifically pleaded that the removal of "almost all of the documents in their archives and working files" violates Article 24 of the Vienna Convention on Diplomatic Relations. The same evidence discussed in paragraph 342 also supports this contention, and the Court accordingly finds the DRC in violation of its obligations under Article 24 of the Vienna Convention.

344. The Court notes that, at this stage of the proceedings, it suffices for it to state that the DRC bears responsibility for the breach of the inviolability of the diplomatic premises, the maltreatment of Ugandan diplomats at the Ugandan Embassy in Kinshasa, the maltreatment of Ugandan diplomats at Ndjili International Airport, and for attacks on and seizure of property and archives from Ugandan diplomatic premises, in violation of international law on diplomatic relations. It would only be at a subsequent phase, failing an agreement between the Parties, that the specific circumstances of these violations as well as the precise damage suffered by Uganda and the extent of the reparation to which it is entitled would have to be demonstrated.

* * *

345. For these reasons,

THE COURT,

(1) By sixteen votes to one,

Finds that the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter's territory, by occupying Ituri and by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention;

IN FAVOUR: *President* Shi; *Vice-President* Ranjeva; *Judges* Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka, Abraham; *Judge* ad hoc Verhoeven;

AGAINST: *Judge* ad hoc Kateka;

(2) Unanimously,

Finds admissible the claim submitted by the Democratic Republic of the Congo relating to alleged violations by the Republic of Uganda of its obligations under international human rights law and international humanitarian law in the course of hostilities between Ugandan and Rwandan military forces in Kisangani;

(3) By sixteen votes to one,

Finds that the Republic of Uganda, by the conduct of its armed forces, which committed acts of killing, torture and other forms of inhumane treatment of the Congolese civilian population, destroyed villages and civilian buildings, failed to distinguish between civilian and military targets and to protect the civilian population in fighting with other combatants, trained child soldiers, incited ethnic conflict and failed to take measures to put an end to such conflict; as well as by its failure, as an occupying Power, to take measures to respect and ensure respect for human rights and international humanitarian law in Ituri district, violated its obligations under international human rights law and international humanitarian law;

IN FAVOUR: *President* Shi; *Vice-President* Ranjeva; *Judges* Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka, Abraham; *Judge* ad hoc Verhoeven;

AGAINST: *Judge* ad hoc Kateka;

(4) By sixteen votes to one,

Finds that the Republic of Uganda, by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the Democratic Republic of

the Congo and by its failure to comply with its obligations as an occupying Power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, violated obligations owed to the Democratic Republic of the Congo under international law;

IN FAVOUR: *President* Shi; *Vice-President* Ranjeva; *Judges* Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka, Abraham; *Judge* ad hoc Verhoeven;

AGAINST: *Judge* ad hoc Kateka;

(5) Unanimously,

Finds that the Republic of Uganda is under obligation to make reparation to the Democratic Republic of the Congo for the injury caused;

(6) Unanimously,

Decides that, failing agreement between the Parties, the question of reparation due to the Democratic Republic of the Congo shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case;

(7) By fifteen votes to two,

Finds that the Republic of Uganda did not comply with the Order of the Court on provisional measures of 1 July 2000;

IN FAVOUR: *President* Shi; *Vice-President* Ranjeva; *Judges* Koroma, Vereshchetin, Higgins, Parra-Aranguren, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka, Abraham; *Judge* ad hoc Verhoeven;

AGAINST: *Judge* Kooijmans; *Judge* ad hoc Kateka;

(8) Unanimously,

Rejects the objections of the Democratic Republic of the Congo to the admissibility of the first counter-claim submitted by the Republic of Uganda;

(9) By fourteen votes to three,

Finds that the first counter-claim submitted by the Republic of Uganda cannot be upheld;

IN FAVOUR: *President* Shi; *Vice-President* Ranjeva; *Judges* Koroma, Vereshchetin, Higgins, Parra-Aranguren, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Abraham; *Judge* ad hoc Verhoeven;

AGAINST: *Judges* Kooijmans, Tomka; *Judge* ad hoc Kateka;

(10) Unanimously,

Rejects the objection of the Democratic Republic of the Congo to the

admissibility of the part of the second counter-claim submitted by the Republic of Uganda relating to the breach of the Vienna Convention on Diplomatic Relations of 1961;

(11) By sixteen votes to one,

Upholds the objection of the Democratic Republic of the Congo to the admissibility of the part of the second counter-claim submitted by the Republic of Uganda relating to the maltreatment of individuals other than Ugandan diplomats at Ndjili International Airport on 20 August 1998;

IN FAVOUR: *President* Shi; *Vice-President* Ranjeva; *Judges* Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal, Elaraby, Owada, Simma, Tomka, Abraham; *Judge* ad hoc Verhoeven;

AGAINST: *Judge* ad hoc Kateka;

(12) Unanimously,

Finds that the Democratic Republic of the Congo, by the conduct of its armed forces, which attacked the Ugandan Embassy in Kinshasa, maltreated Ugandan diplomats and other individuals on the Embassy premises, maltreated Ugandan diplomats at Ndjili International Airport, as well as by its failure to provide the Ugandan Embassy and Ugandan diplomats with effective protection and by its failure to prevent archives and Ugandan property from being seized from the premises of the Ugandan Embassy, violated obligations owed to the Republic of Uganda under the Vienna Convention on Diplomatic Relations of 1961;

(13) Unanimously,

Finds that the Democratic Republic of the Congo is under obligation to make reparation to the Republic of Uganda for the injury caused;

(14) Unanimously,

Decides that, failing agreement between the Parties, the question of reparation due to the Republic of Uganda shall be settled by the Court, and reserves for this purpose the subsequent procedure in the case.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this nineteenth day of December, two thousand and five, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Demo-

cratic Republic of the Congo and the Government of the Republic of Uganda, respectively.

(Signed) SHI Jiuyong,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge KOROMA appends a declaration to the Judgment of the Court; Judges PARRA-ARANGUREN, KOOIJMANS, ELARABY and SIMMA append separate opinions to the Judgment of the Court; Judge TOMKA and Judge *ad hoc* VERHOEVEN append declarations to the Judgment of the Court; Judge *ad hoc* KATEKA appends a dissenting opinion to the Judgment of the Court.

(Initialled) J.Y.S.
(Initialled) Ph.C.

Annex 6

7 Paris Agreement

From: International Climate Change Law
Daniel Bodansky, Jutta Brunnée, Lavanya Rajamani

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(p. 209) 7 Paris Agreement

I. Introduction

UN Secretary General Ban Ki-moon characterized the 2015 Paris Agreement,[1] adopted after years of deeply contentious multilateral negotiations, as a 'monumental triumph'.[2] Others have, in a similar vein, hailed the Agreement as 'historic',[3] a 'landmark',[4] the 'world's greatest diplomatic success',[5] and a 'big, big deal'.[6] To the extent these claims are true, it is not because the Paris Agreement either decisively resolves the climate crisis or is novel in its approach, but because the agreement represents a considerable achievement in multilateral diplomacy. Negotiations rife with fundamental and seemingly intractable disagreements wound their way to a successful conclusion in Paris on 12 December 2015. These negotiations, driven by unprecedented political will,[7] were expected to reach an agreement. However, the fact that they reached a long-term, balanced and virtually universally accepted agreement,[8] despite the many crisscrossing red lines of parties, was not a foregone conclusion.

(p. 210) The Paris Agreement sets an ambitious direction for the climate regime, and complements this direction with a set of common core obligations for all countries, including legally binding obligations of conduct in relation to parties' nationally determined mitigation contributions, and an expectation of progression over time. It also establishes a common transparency and accountability framework and an iterative process, in which parties take stock, every five years, of their collective progress and put forward emission reduction contributions for the next five-year period. The Paris Agreement, moreover, commands universal or near universal acceptance, and is applicable to all. As of 20 January 2017, over 190 countries representing roughly 99% of global emissions had put forward intended nationally determined contributions (INDCs).[9]

This chapter considers the 2015 Paris Agreement in depth, first by exploring four overarching issues, and then through a detailed analysis of its key provisions.

II. Overarching Issues

The negotiations leading up to what became the Paris Agreement were beset by disagreements in at least four key overarching areas: (1) the legal form of the 2015 agreement, and the legal character of provisions within it; (2) the architecture of the 2015 agreement; (3) the scope of the 2015 agreement; and (4) the nature and extent of differentiation it contains. The design of the 2015 agreement reflects the compromises struck in these four key areas.

A. Legal bindingness

1. Legal form of the 2015 agreement

The legal form of the 2015 agreement was at issue from the start. The options for legal form ranged from legal agreements such as protocols and amendments that are treaties within the meaning of the Vienna Convention on the Law of Treaties (VCLT),[10] to soft law options such as decisions taken by the Conference of the Parties (COP), which are not, save in the exception, legally binding.[11] The Alliance of Small Island States (AOSIS) and other vulnerable countries have long argued that anything short of a legally binding instrument would be an affront to their existential crisis. The European Union (EU), the United States (US), and other (p. 211) developed countries also consistently favored a global and comprehensive legally binding agreement under the FCCC. Brazil, China, and India, concerned about the constraints of a new legal agreement on their development prospects, were initially reluctant to endorse the call for a legally binding instrument, but, in the final hours of the 2011 Durban conference, which launched the negotiations for the 2015

agreement, only India remained firm in its opposition to such an instrument. India feared that a legally binding instrument would contain binding mitigation commitments that would pose challenges for its development aspirations. Eventually, the EU prevailed upon India to accept a compromise that called for the development of a 'protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties'.[12] In India's view, this wording was sufficiently open-ended that it preserved the option of an instrument other than a treaty.[13]

Parties chose not to decide the legal form of the 2015 agreement and the legal character of its constituent provisions until the end of the four-year negotiating process.[14] Nevertheless, by the time parties arrived in Paris, there was emerging consensus that the 2015 agreement would take the form of a legally binding instrument. The US was willing to accept a legally binding instrument, despite significant domestic political constraints, so long as developed and developing countries were equally bound by the agreement.[15] India, despite its historical reluctance to accept a legally binding instrument, had softened its stance. Other (p. 212) developing countries were more concerned with particular provisions of the agreement than its legal form. The softening of positions in relation to legal form can be traced to at least three developments. First, a powerful political momentum had built up over time, due to the efforts of the EU and many vulnerable countries, toward adoption of a legally binding instrument. Second, the reluctance of many countries across the developed–developing country divide to take on internationally-negotiated commitments had led to the emergence and gathering traction of the notion of 'nationally determined contributions' (NDCs)—an approach that, by privileging sovereign autonomy, respecting national circumstances, and permitting self-differentiation, significantly reduced the sovereignty costs of a legally binding instrument. Third, due to the efforts of the US and others, there was increasing recognition and acceptance by states of the distinction between the legal form of the instrument (ie could be binding) and the legal character of national determined contributions (ie could be non-binding).

Two key points are worth noting about the Paris Agreement. First, it is a treaty, as defined in the VCLT.[16] It is titled the 'Paris Agreement' rather than the Paris Protocol, in deference to US political sensitivities,[17] and was not explicitly adopted under FCCC Article 17, which governs the adoption of 'Protocols'. However, the nomenclature of an instrument is legally irrelevant.[18]

Second, the Paris Agreement is an agreement 'under the United Nations Framework Convention on Climate Change'.[19] As such, the provisions of the FCCC that apply to 'related legal instruments' apply to the Paris Agreement, including the FCCC's ultimate objective.[20] Furthermore, Article 2 of the Paris Agreement links the 'purpose'[21] of the agreement with 'enhancing the implementation of the Convention',[22] which some parties argue ensures the centrality of the convention in the evolution of the climate regime.[23] The Paris Agreement also makes use of many of the FCCC's institutions, including the COP and financial mechanism.[24]

(p. 213) 2. Legal character of the provisions in the 2015 agreement

Parties agreed to a legally binding 2015 agreement on the understanding that it would contain a range of provisions, some with greater legal force and authority than others.[25] The legal character of a provision, as discussed in Chapter 1, depends on a variety of factors including—location (where the provision occurs), subjects (who the provision addresses), normative content (what requirements, obligations or standards the provision contains), language (whether the provision uses mandatory, hortatory, or advisory language), precision (whether the provision uses contextual, qualifying, or discretionary clauses), and what institutional mechanisms exist for transparency, accountability, and compliance.[26] Taking these factors into account, the Paris Agreement contains provisions that span the spectrum of legal character. Table 7.1 provides a rough sketch of this spread

of provisions, and the cascading levels of treaty norms designed collectively to further the purpose of the agreement.[27] It tabulates provisions based on their nature and subjects. At one end of the spectrum are provisions that create rights and obligations for parties and lend themselves to assessments of compliance and non-compliance. This is, for instance, the case with individual ('each Party') obligations, framed in mandatory terms ('shall'), with clear and precise normative content, and no qualifying or discretionary elements. Such provisions can be characterized as 'hard law'.[28] In the middle of the spectrum are provisions that identify actors ('each Party' or 'all Parties') and set standards, but include qualifying or discretionary elements or are formulated in hortatory or advisory terms ('should' or 'encourage'). These provisions can be characterized, in varying ways, as 'soft law'.[29] At the other end of the spectrum are provisions lacking normative content that capture understandings between parties, provide context, or offer a narrative regarding the need for the provision or its location in the broader picture. Even when these provisions are found in the operational part of a legally binding instrument, they are contextual or descriptive and thus might be characterized as 'non-law'—a purely descriptive term that should not be interpreted as denigrating their critical importance in the Paris Agreement.[30] These three categories of provisions—hard law, soft law, and non-law—are fluid, and there are no bright lines between them. Each provision of the Paris Agreement contains a unique blend of elements, and thus occupies its own place in the spectrum of (p. 214) legal character. For instance, on adaptation, an individual obligation ('each party') phrased in mandatory terms ('shall') is combined with discretionary language ('as appropriate').[31] The combination of elements in each provision is a reflection of the demands of the relevant issue area as well as the particular politics that drove its negotiation. The legal character of particular provisions, including non-law provisions, will be discussed in the detailed analysis of key provisions below.

B. Architecture

A second issue that vexed negotiators was the issue of architecture—whether the Paris Agreement should reflect a top-down or a bottom-up approach. In contrast to the mandate for the Kyoto Protocol negotiations, which called for the negotiation of quantitative emission limitation and reduction objectives,[32] the Durban Platform did not offer any concrete guidance on the issue of architecture, although it recognized in a preambular recital that fulfilling the convention's objective 'will require strengthening of the multilateral, rules-based regime'.[33] It became clear from the submissions of parties after Durban, however, that although some parties favored a top-down architecture and others were keen to retain as much autonomy as possible, there was growing convergence on a hybrid approach that merged the two, by adding top-down elements to the bottom-up approach of the Copenhagen Accord and Cancun Agreements.[34] The decision that parties took in 2013 at the Warsaw COP to prepare INDCs in the context of the 2015 agreement reflected this emerging convergence. It laid the ground for a bottom-up process, in which each state would be able to define the stringency, scope, and form of its contribution. But the decision also introduced some international discipline, by calling on parties to communicate their INDCs 'in a manner that facilitates … clarity, transparency, and understanding',[35] and by suggesting they do so, if possible, in the first quarter of 2015, to leave time before Paris for a process of informal, *ex ante* review.[36]

The Paris Agreement crystallizes this emerging hybrid architecture, in which bottom-up substance to promote participation (contained in parties' NDCs) is combined with a top-down process to promote ambition and accountability (contained in the agreement's internationally-determined provisions on progression and highest possible ambition, accounting, transparency, stocktake, and compliance). The bottom-up component of the Paris Agreement's hybrid architecture was (p. 215) nearly complete by the time the Paris conference began. Over the course of 2015, virtually every state submitted an INDC.[37] The Paris Conference focused on the other half of the hybrid equation: the development of

strong international rules to promote ambition and accountability. The Paris agreement does not include a number of important proposals, such as that NDCs be quantified or quantifiable and include an unconditional element, and that proposed NDCs be subject to a formal process of *ex ante* review to consider their ambition, comparability, and fairness. Nevertheless, the so-called 'friends of rules' group of countries in Paris ultimately proved successful in including comparatively strong rules on transparency, accounting, and updating.[38] The rules that were successfully incorporated into the agreement are at the outer edge of what was politically achievable given the experience of the previous four years of negotiations.[39]

C. Scope

A third overarching issue that negotiators grappled with through the course of the four-year negotiating process was the scope or coverage of the 2015 agreement. The Durban Platform decision required consideration of 'mitigation, adaptation, finance, technology development and transfer, transparency of action, and support, and capacity-building'.[40] In the discussions on the content of the 2015 agreement, developed countries sought to focus on mitigation, transparency, and market instruments, while some developing countries sought to spread the focus across the other 'pillars' of the Bali Action Plan, namely adaptation, finance, and technology development.

The submissions and interventions of parties in the Ad Hoc Working Group on the Durban Platform (ADP) negotiations continued these debates. The US argued that 'mitigation is the main issue that needs updating',[41] Australia believed that 'mitigation must be central to the 2015 agreement',[42] and the Independent Association of Latin America and the Caribbean (AILAC) that 'mitigation will necessarily be at the core of the 2015 agreement'.[43] China and India, among (p. 216) others, disagreed. India argued that 'enhanced action under the Durban Platform is related not just to the mitigation but to other pillars of climate action decided upon in the Bali Action Plan and subsequent COP decisions'.[44] China argued that all the elements should be addressed 'on an equal footing and in a holistic, balanced and coordinated manner' and, with India, that unresolved issues from the Bali process—such as equitable access to sustainable development, trade and unilateral measures, and technology-related intellectual property rights—should also be addressed.[45] The African Group, the Least Developed Countries (LDCs), and AILAC were insistent that there should be political parity between the treatment of adaptation and mitigation. In addition, some parties suggested that the 2015 agreement address loss and damage,[46] and compliance.[47] Given the lack of specificity in the Durban Platform and the divergence in positions of states, it was thus unclear at the start of the four-year negotiating process what attention, if any, different elements in the Durban Platform would ultimately receive in the 2015 agreement. It was also unclear if elements not explicitly identified in the Durban Platform would feature in the 2015 agreement.

As noted above, the Warsaw conference in 2013 invited parties to prepare and submit INDCs in 2015. In the course of the following year, however, it became clear that the carefully negotiated language of the Warsaw decision raised further issues, including:

- Whether INDCs would cover only mitigation or also adaptation, finance, technology and capacity-building.
- Whether mitigation would be a compulsory or optional component of a party's INDC.
- (p. 217) Whether parties could submit conditional INDCs—conditioned on the provision of support or on action by other parties—or only unconditional ones.

There were a range of views on these issues cutting across developed-developing country lines, with some states insisting that contributions should cover only mitigation and others arguing that mitigation and adaptation should be accorded legal and material parity. In addition, many developing countries, including the Like Minded Developing Countries (LMDCs),[48] argued that if they were required to submit mitigation contributions, there had to be a corresponding increase in the provision of technical and financial support. This, in their view, could best be ensured by requiring developed countries to submit contributions on finance.[49] Needless to say, this proved difficult to achieve. The Lima outcome therefore merely repeated Warsaw language inviting parties to communicate their INDCs. It encouraged parties to consider including an adaptation component in their contributions,[50] but was silent on a financial component. Parties were therefore free to offer a full and diverse range of contributions, and they did so: some focused on mitigation alone,[51] while others covered all areas;[52] some were unconditional,[53] while others contained both conditional[54] and unconditional elements.[55]

The Paris Agreement addresses all of the elements listed in the Durban decision in a comprehensive manner: 'mitigation, adaptation, finance, technology development and transfer, transparency of action, and support and capacity-building'. In addition, it addresses loss and damage,[56] an issue of importance to small island states and LDCs, as well as compliance,[57] of interest to a broader coalition of developed and developing countries. Although the agreement is broad in its coverage, its (p. 218) treatment of these issues and the legal character of provisions in different areas vary, as illustrated in the sections below where the specific provisions of the agreement are considered in detail.[58]

Article 3, which contains overarching obligations that cut across issue areas, reflects the comprehensive scope of the Paris Agreement. It reads, in pertinent part,

> [a]s nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with a view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time …

The term 'contributions' in this context could be read either as the term of art it had become after Warsaw, or in its commonsensical meaning as an offering toward the global response to climate change. Further, the term 'efforts' was used so as to preclude the need to characterize the full range of actions across the Paris Agreement as 'contributions'. This range of actions includes mitigation contributions,[59] adaptation planning and implementation,[60] and provision of financial resources to developing countries.[61]

In contrast to Article 3's comprehensive coverage, the Paris Agreement requires parties to submit NDCs only in relation to mitigation.[62] This issue proved contentious, with the LMDCs insisting until the final hours of the Paris negotiations that parties should be able to offer NDCs in areas other than mitigation, such as adaptation and means of implementation (finance, technology, and capacity-building). Their concern is addressed in Article 7.11, which recognizes that an adaptation communication can be submitted as part of a state's NDC.[63] It is also addressed through Article 3 in so far as the ambiguous reference to 'contributions' in that article can be interpreted as cutting across issue areas.

It is worth noting that the references in Article 3 to the specific articles that address mitigation, adaptation, finance, capacity-building, technology, and transparency were introduced to ensure that the obligations in each issue area would be determined by these articles, and that Article 3 would not create any new (potentially conflicting or confusing) obligations in relation to these areas. The one substantive new element in Article 3 is that the progression requirement applies beyond mitigation to areas such as adaptation and support. However, this provision applies to 'all Parties' not 'each Party', indicating that it

could be interpreted as a collective rather than an individual requirement. Further, it uses the auxiliary verb ‘will’ rather than the imperative ‘shall’ and thus sets strong expectations (rather than obligations) of more ambitious actions over time.

The legal character of the provisions in each issue area is also different. Table 7.1 demonstrates that the provisions on mitigation and transparency create several new (p. 219) legal obligations for individual parties (‘Each Party shall’). In contrast, the provision on finance generally continues existing obligations rather than creates new substantive obligations. Finally, in the areas of adaptation, technology, capacity-building, and loss and damage, the provisions primarily recommend, encourage or set aspirations, rather than bind parties.

D. Differentiation

Perhaps the most divisive overarching issue in the Paris Agreement negotiations was the issue of differentiation. Differentiation in the climate regime is founded on the principle of common but differentiated responsibilities and respective capabilities (CBDRRC), as discussed in Chapter 1. This principle has been operationalized in several ways, most sharply in the Kyoto Protocol, which established quantitative emission reduction targets for developed countries but not developing countries. Although the Kyoto model of differentiation was, from the outset, contentious, it began to seriously erode only with the negotiation of the Bali Action Plan in 2007. The trajectory of the climate negotiations since Bali indicates a move away from a bifurcated approach to differentiation, toward a more nuanced approach, with greater symmetry or parallelism.[64] Of particular significance is the text of the Durban Platform decision that launched the negotiation of the Paris Agreement.

In marked contrast to previous COP negotiating mandates,[65] the Durban Platform decision did not contain a reference to ‘equity’ or ‘common but differentiated responsibilities and respective capabilities’, because of differences over how such a reference should be formulated.[66] Developed countries insisted that any reference to ‘common but differentiated responsibilities’ be qualified with a statement that this principle must be interpreted in the light of contemporary economic realities.[67] The 2015 agreement, the EU argued, must contain a broader spectrum of differentiation in the obligations among parties than is the case under the convention. These proposals, however, were unacceptable to developing countries. India, in particular, argued that qualifying CBDRRC in this manner would be tantamount to amending the FCCC.[68] The compromise reached was to omit any (p. 220) reference to CBDRRC in the Durban Platform and instead simply provide that the 2015 agreement would be ‘under the Convention’[69]– thereby implicitly engaging the FCCC’s principles, including the principle of CBDRRC. Many developing countries believed that this reference to the FCCC would hold at bay efforts to reinterpret and qualify CBDRRC. But the debate over CBDRRC in Durban, and its eventual resolution, reflected a recasting of differentiation in the 2015 climate regime.

Another indicator of the shifting approach to differentiation can be found in the Durban Platform’s provision that the 2015 agreement would be ‘applicable to all Parties’.[70] Developed countries, in particular the US, Japan, and Australia, were insistent on including this language. However, the mere fact that an instrument is applicable to all does not imply that it is applicable in a symmetrical manner. Universality of application does not automatically signal uniformity of application. The phrase ‘applicable to all’, therefore, had political rather than legal significance. It was a signal that the 2015 agreement would move toward symmetrical obligations, at least in so far as the nature and form of the obligations (even if not their stringency) were concerned.[71] In a similar vein, preambular recitals in the

Durban Platform decision called for ‘all Parties’ to urgently address climate change, and for the widest possible cooperation ‘by all countries’.[72]

The 2012 Doha ADP decision explicitly reintroduced into the negotiations, through a preambular recital, a reference to the principles of the convention.[73] The Warsaw decision of 2013 similarly contained a general reference to ‘principles’ of the convention,[74] but no specific reference to CBDRRC. The Lima Call for Climate Action of 2014, in contrast, contained an explicit reference to the CBDRRC principle, but qualified by the clause ‘in the light of different national circumstances’.[75] This qualification—which represents a compromise arrived at between the US and China[76]—arguably shifts the interpretation of CBDRRC. Although it could be (p. 221) argued that the principle, even in its original formulation, is dynamic, because historical responsibilities and respective capabilities both evolve, the qualification of the principle by a reference to ‘different national circumstances’ represented a political signal of flexibility and dynamism. As national circumstances evolve, so too will the common but differentiated responsibilities of parties. Moreover, given the differences in national circumstances among states, a simple categorization of states as developed or developing might not be appropriate. It is this version of the principle of common but differentiated responsibilities, with the qualifier ‘in the light of different national circumstances’, that features in the Paris Agreement.

1. The CBDRRC principle in the Paris Agreement[77]

The Paris Agreement contains references to the CBDRRC principle in a preambular recital,[78] and in the provisions relating to the purpose of the agreement,[79] progression,[80] and long-term low greenhouse gas (GHG) development strategies,[81] but always with the qualification, ‘in light of different national circumstances’. The most significant of these references appears in Article 2, which sets the regime’s long-term temperature goal and frames the implementation of the entire agreement. It reads: ‘[t]his Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances’.[82] This language generates an expectation that the agreement will reflect CBDRRC (‘will be implemented to reflect’) and preserves a range of interpretative possibilities for developing countries, yet stops short of prescribing CBDRRC in the implementation of the agreement.

In addition to the CBDRRC principle, the Paris Agreement contains references to the related notions of equity,[83] sustainable development,[84] equitable access to sustainable development,[85] poverty eradication,[86] and climate justice.[87] While some of these notions feature in the FCCC and others in COP decisions, they are formulated differently in the Paris Agreement. For instance, the references in the FCCC to poverty eradication recognize it either as a ‘legitimate priority need’[88] or as an ‘overriding priorit[y]’,[89] whereas in the Paris Agreement it is recognized as part of the ‘context’ for action.[90]

(p. 222) The issue of CBDRRC also underlays debates about the relationship of the 2015 Paris Agreement to the FCCC, discussed above.[91] Developed countries were insistent that the Paris Agreement abandon the FCCC and Kyoto Protocol’s annex-based approach to differentiation, which they regard as outdated and rigid, and they successfully excluded any reference to the annexes in the Paris Agreement. But many developing countries were equally insistent that the agreement contain a hook for arguments to reintroduce what they regard as the continuing balance of responsibilities between developed and developing countries reflected in the annex-based approach to differentiation. They sought to do this indirectly, through the inclusion of general language tying the Paris Agreement to the FCCC, which they believed would implicitly engage the entirety of the FCCC, including its annexes. The shadow boxing over this issue rippled through the negotiations of the entire text. It can be seen in the debate about whether to call the agreement simply the ‘Paris Agreement’ or the ‘Paris Implementing Agreement’. And it was in particular evidence in the

negotiations over whether to include language in Article 2's chapeau stating that the Paris Agreement should enhance the implementation of the convention, as most developing countries argued it should, or just the objective of the convention,[92] as most developed countries favored. For many developing countries, implemention of the convention implies the continued relevance of all the convention's principles and provisions, in particular the balance of responsibilities reflected in FCCC Article 4, and the corresponding annexes. Developed countries, in contrast, believe the Paris Agreement represents a paradigm shift in which the annex-based structure of the FCCC no longer has any continuing relevance, and sought to reinforce this position by referring only to the Paris Agreement's role in implementing the convention's objective. Ultimately, the parties reached a carefully balanced compromise in Article 2, which reads: '[t]his Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, … '.[93] The intense negotiations over this somewhat convoluted provision illustrate the importance placed on language in the UN climate process and the difficulties of resolving disagreements definitively.

2. Operationalizing the CBDRRC principle in the Paris Agreement

The Paris Agreement operationalizes the CBDRRC principle not through the FCCC and Kyoto Protocol's annex structure, but in a tailored way, which takes into account the specificities of each of the Durban pillars—mitigation, adaptation, finance, technology, capacity-building, and transparency.[94] This more nuanced approach has resulted in different approaches to differentiation in different areas.

(p. 223) **a)** Differentiation in mitigation

The mitigation provisions of the Paris Agreement embrace a 'bounded self-differentiation' model, discussed below. The Warsaw decision invited parties to submit INDCs in the context of the 2015 agreement.[95] In submitting these contributions, parties were able to determine the scope, form, and rigor of their contributions, as well as the information that accompanied them. In so far as parties chose their own contributions and tailored these to their national circumstances, capacities and constraints, they differentiated themselves from every other nation. This form of differentiation has come to be characterized as self-differentiation. The mitigation section of the Paris Agreement contains self-differentiation, albeit modulated by several normative expectations placed on parties, as discussed below.

In contrast to the Kyoto Protocol, all of the legal obligations of parties relating to mitigation, with one exception,[96] are undifferentiated, including the obligations to prepare, communicate, and maintain successive NDCs; to provide the information necessary for clarity, transparency, and understanding; to communicate a successive NDC every five years; and to account for their NDCs.[97] The provisions that incorporate differentiation are all couched as recommendations or expectations,[98] rather than as binding obligations,[99] and even many of these reflect a self-differentiation (albeit bounded) model. For instance, in relation to the expectation that successive mitigation contributions will represent a progression beyond current contributions and will reflect a party's highest possible level of ambition, as discussed later,[100] it is for each party to determine, at least initially, what contribution constitutes progression and reflects its highest possible ambition, given the CBRDRC principle. Similarly, in relation to the provision that all parties should strive to formulate and communicate long-term low GHG emission development strategies,[101] it is for each party to take CBDRRC into account in determining its strategies.

The undifferentiated legal obligations, however, are 'bounded' or 'modulated' by several normative expectations placed on parties. Perhaps the most important of these, reflecting a categorical approach to differentiation, is in Article 4, which reads: '[d]eveloped country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation

efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances'.[102] The use of the terms 'developed country Parties' and 'developing country Parties' and the notion of leadership are reminiscent of the FCCC. The paragraph sets strong normative expectations, but does not create any new obligations for parties, given the use of the term 'should'.

(p. 224) Indeed, it is precisely because this provision creates no new obligations that the US was able to accept the Paris Agreement. This provision was at the center of the 'shall/ should' controversy that nearly unraveled the Paris deal in the final hours.[103] The 'take it or leave it' text presented by the French contained mandatory language ('shall') in relation to developed country targets, and recommendatory language ('should') in relation to developing country mitigation efforts. In addition to the lack of parallelism in the legal character of requirements placed on developed and developing countries, the use of mandatory language for developed countries' targets posed a problem for the US. In the light of long-standing and intractable resistance to climate treaties in the Senate, the US had worked throughout the negotiations to ensure that the Paris Agreement could be accepted by it as a Presidential-executive agreement. This approach would have been put in jeopardy, arguably, if the agreement required the US to have a quantitative emissions target, since such a target is not currently part of US law.[104] However, the LMDCs objected to changes in what had been presented as a 'take it or leave it' text. Eventually, after furious huddling in the plenary room, and high-level negotiations outside it, the 'shall' was declared a typographical error and changed to a 'should' by the FCCC secretariat.

In addition to Article 4.4's differentiation between developed and developing countries, the Paris Agreement also recognizes that peaking of emissions will take longer in developing countries,[105] and that support shall be provided to developing countries for the implementation of this article.[106]

Thus, the mitigation section of the Paris Agreement operationalizes the CBDRRC principle through self-differentiation, but sets normative expectations in relation to the types of actions developed and developing country parties should take, and recognizes the need for flexibility and support for developing countries. It also sets normative expectations in relation to progression and 'highest possible ambition' through successive cycles of contributions. Self-differentiation was broadly acceptable to states because it provides flexibility and privileges sovereign autonomy. Given the lack of collective agreement about states' differentiated responsibilities and respective capabilities, self-differentiation was a pragmatic choice intended to encourage broad participation. But the Paris Agreement includes 'modulators' or boundaries to this self-differentiation that encourage ambition and recognize differences.

b) Differentiation in transparency

The transparency provisions of the Paris Agreement provide for flexibility to parties based on their capacities rather than on their categorization as developing countries. Parties rejected a bifurcated transparency system, on the table until the end, in favor of a framework applicable to all countries, albeit with 'built-in flexibility' tailored to parties' differing capacities as well as the provision of support to developing (p. 225) countries.[107] These provisions place uniform informational requirements on parties in relation to mitigation and adaptation.[108] But since parties have differentiated obligations in relation to support, the associated informational requirements are accordingly differentiated.[109] Reporting and review are also similarly differentiated.

Differentiation in the transparency provisions is thus a pragmatic tailoring of informational demands to capacities. While distinct from the bounded self-differentiation in the mitigation provisions, the transparency provisions too represent a significant departure from the

FCCC, which places different informational burdens set to different time frames on Annex I and non-Annex I parties.[110]

This less categorical approach to differentiation proved possible in part because the Paris Agreement provides a number of hooks that developing countries could try to use to reintroduce bifurcation between developed and developing countries in the future. For example, the agreement provides that the enhanced framework shall 'build on' the transparency arrangements under the convention,[111] and that these arrangements, including the bifurcated system of international assessment and review (IAR) and international consultation and analysis (ICA),[112] 'shall form part of the experience drawn upon' in developing the framework's rules.[113] Moreover, the decision accompanying the Paris Agreement 'decides' that those developing countries that need flexibility in light of their national capacities 'shall' be provided flexibility in implementing the transparency framework, 'including in the scope, frequency, and level of detail of reporting, and in the scope of review'.[114] However, any attempt to reintroduce bifurcation in the transparency framework would need to overcome the Paris Agreement's characterization of the framework's modalities, procedures, and guidelines as 'common'—a characterization that is seemingly at odds with a bifurcated approach.

c) Differentiation in finance

The finance article of the Paris Agreement is perhaps most similar to the FCCC in the form of differentiation it embodies. It requires developed country parties to provide financial resources to developing country parties[115] 'in continuation of their existing obligations under the Convention', and to provide biennial reports.[116] It also recommends that developed countries continue to take the lead in mobilizing climate finance.[117] This recommendation is given concrete content in the decision accompanying the Paris Agreement, which captures an agreement to continue the developed countries' existing collective mobilization goal through 2025.[118]

Although the responsibility for provision and mobilization of financial resources is placed primarily on developed countries, the Paris Agreement, in a departure (p. 226) from the FCCC,[119] expands the donor base to '[o]ther parties'.[120] Other parties—presumably, developing country parties—are 'encouraged' to provide such support 'voluntarily'.[121] And, they have correspondingly less demanding reporting requirements placed on them in relation to such support.[122] It is because of this potentially expanded donor base in the Paris Agreement that provisions on support across the agreement are phrased in the passive voice ('support shall be provided'),[123] which precludes the need to identify who is to provide such support. The agreement thus reflects a compromise, in which the provision of support to developing countries remains a central crosscutting feature of the climate regime, but the base of potential donors is expanded. The Paris Agreement also recognizes that enhanced support for developing countries will allow for higher ambition in their actions,[124] and that developing countries will need to be supported to ensure effective implementation of the agreement.[125]

In contrast to the annex-based approach of the FCCC and the Kyoto Protocol, the Paris Agreement does not list which countries qualify as 'developed' and 'developing', nor does the agreement contain a more general definition of these terms. In Paris, countries with 'economies in transition' as well as those whose 'special circumstances are recognized' by the COP, viz, Turkey, sought to ensure that they would be included in the category of 'developing countries' and thus be entitled to any benefits that might flow thereon.[126] This proved contentious until the end, but the term 'developing countries' was eventually left open and undefined.

Differentiation in the finance provisions is thus relatively close to the type of differentiation seen in the FCCC. Although the expansion of the donor base introduces a new element, the finance provisions represent a less radical departure from the FCCC's bifurcated, categorical approach than, for instance, the nature of differentiation seen in the mitigation provisions.

III. Preamble

The preamble to the Paris Agreement identifies a series of contextual factors that could prove helpful in interpreting the agreement. These include: the CBDRRC principle;[127] best available scientific knowledge;[128] special circumstances of particularly vulnerable nations;[129] special needs and situations of the LDCs;[130] equitable access to sustainable development and eradication of poverty;[131] food (p. 227) security;[132] just transition of the work force;[133] human rights;[134] conservation and enhancement of sinks;[135] ecosystem integrity;[136] climate justice;[137] environmental education, awareness, training and participation;[138] multi-level governance;[139] and sustainable patterns of consumption and production.[140] Of this long list, perhaps the most significant and hotly debated reference is that to human rights.[141]

Climate change threatens a variety of human rights, including the rights to life, health, food, and housing, and the measures taken to mitigate and adapt to climate change can raise human rights concerns as well.[142] The intersection of international climate change law and human rights law is discussed in Chapter 9. In the lead-up to Paris, many parties,[143] non-governmental organizations,[144] and international bodies[145] urged the inclusion of human rights concerns in the Paris Agreement.[146] Although some parties sought a reference to human rights in an operative provision of the agreement, for various reasons, discussed in Chapter 9, the only explicit reference to human rights in the Paris Agreement occurs in the preamble.

Preambular recital 11 reads:

> Parties should, when taking action to address climate change, respect, promote, and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations, and the right to development, as well as gender equality, empowerment of women, and intergenerational equity.

This formulation carefully circumscribes the impact of the reference to human rights. First, it addresses the human rights aspects only of response measures ('when taking action'), not of climate change itself. This is a narrower approach than that (p. 228) advocated by the Office of the High Commissioner of Human Rights (OHCHR), which considers that states are obliged to 'take affirmative measures to prevent human rights harms caused by climate change, including foreseeable long-term harms'.[147] The Paris Agreement, in contrast, recommends that states respect, promote, and consider human rights when taking response measures, but is silent with respect to whether they should take human rights considerations into account in determining the ambition, scope and scale of their mitigation or adaptation actions.

Second, the preambular provision recommends that parties 'respect, promote and consider' their human rights obligations, not 'respect, protect, promote *and fulfill* '[148] their obligations, as the OHCHR had urged states to do.[149] Thus, while the Paris Agreement urges states to refrain from taking actions that might interfere with the listed human rights, it does not, by itself, urge them either to prevent others from interfering with these rights or to adopt measures toward full realization.

Third, the preambular recital refers to parties' 'respective obligations'. It is thus limited to parties' existing human rights obligations, and is not intended to imply any new ones. States had differing views on the existence, characterization, relative importance, and boundaries of human rights relating to climate change. In these circumstances, restricting the application of specific rights to those individual parties that already have obligations in relation to those rights was considered desirable.

Notwithstanding the fact that the only explicit reference to human rights in the Paris Agreement is carefully circumscribed, its very inclusion is novel, and may signal enhanced receptivity to rights concerns and discourses.

IV. Purpose (Articles 2 and 4.1)

The 'purpose' of the 2015 agreement is to strengthen the global response to the threat of climate change.[150] In relation to mitigation, parties have explored different options for expressing long-term goals. Long-term mitigation goals can be formulated in terms of limiting temperature increase (2° C or 1.5° C above pre-industrial levels); as a GHG emissions reduction goal (for instance, 50% by 2050); or as a time frame for peaking of emissions.

Of these options for defining a long-term goal, the temperature goal has thus far acquired greater currency in the UN climate regime. The 2° C goal was (p. 229) first recognized by the G-8 in L'Aquila in 2009.[151] It was incorporated into the Copenhagen Accord later that year,[152] and into the Cancun Agreements in 2010.[153] It also features in the Durban Platform decision that launched the negotiations toward a 2015 agreement, in a preambular recital that notes the significant gap between parties' mitigation pledges and the required emissions pathways to reach the 2° C temperature goal.[154] The Durban Platform, however, also references the 1.5° C goal as an alternative to the 2° C goal, thereby leaving open the option of strengthening the global temperature goal in the future. AOSIS, LDCs and the African Group, among others, have long argued for a 1.5° C global temperature goal.[155] For many of these countries, even a 2° C temperature increase poses an existential threat.

The Paris Agreement resolves to hold the increase in global average temperature to 'well below 2° C' above pre-industrial levels, and to pursue efforts toward a 1.5° C temperature limit.[156] The world is not currently on a pathway to 1.5° C, far from it.[157] Such a pathway would dramatically shrink the remaining carbon space, with troubling implications for countries like India that have yet to lift the vast majority of their citizens from the scourge of poverty.[158] Nevertheless, the aspirational 1.5° C goal sets a direction of travel for the climate regime and signals solidarity with the small island states on the frontlines of climate impacts.

The long-term temperature goal is to be achieved, as set out in Article 4.1, inter alia, through global peaking of GHG emissions as soon as possible (with a recognition that peaking will take longer in developing countries), and rapid reductions thereafter, 'so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of GHGs in the second half of the century'.[159] Although parties had proposed quantitative global emission goals with specific peaking dates or percentage reductions from 2010 levels,[160] in the end it proved possible to reach agreement only on goals that lacked specific time lines. (p. 230) The net zero concept requires anthropogenic GHG emissions to be reduced rapidly, with the remainder made up through enhanced removals of GHGs by sinks.[161] In the lead-up to Paris, significant support had emerged for a longer-term decarbonization goal, in line with the conclusion of the Intergovernmental Panel on Climate Change (IPCC) that temperature stabilization will require zero net carbon emissions.[162] G-7 leaders had included such a goal in their 2015 summit declaration.[163] But fossil fuel-producing states did not want to single out carbon dioxide or focus only on emissions from sources to the exclusion of removal by sinks; hence the compromise formulation in Article

4.1, which is neutral as between carbon dioxide and other GHGs and as between reduced emissions and enhanced removals.

These global mitigation goals are to be achieved ‘on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty’.[164] As noted before, these terms are framed differently in the Paris Agreement than in the FCCC.[165] The Paris Agreement also recommends that parties ‘strive to formulate and implement’ long-term low GHG emission development strategies.[166] These are likely to play a critical role in shifting development trajectories and investment patterns toward meeting the long-term temperature goal. In a regime that permits countries to choose the nature, form and stringency of their contributions, this provision provides a mechanism for catalyzing national strategic thinking to ensure short-term actions are in line with long-term goals, and for aggregating the efforts of the parties.[167]

In order to address all of the elements of the Durban Platform in a balanced manner, the Paris Agreement also defines aims for adaptation and finance, albeit in general, qualitative terms (rather than in quantitative terms, as proposed by the African Group). For adaptation, Article 2 expresses the aim of increasing adaptive capacity, fostering climate resilience, and reducing vulnerability—aims reiterated in Article 7, which deals specifically with adaptation. The finance aim—namely, to make ‘finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development’—addresses private as well as public flows, and provides support for efforts to phase out climate-unfriendly investments.

(p. 231) V. Mitigation (Article 4)

A. Obligations in relation to nationally determined contributions (NDCs)

The most significant legal obligations in the Paris Agreement are to be found in its mitigation article. In order to meet the long-term temperature goal, parties are subject to binding obligations of conduct in relation to their nationally determined mitigation contributions.[168] The most significant of these are contained in Article 4.2, which reads:

> Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

There are many drafting treasures to be mined in this carefully negotiated text. First, unlike the majority of provisions in the Paris Agreement that apply to ‘Parties’,[169] the first sentence of this provision applies to ‘each Party’, thus creating individual obligations. Second, this provision, like selective provisions in the Paris Agreement, uses the imperative ‘shall’ both in relation to preparing, communicating and maintaining national contributions, as well as pursuing domestic mitigation measures. Third, while these are binding obligations, they are obligations of conduct rather than result. The term ‘intends to achieve’ in the first sentence establishes a good faith expectation that each party intends to achieve its NDC, but stops short of requiring it to do so. The second clause in the second sentence performs a similar function. It requires parties to pursue measures ‘with the aim of achieving the objectives of [their] contributions’.[170]

Parties thus have binding obligations of conduct to prepare, communicate and maintain contributions, as well as to pursue domestic measures. There is also a good faith expectation that parties intend to and will aim to achieve the objectives of their contributions. In the lead up to Paris, many parties, including the EU, South Africa, and the small island states, had argued that parties should be required to achieve their NDCs, thus imposing an obligation of result. This was strenuously opposed by the US, China, and India, among others, who did not wish to subject themselves to legally binding obligations of

result. The Paris Agreement deferred to the latter in this respect. However, to help ensure that parties act in good faith, the agreement requires each party to provide the information necessary to track (p. 232) progress in implementing and achieving its nationally determined contribution,[171] and subjects parties to a 'facilitative, multilateral consideration of progress' with respect to such implementation and achievement.[172]

The NDCs parties have submitted are formulated in a variety of ways. Some are quantitative (such as absolute emission reduction targets)[173] and others are qualitative (such as goals to adopt climate friendly paths);[174] some are conditional (as for instance on the provision of international support)[175] while others are unconditional.[176] In the circumstances, an obligation of result, if one had been created, may not have lent itself to enforcement.

In addition to the binding obligation to prepare, communicate and maintain contributions as well as to take domestic measures, parties are subject to further procedural obligations. Each party is required to communicate a contribution every five years.[177] When communicating their NDCs, parties are required to provide the information necessary for clarity, transparency, and understanding.[178] These provisions are phrased in mandatory terms ('shall'), and thus constitute binding obligations for parties. Some also oblige parties to act in accordance with 'relevant decisions' to be taken by the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (CMA), thus effectively giving the CMA authority to adopt legally binding decisions.[179] It is worth noting, however, that the 'relevant decisions' may provide parties with discretion. For instance, decision 1/CP.21 provides that parties '*may* include, as appropriate, inter alia' several listed pieces of information, but does not require them to do so.[180]

The Paris Agreement also requires parties to account for their NDCs in accordance with 'guidance' adopted by the CMA.[181] Although this provision is phrased in mandatory terms ('shall'), the use of the word 'guidance' could be interpreted (p. 233) as implying that a CMA decision containing accounting guidance would not bind parties. Alternatively, it could be interpreted as meaning that CMA decisions on accounting should provide general guidance rather than impose detailed rules. Given this ambiguity, the way in which the accounting decision is drafted may provide clues as to whether the parties regard it as binding—for example, whether it is drafted in mandatory or discretionary terms.[182]

The strength of these provisions, as well as the transparency framework, discussed below, can be attributed to the concerted efforts of an informal group of key negotiators from developed and developing countries, including the EU, Australia, New Zealand, South Africa, Switzerland, the US, and others, as well as the Singaporean diplomat who facilitated the formal negotiations. This informal group, which came to be called 'friends of rules', formed after Lima when its members realized that the rules of the game, of profound importance to the integrity of the agreement, were getting short shrift in a process focused primarily on the headline political issues.

B. Registering NDCs

The NDCs referred to in Article 4.2 are to be recorded in a public registry maintained by the secretariat.[183] The US, Canada, and New Zealand, among others, favored this approach, arguing that housing contributions outside the treaty would enable their speedy and seamless updating. Others were concerned that if contributions were housed outside the agreement, parties would enjoy excessive discretion in revising their contributions, potentially even downwards. To address this concern, the Paris Agreement permits parties to adjust their contributions only with a view to enhancing the level of ambition and subject to CMA guidance.[184] The Paris decision also calls on the CMA to adopt modalities and procedures for the operation and use of the public registry,[185] which could potentially circumscribe the discretion parties have. In any case, notwithstanding the fact that

contributions are housed outside the instrument, the entire structure of the agreement, and Article 4 in particular, underscores that NDCs are a crucial element of the Paris Agreement.

C. Progression in NDCs

In addition to the array of obligations relating to NDCs, the Paris Agreement sets a firm expectation that parties' NDCs will progress from each five-year cycle to the next. The relevant provision reads:

> Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution, and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.[186]

(p. 234) Progression could potentially be reflected in several ways. For example, it could be demonstrated through more stringent numerical commitments of the same form, ie a decrease in emissions intensity from a base year over a previous intensity target, or an increase in absolute reductions over an earlier absolute reduction target. It could also be reflected in the form of commitments. For instance, parties that have undertaken sectoral measures might take on economy-wide emissions intensity or business-as-usual deviation targets, or those that currently have economy-wide emissions intensity or business-as-usual deviation targets might take on economy-wide absolute emissions reduction targets.

This provision applies to 'each Party' not to 'Parties' in general. The use of the auxiliary verb 'will' signals an expectation, but not an obligation, that each party will undertake more ambitious actions over time.[187] Many developing countries advocated 'progression' as a way of ensuring that developed countries did not take on commitments less rigorous than their Kyoto commitments. The notion of progression also formed the basis for Brazil's 'concentric differentiation' approach that envisioned gradual progression by all parties in the type and scale of their commitments, reflected in Article 4.4, which recommends that developed countries undertake economy-wide absolute emission reduction targets, and encourages developing countries to move over time toward economy-wide emission reduction or limitation targets.[188]

As noted above, the provision on progression is not prescriptive in relation to how progression (in form or rigor) is defined and it is silent on who determines progression. Each party will, in practice, decide for itself what its contributions will be and hence how its contribution will reflect its 'highest possible ambition' and the principle of CBDRRC. Nevertheless, the standards of progression and highest possible ambition are arguably objective rather than self-judging, so parties' national determinations will be open to comment and critique by other states as well as by civil society organizations.

In addition to the expectation that parties will undertake more ambitious mitigation contributions over time, the Paris Agreement provides that '[t]he efforts of all Parties will represent a progression over time'.[189] This crosscutting provision extends the progression principle beyond mitigation to areas such as adaptation and support. It differs from the mitigation progression provision in two respects. First, it applies to 'all Parties' not 'each Party', indicating that it could be interpreted as a collective rather than an individual expectation. Second, it uses the term 'efforts' rather than 'nationally determined contributions', which captures a wider range of actions, including not only mitigation contributions,[190] but also adaptation planning and implementation,[191] and provision of financial resources to developing (p. 235) countries.[192] Both provisions on progression, however, are similar in that they use the auxiliary verb 'will' and thus establish expectations rather than obligations of more ambitious actions over time. A final occurrence of 'progression' in the Paris Agreement is in relation to the mobilization of finance, which

developed countries are urged, ‘as part of the global effort’, to take the lead on.[193] This provision is phrased in passive language and as a recommendation.

Even though some of these provisions place collective or individual expectations on parties, and progression is initially self-determined, together they bear tremendous significance, as they are designed to ensure that the regime as a whole moves toward ever more ambitious and rigorous actions—that there is a ‘direction of travel’ for the regime, as it were. Since developed and developing countries are starting from different points, reflected in their self-differentiated NDCs, the principle of progression also implies that differentiation will continue in successive cycles of NDCs, at least into the near future.

D. Ambition cycle

The expectation of progression, together with the global stocktakes to assess collective progress toward long-term goals, discussed below, and the binding obligation on each state to communicate an NDC every five years, informed by the outcomes of the global stocktake, form what has come to be characterized as the ‘ambition cycle’ of the Paris Agreement. This ambition cycle, intended to promote progressively stronger NDCs over time, was viewed as crucial by many states, since the NDCs submitted in the run-up to Paris were acknowledged by states themselves to be insufficient.[194] The Paris Agreement and the decision accompanying it establish the following time-line for the ambition cycle:

- In 2018, parties will convene a ‘facilitative dialogue’ focusing on mitigation, to take stock of their collective progress in achieving the emission goals set forth in Article 4.1. [195]
- By 2020, parties with NDCs running to 2025 are requested to communicate a new NDC, informed by the facilitative dialogue. Parties with NDCs running to 2030 may continue their existing NDC or update it. [196]
- By 2020, parties are invited to communicate their mid-century, long-term low GHG emission development strategies. [197]
- In 2023, the CMA will conduct its first global stocktake, addressing adaptation and finance as well as mitigation. [198]
- By 2025, all parties must communicate their successive NDC, informed by the global stocktake, nine to twelve months before the next CMA. [199]

(p. 236) • In 2028, the CMA will conduct its second global stocktake, which will inform the successive NDC that each party is required to communicate by 2030.

The ambition cycle will continue on a five-year basis indefinitely. Although the Paris Agreement does not itself specify a common time frame for NDCs, and the initial NDCs submitted prior to the Paris conference have different end dates, the agreement provides that the CMA shall consider common time frames in the course of elaborating the Agreement’s rules.[200]

VI. Market-Based Approaches (Article 6)

Market-based approaches such as emissions trading and the Clean Development Mechanism (CDM) were central features of the Kyoto Protocol architecture, but for most of the ADP negotiations, it was unclear whether states would agree to include market-oriented language in the Paris Agreement. The fact that more than half the INDCs submitted by parties contemplated the use of international carbon markets[201] suggested broad support for inclusion of a market-based provision. But a small number of states, led by Bolivia, strongly opposed such a provision. In the end, supporters of market mechanisms succeeded in including a separate article on markets. As a concession to market opponents, Article 6 never refers directly to ‘markets’, and expressly recognizes the importance of non-market

approaches,[202] but not market approaches. Nevertheless, in effect, it provides for two market-based mechanisms.

First, Article 6.2 recognizes that parties may engage in ‘cooperative approaches’ to achieve their NDCs, involving the use of ‘internationally transferred mitigation outcomes’—the new jargon for emissions trading and other mechanisms to link national climate policies. To ensure environmental integrity, parties must apply ‘robust accounting rules’—including to ensure that emission reductions are not double counted—consistent with guidance to be adopted by the CMA. Because parties’ NDCs are highly heterogeneous, developing this common accounting system is likely to pose difficult but not insurmountable challenges.[203]

Second, Article 6.4 establishes a new mechanism to ‘promote the mitigation of GHG emissions while fostering sustainable development’ (christened by many (p. 237) as the ‘sustainable development mechanism’ or SDM and by others as the ‘mitigation mechanism’). Like the CDM, the new mechanism will generate emission reduction offsets that another country can use to fulfill its NDC. But, in contrast to the CDM, the SDM will not be limited to project-based reductions, and might involve emission reduction policies or programs. In addition, it will be able to generate offsets for emission reductions in developed as well as developing countries, thus merging the roles of the CDM and joint implementation under the Kyoto Protocol. The Paris Agreement and decision task the CMA to designate a supervisory body for the new mechanism, as well as to develop rules, modalities, and procedures, drawing on the experience gained from the existing FCCC and Kyoto Protocol mechanisms.[204]

VII. Adaptation (Article 7)

As discussed above in relation to ‘scope’ of the Paris Agreement, most developing countries have long argued for parity between mitigation and adaptation in the climate regime, and thus sought to include strong provisions on adaptation in the Paris Agreement. They had limited success, however, perhaps in part because adaptation provides primarily local benefits, so that countries have an incentive to adapt regardless of what other countries are doing, making the case for collective action less compelling.

The Paris Agreement contains one hard law provision and several soft law provisions relating to adaptation. Parties are obliged to (‘Each Party shall’) engage in adaptation planning and implementation of adaptation actions. Parties are nudged (‘Parties should’) to submit and update adaptation communications (possibly as part of their NDCs) identifying priorities and needs, for listing on a public registry,[205] and to strengthen cooperation on adaptation.[206] Many of these provisions are qualified by phrases like, ‘as appropriate’, which permit discretion.[207] The Paris Agreement also tasks the CMA with developing modalities to recognize the adaptation efforts of developing countries.[208]

In addition, the adaptation article in the Paris Agreement includes several contextual provisions.[209] For instance, Article 7.2 recognizes that adaptation is a global challenge. Article 7.5 acknowledges that adaptation action should follow a country-driven approach. And Article 7.6 recognizes the importance of support for (p. 238) adaptation efforts. These provisions do not prescribe—whether in mandatory, recommendatory or even cajoling terms—a particular course of action. Instead, they provide context, construct a narrative, capture shared understandings, and generate mutual reassurances about the nature of the adaptation problem and particular ways of addressing it. In so doing, these provisions perform a critical function and were essential to the Paris package.

An excellent example of a contextual provision is Article 7.4, in which parties recognize that the current need for adaptation is significant, that greater levels of mitigation can reduce the need for additional adaptation efforts, and that greater adaptation needs can involve greater adaptation costs. Although this provision does not require any particular conduct from parties, it was nevertheless extremely important for vulnerable countries. Many

developing countries had stressed the links between mitigation ambition (or lack thereof) and the need for enhanced adaptation. Indeed, the African Group had proposed a quantifiable adaptation goal that would assess adaptation impacts and costs flowing from the agreed temperature goal.[210] Implicit in this proposal was an assumption that the worst impacts of climate change would be borne by vulnerable countries that had contributed little thus far to creating the problem, and that such adaptation costs should be raised and borne by developed countries. But, perhaps because of its potential financial implications, this proposal by the African Group proved unpalatable to developed and some developing countries. The Paris Agreement thus contains only a qualitative adaptation goal in Article 7.1, namely to enhance adaptive capacity, strengthen resilience, and reduce vulnerability to climate change. In deference, however, to the concerns of many vulnerable countries, Article 7.4 recognizes the critical inter-linkages between adaptation, mitigation, and support.[211] Although only a descriptive provision, it signals a shared understanding that was crucial to the acceptability of the larger political package.

Finally, it is worth noting that the Paris Agreement also endorses the aim that scaled up financial resources should achieve a balance between adaptation and mitigation, and specifically recognizes the need for ‘public and grant-based resources’ for adaptation.[212]

VIII. Loss and Damage (Article 8)

As discussed in Chapter 5, the issue of loss and damage has been on the table since the beginning of the UN climate regime, with small island states and other (p. 239) vulnerable countries investing considerable negotiating capital on it. At the 2013 Warsaw conference, parties established the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts (WIM) to address loss and damage associated with impacts of climate change in particularly vulnerable developing countries.[213] Parties disagreed on whether loss and damage should be addressed as part of adaptation or as a distinct issue.[214] Many vulnerable countries believe that the topic of loss and damage is distinct from adaptation, and encompasses issues of liability and compensation, while developed countries prefer to address the issue within the framework of adaptation.[215] At the Warsaw conference, parties agreed to establish the new mechanism ‘under the Cancun Adaptation Framework’, but to provide for a review in 2016.[216] The following year, at the Lima conference, parties agreed to a two-year work plan for the executive committee of the WIM.[217] As the review of the mechanism for loss and damage was slated for 2016, many developed countries believed the issue would not be addressed in Paris. But given the salience of the topic to vulnerable countries, they successfully pushed to include a provision on loss and damage in the Paris Agreement.

Although Article 8 is arguably of greater symbolic than substantive significance, it is important for two reasons. First, it expressly brings the issue of loss and damage within the scope of the Paris Agreement. Second, it is a free-standing article, thus, arguably, separating loss and damage from adaptation, as developing countries have long sought. As the price for agreeing to include Article 8, however, the US insisted on adding a paragraph to the Paris COP decision stating that ‘Article 8 does not involve or provide a basis for any liability or compensation,[218] thereby stripping loss and damage of some of its most distinctive elements.[219] Some of the areas of cooperation and facilitation identified in Article 8 are, in fact, forms of adaptation, aimed at preventing damage, including early warning systems, emergency preparedness, and comprehensive risk assessment and management. Nevertheless, Article 8 gives loss and damage a toehold in the regime, which developing countries are likely to use to advance the issue going forward.

(p. 240) IX. Support (Articles 9, 10, and 11)

A. Finance

In the lead-up to Paris, finance was expected to be one of the most difficult 'crunch' issues to resolve, given the seemingly unbridgeable gap between developing countries, which sought new financial commitments in the Paris Agreement, and developed countries, which insisted that they could not accept any new commitments and sought to broaden the donor pool. In the end, however, developing countries were willing to settle for modest advancements in the Paris Agreement, making resolution of the finance issue possible.

The FCCC requires Annex II parties to provide financial assistance to developing countries for mitigation and adaptation.[220] In the Copenhagen Accord, developed countries committed to a goal of mobilizing $100 billion per year in climate finance by 2020, in order to assist developing countries in mitigating and adapting to climate change. The Copenhagen pledge encompassed money from both public and private sources, and was made 'in the context of meaningful mitigation actions' by developing countries, as well as transparency on implementation.[221] A recent report of the Organization for Economic Co-operation and Development (OECD) found that $62 billion in climate finance was mobilized in 2014, up from $52 billion in 2013.[222] These figures are disputed, however, because of methodological questions about what counts as climate finance.[223] Against this backdrop, the Paris Agreement's provisions on finance are rather modest.

1. Financial commitments

Article 9 obliges developed countries to provide financial resources to assist developing countries with adaptation and mitigation, 'in continuation of their existing obligations under the Convention'.[224] It is the latter clause that permitted the US to accept this mandatory construction of their financial obligations. Article 9 also creates a number of new reporting requirements (including biennial reports that include projected levels of public finance), and introduces a new substantive norm, albeit soft, recommending that the mobilization of climate finance 'should represent a progression beyond previous efforts'.[225]

(p. 241) 2. Donor pool

In a departure from the sharp differentiation in the FCCC, the Paris Agreement 'encourages' other parties to 'provide or continue to provide support voluntarily'.[226] This provision is considerably weaker than developed countries had sought. It encourages rather than requires or recommends the provision of support, and is silent as to who should do so (as compared to earlier formulations that specified countries 'with capacity' or 'in a position' or 'willing' to do so). Nevertheless, this provision could prove significant, by beginning to break down the wall between donor and recipient countries. Along similar lines, the Paris Agreement calls on developed countries to take the lead in mobilizing climate change, but as 'part of a global effort'.[227]

3. Mobilization goal

The US and other developed countries succeeded in excluding a reference to the Copenhagen $100 billion per year mobilization goal from the Paris Agreement. Instead, the only quantitative finance goal appears in the accompanying COP decision, which extends developed countries' existing $100 billion mobilization goal through 2025 and provides that the parties shall set a new collective quantified goal prior to 2025 (not explicitly limited to developed countries), using the $100 billion per year figure as a floor.[228]

Finance, as discussed below, will be part of the 2023 global stocktake. Like the Copenhagen Accord, the Paris Agreement recommends that the provision of scaled-up support should aim to achieve a balance between mitigation and adaptation.[229]

B. Technology

In relation to technology, the Paris Agreement creates a technology framework to provide overarching guidance to the work of the convention's technology mechanism in promoting and facilitating enhanced action on technology development and transfer.[230] It also makes support available to accelerate, encourage, and enable innovation through collaborative approaches to research and development and by facilitating access to technology.[231] Information relating to technology support will also feed into the global stocktake.[232]

C. Capacity-building

The Paris Agreement urges parties to cooperate to enhance the capacity of developing countries to implement the agreement,[233] and requires them to regularly (p. 242) communicate on these actions.[234] It also provides a hook to develop appropriate institutional arrangements for capacity-building.[235]

X. Oversight System (Articles 13, 14, and 15)

The Paris Agreement establishes an oversight system to ensure effective implementation of its provisions, as well as to assess collective progress toward the agreement's long-term goals. This oversight system is vital to the conceptual apparatus of the agreement, and forms, along with the rules relating to NDCs, part of the 'top down' element of the agreement's hybrid architecture.

A. Transparency (Article 13)

Since the Paris Agreement does not contain binding obligations of result in relation to the content of parties' NDCs, the agreement's transparency framework is the main mechanism to hold states accountable for doing what they say they will do.[236] The premise is that peer and public pressure can be as effective as legal obligation in influencing behavior, an issue that has long been debated in the literature on soft law.[237]

Developing countries have traditionally resisted strong reporting and review requirements. Until now, the climate regime has addressed their concerns by differentiating between their commitments and those of developed countries. The 2010 Cancun Agreements, for example, established two systems: IAR for developed countries, and ICA for developing countries.[238] A crunch issue in Paris was whether to move away from the bifurcated approach of the Cancun Agreements to a common transparency system for both developed and developing countries.

Until the final days of the Paris conference, many developing parties, in particular the LMDCs, argued for a bifurcated system that placed differing transparency requirements on developed and developing countries. The Umbrella Group,[239] the EU and the Environmental Integrity Group eventually prevailed, however, and the Paris Agreement's transparency system, albeit not explicitly characterized as 'common' or 'unified', reflects an enhanced framework applicable to all. It addresses differentiation not through bifurcation between developed and developing countries, but through a pragmatic tailoring of commitments to capacities.[240] It provides for (p. 243) 'built in flexibility, which takes into account Parties' different capacities',[241] offers flexibility to those developing countries that 'need it in the light of their capacities',[242] and creates a new capacity-building initiative for transparency to assist developing countries.[243]

The Paris Agreement's transparency framework for action and support is comparatively robust, particularly given that it applies to developing as well as developed countries. It places extensive informational demands on all parties[244] and creates several review mechanisms.[245] The purpose of the transparency framework is to ensure clarity and tracking of progress toward achieving parties' NDCs and adaptation actions,[246] as well as to provide clarity on support provided and received by parties.[247] Toward this end, all parties are required biennially[248] to provide a national inventory report of GHG emissions and removals and information necessary to track progress in implementing and achieving mitigation contributions.[249] Further, developed countries are required to provide information on financial, technology and capacity-building support they provide to developing countries.[250] Article 13 also recommends that each party provide information related to climate impacts and adaptation[251] and that developing countries provide information on the support they need and receive.[252] It is worth noting that there is a hierarchy in the legal character of the informational requirements placed on parties. Informational requirements in relation to mitigation are mandatory individual obligations applicable to all ('each Party shall'). Informational requirements in relation to finance are mandatory collective obligations for developed countries ('developed country Parties shall') and recommendations for developing countries ('developing country Parties should'). Informational requirements in relation to adaptation are recommendations ('each Party should'), and allow parties discretion ('as appropriate').

The information submitted by all parties in relation to mitigation and by developed country parties on the provision of support will be subject to a technical expert review.[253] This review will consider the support provided to parties, the implementation of their NDCs, and the consistency of the information they provide with the common modalities, procedures, and guidelines adopted by the CMA.[254] In addition each party is expected to participate in a 'facilitative, multilateral consideration of progress' with respect to the implementation and achievement of its NDC, as well as its efforts in relation to finance.[255]

It is unclear, at this point, how these review processes will be conducted, who will conduct them, what their outputs will be, how, if at all, these outputs will feed into the global stocktake, and how they will relate to implementation and compliance. The Paris Agreement provides that the enhanced transparency framework is to build (p. 244) on the existing transparency arrangements under the FCCC, and that the CMA is to draw on these arrangements (including national communications, biennial reports, IAR and ICA) in developing modalities, procedures, and guidelines for the enhanced transparency framework. These modalities, procedures, and guidelines are to be developed by 2018 and will supersede the existing arrangements following the submission of parties' final biennial reports and biennial update reports.[256]

B. Global stocktake (Article 14)

The transparency framework is complemented by a 'global stocktake' every five years to assess collective progress toward long-term goals.[257] The global stocktake performs a crucial function in the context of 'nationally determined' contributions. It allows a collective assessment of whether national efforts add up to what is necessary to limit temperature increase to well below 2° C.

The Paris Agreement provides broad guidance on the nature, purpose, tasks and outcome of the stocktake, but leaves the mechanics to be determined by the CMA.[258] The Paris Agreement envisions the stocktake as a 'comprehensive and facilitative'[259] exercise—thus reinforcing the fact that the Paris Agreement addresses not only mitigation but also

adaptation and support, and that it is primarily a facilitative rather than a prescriptive instrument.

The purpose of the stocktake is to 'assess the collective progress towards achieving the purpose of this Agreement and its long term goals'.[260] The 'purpose' of the agreement is stated in Article 2, and includes the long-term temperature goal and the context for implementation. It is unclear what the 'long term goals' are. While mitigation,[261] adaptation,[262] and finance[263] goals, with varying levels of precision, are identified in the agreement, there are no identifiable goals in relation to technology and capacity-building. This introduces an element of uncertainty into the assessment of progress.

Moreover, the stocktake is authorized to consider 'collective', not individual, progress. Although AILAC, AOSIS, and the EU had proposed individualized assessments of performance, the LMDCs, among others, successfully averted such assessments from becoming part of the global stocktake process.

The agreement sets various tasks for the stocktake, as, for instance, reviewing the overall progress made in achieving the global goal on adaptation.[264] It also identifies initial inputs to the stocktake, including information provided by parties on finance,[265] available information on technology development and transfer,[266] and information generated through the transparency framework.[267] Other inputs (p. 245) will be identified in the years to come.[268] The inclusion of information generated through the transparency framework as an input to the stocktake is of particular significance, since it suggests that the stocktake could consider the past performance of parties in implementing their NDCs.

The global stocktake is required to assess collective progress 'in the light of equity and the best available science'.[269] The inclusion of 'equity' was a negotiating coup for several developing countries, in particular the African Group, that had long championed the need to consider parties' historical responsibilities, current capabilities and development needs in setting expectations for NDCs.[270] It is unclear at this point how equity, yet to be defined in the climate regime, will be understood and incorporated in the global stocktake. Nevertheless, the reference to equity leaves the door open for a dialogue on equitable burden sharing, as well an assessment of whether states are contributing as much as they should, given their responsibilities and capabilities, although admittedly this will be difficult to reach agreement on.

Finally, the outcome of the stocktake is to inform parties in updating and enhancing their actions and support 'in a nationally determined manner'.[271] This is a carefully balanced provision. On the one hand, it links the outcome of the stocktake with the process of updating parties' contributions,[272] thus generating strong expectations that parties will enhance the ambition of their actions and support, informed by the findings of the stocktake. On the other hand, it underscores the 'nationally determined' nature of actions and support, thus addressing concerns over loss of autonomy and external ratchets. In this respect LMDCs, in particular China and India, prevailed over AILAC, AOSIS, and the EU, which had sought more prescriptive language to link the outcome of the stocktake with future NDCs.

The first stocktake is set to take place in 2023,[273] once the mechanics of the stocktake have been worked out. There was a felt need for an earlier stocktake to guide parties, especially those with contributions set to five-year time frames, in updating and revising their contributions. Parties agreed therefore to convene a 'facilitative dialogue' in 2018 to take stock of the collective efforts of parties in relation to the agreement's long-term mitigation goal and to inform the preparation of the next round of NDCs.[274]

The global stocktake is cleverly designed to ensure both that it influences NDCs and that it is palatable to all, even the LMDCs, for whom any assessment process was anathema, as it would potentially impinge on sovereign autonomy. The global stocktake is a facilitative process. It assesses collective not individual progress. It assesses collective progress on support as well as on mitigation. It will consider not just science but also equity in determining the adequacy of collective progress. And, finally, ratcheting of contributions as a result of the stocktake, if any, will be left to (p. 246) national determination, albeit with built-in expectations based on the outcome of the stocktake.

C. Implementation and compliance mechanism (Article 15)

The Paris Agreement establishes a mechanism to facilitate implementation of and promote compliance with its provisions, but the skeletal provision establishing this new mechanism provides only minimal guidance on how it will work. Article 15 indicates that the mechanism is to be 'transparent, non-adversarial and non-punitive', but it does not describe the relationship, if any, between the transparency framework and the new mechanism, and leaves the mechanism's modalities and procedures to be negotiated in the years to follow.[275] Article 15 does provide that the mechanism will address both implementation of and compliance with the agreement, that it is to consist of an expert-based facilitative committee, and that the committee is to function in a transparent, non-adversarial, and non-punitive manner.[276] This guidance addresses concerns of those who feared—across the developed-developing country divide—that the Paris Agreement would recreate a Kyoto-like compliance committee with an enforcement branch and serious consequences for non-compliance. However, the fact that the Paris Agreement addresses 'compliance' and not just implementation is a significant achievement for the EU, AOSIS, and Norway, which had pushed for inclusion of a compliance mechanism in the negotiations.

XI. Institutions (Articles 16–19)

The Paris Agreement uses the existing institutional structure of the FCCC, including the FCCC COP (which is to serve as the Meeting of Parties to the Paris Agreement,[277] with states that are not party to the Paris Agreement participating as observers),[278] the FCCC's subsidiary bodies, and its secretariat.[279] In addition, numerous subsidiary bodies and institutional arrangements under the Convention have been mandated ('shall') to serve the Paris Agreement. These include the Green Climate Fund and the Global Environment Facility, the Least Developed Countries Fund, the Special Climate Change Fund,[280] the standing committee on finance,[281] the technology mechanism,[282] appropriate institutional arrangements for capacity-building,[283] and the forum on the impact of the implementation of response measures.[284] Further subsidiary bodies and institutional arrangements can be mandated to serve the agreement through a decision of the CMA.[285]

(p. 247) XII. Final Clauses (Articles 20–28)

The Paris Agreement includes a standard set of final clauses. Parties must express their consent to be bound by means of ratification, accession, acceptance, or approval.[286] Entry into force involves a 'double trigger', requiring acceptance by at least fifty-five states that account for at least 55% of global GHG emissions.[287] The Paris Agreement was opened for signature at a high-level signature ceremony convened by the Secretary General in New York on 22 April 2016, 'Earth Day'.[288] A record 175 FCCC parties signed the agreement on this day,[289] and the Paris Agreement entered into force on 4 November 2016, less than a year after it was adopted.[290]

The Paris Agreement incorporates by reference the FCCC's provisions on amendments,[291] adoption and amendment of annexes,[292] and dispute settlement.[293] Reservations are

expressly disallowed,[294] but parties may withdraw by giving one year's notice, beginning three years after the agreement's entry into force.[295]

XIII. Next Steps

The Durban Platform had envisaged the Paris Agreement as taking effect from 2020.[296] The Paris Agreement, however, entered into force on 4 November 2016—much sooner than expected. Several factors contributed to the Paris Agreement's extraordinarily rapid entry into force. States wanted to harness the political momentum and goodwill generated in Paris before it dissipated. Many states were also concerned about the impact the US elections could have on the Paris Agreement, given the threat by Donald Trump, now the President, to 'cancel' the Paris Agreement.[297] The agreement's entry into force before the US election could potentially insulate it from the vicissitudes of American electoral politics for four years, when withdrawal (p. 248) first becomes legally possible.[298] Indeed, the EU fast tracked its approval of the Paris Agreement in order to take the Paris Agreement over the emissions threshold necessary for entry into force.[299] But entry into force of the Paris Agreement, albeit very important, is merely the first step in its successful implementation. Much of the legal framework created by the Paris Agreement is yet to be fleshed out. The post-Paris negotiations have crucial gap-filling work to do.[300]

For states that have submitted INDCs, their INDCs must be converted into NDCs. Unless a state decides otherwise, this will happen automatically when a state submits its instrument of ratification, acceptance, approval or accession—in essence, removing the 'I' from INDC, leaving the substance of the contribution unchanged.[301] But the Paris COP decision does not prohibit a state from making substantive changes to its contribution before finalizing it.

The Paris COP decision establishes an Ad hoc Working Group on the Paris Agreement (APA), and tasks it with preparing for the agreement's entry into force and the first meeting of the CMA. The APA's main job will be to develop guidance on up-front information and accounting, and to elaborate rules, modalities, and guidelines relating to the transparency framework, the global stocktake, and the implementation and compliance mechanism, for adoption by the CMA.[302] The strength and rigor of these 'top down' elements of the Paris Agreement will play an important role in ensuring that parties' successive NDCs represent a progression from past ones, and that they reflect parties' highest possible ambition. Such ambition will be necessary to bridge the considerable gap between current emissions trajectories and least-cost 2° C and 1.5° C scenarios.

The negotiations in the APA will provide an early indicator of how much the Paris Agreement reflects a stable political equilibrium. In the UN climate regime, issues are rarely settled fully and parties often push to regain ground they had previously ceded. In Paris, many developing countries accepted the move away from binary differentiation only reluctantly, so it remains to be seen whether and how they seek to reintroduce it when elaborating the Paris Agreement's rules.

(p. 249) XIV. Conclusion

The Paris Agreement is a landmark in the UN climate negotiations. Notwithstanding long-standing and seemingly intractable differences, parties harnessed the political will necessary to arrive at an agreement that is long-term, rules-based, and applicable to all. The Paris Agreement contains ambitious goals, extensive obligations, and comparatively rigorous oversight. Admittedly, the goals are aspirational, the obligations are largely procedural, and the mechanics of the oversight mechanisms have yet to be fleshed out. Differentiation too has come to acquire a new more nuanced form. Despite its many tenuous compromises and infirmities, the Paris Agreement represents a hard fought deal among 196 nations. Countries across the developed and developing country divide made significant

concessions from long-held positions in the closing hours of the conference, thus making the final agreement possible.

Many difficult issues remain, however, and much of the hard work lies ahead. The process of elaboration in the post-Paris negotiations will reveal the degree to which the Paris Agreement resolved issues or merely papered over them. For example, the Paris Agreement did not resolve the issue of burden sharing among parties. But, whether resolvable or not, this issue will continue to underpin both the negotiations and actions taken by parties in the years to come. Many developing countries, including Brazil, China, and India, were among those that helped bring the Paris Agreement into force. However, these countries, although rapidly growing, continue to face serious developmental challenges and have other compelling priorities. Many have limited resources to devote to the significant energy transformations required to bend their emissions curve in line with 2° C or 1.5° C scenarios. The declaration accompanying India's ratification of the Paris Agreement offers a useful illustration of these tensions.[303] India's declaration highlights its development agenda, in particular poverty eradication and basic needs provision; notes India's assumption of unencumbered access to cleaner sources of energy, technologies, and financial resources; and asserts that its ratification is based on a fair and ambitious global commitment to combating climate change.[304] Given limited resources, it remains to be seen to what extent many countries, even with the best intentions, will be able to make the transformational changes required domestically to meet the global temperature limit.

Further, the Paris Agreement takes a 'broad then deep' approach to emissions reductions, first expanding coverage of emissions limits, and then seeking depth of commitments.[305] That the Paris Agreement has broad appeal is evident both in its rapid entry into force as well the fact that parties' NDCs cover 99% of global emissions. However, the NDCs are, if not shallow, at least insufficient, given the scale of the challenge. The design of the Paris Agreement, with its focus on progression (p. 250) and highest possible ambition of successive NDCs, aspires to depth of mitigation commitments over time. But it is uncertain whether such an incremental and iterative approach will produce sufficiently rapid change to meet the global temperature limit agreed to in Paris, in particular the 1.5° C aspirational goal.

These concerns notwithstanding, the Paris Agreement justifies cautious optimism about the future of the international climate regime. Of course, it is only one of many contributors to climate policy. Success or failure in combating climate change will depend as much or more on other factors, such as domestic politics and technological change. But the willingness of states to come together and agree on a comprehensive, universal, long-term, and in many ways ambitious agreement bodes well for our chances of limiting dangerous global warming.

Table 7.1 Legal character of provisions in the 2015 agreement

Subjects/ Addressee	Provisions that create obligations	Provisions that generate expectations	Provisions that Recommend	Provisions that Encourage
Individual (Each Party or A Party)	**Mitigation:** **4.2:** 'Each Party **shall** prepare, communicate and maintain successive nationally determined contributions that it intends	**Mitigation:** **4.3:** Each Party's successive NDC '**will** represent a progression' beyond the	**Adaptation:** **7.10:** 'Each Party **should**, **as appropriate**, submit and update periodically an	

Subjects/ Addressee	Provisions that create obligations	Provisions that generate expectations	Provisions that Recommend	Provisions that Encourage
	to achieve. Parties **shall** pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.'[306] **4.9:** 'Each Party **shall** communicate' a nationally determined contribution (NDC) every five years. **4.17:** 'Each party' to an agreement to act jointly '**shall'** be responsible for its emission level as set out in the terms of its joint fulfilment agreement. **Adaptation:** **7.9**: 'Each Party **shall, as appropriate,'** engage in adaptation planning processes and the implementation of actions. **Transparency:** **13.7:** 'Each Party **shall** regularly provide' information on national inventories and to track progress in implementing its NDC. **13.11:** '[e]ach Party **shall** participate in a facilitative, multilateral consideration of progress' with respect to	Party's then current NDC.	adaptation communication.' **Transparency:** **13.8** 'Each Party **should** also provide information' related to climate change impacts and adaptation… **as appropriate.'**	

Subjects/ Addressee	Provisions that create obligations	Provisions that generate expectations	Provisions that Recommend	Provisions that Encourage
	efforts on finance, and 'implementation and achievement' of its NDC.			
Collective or Cooperative 'Parties' or 'All Parties'	**Education, Awareness, Public Participation:** **12:** 'Parties **shall** cooperate in taking measures, **as appropriate**, to enhance climate change education, training, public awareness, public participation and public access to information.'		**Adaptation:** **7.7:** 'Parties **should** strengthen their cooperation on enhancing action on adaptation.' **Loss & Damage:** **8.3:** 'Parties **should** enhance understanding, action and support, including through the Warsaw International Mechanism, **as appropriate**, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change.' **Capacity-building:** **11.3:** All Parties **should** cooperate to enhance the capacity of developing country Parties to implement this Agreement.'	
Blanket 'Parties' or 'All Parties'	**Cross-cutting:** **3**: '… all Parties **are to** undertake and communicate ambitious efforts as defined in	**Cross-cutting:** **3**: '… all Parties **are to** undertake and communicate ambitious efforts as defined in	**Mitigation:** **4.14: '**In the context of their nationally determined contributions, when recognizing and implementing mitigation actions with	**Sinks:** **5.2:** 'Parties are **encouraged** to take action to implement and

Subjects/ Addressee	Provisions that create obligations	Provisions that generate expectations	Provisions that Recommend	Provisions that Encourage
	Articles 4, 7, 9, 10 and 11…'[307] **Mitigation:** **4.2** … Parties **shall** pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.'[308] **4.8:** In communicating their NDCs, 'all Parties **shall** provide the information necessary for clarity, transparency, and understanding.' **4.13:** 'Parties **shall** account' for their NDCs. In accounting for their NDCs, 'Parties **shall** promote environmental integrity, transparency, accuracy, completeness, comparability and consistency, and ensure the avoidance of double counting.' **4.16:** Parties that have reached an agreement to act jointly '**shall** notify the secretariat of the terms of that agreement' including the emission level allocated to each Party. **4.15:** 'Parties **shall take into consideration**' in implementing this Agreement	Articles 4, 7, 9, 10 and 11…'[309] **3**: 'The efforts of all Parties **will** represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.'	respect to anthropogenic emissions and removals, Parties **should** take into account, as appropriate, existing methods and guidance under the Convention.' **4.19:** 'All Parties **should** strive to formulate and communicate long-term low greenhouse gas emission development strategies.' **Sinks:** **5.1: 'Pa**rties **should** take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases.'	support' REDD+. **Finance:** **9.2:** 'Other [than developed country] Parties are **encouraged** to provide or continue to provide such support voluntarily.'

Subjects/ Addressee	Provisions that create obligations	Provisions that generate expectations	Provisions that Recommend	Provisions that Encourage
	the concerns of countries most affected by the impact of response measures **Market-based Approaches:** **6.2:** 'Parties **shall**,' where engaging in cooperative market approaches 'promote sustainable development and ensure environmental integrity and transparency, including in governance, and shall apply robust accounting.' **Technology:** **10.2:** 'Parties … **shall** strengthen cooperative action on technology development and transfer.' **Capacity-building:** **11.4:** 'All Parties, enhancing the capacity of developing country Parties **shall** regularly communicate on these actions or measures on capacity-building.'			
Developed country Parties	**Finance:** **9.1:** 'Developed country Parties **shall** provide financial resources to assist developing country Parties with respect to both mitigation		**Mitigation:** **4.4:** 'Developed country Parties **should** continue taking the lead by undertaking economy-wide absolute emission	

Subjects/ Addressee	Provisions that create obligations	Provisions that generate expectations	Provisions that Recommend	Provisions that Encourage
	and adaptation in continuation of their existing obligations under the Convention.' **9.5:** 'Developed country Parties **shall** biennially communicate indicative quantitative and qualitative information' relating to provision and mobilization of finance. **9.7:** Developed country Parties **shall** provide transparent and consistent information on support for developing country Parties provided and mobilized through public interventions biennially.' **Transparency:** **13.9**: 'Developed country Parties **shall**, and other Parties that provide support should, provide information on financial, technology transfer and capacity-building support provided to developing country Parties.'		reduction targets.' **Finance:** **Article 9.3:** 'As part of a global effort, developed country Parties **should** continue to take the lead in mobilizing climate finance from a wide variety of sources.' **11.3:** 'Developed country Parties **should** enhance support for capacity-building actions in developing country Parties.'	
Developing country Parties			**Mitigation:** **4.4:** 'Developing country Parties **should** continue enhancing their	**Mitigation:** **4.4:** Developing country Parties 'are **encouraged** to move over time towards economy-wide emission

Subjects/ Addressee	Provisions that create obligations	Provisions that generate expectations	Provisions that Recommend	Provisions that Encourage
			mitigation efforts.’ **Capacity-building:** **11.4:** ‘Developing country Parties **should** regularly communicate progress made on implementing capacity-building plans, policies, actions or measures to implement this Agreement.’ **Transparency:** **13.9:** … ‘and other Parties that provide support **should**, provide information on financial, technology transfer and capacity-building support provided to developing country Parties.’ **Capacity-building:** **13.10:** ‘Developing country Parties should provide information on financial, technology transfer and capacity-building support needed and received.’	reduction or limitation targets in the light of different national circumstances.’ **Finance:** **9.5:** Other (than developed country) Parties providing resources ‘are **encouraged** to communicate biennially such information on a voluntary basis.’ **Finance:** **9.7:** Other (than developed country) Parties ‘are **encouraged** to’ provide information on support for developing countries mobilized through public interventions.
No addressee (passive voice)	**Mitigation:** **4.5:** ‘Support **shall** be provided to developing country Parties for the			

Subjects/ Addressee	Provisions that create obligations	Provisions that generate expectations	Provisions that Recommend	Provisions that Encourage
	implementation of this Article.' **Adaptation:** **7.13:** 'Continuous and enhanced international support **shall** be provided to developing country Parties for the implementation' of relevant adaptation actions. **Technology:** **10.6:** 'Support, including financial support, **shall** be provided to developing country Parties for the implementation of this Article.' **Transparency:** **13.14:** 'Support **shall** be provided to developing countries for the implementation of this Article.' **13.15**: 'Support **shall** also be provided for the building of transparency-related capacity of developing country Parties.'			

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Footnotes:

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cop21parisinformationhub/cop-21cmp-11-information-hub-leaders-and-high-level-segment/> accessed 20 January 2017.

8 At the signing ceremony on 22 April 2016, only Bolivia voiced objections to the agreement.

9 World Resources Institute (WRI), 'CAIT Climate Data Explorer' <http://cait.wri.org/indc/> accessed 20 January 2017. For a listing of the INDCs submitted, see INDCs as communicated by the Parties, <http://www4.unfccc.int/submissions/INDC/Submission%20Pages/submissions.aspx> accessed 20 January 2017. For the process of conversion from 'intended' nationally determined contributions to NDCs, see n 301 below and accompanying text.

10 Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (VCLT), Art 2.1(a) (definition of 'treaties').

11 See Chapter 1, Section V.A for a discussion of the different dimensions of legal bindingness and Chapter 3, Section II.D.3 for the legal status of COP decisions.

12 Durban Platform, para 2. See generally Lavanya Rajamani, 'The Durban Platform for Enhanced Action and the Future of the Climate Regime', *International and Comparative Law Quarterly,* 61/2 (2012): 501. See also Daniel Bodansky, 'The Durban Platform Negotiations: Goals and Options' (Harvard Project on Climate Agreements, 2012) <http://belfercenter.ksg.harvard.edu/files/bodansky_durban2_vp.pdf> accessed 20 January 2017.

13 Submission from India (30 April 2012) FCCC/ADP/2012/MISC.3, 33.

14 In 2013, the Warsaw conference invited parties to submit 'intended nationally determined contributions' (INDCs) in the context of the 2015 agreement, but left unresolved the legal form of the 2015 agreement and, explicitly, the legal nature or character of nationally determined contributions. Warsaw decision, para 2(b) and (c). The 'Elements text' for the 2015 agreement, produced by the 2014 Lima conference, and the 'Geneva Negotiating Text' also contained footnoted disclaimers in relation to the legal form and character of the agreement and its provisions. See Lima Call for Climate Action, Annex: Elements for a draft negotiating text; Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP), 'Negotiating text' (25 February 2015) FCCC/ADP/2015/1 (Geneva Negotiating Text).

15 Throughout the ADP negotiations, the US envisioned the 2015 agreement as having 'final clauses', thus signalling that the 2015 agreement would be a treaty within the meaning of the VCLT. U.S. Submission on Elements of the 2015 Agreement (12 February 2014) <http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/u.s._submission_on_elements_of_the_2105_agreement.pdf> accessed 20 January 2017, 10–11. However, the US preferred that the 2015 agreement not be characterized as a 'treaty', since the term 'treaty' has specific connotations in US constitutional law. See Daniel Bodansky and Lavanya Rajamani, 'Key Legal Issues in the 2015 Climate Negotiations' (Arlington, VA: Center for Climate and Energy Solutions, June 2015) <http://www.c2es.org/docUploads/legal-issues-brief-06-2015.pdf> accessed 20 January 2016, note 7; Lavanya Rajamani, 'The Devilish Details: Key Legal Issues in the 2015 Climate Negotiations', *Modern Law Review,* 78/5 (2015): 826; see also Jacob Werksman, 'The Legal Character of International Environmental Obligations in the Wake of the Paris Climate Change Agreement' (University of Edinburgh: Brodies Environmental Law Lecture Series, 9 February 2016) <http://www.law.ed.ac.uk/other_areas_of_interest/events/brodies_lectures_on_environmental_law> accessed 20 January 2017.

16 VCLT, Art 2.1(a).

[17] For appearances sake, the US wanted to distinguish the Paris Agreement as much as possible from the Kyoto Protocol, which the US had rejected, including with respect to its title. For a full discussion, see Rajamani, Devilish Details (n 15) 835.

[18] See Chapter 3, Section II.A.

[19] Decision 1/CP.21, 'Adoption of the Paris Agreement' (29 January 2016) FCCC/CP/2015/10/Add.1, 2, para 1. This is in keeping with the Durban Platform, pursuant to which the Paris Agreement was adopted. See Paris Agreement, preambular recital 1.

[20] Other provisions of the FCCC that apply to related legal instruments include the power of the COP under Article 7.2 to review implementation and Article 14 on dispute settlement.

[21] See Paris Agreement, Art 3 (characterizing Article 2 as the purpose of the agreement).

[22] For a discussion of interpretative possibilities relating to this provision, see Rajamani, Ambition and Differentiation (n 1). See also Annalisa Savaresi, 'The Paris Agreement: A Rejoinder', *Blog of the European Journal of International Law* (16 February 2016) <http://www.ejiltalk.org/the-paris-agreement-a-rejoinder/> accessed 20 January 2016.

[23] For further discussion of this issue, see nn 91–93 below and accompanying text.

[24] Paris Agreement, Art 9.8.

[25] The US, for instance, envisioned that only some elements would be 'internationally legally binding': US Submission (n 15) 7.

[26] See Chapter 1, Section V.A.

[27] Table 7.1 is intended to be illustrative rather than comprehensive, and focuses on provisions that are addressed to states, not those that create obligations for the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (CMA) (such as Art 14).

[28] See Dinah Shelton, 'Introduction', in Dinah Shelton (ed) *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (Oxford University Press, 2000) 1, 10–13.

[29] There are several definitions of 'soft law'. For an overview see Jutta Brunnée, 'The Sources of International Environmental Law: Interactional Law', in Samantha Besson and Jean d'Aspremont (eds), *Oxford Handbook on the Sources of International Law* (Oxford University Press, 2017 forthcoming). See also Chapter 1, Section V.A and Chapter 2, Section II.

[30] See discussion on Article 7 in Section VII below.

[31] Paris Agreement, Art 7.9.

[32] Berlin Mandate, para 2.

[33] Durban Platform, preambular recital 3.

[34] See eg 'Submission by Japan: Information, views and proposals on matters related to the work of Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP)' (10 September 2013) <http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp_japan_workstream_1_and_2_20130910.pdf> accessed 20 January 2017, arguing for a 'flexible hybrid system'.

[35] Warsaw decision, para 2(b).

[36] Ibid. The Lima Call for Climate Action, adopted the following year at COP-20, contributed additional details, identifying (but not prescribing) information that states

might provide in connection with their NDCs, including assumptions and methodological approaches, time frames, scope, and coverage. Lima Call for Climate Action, para 14.

37 154 INDCs of 182 states had been by submitted by 1 December 2015 when the Paris conference began. 163 INDCs of 191 states have been submitted as of 20 January 2017. See INDCs as communicated by the Parties (n 9). 119 INDCs of 147 states had been submitted by 1 October 2015, and were taken into account in the FCCC secretariat's first Synthesis Report on the aggregate effect of the INDCs. FCCC, 'Synthesis Report on the Aggregate Effect of the Intended Nationally Determined Contributions' (30 October 2015) FCCC/CP/2015/7.

38 See below Section V.A.

39 Rajamani, Ambition and Differentiation (n 1).

40 Durban Platform, para 5.

41 ADP Workstream 1: 2015 Agreement, Submission of the United States (11 March 2013) <https://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp_usa_workstream_1_20130312.pdf> accessed 20 January 2017.

42 Australia, Submission under the Durban Platform for Enhanced Action, The 2015 climate change agreement, ADP (26 March 2013) <http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp_australia_workstream_1_20130326.pdf> accessed 20 January 2017.

43 Submission by the Independent Alliance of Latin America and the Caribbean—AILAC, ADP—Planning of Work in 2013 (1 March 2013) <http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp_ailac_workstream1_20130301.pdf> accessed 20 January 2017.

44 Submission by India on the work of the Ad-hoc Working Group on the Durban Platform for Enhanced Action Work-stream I (9 March 2013) <http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp_india_workstream_2_20130309.pdf> accessed 20 January 2017, para 5.13.

45 China's Submission on the Work of the Ad Hoc Working Group on Durban Platform for Enhanced Action (5 March 2013) <http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp_china_workstream_1_20130305.pdf> accessed 20 January 2017, para 5; see also Joint Statement issued at the Conclusion of the 13th BASIC Ministerial Meeting on Climate Change Beijing, China 19–20 November 2012 (Beijing: Embassy of India, 21 November 2012) <http://www.indianembassy.org.cn/newsDetails.aspx?NewsId=381> accessed 20 January 2017.

46 AOSIS submission on the Plan of Work of the Ad Hoc Working Group on Durban Platform for Enhanced Action (1 May 2012) <http://aosis.org/wp-content/uploads/2013/05/AOSIS-Submission-ADP-Final-May-2012.pdf> accessed 20 January 2017, para 19.

47 Submission by Swaziland on behalf of the African Group on adaptation in the 2015 Agreement (8 October 2013) <http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp_african_group_workstream_1_adaptation_20131008.pdf> accessed 20 January 2017; South African Submission on Mitigation under the Ad Hoc Working Group on the Durban Platform for Enhanced Action (30 September 2013) <http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp_south_africa_workstream_1__mitigation_20130930.pdf> accessed 20 January 2017; Submission by India (n 44) para 5.21; Submission by Lithuania and the European Commission on behalf of the European Union and its Member States (16 September 2013) <http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/

adp_eu_workstream_1_design_of_2015_agreement_20130916.pdf> accessed 30 January 2017.

48 The LMDCs are a coalition of developing countries that include Bolivia, China, Cuba, Dominica, Ecuador, Egypt, El Salvador, India, Iran, Iraq, Malaysia, Mali, Nicaragua, Philippines, Saudi Arabia, Sri Lanka, Sudan, and Venezuela. See Chapter 3, Section II.B.2.

49 Proposal from the Like Minded Developing Countries in Climate Change, Decision X/CP. 20 Elements for a Draft Negotiating Text of the 2015 ADP Agreed Outcome of the UNFCCC (3 June 2014) <http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp2-5_submission_by_malaysia_on_behalf_of_the_lmdc_crp.pdf> accessed 20 January 2017.

50 Lima Call for Climate Action, para 12.

51 See eg Switzerland's intended nationally determined contribution and clarifying information (27 February 2015); Submission by Latvia and the European Commission on behalf of the European Union and its Member States (6 March 2015); Submission by Norway to the ADP, Norway's Intended Nationally Determined Contribution (27 March 2015); US Cover Note, INDC and Accompanying Information (31 March 2015); and the Russian Submission (1 April 2015) <http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx> accessed 20 January 2017.

52 See eg Contribution of Gabon (1 April 2015), and India's Intended Nationally Determined Contribution: Working Towards Climate Justice (1 October 2015) <http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx> accessed 20 January 2017.

53 See eg Submission by Latvia and the EC (n 51).

54 See eg Russian Submission (n 51) (conditioning their INDC on the 'maximum possible account of absorbing capacity of forests').

55 See eg INDC of Malaysia (27 November 2015) <http://www4.unfccc.int/submissions/INDC/Submission%20Pages/submissions.aspx> accessed 20 January 2017 (pledging to reduce the emissions intensity of its GDP by 45% from 2005 levels by 2030, 10% of which will be conditional on provision of international support, the rest unconditional).

56 Paris Agreement, Art 8.

57 Ibid, Art 15.

58 See Rajamani, 2015 Paris Agreement (n 1).

59 Paris Agreement, Art 4.2.

60 Ibid, Art 7.9.

61 Ibid, Art 9.1.

62 Ibid, Art 4.2.

63 It is worth noting that 137 parties included an adaptation component in their INDCs. FCCC, 'Aggregate Effect of the Intended Nationally Determined Contributions: An Update' (2 May 2016) FCCC/CP/2016/2, para 7.

64 See Lavanya Rajamani, 'Differentiation in the Emerging Climate Regime', *Theoretical Inquiries in Law*, 14/1 (2013): 151. See also Harald Winkler and Lavanya Rajamani, 'CBDR&RC in a Regime Applicable to All', *Climate Policy,* 14/1 (2014): 102.

65 See eg Berlin Mandate, para 1(a); Bali Action Plan, para 1(a).

66 The analysis of the Durban Platform decision that follows is drawn from Rajamani, Durban Platform (n 12).

67 See eg Submission of Australia (10 December 2008) FCCC/AWGLCA/2008/Misc.5/Add.2 (Part I), 73; Submission of Japan (27 October 2008) FCCC/AWGLCA/2008/MISC.5, 40, 41; Submission of the United States (27 October 2008) FCCC/AWGLCA/2008/MISC.5, 106. It is worth noting that several international tribunals have approached treaties as 'living instruments' and applied the 'evolutionary' method of treaty interpretation. See generally for a discussion of these, Isabelle Van Damme, *Treaty Interpretation by the WTO Appellate Body* (Oxford University Press, 2009); George Letsas, 'Strasbourg's Interpretive Ethic: Lessons for the International Lawyer', *European Journal of International Law*, 21/3 (2010): 509.

68 The FCCC permits non-Annex I parties to graduate to Annex I, through amendment to the annexes, should they wish to do so. See FCCC, Art 16. Thus far, the only cases of such graduation have been Malta and Cyprus (yet to enter into force), and both have sought such graduation as a consequence of their joining the EU.

69 Durban Platform, para 2.

70 Ibid.

71 See eg the comment by Todd Stern, the US Climate Change Envoy, after Durban, '[f]undamentally, we got the kind of symmetry we have been focused on since the beginning of the Obama administration', quoted in Lisa Friedman and Jean Chemnick, 'Durban talks create "platform" for new climate treaty that could include all nations', *ClimateWire* (12 December 2011) <http://www.eenews.net/stories/1059957503> accessed 20 January 2017. See also reaction of Connie Hedegaard, EU climate commissioner, after Durban: 'The big thing is that now all big economies, all parties have to commit in the future in a legal way and that's what we came here for', in 'Reaction to UN climate deal', *BBC News Science and Environment* (11 December 2011) <http://www.bbc.co.uk/news/science-environment-16129762> accessed 20 January 2017.

72 Durban Platform, preambular recital 1.

73 Decision 2/CP.18, 'Advancing the Durban Platform' (28 February 2013) FCCC/CP/2012/8/Add.1, 19, preambular recital 7.

74 See Decision 1/CP.18, 'Agreed outcome pursuant to the Bali Action Plan' (28 February 2013) FCCC/CP/2012/8/Add.1, 3, recital to Part I; and Warsaw decision, preambular recital 9.

75 Lima Call for Climate Action, para 3.

76 See US-China Joint Announcement on Climate Change (Beijing, China, 12 November 2014) <https://www.whitehouse.gov/the-press-office/2014/11/11/us-china-joint-announcement-climate-change> accessed 20 January 2017, para 2.

77 See for an in depth discussion Lavanya Rajamani and Emmanuel Guérin, 'Central Concepts in the Paris Agreement and How They Evolved', in Daniel Klein *et al.* (eds), *The Paris Climate Agreement: Analysis and Commentary* (Oxford University Press, forthcoming 2017); Lavanya Rajamani, 'Guiding Principles and General Obligations (Article 2.2 and Article 3)', in Klein *et al.*, ibid. See also Christina Voigt and Felipe Ferriera, 'Differentiation in the Paris Agreement', *Climate Law Special Issue*, 6/1–2 (2016): 58–74; Sandrine Maljean-Dubois, 'The Paris Agreement: A New Step in the Gradual Evolution of Differential Treatment in the Climate Regime', *Review of European, Comparative and International Environmental Law*, 25/2 (2016): 151–60.

[78] Paris Agreement, preambular recital 3.

[79] Ibid, Art 2.2.

[80] Ibid, Art 4.3.

[81] Ibid, Art 4.19.

[82] Ibid, Art 2.2.

[83] Ibid, preambular recital 3, Arts 2.2, 4.1, and 14.1.

[84] Ibid, preambular recital 8, Arts 2.1, 4.1, 6, 7.1, 8.1, and 10.5.

[85] Ibid, preambular recital 8.

[86] Ibid, preambular recital 8, Arts 2.1, 4.1, and 6.8.

[87] Ibid, preambular recital 13.

[88] FCCC, preambular recital 21.

[89] Ibid, Art 4.7.

[90] See eg Paris Agreement, Arts 2.1, 4.1, and 6.8.

[91] See nn 19–23 above and acccompanying text.

[92] FCCC, Art 2.

[93] Paris Agreement, Art 2.1, chapeau.

[94] Lavanya Rajamani, 'Differentiation in a 2015 Climate Agreement' (Arlington, VA: Center for Climate and Energy Solutions, June 2015) <http://www.c2es.org/docUploads/differentiation-brief-06-2015.pdf> accessed 20 January 2017.

[95] See Warsaw decision, para 2(b).

[96] Article 4.5 states that 'support shall be provided' to developing countries. Read in conjunction with Article 9.1, it follows that developed countries are to provide this support.

[97] See nn 168–170 below and accompanying text.

[98] Paris Agreement, Art 4.4 and 4.19.

[99] Ibid, Art 4.3.

[100] See nn 187–193 below and accompanying text.

[101] Paris Agreement, Art 4.19.

[102] Ibid, Art 4.4.

[103] John Vidal, 'How a 'Typo' Nearly Derailed the Paris Climate Deal', *The Guardian* (16 December 2015) <http://www.theguardian.com/environment/blog/2015/dec/16/how-a-typo-nearly-derailed-the-paris-climate-deal> accessed 20 January 2017.

[104] Ibid.

[105] Paris Agreement, Art 4.1

[106] Ibid, Art 4.5 read with Art 9.1.

[107] Ibid, Arts 13.1 and 13.2.

[108] Ibid, Arts 13.7 and 13.8.

[109] Ibid, Arts 13.9 and 13.10.

[110] FCCC, Art 12; Cancun Agreements LCA, para 40 (Annex I parties), and para 60 (non-Annex I parties).

[111] Paris Agreement, Art 13.3.

[112] See Chapter 5, Section VI.C.

[113] Paris Agreement, Art 13.4.

[114] Decision 1/CP.21 (n 19) para 89.

[115] Paris Agreement, Art 9.1.

[116] Ibid, Art 9.5.

[117] Ibid, Art 9.3.

[118] Decision 1/CP.21 (n 19) para 53.

[119] See FCCC, Art 4.3.

[120] Paris Agreement, Art 9.2.

[121] Ibid.

[122] Ibid, Arts 9.5 and 9.7.

[123] See eg ibid, Arts 4.5, 7.13, 10.6, and 13.14.

[124] Ibid, Art 4.5.

[125] Ibid, Art 3.

[126] Draft Text on COP 21 agenda item 4 (b) Durban Platform for Enhanced Action (decision 1/CP.17): Adoption of a protocol, another legal instrument, or an agreed outcome with legal force under the Convention applicable to all Parties, Version 1 of 9 December 2015 at 15:00, Draft Paris Outcome, Proposal by the President <http://unfccc.int/resource/docs/2015/cop21/eng/da01.pdf> accessed 20 January 2017, footnote 7.

[127] Paris Agreement, preambular recital 3.

[128] Ibid, preambular recital 4.

[129] Ibid, preambular recital 5.

[130] Ibid, preambular recital 6.

[131] Ibid, preambular recital 8.

[132] Ibid, preambular recital 9.

[133] Ibid, preambular recital 10.

[134] Ibid, preambular recital 11.

[135] Ibid, preambular recital 12.

[136] Ibid, preambular recital 13.

[137] Ibid (albeit qualified with the phrase ‘importance for some’).

[138] Ibid, preambular recital 14.

[139] Ibid, preambular recital 15.

[140] Ibid, preambular recital 16.

[141] The discussion on the human rights recital of the Paris Agreement draws on Lavanya Rajamani, ‘Human Rights in the Climate Change Regime: From Rio to Paris’, in John H. Knox and Ramin Pejan (eds), *The Human Right to a Healthy Environment* (Cambridge University Press, 2017, forthcoming). See Chapter 9, Section II.G.

[142] Office of the High Commissioner for Human Rights (OHCHR), 'Understanding Human Rights and Climate Change: Submission to COP21' (26 November 2015) <http://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf> accessed 20 January 2017.

[143] See eg Submission of Chile on behalf of AILAC to the ADP on Human Rights and Climate Change (31 May 2015) <http://www4.unfccc.int/Submissions/Lists/OSPSubmissionUpload/195_99_130775585079215037-Chile%20on%20behalf%20of%20AILAC%20HR%20and%20CC.docx> accessed 20 January 2017.

[144] See eg Submission to the Ad Hoc Working Group on the Durban Platform for Enhanced Action Calling for Human Rights Protections in the 2015 Climate Agreement (7 February 2015) <http://unfccc.int/files/documentation/submissions_from_non-party_stakeholders/application/pdf/489.pdf> accessed 20 January 2017.

[145] See eg OHCHR, 'A New Climate Change Agreement Must Include Human Rights Protections for All' (17 October 2014) <http://www.ohchr.org/Documents/HRBodies/SP/SP_To_UNFCCC.pdf> accessed 20 January 2017.

[146] See generally for a recap of the advocacy movement on human rights in the lead up to Paris, Benoit Mayer, 'Human Rights in the Paris Agreement', *Climate Law,* 6/1–2 (2016): 109 .

[147] See OHCHR, Understanding Human Rights and Climate Change (n 142).

[148] See ibid (emphasis added). See also OHCHR, 'Letter from the Special Rapporteur on human rights and the environment' (4 May 2016) <http://srenvironment.org/wp-content/uploads/2016/06/Letter-to-SBSTA-UNFCCC-final.pdf> accessed 20 January 2017.

[149] See OHCHR, New Climate Change Agreement (n 145); OHCHR, 'The Effects of Climate Change on the Full Enjoyment of Human Rights' (30 April 2015) <http://www.thecvf.org/wp-content/uploads/2015/05/humanrightsSRHRE.pdf> accessed 20 January 2017.

[150] Paris Agreement, Art 2.1. Although the Paris Agreement articles do not have titles, Article 3 identifies Article 2 as the 'purpose' of the agreement.

[151] See Declaration of the Leaders of the Major Economies Forum on Energy and Climate (L'Aquila, Italy, 9 July 2009) <http://www.majoreconomiesforum.org/past-meetings/the-first-leaders-meeting.html> accessed 20 January 2017. See Chapter 8, Section IV.E.2 for a discussion of 'G clubs'.

[152] Copenhagen Accord, para 2.

[153] Cancun Agreements LCA, para 4.

[154] Durban Platform, preambular recital 2.

[155] Submission by Nepal on behalf of the Least Developed Countries Group on the ADP Work Stream 1: The 2015 Agreement, Building on the Conclusions of the ADP 1-2 (3 September 2013) <http://unfccc.int/files/documentation/submissions_from_parties/adp/application/pdf/adp_ldcs_20130903.pdf> accessed 20 January 2017; Submission by Swaziland on behalf of the Africa Group in respect of Workstream I: 2015 Agreement under the ADP (30 April 2013) <http://unfccc.int/files/bodies/awg/application/pdf/adp_2_african_group_29042013.pdf> accessed 20 January 2017.

[156] Paris Agreement, Art 2.1.

[157] Carbon Brief, 'Six years worth of current emissions would blow the carbon budget for 1.5 degrees' (13 November 2014) <https://www.carbonbrief.org/six-years-worth-of-current-emissions-would-blow-the-carbon-budget-for-1-5-degrees> accessed 20 January 2017.

158 See T. Jayaraman and Tejal Kanitkar, 'The Paris Agreement: Deepening the Climate Crisis', *Economic and Political Weekly*, 51/3 (2016): 10.

159 Paris Agreement, Art 4.1.

160 See ADP, Draft agreement and draft decision on workstreams 1 and 2 of the Ad Hoc Working Group on the Durban Platform for Enhanced Action, Work of the ADP contact group (6 November 2015, reissued on 10 November 2015) ADP.2015.11.InformalNote, Art 3.

161 See Kelly Levin, Jennifer Morgan, and Jiawei Song, 'Insider: Understanding the Paris Agreement's Long-term Goal to Limit Global Warming' (World Resources Institute, 15 December 2015) <http://www.wri.org/blog/2015/12/insider-understanding-paris-agreement%E2%80%99s-long-term-goal-limit-global-warming> accessed 20 January 2017.

162 IPCC, *Climate Change 2014: Synthesis Report* (Cambridge University Press, 2014) Summary for Policy Makers, 20.

163 G-7 Leaders' Declaration (Schloss Elmau, Germany, 8 June 2015) <https://www.whitehouse.gov/the-press-office/2015/06/08/g-7-leaders-declaration> accessed 20 January 2017. See Chapter 8, Section IV.E.2 for a discussion of 'G clubs'.

164 Paris Agreement, Art 4.1.

165 See nn 83–90 above and accompanying text.

166 Paris Agreement, Art 4.19.

167 For examples of such strategies, see the Deep Decarbonization Pathways Project, *Synthesis Reports* <http://deepdecarbonization.org/ddpp-reports/> accessed 20 January 2017.

168 See contra, Richard Falk, ' "Voluntary" International Law and the Paris Agreement' (16 January 2016) <https://richardfalk.wordpress.com/2016/01/16/voluntary-international-law-and-the-paris-agreement/> accessed 20 January 2017.

169 Paris Agreement, Arts 3, 4.1, 4.2, 4.8, 4.13, 4.15, 4.16, 4.19, 5.1, 5.2, 6.1, 6.3, 6.8, 7.2, 7.4, 7.5, 7.6, 7.7, 8.1, 8.3, 9.2, 10.1, 10.2, 11.4, 12, and 14.3.

170 The comma ensures that the final clause modifies parties who 'pursue' those measures rather than the measures themselves. Thus the 'with' functions not as a preposition qualifying 'measures' but as a conjunction qualifying 'pursue'.

171 Paris Agreement, Art 13.7(b).

172 Ibid, Art 13.11.

173 See eg United States' Intended Nationally Determined Contribution (31 March 2015) <http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx> accessed 20 January 2017.

174 India's Intended Nationally Determined Contribution (1 October 2015) <http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx> accessed 20 January 2017. In addition to quantitative emissions intensity targets, India's INDC identifies qualitative objectives such as to 'propagate a healthy and sustainable way of living based on traditions and values of conservation and moderation'.

175 Arguably India's. See India's INDC, ibid.

176 See eg Brazil, Intended Nationally Determined Contribution Towards Achieving the Objective of the United Nations Framework Convention on Climate Change (28 September 2015) <http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx> accessed 20 January 2017. It is worth noting that parties considered the possibility of requiring all contributions to be unconditional. No agreement proved possible on this in Paris, but the Ad hoc Working Group on the Paris Agreement (APA) has been tasked with

developing further guidance on ‘features’ of nationally determined contributions for consideration and adoption by the CMA. See Decision 1/CP.21 (n 19) para 26.

177 Paris Agreement, Art 4.9.

178 Ibid, Art 4.8.

179 These decisions are to be negotiated in the next few years and adopted by the CMA in 2018.

180 Decision 1/CP.21 (n 19) para 27 (emphasis added).

181 Paris Agreement, Art 4.13. See also Decision 1/CP.21 (n 19) paras 31 and 32. It is worth noting that the guidance on accounting applies only to second and subsequent contributions, although parties could choose to apply it before.

182 See Chapter 3, Section II.D.3 for a full discussion of the status of COP decisions.

183 Paris Agreement, Art 4.12.

184 Ibid, Art 4.11.

185 Decision 1/CP.21 (n 19) para 29.

186 Paris Agreement, Art 4.3.

187 The notion of progression first found reflection in the Lima decision. See Lima Call for Climate Action, para 10.

188 See Views of Brazil on the Elements of a New Agreement under the Convention Applicable to All Parties (6 November 2014) <http://www4.unfccc.int/submissions/Lists/OSPSubmissionUpload/73_99_130602104651393682-BRAZIL%20ADP%20Elements.pdf> accessed 20 January 2017.

189 Paris Agreement, Art 3.

190 Ibid, Art 4.2.

191 Ibid, Art 7.9.

192 Ibid, Art 9.1.

193 Ibid, Art 9.3.

194 See Synthesis Report on the aggregate effect of the INDCs (n 37).

195 Decision 1/CP.21 (n 19) para 20.

196 Ibid, paras 23 and 24.

197 Ibid, para 35.

198 Paris Agreement, Art 14.2.

199 Decision 1/CP.21 (n 19) para 25.

200 Paris Agreement, Art 4.10.

201 International Carbon Action Partnership (ICAP), *Emissions Trading Worldwide: International Carbon Action Partnership: Status Report 2016* (Berlin: ICAP, 2016) (64 INDCs said they planned to use markets, and 25 said they were considering using markets); Environmental Defense Fund and International Emissions Trading Association, ‘Carbon Pricing: the Paris Agreement’s Key Ingredient’ (April 2016) <http://www.ieta.org/resources/Resources/Reports/Carbon_Pricing_The_Paris_Agreements_Key_Ingredient.pdf> accessed 20 January 2017.

202 Paris Agreement, Art 6.8.

203 See Daniel Bodansky *et al.*, 'Facilitating Linkage of Climate Policies through the Paris Outcome', *Climate Policy* (2015) <http://www.tandfonline.com/doi/abs/10.1080/14693062.2015.1069175?journalCode=tcpo20> accessed 20 January 2017.

204 Paris Agreement, Art 6.7; Decision 1/CP.21 (n 19) para 37(f). For a detailed discussion of Article 6, see Andre Marcu, 'Carbon Market Provisions in the Paris Agreement (Article 6)' (Centre for European Policy Studies, January 2016) <https://www.ceps.eu/system/files/SR%20No%20128%20ACM%20Post%20COP21%20Analysis%20of%20Article%206.pdf> accessed 20 January 2017.

205 Paris Agreement, Art 7.10 read with Art 13.8. The agenda for the post-Paris negotiations mandates further work on adaptation communications as a component of NDCs, which will likely lead to the creation of an adaptation registry. Revised Provisional Agenda, Proposal by the Co-Chairs (20 May 2016) FCCC/APA/2016/L.1.

206 Paris Agreement, Art 7.7.

207 See eg ibid, Arts 7.5, 7.7(a), 7.9, 7.10, and 13.8.

208 Ibid, Art 7.3.

209 See eg ibid, Arts 7.2, 7.4, 7.5, and 7.6.

210 See Submission by Swaziland on behalf of the African Group (n 155).

211 The Paris Agreement also implicitly endorses, in the global stocktake provision, the inter-linkages between the achievement of long-term goals, including in relation to temperature, and efforts related to mitigation, adaptation, and means of implementation. Paris Agreement, Art 14.

212 Ibid, Art 9.4.

213 Decision 2/CP.19, 'Warsaw international mechanism for loss and damage associated with climate change impacts' (31 January 2014) FCCC/CP/2013/10/Add.1, 6.

214 Karen Elizabeth McNamara, 'Exploring Loss and Damage at the International Climate Change Talks', *International Journal of Disaster Risk Science*, 5/3 (2014): 242.

215 See generally Meinhard Doelle, 'Loss and Damage in the UN Climate Regime', in Daniel A. Farber and Marjan Peeters (eds), *Elgar Encyclopedia of Environmental Law vol 1: Climate Change Law* (Cheltenham, UK: Edward Elgar, 2016) 617.

216 Decision 2/CP.19 (n 213) para 1.

217 Decision 2/ CP.20, 'Warsaw International Mechanism on Loss and Damage' (2 February 2015) FCCC/CP/2014/10/Add.1, 2.

218 Warsaw decision, para 51.

219 See contra M.J. Mace and Roda Verheyen, 'Loss, Damage and Responsibility after COP21: All Options Open for the Paris Agreement', *Review of European, Comparative and International Environmental Law*, 25/2 (2016): 197.

220 FCCC, Arts 4.3 and 4.4.

221 Copenhagen Accord, para 8.

222 OECD, 'Climate Finance in 2013–2014 and USD 100 Billion Goal' (report by the OECD in collaboration with the Climate Policy Initiative, 2015) <http://www.oecd.org/env/cc/Climate-Finance-in-2013-14-and-the-USD-billion-goal.pdf> accessed 20 January 2017.

223 Climate Change Finance Unit, Ministry of Finance, Government of India, 'Climate Change Finance, Analysis of a Recent OECD Report: Some Credible Facts Needed' (2015) <

http://pibphoto.nic.in/documents/rlink/2015/nov/p2015112901.pdf > accessed 20 January 2017.

224 Paris Agreement, Art 9.1.

225 Ibid, Art 9.3.

226 Ibid, Art 9.2.

227 Ibid, Art 9.3.

228 Decision 1/CP.21 (n 19) para 53.

229 Paris Agreement, Art 9.4.

230 Ibid, Arts 10.3 and 10.4.

231 Ibid, Arts 10.5 and 10.6.

232 Ibid, Art 10.6.

233 Ibid, Art 11.3.

234 Ibid, Art 11.4.

235 Ibid, Art 11.5.

236 See generally Harro van Asselt, Håkon Sælen, and Pieter Pauw, 'Assessment and Review under a 2015 Climate Change Agreement' (Nordic Council of Ministers 2015) <http://norden.diva-portal.org/smash/get/diva2:797336/FULLTEXT01.pdf> accessed 20 January 2017.

237 See Shelton, Commitment and Compliance (n 28); David Victor, Kal Raustiala, and Eugene B. Skolnikoff (eds), *The Implementation and Effectiveness of International Environmental Commitments: Theory and Practice* (Cambridge, MA: MIT Press, 1998).

238 Cancun Agreements LCA, paras 44, 46(d), 63, and 66.

239 The Umbrella Group usually includes Australia, Canada, Japan, New Zealand, Kazakhstan, Norway, the Russian Federation, Ukraine, and the US.

240 See nn 107–114 above and accompanying text.

241 Paris Agreement, Art 13.1.

242 Ibid, Art 13.2.

243 Decision 1/CP.21 (n 19) para 84.

244 Paris Agreement, Art 13.

245 Ibid, Art 13.11.

246 Ibid, Art 13.5.

247 Ibid, Art 13.6.

248 Decision 1/CP.21 (n 19) para 90.

249 Paris Agreement, Art 13.7.

250 Ibid, Art 13.9.

251 Ibid, Art 13.8.

252 Ibid, Art 13.10.

253 Ibid, Art 13.11.

254 Paris Agreement, Art 13.12.

255 Ibid, Art 13.11.

256 Decision 1/CP.21 (n 19) para 98.

257 Paris Agreement, Art 14.

258 Decision 1/CP.21 (n 19) paras 99–101.

259 Paris Agreement, Art 14.1. In relation to the stocktaking process for adaptation, further details are offered in Article 7.14.

260 Ibid.

261 Ibid, Art 4.1.

262 Ibid, Art 7.1.

263 Ibid, Art 2.1(c), read with Decision 1/CP.21 (n 19) para 53.

264 Paris Agreement, Art 7.14(d).

265 Ibid, Art 9.6.

266 Ibid, Art 10.6.

267 Ibid, Arts 13.5 and 13.6.

268 Decision 1/CP.21 (n 19) para 99 (identifying sources of input 'including but not limited to').

269 Paris Agreement, Art 14.1.

270 See Submission by Swaziland on behalf of the African Group (n 155).

271 Paris Agreement, Art 14.3.

272 Ibid, Art 4.9.

273 Ibid, Art 14.2.

274 Decision 1/CP.21 (n 19) para 20.

275 Paris Agreement, Art 15.3, and Decision 1/CP.21 (n 19) paras 102 and 103.

276 Paris Agreement, Art 15.2.

277 Ibid, Art 16.1.

278 Ibid, Art 16.2.

279 Ibid, Arts 17 and 18.

280 Ibid, Art 9.8 and Decision 1/CP.21 (n 19) para 58.

281 Decision 1/CP.21 (n 19) para 63.

282 Paris Agreement, Art 10.3.

283 Ibid, Art 11.5.

284 Decision 1/CP.21 (n 19) para 32.

285 Paris Agreement, Art 18.

286 Ibid, Art 20. See Chapter 3, Section II.C.

287 Ibid, Art 21. The penultimate version of the negotiating text had also included bracketed language providing that the agreement would not enter into force prior to 2020, but this language was not included in the final text, allowing the agreement's early entry into force in November 2016. See FCCC Legal Affairs Programme, 'Entry into Force of the Paris Agreement: legal requirements and implications'(7 April 2016) <https://unfccc.int/

files/paris_agreement/application/pdf/entry_into_force_of_pa.pdf> accessed 20 January 2017.

288 Decision 1/CP.21 (n 19) paras 1–4.

289 See for a list of signatories, FCCC, 'List of 175 signatories to Paris Agreement' <http://newsroom.unfccc.int/paris-agreement/175-states-sign-paris-agreement/> accessed 20 January 2017.

290 See for the status of ratification and the most recent number of signatures, FCCC, 'Paris Agreement—Status of Ratification' <http://unfccc.int/paris_agreement/items/9444.php> accessed 20 January 2017.

291 Paris Agreement, Art 22.

292 Ibid, Art 23.

293 Ibid, Art 24.

294 Ibid, Art 27.

295 Ibid, Art 28.

296 Durban Platform, para 4.

297 'Donald Trump would "cancel" Paris climate deal', *BBC News* (27 May 2016) <http://www.bbc.com/news/election-us-2016-36401174> accessed 20 January 2017.

298 Paris Agreement, Art 28. However, should the US decide to withdraw from the FCCC, its withdrawal from the FCCC and the Paris Agreement would take effect simultaneously a year after the official notice of such withdrawal is received. Ibid, read with FCCC , Art 25. See Daniel Bodansky, 'Legal Note: Could a Future President Reverse U.S. Approval of the Paris Agreement?' (Arlington, VA: Center for Climate and Energy Solutions, October 2016) <https://www.c2es.org/docUploads/legal-note-could-future-president-reverse-us-approval-paris-agreement.pdf> accessed 20 January 2017.

299 Ibid, Art 21.

300 See FCCC, 'Taking the Paris Agreement Forward: Tasks arising from Decision 1/CP.21' (March 2016) <http://unfccc.int/files/bodies/cop/application/pdf/overview_1cp21_tasks_.pdf > accessed 20 January 2017.

301 Decision 1/CP.21 (n 19) para 22.

302 See, for a list of tasks identified by the secretariat, FCCC, Taking the Paris Agreement Forward (n 300). See also Revised Provisional Agenda, Proposal by the Co-chairs (20 May 2016) FCCC/APA/2016/L.1. 2018 has since been set as the deadline for completing these tasks.

303 FCCC, Paris Agreement—Status of Ratification (n 290).

304 Ibid.

305 See Chapter 2, Section IV.B.

306 It is unclear whether the reference to 'Parties' in the second sentence of Article 4.2 should be read as referring implicitly to 'Each Party', given the use of the term 'Each Party' in the first sentence, or whether it was a deliberate reference to the parties plural. Thus, it appears here as well as in the relevant row below.

307 The phrase 'are to' in Article 3 is ambiguous, and is understood as an imperative by some and an expectation by others, so it appears in both columns.

308 See n 306 above.

309 See n 307 above.

Annex 7

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING THE GABČÍKOVO-NAGYMAROS PROJECT

(HUNGARY/SLOVAKIA)

JUDGMENT OF 25 SEPTEMBER 1997

1997

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE RELATIVE AU PROJET GABČÍKOVO-NAGYMAROS

(HONGRIE/SLOVAQUIE)

ARRÊT DU 25 SEPTEMBRE 1997

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JUDGMENT

GABČÍKOVO-NAGYMAROS PROJECT
(HUNGARY/SLOVAKIA)

PROJET GABČÍKOVO-NAGYMAROS
(HONGRIE/SLOVAQUIE)

25 SEPTEMBRE 1997

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INTERNATIONAL COURT OF JUSTICE

1997
25 September
General List
No. 92

YEAR 1997

25 September 1997

CASE CONCERNING THE GABČÍKOVO-NAGYMAROS PROJECT

(HUNGARY/SLOVAKIA)

Treaty of 16 September 1977 concerning the construction and operation of the Gabčíkovo-Nagymaros System of Locks — "Related instruments".

Suspension and abandonment by Hungary, in 1989, of works on the Project — Applicability of the Vienna Convention of 1969 on the Law of Treaties — Law of treaties and law of State responsibility — State of necessity as a ground for precluding the wrongfulness of an act — "Essential interest" of the State committing the act — Environment — "Grave and imminent peril" — Act having to constitute the "only means" of safeguarding the interest threatened — State having "contributed to the occurrence of the state of necessity".

Czechoslovakia's proceeding, in November 1991, to "Variant C" and putting into operation, from October 1992, this Variant — Arguments drawn from a proposed principle of approximate application — Respect for the limits of the Treaty — Right to an equitable and reasonable share of the resources of an international watercourse — Commission of a wrongful act and prior conduct of a preparatory character — Obligation to mitigate damages — Principle concerning only the calculation of damages — Countermeasures — Response to an internationally wrongful act — Proportionality — Assumption of unilateral control of a shared resource.

Notification by Hungary, on 19 May 1992, of the termination of the 1977 Treaty and related instruments — Legal effects — Matter falling within the law of treaties — Articles 60 to 62 of the Vienna Convention on the Law of Treaties — Customary law — Impossibility of performance — Permanent disappearance or destruction of an "object" indispensable for execution — Impossibility of performance resulting from the breach, by the party invoking it, of an obligation under the Treaty — Fundamental change of circumstances — Essential basis of the consent of the parties — Extent of obligations still to be performed — Stability of treaty relations — Material breach of the Treaty — Date on which the breach occurred and date of notification of termination — Victim of a breach having itself committed a prior breach of the Treaty — Emergence of new norms of environmental law — Sustainable development — Treaty provisions permit-

ting the parties, by mutual consent, to take account of those norms — Repudiation of the Treaty — Reciprocal non-compliance — Integrity of the rule pacta sunt servanda *— Treaty remaining in force until terminated by mutual consent.*

Legal consequences of the Judgment of the Court — Dissolution of Czechoslovakia — Article 12 of the Vienna Convention of 1978 on Succession of States in respect of Treaties — Customary law — Succession of States without effect on a treaty creating rights and obligations "attaching" to the territory — Irregular state of affairs as a result of failure of both Parties to comply with their treaty obligations — Ex injuria jus non oritur *— Objectives of the Treaty — Obligations overtaken by events — Positions adopted by the parties after conclusion of the Treaty — Good faith negotiations — Effects of the Project on the environment — Agreed solution to be found by the Parties — Joint régime — Reparation for acts committed by both Parties — Co-operation in the use of shared water resources — Damages — Succession in respect of rights and obligations relating to the Project — Intersecting wrongs — Settlement of accounts for the construction of the works.*

JUDGMENT

Present: *President* SCHWEBEL; *Vice-President* WEERAMANTRY; *Judges* ODA, BEDJAOUI, GUILLAUME, RANJEVA, HERCZEGH, SHI, FLEISCHHAUER, KOROMA, VERESHCHETIN, PARRA-ARANGUREN, KOOIJMANS, REZEK; *Judge* ad hoc SKUBISZEWSKI; *Registrar* VALENCIA-OSPINA.

In the case concerning the Gabčíkovo-Nagymaros Project,

between

the Republic of Hungary,

represented by

H.E. Mr. György Szénási, Ambassador, Head of the International Law Department, Ministry of Foreign Affairs,

as Agent and Counsel;

H.E. Mr. Dénes Tomaj, Ambassador of the Republic of Hungary to the Netherlands,

as Co-Agent;

Mr. James Crawford, Whewell Professor of International Law, University of Cambridge,

Mr. Pierre-Marie Dupuy, Professor at the University Panthéon-Assas (Paris II) and Director of the Institut des hautes études internationales of Paris,

Mr. Alexandre Kiss, Director of Research, Centre national de la recherche scientifique (retd.),

Mr. László Valki, Professor of International Law, Eötvös Loránd University, Budapest,

Mr. Boldizsár Nagy, Associate Professor of International Law, Eötvös Loránd University, Budapest,
Mr. Philippe Sands, Reader in International Law, University of London, School of Oriental and African Studies, and Global Professor of Law, New York University,
Ms Katherine Gorove, consulting Attorney,

as Counsel and Advocates;

Dr. Howard Wheater, Professor of Hydrology, Imperial College, London,
Dr. Gábor Vida, Professor of Biology, Eötvös Loránd University, Budapest, Member of the Hungarian Academy of Sciences,
Dr. Roland Carbiener, Professor emeritus of the University of Strasbourg,
Dr. Klaus Kern, consulting Engineer, Karlsruhe,

as Advocates;

Mr. Edward Helgeson,
Mr. Stuart Oldham,
Mr. Péter Molnár,

as Advisers;

Dr. György Kovács,
Mr. Timothy Walsh,
Mr. Zoltán Kovács,

as Technical Advisers;

Dr. Attila Nyikos,

as Assistant;

Mr. Axel Gosseries, LL.M.,

as Translator;

Ms Éva Kocsis,
Ms Katinka Tompa,

as Secretaries,

and

the Slovak Republic,

represented by

H.E. Dr. Peter Tomka, Ambassador, Legal Adviser of the Ministry of Foreign Affairs,

as Agent;

Dr. Václav Mikulka, Member of the International Law Commission,

as Co-Agent, Counsel and Advocate;

Mr. Derek W. Bowett, C.B.E., Q.C., F.B.A., Whewell Professor emeritus of International Law at the University of Cambridge, former Member of the International Law Commission,

as Counsel;

Mr. Stephen C. McCaffrey, Professor of International Law at the University of the Pacific, McGeorge School of Law, Sacramento, United States of America, former Member of the International Law Commission,
Mr. Alain Pellet, Professor at the University of Paris X-Nanterre and at the

Institute of Political Studies, Paris, Member of the International Law Commission,
Mr. Walter D. Sohier, Member of the Bar of the State of New York and of the District of Columbia,
Sir Arthur Watts, K.C.M.G., Q.C., Barrister, Member of the Bar of England and Wales,
Mr. Samuel S. Wordsworth, avocat à la cour d'appel de Paris, Solicitor of the Supreme Court of England and Wales, Frere Cholmeley, Paris,

as Counsel and Advocates;

Mr. Igor Mucha, Professor of Hydrogeology and Former Head of the Groundwater Department at the Faculty of Natural Sciences of Comenius University in Bratislava,
Mr. Karra Venkateswara Rao, Director of Water Resources Engineering, Department of Civil Engineering, City University, London,

Mr. Jens Christian Refsgaard, Head of Research and Development, Danish Hydraulic Institute,

as Counsel and Experts;

Dr. Cecília Kandráčová, Director of Department, Ministry of Foreign Affairs,
Mr. Luděk Krajhanzl, Attorney at Law, Vyroubal Krajhanzl Skácel and Partners, Prague,
Mr. Miroslav Liška, Head of the Division for Public Relations and Expertise, Water Resources Development State Enterprise, Bratislava,

Dr. Peter Vršanský, Minister-Counsellor, Chargé d'affaires *a.i.*, of the Embassy of the Slovak Republic, The Hague,

as Counsellors;

Miss Anouche Beaudouin, allocataire de recherche at the University of Paris X-Nanterre,
Ms Cheryl Dunn, Frere Cholmeley, Paris,
Ms Nikoleta Glindová, attaché, Ministry of Foreign Affairs,
Mr. Drahoslav Štefánek, attaché, Ministry of Foreign Affairs,

as Legal Assistants,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. By a letter dated 2 July 1993, filed in the Registry of the Court on the same day, the Ambassador of the Republic of Hungary (hereinafter called "Hungary") to the Netherlands and the Chargé d'affaires *ad interim* of the Slovak Republic (hereinafter called "Slovakia") to the Netherlands jointly notified to the Court a Special Agreement in English that had been signed at Brussels on 7 April 1993 and had entered into force on 28 June 1993, on the date of the exchange of instruments of ratification.

2. The text of the Special Agreement reads as follows:

"*The Republic of Hungary and the Slovak Republic,*

Considering that differences have arisen between the Czech and Slovak Federal Republic and the Republic of Hungary regarding the implementation and the termination of the Treaty on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System signed in Budapest on 16 September 1977 and related instruments (hereinafter referred to as 'the Treaty'), and on the construction and operation of the 'provisional solution';

Bearing in mind that the Slovak Republic is one of the two successor States of the Czech and Slovak Federal Republic and the sole successor State in respect of rights and obligations relating to the Gabčíkovo-Nagymaros Project;

Recognizing that the Parties concerned have been unable to settle these differences by negotiations;

Having in mind that both the Czechoslovak and Hungarian delegations expressed their commitment to submit the differences connected with the Gabčíkovo-Nagymaros Project in all its aspects to binding international arbitration or to the International Court of Justice;

Desiring that these differences should be settled by the International Court of Justice;

Recalling their commitment to apply, pending the Judgment of the International Court of Justice, such a temporary water management régime of the Danube as shall be agreed between the Parties;

Desiring further to define the issues to be submitted to the International Court of Justice,

Have agreed as follows:

Article 1

The Parties submit the questions contained in Article 2 to the International Court of Justice pursuant to Article 40, paragraph 1, of the Statute of the Court.

Article 2

(1) The Court is requested to decide on the basis of the Treaty and rules and principles of general international law, as well as such other treaties as the Court may find applicable,

(a) whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty attributed responsibility to the Republic of Hungary;

(b) whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the 'provisional solution' and to put into operation from October 1992 this system, described in the Report of the Working Group of Independent Experts of the Commission of the European Communities, the Republic of Hungary and the Czech and Slovak Federal Republic dated 23 November 1992 (damming up of the Danube at river kilometre 1851.7 on Czechoslovak territory and resulting consequences on water and navigation course);

(c) what are the legal effects of the notification, on 19 May 1992, of the termination of the Treaty by the Republic of Hungary.

(2) The Court is also requested to determine the legal consequences, including the rights and obligations for the Parties, arising from its Judgment on the questions in paragraph 1 of this Article.

Article 3

(1) All questions of procedure and evidence shall be regulated in accordance with the provisions of the Statute and the Rules of Court.

(2) However, the Parties request the Court to order that the written proceedings should consist of:

(a) a Memorial presented by each of the Parties not later than ten months after the date of notification of this Special Agreement to the Registrar of the International Court of Justice;

(b) a Counter-Memorial presented by each of the Parties not later than seven months after the date on which each has received the certified copy of the Memorial of the other Party;

(c) a Reply presented by each of the Parties within such time-limits as the Court may order.

(d) The Court may request additional written pleadings by the Parties if it so determines.

(3) The above-mentioned parts of the written proceedings and their annexes presented to the Registrar will not be transmitted to the other Party until the Registrar has received the corresponding part of the proceedings from the said Party.

Article 4

(1) The Parties agree that, pending the final Judgment of the Court, they will establish and implement a temporary water management régime for the Danube.

(2) They further agree that, in the period before such a régime is established or implemented, if either Party believes its rights are endangered by the conduct of the other, it may request immediate consultation and reference, if necessary, to experts, including the Commission of the European Communities, with a view to protecting those rights; and that protection shall not be sought through a request to the Court under Article 41 of the Statute.

(3) This commitment is accepted by both Parties as fundamental to the conclusion and continuing validity of the Special Agreement.

Article 5

(1) The Parties shall accept the Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.

(2) Immediately after the transmission of the Judgment the Parties shall enter into negotiations on the modalities for its execution.

(3) If they are unable to reach agreement within six months, either Party may request the Court to render an additional Judgment to determine the modalities for executing its Judgment.

Article 6

(1) The present Special Agreement shall be subject to ratification.

(2) The instruments of ratification shall be exchanged as soon as possible in Brussels.

(3) The present Special Agreement shall enter into force on the date of exchange of instruments of ratification. Thereafter it will be notified jointly to the Registrar of the Court.

In witness whereof the undersigned being duly authorized thereto, have signed the present Special Agreement and have affixed thereto their seals."

3. Pursuant to Article 40, paragraph 3, of the Statute and Article 42 of the Rules of Court, copies of the notification and of the Special Agreement were transmitted by the Registrar to the Secretary-General of the United Nations, Members of the United Nations and other States entitled to appear before the Court.

4. Since the Court included upon the Bench no judge of Slovak nationality, Slovakia exercised its right under Article 31, paragraph 2, of the Statute to choose a judge *ad hoc* to sit in the case: it chose Mr. Krzysztof Jan Skubiszewski.

5. By an Order dated 14 July 1993, the Court fixed 2 May 1994 as the time-limit for the filing by each of the Parties of a Memorial and 5 December 1994 for the filing by each of the Parties of a Counter-Memorial, having regard to the provisions of Article 3, paragraph 2 *(a)* and *(b)*, of the Special Agreement. Those pleadings were duly filed within the prescribed time-limits.

6. By an Order dated 20 December 1994, the President of the Court, having heard the Agents of the Parties, fixed 20 June 1995 as the time-limit for the filing of the Replies, having regard to the provisions of Article 3, paragraph 2 *(c)*, of the Special Agreement. The Replies were duly filed within the time-limit thus prescribed and, as the Court had not asked for the submission of additional pleadings, the case was then ready for hearing.

7. By letters dated 27 January 1997, the Agent of Slovakia, referring to the provisions of Article 56, paragraph 1, of the Rules of Court, expressed his Government's wish to produce two new documents; by a letter dated 10 February 1997, the Agent of Hungary declared that his Government objected to their production. On 26 February 1997, after having duly ascertained the views of the two Parties, the Court decided, in accordance with Article 56, paragraph 2, of the Rules of Court, to authorize the production of those documents under certain conditions of which the Parties were advised. Within the time-limit fixed by the Court to that end, Hungary submitted comments on one of those documents under paragraph 3 of that same Article. The Court authorized Slovakia to comment in turn upon those observations, as it had expressed a wish to do so; its comments were received within the time-limit prescribed for that purpose.

8. Moreover, each of the Parties asked to be allowed to show a video cassette in the course of the oral proceedings. The Court agreed to those requests, provided that the cassettes in question were exchanged in advance between the Parties, through the intermediary of the Registry. That exchange was effected accordingly.

9. In accordance with Article 53, paragraph 2, of the Rules of Court, the Court decided, after having ascertained the views of the Parties, that copies of the pleadings and documents annexed would be made available to the public as from the opening of the oral proceedings.

10. By a letter dated 16 June 1995, the Agent of Slovakia invited the Court

to visit the locality to which the case relates and there to exercise its functions with regard to the obtaining of evidence, in accordance with Article 66 of the Rules of Court. For his part, the Agent of Hungary indicated, by a letter dated 28 June 1995, that, if the Court should decide that a visit of that kind would be useful, his Government would be pleased to co-operate in organizing it. By a letter dated 14 November 1995, the Agents of the Parties jointly notified to the Court the text of a Protocol of Agreement, concluded in Budapest and New York the same day, with a view to proposing to the Court the arrangements that might be made for such a visit *in situ*; and, by a letter dated 3 February 1997, they jointly notified to it the text of Agreed Minutes drawn up in Budapest and New York the same day, which supplemented the Protocol of Agreement of 14 November 1995. By an Order dated 5 February 1997, the Court decided to accept the invitation to exercise its functions with regard to the obtaining of evidence at a place to which the case relates and, to that end, to adopt the arrangements proposed by the Parties. The Court visited the area from 1 to 4 April 1997; it visited a number of locations along the Danube and took note of the technical explanations given by the representatives who had been designated for the purpose by the Parties.

11. The Court held a first round of ten public hearings from 3 to 7 March and from 24 to 27 March 1997, and a second round of four public hearings on 10, 11, 14 and 15 April 1997, after having made the visit *in situ* referred to in the previous paragraph. During those hearings, the Court heard the oral arguments and replies of:

For Hungary: H.E. Mr. Szénási,
Professor Valki,
Professor Kiss,
Professor Vida,
Professor Carbiener,
Professor Crawford,
Professor Nagy,
Dr. Kern,
Professor Wheater,
Ms Gorove,
Professor Dupuy,
Professor Sands.

For Slovakia: H.E. Dr. Tomka,
Dr. Mikulka,
Mr. Wordsworth,
Professor McCaffrey,
Professor Mucha,
Professor Pellet,
Mr. Refsgaard,
Sir Arthur Watts.

12. The Parties replied orally and in writing to various questions put by Members of the Court. Referring to the provisions of Article 72 of the Rules of Court, each of the Parties submitted to the Court its comments upon the replies given by the other Party to some of those questions.

*

13. In the course of the written proceedings, the following submissions were presented by the Parties:

On behalf of Hungary,

in the Memorial, the Counter-Memorial and the Reply (*mutatis mutandis* identical texts):

"On the basis of the evidence and legal argument presented in the Memorial, Counter-Memorial and this Reply, the Republic of Hungary

Requests the Court to adjudge and declare

First, that the Republic of Hungary was entitled to suspend and subsequently abandon the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty attributed responsibility to the Republic of Hungary;

Second, that the Czech and Slovak Federal Republic was not entitled to proceed to the 'provisional solution' (damming up of the Danube at river kilometre 1851.7 on Czechoslovak territory and resulting consequences on water and navigation course);

Third, that by its Declaration of 19 May 1992, Hungary validly terminated the Treaty on the Construction and Operation of the Gabčíkovo-Nagymaros Barrage System of 16 September 1977;

Requests the Court to adjudge and declare further

that the legal consequences of these findings and of the evidence and the arguments presented to the Court are as follows:

(1) that the Treaty of 16 September 1977 has never been in force between the Republic of Hungary and the Slovak Republic;
(2) that the Slovak Republic bears responsibility to the Republic of Hungary for maintaining in operation the 'provisional solution' referred to above;
(3) that the Slovak Republic is internationally responsible for the damage and loss suffered by the Republic of Hungary and by its nationals as a result of the 'provisional solution';
(4) that the Slovak Republic is under an obligation to make reparation in respect of such damage and loss, the amount of such reparation, if it cannot be agreed by the Parties within six months of the date of the Judgment of the Court, to be determined by the Court;
(5) that the Slovak Republic is under the following obligations:
   (a) to return the waters of the Danube to their course along the international frontier between the Republic of Hungary and the Slovak Republic, that is to say the main navigable channel as defined by applicable treaties;
   (b) to restore the Danube to the situation it was in prior to the putting into effect of the provisional solution; and
   (c) to provide appropriate guarantees against the repetition of the damage and loss suffered by the Republic of Hungary and by its nationals."

On behalf of Slovakia,

in the Memorial, the Counter-Memorial and the Reply (*mutatis mutandis* identical texts):

"On the basis of the evidence and legal arguments presented in the Slovak Memorial, Counter-Memorial and in this Reply, and reserving the right to supplement or amend its claims in the light of further written pleadings, the Slovak Republic

Requests the Court to adjudge and declare:

1. That the Treaty between Czechoslovakia and Hungary of 16 September 1977 concerning the construction and operation of the Gabčíkovo/Nagymaros System of Locks, and related instruments, and to which the Slovak Republic is the acknowledged successor, is a treaty in force and has been so from the date of its conclusion; and that the notification of termination by the Republic of Hungary on 19 May 1992 was without legal effect.
2. That the Republic of Hungary was not entitled to suspend and subsequently abandon the works on the Nagymaros Project and on that part of the Gabčíkovo Project for which the 1977 Treaty attributed responsibility to the Republic of Hungary.
3. That the act of proceeding with and putting into operation Variant C, the 'provisional solution', was lawful.
4. That the Republic of Hungary must therefore cease forthwith all conduct which impedes the full and bona fide implementation of the 1977 Treaty and must take all necessary steps to fulfil its own obligations under the Treaty without further delay in order to restore compliance with the Treaty.
5. That, in consequence of its breaches of the 1977 Treaty, the Republic of Hungary is liable to pay, and the Slovak Republic is entitled to receive, full compensation for the loss and damage caused to the Slovak Republic by those breaches, plus interest and loss of profits, in the amounts to be determined by the Court in a subsequent phase of the proceedings in this case."

14. In the oral proceedings, the following submissions were presented by the Parties

On behalf of Hungary,

at the hearing of 11 April 1997:

The submissions read at the hearing were *mutatis mutandis* identical to those presented by Hungary during the written proceedings.

On behalf of Slovakia,

at the hearing of 15 April 1997:

"On the basis of the evidence and legal arguments presented in its written and oral pleadings, the Slovak Republic,

Requests the Court to adjudge and declare:

1. That the Treaty, as defined in the first paragraph of the Preamble to the Compromis between the Parties, dated 7 April 1993, concerning the construction and operation of the Gabčikovo/Nagymaros System of Locks and related instruments, concluded between Hungary and

Czechoslovakia and with regard to which the Slovak Republic is the successor State, has never ceased to be in force and so remains, and that the notification of 19 May 1992 of purported termination of the Treaty by the Republic of Hungary was without legal effect;

2. That the Republic of Hungary was not entitled to suspend and subsequently abandon the works on the Nagymaros Project and on that part of the Gabčíkovo Project for which the 1977 Treaty attributes responsibility to the Republic of Hungary;
3. That the Czech and Slovak Federal Republic was entitled, in November 1991, to proceed with the 'provisional solution' and to put this system into operation from October 1992; and that the Slovak Republic was, and remains, entitled to continue the operation of this system;

4. That the Republic of Hungary shall therefore cease forthwith all conduct which impedes the bona fide implementation of the 1977 Treaty and shall take all necessary steps to fulfil its own obligations under the Treaty without further delay in order to restore compliance with the Treaty, subject to any amendments which may be agreed between the Parties;
5. That the Republic of Hungary shall give appropriate guarantees that it will not impede the performance of the Treaty, and the continued operation of the system;
6. That, in consequence of its breaches of the 1977 Treaty, the Republic of Hungary shall, in addition to immediately resuming performance of its Treaty obligations, pay to the Slovak Republic full compensation for the loss and damage, including loss of profits, caused by those breaches together with interest thereon;
7. That the Parties shall immediately begin negotiations with a view, in particular, to adopting a new timetable and appropriate measures for the implementation of the Treaty by both Parties, and to fixing the amount of compensation due by the Republic of Hungary to the Slovak Republic; and that, if the Parties are unable to reach an agreement within six months, either one of them may request the Court to render an additional Judgment to determine the modalities for executing its Judgment."

* * *

15. The present case arose out of the signature, on 16 September 1977, by the Hungarian People's Republic and the Czechoslovak People's Republic, of a treaty "concerning the construction and operation of the Gabčíkovo-Nagymaros System of Locks" (hereinafter called the "1977 Treaty"). The names of the two contracting States have varied over the years; hereinafter they will be referred to as Hungary and Czechoslovakia. The 1977 Treaty entered into force on 30 June 1978.

It provides for the construction and operation of a System of Locks by the parties as a "joint investment". According to its Preamble, the barrage system was designed to attain

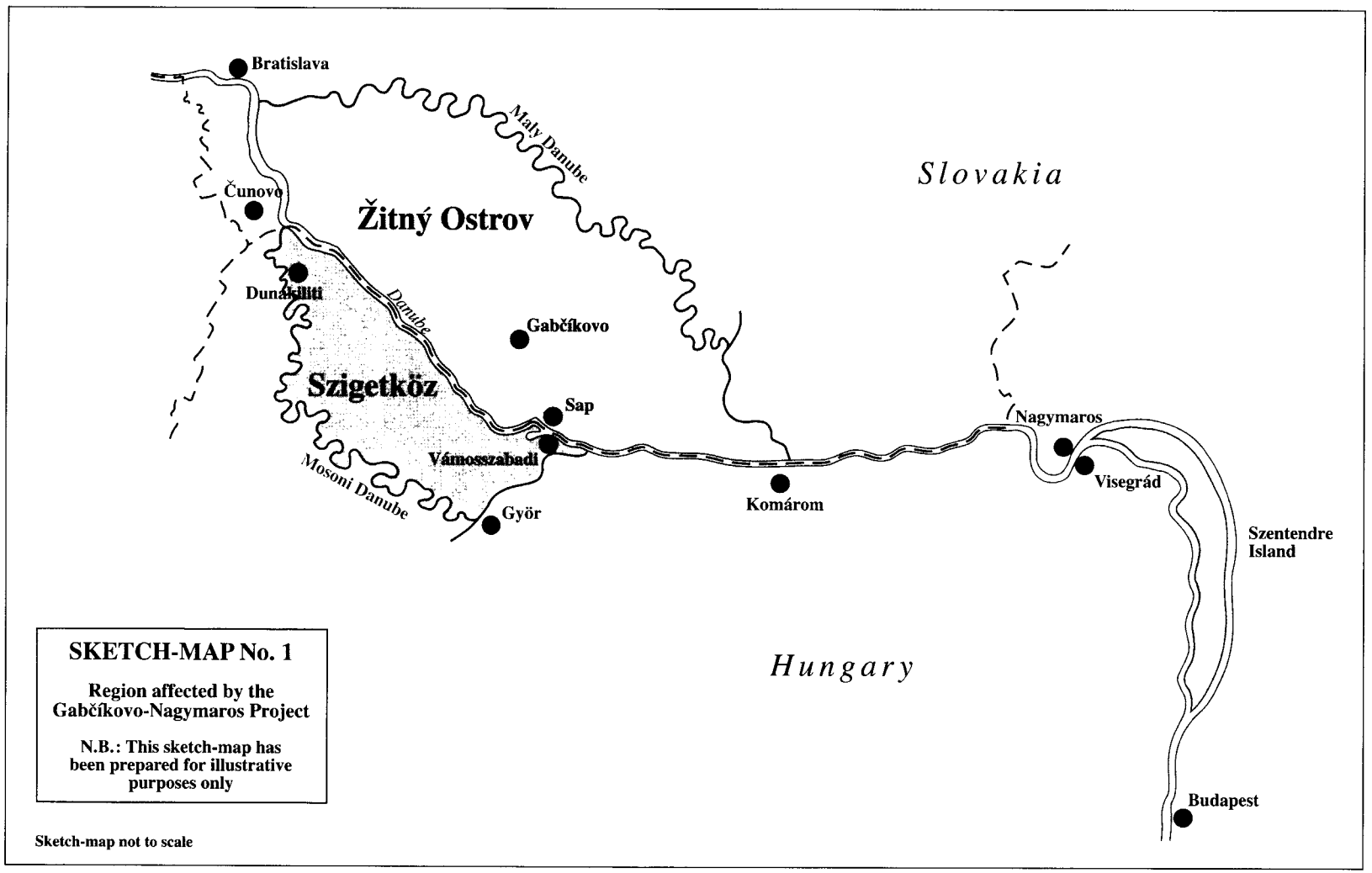
> "the broad utilization of the natural resources of the Bratislava-Budapest section of the Danube river for the development of water

resources, energy, transport, agriculture and other sectors of the national economy of the Contracting Parties".

The joint investment was thus essentially aimed at the production of hydroelectricity, the improvement of navigation on the relevant section of the Danube and the protection of the areas along the banks against flooding. At the same time, by the terms of the Treaty, the contracting parties undertook to ensure that the quality of water in the Danube was not impaired as a result of the Project, and that compliance with the obligations for the protection of nature arising in connection with the construction and operation of the System of Locks would be observed.

16. The Danube is the second longest river in Europe, flowing along or across the borders of nine countries in its 2,860-kilometre course from the Black Forest eastwards to the Black Sea. For 142 kilometres, it forms the boundary between Slovakia and Hungary. The sector with which this case is concerned is a stretch of approximately 200 kilometres, between Bratislava in Slovakia and Budapest in Hungary. Below Bratislava, the river gradient decreases markedly, creating an alluvial plain of gravel and sand sediment. This plain is delimited to the north-east, in Slovak territory, by the Malý Danube and to the south-west, in Hungarian territory, by the Mosoni Danube. The boundary between the two States is constituted, in the major part of that region, by the main channel of the river. The area lying between the Malý Danube and that channel, in Slovak territory, constitutes the Žitný Ostrov; the area between the main channel and the Mosoni Danube, in Hungarian territory, constitutes the Szigetköz. Čunovo and, further downstream, Gabčíkovo, are situated in this sector of the river on Slovak territory, Čunovo on the right bank and Gabčíkovo on the left. Further downstream, after the confluence of the various branches, the river enters Hungarian territory and the topography becomes hillier. Nagymaros lies in a narrow valley at a bend in the Danube just before it turns south, enclosing the large river island of Szentendre before reaching Budapest (see sketch-map No. 1, p. 19 below).

17. The Danube has always played a vital part in the commercial and economic development of its riparian States, and has underlined and reinforced their interdependence, making international co-operation essential. Improvements to the navigation channel have enabled the Danube, now linked by canal to the Main and thence to the Rhine, to become an important navigational artery connecting the North Sea to the Black Sea. In the stretch of river to which the case relates, flood protection measures have been constructed over the centuries, farming and forestry practised, and, more recently, there has been an increase in population and industrial activity in the area. The cumulative effects on the river and on the environment of various human activities over the years have not all been favourable, particularly for the water régime.


Bratislava
Čunovo
Žitný Ostrov
Maly Danube
Slovakia
Dunakiliti
Danube
Gabčíkovo
Szigetköz
Sap
Vámosszabadi
Mosoni Danube
Győr
Komárom
Nagymaros
Visegrád
Szentendre Island
Budapest
Hungary
SKETCH-MAP No. 1
Region affected by the Gabčíkovo-Nagymaros Project
N.B.: This sketch-map has been prepared for illustrative purposes only
Sketch-map not to scale

Only by international co-operation could action be taken to alleviate these problems. Water management projects along the Danube have frequently sought to combine navigational improvements and flood protection with the production of electricity through hydroelectric power plants. The potential of the Danube for the production of hydroelectric power has been extensively exploited by some riparian States. The history of attempts to harness the potential of the particular stretch of the river at issue in these proceedings extends over a 25-year period culminating in the signature of the 1977 Treaty.

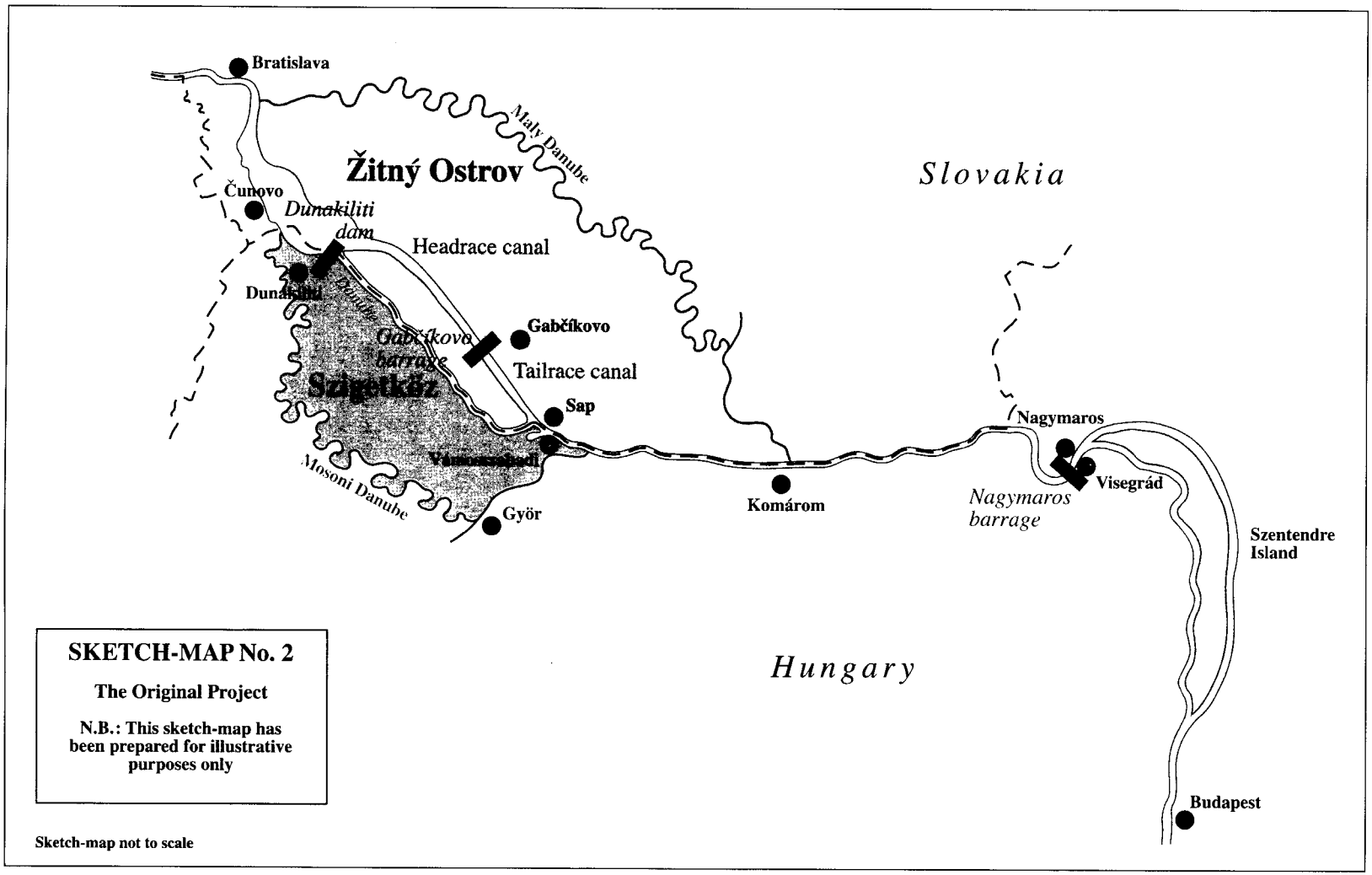
18. Article 1, paragraph 1, of the 1977 Treaty describes the principal works to be constructed in pursuance of the Project. It provided for the building of two series of locks, one at Gabčíkovo (in Czechoslovak territory) and the other at Nagymaros (in Hungarian territory), to constitute "a single and indivisible operational system of works" (see sketch-map No. 2, p. 21 below). The Court will subsequently have occasion to revert in more detail to those works, which were to comprise, *inter alia*, a reservoir upstream of Dunakiliti, in Hungarian and Czechoslovak territory; a dam at Dunakiliti, in Hungarian territory; a bypass canal, in Czechoslovak territory, on which was to be constructed the Gabčíkovo System of Locks (together with a hydroelectric power plant with an installed capacity of 720 megawatts (MW)); the deepening of the bed of the Danube downstream of the place at which the bypass canal was to rejoin the old bed of the river; a reinforcement of flood-control works along the Danube upstream of Nagymaros; the Nagymaros System of Locks, in Hungarian territory (with a hydroelectric power plant of a capacity of 158 MW); and the deepening of the bed of the Danube downstream.

Article 1, paragraph 4, of the Treaty further provided that the technical specifications concerning the system would be included in the "Joint Contractual Plan" which was to be drawn up in accordance with the Agreement signed by the two Governments for this purpose on 6 May 1976; Article 4, paragraph 1, for its part, specified that "the joint investment [would] be carried out in conformity with the joint contractual plan".

According to Article 3, paragraph 1:

> "Operations connected with the realization of the joint investment and with the performance of tasks relating to the operation of the System of Locks shall be directed and supervised by the Governments of the Contracting Parties through . . . (. . . 'government delegates')."

Those delegates had, *inter alia*, "to ensure that construction of the System of Locks is . . . carried out in accordance with the approved joint contractual plan and the project work schedule". When the works were brought into operation, they were moreover "To establish the operating


Bratislava
Malý Dunaj
Žitný Ostrov
Slovakia
Čunovo
Dunakiliti dam
Headrace canal
Dunaj
Gabčíkovo barrage
Gabčíkovo
Tailrace canal
Szigetköz
Sap
Nagymaros
Mosoni Danube
Győr
Komárom
Nagymaros barrage
Visegrád
Szentendre Island
Hungary
Budapest
SKETCH-MAP No. 2
The Original Project
N.B.: This sketch-map has been prepared for illustrative purposes only
Sketch-map not to scale

and operational procedures of the System of Locks and ensure compliance therewith."

Article 4, paragraph 4, stipulated that:

> "Operations relating to the joint investment [should] be organized by the Contracting Parties in such a way that the power generation plants [would] be put into service during the period 1986-1990."

Article 5 provided that the cost of the joint investment would be borne by the contracting parties in equal measure. It specified the work to be carried out by each one of them. Article 8 further stipulated that the Dunakiliti dam, the bypass canal and the two series of locks at Gabčíkovo and Nagymaros would be "jointly owned" by the contracting parties "in equal measure". Ownership of the other works was to be vested in the State on whose territory they were constructed.

The parties were likewise to participate in equal measure in the use of the system put in place, and more particularly in the use of the base-load and peak-load power generated at the hydroelectric power plants (Art. 9).

According to Article 10, the works were to be managed by the State on whose territory they were located, "in accordance with the jointly-agreed operating and operational procedures", while Article 12 stipulated that the operation, maintenance (repair) and reconstruction costs of jointly owned works of the System of Locks were also to be borne jointly by the contracting parties in equal measure.

According to Article 14,

> "The discharge specified in the water balance of the approved joint contractual plan shall be ensured in the bed of the Danube [between Dunakiliti and Sap] unless natural conditions or other circumstances temporarily require a greater or smaller discharge."

Paragraph 3 of that Article was worded as follows:

> "In the event that the withdrawal of water in the Hungarian-Czechoslovak section of the Danube exceeds the quantities of water specified in the water balance of the approved joint contractual plan and the excess withdrawal results in a decrease in the output of electric power, the share of electric power of the Contracting Party benefiting from the excess withdrawal shall be correspondingly reduced."

Article 15 specified that the contracting parties

> "shall ensure, by the means specified in the joint contractual plan, that the quality of the water in the Danube is not impaired as a result of the construction and operation of the System of Locks".

Article 16 set forth the obligations of the contracting parties concerning the maintenance of the bed of the Danube.

Article 18, paragraph 1, provided as follows:

> "The Contracting Parties, in conformity with the obligations previously assumed by them, and in particular with article 3 of the Convention concerning the regime of navigation on the Danube, signed at Belgrade on 18 August 1948, shall ensure uninterrupted and safe navigation on the international fairway both during the construction and during the operation of the System of Locks."

It was stipulated in Article 19 that:

> "The Contracting Parties shall, through the means specified in the joint contractual plan, ensure compliance with the obligations for the protection of nature arising in connection with the construction and operation of the System of Locks."

Article 20 provided for the contracting parties to take appropriate measures, within the framework of their national investments, for the protection of fishing interests in conformity with the Convention concerning Fishing in the Waters of the Danube, signed at Bucharest on 29 January 1958.

According to Article 22, paragraph 1, of the Treaty, the contracting parties had, in connection with the construction and operation of the System of Locks, agreed on minor revision to the course of the State frontier between them as follows:

> "*(d)* In the Dunakiliti-Hrušov head-water area, the State frontier shall run from boundary point 161.V.O.á. to boundary stone No. I.5. in a straight line in such a way that the territories affected, to the extent of about 10-10 hectares shall be offset between the two States."

It was further provided, in paragraph 2, that the revision of the State frontier and the exchange of territories so provided for should be effected "by the Contracting Parties on the basis of a separate treaty". No such treaty was concluded.

Finally a dispute settlement provision was contained in Article 27, worded as follows:

> "1. The settlement of disputes in matters relating to the realization and operation of the System of Locks shall be a function of the government delegates.
>
> 2. If the government delegates are unable to reach agreement on the matters in dispute, they shall refer them to the Governments of the Contracting Parties for decision."

19. The Joint Contractual Plan, referred to in the previous paragraph, set forth, on a large number of points, both the objectives of the system

and the characteristics of the works. In its latest version it specified in paragraph 6.2 that the Gabčíkovo bypass canal would have a discharge capacity of 4,000 cubic metres per second (m^3/s). The power plant would include "Eight . . . turbines with 9.20 m diameter running wheels" and would "mainly operate in peak-load time and continuously during high water". This type of operation would give an energy production of 2,650 gigawatt/hours (GWh) per annum. The Plan further stipulated in paragraph 4.4.2:

> "The low waters are stored every day, which ensures the peak-load time operation of the Gabčíkovo hydropower plant . . . a minimum of 50 m^3/s additional water is provided for the old bed [of the Danube] besides the water supply of the branch system."

The Plan further specified that, in the event that the discharge into the bypass canal exceeded 4,000-4,500 m^3/s, the excess amounts of water would be channelled into the old bed. Lastly, according to paragraph 7.7 of the Plan:

> "The common operational regulation stipulates that concerning the operation of the Dunakiliti barrage in the event of need during the growing season 200 m^3/s discharge must be released into the old Danube bed, in addition to the occasional possibilities for rinsing the bed."

The Joint Contractual Plan also contained "Preliminary Operating and Maintenance Rules", Article 23 of which specified that "The final operating rules [should] be approved within a year of the setting into operation of the system." (Joint Contractual Plan, Summary Documentation, Vol. O-1-A.)

Nagymaros, with six turbines, was, according to paragraph 6.3 of the Plan, to be a "hydropower station . . . type of a basic power-station capable of operating in peak-load time for five hours at the discharge interval between 1,000-2,500 m^3/s" per day. The intended annual production was to be 1,025 GWh (i.e., 38 per cent of the production of Gabčíkovo, for an installed power only equal to 21 per cent of that of Gabčíkovo).

20. Thus, the Project was to have taken the form of an integrated joint project with the two contracting parties on an equal footing in respect of the financing, construction and operation of the works. Its single and indivisible nature was to have been realized through the Joint Contractual Plan which complemented the Treaty. In particular, Hungary would have had control of the sluices at Dunakiliti and the works at Nagymaros, whereas Czechoslovakia would have had control of the works at Gabčíkovo.

*

21. The schedule of work had for its part been fixed in an Agreement on mutual assistance signed by the two parties on 16 September 1977, at

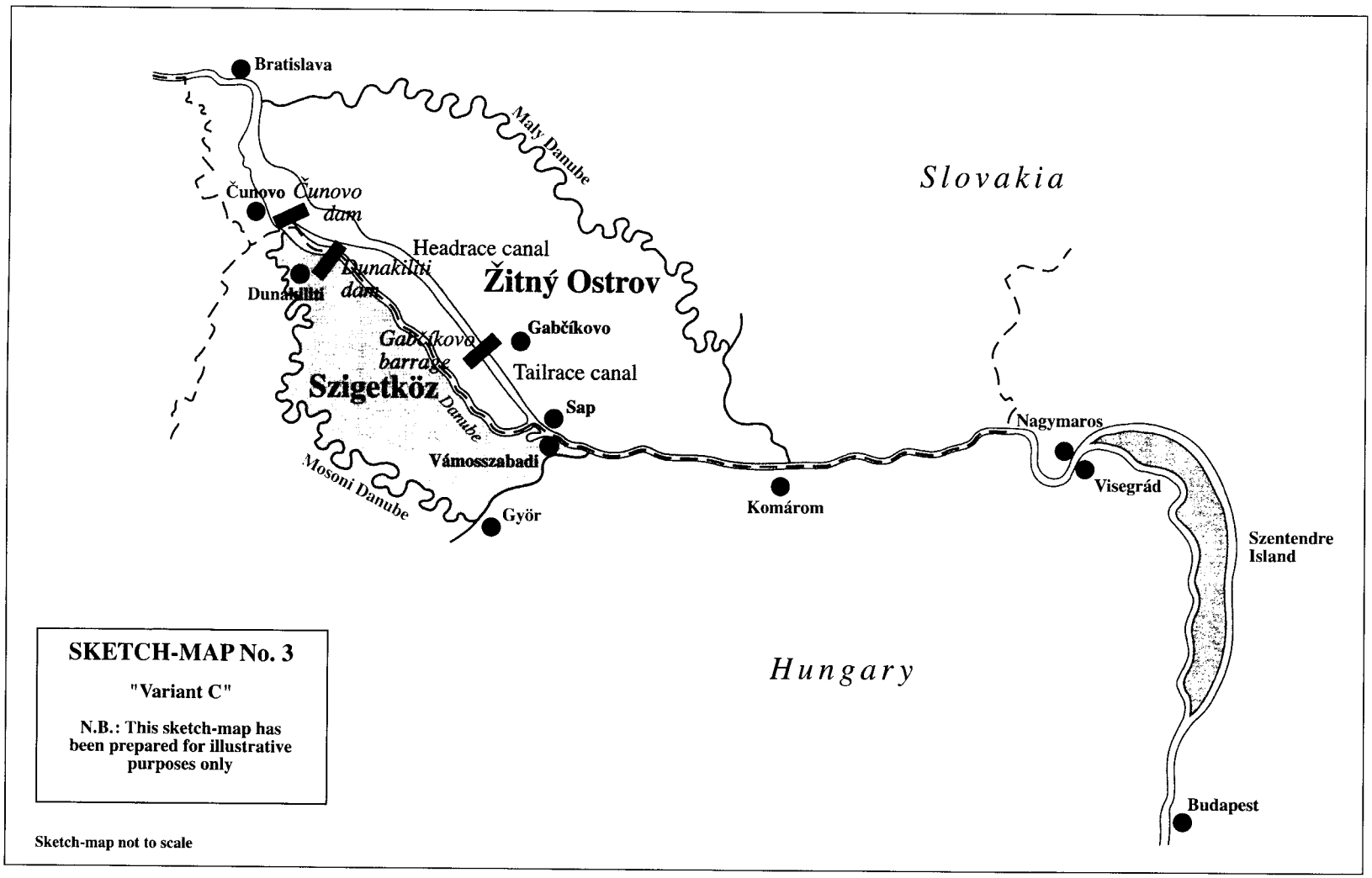
the same time as the Treaty itself. The Agreement moreover made some adjustments to the allocation of the works between the parties as laid down by the Treaty.

Work on the Project started in 1978. On Hungary's initiative, the two parties first agreed, by two Protocols signed on 10 October 1983 (one amending Article 4, paragraph 4, of the 1977 Treaty and the other the Agreement on mutual assistance), to slow the work down and to postpone putting into operation the power plants, and then, by a Protocol signed on 6 February 1989 (which amended the Agreement on mutual assistance), to accelerate the Project.

22. As a result of intense criticism which the Project had generated in Hungary, the Hungarian Government decided on 13 May 1989 to suspend the works at Nagymaros pending the completion of various studies which the competent authorities were to finish before 31 July 1989. On 21 July 1989, the Hungarian Government extended the suspension of the works at Nagymaros until 31 October 1989, and, in addition, suspended the works at Dunakiliti until the same date. Lastly, on 27 October 1989, Hungary decided to abandon the works at Nagymaros and to maintain the status quo at Dunakiliti.

23. During this period, negotiations were being held between the parties. Czechoslovakia also started investigating alternative solutions. One of them, subsequently known as "Variant C", entailed a unilateral diversion of the Danube by Czechoslovakia on its territory some 10 kilometres upstream of Dunakiliti (see sketch-map No. 3, p. 26 below). In its final stage, Variant C included the construction at Čunovo of an overflow dam and a levee linking that dam to the south bank of the bypass canal. The corresponding reservoir was to have a smaller surface area and provide approximately 30 per cent less storage than the reservoir initially contemplated. Provision was made for ancillary works, namely: an intake structure to supply the Mosoni Danube; a weir to enable, *inter alia*, floodwater to be directed along the old bed of the Danube; an auxiliary shiplock; and two hydroelectric power plants (one capable of an annual production of 4 GWh on the Mosoni Danube, and the other with a production of 174 GWh on the old bed of the Danube). The supply of water to the side-arms of the Danube on the Czechoslovak bank was to be secured by means of two intake structures in the bypass canal at Dobrohošt' and Gabčíkovo. A solution was to be found for the Hungarian bank. Moreover, the question of the deepening of the bed of the Danube at the confluence of the bypass canal and the old bed of the river remained outstanding.

On 23 July 1991, the Slovak Government decided "to begin, in September 1991, construction to put the Gabčíkovo Project into operation by the provisional solution". That decision was endorsed by the Federal Czechoslovak Government on 25 July. Work on Variant C began in November 1991. Discussions continued between the two parties but to no avail, and, on 19 May 1992, the Hungarian Government transmitted


Bratislava
Mały Danube
Slovakia
Čunovo
Čunovo dam
Headrace canal
Dunakiliti
Dunakiliti dam
Žitný Ostrov
Gabčíkovo
Gabčíkovo barrage
Tailrace canal
Szigetköz
Danube
Sap
Nagymaros
Vámosszabadi
Mosoni Danube
Visegrád
Győr
Komárom
Szentendre Island
Hungary
Budapest
SKETCH-MAP No. 3
"Variant C"
N.B.: This sketch-map has been prepared for illustrative purposes only
Sketch-map not to scale

to the Czechoslovak Government a Note Verbale terminating the 1977 Treaty with effect from 25 May 1992. On 15 October 1992, Czechoslovakia began work to enable the Danube to be closed and, starting on 23 October, proceeded to the damming of the river.

24. On 23 October 1992, the Court was seised of an "Application of the Republic of Hungary *v.* The Czech and Slovak Federal Republic on the Diversion of the Danube River"; however, Hungary acknowledged that there was no basis on which the Court could have founded its jurisdiction to entertain that application, on which Czechoslovakia took no action. In the meanwhile, the Commission of the European Communities had offered to mediate and, during a meeting of the two parties with the Commission held in London on 28 October 1992, the parties entered into a series of interim undertakings. They principally agreed that the dispute would be submitted to the International Court of Justice, that a tripartite fact-finding mission should report on Variant C not later than 31 October, and that a tripartite group of independent experts would submit suggestions as to emergency measures to be taken.

25. On 1 January 1993 Slovakia became an independent State. On 7 April 1993, the "Special Agreement for Submission to the International Court of Justice of the Differences between the Republic of Hungary and the Slovak Republic concerning the Gabčíkovo-Nagymaros Project" was signed in Brussels, the text of which is reproduced in paragraph 2 above. After the Special Agreement was notified to the Court, Hungary informed the Court, by a letter dated 9 August 1993, that it considered its "initial Application [to be] now without object, and . . . lapsed".

According to Article 4 of the Special Agreement, "The Parties [agreed] that, pending the final Judgment of the Court, they [would] establish and implement a temporary water management régime for the Danube." However, this régime could not easily be settled. The filling of the Čunovo dam had rapidly led to a major reduction in the flow and in the level of the downstream waters in the old bed of the Danube as well as in the side-arms of the river. On 26 August 1993, Hungary and Slovakia reached agreement on the setting up of a tripartite group of experts (one expert designated by each party and three independent experts designated by the Commission of the European Communities)

> "In order to provide reliable and undisputed data on the most important effects of the current water discharge and the remedial measures already undertaken as well as to make recommendations for appropriate measures."

On 1 December 1993, the experts designated by the Commission of the European Communities recommended the adoption of various measures to remedy the situation on a temporary basis. The Parties were unable to agree on these recommendations. After lengthy negotiations, they finally concluded an Agreement "concerning Certain Temporary Technical Measures and Discharges in the Danube and Mosoni branch of the Danube",

on 19 April 1995. That Agreement raised the discharge of water into the Mosoni Danube to 43 m^3/s. It provided for an annual average of 400 m^3/s in the old bed (not including flood waters). Lastly, it provided for the construction by Hungary of a partially underwater weir near to Dunakiliti with a view to improving the water supply to the side-arms of the Danube on the Hungarian side. It was specified that this temporary agreement would come to an end 14 days after the Judgment of the Court.

* * *

26. The first subparagraph of the Preamble to the Special Agreement covers the disputes arising between Czechoslovakia and Hungary concerning the application and termination, not only of the 1977 Treaty, but also of "related instruments"; the subparagraph specifies that, for the purposes of the Special Agreement, the 1977 Treaty and the said instruments shall be referred to as "the Treaty". "The Treaty" is expressly referred to in the wording of the questions submitted to the Court in Article 2, paragraph 1, subparagraphs *(a)* and *(c)*, of the Special Agreement.

The Special Agreement however does not define the concept of "related instruments", nor does it list them. As for the Parties, they gave some consideration to that question — essentially in the written proceedings — without reaching agreement as to the exact meaning of the expression or as to the actual instruments referred to. The Court notes however that the Parties seemed to agree to consider that that expression covers at least the instruments linked to the 1977 Treaty which implement it, such as the Agreement on mutual assistance of 16 September 1977 and its amending Protocols dated, respectively, 10 October 1983 and 6 February 1989 (see paragraph 21 above), and the Agreement as to the common operational regulations of Plenipotentiaries fulfilling duties related to the construction and operation of the Gabčíkovo-Nagymaros Barrage System signed in Bratislava on 11 October 1979. The Court notes that Hungary, unlike Slovakia, declined to apply the description of related instruments to the 1977 Treaty to the Joint Contractual Plan (see paragraph 19 above), which it refused to see as "an agreement at the same level as the other . . . related Treaties and inter-State agreements".

Lastly the Court notes that the Parties, in setting out the replies which should in their view be given to the questions put in the Special Agreement, concentrated their reasoning on the 1977 Treaty; and that they would appear to have extended their arguments to "related instruments" in considering them as accessories to a whole treaty system, whose fate was in principle linked to that of the main part, the 1977 Treaty. The Court takes note of the positions of the Parties and considers that it does not need to go into this matter further at this juncture.

* * *

27. The Court will now turn to a consideration of the questions submitted by the Parties. In terms of Article 2, paragraph 1 *(a)*, of the Special Agreement, the Court is requested to decide first

> "whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty attributed responsibility to the Republic of Hungary".

28. The Court would recall that the Gabčíkovo-Nagymaros System of Locks is characterized in Article 1, paragraph 1, of the 1977 Treaty as a "single and indivisible operational system of works".

The principal works which were to constitute this system have been described in general terms above (see paragraph 18). Details of them are given in paragraphs 2 and 3 of Article 1 of the Treaty.

For Gabčíkovo, paragraph 2 lists the following works:

"*(a)* the Dunakiliti-Hrušov head-water installations in the Danube sector at r.km. (river kilometre(s)) 1860-1842, designed for a maximum flood stage of 131.10 m.B. (metres above sea-level, Baltic system), in Hungarian and Czechoslovak territory;

(b) the Dunakiliti dam and auxiliary navigation lock at r.km. 1842, in Hungarian territory;

(c) the by-pass canal (head-water canal and tail-water canal) at r.km. 1842-1811, in Czechoslovak territory;

(d) series of locks on the by-pass canal, in Czechoslovak territory, consisting of a hydroelectric power plant with installed capacity of 720 MW, double navigation locks and appurtenances thereto;

(e) improved old bed of the Danube at r.km. 1842-1811, in the joint Hungarian-Czechoslovak section;

(f) deepened and regulated bed of the Danube at r.km. 1811-1791, in the joint Hungarian-Czechoslovak section."

For Nagymaros, paragraph 3 specifies the following works:

"*(a)* head-water installations and flood-control works in the Danube sector at r.km. 1791-1696.25 and in the sectors of tributaries affected by flood waters, designed for a maximum flood stage of 107.83 m.B., in Hungarian and Czechoslovak territory;

(b) series of locks at r.km. 1696.25, in Hungarian territory, consisting of a dam, a hydroelectric power plant with installed capacity of 158 MW, double navigation locks and appurtenances thereto;

(c) deepened and regulated bed of the Danube, in both its branches, at r.km. 1696.25-1657, in the Hungarian section."

29. Moreover, the precise breakdown of the works incumbent on each party was set out in Article 5, paragraph 5, of the 1977 Treaty, as follows:

"5. The labour and supplies required for the realization of the joint investment shall be apportioned between the Contracting Parties in the following manner:

(a) The Czechoslovak Party shall be responsible for:

(1) the Dunakiliti-Hrušov head-water installations on the left bank, in Czechoslovak territory;
(2) the head-water canal of the by-pass canal, in Czechoslovak territory;
(3) the Gabčíkovo series of locks, in Czechoslovak territory;
(4) the flood-control works of the Nagymaros head-water installations, in Czechoslovak territory, with the exception of the lower Ipel district;
(5) restoration of vegetation in Czechoslovak territory;

(b) The Hungarian Party shall be responsible for:

(1) the Dunakiliti-Hrušov head-water installations on the right bank, in Czechoslovak territory, including the connecting weir and the diversionary weir;
(2) the Dunakiliti-Hrušov head-water installations on the right bank, in Hungarian territory;
(3) the Dunakiliti dam, in Hungarian territory;
(4) the tail-water canal of the by-pass canal, in Czechoslovak territory;
(5) deepening of the bed of the Danube below Palkovičovo, in Hungarian and Czechoslovak territory;
(6) improvement of the old bed of the Danube, in Hungarian and Czechoslovak territory;
(7) operational equipment of the Gabčíkovo system of locks (transport equipment, maintenance machinery), in Czechoslovak territory;
(8) the flood-control works of the Nagymaros head-water installations in the lower Ipel district, in Czechoslovak territory;
(9) the flood-control works of the Nagymaros head-water installations, in Hungarian territory;
(10) the Nagymaros series of locks, in Hungarian territory;
(11) deepening of the tail-water bed below the Nagymaros system of locks, in Hungarian territory;
(12) operational equipment of the Nagymaros system of locks (transport equipment, maintenance machinery), in Hungarian territory;
(13) restoration of vegetation in Hungarian territory."

30. As the Court has already indicated (see paragraph 18 above), Article 1, paragraph 4, of the 1977 Treaty stipulated in general terms that the "technical specifications" concerning the System of Locks would be included in the "joint contractual plan". The schedule of work had for its part been fixed in an Agreement on mutual assistance signed by the two parties on 16 September 1977 (see paragraph 21 above). In accordance with the provisions of Article 1, paragraph 1, of that Agreement, the whole of the works of the barrage system were to have been completed in 1991. As indicated in paragraph 2 of that same article, a summary construction schedule was appended to the Agreement, and provision was made for a more detailed schedule to be worked out in the Joint Contractual Plan. The Agreement of 16 September 1977 was twice amended further. By a Protocol signed on 10 October 1983, the parties agreed first to postpone the works and the putting into operation of the power plants for four more years; then, by a Protocol signed on 6 February 1989, the parties decided, conversely, to bring them forward by 15 months, the whole system having to be operational in 1994. A new summary construction schedule was appended to each of those Protocols; those schedules were in turn to be implemented by means of new detailed schedules, included in the Joint Contractual Plan.

31. In spring 1989, the work on the Gabčíkovo sector was well advanced: the Dunakiliti dam was 90 per cent complete, the Gabčíkovo dam was 85 per cent complete, and the bypass canal was between 60 per cent complete (downstream of Gabčíkovo) and 95 per cent complete (upstream of Gabčíkovo) and the dykes of the Dunakiliti-Hrušov reservoir were between 70 and 98 per cent complete, depending on the location. This was not the case in the Nagymaros sector where, although dykes had been built, the only structure relating to the dam itself was the coffer-dam which was to facilitate its construction.

32. In the wake of the profound political and economic changes which occurred at this time in central Europe, the Gabčíkovo-Nagymaros Project was the object, in Czechoslovakia and more particularly in Hungary, of increasing apprehension, both within a section of public opinion and in some scientific circles. The uncertainties not only about the economic viability of the Project, but also, and more so, as to the guarantees it offered for preservation of the environment, engendered a climate of growing concern and opposition with regard to the Project.

33. It was against this background that, on 13 May 1989, the Government of Hungary adopted a resolution to suspend works at Nagymaros, and ordered

> "the Ministers concerned to commission further studies in order to place the Council of Ministers in a position where it can make well-founded suggestions to the Parliament in connection with the amendment of the international treaty on the investment. In the interests of

> the above, we must examine the international and legal consequences, the technical considerations, the obligations related to continuous navigation on the Danube and the environmental/ecological and seismic impacts of the eventual stopping of the Nagymaros investment. To be further examined are the opportunities for the replacement of the lost electric energy and the procedures for minimising claims for compensation."

The suspension of the works at Nagymaros was intended to last for the duration of these studies, which were to be completed by 31 July 1989. Czechoslovakia immediately protested and a document defining the position of Czechoslovakia was transmitted to the Ambassador of Hungary in Prague on 15 May 1989. The Prime Ministers of the two countries met on 24 May 1989, but their talks did not lead to any tangible result. On 2 June, the Hungarian Parliament authorized the Government to begin negotiations with Czechoslovakia for the purpose of modifying the 1977 Treaty.

34. At a meeting held by the Plenipotentiaries on 8 and 9 June 1989, Hungary gave Czechoslovakia a number of assurances concerning the continuation of works in the Gabčíkovo sector, and the signed Protocol which records that meeting contains the following passage:

> "The Hungarian Government Commissioner and the Hungarian Plenipotentiary stated, that the Hungarian side will complete construction of the Gabčíkovo Project in the agreed time and in accordance with the project plans. Directives have already been given to continue works suspended in the area due to misunderstanding."

These assurances were reiterated in a letter that the Commissioner of the Government of Hungary addressed to the Czechoslovak Plenipotentiary on 9 June 1989.

35. With regard to the suspension of work at Nagymaros, the Hungarian Deputy Prime Minister, in a letter dated 24 June 1989 addressed to his Czechoslovak counterpart, expressed himself in the following terms:

> "The Hungarian Academy of Sciences (HAS) has studied the environmental, ecological and water quality as well as the seismological impacts of abandoning or implementing the Nagymaros Barrage of the Gabčíkovo-Nagymaros Barrage System (GNBS).
>
> . . . . . .
>
> Having studied the expected impacts of the construction in accordance with the original plan, the Committee *[ad hoc]* of the Academy [set up for this purpose] came to the conclusion that we do not have adequate knowledge of the consequences of environmental risks.
>
> In its opinion, the risk of constructing the Barrage System in accordance with the original plan cannot be considered acceptable. Of course, it cannot be stated either that the adverse impacts will

ensue for certain, therefore, according to their recommendation, further thorough and time consuming studies are necessary."

36. The Hungarian and Czechoslovak Prime Ministers met again on 20 July 1989 to no avail. Immediately after that meeting, the Hungarian Government adopted a second resolution, under which the suspension of work at Nagymaros was extended to 31 October 1989. However, this resolution went further, as it also prescribed the suspension, until the same date, of the "Preparatory works on the closure of the riverbed at . . . Dunakiliti"; the purpose of this measure was to invite "international scientific institutions [and] foreign scientific institutes and experts" to co-operate with "the Hungarian and Czechoslovak institutes and experts" with a view to an assessment of the ecological impact of the Project and the "development of a technical and operational water quality guarantee system and . . . its implementation".

37. In the ensuing period, negotiations were conducted at various levels between the two States, but proved fruitless. Finally, by a letter dated 4 October 1989, the Hungarian Prime Minister formally proposed to Czechoslovakia that the Nagymaros sector of the Project be abandoned and that an agreement be concluded with a view to reducing the ecological risks associated with the Gabčíkovo sector of the Project. He proposed that that agreement should be concluded before 30 July 1990.

The two Heads of Government met on 26 October 1989, and were unable to reach agreement. By a Note Verbale dated 30 October 1989, Czechoslovakia, confirming the views it had expressed during those talks, proposed to Hungary that they should negotiate an agreement on a system of technical, operational and ecological guarantees relating to the Gabčíkovo-Nagymaros Project, "on the assumption that the Hungarian party will immediately commence preparatory work on the refilling of the Danube's bed in the region of Dunakiliti". It added that the technical principles of the agreement could be initialled within two weeks and that the agreement itself ought to be signed before the end of March 1990. After the principles had been initialled, Hungary "[was to] start the actual closure of the Danube bed". Czechoslovakia further stated its willingness to "conclu[de] . . . a separate agreement in which both parties would oblige themselves to limitations or exclusion of peak hour operation mode of the . . . System". It also proposed "to return to deadlines indicated in the Protocol of October 1983", the Nagymaros construction deadlines being thus extended by 15 months, so as to enable Hungary to take advantage of the time thus gained to study the ecological issues and formulate its own proposals in due time. Czechoslovakia concluded by announcing that, should Hungary continue unilaterally to breach the Treaty, Czechoslovakia would proceed with a provisional solution.

In the meantime, the Hungarian Government had on 27 October adopted a further resolution, deciding to abandon the construction of the

Nagymaros dam and to leave in place the measures previously adopted for suspending the works at Dunakiliti. Then, by Notes Verbales dated 3 and 30 November 1989, Hungary proposed to Czechoslovakia a draft treaty incorporating its earlier proposals, relinquishing peak power operation of the Gabčíkovo power plant and abandoning the construction of the Nagymaros dam. The draft provided for the conclusion of an agreement on the completion of Gabčíkovo in exchange for guarantees on protection of the environment. It finally envisaged the possibility of one or other party seising an arbitral tribunal or the International Court of Justice in the event that differences of view arose and persisted between the two Governments about the construction and operation of the Gabčíkovo dam, as well as measures to be taken to protect the environment. Hungary stated that it was ready to proceed immediately "with the preparatory operations for the Dunakiliti bed-decanting", but specified that the river would not be dammed at Dunakiliti until the agreement on guarantees had been concluded.

38. During winter 1989-1990, the political situation in Czechoslovakia and Hungary alike was transformed, and the new Governments were confronted with many new problems.

In spring 1990, the new Hungarian Government, in presenting its National Renewal Programme, announced that the whole of the Gabčíkovo-Nagymaros Project was a "mistake" and that it would initiate negotiations as soon as possible with the Czechoslovak Government "on remedying and sharing the damages". On 20 December 1990, the Hungarian Government adopted a resolution for the opening of negotiations with Czechoslovakia on the termination of the Treaty by mutual consent and the conclusion of an agreement addressing the consequences of the termination. On 15 February 1991, the Hungarian Plenipotentiary transmitted a draft agreement along those lines to his Czechoslovak counterpart.

On the same day, the Czechoslovak President declared that the Gabčíkovo-Nagymaros Project constituted a "totalitarian, gigomaniac monument which is against nature", while emphasizing that "the problem [was] that [the Gabčíkovo power plant] [had] already been built". For his part, the Czechoslovak Minister of the Environment stated, in a speech given to Hungarian parliamentary committees on 11 September 1991, that "the G/N Project [was] an old, obsolete one", but that, if there were "many reasons to change, modify the treaty . . . it [was] not acceptable to cancel the treaty . . . and negotiate later on".

During the ensuing period, Hungary refrained from completing the work for which it was still responsible at Dunakiliti. Yet it continued to maintain the structures it had already built and, at the end of 1991, completed the works relating to the tailrace canal of the bypass canal assigned to it under Article 5, paragraph 5 *(b)*, of the 1977 Treaty.

* *

39. The two Parties to this case concur in recognizing that the 1977 Treaty, the above-mentioned Agreement on mutual assistance of 1977 and the Protocol of 1989 were validly concluded and were duly in force when the facts recounted above took place.

Further, they do not dispute the fact that, however flexible they may have been, these texts did not envisage the possibility of the signatories unilaterally suspending or abandoning the work provided for therein, or even carrying it out according to a new schedule not approved by the two partners.

40. Throughout the proceedings, Hungary contended that, although it did suspend or abandon certain works, on the contrary, it never suspended the application of the 1977 Treaty itself. To justify its conduct, it relied essentially on a "state of ecological necessity".

Hungary contended that the various installations in the Gabčíkovo-Nagymaros System of Locks had been designed to enable the Gabčíkovo power plant to operate in peak mode. Water would only have come through the plant twice each day, at times of peak power demand. Operation in peak mode required the vast expanse (60 km^2) of the planned reservoir at Dunakiliti, as well as the Nagymaros dam, which was to alleviate the tidal effects and reduce the variation in the water level downstream of Gabčíkovo. Such a system, considered to be more economically profitable than using run-of-the-river plants, carried ecological risks which it found unacceptable.

According to Hungary, the principal ecological dangers which would have been caused by this system were as follows. At Gabčíkovo/Dunakiliti, under the original Project, as specified in the Joint Contractual Plan, the residual discharge into the old bed of the Danube was limited to 50 m^3/s, in addition to the water provided to the system of side-arms. That volume could be increased to 200 m^3/s during the growing season. Additional discharges, and in particular a number of artificial floods, could also be effected, at an unspecified rate. In these circumstances, the groundwater level would have fallen in most of the Szigetköz. Furthermore, the groundwater would then no longer have been supplied by the Danube — which, on the contrary, would have acted as a drain — but by the reservoir of stagnant water at Dunakiliti and the side-arms which would have become silted up. In the long term, the quality of water would have been seriously impaired. As for the surface water, risks of eutrophication would have arisen, particularly in the reservoir; instead of the old Danube there would have been a river choked with sand, where only a relative trickle of water would have flowed. The network of arms would have been for the most part cut off from the principal bed. The fluvial fauna and flora, like those in the alluvial plains, would have been condemned to extinction.

As for Nagymaros, Hungary argued that, if that dam had been built,

the bed of the Danube upstream would have silted up and, consequently, the quality of the water collected in the bank-filtered wells would have deteriorated in this sector. What is more, the operation of the Gabčíkovo power plant in peak mode would have occasioned significant daily variations in the water level in the reservoir upstream, which would have constituted a threat to aquatic habitats in particular. Furthermore, the construction and operation of the Nagymaros dam would have caused the erosion of the riverbed downstream, along Szentendre Island. The water level of the river would therefore have fallen in this section and the yield of the bank-filtered wells providing two-thirds of the water supply of the city of Budapest would have appreciably diminished. The filter layer would also have shrunk or perhaps even disappeared, and fine sediments would have been deposited in certain pockets in the river. For this twofold reason, the quality of the infiltrating water would have been severely jeopardized.

From all these predictions, in support of which it quoted a variety of scientific studies, Hungary concluded that a "state of ecological necessity" did indeed exist in 1989.

41. In its written pleadings, Hungary also accused Czechoslovakia of having violated various provisions of the 1977 Treaty from before 1989 — in particular Articles 15 and 19 relating, respectively, to water quality and nature protection — in refusing to take account of the now evident ecological dangers and insisting that the works be continued, notably at Nagymaros. In this context Hungary contended that, in accordance with the terms of Article 3, paragraph 2, of the Agreement of 6 May 1976 concerning the Joint Contractual Plan, Czechoslovakia bore responsibility for research into the Project's impact on the environment; Hungary stressed that the research carried out by Czechoslovakia had not been conducted adequately, the potential effects of the Project on the environment of the construction having been assessed by Czechoslovakia only from September 1990. However, in the final stage of its argument, Hungary does not appear to have sought to formulate this complaint as an independent ground formally justifying the suspension and abandonment of the works for which it was responsible under the 1977 Treaty. Rather, it presented the violations of the Treaty prior to 1989, which it imputes to Czechoslovakia, as one of the elements contributing to the emergence of a state of necessity.

42. Hungary moreover contended from the outset that its conduct in the present case should not be evaluated only in relation to the law of treaties. It also observed that, in accordance with the provisions of Article 4, the Vienna Convention of 23 May 1969 on the Law of Treaties could not be applied to the 1977 Treaty, which was concluded before that Convention entered into force as between the parties. Hungary has indeed acknowledged, with reference to the jurisprudence of the Court, that in many respects the Convention reflects the existing customary law. Hungary nonetheless stressed the need to adopt a cautious attitude, while

suggesting that the Court should consider, in each case, the conformity of the prescriptions of the Convention with customary international law.

43. Slovakia, for its part, denied that the basis for suspending or abandoning the performance of a treaty obligation can be found outside the law of treaties. It acknowledged that the 1969 Vienna Convention could not be applied as such to the 1977 Treaty, but at the same time stressed that a number of its provisions are a reflection of pre-existing rules of customary international law and specified that this is, in particular, the case with the provisions of Part V relating to invalidity, termination and suspension of the operation of treaties. Slovakia has moreover observed that, after the Vienna Convention had entered into force for both parties, Hungary affirmed its accession to the substantive obligations laid down by the 1977 Treaty when it signed the Protocol of 6 February 1989 that cut short the schedule of work; and this led it to conclude that the Vienna Convention was applicable to the "contractual legal régime" constituted by the network of interrelated agreements of which the Protocol of 1989 was a part.

44. In the course of the proceedings, Slovakia argued at length that the state of necessity upon which Hungary relied did not constitute a reason for the suspension of a treaty obligation recognized by the law of treaties. At the same time, it cast doubt upon whether "ecological necessity" or "ecological risk" could, in relation to the law of State responsibility, constitute a circumstance precluding the wrongfulness of an act.

In any event, Slovakia denied that there had been any kind of "ecological state of necessity" in this case either in 1989 or subsequently. It invoked the authority of various scientific studies when it claimed that Hungary had given an exaggeratedly pessimistic description of the situation. Slovakia did not, of course, deny that ecological problems could have arisen. However, it asserted that they could to a large extent have been remedied. It accordingly stressed that no agreement had been reached with respect to the modalities of operation of the Gabčíkovo power plant in peak mode, and claimed that the apprehensions of Hungary related only to operating conditions of an extreme kind. In the same way, it contended that the original Project had undergone various modifications since 1977 and that it would have been possible to modify it even further, for example with respect to the discharge of water reserved for the old bed of the Danube, or the supply of water to the side-arms by means of underwater weirs.

45. Slovakia moreover denied that it in any way breached the 1977 Treaty — particularly its Articles 15 and 19 — and maintained, *inter alia*, that according to the terms of Article 3, paragraph 2, of the Agreement of 6 May 1976 relating to the Joint Contractual Plan, research into the impact of the Project on the environment was not the exclusive responsibility of Czechoslovakia but of either one of the parties, depending on the location of the works.

Lastly, in its turn, it reproached Hungary with having adopted its unilateral measures of suspension and abandonment of the works in viola-

tion of the provisions of Article 27 of the 1977 Treaty (see paragraph 18 above), which it submits required prior recourse to the machinery for dispute settlement provided for in that Article.

* *

46. The Court has no need to dwell upon the question of the applicability in the present case of the Vienna Convention of 1969 on the Law of Treaties. It needs only to be mindful of the fact that it has several times had occasion to hold that some of the rules laid down in that Convention might be considered as a codification of existing customary law. The Court takes the view that in many respects this applies to the provisions of the Vienna Convention concerning the termination and the suspension of the operation of treaties, set forth in Articles 60 to 62 (see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports, 1971,* p. 47, and *Fisheries Jurisdiction (United Kingdom* v. *Iceland), Jurisdiction of the Court, Judgment, I.C.J. Reports 1973,* p. 18; see also *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980,* pp. 95-96).

Neither has the Court lost sight of the fact that the Vienna Convention is in any event applicable to the Protocol of 6 February 1989 whereby Hungary and Czechoslovakia agreed to accelerate completion of the works relating to the Gabčíkovo-Nagymaros Project.

47. Nor does the Court need to dwell upon the question of the relationship between the law of treaties and the law of State responsibility, to which the Parties devoted lengthy arguments, as those two branches of international law obviously have a scope that is distinct. A determination of whether a convention is or is not in force, and whether it has or has not been properly suspended or denounced, is to be made pursuant to the law of treaties. On the other hand, an evaluation of the extent to which the suspension or denunciation of a convention, seen as incompatible with the law of treaties, involves the responsibility of the State which proceeded to it, is to be made under the law of State responsibility.

Thus the Vienna Convention of 1969 on the Law of Treaties confines itself to defining — in a limitative manner — the conditions in which a treaty may lawfully be denounced or suspended; while the effects of a denunciation or suspension seen as not meeting those conditions are, on the contrary, expressly excluded from the scope of the Convention by operation of Article 73. It is moreover well established that, when a State has committed an internationally wrongful act, its international responsibility is likely to be involved whatever the nature of the obligation it has failed to respect (cf. *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Second Phase, Advisory Opinion, I.C.J. Reports 1950,* p. 228; and see Article 17 of the Draft Articles on State Responsi-

bility provisionally adopted by the International Law Commission on first reading, *Yearbook of the International Law Commission*, 1980, Vol. II, Part 2, p. 32).

48. The Court cannot accept Hungary's argument to the effect that, in 1989, in suspending and subsequently abandoning the works for which it was still responsible at Nagymaros and at Dunakiliti, it did not, for all that, suspend the application of the 1977 Treaty itself or then reject that Treaty. The conduct of Hungary at that time can only be interpreted as an expression of its unwillingness to comply with at least some of the provisions of the Treaty and the Protocol of 6 February 1989, as specified in the Joint Contractual Plan. The effect of Hungary's conduct was to render impossible the accomplishment of the system of works that the Treaty expressly described as "single and indivisible".

The Court moreover observes that, when it invoked the state of necessity in an effort to justify that conduct, Hungary chose to place itself from the outset within the ambit of the law of State responsibility, thereby implying that, in the absence of such a circumstance, its conduct would have been unlawful. The state of necessity claimed by Hungary — supposing it to have been established — thus could not permit of the conclusion that, in 1989, it had acted in accordance with its obligations under the 1977 Treaty or that those obligations had ceased to be binding upon it. It would only permit the affirmation that, under the circumstances, Hungary would not incur international responsibility by acting as it did. Lastly, the Court points out that Hungary expressly acknowledged that, in any event, such a state of necessity would not exempt it from its duty to compensate its partner.

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49. The Court will now consider the question of whether there was, in 1989, a state of necessity which would have permitted Hungary, without incurring international responsibility, to suspend and abandon works that it was committed to perform in accordance with the 1977 Treaty and related instruments.

50. In the present case, the Parties are in agreement in considering that the existence of a state of necessity must be evaluated in the light of the criteria laid down by the International Law Commission in Article 33 of the Draft Articles on the International Responsibility of States that it adopted on first reading. That provision is worded as follows:

"*Article 33. State of Necessity*

1. A state of necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act of that State not in conformity with an international obligation of the State unless:

(a) the act was the only means of safeguarding an essential interest of the State against a grave and imminent peril; and

(b) the act did not seriously impair an essential interest of the State towards which the obligation existed.

2. In any case, a state of necessity may not be invoked by a State as a ground for precluding wrongfulness:

(a) if the international obligation with which the act of the State is not in conformity arises out of a peremptory norm of general international law; or

(b) if the international obligation with which the act of the State is not in conformity is laid down by a treaty which, explicitly or implicitly, excludes the possibility of invoking the state of necessity with respect to that obligation; or

(c) if the State in question has contributed to the occurrence of the state of necessity." (*Yearbook of the International Law Commission,* 1980, Vol. II, Part 2, p. 34.)

In its Commentary, the Commission defined the "state of necessity" as being

> "the situation of a State whose sole means of safeguarding an essential interest threatened by a grave and imminent peril is to adopt conduct not in conformity with what is required of it by an international obligation to another State" (*ibid.*, para. 1).

It concluded that "the notion of state of necessity is . . . deeply rooted in general legal thinking" (*ibid.*, p. 49, para. 31).

51. The Court considers, first of all, that the state of necessity is a ground recognized by customary international law for precluding the wrongfulness of an act not in conformity with an international obligation. It observes moreover that such ground for precluding wrongfulness can only be accepted on an exceptional basis. The International Law Commission was of the same opinion when it explained that it had opted for a negative form of words in Article 33 of its Draft

> "in order to show, by this formal means also, that the case of invocation of a state of necessity as a justification must be considered as really constituting an exception — and one even more rarely admissible than is the case with the other circumstances precluding wrongfulness . . ." (*ibid.*, p. 51, para. 40).

Thus, according to the Commission, the state of necessity can only be invoked under certain strictly defined conditions which must be cumulatively satisfied; and the State concerned is not the sole judge of whether those conditions have been met.

52. In the present case, the following basic conditions set forth in Draft Article 33 are relevant: it must have been occasioned by an "essential interest" of the State which is the author of the act conflicting with one of its international obligations; that interest must have been threatened by a "grave and imminent peril"; the act being challenged must

have been the "only means" of safeguarding that interest; that act must not have "seriously impair[ed] an essential interest" of the State towards which the obligation existed; and the State which is the author of that act must not have "contributed to the occurrence of the state of necessity". Those conditions reflect customary international law.

The Court will now endeavour to ascertain whether those conditions had been met at the time of the suspension and abandonment, by Hungary, of the works that it was to carry out in accordance with the 1977 Treaty.

53. The Court has no difficulty in acknowledging that the concerns expressed by Hungary for its natural environment in the region affected by the Gabčíkovo-Nagymaros Project related to an "essential interest" of that State, within the meaning given to that expression in Article 33 of the Draft of the International Law Commission.

The Commission, in its Commentary, indicated that one should not, in that context, reduce an "essential interest" to a matter only of the "existence" of the State, and that the whole question was, ultimately, to be judged in the light of the particular case (see *Yearbook of the International Law Commission*, 1980, Vol. II, Part 2, p. 49, para. 32); at the same time, it included among the situations that could occasion a state of necessity, "a grave danger to . . . the ecological preservation of all or some of [the] territory [of a State]" (*ibid.*, p. 35, para. 3); and specified, with reference to State practice, that "It is primarily in the last two decades that safeguarding the ecological balance has come to be considered an 'essential interest' of all States." (*Ibid.*, p. 39, para. 14.)

The Court recalls that it has recently had occasion to stress, in the following terms, the great significance that it attaches to respect for the environment, not only for States but also for the whole of mankind:

> "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment." (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, pp. 241-242, para. 29.)

54. The verification of the existence, in 1989, of the "peril" invoked by Hungary, of its "grave and imminent" nature, as well as of the absence of any "means" to respond to it, other than the measures taken by Hungary to suspend and abandon the works, are all complex processes.

As the Court has already indicated (see paragraphs 33 *et seq.*), Hungary on several occasions expressed, in 1989, its "uncertainties" as to the ecological impact of putting in place the Gabčíkovo-Nagymaros barrage system, which is why it asked insistently for new scientific studies to be carried out.

The Court considers, however, that, serious though these uncertainties might have been they could not, alone, establish the objective existence of a "peril" in the sense of a component element of a state of necessity. The word "peril" certainly evokes the idea of "risk"; that is precisely what distinguishes "peril" from material damage. But a state of necessity could not exist without a "peril" duly established at the relevant point in time; the mere apprehension of a possible "peril" could not suffice in that respect. It could moreover hardly be otherwise, when the "peril" constituting the state of necessity has at the same time to be "grave" and "imminent". "Imminence" is synonymous with "immediacy" or "proximity" and goes far beyond the concept of "possibility". As the International Law Commission emphasized in its commentary, the "extremely grave and imminent" peril must "have been a threat to the interest at the actual time" (*Yearbook of the International Law Commission*, 1980, Vol. II, Part 2, p. 49, para. 33). That does not exclude, in the view of the Court, that a "peril" appearing in the long term might be held to be "imminent" as soon as it is established, at the relevant point in time, that the realization of that peril, however far off it might be, is not thereby any less certain and inevitable.

The Hungarian argument on the state of necessity could not convince the Court unless it was at least proven that a real, "grave" and "imminent" "peril" existed in 1989 and that the measures taken by Hungary were the only possible response to it.

Both Parties have placed on record an impressive amount of scientific material aimed at reinforcing their respective arguments. The Court has given most careful attention to this material, in which the Parties have developed their opposing views as to the ecological consequences of the Project. It concludes, however, that, as will be shown below, it is not necessary in order to respond to the questions put to it in the Special Agreement for it to determine which of those points of view is scientifically better founded.

55. The Court will begin by considering the situation at Nagymaros. As has already been mentioned (see paragraph 40), Hungary maintained that, if the works at Nagymaros had been carried out as planned, the environment — and in particular the drinking water resources — in the area would have been exposed to serious dangers on account of problems linked to the upstream reservoir on the one hand and, on the other, the risks of erosion of the riverbed downstream.

The Court notes that the dangers ascribed to the upstream reservoir were mostly of a long-term nature and, above all, that they remained uncertain. Even though the Joint Contractual Plan envisaged that the Gab-

čikovo power plant would "mainly operate in peak-load time and continuously during high water", the final rules of operation had not yet been determined (see paragraph 19 above); however, any dangers associated with the putting into service of the Nagymaros portion of the Project would have been closely linked to the extent to which it was operated in peak mode and to the modalities of such operation. It follows that, even if it could have been established — which, in the Court's appreciation of the evidence before it, was not the case — that the reservoir would ultimately have constituted a "grave peril" for the environment in the area, one would be bound to conclude that the peril was not "imminent" at the time at which Hungary suspended and then abandoned the works relating to the dam.

With regard to the lowering of the riverbed downstream of the Nagymaros dam, the danger could have appeared at once more serious and more pressing, in so far as it was the supply of drinking water to the city of Budapest which would have been affected. The Court would however point out that the bed of the Danube in the vicinity of Szentendre had already been deepened prior to 1980 in order to extract building materials, and that the river had from that time attained, in that sector, the depth required by the 1977 Treaty. The peril invoked by Hungary had thus already materialized to a large extent for a number of years, so that it could not, in 1989, represent a peril arising entirely out of the project. The Court would stress, however, that, even supposing, as Hungary maintained, that the construction and operation of the dam would have created serious risks, Hungary had means available to it, other than the suspension and abandonment of the works, of responding to that situation. It could for example have proceeded regularly to discharge gravel into the river downstream of the dam. It could likewise, if necessary, have supplied Budapest with drinking water by processing the river water in an appropriate manner. The two Parties expressly recognized that that possibility remained open even though — and this is not determinative of the state of necessity — the purification of the river water, like the other measures envisaged, clearly would have been a more costly technique.

56. The Court now comes to the Gabčíkovo sector. It will recall that Hungary's concerns in this sector related on the one hand to the quality of the surface water in the Dunakiliti reservoir, with its effects on the quality of the groundwater in the region, and on the other hand, more generally, to the level, movement and quality of both the surface water and the groundwater in the whole of the Szigetköz, with their effects on the fauna and flora in the alluvial plain of the Danube (see paragraph 40 above).

Whether in relation to the Dunakiliti site or to the whole of the Szigetköz, the Court finds here again, that the peril claimed by Hungary was to be considered in the long term, and, more importantly, remained uncertain. As Hungary itself acknowledges, the damage that it appre-

hended had primarily to be the result of some relatively slow natural processes, the effects of which could not easily be assessed.

Even if the works were more advanced in this sector than at Nagymaros, they had not been completed in July 1989 and, as the Court explained in paragraph 34 above, Hungary expressly undertook to carry on with them, early in June 1989. The report dated 23 June 1989 by the *ad hoc* Committee of the Hungarian Academy of Sciences, which was also referred to in paragraph 35 of the present Judgment, does not express any awareness of an authenticated peril — even in the form of a definite peril, whose realization would have been inevitable in the long term — when it states that:

> "The measuring results of an at least five-year monitoring period following the completion of the Gabčíkovo construction are indispensable to the trustworthy prognosis of the ecological impacts of the barrage system. There is undoubtedly a need for the establishment and regular operation of a comprehensive monitoring system, which must be more developed than at present. The examination of biological indicator objects that can sensitively indicate the changes happening in the environment, neglected till today, have to be included."

The report concludes as follows:

> "It can be stated, that the environmental, ecological and water quality impacts were not taken into account properly during the design and construction period until today. Because of the complexity of the ecological processes and lack of the measured data and the relevant calculations the environmental impacts cannot be evaluated.
>
> The data of the monitoring system newly operating on a very limited area are not enough to forecast the impacts probably occurring over a longer term. In order to widen and to make the data more frequent a further multi-year examination is necessary to decrease the further degradation of the water quality playing a dominant role in this question. The expected water quality influences equally the aquatic ecosystems, the soils and the recreational and tourist land-use."

The Court also notes that, in these proceedings, Hungary acknowledged that, as a general rule, the quality of the Danube waters had improved over the past 20 years, even if those waters remained subject to hypertrophic conditions.

However "grave" it might have been, it would accordingly have been difficult, in the light of what is said above, to see the alleged peril as sufficiently certain and therefore "imminent" in 1989.

The Court moreover considers that Hungary could, in this context

also, have resorted to other means in order to respond to the dangers that it apprehended. In particular, within the framework of the original Project, Hungary seemed to be in a position to control at least partially the distribution of the water between the bypass canal, the old bed of the Danube and the side-arms. It should not be overlooked that the Dunakiliti dam was located in Hungarian territory and that Hungary could construct the works needed to regulate flows along the old bed of the Danube and the side-arms. Moreover, it should be borne in mind that Article 14 of the 1977 Treaty provided for the possibility that each of the parties might withdraw quantities of water exceeding those specified in the Joint Contractual Plan, while making it clear that, in such an event, "the share of electric power of the Contracting Party benefiting from the excess withdrawal shall be correspondingly reduced".

57. The Court concludes from the foregoing that, with respect to both Nagymaros and Gabčíkovo, the perils invoked by Hungary, without prejudging their possible gravity, were not sufficiently established in 1989, nor were they "imminent"; and that Hungary had available to it at that time means of responding to these perceived perils other than the suspension and abandonment of works with which it had been entrusted. What is more, negotiations were under way which might have led to a review of the Project and the extension of some of its time-limits, without there being need to abandon it. The Court infers from this that the respect by Hungary, in 1989, of its obligations under the terms of the 1977 Treaty would not have resulted in a situation "characterized so aptly by the maxim *summum jus summa injuria*" (*Yearbook of the International Law Commission*, 1980, Vol. II, Part 2, p. 49, para. 31).

Moreover, the Court notes that Hungary decided to conclude the 1977 Treaty, a Treaty which — whatever the political circumstances prevailing at the time of its conclusion — was treated by Hungary as valid and in force until the date declared for its termination in May 1992. As can be seen from the material before the Court, a great many studies of a scientific and technical nature had been conducted at an earlier time, both by Hungary and by Czechoslovakia. Hungary was, then, presumably aware of the situation as then known, when it assumed its obligations under the Treaty. Hungary contended before the Court that those studies had been inadequate and that the state of knowledge at that time was not such as to make possible a complete evaluation of the ecological implications of the Gabčíkovo-Nagymaros Project. It is nonetheless the case that although the principal object of the 1977 Treaty was the construction of a System of Locks for the production of electricity, improvement of navigation on the Danube and protection against flooding, the need to ensure the protection of the environment had not escaped the parties, as can be seen from Articles 15, 19 and 20 of the Treaty.

What is more, the Court cannot fail to note the positions taken by Hungary after the entry into force of the 1977 Treaty. In 1983, Hungary asked that the works under the Treaty should go forward more slowly,

for reasons that were essentially economic but also, subsidiarily, related to ecological concerns. In 1989, when, according to Hungary itself, the state of scientific knowledge had undergone a significant development, it asked for the works to be speeded up, and then decided, three months later, to suspend them and subsequently to abandon them. The Court is not however unaware that profound changes were taking place in Hungary in 1989, and that, during that transitory phase, it might have been more than usually difficult to co-ordinate the different points of view prevailing from time to time.

The Court infers from all these elements that, in the present case, even if it had been established that there was, in 1989, a state of necessity linked to the performance of the 1977 Treaty, Hungary would not have been permitted to rely upon that state of necessity in order to justify its failure to comply with its treaty obligations, as it had helped, by act or omission to bring it about.

58. It follows that the Court has no need to consider whether Hungary, by proceeding as it did in 1989, "seriously impair[ed] an essential interest" of Czechoslovakia, within the meaning of the aforementioned Article 33 of the Draft of the International Law Commission — a finding which does not in any way prejudge the damage Czechoslovakia claims to have suffered on account of the position taken by Hungary.

Nor does the Court need to examine the argument put forward by Hungary, according to which certain breaches of Articles 15 and 19 of the 1977 Treaty, committed by Czechoslovakia even before 1989, contributed to the purported state of necessity; and neither does it have to reach a decision on the argument advanced by Slovakia, according to which Hungary breached the provisions of Article 27 of the Treaty, in 1989, by taking unilateral measures without having previously had recourse to the machinery of dispute settlement for which that Article provides.

* *

59. In the light of the conclusions reached above, the Court, in reply to the question put to it in Article 2, paragraph 1 *(a)*, of the Special Agreement (see paragraph 27 above), finds that Hungary was not entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the 1977 Treaty and related instruments attributed responsibility to it.

* * *

60. By the terms of Article 2, paragraph 1 *(b)*, of the Special Agreement, the Court is asked in the second place to decide

> "*(b)* whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the 'provisional solution'

and to put into operation from October 1992 this system, described in the Report of the Working Group of Independent Experts of the Commission of the European Communities, the Republic of Hungary and the Czech and Slovak Federal Republic dated 23 November 1992 (damming up of the Danube at river kilometre 1851.7 on Czechoslovak territory and resulting consequences on water and navigation course)".

61. The Court will recall that, as soon as Hungary suspended the works at Nagymaros on 13 May 1989 and extended that suspension to certain works to be carried out at Dunakiliti, Czechoslovakia informed Hungary that it would feel compelled to take unilateral measures if Hungary were to persist in its refusal to resume the works. This was *inter alia* expressed as follows in Czechoslovakia's Note Verbale of 30 October 1989 to which reference is made in paragraph 37 above:

"Should the Republic of Hungary fail to meet its liabilities and continue unilaterally to breach the Treaty and related legal documents then the Czechoslovak party will be forced to commence a provisional, substitute project on the territory of the Czechoslovak Socialist Republic in order to prevent further losses. Such a provisional project would entail directing as much water into the Gabčíkovo dam as agreed in the Joint Construction Plan."

As the Court has already indicated (see paragraph 23), various alternative solutions were contemplated by Czechoslovakia. In September 1990, the Hungarian authorities were advised of seven hypothetical alternatives defined by the firm of Hydroconsult of Bratislava. All of those solutions implied an agreement between the parties, with the exception of one variant, subsequently known as "Variant C", which was presented as a provisional solution which could be brought about without Hungarian co-operation. Other contacts between the parties took place, without leading to a settlement of the dispute. In March 1991, Hungary acquired information according to which perceptible progress had been made in finalizing the planning of Variant C; it immediately gave expression to the concern this caused.

62. Inter-governmental negotiation meetings were held on 22 April and 15 July 1991.

On 22 April 1991, Hungary proposed the suspension, until September 1993, of all the works begun on the basis of the 1977 Treaty, on the understanding that the parties undertook to abstain from any unilateral action, and that joint studies would be carried out in the interval. Czechoslovakia maintained its previous position according to which the studies contemplated should take place within the framework of the 1977 Treaty and without any suspension of the works.

On 15 July 1991, Czechoslovakia confirmed its intention of putting the

Gabčíkovo power plant into service and indicated that the available data enabled the effects of four possible scenarios to be assessed, each of them requiring the co-operation of the two Governments. At the same time, it proposed the setting up of a tripartite committee of experts (Hungary, Czechoslovakia, European Communities) which would help in the search for technical solutions to the problems arising from the entry into operation of the Gabčíkovo sector. Hungary, for its part, took the view that:

> "In the case of a total lack of understanding the so-called C variation or 'theoretical opportunity' suggested by the Czecho-Slovak party as a unilateral solution would be such a grave transgression of Hungarian territorial integrity and International Law for which there is no precedent even in the practices of the formerly socialist countries for the past 30 years";

it further proposed the setting up of a bilateral committee for the assessment of environmental consequences, subject to work on Czechoslovak territory being suspended.

63. By a letter dated 24 July 1991, the Government of Hungary communicated the following message to the Prime Minister of Slovakia:

> "Hungarian public opinion and the Hungarian Government anxiously and attentively follows the [Czechoslovakian] press reports of the unilateral steps of the Government of the Slovak Republic in connection with the barrage system.
>
> The preparatory works for diverting the water of the Danube near the Dunakiliti dam through unilaterally are also alarming. These steps are contrary to the 1977 Treaty and to the good relationship between our nations."

On 30 July 1991 the Slovak Prime Minister informed the Hungarian Prime Minister of

> "the decision of the Slovak Government and of the Czech and Slovak Federal Government to continue work on the Gabčíkovo power plant, as a provisional solution, which is aimed at the commencement of operations on the territory of the Czech and Slovak Federal Republic".

On the same day, the Government of Hungary protested, by a Note Verbale, against the filling of the headrace canal by the Czechoslovak construction company, by pumping water from the Danube.

By a letter dated 9 August 1991 and addressed to the Prime Minister of Slovakia, the Hungarian authorities strenuously protested against "any unilateral step that would be in contradiction with the interests of our [two] nations and international law" and indicated that they considered it "very important [to] receive information as early as possible on the

details of the provisional solution". For its part, Czechoslovakia, in a Note Verbale dated 27 August 1991, rejected the argument of Hungary that the continuation of the works under those circumstances constituted a violation of international law, and made the following proposal:

> "Provided the Hungarian side submits a concrete technical solution aimed at putting into operation the Gabčíkovo system of locks and a solution of the system of locks based on the 1977 Treaty in force and the treaty documents related to it, the Czechoslovak side is prepared to implement the mutually agreed solution."

64. The construction permit for Variant C was issued on 30 October 1991. In November 1991 construction of a dam started at Čunovo, where both banks of the Danube are on Czechoslovak (now Slovak) territory.

In the course of a new inter-governmental negotiation meeting, on 2 December 1991, the parties agreed to entrust the task of studying the whole of the question of the Gabčíkovo-Nagymaros Project to a Joint Expert Committee which Hungary agreed should be complemented with an expert from the European Communities. However whereas, for Hungary, the work of that Committee would have been meaningless if Czechoslovakia continued construction of Variant C, for Czechoslovakia, the suspension of the construction, even on a temporary basis, was unacceptable.

That meeting was followed by a large number of exchanges of letters between the parties and various meetings between their representatives at the end of 1991 and early in 1992. On 23 January 1992, Czechoslovakia expressed its readiness "to stop work on the provisional solution and continue the construction upon mutual agreement" if the tripartite committee of experts whose constitution it proposed, and the results of the test operation of the Gabčíkovo part, were to "confirm that negative ecological effects exceed its benefits". However, the positions of the parties were by then comprehensively defined, and would scarcely develop any further. Hungary considered, as it indicated in a Note Verbale of 14 February 1992, that Variant C was in contravention

> "of [the Treaty of 1977] . . . and the convention ratified in 1976 regarding the water management of boundary waters.
>
> . . . . . .
>
> with the principles of sovereignty, territorial integrity, with the inviolability of State borders, as well as with the general customary norms on international rivers and the spirit of the 1948 Belgrade Danube Convention";

and the suspension of the implementation of Variant C was, in its view, a prerequisite. As for Czechoslovakia, it took the view that recourse to Variant C had been rendered inevitable, both for economic and ecologi-

cal as well as navigational reasons, because of the unlawful suspension and abandonment by Hungary of the works for which provision was made in the 1977 Treaty. Any negotiation had, in its view, to be conducted within the framework of the Treaty and without the implementation of Variant C — described as "provisional" — being called into question.

65. On 5 August 1992, the Czechoslovak representative to the Danube Commission informed it that "work on the severance cutting through of the Danube's flow will begin on 15 October 1992 at the 1,851.759-kilometre line" and indicated the measures that would be taken at the time of the "severance". The Hungarian representative on the Commission protested on 17 August 1992, and called for additional explanations.

During the autumn of 1992, the implementation of Variant C was stepped up. The operations involved in damming the Danube at Čunovo had been scheduled by Czechoslovakia to take place during the second half of October 1992, at a time when the waters of the river are generally at their lowest level. On the initiative of the Commission of the European Communities, trilateral negotiations took place in Brussels on 21 and 22 October 1992, with a view to setting up a committee of experts and defining its terms of reference. On that date, the first phase of the operations leading to the damming of the Danube (the reinforcement of the riverbed and the narrowing of the principal channel) had been completed. The closure of the bed was begun on 23 October 1992 and the construction of the actual dam continued from 24 to 27 October 1992: a pontoon bridge was built over the Danube on Czechoslovak territory using river barges, large stones were thrown into the riverbed and reinforced with concrete, while 80 to 90 per cent of the waters of the Danube were directed into the canal designed to supply the Gabčíkovo power plant. The implementation of Variant C did not, however, come to an end with the diversion of the waters, as there still remained outstanding both reinforcement work on the dam and the building of certain auxiliary structures.

The Court has already referred in paragraph 24 to the meeting held in London on 28 October 1992 under the auspices of the European Communities, in the course of which the parties to the negotiations agreed, *inter alia*, to entrust a tripartite Working Group composed of independent experts (i.e., four experts designated by the European Commission, one designated by Hungary and another by Czechoslovakia) with the task of reviewing the situation created by the implementation of Variant C and making proposals as to urgent measures to adopt. After having worked for one week in Bratislava and one week in Budapest, the Working Group filed its report on 23 November 1992.

66. A summary description of the constituent elements of Variant C appears at paragraph 23 of the present Judgment. For the purposes of the question put to the Court, the official description that should be adopted is, according to Article 2, paragraph 1 *(b)*, of the Special Agreement, the one given in the aforementioned report of the Working Group

of independent experts, and it should be emphasized that, according to the Special Agreement, "Variant C" must be taken to include the consequences "on water and navigation course" of the dam closing off the bed of the Danube.

In the section headed "Variant C Structures and Status of Ongoing Work", one finds, in the report of the Working Group, the following passage:

> "In both countries the original structures for the Gabčíkovo scheme are completed except for the closure of the Danube river at Dunakiliti and the
>
> (1) Completion of the hydropower station (installation and testing of turbines) at Gabčíkovo.
>
> Variant C consists of a complex of structures, located in Czecho-Slovakia . . . The construction of these are planned for two phases. The structures include . . .:
>
> (2) By-pass weir controlling the flow into the river Danube.
> (3) Dam closing the Danubian river bed.
> (4) Floodplain weir (weir in the inundation).
> (5) Intake structure for the Mosoni Danube.
> (6) Intake structure in the power canal.
> (7) Earth barrages/dykes connecting structures.
> (8) Ship lock for smaller ships (15 m × 80 m).
> (9) Spillway weir.
> (10) Hydropower station.
>
> The construction of the structures 1-7 are included in Phase 1, while the remaining 8-10 are a part of Phase 2 scheduled for construction 1993-1995."

* *

67. Czechoslovakia had maintained that proceeding to Variant C and putting it into operation did not constitute internationally wrongful acts; Slovakia adopted this argument. During the proceedings before the Court Slovakia contended that Hungary's decision to suspend and subsequently abandon the construction of works at Dunakiliti had made it impossible for Czechoslovakia to carry out the works as initially contemplated by the 1977 Treaty and that the latter was therefore entitled to proceed with a solution which was as close to the original Project as possible. Slovakia invoked what it described as a "principle of approximate application" to justify the construction and operation of Variant C. It explained that this was the only possibility remaining to it "of fulfilling not only the purposes of the 1977 Treaty, but the continuing obligation to implement it in good faith".

68. Slovakia also maintained that Czechoslovakia was under a duty to mitigate the damage resulting from Hungary's unlawful actions. It claimed

that a State which is confronted with a wrongful act of another State is under an obligation to minimize its losses and, thereby, the damages claimable against the wrongdoing State. It argued furthermore that "Mitigation of damages is also an aspect of the performance of obligations in good faith." For Slovakia, these damages would have been immense in the present case, given the investments made and the additional economic and environmental prejudice which would have resulted from the failure to complete the works at Dunakiliti/Gabčíkovo and to put the system into operation. For this reason, Czechoslovakia was not only entitled, but even obliged, to implement Variant C.

69. Although Slovakia maintained that Czechoslovakia's conduct was lawful, it argued in the alternative that, even were the Court to find otherwise, the putting into operation of Variant C could still be justified as a countermeasure.

70. Hungary for its part contended that Variant C was a material breach of the 1977 Treaty. It considered that Variant C also violated Czechoslovakia's obligations under other treaties, in particular the Convention of 31 May 1976 on the Regulation of Water Management Issues of Boundary Waters concluded at Budapest, and its obligations under general international law.

71. Hungary contended that Slovakia's arguments rested on an erroneous presentation of the facts and the law. Hungary denied, *inter alia*, having committed the slightest violation of its treaty obligations which could have justified the putting into operation of Variant C. It considered that "no such rule" of "approximate application" of a treaty exists in international law; as to the argument derived from "mitigation of damage[s]", it claimed that this has to do with the quantification of loss, and could not serve to excuse conduct which is substantively unlawful. Hungary furthermore stated that Variant C did not satisfy the conditions required by international law for countermeasures, in particular the condition of proportionality.

* *

72. Before dealing with the arguments advanced by the Parties, the Court wishes to make clear that it is aware of the serious problems with which Czechoslovakia was confronted as a result of Hungary's decision to relinquish most of the construction of the System of Locks for which it was responsible by virtue of the 1977 Treaty. Vast investments had been made, the construction at Gabčíkovo was all but finished, the bypass canal was completed, and Hungary itself, in 1991, had duly fulfilled its obligations under the Treaty in this respect in completing work on the tailrace canal. It emerges from the report, dated 31 October 1992, of the tripartite fact-finding mission the Court has referred to in paragraph 24 of the present Judgment, that not using the system would have

led to considerable financial losses, and that it could have given rise to serious problems for the environment.

73. Czechoslovakia repeatedly denounced Hungary's suspension and abandonment of works as a fundamental breach of the 1977 Treaty and consequently could have invoked this breach as a ground for terminating the Treaty; but this would not have brought the Project any nearer to completion. It therefore chose to insist on the implementation of the Treaty by Hungary, and on many occasions called upon the latter to resume performance of its obligations under the Treaty.

When Hungary steadfastly refused to do so — although it had expressed its willingness to pay compensation for damage incurred by Czechoslovakia — and when negotiations stalled owing to the diametrically opposed positions of the parties, Czechoslovakia decided to put the Gabčíkovo system into operation unilaterally, exclusively under its own control and for its own benefit.

74. That decision went through various stages and, in the Special Agreement, the Parties asked the Court to decide whether Czechoslovakia "was entitled to proceed, in November 1991" to Variant C, and "to put [it] into operation from October 1992".

75. With a view to justifying those actions, Slovakia invoked what it described as "the principle of approximate application", expressed by Judge Sir Hersch Lauterpacht in the following terms:

> "It is a sound principle of law that whenever a legal instrument of continuing validity cannot be applied literally owing to the conduct of one of the parties, it must, without allowing that party to take advantage of its own conduct, be applied in a way approximating most closely to its primary object. To do that is to interpret and to give effect to the instrument — not to change it." (*Admissibility of Hearings of Petitioners by the Committee on South West Africa, I.C.J. Reports 1956*, separate opinion of Sir Hersch Lauterpacht, p. 46.)

It claimed that this is a principle of international law and a general principle of law.

76. It is not necessary for the Court to determine whether there is a principle of international law or a general principle of law of "approximate application" because, even if such a principle existed, it could by definition only be employed within the limits of the treaty in question. In the view of the Court, Variant C does not meet that cardinal condition with regard to the 1977 Treaty.

77. As the Court has already observed, the basic characteristic of the 1977 Treaty is, according to Article 1, to provide for the construction of the Gabčíkovo-Nagymaros System of Locks as a joint investment constituting a single and indivisible operational system of works. This element is equally reflected in Articles 8 and 10 of the Treaty providing for joint ownership of the most important works of the Gabčíkovo-Nagymaros Project and for the operation of this joint property as a co-ordinated single unit. By definition all this could not be carried

out by unilateral action. In spite of having a certain external physical similarity with the original Project, Variant C thus differed sharply from it in its legal characteristics.

78. Moreover, in practice, the operation of Variant C led Czechoslovakia to appropriate, essentially for its use and benefit, between 80 and 90 per cent of the waters of the Danube before returning them to the main bed of the river, despite the fact that the Danube is not only a shared international watercourse but also an international boundary river.

Czechoslovakia submitted that Variant C was essentially no more than what Hungary had already agreed to and that the only modifications made were those which had become necessary by virtue of Hungary's decision not to implement its treaty obligations. It is true that Hungary, in concluding the 1977 Treaty, had agreed to the damming of the Danube and the diversion of its waters into the bypass canal. But it was only in the context of a joint operation and a sharing of its benefits that Hungary had given its consent. The suspension and withdrawal of that consent constituted a violation of Hungary's legal obligations, demonstrating, as it did, the refusal by Hungary of joint operation; but that cannot mean that Hungary forfeited its basic right to an equitable and reasonable sharing of the resources of an international watercourse.

The Court accordingly concludes that Czechoslovakia, in putting Variant C into operation, was not applying the 1977 Treaty but, on the contrary, violated certain of its express provisions, and, in so doing, committed an internationally wrongful act.

79. The Court notes that between November 1991 and October 1992, Czechoslovakia confined itself to the execution, on its own territory, of the works which were necessary for the implementation of Variant C, but which could have been abandoned if an agreement had been reached between the parties and did not therefore predetermine the final decision to be taken. For as long as the Danube had not been unilaterally dammed, Variant C had not in fact been applied.

Such a situation is not unusual in international law or, for that matter, in domestic law. A wrongful act or offence is frequently preceded by preparatory actions which are not to be confused with the act or offence itself. It is as well to distinguish between the actual commission of a wrongful act (whether instantaneous or continuous) and the conduct prior to that act which is of a preparatory character and which "does not qualify as a wrongful act" (see for example the Commentary on Article 41 of the Draft Articles on State Responsibility, "Report of the International Law Commission on the work of its forty-eighth session, 6 May-26 July 1996", *Official Records of the General Assembly, Fifty-first Session, Supplement No. 10* (A/51/10), p. 141, and *Yearbook of the International Law Commission*, 1993, Vol. II, Part 2, p. 57, para. 14).

*

80. Slovakia also maintained that it was acting under a duty to mitigate damages when it carried out Variant C. It stated that "It is a general principle of international law that a party injured by the non-performance of another contract party must seek to mitigate the damage he has sustained."

It would follow from such a principle that an injured State which has failed to take the necessary measures to limit the damage sustained would not be entitled to claim compensation for that damage which could have been avoided. While this principle might thus provide a basis for the calculation of damages, it could not, on the other hand, justify an otherwise wrongful act.

81. Since the Court has found that the putting into operation of Variant C constituted an internationally wrongful act, the duty to mitigate damage invoked by Slovakia does not need to be examined further.

*

82. Although it did not invoke the plea of countermeasures as a primary argument, since it did not consider Variant C to be unlawful, Slovakia stated that "Variant C could be presented as a justified countermeasure to Hungary's illegal acts".

The Court has concluded, in paragraph 78 above, that Czechoslovakia committed an internationally wrongful act in putting Variant C into operation. Thus, it now has to determine whether such wrongfulness may be precluded on the ground that the measure so adopted was in response to Hungary's prior failure to comply with its obligations under international law.

83. In order to be justifiable, a countermeasure must meet certain conditions (see *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 127, para. 249. See also *Arbitral Award of 9 December 1978 in the case concerning the Air Service Agreement of 27 March 1946 between the United States of America and France*, United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. XVIII, pp. 443 *et seq.*; also Articles 47 to 50 of the Draft Articles on State Responsibility adopted by the International Law Commission on first reading, "Report of the International Law Commission on the work of its forty-eighth session, 6 May-26 July 1996", *Official Records of the General Assembly, Fifty-first Session, Supplement No. 10* (A/51/10), pp. 144-145.)

In the first place it must be taken in response to a previous international wrongful act of another State and must be directed against that State. Although not primarily presented as a countermeasure, it is clear that Variant C was a response to Hungary's suspension and abandon-

ment of works and that it was directed against that State; and it is equally clear, in the Court's view, that Hungary's actions were internationally wrongful.

84. Secondly, the injured State must have called upon the State committing the wrongful act to discontinue its wrongful conduct or to make reparation for it. It is clear from the facts of the case, as recalled above by the Court (see paragraphs 61 *et seq.*), that Czechoslovakia requested Hungary to resume the performance of its treaty obligations on many occasions.

85. In the view of the Court, an important consideration is that the effects of a countermeasure must be commensurate with the injury suffered, taking account of the rights in question.

In 1929, the Permanent Court of International Justice, with regard to navigation on the River Oder, stated as follows:

> "[the] community of interest in a navigable river becomes the basis of a common legal right, the essential features of which are the perfect equality of all riparian States in the user of the whole course of the river and the exclusion of any preferential privilege of any one riparian State in relation to the others" (*Territorial Jurisdiction of the International Commission of the River Oder, Judgment No. 16, 1929, P.C.I.J., Series A, No. 23,* p. 27).

Modern development of international law has strengthened this principle for non-navigational uses of international watercourses as well, as evidenced by the adoption of the Convention of 21 May 1997 on the Law of the Non-Navigational Uses of International Watercourses by the United Nations General Assembly.

The Court considers that Czechoslovakia, by unilaterally assuming control of a shared resource, and thereby depriving Hungary of its right to an equitable and reasonable share of the natural resources of the Danube — with the continuing effects of the diversion of these waters on the ecology of the riparian area of the Szigetköz — failed to respect the proportionality which is required by international law.

86. Moreover, as the Court has already pointed out (see paragraph 78), the fact that Hungary had agreed in the context of the original Project to the diversion of the Danube (and, in the Joint Contractual Plan, to a provisional measure of withdrawal of water from the Danube) cannot be understood as having authorized Czechoslovakia to proceed with a unilateral diversion of this magnitude without Hungary's consent.

87. The Court thus considers that the diversion of the Danube carried out by Czechoslovakia was not a lawful countermeasure because it was not proportionate. It is therefore not required to pass upon one other condition for the lawfulness of a countermeasure, namely that its purpose must be to induce the wrongdoing State to comply with its obliga-

tions under international law, and that the measure must therefore be reversible.

* *

88. In the light of the conclusions reached above, the Court, in reply to the question put to it in Article 2, paragraph 1 *(b)*, of the Special Agreement (see paragraph 60), finds that Czechoslovakia was entitled to proceed, in November 1991, to Variant C in so far as it then confined itself to undertaking works which did not predetermine the final decision to be taken by it. On the other hand, Czechoslovakia was not entitled to put that Variant into operation from October 1992.

* * *

89. By the terms of Article 2, paragraph 1 *(c)*, of the Special Agreement, the Court is asked, thirdly, to determine "what are the legal effects of the notification, on 19 May 1992, of the termination of the Treaty by the Republic of Hungary".

The Court notes that it has been asked to determine what are the legal effects of the notification given on 19 May 1992 of the termination of the Treaty. It will consequently confine itself to replying to this question.

90. The Court will recall that, by early 1992, the respective parties to the 1977 Treaty had made clear their positions with regard to the recourse by Czechoslovakia to Variant C. Hungary in a Note Verbale of 14 February 1992 had made clear its view that Variant C was a contravention of the 1977 Treaty (see paragraph 64 above); Czechoslovakia insisted on the implementation of Variant C as a condition for further negotiation. On 26 February 1992, in a letter to his Czechoslovak counterpart, the Prime Minister of Hungary described the impending diversion of the Danube as "a serious breach of international law" and stated that, unless work was suspended while further enquiries took place, "the Hungarian Government [would] have no choice but to respond to this situation of necessity by terminating the 1977 inter-State Treaty". In a Note Verbale dated 18 March 1992, Czechoslovakia reaffirmed that, while it was prepared to continue negotiations "on every level", it could not agree "to stop all work on the provisional solution".

On 24 March 1992, the Hungarian Parliament passed a resolution authorizing the Government to terminate the 1977 Treaty if Czechoslovakia did not stop the works by 30 April 1992. On 13 April 1992, the Vice-President of the Commission of the European Communities wrote to both parties confirming the willingness of the Commission to chair a committee of independent experts including representatives of the two countries, in order to assist the two Governments in identifying a mutu-

ally acceptable solution. Commission involvement would depend on each Government not taking "any steps . . . which would prejudice possible actions to be undertaken on the basis of the report's findings". The Czechoslovak Prime Minister stated in a letter to the Hungarian Prime Minister dated 23 April 1992, that his Government continued to be interested in the establishment of the proposed committee "without any preliminary conditions"; criticizing Hungary's approach, he refused to suspend work on the provisional solution, but added, "in my opinion, there is still time, until the damming of the Danube (i.e., until October 31, 1992), for resolving disputed questions on the basis of agreement of both States".

On 7 May 1992, Hungary, in the very resolution in which it decided on the termination of the Treaty, made a proposal, this time to the Slovak Prime Minister, for a six-month suspension of work on Variant C. The Slovak Prime Minister replied that the Slovak Government remained ready to negotiate, but considered preconditions "inappropriate".

91. On 19 May 1992, the Hungarian Government transmitted to the Czechoslovak Government a Declaration notifying it of the termination by Hungary of the 1977 Treaty as of 25 May 1992. In a letter of the same date from the Hungarian Prime Minister to the Czechoslovak Prime Minister, the immediate cause for termination was specified to be Czechoslovakia's refusal, expressed in its letter of 23 April 1992, to suspend the work on Variant C during mediation efforts of the Commission of the European Communities. In its Declaration, Hungary stated that it could not accept the deleterious effects for the environment and the conservation of nature of the implementation of Variant C which would be practically equivalent to the dangers caused by the realization of the original Project. It added that Variant C infringed numerous international agreements and violated the territorial integrity of the Hungarian State by diverting the natural course of the Danube.

* *

92. During the proceedings, Hungary presented five arguments in support of the lawfulness, and thus the effectiveness, of its notification of termination. These were the existence of a state of necessity; the impossibility of performance of the Treaty; the occurrence of a fundamental change of circumstances; the material breach of the Treaty by Czechoslovakia; and, finally, the development of new norms of international environmental law. Slovakia contested each of these grounds.

93. On the first point, Hungary stated that, as Czechoslovakia had "remained inflexible" and continued with its implementation of Variant C, "a temporary state of necessity eventually became permanent, justifying termination of the 1977 Treaty".

Slovakia, for its part, denied that a state of necessity existed on the

basis of what it saw as the scientific facts; and argued that even if such a state of necessity had existed, this would not give rise to a right to terminate the Treaty under the Vienna Convention of 1969 on the Law of Treaties.

94. Hungary's second argument relied on the terms of Article 61 of the Vienna Convention, which is worded as follows:

> "*Article 61*
>
> *Supervening Impossibility of Performance*
>
> 1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.
>
> 2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty."

Hungary declared that it could not be "obliged to fulfil a practically impossible task, namely to construct a barrage system on its own territory that would cause irreparable environmental damage". It concluded that

> "By May 1992 the essential object of the Treaty — an economic joint investment which was consistent with environmental protection and which was operated by the two parties jointly — had permanently disappeared, and the Treaty had thus become impossible to perform."

In Hungary's view, the "object indispensable for the execution of the treaty", whose disappearance or destruction was required by Article 61 of the Vienna Convention, did not have to be a physical object, but could also include, in the words of the International Law Commission, "a legal situation which was the raison d'être of the rights and obligations".

Slovakia claimed that Article 61 was the only basis for invoking impossibility of performance as a ground for termination, that paragraph 1 of that Article clearly contemplated physical "disappearance or destruction" of the object in question, and that, in any event, paragraph 2 precluded the invocation of impossibility "if the impossibility is the result of a breach by that party . . . of an obligation under the treaty".

95. As to "fundamental change of circumstances", Hungary relied on Article 62 of the Vienna Convention on the Law of Treaties which states as follows:

"*Article 62*

Fundamental Change of Circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

(a) if the treaty establishes a boundary; or

(b) if the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty."

Hungary identified a number of "substantive elements" present at the conclusion of the 1977 Treaty which it said had changed fundamentally by the date of notification of termination. These included the notion of "socialist integration", for which the Treaty had originally been a "vehicle", but which subsequently disappeared; the "single and indivisible operational system", which was to be replaced by a unilateral scheme; the fact that the basis of the planned joint investment had been overturned by the sudden emergence of both States into a market economy; the attitude of Czechoslovakia which had turned the "framework treaty" into an "immutable norm"; and, finally, the transformation of a treaty consistent with environmental protection into "a prescription for environmental disaster".

Slovakia, for its part, contended that the changes identified by Hungary had not altered the nature of the obligations under the Treaty from those originally undertaken, so that no entitlement to terminate it arose from them.

96. Hungary further argued that termination of the Treaty was justified by Czechoslovakia's material breaches of the Treaty, and in this regard it invoked Article 60 of the Vienna Convention on the Law of Treaties, which provides:

"*Article 60*

Termination or Suspension of the Operation of a Treaty as a Consequence of Its Breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:

(i) in the relations between themselves and the defaulting State, or

(ii) as between all the parties;

(b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;

(c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

(a) a repudiation of the treaty not sanctioned by the present Convention; or

(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties."

Hungary claimed in particular that Czechoslovakia violated the 1977 Treaty by proceeding to the construction and putting into operation of Variant C, as well as failing to comply with its obligations under Articles 15 and 19 of the Treaty. Hungary further maintained that Czechoslovakia had breached other international conventions (among them the Convention of 31 May 1976 on the Regulation of Water Management Issues of Boundary Waters) and general international law.

Slovakia denied that there had been, on the part of Czechoslovakia or on its part, any material breach of the obligations to protect water quality and nature, and claimed that Variant C, far from being a breach, was devised as "the best possible approximate application" of the Treaty. It furthermore denied that Czechoslovakia had acted in breach of other international conventions or general international law.

97. Finally, Hungary argued that subsequently imposed requirements of international law in relation to the protection of the environment precluded performance of the Treaty. The previously existing obligation not to cause substantive damage to the territory of another State had, Hungary claimed, evolved into an *erga omnes* obligation of prevention of damage pursuant to the "precautionary principle". On this basis, Hungary argued, its termination was "forced by the other party's refusal to suspend work on Variant C".

Slovakia argued, in reply, that none of the intervening developments in environmental law gave rise to norms of *jus cogens* that would override the Treaty. Further, it contended that the claim by Hungary to be entitled to take action could not in any event serve as legal justification for termination of the Treaty under the law of treaties, but belonged rather "to the language of self-help or reprisals".

* *

98. The question, as formulated in Article 2, paragraph 1 *(c)*, of the Special Agreement, deals with treaty law since the Court is asked to determine what the legal effects are of the notification of termination of the Treaty. The question is whether Hungary's notification of 19 May 1992 brought the 1977 Treaty to an end, or whether it did not meet the requirements of international law, with the consequence that it did not terminate the Treaty.

99. The Court has referred earlier to the question of the applicability to the present case of the Vienna Convention of 1969 on the Law of Treaties. The Vienna Convention is not directly applicable to the 1977 Treaty inasmuch as both States ratified that Convention only after the Treaty's conclusion. Consequently only those rules which are declaratory of customary law are applicable to the 1977 Treaty. As the Court has already stated above (see paragraph 46), this is the case, in many respects, with Articles 60 to 62 of the Vienna Convention, relating to termination or suspension of the operation of a treaty. On this, the Parties, too, were broadly in agreement.

100. The 1977 Treaty does not contain any provision regarding its termination. Nor is there any indication that the parties intended to admit the possibility of denunciation or withdrawal. On the contrary, the Treaty establishes a long-standing and durable régime of joint investment

and joint operation. Consequently, the parties not having agreed otherwise, the Treaty could be terminated only on the limited grounds enumerated in the Vienna Convention.

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101. The Court will now turn to the first ground advanced by Hungary, that of the state of necessity. In this respect, the Court will merely observe that, even if a state of necessity is found to exist, it is not a ground for the termination of a treaty. It may only be invoked to exonerate from its responsibility a State which has failed to implement a treaty. Even if found justified, it does not terminate a Treaty; the Treaty may be ineffective as long as the condition of necessity continues to exist; it may in fact be dormant, but — unless the parties by mutual agreement terminate the Treaty — it continues to exist. As soon as the state of necessity ceases to exist, the duty to comply with treaty obligations revives.

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102. Hungary also relied on the principle of the impossibility of performance as reflected in Article 61 of the Vienna Convention on the Law of Treaties. Hungary's interpretation of the wording of Article 61 is, however, not in conformity with the terms of that Article, nor with the intentions of the Diplomatic Conference which adopted the Convention. Article 61, paragraph 1, requires the "permanent disappearance or destruction of an object indispensable for the execution" of the treaty to justify the termination of a treaty on grounds of impossibility of performance. During the conference, a proposal was made to extend the scope of the article by including in it cases such as the impossibility to make certain payments because of serious financial difficulties (*Official Records of the United Nations Conference on the Law of Treaties, First Session, Vienna, 26 March-24 May 1968*, doc. A/CONF.39/11, Summary records of the plenary meetings and of the meetings of the Committee of the Whole, 62nd Meeting of the Committee of the Whole, pp. 361-365). Although it was recognized that such situations could lead to a preclusion of the wrongfulness of non-performance by a party of its treaty obligations, the participating States were not prepared to consider such situations to be a ground for terminating or suspending a treaty, and preferred to limit themselves to a narrower concept.

103. Hungary contended that the essential object of the Treaty — an economic joint investment which was consistent with environmental protection and which was operated by the two contracting parties jointly — had permanently disappeared and that the Treaty had thus become impossible to perform. It is not necessary for the Court to determine whether the term "object" in Article 61 can also be understood to embrace a legal régime as in any event, even if that were the case, it

would have to conclude that in this instance that régime had not definitively ceased to exist. The 1977 Treaty — and in particular its Articles 15, 19 and 20 — actually made available to the parties the necessary means to proceed at any time, by negotiation, to the required readjustments between economic imperatives and ecological imperatives. The Court would add that, if the joint exploitation of the investment was no longer possible, this was originally because Hungary did not carry out most of the works for which it was responsible under the 1977 Treaty; Article 61, paragraph 2, of the Vienna Convention expressly provides that impossibility of performance may not be invoked for the termination of a treaty by a party to that treaty when it results from that party's own breach of an obligation flowing from that treaty.

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104. Hungary further argued that it was entitled to invoke a number of events which, cumulatively, would have constituted a fundamental change of circumstances. In this respect it specified profound changes of a political nature, the Project's diminishing economic viability, the progress of environmental knowledge and the development of new norms and prescriptions of international environmental law (see paragraph 95 above).

The Court recalls that, in the *Fisheries Jurisdiction* case, it stated that

> "Article 62 of the Vienna Convention on the Law of Treaties, . . . may in many respects be considered as a codification of existing customary law on the subject of the termination of a treaty relationship on account of change of circumstances" (*I.C.J. Reports 1973*, p. 63, para. 36).

The prevailing political situation was certainly relevant for the conclusion of the 1977 Treaty. But the Court will recall that the Treaty provided for a joint investment programme for the production of energy, the control of floods and the improvement of navigation on the Danube. In the Court's view, the prevalent political conditions were thus not so closely linked to the object and purpose of the Treaty that they constituted an essential basis of the consent of the parties and, in changing, radically altered the extent of the obligations still to be performed. The same holds good for the economic system in force at the time of the conclusion of the 1977 Treaty. Besides, even though the estimated profitability of the Project might have appeared less in 1992 than in 1977, it does not appear from the record before the Court that it was bound to diminish to such an extent that the treaty obligations of the parties would have been radically transformed as a result.

The Court does not consider that new developments in the state of

environmental knowledge and of environmental law can be said to have been completely unforeseen. What is more, the formulation of Articles 15, 19 and 20, designed to accommodate change, made it possible for the parties to take account of such developments and to apply them when implementing those treaty provisions.

The changed circumstances advanced by Hungary are, in the Court's view, not of such a nature, either individually or collectively, that their effect would radically transform the extent of the obligations still to be performed in order to accomplish the Project. A fundamental change of circumstances must have been unforeseen; the existence of the circumstances at the time of the Treaty's conclusion must have constituted an essential basis of the consent of the parties to be bound by the Treaty. The negative and conditional wording of Article 62 of the Vienna Convention on the Law of Treaties is a clear indication moreover that the stability of treaty relations requires that the plea of fundamental change of circumstances be applied only in exceptional cases.

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105. The Court will now examine Hungary's argument that it was entitled to terminate the 1977 Treaty on the ground that Czechoslovakia had violated its Articles 15, 19 and 20 (as well as a number of other conventions and rules of general international law); and that the planning, construction and putting into operation of Variant C also amounted to a material breach of the 1977 Treaty.

106. As to that part of Hungary's argument which was based on other treaties and general rules of international law, the Court is of the view that it is only a material breach of the treaty itself, by a State party to that treaty, which entitles the other party to rely on it as a ground for terminating the treaty. The violation of other treaty rules or of rules of general international law may justify the taking of certain measures, including countermeasures, by the injured State, but it does not constitute a ground for termination under the law of treaties.

107. Hungary contended that Czechoslovakia had violated Articles 15, 19 and 20 of the Treaty by refusing to enter into negotiations with Hungary in order to adapt the Joint Contractual Plan to new scientific and legal developments regarding the environment. Articles 15, 19 and 20 oblige the parties jointly to take, on a continuous basis, appropriate measures necessary for the protection of water quality, of nature and of fishing interests.

Articles 15 and 19 expressly provide that the obligations they contain shall be implemented by the means specified in the Joint Contractual Plan. The failure of the parties to agree on those means cannot, on the basis of the record before the Court, be attributed solely to one party.

The Court has not found sufficient evidence to conclude that Czechoslovakia had consistently refused to consult with Hungary about the desirability or necessity of measures for the preservation of the environment. The record rather shows that, while both parties indicated, in principle, a willingness to undertake further studies, in practice Czechoslovakia refused to countenance a suspension of the works at Dunakiliti and, later, on Variant C, while Hungary required suspension as a prior condition of environmental investigation because it claimed continuation of the work would prejudice the outcome of negotiations. In this regard it cannot be left out of consideration that Hungary itself, by suspending the works at Nagymaros and Dunakiliti, contributed to the creation of a situation which was not conducive to the conduct of fruitful negotiations.

108. Hungary's main argument for invoking a material breach of the Treaty was the construction and putting into operation of Variant C. As the Court has found in paragraph 79 above, Czechoslovakia violated the Treaty only when it diverted the waters of the Danube into the bypass canal in October 1992. In constructing the works which would lead to the putting into operation of Variant C, Czechoslovakia did not act unlawfully.

In the Court's view, therefore, the notification of termination by Hungary on 19 May 1992 was premature. No breach of the Treaty by Czechoslovakia had yet taken place and consequently Hungary was not entitled to invoke any such breach of the Treaty as a ground for terminating it when it did.

109. In this regard, it should be noted that, according to Hungary's Declaration of 19 May 1992, the termination of the 1977 Treaty was to take effect as from 25 May 1992, that is only six days later. Both Parties agree that Articles 65 to 67 of the Vienna Convention on the Law of Treaties, if not codifying customary law, at least generally reflect customary international law and contain certain procedural principles which are based on an obligation to act in good faith. As the Court stated in its Advisory Opinion on the *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt* (in which case the Vienna Convention did not apply):

> "Precisely what periods of time may be involved in the observance of the duties to consult and negotiate, and what period of notice of termination should be given, are matters which necessarily vary according to the requirements of the particular case. In principle, therefore, it is for the parties in each case to determine the length of those periods by consultation and negotiation in good faith." (*I.C.J. Reports 1980*, p. 96, para. 49.)

The termination of the Treaty by Hungary was to take effect six days

after its notification. On neither of these dates had Hungary suffered injury resulting from acts of Czechoslovakia. The Court must therefore confirm its conclusion that Hungary's termination of the Treaty was premature.

110. Nor can the Court overlook that Czechoslovakia committed the internationally wrongful act of putting into operation Variant C as a result of Hungary's own prior wrongful conduct. As was stated by the Permanent Court of International Justice:

> "It is, moreover, a principle generally accepted in the jurisprudence of international arbitration, as well as by municipal courts, that one Party cannot avail himself of the fact that the other has not fulfilled some obligation or has not had recourse to some means of redress, if the former Party has, by some illegal act, prevented the latter from fulfilling the obligation in question, or from having recourse to the tribunal which would have been open to him." (*Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 31.)

Hungary, by its own conduct, had prejudiced its right to terminate the Treaty; this would still have been the case even if Czechoslovakia, by the time of the purported termination, had violated a provision essential to the accomplishment of the object or purpose of the Treaty.

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111. Finally, the Court will address Hungary's claim that it was entitled to terminate the 1977 Treaty because new requirements of international law for the protection of the environment precluded performance of the Treaty.

112. Neither of the Parties contended that new peremptory norms of environmental law had emerged since the conclusion of the 1977 Treaty, and the Court will consequently not be required to examine the scope of Article 64 of the Vienna Convention on the Law of Treaties. On the other hand, the Court wishes to point out that newly developed norms of environmental law are relevant for the implementation of the Treaty and that the parties could, by agreement, incorporate them through the application of Articles 15, 19 and 20 of the Treaty. These articles do not contain specific obligations of performance but require the parties, in carrying out their obligations to ensure that the quality of water in the Danube is not impaired and that nature is protected, to take new environmental norms into consideration when agreeing upon the means to be specified in the Joint Contractual Plan.

By inserting these evolving provisions in the Treaty, the parties recognized the potential necessity to adapt the Project. Consequently, the

Treaty is not static, and is open to adapt to emerging norms of international law. By means of Articles 15 and 19, new environmental norms can be incorporated in the Joint Contractual Plan.

The responsibility to do this was a joint responsibility. The obligations contained in Articles 15, 19 and 20 are, by definition, general and have to be transformed into specific obligations of performance through a process of consultation and negotiation. Their implementation thus requires a mutual willingness to discuss in good faith actual and potential environmental risks.

It is all the more important to do this because as the Court recalled in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn" (*I.C.J. Reports 1996*, p. 241, para. 29; see also paragraph 53 above).

The awareness of the vulnerability of the environment and the recognition that environmental risks have to be assessed on a continuous basis have become much stronger in the years since the Treaty's conclusion. These new concerns have enhanced the relevance of Articles 15, 19 and 20.

113. The Court recognizes that both Parties agree on the need to take environmental concerns seriously and to take the required precautionary measures, but they fundamentally disagree on the consequences this has for the joint Project. In such a case, third-party involvement may be helpful and instrumental in finding a solution, provided each of the Parties is flexible in its position.

114. Finally, Hungary maintained that by their conduct both parties had repudiated the Treaty and that a bilateral treaty repudiated by both parties cannot survive. The Court is of the view, however, that although it has found that both Hungary and Czechoslovakia failed to comply with their obligations under the 1977 Treaty, this reciprocal wrongful conduct did not bring the Treaty to an end nor justify its termination. The Court would set a precedent with disturbing implications for treaty relations and the integrity of the rule *pacta sunt servanda* if it were to conclude that a treaty in force between States, which the parties have implemented in considerable measure and at great cost over a period of years, might be unilaterally set aside on grounds of reciprocal non-compliance. It would be otherwise, of course, if the parties decided to terminate the Treaty by mutual consent. But in this case, while Hungary purported to terminate the Treaty, Czechoslovakia consistently resisted this act and declared it to be without legal effect.

* *

115. In the light of the conclusions it has reached above, the Court, in reply to the question put to it in Article 2, paragraph 1 *(c)*, of the Special Agreement (see paragraph 89), finds that the notification of termination by Hungary of 19 May 1992 did not have the legal effect of terminating the 1977 Treaty and related instruments.

* * *

116. In Article 2, paragraph 2, of the Special Agreement, the Court is requested to determine the legal consequences, including the rights and obligations for the Parties, arising from its Judgment on the questions formulated in paragraph 1. In Article 5 of the Special Agreement the Parties agreed to enter into negotiations on the modalities for the execution of the Judgment immediately after the Court has rendered it.

117. The Court must first turn to the question whether Slovakia became a party to the 1977 Treaty as successor to Czechoslovakia. As an alternative argument, Hungary contended that, even if the Treaty survived the notification of termination, in any event it ceased to be in force as a treaty on 31 December 1992, as a result of the "disappearance of one of the parties". On that date Czechoslovakia ceased to exist as a legal entity, and on 1 January 1993 the Czech Republic and the Slovak Republic came into existence.

118. According to Hungary, "There is no rule of international law which provides for automatic succession to bilateral treaties on the disappearance of a party" and such a treaty will not survive unless another State succeeds to it by express agreement between that State and the remaining party. While the second paragraph of the Preamble to the Special Agreement recites that

> "the Slovak Republic is one of the two successor States of the Czech and Slovak Federal Republic and the sole successor State in respect of rights and obligations relating to the Gabčíkovo-Nagymaros Project",

Hungary sought to distinguish between, on the one hand, rights and obligations such as "continuing property rights" under the 1977 Treaty, and, on the other hand, the treaty itself. It argued that, during the negotiations leading to signature of the Special Agreement, Slovakia had proposed a text in which it would have been expressly recognized "as the successor to the Government of the CSFR" with regard to the 1977 Treaty, but that Hungary had rejected that formulation. It contended that it had never agreed to accept Slovakia as successor to the 1977 Treaty. Hungary referred to diplomatic exchanges in which the two Parties had each submitted to the other lists of those bilateral treaties which they respectively wished should continue in force between them, for negotiation on a case-

by-case basis; and Hungary emphasized that no agreement was ever reached with regard to the 1977 Treaty.

119. Hungary claimed that there was no rule of succession which could operate in the present case to override the absence of consent.

Referring to Article 34 of the Vienna Convention of 23 August 1978 on Succession of States in respect of Treaties, in which "a rule of automatic succession to all treaties is provided for", based on the principle of continuity, Hungary argued not only that it never signed or ratified the Convention, but that the "concept of automatic succession" contained in that Article was not and is not, and has never been accepted as, a statement of general international law.

Hungary further submitted that the 1977 Treaty did not create "obligations and rights . . . relating to the régime of a boundary" within the meaning of Article 11 of that Convention, and noted that the existing course of the boundary was unaffected by the Treaty. It also denied that the Treaty was a "localized" treaty, or that it created rights "considered as attaching to [the] territory" within the meaning of Article 12 of the 1978 Convention, which would, as such, be unaffected by a succession of States. The 1977 Treaty was, Hungary insisted, simply a joint investment. Hungary's conclusion was that there is no basis on which the Treaty could have survived the disappearance of Czechoslovakia so as to be binding as between itself and Slovakia.

120. According to Slovakia, the 1977 Treaty, which was not lawfully terminated by Hungary's notification in May 1992, remains in force between itself, as successor State, and Hungary.

Slovakia acknowledged that there was no agreement on succession to the Treaty between itself and Hungary. It relied instead, in the first place, on the "general rule of continuity which applies in the case of dissolution"; it argued, secondly, that the Treaty is one "attaching to [the] territory" within the meaning of Article 12 of the 1978 Vienna Convention, and that it contains provisions relating to a boundary.

121. In support of its first argument Slovakia cited Article 34 of the 1978 Vienna Convention, which it claimed is a statement of customary international law, and which imposes the principle of automatic succession as the rule applicable in the case of dissolution of a State where the predecessor State has ceased to exist. Slovakia maintained that State practice in cases of dissolution tends to support continuity as the rule to be followed with regard to bilateral treaties. Slovakia having succeeded to part of the territory of the former Czechoslovakia, this would be the rule applicable in the present case.

122. Slovakia's second argument rests on "the principle of *ipso jure* continuity of treaties of a territorial or localized character". This rule, Slovakia said, is embodied in Article 12 of the 1978 Convention, which in part provides as follows:

"*Article 12*
Other Territorial Regimes

. . . . . .

2. A succession of States does not as such affect:

(a) obligations relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of a group of States or of all States and considered as attaching to that territory;

(b) rights established by a treaty for the benefit of a group of States or of all States and relating to the use of any territory, or to restrictions upon its use, and considered as attaching to that territory."

According to Slovakia, "[this] article [too] can be considered to be one of those provisions of the Vienna Convention that represent the codification of customary international law". The 1977 Treaty is said to fall within its scope because of its "specific characteristics . . . which place it in the category of treaties of a localized or territorial character". Slovakia also described the Treaty as one "which contains boundary provisions and lays down a specific territorial régime" which operates in the interest of all Danube riparian States, and as "a dispositive treaty, creating rights *in rem*, independently of the legal personality of its original signatories". Here, Slovakia relied on the recognition by the International Law Commission of the existence of a "special rule" whereby treaties "intended to establish an objective régime" must be considered as binding on a successor State (*Official Records of the United Nations Conference on the Succession of States in respect of Treaties*, Vol. III, doc. A/CONF.80/16/Add.2, p. 34). Thus, in Slovakia's view, the 1977 Treaty was not one which could have been terminated through the disappearance of one of the original parties.

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123. The Court does not find it necessary for the purposes of the present case to enter into a discussion of whether or not Article 34 of the 1978 Convention reflects the state of customary international law. More relevant to its present analysis is the particular nature and character of the 1977 Treaty. An examination of this Treaty confirms that, aside from its undoubted nature as a joint investment, its major elements were the proposed construction and joint operation of a large, integrated and indivisible complex of structures and installations on specific parts of the respective territories of Hungary and Czechoslovakia along the Danube. The Treaty also established the navigational régime for an important sector of an international waterway, in particular the relocation of the main international shipping lane to the bypass canal. In so doing, it inescapably created a situation in which the interests of other users of the Dan-

ube were affected. Furthermore, the interests of third States were expressly acknowledged in Article 18, whereby the parties undertook to ensure "uninterrupted and safe navigation on the international fairway" in accordance with their obligations under the Convention of 18 August 1948 concerning the Régime of Navigation on the Danube.

In its Commentary on the Draft Articles on Succession of States in respect of Treaties, adopted at its twenty-sixth session, the International Law Commission identified "treaties of a territorial character" as having been regarded both in traditional doctrine and in modern opinion as unaffected by a succession of States (*Official Records of the United Nations Conference on the Succession of States in respect of Treaties*, Vol. III, doc. A/CONF.80/16/Add.2, p. 27, para. 2). The draft text of Article 12, which reflects this principle, was subsequently adopted unchanged in the 1978 Vienna Convention. The Court considers that Article 12 reflects a rule of customary international law; it notes that neither of the Parties disputed this. Moreover, the Commission indicated that "treaties concerning water rights or navigation on rivers are commonly regarded as candidates for inclusion in the category of territorial treaties" (*ibid.*, p. 33, para. 26). The Court observes that Article 12, in providing only, without reference to the treaty itself, that rights and obligations of a territorial character established by a treaty are unaffected by a succession of States, appears to lend support to the position of Hungary rather than of Slovakia. However the Court concludes that this formulation was devised rather to take account of the fact that, in many cases, treaties which had established boundaries or territorial régimes were no longer in force (*ibid.*, pp. 26-37). Those that remained in force would nonetheless bind a successor State.

Taking all these factors into account, the Court finds that the content of the 1977 Treaty indicates that it must be regarded as establishing a territorial régime within the meaning of Article 12 of the 1978 Vienna Convention. It created rights and obligations "attaching to" the parts of the Danube to which it relates; thus the Treaty itself cannot be affected by a succession of States. The Court therefore concludes that the 1977 Treaty became binding upon Slovakia on 1 January 1993.

124. It might be added that Slovakia also contended that, while still a constituent part of Czechoslovakia, it played a role in the development of the Project, as it did later, in the most critical phase of negotiations with Hungary about the fate of the Project. The evidence shows that the Slovak Government passed resolutions prior to the signing of the 1977 Treaty in preparation for its implementation; and again, after signature, expressing its support for the Treaty. It was the Slovak Prime Minister who attended the meeting held in Budapest on 22 April 1991 as the Plenipotentiary of the Federal Government to discuss questions arising out of the Project. It was his successor as Prime Minister who notified his Hun-

garian counterpart by letter on 30 July 1991 of the decision of the Government of the Slovak Republic, as well as of the Government of the Czech and Slovak Federal Republic, to proceed with the "provisional solution" (see paragraph 63 above); and who wrote again on 18 December 1991 to the Hungarian Minister without Portfolio, renewing an earlier suggestion that a joint commission be set up under the auspices of the European Communities to consider possible solutions. The Slovak Prime Minister also wrote to the Hungarian Prime Minister in May 1992 on the subject of the decision taken by the Hungarian Government to terminate the Treaty, informing him of resolutions passed by the Slovak Government in response.

It is not necessary, in the light of the conclusions reached in paragraph 123 above, for the Court to determine whether there are legal consequences to be drawn from the prominent part thus played by the Slovak Republic. Its role does, however, deserve mention.

* * *

125. The Court now turns to the other legal consequences arising from its Judgment.

As to this, Hungary argued that future relations between the Parties, as far as Variant C is concerned, are not governed by the 1977 Treaty. It claims that it is entitled, pursuant to the Convention of 1976 on the Regulation of Water Management Issues of Boundary Waters, to "50% of the natural flow of the Danube at the point at which it crosses the boundary below Čunovo" and considers that the Parties

> "are obliged to enter into negotiations in order to produce the result that the water conditions along the area from below Čunovo to below the confluence at Sap become jointly defined water conditions as required by Article 3 *(a)* of the 1976 Convention".

Hungary moreover indicated that any mutually accepted long-term discharge régime must be "capable of avoiding damage, including especially damage to biodiversity prohibited by the [1992 Rio Convention on Biological Diversity]". It added that "a joint environmental impact assessment of the region and of the future of Variant C structures in the context of the sustainable development of the region" should be carried out.

126. Hungary also raised the question of financial accountability for the failure of the original project and stated that both Parties accept the fact that the other has "proprietary and financial interests in the residues of the original Project and that an accounting has to be carried out". Furthermore, it noted that:

> "Other elements of damage associated with Variant C on Hungarian territory also have to be brought into the accounting . . ., as well as electricity production since the diversion",

and that: "The overall situation is a complex one, and it may be most easily resolved by some form of lump sum settlement."

127. Hungary stated that Slovakia had incurred international responsibility and should make reparation for the damage caused to Hungary by the operation of Variant C. In that connection, it referred, in the context of reparation of the damage to the environment, to the rule of *restitutio in integrum*, and called for the re-establishment of "joint control by the two States over the installations maintained as they are now", and the "re-establishment of the flow of [the] waters to the level at which it stood prior to the unlawful diversion of the river". It also referred to reparation of the damage to the fauna, the flora, the soil, the sub-soil, the groundwater and the aquifer, the damages suffered by the Hungarian population on account of the increase in the uncertainties weighing on its future *(pretium doloris)*, and the damage arising from the unlawful use, in order to divert the Danube, of installations over which the two Parties exercised joint ownership.

Lastly, Hungary called for the "cessation of the continuous unlawful acts" and a "guarantee that the same actions will not be repeated", and asked the Court to order "the permanent suspension of the operation of Variant C".

128. Slovakia argued for its part that Hungary should put an end to its unlawful conduct and cease to impede the application of the 1977 Treaty, taking account of its "flexibility and of the important possibilities of development for which it provides, or even of such amendments as might be made to it by agreement between the Parties, further to future negotiations". It stated that joint operations could resume on a basis jointly agreed upon and emphasized the following:

> "whether Nagymaros is built as originally planned, or built elsewhere in a different form, or, indeed, not built at all, is a question to be decided by the Parties some time in the future.
>
> . . . . . .
>
> Provided the bypass canal and the Gabčíkovo Power-station and Locks — both part of the original Treaty, and not part of Variant C — remain operational and economically viable and efficient, Slovakia is prepared to negotiate over the future roles of Dunakiliti and Čunovo, bearing Nagymaros in mind."

It indicated that the Gabčíkovo power plant would not operate in peak mode "if the evidence of environmental damage [was] clear and accepted by both Parties". Slovakia noted that the Parties appeared to agree that an accounting should be undertaken "so that, guided by the Court's findings on responsibility, the Parties can try to reach a global settlement". It

added that the Parties would have to agree on how the sums due are to be paid.

129. Slovakia stated that Hungary must make reparation for the deleterious consequences of its failures to comply with its obligations, "whether they relate to its unlawful suspensions and abandonments of works or to its formal repudiation of the Treaty as from May 1992", and that compensation should take the form of a *restitutio in integrum*. It indicated that "Unless the Parties come to some other arrangement by concluding an agreement, *restitutio in integrum* ought to take the form of a *return* by Hungary, *at a future time*, to its obligations under the Treaty" and that "For compensation to be 'full' . . ., to 'wipe out all the consequences of the illegal act' . . ., a payment of compensation must . . . *be added* to the *restitutio* . . ." Slovakia claims compensation which must include both interest and loss of profits and should cover the following heads of damage, which it offers by way of guidance:

(1) Losses caused to Slovakia in the Gabčíkovo sector: costs incurred from 1990 to 1992 by Czechoslovakia in protecting the structures of the G/N project and adjacent areas; the cost of maintaining the old bed of the River Danube pending the availability of the new navigation canal, from 1990 to 1992; losses to the Czechoslovak navigation authorities due to the unavailability of the bypass canal from 1990 to 1992; construction costs of Variant C (1990-1992).

(2) Losses caused to Slovakia in the Nagymaros sector: losses in the field of navigation and flood protection incurred since 1992 by Slovakia due to the failure of Hungary to proceed with the works.

(3) Loss of electricity production.

Slovakia also calls for Hungary to "give the appropriate guarantees that it will abstain from preventing the application of the Treaty and the continuous operation of the system". It argued from that standpoint that it is entitled "to be given a formal assurance that the internationally wrongful acts of Hungary will not recur", and it added that "the maintenance of the closure of the Danube at Čunovo constitutes a guarantee of that kind", unless Hungary gives an equivalent guarantee "within the framework of the negotiations that are to take place between the Parties".

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130. The Court observes that the part of its Judgment which answers the questions in Article 2, paragraph 1, of the Special Agreement has a declaratory character. It deals with the *past* conduct of the Parties and determines the lawfulness or unlawfulness of that conduct between 1989 and 1992 as well as its effects on the existence of the Treaty.

131. Now the Court has, on the basis of the foregoing findings, to

determine what the *future* conduct of the Parties should be. This part of the Judgment is prescriptive rather than declaratory because it determines what the rights and obligations of the Parties are. The Parties will have to seek agreement on the modalities of the execution of the Judgment in the light of this determination, as they agreed to do in Article 5 of the Special Agreement.

* *

132. In this regard it is of cardinal importance that the Court has found that the 1977 Treaty is still in force and consequently governs the relationship between the Parties. That relationship is also determined by the rules of other relevant conventions to which the two States are party, by the rules of general international law and, in this particular case, by the rules of State responsibility; but it is governed, above all, by the applicable rules of the 1977 Treaty as a *lex specialis*.

133. The Court, however, cannot disregard the fact that the Treaty has not been fully implemented by either party for years, and indeed that their acts of commission and omission have contributed to creating the factual situation that now exists. Nor can it overlook that factual situation — or the practical possibilities and impossibilities to which it gives rise — when deciding on the legal requirements for the future conduct of the Parties.

This does not mean that facts — in this case facts which flow from wrongful conduct — determine the law. The principle *ex injuria jus non oritur* is sustained by the Court's finding that the legal relationship created by the 1977 Treaty is preserved and cannot in this case be treated as voided by unlawful conduct.

What is essential, therefore, is that the factual situation as it has developed since 1989 shall be placed within the context of the preserved and developing treaty relationship, in order to achieve its object and purpose in so far as that is feasible. For it is only then that the irregular state of affairs which exists as the result of the failure of both Parties to comply with their treaty obligations can be remedied.

134. What might have been a correct application of the law in 1989 or 1992, if the case had been before the Court then, could be a miscarriage of justice if prescribed in 1997. The Court cannot ignore the fact that the Gabčíkovo power plant has been in operation for nearly five years, that the bypass canal which feeds the plant receives its water from a significantly smaller reservoir formed by a dam which is built not at Dunakiliti but at Čunovo, and that the plant is operated in a run-of-the-river mode and not in a peak hour mode as originally foreseen. Equally, the Court cannot ignore the fact that, not only has Nagymaros not been built, but that, with the effective discarding by both Parties of peak power operation, there is no longer any point in building it.

135. As the Court has already had occasion to point out, the 1977 Treaty was not only a joint investment project for the production of

energy, but it was designed to serve other objectives as well: the improvement of the navigability of the Danube, flood control and regulation of ice-discharge, and the protection of the natural environment. None of these objectives has been given absolute priority over the other, in spite of the emphasis which is given in the Treaty to the construction of a System of Locks for the production of energy. None of them has lost its importance. In order to achieve these objectives the parties accepted obligations of conduct, obligations of performance, and obligations of result.

136. It could be said that that part of the obligations of performance which related to the construction of the System of Locks — in so far as they were not yet implemented before 1992 — have been overtaken by events. It would be an administration of the law altogether out of touch with reality if the Court were to order those obligations to be fully reinstated and the works at Čunovo to be demolished when the objectives of the Treaty can be adequately served by the existing structures.

137. Whether this is indeed the case is, first and foremost, for the Parties to decide. Under the 1977 Treaty its several objectives must be attained in an integrated and consolidated programme, to be developed in the Joint Contractual Plan. The Joint Contractual Plan was, until 1989, adapted and amended frequently to better fit the wishes of the parties. This Plan was also expressly described as the means to achieve the objectives of maintenance of water quality and protection of the environment.

138. The 1977 Treaty never laid down a rigid system, albeit that the construction of a system of locks at Gabčíkovo and Nagymaros was prescribed by the Treaty itself. In this respect, however, the subsequent positions adopted by the parties should be taken into consideration. Not only did Hungary insist on terminating construction at Nagymaros, but Czechoslovakia stated, on various occasions in the course of negotiations, that it was willing to consider a limitation or even exclusion of operation in peak hour mode. In the latter case the construction of the Nagymaros dam would have become pointless. The explicit terms of the Treaty itself were therefore in practice acknowledged by the parties to be negotiable.

139. The Court is of the opinion that the Parties are under a legal obligation, during the negotiations to be held by virtue of Article 5 of the Special Agreement, to consider, within the context of the 1977 Treaty, in what way the multiple objectives of the Treaty can best be served, keeping in mind that all of them should be fulfilled.

140. It is clear that the Project's impact upon, and its implications for, the environment are of necessity a key issue. The numerous scientific reports which have been presented to the Court by the Parties — even if their conclusions are often contradictory — provide abundant evidence that this impact and these implications are considerable.

In order to evaluate the environmental risks, current standards must be taken into consideration. This is not only allowed by the wording of

Articles 15 and 19, but even prescribed, to the extent that these articles impose a continuing — and thus necessarily evolving — obligation on the parties to maintain the quality of the water of the Danube and to protect nature.

The Court is mindful that, in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage.

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind — for present and future generations — of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.

For the purposes of the present case, this means that the Parties together should look afresh at the effects on the environment of the operation of the Gabčíkovo power plant. In particular they must find a satisfactory solution for the volume of water to be released into the old bed of the Danube and into the side-arms on both sides of the river.

141. It is not for the Court to determine what shall be the final result of these negotiations to be conducted by the Parties. It is for the Parties themselves to find an agreed solution that takes account of the objectives of the Treaty, which must be pursued in a joint and integrated way, as well as the norms of international environmental law and the principles of the law of international watercourses. The Court will recall in this context that, as it said in the *North Sea Continental Shelf* cases:

> "[the Parties] are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it" (*I.C.J. Reports 1969*, p. 47, para. 85).

142. What is required in the present case by the rule *pacta sunt servanda*, as reflected in Article 26 of the Vienna Convention of 1969 on the Law of Treaties, is that the Parties find an agreed solution within the cooperative context of the Treaty.

Article 26 combines two elements, which are of equal importance. It provides that "Every treaty in force is binding upon the parties to it and

must be performed by them in good faith." This latter element, in the Court's view, implies that, in this case, it is the purpose of the Treaty, and the intentions of the parties in concluding it, which should prevail over its literal application. The principle of good faith obliges the Parties to apply it in a reasonable way and in such a manner that its purpose can be realized.

143. During this dispute both Parties have called upon the assistance of the Commission of the European Communities. Because of the diametrically opposed positions the Parties took with regard to the required outcome of the trilateral talks which were envisaged, those talks did not succeed. When, after the present Judgment is given, bilateral negotiations without pre-conditions are held, both Parties can profit from the assistance and expertise of a third party. The readiness of the Parties to accept such assistance would be evidence of the good faith with which they conduct bilateral negotiations in order to give effect to the Judgment of the Court.

144. The 1977 Treaty not only contains a joint investment programme, it also establishes a régime. According to the Treaty, the main structures of the System of Locks are the joint property of the Parties; their operation will take the form of a co-ordinated single unit; and the benefits of the project shall be equally shared.

Since the Court has found that the Treaty is still in force and that, under its terms, the joint régime is a basic element, it considers that, unless the Parties agree otherwise, such a régime should be restored.

145. Article 10, paragraph 1, of the Treaty states that works of the System of Locks constituting the joint property of the contracting parties shall be operated, as a co-ordinated single unit and in accordance with jointly agreed operating and operational procedures, by the authorized operating agency of the contracting party in whose territory the works are built. Paragraph 2 of that Article states that works on the System of Locks owned by one of the contracting parties shall be independently operated or maintained by the agencies of that contracting party in the jointly prescribed manner.

The Court is of the opinion that the works at Čunovo should become a jointly operated unit within the meaning of Article 10, paragraph 1, in view of their pivotal role in the operation of what remains of the Project and for the water-management régime. The dam at Čunovo has taken over the role which was originally destined for the works at Dunakiliti, and therefore should have a similar status.

146. The Court also concludes that Variant C, which it considers operates in a manner incompatible with the Treaty, should be made to conform to it. By associating Hungary, on an equal footing, in its operation, management and benefits, Variant C will be transformed from a *de facto* status into a treaty-based régime.

It appears from various parts of the record that, given the current state

of information before the Court, Variant C could be made to function in such a way as to accommodate both the economic operation of the system of electricity generation and the satisfaction of essential environmental concerns.

Regularization of Variant C by making it part of a single and indivisible operational system of works also appears necessary to ensure that Article 9 of the Treaty, which provides that the contracting parties shall participate in the use and in the benefits of the System of Locks in equal measure, will again become effective.

147. Re-establishment of the joint régime will also reflect in an optimal way the concept of common utilization of shared water resources for the achievement of the several objectives mentioned in the Treaty, in concordance with Article 5, paragraph 2, of the Convention on the Law of the Non-Navigational Uses of International Watercourses, according to which:

> "Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present Convention." (General Assembly doc. A/51/869 of 11 April 1997.)

* *

148. Thus far the Court has indicated what in its view should be the effects of its finding that the 1977 Treaty is still in force. Now the Court will turn to the legal consequences of the internationally wrongful acts committed by the Parties.

149. The Permanent Court of International Justice stated in its Judgment of 13 September 1928 in the case concerning the *Factory at Chorzów*:

> "reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed" (*P.C.I.J., Series A, No. 17*, p. 47).

150. Reparation must, "as far as possible", wipe out all the consequences of the illegal act. In this case, the consequences of the wrongful acts of both Parties will be wiped out "as far as possible" if they resume their co-operation in the utilization of the shared water resources of the Danube, and if the multi-purpose programme, in the form of a co-ordinated single unit, for the use, development and protection of the watercourse is implemented in an equitable and reasonable manner. What it is possible for the Parties to do is to re-establish co-operative administration of what remains of the Project. To that end, it is open to them to agree to maintain the works at Čunovo, with changes in the mode of operation in respect of the allocation of water and electricity, and not to build works at Nagymaros.

151. The Court has been asked by both Parties to determine the consequences of the Judgment as they bear upon payment of damages. According to the Preamble to the Special Agreement, the Parties agreed that Slovakia is the sole successor State of Czechoslovakia in respect of rights and obligations relating to the Gabčíkovo-Nagymaros Project. Slovakia thus may be liable to pay compensation not only for its own wrongful conduct but also for that of Czechoslovakia, and it is entitled to be compensated for the damage sustained by Czechoslovakia as well as by itself as a result of the wrongful conduct of Hungary.

152. The Court has not been asked at this stage to determine the quantum of damages due, but to indicate on what basis they should be paid. Both Parties claimed to have suffered considerable financial losses and both claim pecuniary compensation for them.

It is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it. In the present Judgment, the Court has concluded that both Parties committed internationally wrongful acts, and it has noted that those acts gave rise to the damage sustained by the Parties; consequently, Hungary and Slovakia are both under an obligation to pay compensation and are both entitled to obtain compensation.

Slovakia is accordingly entitled to compensation for the damage suffered by Czechoslovakia as well as by itself as a result of Hungary's decision to suspend and subsequently abandon the works at Nagymaros and Dunakiliti, as those actions caused the postponement of the putting into operation of the Gabčíkovo power plant, and changes in its mode of operation once in service.

Hungary is entitled to compensation for the damage sustained as a result of the diversion of the Danube, since Czechoslovakia, by putting into operation Variant C, and Slovakia, in maintaining it in service, deprived Hungary of its rightful part in the shared water resources, and exploited those resources essentially for their own benefit.

153. Given the fact, however, that there have been intersecting wrongs by both Parties, the Court wishes to observe that the issue of compensation could satisfactorily be resolved in the framework of an overall settlement if each of the Parties were to renounce or cancel all financial claims and counter-claims.

154. At the same time, the Court wishes to point out that the settlement of accounts for the construction of the works is different from the issue of compensation, and must be resolved in accordance with the 1977 Treaty and related instruments. If Hungary is to share in the operation and benefits of the Čunovo complex, it must pay a proportionate share of the building and running costs.

* * *

155. For these reasons,

THE COURT,

(1) Having regard to Article 2, paragraph 1, of the Special Agreement,

A. By fourteen votes to one,

Finds that Hungary was not entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabčíkovo Project for which the Treaty of 16 September 1977 and related instruments attributed responsibility to it;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Fleischhauer, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; *Judge* ad hoc Skubiszewski;

AGAINST: *Judge* Herczegh;

B. By nine votes to six,

Finds that Czechoslovakia was entitled to proceed, in November 1991, to the "provisional solution" as described in the terms of the Special Agreement;

IN FAVOUR: *Vice-President* Weeramantry; *Judges* Oda, Guillaume, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans; *Judge* ad hoc Skubiszewski;

AGAINST: *President* Schwebel; *Judges* Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Rezek;

C. By ten votes to five,

Finds that Czechoslovakia was not entitled to put into operation, from October 1992, this "provisional solution";

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Kooijmans, Rezek;

AGAINST: *Judges* Oda, Koroma, Vereshchetin, Parra-Aranguren; *Judge* ad hoc Skubiszewski;

D. By eleven votes to four,

Finds that the notification, on 19 May 1992, of the termination of the Treaty of 16 September 1977 and related instruments by Hungary did not have the legal effect of terminating them;

IN FAVOUR: *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans; *Judge* ad hoc Skubiszewski;

AGAINST: *President* Schwebel; *Judges* Herczegh, Fleischhauer, Rezek;

(2) Having regard to Article 2, paragraph 2, and Article 5 of the Special Agreement,

A. By twelve votes to three,

Finds that Slovakia, as successor to Czechoslovakia, became a party to the Treaty of 16 September 1977 as from 1 January 1993;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans; *Judge* ad hoc Skubiszewski;

AGAINST: *Judges* Herczegh, Fleischhauer, Rezek;

B. By thirteen votes to two,

Finds that Hungary and Slovakia must negotiate in good faith in the light of the prevailing situation, and must take all necessary measures to ensure the achievement of the objectives of the Treaty of 16 September 1977, in accordance with such modalities as they may agree upon;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; *Judge* ad hoc Skubiszewski;

AGAINST: *Judges* Herczegh, Fleischhauer;

C. By thirteen votes to two,

Finds that, unless the Parties otherwise agree, a joint operational régime must be established in accordance with the Treaty of 16 September 1977;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; *Judge* ad hoc Skubiszewski;

AGAINST: *Judges* Herczegh, Fleischhauer;

D. By twelve votes to three,

Finds that, unless the Parties otherwise agree, Hungary shall compensate Slovakia for the damage sustained by Czechoslovakia and by Slovakia on account of the suspension and abandonment by Hungary of works for which it was responsible; and Slovakia shall compensate Hungary for the damage it has sustained on account of the putting into operation of the "provisional solution" by Czechoslovakia and its maintenance in service by Slovakia;

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Bedjaoui, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Parra-Aranguren, Kooijmans, Rezek; *Judge* ad hoc Skubiszewski;

AGAINST: *Judges* Oda, Koroma, Vereshchetin;

E. By thirteen votes to two,

Finds that the settlement of accounts for the construction and operation of the works must be effected in accordance with the relevant provisions of the Treaty of 16 September 1977 and related instruments, taking due account of such measures as will have been taken by the Parties in application of points 2 B and 2 C of the present operative paragraph.

IN FAVOUR: *President* Schwebel; *Vice-President* Weeramantry; *Judges* Oda, Bedjaoui, Guillaume, Ranjeva, Shi, Koroma, Vereshchetin, Parra-Aranguren, Kooijmans, Rezek; *Judge* ad hoc Skubiszewski;

AGAINST: *Judges* Herczegh, Fleischhauer.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-fifth day of September, one thousand nine hundred and ninety-seven, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Republic of Hungary and the Government of the Slovak Republic, respectively.

(Signed) Stephen M. SCHWEBEL,
President.

(Signed) Eduardo VALENCIA-OSPINA,
Registrar.

President SCHWEBEL and Judge REZEK append declarations to the Judgment of the Court.

Vice-President WEERAMANTRY and Judges BEDJAOUI and KOROMA append separate opinions to the Judgment of the Court.

Judges ODA, RANJEVA, HERCZEGH, FLEISCHHAUER, VERESHCHETIN and PARRA-ARANGUREN and Judge *ad hoc* SKUBISZEWSKI append dissenting opinions to the Judgment of the Court.

(Initialled) S.M.S.

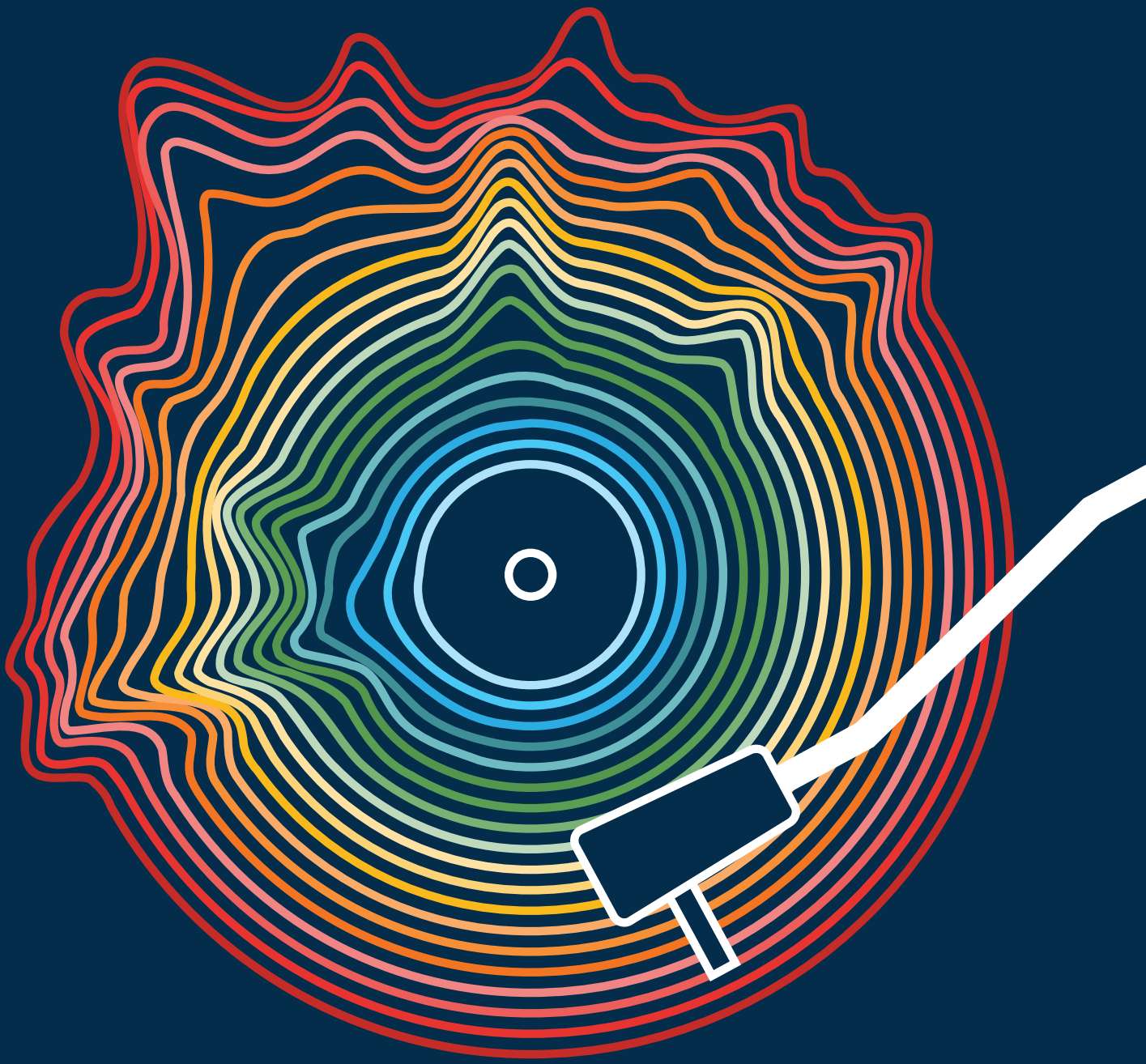
(Initialled) E.V.O.

Annex 8

UN environment programme

Broken Record

Temperatures hit new highs, yet world fails to cut emissions (again)



Emissions Gap Report 2023

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IKI INTERNATIONAL CLIMATE INITIATIVE

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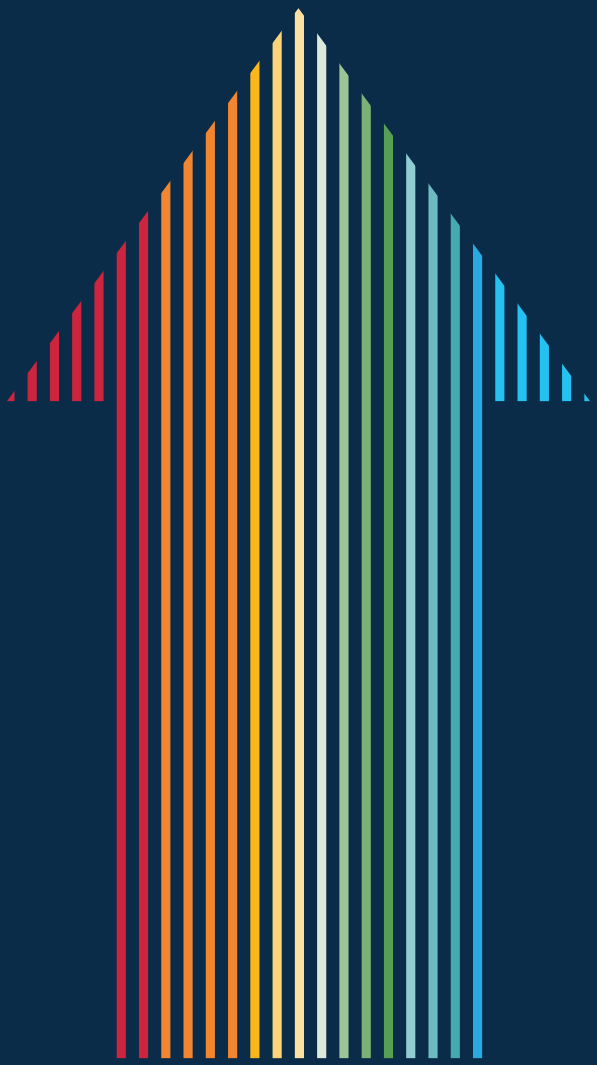
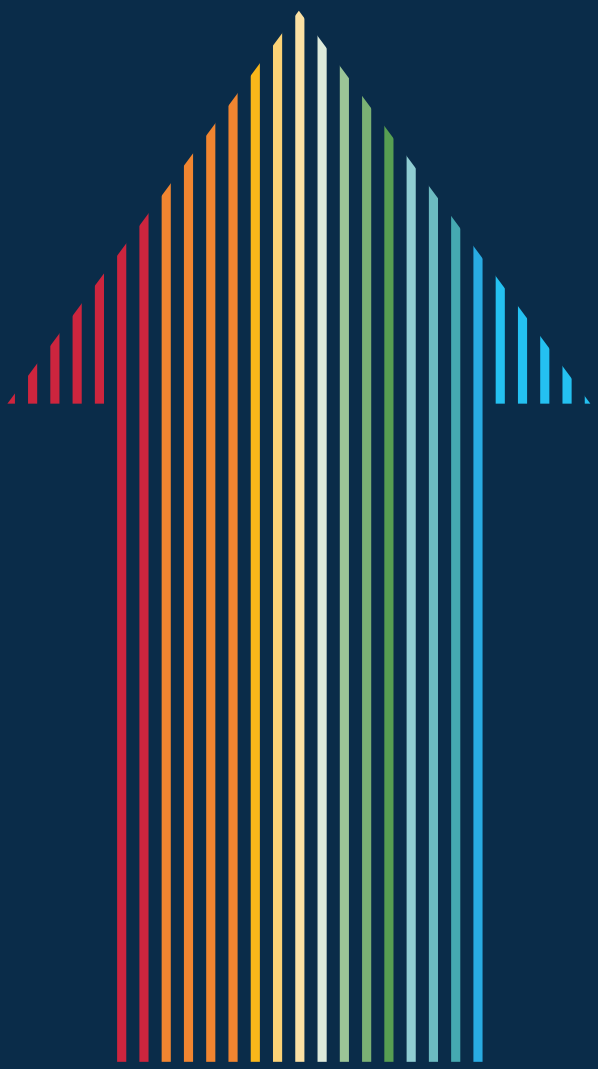
Government of the Netherlands

Broken Record

Temperatures hit new highs, yet world fails to cut emissions (again)

Emissions Gap Report 2023





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Glossary

This glossary is compiled drawing on glossaries and other resources available on the websites of the following organizations, networks and projects: the Intergovernmental Panel on Climate Change, United Nations Environment Programme, United Nations Framework Convention on Climate Change (UNFCCC), and World Resources Institute.

Annex I Parties: Consists of the group of countries listed in Annex I to the UNFCCC. Under Articles 4.2 (a) and 4.2 (b) of the UNFCCC, Annex I Parties were committed to adopting national policies and measures with the non-legally binding aim to return their greenhouse gas (GHG) emissions to 1990 levels by 2000. The group is largely similar to the Annex B Parties to the Kyoto Protocol that also adopted emissions reduction targets for 2008–2012. By default, the other countries are referred to as Non-Annex I Parties (see below).

Annex II Parties: The group of countries listed in Annex II to the UNFCCC. Under Article 4 of the UNFCCC, these countries have a special obligation to provide financial resources to meet the agreed full incremental costs of implementing measures mentioned under Article 12, paragraph 1. They are also obliged to provide financial resources, including for the transfer of technology, to meet the agreed incremental costs of implementing measures covered by Article 12, paragraph 1 and agreed between developing country Parties and international entities referred to in Article 11 of the UNFCCC. This group of countries shall also assist countries that are particularly vulnerable to the adverse effects of climate change.

Anthropogenic emissions: Emissions derived from human activities.

Baseline/reference: The state against which change is measured. In the context of climate change transformation pathways, the term "baseline scenarios" refers to scenarios based on the assumption that no mitigation policies or measures will be implemented beyond those already in force and/or legislated or planned to be adopted. Baseline scenarios are not intended to be predictions of the future, but rather counterfactual constructions that can serve to highlight the level of emissions that would occur without further policy efforts. Typically, baseline scenarios are compared to mitigation scenarios that are constructed to meet different goals for GHG emissions, atmospheric concentrations or temperature change. The term "baseline scenario" is used interchangeably with "reference scenario" and "no-policy scenario".

Carbon dioxide emission budget (or carbon budget): For a given temperature rise limit, for example a 1.5°C or 2°C long-term limit, the corresponding carbon budget reflects the total amount of carbon emissions that can be emitted for temperatures to stay below that limit. Stated differently, a carbon budget is an area under a carbon dioxide (CO_2) emission trajectory that satisfies assumptions about limits on cumulative emissions estimated to avoid a certain level of global mean surface temperature rise.

Carbon dioxide equivalent (CO_2e): A way to place emissions of various radiative forcing agents on a common footing by accounting for their effect on the climate. It describes, for a given mixture and amount of GHGs, the amount of CO_2 that would have the same global warming ability, when measured over a specified time period. For the purpose of this report, unless otherwise specified, GHG emissions are the sum of the basket of GHGs listed in Annex A to the Kyoto Protocol, expressed as CO_2e, assuming a 100-year global warming potential.

Carbon dioxide removal (CDR): Refers to anthropogenic activities removing CO_2 from the atmosphere and durably storing it in geological, terrestrial or ocean reservoirs, or in products. It includes existing and potential anthropogenic enhancement of biological or geochemical sinks and direct air capture and storage, but excludes natural CO_2 uptake not directly caused by human activities.

Carbon markets: A term for a carbon trading system through which countries and/or companies may buy or sell units of GHG emissions to offset their GHG emissions by acquiring carbon credits from entities that either minimize or eliminate their own emissions. The term comes from the fact that CO_2 is the predominant GHG, and other gases are measured in units called CO_2 equivalents.

Carbon neutrality: Is achieved when an actor's net contribution to global CO_2 emissions is zero. Any CO_2 emissions attributable to an actor's activities are fully compensated by CO_2 reductions or removals exclusively claimed by the actor, irrespective of the time period or the relative magnitude of emissions and removals involved.

Carbon price: The price for a voided or released CO_2 or CO_2e emissions. This may refer to the rate of a carbon tax or the price of emission permits. In many models used to assess the economic costs of mitigation, carbon prices are used as a proxy to represent the level of effort in mitigation policies.

Conditional nationally determined contribution: A nationally determined contribution (NDC – see below) proposed by some countries that is contingent on a range of possible conditions, such as the ability of national legislatures to enact the necessary laws, ambitious action from other countries, realization of finance and technical support, or other factors.

Conference of the Parties to the United Nations Framework Convention on Climate Change (COP): The supreme body of the UNFCCC. It currently meets once a year to review the UNFCCC's progress.

Emissions pathway: The trajectory of annual GHG emissions over time.

Emissions trading: A market-based instrument used to limit emissions. The environmental objective or sum of total allowed emissions is expressed as an emissions cap. The cap is divided in tradable emission permits that are allocated – either by auctioning or handing out for free – to entities within the jurisdiction of the trading scheme. Entities need to surrender emission permits equal to the amount of their emissions (e.g. tons of CO_2). An entity may sell excess permits. Trading schemes occur at the intracompany, domestic and international levels, and may apply to CO_2, other GHGs or other substances. Emissions trading is also one of the mechanisms specified under the Kyoto Protocol.

Gross national income: Gross national income, abbreviated as GNI, is the sum of the incomes of residents of an economy in a given period. It is equal to GDP minus primary income payable by resident units to non-resident units, plus primary income receivable from the rest of the world (from non-resident units to resident units).

Global stocktake: The global stocktake was established under Article 14 of the Paris Agreement. It is a process for Member States and stakeholders to assess whether they are collectively making progress towards meeting the goals of the Paris Climate Change Agreement. The global stocktake assesses everything related to where the world stands on climate action and support, identifying the gaps, and working together to agree on solutions pathways, to 2030 and beyond. The first global stocktake takes place at COP 28 in 2023.

Global warming potential: An index representing the combined effect of the differing times GHGs remain in the atmosphere and their relative effectiveness in absorbing outgoing infrared radiation.

Greenhouse gases (GHGs): The atmospheric gases responsible for causing global warming and climatic change. The major GHGs are CO_2, methane (CH_4) and nitrous oxide (N_2O). Less prevalent, but very powerful, GHGs include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF6).

Integrated assessment models: Models that seek to combine knowledge from multiple disciplines in the form of equations and/or algorithms, in order to explore complex environmental problems. As such, they describe the full chain of climate change, from the production of GHGs to atmospheric responses. This necessarily includes relevant links and feedback between socioeconomic and biophysical processes.

Intended nationally determined contribution (NDC): Intended NDCs are submissions from countries describing the national actions that they intend to take to reach the Paris Agreement's long-term temperature goal of limiting warming to well below 2°C. Once a country has ratified the Paris Agreement, its intended NDC is automatically converted to its NDC, unless it chooses to further update it.

Kyoto Protocol: An international agreement signed in 1997 and which came into force in 2005, standing on its own, and requiring separate ratification by Governments, but linked to the UNFCCC. The Kyoto Protocol, among other things, sets binding targets for the reduction of GHG emissions by industrialized countries.

Land use, land-use change and forestry (LULUCF): A GHG inventory sector that covers emissions and removals of GHGs resulting from direct human-induced land use, land-use change and forestry activities.

Least-cost pathway: Least-cost pathway scenarios identify the least expensive combination of mitigation options to fulfil a specific climate target. A least-cost scenario is based on the premise that, if an overarching climate objective is set, society wants to achieve this at the lowest possible cost over time. It also assumes that global actions start at the base year of model simulations (usually close to the current year) and are implemented following a cost-optimal (cost-efficient) sharing of the mitigation burden between current and future generations, depending on the social discount rate.

Likely chance: A likelihood greater than 66 per cent chance. Used in this assessment to convey the probabilities of meeting temperature limits.

Mitigation: In the context of climate change, mitigation relates to a human intervention to reduce the sources or enhance the sinks of GHGs. Examples include using fossil fuels more efficiently for industrial processes or electricity generation, switching to solar energy or wind power, improving the insulation of buildings, and expanding forests and other "sinks" to remove greater amounts of CO_2 from the atmosphere.

Nationally determined contribution (NDC): Submissions by countries that have ratified the Paris Agreement which present their national efforts to reach the Paris Agreement's long-term temperature goal of limiting warming to well below 2°C. New or updated NDCs are to be submitted in 2020 and every five years thereafter. NDCs thus represent a country's current ambition or target for reducing emissions nationally.

Non-Annex I Parties: These consist mostly of developing countries. Certain groups of developing countries are recognized by the UNFCCC as being especially vulnerable to the adverse impacts of climate change, including countries with low-lying coastal areas and those prone to desertification and drought. Others, such as countries that rely heavily on income from fossil fuel production and commerce, feel more vulnerable to the potential economic impacts of climate change response measures. The UNFCCC emphasizes activities that promise to answer the special needs and concerns of these vulnerable countries, such as investment, insurance and technology transfer.

Offset: In climate policy, a unit of CO_2e emissions that is reduced, avoided or sequestered to compensate for emissions occurring elsewhere.

Scenario: A description of how the future may unfold, based on "if-then" propositions. Scenarios typically include an initial socioeconomic situation and a description of the key driving forces and future changes in emissions, temperatures or other climate change-related variables.

Source: Any process, activity or mechanism that releases a GHG, an aerosol or a precursor of a GHG or aerosol into the atmosphere.

Contents

Foreword

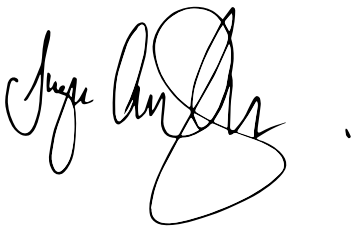
Humanity is breaking all the wrong records when it comes to climate change. Greenhouse gas emissions reached a new high in 2022. In September 2023, global average temperatures were 1.8°C above pre-industrial levels. When this year is over, according to the European Union's Copernicus Climate Change Service, it is almost certain to be the warmest year on record.

The 2023 edition of the Emissions Gap Report tells us that the world must change track, or we will be saying the same thing next year – and the year after, and the year after, like a broken record. The report finds that fully implementing and continuing mitigation efforts of unconditional nationally determined contributions (NDCs) made under the Paris Agreement for 2030 would put the world on course for limiting temperature rise to 2.9°C this century. Fully implementing conditional NDCs would lower this to 2.5°C. Given the intense climate impacts we are already seeing, neither outcome is desirable.

Progress since the Paris Agreement was signed in 2015 has shown that the world is capable of change. Greenhouse gas emissions in 2030, based on policies in place, were projected to increase by 16 per cent at the time of the agreement's adoption. Today, the projected increase is 3 per cent. However, predicted 2030 greenhouse gas emissions must fall by 28 per cent for the Paris Agreement 2°C pathway and 42 per cent for the 1.5°C pathway.

Change must come faster in the form of economy-wide, low-carbon development transformations, with a focus on the energy transition. Countries with greater capacity and responsibility for emissions will need to take more ambitious action and provide financial and technical support to developing nations. Low- and middle-income countries, which already account for more than two thirds of global emissions, should meet their development needs with low-emissions growth, which would provide universal access to energy, lift millions out of poverty, and expand strategic industries.

The first global stocktake, concluding at COP 28 in Dubai this year, will inform the next round of NDCs, which will set new national emissions targets for 2035. Ambition in these NDCs must bring greenhouse gas emissions in 2035 to levels consistent with the 2°C and 1.5°C pathways. Stronger implementation in this decade will help to make this possible. The world needs to lift the needle out of the groove of insufficient ambition and action, and start setting new records on cutting emissions, green and just transitions, and climate finance – starting now.



Inger Andersen

Executive Director
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Executive summary

Stocktake during a year of broken records

The world is witnessing a disturbing acceleration in the number, speed and scale of broken climate records. At the time of writing, 86 days have been recorded with temperatures exceeding 1.5°C above pre-industrial levels this year. Not only was September the hottest month ever, it also exceeded the previous record by an unprecedented 0.5°C, with global average temperatures at 1.8°C above pre-industrial levels. These records were accompanied by devastating extreme events, which the Intergovernmental Panel on Climate Change (IPCC) has warned us are merely a meek beginning. While the records do not imply that the world has exceeded the 1.5°C temperature limit specified in the Paris Agreement, which refers to global warming levels based on multi-decadal averages, they signal that we are getting closer.

This fourteenth Emissions Gap Report is published ahead of the twenty-eighth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP 28). It provides an annual, independent science-based assessment of the gap between the pledged greenhouse gas (GHG) emissions reductions and the reductions required to align with the long-term temperature goal of the Paris Agreement, as well as opportunities to bridge this gap. COP 28 marks the conclusion of the first global stocktake under the Paris Agreement, held every five years to assess the global response to the climate crisis and chart a better way forward. This closely mirrors the objective of the Emissions Gap Report, and the report aims to provide findings relevant to the concluding discussions under the global stocktake.

To inform COP 28 – including on the outcomes needed from the global stocktake – and set the scene for the next round of nationally determined contributions (NDCs) that countries are requested to submit in 2025, which will include emissions reduction targets for 2035, this report looks at what is required this decade and beyond 2030 to maintain the possibility of achieving the long-term temperature goal of the Paris Agreement. It underscores that maintaining this possibility hinges on relentlessly strengthening mitigation action this decade to narrow the emissions gap. This will facilitate significantly more ambitious targets for 2035 in the next round of NDCs, and pave the way for enhancing the credibility and feasibility of the net-zero pledges that by now cover around 80 per cent of global emissions. Failure to bring global GHG emissions in 2030 below the levels implied by current NDCs will make it impossible to limit warming to 1.5°C with no or limited overshoot and strongly increase the challenge of limiting warming to 2°C.

As this report shows, not only temperature records continue to be broken – global GHG emissions and atmospheric concentrations of carbon dioxide (CO_2) also set new records in 2022. Due to the failure to stringently reduce emissions in high-income and high-emitting countries (which bear the greatest responsibility for past emissions) and to limit emissions growth in low- and middle-income countries (which account for the majority of current emissions), unprecedented action is now needed by all countries. For high-income countries, this implies further accelerating domestic emissions reductions, committing to reaching net zero as soon as possible – and sooner than the global averages from the latest IPCC report implies – and at the same time providing financial and technical support to low- and middle-income countries. For low- and middle-income countries, it means that pressing development needs must be met alongside a transition away from fossil fuels. Furthermore, the delay in stringent mitigation action will likely increase future dependence on carbon dioxide removal (CDR) from the atmosphere, but availability of large-scale CDR options in the future cannot be taken for granted. This year, the report thus explores opportunities and challenges associated with energy transitions as well as development and deployment of CDR.

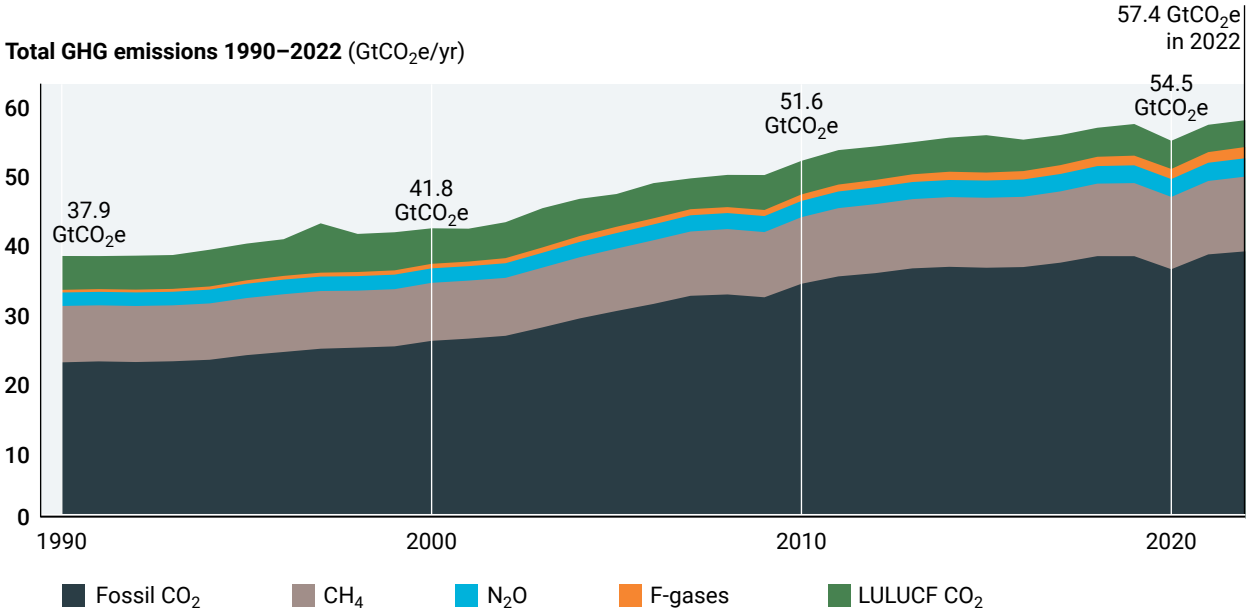
1. Global GHG emissions set new record of 57.4 $GtCO_2e$ in 2022

- Global GHG emissions increased by 1.2 per cent from 2021 to 2022 to reach a new record of 57.4 gigatons of CO_2 equivalent ($GtCO_2e$) (figure ES.1). All sectors apart from transport have fully rebounded from the drop in emissions induced by the COVID-19 pandemic and now exceed 2019 levels. CO_2 emissions from fossil fuel combustion and industrial processes were the main contributors to the overall increase, accounting for about two thirds of current GHG emissions. Emissions of methane (CH_4), nitrous oxide (N_2O) and fluorinated gases (F-gases), which have higher global warming potentials and account for about one quarter of current GHG emissions, are increasing rapidly: in

2022, F-gas emissions grew by 5.5 per cent, followed by CH_4 at 1.8 per cent and N_2O at 0.9 per cent. Based on early projections, global net land use, land-use change and forestry (LULUCF) CO_2 emissions remained steady in 2022. LULUCF CO_2 emissions and removals continue to have the largest uncertainties of all gases considered, both in terms of their absolute amounts and trends.

- GHG emissions across the G20 also increased by 1.2 per cent in 2022. However, members vary widely in their trends with increases in China, India, Indonesia and the United States of America, but decreases in Brazil, the European Union and the Russian Federation. Collectively, the G20 currently account for 76 per cent of global emissions.

Figure ES.1 Total net anthropogenic GHG emissions, 1990–2022



- Global primary energy consumption expanded in 2022 – an expansion mainly met by a growth in coal, oil and renewable electricity supply – whereas gas consumption declined by 3 per cent following the energy crisis and the war in Ukraine. Overall, net electricity demand growth in 2022 was primarily met by renewable sources (excluding hydropower), driven by a record increase in solar capacity additions. Nonetheless, investments in fossil fuel extraction and use have continued in most regions worldwide. Globally, Governments still plan to produce more than double the amount of fossil fuels in 2030 than would be consistent with the long-term temperature goal of the Paris Agreement.

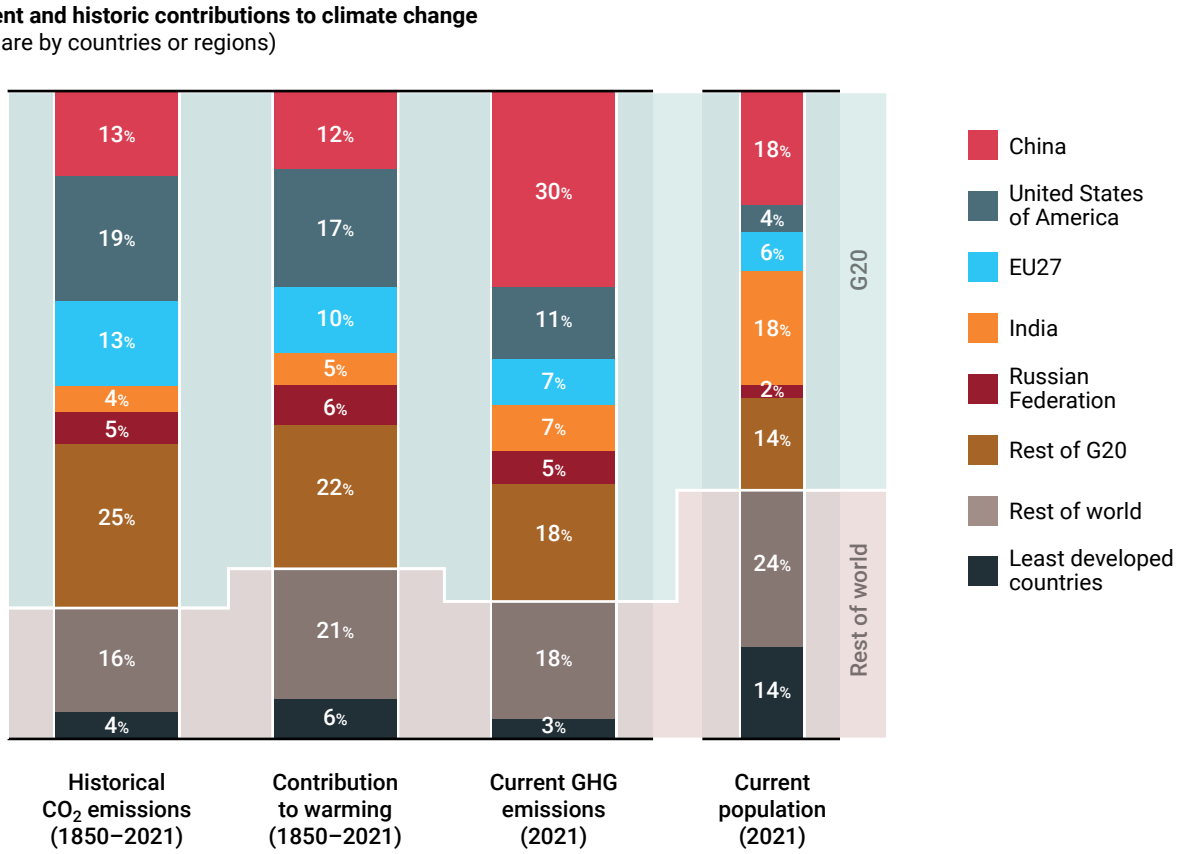
2. Current and historical emissions are highly unequally distributed within and among countries, reflecting global patterns of inequality

- Per capita territorial GHG emissions vary significantly across countries. They are more than double the world average of 6.5 tons of CO_2 equivalent (tCO_2e) in the Russian Federation and the United States of America, while those in India remain under half of it. Per capita emissions are fairly similar in Brazil, the European Union and Indonesia, and at levels slightly below the G20 average. The G20 as a group averaged 7.9 tCO_2e, whereas least developed countries averaged 2.2 tCO_2e and small island developing States averaged 4.2 tCO_2e.

- Inequality in consumption-based emissions is also found among and within countries. Globally, the 10 per cent of the population with the highest income accounted for nearly half (48 per cent) of emissions with two thirds of this group living in developed countries. The bottom 50 per cent of the world population contributed only 12 per cent of total emissions.

- Historic emissions and contribution to global warming similarly vary significantly across countries and groups of countries (figure ES.2). Nearly 80 per cent of historical cumulative fossil and LULUCF CO_2 emissions came from G20 countries, with the largest contributions from China, the United States of America and the European Union, while least developed countries contributed 4 per cent. The United States of America account for 4 per cent of current world population, but contributed 17 per cent of global warming from 1850 to 2021, including the impact of methane and nitrous oxide emissions. India, by contrast, accounts for 18 per cent of the world population, but to date only contributed 5 per cent of warming.

Figure ES.2 Current and historic contributions to climate change



3. There has been negligible movement on NDCs since COP 27, but some progress in NDCs and policies since the Paris Agreement was adopted

- Nine countries have submitted new or updated NDCs since COP 27, bringing the total number of NDCs that have been updated since the initial NDCs were submitted in advance of or following the Paris Agreement to 149 (counting the European Union and its 27 Member States as a single Party) as at 25 September 2023. More NDCs now contain GHG reduction targets, and more of these targets are economy-wide, covering a country's entire economy as opposed to certain sectors only.

- If all new and updated unconditional NDCs are fully implemented, they are estimated to reduce global GHG emissions by about 5.0 $GtCO_2e$ (range: 1.8–8.2 $GtCO_2e$) annually by 2030, compared with the initial NDCs. The combined effect of the nine NDCs submitted since COP 27 amounts to around 0.1 $GtCO_2e$ of this total. Thus, while NDC progress since COP 27 has been negligible, progress since the adoption of the Paris Agreement at COP 21 is more pronounced, although still insufficient to narrow the emissions gap.

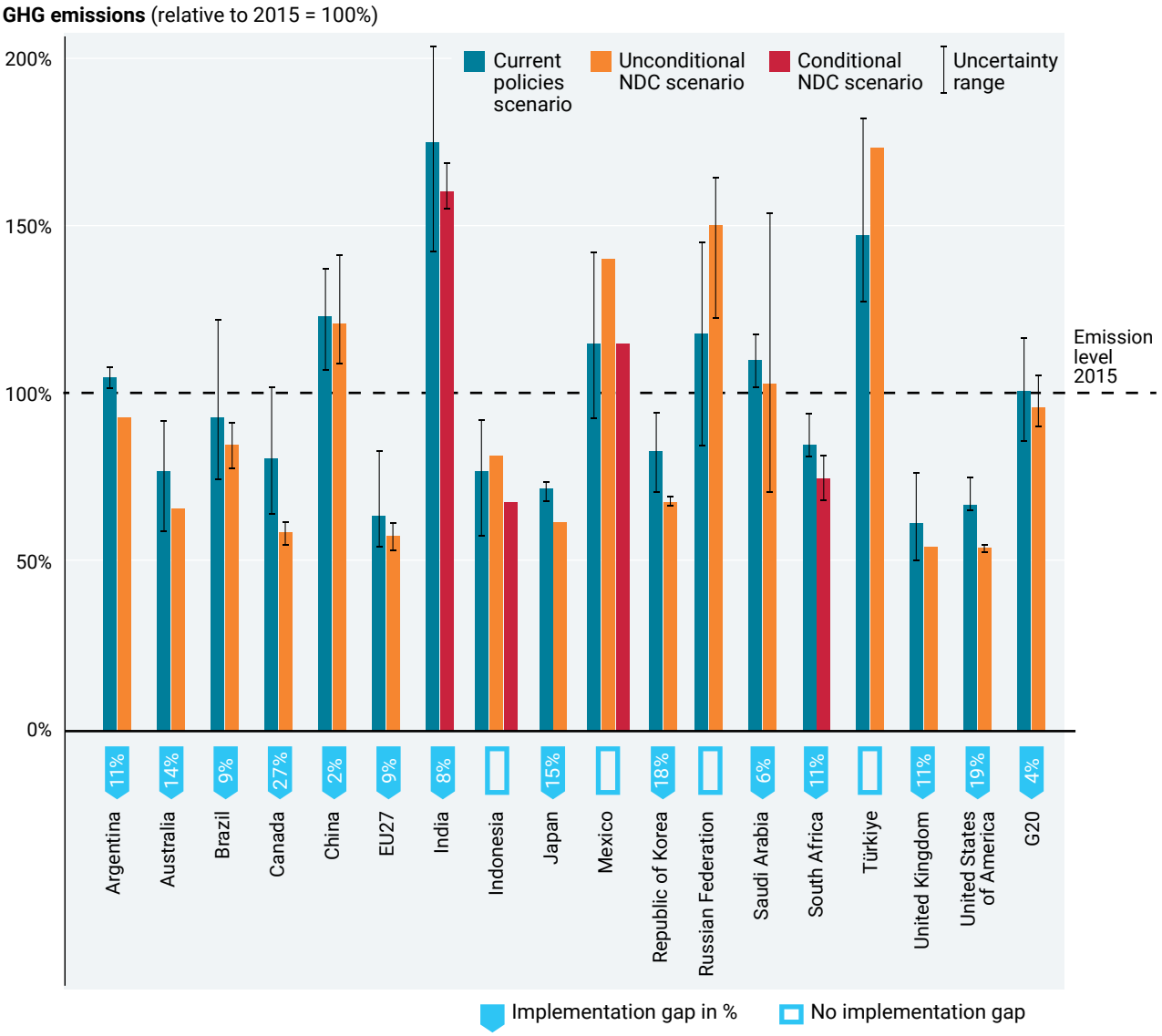
- Progress since the Paris Agreement is clearer on the policy side. Globally, GHG emissions in 2030 based on policies in place were projected to increase by 16 per cent at the time of the adoption of the Paris Agreement. Now the projected increase is 3 per cent.

- Policy progress has contributed to reducing the implementation gap, defined as the difference

between projected emissions under current policies and projected emissions under full implementation of the NDCs. The global implementation gap for 2030 is estimated to be around 1.5 $GtCO_2e$ for the unconditional NDCs (down from 3 $GtCO_2e$ in last year's assessment) and 5 $GtCO_2e$ for the conditional NDCs (down from 6 $GtCO_2e$ last year). The implementation gap for the G20 members has also been reduced.

As a group, the G20 members are projected to fall short of their new and updated NDCs by 1.2 $GtCO_2e$ annually by 2030, which is 0.6 $GtCO_2e$ lower than last year's assessment (figure ES.3). The impact of newly implemented policies is a main driver of both lower global and G20 emission projections for 2030. Other factors include changes in emission trends and socioeconomic circumstances.

Figure ES.3 Implementation gaps between current policies and NDC pledges for the G20 members collectively and individually by 2030, relative to 2015 emissions



4. The number of net-zero pledges continues to increase, but confidence in their implementation remains low

- As at 25 September 2023, 97 Parties covering approximately 81 per cent of global GHG emissions had adopted net-zero pledges either in law (27 Parties), in a policy document such as an NDC or a long-term strategy (54 Parties), or in an announcement by a high-level government official (16 Parties). This is up from 88 Parties last year. A total of 37 per cent of global GHG emissions are covered by net-zero targets for 2050 or earlier, while 44 per cent of global emissions are covered by net-zero pledges for years later than 2050.
- Responsible for 76 per cent of global emissions, G20 members will dominate when global emissions

reach net zero. Encouragingly, all G20 members except Mexico have set net-zero targets, and over the past year, some members have taken important steps towards strengthening and implementing their targets. Overall, however, limited progress has been made on key indicators of confidence in net-zero implementation among G20 members, including legal status, the existence and quality of implementation plans, and alignment of near-term emissions trajectories with net-zero targets. Most concerningly, none of the G20 members are currently reducing emissions at a pace consistent with meeting their net-zero targets.

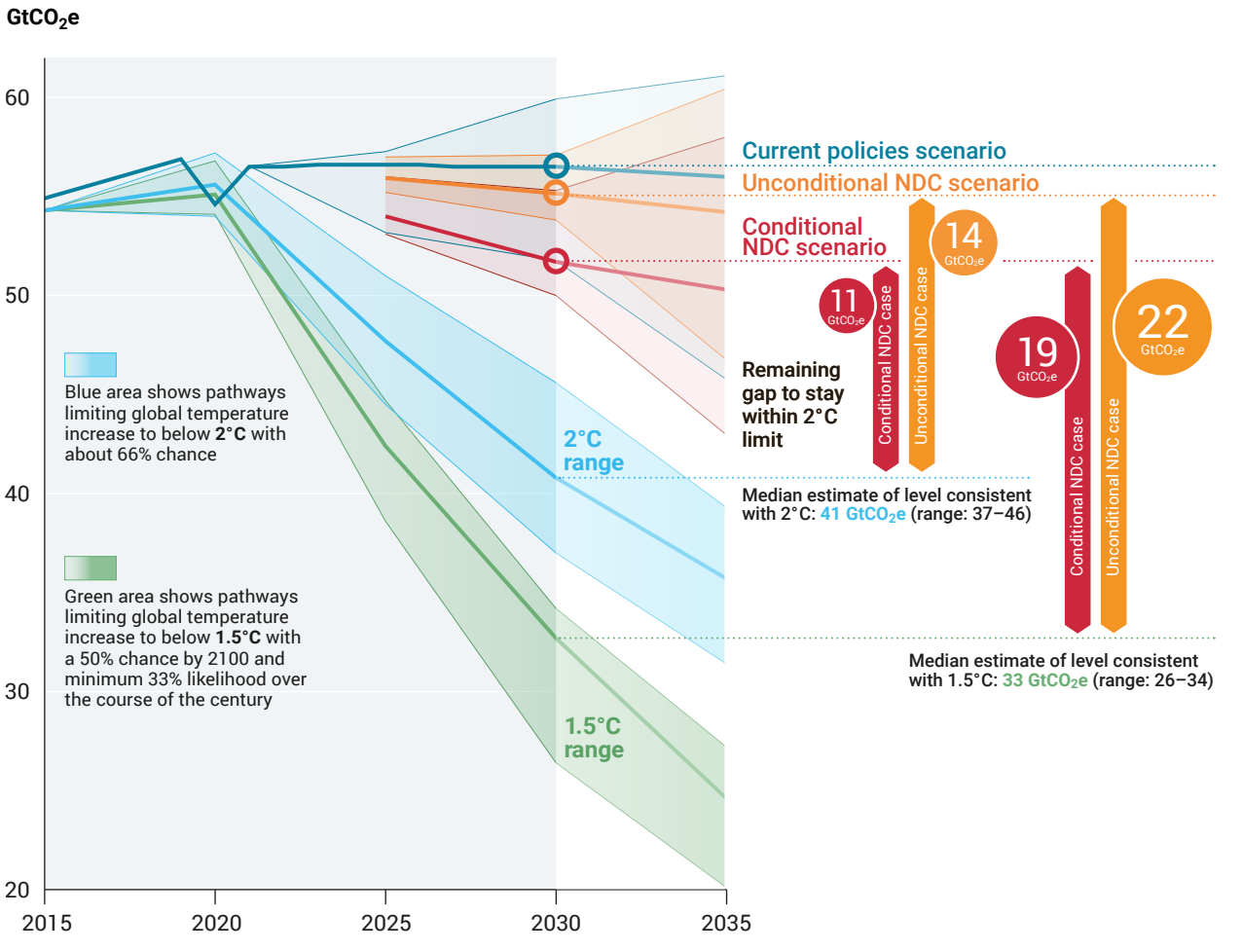
5. The emissions gap in 2030 remains high: current unconditional NDCs imply a 14 $GtCO_2e$ gap for a 2°C goal and a 22 $GtCO_2e$ gap for the 1.5°C goal. The additional implementation of the conditional NDCs reduces these estimates by 3 $GtCO_2e$

- The emissions gap is defined as the difference between the estimated global GHG emissions resulting from full implementation of the latest NDCs and those under least-cost pathways aligned with the long-term temperature goal of the Paris Agreement.
- These least-cost pathways assume stringent emissions reductions starting in 2020, which current trends contradict. Since emissions today are higher than in 2020, this implies that the world has already further depleted the limited remaining carbon budget and committed to slightly higher global warming than indicated by the least-cost pathways, unless there is further acceleration of emissions reductions after emissions levels consistent with the least-cost pathways are met. The emissions gap estimates are thus likely to be lower-bound, as they do not account for the excess emissions since 2020 compared with the least-cost pathways, and should be read with this caveat in mind.
- The emissions gap for 2030 remains largely unchanged compared with last year's assessment. Full implementation of unconditional NDCs is estimated to result in a gap with below 2°C pathways of about 14 $GtCO_2e$ (range: 13–16) with at least 66 per cent chance. If the conditional NDCs are also fully implemented, the below 2°C emissions gap is reduced to 11 $GtCO_2e$ (range: 9–15) (table ES.1 and figure ES.4).

Table ES.1 Global total GHG emissions in 2030, 2035 and 2050, and estimated gaps under different scenarios

Scenario	GHG emissions ($GtCO_2e$)	Estimated gap to least-cost pathways consistent with limiting global warming to specific levels ($GtCO_2e$)		
	Median and range	Below 2°C	Below 1.8°C	Below 1.5°C
2030				
Current policies	56 (52–60)	16 (11–19)	22 (17–25)	24 (19–27)
Unconditional NDCs	55 (54–57)	14 (13–16)	20 (19–22)	22 (21–24)
Conditional NDCs	52 (50–55)	11 (9–15)	17 (15–20)	19 (17–23)
2035				
Current policies continued	56 (45–64)	20 (9–28)	29 (18–37)	31 (20–39)
Unconditional NDCs continued	54 (47–60)	18 (11–25)	27 (20–34)	29 (22–36)
Conditional NDCs continued	51 (43–58)	15 (8–22)	24 (17–31)	26 (19–33)
2050				
Current policies continued	55 (24–72)	35 (4–52)	43 (12–60)	46 (16–63)
Unconditional NDCs and net-zero pledges using strict criteria	44 (26–58)	24 (6–38)	32 (14–46)	36 (18–49)
Conditional NDCs and all net-zero pledges	21 (6–33)	1 (-14–13)	9 (-6–21)	12 (-2–25)

Figure ES.4 Global GHG emissions under different scenarios and the emissions gap in 2030 and 2035 (median estimate and tenth to ninetieth percentile range)



- The emissions gap in 2030 between unconditional NDCs and 1.5°C pathways is about 22 $GtCO_2e$ (range: 21–24) with at least 50 per cent chance. If the conditional NDCs are also fully implemented, the 1.5°C emissions gap is reduced to 19 $GtCO_2e$ (range: 17–23).

- Unconditional and conditional NDCs for 2030 are estimated to reduce global emissions by 2 per cent and 9 per cent respectively, compared with current policy projections and assuming they are fully implemented. To get to levels consistent with least-cost pathways limiting global warming to below 2°C and 1.5°C, global GHG emissions must be reduced by 28 per cent and 42 per cent respectively. This is 2 percentage points lower than last year's assessment, illustrating the progress in narrowing the implementation gap between current policies and NDCs.

- Nonetheless, immediate, accelerated and relentless mitigation action is needed to bring about the deep annual emission cuts that are required from now to 2030 to narrow the emissions gap, with unparalleled annual cuts required to bridge the gap, even without accounting for excess emissions since 2020.

6. Action in this decade will determine the ambition required in the next round of NDCs for 2035, and the feasibility of achieving the long-term temperature goal of the Paris Agreement

- The first global stocktake under the Paris Agreement is envisaged to inform the next round of NDCs that countries are requested to submit in 2025, which will include targets for 2035. Overall, global ambition in the next round of NDCs must be sufficient to bring global GHG emissions in 2035 to the levels consistent with below 2°C and 1.5°C pathways of 36 $GtCO_2e$ (range: 31–39) and 25 $GtCO_2e$ (range: 20–27) respectively (table ES.2), while also compensating for excess emissions until levels consistent with these pathways are achieved.

- In contrast, a continuation of current policies and NDC scenarios would result in widened and likely unbridgeable gaps in 2035 (table ES.1). A continuation of current policies is projected to result in global GHG emissions of 56 $GtCO_2e$ in 2035 (table ES.1), which is 36 per cent and 55 per cent higher than the

levels consistent with below 2°C and 1.5°C pathways respectively (table ES.2), without compensating for excess emissions.

- Again, these findings underline that immediate and unprecedented mitigation action in this decade is essential. Over-complying with current NDC targets for 2030 will enable countries to put forward more ambitious mitigation targets for 2035 in their next NDCs, and it will make the realization of such ambitious targets for 2035 more feasible.
- Looking beyond 2035 at mid-century scenarios (table ES.1) reinforces these findings and points to the necessity of enhancing the credibility and feasibility of net-zero pledges. Total global GHG emissions in 2050 are only brought closer to 1.5°C and 2°C pathways if the conditional NDCs are fully implemented in combination with the achievement of all net-zero pledges.

Table ES.2 Global GHG emissions in 2030, 2035 and 2050, and global warming characteristics of least-cost pathways starting in 2020 consistent with limiting global warming to specific temperature limits

Least-cost pathways consistent with limiting global warming to specific levels	Number of scenarios	Global total GHG emissions ($GtCO_2e$)			Estimated temperature outcomes			
		In 2030	In 2035	In 2050	50% chance	66% chance	90% chance	Closest IPCC Working Group III *Sixth Assessment Report* scenario class
Below 2°C (66% chance throughout the century)	195	41 (37–46)	36 (31–39)	20 (16–24)	Peak: 1.7–1.8°C In 2100: 1.4–1.7°C	**Peak: 1.8–1.9°C** **In 2100: 1.6–1.9°C**	Peak: 2.2–2.4°C In 2100: 2–2.4°C	C3a
Below 1.8°C (66% chance throughout the century)	139	35 (28–41)	27 (21–31)	12 (8–16)	Peak: 1.5–1.7°C In 2100: 1.3–1.6°C	**Peak: 1.6–1.8°C** **In 2100: 1.4–1.7°C**	Peak: 1.9°C–2.2°C In 2100: 1.8–2.2°C	N/A
Below 1.5°C (50% chance in 2100 and minimum 33% chance throughout the century)	50	33 (26–34)	25 (20–27)	8 (5–13)	Peak: 1.5–1.6°C In 2100: 1.1–1-3°C	**Peak: 1.6–1.7°C** **In 2100: 1.2–1.5°C**	Peak: 1.9–2.1°C In 2100: 1.6–1.9°C	C1a

7. If current policies are continued, global warming is estimated to be limited to 3°C. Delivering on all unconditional and conditional pledges by 2030 lowers this estimate to 2.5°C, with the additional fulfilment of all net-zero pledges bringing it to 2°C

- A continuation of the level of climate change mitigation efforts implied by current policies is estimated to limit global warming to 3°C (range: 1.9–3.8°C) throughout the century with a 66 per cent chance. Warming is expected to increase further after 2100 as CO_2 emissions are not yet projected to reach net-zero levels.
- A continuation of the unconditional NDC scenario lowers this estimate to 2.9°C (range: 2–3.7°C), whereas the additional achievement and continuation of conditional NDCs lowers this by around 0.4°C to 2.5°C (range: 1.9–3.6°C).
- In the most optimistic scenario where all conditional NDCs and net-zero pledges, including those made as part of long-term low-emissions development strategies, are assumed to be fully achieved, global warming is projected to be limited to 2°C (range: 1.8–2.5°C) with 66 per cent chance over the course of the century. However, as noted previously, net-zero pledges remain highly uncertain.
- Even in the most optimistic scenario considered in this report, the chance of limiting global warming to 1.5°C is only 14 per cent, and the various scenarios leave open a large possibility that global warming exceeds 2°C or even 3°C. This further illustrates the need to bring global emissions in 2030 lower than levels associated with full implementation of the current

NDCs, to expand the coverage of net-zero pledges to all GHG emissions and to achieve these pledges.

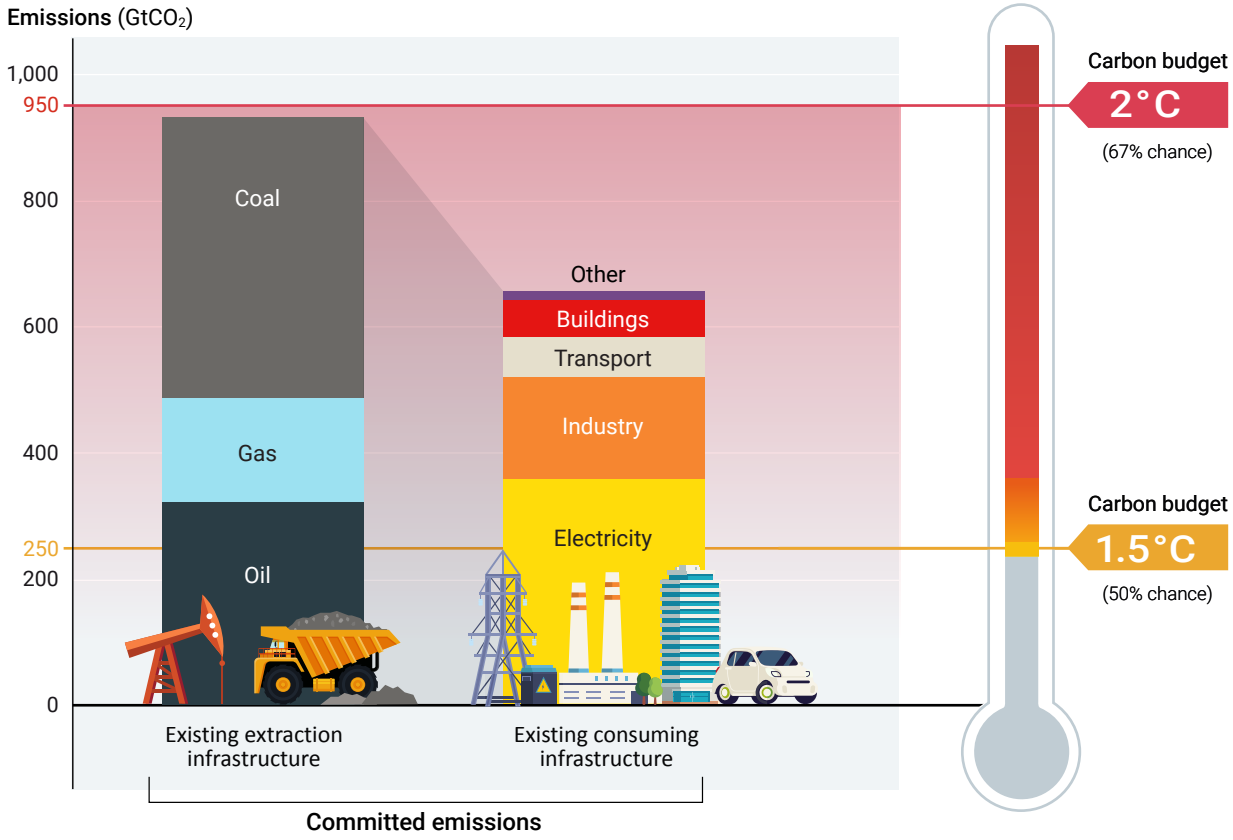
- Central temperature projections are slightly higher than in the 2022 edition of the Emissions Gap Report, as a larger number of models have been included in the estimation of future emissions. However, the projections are consistent with those from other major assessments, such as the International Energy Agency's 2023 Announced Pledges Scenario, the Climate Action Tracker and the United Nations Framework Convention on Climate Change 2023 NDC Synthesis Report, noting that these report temperature projections with a 50 per cent rather than a 66 per cent chance.

8. The failure to stringently reduce emissions in high-income countries and to prevent further emissions growth in low- and middle-income countries implies that all countries must urgently accelerate economy-wide, low-carbon transformations to achieve the long-term temperature goal of the Paris Agreement

- Delivering transformational change requires unprecedented global cooperation reflecting the Paris Agreement principle of common but differentiated responsibilities and respective capabilities in light of national circumstances. This principle implies that countries with greater capacity and greater historic responsibility for emissions – particularly high-income and high-emitting countries among the G20 – will need to take more ambitious and rapid action, setting the course and demonstrating the viability of fossil-free development. However, this will not be sufficient as low- and middle-income countries already account for more than two thirds of global GHG emissions. Accordingly, the Climate Solidarity Pact proposed by the United Nations Secretary-General calls on all big emitters to make extra efforts to cut emissions and wealthier countries to provide financial and technical resources to support low- and middle-income countries in their transformation, reflecting differentiated timelines.

- Energy is the dominant source of GHG emissions, currently accounting for 86 per cent of global CO_2 emissions. The coal, oil and gas extracted over the lifetime of producing and under-construction mines and fields as at 2018 would emit more than 3.5 times the carbon budget available to limit warming to 1.5°C with 50 per cent probability, and almost the size of the budget available for 2°C with 67 per cent probability. Global transformation of energy systems is thus essential, including in low- and middle-income countries, where pressing development objectives must be met alongside a transition away from fossil fuels.

Figure ES.5 Committed CO_2 emissions from existing fossil fuel infrastructure, compared with carbon budgets reflecting the long-term temperature goal of the Paris Agreement



9. Low- and middle-income countries face substantial economic and institutional challenges in low-carbon energy transitions, but can also exploit opportunities

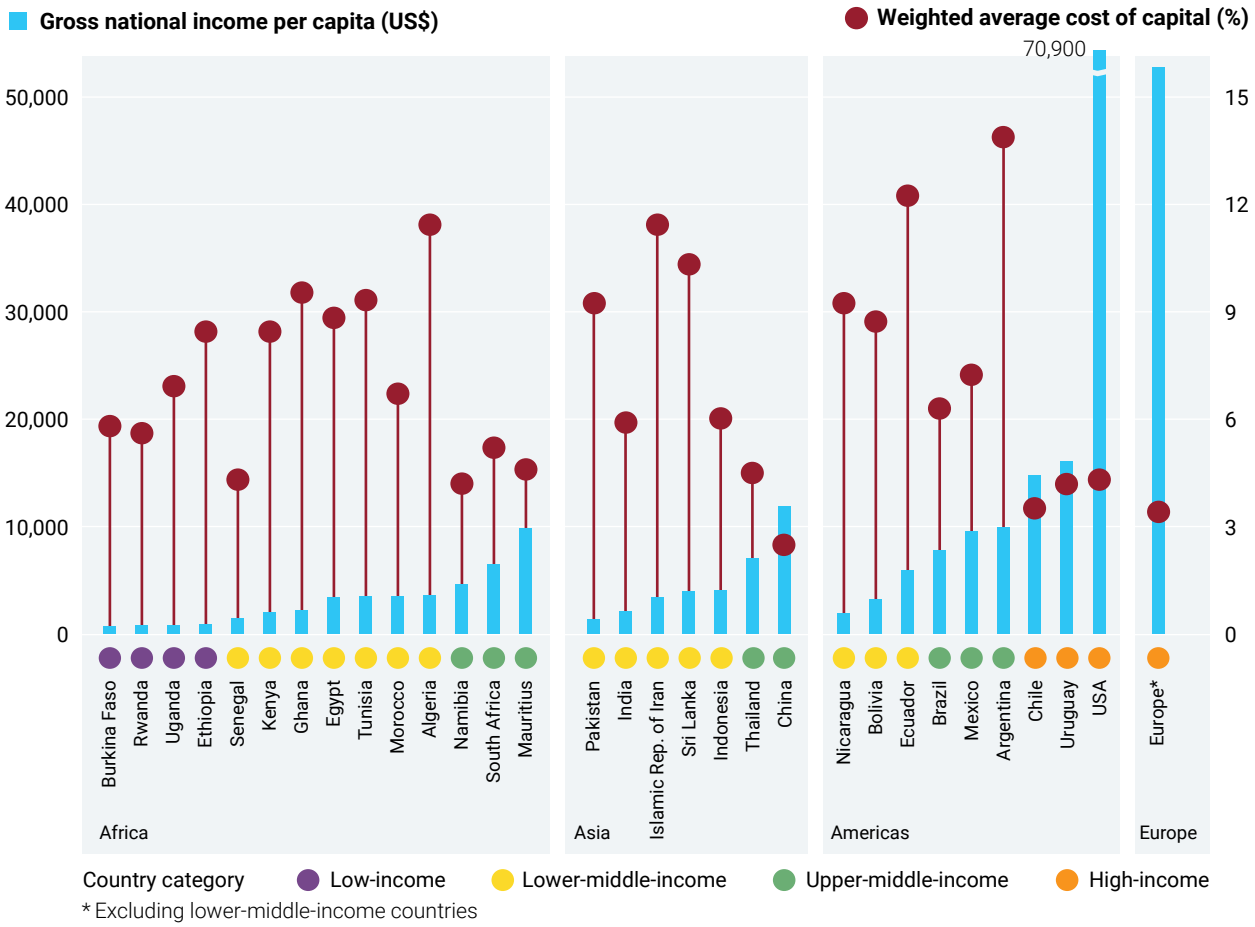
- Energy transitions in low- and middle-income countries are shaped by the overarching objective of pursuing development. Low- and middle-income countries face several common challenges in having to bring millions out of poverty, expand strategic industries, urbanize and deal with the political challenges of a transition away from fossil fuel use. Meeting basic energy needs of people living in poverty would have a limited impact on global GHG emissions. Yet today, 2.4 billion people lack access to clean cooking and 775 million to electricity, with women and children disproportionately affected. Meeting energy needs for broader human development will lead to significant energy demand growth, but there is scope to meet this growth more efficiently and equitably, and with low-carbon energy as renewables get cheaper.

- National circumstances vary with natural resource endowments and economic conditions, and will shape energy transition pathways. Capacity and institutions are often weak in low- and middle-income countries, and they may face different and additional political economic challenges from high-income countries, especially in view of the required speed of transition.

- Low- and lower-middle-income countries are in the greatest need of affordable finance as they are already saddled with debt, receive disproportionately low clean energy investments, are more vulnerable to volatile fossil fuel markets either as exporters or importers, and may face future stranded fossil fuel assets. Upper-middle-income countries are typically further along in building clean energy economies, but still face risks of stranded assets and related employment implications and macroeconomic shocks.

- Access to affordable finance is therefore a prerequisite for increasing mitigation ambition in low- and middle-income countries. Yet, costs of capital are up to seven times higher in these countries compared with the United States of America and Europe (figure ES.6). International financial assistance will therefore have to be significantly scaled up from existing levels, and new public and private sources of capital better distributed towards low-income countries, restructured through financing mechanisms that lower costs of capital. These include debt financing, increasing long-term concessional finance, guarantees and catalytic finance.

Figure ES.6 Weighted average cost of capital for solar photovoltaic projects against per capita gross national income for select countries in 2021



* Excluding lower-middle-income countries

- Low- and middle-income countries can take ownership of their low-carbon development agenda by laying out national low-carbon development strategies suited to their national context, including by adopting measures in key energy-intensive demand sectors, such as housing, transport and food, which have known synergies between climate mitigation and human development. This will require strengthening domestic energy and climate institutions to undertake strategic planning and enhanced coordination across sectors. Furthermore, strong stakeholder engagement is needed to ensure just outcomes and economic diversification.

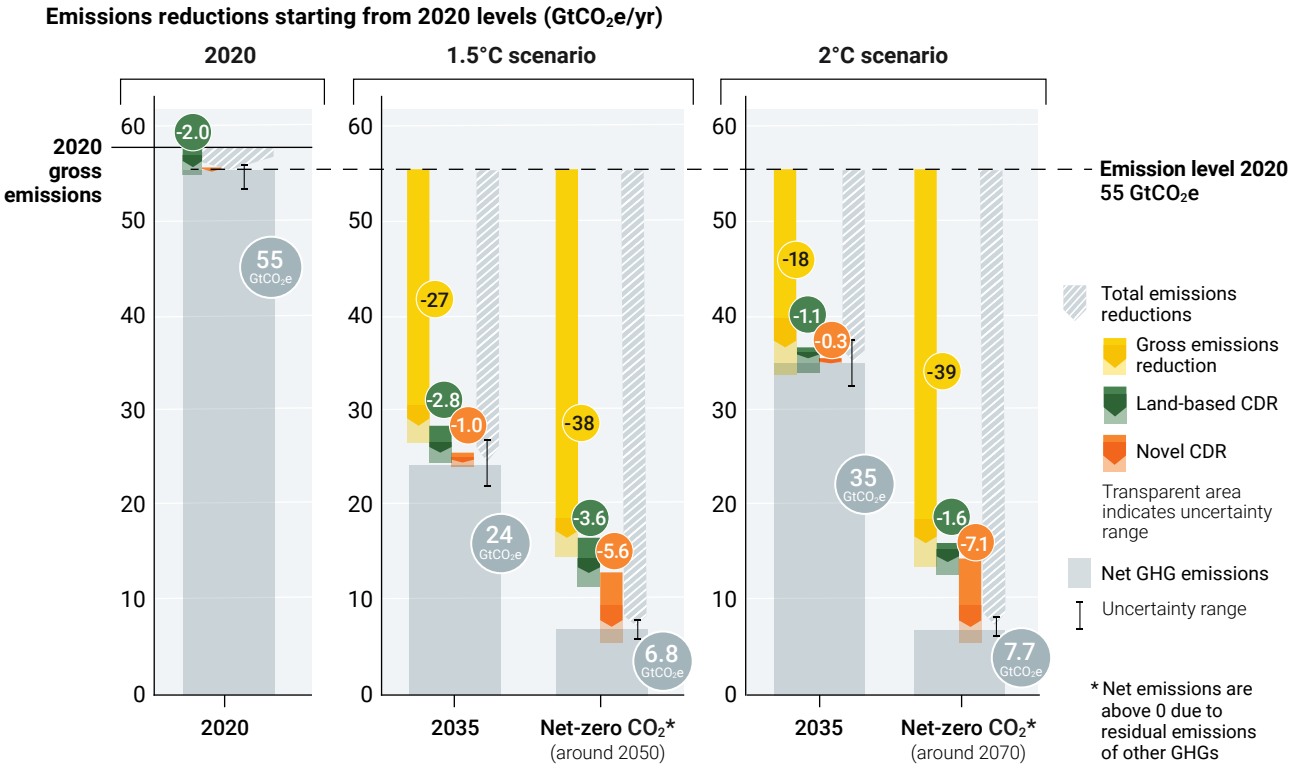
- The preparation of the next round of NDCs offers an opportunity for low- and middle-income countries to develop nationally driven road maps with broad domestic visions for ambitious development and climate policies and targets, for which implementation progress can be measured, finance and technology needs are clearly specified, and detailed investment-ready implementation plans are prepared. With less than two years left until the next round of NDCs are due, COP 28 would be a timely occasion to call for international support to prepare such robust and ambitious NDCs that integrate development and climate objectives.

10. Further delay of stringent global GHG emissions reductions will increase future reliance on CDR to meet the long-term temperature goal of the Paris Agreement

- Immediate and stringent emissions reductions are required to bridge the emissions gap and maintain the feasibility of achieving the long-term temperature goal of the Paris Agreement. All least-cost pathways starting in 2020 consistent with meeting this goal require immediate and deep emission cuts as well as a growing quantum of CDR over time (figure ES.7). With the delay in stringent mitigation action, the need for CDR in the longer term will likely increase even further.

- CDR is necessary to achieve the long-term goal of the Paris Agreement as reaching net-zero CO_2 emissions is required to stabilize global warming, whereas net-zero GHG emissions will result in a peak and decline in global warming. Since it is impossible to fully eliminate all CO_2 or other GHG emissions through stringent emissions reductions, residual emissions must be balanced by removals from the atmosphere, i.e. through CDR, to reach net-zero emissions.

Figure ES.7 The role of emissions reductions and CDR in least-cost pathways consistent with the long-term temperature goal of the Paris Agreement



- CDR is already deployed today – mainly in the form of conventional land-based methods, such as afforestation, reforestation and management of existing forests, with a large share located in developing countries. Present-day direct removals through conventional land-based methods are estimated to be 2.0 (±0.9) $GtCO_2$ annually, almost entirely through conventional land-based methods. Direct removals through novel CDR methods, such as bioenergy with carbon capture and storage, biochar, direct air carbon capture and storage, and enhanced weathering, are currently miniscule at 0.002 $GtCO_2$ annually.

- Nonetheless, 1.5°C and 2°C least-cost pathways assume significant increases in both conventional and novel CDR over time (figure ES.7). Conventional CDR grows to up to 6 $GtCO_2$ annually by 2050 under these pathways and novel CDR up to 4 $GtCO_2$ annually by 2050. Conventional land-based CDR plays a stronger role in the near- and mid-term, while novel CDR plays a stronger role later in the century to reach net-negative emissions, noting that levels depend on the underlying economic and technological assumptions as well as the magnitude of temperature drawdown after achieving net-zero CO_2 emissions.

- Achievement of the gigaton levels of CDR implied later in this century by pathways consistent with the Paris Agreement is uncertain and associated with several risks. Increased reliance on conventional land-based CDR is risky due to issues of land competition, protection of Indigenous and traditional communities' land tenure and rights, and sustainability, biodiversity and permanence risks of forest-based CDR, including from forest fires and other disturbances. Novel CDR methods are generally at an early stage of development and are associated with different types of risks, including that the technical, economic and political requirements for large-scale deployment may not materialize in time. Furthermore, public acceptance is still uncertain, particularly for approaches involving carbon capture and storage, or the open ocean. These risks can negatively affect the prospects for scale-up, despite technical potentials.

- To spur innovation and enable scaling up of novel CDR technologies, these technologies will first need to go through a formative phase, which will require strong policy and financial support. Given the time it takes to mature technologies, the next decade will be crucial for novel CDR methods. Failure to create momentum in this formative phase will result in a widening discrepancy between the levels of novel CDR needed and available by 2050 and beyond.

- This points to four important areas for political action:

  1) Setting and signalling CDR priorities
  2) Developing robust measurement, reporting and verification systems to enhance credibility
  3) Harnessing synergies and co-benefits with other efforts
  4) Accelerating innovation.

1 Introduction

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1.1 Context and framing of the Emissions Gap Report 2023

The world is witnessing a disturbing acceleration in the number, speed and scale of broken climate records: 2023 is on track to become the warmest year on record. At the time of writing, 86 days have been recorded with temperatures exceeding 1.5°C above pre-industrial levels. Not only was September the hottest month ever, it exceeded the previous record by an unprecedented 0.5°C, with global average temperatures at 1.8°C above pre-industrial levels (Copernicus Climate Change Services 2023a; Copernicus Climate Change Services 2023b). This does not imply that the world has exceeded the 1.5°C temperature limit specified in the Paris Agreement, which refers to global warming levels based on multi-decadal averages. However, it does signal that we are getting closer to that point. These temperature records were accompanied by devastating extreme events, which the Intergovernmental Panel on Climate Change (IPCC) has warned us are merely a meek beginning. Every increment of warming results in rapidly escalating hazards with extensive implications for human livelihoods and ecosystems (IPCC 2023).

This is the fourteenth Emissions Gap Report by UNEP, published ahead of the twenty-eighth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP 28). COP 28 is special, as it marks the conclusion of the first global stocktake under the Paris Agreement. The global stocktakes are held every five years to assess the global response to the climate crisis and chart a better way forward. This objective closely mirrors that of the Emissions Gap Report, which is to provide an annual, independent science-based assessment of the gap between pledged greenhouse gas (GHG) emissions reductions and the reductions required to align with the long-term temperature goal of the Paris Agreement, and opportunities to bridge this gap.

To inform the discussions at COP 28 – including on the outcomes needed from the global stocktake – and set the scene for the next round of nationally determined contributions (NDCs) that countries are requested to submit in 2025, which will include emissions reduction targets for 2035, this report looks at what is required this decade and beyond 2030 to maintain the possibility of achieving the long-term temperature goal of the Paris Agreement.

The IPCC concluded that global emissions levels by 2030 resulting from the implementation of the current NDCs will make it impossible to limit warming to 1.5°C with no or limited overshoot, and strongly increase the challenge of limiting warming to 2°C (Pathak *et al.* 2022). This finding is reiterated in this report. It highlights that maintaining the possibility of achieving the long-term goal of the Paris Agreement hinges on relentlessly strengthening ambition and implementation this decade, thereby facilitating significantly more ambitious targets for 2035 in the next round of NDCs and paving the way for operationalizing and implementing the net-zero pledges by countries that currently cover around 80 per cent of global emissions.

The report shows that movement on the NDCs has been negligible since COP 27, and although the ambition of the NDCs has been strengthened since the adoption of the Paris Agreement at COP 21 in 2015, it has been insufficient to narrow the 2030 emissions gap.

Progress since the adoption of the Paris Agreement is more visible on the policy implementation side. Globally, GHG emissions in 2030 based on policies in place were projected to increase by 16 per cent at the time of the adoption of the Paris Agreement. Now the projected increase is 3 per cent.

However, the challenge remains immense. In just seven years, global GHG emissions must be reduced by 28–42 per cent compared to where they are headed under policies currently in place, to get to levels consistent with pathways that limit global warming to well below 2.0°C and 1.5°C respectively.

Due to the failure to stringently reduce emissions in high-income countries – which bear the greatest responsibility for past emissions – and to limit emissions growth in low- and middle-income countries, which account for the majority of current emissions, unprecedented action is now

needed by all countries. For high-income countries, this implies further accelerating domestic emissions reductions, committing to reaching net-zero as soon as possible – and sooner than the global averages from the latest IPCC report implies – and at the same time providing financial and technical support to low- and middle-income countries. For low- and middle-income countries, this means that pressing development needs must be met alongside a transition away from fossil fuels.

Furthermore, the delay in stringent mitigation action will likely increase future dependence on carbon dioxide removal (CDR) from the atmosphere. However, availability of large-scale CDR opportunities in the future cannot be taken for granted. The second part of the report explores the opportunities and challenges associated with energy transformation, and development and deployment of CDR.

The feasibility of the necessary transformation hinges on reconciling development and climate objectives in all countries. As has been amply illustrated during the COVID-19 pandemic and the energy crisis, development choices and responses to economic shocks are inseparable from – and often determine – climate outcomes. Previous editions of the Emissions Gap Report have illustrated that well planned and socially just transformations can bring economic benefits, create new jobs, advance gender equality, and empower people, communities and societies. All available evidence confirms the availability of a wide range of mature, efficient and economically attractive options to reduce GHG emissions. They just need to be deployed, immediately and at unprecedented rates (Pathak *et al.* 2022; International Energy Agency 2023; Lee *et al.* 2023).

Doing so could simultaneously help reverse the concerning general international setback on the achievement of the global Sustainable Development Goals for 2030. A preliminary assessment shows that of the around 140 targets for which data is available, only 12 per cent are on track, whereas more than half are moderately or severely off track, and around 30 per cent have either seen no movement or have regressed below the 2015 baseline (United Nations 2023).

1.2 Approach and structure of the report

The Emissions Gap Report is an assessment report. It provides an evaluation of scientifically and technically credible knowledge on emissions trends, progress, gaps and opportunities, based on a synthesis of the latest scientific literature, models, and data analysis and interpretation, including that published by the IPCC.

As in previous years, this Emissions Gap Report has been prepared by an international team of leading experts. This year, 79 leading scientists from 47 expert institutions across 22 countries have been engaged in producing the report. The assessment process has been overseen by an international steering committee and has been transparent and participatory. Geographical diversity and gender balance has been considered to the extent possible. All chapters have undergone external review, and the assessment methodology and preliminary findings were made available to the Governments of the countries specifically mentioned in the report, to provide them with the opportunity to comment on the findings.

The report is organized into seven chapters, including this introduction. Chapter 2 assesses the trends in global GHG emissions. Chapter 3 provides a global update of NDCs and long-term net-zero emissions pledges, and assesses the progress of G20 members towards achieving their NDCs and net-zero emissions pledges. Chapter 4 updates the assessment of the emissions gap by 2030 based on the latest NDCs, and looks at potential gaps beyond 2030. It also considers the implications of the emissions gap on the feasibility of achieving the long-term temperature goal of the Paris Agreement. Chapter 5 frames the second part of the report, laying out global issues related to energy transformation and CDR. Chapter 6 assesses challenges and opportunities for accelerating energy transitions in low- and middle-income countries, while meeting critical development needs and priorities. Finally, chapter 7 considers the role, status and scope for CDR in achieving the long-term temperature goal of the Paris Agreement.

2 Global emissions trends

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2.1 Introduction

This chapter assesses greenhouse gas (GHG) emissions trends up to and including 2022. Starting from global emissions trends by GHG and sector (section 2.2), it describes the emissions of the G20 and top emitters (section 2.3) before covering household and consumption-based emissions (sections 2.4 and 2.5). In doing so, it sets the stage for subsequent chapters on G20 policies and the emissions gap.[1] Importantly, this chapter provides multiple perspectives on national emissions, including absolute, per capita and historical cumulative emissions. Each of these perspectives offer insight into inequalities in contributions to climate change, while highlighting that turning around global emissions growth now requires ambitious and urgent efforts from all countries to reduce fossil fuel use and deforestation.

As in previous years, the Emissions Gap Report focuses on total net GHG emissions across all major groups of anthropogenic sources and sinks reported under the United Nations Framework Convention on Climate Change (UNFCCC). This includes carbon dioxide (CO_2) emissions from fossil fuel and industry (fossil CO_2), CO_2 emissions and removals from land use, land-use change and forestry (LULUCF CO_2), methane (CH_4) and nitrous oxide (N_2O) emissions. It includes fluorinated gas (F-gas) emissions reported under the UNFCCC, but excludes F-gas emissions regulated under the Montreal Protocol on ozone depleting substances, which accounted for approximately 1.6 gigatons of CO_2 equivalent ($GtCO_2e$) in 2021 (Forster *et al.* 2023). Non-CO_2 LULUCF emissions are also excluded due to data limitations.

Following the change in methodology outlined in the Emissions Gap Report 2022 (United Nations Environment Programme [UNEP] 2022), the global bookkeeping approach is used to report global estimates of net LULUCF CO_2 emissions and the national inventory approach to report national estimates of net LULUCF CO_2 emissions. This ensures that global estimates are consistent with the mitigation scenarios presented in chapter 4, as well as the carbon cycle and climate science literature; while national estimates are consistent with those reported by countries to the UNFCCC. As this chapter reports, total net LULUCF CO_2 emissions differ substantially between these two approaches, due to known differences in system boundaries and other assumptions.

Where GHG emissions are aggregated to CO_2 equivalents in this report, 100-year global warming potentials from the latest Intergovernmental Panel on Climate Change (IPCC) Working Group (WG) I *Sixth Assessment Report* (AR6) (Forster *et al.* 2021) are used. Alternative metrics can be used – for instance, global warming potentials with a 20-year time horizon would highlight the relative importance of CH_4 on near-term warming – but are not explored here. Uncertainties in emissions estimates are reported following the IPCC WGIII AR6 of ±8 per cent for fossil CO_2, ±70 per cent for LULUCF CO_2, ±30 per cent for CH_4 and F-gases, and

1 The African Union became a permanent member of the G20 in September 2023, which was after the assessments for this report had been completed. Consequently, the African Union is not included in the G20 assessment this year.

±60 per cent for N_2O (Dhakal *et al.* 2022). This chapter follows a territorial-based accounting of emissions (i.e. emissions are allocated to the sectors and nations where they occur) unless otherwise noted. Indirect and consumption-based perspectives are considered in section 2.5, in particular in the context of household emissions.

The principal sources in this chapter include the Emissions Database for Global Atmospheric Research dataset for fossil CO_2, CH_4, N_2O and F-gas emissions (Crippa *et al.* 2023); the Global Carbon Budget for global LULUCF CO_2 estimates, taking the average of three bookkeeping models (Friedlingstein *et al.* 2022); and Grassi *et al.* (2022; 2023) for national inventory-based LULUCF CO_2 (with updates to the latest inventories for the top emitters). The latest years of data in these sources should be treated as preliminary – particularly in the case of LULUCF CO_2 and non-CO_2 GHG emissions – due to the use of provisional methodologies based on available activity data. Emissions are generally reported up to 2022. However, due to data limitations, this is not possible for inventory-based LULUCF CO_2. Complete national totals including LULUCF CO_2 are therefore only given up to 2021. Lamb (2023) contains the code and data used to produce all emissions estimates in this chapter.

2.2 Global emissions trends

2.2.1 Global emissions increased to record levels in 2022

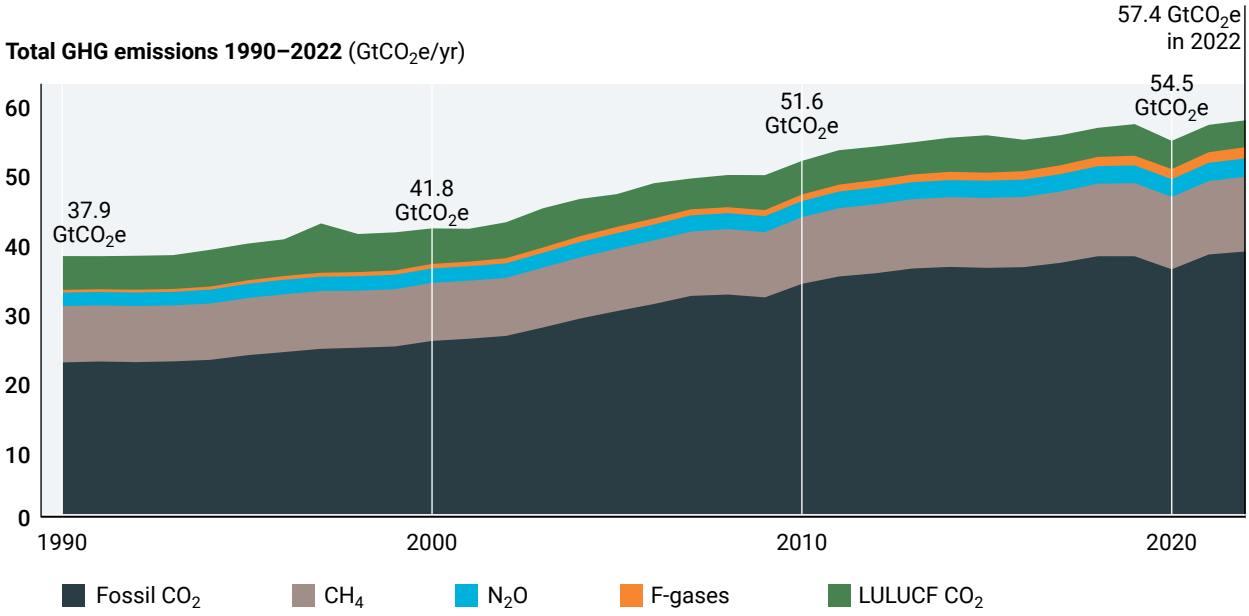
Global GHG emissions reached a record high of 57.4 $GtCO_2e$ in 2022, growing by 1.2 per cent (0.6 $GtCO_2e$) from the previous year (figure 2.1 and table 2.1). This rate is slightly above the average rate in the decade preceding the COVID-19 pandemic (2010–2019), when GHG emissions growth averaged 0.9 per cent per year, but was slower than the emissions growth of the 1990s (1.2 per cent per year) and 2000s (2.2 per cent per year). Atmospheric CO_2 concentrations grew to 417.9 ± 0.2 parts per million in 2022 (World Meteorological Organization 2023), and will continue to grow until annual emissions are reduced sufficiently to be balanced by removals. In contrast, as shown in chapter 4 of this report, global GHG emissions must decline to levels between 33 and 41 $GtCO_2e$ by 2030 (chapter 4 and table 4.2) to get on a least-cost pathway to meeting the temperature goal of the Paris Agreement.

Fossil CO_2 emissions account for approximately two thirds of current GHG emissions using 100-year global warming potentials. According to multiple datasets, fossil CO_2 emissions grew between 0.8–1.5 per cent in 2022 and were the main contributor to the overall increase in GHG emissions (Friedlingstein *et al.* 2022; Energy Institute 2023; International Energy Agency 2023; Liu *et al.* 2023). CH_4, N_2O and F-gas emissions account for about one quarter of current GHG emissions. Although their absolute contribution to the overall increase in 2022 was lower since they represent a much smaller share of the total, emissions of these gases are increasing rapidly: in 2022, F-gas emissions grew by 5.5 per cent, followed by CH_4 at 1.8 per cent and N_2O at 0.9 per cent.

Global net LULUCF CO_2 emissions – using the global bookkeeping approach – remained steady in 2022, but are based on an early projection of land-use activity with relatively high uncertainties (Friedlingstein *et al.* 2022). Updated estimates indicate that net LULUCF CO_2 emissions slowly declined in the past two decades, with average emissions of 4.5 gigatons of CO_2 ($GtCO_2$) per year during 2012–2021, compared with 4.9 $GtCO_2$ per year during 2002–2011. The primary driver behind the decline is an increase in removals on forest land (from 3.0 to 3.5 $GtCO_2$ per year), including afforestation/reforestation, while emissions from deforestation remained high (6.8 and 6.7 $GtCO_2$ per year for 2002–2011 and 2012–2021, respectively). LULUCF CO_2 emissions and removals continue to have the largest uncertainties of all gases considered here, both in terms of their absolute amounts and trends.

Global bookkeeping and national inventory-based accounts of LULUCF CO_2 emissions diverged by approximately 6.4 $GtCO_2$ in 2021 (table 2.1). This is due to known differences in system boundaries between each approach, in particular the fact that bookkeeping models consider only "direct" human-induced fluxes as anthropogenic (e.g. deforestation, afforestation and other land use-related vegetation changes), whereas national inventories typically also include most of the "indirect" human-induced fluxes (e.g. enhanced vegetation growth due to increased atmospheric CO_2) that occur on managed land (Grassi *et al.* 2021; UNEP 2022, p. 4).

Figure 2.1 Total net anthropogenic GHG emissions, 1990–2022



Sources: Crippa *et al.* (2023) for GHG emissions; Friedlingstein *et al.* (2022) for bookkeeping LULUCF CO_2; Grassi *et al.* (2023) for inventory-based LULUCF CO_2.

Note: GHG emissions include fossil CO_2, LULUCF CO_2, CH_4, N_2O and F-gas emissions. Bookkeeping-based net LULUCF CO_2 emissions are depicted. Non-CO_2 gases are converted to CO_2 equivalents using global warming potentials with a 100-year time horizon from the IPCC AR6 (Forster *et al.* 2021).

Global primary energy consumption expanded in 2022, and was mainly met by a growth in coal, oil and renewable electricity supply (Energy Institute 2023; International Energy Agency 2023). Gas consumption declined by 3 per cent in 2022 following the war in Ukraine (Energy Institute 2023). Coal consumption increased, in part driven by switching from gas to coal, as well as the steady growth of coal-fired power production in some emerging economies. Net electricity demand growth in 2022 was primarily met by renewable sources (excluding hydropower), in particular driven by a record increase in solar capacity additions (Energy Institute 2023). Overall, while investments in renewables increased globally, investments in coal, oil and gas have continued and even increased in some countries.

Table 2.1 Total global emissions by source

$GtCO_2e$	2010–2019 (average)	2020	2021	2022
GHG	54.6 ± 5.55	54.5 ± 5.36	56.8 ± 5.45	57.4 ± 5.48
Fossil CO_2	36.1 ± 2.89	35.9 ± 2.88	38.1 ± 3.05	38.5 ± 3.08
LULUCF CO_2 (global bookkeeping)	4.72 ± 3.3	4.06 ± 2.84	3.94 ± 2.76	3.87 ± 2.71
LULUCF CO_2 (national inventory)*	-2.64 ± -1.85	-2.49 ± -1.74	-2.4 ± -1.68	N/A
CH_4	10.1 ± 3.03	10.4 ± 3.13	10.6 ± 3.18	10.8 ± 3.23
N_2O	2.47 ± 1.48	2.57 ± 1.54	2.63 ± 1.58	2.65 ± 1.59
F-gases	1.17 ± 0.351	1.46 ± 0.439	1.54 ± 0.461	1.62 ± 0.486

Note: * Inventory-based LULUCF CO_2 is excluded from total GHG emissions. Non-CO_2 greenhouse gases are converted to CO_2 equivalents using global warming potentials with a 100-year time horizon from the IPCC WGI AR6 (Forster *et al.* 2021).

2.2.2 Emissions rebounded across most global sectors following the COVID-19 pandemic

Emissions can be split into five major economic sectors: energy supply, industry, agriculture and LULUCF, transport and buildings. In 2022, energy supply was the largest source of emissions at 20.9 $GtCO_2e$ (36 per cent of the total), which is mainly due to combustion emissions in the power sector (14.8 $GtCO_2e$) and emissions from fossil fuel production including fugitive methane (6.1 $GtCO_2e$). The energy supply sector is the largest contributor to the increase in emissions over the past decades, largely due to the worldwide expansion of coal- and gas-fired power generation (International Energy Agency 2023). However, it is also one of the only sectors where some countries have made progress in reducing emissions by switching to lower emission fuels and by scaling up renewable sources.

Industry is the second largest sector when accounting by direct emissions (14.4 $GtCO_2e$, 25 per cent of the total), followed by agriculture and LULUCF CO_2 (global bookkeeping approach) (10.3 $GtCO_2e$, 18 per cent), transport (8.1 $GtCO_2e$, 14 per cent) and buildings (3.8 $GtCO_2e$, 6.7 per cent). However, if power sector emissions are reallocated to final sectors based on their use of electricity and heat (i.e. indirect emissions, which highlight a demand perspective), then the contribution of the industry and buildings sectors increase significantly (to 34 per cent and 16 per cent, respectively) (Lamb *et al.* 2021b).

The latest data up to 2022 indicate that most global sectors have fully rebounded from the drop in 2020 emissions, which was induced by COVID-19, and now exceed 2019 levels with little change in the overall composition of sector emissions (Liu *et al.* 2023). An exception is aviation emissions, which remain at 74 per cent of their 2019 peak of 1.0 $GtCO_2e$, but are likely to continue to rebound in 2023 as air passenger numbers start to reach pre-pandemic levels (International Air Transport Association 2023).

2.3 Emissions trends of major emitters

2.3.1 Emissions of the G20 members increased in 2022 and accounted for three quarters of the total

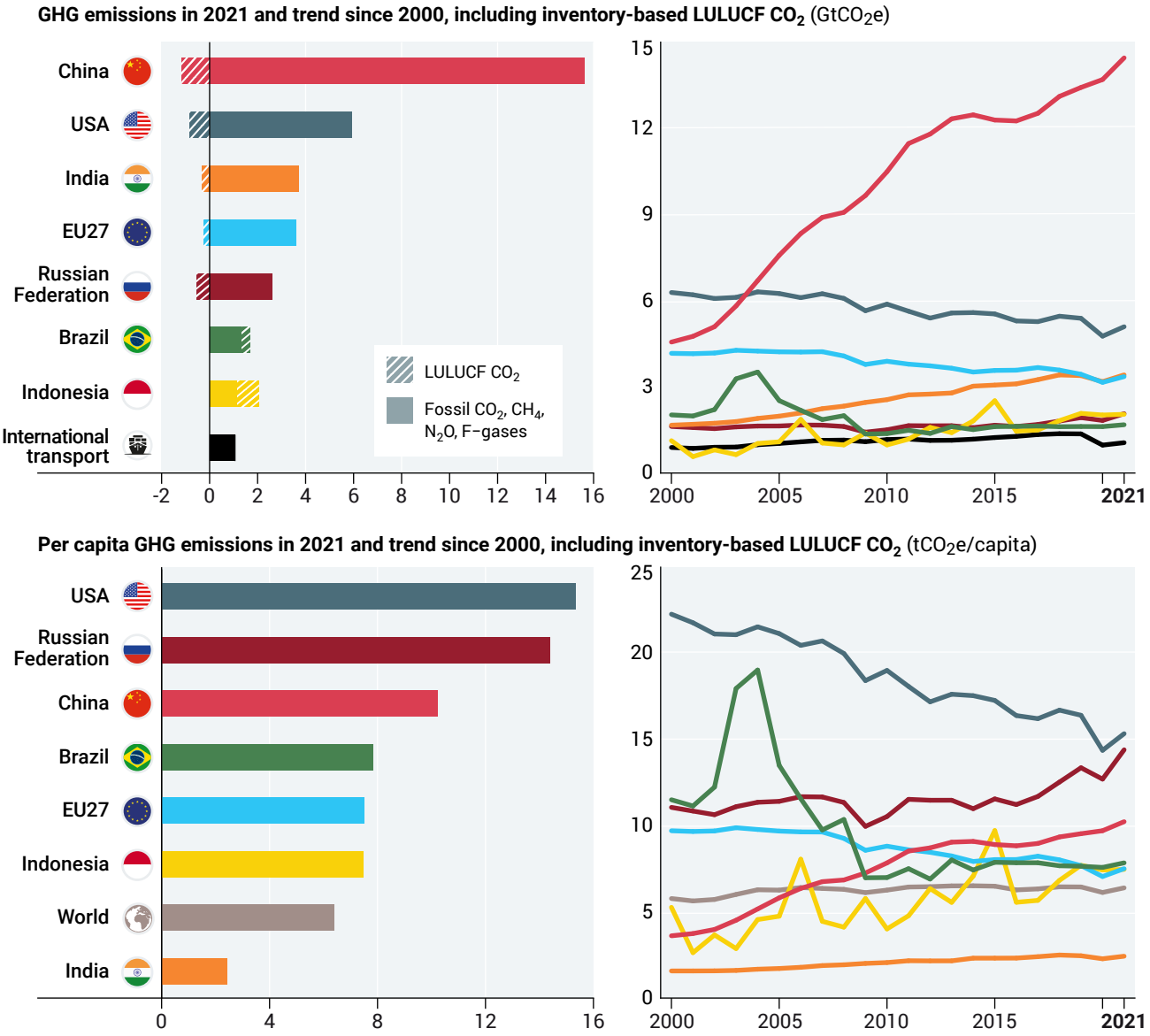
Preliminary estimates for 2022 (which exclude LULUCF CO_2 for which data is only available up to 2021) show an increase in GHG emissions compared with 2021 in Indonesia (+10 per cent), India (+5.1 per cent), the United States of America (+1.6 per cent) and China (+0.3 per cent), and a decrease in the European Union (-0.8 per cent), the Russian Federation (-1 per cent) and Brazil (-2.5 per cent). International transport emissions rapidly increased (+11.4 per cent), but remain below pre-pandemic levels. Total emissions of the G20 also increased (+1.2 per cent).

The top seven global emitters remain the same as in 2021: Brazil, China, India, Indonesia, the European Union, the Russian Federation and the United States of America (figure 2.2). Collectively, and with the addition of international transport, these emitters accounted for a total of 33 $GtCO_2e$ in 2021, or 65 per cent of global emissions on a territorial basis, including national inventory-based LULUCF CO_2. Combined, the G20 accounted for 76 per cent of global emissions. By contrast, least developed countries accounted for 3.8 per cent of global emissions, while small island developing States contributed less than 1 per cent. Generally, global emissions have shifted from high-income to low- and middle-income countries in the past two decades. High-income countries, which include eight members of the G20 (Australia, Canada, the European Union, Japan, Saudi Arabia, the Republic of Korea, the United Kingdom of Great Britain and Northern Ireland and the United States of America) contributed 43 per cent of GHG emissions in 2000, but 28 per cent in 2021. Conversely, low- and middle-income countries, which include nine members of the G20 (Argentina, Brazil, China, India, Indonesia, Mexico, the Russian Federation, South Africa and Türkiye) contributed 53 per cent in 2000 and 69 per cent in 2021.

There is some evidence that the global energy crisis and the international sanctions following the war in Ukraine have impacted regional economic activity and emissions, with highly uncertain long-term implications (International Energy Agency 2022). Direct emissions from military operations, vehicles and installations are likely non-trivial, but remain insufficiently accounted under UNFCCC reporting conventions, and there is limited evidence in the literature on the scope, scale, composition or trend of these emissions (Rajaeifar *et al.* 2022). The energy crisis has driven efforts towards a clean energy transition, with increased investments in renewables and support for clean energy policies and phasing out fossil fuels in some countries (Steffen and Patt 2022; Tollefson 2022). At the same time, some countries have expanded domestic fossil fuel extraction, citing energy security concerns (United Kingdom 2022). There is evidence of an increase in energy prices and a shift in regional energy supplies, particularly in Europe, which took active measures to decrease fossil imports from the Russian Federation (Steffen and Patt 2022). Rising costs of energy and products dependent on fossil fuels could push millions of people globally into poverty, in addition to the hundreds of millions already living under hardship (Guan *et al.* 2023).

Net LULUCF CO_2 emissions, especially from deforestation and land-use change, continue to be concentrated in tropical regions, with Brazil, Indonesia and the Democratic Republic of the Congo contributing 58 per cent of the global total in 2021 – albeit with extremely high uncertainties (Friedlingstein *et al.* 2022). Countries such as these that have a higher contribution from LULUCF CO_2 also tend to experience larger annual fluctuations in GHG emissions due to policy-induced land-use changes, deforestation, wildfires on managed land or shifts towards forest protection (figure 2.2).

Figure 2.2 Emissions trends of major emitters



Sources: World Bank (2023) for population; Crippa *et al.* (2023) for GHG emissions; Grassi *et al.* (2023) for inventory-based LULUCF CO_2.

Note: The top panel depicts total GHG emissions in 2021 and their trends since 2000 for the top seven emitters and international transport. Insufficient LULUCF CO_2 data prevents an update of these trends to 2022 and before 2000. The lower panel depicts per capita GHG emissions in 2021 for these countries and their trends since 2000. Both include inventory-based net LULUCF CO_2 emissions. Non-CO_2 gases are converted to CO_2 equivalents using global warming potentials with a 100-year time horizon from the IPCC WGI AR6 (Forster *et al.* 2021).

2.4 Some countries have peaked in emissions, meanwhile global per capita levels remain highly unequal

Per capita territorial-based GHG emissions in the United States of America and the Russian Federation are over double the world average of 6.5 tons of CO_2 equivalent (tCO_2e), while those in India remain under half of it (figure 2.2). The G20 as a whole averaged 7.9 tCO_2e, whereas least developed countries averaged 2.2 tCO_2e and small island developing States averaged 4.2 tCO_2e. In general, per capita GHG emissions are highly unequally distributed across countries, with emissions as low as 1.3 tCO_2e in Nepal and as high as 73 tCO_2e in Qatar. By comparison, global median estimates of per capita emissions by 2050 consistent with 2°C and 1.5°C scenarios are 2.2 tCO_2e and 1.0 tCO_2e respectively (see chapter 3).

An increasing number of countries have peaked and reduced absolute emissions for more than 10 years (Le Quéré *et al.* 2019; Hubacek *et al.* 2021; Lamb *et al.* 2021a). As of 2022, 36 countries have now sustained emissions reductions for

longer than 10 years, in terms of both fossil CO_2 and total GHG emissions, excluding LULUCF CO_2. Of these, 22 are countries in the European Union, while a further eight are high-income countries: Australia, Israel, Japan, Norway, Switzerland, Ukraine, the United Kingdom, the United States of America. Six middle-income countries have also reduced emissions over this time period: Albania, Cuba, Jamaica, Mexico, North Macedonia and South Africa. Generally, while these countries have succeeded in reducing power sector and industry emissions, success in reducing transport, buildings and agriculture emissions has so far been limited (Lamb *et al.* 2021a).

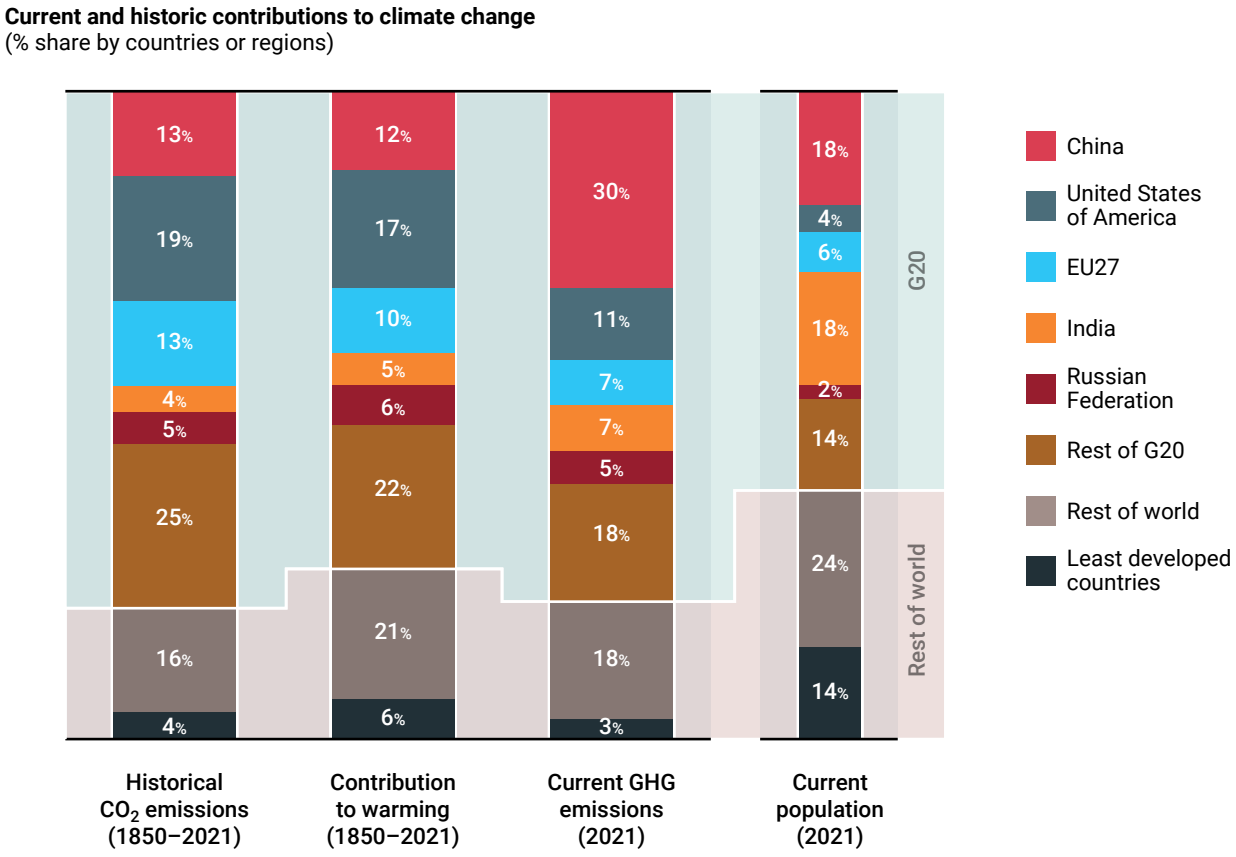
2.5 Contributions to climate change are unequal

2.5.1 A minority of countries have contributed the majority of historical emissions and warming

Cumulative emissions between 1850 and 2021 vary across regions (IPCC 2022). The United States of America is responsible for the largest share of these emissions, followed by the European Union and China (figure 2.3). Collectively, the United States of America and the European Union contributed nearly a third of the total cumulative emissions from 1850 to 2021. Consequently, emissions from these countries have also contributed significantly to warming, including the impact of methane and nitrous oxide emissions, since industrialization (Jones *et al.* 2023). In comparison, least developed countries contributed 4 per cent of historical cumulative fossil and LULUCF CO_2 emissions (figure 2.3).

The G20 as a whole is responsible for approximately three quarters of warming to date, and an even greater proportion of historical cumulative fossil CO_2 emissions (figure 2.3). However, the G20 is itself diverse in terms of economic and social development stages, including population, level of urbanization, industrialization and resource endowments.

Figure 2.3 Current and historical contributions to climate change



Sources: World Bank (2023) for population; Crippa *et al.* (2023) for current GHG emissions; Friedlingstein *et al.* (2022) for historic CO_2 emissions; Jones *et al.* (2023) for historic contributions to warming.

Note: This figure contrasts the distribution of global population in 2021 (total = 7.86 billion), GHG emissions in 2021 (total = 51.6 $GtCO_2e$), cumulative CO_2 emissions (total = 2,200 $GtCO_2$) and historic contributions to warming (total = 1.61°C). Historic contributions to warming result from cumulative CO_2 emissions, but also estimated CH_4, N_2O and F-gas emissions (cooling from aerosols is excluded, leading to a higher estimate of warming than currently observed). Note that due to missing data, these totals are not complete for all categories and exclude, for example, international transport. Current GHG and cumulative CO_2 emissions include net LULUCF CO_2 emissions (global bookkeeping approach) to align with historical emissions estimates (note that this leads to differences with section 2.3.1 where national inventories are used). Non-CO_2 gases are converted to CO_2 equivalents using global warming potentials with a 100-year time horizon from the IPCC AR6 (Forster *et al.* 2021).

2.5.2 Wealthy households contribute nearly half of consumption-based emissions worldwide

Globally, emissions inequality exists among households across and within countries, reflecting underlying inequalities in wealth and income (Bruckner *et al.* 2022). A consistent finding in the literature is that households with the highest income or wealth contribute a disproportionate amount of emissions worldwide. Emissions of the global top 10 per cent of individuals (ranked according to income, wealth or emissions) contributed 45 per cent to 49 per cent of total global emissions, while the global bottom 50 per cent emitted 7 per cent to 13 per cent of the total (Chancel and Piketty 2015; Kartha *et al.* 2020; Chancel 2022; Bruckner *et al.* 2022;).

Estimates of household-level emissions can include those associated with the direct consumption of energy for heating, cooling and transportation, as well as the indirect emissions associated with the consumption of goods and services, or with financial investments (Starr *et al.* 2023).

There are high emitters in all regions and countries. However, emissions of the high-income households in South and Southeast Asia and sub-Saharan Africa appear to be significantly lower compared to other regions (figure 2.4). The emissions of the top 1 per cent households in the United States of America, the Russian Federation and China far exceed their counterparts from developing countries such as Brazil, India and Indonesia.

Emissions trends also vary across income groups. For the United States of America, Starr *et al.* (2023) found that the top 1 per cent consumption-based per capita emissions increased over the recent period, while they decreased for other groups of the population. Zheng *et al.* (2023) found that emissions of the top 20 per cent declined less rapidly than that of other groups in most high-income countries. At the global level, the top 1 per cent contributed to a quarter of the growth in per capita emissions over 1990–2019 (Chancel 2022).

These inequalities in consumption-based emissions reflect income and wealth inequality, and unequal consumption and savings patterns both within and between countries (Cheng *et al.* 2021; Duarte, Miranda-Buetas and Sarasa 2021). Drivers of high energy consumption in wealthier countries include living space (very large homes or secondary homes), the use of large vehicles such as sport-utility vehicles, leisure and work that involve driving and air travel, and the high consumption of meat, dairy and fast fashion (Wiedmann *et al.* 2020; Hickel and Slamersak 2022). Emissions from investments can also lead to significant inequalities between high- and low-income households (Starr *et al.* 2023). Evidence from China shows a positive relationship between income and wealth inequality, and high-consumption lifestyles and emissions (Liu *et al.* 2019; Mi *et al.* 2020; Qin *et al.* 2022). In the United States of America, emissions from high-income households are due to higher energy needs resulting from lifestyle choices such as preference for larger homes and higher dependence on private transport (Feng, Hubacek and Song 2021). Evidence of emissions inequalities between high- and low-income households has been reported for India, Mexico and the Philippines (Santillán Vera and de la Vega Navarro 2020; Seriño 2020; Sri and Banerjee 2023). Climate policy instruments have not always been successful in reducing emissions-intensive consumption or investments, and in many cases have increased the burden on low- and middle-income households (Chancel 2022).

Materials and energy are also required to sustain decent living standards, such as shelter, mobility, nutrition and healthcare – however, the estimated impact of satisfying these needs is relatively small (Pachauri 2014; Rao, Min and Mastrucci 2019; Vélez-Henao and Pauliuk 2023; see also chapter 5). Achieving targets of the Sustainable Development Goals including eradicating extreme poverty, providing clean energy access and providing decent living standards to these regions are consequently global priorities alongside deep emissions reductions (chapters 5 and 6).

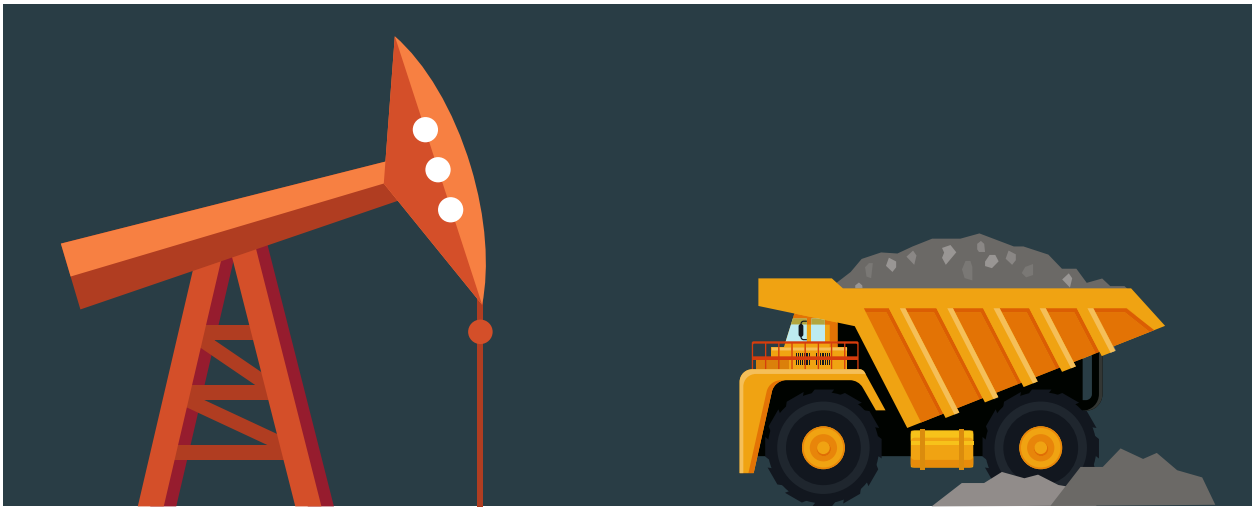
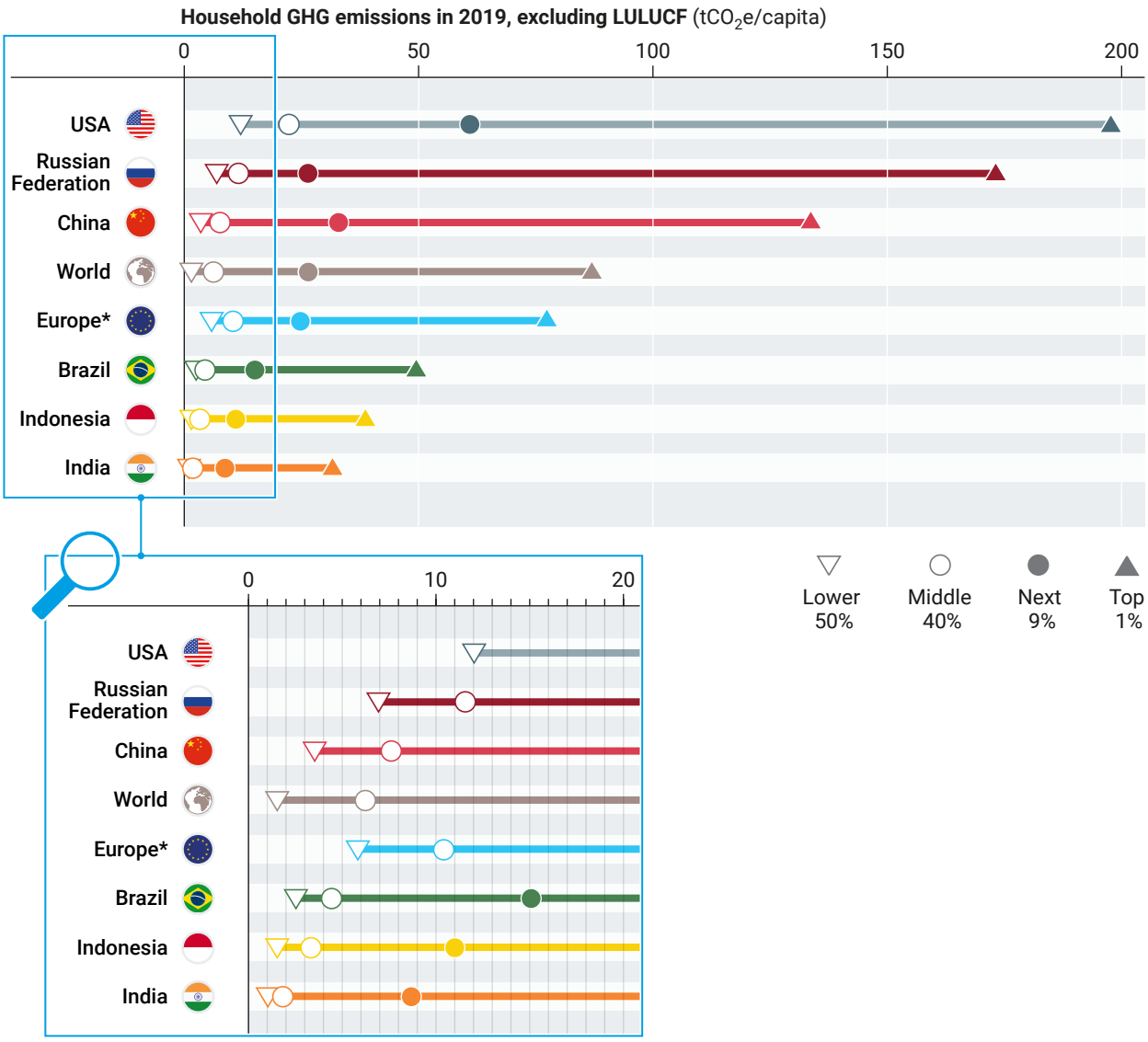


Figure 2.4 GHG emissions across different groups of households (2019)



Source: World Inequality Database (2023).

Note: Emissions include those from domestic direct and indirect consumption, and public and private investments, imports and exports of carbon embedded in goods and services traded. In these estimates, emissions associated with the formation of capital (i.e. investments) are attributed to the owners of capital. This excludes LULUCF CO_2 emissions. Emissions are split equally within households.

* In this table, Europe refers to, and is calculated as the weighted average, of France, Germany, Italy, Poland, Spain, Sweden and the United Kingdom.

3 Nationally determined contributions and long-term pledges: The global landscape and G20 member progress

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3.1 Introduction

This chapter provides a global update of greenhouse gas (GHG) emissions reduction pledges for 2030 and beyond, as well as an assessment of G20 members' implementation progress. The chapter addresses the following three questions:

1 How have the nationally determined contributions (NDCs) evolved since the twenty-seventh session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP 27) and since the Paris Agreement was adopted, and what does this imply for global GHG emissions in 2030? (section 3.2)

2 What progress have G20 members made towards achieving their NDC targets since COP 27, and what new policies are they implementing? (section 3.3)

3 To what extent have net-zero targets been strengthened and moved towards implementation since COP 27? (section 3.4)

The cut-off date for the literature and data assessed in this chapter is 25 September 2023. In line with the other chapters of this report, all GHG emissions numbers are expressed using the 100-year global warming potentials from the Intergovernmental Panel on Climate Change Sixth Assessment Report (IPCC AR6). For historical emissions, this chapter refers to the national inventory reports submitted to the United Nations Framework Convention on Climate Change (UNFCCC), unless otherwise noted. The methodology and preliminary findings of this chapter were made available to the Governments of the G20 members to provide them with the opportunity to comment on the findings.

According to the Paris Agreement, its implementation should "reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of differing national circumstances" (UNFCCC 2015). An assessment of the extent to which countries' 2030 and long-term pledges are ambitious in light of equity, responsibility, capability and other burden-sharing principles is beyond this chapter. These are highly contested and normative issues. However, the chapter showcases the wide variation in per capita emissions implied by current NDCs and policies. Moreover, it notes that the ambition of an NDC is one of the factors likely to influence whether a country is on track to achieving it, as a less ambitious target for 2030 will be easier to implement than a more ambitious target. Similarly, a country not currently on track to achieve its NDCs might nevertheless be taking substantially more mitigation action than a country that is on track. The chapter should be read with this context in mind.

3.2 Global progress of NDCs is negligible since COP 27, but there is some progress since the adoption of the Paris Agreement

3.2.1 A growing number of NDCs contain GHG reduction targets, and more of these are economy-wide

The Conference of the Parties (COP) decision that accompanied the Paris Agreement invited countries to communicate new NDCs or to update their current NDCs by 2020, while subsequent COP decisions have asked countries to revisit and strengthen their targets "as necessary to align with the Paris Agreement temperature goal". The Emissions Gap Report tracks the number of countries communicating new or updated NDCs, as well as key characteristics related to the emissions reduction targets included in these NDCs.

Since COP 27, nine countries have submitted new or updated NDCs. Of these, four propose to reduce 2030 emissions further than the country's prior NDCs (Egypt, Türkiye, the United Arab Emirates and Uruguay), two are unclear or not comparable to the prior NDCs (Kiribati and Turkmenistan), one does not further reduce emissions (Kazakhstan) and one is the country's first NDC (the Holy See) (Climate Watch 2023). These submissions bring the total number of Paris Agreement parties that have replaced or updated their NDCs as at 25 September 2023 to 149 (counting the European Union and its 27 Member States as a single party). The mitigation content of these NDCs has evolved over time, in several ways (table 3.1).

First, more NDCs now contain GHG reduction targets, and more of these targets are economy-wide – that is, they cover a country's entire economy as opposed to certain sectors. The Paris Agreement stipulates that developed countries should adopt "economy-wide absolute emissions reduction targets" and encourages developing countries to "move over time" to economy-wide emissions targets. Now, 148 NDCs contain GHG reduction targets, up from 122 at COP 21 where the Paris Agreement was adopted. Of these targets, 97 are economy-wide, versus 55 in the initial NDCs. The share of NDCs with targets covering all seven GHGs listed in the Kyoto Protocol, in contrast, has remained modest at only 23, up from 20 at COP 21.[1]

Second, the number of NDCs noting that they may use international market mechanisms to achieve their targets has increased to 121, up from 92 at COP 21. Article 6 of the Paris Agreement provides that parties may cooperate with other parties to achieve their targets by trading emissions credits or offsets. The increase in targets that may incorporate these mechanisms might reflect greater certainty regarding the modalities of these mechanisms since they were clarified at COP 26.

Finally, developing country parties often specify that all or part of their NDCs are conditional on international finance, technology transfer or other provisions. The number of NDCs containing elements that are not conditional on such measures has increased to 135, compared with 108 at COP 21.

3.2.2 The effect on global emissions of new and updated NDCs submitted since COP 27 is negligible, while the aggregate effect of new and updated NDCs since the Paris Agreement is more pronounced

If all the latest unconditional NDCs[2] are fully implemented, they are estimated to reduce global GHG emissions in 2030 by about 5.0 gigatons of CO_2 equivalent ($GtCO_2e$) (range: 1.6–8.1) annually compared with the initial NDCs (see appendix B.2 for details on the impacts of various country contributions). The combined effect of the nine NDCs submitted since COP 27 amounts to about 0.1 $GtCO_2e$ of this total.[3] Thus, while progress since COP 27 is negligible, progress since the adoption of the Paris Agreement is more pronounced.

1 There are 136 NDCs that contain targets covering methane.

2 Through 25 September 2023.

3 The data comes from three model groups with updated NDCs, with cut-off dates ranging from November 2022 to September 2023 across studies (Keramidas *et al.* 2022; den Elzen *et al.* 2023; Meinshausen *et al.* 2022; Meinshausen *et al.* 2023) and two open-source tools (Climate Action Tracker 2023a; Fransen *et al.* 2022, as updated using Climate Watch 2023).

Table 3.1 Trends in global NDC characteristics since the Paris Agreement

NDC characteristics	COP 28 (2023)	COP 27 (2022)	COP 26 (2021)	COP 21 (2015)
Number of NDCs	Number (percentage of global emissions)			
That reduce 2030 emissions relative to initial NDCs	81 (79%)	79 (79%)	65 (63%)	N/A
That contain a GHG reduction target	148 (90%)	147 (90%)	143 (89%)	122 (85%)
That contain a GHG target covering all sectors (energy, industry, waste; agriculture, forestry and other land-use change; or agriculture and land use, land-use change and forestry [LULUCF])	97 (54%)	96 (53%)	91 (52%)	55 (44%)
That contain a GHG target covering all GHGs listed in the Kyoto Protocol (carbon dioxide [CO_2], methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and nitrogen trifluoride)	23 (30%)	23 (30%)	23 (30%)	20 (29%)
That may be achieved using international market mechanisms	121 (39%)	120 (39%)	120 (37%)	92 (24%)
That contain elements not conditional on international support	135 (82%)	134 (82%)	131 (81%)	108 (77%)

Note: Numbers in parentheses refer to the share of global GHG emissions from countries communicating NDCs with the characteristic shown in the first column. The last day of each COP is used as the cut-off date for each column, except for COP 28, for which the cut-off date is 25 September 2023.

3.3 Implementation progress of G20 members continues, but must be accelerated

This section provides an update on the progress of G20 members towards their latest NDC targets. It assesses collective and individual progress of G20 members in bridging the implementation gap, defined as the difference between projected emissions under current policies and projected emissions under full implementation of the NDCs (section 3.3.1). This is accompanied by consideration of recent major policy developments that are not yet fully reflected in emissions projection studies (section 3.3.2). To take stock, box 3.1 concludes on the predecessor of the NDCs (the Cancun Pledges for 2020) against which the Emissions Gap Reports (until 2015) assessed the emissions gap for 2020.

Box 3.1 Did the G20 achieve the Cancun Pledges for 2020?

As part of the 2010 Cancun Agreements, developed country parties communicated emissions reduction targets for 2020 and developing country parties communicated nationally appropriate mitigation actions, many of which also contained 2020 emissions targets (UNFCCC 2011). Thirteen of the G20 members made such pledges (counting the European Union Members – France, Germany, Italy and the United Kingdom – as a single entity), while three countries (Argentina, Saudi Arabia and Türkiye) did not. GHG inventory data for 2020 are now available for all Annex I countries and some non-Annex I countries, making it possible to assess whether these pledges were achieved.

Collectively, G20 members achieved the Cancun Pledges (see appendix B.1). Ten G20 members (Australia, Brazil, China, the European Union [including the United Kingdom], India, Japan, Mexico, South Africa, the Russian Federation and the United States of America) achieved their Cancun Pledges, while two members (Canada and the Republic of Korea) did not achieve them. Some countries, such as Indonesia, need to update their national data and information to enable tracking progress towards their pledges.

However, the achievement of the Cancun Pledges still resulted in a large emissions gap in 2020. The failure to bridge the 2020 emissions gap has added further to the present mitigation challenge and the feasibility of bridging the 2030 emissions gap.

The assessment is based on a comparison of 2020 GHG emissions with the trajectories associated with the achievement of these parties' pledges (see appendix B.1 for further detail). Emissions data is sourced from official GHG inventories (where available) or from independent data sources (chapter 2).

3.3.1 Progress of G20 members towards the 2030 NDC targets varies

Collectively, the G20 members are projected to fall short of their latest NDCs by 1.2 $GtCO_2e$ (central estimate) annually by 2030. This is 0.6 $GtCO_2e$ lower than last year's assessment. For two G20 members, the projected emissions under the NDC have, from the time they were submitted, significantly exceeded current policies projections (the Russian Federation and Türkiye), thereby lowering the implementation gap compared with what can be reasonably expected. If NDC projections for these two members are substituted by current policies scenario projections, the G20 members would collectively fall short of achieving their NDCs in 2030 by an annual 1.8 $GtCO_2e$ in 2030, which is 0.8 $GtCO_2e$ lower than in last year's assessment. The impact of newly implemented policies is the driver of the lower projections. Other factors include that the scenario dataset has been updated to reflect the latest emissions trends and socioeconomic developments and circumstances, and that there have been methodological updates to scenario models (see box 3.2 and chapter 4).

Box 3.2 Methodology underlying the assessment of G20 member progress

The updated assessment of progress towards 2030 targets is based on a synthesis of emissions projection studies by independent research groups. The studies considered in the assessment are mostly published between 2021 and 2023. A list of the studies as well as the criteria for their inclusion is available in appendix B.3. In line with previous Emissions Gap Reports, the assessment follows the methodology of den Elzen *et al.* (2019). NDC targets are compared to emissions projections under a current policies scenario, which reflects all policies adopted and implemented up to specific cut-off dates, and which, for the purposes of this report, are defined as legislative decisions, executive orders or their equivalent. This implies that officially announced plans or strategies alone would not qualify, while individual executive orders to implement such plans or strategies would qualify. It is important to note that some of the most recently adopted policies, some of which are presented in section 3.3.3, may not be considered in the scenario studies reviewed as they were prepared before the adoption of these policies. Many studies reviewed this year reflect the impact of the COVID-19 pandemic on both historical and projected emissions.[4] Additionally, a few studies published in 2022 and 2023 partially reflect the impact of the energy crisis and the war in Ukraine.

To evaluate the conditionality of NDCs, the categorization of the World Resources Institute (Climate Watch 2023) is adopted. According to this categorization, Indonesia and Mexico have both unconditional and conditional NDCs, while India and South Africa have only conditional NDCs (see appendix B.2). The assessment based on independent studies is compared with official projections published by national Governments. Many of the "with existing measures" scenario projections in the latest UNFCCC submissions are considered as current policies scenario projections. Methodological limitations of the assessment are similar to those described in previous Emissions Gap Reports (see appendix B.4). The assessment is based on "point in time" emissions projections for the NDC target year.[5] European Union Member States are not assessed individually. The assessment is based on emissions including LULUCF.

4 Earlier studies suggest that the economic rescue and recovery measures would not lead to substantive additional future emission reductions (Hans *et al.* 2022; Nahm, Miller and Urpelainen 2022).

5 Some countries also set an emissions budget for a multi-year period; an assessment of these targets may lead to different conclusions.

Progress of individual G20 members towards their latest NDC targets is shown in more detail in table 3.2, organized by the likelihood of achieving the targets with existing policies. There are no major changes to the overall assessment of whether individual G20 members are on track to meet their 2030 targets with existing policies, compared with last year's assessment. Overall, ten G20 members are assessed to fall short of achieving their NDC targets with existing policies. It should be noted that many of these countries have submitted stronger NDC targets in 2020 or later, and are in the midst of their implementation efforts to meet their new targets. G20 members that are projected to meet their latest NDC targets based on policies currently in place are those that did not strengthen, or only moderately strengthened, their target levels in their new or updated NDCs.

Table 3.2 Assessment of progress towards achieving the current NDC targets

Assessment of progress towards the latest NDC target

LIKELY to meet the target with existing policies*	LESS LIKELY to meet the target with existing policies	UNCERTAIN
China ●●●●●●○○	Argentina ○○○	Indonesia ●○○
India ●●●●○○○	Australia ●○○○ [1]	
Saudi Arabia ●○	Brazil ●●○○	
Türkiye ●●●	Canada ●○○○ [1]	
Russian Federation ●●●● [1]	EU27 ●●○ [1,2]	
Mexico ●●○	Japan ●○○	
	Republic of Korea ●○○	
	South Africa ●○○	
	UK ○○ [1]	
	USA ○○○○○○○ [1]	

Number of studies indicating:

- ● Target will be achieved
- ○ Target within reach
- ○ Target will be missed
- Conditional NDC

*** Indicated by bold font, if overachieved by more than 15%.**

Note: All NDCs considered in this assessment are unconditional NDCs, unless otherwise mentioned. The assessment is based on independent studies mainly published in 2021 or later. See appendix B.3 for the list of studies reviewed. The number of independent studies that project a country to meet its current NDC targets are compared with the total number of studies. The assessment is based on the middle of the projection range for each independent study. "Within reach" is applied when the lower bound estimate of a current policies scenario projection is within the NDC target range, even though the assessment based on the middle of the projection range suggests that the country will not achieve its target. In the case of Indonesia, "uncertain" is mainly due to the variations in LULUCF emissions and uncertainty of LULUCF emissions projections as a result of peat fires.

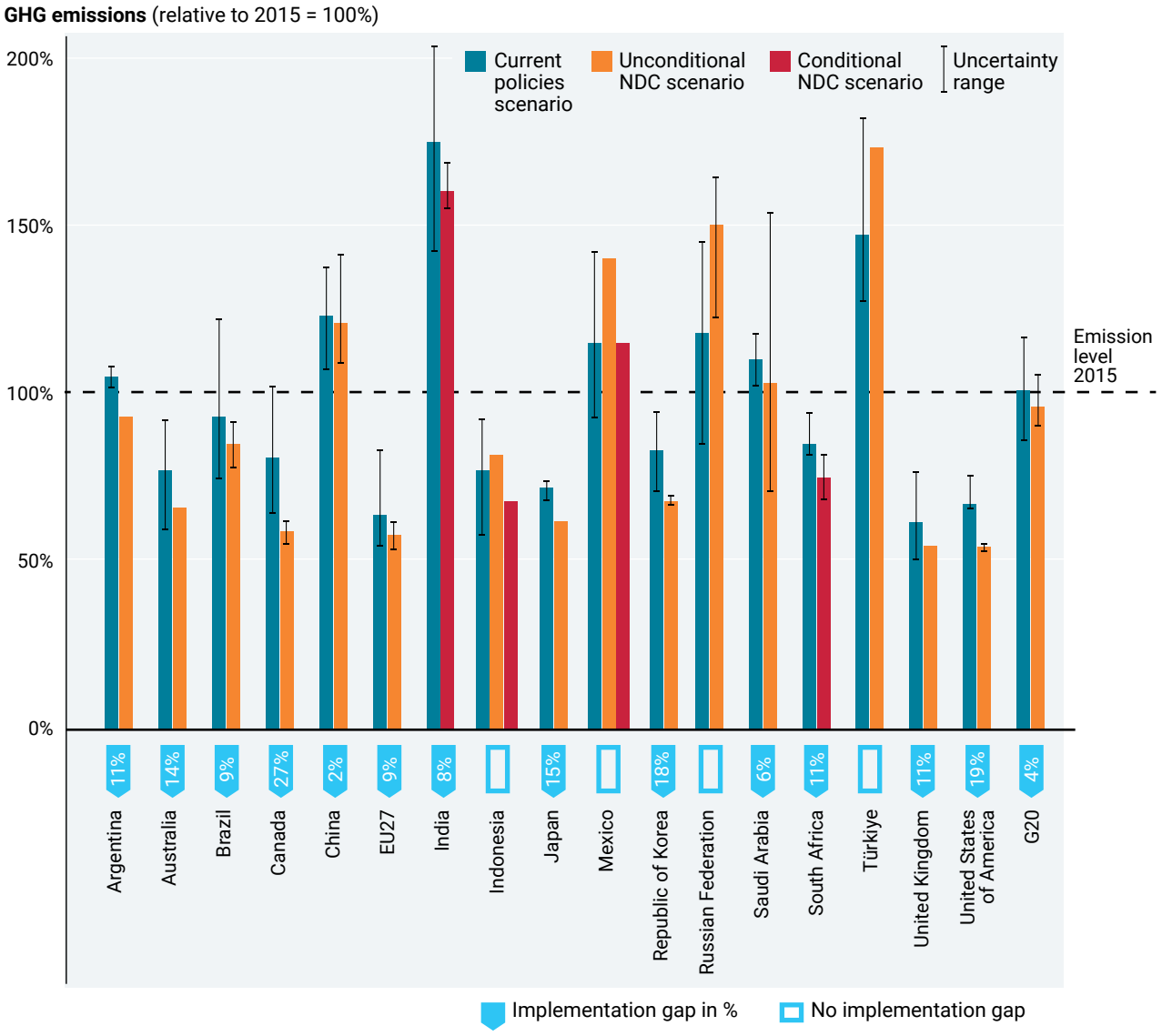
1 Current policies scenario projections from official publications were also examined. The official publications for five G20 members (Australia, Canada, the European Union, the United Kingdom and the United States of America) show that they do not yet project to meet their "point in time" NDC target under their current policies scenarios (European Environment Agency 2023; European Commission, Directorate-General for Energy, Directorate-General for Climate Action, Directorate-Generate for Mobility and Transport 2021; UNFCCC 2023a). For the Russian Federation, official projections of the fourth biennial report indicate that the country would achieve its NDC with existing policies.

2 Both independent studies and official projections do not account for the impact of some recently adopted policies, most notably the REPowerEU plan.

However, for most G20 members, central estimates of projected emissions in 2030 under current policies are lower than in last year's assessment. Based on the scenario modelling, the largest reductions (8–14 per cent) are observed for Australia, the European Union, Japan, Mexico, the Republic of Korea and the United Kingdom. Figure 3.1

illustrates the collective and individual implementation gaps of the G20 members and shows them relative to emissions levels in 2015, the year the Paris Agreement was adopted. The figure illustrates a wide variation in implementation gaps as well as projected emissions in 2030 relative to 2015 levels. The aggregate emissions of the G20 members in 2030 under current policies are projected at 36.1 $GtCO_2e$ (central estimate), which is slightly above 2015 levels. The impact of newly implemented policies is a main driver of the lower emissions projections for 2030 for G20 members. Other factors include an updated scenario dataset reflecting the latest emission trends, and socioeconomic developments and circumstances.

Figure 3.1 Implementation gaps between current policies and NDC pledges for the G20 members collectively and individually by 2030, relative to 2015 emissions



Note: The 2015 emissions are based on national inventory data and provided in table B.2 of appendix B.2. For the G20 total, the bar for unconditional NDCs also includes the conditional NDCs of India and South Africa. The error bars show the uncertainty range across studies, which reflects model variations as well as interpretation of policies and targets.

Per capita emissions are highly unequal across G20 members, and far from levels consistent with the Paris Agreement

To supplement the findings presented above and complement chapter 2, table 3.3 presents per capita GHG emissions in 2015 and projections for 2030 under current

NDC targets and current policies scenario.[6] There are only small changes compared with last year. The average per capita emissions in 2030 of G20 members under the latest NDCs are projected to be only marginally lower (6.8 tons of CO_2 equivalent [tCO_2e]) than under the current policies scenario (7.1 tCO_2e). They are still very far from the median estimates implied by 2°C and 1.5°C scenarios by 2050, which are 2.2 tCO_2e (fifth and ninety-fifth percentile range: 1.4–2.8) and 1.0 tCO_2e (0.1–1.6), respectively.[7]

Echoing the findings of chapter 2, table 3.3 shows that per capita emissions range widely across G20 members. Australia, the European Union, the United Kingdom and the United States of America are projected to reduce their per capita emissions by more than one-third between 2015 and 2030 under current policies, and by between 40 per cent and 50 per cent under unconditional NDCs. For five G20 members (China, India, Mexico, the Russian Federation and Türkiye), per capita emissions are projected to increase between 2015 and 2030 under both current unconditional NDC targets and current policies. Furthermore, per capita emissions are projected to stay above 10 tCO_2e in 2030 for several G20 members, both under current policies and under full implementation of the unconditional NDCs.

Table 3.3 G20 member per capita emissions implied by current policies and unconditional NDCs

Country	Unconditional NDC: Per capita GHG emissions [1]		Current policies scenario: Per capita GHG emissions [1]	
	tCO_2e/cap in 2030 [2, 3]	vs. 2015 levels	tCO_2e/cap in 2030 [2, 3]	vs. 2015 levels
G20 [4]	6.8	-10%	7.1	-6%
Argentina	7.5	-16%	8.4	-5%
Australia	12.7	-44%	14.7	-35%
Brazil	6.1	-23%	6.7	-15%
Canada	10.5	-49%	14.5	-30%
China	10.0	+19%	10.2	+21%
EU27	4.6	-42%	5.0	-37%
India [4]	2.8	+40%	3.1	+52%
Indonesia	6.9	-28%	6.5	-32%
Japan	6.5	-35%	7.6	-23%
Mexico	5.8	+25%	4.8	+3%
Republic of Korea	8.7	-32%	10.6	-18%
Russian Federation	15.8	+54%	12.4	+21%
Saudi Arabia	16.1	-16%	17.2	-11%
South Africa [4]	6.0	-35%	6.8	-27%
Türkiye	7.9	+55%	6.7	+31%
United Kingdom	4.0	-49%	4.5	-43%
United States of America	9.4	-50%	11.7	-38%

Notes: The figures presented here may not exactly match those presented in other chapters of this report (including figure 2.2) and official estimates by the national Governments, due to the differences in data sources.

1 Emissions estimates include LULUCF.

2 Central estimates are the median value when five or more studies were available, otherwise they are average values.

3 Data on historical and projected (medium fertility variant) population per country are taken from the United Nations World Population Prospects 2022 (United Nations 2022).

4 To estimate G20 total emissions for the NDC pledges scenario, emissions projections under the current policies scenario were used for India, the Russian Federation and Türkiye.

6 Note that the 2015 estimates are not identical to those of chapter 2, due to the differences in data sources and the consideration of LULUCF emissions.

7 Estimated based on the IPCC AR6 scenario database (Byers *et al.* 2022; Riahi *et al.* 2022) and United Nations population projections, medium fertility variant (United Nations 2022).

3.3.3 Recently adopted policies in G20 economies shows mixed progress

The projections in section 3.3.2 do not include all the most recent policy updates, as some of these are not yet reflected in the underlying models. Therefore, this section provides recent policy updates (mid-2022 to mid-2023) of the G20 members.

Responding to the climate emergency requires rapid policy implementation in all countries with discernible progress each year. However, this chapter finds that recent developments in national policies has been mixed with some steps forward, while some imply a standstill or even deterioration.

3.3.3.1 Some recent policies of G20 members could have substantial effects on GHG emissions in 2030

This section provides examples of recently adopted policies in the G20 member states that are quantified or analysed to have positive or negative effects in reducing global or national implementation gaps in recent studies. It is acknowledged that these policies cover only a fraction of G20 policy developments, and that other policies may still result in substantial emissions reductions or support the implementation of more stringent policies.

Inflation Reduction Act (IRA) – United States of America: The United States of America's federal Government has advanced several important regulations implementing the IRA, which was passed in August 2022. These regulations propose or finalize requirements for claiming electric power generation, clean vehicles and home energy tax credits (United States of America, Internal Revenue Service 2023); provide funding to reduce methane emissions (United States of America, Environmental Protection Agency 2023); and implement new lease sales and royalty rates for oil and gas leasing on public lands and in public waters (United States of America, Department of the Interior, Bureau of Land Management 2023; United States of America, Department of the Interior, Bureau of Ocean Energy Management 2023), among others. More and more analyses confirm that the act will bring the United States of America roughly two thirds of the way to meet its NDC targets for 2030, with reductions of up to 1 $GtCO_2e$ over a scenario without that policy (Bistline *et al.* 2023). While a big step forward, the IRA also received criticism as it, for example, allows for more oil and gas exploration, potentially increasing emissions, but not overcompensating reductions elsewhere. The name of the IRA suggests that it is more an economic policy than a climate policy. It has significant knock-on effects on other countries, as many industries are considering whether to place their production lines in the United States of America or abroad. The potential impact of the IRA on 2030 emissions has been considered in all national-level scenarios reviewed in the United Nations Environment Programme (UNEP) Emissions Gap Report since the 2022 edition; the projected 2030 emissions range presented in section 3.3.2 is therefore similar to that of the 2022 assessment.

Fit for 55 and REPowerEU – European Union: In the last 12 months, the European Union significantly advanced several policy packages to achieve its 2030 emissions reduction target and accelerate the European Union transition away from fossil fuels (European Commission 2021; European Commission 2022). These include the expansion of the current European Union Emissions Trading System, updates to regulation on emissions from transport and buildings, improvements in the renewables and energy efficiency targets and a carbon border adjustment mechanism, which will ensure that carbon-intensive imports are subject to a carbon price equivalent to that of products from within the European Union, and at the same time a gradual phase-out of free allocations to those industries within the European Union Emissions Trading System. Still, increased investments in fossil gas infrastructure and a temporary shift from gas to coal pose a threat to the European Union's climate ambition. Many elements of the Fit for 55 package and REPowerEU plan have now been adopted. The emission scenario studies reviewed in section 3.3.1 show a range of interpretation (or lack thereof) on the implementation status of these policies. The elements adopted in the last 12 months result in roughly 0.5 $GtCO_2e$ lower emissions in 2030. If all packages are adopted, the European Union could overachieve its 2030 target (Climate Action Tracker 2023c).

Just Energy Transition Partnership (JETP) – Indonesia: In November 2022, a JETP to support limiting Indonesia's power sector emissions was agreed between the Indonesian Government and an international partner group. It secures approximately US$20 billion to support investments in grid and transmission, early coal power retirement, accelerated uptake of dispatchable and variable renewables, as well as supply chain build-out for renewable energy technologies. It also helps to mitigate adverse effects on communities. It reinforces the commitment established in a presidential regulation to stop the addition of new coal-fired power plants to the electricity grid (Indonesia 2022). However, the presidential regulation still allows for off-grid power plants where the electricity is directly used by industry to be built, which results in increasing emissions up to 2030. The deal stipulates that Indonesia caps its power sector emissions to 290 megatons of CO_2 equivalent ($MtCO_2e$) in 2030 (Edianto 2023). Estimates indicate that the emissions cap constitutes a reduction of emissions in the order of up to 100 $MtCO_2e$ in 2030 over current policies (International Energy Agency 2022; Edianto 2023). This alone may be small on a global scale, but if the concept of JETP proves successful, it can lead to similar agreements in other countries.

Emissions Reduction Plan – Canada: Many recent developments in Canada advance the implementation of its Emissions Reduction Plan, which is the federal Government's first comprehensive roadmap for how to achieve the 2030 target (Canada, Environment and Climate Change Canada

2022). The federal Government's Clean Fuel Regulations were finalized in June 2022 and came into effect in July 2023 (Canada 2022). The regulations require all fuel importers or producers to gradually reduce the life-cycle emissions intensity of their fuels. Beginning in 2023, the federal carbon price rose from CA$50/t$CO_2$e to CA$65/tCO_2e, and is scheduled to increase linearly to CA$170/t$CO_2$e in 2030. Additionally, the 2023 budget made significant investments to expand clean electricity and accelerate low-carbon growth. The federal budget contained over CA$40 billion in new or reallocated funds for emissions-reducing actions by 2034/2035, including a number of new investment tax credits for carbon capture, utilization and storage, clean electricity, clean hydrogen, clean technology and clean technology manufacturing. While some of the tax credits are not yet in force, once legislated, many of the credits will be retroactively available to businesses. The implementation of legislated and developing policies in Canada results in emissions at approximately 520 MtCO_2e in 2030, bringing Canada more than halfway through meeting its 2030 target (Sawyer *et al.* 2022) and roughly 100 MtCO_2e lower than last year without the policies (Climate Action Tracker 2022a).

Fossil fuel expansion in the G20: Although many policies constitute progress in the past year, an opposite trend of fossil fuel infrastructure expansion is at odds with global climate goals. Over the past year, many countries increased their plans for fossil fuel extraction and production. Several major G20 economies, such as Australia, Canada, the United Kingdom and the United States of America issued new licences for oil and gas explorations, and Argentina pursued expansion (NewClimate Institute and Climate Analytics 2023; International Energy Agency 2023). In addition, rather than declining, fossil fuel subsidies have increased significantly. The International Monetary Fund reports that explicit subsidies more than doubled globally from 2020 to 2022 (Black *et al.* 2023). The United States of America is now the largest fossil fuel producer in the world, with oil production doubling and gas production increasing by around 60 per cent since 2010 (United States of America, Energy Information Administration 2023). The recent increase in fossil fuel production and exports of the G20 members result in domestic emissions and undermine global GHG emission reductions. This year's edition of the Production Gap Report (Stockholm Environment Institute *et al.* 2023) shows that globally, Governments still plan to produce more than double the amount of fossil fuels in 2030 than would be consistent with the collective goals of the Paris Agreement. G20 Governments account for the majority of current fossil fuel production (73 per cent on an energy basis [International Energy Agency 2023]).

3.3.3.2 The effect of other selected policy developments cannot yet be quantified

Several other policies have been adopted by G20 members, but in many cases their impacts remain unclear. Some of the key policy developments since the last edition of the UNEP Emissions Gap Report are described below.

Argentina: In December 2022, Argentina published its new National Climate Change Adaptation and Mitigation Plan (Argentina, Ministry of Environment and Sustainable Development 2022). This strategy includes targets for the decarbonization of the transport sector, incentives to increase energy efficiency in buildings, and measures to reduce food loss and waste. It also includes agroecological practices measures, which affect one of Argentina's biggest productive sectors. The plan, however, does not include any new renewable energy targets, nor does it include a plan to reduce absolute emissions from livestock, one of Argentina's major emissions sources. Additionally, the plan proposes measures related to oil and gas expansion (focusing on the Vaca Muerta shale fields), as well as hydrogen production without clarifying if the hydrogen is produced from electricity (Argentina, Ministry of Environment and Sustainable Development 2022).

China: Policy developments in China go both ways. On one hand, the Government is rapidly implementing its double strategy of overarching carbon peaking before 2030 and carbon neutrality before 2060 goals, and has issued supporting sectoral peaking plans. The Central Comprehensively Deepening Reforms Commission of China announced in 2023 the transition of the economy from targeting energy consumption and intensity reduction to limiting carbon (intensity and reduction) – a clear sign of support for clean energy (Xinhua 2023). Non-fossil energy capacity has surpassed 50 per cent of all installed capacity, reaching a 2025 milestone target early, and was forecasted to grow in 2023 by another 180 gigawatts (GW) off the back of a strong year for solar and wind (China Electricity Council 2023; Xinhuanet 2023). On the other hand, energy security concerns are leading to the continued expansion and overcapacity of the coal-fired power fleet: 243 GW of coal-fired power plants are currently either permitted or in construction (Global Energy Monitor *et al.* 2023). Energy demand has increased in 2023, with domestic production and consumption of coal, gas and oil up compared to last year (China, National Energy Administration 2023).

Japan: A new law that proposes a carbon levy, an emissions trading scheme and issuance of new government bonds was adopted in June 2023 (Japan 2021). However, its impact on emissions remains unclear due to lack of clarity on the level of carbon pricing. The Government will mobilize JP¥20 trillion through the issuance of the Green Transformation (GX) Economy Transition Bonds (Japan, Ministry of Economy, Trade and Industry 2023). The Basic Hydrogen Strategy was also revised and now sets new hydrogen supply targets for 2030, 2040 and 2050, and an investment plan of US$107.5 billion over the next 15 years (Japan, Cabinet Secretariat 2023).

Mexico: In February 2023, Mexico announced a renewables energies plan – the Sonora Plan – aiming at deploying renewable energy as well as low-carbon investments in the north of the country (Conan 2023). The Sonora Plan is a step in the right direction to accelerate the energy transition,

but is the only new renewable energy project announced by this administration. In May 2023, the Energy Regulatory Commission revised the criteria to calculate clean energy. The Commission states that a portion (30 per cent) of the electricity generation from combined cycle power plants using fossil gas could be legally considered as "clean" energy. Clean Energy Certificates could also be granted to fossil fuel-based power plants (Mexico, Secretariat of the Government 2023). This regulation has been provisionally suspended, and further legal processes are expected to address environmental concerns. The Government has also updated the new light vehicle fleet's fuel efficiency standard (NOM-163), but captured only half of the potential. The adopted standard lowers emissions by 9 $MtCO_2$ by 2030 (Jiménez and Pineda 2022), while a more ambitious standard could have achieved up to 19.5 $MtCO_2$ by 2030 (Iniciativa Climática de México 2022).

Republic of Korea: In April 2023, the Government of the Republic of Korea released its National Basic Plan for Carbon Neutrality and Green Growth (the Basic Plan) (Republic of Korea, Climate Change Strategy Division 2023). The new plan reaffirmed the Republic of Korea's commitment to carbon neutrality by 2050 and a 40 per cent reduction of GHG emissions below 2018 levels by 2030. The plan introduces 12 measures to realize carbon neutrality, including making the most of domestically available low-carbon energy sources and transitioning to low-carbon industry structure and circular economy. In line with the tenor of the Basic Plan, several sectoral targets in the national 2030 scenario were revised (for power generation and industry, among others). Among the major changes are an increased role of nuclear energy in power generation mix and expanded use of overseas carbon offset programmes.

South Africa: In response to the supply pressure facing the state-owned utility Eskom, South Africa opened the electricity market in 2022, enabling generation at large-scale for own-use or sale to others. The pipeline of new privately developed generation is significant, especially considering new wind and solar. A total of 33 GW of variable renewable energy and batteries either has approval or is in the process of applying for environmental licencing (i.e. is relatively advanced). Overall, there are 66 GW of new wind, solar, battery and gas projects under development, albeit at varying stages of project development and certainty, up to 2028 (Eskom, South African Photovoltaic Industry Association and South African Wind Energy Association 2023). This constitutes a major projected increase compared to the 6 GW of renewable installed capacity operational in 2022. The uptake is driven largely by supply insecurity and declining costs – exemplified in recent auctions where the average cost of the portfolio, across technologies, was approximately US$0.026 per kilowatt-hour, similar to Eskom's coal plant fuel costs (Independent Power Producers Office 2023). South Africa's Just Energy Transition Investment Plan, which supports South Africa's transition away from coal and towards clean energy with US$8.5 billion, is the first of its kind and if successful, can lead the way to similar partnerships. But its success depends on the partners spelling out the exact detail of what they are offering and how the local political dynamics can be overcome.

United Kingdom: The United Kingdom Government made a U-turn on climate policies in September 2023 and announced the country is to delay in phasing out new petrol and diesel cars, to delay in phasing out gas boilers and to eliminate the requirement for landlords to improve the energy efficiency of their homes, among other measures. This undermines progress made, for example, on emissions standards for cars and in heavy industry. As a response, the United Kingdom's Climate Change Committee (the national scientific oversight body) remains "concerned about the likelihood of achieving the United Kingdom's future targets, especially the substantial policy gap to the United Kingdom's 2030 goal" (Dooks 2023).

3.4 Developments in long-term and net-zero pledges: The number continues to increase, but confidence in their implementation remains low

3.4.1 The number of net-zero targets has inched upwards

As at 25 September 2023, 97 parties representing 101 countries and covering approximately 82 per cent of global GHG emissions had adopted net-zero pledges either in law (27 parties), in a policy document such as an NDC or a long-term strategy (54 parties), or in an announcement by a high-level government official (16 parties).[8] This is up from 88 parties as at last year's report. An additional nine parties covering an additional 2 per cent of global GHG emissions have another (non-net zero) GHG mitigation target as part of their long-term strategy. A total of 37 per cent of global GHG emissions are covered by net-zero targets for 2050 or earlier, while 44 per cent of global emissions are covered by net-zero pledges for years later than 2050.

Net-zero targets vary in their scope, with some applying to all GHGs and sectors of the economy and others applying to a subset of sectors and gases. A total of 69 net-zero targets cover all sectors, while the remainder do not specify sectoral coverage. A total of 48 cover all gases, 11 cover fewer than all gases and 38 do not specify. The vast majority of countries with net-zero targets fail to specify whether their targets cover international shipping and aviation, and whether they permit the use of international offsets.

Likewise, few net-zero strategies yet clarify the role of CO_2 removal in achieving their net-zero targets, with only

8 These figures do not count parties where net-zero pledges are under discussion but do not yet take one of the forms listed above.

six countries having set separate goals for emissions and removals. These countries are Australia, Colombia, Slovakia, Slovenia, Spain and Sweden, and together account for less than 3 per cent of global emissions. Long-term strategies, likewise, contain limited detail on the role of CO_2 removal in counterbalancing residual emissions (Buck *et al.* 2023; Lebling, Schumer and Riedl 2023).

3.4.2 Overall, confidence in the implementation of G20 members' net-zero pledges remains low

Responsible for three quarters of current global emissions, G20 members will have an outsized impact on when global emissions reach net zero. Encouragingly, all G20 members except Mexico have set net-zero targets, and since the 2022 Emissions Gap Report, some members have taken important steps towards strengthening and implementing their targets. Argentina and India, for example, communicated long-term low-emissions development strategies, formalizing their previously announced targets.

Overall, however, limited progress has been made on key indicators of confidence in net-zero implementation, including legal status, the existence and quality of implementation plans, and alignment of near-term emission trajectories with net-zero targets (Rogelj *et al.* 2023). Nine G20 members have legally binding net-zero targets – the same as last year. Implementation planning has seen further progress, with 10 G20 members now having published an implementation plan, counting new or more detailed plans from the Republic of Korea and Türkiye. A majority of these plans, however, still lack concrete details and milestones to guide implementation at a granular level. Most concerningly, no G20 members are currently reducing emissions at a pace consistent with net-zero scenarios in the published literature. Reflecting the principle of common but differentiated responsibilities and respective capabilities, some countries will need more time than others to align their emissions trajectories with their net-zero targets. Most countries' long-term strategies and other net-zero plans do not robustly justify their targets in light of fairness and equity. The Paris Agreement recognizes that peaking emissions – a prerequisite to aligning emissions trajectories with net zero – will take longer for developing countries. For those countries that have peaked emissions, it will be necessary to accelerate reductions to match net-zero trajectories. For those countries that have not yet peaked emissions, it will be especially important to develop clear plans to peak and then align emissions with net-zero trajectories.

Table 3.4 presents a meta-analysis of key characteristics of G20 members' net-zero targets, based on three independent trackers (Climate Action Tracker 2022b; Climate Watch 2023; Net Zero Tracker 2023). The indicators and criteria by which they are assessed are as follows:

- **Source:** Refers to whether the net-zero target is established in law, in a policy document (including an NDC or a long-term strategy), or via a political announcement or pledge, such as those made at the 2020 Climate Ambition Summit.
- **Target year:** Refers to the year by which the source indicates net-zero emissions will be achieved.
- **Covers all sectors and gases:** Receives green checkmark if the source specifies that the target applies to all economic sectors (as opposed to, for example, the energy sector only) as well as all Kyoto greenhouse gases.
- **Transparent information on carbon removal:** Receives green checkmark if the source contains transparent assumptions for both domestic LULUCF and domestic removals and storage; receives yellow checkmark if source contains information on domestic LULUCF, removals and storage, but assumptions are not transparent.
- **Published plan:** Receives green checkmark if source meets all Climate Action Tracker and Net Zero Tracker criteria for information on anticipated pathway or measures for achieving net-zero target, and a yellow checkmark if source meets some, but not all, criteria.[9]
- **Review process:** Receives a green checkmark if source establishes a legally binding process to review progress against the target at regular intervals; receives a yellow checkmark if the process is not legally binding, is still being established, or lacks detail or tracking of progress.
- **Annual reporting:** Receives a green checkmark if source establishes a process to report at least annually on progress towards the target.

All indicators receive an "X" if the criteria for either a green or yellow checkmark are not met, a question mark where no information is available, an "inconclusive" if the data sources reach differing conclusions regarding the indicator and a "no data" if none of the data sources track the indicator for the G20 member. The European Union is evaluated according to its long-term strategy, while individual European Union Member States are evaluated according to the laws, policies and plans specific to the respective States. Further detail on the methods underlying each indicator can be found at Climate Action Tracker, Climate Watch and Net Zero Tracker.

A number of overall conclusions can be drawn from this chapter. While G20 members are making collective progress towards achieving the NDC targets with policy

9 The yellow category is new for this year's report. According to the 2022 coding criteria, the yellow checkmarks would have been green.

implementation, there is wide variation and the speed of progress needs to be accelerated. Few countries have responded to the calls of the COP 27 decision, the COP 28 presidency and the recently published synthesis report from the technical dialogue of the global stocktake process (UNFCCC 2023b) to put forward more ambitious NDCs for 2030. As the next chapter shows, this results in a large emissions gap in 2030. Relentlessly strengthening implementation is key to go beyond the existing 2030 targets, open the way for more ambitious targets for both 2030 and 2035, and ultimately achieve long-term net-zero goals.

Table 3.4 Key characteristics of G20 members' net-zero targets

Sources: Climate Action Tracker 2022b, Climate Watch 2023; Net Zero Tracker 2023.

Countries	Source	Target year	Covers all sectors and gases	Transparent information on carbon removal	Published plan	Review process	Annual reporting
High-income G20 members							
Australia	law	2050	✓	✓	inconclusive	✓	✓
Canada	law	2050	✓	✓	✓	✓	✓
European Union	law	2050	✓	✓	✓	✓	✓
France	law	2050	✓	✓	✓	✓	✓
Germany	law	2045	✓	✓	inconclusive	✓	✓
Italy	policy	2050	✓	✓	✓	not evaluated	✓
Japan	law	2050	✓	✗	inconclusive	✓	✓
Republic of Korea	law	2050	?	✓	inconclusive	✓	✓
Saudi Arabia	announce-ment	2060	?	✗	✗	?	✗
United Kingdom	law	2050	✓	✓	✓	✓	✓
United States of America	policy	2050	✓	✓	✓	✓	✓
Lower- and upper-middle-income G20 members							
Argentina	policy	2050	✓	✗	✗	?	✗
Brazil	policy	2050	?	✗	✗	?	✗
China	policy	2060	?	✗	✓	✓	✗
India	policy	2070	?	✗	✗	?	✗
Indonesia	policy	2060	✗	✗	inconclusive	?	✗
Mexico	no net-zero target						
Russian Federation	law	2060	✓	✓	✓	✓	✗
South Africa	policy	2050	✗	✗	✗	?	✗
Türkiye	policy	2053	?	✗	✓	?	✗

✓ Fulfilled ✓ Partially fulfilled ✗ Not fulfilled ? No information

4 The emissions gap in 2030 and beyond

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4.1 Introduction

This chapter provides an updated assessment of the emissions gap, which is the difference between the estimated global greenhouse gas (GHG) emissions resulting from the full implementation of the latest country pledges, and those under least-cost pathways aligned with the Paris Agreement's long-term temperature goal to limit the global average temperature increase to well below 2°C, while pursuing efforts to limit it to 1.5°C compared with pre-industrial levels. Put simply, the emissions gap represents the discrepancy between pledged GHG emission reductions and the reductions required to align with the Paris Agreement. This chapter also assesses the discrepancy between pledged GHG emission reductions and those associated with current policies or a continuation thereof. This is referred to as the implementation gap.

This year's assessment is particularly relevant as 2023 marks the conclusion of the first global stocktake. To inform the stocktake and the next round of nationally determined contributions (NDCs) to be put forward by 2025 (which should include emission reduction targets for 2035), this update addresses the following questions:

- What is the emissions gap in 2030 under the latest NDCs and various policy assumptions?
- What are the implications for the emissions gap in 2035 and for the global level of ambition required in the next round of NDCs?
- What are the implications of delayed stringent mitigation action for the emissions gap and global warming over the century?

The scenarios that form the basis for assessing the emissions gap are described in section 4.2, with a summary of the implications of delayed mitigation action provided in section 4.3. The assessment of the emissions gap in 2030 and beyond is presented in section 4.4, while section 4.5 assesses the implications for global temperature projections.

4.2 A set of scenarios is needed to assess the emissions gap and global temperature outcomes

The emissions gap assessment draws on a set of scenarios (table 4.1) that are updated in this section. These scenarios are organized into four categories: a current policies reference scenario, NDC scenarios, mid-century scenarios and least-cost mitigation scenarios starting in 2020 and aligned with specific temperature limits. These scenarios form the basis for estimating the emissions gap in 2030 and the global temperature outcomes in section 4.5.

It is worth noting that emissions projections, especially beyond 2030, rely on the assumptions and choices of modelling teams in how to interpret scenarios in the longer term.

Table 4.1 Summary of scenarios selected for the emissions gap assessment

Category	Scenario cases	Cut-off year	Scenario description
Reference scenario	Current policies	2022	This scenario projects the GHG implications of climate mitigation policies that have been adopted and implemented as at November 2022, including the short-term and midterm socioeconomic impacts of COVID-19. Where necessary, these implications have been adjusted to account for the impact of recent policies, such as the Inflation Reduction Act of the United States of America.
NDC scenarios	Unconditional NDCs	2023	This scenario projects the GHG implications of the full implementation of the most recent NDCs that do not depend on explicit external support (cut-off date: 25 September 2023). When extended beyond 2030, the scenario assumes a continuation of efforts at a similar level of ambition.
	Conditional NDCs	2023	Additional to the unconditional NDCs, this scenario encompasses the most recent NDC targets for which implementation is contingent on receiving international support, such as finance, technology transfer and/or capacity-building (cut-off date: November 2022). When extended beyond 2030, it assumes a continuation of efforts at a similar level of ambition.
Mid-century scenarios	Current policies continuing	2022	This scenario projects GHG implications per the current policies scenario and assumes mitigation policies continue similar reduction efforts when extended beyond 2030 (see appendix C.1).
	Unconditional NDCs plus net-zero pledges using strict criteria	2022	This scenario assumes an extension of the unconditional NDC scenario plus net-zero pledges (including those made in long-term low emissions development strategies) after 2030 that live up to strict criteria regarding the comprehensiveness of implementation plans and current emission trajectories (see also appendix C.1).
	Conditional NDCs plus all net-zero pledges	2022	This is the most optimistic scenario included. It assumes the achievement of the conditional NDC scenario until 2030 and all net-zero or other long-term low emissions development strategy pledges thereafter.
Mitigation scenarios consistent with limiting global warming to specific levels	Below 2°C	N/A	A least-cost pathway starting from 2020 and consistent with keeping global warming below 2°C throughout the twenty-first century with at least a 66 per cent chance.
	Below 1.8°C	N/A	A least-cost pathway starting from 2020 and consistent with keeping global warming below 1.8°C throughout the twenty-first century with at least a 66 per cent chance.
	Below 1.5°C	N/A	A least-cost pathway starting from 2020 and ensuring that global warming is kept below 1.5°C with at least a 33 per cent chance throughout the entire century and is brought below 1.5°C with at least a 50 per cent chance by 2100. This pathway reaches net-zero GHG emissions in the second half of the century.

Note: Details are available in the subsequent sections and in table C.1 in appendix C.

4.2.1 The current policies scenario is a reference scenario

The current policies scenario projects global GHG emissions based on the assumption that currently adopted and implemented policies (defined as legislative decisions, executive orders or equivalent) are achieved but with no further measures undertaken since 2022. Typically, selected policies are based on literature research, input from the Climate Policy Database (NewClimate Institute 2023) and country expert reviews of the policies identified, and are then implemented in global models following a detailed protocol, which is continuously updated and builds on the work of Roelfsema *et al.* (2020; 2022). The data for

this scenario are based on the four modelling estimates that underpin the current policies assessment of the Intergovernmental Panel on Climate Change Working Group III *Sixth Assessment Report* (IPCC WGIII AR6) (Lecocq *et al.* 2022), and have been updated by the respective research teams. These data updates use a policy cut-off date of November 2022 and apply the most recent AR6 global warming potentials over 100 years (Riahi *et al.* 2021; Climate Action Tracker 2022; den Elzen *et al.* 2022; Keramidas *et al.* 2022; Nascimento *et al.* 2022; den Elzen *et al.* 2023; Schmidt Tagomori, Hooijschuur and Muyasyaroh 2023; van Ruijven *et al.* 2023). The scenario considers the effects of the COVID-19 pandemic and the impact of recent policies, such as the expected emission reductions from the Inflation Reduction Act introduced in the United States of America. The scenarios do not include the impact of the energy crisis and the war in Ukraine on energy flows and related emission levels. The resulting median estimate of global GHG emissions in 2030 and 2035 under current policies is 56 gigatons of carbon dioxide equivalent ($GtCO_2e$) (range: 52–60 $GtCO_2e$) and 57 $GtCO_2e$ (range: 46–61 $GtCO_2e$), respectively (see table C.4 in appendix C). The median 2030 estimate is about 1.5 $GtCO_2e$ lower than the median estimate of the Emissions Gap Report 2022, which is due to multiple factors, including updated polices first and foremost, but also latest emission trends, socioeconomic projections and methodological updates. In line with the findings on the emission trends of G20 members (see chapter 3), the current policies projections have shown a flattening trend since 2019, and are now significantly lower than those at the time of the Paris Agreement's adoption (United Nations Environment Programme [UNEP] 2015), which indicated that 2030 emissions would increase by 16 per cent.

4.2.2 NDC scenarios project emissions based on the full achievement of NDCs

The NDC scenarios project global GHG emissions based on the full achievement of the latest unconditional and conditional NDCS submitted by Parties to the United Nations Framework Convention on Climate Change (UNFCCC). The estimates are derived using an approach similar to that used in Lecocq *et al.* (2022) and reflect the latest updates available as at November 2022. The scenarios are based on findings from four modelling exercises: Climate Action Tracker (2022), Keramidas *et al.* (2022), den Elzen *et al.* (2023) and Meinshausen *et al.* (2023). The unconditional and conditional NDC scenario estimates result in median global GHG emissions in 2030 of 55 $GtCO_2e$ (range: 54–57 $GtCO_2e$) and 52 $GtCO_2e$ (range: 50–55 $GtCO_2e$), respectively (see table 4.3; further information is provided in appendix C). The ranges mainly stem from uncertainty in socioeconomic baselines and current policies projections, as well as uncertainty from the conditionality or range of NDC targets (den Elzen *et al.* 2023). The projected emissions in 2030 assuming the full achievement of NDCs are similar to the median estimates of the Emissions Gap Report 2022 (UNEP 2022).

4.2.3 Mid-century scenarios are subject to much larger uncertainty

The mid-century scenarios describe how GHG emission trajectories might evolve in the longer term. Since GHG projections to mid-century are subject to much larger policy uncertainty than projections to 2030, three scenarios are presented to reflect the range of possible outcomes. The least ambitious mid-century scenario involves a simple extension of current policies continuing at the current level of climate policy effort after 2030. The most optimistic scenario assumes the full achievement of all conditional NDCs and all net-zero pledges, including those made as part of long-term low emissions development strategies and announced by 25 September 2023. Finally, a scenario that uses the unconditional NDC scenario as a base and also includes net-zero pledges that fulfil strict criteria on operationalization and implementation progress is considered.

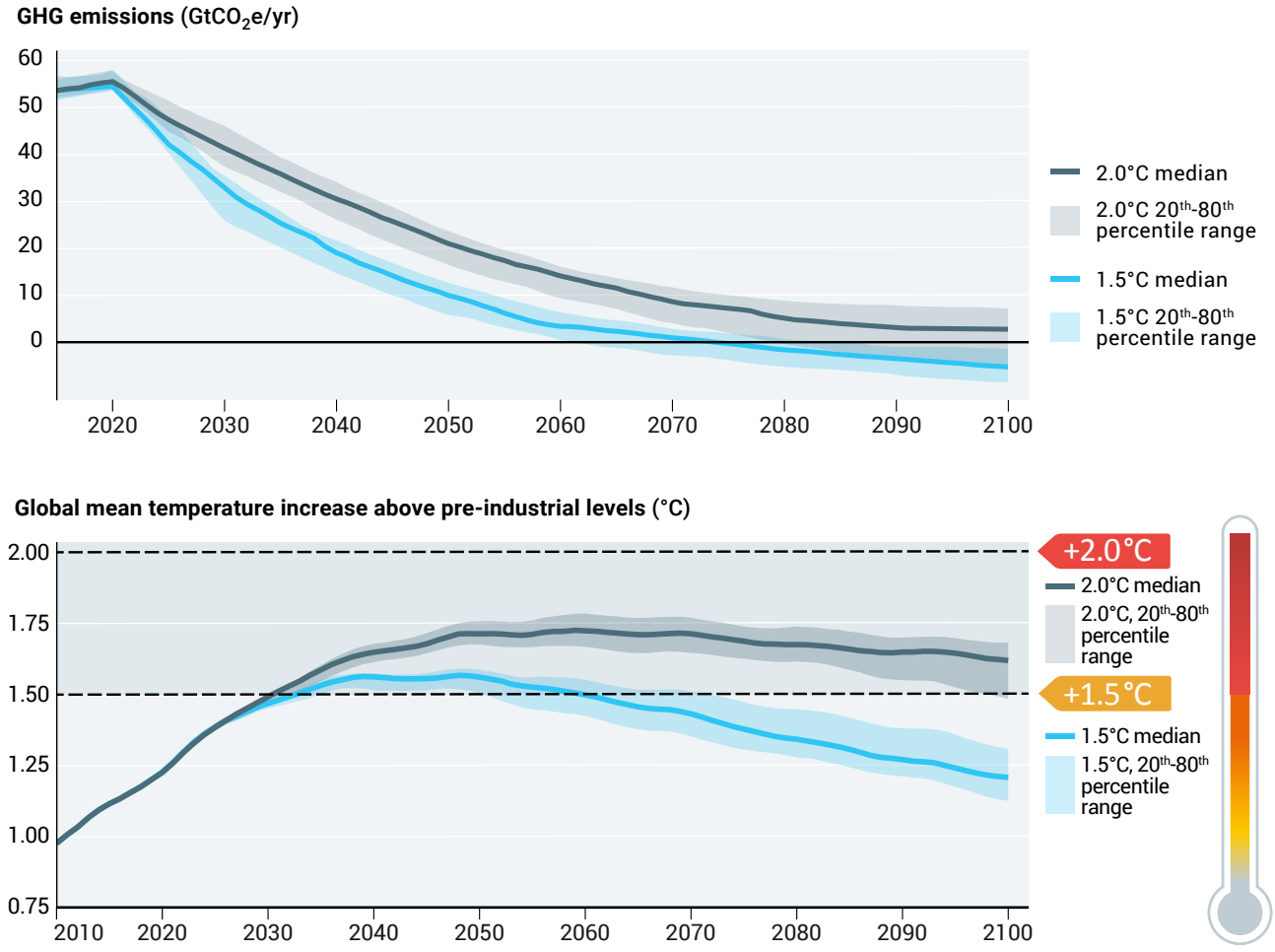
The assessment of progress towards net-zero pledges is based on a set of criteria as defined in Rogelj *et al.* (2023): (i) whether the long-term target is legally binding; (ii) whether a credible policy plan has been published supporting its implementation; and (iii) whether short-term emissions under current policies are on a downward path over the next decade (at least 10 per cent below 2019 levels) (for further information, see appendix C). Only net-zero pledges that live up to the second and third criteria on credible policy plans and downward emission trajectories are considered in the scenario based on unconditional NDCs plus net-zero pledges that comply with strict criteria. Relatively few net-zero pledges fulfil these two criteria, with those made by New Zealand, the United States of America and the European Union among the few that do (see table 3.4 in chapter 3). Currently, more than 80 per cent of global emissions are not covered by long-term pledges that fulfil these criteria (see table C.4 in appendix C). It is important to note that compliance with the strict operationalization and implementation criteria does not necessarily mean that the net-zero pledges will be achieved. As chapter 3 (section 3.4) illustrates, all countries need to enhance the operationalization and implementation of their net-zero pledges to increase their credibility and feasibility. Similarly, it should be noted that non-compliance with these criteria does not imply that net-zero pledges cannot be achieved or that progress is not being made. Rather, it reflects that some countries are further along with operationalizing and implementing their net-zero pledges than others.

Emissions projections for all mid-century scenarios are provided in appendix C (table C.5), including a comparison with the ranges from the corresponding four individual modelling studies used for the current policies and NDC scenarios (Climate Action Tracker 2022; Keramidas *et al.* 2022; Dafnomilis den Elzen and van Vuuren 2023; van Ruijven *et al.* 2023).

4.2.4 Mitigation scenarios that keep warming below specified temperature limits

This category of scenarios reflects least-cost mitigation pathways starting in 2020 for different global warming outcomes relative to pre-industrial levels over the course of this century. Consistent with previous Emissions Gap Reports, three scenarios have been chosen to represent warming limits relevant in the context of the Paris Agreement's long-term temperature goal, 2°C, 1.8°C and 1.5°C, noting that these limits are not intended to offer a specific interpretation of the goal. The GHG emissions of the scenarios were drawn from the IPCC WGIII AR6 scenario database (Byers *et al.* 2022; Riahi *et al.* 2022) and grouped according to characteristics as described in table 4.1. Their corresponding temperature projections are based on IPCC WGI AR6 (Nicholls *et al.* 2021; Kikstra *et al.* 2022; Smith 2023) and are consistent with recent updates to the remaining carbon budget (Forster *et al.* 2023). Table 4.2 provides an overview of the scenarios' emissions and temperature characteristics. The no or limited overshoot pathways in the 1.5°C category have at least a 33 per cent chance of keeping warming below 1.5°C over the course of the entire century, and at least a 50 per cent chance of doing so by 2100.[1] In many cases, median warming under these scenarios will temporarily reach and exceed 1.5°C of global warming as part of projected temperature developments (figure 4.1). As figure 4.2 shows, pathways in the 1.5°C category achieve net-negative GHG emissions in the second half of the century through the use of carbon dioxide removal (see chapter 7).

Figure 4.1 Global GHG emissions and corresponding median temperature projections of 1.5°C and 2°C scenarios



Notes: The ranges show the twentieth to eightieth percentile range across each category's scenarios. GHG emissions are aggregated using AR6 global warming potentials over 100 years. The thick lines in each range represent the category median.

1 The global warming characteristics for the 1.5°C pathways are chosen to be consistent with category C1a from the IPCC AR6 Working Group 3 assessment. The 2022 edition of the Emissions Gap Report also applied a 33 per cent of limiting warming to 1.5°C over the entire century, but a 66 per cent chance of limiting warming below 1.5°C in 2100. Until mid-century, this change results in no or little difference in projected emission levels, as these are constrained by the minimum 33 per cent chance limit. Achieving a higher chance in 2100 relies on realizing net-negative emissions in the second half of the century through the use of carbon dioxide removal (see chapter 7).

Table 4.2 Global GHG emissions in 2030, 2035 and 2050, and global warming characteristics of least-cost pathways starting in 2020 consistent with specific temperature limits

Least-cost pathways consistent with limiting global warming to specific levels	Number of scenarios	Global total GHG emissions ($GtCO_2e$)			Estimated temperature outcomes			
		In 2030	In 2035	In 2050	50% chance	66% chance	90% chance	Closest IPCC WGIII AR6 scenario class
Below 2°C (66% chance throughout the century)	195	41 (37–46)	36 (31–39)	20 (16–24)	Peak: 1.7–1.8°C In 2100: 1.4–1.7°C	**Peak: 1.8–1.9°C In 2100: 1.6–1.9°C**	Peak: 2.2–2.4°C In 2100: 2–2.4°C	C3a
Below 1.8°C (66% chance throughout the century)	139	35 (28–41)	27 (21–31)	12 (8–16)	Peak: 1.5–1.7°C In 2100: 1.3–1.6°C	**Peak: 1.6–1.8°C In 2100: 1.4–1.7°C**	Peak: 1.9°C–2.2°C In 2100: 1.8–2.2°C	N/A
Below 1.5°C (50% chance in 2100 and minimum 33% chance throughout the century)	50	33 (26–34)	25 (20–27)	8 (5–13)	Peak: 1.5–1.6°C In 2100: 1.1–1-3°C	**Peak: 1.6–1.7°C In 2100: 1.2–1.5°C**	Peak: 1.9–2.1°C In 2100: 1.6–1.9°C	C1a

* Values represent the median and twentieth to eightieth percentile range across scenarios. The likelihood levels refer to peak warming at any time during the twenty-first century for the below 1.8°C and below 2°C scenarios. When achieving net-negative carbon dioxide (CO_2) emissions in the second half of the century, global warming can be further reduced from these peak warming characteristics, as illustrated by the 'Estimated temperature outcomes' columns. For the below 1.5°C scenario, the likelihood applies to the global warming level in 2100, while the 'no or limited overshoot' characteristic is captured by ensuring that the lowest likelihood of warming being limited to 1.5°C throughout the twenty-first century is never less than 33 per cent. This definition is similar to the C1a category definition of IPCC WGIII AR6. The Emissions Gap Report analysis uses scenarios that assume immediate action from 2020 onward.

Note: GHG emissions in this table have been aggregated using IPCC AR6 global warming potentials over 100 years.

Source: Based on underlying data from Byers *et al.* (2022) and Riahi *et al.* (2022).

4.3 Pathways matter for the carbon budget, the interpretation of emissions gaps and the chance of achieving the Paris Agreement's temperature goal

Global warming is almost linearly proportional to the total net amount of CO_2 that has ever been emitted into the atmosphere from human activities. Limiting global warming to a specified level therefore requires the total amount of CO_2 emissions ever emitted to be kept within a finite carbon budget (Canadell *et al.* 2021). Until global CO_2 emissions reach net-zero levels, the carbon budget will continue to be depleted with each passing year. IPCC AR6 reported remaining carbon budgets of 500 $GtCO_2$ for a 50 per cent chance of limiting global warming to 1.5°C from 2020 onward, and 1,150 $GtCO_2$ for a 67 per cent chance of limiting warming to 2°C (Canadell *et al.* 2021). A recent update that considers further warming until 2022 shows a reduction of these budgets to 250 $GtCO_2$ from 2023 onward for a 50 per cent chance of limiting warming to 1.5°C and 950 $GtCO_2$ for a 67 per cent chance of limiting warming to below 2°C.

These values can be compared with the cumulative CO_2 emissions implied by the current policies and NDC scenarios. Under current policies, the carbon budget for a 50 per cent chance of limiting warming to 1.5°C is expected to clearly be exceeded by 2030. Even the budget for a 66 per cent chance of limiting warming to 2°C is expected to be reduced by more than a third by 2030, leaving very little room for warming to be kept well below 2°C if emissions continue at current rates.

This highlights the importance of the pathways followed to reach net-zero CO_2 emissions. As figure 4.1 and table 4.1 show, the 1.5°C and 2°C pathways assume stringent emission reductions from 2020, which current trends contradict, resulting in implications for the achievability of significant reductions by 2030. Emissions are now higher than in 2020, which implies a commitment to slightly higher global warming than the least-cost pathways indicate, unless

there is further acceleration of emission reductions after emissions levels consistent with the least-cost pathways are met. The emissions gap estimates are therefore likely to be a lower bound as they do not account for the excess emissions since 2020 compared with the least-cost pathways.

The emissions gap estimates in section 4.4 should be read with this caveat in mind, while section 4.5 shows that following a delayed path compared with 1.5°C and 2°C pathways is associated with higher warming and a lower likelihood of achieving the Paris Agreement's long-term temperature goal.

4.4 The emissions gap in 2030 and 2035 must be bridged through action in this decade

This section provides an updated assessment of the emissions gap in 2030 based on the scenarios described in section 4.2, findings on the global level of ambition needed in the next round of NDCs (which will contain targets for 2035) and implications for emissions by 2050.

Action in this decade will not only determine the ambition required in the next round of NDCs, but also the feasibility of achieving the Paris Agreement's long-term temperature goal. Unless current NDC targets are over-complied with globally, it will become impossible to limit warming to 1.5°C with no or limited overshoot, and strongly increase the challenge of limiting warming to well below 2°C. Furthermore, the feasibility and credibility of net-zero emission pledges must be enhanced.

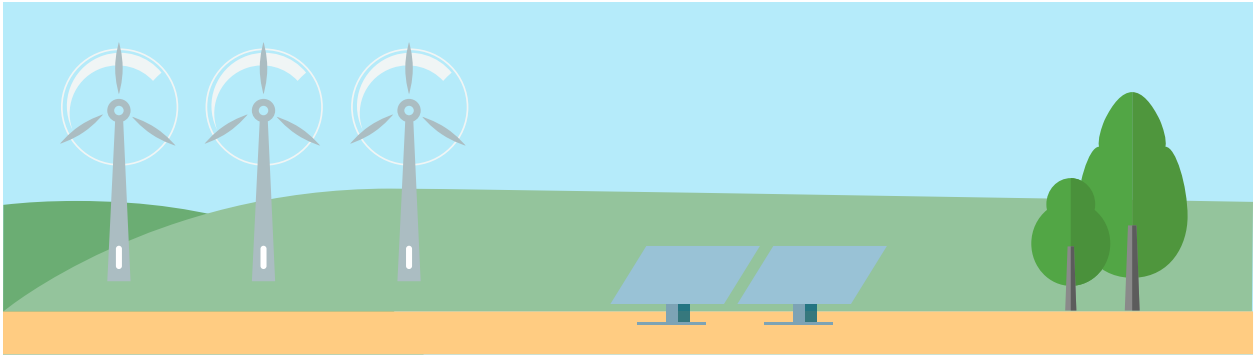
4.4.1 The emissions gap in 2030 remains significant

The emissions gap for 2030 is defined as the difference between the estimated total global GHG emissions resulting from the full implementation of NDCs and the total global GHG emissions from least-cost scenarios that keep global warming to 2°C, 1.8°C or 1.5°C, with varying levels of likelihood. As noted in section 4.3, this is an underestimate as it does not account for excess emissions since 2020 compared with the least-cost pathways.

Figure 4.2 shows the emissions gap in 2030, with table 4.3 providing further information. Current NDCs remain highly insufficient to bridge the emissions gap in 2030. Full implementation of unconditional and conditional NDCs for 2030 reduces expected emissions in 2030 under current policies by only 2 per cent and 9 per cent, respectively, whereas 28 per cent and 42 per cent is needed for 2°C or 1.5°C, respectively (table 4.2 and table 4.3). These estimates are two percentage points lower than the 2022 assessment, illustrating the progress in narrowing the implementation gap (defined as the difference between projected emissions under current policies and projected emissions under the full implementation of NDCs) (chapter 3). This difference is now around 1.5 $GtCO_2e$ for unconditional NDCs (down from 3 $GtCO_2e$ in the 2022 assessment) and 5 $GtCO_2e$ for conditional NDCs (down from 6 $GtCO_2e$ in the 2022 assessment) in 2030.[2] Nonetheless, unprecedented annual emission cuts are required from now to 2030 to achieve the reductions required.

Full implementation of the latest unconditional NDCs is estimated to result in an 1.5°C emissions gap of 22 $GtCO_2e$ (range: 21–24 $GtCO_2e$) with at least a 66 per cent chance (table 4.3 and figure 4.2). If conditional NDCs are also fully implemented, the 1.5°C emissions gap reduces to 19 $GtCO_2e$ (range: 17–23 $GtCO_2e$). The emissions gap for the below 2°C pathways is about 14 $GtCO_2e$ (range: 13–16 $GtCO_2e$), assuming the full implementation of unconditional NDCs. If conditional NDCs are also fully implemented, the below 2°C emissions gap reduces to 11 $GtCO_2e$ (range: 9–15 $GtCO_2e$). These figures remain largely unchanged compared with the 2022 assessment, with some small differences due to rounding.

In conclusion, immediate and unprecedented mitigation action is needed in this decade to reduce total global GHG emissions compared with levels implied by the current NDCs, and to ultimately narrow the emissions gap.



2 These estimates are based on original, unrounded scenario figures and therefore differ from those that can be derived from table 4.3.

Figure 4.2 GHG emissions under different scenarios and the emissions gap in 2030 and 2035 (median estimate and tenth to ninetieth percentile range)

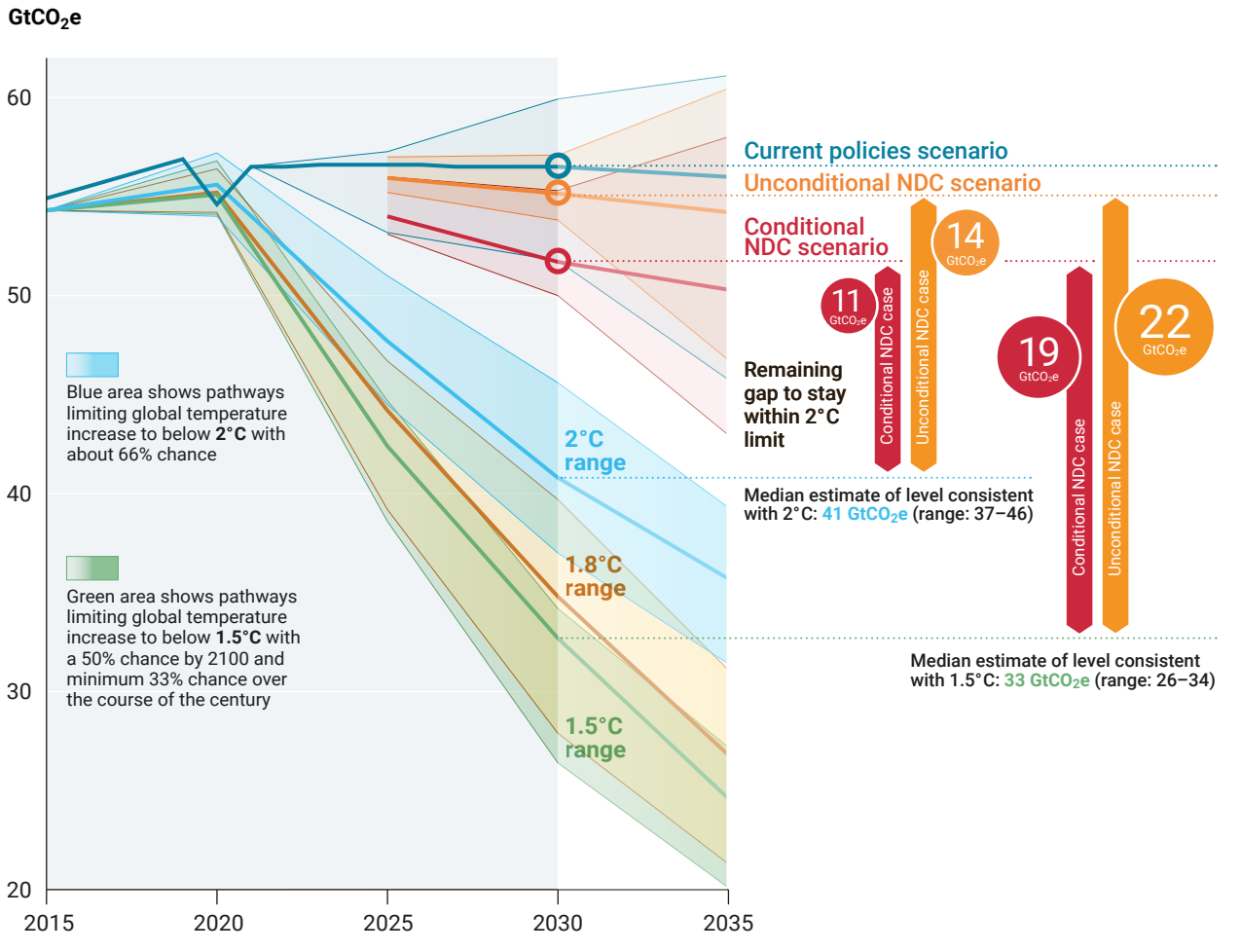


Table 4.3 Global total GHG emissions in 2030, 2035 and 2050, and estimated gaps under different scenarios

Scenario	GHG emissions ($GtCO_2e$)	Estimated gap to least-cost pathways consistent with limiting global warming to specific levels ($GtCO_2e$)		
	Median and range	Below 2°C	Below 1.8°C	Below 1.5°C
2030				
Current policies	56 (52–60)	16 (11–19)	22 (17–25)	24 (19–27)
Unconditional NDCs	55 (54–57)	14 (13–16)	20 (19–22)	22 (21–24)
Conditional NDCs	52 (50–55)	11 (9–15)	17 (15–20)	19 (17–23)
2035				
Current policies continued	56 (45–64)	20 (9–28)	29 (18–37)	31 (20–39)
Unconditional NDCs continued	54 (47–60)	18 (11–25)	27 (20–34)	29 (22–36)
Conditional NDCs continued	51 (43–58)	15 (8–22)	24 (17–31)	26 (19–33)
2050				
Current policies continued	55 (24–72)	35 (4–52)	43 (12–60)	46 (16–63)
Unconditional NDCs and net-zero pledges using strict criteria	44 (26–58)	24 (6–38)	32 (14–46)	36 (18–49)
Conditional NDCs and all net-zero pledges	21 (6–33)	1 (-14–13)	9 (-6–21)	12 (-2–25)

Notes: The GHG emission ranges for 2035 and 2050 show the minimum–maximum range across different projection-model assumptions, including 2030 current policy/NDC assessment uncertainty (see appendix C). The gap figures and ranges are calculated based on the original figures (without rounding), which may differ from the rounded figures in the table. Figures are rounded to full $GtCO_2e$. GHG emissions have been aggregated using IPCC AR6 global warming potentials over 100 years.

4.4.2 Action in this decade will determine the ambition required in the next round of NDCs and the emissions gap for 2035

The first global stocktake under the Paris Agreement, which will conclude at the twenty-eighth session of the Conference of the Parties to the UNFCCC (COP 28), is envisaged to inform the next round of NDCs (with targets for 2035) that countries are requested to submit by 2025. Although there are no pledges for 2035 yet to enable an estimation of the emissions gap for 2035, it is possible to provide information about the global level of ambition that will be required in the next round of NDCs.

Overall, global ambition in the next round of NDCs must be sufficient to bring global GHG emissions in 2035 to levels consistent with the below 2°C and 1.5°C pathways. These are 36 $GtCO_2e$ (range: 31–39 $GtCO_2e$) and 25 $GtCO_2e$ (range: 20–27 $GtCO_2e$), respectively (table 4.2).

In contrast, a continuation of current policies and current NDC scenarios would result in widened and likely unbridgeable gaps in 2035 (table 4.3). A continuation of current policies is projected to result in global GHG emissions of 56 $GtCO_2e$ in 2035, which is 36 per cent and 55 per cent higher than the levels consistent with below 2°C and 1.5°C pathways, respectively, even without compensating for excess emissions.

Again, these findings imply that immediate and unprecedented mitigation action in this decade is essential. Overcompliance of NDC targets for 2030 is not only necessary to maintain the possibility of limiting global warming to 1.5°C with no or limited overshoot, it will also enable countries to put forward more ambitious mitigation targets for 2035 in their next NDCs and will make the achievement of such ambitious targets more feasible.

4.4.3 Looking beyond 2035 reinforces these findings and points to the essential need to enhance the credibility and feasibility of net-zero pledges

The mid-century scenarios allow for an exploration of developments later in this century (table 4.1 and table 4.3). Considering these scenarios strengthens the findings of the previous sections that action in this decade is critical, and also highlights the crucial importance of increasing the steps and policies that make the achievement of net-zero pledges more likely.

Total global GHG emissions in 2050 will only be brought closer to 1.5°C and 2°C pathways if conditional NDCs are fully implemented and combined with the achievement of all net-zero pledges. Again, this does not account for excess emissions under this scenario compared with the 1.5°C and 2°C pathways. Furthermore, and as table 4.3 illustrates, the uncertainties around GHG emissions and gap estimates are vast the further into the future projections are made.

4.5 The emissions gap has severe implications for global warming projections

The global failure to bridge the emissions gap to date has various consequences. This section provides the consequences for annual average global GHG emission reduction rates until 2030 consistent with limiting warming to 1.5°C or 2°C, and the global warming implications under the scenarios considered in this chapter.

4.5.1 Unprecedented annual emission cuts are required from now to 2030

The consequences of the continued delay in stringent emission reductions are evident when examining the past decade of Emissions Gap Reports. As highlighted in the Emissions Gap Report 2019 (UNEP 2019) the underlying data from the reports reveal that had serious climate action been initiated in 2010, the annual emission reductions necessary to achieve emission levels consistent with the below 2°C and 1.5°C scenarios by 2030 would have been only 0.7 per cent and 3.3 per cent on average, respectively (Höhne *et al.* 2020). The lack of stringent emission reductions means that the required emission cuts from now to 2030 have increased significantly. To reach emission levels consistent with a below 2°C pathway in 2030, the cuts required per year are now 5.3 per cent from 2024, reaching 8.7 per cent per year on average for the 1.5°C pathway. To compare, the fall in total global GHG emissions from 2019 to 2020 due to the COVID-19 pandemic was 4.7 per cent (UNEP 2022).

4.5.2 Temperature implications depend strongly on scenarios

Temperature implications of the emissions gap are estimated by projecting emissions over the twenty-first century and assessing their global warming implications with the Finite Amplitude Impulse Response (FaIR) reduced-complexity climate model, which is calibrated to the IPCC AR6 assessment (Nicholls *et al.* 2021; Kikstra *et al.* 2022; Smith 2023; see also section C.1 in appendix C). Projections until the end of the century are inherently uncertain and subject to scenario assumptions, such as the level at which climate action continues or technology costs. These uncertainties are reflected in the large ranges around the central warming projections indicated in table 4.4.

A continuation of the level of mitigation effort implied by global warming under the current policies scenario is projected to limit global warming to 3°C (range: 1.9–3.8°C)[3]

3 The range captures uncertainty in the near-term (2030) assessment of current policies, as well as the uncertainty in the continuation of policies over the course of the twenty-first century.

with a 66 per cent chance (table 4.4). A continuation of the unconditional NDC scenario lowers this estimate to 2.9°C (range: 2.0–3.7°C), whereas the additional achievement and continuation of conditional NDCs lowers this by around 0.4°C to 2.5°C (range: 1.9–3.6°C).

Table 4.4 Global warming projections under the scenarios assessed

Peak warming throughout the twenty-first century (°C)			
Scenario	**50% chance**	**66% chance**	**90% chance**
Current policies continuing	2.7°C (range: 1.8–3.5)	**3.0°C** (range: 1.9–3.8)	3.5°C (range: 2.3–4.5)
Unconditional NDCs continuing	2.6°C (range: 1.8–3.4)	**2.9°C** (range: 2.0–3.7)	3.4°C (range: 2.3–4.4)
Conditional NDCs continuing	2.3°C (range: 1.7–3.3)	**2.5°C** (range: 1.9–3.6)	3.0°C (range: 2.2–4.2)
Unconditional NDCs and net-zero pledges using strict criteria	2.5°C (range: 1.8–3.2)	**2.7°C** (range: 1.9–3.5)	3.2°C (range: 2.3–4.1)
Conditional NDCs and all net-zero pledges (most optimistic case)	1.8°C (range: 1.6–2.3)	**2.0°C** (range: 1.8–2.5)	2.4°C (range: 2.0–3.0)
Likelihood of limiting warming to below a specific warming limit (%)			
Scenario	**1.5°C**	**2°C**	**3°C**
Current policies continuing	0% (range: 0–16)	4% (range: 0–73)	68% (range: 16–99)
Unconditional NDCs continuing	0% (range: 0–12)	6% (range: 0–69)	75% (range: 24–99)
Conditional NDCs continuing	0% (range: 0–20)	19% (range: 0–78)	90% (range: 30–100)
Unconditional NDCs and net-zero pledges using strict criteria	0% (range: 0–16)	11% (range: 0–74)	83% (range: 42–99)
Conditional NDCs and all net-zero pledges (most optimistic case)	14% (range: 1–27)	69% (range: 22–85)	99% (range: 89–100)

Notes: The range between brackets reflects the scenario uncertainty, taking into account the range of emission estimates for 2030 and the variations in their extensions (see section C.1 in appendix C). The Emissions Gap Report typically presents temperature projections with a 66 per cent chance. Other likelihoods are included for completeness. Values for 2100 are given in table C.6 in appendix C.

Under the scenario where unconditional NDCs are combined with the net-zero pledges that currently comply with strict criteria on implementation progress, global warming is estimated to be limited to 2.7°C (range: 1.9–3.5°C) with a 66 per cent chance over the course of this century.

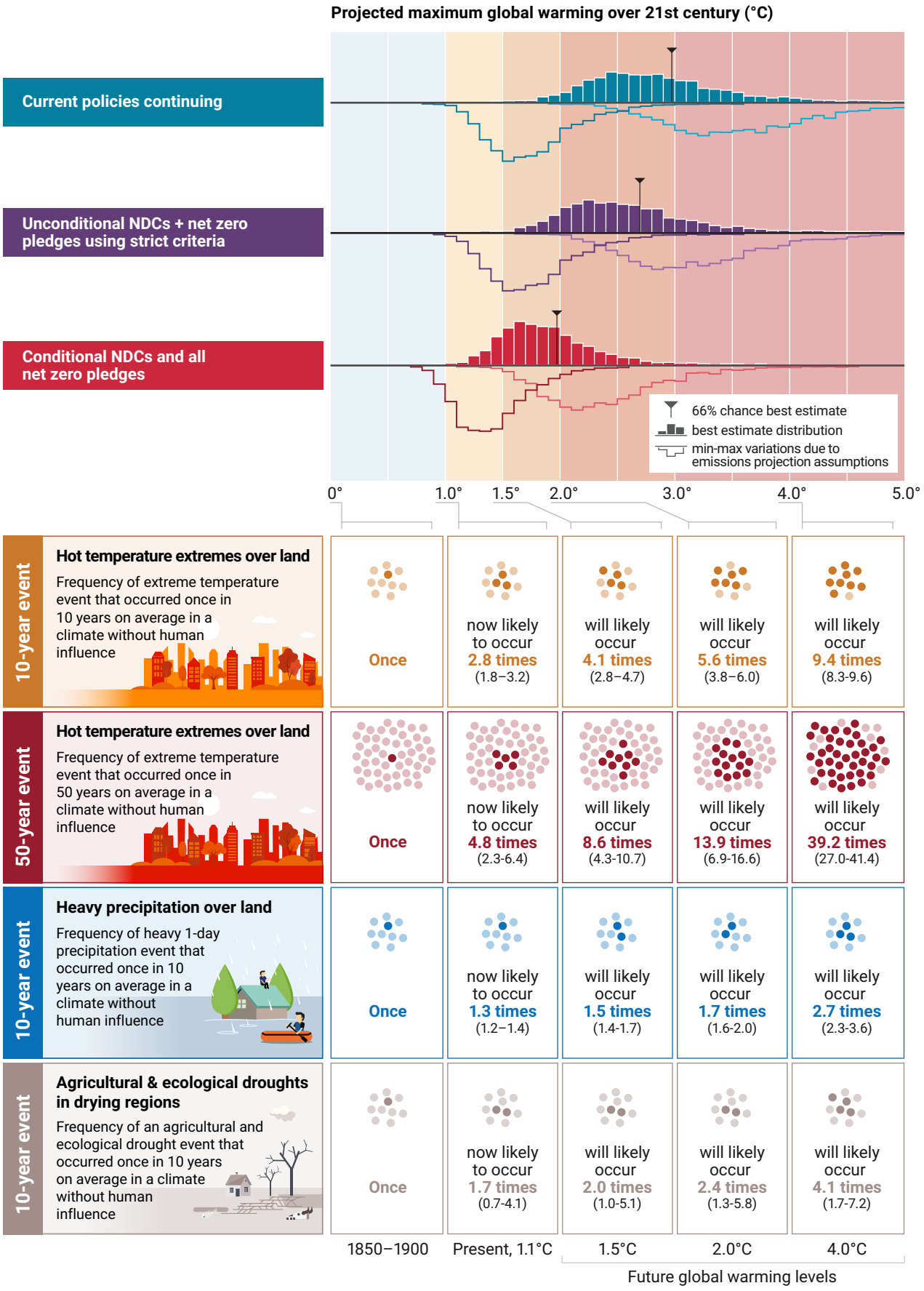
In the most optimistic scenario, where conditional NDCs and all net-zero pledges (including those specified in long-term low emissions development strategies) are assumed to be achieved, global warming is projected to be limited to 2°C (range: 1.8–2.5°C) with a 66 per cent chance over the course of this century. However, as chapter 3 shows, the achievement of net-zero pledges remains highly uncertain.

Values for other likelihoods and for 2100 are provided in table 4.4 and table C.6 in appendix C. Central temperature projections are slightly higher than in the Emissions Gap Report 2022, but uncertainty ranges strongly overlap.[4] This is because a larger number of models has been included in the estimation of future emissions for the 2023 assessment (see section C.1 in appendix C). The Emissions Gap Report's best estimated temperature projections are consistent with those from other major assessments, such as the 2023 Announced Pledges Scenario of the International Energy Agency, Climate Action Tracker and the 2023 UNFCCC NDC synthesis report (all of which report temperature projections with a 50 per cent chance).[5]

4 Current policies and unconditional and conditional NDC scenarios in the Emissions Gap Report 2022 were estimated to keep warming with a 66 per cent chance to 2.8°C (range: 1.9–3.3°C), 2.6°C (range: 1.9–3.1°C) and 2.4°C (range: 1.8–3.0°C), respectively. The most optimistic case, combining unconditional and conditional NDCs with all long-term net-zero targets, resulted in an estimate of 1.8°C (range: 1.7–1.9°C).

5 See appendix C and the joint technical note by UNFCCC and UNEP, both available online, for more detailed comparisons.

Figure 4.3 Temperature implications of key scenarios assessed in this chapter and the associated risks of extreme events



Notes: Peak global warming outcomes for emissions projections following the best estimate (solid histograms) and variations across different models and projection assumptions and including 2030 current policy/NDC assessment uncertainty (line histograms). The thin horizontal lines indicate the median estimate. Projections of extremes are taken from figure SPM.6 of IPCC WGI AR6 (IPCC 2021).

Even in this most optimistic scenario, the likelihood of limiting global warming to 1.5°C is only 14 per cent (table 4.4), and the various scenarios leave open a large possibility that global warming will exceed 2°C or even 3°C (table 4.4 and figure 4.3). This further illustrates the need to reduce global emissions by 2030 to less than the levels associated with the full implementation of current NDCs, as well as the need to expand the coverage of net-zero pledges to all GHG emissions and to achieve these pledges. Climate impacts and extremes increase with every increment of global warming, emphasizing the significant risks that result from insufficient near-term mitigation action (figure 4.3).

5 Global energy transformation in the context of the Paris Agreement

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5.1 Introduction

Previous chapters document the continued delay in strong mitigation action and the implications for the carbon budget and projected global warming. The second part of the report focuses on two issues which result from these findings and that are central for the possibility of achieving the long-term temperature goal of the Paris Agreement (United Nations 2015).

First, all countries must accelerate economy-wide, low-carbon transformations. Energy sector transformation is essential, as energy is the dominant source of greenhouse gas (GHG) emissions. Accelerated mitigation by high-income countries is urgent and a priority to reflect the United Nations Framework Convention on Climate Change (UNFCCC) principle of common but differentiated responsibilities and respective capabilities. However, this will not be sufficient, given that low- and middle-income countries already account for more than two thirds of global greenhouse gas emissions today (see appendix A). Thus, energy sector transformation is also necessary in low- and middle-income countries, but must be aligned with meeting pressing development needs (chapter 6).

Second, all pathways consistent with meeting the Paris Agreement long-term temperature goal require a growing quantum of carbon dioxide removal in the longer term, alongside rapid and immediate GHG emission reductions. Chapter 7 explores the implications of this.

Energy transformation and development of approaches to carbon dioxide removal will need to be pursued in parallel, rather than more of one justifying less of the other. Action on both must be consistent with the UNFCCC principle of common but differentiated responsibility and respective capabilities, and requires global collaboration.

This chapter outlines some of the major issues related to global energy transformation, setting the scene for the subsequent chapter on energy transition in low- and middle-income countries (chapter 6).

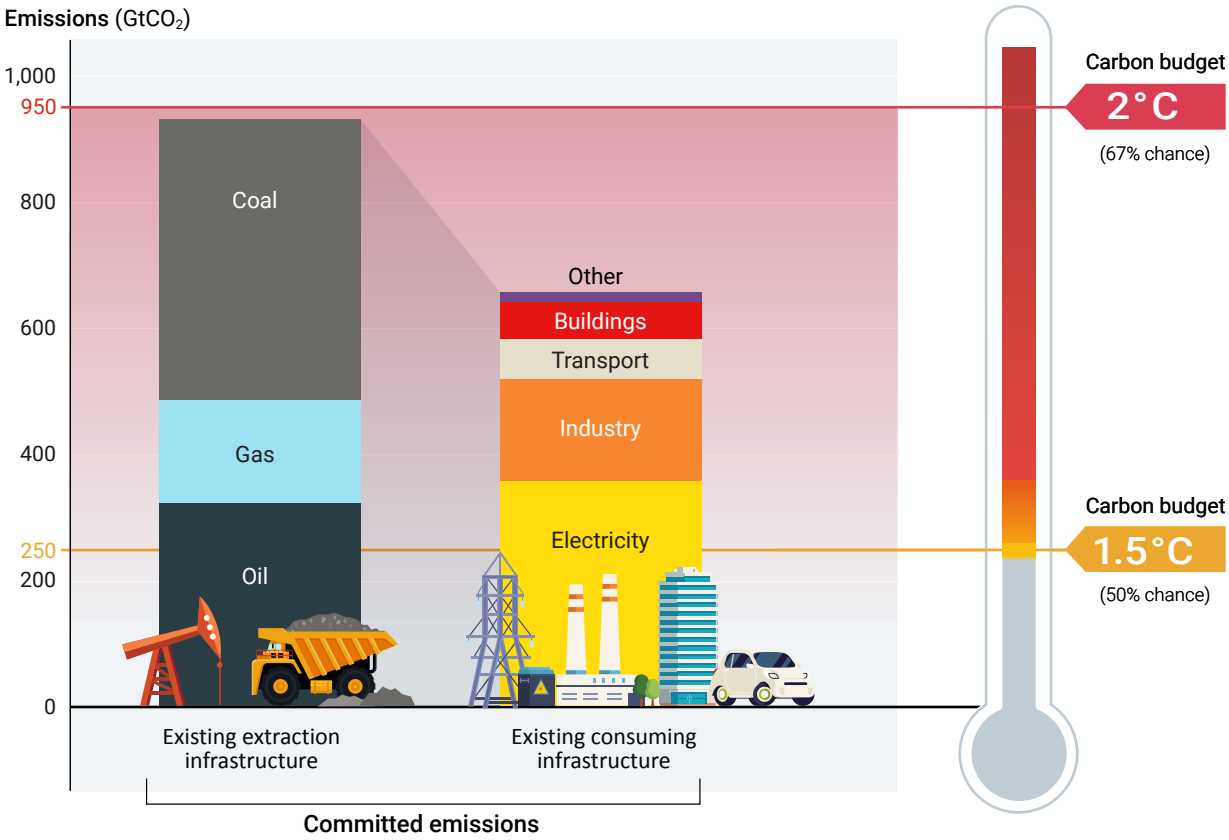
5.2 Avoiding new fossil fuel capacity will limit the existing infrastructure that must be retired early to achieve Paris Agreement goals

Energy consumption and production account for 86 per cent of global carbon dioxide (CO_2) emissions, comprising 37 per cent from coal, 29 per cent from oil and 20 per cent from gas (Friedlingstein *et al.* 2022; see also chapter 2). Achieving the Paris Agreement goals thus requires a policy-driven transformation of the global energy system.

The coal, oil and gas extracted over the lifetime of producing and under-construction mines and fields, as at 2018, would emit 936 gigatons of CO_2 if fully used (Trout *et al.* 2022) – around 3.5 times the carbon budget available to limit warming to 1.5°C with 50 per cent probability, and almost the size of the budget available for 2°C with 67 per cent probability (figure 5.1). Yet as described in chapter 3, new fields and mines continue to be opened.

Similarly, at the other end of the supply chain, the CO_2 emissions from full-lifetime operation of power stations, industrial plants, transportation and buildings already in existence exceed the budget available for 1.5°C warming by a factor of 2.5, and amount to around two thirds of the budget for 2°C (Tong *et al.* 2021; figure 5.1). Again, new energy-consuming infrastructure continues to expand (chapter 3).

Figure 5.1. Committed CO_2 emissions from existing fossil fuel infrastructure, compared to carbon budgets reflecting the long-term temperature goal of the Paris Agreement



Source: Adapted from Bustamente *et al.* (2023).

Note: Bars show future emissions implied by full-lifetime operation of fossil fuel-extracting infrastructure (Trout *et al.* 2022) and of fossil fuel-consuming infrastructure (Tong *et al.* 2019). These are compared with carbon budgets remaining at the start of 2023 (chapter 4). "Existing" generally means that infrastructure has been invested or committed, as at the start of 2018 (see previously cited sources for further details on methods). Since that time, while full data are not available, more infrastructure has been added than retired; hence this figure is an underestimate of the committed emissions problem.

In contrast, carbon budgets aligned with the long-term temperature goal of the Paris Agreement require that much of the existing capital stock will need to be retired early, retrofitted with carbon capture and storage, and/or operated below capacity (Trout *et al.* 2022; Intergovernmental Panel on Climate Change [IPCC] 2022; IEA 2023), while ensuring a just transition for workers and affected communities (International Labour Organization 2015; Smith 2017; McCauley and Heffron 2018). Globally, this leaves no room for new fossil fuel infrastructure, unless an even greater quantity of existing stock is stranded. Instead, new energy investments should focus on clean energy supply and end-use electrification to avoid further increasing committed emissions (International Energy Agency [IEA] 2021; IISD 2022; IEA 2023; Stockholm Environment Institute *et al.* 2023).

As low-carbon technology costs have fallen, wind and solar now offer the lowest-cost means of generating electricity in most of the world (UNEP 2019). The fall in the cost of renewables generally means that the "transition fuel" argument for higher-emissions and higher-cost gas is becoming increasingly invalid. However, there can be barriers to immediate transitions, including where finance for renewable remains prohibitively expensive in poorer countries (see chapter 6).

All this creates a dilemma for poorer countries with fossil fuel resources, between trying to use those resources to meet their development needs, versus avoiding the economic risk of stranded assets as the world decarbonizes (United Nations University Institute for Natural Resources in Africa 2019; see also chapter 6).

While all countries face stranded asset risk, stranded assets are likely to intensify existing systemic inequities and related vulnerabilities, including fiscal deficits, indebtedness, high borrowing costs and currency devaluation, especially in poorer countries (Sokona *et al.* 2023).

5.3 Meeting the basic energy needs of people living in poverty would have a limited impact on global GHG emissions

Access to affordable, reliable and modern energy services is critical to human welfare and livelihoods, linking together social equity, economic development and environmental sustainability (United Nations Department of Economic and Social Affairs 2022; see also chapter 6). Energy access enables food security and improved nutrition; reduces drudgery for women and girls from the collection of traditional fuels; provides light and frees time for education and studying; improves health and well-being, both through access to medicines and by reducing the burden of air pollution; and is a critical input for small business and for economic development.

Yet energy poverty persists, with women and children disproportionately affected. In 2022, the number of people without electricity access increased for the first time in a decade (Cozzi *et al.* 2022), while annual investments would need to triple to achieve universal access by 2030 (IEA *et al.* 2023; see also chapter 6).

Increasing consumption among the poorest to achieve developmental outcomes would have limited impact on GHG emissions (IPCC 2022; Wollburg *et al.* 2023). This is because at very low levels of development, measured by the Human Development Index, gains can quickly be made through small increases in energy access and use (Garg 2020; Clarke *et al.* 2022).

The energy that is required to deliver the basic elements of living standards that enable well-being – including thermal comfort, nutritious food, health and education, mobility, and civic engagement (IPCC 2022) – ranges from 12 to 40 gigajoules per person (taking into account differences in climate, geography, economic structure and culture), well below the average global energy consumption of 47 gigajoules per person (Kikstra *et al.* 2021). Considering the unequal distribution of emissions across income groups within and between countries documented in chapter 2, the energy needed to achieve the basic elements of living standards that enable well-being worldwide could even be supplied while decreasing aggregate global energy use (Millward-Hopkins *et al.* 2020), if increases for some people and countries were counterbalanced by decreases in the high per capita energy consumption of the world's wealthiest people (Rao *et al.* 2019; UNEP 2020; Kikstra *et al.* 2021).

5.4 Delivering change requires global cooperation that reflects the equity and fairness principles of the Paris Agreement

Limiting global warming to well below 2°C, while pursuing efforts to limit the increase to 1.5°C, requires an unprecedented degree of global cooperation. Fairness of effort-sharing is central to the intergovernmental trust-building that is essential to the bottom-up process of the Paris Agreement (Holz *et al.* 2023). Reflecting this, the Paris Agreement builds on the principle of common but differentiated responsibilities and respective capabilities in light of national circumstances.

This principle implies that countries with greater capacity and greater historic responsibility for emissions – particularly high-income countries– will need to take more ambitious and rapid action, setting the course and demonstrating the viability of fossil-free development. For example, the Climate Solidarity Pact, proposed by the United Nations Secretary-General, calls on all big emitters to make extra efforts to cut emissions, and wealthier countries to provide financial and technical resources to support low- and middle-income countries. Specifically, the Pact calls on developed countries to reach net zero as close as possible to 2040, and emerging economies to commit to reaching net zero as close as possible to 2050 (United Nations Secretary-General 2023).

Differentiated timelines are important for the feasibility of pathways aligned with the long-term temperature goal of the Paris Agreement, which is an aspect that global modelling tends to overlook. To illustrate, the median of 1.5°C pathways reviewed by the IPCC sees unabated coal power decline by 88 per cent from 2020 to 2030 (Muttitt *et al.* 2023), which in coal-dependent countries such as China, India and South Africa would require transition at a historically implausible rate, effectively replacing almost the entire fleet of power stations within a decade, likely making a just transition impossible (Vinichenko *et al.* 2021). This is compared to a 14 per cent reduction in gas power and 10 per cent for all uses of oil (primary energy), implying slower transition rates for most high-income countries, which generally depend more on oil and gas than on coal. Adjusting to a more feasible coal phase-out pace in all countries would require correspondingly faster declines in oil and gas use, and greater efforts by high-income countries (Muttitt *et al.* 2023). Thus, while global modelling is important to align overall ambition, it needs to be complemented by national models, which are better positioned to understand societal feasibility constraints, national realities, enabling conditions, and integration with national development strategies (La Rovere *et al.* 2018; Waisman *et al.* 2019; Deep Decarbonization Pathways 2021; Gunfaus and Waisman 2021; Svensson 2023).

The Paris Agreement furthermore recognizes that international support of at least three types is crucial for climate action: finance, technology transfer and capacity-building (UNFCCC 2015). This includes access to sufficient, affordable and quality finance that addresses sectoral transformations in different contexts (Ameli *et al.* 2021; Pachauri *et al.* 2022; Svensson 2023), access to clean technology that has been proven through deployment by the North; and technical assistance to drive nationally-defined and investment-ready low-carbon development pathways (Dubash 2023). Decarbonization will require affordable finance, considerably above current levels: limiting warming to 1.5°C while achieving the Sustainable Development Goals will require several trillion US$ per year (Organisation for Economic Co-operation and Development 2020; UNFCCC Standing Committee on Finance 2022; UNEP 2022; IEA and International Finance Corporation 2023).

Pressing development needs, existing resource profiles, political economy constraints, and limited political and institutional capacity all constrain and challenge countries to achieve transformations in power, transport and demand sectors at pace, and avoid new emissions as they develop. Thus, as discussed in chapter 6, a country's capacity to initiate the transformation of its energy system and the pace of transition that can be achieved will depend strongly on national circumstances, in the context of national developmental priorities (Mulugetta *et al.* 2022).

6 Energy transitions for low-carbon development futures in low- and middle-income countries: Challenges and opportunities

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6.1 Introduction

This chapter focuses on the relationship between energy transitions[1] and low-carbon development futures in low- and middle-income countries,[2] whose emissions account for more than two thirds of global greenhouse gases (see chapter 5). Globally, the role for low- and middle-income countries in climate action is framed by historical patterns of development, as recognized by the Paris Agreement principle of common but differentiated responsibility and respective capabilities in light of national circumstances. Low- and middle-income countries share the challenge of bringing millions out of poverty, including through energy demand growth, while shifting to a clean energy system. Even as they face some common challenges, their pathways will vary, driven by different starting points, economic structures and natural resource endowments. The objective of this chapter is to place these countries' future opportunities for energy transition in the context of their heterogeneous starting points and development priorities, while exploring the scope for an internationally supported energy transition.

6.2 Development and energy are interlinked

Energy transitions in low- and middle-income countries are shaped by the overarching objective of pursuing development. The historical expansion of the energy sector has enabled development by providing energy services to households and industry, and in some cases generating export revenues. Low- and middle-income countries' future energy transitions, and their low-carbon implications, will in turn be shaped by their development context. This section examines past and likely future links between development and energy trends, and the importance of local context in shaping these links.

6.2.1 Development drives energy transitions

Energy transitions have historically been driven by the requirements of providing clean cooking and electricity services to homes, and infrastructure needed to improve living standards. In low- and middle-income countries, climate mitigation measures have frequently been adopted as part of development policies that offer multiple environmental and social benefits (Ürge-Vorsatz *et al.* 2014). For example, the policies database of the International Energy Agency (IEA) illustrates that policies often target achieving a mix of energy efficiency, green growth, air pollution reduction and affordability objectives (IEA undated).

1 Consistent with IPCC usage, the term "transition" is used here to denote the process of changing from one state or condition to another in a given period of time. Transitions are related to achieving a "transformation", or a change in the fundamental attributes of natural and human systems, but emphasize the process of this change (IPCC 2023).

2 Low-and-middle-income countries are defined as countries with an annual per capita gross national income of less than US$13,205 in 2022 (Hamadeh *et al.* 2022). This includes low-, lower-middle- and upper-middle-income countries. In this chapter, "middle-income countries" refers to both lower- and upper-middle-income countries together.

The cooking transition is a good example of how energy transitions are development-driven. Driven by health objectives and national context, electric or biogas stoves offer the most attractive long-term pathways for the sector, effectively leading to decarbonizing cooking and heating (Pachauri *et al.* 2021). Driven by this logic, about 600 million people have transitioned from solid fuel to liquid petroleum gas and electric stoves since 2012, resulting not only in mitigation but in fewer premature deaths and diseases among women and children (World Health Organization [WHO] 2014; WHO 2022) and easing the burden on women in carrying out their productive activities (Maji *et al.* 2021). However, the transition is yet incomplete; close to 2.4 billion people continue to use solid fuels.

Electricity access through off-grid systems has been enabled by steeply decreasing costs of solar photovoltaics (PV), albeit offset in low-income countries to an extent by high borrowing costs (section 6.5). Over 100 million people, half of whom reside in sub-Saharan Africa, and 29 per cent in South Asia, had solar-based access through off-grid systems by 2019 (IEA *et al.* 2021). However, about 775 million people still lack electricity access (Cozzi *et al.* 2022); over 3.5 billion suffer unreliable supply and electricity consumption remains low (Ayaburi *et al.* 2020); and the share of renewables in total energy consumption is only 17 per cent, and scarcely keeping up with energy demand growth. Moreover, services from off-grid systems are typically limited to basic lighting and phone charging, neglecting longer-term energy services and productive uses that would have transformative local development benefits (Groenewoudt and Romjin 2022). Notwithstanding these concerns, the scale-up of affordable renewable-based access solutions offers an opportunity for stimulating development and raising living standards, while avoiding emissions growth from the power sector.

National energy needs for broader human development, including for poverty eradication and further quality of life improvements, will require significant energy demand growth (Kikstra *et al.* 2021). In 2021, average per capita energy demand in sub-Saharan Africa and South Asia was 19 and 16 gigajoules respectively, in contrast to 51 gigajoules in China, 83 gigajoules in Western Europe and 181 gigajoules in North America. However, as discussed in section 6.4.1, there is scope for meeting energy demand more efficient and equitable, and meet energy needs with low-carbon energy as renewables get cheaper (see chapter 5).

6.2.2 Countries have different starting points and priorities for future clean energy transitions

The challenges faced by countries in bringing about clean energy transitions are shaped by differing national circumstances (Mulugetta *et al.* 2022). Yet, these challenges fall into patterns based on countries' stage of development, economic structures, and fuel resource endowments, as mapped out in figure 6.1. Low-income countries not only contribute the least to global greenhouse gas emissions but also face acute development challenges that limit their ability to invest in clean energy opportunities without affordable finance. Middle-income countries with a manufacturing and services base may require a greater focus on decarbonizing industry, while those with a services and agriculture and silviculture base may give precedence to reducing deforestation. Fuel endowments also matter: countries with renewable (e.g. hydro) capacity, those with abundant fossil reserves for domestic use and/or exports, and those dependent on energy imports, will all face different sets of challenges and opportunities.

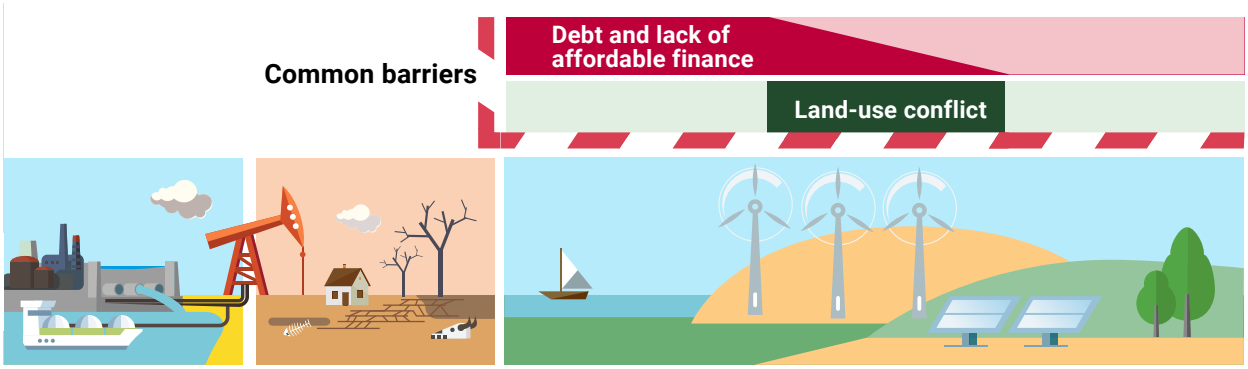
The overarching economic context in low-income countries and some lower middle-income countries, is low human development and high levels of debt. With underdeveloped power sectors and industry, clean energy access for cooking and electricity to reduce traditional biomass dependence is a priority (Chen *et al.* 2022). However, financing energy access expansion has been a challenge. Many low-income countries have depleted public savings either to counter the economic fallout of the COVID-19 pandemic, to cope with volatile commodity prices or to service external debt. In 2021, Governments in sub-Saharan Africa spent 16.5 per cent of their revenues servicing external debt, up from less than 5 per cent in 2010 (World Bank, Office of the Chief Economist for the Africa Region 2023). Today, 60 per cent of low-income countries are in or at high risk of debt distress, up from 49 per cent in 2019 (World Bank 2022).

The risks from undertaking a clean energy transition, and its implications for broader economic outcomes, varies by resource base. For instance, in net fuel importing low-income countries, such as Mali, threats to fossil fuel supply may exacerbate trade deficits and debt burdens. Consequently, they are likely to prioritize energy security, and value clean energy investments to replace imports (de Hoog, Bodnar and Smid 2023).

Low-income countries with cheap energy due to abundant hydro resources, such as Ethiopia or Nepal (recently classified as lower-middle-income), may choose to export low-carbon electricity to earn revenues while easing their foreign exchange bottlenecks. They also have more flexibility to accelerate emission reductions because they do not face stranded fossil fuel asset costs. Bhutan, for example, is among the few countries that have pledged to achieve carbon neutrality in its second nationally determined contribution (NDC) targets, based on its significant hydropower potential and over 70 per cent forest cover (Yangka *et al.* 2019).

Figure 6.1 Country groups based on development stage and fuel endowments share these challenges in the energy transition, among other country-specific circumstances

Energy sources	Risks	Low-income countries	Lower- and upper-middle income countries: Agriculture and forestry	Lower- and upper-middle income countries: Manufacturing and services
Fossil fuel producer (export-dependent)	Stranded sector risks	Democratic Republic of the Congo	Cameroon Equatorial Guinea	Algeria Ecuador Nigeria
Fossil fuel producer (domestic use)	Stranded sector risks	Burkina Faso	Brazil Indonesia	China India Viet Nam
Renewable producer (mainly hydro)	Climate risks for energy supply	Afghanistan	Costa Rica Bhutan	Kenya
Energy importer (low resources)	Energy security risks	Mali	Senegal Myanmar Côte d'Ivoire	Morocco Jamaica Mauritius



Some low-income countries and a few middle-income countries already do or plan to rely on fossil fuel exports, and could benefit from economic diversification. These countries face common risks, such as fuel price volatility and locking into future stranded assets. For example, a 50 per cent decline in oil prices during the pandemic contracted revenues and depleted foreign currency reserves in oil exporting countries (Akinola *et al.* 2022; Gerval and Hansen 2022). These circumstances pose a considerable threat to countries such as Angola and South Sudan, where energy accounts for up to 90 per cent share of their export earnings (International Monetary Fund [IMF] 2022; IMF 2023). In addition to incumbent producers in North and West Africa, several African countries including, Mozambique, Namibia, Senegal and Uganda, have made new discoveries of significant oil and gas reserves. Countries such as these seeking new sources of growth will avoid fossil fuel expansion only if they have credible alternative choices.

At the same time, oil and gas projects are capital-intensive, difficult to execute, and often face cost and time overruns (Mihalyi and Scurfield 2020). Because of long lead times to develop their industries, countries will be in a race against time to reap the economic benefits of the oil and gas trade. As renewables and other low-carbon technologies become competitive, the prospects of declining future demand could risk lock-in and asset stranding over the long term (Anwar, Neary and Huixham 2022). These fossil fuel-dependent low-income countries may benefit from economic diversification. Angola is an example of a country that has sought to diversify exports, as reflected in the country's 2025 Strategy and 2018–2022 Sector Development Plan.

Most middle-income countries, in contrast, typically have larger urban centres, more developed energy infrastructure, and better access to capital. Those that are major coal producers, such as China, India and South Africa, face the risk of stranded assets, large-scale unemployment and energy insecurity if coal is rapidly phased down. The speed of transition required poses a particular challenge. Energy transition consistent with Intergovernmental Panel on Climate Change (IPCC)-modelled pathways to 1.5° would require declines in coal generation at historically unprecedented rates (Muttit *et al.* 2023). However, the clean energy transition also offers opportunities, contingent on international support. Notably, all three of the countries mentioned have developed ambitious plans for mainstreaming climate into long-term development strategies (South Africa 2019; India, Ministry of Environment, Forest and Climate Change [MoEFCC] 2022).

In China, for example, to meet the projected rate of emissions decline, the country's energy infrastructure investment could triple compared to the NDC scenario. In one 1.5° scenario, these investments account for more than 2.6 per cent of its gross domestic product (GDP) (He *et al.* 2022). Since much of China's energy infrastructure, including coal plants, has been constructed in the past two decades, a rapid phase-out of coal could result in trillion-dollar stranded assets (Cui 2019). Conversion to peaking plants (Cui 2021), and retrofits with CCS or biomass co-generation (Xing *et al.* 2021), are partial solutions to this challenge.

South Africa, a coal-producing and -exporting economy, has rapidly expanded renewable energy development, yet faces a long road to replace its coal dependence. In 2019, South Africa had planned for 30 GW of variable renewable energy in its Integrated Resource Plan (South Africa, Department of Mineral Resources and Energy 2019), and by 2022 had 18 GW in the grid connection queue and 33 GW of variable renewable energy and batteries at an advanced stage of approval (South African Photovoltaic Industry Association 2023). Yet to meet South Africa's ambitious NDC targets would require adding over 6 GW of variable renewable energy every year to 2030, an amount equivalent to the current installed capacity of variable renewable energy, as well as investments in grid backbone (South Africa, Presidency 2022). Without enhanced international financial support, the country risks short-term negative impacts on growth, exacerbating poverty and inequality, and failing to capture future low-carbon industrial opportunities (World Bank Group 2022).

India faces the challenge of mobilizing investment to achieve its ambitious clean energy transition plans. These plans include increasing non-fossil fuel capacity in the power sector to 65 per cent by 2030 (India, Ministry of Power, Central Electrical Authority 2023), exceeding its NDC commitment of 50 per cent, implementing building and industrial energy efficiency standards and markets, and undertaking electric vehicle, biofuels and green hydrogen promotion programmes (India, MoEFCC 2022; India, Ministry of New and Renewable Energy 2023). To fully achieve this transition will require complementary measures such as a smooth transition away from coal, strengthening an already stretched electric grid, and decarbonizing the fertilizer, cement and steel industries. There is also scope to exploit potential linkages between social development and climate mitigation (Bhatia 2023), such as through electric public transit and two- or three-wheeler vehicles, passive designs for affordable housing (the Pradhan Mantri Awas Yojana programme) and efficient cooling solutions.

In industrializing middle-income countries with strong agriculture and forestry sectors, like Brazil and Indonesia, curbing deforestation through forest management reform may be a critical lever, though also with political challenges. For example, Brazil had success in reducing deforestation from 2004 to 2012 through stronger monitoring and enforcement and incentive programmes, such as conditional access to credit in rural areas with illegal practices (Assunção, Gandour and Rocha 2015), but some regression has occurred with changes in political cycles. Such reforms have had to contend with the conflict between conservation and the protection of indigenous rights, and land-grabbing for agriculture (Brito *et al.* 2019).

6.3 The political economy of clean energy transitions is challenging

Ensuring rapid, smooth and just national clean energy transitions will require addressing many political and institutional challenges at the national and global levels. Central to these challenges is the reality that greenhouse gas emissions contributions and the capacity to mitigate them have been, and will likely continue to be, highly unequal (see chapters 2 and 5). Global inequalities carry implications for financing and other means of international support for energy transitions, as discussed in section 6.5. National inequalities reflect unequal access to institutions and resources, concentration of power among elites and contestation among rival political interests. This section focuses on the implications for energy transitions of national development challenges, in particular capacity constraints, weak institutions and complex political economies.

6.3.1 Clean energy transitions are limited by capacity constraints

Ensuring that clean energy transition processes account for national circumstances requires deep capacity, including autonomy to take decisions in the national interest, inclusive processes, and the building and sharing of required knowledge (Klinsky and Sagar 2022). Yet differences in wealth mirror differences in capacities to undertake a clean energy transition. Low-income countries typically have limited resources and are often saddled with weak institutions and governance mechanisms to plan and manage their transitions (Sokona 2021).

Yet, capacity-building processes are often shaped more by the interests of international actors than by local needs (Nago and Krott 2020). For example, mitigation actions focused on climate outcomes may privilege training and knowledge acquisition on climate transparency, such as emissions reporting, over knowledge on social benefits or assessing needs for international support (Klinsky and Sagar 2022). Such "knowledge politics" also require attention in capacity-building processes.

6.3.2 Institutional requirements are substantial

Clean energy transition processes are characterized by lock-ins and path dependence (Sovacool 2016), and require structural changes including building new industries, infrastructure and human capital (Muttitt and Kartha 2020). Climate institutions, notwithstanding political challenges in establishing them, can help shape policy and serve governance functions needed for low-carbon transitions (Dubash *et al.* 2021).

Institutions that enable coordination across sector areas are necessary because multiple and competing institutions operating in silos are often in charge of energy- and development-related sectors, with implications for carbon outcomes (Newell 2019). Enhancing policy coherence through coordination between energy and the rest of the economy is critical to capitalize on the systemic benefits from the energy transition (Shawoo *et al.* 2021). For example, finance ministries are well placed to introduce development- and climate-related conditionalities to the use of public funds.

The careful design of decarbonization processes can help build consensus for complex transitions and broaden the knowledge base on which they are built. For example, Costa Rica put in place a data-driven, stakeholder-co-designed National Decarbonization Plan, which has also been an important foundation on which significant international concessional finance was mobilized (Jaramillo *et al.* 2023). Elements of this approach include a deliberative process, and carefully crafted long-term scenarios based on open-source models with scope for input from broad research, practice and policy communities.

6.3.3 Political economy challenges include entrenched fossil fuel interests

Undertaking clean energy transitions requires structural changes in political economy, with impacts on existing economic structures and interests as well as new political constituencies. For example, in South Africa, the historically powerful alliance of coal mining and the main electricity utility Eskom have maintained their defence of incumbent fossil fuel, while new alliances composed of parts of the State and civil society have lined up in favour of expanding renewables (Hochstetler 2020). The chasm between these coalitions has made it difficult for policymakers to commit fully to either climate action or renewable energy. In Latin American countries where livestock cultivation contributes to deforestation, mitigation may threaten the political influence of the cattle industry and increase the importance of food policies to reduce beef demand (Dumas *et al.* 2022).

The political acceptability of sustaining transitions depends on how their economic impacts are distributed through labour shifts, energy price and macroeconomic impacts. Labour retrenchment is a concern in coal-dependent economies such as China, India, Indonesia, and South Africa. Because the coal sector supports millions of people directly and indirectly, a phase-down from coal would also cause spillover effects in local economies and community well-being (Ruppert Bulmer *et al.* 2021). Similarly, Algeria employs 350,000 workers directly and 1.7 million people indirectly in its oil and gas sector. Not least, the transition out of fossil fuels could bring macroeconomic shocks with political economy implications. For example, countries that seek to exploit fossil fuel reserves for future economic growth face the risk of dwindling revenues as the rest of the world transitions to renewables-based economies (Solano-Rodriquez *et al.* 2021).

6.4 Clean energy transitions also bring opportunities

In addition to challenges, low emission energy transitions bring potential opportunities for low- and middle-income countries, including multiple social and environmental co-benefits. Many mitigation options bring both synergies and trade-offs with the Sustainable Development Goals, but the prevalence of synergies is greater than of trade-offs (Allan *et al.* 2021 p. 22). For example, sustainable transport strategies could yield co-benefits such as air quality and health improvements, equitable access to transportation services including enhanced gender equality, and improved access to education (Doblas-Reyes *et al.* 2021, p. 1389). Widening access to clean cooking options could improve health outcomes considerably, especially for women, while reducing forest degradation and deforestation. Realizing these co-benefits also depends on policy choices that intentionally maximize co-benefits and minimize trade-offs.

The scope for these sectoral co-benefits is well recognized. This section focuses on the complementary question of how broader structural economic changes could help generate opportunities, across a wide spectrum of low- and middle-income countries, while keeping their specific national contexts in mind. It discusses two such sets of opportunities: demand-side changes that result in more efficient growth; and moving up the clean energy supply chain.

6.4.1 Demand-side changes bring efficiency and social benefits

Demand-side changes could bring social benefits and, through enhanced efficiency, reduce the need for supply expansion (Creutzig *et al.* 2018). The most energy-intensive demand sectors include housing, transport and food (Rao *et al.* 2019). Avoiding lock-in in these sectors require shifting how low- and middle-income countries develop urban areas where the most energy demand growth and lock-in is expected. Given that future demand growth is dominated by urban areas, the potential for avoided emissions is greatest there.

Because urban and industrial infrastructure is still being built in low- and middle-income countries, these countries can avoid locking into energy- and carbon-intensive infrastructure, thereby avoiding future emissions (Lwasa *et al.* 2022). Urban planning and housing policies that encourage more dense and affordable multifamily housing can reduce commuting needs and building energy demand. Building energy efficiency measures, coupled with financial support to maintain affordability, such as for appliances and housing construction practices, can save households money and reduce emissions. In the transport sector, shifts from investments in road infrastructure to facilitate shared transit, such as buses, mass transit rail or even car-sharing, can significantly reduce transport-related emissions, with numerous social and environmental benefits (McCollum *et al.* 2018).

In the food sector, energy investments at scale are essential to support expected growth in food production of 70 per cent by 2050 to meet the needs of a growing population, increased urbanization, and dietary changes (International Renewable Energy Agency [IRENA] and Food and Agriculture Organization of the United Nations [FAO] 2021). For example, improved access to modern energy for cooling and mechanical power in the agrifood supply chain can reduce waste in storage and increase productivity in agroprocessing. Policies that support diets with healthy coarse grains (Davis *et al.* 2019) and less meat (Willet *et al.* 2019) can have nutritional, environmental and economic benefits.

Shifts in development strategies that prioritize the poor or broad public interests over private consumption can reduce emissions growth. In South Africa, models show that macroeconomic policies that prioritize energy security and employment can favour renewables over fossil investments in the power sector (Winkler *et al.* 2022). Shifts in investments towards shared infrastructure that serve basic needs, such as health or education facilities, and water and sanitation, would reduce inequality in human development and limit emissions growth (Kikstra *et al.* 2021; Millward-Hopkins and Oswald 2023).

6.4.2 Participating in clean energy supply chains can bring jobs and revenue

Moving from mineral extraction to the final product end of the clean energy supply chain provides considerable opportunities to low- and middle-income countries. Doing so can create new revenue opportunities for the industry and new jobs for the public, and, in some cases, help fossil fuel-dependent economies to diversify.

The rise in the electric vehicle industry will require a material shift from a liquid-based to a minerals-intensive energy system, estimated to result in a six-fold increase in mineral inputs in 2040 relative to today (IEA 2021a). By 2025, the six segments of the US$8.8 trillion global electric vehicle batteries value chain will include mineral exploitation (US$11 billion), minerals-to-metals transformation (US$44 billion), production of precursors (US$217 billion), battery cell manufacture (US$387 billion), cell assembly (US$1.8 trillion) and electric vehicle manufacture (at least US$7 trillion). Moving from the first segment to the third would allow countries in Central Africa to capture gains beyond the very first and least profitable stage of the chain (BloombergNEF 2021; Ouedraogo and Gasser 2022).

Low- and middle-income countries today are competitive in exploration and mining of critical minerals, but lack capacity for processing or refining operations, cell assembly, and manufacturing of components necessary for electric vehicle production. For example, almost all the cobalt mined in the Democratic Republic of the Congo is exported to Belgium or China for refining, with insignificant economic benefits accruing to the country (Bridle *et al.* 2021). Achieving the transformative potential of lower- and middle-income countries' resources requires a new way of thinking about minerals and their place in the industrialization and diversification of economies.

Low- and middle-income countries that have been successful in taking advantage of downstream opportunities in the renewables value chain have done so through the support of robust institutions, cross-sectoral coordination, industrial policies to strengthen local manufacturing capabilities, and development of export partnerships. China's PV programme, for example, has established an industrial ecosystem with strong synergy between upstream and downstream sectors. China's PV industry promoted sustained cooperation between local firms, universities and industry associations across the PV value chain. Starting from portable lighting devices, then moving to solar PV panels, and ultimately creating domestic cell and wafer industry for export, the Chinese PV industry has gradually become one of the pillars

of the Chinese manufacturing sector (Huang *et al.* 2016; Zhang and Gallagher 2016). Conversely, India's National Solar Mission prioritized low-cost deployment of PV over building domestic manufacturing capability, paying insufficient attention to training and research and development (R&D) (Behuria 2020). India's relatively limited success in creating opportunities for localizing manufacturing has therefore resulted in high dependence on solar PV imports.

Prior expertise in related industries matters. For instance, Viet Nam has had substantial experience producing internal combustion engine based two-wheelers for several decades, and has become the second-largest electrical two-wheelers market worldwide, second only to China (Hiep *et al.* 2023). As part of the effort for upscaling electric vehicles, the Government of Viet Nam agreed to reduce the excise tax on domestically manufactured, assembled and imported electric cars. A preferential import tax on raw materials and components is currently under review (Le, Posada and Yang 2022). However, Viet Nam still lacks a clear and comprehensive e-mobility policy and regulatory framework to plan for significant future investment.

Starting down the pathway to harness gains from the energy supply chain may require taking early bold steps. For instance, Peru reformed its copper royalty regime in 2021 to increase government revenue from the mining sector. Indonesia has banned the export of unprocessed nickel to encourage value-added activities within its borders. Namibia has also been actively exploring the development of green hydrogen, mainly for export. Although it lacks the industrial capacity and sectoral system capabilities of countries further ahead, Namibia has established strong international R&D interactions and collaborations to ensure the social benefits of employment and local learning take place (United Nations Conference on Trade and Development 2023). The initiative is expected to create an additional 600,000 jobs by 2040 in Namibia, but the social, political and resource-related risks would need to be carefully assessed.

6.5 Adequate international finance is an essential enabler of clean energy transitions

Decarbonizing energy systems in low- and middle-income countries requires mobilizing capital at an unprecedented scale. Without affordable external climate finance assistance, the majority of low- and middle-income countries will struggle to achieve their development objectives and reduce emissions. Global clean energy investment stands at US$1.3 trillion today, and is projected to rise to US$2 trillion by 2030 (though US$4 trillion is needed to stay on track with the net-zero scenario) (IEA 2021b). Low- and middle-income countries account for two-thirds of the global population, yet received only a fifth of all energy transitions investments (IEA 2021c). The implementation of the NDCs alone, for instance in Africa, are projected to require close to US$3 trillion of conditional and unconditional finance for implementation, a sum close to one year of Africa's GDP in current terms (UNECA 2020).

Enabling an energy transition in low- and middle-income countries will require scaling up financial flows in strained financial systems. In many cases, challenges of food sovereignty, energy sovereignty, and the low value-added content of exports relative to imports (Sokona *et al.* 2023) contribute to structural trade deficits, weakened currencies and persistent indebtedness. In low- and middle-income countries with fossil fuel industries, affordable finance is important not only for scaling clean energy, but also to manage the economic shocks from retiring fossil fuel assets. For example, coal-fired power plants support the viability of India's rail system through coal freight charges and finance state budgets (Tongia, Sehgal and Kamboj [eds.] 2020). Moreover, reduction in fossil fuel exports could threaten fiscal solvency in countries such as Algeria, where oil and gas revenues accounted for 38 per cent of government revenue between 2016 and 2021, increasing to more than 50 per cent in 2022 and 2023 (Oxford Analytica 2023).

Against this challenging backdrop, energy transitions in low- and middle-income countries are impeded by nominal financing costs that are up to seven times higher than those in the United States of America and Europe (IEA 2021c). The weighted average cost of capital varied between 5 and 21 per cent for solar and wind projects in lower- and middle-income countries (see figure 6.2). The regional weighted average cost of capital for solar PV in 2021 was 7 per cent in Africa and Asia and 4 per cent in Europe (IRENA 2022). Some low- and middle-income countries face a climate investment trap, where the high costs of capital that limit financial flows are due in part to limited experience with these markets. Perceived risks of investment are exacerbated by sovereign credit scores and ratings, and the lack of concessional finance, catalytic finance and guarantees (Mithatcan *et al.* 2022).

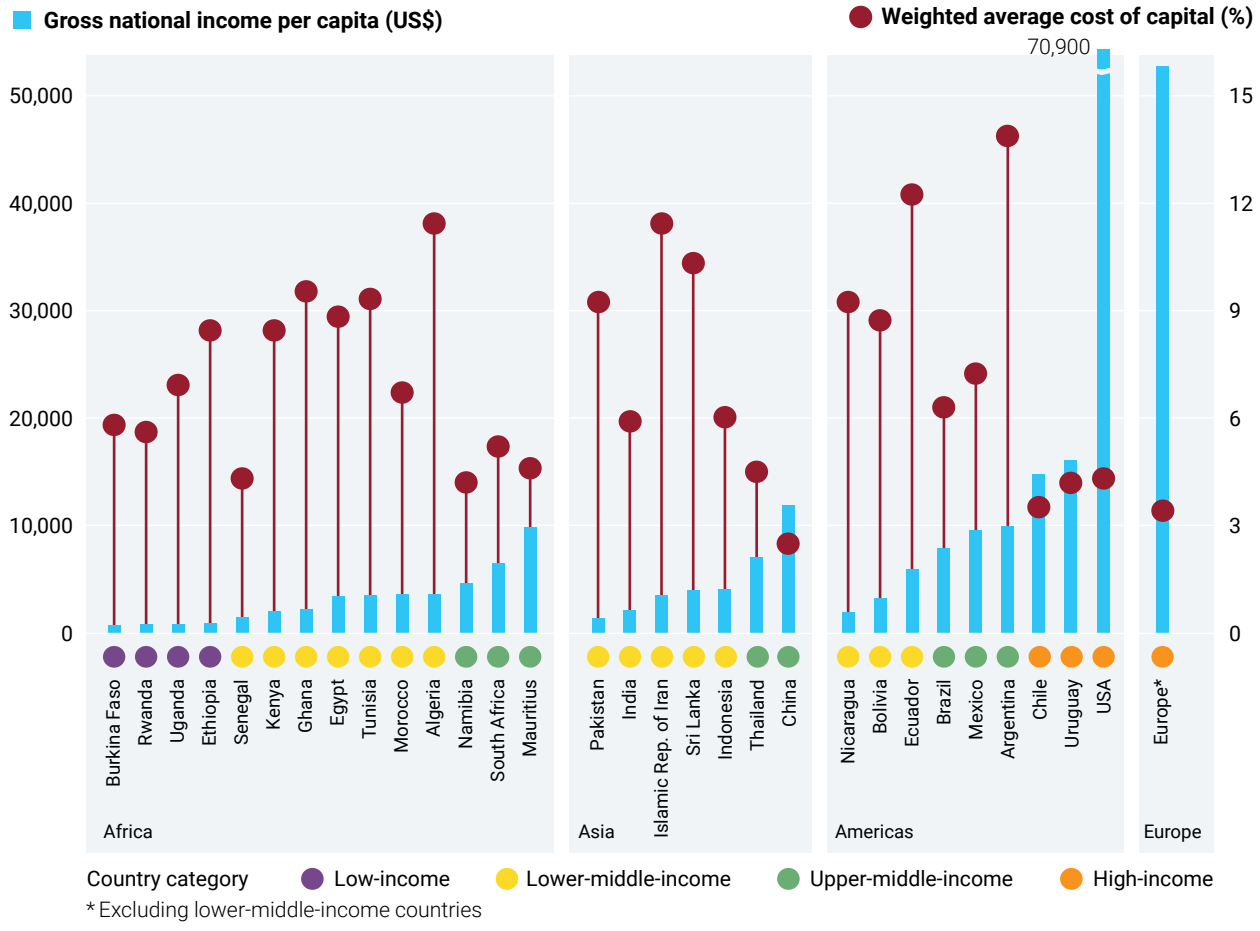
Reducing costs of capital can significantly increase the scope for low-carbon energy investments to provide affordable energy services to wider populations (Ameli *et al.* 2021). To do so, reforms are needed in international finance as well as in domestic markets where clean energy is sold. International climate finance needs to be re-oriented towards long-tenor and low-interest concessional finance, guarantees and catalytic finance need to be provided, and new public and private sources of finance should be encouraged. New innovative models for finance are needed that restore debt sustainability and restructure the rules of international financial institutions (United Nations 2023). In domestic markets, risks of energy off-take need to be reduced by improving the financial viability of purchasing utilities, developing reliable market design and rules, and strengthening electric grids to ensure reliable delivery.

Further, climate finance is less forthcoming for countries that need it the most. The 46 least developed countries received 2.8 billion in energy transition investments in

2018, an amount lower than in previous years. Despite the enormous renewable potential and need to meet energy access needs in Africa, only 2 per cent of global investment flowed into Africa between 2000 and 2020, of which 75 per cent was concentrated in Egypt, Kenya, Morocco and South Africa (IEA, IRENA, United Nations Statistics Division, World Bank and WHO 2021).

The emerging Just Energy Transition Partnerships (JETPs) between international finance providers and low- and middle-income countries are finance packages intended to support country-led decarbonization strategies consistent with national development priorities. They show promise, but require considerable additional investment mobilization and further assessment of their ability to address development objectives. The amount of funding in a JETP is small compared to the scale required for clean energy transition. However, they offer a process to help develop capacity and governance. For example, in South Africa the JETP catalysed the development of a comprehensive country investment plan that is much bigger (US$98 billion) than what was on offer (South Africa, Presidency 2022). Indonesia and Viet Nam have agreements to increase their commitment to renewable energy and reduce their pipeline of coal generation expansion with international assistance (Southeast Asia Energy Transition Partnership 2022).

Figure 6.2 Weighted average cost of capital for solar PV projects against per capita gross national income for select countries in 2021.



Source: Adapted from IRENA (2022). Gross national income (current US$, World Bank Atlas method).

6.6 Low- and middle-income countries can take concrete steps towards clean energy transitions

The challenges on the path to clean energy transition in low- and middle-income countries are considerable. However, there are concrete steps that this large group of countries can take towards accelerated energy transition. The starting point is to develop nationally owned and context-specific visions and strategies for energy futures that bring together development and clean energy imperatives. To do so requires low- and middle-income countries to undertake institutional strengthening. And to realize these ambitious visions will require mobilizing international support. This section lays out concrete measures towards each of these steps. Taken together, these steps can assist lower- and middle-income

countries' Governments in preparing investment-ready climate and development plans that scale up mitigation ambition through articulated policies and strategies, and their investment needs.

6.6.1 Develop domestic strategies towards equitable, efficient and clean growth

Shifting development pathways towards sustainability allows mitigation considerations to be incorporated alongside a broad set of developmental objectives (Winkler *et al.* 2022). But to do so requires developing energy transition strategies that account for both synergies and trade-offs across development and emissions outcomes in specific national contexts. At least three areas may be particularly salient to lower- and middle-income countries' strategies: encouraging energy-efficient and well-being-enhancing demand growth; developing economic and social transition plans for fossil dependence; and exploiting clean energy supply chains.

6.6.2 Avoid emissions through demand-side measures

Because many low- and middle-income countries have not fully locked into infrastructure or consumption patterns, focused attention to the following aspects of energy demand could avoid future emissions: in emerging urban areas, preemptive urban planning with electric public transit, affordable, efficient housing and compact design; social service expansion through shared infrastructure such as health, education, water and sanitation; and supporting efficient food systems with diverse grains, which likely entails less emissions-intensive growth, and potentially contributes to gender equality and youth employment (IRENA and FAO 2021).

Develop a strategic plan around fossil fuel use: Because of the need for rapid global phase-down of all fossil fuels, low- and middle-income countries should develop strategic plans for existing or planned fossil fuel use – domestic or exports. These plans should examine the scope for economic diversification and alternatives to fossil fuel expansion, the economic risks associated with stranding existing assets, and the need for social protection mechanisms to manage transition shocks such as unemployment and higher energy prices. The process of formulating these strategic plans should be inclusive and gender-responsive, to identify and involve affected communities.

Foster green industrial opportunities: Capturing economic and social gains from the large-scale deployment of renewable energy and storage technologies is a key development objective (United Nations Environment Programme 2019). To do so, extraction-dependent low- and middle-income countries could broaden their involvement in clean energy supply chains from ore exports to higher-margin activities such as processing and manufacturing technologies. This requires identifying value chain activities that can feasibly be picked up by local firms and introducing enabling measures such as local content incentives, business incubation initiatives, domestic R&D and human capital investments, and promotion of low-carbon industrial clusters (Lema *et al.* 2021). Regional coordination may enable low- and middle-income countries to build on comparative strengths in raw materials, manufacturing, and trade routes. For example, entities such as the African Continental Free-Trade Area can help develop an efficient regional low-carbon industrial ecosystem by providing an impetus for African Governments to address infrastructure gaps, improve and streamline supply chains, improve manufacturing capacity, and foster cross-border cooperation.

6.6.3 Develop institutions to support energy transitions

To enable low- and middle-income countries' Governments to take ownership of their mitigation strategies, developing appropriate domestic institutions at national and subnational levels is necessary (Dubash *et al.* 2021). Institutions can enable strategic thinking, ensure coordination for implementation, and strengthen gender-responsive inclusive processes for designing, assessing, and implementing policies that safeguard people's interests during transition. Appropriate institutional development is a precondition for countries to exploit new green economy opportunities, as discussed above. Identifying strategic opportunities, coordinating and harnessing domestic capabilities to move down the supply chain, working in partnership with domestic industry, and establishing partnerships and markets globally, all require considerable State capacity. Because of their cross-sectoral nature, managing energy transitions will require coordinating across government departments and jurisdictions. And because they risk creating winners and losers, they require open processes that ensure the interests of the poor are represented. This calls for lower- and middle-income countries' Governments to take greater responsibility for setting up transparent and accountable governance systems with improved public administration.

6.6.4 Create improved conditions for international financial assistance

A clean energy transition requires international support, consistent with operationalizing the principle of common but differentiated responsibilities and respective capabilities (Klinsky *et al.* 2017). In practical terms, global climate mitigation financial flows from North America and Europe to other regions would have to increase to hundreds of billions to reconcile development needs and fair effort sharing (Pachauri *et al.* 2022). To facilitate such an increase in international flows, the structure of international finance needs reform, domestic market conditions need to be improved, and country platforms for facilitating dialogue need to be developed, as laid out below.

Fundamental to the goal of restructuring international finance is to reduce costs of capital. This will require de-risking early-stage investment, enabling long-tenor and low-cost concessional finance, introducing catalytic finance and guarantees, and creating market conditions that provide long-term certainty (Mithatcan *et al.* 2022). Mobilizing capital at the scale required may require attracting private capital through blended capital with international or domestic financial institutions (IEA 2021c).

Domestic market conditions need to provide investor confidence. In some low- and middle-income countries, market design rules and regulations that enable the private sector to invest in clean energy need to be put in place (Fazekas *et al.* 2022). Stable and robust legal and regulatory institutions are important to investors. Domestic financial institutions can provide support to enhance the financial viability of projects. The India Infrastructure Project Development Fund is an example of such an institution that bore early-stage risk in large infrastructure projects.[3] As discussed in section 6.5, the viability of clean energy investments in electricity production also depends on reliable electricity policies, grid reliability and on the financial viability of utilities.

Matching reformed and scaled up international finance with domestic mitigation strategies requires appropriate mechanisms to facilitate international cooperation.

The preparation of the next round of NDCs due in less than two years, which will include mitigation targets for 2035, provides an opportunity in this context. Most of the NDCs for 2030 are unconditional. However, some low- and middle-income countries have submitted conditional NDCs – i.e. commitments with more ambitious emission reduction targets for 2030 than those of unconditional NDCs, but which are contingent on the provision of support. Current NDCs often lack specificity on policies and on investment needs (Pauw *et al.* 2018). A few countries list policies associated with higher ambition, while some others have merely listed sectoral policies in their NDC. The next round of NDCs offers the opportunity for low- and middle-income countries to develop road maps for more ambitious low-carbon development futures that include policies with accompanying targets and investment needs, against which finance and technology support can be negotiated and implementation progress can be measured. The twenty-eighth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP 28) is a timely opportunity to call on low- and middle-income countries to lead the preparation of such plans, and for industrialized countries to commit financial and technical support towards them.

In addition, JETPs offer a semi-structured approach to link support to low-carbon development outcomes. However, they are likely to be more useful if they embrace a broad domestic vision for national economic transformation and fund broader programmes rather than individual projects for coal or other fossil-fuel phase-down. Moreover, they can offer a process to help develop capacity and governance in key areas, such as project tracking, data management and outcome measurement, and identify needs in line with national goals and a vision of a just transition.

3 See https://ppp.worldbank.org/public-private-partnership/library/india-project-development-fund-ipdf.

7 The role of carbon dioxide removal in achieving the Paris Agreement's long-term temperature goal

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7.1 Introduction

Under current or planned emission reduction efforts, as presented in chapter 4, the expanded use of carbon dioxide removal (CDR) is unavoidable if the Paris Agreement long-term temperature goal is to remain within reach.

CDR is already being deployed, mainly in the form of conventional land-based methods and mostly in the developing countries. As described in section 7.1.1, there are various current and emerging approaches for CDR. These approaches are at varying levels of maturity and have different types of risks that are either method- or implementation-specific (e.g. relating to land competition, sustainability, biodiversity, durability or high energy requirements) or of a more systemic nature, such as the potential to undermine the priority of emission reductions or overestimating the future efficacy of CDR.

It is important to note that all mitigation scenarios assessed by the Intergovernmental Panel on Climate Change (IPCC) (Riahi *et al.* 2022) that are aligned with the Paris Agreement temperature goal make use of CDR to some extent, especially to achieve and even go beyond net-zero carbon dioxide (CO_2) emissions and eventually all greenhouse gas (GHG) emissions. The gigaton-level application of CDR in these scenarios imply a need for substantial growth in nascent technologies. For this to happen, both national and international policy and governance regimes will need to be developed to better incorporate CDR constraints and opportunities. Beyond a commitment to formally integrating CDR in existing climate policy frameworks, four important areas for political action can be identified: setting and signalling priorities; developing robust measurement, reporting and verification systems; harnessing synergies and co-benefits; and accelerating needed innovation.

7.1.1 CDR methods and characteristics differ

As a result of the continued increase in GHG emissions worldwide, CDR has gradually become an increasingly essential element of scenarios consistent with limiting global warming to 1.5°C or well below 2°C (Pathak *et al.* 2022; Riahi *et al.* 2022). Achieving these targets will still require the rapid decarbonization of industry, transport, heat and power systems, but will need to be combined with the scale-up of CDR technologies to address residual emissions from so-called hard-to-abate sectors, such as aviation, shipping, heavy industry and some agricultural activities.

When discussing CDR, it is vital to clearly differentiate between a set of related but different options for managing carbon emissions:

- CDR is only the direct removal of CO_2 from the atmosphere and its durable storage in geological, terrestrial or ocean reservoirs, or in products.
- While carbon capture and storage and carbon capture and utilization share components with some CDR methods, their application on CO_2 emissions from fossil fuels can never result in CO_2 removal from the atmosphere.
- Carbon capture and storage involves the capture of CO_2 from point-source emissions, industrial process streams or the atmosphere, which is then transferred into permanent CO_2 storage (e.g. long-term geological storage). Some CDR processes require carbon capture and storage technologies to be considered for CDR (e.g. bioenergy with carbon capture and storage or direct air carbon capture and storage).
- Carbon capture and utilization involves the capture of CO_2 from a point source or the atmosphere, which is then used to produce other products, such as fuels and chemicals. The key difference of this approach from CDR and carbon capture and storage is that most carbon capture and utilization products will eventually be combusted, resulting in the re-release of the CO_2 back into atmosphere.

Methods that can provide direct removal of CO_2 from the atmosphere and durably store it include afforestation, reforestation, coastal blue carbon management, enhanced weathering, biochar, soil carbon sequestration, direct air carbon capture and storage, bioenergy with carbon capture and storage, ocean alkalinity enhancement and ocean fertilization (Fuss *et al.* 2018; National Academies of Sciences, Engineering, and Medicine 2019; Babiker *et al.* 2022; Bui and Mac Dowell [eds.] 2022).[1] Figure 7.1 summarizes the main characteristics of CDR methods.

Conventional approaches such as afforestation and reforestation have been practised for centuries, but not at the scale assumed in IPCC-assessed mitigation scenarios, and will therefore need to be backed by improved inventory methods for credibility. Other so-called novel CDR methods are in the early stages of development, or have reached pilot, demonstration and even commercialization stages, for example bioenergy with carbon capture and storage, direct air carbon capture and storage, biochar or enhanced weathering (Smith *et al.* 2023).

CDR efficiency is the fraction of CO_2 captured that is permanently removed from the atmosphere, having also accounted for any GHG emissions arising along the supply chain. CDR potential and scalability of each CDR implementation pathway will depend on the method used. Specific CDR approaches will have different co-benefits (e.g. soil improvements), risks and adverse consequences (e.g. land competition for food production).

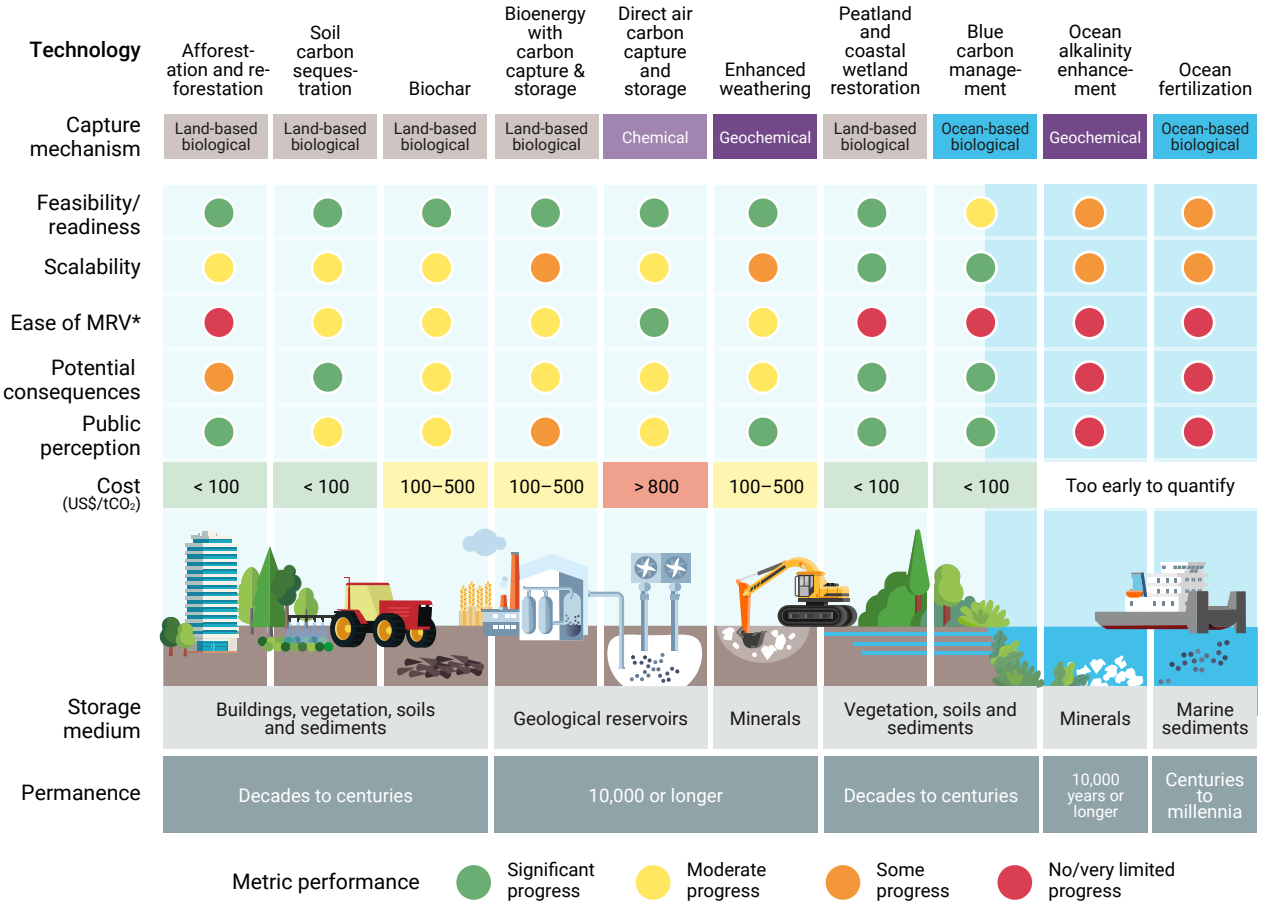
The timescale of CDR from different CDR approaches is an important factor to consider in terms of the possible speed at which global warming is reduced. For instance, forest carbon sinks can take decades to centuries to establish and saturate, while the mineral carbonation process of enhanced rock weathering can take months to years, or even decades to proceed to completion. In contrast, direct air capture removes CO_2 on much more immediate timescales (Chiquier *et al.* 2022).

CDR permanence is the duration of time for which the captured carbon is stored and is also referred to as carbon storage durability. Depending on the CDR method, this can vary from decades to thousands of years, or even longer (figure 7.1). Each carbon storage option will have some level of risk of reversal, which refers to the risk associated with the re-release of the stored carbon through an unintended event or activity.

To accurately measure net CDR, measurement, reporting and verification methodologies are being developed for different CDR options, which will provide standardized guidance on project eligibility criteria, required field measurements, best practice principles (e.g. to avoid the reversal of CDR) and life cycle assessment boundaries to quantify the carbon stored and emitted. The ease of measurement, reporting and verification will have an impact on the cost, feasibility and even the perception of CDR implementation options (Mercer and Burke 2023).

1 There is conceptual overlap between biological removal methods (such as reforestation, soil carbon sequestration or blue carbon management) and nature-based solutions, defined by the International Union for Conservation of Nature as actions to protect, sustainably manage and restore natural or modified ecosystems that address societal challenges (e.g. climate change mitigation) effectively and adaptively, while simultaneously providing human well-being and biodiversity benefits (Cohen-Shacham *et al.* 2016). Considering that nature-based solutions encompass both emission reductions/avoidance and removals, the term is not used in this chapter due to the focus on CDR.

Figure 7.1 Overview of CDR methods and their main characteristics



* Monitoring, reporting and verification. For example, ease of MRV indicates the level of development in practices for MRV of CO_2 for a given CDR option. Green suggests MRV is well developed, where the methodology and techniques are well-established and standardized due to comprehensive and demonstration trials providing valuable learnings. Red corresponds to either a lack of practical experience, or technical difficulties with the MRV development for a CDR approach.

Note: The coloured circles indicate the level of progress for different metrics based on current development of the technology. Green corresponds to progress being close to the target levels required for wider adoption, whereas red indicates no progress or limited progress towards the target.

Sources: Adapted from Geden *et al.* (2022) and Pisciotta, Davids and Wilcox (2022).

7.1.2 CDR plays different roles in current and future mitigation

Robust strategies for limiting a global temperature increase include both immediate and stringent emission reductions and the active removal of CO_2 from the atmosphere. Global mitigation scenarios assessed by the IPCC Working Group II Sixth Assessment Report (WGII AR6) show that the main mitigation focus until net-zero CO_2 emissions are reached is on reducing emissions, mainly by substantially reducing the use of all fossil fuels, electrifying energy end-use sectors (including mobility), reducing energy demand through energy efficiency measures and reducing deforestation and ecosystem degradation (Riahi *et al.* 2022).

CDR can support ambitious mitigation strategies in three ways. Firstly, it can contribute to the reduction of net emissions in the near term, primarily through sustainable land-use practices and the expansion of forested land. Secondly, in the medium term it can compensate for remaining emissions from challenging sectors, such as CO_2 from industrial activities (e.g. the production of chemicals, iron, steel and cement) and long-distance transport (e.g. aviation and shipping), as well as methane and nitrous oxide from agricultural activity (e.g. animal husbandry and fertilizer production), thereby supporting the achievement of net-zero CO_2 emissions and eventually net-zero GHG emissions later in the century. Lastly, in the long term, deploying CDR at levels surpassing annual residual gross GHG emissions would result in net-negative emissions that would then facilitate a decline in the global mean temperature, and a move towards the Paris Agreement long-term temperature goal after a temporary overshoot (Fuss *et al.* 2014; Minx *et al.* 2018; Rogelj *et al.* 2018).

7.2 The land sector dominates current CDR levels

CDR is already in use, with removals mostly taking place in the land sector. These carbon removals are largely carried out via conventional methods that have been used for decades (or even centuries), often for reasons other than climate change mitigation. Conventional methods include afforestation, reforestation, enhanced soil carbon sequestration, peatland and wetland restoration, agroforestry and forest management, including the transfer of biomass to durable harvested wood products, in which CO_2 is taken up by photosynthesis and is stored in terrestrial vegetation, soil or as wood products. Countries already report these carbon removals as standard practice under their land use, land-use change and forestry (LULUCF) activities. Bookkeeping methods estimate present-day direct removals through these conventional methods to be 2.0±0.9 gigatons (Gt) of CO_2 per year, primarily from afforestation and reforestation and the management of existing forests (Smith *et al.* 2023). The majority (about two thirds) of these removals occur on land in non-Annex I countries (Friedlingstein *et al.* 2022).

Total CO_2 uptake in the LULUCF sector is substantially larger than that estimated for CDR alone: gross removals in the LULUCF sector amount to 9.6±1.4 $GtCO_2$ per year averaged over 2012–2021, with a net (removal) flux on forested land of 3.5±1.0 $GtCO_2$ per year (Friedlingstein *et al.* 2022). However, these additional removals through forest regrowth are linked to land-use activities that also cause emissions, particularly from slash and burn practices, soil carbon and product decomposition in forestry and the clearing of forests by shifting cultivation. Only a transfer to durable storage, such as long-lived harvested wood products, is counted towards CDR (estimated to about 0.2 $GtCO_2$ in 2022) (Powis *et al.* 2023). Indirect anthropogenic effects, such as carbon fertilization, enhance the ability of the LULUCF sector to remove carbon from the atmosphere even further but are counted towards the natural terrestrial land sink and are not directly attributable to CDR activities in scientific assessments (Friedlingstein *et al.* 2022), although they are partly included in national GHG inventories (Grassi *et al.* 2023). Additional efforts to remove CO_2 through enhancing natural sinks include coastal wetland (blue carbon) management (Smith *et al.* 2023).

Other removal methods, including bioenergy with carbon capture and storage, biochar, direct air carbon capture and storage and enhanced weathering (collectively referred to here as novel CDR) are currently at lower levels of technological readiness and are at smaller pilot or experimental scales of implementation (Babiker *et al.* 2022). Estimates indicate that present-day removals from these approaches are small compared with removals from conventional methods, amounting to approximately 2.3 megatons (Mt) of CO_2 per year, primarily from a small number of bioenergy with carbon capture and storage facilities, which remove 1.8 $MtCO_2$ per year, with approximately 0.5 $MtCO_2$ of removals per year occurring from biochar production (Powis *et al.* 2023). Smaller contributions come from a range of other projects that use methods such as direct air carbon capture and storage and enhanced rock weathering. It is important to note that CO_2 captured by these methods is only considered CDR if the captured CO_2 is durably and permanently stored. Thus, captured CO_2 that is used in short-lived products (e.g. for sustainable aviation fuels) is not considered CDR. Similarly, captured CO_2 that is used for enhanced oil recovery raises serious carbon accounting concerns (Schenuit *et al.* 2023).

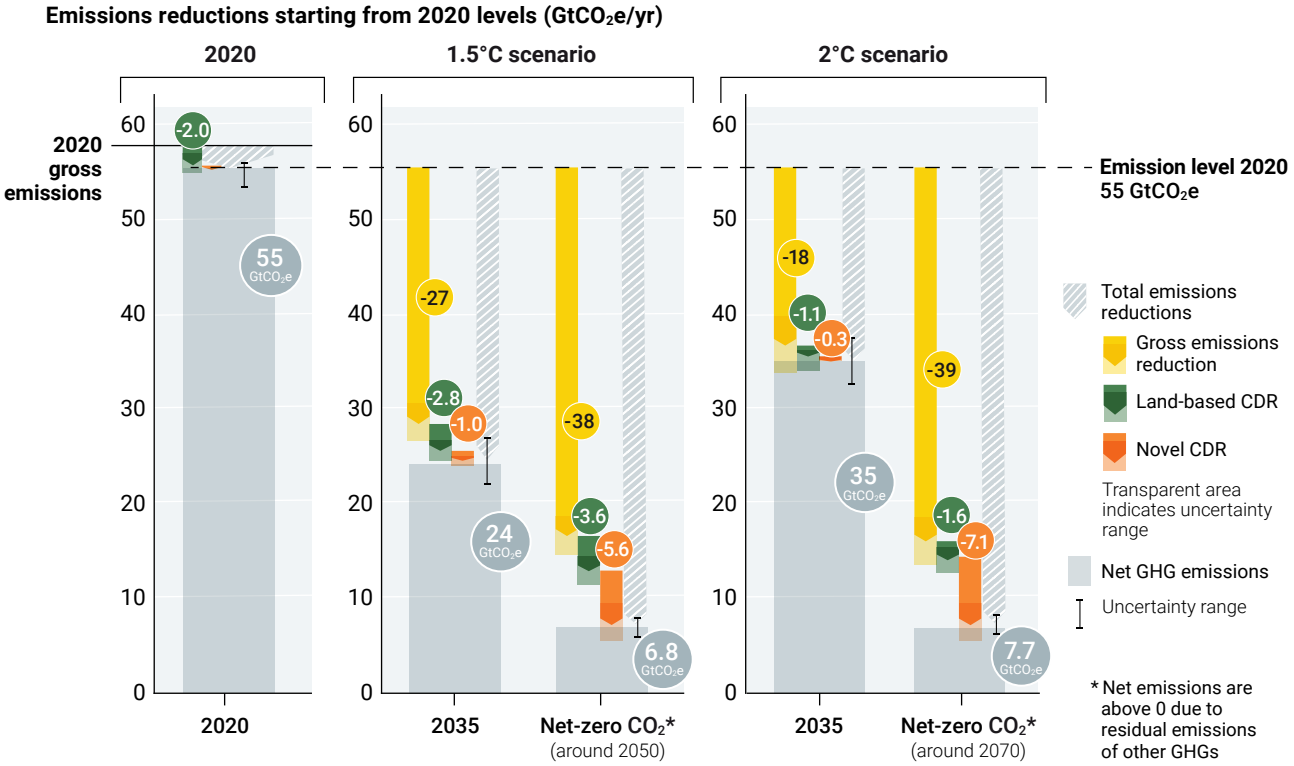
7.2.1 CDR contributes to global mitigation pathways

In least-cost mitigation pathways assessed in IPCC WII AR6 and considered in chapter 4, the amount of mitigation achieved by reducing gross emissions (e.g. switching from fossil fuels to renewable energy, increasing energy efficiency or reducing the demand for emission-intensive goods and services) compared with actively removing CO_2 from the atmosphere depends on various factors, most notably the magnitude and timing of the peak temperature achieved in a scenario as well as the degree of temperature reduced after the peak. Across all pathways assessed here, the primary mitigation activity both in the near and long term is reducing gross emissions (figure 7.2).

In the near term, 1.5°C and 1.8°C pathways both see rapid gross emission reductions, further highlighting the importance of reducing emissions this decade. However, these pathways differ, as the 1.5°C pathways tend to scale up land-based carbon removals more ambitiously, resulting in greater net emission reductions by 2035 compared with the 1.8°C pathways. In both cases, novel CDR plays a relatively minor role until at least 2035, as the various technologies begin to scale up to provide removals later in these scenarios. Less ambitious climate targets such as 2°C see slower gross emission reductions and lower levels of both land-based and novel CDR in comparison (figure 7.2).

Net-zero CO_2 emissions are achieved at different times depending on the temperature target, with 1.5°C pathways by mid-century and other pathways one or two decades thereafter. By the time net-zero CO_2 emissions are reached, most mitigation efforts across all scenarios continue to be in the form of gross emission reductions, through which roughly 80 per cent of total efforts occur (figure 7.2, panel c). The pathways mostly differ in the relative contribution of land-based CDR and novel CDR for the remaining 20 per cent of efforts. In 1.5°C pathways, land-based removals from afforestation and reforestation increase to 6.2 (4.5–6.8) $GtCO_2$ per year (median and interquartile range) by mid-century, while novel forms of CDR increase to around 4.2 (3.7–6.2) $GtCO_2$ per year, which is approximately 1,500 times more than present levels. Because net-zero CO_2 emissions are reached later in 1.8°C and 2.0°C pathways, larger relative contributions to total CDR come from novel methods. In all cases, novel CDR begins to overtake land-based CDR, on average, by around 2060, and is the main contributor to total CDR by the end of the century.

Figure 7.2 The role of emission reductions and CDR in least-cost pathways consistent with the Paris Agreement



Notes: The left panel shows global GHG emissions and levels of CDR in 2020. The centre panel shows snapshots of gross emission reductions, CDR and remaining GHG emissions in 2035 and at the time of net-zero CO_2 under a 1.5°C pathway. The right panel shows the same for a 2°C pathway.

Sources: Byers *et al.* (2022); Riahi *et al.* (2022); Smith *et al.* (2023).

Certain sectors are crucial in facilitating these levels of removals. The use of bioenergy with carbon capture and storage in scenarios provides a source of power and heat with net-negative emissions but uses less energy-efficient processes to produce electricity and synthetic fuels while drawing down CO_2 emissions (Bauer *et al.* 2018; Daioglou *et al.* 2020). Direct air carbon capture and storage is particularly dependent on the electricity sector, both from an operational perspective and for its net capture efficiency. When paired with zero-carbon or net-negative electricity systems, direct air carbon capture and storage can remove CO_2 without resulting in a substantive additional carbon footprint from its operation (Bistline and Blanford 2021; Fuhrman *et al.* 2021; Strefler *et al.* 2021). Other CDR methods, such as biochar, soil carbon sequestration and enhanced weathering, as well as bioenergy with carbon capture and storage, depend on agricultural and other environmental management practices and decarbonized supply chains to support their deployment (Strefler *et al.* 2018; Beerling *et al.* 2020). As highlighted in previous Emissions Gap Reports, the models' use of CDR options such as bioenergy with carbon capture and storage depend on several assumptions that may not be fully realistic in terms of the availability of required land areas and competition for water resources and food, among others (see section 7.3).

The level of CDR needed in 1.5°C and 2°C scenarios heavily relies on policy decisions and technological advancements. Further delays in near-term emission reductions are set to increase future reliance on CDR to achieve ambitious temperature goals or will otherwise make them unattainable this century (Babiker *et al.* 2022). Limiting reliance on CDR thus requires ambitious action to limit the total emissions left in the energy–economy system. The sectors that will end up contributing substantial residual emissions in a net-zero or net-negative future will depend on both sector and country-level mitigation strategies. Hard-to-abate sectors such as heavy industry (which includes iron, steel, cement, chemical and fertilizer production) have been identified as sectors with relatively more expensive mitigation options. For example, the agriculture sector contributes substantial amounts of short-lived non-CO_2 emissions mainly due to livestock husbandry and current agricultural practices, such as rice cultivation, and global transport sectors, including long-haul aviation and shipping, currently use high-emission fuels.

7.2.2 National climate strategies focus on land-based CDR

Many countries currently report net-negative LULUCF emissions in their national GHG inventories, and thus already include land-based CDR, which is part of the negative component of gross LULUCF fluxes (see section 7.2). At present, many nationally determined contributions (NDCs) for 2030 and net-zero pledges made by countries do not specify how much they will depend on CDR, nor the level of residual emissions they plan to maintain when achieving net-zero CO_2 and GHG emission targets (Buck *et al.* 2023b). Removals from the land sector form the bulk of current CDR estimates implied by existing NDCs, with 2030 levels estimated to be between 2.1 and 2.6 $GtCO_2$ of removals per year, depending on the conditionality of the NDC. Current literature estimates of the implied levels of land-based removals in long-term strategies and net-zero pledges are 2.1–2.9 $GtCO_2$ of removals per year by 2050, though this is based on an incomplete sample of 53 countries (updated from Smith *et al.* 2023). It is also important to note that the literature estimates vary based on whether they exclude indirect anthropogenic effects (see chapter 2). In general, very little information is available from country submissions to the United Nations Framework Convention on Climate Change (UNFCCC) in terms of the expected use of novel CDR to achieve net-zero targets, with aggregate estimates around 600–1,000 $MtCO_2$ per year by 2050 (Smith *et al.* 2023). As figure 7.2 illustrates, these levels implied by country pledges are substantially below the levels in least-cost pathways consistent with the Paris Agreement's long-term temperature goal.

At present, countries do not separate their planned gross emission reductions from their planned use of CDR in national target setting, and thus can in principle achieve their national climate targets by pursuing different mitigation strategies. Countries choose their mitigation strategies based on their capabilities, which in turn has significant impacts on the amount of CDR required to meet their climate targets. Countries with significant dependence on land-based removals may find their targets more difficult to achieve since these removals weaken with increasing climate action (Gidden, Gasser *et al.* 2023).

Large-scale CDR deployment may face significant ecological, environmental and social constraints (Fujimori *et al.* 2022). In many regions of the world, significant expansion of land-based CDR will require much stronger governance structures and will compete with agricultural production. CDR that involves energy use, such as direct air carbon capture and storage and enhanced weathering, will require net-zero energy supply to be truly carbon negative (Realmonte *et al.* 2019; Grant *et al.* 2021). Furthermore, these options may face opposition from citizens concerned with the impacts of new infrastructure, the cost of CDR, the ability of Governments to safely regulate geological CO_2 storage and unintended consequences, among others (Cox, Spence and Pidgeon 2020).

7.3 The risks of depending on large-scale CDR to meet climate goals

Relying on large-scale CDR has various risks. The main climate-related risks include the durability of conventional land-based CDR approaches and an inability to deliver novel CDR approaches at the envisaged scale, while the main sustainability-related risks include impacts on biodiversity, water resources, nutrient loading, food security and livelihoods.

7.3.1 Climate risks include issues with durability and acceptance

Currently, terrestrial ecosystems are responsible for absorbing a quarter of anthropogenic carbon emissions, with ecosystem restoration (including the expansion of forest cover through reforestation) the most cost-effective and scalable CDR option. The maintenance of the existing land carbon sink and its enhancement represent a substantial contribution to mitigation pledges and scenarios. However, the permanence of carbon stored in forests, peatlands, coastal wetlands and soils under both climate change and direct human intervention is uncertain (Windisch, Davin and Seneviratne 2021). Storing carbon in plant biomass and soils is limited to timescales of several decades to centuries, with the carbon storing ability saturating over time. Natural and managed ecosystems are also subject to natural and anthropogenic disturbances, such as fires, degradation and deforestation, which release the stored carbon back into the atmosphere.

The durability of carbon sequestered in the biosphere, including conventional CDR methods, is less than that of novel CDR measures that rely on geological storage (see figure 7.1) (Fuss *et al.* 2018; National Academies of Sciences, Engineering, and Medicine 2019; Bui and Mac Dowell [eds.] 2022; IPCC 2022a). However, the value of these options for climate policy (Fuss, Golub and Lubowski 2021; Kalkuhl *et al.* 2022) should not be underestimated as they are often associated with substantial ecosystem services and livelihood co-benefits (Smith *et al.* 2019; Ruseva *et al.* 2020).

For climate policy to be effective, it is crucial to understand the effects of CDR and emissions, potential interlinkages and the timing of effects. Due to the impact of natural disturbances on forests, the risk of such disturbances has been integrated into forest management with a focus on timber production rather than carbon benefits. A few risk-accounting methods have been introduced, specifically for hurricanes and wildfires at site, region or country-specific scales (Chiquier, Fajardy and Mac Dowell 2022).

While novel CDR approaches that store carbon in the geosphere have greater storage durability, there is a risk that the technical, economic and political requirements for large-scale deployment may not materialize in time. Controversies in the debate in many countries show that public acceptance is still uncertain for various CDR methods, particularly

approaches involving carbon capture and storage or the open ocean (Cox, Spence and Pidgeon 2020; Merk *et al.* 2022; Nawaz, Peterson St-Laurent and Satterfield 2023; Satterfield, Nawaz and St-Laurent 2023), which can negatively affect the prospects for scale-up, despite the technical potential of the approach. Furthermore, transparent and robust measurement, reporting and verification is needed to build trust and support CDR scale-up (de Coninck *et al.* 2022).

At both the national and international levels, overly-optimistic dependence on future CDR could be used to design policies that divert the focus from stringent near-term emission reduction efforts (Lenzi *et al.* 2018; Markusson, McLaren and Tyfield 2018) or mask insufficient mitigation policies (Geden 2016; Carton 2019).

A broad CDR portfolio that balances these trade-offs and potential benefits will be important for mitigating the outlined risks. Furthermore, energy-intensive methods such as direct air carbon capture and storage or enhanced weathering in the near to medium term will only be an option in pathways with a quick and comprehensive phase-out of all fossil fuels (i.e. that involve a largely decarbonized energy mix and/or lower energy demand).[2] Carbon capture and storage will still be needed in this transition to capture and store industrial emissions (Bashmakov *et al.* 2022) that cannot easily be reduced to zero or at least not quickly enough (Lecocq *et al.* 2022). Carbon capture and storage thus has a dual role of addressing residual emissions from fossil fuel and industry in the medium term, and of removing CO_2 from the atmosphere in the longer term as part of direct air carbon capture and storage and bioenergy with carbon capture and storage.

Even if the risks described in this section could be mitigated, key uncertainties exist with respect to how much CDR will be needed, as scenario-based assessments do not currently account for the full range of uncertainties in Earth system responses. Asymmetries in the climate response to net-positive and net-negative emissions (Zickfeld *et al.* 2021), as well as the expected warming when CO_2 emissions cease (MacDougall *et al.* 2020; Koven, Sanderson and Swann 2023) can affect the levels of CDR needed to achieve a given climate outcome.

7.3.2 Addressing sustainability risks will be essential

Strategies underlying national net-zero pledges and NDCs generally tend to feature only conventional land-based CDR, most of which is centred around forestry and agriculture (Smith *et al.* 2023). Sustainability-related risks of conventional CDR (e.g. afforestation, reforestation, agroforestry, ecosystem restoration and soil carbon sequestration) are perceived to be less than those associated with novel biological CDR methods (e.g. bioenergy with carbon capture and storage) due to environmental concerns including land-use change, fertilizer use or irrigation. Co-benefits for biodiversity, ecosystem services and livelihoods, as well as co-delivery on other international and national commitments on biodiversity, land degradation and people, have also propelled the use of conventional CDR approaches. However, the risks and benefits of CDR depend on the method used and its implementation and management (e.g. reforestation with native species versus afforestation of non-forest biomes with non-native monocultures).

Competition for land is a pressing issue due to numerous global demands, including for food production, resource extraction, infrastructure development, biodiversity and ecosystem services conservation and climate change mitigation. Environmental changes, such as climate change, may exacerbate land-use competition, due to complex feedback processes between human and biophysical components in the land system (Haberl *et al.* 2014). Cropland and urban expansion therefore also compete with land-based CDR options. Modelling efforts show that cropland expansion to fulfil future food demand is the primary cause of such competition, with more severe impacts seen in the tropics due to their greater land-based mitigation potential (Zheng *et al.* 2022). Such findings highlight that careful spatial planning is essential for sustainable climate policies.

Various land-based CDR options have the potential to enhance biodiversity. An assessment of the biodiversity impacts of 20 land-based mitigation options showed that most options benefit biodiversity. However, a quarter of the assessed options, including bioenergy with carbon capture and storage, decreased mean species abundance, while afforestation and forest management either positively or negatively affected biodiversity depending on the local implementation method and forest conservation schemes adopted (Nunez, Verboom and Alkemade 2020). Recent studies explore how ambitious objectives and multiple targets of biodiversity and climate conventions can be operationalized spatially and pursued concurrently (e.g. Soto-Navarro *et al.* 2020; Jung *et al.* 2021; Duncanson *et al.* 2023). Given potential land competition, it is crucial to identify land areas where the greatest synergies can be achieved.

7.4 Equity and differentiated responsibilities associated with deploying CDR

Equity and the principle of "common but differentiated responsibilities and respective capabilities" are key normative pillars of the Paris Agreement. Scientists, analysts and policymakers have long debated how to operationalize

2 See Fasihi, Efimova and Breyer (2019) for an in-depth assessment of direct air carbon capture and storage energy requirements.

this principle, with a focus on how to set equitable emission reduction targets (Robiou du Pont *et al.* 2017; Holz *et al.* 2018; Kartha *et al.* 2018), regional carbon budgets (Raupach *et al.* 2014) and fair mitigation financial obligations (Pachauri *et al.* 2022; Semieniuk, Ghosh and Folbre 2023). Relatively little attention has been paid so far to extending this principle to equitable CDR targets, with some notable exceptions (Fyson *et al.* 2020; Mohan *et al.* 2021; Yuwono *et al.* 2023).

The global achievement of net-zero GHG emissions does not imply that all regions achieve net zero at the same time or contribute the same amount of carbon removal. The integrated assessment modelling pathways assessed in section 7.2.1 and in chapter 4, show specific regional patterns associated with cost-effective CDR deployment. When accounting for cumulative removals between 2020 and 2050, the highest shares of removals are in Asia and Latin America consistently across scenarios (table 7.1). Both regions tend to have higher removal levels than the Organisation for Economic Co-operation and Development (OECD) region when considering both land-based and novel removals, while other regions have consistently lower levels. Importantly, these results come from integrated assessment modelling approaches to achieve climate targets in a global cost-effective manner and are not necessarily oriented towards identifying an equitable distribution of efforts (Bauer *et al.* 2020).

Table 7.1 Shares of cumulative removals in different scenarios between 2020 and 2050 by IPCC WGIII modelling region

IPCC modelling regions Scenarios consistent with limiting global warming to specific temperature limits	Asia	Latin America	OECD	Reformed economies (R5REF)	Middle East and Africa (R5MAF)
1.5°C	34 (29–36)%	22 (20–26)%	20 (16–24)%	5 (5–6)%	16 (11–17)%
1.8°C	37 (34–43)%	20 (16–23)%	18 (17–25)%	7 (5–8)%	13 (9–17)%
2.0°C	38 (36–43)%	23 (19–25)%	19 (18–23)%	8 (6–9)%	12 (9–15)%

Note: The median value is shown with the interquartile range in brackets.

Equitable distributions can differ quite significantly from cost-effective deployment of mitigation options. Fyson *et al.* (2020) suggest one possible approach to allocating global CDR deployment fairly: allocating regional CDR in proportion to regional emissions that exceed a counterfactual equal per capita emission pathway. A slightly adapted version of this approach[3] is applied to the pathways assessed in section 7.2.1 to illustrate the difference of equitable distributions from cost-effective deployment. Under this approach, developed countries (taken as the OECD region from chapter 3 of IPCC WGIII AR6) have equitable allocations of around 80 per cent of the cumulative removals deployed between 2020 and 2050 across the three pathway categories (1.5°C, 1.8°C and 2°C) assessed in section 7.2. This illustrative calculation demonstrates the importance of extending considerations of equity under the Paris Agreement while deploying CDR.

Achieving more equitable outcomes in the 2020–2035 time frame will require two broad strategies, even when novel forms of CDR such as direct air carbon capture and storage are available (Gidden, Brutschin *et al.* 2023), models are increasing the technical representation of novel CDR: (1) deploying financial transfers at scale to facilitate emission reductions (Pachauri *et al.* 2022; Ganti *et al.* 2023); (2) investing in a broad range of CDR options both domestically and internationally to ensure a portfolio of approaches is available. The latter is significant as many novel CDR options are still in the early stages of innovation. Whether they will be used to help reduce temperatures and in turn long-term impacts will be decided by future generations.

CDR deployment decisions will also need to take into account domestic equity considerations. Countries will have to weigh the potential regressivity of payment schemes as well as concerns around land competition and food prices (for afforestation, reforestation and bioenergy with carbon capture and storage), water scarcity and nitrogen pollution (bioenergy with carbon capture and storage), additional energy demand (direct air carbon capture and storage) and health issues due to fine dust (enhanced weathering), among others (Strefler *et al.* 2021; Babiker *et al.* 2022). Land-based CDR deployment raises many of the same equity concerns as other land-based mitigation activities, including land tenure conflicts and dispossession, and mainly impacts poorer and more marginalized rural farmers and workers (McElwee 2023) and Indigenous Peoples, who manage a significant portion of the world's land area (Garnett *et al.* 2018). Unequal power relations and poor governance might further reduce confidence in and public acceptance of land-based CDR options (DeFries *et al.* 2022).

3 The approach is adapted from the original paper in the following ways: (1) the starting year for the calculation of excess emissions is 2005 as opposed to 1990, because the data set developed by Gidden, Brutschin *et al.* (2023) models are increasing the technical representation of novel CDR since 2005; and (2) the approach is applied to net CO_2 emissions (considering only the direct land component) as opposed to the aggregated six GHGs listed in Annex A of the Kyoto Protocol (the Kyoto "basket").

Frameworks to guide national priorities in balancing domestic equity considerations, intergenerational equity concerns and the possible contribution of CDR to meet NDCs through emerging carbon markets for removals are currently missing and will be important to advance policy discussions as a foundation for equitable future CDR deployment.

7.5 Scaling up CDR will require dedicated policies and innovation

Deliberate CDR policymaking is still scarce, apart from in the European Union, the United Kingdom and the United States of America. CDR has only just entered the climate policy debate in recent years, mainly as an unavoidable component of meeting net-zero CO_2 and GHG targets (IPCC 2022a). Only a few Governments have begun to specify the role of CDR in domestic climate policy explicitly through CDR strategies and policies. Overall, robust plans for CDR implementation are still scarce and policymaking remains largely incremental (Smith *et al.* 2023). While more than 100 countries have set net-zero emission targets, only a few countries include clear information on CDR in their NDCs and long-term low-emission development strategies. Most Governments have not yet expressed how large the contribution of CDR should be in reaching net-zero emissions and which CDR methods this might entail. Where this has been specified, removal via forests and soils is the most common approach, even in mid-century strategies (Smith, Vaughan and Forster 2022; Smith *et al.* 2023). Examples of dedicated CDR policy and governance exist mainly at the national level and primarily in developed countries (Schenuit *et al.* 2021). In multilateral initiatives, CDR only has a limited role at present (e.g. the Mission Innovation CDR). In the context of the UNFCCC, the Article 6.4 Supervisory Body has been mandated by the Parties to provide methodological guidance on CDR before the twenty-eighth session of the Conference of the Parties to the UNFCCC (COP 28).

This lack of concrete incentive frameworks is one of the reasons why there is currently almost no CDR deployment beyond the LULUCF sector. Comparing the current CDR level of 2 $GtCO_2$ to mid-century annual removals in scenarios compatible with reaching the Paris Agreement long-term temperature goal reveals a large discrepancy of several gigatons per year. In the absence of a more supportive policy environment than that indicated in existing NDCs and long-term low-emission development strategies, or the lack of CDR in national climate policy (Schenuit *et al.* 2021; Smith *et al.* 2023), this discrepancy is likely to persist and even grow, considering that the transition from first commercial deployment of a new technology to widespread adoption takes decades and not just a few years.

A large body of innovation research shows that new technologies must pass through a formative phase: the period between first commercial deployment to the beginning of widespread adoption (Jacobsson and Bergek 2004; Grubler and Wilson eds. 2013). Given the scale of removals at the time of net-zero CO_2 or GHG emissions described in scenarios, this platform for scaling up technologies is essential. The empirical literature on formative phases shows that the length of this period is highly variable, with an average estimate of around 20 years (Bento and Wilson 2016).

The highly successful technology of solar photovoltaics (PV) is a specific example of a technology in a formative phase and offers insight for the development of CDR approaches, such as small-scale direct air carbon capture and storage. In this case, the first commercial application of solar PV occurred in 1957, took 60 years to become cost-competitive and is now still a couple of decades away from widespread adoption. If small-scale direct air carbon capture and storage were to follow the path of solar PV, it would require a much faster progression through its formative phase to reach gigaton scale by mid-century. The development of expectations of large, reliable and growing markets is a repeated finding in innovation studies, as already emphasized in the Emissions Gap Report 2018, and will be crucial for CDR too. The research literature highlights the importance of local context and distinct factors, and the crucial but gradual progression in the period just before scale-up that takes decades rather than years. Two robust common implications are first, the need for strong policy support and second, urgency in delivering that support given the inherent lags in the innovation system.

There are already signs that CDR innovations are in motion. As Smith *et al.* (2023) show, the number of CDR-related patents have increased and are spread across a broader set of CDR technologies, indicating an acceleration in inventive activity and a healthy innovation system. Funding and entrepreneurial activity in CDR are also increasing. Furthermore, niche markets, such as voluntary purchase for removals, are providing the early support for novel CDR demand, with the possibility of initiating a positive feedback process of learning in which adoption begets cost reductions and performance improvements. Still, this is just the beginning. Stronger support is becoming an urgent priority if novel CDR is to play a gigaton-scale role in the longer term.

7.6 Political priorities for action are needed

With the enhancement of carbon sinks forming part of climate change mitigation (Honegger, Burns and Morrow 2021), CDR governance challenges are in many respects similar to those related to emission reductions, and similar policy instruments, such as research, development and demonstration funding, carbon pricing, tax or investment credits, certification schemes and public procurement, will be relevant (Babiker *et al.* 2022). Effectively integrating CDR into Governments' climate policy portfolios should therefore

build on pre-existing rules, procedures and instruments. Furthermore, there is a need to include learnings from shortcomings in the governance of land-based mitigation and to have a special focus on local conditions (Fridahl *et al.* 2020; Mace *et al.* 2021; Rickels *et al.* 2021; IPCC 2022b). Beyond a political commitment to formally integrate CDR into existing climate policy frameworks, four priority policy action areas can be identified for the short to medium term.

7.6.1 Political priorities need to be established and signalled

For countries with net-zero or net-negative emission targets, the core governance question is not whether CDR should be mobilized, but which CDR approaches Governments want to see deployed by whom, by when, at which volumes and in which ways (Babiker *et al.* 2022). The choice of CDR approaches and the scale and timing of their deployment will depend on the respective ambitions for gross emission reductions, feasibility and viability limitations, how their unintended impacts can be managed and how political preferences and social acceptability evolve (Bellamy 2018; Forster *et al.* 2020; Waller *et al.* 2020; Smith *et al.* 2023).

To avoid CDR being misperceived as a substitute for deep emission reductions, the prioritization of emission cuts can be signalled and achieved with differentiated target setting for reductions and removals (Geden, Peters and Scott 2019; McLaren *et al.* 2019).

This needs to include the LULUCF sector, for which only net fluxes tend to be highlighted in NDCs, long-term low-emission development strategies (Fyson and Jeffery 2019) and national strategies, whereas national inventory reports differentiate between land-based emissions and removals. Similarly, subtargets are conceivable for different types of CDR, to prioritize preferred methods according to characteristics such as removal processes or storage timescales (Smith 2021). Transparent information about expected levels and types of CDR (e.g. through mandatory inclusion in the 'information to facilitate clarity, transparency and understanding' tables in NDCs) will also enable policy debates about assumptions around the level of residual emissions in and beyond the first year of net-zero emissions (Buck *et al.* 2023a).

7.6.2 Robust measurement, reporting and verification systems are needed

To maintain credibility in the CDR sector while driving innovation and growth, measurement, reporting and verification frameworks for CDR methods will need to be developed and adapted to new CDR approaches (e.g. new measurement techniques or modelling tools).

Some measurement, reporting and verification methodologies already exist for project-based accounting of both LULUCF-related and novel CDR methods, but a lack of coordination and minimum standards, especially for voluntary carbon markets, leads to an inconsistent patchwork of measurement, reporting and verification approaches (Arcusa and Sprenkle-Hyppolite 2022; Mercer and Burke 2023). In contrast, accounting for national inventories under the UNFCCC has been established for conventional land-based CDR methods and some novel methods such as biochar and bioenergy with carbon capture and storage, but similar methods have yet to be developed and agreed upon for direct air carbon capture and storage or enhanced rock weathering, for example. Such agreed methodologies are crucial to make deployment eligible for consideration under national or supranational compliance regimes (Lebling, Schumer and Riedl 2023).

In the context of the UNFCCC, the priority must be to develop accounting rules for CDR and establish trusted measurement, reporting and verification frameworks, mainly based on methodological work carried out by the IPCC's Task Force on National Greenhouse Gas Inventories. This can be done, on the one hand, by strengthening rules for land-based biological removals (most importantly addressing pre-existing permanence and saturation challenges – see Mace *et al.* 2021), and on the other hand, by creating additional guidance for novel CDR methods, for which there is a need. For some methods, the measurement, reporting and verification of carbon flows will be relatively straightforward (e.g. direct air carbon capture and storage), whereas other methods still lack foundational science, particularly those operating in open-loop systems (e.g. enhanced weathering) (Mercer and Burke 2023).

Currently, measurement, reporting and verification and certification methodologies for novel CDR methods beyond LULUCF are being developed mainly in the European Union, the United Kingdom and the United States of America, with the latter already investigating measurement, reporting and verification for a wide range of marine methods (Cross *et al.* 2023). In the medium term, such methodologies will be relevant not only for national inventory reporting but also in the context of establishing international carbon trading under the Paris Agreement's article 6.4 mechanism. However, these methodologies need to be globally vetted and accepted as part of UNFCCC reporting standards as well as national inventory rules. The latter are currently based on IPCC guidelines from 2006 and 2019, which are unlikely to be expanded without the explicit request of national Governments.

7.6.3 The need to enhance synergies and co-benefits

CDR approaches can have multiple benefits for adaptation, mitigation and other social and environmental goals. In some cases, these benefits may be a core motivator for adoption. For example, improved soil water retention is a key motivator for farmers to adopt practices that sequester soil carbon (Fleming *et al.* 2019; Gosnell, Gill and Voyer 2019; Buck and Palumbo-Compton 2022), and farm resilience, income diversification and food security can be important drivers of

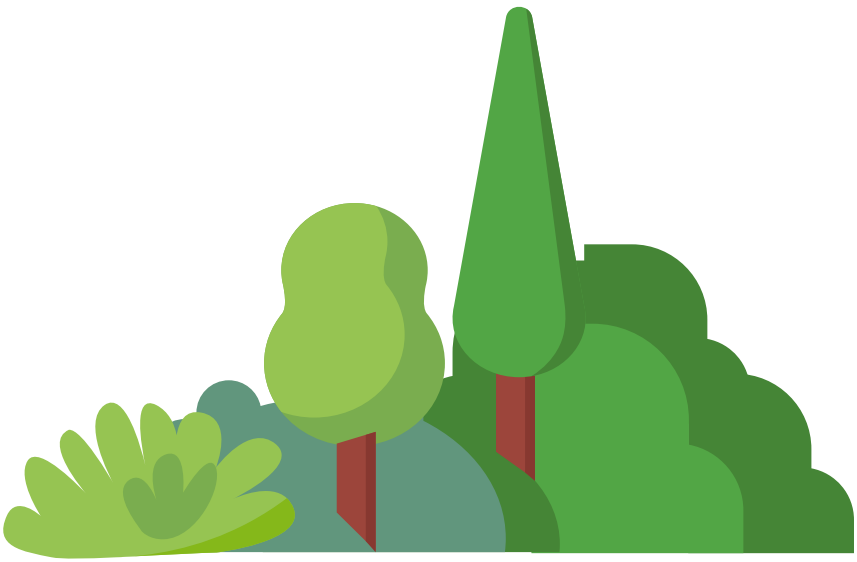
agroforestry adoption (Muthee *et al.* 2022). Co-benefits are not limited to land-based CDR. In fact, scientists are studying how forest biomass with carbon capture and storage can reduce the risk of wildfires when paired with forest thinning projects (Sanchez *et al.* 2021; Elias *et al.* 2023). Social co-benefits for industrial CDR with carbon capture and storage could include jobs or economic revenue in areas and fields affected by the energy transition (Romig 2021).

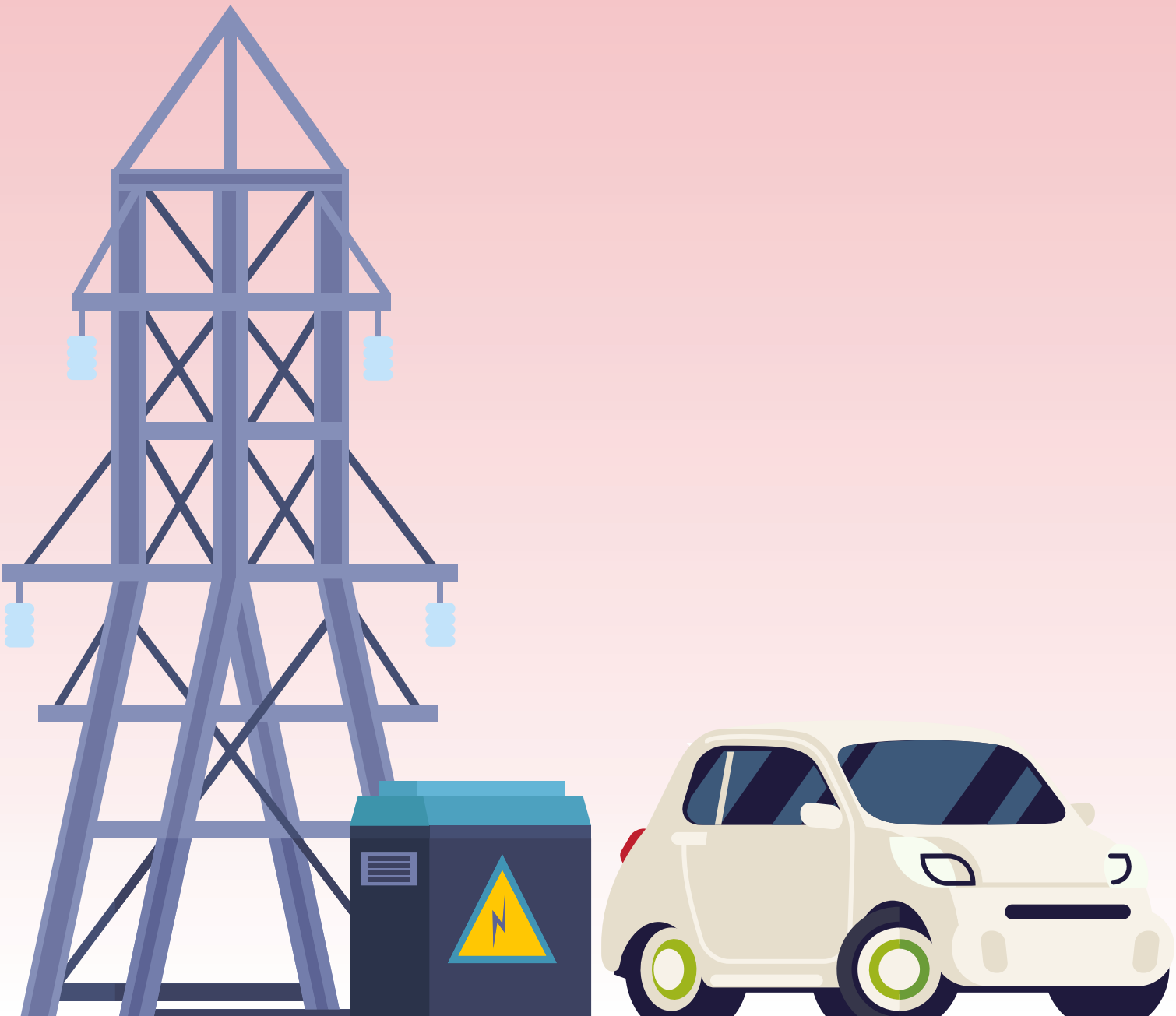
Dedicated policy design can enhance such synergies. For example, through government action to support improvements in CDR measurement, reporting and verification so that adaptation projects can have an additional revenue stream (Buck *et al.* 2020), or through planned actions that consider decarbonization and CDR together, and not just in terms of developing bioenergy via carbon capture and sequestration for hydrogen and electricity generation, but also considering how hydrogen or synthetic fuels may be co-products of direct ocean-based capture and sequestration (Digdaya *et al.* 2020). Considering CDR in mitigation and adaptation infrastructure planning can help ensure that potential co-benefits from CDR come to fruition.

7.6.4 Innovation and learning needs to be accelerated

Proceeding through the early years of CDR's formative phase will require various demonstration projects, for which a cost-reducing learning-by-doing process can be put in place (Lackner and Azarabadi 2021). For example, the Department of Energy of the United States of America will provide US$3.5 billion in federal support for four regional Direct Air Capture (DAC) hubs, with the United States Government also funding the feasibility and design studies of 19 other DAC projects at varying stages of technological readiness. Similarly, emerging programmes for bioenergy with carbon capture and storage in Sweden and the United Kingdom will provide valuable progress during the "middle" of the formative phase for CDR technologies.

Furthermore, the coming years of CDR development provide an opportunity for societal learning about the sustainability impacts of novel CDR (Honegger, Michaelowa and Roy 2021; Madhu *et al.* 2021; Fuhrman *et al.* 2023). Insight on a large set of issues can be gleaned from experiments, demonstrations and small-scale deployment. These issues include public acceptance, distributional effects, affordability, life cycle analysis, biodiversity, resource consumption, competition for land and interactions among CDR approaches (Buck 2016; Erans *et al.* 2022; Owen, Burke and Serin 2022), as well as future costs (Shayegh, Bosetti and Tavoni 2021).





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Annex 9

United Nations

Framework Convention on Climate Change

REVISED ADVANCE VERSION

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Conference of the Parties serving as the meeting of the Parties to the Paris Agreement
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United Arab Emirates, 30 November to 12 December 2023
Agenda item 4
First global stocktake

First global stocktake

Proposal by the President

Draft decision -/CMA.5

Outcome of the first global stocktake

The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement,

Recalling Article 2, paragraph 1, of the Paris Agreement, which provides that the Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty,

Also recalling Article 2, paragraph 2, of the Paris Agreement, which provides that the Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,

Further recalling, as provided in Article 14, paragraph 1, of the Paris Agreement, that the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement shall periodically take stock of the implementation of the Paris Agreement to assess the collective progress towards achieving the purpose of the Agreement and its long-term goals, and that it shall do so in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science,

Recalling, as provided in Article 14, paragraph 3, of the Paris Agreement, that the outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of the Agreement, as well as in enhancing international cooperation for climate action,

Also recalling decisions 19/CMA.1, 1/CMA.2, 1/CMA.3 and 1/CMA.4,

Underlining the critical role of multilateralism based on United Nations values and principles, including in the context of the implementation of the Convention and the Paris Agreement, and the importance of international cooperation for addressing global issues,

including climate change, in the context of sustainable development and efforts to eradicate poverty,

Acknowledging that climate change is a common concern of humankind and that Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to a clean, healthy and sustainable environment, the right to health, the rights of Indigenous Peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,

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

Also recognizing the critical role of protecting, conserving and restoring water systems and water-related ecosystems in delivering climate adaptation benefits and co-benefits, while ensuring social and environmental safeguards,

Noting the importance of ensuring the integrity of all ecosystems, including in forests, the ocean, mountains and the cryosphere, and the protection of biodiversity, recognized by some cultures as Mother Earth, and *also noting* the importance of 'climate justice', when taking action to address climate change,

Underlining the urgent need to address, in a comprehensive and synergetic manner, the interlinked global crises of climate change and biodiversity loss in the broader context of achieving the Sustainable Development Goals, as well as the vital importance of protecting, conserving, restoring and sustainably using nature and ecosystems for effective and sustainable climate action,

I. Context and cross-cutting considerations

1. *Welcomes* that the Paris Agreement has driven near-universal climate action by setting goals and sending signals to the world regarding the urgency of responding to the climate crisis;

2. *Underlines* that, despite overall progress on mitigation, adaptation and means of implementation and support, Parties are not yet collectively on track towards achieving the purpose of the Paris Agreement and its long-term goals;

3. *Reaffirms* the Paris Agreement temperature goal of holding 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, recognizing that this would significantly reduce the risks and impacts of climate change;

4. *Underscores* that the impacts of climate change will be much lower at the temperature increase of 1.5 °C compared with 2 °C and *resolves* to pursue efforts to limit the temperature increase to 1.5 °C;

5. *Expresses serious concern* that 2023 is set to be the warmest year on record and that impacts from climate change are rapidly accelerating, and *emphasizes* the need for urgent action and support to keep the 1.5 °C goal within reach and to address the climate crisis in this critical decade;

6. *Commits* to accelerate action in this critical decade on the basis of the best available science, reflecting equity and the principle of common but differentiated responsibilities and respective capabilities in the light of different national circumstances and in the context of sustainable development and efforts to eradicate poverty;

7. *Underscores* Article 2, paragraph 2, of the Paris Agreement, which stipulates that the Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances;

8. *Emphasizes* that finance, capacity-building and technology transfer are critical enablers of climate action;

9. *Reaffirms* that sustainable and just solutions to the climate crisis must be founded on meaningful and effective social dialogue and participation of all stakeholders, including Indigenous Peoples, local communities and governments, women, and youth and children, and *notes* that the global transition to low emissions and climate-resilient development provides opportunities and challenges for sustainable development and poverty eradication;

10. *Underlines* that just transitions can support more robust and equitable mitigation outcomes, with tailored approaches addressing different contexts;

11. *Recognizes* the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, as provided for in the Convention and the Paris Agreement;

12. *Welcomes* the conclusion of the first global stocktake and *expresses appreciation and gratitude* to those involved in the technical dialogue thereunder, and to the co-facilitators for preparing the synthesis report[1] and other outputs of the technical assessment component;

13. *Welcomes* the high-level events convened under the first global stocktake and *takes note* of the summary thereof;

14. *Welcomes* the Sixth Assessment Report of the Intergovernmental Panel on Climate Change and *expresses appreciation and gratitude* to those involved in preparing the reports in the sixth assessment cycle for their excellent work and dedication to continuing their work during the extraordinary circumstances of the coronavirus disease 2019 pandemic;

15. *Notes with alarm and serious concern* the following findings of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change:

(a) That human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming of about 1.1 °C;

(b) That human-caused climate change impacts are already being felt in every region across the globe, with those who have contributed the least to climate change being most vulnerable to the impacts, and, together with losses and damages, will increase with every increment of warming;

(c) That most observed adaptation responses are fragmented, incremental, sector-specific and unequally distributed across regions, and that, despite the progress made, significant adaptation gaps still exist across sectors and regions and will continue to grow under current levels of implementation;

16. *Notes* the following findings of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change:

(a) That mitigation efforts embedded within the wider development context can increase the pace, depth and breadth of emissions reductions, as well as that policies that shift development pathways towards sustainability can broaden the portfolio of available mitigation responses and enable the pursuit of synergies with development objectives;

(b) That both adaptation and mitigation financing would need to increase manyfold, and that there is sufficient global capital to close the global investment gap but there are barriers to redirecting capital to climate action, and that Governments through public funding and clear signals to investors are key in reducing these barriers and investors, central banks and financial regulators can also play their part;

(c) That feasible, effective and low-cost mitigation options are already available in all sectors to keep 1.5 °C within reach in this critical decade with the necessary cooperation on technologies and support;

17. *Notes with concern* the pre-2020 gaps in both mitigation ambition and implementation by developed country Parties and that the Intergovernmental Panel on Climate Change had

[1] FCCC/SB/2023/9.

earlier indicated that developed countries must reduce emissions by 25–40 per cent below 1990 levels by 2020, which was not achieved;

II. Collective progress towards achieving the purpose and long-term goals of the Paris Agreement, including under Article 2, paragraph 1(a–c), in the light of equity and the best available science, and informing Parties in updating and enhancing, in a nationally determined manner, action and support

A. Mitigation

18. *Acknowledges* that significant collective progress towards the Paris Agreement temperature goal has been made, from an expected global temperature increase of 4 °C according to some projections prior to the adoption of the Agreement to an increase in the range of 2.1–2.8 °C with the full implementation of the latest nationally determined contributions;

19. *Expresses appreciation* that all Parties have communicated nationally determined contributions that demonstrate progress towards achieving the Paris Agreement temperature goal, most of which provided the information necessary to facilitate their clarity, transparency and understanding;

20. *Commends* the 68 Parties that have communicated long-term low greenhouse gas emission development strategies and *notes* that 87 per cent of the global economy in terms of share of gross domestic product is covered by targets for climate neutrality, carbon neutrality, greenhouse gas neutrality or net zero emissions, which provides the possibility of achieving a temperature increase below 2 °C when taking into account the full implementation of those strategies;

21. *Notes with concern* the findings in the latest version of the synthesis report on nationally determined contributions that implementation of current nationally determined contributions would reduce emissions on average by 2 per cent compared with the 2019 level by 2030 and that significantly greater emission reductions are required to align with global greenhouse gas emission trajectories in line with the temperature goal of the Paris Agreement and *recognizes* the urgent need to address this gap;

22. *Notes* the findings in the synthesis report on nationally determined contributions that greenhouse gas emission levels in 2030 are projected to be 5.3 per cent lower than in 2019 if all nationally determined contributions, including all conditional elements, are fully implemented and that enhanced financial resources, technology transfer and technical cooperation, and capacity-building support are needed to achieve this;

23. *Notes with concern* the findings of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change that policies implemented by the end of 2020 are projected to result in higher global greenhouse gas emissions than those implied by the nationally determined contributions, indicating an implementation gap, and *resolves* to take action to urgently address this gap;

24. *Notes with significant concern* that, despite progress, global greenhouse gas emissions trajectories are not yet in line with the temperature goal of the Paris Agreement, and that there is a rapidly narrowing window for raising ambition and implementing existing commitments in order to achieve it;

25. *Expresses concern* that the carbon budget consistent with achieving the Paris Agreement temperature goal is now small and being rapidly depleted and *acknowledges* that historical cumulative net carbon dioxide emissions already account for about four fifths of the total carbon budget for a 50 per cent probability of limiting global warming to 1.5 °C;

26. *Recognizes* the finding in the Synthesis Report of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change,[2] based on global modelled pathways and assumptions, that global greenhouse gas emissions are projected to peak between 2020 and at the latest before 2025 in global modelled pathways that limit warming to 1.5 °C with no or limited overshoot and in those that limit warming to 2 °C and assume immediate action, and *notes* that this does not imply peaking in all countries within this time frame, and that time frames for peaking may be shaped by sustainable development, poverty eradication needs and equity and be in line with different national circumstances, and *recognizes* that technology development and transfer on voluntary and mutually agreed terms, as well as capacity-building and financing, can support countries in this regard;

27. *Also recognizes* that limiting global warming to 1.5 °C with no or limited overshoot requires deep, rapid and sustained reductions in global greenhouse gas emissions of 43 per cent by 2030 and 60 per cent by 2035 relative to the 2019 level and reaching net zero carbon dioxide emissions by 2050;

28. *Further recognizes* the need for deep, rapid and sustained reductions in greenhouse gas emissions in line with 1.5 °C pathways and *calls on* Parties to contribute to the following global efforts, in a nationally determined manner, taking into account the Paris Agreement and their different national circumstances, pathways and approaches:

(a) Tripling renewable energy capacity globally and doubling the global average annual rate of energy efficiency improvements by 2030;

(b) Accelerating efforts towards the phase-down of unabated coal power;

(c) Accelerating efforts globally towards net zero emission energy systems, utilizing zero- and low-carbon fuels well before or by around mid-century;

(d) Transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science;

(e) Accelerating zero- and low-emission technologies, including, inter alia, renewables, nuclear, abatement and removal technologies such as carbon capture and utilization and storage, particularly in hard-to-abate sectors, and low-carbon hydrogen production;

(f) Accelerating and substantially reducing non-carbon-dioxide emissions globally, including in particular methane emissions by 2030;

(g) Accelerating the reduction of emissions from road transport on a range of pathways, including through development of infrastructure and rapid deployment of zero- and low-emission vehicles;

(h) Phasing out inefficient fossil fuel subsidies that do not address energy poverty or just transitions, as soon as possible;

29. *Recognizes* that transitional fuels can play a role in facilitating the energy transition while ensuring energy security;

30. *Welcomes* that over the past decade mitigation technologies have become increasingly available, and that the unit costs of several low-emission technologies have fallen continuously, notably wind power and solar power and storage, thanks to technological advancements, economies of scale, increased efficiency and streamlined manufacturing processes, while recognizing the need to increase the affordability and accessibility of such technologies;

[2] Intergovernmental Panel on Climate Change. 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*. Geneva: Intergovernmental Panel on Climate Change. Available at https://www.ipcc.ch/report/ar6/syr/.

31. *Emphasizes* the urgent need for accelerated implementation of domestic mitigation measures in accordance with Article 4, paragraph 2, of the Paris Agreement, as well as the use of voluntary cooperation, referred to in Article 6, paragraph 1, of the Paris Agreement;

32. *Also emphasizes* the urgent need to strengthen integrated, holistic and balanced non-market approaches in accordance with Article 6, paragraph 8, of the Paris Agreement, in the context of sustainable development and poverty eradication, in a coordinated and effective manner, including through mitigation, adaptation, finance, technology transfer and capacity-building, as appropriate;

33. *Further emphasizes* the importance of conserving, protecting and restoring nature and ecosystems towards achieving the Paris Agreement temperature goal, including through enhanced efforts towards halting and reversing deforestation and forest degradation by 2030, and other terrestrial and marine ecosystems acting as sinks and reservoirs of greenhouse gases and by conserving biodiversity, while ensuring social and environmental safeguards, in line with the Kunming-Montreal Global Biodiversity Framework;

34. *Notes* the need for enhanced support and investment, including through financial resources, technology transfer and capacity-building, for efforts towards halting and reversing deforestation and forest degradation by 2030 in the context of sustainable development and poverty eradication, in accordance with Article 5 of the Paris Agreement, including through results-based payments for policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries; and alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests, while reaffirming the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches;

35. *Invites* Parties to preserve and restore oceans and coastal ecosystems and scale up, as appropriate, ocean-based mitigation action;

36. *Notes* the importance of transitioning to sustainable lifestyles and sustainable patterns of consumption and production in efforts to address climate change, including through circular economy approaches, and *encourages* efforts in this regard;

37. *Recalls* Article 3 and Article 4, paragraphs 3, 4, 5 and 11, of the Paris Agreement and *requests* Parties that have not yet done so to revisit and strengthen the 2030 targets in their nationally determined contributions as necessary to align with the Paris Agreement temperature goal by the end of 2024, taking into account different national circumstances;

38. *Recalls* Article 4, paragraph 4, of the Paris Agreement, which provides that developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets, and that developing country Parties should continue enhancing their mitigation efforts and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances;

39. *Reaffirms* the nationally determined nature of nationally determined contributions and Article 4, paragraph 4, of the Paris Agreement and *encourages* Parties to come forward in their next nationally determined contributions with ambitious, economy-wide emission reduction targets, covering all greenhouse gases, sectors and categories and aligned with limiting global warming to 1.5 °C, as informed by the latest science, in the light of different national circumstances;

40. *Notes* the importance of aligning nationally determined contributions with long-term low greenhouse gas emission development strategies, and *encourages* Parties to align their next nationally determined contributions with long-term low greenhouse gas emission development strategies;

41. *Notes* the capacity challenges of the least developed countries and small island developing States related to preparing and communicating nationally determined contributions;

42. *Urges* Parties that have not yet done so and *invites* all other Parties to communicate or revise, by the sixth session of the Conference of the Parties serving as the meeting of the

Parties to the Paris Agreement (November 2024), their long-term low greenhouse gas emission development strategies referred to in Article 4, paragraph 19, of the Paris Agreement towards just transitions to net zero emissions by or around mid-century, taking into account different national circumstances;

B. Adaptation

43. *Emphasizes* the importance of the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2 of the Paris Agreement;

44. *Recognizes* the increasing adaptation planning and implementation efforts being undertaken by Parties towards enhancing adaptive capacity, strengthening resilience and reducing vulnerability, as set out in national adaptation plans, adaptation communications and nationally determined contributions, as appropriate, and *welcomes* that 51 Parties have submitted national adaptation plans and 62 Parties have submitted adaptation communications to date;

45. *Recognizes* the significant efforts of developing country Parties in formulating and implementing national adaptation plans, adaptation communications and nationally determined contributions, as appropriate, including through their domestic expenditure, as well as their increased efforts to align their national development plans;

46. *Also recognizes* the significant challenges developing country Parties face in accessing finance for implementing their national adaptation plans;

47. *Notes with appreciation* the contribution of relevant UNFCCC constituted bodies and institutional arrangements, including the Adaptation Committee, the Least Developed Countries Expert Group and the Nairobi work programme on impacts, vulnerability and adaptation to climate change, to the efforts referred to in paragraph 45 above;

48. *Notes* that there are gaps in implementation of, support for and collective assessment of the adequacy and effectiveness of adaptation, and that monitoring and evaluation of outcomes is critical for tracking the progress and improving the quality and awareness of adaptation action;

49. *Acknowledges* that establishing and improving national inventories of climate impacts over time and building accessible, user-driven climate services systems, including early warning systems, can strengthen the implementation of adaptation actions, and *recognizes* that one third of the world does not have access to early warning and climate information services, as well as the need to enhance coordination of activities by the systematic observation community;

50. *Recalls* the United Nations Secretary-General's call made on World Meteorological Day on 23 March 2022 to protect everyone on Earth through universal coverage of early warning systems against extreme weather and climate change by 2027 and *invites* development partners, international financial institutions and the operating entities of the Financial Mechanism to provide support for implementation of the Early Warnings for All initiative;

51. *Calls for* urgent, incremental, transformational and country-driven adaptation action based on different national circumstances;

52. *Recognizes* that climate change impacts are often transboundary in nature and may involve complex, cascading risks that require knowledge-sharing and international cooperation for addressing them;

53. *Emphasizes* that the magnitude and rate of climate change and associated risks depend strongly on near-term mitigation and adaptation actions, that long-term planning for and accelerated implementation of adaptation, particularly in this decade, are critical to closing adaptation gaps and create many opportunities, and that accelerated financial support for developing countries from developed countries and other sources is a critical enabler;

54. *Recognizes* the importance of the iterative adaptation cycle for building adaptive capacity, strengthening resilience and reducing vulnerability and *notes* that the adaptation cycle is an iterative process, consisting of risk and impact assessment; planning; implementation; and monitoring, evaluation and learning, recognizing the importance of means of implementation and support for developing country Parties at each stage of the cycle;

55. *Encourages* the implementation of integrated, multi-sectoral solutions, such as land-use management, sustainable agriculture, resilient food systems, nature-based solutions and ecosystem-based approaches, and protecting, conserving and restoring nature and ecosystems, including forests, mountains and other terrestrial and marine and coastal ecosystems, which may offer economic, social and environmental benefits such as improved resilience and well-being, and that adaptation can contribute to mitigating impacts and losses, as part of a country-driven gender-responsive and participatory approach, building on the best available science as well as Indigenous Peoples' knowledge and local knowledge systems;

56. *Notes* that ecosystem-based approaches, including ocean-based adaptation and resilience measures, as well as in mountain regions, can reduce a range of climate change risks and provide multiple co-benefits;

57. *Recalls* that, as provided in Article 7, paragraphs 10–11, of the Paris Agreement, each Party should, as appropriate, submit and update an adaptation communication, and that the adaptation communication shall be, as appropriate, submitted and updated periodically, as a component of or in conjunction with other communications or documents, including a national adaptation plan, a nationally determined contribution as referred to in Article 4, paragraph 2, of the Paris Agreement and/or a national communication, and that Parties may, as appropriate, also submit and update their adaptation communication as a component of or in conjunction with the reports on impacts and adaptation as stipulated in Article 13, paragraph 8, of the Paris Agreement;

58. *Also recalls* that the guidance on adaptation communications is to be reviewed in 2025;

59. *Calls on* Parties that have not yet done so to have in place their national adaptation plans, policies and planning processes by 2025 and to have progressed in implementing them by 2030;

60. *Requests* the secretariat to prepare a regular synthesis report on adaptation information provided by Parties in their biennial transparency reports, adaptation communications and nationally determined contributions;

61. *Stresses* the importance of global solidarity in undertaking adaptation efforts, including long-term transformational and incremental adaptation, towards reducing vulnerability and enhancing adaptive capacity and resilience, as well as the collective well-being of all people, the protection of livelihoods and economies, and the preservation and regeneration of nature, for current and future generations, in the context of the temperature goal referred to in Article 2 of the Paris Agreement, and that such efforts should be inclusive in terms of adaptation approaches and taking into account the best available science and the worldviews and values of Indigenous Peoples, to support achievement of the global goal on adaptation;

62. *Calls on* Parties to enhance their adaptation efforts in line with what is needed to achieve the goal in Article 2, paragraph 1(b), of the Paris Agreement and the global goal on adaptation, taking into account the framework for the global goal on adaptation referred to in decision -/CMA.5;[3]

63. *Urges* Parties and *invites* non-Party stakeholders to increase ambition and enhance adaptation action and support, in line with decision -/CMA.5,[4] in order to accelerate swift

[3] Draft decision entitled "Glasgow–Sharm el-Sheikh work programme on the global goal on adaptation referred to in decision 7/CMA.3" proposed under agenda item 8(a) of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its fifth session.

[4] As footnote 3 above.

action at scale and at all levels, from local to global, in alignment with other global frameworks, towards the achievement of, inter alia, the following targets by 2030, and progressively beyond:

(a) Significantly reducing climate-induced water scarcity and enhancing climate resilience to water-related hazards towards a climate-resilient water supply, climate-resilient sanitation and access to safe and affordable potable water for all;

(b) Attaining climate-resilient food and agricultural production and supply and distribution of food, as well as increasing sustainable and regenerative production and equitable access to adequate food and nutrition for all;

(c) Attaining resilience against climate change related health impacts, promoting climate-resilient health services, and significantly reducing climate-related morbidity and mortality, particularly in the most vulnerable communities;

(d) Reducing climate impacts on ecosystems and biodiversity and accelerating the use of ecosystem-based adaptation and nature-based solutions, including through their management, enhancement, restoration and conservation and the protection of terrestrial, inland water, mountain, marine and coastal ecosystems;

(e) Increasing the resilience of infrastructure and human settlements to climate change impacts to ensure basic and continuous essential services for all, and minimizing climate-related impacts on infrastructure and human settlements;

(f) Substantially reducing the adverse effects of climate change on poverty eradication and livelihoods, in particular by promoting the use of adaptive social protection measures for all;

(g) Protecting cultural heritage from the impacts of climate-related risks by developing adaptive strategies for preserving cultural practices and heritage sites and by designing climate-resilient infrastructure, guided by traditional knowledge, Indigenous Peoples' knowledge and local knowledge systems;

64. *Affirms* that the framework for the global goal on adaptation includes the following targets in relation to the dimensions of the iterative adaptation cycle, recognizing the need to enhance adaptation action and support:

(a) Impact, vulnerability and risk assessment: by 2030 all Parties have conducted up-to-date assessments of climate hazards, climate change impacts and exposure to risks and vulnerabilities and have used the outcomes of these assessments to inform their formulation of national adaptation plans, policy instruments, and planning processes and/or strategies, and by 2027 all Parties have established multi-hazard early warning systems, climate information services for risk reduction and systematic observation to support improved climate-related data, information and services;

(b) Planning: by 2030 all Parties have in place country-driven, gender-responsive, participatory and fully transparent national adaptation plans, policy instruments, and planning processes and/or strategies, covering, as appropriate, ecosystems, sectors, people and vulnerable communities, and have mainstreamed adaptation in all relevant strategies and plans;

(c) Implementation: by 2030 all Parties have progressed in implementing their national adaptation plans, policies and strategies and, as a result, have reduced the social and economic impacts of the key climate hazards identified in the assessments referred to in paragraph 6 (a) above;

(d) Monitoring, evaluation and learning: by 2030 all Parties have designed, established and operationalized a system for monitoring, evaluation and learning for their national adaptation efforts and have built the required institutional capacity to fully implement the system;

65. *Also affirms* that efforts in relation to the targets referred to in paragraphs 63–64 above shall be made in a manner that is country-driven, voluntary and in accordance with national circumstances, take into account sustainable development and poverty eradication, and do not constitute a basis for comparison between Parties;

C. Means of implementation and support

1. Finance

66. *Recalls* Articles 2, 4 and 9, paragraphs 1–4, of the Paris Agreement;

67. *Highlights* the growing gap between the needs of developing country Parties, in particular those due to the increasing impacts of climate change compounded by difficult macroeconomic circumstances, and the support provided and mobilized for their efforts to implement their nationally determined contributions, highlighting that such needs are currently estimated at USD 5.8–5.9 trillion for the pre-2030 period;[5]

68. *Also highlights* that the adaptation finance needs of developing countries are estimated at USD 215–387 billion annually up until 2030, and that about USD 4.3 trillion per year needs to be invested in clean energy up until 2030, increasing thereafter to USD 5 trillion per year up until 2050, to be able to reach net zero emissions by 2050;[6]

69. *Notes* that scaling up new and additional grant-based, highly concessional finance, and non-debt instruments remains critical to supporting developing countries, particularly as they transition in a just and equitable manner, and *recognizes* that there is a positive connection between having sufficient fiscal space, and climate action and advancing on a pathway towards low emissions and climate-resilient development, building on existing institutions and mechanisms such as the Common Framework;

70. *Also recognizes* the role of the private sector and *highlights* the need to strengthen policy guidance, incentives, regulations and enabling conditions to reach the scale of investments required to achieve a global transition towards low greenhouse gas emissions and climate-resilient development and *encourages* Parties to continue enhancing their enabling environments;

71. *Recalls* that developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention and that other Parties are encouraged to provide or continue to provide such support voluntarily;

72. *Also recalls* that as part of a global effort developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties, and that such mobilization of climate finance should represent a progression beyond previous efforts;

73. *Reiterates* that support shall be provided to developing country Parties for the implementation of Article 4 of the Paris Agreement, in accordance with Articles 9–11 of the Paris Agreement, recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions;

74. *Also reiterates* the urgency to support the implementation of the Paris Agreement in developing countries;

[5] Standing Committee on Finance. 2021. *First report on the determination of the needs of developing country Parties related to implementing the Convention and the Paris Agreement*. Bonn: UNFCCC. Available at https://unfccc.int/topics/climate-finance/workstreams/determination-of-the-needs-of-developing-country-parties/first-report-on-the-determination-of-the-needs-of-developing-country-parties-related-to-implementing.

[6] United Nations Environment Programme. 2023. *Adaptation Gap Report 2023: Underfinanced. Underprepared.* Nairobi: United Nations Environment Programme. Available at http://www.unep.org/resources/adaptation-gap-report-2023; International Renewable Energy Agency. 2023. *World Energy Transitions Outlook 2023: 1.5°C Pathway.* Abu Dhabi: International Renewable Energy Agency. Available at https://www.irena.org/Publications/2023/Mar/World-Energy-Transitions-Outlook-2023; International Energy Agency. 2023. *World Energy Investment 2023*. Paris: International Energy Agency. Available at https://www.iea.org/reports/world-energy-investment-2023.

75. *Emphasizes* the ongoing challenges faced by many developing country Parties in accessing climate finance and encourages further efforts, including by the operating entities of the Financial Mechanism, to simplify access to such finance, in particular for those developing country Parties that have significant capacity constraints, such as the least developed countries and small island developing States;

76. *Welcomes* recent progress made by developed countries in the provision and mobilization of climate finance and *notes* the increase in climate finance from developed countries in 2021 to USD 89.6 billion and the likelihood of meeting the goal in 2022, and *looks forward* to further information on the positive progress;

77. *Notes* the efforts of developed country Parties to make progress in at least doubling adaptation finance from 2019 levels by 2025;

78. *Welcomes* the pledges made by 31 contributors during the second replenishment of the Green Climate Fund, resulting in a nominal pledge of USD 12.833 billion to date, and *encourages* further pledges and contributions towards the second replenishment of the Fund, welcoming the progression over the previous replenishment;

79. *Welcomes* the pledges made to date for the operationalization of the funding arrangements, including the Fund, referred to in decisions -/CP.28[7] and -/CMA.5[8] amounting to USD 792 million, for the Adaptation Fund amounting to USD 187.74 million and the pledges to the Least Developed Countries Fund and the Special Climate Change Fund amounting to USD 179.06 million, and *commends* the efforts of the President of the Conference of the Parties at its twenty-eighth session in this regard;

80. *Notes with deep regret* that the goal of developed country Parties to mobilize jointly USD 100 billion per year by 2020 in the context of meaningful mitigation actions and transparency on implementation was not met in 2021, including owing to challenges in mobilizing finance from private sources, and *welcomes* the ongoing efforts of developed country Parties towards achieving the goal of mobilizing jointly USD 100 billion per year;[9]

81. *Notes with concern* that the adaptation finance gap is widening, and that current levels of climate finance, technology development and transfer, and capacity-building for adaptation remain insufficient to respond to worsening climate change impacts in developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change;

82. *Recognizes* the importance of the operating entities of the Financial Mechanism and the Adaptation Fund in the climate finance architecture, *welcomes* the new pledges to the Fund made at this session, *urges* all contributors to fulfil their pledges in a timely manner and *invites* the contributors to ensure the sustainability of the resources of the Fund, including the share of proceeds;

83. *Strongly urges* the operating entities of the Financial Mechanism to make full use of their current replenishment, *calls on* multilateral development banks and other financial institutions to further scale up investments in climate action and *calls for* a continued increase in the scale, and effectiveness of, and simplified access to, climate finance, including in the form of grants and other highly concessional forms of finance;

[7] Decision entitled "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" adopted under agenda item 8(g) of the Conference of the Parties at its twenty-eighth session.

[8] Decision entitled "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" adopted under agenda item 10(g) of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its fifth session.

[9] See https://www.auswaertiges-amt.de/blob/2631906/4eee299dac91ba9649638cbcfae754cb/231116-deu-can-bnrief-data.pdf.

84. *Notes* the diversity of definitions of climate finance in use by Parties and non-Party stakeholders in the context of aggregate accounting of and reporting on climate finance and *takes note* of decision -/CP.28;[10]

85. *Urges* developed country Parties to fully deliver, with urgency, on the USD 100 billion per year goal through to 2025, in the context of meaningful mitigation actions and transparency on implementation, noting the significant role of public funds, and *calls on* developed country Parties to further enhance the coordination of their efforts to deliver on the goal;

86. *Recognizes* that adaptation finance will have to be significantly scaled up beyond the doubling as per decision 1/CMA.3, paragraph 18, to support the urgent and evolving need to accelerate adaptation and build resilience in developing countries, considering the need for public and grant-based resources for adaptation and exploring the potential of other sources, and *reiterates* the importance of support for progress in implementing developing countries' national adaptation plans by 2030;

87. *Welcomes* the operationalization of the funding arrangements, including the Fund, referred to in decisions -/CP.28[11] and -/CMA.5,[12] and the pledges of USD 792 million to the Fund and *commends* the efforts of the President of the Conference of the Parties at its twenty-eighth session in this regard;

88. *Urges* developed country Parties to continue to provide support and *encourages* other Parties to provide, or continue to provide support, on a voluntary basis, for activities to address loss and damage[13] in line with decisions -/CP.28[14] and -/CMA.5;[15]

89. *Invites* financial contributions with developed country Parties continuing to take the lead to provide financial resources for commencing the operationalization of the Fund referred to in decisions -/CP.28[16] and -/CMA.5;[17]

90. *Recognizes* the importance of making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development for the achievement of Article 2 of the Paris Agreement and that this goal is complementary to, and no substitute for, Article 9 of the Paris Agreement, which remains essential for achieving mitigation and adaptation goals in developing countries;

91. *Also recognizes* the need for further understanding of Article 2, paragraph 1(c), of the Paris Agreement, including its complementarity with Article 9 of the Paris Agreement, and *notes* the limited progress towards making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development;

92. *Decides* to continue and strengthen the Sharm el-Sheikh dialogue between Parties, relevant organizations and stakeholders to exchange views on and enhance understanding of the scope of Article 2, paragraph 1(c), of the Paris Agreement and its complementarity with Article 9 of the Paris Agreement referred to in decision 1/CMA.4 until 2025 and *takes note* of decision -/CMA.5;[18]

93. *Recognizes* the transition to a mode of work to enable the development of a draft negotiating text for the setting of the new collective quantified goal on climate finance for

[10] Draft decision entitled "Matters relating to the Standing Committee on Finance" proposed under agenda item 8(b) of the Conference of the Parties at its twenty-eighth session.

[11] As footnote 7 above.

[12] As footnote 8 above.

[13] This paragraph is without prejudice to any future funding arrangements, any positions of Parties in current or future negotiations, or understandings and interpretations of the Convention and the Paris Agreement.

[14] As footnote 7 above.

[15] As footnote 8 above.

[16] As footnote 7 above.

[17] As footnote 8 above.

[18] Decision entitled "Matters relating to the Standing Committee on Finance" adopted under agenda item 10(a) of the Conference of the Parties serving as the meeting of the Parties at its fifth session.

consideration by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its sixth session;

94. *Also recognizes* that the deliberations related to the scale and elements of the new collective quantified goal on climate finance could take into consideration the urgent need to, inter alia, support implementation of current nationally determined contributions and national adaptation plans, increase ambition and accelerate action, taking into account the evolving needs of developing country Parties, and the potential for mobilizing finance from a wide variety of sources, instruments and channels, recognizing the interlinkages between the different elements of the new collective quantified goal on climate finance;

95. *Underscores* the importance of reforming the multilateral financial architecture, inter alia, multilateral development banks, *acknowledges* the updated vision statement by the World Bank to create a world free of poverty on a livable planet and by the multilateral development banks to strengthen collaboration for greater impact, and *calls on* their shareholders to expeditiously implement that vision and continue to significantly scale up the provision of climate finance in particular through grants and concessional instruments;

96. *Emphasizes* the role of governments, central banks, commercial banks, institutional investors and other financial actors with a view to improving the assessment and management of climate-related financial risks, ensuring or enhancing access to climate finance in all geographical regions and sectors, and accelerating the ongoing establishment of new and innovative sources of finance, including taxation, for implementing climate action and thus enabling the scaling down of harmful incentives;

97. *Decides* to establish the xx dialogue on implementing the global stocktake outcomes;

98. *Also decides* that the dialogue referred to in paragraph 97 above will be operationalized starting from the sixth session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement and conclude at its tenth session (2028) and *requests* the Subsidiary Body for Implementation to develop the modalities for the work programme at its sixtieth session (June 2024) for consideration by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its sixth session;

99. *Decides* to convene a xx high-level ministerial dialogue at its sixth session on the urgent need to scale up adaptation finance, taking into account the adaptation-related outcomes of the global stocktake, and to ensure the mobilization by developed country Parties of the adaptation support pledged;

100. *Urges* developed country Parties to prepare a report on the doubling of the collective provision of climate finance for adaptation to developing country Parties from 2019 levels by 2025, in the context of achieving a balance between mitigation and adaptation in the provision of scaled-up financial resources, recalling Article 9, paragraph 4, of the Paris Agreement,[19] for consideration by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its sixth session;

2. Technology development and transfer

101. *Underlines* the fundamental role of technology development and transfer, endogenous technologies and innovation in facilitating urgent adaptation and mitigation action aligned with achieving the goals of the Paris Agreement and sustainable development;

102. *Welcomes* the progress of the Technology Mechanism, which is comprised of the Technology Executive Committee and the Climate Technology Centre and Network, including through its first joint work programme, for 2023–2027, in supporting technology development and transfer through policy recommendations, knowledge-sharing, capacity-building and technical assistance;

103. *Highlights* the persistent gaps and challenges in technology development and transfer and the uneven pace of adoption of climate technologies around the world and *urges* Parties to address these barriers and strengthen cooperative action, including with non-Party stakeholders, particularly with the private sector, to rapidly scale up the deployment of

[19] See decision 1/CMA.3, para. 18.

existing technologies, the fostering of innovation and the development and transfer of new technologies;

104. *Highlights* the importance of predictable, sustainable and adequate support for implementing the mandates of the Technology Mechanism and for supporting national designated entities and of the delivery on the Climate Technology Centre and Network resource mobilization and partnership strategy for 2023–2027 as referred to in decision -/CMA.5;[20]

105. *Encourages* the Technology Executive Committee, the Climate Technology Centre and Network and the operating entities of the Financial Mechanism to enhance the involvement of stakeholders as they take action to strengthen the linkages between the Technology Mechanism and the Financial Mechanism;

106. *Emphasizes* the importance of ensuring the availability of and access to enhanced financial and capacity-building support for developing countries, in particular the least developed countries and small island developing States, for implementing and scaling up prioritized technology measures, including those identified in technology needs assessments, technology action plans and long-term low greenhouse gas emission development strategies that align with national circumstances;

107. *Encourages* inclusive international cooperation on research, development and demonstration as well as innovation, including in hard-to-abate sectors, with a view to strengthening endogenous capacities and technologies and fostering national systems of innovation in line with the findings of the Intergovernmental Panel on Climate Change;

108. *Recognizes* that achieving the long-term goals of the Paris Agreement requires the rapid and scaled-up deployment and adoption of existing clean technologies and accelerated innovation, digital transformation and development, demonstration and dissemination of new and emerging technologies, as well as increased access to those technologies, supported by appropriate enabling frameworks and international cooperation;

109. *Notes* the Technology Mechanism initiative on artificial intelligence for climate action, the aim of which is to explore the role of artificial intelligence as a technological tool for advancing and scaling up transformative climate solutions for adaptation and mitigation action in developing countries, with a focus on the least developed countries and small island developing States, while also addressing the challenges and risks posed by artificial intelligence, as referred to in decision -/CMA.5;[21]

110. *Decides* to establish a technology implementation programme, supported by, inter alia, the operating entities of the Financial Mechanism, to strengthen support for the implementation of technology priorities identified by developing countries, and to address the challenges identified in the first periodic assessment of the Technology Mechanism,[22] and *invites* the Subsidiary Body for Implementation at its sixty-first session (November 2024) to take into account the technology implementation programme in its consideration of the Poznan strategic programme on technology transfer, with a view to recommending a draft decision on the matter for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its sixth session;

3. Capacity-building

111. *Underlines* the fundamental role of capacity building in taking urgent climate action aligned with the goals of the Paris Agreement and *appreciates* the contributions made in this regard under institutional arrangements under the Paris Agreement, such as the Paris Committee on Capacity-building;

112. *Welcomes* the progress made in capacity-building at individual, institutional, and systemic levels since the adoption of the Paris Agreement, including through the work under

[20] Decision entitled "Enhancing climate technology development and transfer to support the implementation of the Paris Agreement" adopted under agenda item 11 of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its fifth session.

[21] As footnote 8 above.

[22] See decision 20/CMA.4, para. 8.

the Paris Committee on Capacity-building, the Capacity-building Initiative for Transparency and the Action for Climate Empowerment agenda;

113. *Recognizes* best practices in capacity-building, notably multi-stakeholder engagement, enhancing ownership by beneficiary countries, and sharing experiences and lessons learned, particularly at the regional level;

114. *Acknowledges* that developing country Parties continue to have persistent gaps in capacity and urgent needs for effectively implementing the Paris Agreement, including related to skills development, institutional capacity for governance and coordination, technical assessment and modelling, strategic policy development and implementation and capacity retention and *recognizes* the urgent need to address these gaps and needs that are constraining effective implementation of the Paris Agreement;

115. *Encourages* enhanced coherence and cooperation in the provision of effective capacity-building support, including, but not limited to, by facilitating collaboration platforms and capitalizing on the exchange of knowledge, country-led shared experiences and best practices;

116. *Recognizes* the role of the Local Communities and Indigenous Peoples Platform in strengthening the capacity of Indigenous Peoples and local communities to effectively engage in the intergovernmental process under the Paris Agreement and *calls on* Parties to meaningfully engage Indigenous Peoples and local communities in their climate policies and action;

117. *Requests* the Paris Committee on Capacity-building to identify, in coordination with Parties, other constituted bodies and programmes and relevant stakeholders, current activities for enhancing the capacity of developing countries to prepare and implement nationally determined contributions, and *also requests* the secretariat to facilitate the sharing of knowledge and good practices for the preparation and implementation of nationally determined contributions, including through workshops;

118. *Encourages* developing country Parties to identify their capacity-building support needs and to report thereon, as appropriate, in their biennial transparency reports as part of the information referred to in decision 18/CMA.1;

119. *Also encourages* the Paris Committee on Capacity-building to consider new activities, including those related to adaptation, Article 6 of the Paris Agreement and the enhanced transparency framework under the Paris Agreement in deciding on its future annual focus areas;

120. *Requests* the operating entities of the Financial Mechanism and the Adaptation Fund to further enhance support for capacity-building in developing countries and to provide updates thereon in their annual reports to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement and *encourages* Parties to further enhance support for capacity-building, including through international cooperation;

D. Loss and damage

121. *Recalls* Article 8 of the Paris Agreement, in which Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage, and according to which Parties should enhance understanding, action and support, including through the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change;

122. *Recognizes* the importance of particularly vulnerable developing countries and segments of the population that are already vulnerable owing to geography, socioeconomic status, livelihood, gender, age, minority status, marginalization, displacement, or disability, as well as the ecosystems that they depend on, in responding to loss and damage associated with climate change impacts;

123. *Stresses* the importance of promoting coherence and complementarity in all aspects of action and support for averting, minimizing, and addressing loss and damage associated with climate change impacts;

124. *Recognizes* advancements in international efforts to avert, minimize and address loss and damage associated with climate change impacts, including extreme weather events and slow onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change, including the progress of work made under the Executive Committee of the Warsaw International Mechanism and its expert groups, technical expert group and task force; the establishment of the Santiago network for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change and progress in its operationalization, including the selection of its host; progress in the areas referred to in Article 8, paragraph 4, of the Paris Agreement; and as a result of ongoing efforts to enhance understanding, action and support with respect to loss and damage associated with climate change impacts;

125. *Also recognizes* national efforts to respond to loss and damage associated with climate change impacts, including in relation to comprehensive risk management, anticipatory action and planning, recovery, rehabilitation and reconstruction, actions to address the impacts of slow onset events policymaking and planning for displacement and planned relocation, and mechanisms for channelling funding, including at the local level and for those who are on the frontline of climate change, to support activities relevant to averting, minimizing and addressing loss and damage associated with climate change impacts;

126. *Acknowledges* that climate change has already caused and will increasingly cause losses and damages and that, as temperatures rise, the impacts of climate and weather extremes, as well as slow onset events, will pose an ever-greater social, economic and environmental threat;

127. *Recognizes* that improved understanding of how to avoid and respond to the risk of low-likelihood or high-impact events or outcomes, such as abrupt changes and potential tipping points, as well as more knowledge, support, policy and action are needed to comprehensively manage risks of and respond to loss and damage associated with climate change impacts;

128. *Acknowledges* the significant gaps, including finance, that remain in responding to the increased scale and frequency of loss and damage, and the associated economic and non-economic losses;

129. *Expresses deep concern* regarding the significant economic and non-economic loss and damage associated with the adverse effects of climate change for developing countries, resulting, inter alia, in reduced fiscal space and constraints in realizing the Sustainable Development Goals;

130. *Recognizes* the need for urgent and enhanced action and support for averting, minimizing and addressing loss and damage associated with climate change impacts, including under the Warsaw International Mechanism, including its expert groups, technical expert group and task force and the Santiago network and as part of other relevant cooperation efforts;

131. *Calls on* Parties and relevant institutions to improve coherence and synergies between efforts pertaining to disaster risk reduction, humanitarian assistance, rehabilitation, recovery and reconstruction, and displacement, planned relocation and migration, in the context of climate change impacts, as well as actions to address slow onset events, in order to make progress in averting, minimizing and addressing loss and damage associated with climate change impacts in a coherent and effective manner;

132. *Recalls* that, in the context of the enhanced transparency framework, each interested Party may provide, as appropriate, information related to enhancing understanding, action and support, on a cooperative and facilitative basis, to avert, minimize and address loss and damage associated with climate change impacts;

133. *Requests* the Executive Committee of the Warsaw International Mechanism to prepare, building on the work of its expert groups, technical expert group and task force,

voluntary guidelines for enhancing the collection and management of data and information to inform the preparation of biennial transparency reports;

134. *Also requests* the secretariat to prepare on a regular basis a synthesis report, for consideration by the Executive Committee of the Warsaw International Mechanism, on information on loss and damage provided by Parties in their biennial transparency reports and, as appropriate, in other national reports under the Paris Agreement, with a view to enhancing the availability of information on loss and damage, including for the purpose of monitoring progress in responding thereto at the national level;

135. *Encourages* interested developing country Parties to seek technical assistance through the Santiago network for undertaking the actions referred to in paragraph 130 above;

E. Response measures

136. *Recognizes* the importance of maximizing the positive and minimizing the negative economic and social impacts of the implementation of response measures;

137. *Recalls* Article 4, paragraph 15, of the Paris Agreement, which states that Parties shall take into consideration in the implementation of the Paris Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties;

138. *Recognizes* that significant efforts have been undertaken to assess and address the positive and negative socioeconomic impacts of response measures by Parties and non-Party stakeholders domestically and by the forum on the impact of the implementation of response measures and its Katowice Committee of Experts on the Impacts of the Implementation of Response Measures under the six-year workplan of the forum and its Katowice Committee on Impacts;

139. *Notes with appreciation* the progress of the Katowice Committee on Impacts in supporting the work of the forum;

140. *Notes* that just transition of the workforce and the creation of decent work and quality jobs, and economic diversification are key to maximizing the positive and minimizing the negative impacts of response measures and that strategies related to just transition and economic diversification should be implemented taking into account different national circumstances and contexts;

141. *Underscores* the social and economic opportunities and challenges that arise from the efforts to achieve the Paris Agreement temperature goal;

142. *Notes* that further efforts are needed to strengthen the work of the forum and its Katowice Committee on Impacts;

143. *Encourages* Parties to consider developing, in consultation with technical experts, practitioners and other stakeholders, as appropriate, methodologies and tools, including modelling tools, for assessing and analysing the impacts of the implementation of response measures, with a view to minimizing the negative and maximizing the positive impacts of response measures, with a particular focus on the creation of decent work and quality jobs and on economic diversification;

144. *Also encourages* Parties to develop more national case studies involving the assessment and analysis of the impacts of the implementation of response measures to enable an exchange of experience among Parties on such studies;

145. *Further encourages* Parties, as appropriate, to establish capacity-building partnerships and networks for increasing the number of developing countries that are developing and using methodologies and tools for assessing the impacts of the implementation of response measures;

146. *Encourages* Parties, in their efforts to diversify their economies, to pursue relevant policies in a manner that promotes sustainable development and the eradication of poverty, taking into account national circumstances;

147. *Also encourages* Parties to provide detailed information, to the extent possible, on the assessment of the economic and social impacts of the implementation of response measures;

148. *Requests* the forum and its Katowice Committee on Impacts to intensify efforts to implement the recommendations outlined in relevant decisions of the Conference of the Parties, the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, including by enhancing cooperation among Parties, stakeholders, external organizations, experts and institutions and by enabling the exchange of information, experience and best practices among Parties with a view to increasing their resilience to these impacts;

149. *Also requests* the forum and its Katowice Committee on Impacts in performing their functions to implement in line with the best available science and take into account different national circumstances;

150. *Notes* that the global transition to low-emissions and climate resilient development provides opportunities for and poses challenges to sustainable development, economic growth and eradication of poverty;

151. *Welcomes* the adoption of decision -/CMA.5[23] on the work programme on just transition pathways referred to in the relevant paragraphs of decision 1/CMA.4;

152. *Reconfirms* that the objective of the work programme on just transition pathways shall be the discussion of pathways to achieving the goals of the Paris Agreement outlined in Article 2, paragraph 1, in the context of Article 2, paragraph 2;

III. International cooperation

153. *Reaffirms* its commitment to multilateralism, especially in the light of the progress made under the Paris Agreement and *resolves* to remain united in the pursuit of efforts to achieve the purpose and long-term goals of the Agreement;

154. *Recognizes* that Parties should cooperate on promoting a supportive and open international economic system aimed at achieving sustainable economic growth and development in all countries and thus enabling them to better to address the problems of climate change, noting that measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade;

155. *Notes* that the Sixth Assessment Report of the Intergovernmental Panel on Climate Change states that international cooperation is a critical enabler for achieving ambitious climate action and encouraging development and implementation of climate policies;

156. *Recognizes* the importance of international collaboration, including transboundary cooperation, for contributing to progress towards the goals of the Paris Agreement;

157. *Also recognizes* that international cooperation is critical for addressing climate change, in the context of sustainable development and poverty eradication, particularly for those who have significant capacity constraints, and enhancing climate action across all actors of society, sectors and regions;

158. *Acknowledges* the important role and active engagement of non-Party stakeholders, particularly civil society, business, financial institutions, cities and subnational authorities, Indigenous Peoples, local communities, youth and research institutions, in supporting Parties and contributing to the significant collective progress towards the Paris Agreement temperature goal and in addressing and responding to climate change and enhancing ambition, including progress through other relevant intergovernmental processes;

[23] Draft decision entitled “Work programme on just transition pathways referred to in the relevant paragraphs of decision 1/CMA.4” proposed under agenda item 5 of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its fifth session.

159. *Welcomes* current international cooperative efforts and voluntary initiatives for enhancing climate action and support by Parties and non-Party stakeholders, including through the sharing of information, good practices, experiences, lessons learned, resources and solutions;

160. *Also welcomes* the leadership and efforts of the high-level champions in supporting the effective participation of non-Party stakeholders in the global stocktake;

161. *Urges* Parties and non-Party stakeholders to join efforts to accelerate delivery through inclusive, multilevel, gender-responsive and cooperative action;

162. *Encourages* international cooperation and the exchange of views and experience among non-Party stakeholders at the local, subnational, national and regional levels, including conducting joint research, personnel training, practical projects, technical exchanges, project investment and standards cooperation;

163. *Also encourages* Parties and non-Party stakeholders to enhance cooperation on the implementation of multilateral environmental conventions and agreements, particularly their work under the Rio Conventions, to facilitate the achievement of the purpose and long-terms goals of the Paris Agreement and the Sustainable Development Goals in a synergistic and efficient manner;

IV. Guidance and way forward

164. *Recalls* Article 4, paragraph 2 of the Paris Agreement, which states that each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve, and that Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions;

165. *Also recalls* Article 4, paragraph 9, of the Paris Agreement, which states that each Party shall communicate a nationally determined contribution every five years in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement and be informed by the outcomes of the global stocktake;

166. *Further recalls* that pursuant to paragraph 25 of decision 1/CP.21, Parties shall submit to the secretariat their next nationally determined contributions at least 9 to 12 months in advance of the seventh session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (November 2025) with a view to facilitating the clarity, transparency and understanding of these contributions;

167. *Recalls* Article 3 and Article 4, paragraph 3, of the Paris Agreement, and reaffirms that each Party's successive nationally determined contribution will represent a progression beyond the Party's current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances;

168. *Also recalls* decision 4/CMA.1, paragraphs 7 and 13, which state that, in communicating their second and subsequent nationally determined contributions, Parties shall provide the information necessary for clarity, transparency and understanding contained in annex I to decision 4/CMA.1, as applicable to their nationally determined contributions, and that, in accounting for anthropogenic emissions and removals corresponding to their nationally determined contributions, Parties shall account for their nationally determined contributions in accordance with the guidance contained in annex II to decision 4/CMA.1;

169. *Further recalls* decision 4/CMA.1, paragraph 4(c) of its annex I, which notes that Parties shall provide information on how the preparation of their nationally determined contributions has been informed by the outcomes of the global stocktake;

170. *Encourages* Parties to communicate in 2025 their nationally determined contributions with an end date of 2035, pursuant to paragraph 2 of decision 6/CMA.3;

171. *Invites* all Parties to put in place new or intensify existing domestic arrangements for preparing and implementing their successive nationally determined contributions;

172. *Emphasizes* the critical role of the full implementation of the enhanced transparency framework under the Paris Agreement;

173. *Recalls* that Parties shall submit their first biennial transparency report and national inventory report, if submitted as a stand-alone report, at the latest by 31 December 2024 and *urges* Parties to make the necessary preparations for ensuring timely submission thereof;

174. *Also recalls* paragraph 7 of decision 18/CMA.1 and paragraph 73 of decision 1/CMA.4, which recognize the importance of the provision of increased support, in a timely, adequate and predictable manner, to developing country Parties for implementing the enhanced transparency framework under the Paris Agreement;

175. *Further recalls* Article 15, paragraph 1, of the Paris Agreement and recognizes the role of the Paris Agreement Implementation and Compliance Committee in facilitating implementation of and promoting compliance with the provisions of the Paris Agreement in a transparent, non-adversarial and non-punitive manner that pays particular attention to the respective national capabilities and circumstances of Parties;

176. *Emphasizes* the importance of Action for Climate Empowerment for empowering all members of society to engage in climate action and for the consideration of the outcomes of the first global stocktake;

177. *Encourages* Parties to take into account the good practices and opportunities identified during the technical dialogue of the first global stocktake in enhancing their actions and support;

178. *Also encourages* Parties to implement climate policy and action that is gender-responsive, fully respects human rights, and empowers youth and children;

179. *Affirms* that consideration will be given to the outcome of the review of the enhanced Lima work programme on gender and its gender action plan, including to the application of this outcome mutatis mutandis in considering the outcomes of the first global stocktake;

180. *Welcomes* the outcomes of and the informal summary report on the 2023 ocean and climate change dialogue and encourages further strengthening of ocean-based action, as appropriate;

181. *Requests* the Chair of the Subsidiary Body for Scientific and Technological Advice to hold an expert dialogue on mountains and climate change at its sixtieth session (June 2024);

182. *Also requests* the Subsidiary Body for Implementation, at its sixtieth session, to hold an expert dialogue on children and climate change to discuss the disproportionate impacts of climate change on children and relevant policy solutions in this regard, engaging relevant United Nations entities, international organizations and non-governmental organizations in this effort;

183. *Encourages* the scientific community to continue enhancing knowledge on and addressing knowledge gaps in adaptation and availability of information on climate change impacts, including for monitoring and progress, and to provide relevant and timely inputs to the second and subsequent global stocktakes;

184. *Invites* the Intergovernmental Panel on Climate Change to consider how best to align its work with the second and subsequent global stocktakes and *also invites* the Intergovernmental Panel on Climate Change to provide relevant and timely information for the next global stocktake;

185. *Encourages* the high-level champions, the Marrakech Partnership for Global Climate Action and non-Party stakeholders, as appropriate, to consider the outcomes of the first global stocktake in their work on scaling-up and introducing new or strengthened voluntary efforts, initiatives and coalitions;

186. *Invites* the relevant work programmes and constituted bodies under or serving the Paris Agreement to integrate relevant outcomes of the first global stocktake in planning their future work, in line with their mandates;

187. *Requests* the Chairs of the subsidiary bodies to organize an annual global stocktake dialogue starting at their sixtieth sessions (June 2024) to facilitate the sharing of knowledge

and good practices on how the outcomes of the global stocktake are informing the preparation of Parties' next nationally determined contributions in accordance with the relevant provisions of the Paris Agreement and *also requests* the secretariat to prepare a report for consideration at its subsequent session;

188. *Encourages* the relevant operating entities of the Financial Mechanism and the constituted bodies under or serving the Paris Agreement to continue to provide, within their mandates, capacity-building support for the preparation and communication of the next nationally determined contributions;

189. *Invites* organizations in a position to do so and the secretariat, including through its regional collaboration centres, to provide capacity-building support for the preparation and communication of the next nationally determined contributions;

190. *Also invites* Parties to present their next nationally determined contributions at a special event to be held under the auspices of the United Nations Secretary-General;

191. *Decides* to launch, under the guidance of the Presidencies of the fifth, sixth and seventh sessions of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, a set of activities ("Road map to Mission 1.5") to significantly enhance international cooperation and the international enabling environment to stimulate ambition in the next round of nationally determined contributions, with a view to enhancing action and implementation over this critical decade and keeping 1.5 °C within reach;

192. *Recalls* paragraph 15 of decision 19/CMA.1, and *decides* that consideration of refining the procedural and logistical elements of the overall global stocktake process on the basis of experience gained from the first global stocktake shall commence at the sixtieth sessions of the subsidiary bodies and conclude at the sixth session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement;

193. *Invites* Parties and non-Party stakeholders to submit via the submission portal[24] by 1 March 2024 information on experience and lessons learned in relation to conducting the first global stocktake and requests the secretariat to prepare a synthesis report on the submissions in time to inform the refinement referred to in paragraph 192 above;

194. *Decides* pursuant to paragraph 8 of decision 19/CMA.1 that the information collection and preparation component of the second global stocktake shall start at the eighth session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (November 2026) and its consideration of outputs component will conclude at the tenth session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement;

195. *Takes note* of the estimated budgetary implications of the activities to be undertaken by the secretariat referred to in this decision;

196. *Requests* that the actions of the secretariat called for in this decision be undertaken subject to the availability of financial resources.

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[24] https://www4.unfccc.int/sites/submissionsstaging/Pages/Home.aspx.

Annex 10

United Nations FCCC/CP/2015/10/Add.1

Framework Convention on Climate Change

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Conference of the Parties

Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015

Addendum

Part two: Action taken by the Conference of the Parties at its twenty-first session

Contents

Decisions adopted by the Conference of the Parties

GE.16-01194(E)

Decision 1/CP.21

Adoption of the Paris Agreement

The Conference of the Parties,

Recalling decision 1/CP.17 on the establishment of the Ad Hoc Working Group on the Durban Platform for Enhanced Action,

Also recalling Articles 2, 3 and 4 of the Convention,

Further recalling relevant decisions of the Conference of the Parties, including decisions 1/CP.16, 2/CP.18, 1/CP.19 and 1/CP.20,

Welcoming the adoption of United Nations General Assembly resolution A/RES/70/1, "Transforming our world: the 2030 Agenda for Sustainable Development", in particular its goal 13, and the adoption of the Addis Ababa Action Agenda of the third International Conference on Financing for Development and the adoption of the Sendai Framework for Disaster Risk Reduction,

Recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires the widest possible cooperation by all countries, and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emissions,

Also recognizing that deep reductions in global emissions will be required in order to achieve the ultimate objective of the Convention and *emphasizing* the need for urgency in addressing climate change,

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,

Also acknowledging the specific needs and concerns of developing country Parties arising from the impact of the implementation of response measures and, in this regard, decisions 5/CP.7, 1/CP.10, 1/CP.16 and 8/CP.17,

Emphasizing with serious concern the urgent need to address the significant gap between the aggregate effect of Parties' mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with holding 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,

Also emphasizing that enhanced pre-2020 ambition can lay a solid foundation for enhanced post-2020 ambition,

Stressing the urgency of accelerating the implementation of the Convention and its Kyoto Protocol in order to enhance pre-2020 ambition,

Recognizing the urgent need to enhance the provision of finance, technology and capacity-building support by developed country Parties, in a predictable manner, to enable enhanced pre-2020 action by developing country Parties,

Emphasizing the enduring benefits of ambitious and early action, including major reductions in the cost of future mitigation and adaptation efforts,

Acknowledging the need to promote universal access to sustainable energy in developing countries, in particular in Africa, through the enhanced deployment of renewable energy,

Agreeing to uphold and promote regional and international cooperation in order to mobilize stronger and more ambitious climate action by all Parties and non-Party stakeholders, including civil society, the private sector, financial institutions, cities and other subnational authorities, local communities and indigenous peoples,

I. Adoption

1. *Decides* to adopt the Paris Agreement under the United Nations Framework Convention on Climate Change (hereinafter referred to as "the Agreement") as contained in the annex;

2. *Requests* the Secretary-General of the United Nations to be the Depositary of the Agreement and to have it open for signature in New York, United States of America, from 22 April 2016 to 21 April 2017;

3. *Invites* the Secretary-General to convene a high-level signature ceremony for the Agreement on 22 April 2016;

4. *Also invites* all Parties to the Convention to sign the Agreement at the ceremony to be convened by the Secretary-General, or at their earliest opportunity, and to deposit their respective instruments of ratification, acceptance, approval or accession, where appropriate, as soon as possible;

5. *Recognizes* that Parties to the Convention may provisionally apply all of the provisions of the Agreement pending its entry into force, and *requests* Parties to provide notification of any such provisional application to the Depositary;

6. *Notes* that the work of the Ad Hoc Working Group on the Durban Platform for Enhanced Action, in accordance with decision 1/CP.17, paragraph 4, has been completed;

7. *Decides* to establish the Ad Hoc Working Group on the Paris Agreement under the same arrangement, mutatis mutandis, as those concerning the election of officers to the Bureau of the Ad Hoc Working Group on the Durban Platform for Enhanced Action;[1]

8. *Also decides* that the Ad Hoc Working Group on the Paris Agreement shall prepare for the entry into force of the Agreement and for the convening of the first session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement;

9. *Further decides* to oversee the implementation of the work programme resulting from the relevant requests contained in this decision;

10. *Requests* the Ad Hoc Working Group on the Paris Agreement to report regularly to the Conference of the Parties on the progress of its work and to complete its work by the first session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement;

11. *Decides* that the Ad Hoc Working Group on the Paris Agreement shall hold its sessions starting in 2016 in conjunction with the sessions of the Convention subsidiary bodies and shall prepare draft decisions to be recommended through the Conference of the Parties to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement for consideration and adoption at its first session;

[1] Endorsed by decision 2/CP.18, paragraph 2.

II. Intended nationally determined contributions

12. *Welcomes* the intended nationally determined contributions that have been communicated by Parties in accordance with decision 1/CP.19, paragraph 2(b);

13. *Reiterates* its invitation to all Parties that have not yet done so to communicate to the secretariat their intended nationally determined contributions towards achieving the objective of the Convention as set out in its Article 2 as soon as possible and well in advance of the twenty-second session of the Conference of the Parties (November 2016) and in a manner that facilitates the clarity, transparency and understanding of the intended nationally determined contributions;

14. *Requests* the secretariat to continue to publish the intended nationally determined contributions communicated by Parties on the UNFCCC website;

15. *Reiterates* its call to developed country Parties, the operating entities of the Financial Mechanism and any other organizations in a position to do so to provide support for the preparation and communication of the intended nationally determined contributions of Parties that may need such support;

16. *Takes note* of the synthesis report on the aggregate effect of intended nationally determined contributions communicated by Parties by 1 October 2015, contained in document FCCC/CP/2015/7;

17. *Notes with concern* that the estimated aggregate greenhouse gas emission levels in 2025 and 2030 resulting from the intended nationally determined contributions do not fall within least-cost 2 ˚C scenarios but rather lead to a projected level of 55 gigatonnes in 2030, and *also notes* that much greater emission reduction efforts will be required than those associated with the intended nationally determined contributions in order to hold the increase in the global average temperature to below 2 ˚C above pre-industrial levels by reducing emissions to 40 gigatonnes or to 1.5 ˚C above pre-industrial levels by reducing to a level to be identified in the special report referred to in paragraph 21 below;

18. *Further notes*, in this context, the adaptation needs expressed by many developing country Parties in their intended nationally determined contributions;

19. *Requests* the secretariat to update the synthesis report referred to in paragraph 16 above so as to cover all the information in the intended nationally determined contributions communicated by Parties pursuant to decision 1/CP.20 by 4 April 2016 and to make it available by 2 May 2016;

20. *Decides* to convene a facilitative dialogue among Parties in 2018 to take stock of the collective efforts of Parties in relation to progress towards the long-term goal referred to in Article 4, paragraph 1, of the Agreement and to inform the preparation of nationally determined contributions pursuant to Article 4, paragraph 8, of the Agreement;

21. *Invites* the Intergovernmental Panel on Climate Change to provide a special report in 2018 on the impacts of global warming of 1.5 °C above pre-industrial levels and related global greenhouse gas emission pathways;

III. Decisions to give effect to the Agreement

Mitigation

22. *Also invites* Parties to communicate their first nationally determined contribution no later than when the Party submits its respective instrument of ratification, acceptance, approval or accession of the Paris Agreement; if a Party has communicated an intended

nationally determined contribution prior to joining the Agreement, that Party shall be considered to have satisfied this provision unless that Party decides otherwise;

23. *Requests* those Parties whose intended nationally determined contribution pursuant to decision 1/CP.20 contains a time frame up to 2025 to communicate by 2020 a new nationally determined contribution and to do so every five years thereafter pursuant to Article 4, paragraph 9, of the Agreement;

24. *Also requests* those Parties whose intended nationally determined contribution pursuant to decision 1/CP.20 contains a time frame up to 2030 to communicate or update by 2020 these contributions and to do so every five years thereafter pursuant to Article 4, paragraph 9, of the Agreement;

25. *Decides* that Parties shall submit to the secretariat their nationally determined contributions referred to in Article 4 of the Agreement at least 9 to 12 months in advance of the relevant session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement with a view to facilitating the clarity, transparency and understanding of these contributions, including through a synthesis report prepared by the secretariat;

26. *Requests* the Ad Hoc Working Group on the Paris Agreement to develop further guidance on features of the nationally determined contributions for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

27. *Agrees* that the information to be provided by Parties communicating their nationally determined contributions, in order to facilitate clarity, transparency and understanding, may include, as appropriate, inter alia, quantifiable information on the reference point (including, as appropriate, a base year), time frames and/or periods for implementation, scope and coverage, planning processes, assumptions and methodological approaches including those for estimating and accounting for anthropogenic greenhouse gas emissions and, as appropriate, removals, and how the Party considers that its nationally determined contribution is fair and ambitious, in the light of its national circumstances, and how it contributes towards achieving the objective of the Convention as set out in its Article 2;

28. *Requests* the Ad Hoc Working Group on the Paris Agreement to develop further guidance for the information to be provided by Parties in order to facilitate clarity, transparency and understanding of nationally determined contributions for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

29. *Also requests* the Subsidiary Body for Implementation to develop modalities and procedures for the operation and use of the public registry referred to in Article 4, paragraph 12, of the Agreement, for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

30. *Further requests* the secretariat to make available an interim public registry in the first half of 2016 for the recording of nationally determined contributions submitted in accordance with Article 4 of the Agreement, pending the adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement of the modalities and procedures referred to in paragraph 29 above;

31. *Requests* the Ad Hoc Working Group on the Paris Agreement to elaborate, drawing from approaches established under the Convention and its related legal instruments as appropriate, guidance for accounting for Parties' nationally determined contributions, as referred to in Article 4, paragraph 13, of the Agreement, for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session, which ensures that:

(a) Parties account for anthropogenic emissions and removals in accordance with methodologies and common metrics assessed by the Intergovernmental Panel on Climate Change and adopted by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement;

(b) Parties ensure methodological consistency, including on baselines, between the communication and implementation of nationally determined contributions;

(c) Parties strive to include all categories of anthropogenic emissions or removals in their nationally determined contributions and, once a source, sink or activity is included, continue to include it;

(d) Parties shall provide an explanation of why any categories of anthropogenic emissions or removals are excluded;

32. *Decides* that Parties shall apply the guidance referred to in paragraph 31 above to the second and subsequent nationally determined contributions and that Parties may elect to apply such guidance to their first nationally determined contribution;

33. *Also decides* that the forum on the impact of the implementation of response measures, under the subsidiary bodies, shall continue, and shall serve the Agreement;

34. *Further decides* that the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation shall recommend, for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session, the modalities, work programme and functions of the forum on the impact of the implementation of response measures to address the effects of the implementation of response measures under the Agreement by enhancing cooperation amongst Parties on understanding the impacts of mitigation actions under the Agreement and the exchange of information, experiences, and best practices amongst Parties to raise their resilience to these impacts;

35. *Invites* Parties to communicate, by 2020, to the secretariat mid-century, long-term low greenhouse gas emission development strategies in accordance with Article 4, paragraph 19, of the Agreement, and *requests* the secretariat to publish on the UNFCCC website Parties' low greenhouse gas emission development strategies as communicated;

36. *Requests* the Subsidiary Body for Scientific and Technological Advice to develop and recommend the guidance referred to under Article 6, paragraph 2, of the Agreement for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session, including guidance to ensure that double counting is avoided on the basis of a corresponding adjustment by Parties for both anthropogenic emissions by sources and removals by sinks covered by their nationally determined contributions under the Agreement;

37. *Recommends* that the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement adopt rules, modalities and procedures for the mechanism established by Article 6, paragraph 4, of the Agreement on the basis of:

(a) Voluntary participation authorized by each Party involved;

(b) Real, measurable, and long-term benefits related to the mitigation of climate change;

(c) Specific scopes of activities;

(d) Reductions in emissions that are additional to any that would otherwise occur;

(e) Verification and certification of emission reductions resulting from mitigation activities by designated operational entities;

(f) Experience gained with and lessons learned from existing mechanisms and approaches adopted under the Convention and its related legal instruments;

38. *Requests* the Subsidiary Body for Scientific and Technological Advice to develop and recommend rules, modalities and procedures for the mechanism referred to in paragraph 37 above for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

39. *Also requests* the Subsidiary Body for Scientific and Technological Advice to undertake a work programme under the framework for non-market approaches to sustainable development referred to in Article 6, paragraph 8, of the Agreement, with the objective of considering how to enhance linkages and create synergy between, inter alia, mitigation, adaptation, finance, technology transfer and capacity-building, and how to facilitate the implementation and coordination of non-market approaches;

40. *Further requests* the Subsidiary Body for Scientific and Technological Advice to recommend a draft decision on the work programme referred to in paragraph 39 above, taking into account the views of Parties, for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

Adaptation

41. *Requests* the Adaptation Committee and the Least Developed Countries Expert Group to jointly develop modalities to recognize the adaptation efforts of developing country Parties, as referred to in Article 7, paragraph 3, of the Agreement, and make recommendations for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

42. *Also requests* the Adaptation Committee, taking into account its mandate and its second three-year workplan, and with a view to preparing recommendations for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session:

(a) To review, in 2017, the work of adaptation-related institutional arrangements under the Convention, with a view to identifying ways to enhance the coherence of their work, as appropriate, in order to respond adequately to the needs of Parties;

(b) To consider methodologies for assessing adaptation needs with a view to assisting developing country Parties, without placing an undue burden on them;

43. *Invites* all relevant United Nations agencies and international, regional and national financial institutions to provide information to Parties through the secretariat on how their development assistance and climate finance programmes incorporate climate-proofing and climate resilience measures;

44. *Requests* Parties to strengthen regional cooperation on adaptation where appropriate and, where necessary, establish regional centres and networks, in particular in developing countries, taking into account decision 1/CP.16, paragraph 30;

45. *Also requests* the Adaptation Committee and the Least Developed Countries Expert Group, in collaboration with the Standing Committee on Finance and other relevant institutions, to develop methodologies, and make recommendations for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session on:

(a) Taking the necessary steps to facilitate the mobilization of support for adaptation in developing countries in the context of the limit to global average temperature increase referred to in Article 2 of the Agreement;

(b) Reviewing the adequacy and effectiveness of adaptation and support referred to in Article 7, paragraph 14(c), of the Agreement;

46. *Further requests* the Green Climate Fund to expedite support for the least developed countries and other developing country Parties for the formulation of national adaptation plans, consistent with decisions 1/CP.16 and 5/CP.17, and for the subsequent implementation of policies, projects and programmes identified by them;

Loss and damage

47. *Decides* on the continuation of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, following the review in 2016;

48. *Requests* the Executive Committee of the Warsaw International Mechanism to establish a clearing house for risk transfer that serves as a repository for information on insurance and risk transfer, in order to facilitate the efforts of Parties to develop and implement comprehensive risk management strategies;

49. *Also requests* the Executive Committee of the Warsaw International Mechanism to establish, according to its procedures and mandate, a task force to complement, draw upon the work of and involve, as appropriate, existing bodies and expert groups under the Convention including the Adaptation Committee and the Least Developed Countries Expert Group, as well as relevant organizations and expert bodies outside the Convention, to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change;

50. *Further requests* the Executive Committee of the Warsaw International Mechanism to initiate its work, at its next meeting, to operationalize the provisions referred to in paragraphs 48 and 49 above, and to report on progress thereon in its annual report;

51. *Agrees* that Article 8 of the Agreement does not involve or provide a basis for any liability or compensation;

Finance

52. *Decides* that, in the implementation of the Agreement, financial resources provided to developing country Parties should enhance the implementation of their policies, strategies, regulations and action plans and their climate change actions with respect to both mitigation and adaptation to contribute to the achievement of the purpose of the Agreement as defined in its Article 2;

53. *Also decides* that, in accordance with Article 9, paragraph 3, of the Agreement, developed countries intend to continue their existing collective mobilization goal through 2025 in the context of meaningful mitigation actions and transparency on implementation; prior to 2025 the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement shall set a new collective quantified goal from a floor of USD 100 billion per year, taking into account the needs and priorities of developing countries;

54. *Recognizes* the importance of adequate and predictable financial resources, including for results-based payments, as appropriate, for the implementation of policy approaches and positive incentives for reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks; as well as alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests; while reaffirming the importance of non-carbon benefits associated with such

approaches; encouraging the coordination of support from, inter alia, public and private, bilateral and multilateral sources, such as the Green Climate Fund, and alternative sources in accordance with relevant decisions by the Conference of the Parties;

55. *Decides* to initiate, at its twenty-second session, a process to identify the information to be provided by Parties, in accordance with Article 9, paragraph 5, of the Agreement with a view to providing a recommendation for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

56. *Also decides* to ensure that the provision of information in accordance with Article 9, paragraph 7, of the Agreement shall be undertaken in accordance with the modalities, procedures and guidelines referred to in paragraph 91 below;

57. *Requests* the Subsidiary Body for Scientific and Technological Advice to develop modalities for the accounting of financial resources provided and mobilized through public interventions in accordance with Article 9, paragraph 7, of the Agreement for consideration by the Conference of the Parties at its twenty-fourth session (November 2018), with a view to making a recommendation for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

58. *Decides* that the Green Climate Fund and the Global Environment Facility, the entities entrusted with the operation of the Financial Mechanism of the Convention, as well as the Least Developed Countries Fund and the Special Climate Change Fund, administered by the Global Environment Facility, shall serve the Agreement;

59. *Recognizes* that the Adaptation Fund may serve the Agreement, subject to relevant decisions by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement;

60. *Invites* the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol to consider the issue referred to in paragraph 59 above and make a recommendation to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

61. *Recommends* that the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement shall provide guidance to the entities entrusted with the operation of the Financial Mechanism of the Convention on the policies, programme priorities and eligibility criteria related to the Agreement for transmission by the Conference of the Parties;

62. *Decides* that the guidance to the entities entrusted with the operations of the Financial Mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before adoption of the Agreement, shall apply mutatis mutandis to the Agreement;

63. *Also decides* that the Standing Committee on Finance shall serve the Agreement in line with its functions and responsibilities established under the Conference of the Parties;

64. *Urges* the institutions serving the Agreement to enhance the coordination and delivery of resources to support country-driven strategies through simplified and efficient application and approval procedures, and through continued readiness support to developing country Parties, including the least developed countries and small island developing States, as appropriate;

Technology development and transfer

65. *Takes note* of the interim report of the Technology Executive Committee on guidance on enhanced implementation of the results of technology needs assessments as contained in document FCCC/SB/2015/INF.3;

66. *Decides* to strengthen the Technology Mechanism and *requests* the Technology Executive Committee and the Climate Technology Centre and Network, in supporting the implementation of the Agreement, to undertake further work relating to, inter alia:

(a) Technology research, development and demonstration;

(b) The development and enhancement of endogenous capacities and technologies;

67. *Requests* the Subsidiary Body for Scientific and Technological Advice to initiate, at its forty-fourth session (May 2016), the elaboration of the technology framework established under Article 10, paragraph 4, of the Agreement and to report on its findings to the Conference of the Parties, with a view to the Conference of the Parties making a recommendation on the framework to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement for consideration and adoption at its first session, taking into consideration that the framework should facilitate, inter alia:

(a) The undertaking and updating of technology needs assessments, as well as the enhanced implementation of their results, particularly technology action plans and project ideas, through the preparation of bankable projects*;*

(b) The provision of enhanced financial and technical support for the implementation of the results of the technology needs assessments;

(c) The assessment of technologies that are ready for transfer;

(d) The enhancement of enabling environments for and the addressing of barriers to the development and transfer of socially and environmentally sound technologies;

68. *Decides* that the Technology Executive Committee and the Climate Technology Centre and Network shall report to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, through the subsidiary bodies, on their activities to support the implementation of the Agreement;

69. *Also decides* to undertake a periodic assessment of the effectiveness and adequacy of the support provided to the Technology Mechanism in supporting the implementation of the Agreement on matters relating to technology development and transfer;

70. *Requests* the Subsidiary Body for Implementation to initiate, at its forty-fourth session, the elaboration of the scope of and modalities for the periodic assessment referred to in paragraph 69 above, taking into account the review of the Climate Technology Centre and Network as referred to in decision 2/CP.17, annex VII, paragraph 20, and the modalities for the global stocktake referred to in Article 14 of the Agreement, for consideration and adoption by the Conference of the Parties at its twenty-fifth session (November 2019);

Capacity-building

71. *Decides* to establish the Paris Committee on Capacity-building whose aim will be to address gaps and needs, both current and emerging, in implementing capacity-building in developing country Parties and further enhancing capacity-building efforts, including with regard to coherence and coordination in capacity-building activities under the Convention;

72. *Also decides* that the Paris Committee on Capacity-building will manage and oversee the workplan referred to in paragraph 73 below;

73. *Further decides* to launch a workplan for the period 2016–2020 with the following activities:

(a) Assessing how to increase synergies through cooperation and avoid duplication among existing bodies established under the Convention that implement capacity-building activities, including through collaborating with institutions under and outside the Convention;

(b) Identifying capacity gaps and needs and recommending ways to address them;

(c) Promoting the development and dissemination of tools and methodologies for the implementation of capacity-building;

(d) Fostering global, regional, national and subnational cooperation;

(e) Identifying and collecting good practices, challenges, experiences and lessons learned from work on capacity-building by bodies established under the Convention;

(f) Exploring how developing country Parties can take ownership of building and maintaining capacity over time and space;

(g) Identifying opportunities to strengthen capacity at the national, regional and subnational level;

(h) Fostering dialogue, coordination, collaboration and coherence among relevant processes and initiatives under the Convention, including through exchanging information on capacity-building activities and strategies of bodies established under the Convention;

(i) Providing guidance to the secretariat on the maintenance and further development of the web-based capacity-building portal;

74. *Decides* that the Paris Committee on Capacity-building will annually focus on an area or theme related to enhanced technical exchange on capacity-building, with the purpose of maintaining up-to-date knowledge on the successes and challenges in building capacity effectively in a particular area;

75. *Requests* the Subsidiary Body for Implementation to organize annual in-session meetings of the Paris Committee on Capacity-building;

76. *Also requests* the Subsidiary Body for Implementation to develop the terms of reference for the Paris Committee on Capacity-building, in the context of the third comprehensive review of the implementation of the capacity-building framework, also taking into account paragraphs 71–75 above and paragraphs 79 and 80 below, with a view to recommending a draft decision on this matter for consideration and adoption by the Conference of the Parties at its twenty-second session;

77. *Invites* Parties to submit their views on the membership of the Paris Committee on Capacity-building by 9 March 2016;[2]

78. *Requests* the secretariat to compile the submissions referred to in paragraph 77 above into a miscellaneous document for consideration by the Subsidiary Body for Implementation at its forty-fourth session;

79. *Decides* that the inputs to the Paris Committee on Capacity-building will include, inter alia, submissions, the outcome of the third comprehensive review of the implementation of the capacity-building framework, the secretariat's annual synthesis report on the implementation of the framework for capacity-building in developing

[2] Parties should submit their views via the submissions portal at <http://www.unfccc.int/5900>.

countries, the secretariat's compilation and synthesis report on capacity-building work of bodies established under the Convention and its Kyoto Protocol, and reports on the Durban Forum and the capacity-building portal;

80. *Requests* the Paris Committee on Capacity-building to prepare annual technical progress reports on its work, and to make these reports available at the sessions of the Subsidiary Body for Implementation coinciding with the sessions of the Conference of the Parties;

81. *Decides*, at its twenty-fifth session, to review the progress, need for extension, the effectiveness and enhancement of the Paris Committee on Capacity-building and to take any action it considers appropriate, with a view to making recommendations to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session on enhancing institutional arrangements for capacity-building consistent with Article 11, paragraph 5, of the Agreement;

82. *Calls upon* all Parties to ensure that education, training and public awareness, as reflected in Article 6 of the Convention and in Article 12 of the Agreement, are adequately considered in their contribution to capacity-building;

83. *Invites* the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, at its first session, to explore ways of enhancing the implementation of training, public awareness, public participation and public access to information so as to enhance actions under the Agreement;

Transparency of action and support

84. *Decides* to establish a Capacity-building Initiative for Transparency in order to build institutional and technical capacity, both pre- and post-2020; this initiative will support developing country Parties, upon request, in meeting enhanced transparency requirements as defined in Article 13 of the Agreement in a timely manner;

85. *Also decides* that the Capacity-building Initiative for Transparency will aim:

(a) To strengthen national institutions for transparency-related activities in line with national priorities;

(b) To provide relevant tools, training and assistance for meeting the provisions stipulated in Article 13 of the Agreement;

(c) To assist in the improvement of transparency over time;

86. *Urges and requests* the Global Environment Facility to make arrangements to support the establishment and operation of the Capacity-building Initiative for Transparency as a priority reporting-related need, including through voluntary contributions to support developing country Parties in the sixth replenishment of the Global Environment Facility and future replenishment cycles, to complement existing support under the Global Environment Facility;

87. *Decides* to assess the implementation of the Capacity-building Initiative for Transparency in the context of the seventh review of the Financial Mechanism;

88. *Requests* that the Global Environment Facility, as an operating entity of the Financial Mechanism, include in its annual report to the Conference of the Parties the progress of work in the design, development and implementation of the Capacity-building Initiative for Transparency referred to in paragraph 84 above starting in 2016;

89. *Decides* that, in accordance with Article 13, paragraph 2, of the Agreement, developing country Parties shall be provided flexibility in the implementation of the provisions of that Article, including in the scope, frequency and level of detail of reporting,

and in the scope of review, and that the scope of review could provide for in-country reviews to be optional, while such flexibilities shall be reflected in the development of modalities, procedures and guidelines referred to in paragraph 91 below;

90. *Also decides* that all Parties, except for the least developed country Parties and small island developing States, shall submit the information referred to in Article 13, paragraphs 7, 8, 9 and 10, of the Agreement, as appropriate, no less frequently than on a biennial basis, and that the least developed country Parties and small island developing States may submit this information at their discretion;

91. *Requests* the Ad Hoc Working Group on the Paris Agreement to develop recommendations for modalities, procedures and guidelines in accordance with Article 13, paragraph 13, of the Agreement, and to define the year of their first and subsequent review and update, as appropriate, at regular intervals, for consideration by the Conference of the Parties, at its twenty-fourth session, with a view to forwarding them to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement for consideration and adoption at its first session;

92. *Also requests* the Ad Hoc Working Group on the Paris Agreement, in developing the recommendations for the modalities, procedures and guidelines referred to in paragraph 91 above, to take into account, inter alia:

(a) The importance of facilitating improved reporting and transparency over time;

(b) The need to provide flexibility to those developing country Parties that need it in the light of their capacities;

(c) The need to promote transparency, accuracy, completeness, consistency and comparability;

(d) The need to avoid duplication as well as undue burden on Parties and the secretariat;

(e) The need to ensure that Parties maintain at least the frequency and quality of reporting in accordance with their respective obligations under the Convention;

(f) The need to ensure that double counting is avoided;

(g) The need to ensure environmental integrity;

93. *Further requests* the Ad Hoc Working Group on the Paris Agreement, in developing the modalities, procedures and guidelines referred to in paragraph 91 above, to draw on the experiences from and take into account other ongoing relevant processes under the Convention;

94. *Requests* the Ad Hoc Working Group on the Paris Agreement, in developing the modalities, procedures and guidelines referred to in paragraph 91 above, to consider, inter alia:

(a) The types of flexibility available to those developing country Parties that need it on the basis of their capacities;

(b) The consistency between the methodology communicated in the nationally determined contribution and the methodology for reporting on progress made towards achieving individual Parties' respective nationally determined contribution;

(c) That Parties report information on adaptation action and planning including, if appropriate**,** their national adaptation plans, with a view to collectively exchanging information and sharing lessons learned;

(d) Support provided, enhancing delivery of support for both adaptation and mitigation through, inter alia, the common tabular formats for reporting support, and taking into account issues considered by the Subsidiary Body for Scientific and Technological Advice on methodologies for reporting on financial information, and enhancing the reporting by developing country Parties on support received, including the use, impact and estimated results thereof;

(e) Information in the biennial assessments and other reports of the Standing Committee on Finance and other relevant bodies under the Convention;

(f) Information on the social and economic impact of response measures;

95. *Also requests* the Ad Hoc Working Group on the Paris Agreement, in developing recommendations for the modalities, procedures and guidelines referred to in paragraph 91 above, to enhance the transparency of support provided in accordance with Article 9 of the Agreement;

96. *Further requests* the Ad Hoc Working Group on the Paris Agreement to report on the progress of work on the modalities, procedures and guidelines referred to in paragraph 91 above to future sessions of the Conference of the Parties, and that this work be concluded no later than 2018;

97. *Decides* that the modalities, procedures and guidelines developed under paragraph 91 above shall be applied upon the entry into force of the Paris Agreement;

98. *Also decides* that the modalities, procedures and guidelines of this transparency framework shall build upon and eventually supersede the measurement, reporting and verification system established by decision 1/CP.16, paragraphs 40–47 and 60–64, and decision 2/CP.17, paragraphs 12–62, immediately following the submission of the final biennial reports and biennial update reports;

Global stocktake

99. *Requests* the Ad Hoc Working Group on the Paris Agreement to identify the sources of input for the global stocktake referred to in Article 14 of the Agreement and to report to the Conference of the Parties, with a view to the Conference of the Parties making a recommendation to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement for consideration and adoption at its first session, including, but not limited to:

(a) Information on:

(i) The overall effect of the nationally determined contributions communicated by Parties;

(ii) The state of adaptation efforts, support, experiences and priorities from the communications referred to in Article 7, paragraphs 10 and 11, of the Agreement, and reports referred to in Article 13, paragraph 8, of the Agreement;

(iii) The mobilization and provision of support;

(b) The latest reports of the Intergovernmental Panel on Climate Change;

(c) Reports of the subsidiary bodies;

100. *Also requests* the Subsidiary Body for Scientific and Technological Advice to provide advice on how the assessments of the Intergovernmental Panel on Climate Change can inform the global stocktake of the implementation of the Agreement pursuant to its Article 14 and to report on this matter to the Ad Hoc Working Group on the Paris Agreement at its second session;

101. *Further requests* the Ad Hoc Working Group on the Paris Agreement to develop modalities for the global stocktake referred to in Article 14 of the Agreement and to report to the Conference of the Parties, with a view to the Conference of the Parties making a recommendation to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement for consideration and adoption at its first session;

Facilitating implementation and compliance

102. *Decides* that the committee referred to in Article 15, paragraph 2, of the Agreement shall consist of 12 members with recognized competence in relevant scientific, technical, socioeconomic or legal fields, to be elected by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on the basis of equitable geographical representation, with two members each from the five regional groups of the United Nations and one member each from the small island developing States and the least developed countries, while taking into account the goal of gender balance;

103. *Requests* the Ad Hoc Working Group on the Paris Agreement to develop the modalities and procedures for the effective operation of the committee referred to in Article 15, paragraph 2, of the Agreement, with a view to the Ad Hoc Working Group on the Paris Agreement completing its work on such modalities and procedures for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session;

Final clauses

104. *Also requests* the secretariat, solely for the purposes of Article 21 of the Agreement, to make available on its website on the date of adoption of the Agreement as well as in the report of the Conference of the Parties on its twenty-first session, information on the most up-to-date total and per cent of greenhouse gas emissions communicated by Parties to the Convention in their national communications, greenhouse gas inventory reports, biennial reports or biennial update reports;

IV. Enhanced action prior to 2020

105. *Resolves* to ensure the highest possible mitigation efforts in the pre-2020 period, including by:

(a) Urging all Parties to the Kyoto Protocol that have not already done so to ratify and implement the Doha Amendment to the Kyoto Protocol;

(b) Urging all Parties that have not already done so to make and implement a mitigation pledge under the Cancun Agreements;

(c) Reiterating its resolve, as set out in decision 1/CP.19, paragraphs 3 and 4, to accelerate the full implementation of the decisions constituting the agreed outcome pursuant to decision 1/CP.13 and enhance ambition in the pre-2020 period in order to ensure the highest possible mitigation efforts under the Convention by all Parties;

(d) Inviting developing country Parties that have not submitted their first biennial update reports to do so as soon as possible;

(e) Urging all Parties to participate in the existing measurement, reporting and verification processes under the Cancun Agreements, in a timely manner, with a view to demonstrating progress made in the implementation of their mitigation pledges;

106. *Encourages* Parties to promote the voluntary cancellation by Party and non-Party stakeholders, without double counting, of units issued under the Kyoto Protocol, including certified emission reductions that are valid for the second commitment period;

107. *Urges* host and purchasing Parties to report transparently on internationally transferred mitigation outcomes, including outcomes used to meet international pledges, and emission units issued under the Kyoto Protocol with a view to promoting environmental integrity and avoiding double counting;

108. *Recognizes* the social, economic and environmental value of voluntary mitigation actions and their co-benefits for adaptation, health and sustainable development;

109. *Resolves* to strengthen, in the period 2016–2020, the existing technical examination process on mitigation as defined in decision 1/CP.19, paragraph 5(a), and decision 1/CP.20, paragraph 19, taking into account the latest scientific knowledge, including by:

(a) Encouraging Parties, Convention bodies and international organizations to engage in this process, including, as appropriate, in cooperation with relevant non-Party stakeholders, to share their experiences and suggestions, including from regional events, and to cooperate in facilitating the implementation of policies, practices and actions identified during this process in accordance with national sustainable development priorities;

(b) Striving to improve, in consultation with Parties, access to and participation in this process by developing country Party and non-Party experts;

(c) Requesting the Technology Executive Committee and the Climate Technology Centre and Network in accordance with their respective mandates:

(i) To engage in the technical expert meetings and enhance their efforts to facilitate and support Parties in scaling up the implementation of policies, practices and actions identified during this process;

(ii) To provide regular updates during the technical expert meetings on the progress made in facilitating the implementation of policies, practices and actions previously identified during this process;

(iii) To include information on their activities under this process in their joint annual report to the Conference of the Parties;

(d) Encouraging Parties to make effective use of the Climate Technology Centre and Network to obtain assistance to develop economically, environmentally and socially viable project proposals in the high mitigation potential areas identified in this process;

110. *Encourages* the operating entities of the Financial Mechanism of the Convention to engage in the technical expert meetings and to inform participants of their contribution to facilitating progress in the implementation of policies, practices and actions identified during the technical examination process;

111. *Requests* the secretariat to organize the process referred to in paragraph 109 above and disseminate its results, including by:

(a) Organizing, in consultation with the Technology Executive Committee and relevant expert organizations, regular technical expert meetings focusing on specific policies, practices and actions representing best practices and with the potential to be scalable and replicable;

(b) Updating, on an annual basis, following the meetings referred to in paragraph 111(a) above and in time to serve as input to the summary for policymakers referred to in paragraph 111(c) below, a technical paper on the mitigation benefits and co-benefits of policies, practices and actions for enhancing mitigation ambition, as well as on options for supporting their implementation, information on which should be made available in a user-friendly online format;

(c) Preparing, in consultation with the champions referred to in paragraph 121 below, a summary for policymakers, with information on specific policies, practices and actions representing best practices and with the potential to be scalable and replicable, and on options to support their implementation, as well as on relevant collaborative initiatives, and publishing the summary at least two months in advance of each session of the Conference of the Parties as input for the high-level event referred to in paragraph 120 below;

112. *Decides* that the process referred to in paragraph 109 above should be organized jointly by the Subsidiary Body for Implementation and the Subsidiary Body for Scientific and Technological Advice and should take place on an ongoing basis until 2020;

113. *Also decides* to conduct in 2017 an assessment of the process referred to in paragraph 109 above so as to improve its effectiveness;

114. *Resolves* to enhance the provision of urgent and adequate finance, technology and capacity-building support by developed country Parties in order to enhance the level of ambition of pre-2020 action by Parties, and in this regard *strongly urges* developed country Parties to scale up their level of financial support, with a concrete road map to achieve the goal of jointly providing USD 100 billion annually by 2020 for mitigation and adaptation while significantly increasing adaptation finance from current levels and to further provide appropriate technology and capacity-building support;

115. *Decides* to conduct a facilitative dialogue in conjunction with the twenty-second session of the Conference of the Parties to assess the progress in implementing decision 1/CP.19, paragraphs 3 and 4, and identify relevant opportunities to enhance the provision of financial resources, including for technology development and transfer, and capacity-building support, with a view to identifying ways to enhance the ambition of mitigation efforts by all Parties, including identifying relevant opportunities to enhance the provision and mobilization of support and enabling environments;

116. *Acknowledges* with appreciation the results of the Lima-Paris Action Agenda, which build on the climate summit convened on 23 September 2014 by the Secretary-General of the United Nations;

117. *Welcomes* the efforts of non-Party stakeholders to scale up their climate actions, and *encourages* the registration of those actions in the Non-State Actor Zone for Climate Action platform;[3]

118. *Encourages* Parties to work closely with non-Party stakeholders to catalyse efforts to strengthen mitigation and adaptation action;

119. *Also encourages* non-Party stakeholders to increase their engagement in the processes referred to in paragraph 109 above and paragraph 124 below;

120. *Agrees* to convene, pursuant to decision 1/CP.20, paragraph 21, building on the Lima-Paris Action Agenda and in conjunction with each session of the Conference of the Parties during the period 2016–2020, a high-level event that:

(a) Further strengthens high-level engagement on the implementation of policy options and actions arising from the processes referred to in paragraph 109 above and paragraph 124 below, drawing on the summary for policymakers referred to in paragraph 111(c) above;

(b) Provides an opportunity for announcing new or strengthened voluntary efforts, initiatives and coalitions, including the implementation of policies, practices and actions arising from the processes referred to in paragraph 109 above and paragraph 124

[3] <http://climateaction.unfccc.int/>.

below and presented in the summary for policymakers referred to in paragraph 111(c) above;

(c) Takes stock of related progress and recognizes new or strengthened voluntary efforts, initiatives and coalitions;

(d) Provides meaningful and regular opportunities for the effective high-level engagement of dignitaries of Parties, international organizations, international cooperative initiatives and non-Party stakeholders;

121. *Decides* that two high-level champions shall be appointed to act on behalf of the President of the Conference of the Parties to facilitate through strengthened high-level engagement in the period 2016–2020 the successful execution of existing efforts and the scaling-up and introduction of new or strengthened voluntary efforts, initiatives and coalitions, including by:

(a) Working with the Executive Secretary and the current and incoming Presidents of the Conference of the Parties to coordinate the annual high-level event referred to in paragraph 120 above;

(b) Engaging with interested Parties and non-Party stakeholders, including to further the voluntary initiatives of the Lima-Paris Action Agenda;

(c) Providing guidance to the secretariat on the organization of technical expert meetings referred to in paragraph 111(a) above and paragraph 129(a) below;

122. *Also decides* that the high-level champions referred to in paragraph 121 above should normally serve for a term of two years, with their terms overlapping for a full year to ensure continuity, such that:

(a) The President of the twenty-first session of the Conference of the Parties should appoint one champion, who should serve for one year from the date of the appointment until the last day of the twenty-second session of the Conference of the Parties;

(b) The President of the twenty-second session of the Conference of the Parties should appoint one champion who should serve for two years from the date of the appointment until the last day of the twenty-third session of the Conference of the Parties (November 2017);

(c) Thereafter, each subsequent President of the Conference of the Parties should appoint one champion who should serve for two years and succeed the previously appointed champion whose term has ended;

123. *Invites* all interested Parties and relevant organizations to provide support for the work of the champions referred to in paragraph 121 above;

124. *Decides* to launch, in the period 2016–2020, a technical examination process on adaptation;

125. *Also decides* that the process referred to in paragraph 124 above will endeavour to identify concrete opportunities for strengthening resilience, reducing vulnerabilities and increasing the understanding and implementation of adaptation actions;

126. *Further decides* that the process referred to in paragraph 124 above should be organized jointly by the Subsidiary Body for Implementation and the Subsidiary Body for Scientific and Technological Advice, and conducted by the Adaptation Committee;

127. *Decides* that the process referred to in paragraph 124 above will be pursued by:

(a) Facilitating the sharing of good practices, experiences and lessons learned;

(b) Identifying actions that could significantly enhance the implementation of adaptation actions, including actions that could enhance economic diversification and have mitigation co-benefits;

(c) Promoting cooperative action on adaptation;

(d) Identifying opportunities to strengthen enabling environments and enhance the provision of support for adaptation in the context of specific policies, practices and actions;

128. *Also decides* that the technical examination process on adaptation referred to in paragraph 124 above will take into account the process, modalities, outputs, outcomes and lessons learned from the technical examination process on mitigation referred to in paragraph 109 above;

129. *Requests* the secretariat to support the process referred to in paragraph 124 above by:

(a) Organizing regular technical expert meetings focusing on specific policies, strategies and actions;

(b) Preparing annually, on the basis of the meetings referred to in paragraph 129(a) above and in time to serve as an input to the summary for policymakers referred to in paragraph 111(c) above, a technical paper on opportunities to enhance adaptation action, as well as options to support their implementation, information on which should be made available in a user-friendly online format;

130. *Decides* that in conducting the process referred to in paragraph 124 above, the Adaptation Committee will engage with and explore ways to take into account, synergize with and build on the existing arrangements for adaptation-related work programmes, bodies and institutions under the Convention so as to ensure coherence and maximum value;

131. *Also decides* to conduct, in conjunction with the assessment referred to in paragraph 113 above, an assessment of the process referred to in paragraph 124 above, so as to improve its effectiveness;

132. *Invites* Parties and observer organizations to submit information on the opportunities referred to in paragraph 125 above by 3 February 2016;

V. Non-Party stakeholders

133. *Welcomes* the efforts of all non-Party stakeholders to address and respond to climate change, including those of civil society, the private sector, financial institutions, cities and other subnational authorities;

134. *Invites* the non-Party stakeholders referred to in paragraph 133 above to scale up their efforts and support actions to reduce emissions and/or to build resilience and decrease vulnerability to the adverse effects of climate change and demonstrate these efforts via the Non-State Actor Zone for Climate Action platform[4] referred to in paragraph 117 above;

135. *Recognizes* the need to strengthen knowledge, technologies, practices and efforts of local communities and indigenous peoples related to addressing and responding to climate change, and *establishes* a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner;

[4] <http://climateaction.unfccc.int/>.

136. *Also recognizes* the important role of providing incentives for emission reduction activities, including tools such as domestic policies and carbon pricing;

VI. Administrative and budgetary matters

137. *Takes note* of the estimated budgetary implications of the activities to be undertaken by the secretariat referred to in this decision and *requests* that the actions of the secretariat called for in this decision be undertaken subject to the availability of financial resources;

138. *Emphasizes* the urgency of making additional resources available for the implementation of the relevant actions, including actions referred to in this decision, and the implementation of the work programme referred to in paragraph 9 above;

139. *Urges* Parties to make voluntary contributions for the timely implementation of this decision.

Annex

Paris Agreement

The Parties to this Agreement,

Being Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as "the Convention",

Pursuant to the Durban Platform for Enhanced Action established by decision 1/CP.17 of the Conference of the Parties to the Convention at its seventeenth session,

In pursuit of the objective of the Convention, and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,

Recognizing the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge,

Also recognizing the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, as provided for in the Convention,

Taking full account of the specific needs and special situations of the least developed countries with regard to funding and transfer of technology,

Recognizing that Parties may be affected not only by climate change, but also by the impacts of the measures taken in response to it,

Emphasizing the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty,

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

Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities,

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,

Recognizing the importance of the conservation and enhancement, as appropriate, of sinks and reservoirs of the greenhouse gases referred to in the Convention,

Noting the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of "climate justice", when taking action to address climate change,

Affirming the importance of education, training, public awareness, public participation, public access to information and cooperation at all levels on the matters addressed in this Agreement,

Recognizing the importance of the engagements of all levels of government and various actors, in accordance with respective national legislations of Parties, in addressing climate change,

Also recognizing that sustainable lifestyles and sustainable patterns of consumption and production, with developed country Parties taking the lead, play an important role in addressing climate change,

Have agreed as follows:

Article 1

For the purpose of this Agreement, the definitions contained in Article 1 of the Convention shall apply. In addition:

(a) "Convention" means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992;

(b) "Conference of the Parties" means the Conference of the Parties to the Convention;

(c) "Party" means a Party to this Agreement.

Article 2

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

(a) Holding 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, recognizing that this would significantly reduce the risks and impacts of climate change;

(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and

(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

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

Article 3

As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.

Article 4

1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.

2. Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

3. Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

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

5. Support shall be provided to developing country Parties for the implementation of this Article, in accordance with Articles 9, 10 and 11, recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions.

6. The least developed countries and small island developing States may prepare and communicate strategies, plans and actions for low greenhouse gas emissions development reflecting their special circumstances.

7. Mitigation co-benefits resulting from Parties' adaptation actions and/or economic diversification plans can contribute to mitigation outcomes under this Article.

8. In communicating their nationally determined contributions, all Parties shall provide the information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement.

9. Each Party shall communicate a nationally determined contribution every five years in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement and be informed by the outcomes of the global stocktake referred to in Article 14.

10. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall consider common time frames for nationally determined contributions at its first session.

11. A Party may at any time adjust its existing nationally determined contribution with a view to enhancing its level of ambition, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

12. Nationally determined contributions communicated by Parties shall be recorded in a public registry maintained by the secretariat.

13. Parties shall account for their nationally determined contributions. In accounting for anthropogenic emissions and removals corresponding to their nationally determined contributions, Parties shall promote environmental integrity, transparency, accuracy, completeness, comparability and consistency, and ensure the avoidance of double counting, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

14. In the context of their nationally determined contributions, when recognizing and implementing mitigation actions with respect to anthropogenic emissions and removals, Parties should take into account, as appropriate, existing methods and guidance under the Convention, in the light of the provisions of paragraph 13 of this Article.

15. Parties shall take into consideration in the implementation of this Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties.

16. Parties, including regional economic integration organizations and their member States, that have reached an agreement to act jointly under paragraph 2 of this Article shall notify the secretariat of the terms of that agreement, including the emission level allocated to each Party within the relevant time period, when they communicate their nationally determined contributions. The secretariat shall in turn inform the Parties and signatories to the Convention of the terms of that agreement.

17. Each party to such an agreement shall be responsible for its emission level as set out in the agreement referred to in paragraph 16 of this Article in accordance with paragraphs 13 and 14 of this Article and Articles 13 and 15.

18. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization which is itself a Party to this Agreement, each member State of that regional economic integration organization individually, and together with the regional economic integration organization, shall be responsible for its emission level as set out in the agreement communicated under paragraph 16 of this Article in accordance with paragraphs 13 and 14 of this Article and Articles 13 and 15.

19. All Parties should strive to formulate and communicate long-term low greenhouse gas emission development strategies, mindful of Article 2 taking into account their common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

Article 5

1. Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases as referred to in Article 4, paragraph 1(d), of the Convention, including forests.

2. Parties are encouraged to take action to implement and support, including through results-based payments, the existing framework as set out in related guidance and decisions already agreed under the Convention for: policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries; and alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests, while reaffirming the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches.

Article 6

1. Parties recognize that some Parties choose to pursue voluntary cooperation in the implementation of their nationally determined contributions to allow for higher ambition in their mitigation and adaptation actions and to promote sustainable development and environmental integrity.

2. Parties shall, where engaging on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions, promote sustainable development and ensure environmental integrity and transparency, including in governance, and shall apply robust accounting to ensure, inter alia, the avoidance of double counting, consistent with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

3. The use of internationally transferred mitigation outcomes to achieve nationally determined contributions under this Agreement shall be voluntary and authorized by participating Parties.

4. A mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development is hereby established under the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement for use by Parties on a voluntary basis. It shall be supervised by a body designated by the Conference of the Parties serving as the meeting of the Parties to this Agreement, and shall aim:

(a) To promote the mitigation of greenhouse gas emissions while fostering sustainable development;

(b) To incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities authorized by a Party;

(c) To contribute to the reduction of emission levels in the host Party, which will benefit from mitigation activities resulting in emission reductions that can also be used by another Party to fulfil its nationally determined contribution; and

(d) To deliver an overall mitigation in global emissions.

5. Emission reductions resulting from the mechanism referred to in paragraph 4 of this Article shall not be used to demonstrate achievement of the host Party's nationally determined contribution if used by another Party to demonstrate achievement of its nationally determined contribution.

6. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall ensure that a share of the proceeds from activities under the mechanism referred to in paragraph 4 of this Article is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.

7. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall adopt rules, modalities and procedures for the mechanism referred to in paragraph 4 of this Article at its first session.

8. Parties recognize the importance of integrated, holistic and balanced non-market approaches being available to Parties to assist in the implementation of their nationally determined contributions, in the context of sustainable development and poverty eradication, in a coordinated and effective manner, including through, inter alia, mitigation, adaptation, finance, technology transfer and capacity-building, as appropriate. These approaches shall aim to:

(a) Promote mitigation and adaptation ambition;

(b) Enhance public and private sector participation in the implementation of nationally determined contributions; and

(c) Enable opportunities for coordination across instruments and relevant institutional arrangements.

9. A framework for non-market approaches to sustainable development is hereby defined to promote the non-market approaches referred to in paragraph 8 of this Article.

Article 7

1. Parties hereby establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view

to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2.

2. Parties recognize that adaptation is a global challenge faced by all with local, subnational, national, regional and international dimensions, and that it is a key component of and makes a contribution to the long-term global response to climate change to protect people, livelihoods and ecosystems, taking into account the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change.

3. The adaptation efforts of developing country Parties shall be recognized, in accordance with the modalities to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement at its first session.

4. Parties recognize that the current need for adaptation is significant and that greater levels of mitigation can reduce the need for additional adaptation efforts, and that greater adaptation needs can involve greater adaptation costs.

5. Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.

6. Parties recognize the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change.

7. Parties should strengthen their cooperation on enhancing action on adaptation, taking into account the Cancun Adaptation Framework, including with regard to:

(a) Sharing information, good practices, experiences and lessons learned, including, as appropriate, as these relate to science, planning, policies and implementation in relation to adaptation actions;

(b) Strengthening institutional arrangements, including those under the Convention that serve this Agreement, to support the synthesis of relevant information and knowledge, and the provision of technical support and guidance to Parties;

(c) Strengthening scientific knowledge on climate, including research, systematic observation of the climate system and early warning systems, in a manner that informs climate services and supports decision-making;

(d) Assisting developing country Parties in identifying effective adaptation practices, adaptation needs, priorities, support provided and received for adaptation actions and efforts, and challenges and gaps, in a manner consistent with encouraging good practices; and

(e) Improving the effectiveness and durability of adaptation actions.

8. United Nations specialized organizations and agencies are encouraged to support the efforts of Parties to implement the actions referred to in paragraph 7 of this Article, taking into account the provisions of paragraph 5 of this Article.

9. Each Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include:

(a) The implementation of adaptation actions, undertakings and/or efforts;

(b) The process to formulate and implement national adaptation plans;

(c) The assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems;

(d) Monitoring and evaluating and learning from adaptation plans, policies, programmes and actions; and

(e) Building the resilience of socioeconomic and ecological systems, including through economic diversification and sustainable management of natural resources.

10. Each Party should, as appropriate, submit and update periodically an adaptation communication, which may include its priorities, implementation and support needs, plans and actions, without creating any additional burden for developing country Parties.

11. The adaptation communication referred to in paragraph 10 of this Article shall be, as appropriate, submitted and updated periodically, as a component of or in conjunction with other communications or documents, including a national adaptation plan, a nationally determined contribution as referred to in Article 4, paragraph 2, and/or a national communication.

12. The adaptation communications referred to in paragraph 10 of this Article shall be recorded in a public registry maintained by the secretariat.

13. Continuous and enhanced international support shall be provided to developing country Parties for the implementation of paragraphs 7, 9, 10 and 11 of this Article, in accordance with the provisions of Articles 9, 10 and 11.

14. The global stocktake referred to in Article 14 shall, inter alia:

(a) Recognize adaptation efforts of developing country Parties;

(b) Enhance the implementation of adaptation action taking into account the adaptation communication referred to in paragraph 10 of this Article;

(c) Review the adequacy and effectiveness of adaptation and support provided for adaptation; and

(d) Review the overall progress made in achieving the global goal on adaptation referred to in paragraph 1 of this Article.

Article 8

1. Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.

2. The Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement and may be enhanced and strengthened, as determined by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

3. Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change.

4. Accordingly, areas of cooperation and facilitation to enhance understanding, action and support may include:

(a) Early warning systems;

(b) Emergency preparedness;

(c) Slow onset events;

(d) Events that may involve irreversible and permanent loss and damage;

(e) Comprehensive risk assessment and management;

(f) Risk insurance facilities, climate risk pooling and other insurance solutions;

(g) Non-economic losses; and

(h) Resilience of communities, livelihoods and ecosystems.

5. The Warsaw International Mechanism shall collaborate with existing bodies and expert groups under the Agreement, as well as relevant organizations and expert bodies outside the Agreement.

Article 9

1. Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.

2. Other Parties are encouraged to provide or continue to provide such support voluntarily.

3. As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts.

4. The provision of scaled-up financial resources should aim to achieve a balance between adaptation and mitigation, taking into account country-driven strategies, and the priorities and needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, considering the need for public and grant-based resources for adaptation.

5. Developed country Parties shall biennially communicate indicative quantitative and qualitative information related to paragraphs 1 and 3 of this Article, as applicable, including, as available, projected levels of public financial resources to be provided to developing country Parties. Other Parties providing resources are encouraged to communicate biennially such information on a voluntary basis.

6. The global stocktake referred to in Article 14 shall take into account the relevant information provided by developed country Parties and/or Agreement bodies on efforts related to climate finance.

7. Developed country Parties shall provide transparent and consistent information on support for developing country Parties provided and mobilized through public interventions biennially in accordance with the modalities, procedures and guidelines to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement, at its

first session, as stipulated in Article 13, paragraph 13. Other Parties are encouraged to do so.

8. The Financial Mechanism of the Convention, including its operating entities, shall serve as the financial mechanism of this Agreement.

9. The institutions serving this Agreement, including the operating entities of the Financial Mechanism of the Convention, shall aim to ensure efficient access to financial resources through simplified approval procedures and enhanced readiness support for developing country Parties, in particular for the least developed countries and small island developing States, in the context of their national climate strategies and plans.

Article 10

1. Parties share a long-term vision on the importance of fully realizing technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions.

2. Parties, noting the importance of technology for the implementation of mitigation and adaptation actions under this Agreement and recognizing existing technology deployment and dissemination efforts, shall strengthen cooperative action on technology development and transfer.

3. The Technology Mechanism established under the Convention shall serve this Agreement.

4. A technology framework is hereby established to provide overarching guidance to the work of the Technology Mechanism in promoting and facilitating enhanced action on technology development and transfer in order to support the implementation of this Agreement, in pursuit of the long-term vision referred to in paragraph 1 of this Article.

5. Accelerating, encouraging and enabling innovation is critical for an effective, long-term global response to climate change and promoting economic growth and sustainable development. Such effort shall be, as appropriate, supported, including by the Technology Mechanism and, through financial means, by the Financial Mechanism of the Convention, for collaborative approaches to research and development, and facilitating access to technology, in particular for early stages of the technology cycle, to developing country Parties.

6. Support, including financial support, shall be provided to developing country Parties for the implementation of this Article, including for strengthening cooperative action on technology development and transfer at different stages of the technology cycle, with a view to achieving a balance between support for mitigation and adaptation. The global stocktake referred to in Article 14 shall take into account available information on efforts related to support on technology development and transfer for developing country Parties.

Article 11

1. Capacity-building under this Agreement should enhance the capacity and ability of developing country Parties, in particular countries with the least capacity, such as the least developed countries, and those that are particularly vulnerable to the adverse effects of climate change, such as small island developing States, to take effective climate change action, including, inter alia, to implement adaptation and mitigation actions, and should facilitate technology development, dissemination and deployment, access to climate finance, relevant aspects of education, training and public awareness, and the transparent, timely and accurate communication of information.

2. Capacity-building should be country-driven, based on and responsive to national needs, and foster country ownership of Parties, in particular, for developing country Parties,

including at the national, subnational and local levels. Capacity-building should be guided by lessons learned, including those from capacity-building activities under the Convention, and should be an effective, iterative process that is participatory, cross-cutting and gender-responsive.

3. All Parties should cooperate to enhance the capacity of developing country Parties to implement this Agreement. Developed country Parties should enhance support for capacity-building actions in developing country Parties.

4. All Parties enhancing the capacity of developing country Parties to implement this Agreement, including through regional, bilateral and multilateral approaches, shall regularly communicate on these actions or measures on capacity-building. Developing country Parties should regularly communicate progress made on implementing capacity-building plans, policies, actions or measures to implement this Agreement.

5. Capacity-building activities shall be enhanced through appropriate institutional arrangements to support the implementation of this Agreement, including the appropriate institutional arrangements established under the Convention that serve this Agreement. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall, at its first session, consider and adopt a decision on the initial institutional arrangements for capacity-building.

Article 12

Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement.

Article 13

1. In order to build mutual trust and confidence and to promote effective implementation, an enhanced transparency framework for action and support, with built-in flexibility which takes into account Parties' different capacities and builds upon collective experience is hereby established.

2. The transparency framework shall provide flexibility in the implementation of the provisions of this Article to those developing country Parties that need it in the light of their capacities. The modalities, procedures and guidelines referred to in paragraph 13 of this Article shall reflect such flexibility.

3. The transparency framework shall build on and enhance the transparency arrangements under the Convention, recognizing the special circumstances of the least developed countries and small island developing States, and be implemented in a facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing undue burden on Parties.

4. The transparency arrangements under the Convention, including national communications, biennial reports and biennial update reports, international assessment and review and international consultation and analysis, shall form part of the experience drawn upon for the development of the modalities, procedures and guidelines under paragraph 13 of this Article.

5. The purpose of the framework for transparency of action is to provide a clear understanding of climate change action in the light of the objective of the Convention as set out in its Article 2, including clarity and tracking of progress towards achieving Parties' individual nationally determined contributions under Article 4, and Parties' adaptation

actions under Article 7, including good practices, priorities, needs and gaps, to inform the global stocktake under Article 14.

6. The purpose of the framework for transparency of support is to provide clarity on support provided and received by relevant individual Parties in the context of climate change actions under Articles 4, 7, 9, 10 and 11, and, to the extent possible, to provide a full overview of aggregate financial support provided, to inform the global stocktake under Article 14.

7. Each Party shall regularly provide the following information:

(a) A national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases, prepared using good practice methodologies accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Agreement; and

(b) Information necessary to track progress made in implementing and achieving its nationally determined contribution under Article 4.

8. Each Party should also provide information related to climate change impacts and adaptation under Article 7, as appropriate.

9. Developed country Parties shall, and other Parties that provide support should, provide information on financial, technology transfer and capacity-building support provided to developing country Parties under Articles 9, 10 and 11.

10. Developing country Parties should provide information on financial, technology transfer and capacity-building support needed and received under Articles 9, 10 and 11.

11. Information submitted by each Party under paragraphs 7 and 9 of this Article shall undergo a technical expert review, in accordance with decision 1/CP.21. For those developing country Parties that need it in the light of their capacities, the review process shall include assistance in identifying capacity-building needs. In addition, each Party shall participate in a facilitative, multilateral consideration of progress with respect to efforts under Article 9, and its respective implementation and achievement of its nationally determined contribution.

12. The technical expert review under this paragraph shall consist of a consideration of the Party's support provided, as relevant, and its implementation and achievement of its nationally determined contribution. The review shall also identify areas of improvement for the Party, and include a review of the consistency of the information with the modalities, procedures and guidelines referred to in paragraph 13 of this Article, taking into account the flexibility accorded to the Party under paragraph 2 of this Article. The review shall pay particular attention to the respective national capabilities and circumstances of developing country Parties.

13. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall, at its first session, building on experience from the arrangements related to transparency under the Convention, and elaborating on the provisions in this Article, adopt common modalities, procedures and guidelines, as appropriate, for the transparency of action and support.

14. Support shall be provided to developing countries for the implementation of this Article.

15. Support shall also be provided for the building of transparency-related capacity of developing country Parties on a continuous basis.

Article 14

1. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall periodically take stock of the implementation of this Agreement to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals (referred to as the "global stocktake"). It shall do so in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science.

2. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall undertake its first global stocktake in 2023 and every five years thereafter unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

3. The outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action.

Article 15

1. A mechanism to facilitate implementation of and promote compliance with the provisions of this Agreement is hereby established.

2. The mechanism referred to in paragraph 1 of this Article shall consist of a committee that shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The committee shall pay particular attention to the respective national capabilities and circumstances of Parties.

3. The committee shall operate under the modalities and procedures adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement at its first session and report annually to the Conference of the Parties serving as the meeting of the Parties to this Agreement.

Article 16

1. The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Agreement.

2. Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Agreement. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement.

3. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Agreement, shall be replaced by an additional member to be elected by and from amongst the Parties to this Agreement.

4. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall keep under regular review the implementation of this Agreement and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Agreement and shall:

(a) Establish such subsidiary bodies as deemed necessary for the implementation of this Agreement; and

(b) Exercise such other functions as may be required for the implementation of this Agreement.

5. The rules of procedure of the Conference of the Parties and the financial procedures applied under the Convention shall be applied *mutatis mutandis* under this Agreement, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

6. The first session of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be convened by the secretariat in conjunction with the first session of the Conference of the Parties that is scheduled after the date of entry into force of this Agreement. Subsequent ordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be held in conjunction with ordinary sessions of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

7. Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Agreement or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.

8. The United Nations and its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented at sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Agreement and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties serving as the meeting of the Parties to this Agreement as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure referred to in paragraph 5 of this Article.

Article 17

1. The secretariat established by Article 8 of the Convention shall serve as the secretariat of this Agreement.

2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and Article 8, paragraph 3, of the Convention, on the arrangements made for the functioning of the secretariat, shall apply *mutatis mutandis* to this Agreement. The secretariat shall, in addition, exercise the functions assigned to it under this Agreement and by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

Article 18

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation established by Articles 9 and 10 of the Convention shall serve, respectively, as the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Agreement. The provisions of the Convention relating to the functioning of these two bodies shall apply *mutatis mutandis* to this Agreement. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Agreement shall be held in conjunction with the meetings of, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention.

2. Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary

bodies serve as the subsidiary bodies of this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement.

3. When the subsidiary bodies established by Articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Agreement, any member of the bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a Party to this Agreement, shall be replaced by an additional member to be elected by and from amongst the Parties to this Agreement.

Article 19

1. Subsidiary bodies or other institutional arrangements established by or under the Convention, other than those referred to in this Agreement, shall serve this Agreement upon a decision of the Conference of the Parties serving as the meeting of the Parties to this Agreement. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall specify the functions to be exercised by such subsidiary bodies or arrangements.

2. The Conference of the Parties serving as the meeting of the Parties to this Agreement may provide further guidance to such subsidiary bodies and institutional arrangements.

Article 20

1. This Agreement shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations that are Parties to the Convention. It shall be open for signature at the United Nations Headquarters in New York from 22 April 2016 to 21 April 2017. Thereafter, this Agreement shall be open for accession from the day following the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organization that becomes a Party to this Agreement without any of its member States being a Party shall be bound by all the obligations under this Agreement. In the case of regional economic integration organizations with one or more member States that are Parties to this Agreement, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Agreement. In such cases, the organization and the member States shall not be entitled to exercise rights under this Agreement concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Agreement. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

Article 21

1. This Agreement shall enter into force on the thirtieth day after the date on which at least 55 Parties to the Convention accounting in total for at least an estimated 55 per cent of the total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval or accession.

2. Solely for the limited purpose of paragraph 1 of this Article, "total global greenhouse gas emissions" means the most up-to-date amount communicated on or before the date of adoption of this Agreement by the Parties to the Convention.

3. For each State or regional economic integration organization that ratifies, accepts or approves this Agreement or accedes thereto after the conditions set out in paragraph 1 of this Article for entry into force have been fulfilled, this Agreement shall enter into force on the thirtieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

4. For the purposes of paragraph 1 of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by its member States.

Article 22

The provisions of Article 15 of the Convention on the adoption of amendments to the Convention shall apply *mutatis mutandis* to this Agreement.

Article 23

1. The provisions of Article 16 of the Convention on the adoption and amendment of annexes to the Convention shall apply *mutatis mutandis* to this Agreement.

2. Annexes to this Agreement shall form an integral part thereof and, unless otherwise expressly provided for, a reference to this Agreement constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.

Article 24

The provisions of Article 14 of the Convention on settlement of disputes shall apply *mutatis mutandis* to this Agreement.

Article 25

1. Each Party shall have one vote, except as provided for in paragraph 2 of this Article.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to this Agreement. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 26

The Secretary-General of the United Nations shall be the Depositary of this Agreement.

Article 27

No reservations may be made to this Agreement.

Article 28

1. At any time after three years from the date on which this Agreement has entered into force for a Party, that Party may withdraw from this Agreement by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Agreement.

Article 29

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

DONE at Paris this twelfth day of December two thousand and fifteen.

IN WITNESS WHEREOF, the undersigned, being duly authorized to that effect, have signed this Agreement.