

INTERNATIONAL COURT OF JUSTICE

**WRITTEN STATEMENT OF THE ISLAMIC REPUBLIC OF IRAN IN
ADVISORY PROCEEDINGS CONCERNING OBLIGATIONS OF STATES
IN RESPECT OF CLIMATE CHANGE**

Filed with the Registry

22 March 2024

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I. Introduction

1. This written statement is filed pursuant to the Order of 20 April 2023 issued by the International Court of Justice (hereinafter ICJ) and subsequent orders concerning the request for an advisory opinion made by the General Assembly of the United Nations in its resolution A/Res/77/776 of 29 March 2023. The question submitted is as follows:

“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 or 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?”

2. Adverse effects of extreme climate change can seriously hinder the sustainable development of all nations worldwide. The Islamic Republic of Iran, like other developing countries, has not been spared from the toll climate change has taken on the world. As such, it attaches great importance to combatting severe climate change and its environmental ramifications.

3. The nature, scope and consequences of the challenge have a direct linkage with the nature, scope and level of the commitments and undertakings by States. This is based on the well-established and long-standing recognition of the differentiation between developed and developing countries in terms of their specific needs, national circumstances, and different levels of capacities to undertake measures on mitigation, adaptation, technology transfer and development, financing and capacity building.

4. The Islamic Republic of Iran considers efforts to combat the adverse effects of climate change to be of utmost importance and fully understands the relevance of international cooperation to respond thereto. We also attach great significance to the ICJ as the principal judicial organ of the United Nations and note that the Court has had a significant role in terms of international environmental law.

5. The above encouraged Iran to cast a positive vote to resolution A/Res/77/776 to request the ICJ to render an advisory opinion on the question submitted by the General Assembly. This is notwithstanding the fact that, as reiterated by the Islamic Republic of Iran in explaining its vote, “the final text [of the Resolution] does not incorporate [Iran]’s suggestion to explicitly request the Court to identify and consider situations and circumstances that also preclude States’ required actions”¹, and that “[the Resolution] also unduly focuses on one assumed cause of climate change ... [while] it is necessary to ask comprehensive questions and for the Court to consider the matter holistically and comprehensively”². We consider that the

¹ A/Res/77/776, 64th plenary meeting, Wednesday, 29 March 2023

² *Ibid.*

request submitted to the Court concerns a highly complex issue, many aspects of which are not addressed by the question.

6. As such, without prejudice to the long-standing position of the Islamic Republic of Iran to *protect the climate system, and other parts of the environment, against the anthropogenic emissions of GHGs*, Iran considers a clearer and comprehensive question could better grasp the crux of the matter as related to the climate change.

7. The present statement consists of a section discussing the jurisdiction of the Court (Part II), followed by a substantive response to the question as submitted to the Court (Parts III _ VI).

II. Jurisdiction

8. First and foremost, the Court's jurisdiction to render an advisory opinion requested by the General Assembly needs to be assessed based on objective criteria and the precedent of the Court.

9. To that end, in the following sub-sections, questions are raised with regard to the existence of compelling reasons for the Court not to render the advisory opinion requested in the current format of the question (A), and certain recommendations concerning reformulation of the question by the Court (B).

A. There are compelling reasons for the Court not to render the advisory opinion requested

10. The question formulated in the current format invites the readers' scrutiny as whether there are compelling reasons for the Court not to render the advisory opinion requested.

11. The Court has recalled that it has the discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met.³ The Court has also indicated that its consistent jurisprudence is that "only 'compelling reasons' may

³ See e.g. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, (hereinafter Wall Advisory Opinion), I.C.J. Reports 2004, p.156, para.144; and Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, (hereinafter Kosovo Advisory Opinion), I.C.J. Reports 2010 (II), pp. 415-416, para. 29.

lead the Court to refuse its opinion in response to a request falling within its jurisdiction”.⁴

12. The Court has further recalled that it may decide not to render the advisory opinion requested “to protect the integrity of the Court’s judicial functions as the principal judicial organ of the United Nations”⁵.

13. In its advisory opinion in the Western Sahara case, the Court established its power to give an advisory opinion for the question raised by an authorized organ based on Article 65, paragraph 1, of its statute and clearly declared that:

“Article 65, paragraph 1, of the Statute, which establishes the power of the Court to give an advisory opinion, is permissive and, under it, that power is of a discretionary character. In exercising this discretion, the International Court of Justice, like the Permanent Court of International Justice, has always been guided by the principle that, as a judicial body, it is bound to remain faithful to the requirements of its judicial character even in giving advisory opinions. [...] As this Court has said in previous Opinions, the permissive character of Article 65, paragraph 1, gives it the power to examine whether the circumstances of the case are of such a character as should lead it to decline to answer the request.”⁶

14. The question submitted to the Court in the present case is using certain terms that render it *not precise enough* (part *i*), while inviting the Court to enter *lex ferenda* (part *ii*). These are discussed below.

(i) The question is not “precise enough”

15. The Court has expressly stated that “the question [put to it for advisory opinion] must be precise enough to enable the Court to give a meaningful opinion, which will contribute to the elucidation of the legal issues involved”⁷, further explaining that “the question put to the Court must be a legal question and must be clear and specific enough to allow the Court to provide a useful and relevant opinion.”⁸

⁴ Wall Advisory Opinion, *Ibid.*, p. 156, para. 44; Kosovo Advisory Opinion, p. 416, para. 30.

⁵ Wall Advisory Opinion, *Ibid.*, pp. 156-157, paras. 44-45; Kosovo Advisory Opinion, *Ibid.*, pp. 415-416, para. 29.

⁶ Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 13, para. 23.

⁷ Wall Advisory Opinion, *Ibid.*, para. 42.

⁸ Wall Advisory Opinion, *Ibid.*

16. The Court has also considered it well established in its case law that “the question put to it for an advisory opinion must be a legal question and must be precise enough to enable the Court to give a meaningful opinion”.⁹

17. The formulation of the question addressed to the Court has mystified its contours hindering its clarity and precision. While its chapeau invites “particular regard to” certain international instruments (i.e. 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, and the United Nations Convention on the Law of the Sea), reference to “obligations of States under international law” in paragraph (a) has obscured the crux of the question.

18. Does the question disregard those States that are not party to the abovementioned instruments? For instance, while 165 United Nations member States are party to the United Nations Convention on the Law of the Sea [hereinafter UNCLOS],¹⁰ some United Nations Member States are not legally bound by the treaty and they have different obligations under international law. The same could be stated with regard to the International Convention on Economic, Social and Cultural Rights [hereinafter ICESCR], the International Covenant on Economic, Social and Cultural Rights [ICESCR] and, more relevantly, the Paris Agreement.

19. Be that as it may, does the question include *all* States regardless of the specific instruments? If that is the case, it is not clear what the function of reference to the instruments is.

20. Rendering the ambiguity all the more inscrutable, the term “ensure the protection of [...]” raises the question whether the obligations involved concern those of treaty or customary nature. Specifically, the term as employed does not appear in the instruments referred to in the chapeau. It could hardly be argued that the assertion is premised upon custom, unless it is inferred that it is aimed at *lex ferenda*.

⁹ "Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo," Advisory Opinion of 22 July 2010, para. 40.

¹⁰ Convention on the United Nations Law of the Sea, opened for signature on 10 December 1982 at Montego Bay. See: https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter= 21&Temp =mt dsg3&clang= en 8 March 2024.

(ii) *The question invites the Court to enter lex ferenda*

21. Read strictly within the context created by the chapeau, obligations of States to “ensure the protection of the climate system [...]” in light of their treaty obligations under the treaties seems far from established.

22. Therefore, since the obligation *to ensure* the protection of the climate system and other parts of the environment is not solidly rooted in the cited instruments, the Court would be obliged to enter *lex ferenda* which departs from its functions and precedent.

23. Climate change is based on common but differentiated responsibilities and respective capabilities and international cooperation. As such, even considering the extra-contractual references in the chapeau (*i.e.* the duty of due diligence, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment), an obligation to *ensure the protection* seems far from established, particularly due to its vagueness and unfeasibility with respect to climate change.

24. Taking into account the above, it seems that the Court has compelling reasons not to render the advisory opinion requested; otherwise, it may alternatively opt to reformulate the question to make it more precise and clear in terms of treaty frameworks, thus confining its opinion to *lex lata* on the subject-matter of the request, *i. e.* obligations of States in relation to climate change.

B. The Court may consider reformulating the question

25. As per its dictum, the Court has the authority to depart from the language of the question put to it “where the question is not adequately formulated”¹¹ or does not reflect the “legal questions really in issue”.¹² Similarly, where the question asked is ambiguous or vague, the Court may clarify it before giving its opinion.¹³ It has also

¹¹ Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV), Advisory Opinion, 1928, P.C.I.J., Series B, No. 16.

¹² Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980, p. 89, para. 35.

¹³ Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982, p. 348, para. 46.

been established that the Court may reformulate the questions referred to it for an advisory opinion to ensure that it gives a reply “based on law”.¹⁴

26. In the previous section, it was highlighted that the question, in its current format, does not precisely delineate its own contours; while the focus, as per paragraph (a), seems to be on States’ obligations with respect to “the protection of the climate system and other parts of the environment from the anthropogenic emission of GHGs”, reference to numerous treaties in the chapeau raises the question whether the Court is requested to address the obligations of States party to each of the treaties mentioned, or it is requested to opine on the obligations of States regardless of the sources of the same.

27. The phrase “ensure the protection” similarly adds to the ambiguity since it is not clear whether it is based on the cited instruments or more generally on custom. The phrase “obligations of States to ensure the protection” in light of the chapeau is therefore not precise and clear enough and should be clarified by the Court.

28. In our interpretation, since combating the adverse effects of climate change is primarily based on differentiated responsibilities and international cooperation by States, the question may be improved by confining it to treaty obligations and commitments States have undertaken in order to address the impacts of climate change, which includes mitigation, reduction as well as adaptation.

29. The reformulation of the question in order to make it clearer, more precise and sans ambiguity seems vital particularly since the second sub-question on the legal consequences under the obligations addressed in paragraph (a) depends on the latter.

30. Despite the above queries concerning the question put to the Court to render the advisory opinion, the interpretation of the Islamic Republic of Iran is that the question focuses on the obligations of States based on their commitments undertaken in the treaties they are party to. This written statement will therefore elaborate the core principles of international law recognized in climate change regime as well as the main obligations based thereupon, before approaching the second sub-question concerning legal consequences under the same.

¹⁴ Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 18, para. 15. See also I.C. J. Advisory Opinion of 25 February 2019 on “Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965”, 25 February 2019, para. 135.

III. Core principles of international law concerning climate change

31. Reference to “under international law” in paragraph (a) of the General Assembly's question makes it inevitable to address certain core principles of the climate change regime that underlie all respective obligations of States. Considering, in particular, the 1992 UNFCCC, the 1997 Kyoto Protocol, the 2015 Paris Agreement, the decisions of the Conference of Parties’ (hereinafter COP) and other relevant instruments, certain pivotal principles have been developed that underpin States’ obligations and commitments in the field.

32. These include the principle of “common but differentiated responsibilities and respective capabilities”, the principle of “equity” and “international cooperation”. These three principles underlie States’ obligations and commitments in the climate change regime and should, therefore, underpin any attempts to interpret them in light of the instruments mentioned above. The three are discussed below.

A. Principle of common but differentiated responsibilities and respective capabilities

33. Considering the greater share of developed countries in the accumulation of GHGs in the last century, and their different financial and technological capacities and capabilities, the regime of climate change has placed them at the forefront of countering the effects of climate change. This was done through the application of the principle of “common but differentiated responsibilities and respective capabilities” (hereinafter CBDR-RC). This principle guides States in implementation of their climate obligations by differentiating between the responsibilities of developed and developing countries. Accordingly, differentiated standards with regard to the type, stringency and effectiveness of climate mitigation measures have to be applied to different States based on their level of economic development and historic emission levels.

34. As such, the CBDR-RC principle is considered the bedrock of most multilateral environmental agreements and in its current form can be traced back to the 1992 Rio Declaration on Environment and Development, Principle 7 of the Rio Declaration states the following:

“[...] In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities.

The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command. .”

35. Article 3 of the United Nations Framework Convention on Climate Change (hereinafter UNFCCC) clearly determines the CBDR-RC as the guiding principle in achieving the objective of the Convention. The Article sets forth that “[i]n their actions to achieve the objective of the Convention and to implement its provisions, the parties shall be guided, inter alia, by [...] equity and in accordance with their common but differentiated responsibilities and respective capabilities”. The provision also underlines the leading role of the developed countries which is again based on CBDR-RC (paragraph 1).

36. The above clearly demonstrates the predominance and priority of the CBDR-RC over other obligations contained in the Convention. Consequently, different obligations are illustrated for developed and developing countries in protecting the climate system, and this distinction is followed in the Kyoto Protocol and the Paris Agreement as well.

37. The UNFCCC and the Kyoto Protocol have mainly obliged the developed countries to reduce GHGs emissions, and in the Paris Agreement, despite the obligation of all States to mitigate the impacts of climate change, the developing countries “are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances”¹⁵.

38. As a corollary of the CBDR-RC, the developed countries are under an absolute obligation to reduce GHGs emissions (Article 4(4) of Paris Agreement) alongside with the obligation to mitigate climate change, while the developing countries have been, in addition to mitigation efforts, *encouraged* to move over time towards economy-wide emission reduction or limitation targets taking into account their *national circumstances*, and in line with the principle of CBDR-RC.

39. As per Article 3(2) of UNFCCC, *specific needs* and *conditions* of developing countries, especially those that are particularly vulnerable to the adverse effects of climate change, should also be taken into account. Moreover, the same provision requires that the *right to sustainable development* of developing countries should be

¹⁵ Paris Agreement, Art. 4(4).

promoted and that “policies and measures to protect the climate system against human-induced change should be appropriate for the *specific conditions of each Party* [emphasis added] and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change”.¹⁶ These clearly emanate from the CBDR-RC.

40. This principle should be read in the light of preambular paragraph in the Convention according to which “[The] 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* [emphasis added] account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty”¹⁷ and “[r]ecognizing that all countries, especially developing countries, need *access to resources* [emphasis added] required to achieve sustainable, social and economic development”.¹⁸

41. To conclude, the concept of CBDR-RC works as an overarching principle that governs any interpretation of obligations related to the protection of the climate system and other parts of the environment from the anthropogenic emission of GHGs.

42. Thus, since the principle is virtually omnipresent in all instruments related to climate change to subsequent instruments, it is requested that any recognition of obligations by the Court should be conditioned upon the principle of CBDR-RC. There are three main corollaries to the principle: (i) financial support, (ii) transfer of technology and (iii) capacity building.

(i) Financial support

43. The CBDR-RC is based on the fact that different countries have different capacities to combat the adverse effects of climate change and as such their responsibilities are differentiated as well; developing countries will not be able to participate effectively in international arrangements for environmental protection, including climate change, without receiving financial support. Based upon this

¹⁶ UNFCCC, Art. 3(4).

¹⁷ *Ibid.*, Preamble, para, 22.

¹⁸ *Ibid.*, Preamble, para, 23,

premise, Principle 12 of the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment states that:

“Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries and any costs which may emanate from their incorporating environmental safeguards into their development planning and the need for making available to them, upon their request, additional international technical and financial assistance for this purpose”.¹⁹

44. As such, providing financial support for developing country Parties of international environmental instruments is extremely critical for meeting their obligations. Such support is inevitable in climate change regime for three reasons: first, as recognized in the Preamble of the UNFCCC, the developed countries have a historical role in global emissions of GHGs.²⁰ Second, the developing countries are vulnerable to the adverse effects of climate change and implementation of mitigation efforts; and third, the majority of the developing countries have no access to required financial resources for mitigation and adaptation efforts.

45. Meanwhile, any effort to address the adverse effects of climate change will be in vain unless proper funding mechanisms are in place and the obligations of the developed countries aimed at supporting mitigation and adaptation actions by developing and vulnerable countries are met in due time. For this very reason, the UNFCCC has committed developed country Parties to provide financial resources to meet the agreed full cost incurred by developing country Parties in complying with their obligations under the Convention and the obligations related to adaptation measures of these countries. In this regard, Article 4(3) of the UNFCCC stipulates that:

“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”.

¹⁹ U.N. General Assembly Resolutions 2994/XXVII, 2995/XXII and 2996/XXII of 15 December 1972.

²⁰ UNFCCC, *op. cit.*, Preamble, para. 3.

46. In addition, Article 4(4) of the same instrument sets forth the obligation of developed country Parties to assist the developing country Parties in meeting costs of adaptation measures as follows:

“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 effects”.

47. The robust wording of the above provisions demonstrates the absolute obligation of developed countries to fund developing countries in meeting costs of their implementation of obligations under the UNFCCC. Further, the importance of implementation of obligation is such that Article 4(7) has conditioned the effective implementation of their commitments under the Convention upon effective implementation, by developed countries, of their commitments concerning financial resources and transfer of technology.²¹

48. Likewise, as reflected in Article 9(1) of the Paris Agreement:

“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.”

49. In other words, it can be concluded that financial support for developed States is not a permissive voluntary act; rather, it is an explicit legal obligation on the part of developed countries that could make possible implementation of mitigation and adaptation measures by developing countries. As leadership in climate change efforts is clearly entrusted to the developed Parties, *a fortiori*, developed countries should continue to take the lead in mobilizing climate finance from a wide variety of sources²² and support, including financial support, should be provided to developing country Parties for the implementation of the Agreement.²³

50. Article 11(2) (a) of the Kyoto Protocol, has further reiterated the obligation of developed countries to provide new and additional financial resources to meet the

²¹ UNFCCC, Art. 4 (7): “[T]he 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 [...]”.

²² See Paris Agreement, Article 9, para. 3.

²³ See *Ibid.*, Article 10, para 6.

agreed full costs incurred by developing country Parties in advancing their commitments. It is further stressed that 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.²⁴ This clearly highlights how pivotal it is, for implementation of climate change obligations, to have the obligation to provide financial resources by the developed countries fully realized.

51. Moreover, the Kyoto Protocol emphasizes the funding provisions of the implementation in its Article 10 which is in line with the implementation of Article 4(3),(5), and (7) of UNFCCC. According to 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

²⁴ Article 11 of the Kyoto Protocol: “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 meet 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 advancing 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.

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.

52. While estimations suggest that billions of dollars are needed to support developing countries to achieve climate change goals, the report of the COP on its twenty-seventh session indicated that mobilizing 100 billion dollars per year committed by developing countries in COP15 and COP16 would not be met and will expire in 2025.²⁵ Therefore, serious concern has been expressed and developed country Parties have been urged to meet the goal.²⁶

(ii) Transfer of technology

53. Despite the historical role of developed countries in today's environmental challenges, including the accumulation of GHGS and global warming, the participation of all States, including developing countries, in protecting and rehabilitation of environment is necessary. By the same token, combating the adverse effects of climate change is impossible without access to technology. However, the capacities of developing countries for such participation are limited; The international community has also confirmed the importance of access to technology for climate change measures; it is emphasized by the Stockholm Declaration that:

“[...] environmental technologies should be made available to developing countries on terms which would encourage their wide

²⁵ For more info see: <<https://unctad.org/news/climate-finance-goal-works-developing-countries>.> 8 March 2024.

²⁶ Report of the Conference of the Parties on its twenty-seventh session, held in Sharm el-Sheikh from 6 to 20 November 2022, FCCC/CP/2022/10/Add.1, para 34. Also see Standing Committee on Finance. 2022, Report on progress towards achieving the goal of mobilizing jointly USD 100 billion per year to address the needs of developing countries in the context of meaningful mitigation actions and transparency on implementation. Bonn: UNFCCC Available at <<https://unfccc.int/process-and-meetings/bodies/constituted-bodies/standing-committee-on-finance-scf/progress-report>.> 8 March 2024.

dissemination without constituting an economic burden on the developing countries”.²⁷

54. Also, the Rio Declaration on Environment and Development Declaration, while referring to the common but differentiated responsibility of states²⁸, stresses on the transfer of technology obligation as follows:

“States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.”²⁹

55. The IPCC has, for its part, found that without technology transfer it may be difficult to achieve emission reduction at a significant scale.³⁰

56. Moreover, the UNFCCC points out the need to regard technical considerations in addressing climate change:

“Recognizing that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas”.³¹

57. In addition, Paris Agreement, in its preamble, takes full account of the special needs and special situations of the least developed countries with regard to funding

²⁷ Stockholm Declaration on Human Environment, 1972, Principle 20.

²⁸ Rio Declaration on Environment and Development, 1992, Principle 7: “States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.”

²⁹ *Ibid.*, Principle 9.

³⁰ IPCC, Climate Change 2007; Synthesis Report. Contribution of Working Group I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, Pachauri, R.K. and Reisinger, A. (eds.)]. IPCC, Geneva, Switzerland, 2007, p. 20.

³¹ UNFCCC, Preamble, para 16.

and transfer of technology.³² Its Article 10(2) also considers the importance of technology for implementation of mitigation and adaptation actions.³³

58. Facilitation of technology transfer has been provided by the UNFCCC. Article 4(1)(c) of this Convention stipulates that:

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

(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”.

59. In particular, States listed in Annex II of the UNFCCC are required to take practicable steps to promote, facilitate and finance, as appropriate, the transfer of and access to, environmentally sound technologies and knowhow to other Parties particularly developing country Parties.³⁴ Moreover, Article 4(7) provides the following:

The extent to which developing country Parties will effectively implement their commitments under the Convention will *depend* [emphasis added] on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology [...].

60. In paragraph 8 of the same Article, the Parties are required to “give *full* [emphasis added] consideration to what actions are necessary under the Convention, including actions related to [...] 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 [...] (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”.

³² Paris Agreement, Preamble, para. 6.

³³ *Ibid.*, Art. 10 (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.”

³⁴ UNFCCC, Article 4(5).

61. In the same line, Article 10(1) of the Paris Agreement stipulates that:

“Parties share a long-term vision on the importance of *fully* [emphasis added] realizing technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions”.

62. Further, Article 10(2) specifically obligates States Parties to improve cooperative measures on technology development and transfer while emphasizing the importance of mitigation and adaptation measures:

“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”.

63. The Montreal Protocol on Substances that Deplete the Ozone Layer (hereinafter *the Montreal Protocol*) makes the implementation of obligations of developing States Parties dependent upon receiving necessary technologies. Article 10(A) of the Montreal Protocol is dedicated to the transfer of technology and stipulates as follows:

“Each Party shall take every practicable step, consistent with the programmes supported by the financial mechanism, to *ensure* [emphasis added]:

(a) that the best available, environmentally safe substitutes and related technologies are *expeditiously* [emphasis added] transferred to Parties operating under paragraph 1 of Article 5; and

(b) that the transfers referred to in subparagraph (a) occur under fair and most favourable conditions.”

64. The importance of referring to the provisions of the global regime for the protection of the ozone layer in this area is that the provisions of these two legal regimes have overlapped explicitly in 2016 Kigali Amendment to Montreal Protocol. By reducing the production and consumption of hydrofluorocarbons (HFCs), the Kigali Amendment is aimed at preventing the increase in global

temperature by half a degree until the end of this century, and thus contributes to the realization of the Paris Agreement objectives.³⁵

65. In sum, the Islamic Republic of Iran believes that the developed countries that are Parties to the climate change regime are bound to transfer the necessary technologies to developing countries for their participation in climate mitigation and adaptation efforts. This obligation can have both positive and negative aspects, i.e. duties of commission and duties of omission. The positive obligation was well mentioned in the above-addressed instruments in previous paragraphs. In fact, the developed country Parties to the treaties on climate change are bound to transfer the necessary technologies to developing countries; meanwhile, they are, *a fortiori*, bound to refrain from creating an obstacle to transfer of technology to developing countries. It follows that all kinds of coercive measures like unilateral and secondary economic sanctions are negatively and positively, contrary to the explicit legal obligation of developed States Parties on transfer of technology.

66. Economic sanctions adversely affect the full and effective implementation of the global regime of climate change in a number of ways. Economic sanctions not only reduce the participation of targeted countries in the global climate change regime and undermine their capacity for compliance with emission commitments, but also lead targeted countries to unsustainable survivalist policy. Unilateral secondary sanctions are illegal and their introduction and application must therefore come to an end. It is of crucial importance due particularly to their adverse effects on the environmental protection actions of targeted States including compliance with their climate commitments.³⁶

67. In light of the aforementioned, effective measures to combat the adverse effects of climate change and protection of the environment at large depends on compliance with the obligation to transfer technology to developing countries; as a corollary of the CBDR-RC, this is enshrined in other environmental agreements as well.³⁷ Hence,

³⁵ “United Nations Environment Programme, Report of the Twenty-Eighth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer”, Kigali, 2016 (UNEP/OzL.Pro.28/12), Statements by Representative (s) of the Government of Rwanda, paras. 5-7. Available at: < [https:// ozone. unep. org/ sites/ default/ files/2019-08/MOP-28-12E.pdf](https://ozone.unep.org/sites/default/files/2019-08/MOP-28-12E.pdf) >. 8 March 2024.

³⁶ Mohsen Abdollahi, “Economic Sanctions and the Effectiveness of the Global Climate Change Regime: Lessons from Iran”, in: Danilola S. Olawuyi (ed), Climate Change Law and Policy in the Middle East and North Africa Region, Routledge, 2022, p. 130.

³⁷ See e.g. Article 20 (4) of the 1992 Convention on Biological Diversity which refers to “fulfilment of [their] pledges concerning financial aid and technology transfer”; this obligation is repeated in other multilateral environmental agreements such as Minamata Convention, 2013: Arts 13.4, 14.3; Stockholm Convention, 2001: art 13.4; Montreal Protocol (1987), Protocol on Substances that Deplete the Ozone Layer, Montreal, 16 September 1987, UNTS 1522, 3.

any obstacle to such transfer of technology would be inconsistent with obligations of developed countries undertaken under the treaty framework of climate change regime.

(iii) Capacity building

68. The CBDR-RC principle acknowledges the disproportionate impacts of climate change on vulnerable nations and their limited capacity to address the adverse effects of climate change. Capacity building is a critical corollary of this principle which underpins the main obligations of States with respect to climate change.

69. Capacity building encompasses a wide range of activities that foster human, institutional, and infrastructural development, with its key areas being human resources, institutional frameworks and technology transfer.

70. The UNFCCC, Kyoto Protocol, and Paris Agreement emphasize the significance of capacity building and recognize the responsibility of developed countries in supporting developing countries. Article 6 of the UNFCCC highlights the importance of education, training, and public awareness in addressing climate change. The Kyoto Protocol established the Capacity Building Initiative for Transparency (CBIT) to assist developing countries in meeting their reporting requirements, and Article 11 of the Paris Agreement reaffirms capacity building as a critical component of climate action and establishes a framework to enhance the transparency of action and support.

71. The inclusion of capacity building in the main climate change instruments indicates its significance in climate change efforts. It encompasses the obligation of developed countries to provide capacity building in developing States through financial support, technology transfer and technical assistance. It is therefore the backbone of the CBDR-RC.

72. Provision of adequate and predictable financial resources to assist developing countries in implementing their climate strategies,³⁸ facilitating access to environmentally sound technologies and know-how, provision of expertise and

³⁸ Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change; available at: <<https://www.ipcc.ch/report/ar5/syr/>> 8 March 2024.

technical assistance to support institutional development and policy formulation in developing countries are all part and parcel of capacity building.³⁹

73. Without capacity building, developing countries would be practically precluded from meeting their goals and objectives in terms of climate change efforts. Nonetheless, politicization of capacity building continues to hamper climate change efforts, especially those of developing countries.

74. What makes this politicization more challenging is imposition of Unilateral Coercive Measures (hereinafter UCM) which hamper transfer of finance, technology and technical assistance to certain countries including the Islamic Republic of Iran. This undermines the principle of CBDR-RC and hinders contributions of countries to climate change efforts.

75. Thus, the Court is requested to call for an end to such illegal restrictions and opine that the CBDR-RC obliges developed countries to refrain from imposing UCM on transfer of funds, technology and technical support so as to assist States in the protection of the climate system and other parts of the environment against the

B. Principle of equity

76. As stated in the chapeau of Article 3 of the UNFCCC, the principle of equity is one of the principles within climate change regime. Developing countries have played a lesser role in causing climate change and have limited capabilities, both economically and in terms of resources, to respond to the challenge. Additionally, they bear the brunt of the adverse impacts of climate change. Droughts, sand and dust storms, land subsidence, and other crises are among the challenges faced by these countries. Therefore, it is essential to treat developing countries in accordance with the principle of equity.

³⁹ See Surbhi Sarang and Ranjani Prabhakar, Capacity-Building for Successful Climate Justice Collaborations, 5 September 2023; at: <https://direct.mit.edu/crcj/article/doi/10.1162/crcj_a_00008/117385/Capacity-Building-for-Successful-Climate-Justice> 8 March 2024.

77. In fact, it can be said that the principle of CBDR-RC is the external manifestation of the principle of equity in international climate change instruments. As reflected in Article 2(2) of the Paris Agreement:

“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.”

78. The concept of CBDR-RC in international environmental law requires a global partnership, linked to the duty to cooperate, in which States are to take on different obligations based on their national circumstances and historical contribution to environmental degradation, mutual contribution to the problem and their access to technological and financial resources.

79. The basis of such differentiation in the application of the concept has two components; firstly, it consists of a *responsibility component* which takes account of historical, current, and future contributions to environmental degradation referred to as the CBDR-RC principle, and secondly, a *capabilities component*, which reflects economic and technical and technological capacities to contribute to environmental protection which is recognized as the equity principle. According to the equity principle the State or entity causing the environmental damage should bear its costs.

80. This is why the developed countries bear a responsibility for leading the climate change regime, as per Article 3(1) of the UNFCCC. According to the said provision:

“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.”

81. Leadership of developed countries can be considered as a corollary of the principle of equity and requires that these countries take the lead in public actions to achieve the climate change goals. This role is explicitly underlined by Article 4(2)(a) of the UNFCCC:

“ [...] Each of these Parties shall adopt national 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 the objective of the Convention [...]"

82. In the same vein, sustainable lifestyles and patterns of consumption and production as recognized by the Paris Agreement are attributed to developed Parties who are required to take the lead in addressing climate change.⁴⁰ This is further highlighted by Article 4 (4) which requires the following:

“...Developed country Parties should *continue taking the lead* by undertaking economy-wide absolute emission reduction targets.”⁴¹
(emphasis added)

83. Hence, as part of a global effort, developed country Parties should continue to take the lead because of their role in climate change crisis⁴², which is a corollary of the principle of equity recognized as the bedrock of States’ obligations in the climate change regime. Consequently, the Court is requested to consider the leading role of developed countries in efforts to address the adverse impacts of climate change.

C. International cooperation

84. While reinforcing the principles of CBDR-RC and equity, the UNFCCC and its Kyoto Protocol and Paris Agreement underpin the need for international cooperation to achieve climate goals.

85. International cooperation has emerged as an essential principle underlying other commitments and obligations undertaken by States in their climate change efforts. Developing nations face numerous challenges in addressing climate change, including limited resources, inadequate infrastructure, and vulnerability to climate impacts. While developed nations' obligation to provide financial support and technical assistance for capacity building helps bridge this gap,⁴³ international

⁴⁰ The preamble of the Paris Agreement: “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”. (emphasis added)

⁴¹ *Ibid.*, Article 4, para 4.

⁴² *Ibid.*, Article 9, para 3.

⁴³ See Paavola, J., & Adger, W. N., “Fair adaptation to climate change”, *Ecological Economics*, 2006, 56(4), pp. 594–609.

cooperation facilitates knowledge sharing, technology transfer, and the development of sustainable practices to enhance climate resilience.⁴⁴

86. The global challenge of climate change necessitates a collaborative approach that transcends national boundaries. The UNFCCC and its Kyoto Protocol and Paris Agreement underscore the importance of international cooperation in addressing climate change. Effective cooperation and multilateral efforts are essential for a sustainable and resilient future.

87. Besides the fact that climate change commitments are generally based on international cooperation, certain provisions of the UNFCCC and its Kyoto Protocol and Paris Agreement operate specifically through cooperation. While the necessity of respect for international cooperation as a principle is addressed in the following paragraphs, it is submitted that the Court should address any measures that hamper cooperation of States, e.g. UCM via unilateral and secondary sanctions which are imposed against third parties.

(i) The UNFCCC

88. International cooperation runs through the provisions of the UNFCCC, giving meaning to the CBDR-RC and capacity building. Article 3 (5) of the UNFCCC requires the Parties to “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”. Cooperation is of such importance that the provision further attributes unjustifiable discrimination to lack of cooperation by stipulating that “[M]easures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination”.

89. Article 4 of the UNFCCC, too, depends to a large extent on international cooperation. Article 4 (1) (c) obliges the Parties to “[...] 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,

⁴⁴ See Stern, N., *The Economics of Climate Change: The Stern Review*, Cambridge, Cambridge University Press, 2006, pp. 354-355.

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

90. While paragraph (d) further binds the Parties to cooperate with respect to sinks and reservoirs, paragraph (e) prescribes cooperation for “adaptation to the impacts of climate change”. Also, paragraph (g) binds Parties to “[...] 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”.

91. Paragraph (h) further obliges Parties to “[...] 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”. And finally, Paragraph (i) of the same provision underlines the obligation to “[...] 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”.

92. Article 5 (c) also obliges the Parties to “[T]ake into account the particular concerns and needs of developing countries and cooperate in improving their endogenous capacities and capabilities [...]”.

93. Article 6 (b), for its part, requires the parties to “Cooperate in [...]: (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”.

94. As seen above, the UNFCCC endorses cooperation in implementing diverse aspects of the CBDR-RC including transfer of technology and capacity building. Any efforts in hampering cooperation especially by third parties is against the said principle and numerous provisions of the Convention.

(ii) *Kyoto Protocol*

95. The Kyoto Protocol, too, has cooperation as its underlying principle. Its Article 2 (1) (b) binds Parties to “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”. Article 10 (c) sets forth a detailed provision on the need to cooperation in terms of technology transfer. According to the same:

“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;”

96. International cooperation is likewise prescribed for scientific and technical research in paragraph (d) of the same Article:

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 and intergovernmental efforts, programmes and networks on research and systematic observation, taking into account Article 5 of the Convention;

97. The drafters of the Convention have also considered international cooperation to be crucial in capacity building, which is reflected in paragraph (e) of the same Article:

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;

98. From the above cited provisions, it is evident that cooperation appears to underpin implementation of the obligations under the Kyoto Protocol. This cooperation covers transfer of technology, capacity building and research, among others. It goes without saying that impediment of any of the above provisions, or any efforts in hampering effective cooperation by State Parties, run counter to the CBDR-RC and the obligations undertaken by States Parties, and in particular, the developed countries.

(iii) Paris Agreement

99. The Paris Agreement, for its part, depends on cooperation in many respects. Its Article 6 stipulates that “Parties recognize that some Parties choose to pursue voluntary cooperation in the implementation of their nationally determined contributions [...]”.

100. Article 7 (6) further underlines that “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”. Article 7 (7) also binds Parties to “strengthen their cooperation on enhancing action on adaptation [...]”.

101. Article 8 (4) of the Agreement specifies the areas of “cooperation and facilitation to enhance understanding, action and support” further demonstrating that detailed technical efforts also depend upon effective cooperation.⁴⁵

⁴⁵ Under this provision, these areas 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

102. Article 10 (2) obligates the Parties to “strengthen cooperative action on technology development and transfer”. The same is reiterated in similar terms in Article 10 (6). The provisions highlight the significance of technology transfer as an important corollary of CRDR-RC.

103. Article 11 (3) of the Paris Agreement, too, obliges all the Parties to “cooperate to enhance the capacity of developing country Parties to implement this Agreement”. Its Article 12 also states that “Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information [...]”.

104. It follows from the above that international cooperation is a pivotal principle in terms of efforts taken at the international level to tackle the adverse impacts of climate change. Effective cooperation not only contributes to enforcement of CBDR-RC, but it also leads to efficient implementation of other obligations at the core of the combat against the adverse effects of climate change. Therefore, in weighing any other international obligations or commitments, due regard must be given to respect for international cooperation. In this regard, any impediments thereto hampers implementation of undertakings by countries with respect to climate change.

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.

IV. Protection of the climate system in the climate change regime

105. Paragraph (a) of the General Assembly's question makes reference to “the States' obligations under international law to ensure the protection of climate system and other parts of the environment from anthropogenic GHGs emissions”. Reference to “under international law” in the General Assembly's question, with particular regard to the treaties mentioned in the chapeau, is understood to refer to the specific instruments mainly dealing with climate change as well as the relevant rights emanating from international human rights law, mainly the right to sustainable development.

106. The climate change regime began with the adoption of the UNFCCC in 1992 followed by the adoption of the Kyoto Protocol in 1997 and the Paris Agreement in 2015. While the Islamic Republic of Iran is not a party to the latter, the main commitments enshrined in climate change regime are explored here with reference to the three instruments to clarify the scope of the obligations contained therein.

107. The above three instruments, together with the decisions of the COP, have constituted the climate change regime which addresses States' efforts to combat the adverse effects of climate change.

108. According to Article 2 of UNFCCC, the ultimate objective of this convention is the stabilization of anthropogenic GHGs concentrations. The objective of Kyoto Protocol, according to its Article 3, is to reduce carbon dioxide equivalent emissions of the GHGs listed in Annex A to at least 5% below the 1990 level; and the Paris Agreement has, as its objective pursuant to its Article 2(a), to hold the increase in the global average temperature to well below 2° C above pre-industrial levels, and to pursue efforts to limit the temperature increase to 1.5° C above pre-industrial levels.

109. In this regard, distinction is made between “obligation to undertake mitigation efforts” and “obligation to reduce emissions of GHGs”. This distinction is evident in the Paris Agreement. According to Article 4(4) thereof:

“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”.

110. As such, in this section, two parts are dedicated to “obligation to undertake mitigation efforts” and the “obligation to reduce emission of GHGs”, and in the third section “conditionality of mitigation obligations of developing countries” is illustrated. In the end it is submitted that the Court needs to consider the distinction between the obligations of developed and developing countries as well as the conditionality of the obligations of the latter, while emphasizing the both types of obligations are those of conduct rather than result.

A. Obligation to undertake mitigation efforts

111. Mitigation encompasses a broad range of actions and strategies aimed at alleviating the severity of climate change impacts. According to the definition provided by the IPCC:

“Mitigation is the process of reducing emissions or enhancing sinks of greenhouse gases (GHGs), so as to limit future climate change”.⁴⁶

112. Mitigation consists in making the impacts of climate change less severe by preventing or reducing the emission of GHGs into the atmosphere. Mitigation is achieved either by reducing the sources of these gases e.g. by increasing the share of renewable energies, or establishing a cleaner mobility system or by enhancing the storage of these gases e.g. by increasing the size of forests. In short, mitigation is a human intervention that reduces the sources of GHGs emissions and/or enhances the sinks.⁴⁷

113. The duty to mitigate is a general obligation which encompasses reduction, prevention and increasing the storage capacity of sinks. While the climate instruments oblige all State Parties to undertake mitigation efforts, the developed country Parties are expected to limit (UNFCCC, Art. 4(2)(a)) and reduce (Kyoto Protocol, Art. 2(1)) their GHG emissions. Therefore, one may argue that while the obligation of developing countries primarily focuses on mitigation efforts, the obligations of developed countries go further, specifically requiring them to reduce their GHG emissions.

⁴⁶ IPCC, *op. cit.*, p. 76

⁴⁷European Environment Agency, FAQs, “What is the difference between adaptation and mitigation?”, at: <[https://www.eea.europa.eu/help/faq/what-is-the-difference-between#:~:text=In%20essence%2C%20adaptation%20can%20be.\(GHG\)%20into%20the%20atmosphere](https://www.eea.europa.eu/help/faq/what-is-the-difference-between#:~:text=In%20essence%2C%20adaptation%20can%20be.(GHG)%20into%20the%20atmosphere)>, 8 March 2024.

114. According to Article 4(1) of UNFCCC, all States Parties' mitigation obligations, including developing and developed countries, consists in, among others, developing national inventories of anthropogenic emissions, and formulating and implementing national and regional programmes containing measures to mitigate climate change.⁴⁸

115. The Paris Agreement, which has been adopted under the UNFCCC, has repeated the mitigation obligations in Articles 4(1), 5(1) and 5(2). Specifically, according to Article 5(1):

“All 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”.

116. The above provisions from the UNFCCC and the Paris Agreement clearly indicate that mitigation obligations are obligations of *conduct*. Article 4(1) of the UNFCCC demonstrates this aspect of mitigation measures in the following terms:

⁴⁸ The provision includes different aspects of CBDR-RC:

[...] (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; [...]

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

117. Article 4(2) of the Paris Agreement also states the following:

“Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions characteristics”,

118. In the above provision, “shall pursue” underlines the nature of the obligation to take mitigation measures as one of conduct rather than one of result. Therefore, the obligation is focused on the actions and efforts undertaken by States, rather than the outcome or result achieved.

B. Obligation to reduce emissions of GHGs

119. As a framework Convention, the UNFCCC’s ultimate objective is the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”.⁴⁹ To this end, as a general commitment, the Parties to the Convention are committed to “promote and cooperate in the development, application and diffusion, [...] practices and processes that control [...], reduce or prevent anthropogenic emissions of greenhouse gases”.⁵⁰

120. In order to implement the objectives and general obligations of UNFCCC, the Kyoto Protocol was developed as the operational instrument of the UNFCCC. According to this Protocol:

“The [developed] 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 2008 to 2012”.⁵¹

⁴⁹ UNFCCC, Art. 2.

⁵⁰ *Ibid.*, Art. 4 (1) (c)

⁵¹ Kyoto Protocol, Art. 3(1).

121. As can be seen, the Kyoto Protocol considers mitigation obligations for reducing GHGs emissions only for developed countries, including countries that are undergoing the process of transition to a market economy listed in Annex I, and exempts developing countries from this obligation. Although this exemption was, and still is, an appropriate and fair step considering the historical role of developed countries in the emissions of GHGS and the guiding principle of CBDR-RC, the distinction between developing and developed countries with large and emerging economies, which have a significant contribution to GHG emissions, prevented the membership of some major powers and the timely extension of the Protocol. As a result, the Paris Agreement has softened the aforementioned distinction for the purpose of mitigation/reduction efforts.

122. The Paris Agreement has bound all its States Parties with different formulas to participate in the mitigation of GHGs emission by issuing NDC declarations (Article 3). According to this Agreement:

“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”.⁵² (emphasis added)

123. The narrow distinction between the obligations of developed and developing countries is highlighted in this paragraph. Firstly, the developed countries should pursue the economy-wide absolute emission reduction targets while being pioneers. Secondly, the developing countries have committed to continue enhancing their mitigation efforts instead of the absolute emission reduction. As a result, these States have gradually been encouraged to move towards reduction or limitation targets without having a hard obligation to reduce GHGs emissions. This norm has been based on the principle of CBDR-RC. The phrase “different national circumstances” confirms this interpretation.

124. Although developing countries are committed to continue the mitigation efforts under this Article, which was previously proposed in the UNFCCC, the difference between the Paris Agreement and the UNFCCC lies in the fact that the developing countries are committed to quantify their mitigation efforts by NDCs. As a result, it can be concluded that the announcement of developed and developing

⁵² Paris Agreement, Art. 4 (4).

States' commitments in the mitigation and adaptation efforts in NDCs are examples of unilateral declarations. According to International Law Commission's (hereinafter ILC) Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations (2006),⁵³ the binding character of such declarations is based on good faith. According to aforementioned principles, the State issuing a declaration can make the unilateral commitment conditional or limited to certain conditions and circumstances.⁵⁴

125. In addition to the unilateral nature of States' commitments to NDC, these are obligations of conduct. Article 4(2) of Paris Agreement is framed in such a manner that clearly demonstrates this by requiring the parties *to pursue* domestic mitigation measures.

126. As regards the commitments of developing countries, the binding character of NDCs as clear instances of unilateral acts is based on good faith. Therefore, the clear-cut description of such an undertaking as “obligation” depends on the declaration of the issuing State.

C. Conditionality of mitigation obligations of developing countries

127. Apart from the fact that the obligation to reduce emission of GHGs is one of conduct, as far as the mitigation efforts are related to developing countries, their implementation is conditional upon receiving technology and financial assistance from developed countries. In this regard, Article 4(7) of UNFCCC stipulates that:

*“The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties”.*⁵⁵ [emphasis added]

⁵³ Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations, with commentaries thereto, Text adopted by the International Law Commission at its Fifty-eighth Session, 2006, Principle 1. Available at: <https://legal.un.org/ilc/texts/instruments/english/commentaries/9_9_2006.pdf>.

⁵⁴ *Ibid.*, Principles. 3 and 7.

⁵⁵ Similar clause has been adopted by Article 5.5 of the Montreal Protocol additional to Vienna Convention on ozone-depletion layer. It provides that “[D]eveloping the capacity to fulfil the obligations of the Parties operating under

128. Further, the importance of financial support and transfer of technology to developing countries has been reiterated in several Articles of the Paris Agreement including Articles 4(5), 9, 10 (2) and 11. For instance, Article 4(5) emphasizes that:

“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.”

129. Moreover, the quantitative analysis of States' NDCs demonstrates that 126 developing country Parties have regarded the implementation of their mitigation obligations as a conditional or non-independent obligation; this approach can be seen through the terms they used in their NDCs. These Parties have conditioned the implementation of their mitigation obligations under Paris Agreement to receiving financial support, technology transfer and capacity building by using terms such as ‘subject to’, ‘conditional to’, and ‘contingent upon’.⁵⁶

130. As such, the obligation to undertake mitigation efforts by the developing countries remains to be a conditional obligation of conduct, which may not be accomplished without, among other things, the successful financial support and transfer of technology by the developed countries.

Paragraph 1 of this Article to comply with the control measures set out in Articles 2(A) to 2(E) and Articles 2(I) and J), and with any control measures in Articles 2(F) to 2(H) that are decided pursuant to paragraph 1 bis of this Article, and their implementation by those same Parties will depend upon the effective implementation of the financial cooperation as provided by Article 10 and the transfer of technology as provided by Article 10(A)”.

⁵⁶ As an example and for a similar comparison, paragraph 2(B) of Iran’s INDC stipulated that: “*Subject to the termination and non-existence of unjust sanctions, availability of international resources in the form of financial support and technology transfer, exchange of carbon credits, accessibility of bilateral or multilateral implementation mechanisms, transfer of clean technologies as well as capacity building, the Islamic Republic of Iran has the potential of mitigating additional GHGs [...]*”.

V. Climate change and the international human rights law

131. Protection of the climate system and other parts of the environment is not included as a distinct right or obligation in human right instruments, nor is the anthropogenic emission of GHGs specifically. However, the environment, in general, has become the subject of certain provisions in human rights instruments.

132. As the ICJ in its advisory opinion in the Nuclear Weapons case stated:

“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”.⁵⁷

133. The Declaration on the Human Environment states that “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations”.⁵⁸

134. Despite such importance of environment for human life, this issue has not been explicitly recognized as a human right either in the Universal Declaration of Human Rights, or in the two 1966 international covenants (The International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights (hereinafter *ICESCR*). Article 11 of the *ICESCR* refers to the right to an adequate standard of living, without reference to the term “environment”. However, the right to a clean and healthy environment is important for the enjoyment of other human rights.

135. The effects of climate change including global warming, desertification, reduction of water resources, increase in the number of natural disasters, and rising sea levels affect adequate standards of living, hindering the enjoyment of civil, political, economic, social and cultural as well as third-generation rights;. To that effect, the treaty obligations of States to protect the climate system and other parts of the environment against GHGs emissions from that perspective contribute to higher standards of living, leading to an improved enjoyment of the aforementioned rights.

⁵⁷ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, para. 29

⁵⁸ Stockholm Declaration, Principle. 1.

136. As the Fifth Assessment Report of the IPCC states, climate change has had impacts on natural and human systems threatening many human rights including access to food and water.⁵⁹ This demonstrates the importance of climate change efforts which are mainly dependent upon full implementation of climate change contributions based on CBDR-RC and equity.

137. As such, it is requested that the Court opine on the relationship between observance of climate change commitments based on the CBDR-RC principle and human rights, and measures taken to impede financial support and transfer of technology by illegal unilateral sanctions imposed against third parties by certain developed States. This not only violates States' obligations based on equity and CBDR-RC, but they also directly undermine full realization of human rights in affected countries.

138. In this context, the right to a healthy environment and the right to sustainable development are particularly relevant, and specific attention needs to be given to the relationship between CBDR-RC and human rights as discussed below.

A. The right to a healthy environment

139. The right to a healthy environment was first recognized in the regional instrument of the African Charter on Human Rights⁶⁰, and has, ever since, been gradually identified in declarative and recommendatory instruments, reports of special rapporteurs, and to some extent in State practice.⁶¹ At the United Nations, too, the right has received attention.⁶²

⁵⁹ IPCC, Fifth Assessment Report, at: <<https://www.ipcc.ch/assessment-report/ar5>> 8 March 2024.

⁶⁰ The African Charter on Human and Peoples' Rights of 1981, Art. 24.

⁶¹ "In 1972, the UN held its first global environmental conference in Stockholm. States adopted the Stockholm Declaration on the Human Environment, in which the first principle states that people have "the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being". Later, at the regional level, the right to a healthy environment was included in the African Charter on Human and Peoples' Rights (1981), the San Salvador Protocol to the American Convention on Human Rights (1988), the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention (1998), the Arab Charter on Human Rights (2004), the ASEAN Declaration on Human Rights (2012), and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin American and the Caribbean (Escazú Agreement) (2018), among others". (OHCHR, UNEP and UNDP), What is the Right to Healthy Environment?, Information Note, p. 8, available at: <<https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCR-What-is-the-Right-to-a-Healthy-Environment.pdf>> 8 March 2024,

⁶² See *Ibid.*

140. As a corollary of the right to adequate standard of living, the right to a healthy environment requires that States refrain from actions leading to environmental pollution and degradation, and adopt measures to protect and safeguard the environment.

141. In the context of climate change regime, the obligation of developed countries not to emit GHGs may contribute to the improvement of standards of living and realization of the right to a healthy environment. In tandem with the above financial support, transfer of technology and capacity building by developed countries could assist the developing countries in contributing to the realization of the right.

142. In any case, realization of the right to a healthy environment at large, regardless of the State party, takes effect in light of the principles governing climate change regime, including the principle of CBDR. Non-observance of the latter obviously hinders and undermines the former.

B. The right to sustainable development

143. The right to development is another human right related to climate change; this link is understood in two ways: on the one hand, the adverse effects of climate change can disrupt the realization of the right to development and, on the other hand, climate change measures should not curtail States' ability to develop. While climate change instruments have addressed the latter aspect of the right to development by inclusion of the principle of sustainable development as one of the guiding principles of the UNFCCC,⁶³ reference to the right to development as a human right to identify States' obligations to protect climate system and other parts of the environment against GHGs emissions needs more clarification.

144. According to Article 3(1) of the Declaration on the Right to Development, States “have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development”.⁶⁴ Article 3 (2)

⁶³ In addition to Article 3 of UNFCCC which sets forth the guiding principles of climate change, Paragraph 11 of the Preamble of the Paris Agreement stipulates that “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”.

⁶⁴ Declaration on the Right to Development: resolution adopted by the General Assembly, December 1986, ARES/41/128, Art. 3(1).

of the Declaration, which works as a guiding principle in interpretation of the realization of the right to development, states as follows:

“The realization of the right to development requires full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations.”

145. Therefore, respect for the principles of international law as enshrined in the Charter of the United Nations is fundamental in realization of the right to development. Article 3 (3) further underlines the primacy of the “duty to cooperate” as a requirement to ensure development and eliminate obstacles thereto. The provision highlights this duty in such strong terms:

“States have the *duty to co-operate* with each other in *ensuring development and eliminating obstacles to development*. States should realize their rights and fulfill their duties in such a manner as to promote a new international economic order based on *sovereign equality, interdependence, mutual interest and co-operation* among all States, as well as to encourage the observance and realization of human rights.”
[emphasis added]

146. The above provision underlines that development should not be hindered by lack of cooperation. In the context of climate change, this translates into effective implementation of CBDR-RC which depends on provision of financial support and transfer of technology by developed countries.

C. The relationship between CBDR-RC and human rights

147. The right to development, as articulated in the United Nations Declaration on the Right to Development, requires that developing countries could enjoy “fair distribution of benefits”⁶⁵ resulting from development. The UNFCCC, for its part, calls for States to protect future generations and to take action on climate change “on the basis of equity and in accordance with their common but differentiated

⁶⁵ *Ibid.*, Preamble, para. 3, and Article 2 (3).

responsibilities and respective capabilities”.⁶⁶ While climate change affects people everywhere, those who have contributed the least to greenhouse gas emissions such as developing and vulnerable countries are those most affected. Equity in climate action requires that efforts to mitigate and adapt to the impacts of climate change should benefit people in developing countries, indigenous peoples, people in vulnerable situations, and future generations.

148. In addition, the ICESCR requires States to recognize the right of everyone “to enjoy the benefits of scientific progress and its applications”. All States should actively support the development and dissemination of new climate mitigation and adaptation technologies including technologies for sustainable production and consumption. Environmentally clean and sound technologies should be accessibly priced, the cost of their development should be equitably shared, and their benefits should be fairly distributed between and within countries. Technology transfers between States should take place as needed and appropriate to ensure a just, comprehensive and effective international response to climate change.

149. Considering the above, the relationship between the CBDR and human rights is crystal clear. It is in this context that obligations of developing countries become in practice dependent upon those of developed countries with respect to, inter alia, financial support, transfer of technology and capacity building.

150. Despite the above, universal coercive measures put in place against the Islamic Republic of Iran impede its right to sustainable development and realization of the right to a healthy environment, and further curtail its ability to fully achieve its mitigation objectives. As an example, according to the Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights, “shortage of water for irrigation, combined with climate change, have serious consequences for domestic agricultural production in Iran”.⁶⁷

151. As clearly reflected in the special reporter’s report, “United States sanctions force people to prolong the use of older vehicles that burn fuel less efficiently, while making it impossible for Iran to obtain equipment and technology to reduce vehicle

⁶⁶ UNFCCC, Article 3 (1).

⁶⁷ A/HRC/51/33/Add.1, paras. 45-47, in “Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights” in A/HRC/54/23, p. 13, para. 57; available at: <<https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures/annual-thematic-reports>>. 8 March 2024.

emissions,”⁶⁸ which is a violation of obligations of developed countries based on the CBDR-RC, in particular, those of transfer of technology and financial support. As clearly reflected in the report:

“US efforts to enforce its sanctions by threatening to penalize foreign companies doing business in Iran have led foreign car manufacturers to leave the country. So, Iran must rely on locally made motors and other equipment that cannot use the latest technologies.”⁶⁹

152. Unilateral sanctions impede Iranian scientists from engaging in joint environmental research projects abroad, and even prevent Iranians from accessing online databases and courses about environmental issues and sustainability. As stated by the United Nations experts: “The effects of the sanctions on the right to education and the right to benefit from scientific progress are also blocking progress in improving Iran’s environment.”⁷⁰

153. The illegal unilateral and secondary sanctions against Iran have led to harm to its environment and curtailed the country’s ability to enjoy fully its right to development. Iran’s case is a significant example of the relationship between CBDR-RC and human rights; when developed countries fail to meet their obligations to provide financial support and access to technology to developing countries, the people’s right to a healthy environment is compromised. The Court is thus requested to give heed to the relationship between CBDR-RC and realization of human rights in the context of climate change regime and the questions put to the Court to render the advisory opinion requested.

⁶⁸ “US sanctions violate Iranian people’s rights to clean environment, health and life: UN experts”, Press Release, Special Procedures, OHCHR, 20 December 2022, available at: <<https://www.ohchr.org/en/press-releases/2022/12/us-sanctions-violate-iranian-peoples-rights-clean-environment-health-and>> 8 March 2024.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

VI. Strengthening international cooperation as the most viable response to legal consequences in relation to climate change obligations

154. Paragraph (b) of the question of the General Assembly's resolution 77/776, concerns the legal consequences under the obligations, as discussed in previous sections, "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 and (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change".⁷¹

155. In order to answer the above question, the concept of "legal consequences" must be explained first. Due to the reference to "these obligations", legal consequences would depend on the exact obligations identified by the Court according to paragraph (a) of the General Assembly's question. The meaning of "legal consequences" can, as such, include identification of States' obligations of conduct according to the primary rule, as well as identification of secondary obligations of States due to the violation of the above primary rules. However, the explicit reference, by the General Assembly, to "where they, by their acts and omissions, have caused significant harm", reveals General Assembly's intention to limit the question to the scope of secondary rules.

156. According to the above, it appears that the second question concerns identification of States' possible obligations due to non-compliance with, or violation of, possible treaty obligations identified by the Court based on General Assembly's first question.

157. It follows that the question does not include States' obligations according to Article 8 of the Paris Agreement⁷² regarding the States' obligation to averting,

⁷¹ UN GA Res A/C.4/77/L.58/Rev.1, adopted on 4 April 2023.

⁷² Paris Agreement, Art. 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."

minimizing and addressing loss and damage associated with the adverse effects of climate change based on The Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts. In other words, State Parties' obligation in Article 8 is not a consequence of the breach of climate obligations and, as an independent primary rule, is related to loss and damage associated with the adverse effects of climate change. Consequently, it is out of the scope of the secondary rules in question. This issue can also be inferred from Paragraph 51 of Decision No. 1 of the 21st Conference of the UNECCC's Parties, which stipulates that" [...] Article 8 of the Agreement does not involve or provide a basis for any liability or compensation".⁷³

158. Considering the above premise, the concept of "legal consequences" is limited to secondary rules, which may be examined in terms of rules governing compliance/non-compliance mechanisms under Article 15 of the Paris Agreement⁷⁴. Apart from that, due to the nature of climate change-related commitments, international cooperation should underlie all relations following the trigger of legal consequence of any sort.

159. Compliance and non-compliance procedures are intra-treaty mechanisms that operate in some multilateral environmental treaties in order to facilitate implementation of and promote compliance with the provisions of treaties where State Parties are unable to fulfill their obligations due to financial and technical reasons. The purpose of creating these mechanisms is to pursue implementation-oriented approaches against compensation-oriented approaches. Instead of invocation of responsibility, the purpose of these mechanisms is to empower State Parties to implement their obligations.⁷⁵

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."

⁷³ Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, FCCC/CP/2015/10/Add.1, para. 51.

⁷⁴ Before Paris Agreement, Article 18 of Kyoto Protocol also mentioned the adoption of appropriate procedures and mechanisms for non-compliance.

⁷⁵ A successful example of this mechanism model is the non-implementation foreseen in the legal regime concerning ozone-depleting substances.

160. It should be noted that the mechanism contained in Article 15 of Paris Agreement has never been considered as a mechanism for resolving disputes arising out of breaching treaty obligations. This is specified in modalities and procedures for the effective operation of the committee referred to in Article 15 of the Paris Agreement.⁷⁶ According to Paragraph 4 of this instrument:

“In carrying out its work, the Committee shall strive to avoid duplication of effort, shall neither function as an enforcement or dispute settlement mechanism, nor impose penalties or sanctions, and shall respect national sovereignty. This mechanism does not transform climate change legal regime into a self-contained regime. Especially, according to the modalities and procedures instrument, even the right to initiate the non-compliance review process in the Article 15 Committee is not provided for other Paris Agreement State Parties.”⁷⁷

161. It should also be noted that this mechanism is, based on the Paris Agreement (Paragraph 2 of Article 15) and also the modalities and procedures instrument, *non-adversarial and non-punitive*.⁷⁸ However, in response to General Assembly's second question, it can be concluded that the response due to the compliance/non-compliance mechanism contained in Article 15 of the Paris Agreement is among the legal consequences resulting from the obligations of the States in protecting the climate system and other parts of the environment from the anthropogenic emissions of GHGs.

162. Despite the abovementioned, since the UNFCCC and its two important parcels (the Kyoto Protocol and the Paris Agreement) govern States' efforts in combating the adverse effects of climate change, international cooperation emerges as the only viable response to address the legal consequences in relation to climate change commitments.

163. As highlighted in Chapter III on “Core principles of international law governing climate change regime”, international cooperation underlies all commitments and obligations emanating from the main international instruments dealing with anthropogenic emissions of GHGs. As such, any legal consequence in

⁷⁶ Decision. 20/ CMA. 1: Modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, Annex, paragraph 2, of the Paris Agreement, FCCC/PA/CMA/201 8/3/Add.2, 2019, para. 4.

⁷⁷ *Ibid.*, Paras. 19-22.

⁷⁸ Paris Agreement, Art. 15 (2), Decision, 20/CMA. 1, *op. cit.*, para. 2.

relation to the said commitments depend on the good faith of the States involved and the level of their mutual cooperation.

164. In this context, with respect to “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”, cooperation and negotiation remains the only tangible and viable response. This, in line with the UNFCCC and its Kyoto Protocol and Paris Agreement, should be based upon the principle of CBDR-RC and equity. To that end, strengthening international cooperation can not only help resolve legal consequences in relation to climate change issues, but it may assist in prevention of climate-change related challenges.

165. The same is true with regard to the legal consequences in relation to climate change commitments with respect to “[P]eoples and individuals of the present and future generations affected by the adverse effects of climate change”. We submit that international cooperation, as an overarching principle within the climate change regime, may be resorted to, in line with the principle of CBDR-RC and its components (financial support, transfer of technology and capacity building by developed States Parties) not only as a remedy but as a preventive element.

166. VII. Conclusion and submissions

167. The Court's jurisdiction to render an advisory opinion requested by the General Assembly needs to be assessed based on objective criteria and precedent of the Court. The General Assembly has the authority to request an advisory opinion as per the Statute and practice of the Court. However, the Court may scrutinize the broad question put before it in order to see if it may find any **compelling reasons** not to render the advisory opinion requested. Alternatively, it may opt to **reformulate** the question or clarify the exact contours thereof in order to include all measures States are generally committed to take with respect to climate change, including in particular, adaptation measures.

168. The Islamic Republic of Iran is of the conviction that the treaty framework specifically governing “protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases” consists mainly of the three conventions referred to in the chapeau of the question put to the Court: the UNFCCC, the Kyoto Protocol and the Paris Agreement. The major obligations emanating therefrom are the obligation to **undertake mitigation efforts** and the obligation to **reduce emissions of greenhouse gases**. In this context, three

underlying principles namely the “**principle of CBDR-RC**”, the “**principle of equity**” and the “**principle of cooperation**” govern all treaty relationships, based on which developed countries are committed, *inter alia*, to provide financial support and transfer technology to developing countries. The commitments of the latter have become, as such, conditional upon the fulfillment of the obligations of the former.

169. International human rights law, for its part, has contributed to States’ commitments with regard to the protection of the climate system and other parts of the environment from the anthropogenic emission of GHGs; in this context, the right to a healthy environment and the right to sustainable development are relevant and their realization is hampered, with respect to the Islamic Republic of Iran, by imposition of **UCM** by way of illegal unilateral and secondary sanctions. Respect for the principle of **CBDR-RC** also contributes to realization of the right to a healthy environment, which is again encroached upon, with respect to the Islamic Republic of Iran, due to imposition of illegal sanctions against the nation by certain countries.

170. On legal consequences of States’ obligations related to climate change, the mechanism under Article 15 of the Paris Agreement was analyzed in tandem with the role of international cooperation in dealing with legal consequences in relation to obligations of States with respect to climate change. The principle of cooperation appears to work both as a preventative and remedial component in climate change regime.

171. Considering the abovementioned, the Islamic Republic of Iran submits that:

- The Court should consider compelling reasons not to render the advisory opinion requested, or alternatively reformulate the question to limit its scope to *lex lata* and existing treaty frameworks governing the climate change regime;
- The principles of equity, CBDR-RC and international cooperation govern all climate change efforts and highly depend on financial support, transfer of technology and capacity building by developed countries; in this respect, international cooperation plays a vital role in ensuring respect for the other principles.

- Imposition of restrictions, by developed countries, in terms of UCM impeding financial support, transfer of technology and capacity building to developing countries amounts to violation of the principles of CBDR-RC, equity and international cooperation, and hinders realization of the right to sustainable development of developing countries and other relevant human rights.
- International cooperation remains the only vital response to deal with the question of legal consequences in relation to States' commitments under the climate change regime both in terms of prevention and remedy.

* * *

The Islamic Republic of Iran respectfully submits the foregoing to the International Court of Justice as information to assist the Court to render an advisory opinion on the question posed by the General Assembly.

Submitted on behalf of Islamic Republic of Iran

Hadi Farajvand

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