THE INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE
(REQUEST FOR ADVISORY OPINION)

WRITTEN STATEMENT OF THR ARAB REPUBLIC OF EGYPT

22 March 2024

Contents

I. INTRODUCTION

1. The United Nations (hereinafter "**UN**") General Assembly, at its sixty-fourth plenary meeting held on 29 March 2022, under its agenda item 70, adopted by consensus resolution 77/276 entitled "Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change" (hereinafter "**Resolution 77/276**"). In this resolution, the General Assembly decided, in accordance with Article 96 of the UN Charter, to request the International Court of Justice (hereinafter "**ICJ"** or the "**Court"**) to render an advisory opinion (hereinafter the "**Request**") pursuant to Article 65 of the Statute of the Court, on the following questions:

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

2. The Request was transmitted to the Court by the UN Secretary-General through a letter dated 12 April 2023, which was received by the Court's Registry on 17 April 2023. In this letter, the UN Secretary-General assured that, pursuant to Article 65, paragraph 2, of the Statute of the Court, the UN Secretariat will start preparing a dossier containing a collection of all relevant documents that are likely to throw light upon these questions, with the aim of providing it to the Court in due course.

3. By letters dated 17 April 2023, the Court's Registrar gave notice of the request for an advisory opinion to all States entitled to appear before the Court, pursuant to Article 66, paragraph 1, of the ICJ Statute.

4. On 15 December 2023, the Court issued an order by virtue of which it extended to 22 March 2024 the time-limit within which all written statements on the questions may be presented to the Court, and it has also extended to 24 June 2024 the time-limit within which States and organizations which have provided written statements may submit written comments on these written statements.

5. Egypt attaches the highest importance to the opinion subject of the Request before the Court. As stated by the United Nations Secretary General the "earth's vital signs are failing"[1], and that "the era of global warming has ended and the era of global boiling has arrived"[2]. Climate change is one of the biggest challenges humanity is facing, the consequences of which are being unjustly beard countries who have least contributed to it.

6. As Egypt attaches the highest respect to public international law and to the role of the ICJ, it wishes to avail itself of this opportunity to make a written statement on issues pertaining to the Request. Egypt hopes that, if the Court were to decide to provide the advisory opinion, the opinion will help clarify, and enhance several important aspects of the international environmental law, that would indeed help guide States' actions to address the issue of climate change in the little time left for humanity to save the planet for present and future generations.

7. Egypt's written statement will be divided into seven parts, in addition to this Introduction (Part I). Part II addresses jurisdiction and discretion. Part III affirms that the questions submitted to the Court should be answered based on the latest, most reliable available science, and taking into consideration the concept of historical responsibility (Part IV). Parts V, VI, and VII provide an answer to the questions submitted to the Court.

8. The Statement ends with a conclusion summarizing Egypt's comments and views, and "Submissions" for the consideration of the Court.

[1] Secretary – General's remarks at the opening of World Climate Action Summit, 1 December 2023, available at: https://www.un.org/sg/en/content/sg/speeches/2023-12-01/secretary-generals-remarks-opening-of-world-climate-action-summit#:~:text=We%20can%20%2D%20you%20can%20%2D%20prevent,and%20political%20will%20for%20action.

[2] Secretary – General's opening remarks at the press conference on climate, 27 July 2023, available at: https://www.un.org/sg/en/content/sg/speeches/2023-07-27/secretary-generals-opening-remarks-press-conference-climate

II: JURISDICTION AND DISCRETION

A] Introduction

9. When the Court is seized of a request for an advisory opinion, it must first consider whether it has jurisdiction to give the opinion requested and, if so whether there is any reason why the Court should, in the exercise of its discretion, decline to answer the request.[3]

10. Once the Court has established its jurisdiction, it will only exercise its discretion not to render an advisory opinion, where there are "compelling reasons" not to[4].

11. Article 65, paragraph 1, of the ICJ's Statute provides that: "The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."[5].

12. The Court has indicated that: "It is … a precondition of the Court's competence that the advisory opinion be requested by an organ duly authorized to seek it under the Charter, that it be requested on a legal question, and that, except in the case of the General Assembly or the Security Council, that question should be one arising within the scope of the activities of the requesting organ."[6]

13. Egypt submits that there are two relevant prerequisites for rendering an advisory opinion, namely that the request be made by a duly authorized organ and that the question put to the Court be a legal one, are both fulfilled in the present request, as detailed below.

B] Jurisdiction of the Court:

14. According to Article 96, paragraph 1, of the United Nations Charter, the General Assembly, "may request the International Court of Justice to give an advisory opinion on any legal question".[7] Thus the General Assembly is formally authorized by the Charter to make a request 'on any legal question'.

15. The broad scope of this Article reflects the very broad competence of the General Assembly, under Chapter IV of the UN Charter (in particular articles 10, 11, and 13) and

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[3] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 232, para. 10 [hereinafter "*The Nuclear Weapons Advisory Opinion*"]; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 144, para. 13 [hereinafter "*The Wall Advisory Opinion*"]; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 412, para. 17 [hereinafter "*The Independence of Kosovo Advisory Opinion*"]; and *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 113, para. 54 [hereinafter "*The Separation of the Chagos Archipelago Advisory Opinion*"]..

[4] *The Wall Advisory Opinion, op. cit.*, p. 156, para. 44; *The Nuclear Weapons Advisory Opinion, op.cit.*, pp. 234-235, para. 14.

[5] Statute of the International Court of Justice, adopted in the San Francico Conference on 26 June 1945, Article 65, [hereinafter "*The ICJ Statute*"], can be accessed through: https://www.icj-cij.org/statute

[6] *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, pp. 333-334, para. 21.

[7] Charter of the United Nations, entered into force on 24 October 1944, Article 96(1) [hereinafter the "*UN Charter*"], can be accessed through: https://www.un.org/en/about-us/un-charter/full-text

hence, the almost complete liberty of the Assembly in requesting an opinion of the Court. This has been confirmed by the Court itself, in the often quoted Nuclear Weapons Advisory Opinion[8]. The Court has also clearly reiterated its position in the Wall Advisory Opinion[9].

16. Second, it is stipulated under article 95, paragraph 1 of the Charter that the request for an advisory opinion must be on a legal question.

17. The questions in Resolution 77/276 are 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 and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

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

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

18. These two questions are preceded by a chapeau that makes reference to several international law treaties. It is clear from the questions and their chapeau in Resolution 77/276 that they can only be qualified as legal questions the answers to which must have regard to rules of international law. They are, necessarily, and by definition, legal questions in the meaning of the Charter, the Statute of the Court and the Court's own jurisprudence.

19. Further, these questions also involve the interpretation of international norms, which is essentially a judicial task. The questions submitted by the General Assembly have been, to use the very words of the Court "framed in terms of law and raise problems of international law

[8] *The Nuclear Weapons Advisory Opinion, op. cit.*, p. 232, para. 11.
[9] *The Wall Advisory Opinion, op. cit.*, p. 144, para. 14

… [they are by their] very nature susceptible of a reply based on law", hence they are squarely questions of a legal character[10].

20. Egypt therefore notes that the Request presents two legal questions that are precisely formulated in clear legal terms and raise issues of international law. The General Assembly's Request satisfies the conditions of Article 65 of the Statute of the Court and Article 96(1) of the UN Charter, both *ratione personae* (the General Assembly being a duly authorised organ) and *ratione materiae* (the Request being for a legal question). Accordingly, the Court is invited to render the requested advisory opinion.

C] Discretion

21. The Court has stated that the "fact that the Court has jurisdiction does not mean, however, that it is obliged to exercise it"[11]. It recalled many times in the past that Article 65, paragraph 1, of its Statute, which provides that "[t]he Court may give an advisory opinion…", should be interpreted to mean that the Court has a "discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met"[12].

22. The Court has been mindful of the fact that its answer to a request for an advisory opinion "represents its participation in the activities of the Organization, and, in principle, should not be refused"[13]. Thus, the consistent jurisprudence of the Court is that only "compelling reasons" may lead the Court to refuse its opinion in response to a request falling within its jurisdiction[14].

23. The ICJ affirmed in its Wall Advisory Opinion: "The present Court has never, in the exercise of this discretionary power, declined to respond to a request for an advisory opinion. Its decision not to give the advisory opinion on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict requested by the World Health Organization was based on the Court's lack of jurisdiction, and not on considerations of judicial propriety."[15]

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[10] *Western Sahara, Advisory Opinion, ICJ. Reports 1975* [hereinafter "*Western Sahara Advisory Opinion*"], p. 18, para. 15; *The Wall Advisory Opinion, op. cit.*, p. 153, para. 37

[11] *The Separation of the Chagos Archipelago Advisory Opinion, op. cit.*, p. 113, para. 63.

[12] *Ibid*; *The Wall Advisory Opinion, op. cit*., p. 156, para. 44; *The Independence of Kosovo Advisory Opinion, op. cit.*, pp. 415-416, para. 29.

[13] *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71 [hereinafter "*The Interpretation of Peace Treaties Advisory Opinion*"]; *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, pp. 78-79, para. 29; *The Wall, Advisory Opinion, op. cit.*, p. 156, para. 44

[14] *The Wall Advisory Opinion, op. cit*., p. 156, para. 44; *The Independence of Kosovo Advisory Opinion, op. cit.*, p. 416, para. 30

[15] *The Wall Advisory Opinion, op. cit.*, p. 156, para 44.

24. This Court has identified objective, compelling grounds to guide it in the exercise of this discretionary power mainly (a) the lack of fact finding and evidence[16], and (b) the circumvention of consent to jurisdiction[17].

25. Regarding the possible claim of the lack of fact finding, information and evidence, and the need for scientific evidence to answer the questions posed by the General Assembly, Egypt considers that there is an abundance of scientific evidence and facts that the Court can rely on when rendering its advisory opinion. Egypt would like to draw the attention of the Court, in particular, to the assessment reports prepared by the Intergovernmental Panel on Climate Change (hereinafter the "**IPCC**")[18], a UN body established in 1988[19], mandated to prepare a review of the state of knowledge of the science of climate change, and to assess the scientific basis for human-induced climate change and its potential impacts and its prevention[20]. The IPCC can provide the Court with the best science in relation to the questions posed.

26. Egypt further submits that the subject matter of the Request, i.e. climate change, is a subject that has been amply studied and discussed by the UN, its different organs, and specialized agencies. Information, including scientific information, is abundantly available. In addition, a voluminous dossier on the matter of climate change[21], including scientific information, has been provided to the Court by the UN Secretariat. This is in line with the finding of the Court in its Wall Advisory opinion[22].

27. As for the "circumvention of the consent to jurisdiction", in Interpretation of Peace Treaties, the ICJ held that the consent requirement "is different regarding advisory proceedings even where the request for an opinion relates to a legal question actually pending between States.… no State can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable"[23]. The Court affirmed this view in its Wall Advisory Opinion, stating that "the lack of consent to the Court's contentious jurisdiction by interested States has no bearing on the Court's jurisdiction to give an advisory opinion"[24].

28. Finally, it is also noteworthy that Resolution 77/276 was adopted by consensus, which is yet a further indication that the contention of circumvention of consent is not applicable regarding the current request by the General Assembly for an advisory opinion.

29. In light of the above, Egypt respectfully submits that there are no compelling reasons which might prevent the Court from rendering this advisory opinion.

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[16] *The Separation of Chagos Archipelago Advisory Opinion, supra note* 12, p.114, paras. 71- 72.
[17] *Western Sahara, Advisory Opinion, op. cit., p.25, para. 33.*
[18] More about the IPCC can be found here: https://www.ipcc.ch/
[19] History of the IPCC, available at: https://www.ipcc.ch/about/history/
[20] Principles Governing IPCC Work, Annex 7, para. 2, available at: https://www.ipcc.ch/site/assets/uploads/2018/09/ipcc-principles.pdf
[21] History of the IPCC, available at: https://www.ipcc.ch/about/history/
[22] *The Wall Advisory Opinion, op.cit, pp. 161-162, para. 57-58.*
[23] *Interpretation of Peace Treaties Advisory Opinion, op.cit.*, p.71
[24] *The Wall Advisory Opinion, op.cit*., p. 157, para 47.

III. The Questions should be addressed based on the latest, most reliable available science

30. The Court is asked to render an advisory opinion on "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 gas emissions", and on the legal consequences arising from the States' conduct which have caused significant harm to the climate system and other parts of the environment.

31. The question of climate change was studied, explained, and first identified by science. Science has drawn the link between climate change and the concentration of greenhouse gas emissions (hereinafter "**GHG**s").

32. For that purpose, the United Nations established the IPCC to further study climate change, and the impacts of GHG emissions from human activities on the climate system and the environment.

33. Egypt submits that in order for the Court to be able to answer the questions submitted before it, it needs to rely on scientific evidence and information as the question of climate change is an evolving scientific question with legal and socio-economic implications, as will be demonstrated in the subsequent paragraphs.

34. Pursuant to the definitions given by the IPCC, the atmosphere is "the gaseous envelope surrounding the earth"[25], the climate or climate system is defined as "the average weather", it is in a wider sense the state of the climate system[26]. As for climate change, the IPCC has defined it as the "change in the state of the climate that can be identified (e.g., by using statistical tests) by changes in the mean and/or the variability of its properties and that persists for an extended period, typically decades or longer"[27].

35. According to the same definition given by the IPCC, climate change may be due to "external forcings such as (…) persistent anthropogenic changes in the composition of the atmosphere"[28]. Anthropogenic is defined as "resulting from or produced by human activities"[29].

36. Article 1 of the United Nations Framework Convention on Climate Change (hereinafter

[25] IPCC, 2018: Annex I: Glossary [Matthews, J.B.R. (ed.)]. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 541-562. https://doi.org/10.1017/9781009157940.008, [hereinafter "*IPCC, 2018: Annex I Glossary*"]

[26] *Ibid*.

[27] *Ibid*.

[28] *Ibid*.

[29] *Ibid*.

the "**UNFCCC or the Convention**")[30] similarly defines climate change as "a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over compatible time periods"[31].

37. It is scientifically proven that "the amount of carbon dioxide in the atmosphere has increased by about 35% in the industrial era, and this increase is known to be due to human activities, primarily the combustion of fossil fuels and removal of forests"[32]. It is further proven that "during the industrial era, CO_2 abundance rose exponentially to 367 ppm in 1999"[33].

38. The IPCC has proved that "increases in well-mixed GHGs concentrations since around 1750 are unequivocally caused by GHG emissions from human activities"[34]. The IPCC further asserted that "a major part of emissions affecting the atmosphere at present (i.e. at the time when the Report was published: 1990) originates in industrialized countries where the scope for change is greatest"[35].

39. The First IPCC Report (1990) also highlighted, that "continuation of present-day emissions is committing us to increased future concentrations, and the longer emissions continue to increase, the greater would reductions have to be to stabilize at a given level [i.e. to limit the concentration of GHGs]"[36].

40. According to science, global surface temperature has increased 1.1°C above 1850-1900[37] levels, "the majority of the warming has occurred since 1975, at a rate roughly 0.15 to

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[30] The United Nations Framework Convention adopted in 1992, entered into force in 1994, 198 States are parties to this Convention [hereinafter the "*UNFCCC*"], available at: https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXVII7&chapter=27&Temp=mtdsg3&clang=_en

[31] Article 1 of the UNFCCC.

[32] Le Treut, H., R. Somerville, U. Cubasch, Y. Ding, C. Mauritzen, A. Mokssit, T. Peterson and M. Prather, 2007: Historical Overview of Climate Change. In: Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, [hereinafter "*Historical Overview of Climate Change*"].

[33] *Ibid.*

[34] IPCC, 2023: Sections. In: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 35-115, doi: 10.59327/IPCC/AR6-9789291691647, [hereinafter "*IPCC Sixth assessment Report – Synthesis Report 2023*"]

[35] Overview to the IPCC First Assessment Report, available at: https://www.ipcc.ch/report/climate-change-the-ipcc-1990-and-1992-assessments/

[36] Policymaker Summary of Working Group I (Scientific Assessment of Climate Change), 1990, available at: https://www.ipcc.ch/report/climate-change-the-ipcc-1990-and-1992-assessments/

[37]IPCC, 2023: Summary for Policymakers. In: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (eds.)]. IPCC, Geneva, Switzerland, pp. 1-34, doi: 10.59327/IPCC/AR6-9789291691647.001 [hereinafter "*IPCC Sixth Assessment Report – Summary for Policymakers 2023*"]; NASA, Earth Observatory, "World of Change: Global Temperatures" [hereinafter "*NASA Global Temperatures*"], available at: https://earthobservatory.nasa.gov/world-of-change/global-temperatures

0.20°C per decade"[38]. The IPCC has further stated that "about half of the anthropogenic CO_2 emissions between 1750 and 2011 have occurred in the last 40 years"[39]. Preambular paragraph 9 of Resolution 77/276, which was adopted by consensus recalls the scientific consensus that "anthropogenic greenhouse gases are unequivocally the dominant cause of the global warming observed since the mid-20th century"[40]

41. Climate change has scientifically proven adverse impacts such as heat waves, droughts, ocean acidification, and sea level rise[41]. In this regard, preambular paragraph 9 of Resolution 77/276 indicated that "human-induced climate change, including more frequent and intense extreme events, has caused widespread adverse impacts and related losses and damages to nature and people".

42. It is also expected that with no serious emissions reduction, temperature could increase to 3.3°C to 5.7°C by 2081-2100[42].

43. Despite the above, the IPCC confirmed that "developed countries contributed 57% [to cumulative CO_2- FFO emissions between 1850 and 2019]"[43], whereas "the three developing regions [i.e. Africa, Asia and Pacific] together contributed 28% to cumulative CO_2 – FFI emissions"[44] in the same period, while noting that Africa's contribution is 3 per cent[45].

44. The IPCC also indicated that "CO_2 emissions from fossil fuel combustion and industrial processes contributed about 78% to the total GHG emission increase between 1970 and 2010, with a contribution of similar percentage over the 2000-2010 period"[46].

45. The IPCC in 2022 confirmed that emissions of GHGs continued to grow since 2010[47]. According to the United Nations Environment Programme (hereinafter the "**UNEP**")

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[38] NASA Global Temperatures.
[39] Climate Change 2014, Synthesis Report, Summary for Policymakers, [hereinafter "*IPCC Fifth Assessment Report – Summary for Policymakers 2014*"] available at: https://www.ipcc.ch/report/ar5/syr/
[40] IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Repot of the Intergovernmental Panel on Climate Change, Summary for Policymakers, statement 1.2, [hereinafter "*IPCC Fifth Assessment Report – Synthesis Report 2014*"]; IPCC, 2021: Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 3−32, doi:10.1017/9781009157896.001, statement A.1, [hereinafter "*IPCC, 2021: Summary for Policymakers – the Physical Science Basis*"]
[41] IPCC Fifth Assessment Report – Summary for Policymakers 2014.
[42] IPCC, 2021: Summary for Policymakers - The Physical Science Basis.
[43] Dhakal, S., J.C. Minx, F.L. Toth, A. Abdel-Aziz, M.J. Figueroa Meza, K. Hubacek, I.G.C. Jonckheere, Yong-Gun Kim, G.F. Nemet, S. Pachauri, X.C. Tan, T. Wiedmann, 2022: Emissions Trends and Drivers. In IPCC, 2022: Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [P.R. Shukla, J. Skea, R. Slade, A. Al Khourdajie, R. van Diemen, D. McCollum, M. Pathak, S. Some, P. Vyas, R. Fradera, M. Belkacemi, A. Hasija, G. Lisboa, S. Luz, J. Malley, (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA. doi: 10.1017/9781009157926.004, p.4, [hereinafter "*IPCC, 2022: Emissions Trends and Drivers*"].
[44] *Ibid*.
[45] *Ibid*.
[46] IPCC Fifth Assessment Report – Synthesis Report 2014.
[47] IPCC, 2022: Emissions Trends and Drivers.

emissions gap report (2023), several developed countries continue to be among the global top emitters[48]. The report explicitly states that "collectively, the United States of America and the European Union contributed nearly a third of the total cumulative emissions from 1850 to 2022"[49].

46. It was further proven that "developed Countries sustained high levels of per capita CO_2-FFI emissions at 9.5 t CO_2 per capita in 2019 (but with a wide range of 1.9–16 tCO_2 per capita). This is more than double that of three developing regions: 4.4 (0.3–12.8) t CO_2 per capita in Asia and Pacific; 1.2 (0.03–8.5) tCO_2 per capita in Africa; and 2.7 (0.3–24) t CO_2 per capita in Latin America".

47. In addition to the above, the UNEP emissions gap report (2023) also confirmed that "globally, the 19 per cent of the population with the highest income accounted for nearly half (48 per cent) of emissions with two thirds of this group living in developed countries. The bottom 50 per cent of the world population contributed only 12 per cent of total emissions"[50].

48. According to a UNEP report on fossil fuel production gap (i.e. the discrepancy between governments planned/ projected fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C), it was found that the production of fossil fuels will amount to 110% more fossil fuels in 2023 "than would be consistent with limiting global warming to 1.5°C, and 69% more than would be consistent with limiting warming to 2°C"[51].

49. Moreover, it is important to note that, according to the IPCC, "the remaining carbon budgets amount to 500 and 400 billion tonnes of CO_2, respectively, from 1 January 2020 onward. Currently, human activities are emitting around 40 billion tonnes of CO_2 into the atmosphere in a single year". Noting that "of the about 2560 billion tonnes of CO_2 that were released into the atmosphere by human activities between the years 1750 and 2019, about a quarter were absorbed by the ocean (causing ocean acidification) and about a third by the land vegetation. About 45% of these emissions remain in the atmosphere"[52]. And as a consequence, "the remaining carbon budget from 2020 onwards is much smaller than the total CO_2 emissions released to date"[53].

50. According to the UNEP emissions gap report (2023), "climate finance is less

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[48]United Nations Environment Programme (2023). Emissions Gap Report 2023: Broken Record –Temperatures hit new highs, yet world fails to cut emissions (again). Nairobi. https://doi.org/10.59117/20.500.11822/43922, p.6, [hereinafter "*UNEP Emissions Gap Report 2023: Broken Record"*].

[49] *Id.*, p. 8

[50] *Id.*, p. XVII

[51] SEI, Climate Analytics, E3G, IISD, and UNEP. (2023). The Production Gap: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises. Stockholm Environment Institute, Climate Analytics, E3G, International Institute for Sustainable Development and United Nations Environment Programme. https://doi.org/10.51414/sei2023.050, [hereinafter "*UNEP Production Gap Report*"], p.4.

[52] IPCC, Frequently Asked Questions, FAQ 5.4 "What Are Carbon Budgets?", [hereinafter "*FAQ, 5.4*"] available at: https://www.ipcc.ch/report/ar6/wg1/downloads/faqs/IPCC_AR6_WGI_FAQ_Chapter_05.pdf

[53]*Ibid.*

forthcoming for countries that need it the most". The report emphasized that "despite the enormous renewable potential and need to meet the energy access needs in Africa, only 2 per cent of global investment flowed into Africa between 2000 and 2020"[54].

51. It was also stated that "many major fossil-fuel-producing governments are still planning near-term increases in coal production and long-term increases in oil and gas production. In total, government plans and projections would lead to an increase in global production until 2030 for coal, and until at least 2050 for oil and gas"[55].

52. The IPCC, in its most recent assessment report, indicated that "the contribution of Africa is among the lowest of historical GHG emissions responsible for human-induced climate change and it has the lowest per capita GHG emissions of all regions currently"[56].

53. Although Africa is only responsible for about 3% of global emissions since 1850, it is disproportionately impacted by the adverse effects of climate change. It is proven that "increased mean and extreme temperature trends across Africa are attributable to human-caused climate change"[57]. Africa has already experienced, due to climate change, "biodiversity loss, water shortages, reduced food production, loss of lives and reduced economic growth"[58]. Between 1.5°C and 2°C global warming will further increase the exposure and vulnerability to climate change in Africa.

54. Egypt, as an African coastal developing country has particularly suffered from climate change and is particularly vulnerable to its consequences. Egypt remains highly vulnerable to climate variability and change in the immediate as well as longer-term. The negative impacts from climate change in Egypt are already being experienced across various sectors including coastal zones, water resources, agriculture, and health, in addition to damages related to food security, which leads to economic losses estimated at billions. Egypt's Nile Delta, which lies ~1 m above mean sea level, is recognized as one of the world's three 'extreme' vulnerability hotspots.[59] Most of the country's population and infrastructure are concentrated in the Nile Delta and along the Mediterranean coast, making the country additionally vulnerable to the impacts of sea level rise. On another hand, there remains significant uncertainty regarding the anticipated impacts of climate change on Nile River flows, with some studies suggesting increased evaporation rates

[54]UNEP Emissions Gap Report 2023: Broken Record, *op.cit.*, p. 44 - 45

[55] UNEP Production Gap Report, *op.cit*, p.4

[56] Trisos, C.H., I.O. Adelekan, E. Totin, A. Ayanlade, J. Efitre, A. Gemeda, K. Kalaba, C. Lennard, C. Masao, Y. Mgaya, G. Ngaruiya, D. Olago, N.P. Simpson, and S. Zakieldeen, 2022: Africa. In: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 1285–1455, doi:10.1017/9781009325844.011, [hereinafter "*IPCC 2022: Africa*"]

[57] *Ibid*.

[58] *Ibid.*

[59] UNDP (2018). National Adaptation Plans in Focus: Lessons from Egypt. URL: https://www.adaptation-undp.org/sites/default/files/ resources/naps_in_focus_lessons_from_egypt.pdf

due to rising temperatures could decrease water availability by up to 70%. As the Nile River's sources are located outside Egypt, the country is highly vulnerable to changing climate conditions and shocks both within and outside the country's borders. Egypt is the most downstream state on the Nile River, and is affected by the impacts of climate change not only within its borders, but also within the whole basin, which is shared with 10 other riparian States (further details on the impacts of climate change on Egypt are outlined in Annex I attached to this submission).

55. Lastly, Egypt submits that the state of global finance landscape should also be perceived as part of the scientific/factual basis which the Court should take into consideration while assessing the various legal obligations imposed on States in relation to the protection of the climate system from climate change and the legal consequences arising therefrom.

56. Having established the relevance of climate science in assessing States' obligations in relation to climate change, it is also important to highlight the relevance of the asymmetric responsibilities of developed and developing countries with regard to climate change.

IV] The Historical Responsibility for Climate Change

57. It is now proven that human activities have caused the increase of GHG "concentrations since around 1750"[60]. The Industrial Revolution, occurring predominately in industrialized countries, marks the starting point for tracking the anthropogenic changes caused to the climate[61] due to human activities. According to the IPCC, "Anthropogenic greenhouse gas (GHG) emissions since the pre-industrial era have driven large increases in the atmospheric concentrations of carbon dioxide (CO_2), methane (CH4) and nitrous oxide (N2O)"[62]. In this regard, it is estimated that "the average global temperature on Earth has increased by at least 1.1° Celsius (1.9° Fahrenheit) since 1880. The majority of the warming has occurred since 1975, at a rate of roughly 0.15 to 0.20°C per decade"[63].

58. Scientific information has also proven that "the largest share of historical global emissions of GHGs originated in developed countries"[64], which led to the emergence of the concept of historical responsibility.

59. The Cancun Agreements, adopted by the 16th Conference of the Parties to the UNFCCC in 2010, explicitly acknowledged that "the largest share of historical global emissions of GHGs originated in developed countries and that, owing to this historical responsibility, developed country Parties must take the lead in combatting climate change and the adverse effects thereof"[65].

60. As demonstrated with scientific evidence under Part III. above, it is undeniably clear that "those who will suffer [and who already suffer] most acutely [from climate change] are also those who are least responsible for the crisis to date"[66].

61. Egypt submits that the concept of "historical responsibility" forms the basis on which climate negotiations are built. This concept mirrors the scientific evidence which demonstrates that the developed world bear the major responsibility for the climate crisis. It is a call "for the acceptance of accountability for the full consequences of an industrialization that relied on

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[60] IPCC 2021: Summary for Policymakers, the Physical Science Basis, para. A.1.1.

[61] US Environmental Protection Agency, "Causes of Climate Change", available at: https://www.epa.gov/climatechange-science/causes-climate change#:~:text=Since%20the%20Industrial%20Revolution%2C%20human,also%20affect%20the%20earth's%20climate.

[62] IPCC Fifth Assessment Report – Summary for Policymakers 2014.

[63] See, National Aeronautics and Space Administration, "World of Change: Global Temperatures", available at https://earthobservatory.nasa.gov/world-of-change/global-temperatures

[64] Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, UNFCCC, FCCC/CP/2010/7/Add.1. 2011, available at: https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf

[65] *Ibid*.

[66] Burkett, Maxine, Climate Reparations (October 1, 2009). Melbourne Journal of International Law, Vol. 10, 2009, Available at SSRN: https://ssrn.com/abstract=1539726

fossil fuels (….) and carbon energy"[67].

62. The concept of historical responsibility embodies the idea of fairness which entails that "those who have contributed most of to the creation of a problem to bear much more of the burden of dealing with the problem than those who have contributed least"[68]. In the same line, it is fairer "for those who have benefitted most from the creation of a problem to bear much more of the burden of dealing with the problem than those who have benefitted least. And further, other things equal, it is patently fairer for those who are most able to pay to bear much more of the burden of dealing with a problem than those who are least able to pay"[69].

63. Further the IPCC has confirmed that the climate system has a limited capacity to absorb GHGs. This limit is defined as "carbon budget". According to the IPCC, "the remaining carbon budgets amount to 500 and 400 billion tonnes of CO_2, respectively, from 1 January 2020 onward. Currently, human activities are emitting around 40 billion tonnes of CO_2 into the atmosphere in a single year". Noting that "of the about 2560 billion tonnes of CO_2 that were released into the atmosphere by human activities between the years 1750 and 2019, about a quarter were absorbed by the ocean (causing ocean acidification) and about a third by the land vegetation. About 45% of these emissions remain in the atmosphere"[70]. And as a consequence, "the remaining carbon budget from 2020 onwards is much smaller than the total CO_2 emissions released to date"[71].

64. In other words, the most reliable scientific evidence and statistics confirm that industrialized countries, through their "excessive historical emissions (…) have appropriated atmospheric space, thereby preventing other countries from emitting their 'fair share' within a carbon budget consistent with the global temperature target of remaining below 2°C of warming, and have constrained the policy choices of such countries about what development pathways to pursue"[72]. This is evidently an unfair situation where we one can assert that the benefits resulting from industrialization "have been narrowly held [by the industrialized countries] while the costs [i.e. adverse impacts of climate change] have been widely

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[67] Shue, Henry. "Historical Responsibility, Harm Prohibition, and Preservation Requirement: Core Practical Convergence on Climate Change" Moral Philosophy and Politics, vol. 2, no. 1, 2015, pp. 7-31, [hereinafter "*Shue, Historical Responsibility*"], available at: https://doi.org/10.1515/mopp-2013-0009, available at: https://www.degruyter.com/document/doi/10.1515/mopp-2013-0009/html?lang=en#:~:text=Historical%20responsibility%3A%20accountability%20for%20the%20results%20of%20past%20actions

[68] *Ibid*.

[69] *Ibid*.

[70] FAQ, 5.4.

[71] FAQ, 5.4.

[72] Shue, Henry. (2014). Changing images of climate change: Human rights and future generations. Journal of Human Rights and the Environment. 5. 50-64. 10.4337/jhre.2014.02.06. 50, 62; Mason-Case S, Dehm J. Redressing Historical Responsibility for the Unjust Precarities of Climate Change in the Present. In: Mayer B, Zahar A, eds. Debating Climate Law. Cambridge University Press; 2021:170-189, [hereinafter "*Debating Climate Law: Redressing Historical Responsibility*"]

disbursed"[73].

65. In this regard, the preamble of the UNFCCC stated: "noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions of greenhouse gases in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs"[74]. The UNFCCC further states that "the developed country Parties should take the lead in combatting climate change and the adverse effects thereof"[75], and that is because 'developed countries are responsible for a very large part of historical emissions"[76].

66. Egypt respectfully submits that the Court in answering the questions submitted to it should take into account, along with scientific information, the concept of historical responsibility as it permits to further inform the obligations of States to ensure the protection of the climate system based on equity as will be further elaborated below.

67. In summation of the above, Egypt submits that while all States have a responsibility to contribute to the global efforts to combat climate change, particularly through reducing GHG emissions, this is a differentiated responsibility where developed countries have a responsibility to take the lead and to provide support to developing countries, while developing countries have the right, as they strive to reduce emissions, to do so, in light of their legitimate pursuit of sustainable development and eradication of poverty. This principle is also a manifestation of the notion of climate justice.

[73] *Shue: Historical Responsibility, op.cit.*
[74] UNFCC, Preamble, para. 3.
[75] UNFCCC, Article 3, Principles.
[76] Warlenius, Rikard, "In Defense of Climate Debt Ethics: A Response to Olivier Godard", Working Papers in Human Ecology No. 5, Human Ecology Division, Lund University, ISSN 1402-6902, 2013, [hereinafter "*Warlenius, in Defense of Climate Debt Ethics*"], available at: https://www.keg.lu.se/en/sites/keg.lu.se.en/files/warlenius_working_papers_in_human_ecology_no_5.pdf

V. IN ANSWERING THE QUESTIONS, THE COURT SHOULD TAKE INTO ACCOUNT THE ENTIRE CORPUS OF INTERNATIONAL LAW

68. To answer the questions submitted to the Court, Egypt submits that the entire corpus of international law should be considered by the Court, and this for the reasons outlined in the subsequent paragraphs.

69. First, question 1 (a) submitted to the Court requires it to determine the obligations of States "under international law to ensure the protection of the environment". The question is thus explicitly formulated in a way that requires the court to look into all relevant treaties and rules of international law to answer these questions.

70. Second, the chapeau of the questions in the operative paragraph of Resolution 77/276 states:

"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"

The use of the term *"in particular*" before enumerating a non-exhaustive list of treaties, rules and principles of international law and of customary international law (i.e. the principle prevention of significant harm to the environment) suggests that the Court in answering the questions:

a) should not be confined to the list of treaties and principles enumerated in the chapeau,
b) should consider all relevant rules and principles under international law.

This further asserts that the intention of the General Assembly was to request the Court to consider the questions in light of the whole corpus of international law.

71. In addition to the above, Egypt submits that the existence of treaties dealing with the subject of climate change does not preclude the application of the general rules of international law. It is important to note, in this regard, that "international climate change law does not operate in isolation"[77], but in light of and as part of international environmental law and the rules of general international law. Hence, Egypt emphasizes that rules of general international law in relation to the protection of the environment, form an integral part of the corpus of environmental law and are thus applicable to the international climate change law.

[77] Chapter 2: Climate Change and International Law in International Climate Change Law, Daniel Bodansky, Jutta Brunnée, Lavanya Rajamani, 25 May 2017, Oxford Scholarly Authorities on International Law, [hereinafter "*Chapter 2: Climate Change*"]

72. Moreover, preambular paragraph 5 of Resolution 77/276, similar to the chapeau of the questions, suggests that the Court in answering the questions should take into consideration a wide range of treaties and rules of international law. This is further demonstrated by the use of "among other instruments", and "of the relevant principles and relevant obligations of customary international law including" in preambular paragraph 5:

> *Emphasizing the importance of the Charter of the United Nations, the Universal Declaration of Human Rights the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the United Nations Convention on the Law of the Sea, the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on Biological Diversity and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, among other instruments, and of the relevant principles and relevant obligations of customary international law, including those reflected in the Declaration of the United Nations Conference on the Human Environment and the Rio Declaration on Environment and Development, to the conduct of States over time in relation to activities that contribute to climate change and its adverse effects*. (emphasis added)

73. The existence of treaties dealing with the subject of climate change does not preclude the application of the general rules of international law. The relationship between obligations under more than one treaty or between treaty and non-treaty obligations has been addressed by the Study Group of the International Law Commission (hereinafter the "**ILC**"), on *Fragmentation of International Law*. According to the Study Group's report, as there is no hierarchy between the sources of international law, the relationship between any particular treaty and principle of customary international law is to be determined on a case-by-case basis.[78] The "*lex specialis derogat legi generali*" rule does not exclude the applicability of the rules of the general international law in relation to climate change as there is no conflict between the different norms applicable whether arising from the UNFCCC, the Kyoto Protocol[79] and the Paris Agreement[80] (hereinafter refereed to together as the "**Climate Change**

[78] M. Koskenniemi et al., Fragmentation of international law: difficulties arising from the diversification and expansion of international law, Report of the Study Group of the International Law Commission, UN Doc. A/CN.4/L.682, 13 April 2006, para 224, [hereinafter "*M. Koskenniemi, Fragmentation of International Law*"]
[79] A Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted in 11 December 1997, entered into force in 16 February 2005, ratified by 192 States, can be accessed through: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-a&chapter=27&clang=_en
[80] The Paris Agreement, adopted 12 December 2015, entered into force 4 November 2015, ratified by 195 States, can be accessed through: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en

Legal Regime") or from general international law[81], there is no "inconsistency between them"[82], and there is no "discernible intention that one provision is to exclude the other"[83]. The same holds for the case of the existence of obligations under more than one treaty. In this regard, Egypt notes, and as indicated by the ILC "the *lex specialis* principle is assumed to apply if "harmonious interpretation" turns out to be impossible, that is, a general standard is overridden by a conflicting special one"[84]. The predominant view is that all relevant obligations continue to apply in parallel, unless they are incompatible. This is consistent with article 43 the Vienna Convention of the Law of Treaties ("**VCLT**"), as well as the jurisprudence of this Court.[85]

74. In addition, the rules of general international law in relation to the environment "should to the extent possible be interpreted as to give rise to a single set of compatible obligations"[86] in accordance with the principle of harmonization and 'systemic integration', reflected in article 31(3)(c) of the VCLT. The rules of general international law "will continue to give direction for the interpretation and application of the relevant special law and will become fully applicable in situations not provided for by the latter"[87].

75. The Court is therefore requested to decide on the questions submitted by the General Assembly through applying, concurrently, the rules and principles enshrined in applicable treaties specific to climate change (including the Climate Change Legal Regime), other treaties listed in the chapeau of the questions, including human rights and other relevant treaties, as well as rules of general international law (such as the no-harm principle). The legal obligations under these treaties and customary international law remain applicable independently.

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[81] International Law Commission (ILC), 'Conclusions of the work of the Study Group on the Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law', (2006) 2(2) *Yearbook of the International Law Commission*, at paras. 5-10 [hereinafter "*ILC, Conclusions of the work of the Study Group on the Fragmentation of International Law*"]; Mayer, Benoit, Construing International Climate Change Law as a Compliance Regime (May 15, 2017). (2018) 7:1 Transnational Environmental Law 115-137, [hereinafter "*Mayer, Climate Change as a Compliance Regime*"] Available at SSRN: https://ssrn.com/abstract=2968364

[82] ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (Articles on State Responsibility), in: Report of the International Law Commission on the work of its Fifty-third session, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10), chp.IV.E.2, Article 55, para. 4 [hereinafter "*Report of the ILC, A/56/10*"]; *Mayer, Climate Change as a Compliance Regime*.

[83] *Ibid*.

[84] *M. Koskenniemi, Fragmentation of International Law*, para. 88.

[85] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America), Jurisdiction and Admissibility, Judgement, 26 November 1984, ICJ Reports (1984) 392, at 73.

[86] *ILC, Conclusions of the work of the Study Group on the Fragmentation of International Law*; *M. Koskenniemi, Fragmentation of International Law*, para. 88; *Mayer, Climate Change as a Compliance Regime*.

[87] *ILC, Conclusions of the work of the Study Group on the Fragmentation of International Law*, paras. 4 and 9; *Mayer, Climate Change as a Compliance Regime*.

VI. ANSWER TO QUESTION 1 (A): 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:

A] Elements of Question 1 (a):

76. Question 1 (a) in the operative paragraph of Resolution 77/276 reads as follows:

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?*

77. Egypt submits that this question contains several important elements which need to be identified.

78. First the question focuses on States, as subjects of international law. They are in this advisory opinion duty holders.

79. Second, the question requires the Court to determine the obligations of States "to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases". There are several keys words and scientific terms that need to be defined in this question.

80. The climate system is defined by the IPCC as composed of the atmosphere, among other components. It "evolves in time (…) because of external forcings such as (…) anthropogenic forcings"[88], and the UNFCCC has identified the climate system as "the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions"[89].

Anthropogenic emissions of GHGs mean emissions resulting from human activities[90]. "Other parts of the environment" is a broad wording of terms used to include parts of the environment, other than the climate system, that can be affected by anthropogenic emissions such as the marine environment.

81. Third, the question requires the court to determine these obligations of States under international law, which as outlined above, requires the court to consider the whole corpus of international law relevant to the question and not only treaties specific to climate change.

82. Lastly, the question as framed requires the Court to identify these obligations owed to other States, and to individuals of present and future generations.

[88] *IPCC, 2018: Annex I: Glossary*
[89] Article 1 of the UNFCCC.
[90] *IPCC, 2018: Annex I: Glossary.*

B] Obligations of States to protect the climate system and other parts of the environment from climate change

1. States are under the obligation not to cause harm to the environment: The no-harm principle applies to global commons which includes the earth's atmosphere[91] and as a consequence the climate system (the atmosphere is part of the climate system). It is a State-to-State Duty but also an obligation erga-omnes

83. States have an obligation not to cause environmental damage to other States or in areas outside their jurisdiction. This obligation can be traced back to the general principle of law *sic utere tuo* and was confirmed by the arbitral tribunal in the much cited Trailer Smelter arbitration, where the tribunal stated that: "under the principles of international law (…) no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another of the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence"[92].

84. This obligation clarified under the Trail Smelter arbitration could be considered as "an extension of the principle of good neighborliness[93]. This was reflected by the dictum of this Court in the Corfu Channel Case, where the tribunal stated that States have an obligation "not to allow its territory to be used for acts contrary to the rights of other States"[94].

85. Two important instruments have informed the development of the obligation not to cause harm or the no-harm principle which has evolved into a rule of customary international law as confirmed by this court in 1996 and in its subsequent judgements and advisory opinions: the 1972 Stockholm Declaration and the 1992 Rio Declaration on Environment and Development.

86. Principle 21 of the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment (hereinafter the "**Stockholm Declaration**") stipulates that States have the "sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do

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[91] Chapter 2: Climate Change, *op.cit*; the IPCC defined the atmosphere as: "the gaseous envelope surrounding the earth, divided into five layers – the troposphere which contains half of the Earth's atmosphere, the stratosphere, the mesosphere, the thermosphere, and the exosphere, which is the outer limit of the atmosphere. The dry atmosphere consists almost entirely of nitrogen (78.1% volume mixing ratio) and oxygen (20.9% volume mixing ratio), together with a number of trace gases, such as argon (0.93 % volume mixing ratio), helium and radiatively active greenhouse gases (GHGs) such as carbon dioxide (CO2) (0.04% volume mixing ratio) and ozone (O3). In addition, the atmosphere contains the GHG water vapour (H2O), whose amounts are highly variable but typically around 1% volume mixing ratio. The atmosphere also contains clouds and aerosols. See also Troposphere, Stratosphere, Greenhouse gas (GHG) and Hydrological cycle" in: IPCC, 2018: Annex I: Glossary.

[92] Unites States v. Canada, 3 RIAA 1907 (1941) citing Sands, P., Peel, J., Fabra, A., & MacKenzie, R. (2018). General Principles and Rules. In Principles of International Environmental Law (pp. 197–251). Chapter 6, Cambridge: Cambridge University Press, [hereinafter "*General Principles and Rules in Principles of International Environmental Law*"].

[93] *Ibid*.

[94] *Corfu Channel case, Judgement of April 9th*, 1949: ICJ. Reports, p. 22, [hereinafter "*Corfu Channel Case*"].

not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction"[95]. Principle 2 of the 1992 Rio Declaration on Environment and Development restated the same principle[96] (hereinafter the "**Rio Declaration**").

87. This Court in its Nuclear Weapons Advisory Opinion further reaffirmed the above by stating that: "the existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment"[97]. This was reiterated by the Court in its Gabcikovo-Nagymaros judgement[98]. And in the Pulp Mills case, this Court asserted that the no-harm principle or the principle of prevention is a customary rule[99].

88. According to the above, States are under an obligation not to cause harm to the environment. They are also under an obligation not to cause harm to the climate system which forms part of the environment.

89. Harm to the climate system need not only be in the form of air pollution as indicated in the Trail Smelter arbitration[100], but can also be in the form of anthropogenic interference with the climate system resulting in climate change. This is further reaffirmed by the preamble of the UNFCCC, which includes, verbatim, the wording of principle 21, indicating that the no-harm principle applies to climate change[101].

90. The no-harm principle does not only apply to transboundary harm but also to harm beyond national jurisdiction. Egypt is of the view that "the rationale which justifies a prevention of activities that cause local transboundary damage applies a fortiori to circumstances where the stakes include the prosperity, viability or survival of other States and human civilization as a whole"[102].

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[95] UN Conference on the Human Environment, 'Declaration of the United Nations Conference on the Human Environment' (16 June 1972) UN Doc A/CONF.48/14/Rev.1, available at: https://documents.un.org/doc/undoc/gen/nl7/300/05/pdf/nl730005.pdf?token=MJcuH1DFiF0O7ez6xx&fe=true

[96] UN Conference on Environment and Development, 'Rio Declaration on Environment and Development' (14 June 1992) UN Doc A/CONF.151/26 (Vol. I), available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

[97] *Nuclear Weapons Advisory Opinion, op.cit*., p. 226, para. 29; *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, ICJ. Reports 1997*, p.7, para. 53, [hereinafter "*Gabcikovo-Nagymaros Judgement*"].

[98] *Gabčíkovo-Nagymaros Judgement, op.cit.,* p. 41, para 53.

[99] *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, para. 101 [hereinafter "Pulp Mills Case"]; Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica), Judgment, ICJ. Reports 2015, para. 104, [hereinafter "Certain Activities Carried out by Nicaragua 2015"].*

[100] Commentary 14 on article 14 of Draft Articles on Responsibility of States for Internationally Wrongful Acts, available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf; Trail Smelter Case (United States, Canada), 16 April 1938 and 11 March 1941, Volume III, p. 1905.

[101] Preamble of the UNFCCC.

[102] *Maljean-Dubois S. The No-Harm Principle as the Foundation of International Climate Law. In: Mayer B, Zahar A, eds. Debating Climate Law. Cambridge University Press; 2021:15-28, [hereinafter the "No-Harm*

91. According to the Barcelona Traction judgement rendered by this Court, the no harm principle entails a State-to-State Duty not to cause transboundary harm to the atmosphere as well as *an erga omnes* obligation[103]not to cause harm to the climate system.

92. In 1988, the UN General Assembly "recognized that protecting the climate system is a prerequisite for the survival of humankind"[104]. It was declared in the UNFCCC and the Paris Agreement that climate change is a "common concern of humankind"[105].

93. Egypt is of the view that the no-harm principle applies to global commons which includes the earth's atmosphere[106] and, as a consequence, the climate system (the atmosphere is part of the climate system)[107].

94. States, therefore, have obligations owed to the international community as a whole to prevent significant damage to the climate system[108].

95. This is in line with the finding of the Seabed Disputes Chamber of International Tribunal for the Law of the Sea (hereinafter "**ITLOS**") where it was recognized that "preventing harm to the deep seabed is an *erga omnes* obligation insofar as that geographic area and its resources are for the benefit of all humankind"[109]. This similarly applies to the climate system[110].

96. In light of the above, States have a due diligence obligation entailing a positive obligation to take necessary measures to mitigate climate change and to exert efforts to reduce GHG emissions.

Principle as the Foundation of International Climate Law"]; Mayer, Climate Change as a Compliance Regime, op.cit.

[103] *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, para. 33.

[104] UNGA Resolution 43/53, UN Doc A/RES/43/53 (1988); UNGA, Report of the Second Committee: 'Conservation of the Climate as Part of the Common Heritage of Mankind', UN Doc A/43/905 (1988).

[105] The Preamble of the UNFCCC and the Preamble of the Paris Agreement.

[106] Chapter 2: Climate Change, *op.cit*.; the IPCC defined the atmosphere as: "the gaseous envelope surrounding the earth, divided into five layers – the troposphere which contains half of the Earth's atmosphere, the stratosphere, the mesosphere, the thermosphere, and the exosphere, which is the outer limit of the atmosphere. The dry atmosphere consists almost entirely of nitrogen (78.1% volume mixing ratio) and oxygen (20.9% volume mixing ratio), together with a number of trace gases, such as argon (0.93 % volume mixing ratio), helium and radiatively active greenhouse gases (GHGs) such as carbon dioxide (CO2) (0.04% volume mixing ratio) and ozone (O3). In addition, the atmosphere contains the GHG water vapour (H2O), whose amounts are highly variable but typically around 1% volume mixing ratio. The atmosphere also contains clouds and aerosols. See also Troposphere, Stratosphere, Greenhouse gas (GHG) and Hydrological cycle" in: IPCC, 2018: Annex I: Glossary.

[107] IPCC, 2018: Annex I: Glossary.

[108] *Debating Climate Law: Redressing Historical Responsibility, op.cit*..

[109] *Ibid*.

[110]Peel J, Schechinger J. Climate Change. In: Nollkaemper A, Plakokefalos I, eds. The Practice of Shared Responsibility in International Law. Shared Responsibility in International Law. Cambridge University Press; 2017:1009-1050, p.1032, [hereinafter "*Climate Change – The Practice of Shared Responsibility in International Law*"].

2. The no-harm principle entails a due diligence obligation: States have an obligation to "deploy adequate means, to exercise best possible efforts, to do the utmost" to protect the environment from activities causing significant harm, i.e. harm from GHGs emitting activities

97. As indicated above, the no-harm principle, also known as the principle of prevention, is considered a rule of customary international law as established by this Court in its Pulp Mills judgement.

98. This Court indicated that the no-harm principle or the principle of prevention has its origins in the due diligence that is required of a State in its territory. It is every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States. A State is thus obliged to use all means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State. This Court has established that this obligation "is now part of the corpus of international law relating to the environment"[111].

99. Egypt submits that, and in accordance with the established case law, in customary environmental law, States are under the obligation "to oversee activities carried out in the spaces subject to its jurisdiction and over activities subject to its control, so that such activities do not cause significant environmental harm either to the territory or the resources of other States or to common spaces and resources"[112].

100. The no-harm principle thus entails an obligation "to take appropriate measures to prevent harm to the environment of other States or to the global commons", but also it encompasses the principle of prevention, which entails an obligation to act with due diligence[113]. This justifies the emphasis on the duty of due diligence in the chapeau of the questions in Resolution 77/276 as one the rules of international law that this Court should take into consideration when determining the obligations of States in relation to climate change.

101. The due diligence obligation is an obligation of conduct rather than obligation of result[114]. It is "an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result"[115]. It is a positive obligation to protect the environment from activities causing significant harm[116].

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[111] *Pulp Mills Case, op.cit, para. 101; Corfu Channel Case, op.cit., p.22; Certain Activities Carried Out by Nicaragua 2015, op.cit., para. 104.*

[112] Riccardo Pisillo-Mazzeschi, The Due Diligence Rule and the Nature of the International Responsibility of States, 35 GERMAN Y.B. INT'l L. 9 (1992), [hereinafter "*Riccardo, the Due Diligence Rule*"].

[113] *Chapter 2: Climate Change, op.cit*.

[114] *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011*, ITLOS Reports 2011, para. 110, [hereinafter "*Responsibilities and Obligations of States in the Area Advisory Opinion*"]

[115] *Ibid*.

[116] *Riccardo, the Due Diligence Rule, op.cit*.

102. In light of the above, Egypt submits that States should not only refrain from causing significant harm to the climate system through GHGs emitting activities, but they also have a positive obligation, which requires them to take all possible measures to protect the climate system from GHG emissions.

3. Due Diligence is a "variable concept": "the standard of due diligence has to be more severe for the riskier activities"

103. ITLOS has also clarified that "due diligence is a variable concept. It may change over time as measures considered sufficiently diligent at a certain moment may become not diligent enough in light, for instance, of new scientific or technological knowledge"[117]. It has also emphasized that "the standard of due diligence has to be more severe for the riskier activities"[118].

104. Egypt submits that some obligations as identified by international courts and tribunals help shape and identify the contours of the due diligence obligation.

105. ***First,*** States are required, in compliance with their due diligence obligation, to protect the environment by taking all possible measures to prevent the occurrence of significant harm. This entails that States are required to adopt rules and regulations to reduce GHG emissions. This is echoed in the mitigation obligation imposed on developed States in article 4.2 (a) of the UNFCCC which stipulates that developed countries "shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases"[119], and is also reflected in the obligation imposed on all States to prepare, communicate and maintain progressive nationally determined contributions in accordance with the Paris Agreement[120].

106. On the other hand, and as indicated by ITLOS, "the standard of due diligence has to be more severe for the riskier activities"[121]. In other words, and when applying this finding of the Court to climate change, effective mitigation measures are required of States given the high degree of risk emitting GHG activities cause to the climate system, and their irreversible and adverse impacts.

107. In light of this, and when assessing the efficacy of the mitigation measures adopted by States, the Court should conduct its assessment based on the objective of the UNFCCC stipulated in its article 2, as well as the temperature goal of the Paris Agreement. Particular attention should also be given to scientific knowledge and technological advances specially in

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[117] *Responsibilities and Obligations of States in the Area Advisory Opinion, op.cit.*, para. 117.
[118] *Ibid.*
[119] Article 4.2 (a) of the UNFCCC.
[120] Article 4 of the Paris Agreement.
[121] *Responsibilities and Obligations of States in the Area Advisory Opinion, op.cit, para. 117.*

developed countries, which further require of them a stricter compliance with the due diligence obligation in light of their capabilities.

108. ***Second***, the principle of prevention, and as a consequence the due diligence obligation, further "requires action to be taken at an early stage, and if possible, before damage has actually occurred"[122]. As noted by the ICJ in its Gabcikovo Nagymoros case that it was "mindful that, in the field of environmental protection, vigilance and prevention are required on account of the often-irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage"[123].

109. This is further asserted by the precautionary principle, found in principle 15 of the Rio Declaration, and which is "an integral part of the general obligation of due diligence"[124]. The Seabed Disputes Chamber stated in this regard that: "this obligation [of due diligence] requires States 'to take all appropriate measures to prevent damage … [and] applies in situations where scientific evidence concerning the scope and potential negative impact of the activity in question is insufficient but where there are plausible indications of potential risks"[125], and that a state "would not meet its obligation of due diligence if it disregarded those risks"[126]. In other words, the precautionary principle "requires States to abate possible environmental damage despite scientific uncertainties as to whether the potential damage will eventuate"[127].

110. Egypt therefore submits that in accordance with the precautionary principle, which forms part of the due diligence obligation, States are under the obligation to take all appropriate preventive measures, to protect the climate system, even when there is scientific uncertainty[128].

111. ***Third***, the obligation of due diligence further entails a set of procedural obligations such as the obligation to notify affected States[129], the obligation to exchange information, consult and negotiate[130], and the obligation to cooperate[131].

112. In the MOX Plant case, ITLOS stated that "the duty to cooperate is a fundamental principle in the prevention of pollution of the marine environment under Part XII of the United Nations Convention on the Law of the Sea[132] (hereinafter "**UNCLOS**") and general

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[122] *General Principles and Rules in Principles of International Environmental Law*.
[123] *Gabcikovo-Nagymoros Judegement, op.cit.*, para. 140.
[124] *Responsibilities and Obligations of States in the Area Advisory Opinion, op.cit*, para 131.
[125] *Ibid.*
[126] *Ibid.*
[127] *Nele Matz-Luck, Johannes Fuchs, Chapter 22. Marine Living Resources*, p. 491 – 515, *the Oxford Handbook of the Law of the Sea, Donald Rothwell (ed.) et al.*, 2015, [hereinafter *"Matz, Fuchs, Marine Living Resources"]* p. 496.
[128] "*Climate Change – The Practice of Shared Responsibility in International Law, op.cit.*, p. 1036.
[129] *Corfu Channel Case, op.cit*, p.22.
[130]Lake Lanoux Arbitration (France v. Spain) (1957) 12 R.I.A.A. 281; 24 I.L.R. 101.
[131] *Pulp Mills Case, op.cit.*, para 145.
[132] The United Nations Convention on the Law of the Sea, adopted in 10 December 1982, entered into force in 16 November 1994, ratified by 169 States, can be accessed through: https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en

international law and that rights arise therefrom which the Tribunal may consider appropriate to preserve under article 290 of the Convention (i.e. UNCLOS)"[133].

113. It has further been confirmed by this Court on several occasions, that States have a duty to conduct environmental impact assessment when activities under their jurisdiction have adverse impacts outside their jurisdiction[134]. It is important to note that this obligation is a customary international law norm.

114. In light of this, developed countries are under the obligation to cooperate with other interested States, through information sharing, undertaking of environmental impact assessment, notification and consultation, when they undertake projects or implement rules that "carry a significant risk of climate change harm through their contribution to GHG emissions"[135].

115. ***Fourth,*** the due diligence obligation "entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators"[136]

116. In this regard, Egypt submits that States are under the obligation, through its rules, policies and regulations, to regulate the conduct of and to punish private entities operating under its jurisdiction[137] for their polluting activities[138.]

117. In light of the above, the level of due diligence required of States and the contours of this obligation, is delimited by States' capacities and capability to reduce GHG emissions and to prevent harm to the climate system from polluting activities.

4. The content of the due diligence obligation is further informed by the mitigation obligation imposed on all States under the UNFCCC and its Paris Agreement, and the emissions reduction targets indicated under the Kyoto Protocol for developed countries in particular

a) The UNFCC

118. The UNFCCC prescribes general obligations on all States Parties in relation to mitigation.

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[133] *MOX Plant Case, op.cit., (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001*, para. 82, [hereinafter the "*MOX Plant Case*"].

[134] *Ibid, op.cit.*, para. 26 (5); *Responsibilities and Obligations of States in the Area Advisory Opinion, op.cit*., para.145; *Certain Activities Carried out by Nicaragua 2015, op.cit*., para 104.

[135] *Climate Change – The Practice of Shared Responsibility in International Law, op.cit.*, p. 1036.

[136] *Request for Advisory Opinion submitted by the Sub Regiobal Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, [hereinafter "*SRFC Advisory Opinion"],* para. 131; *Pulp Mills Case,* para. 197.

[137] *No-Harm Principle as the Foundation of International Climate Law, op.cit.; Riccardo, the Due Diligence Rule, op.cit*.

[138] *Riccardo, the Due Diligence Rule, op.cit*.

Article 4.1 requires all States to, inter alia, "formulate, implement (…) measures to mitigate climate change"[139], with additional, specific obligations imposed only on developed countries.

119. In this regard, the UNFCCC further requires developed countries (Annex I countries) under article 4.2 (a and b) to "adopt national policies and take corresponding measures on the mitigation of climate change" in order to limit their GHG emissions and to protect and enhance its sinks and reservoirs[140].

120. Egypt submits that reading the obligation provided for under article 4.2 together with the objective of the UNFCCC, and the temperature goal indicated under its Paris Agreement, developed countries are required to "implement effective measures that would lead to a reversal of long-term emission trends"[141].

121. In order for States, and in particular developed countries, to comply with their mitigation obligation under the UNFCCC, they have to comply with their due diligence obligation, and do their utmost best to mitigate climate change in light of their different capabilities and national circumstances.

b) The Kyoto Protocol

122. The Kyoto Protocol 1997 developed under the UNFCCC to "address the impact of developed industrialized countries on climate change[142] could help as a guide for this Court in devising the obligations of developed countries in relation to climate change.

123. The Kyoto Protocol supplements and operationalizes the UNFCCC by imposing on developed countries an obligation to "reduce greenhouse gas emissions in accordance with agreed individual targets"[143]. It imposes quantified emission limitation and reduction commitment on developed countries[144] and adopts a top-down approach[145].

124. The Kyoto Protocol further imposes an obligation on developed countries to implement and elaborate policies and measures to enhance, inter alia, sinks and reservoirs of GHGs[146].

125. The developed countries' obligations extended over two commitment periods, the first commitment period 2008-2012, and the second commitment period 2013 – 2020. The second

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[139] Article 4.1 (b) of the UNFCCC.

[140] Chapter 5: The Framework Convention on Climate Change in: International Climate Change Law by Daniel Bodansky, Jutta Brunnée, Lavanya Rajmani, 25 May 2017, Oxford Scholarly Authorities on International Law [hereinafter the "*Framework Convention on Climate Change in International Climate Change Law*"].

[141] *Climate Change – The Practice of Shared Responsibility in International Law*, p. 1025, citing Voigt, Christina, State Responsibility for Climate Change Damages. Nordic Journal of International Law, Vol. 77, Nos. 1-2, pp. 1-22, 2008, Available at SSRN: https://ssrn.com/abstract=1145199, [hereinafter "*Voigt, State Responsibility for Climate Change Damage*"].

[142] Climate Change and the Kyoto Protocol by Yin Shao Loong, in Third World Network, available at: https://www.twn.my/title/ysl1.htm

[143] "What is the Kyoto Protocol?" , available at: https://unfccc.int/kyoto_protocol#:~:text=In%20short%2C%20the%20Kyoto%20Protocol,accordance%20with%20agreed%20individual%20targets.

[144] Article 2 of the Kyoto Protocol.

[145] *Climate Change – The Practice of Shared Responsibility* in International Law, p. 18.

[146] Kyoto Protocol, Article 2, para. 1 (a) (i) and (ii).

commitment period was established by virtue of the Doha Amendment to the Kyoto Protocol, which entered into force in December 2020.

126. As indicated under the Kyoto Protocol GHG emissions reduction targets were limited to developed countries, which is an assertation of developed countries historical responsibility for climate change. The Kyoto Protocol stipulates in its article 3 that developed countries "shall individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases (…) do not exceed their assigned amounts".

127. Annex B of the Kyoto Protocol lists and indicates different emissions targets for the developed countries and six GHGs were listed in Annex A of the Kyoto Protocol.

128. Despite the fact that some developed countries have failed to comply with the first commitment target indicated under the Kyoto Protocol, and despite the withdraws by several developed countries from the Protocol[147], Egypt submits that its provisions help in devising and interpreting the responsibility incumbent on developed countries to address the negative impacts of climate change, whether past or present.

129. Egypt, on the other hand, considers that Kyoto Protocol still governs the actions of the Parties for the pre-2020 period[148].

c) The Paris Agreement

130. As for the Paris Agreement, it is first important to note that the purpose of this Agreement, as enshrined in its article 2, is to: (a) "hold the increase in the global average temperature to well below 2°C above pre-industrial levels, and limit the temperature increase to 1.5°C above pre-industrial levels", (b)" increase the ability to adapt to the adverse impacts of climate change", (c) "making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development".

131. Since the adoption of the Paris Agreement at COP21 in Paris, in 2015, and later with the completion of the Paris Agreement Work Programme, which was necessary for the operationalization of the provisions of the Paris Agreement at COP24 in Katowice, the Paris Agreement temperature goal has been accepted as the objective which all States should be striving to achieve.

132. The main tool for individual States to deliver this goal is individual Nationally determined contributions **(NDC**).

133. By design, the NDCs reflect the "philosophy" upon which the Paris Agreement was built through requiring contributions, which are nationally determined by individual States to

[147] *Climate Change – The Practice of Shared Responsibility* in International Law p. 1026.

[148] Sands, P., Peel, J., Fabra, A., & MacKenzie, R. (2018). Climate Change. In Principles of International Environmental Law (pp. 295–336). Chapter 8, Cambridge: Cambridge University Press, [hereinafter: *Climate Change in Principles of International Environmental Law*"].

the collective goal of achieving the Paris Agreement temperature goal. For this reason, the Paris Agreement has been described as espousing a bottom-up approach.

134. It is however important to note that the explicit legal obligations in the Paris Agreement are essentially of a procedural nature such as requiring State Parties to "prepare, communicate and maintain successive nationally determined contributions that it intends to achieve"[149] in order to mitigate climate change. In this regard, each Party is required to communicate its NDCs every five years[150].

135. Furthermore, article 4.3 of the Paris Agreement states that Parties' NDCs must represent a progression from previous NDCs[151] (meaning there should not be backsliding) with a view to reaching global peaking of GHG emissions as soon as possible[152]. Parties are also required through their NDCs to reflect the highest possible ambition[153].

136. The aforementioned obligations to "prepare, communicate and maintain successive" NDCs, and the requirement that NDCs reflect the Parties' highest possible ambition does not explicitly impose on Parties a specific quantum of reduction per NDC, but rather leaves this to the discretion of each party, which is a reflection of the "nationally determined" nature of the Paris Agreement as a bottom-up agreement.

137. It is also noteworthy that neither the UNFCCC, nor the Paris Agreement make the production, and or use of fossil fuels illegal per se. This was clearly intentional – namely to focus on emissions' reduction, rather than on the source of emissions- in acknowledgment of the fact that fossil fuels have been essential to economic growth and development, and hence the need for a gradual, just transition away from the use of fossil fuels.

138. Lastly, it is important to note that developed countries are required in particular, and in light of the provisions of the Convention, as well as the common but differentiated responsibilities principle, to take the lead "by undertaking economy-wide absolute emission reduction targets"[154].

139. **At this juncture, it would be relevant to reiterate the centrality of the principle of common but differentiated responsibilities and respective capabilities regarding the prevention of harm from GHG emissions.**

140. The principle of common but differentiated responsibilities (hereinafter "**CBDR**") "forms the core of international environmental law"[155].

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[149] Article 4.2 of the Paris Agreement
[150] Article 4.8 of the Paris Agreement.
[151] Article 4.3 of the Paris Agreement.
[152] Article 4.3 of the Paris Agreement.
[153] Article 4.3 of the Paris Agreement.
[154] Article 4.4 of the Paris Agreement.
[155] "*Common but differentiated responsibilities: a beacon of realism*", Dipa Patel, July 29th, 2020, London School of Economics, available at: https://blogs.lse.ac.uk/internationaldevelopment/2020/07/29/common-but-differentiated-responsibilities-a-beacon-of-realism/

141. The CBDR principle finds its source and has developed from the application of the equity principle under international law[156]. It is essential for a just and balanced interpretation of the obligations incumbent upon states to ensure the protection of the climate system from climate change.

142. CBDR is a recognition of the needs and rights of developing countries in development and the responsibility developed countries bear in relation to the degradation of the environment. As a consequence, varying and differentiating obligations are imposed on developed and developing countries, and different expectations in relation to mitigation, as well as adaptation to climate change. CBDR "gives effect to conceptions of equity and fairness by taking into account historical responsibilities and present contributions to emissions"[157]. It is therefore indispensable to achieve equity.

143. CBDR is enshrined in Principle 7 of the Rio Declaration[158] which states that "in view of the different contributions to global environmental degradation, States have common but differentiated responsibilities"[159]. Principle 23 of the Stockholm Declaration indicates that it is essential to consider "the systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries"[160].

144. The UNFCCC also indicates that States should protect the climate system "on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities"[161].

145. This principle is also reflected in article 2.2 of the Paris Agreement which stipulates that the Agreement "will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances"[162].

146. The term "common" in CBDR describes the shared obligations of States in relation to the protection of the environment from the adverse effects of climate change[163]. While "differentiated responsibilities reflects the "asymmetrical commitments"[164] of States in

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[156] *General Principles and Rules in Principles of International Environmental Law, op.cit.*
[157] Mayer B, Zahar A, eds. Debate 3: CBDR Principle. In: Debating Climate Law. Cambridge University Press; 2021:63-85.
[158] *General Principles and Rules in Principles of International Environmental Law, op.cit.*; Rio Declaration, *op.cit.*
[159] Principle 7 of the Rio Declaration.
[160] Principle 23 of the Stockholm Declaration.
[161] Article 3 (1) of the UNFCCC.
[162] Article 2 (2) of the Paris Agreement.
[163] *General Principles and Rules in Principles of International Environmental Law, op.cit.*
[164] "Common but differentiated responsibilities": a beacon of realism", Dipa Patel, July 29th, 2020, London School of Economics, available at: https://blogs.lse.ac.uk/internationaldevelopment/2020/07/29/common-but-differentiated-responsibilities-a-beacon-of-realism/

relation to the protection of the climate system from GHG emissions and their mitigation obligations.

This differentiation is based on different factors including, in particular, the "special needs and circumstances, future economic development of developing countries and historic contributions"[165] to the climate problem.

147. The term "special needs" of developing countries was also explicitly stated in article 11 of UNCLOS, article 3 (2) of the UNFCCC, article 3 (4) of the Paris Agreement.

148. Based on the CBDR principle, there is a differentiation between developed and developing countries regarding the requirements under the provisions of the Paris Agreement in relation to protecting the environment from the harm resulting from GHG emissions. Furthermore, another manifestation of the application of the CBDR principle is found in the obligations on developed countries to provide developing countries with support in the form of finance, technology transfer and capacity building. Reporting requirements under the Paris Agreement are also differentiated between those of developed and developing countries.

149. In light of the above, a higher standard of due diligence should be applied to developed countries in relation to their mitigation obligations. Developed countries are thus required to "take the lead by undertaking economy-wide absolute emission reduction targets"[166], while developing countries are "encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances"[167].

150. CBDR also is an embodiment of the right of developing States to pursue sustainable development. This is further reiterated in the UNFCCC which states that "the share of global emissions originating in developing countries will grow to meet their social and development needs"[168].

151. Egypt further submits that CBDR should not be restricted to the scope of differentiated responsibilities for GHG emissions, but should also encompass differentiation between States with regard to the financial burden for combatting climate change. Indeed, the UNFCCC and Paris Agreement make this clear through their various provisions on support (finance/ transfer of technology/ capacity building). These provisions impose obligations on developed countries to provide support for mitigation and adaptation, that do not apply to developing countries, while recognizing (as explicitly stated under both the UNFCCC and the Paris Agreement) that compliance by developing countries with their mitigation and adaptation commitments is not possible without developed States' financial support[169].

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[165] *General Principles and Rules in Principles of International Environmental Law*.
[166] Article 4.4. of the Paris Agreement.
[167] Article 4.4 of the Paris Agreement.
[168] UNFCCC Preamble.
[169] Article 4.7 of the UNFCCC, and Article 4.5 of the Paris Agreement.

5. Adaptation

152. The most reliable scientific evidence has established that climate change is causing widespread negative impacts which include slow-onset impacts such as sea level rise and increased desertification, as well as an increase in the intensity and frequency of extreme weather events, with dire consequences on the lives and livelihood of millions of people particularly those in the more vulnerable, less resilient communities in the global south.

153. It is generally acknowledged that responding to climate change requires "mitigation through reducing GHG emissions and enhancing sinks and reservoirs" along with taking the necessary urgent measures to "adapt to climate change".

154. As indicated in the report on NDCs prepared by the secretariat of the UNFCCC for COP27, "adaptation involves responding to climate change by assessing impacts, vulnerability and risk; planning and implementing adaptation; making contingency arrangements for when impacts occur; addressing losses and monitoring and evaluating adaptation efforts"[170].

155. In this regard, the UNFCCC stipulates that States are required to adopt "measures to facilitate adequate adaptation to climate change"[171]. States are further required to "cooperate in preparing for adaptation to the impacts of climate change"[172].

156. Developed countries in particular have additional obligation to assist developing countries in meeting the costs of adaptation to climate change[173].

157. As for the Paris Agreement, it clearly includes an adaptation objective of "increasing the ability to adapt to the adverse impacts of climate change'[174].

158. Under the Paris Agreement, each party "shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions"[175]. In this regard, it is important to note that "80% of parties to Paris Agreement have included an adaptation component in their NDCs"[176].

159. Further, a direct link as indicated under the Paris Agreement, exists between mitigation and adaptation. As stipulated under article 7.4 of the Paris Agreement, "Parties recognize that the current need for adaptation is significant and that greater levels of mitigation can reduce the need for additional adaptation efforts, and that greater adaptation needs can involve greater adaptation costs"[177]. This requires States to reduce their GHG emissions in compliance with

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[170] Synthesis Report by the Secretariat of the UNFCCC, Nationally determined contributions under the Paris Agreement, FCCC/PA/CMA/2022/4, 26 October 2022, [hereinafter "*Secretariat Synthesis Report on NDCs*"] available at: https://unfccc.int/documents/619180

[171] Article 4. 1 (b) of the UNFCCC.

[172] Article 4. 1 (e) of the UNFCCC.

[173] Article 4.4 of the UNFCCC.

[174] Article 2.1 (b) of the Paris Agreement.

[175] Article 7.9 of the Paris Agreement.

[176] Secretariat Synthesis Report on NDCs, *op. cit.*

[177] Article 7.4 of the Paris Agreement.

their mitigation obligation as well as their due diligence obligation. Failure to comply with the mitigation obligation leads to higher adaptation efforts and costs. Developed States are in this regard, required to provide assistance to developing countries.

160. Under the Paris Agreement, it is stated that developed countries "should, as appropriate, submit and update periodically an adaptation communication, (…) without creating any additional burden for developing country Parties"[178]. In the same line, article 7.6 of the Paris Agreement "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"[179].

161. It is further stipulated under article 7.7 of the Paris Agreement that "Parties should strengthen their cooperation on enhancing action on adaptation including with regard to (…) (d) assisting developing country Parties in identifying effective adaptation practices, adaption needs, priorities, support provided and received for adaptation actions and efforts, and challenges and gaps"[180].

162. Further, and as stated under article 7.13 of the Paris Agreement, "continuous and enhanced international support shall be provided to developing country Parties" for adaptation.

163. Similarly, and as indicated above, the UNFCCC requires States to "cooperate in preparing for adaptation to the impacts of climate change". Particular attention is given to Africa, because it is affected by "drought and desertification, as well as floods"[181]. In this regard, article 4.4 of the UNFCCC explicitly requires developed countries to assist developing countries "in meeting costs of adaptation"[182] to the adverse effects of climate change.

164. In light of the above, and notwithstanding the debate whether adaptation is a legal obligation, suffice it to say that there is an obligation on developed countries to assist developing countries in meeting the cost of adaptation[183]. This is further asserted by reading the provisions of the UNFCCC and its Paris Agreement in conjunction with each other.

165. It is important to note in this regard, that this adaptation support to developing countries may come in the form of providing climate finance as indicated under article 9 of the Paris Agreement, through technology development and transfer under article 10 of the Paris Agreement, and capacity building as provided for under article 11 of the Paris Agreement.

[178] Article 7.10 of the Paris Agreement.
[179] Article 7.6 of the Paris Agreement.
[180] Article 7.7. (d) of the Paris Agreement.
[181] Article 4. 1 (e) of the UNFCCC.
[182] Article 4.4 of the UNFCCC.
[183] UNFCCC article 4.4 and PA article 7.6.

6. Obligations in relation to providing support to developing countries

166. The obligation in relation to providing support to developing countries is the corollary of the principle of "distributive justice, according to which relevant dissimilarities between subjects of the law warrant special attention or special treatment"[184]. This is based primarily on the equity principle in international environmental law as reflected in the principles under the UNFCCC[185], as well as in its Paris Agreement[186], and the CBDR principle as explained above. It entails a preferential treatment. This preferential treatment "refers to instances where, because of pervasive differences or inequalities among States, formal equality and reciprocity are sidelined to accommodate extraneous factors"[187].

167. These inequalities between States "include divergences in levels of economic development, different contributions to the creation of a problem or unequal capacitors to tackle existing problems"[188].

168. Providing support to developing countries, through providing finance, technology transfer, and capacity building is a form of "preferential or differentiated treatment" to correct a situation of injustice, and to redress a situation of inequality.

a) Finance:

169. Both the UNFCCC and the Paris Agreement detail the obligations of developed state parties regarding the provision of financial resources to developing countries.

170. Articles 4.3 and 4.4 of the UNFCCC impose an obligation on developed country Parties to "provide financial resources to developing countries (…): (1) to prepare emissions inventories and national reports; (2) to implement measures to reduce emissions; and (3) to meet the costs of adapting to the adverse effects of climate change"[189].

171. Article 4.5 of the UNFCCC requires developed countries to take "all practicable steps to promote, facilitate and finance as appropriate the transfer of, or access to, environmentally sound technologies and know-how" to developing countries.

172. The Paris Agreement deals with finance mainly under article 9.

173. Article 9.1 of the Paris Agreement explicitly imposes the obligation of "provision" of finance by stating that "developed country Parties **shall** provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.

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[184] Cullet, Philippe --- "Common but Differentiated Responsibilities, [hereinafter "*Common but Differentiated Responsibilities, P. Cullet*"], available at: https://eprints.soas.ac.uk/35377/1/CBDR%20chapter%20Malgosia%20eprints.pdf

[185] Article 3 of the UNFCCC.

[186] Preamble, Paris Agreement.

[187] *Common but Differentiated Responsibilities, P. Cullet, op.cit.*

[188] *Ibid.*

[189] *Framework Convention on Climate Change in International Climate Change Law, op,cit.*

174. Article 9.3 introduces the concept of "mobilizing" finance. It states that developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels.

175. Article 9.5 establishes the obligation to "report" on the obligations referred to in 9.1 and 9.3 through stating that "developed country Parties **shall** biennially communicate indicative quantitative and qualitative information related to paragraphs 1 and 3 of this article. Article 9.7 further adds a requirement of reporting on developed country parties by stipulating that "developed country Parties shall provide transparent and consistent information on support for developing country parties provided and mobilized through public interventions biennially.

176. In its entirety, article 9 of the Paris Agreement which outlines the obligations of developed country Parties to provide financial resources to assist developing countries in their mitigation and adaptation efforts, can be seen as a logical continuation of the comparable, corresponding existing obligations under the Convention (i.e. article 4 of the Convention in relation to providing finance for developing countries).

177. It should also be noted that the various provisions in the Paris Agreement detailing the developed countries' obligations to provide financial support to developing countries are in line with the preamble of the Convention which states that 'the largest share of historical and current global emissions of GHGs has originated in developed countries", and a continuation of the obligation imposed on developed countries to provide finance to developing countries indicated under article 4 of the Convention. This is a crucial point as it once again affirms that the Paris Agreement – in line with the UNFCCC – has based the obligation of developed countries to provide finance to developing countries on the undisputed, scientifically substantiated fact that they – the developed countries – are those with the largest share of historical and current global GHG emissions.

178. Furthermore, article 4.7 of the UNFCCC is also telling due to the link it makes between support provided from developed to developing countries and the ability of developing countries to implement their "commitment under the Convention". Article 4.7 stipulates that "the extent to which developing country Parties will effectively implement their commitment 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"[190].

[190] Article 4.7 of the UNFCCC.

179. Also, in line with this same concept, article 3 of the Paris Agreement recognizes the need to support developing countries parties for the effective implementation of this agreement[191].

180. And in addition, article 4.5 of the Paris Agreement emphasizes that enhanced support for developing countries will allow for higher ambition in their actions[192].

181. All of these aforementioned provisions unambiguously establish the link between the level of support provided and the level of implementation by developing countries, while also representing a manifestation of the principle of differentiation whereby developed countries have an added obligation of providing support to developing countries.

182. The reality of the global climate finance landscape is however a far cry from what is needed if developing countries are to make their contributions to the global climate effort as outlined through their NDCs.

183. Financial support is consistently falling short from meeting the actual needs of developing countries. According to the IPCC 2022 "Mitigation of Climate Change" report: "in 2018, public and publicly mobilised private climate finance flows from developed to developing countries were below the collective goal under the UNFCCC and Paris Agreement to mobilise USD 100 billion per year by 2020 in the context of meaningful mitigation action and transparency on implementation (medium confidence). Alarmingly, the IPCC also finds that public and private finance flows for fossil fuels are still greater than those for climate adaptation and mitigation"[193].

184. According to the UNEP Adaptation Gap Report "Underfinanced. Underprepared." issued in 2023, the costs of adaptation for developing countries this decade (2020 – 2030) are estimated to be "in a plausible central range of US$ 251- 387 billion/year"[194], however, the international public adaptation finance flows to developing countries are estimated at USD 21 billion in 2021[195], which is a far cry from the actual needs of developing countries as well as the USD 100 billion pledged by the developed countries in the Copenhagen Accord, a pledge that was supposed to be met in the year 2020[196].

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[191] Article 3 of the Paris Agreement.

[192] Article 4.5 of the Paris Agreement.

[193]IPCC, 2022: Summary for Policymakers [H.-O. Pörtner, D.C. Roberts, E.S. Poloczanska, K. Mintenbeck, M. Tignor, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem (eds.)]. In: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 3–33, doi:10.1017/9781009325844.001., [hereinafter "*IPCC 2022 Summary for Policymaker*s"].

[194] United Nations Environment Programme (2023). Adaptation Gap Report 2023: Underfinanced. Underprepared. Inadequate investment and planning on climate adaptation leaves world exposed. Nairobi. https://doi. org/10.59117/20.500.11822/43796, [hereinafter "*UNEP Adaptation Gap Report*"].

[195] *Ibid.*

[196] UNFCCC, Conference of the Parties, Fifteenth Session, FCCC/CP/2009/11/Add.1, Decision 2/CP.15, 18 December 2009, available at : https://unfccc.int/process/conferences/pastconferences/copenhagen-climate-

185. The UNEP estimates that the adaptation finance gap is increasing significantly, and that "the estimated costs/needs of adaption are now approximately 10-18 times as much as international public adaptation flows"[197].

186. According to a report of the Standing Committee on Finance "on the determination of the needs of developing country Parties related to implementing the Convention and the Paris Agreement" the needs amount to "USD 5.8–5.9 trillion up until 2030. Of this amount, USD 502 billion is identified as needs requiring international sources of finance and USD 112 billion as sourced from domestic finance"[198].

187. Further, according to the most recent Global Landscape of Climate Finance, published in 2023, adaptation finance reached only USD 63 billion which "still falls far short of estimated needs of USD 212 billion per year by 2023 for developing countries alone"[199], while "global climate finance continues to be channeled primarily towards mitigation efforts, which received 91% of the total in 2021-2022"[200]. The Adaptation Fund, which is the main vehicle for private finance to support developing countries, continues to struggle in attracting needed financial support for adaptation since contributions are made to it on a voluntarily basis, and after the rejection by many developed countries particularly the US of a proposal from developing countries which would have called for a percentage of proceeds from the market mechanism under article 6 of the Paris Agreement be directed to finance the Adaptation Fund. It should also be noted that adaptation finance mostly comes in the form of market-rate debt which amounts to 60% of the total in 2021-2022[201]. Concessional lending amounted to USD 13 billion, while adaptation finance through grants decreased from 20% in 2019 – 2020 to 17% in 2021-2022.

188. The contention has been made that in light of the enormous financial needs for mitigation and adaptation actions in developing countries, it is unrealistic to assume that public money from developed countries will be made available to meet these needs and hence the contention that the solution to the current finance gap lies in attracting the private sector to invest in climate action – mitigation and adaptation – and thereby provide the financial resources needed, particularly in developing countries.

189. This contention however falls short on multiple levels:

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change-conference-december-2009/statements-and-resources/information-provided-by-parties-to-the-convention-relating-to-the-copenhagen-accord

[197] *UNEP Adaptation Gap Report, op.cit.*

[198] "Executive Summary by the Standing Committee on Finance of the first report on the determination of the needs of developing country Parties related to implementing the Convention and the Paris Agreement", available at: https://unfccc.int/sites/default/files/resource/54307_2%20-%20UNFCCC%20First%20NDR%20summary%20-%20V6.pdf

[199] Global Landscape of Climate Finance 2023: https://www.climatepolicyinitiative.org/wp-content/uploads/2023/11/Global-Landscape-of-Climate-Finance-2023.pdf

[200] *Ibid.*

[201] *Ibid.*

a) First, the private sector has no legal obligation *vis a vis* developing countries to invest in their climate related mitigation and/or adaptation programs or projects and therefore cannot provide the predictability of finance needed in developing countries for climate planning and climate action.

b) Secondly, private finance cannot be expected to be distributed geographically in a balanced manner. The available data suggests that climate finance has a tendency to invest in its country of source and therefore the overwhelming majority of climate investments over the past few years have taken place predominantly in the wealthier developed economies of the global north and in China. According to the most recent published report on the Global Landscape of Climate Finance, "in 2021/2022, a substantial majority (84%, or USD 1 trillion) of tracked climate finance was raised and spent domestically"[202], "East Asia and the Pacific, and China in particular, account for 51% of total domestic flows"[203]. Further, and according to the same report, the most affected countries by climate change received only "less than 2% of total climate finance"[204].

c) Third, while private investment has thus far made significant contributions to climate finance for mitigation[205], a small fraction of private investment has found its ways to adaptation activities due to the absence of a viable business model that would attract such private sector investment[206].

b) Technology Transfer and capacity building:

190. Under the UNFCCC, developed countries are required to "provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties" in complying with their mitigation and adaptation requirements under the Convention[207].

191. The UNFCCC imposes on developed countries further an obligation in relation to its national inventory of anthropogenic emissions as indicated under article 12 of the UNFCCC. In this regard, developed countries are required to report on their obligation to provide financial support for developing countries as well as technology transfer, which help promotes transparency[208].

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[202] *Ibid.*
[203] *Ibid.*
[204] *Ibid.*
[205] "in fact, 49% of total climate finance comes from private actors", Energy and transport, "the two largest-emitting sectors" attract the majority of mitigation finance, with energy attracting 44% of total mitigation finance, transport receiving 29%", See more in: Global Landscape of Climate Finance 2023: https://www.climatepolicyinitiative.org/wp-content/uploads/2023/11/Global-Landscape-of-Climate-Finance-2023.pdf
[206] Global Landscape of Climate Finance 2023: https://www.climatepolicyinitiative.org/wp-content/uploads/2023/11/Global-Landscape-of-Climate-Finance-2023.pdf
[207] Article 4.3 of the UNFCCC.
[208] *Framework Convention on Climate Change in International Climate Change Law, op,cit.*

192. The UNFCCC further indicates that "the Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regards to funding and transfer of technology"[209]. It is further emphasized as indicated above, that developing countries will only be able to "implement their commitments under the Convention", if developed countries comply with their obligations in relation to providing financial resources and transfer of technology to developing countries[210].

193. Under the Paris Agreement, Article 4.8 indicates that in implementing the adaptation obligations "full consideration [shall be given] to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change".

194. As indicated under article 10 of the Paris Agreement, States also "share a long-term vision on the importance of fully realizing technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions"[211]. Parties are also committed to "strengthen cooperation action on technology development and transfer"[212].

195. The Paris Agreement also focuses on capacity building of developing countries, under article 11, to mitigate and adapt to climate change.

196. States are required to cooperate "to enhance the capacity of developing countries to implement"[213] the Paris Agreement. Developed countries, in particular, are required to "enhance support for capacity-building actions"[214] in developing countries.

197. Technology transfer and capacity-building, a form of preferential treatment to developing countries who are most affected by climate change despite having continued the least to it, is necessary for developing countries to be able to mitigate and adapt to climate change adverse impacts.

7. International Human Rights Law

198. Climate change has adverse impact effects on all aspects of human life. The former UN High Commissioner for Human Rights has described climate change as "the greatest threat to human rights in the twenty-first century"[215]. In fact, the preamble of the Paris Agreement acknowledges that "Parties should, when taking action to address climate change, respect,

[209] Article 4.9 of the UNFCCC
[210] Article 4.7 of the UNFCCC.
[211] Article 10.1 of the Paris Agreement.
[212] Article 10.2 of the Paris Agreement.
[213] Article 11.3 of the Paris Agreement
[214] Article 11. 3 of the Paris Agreement
[215] UNHCHR, 'Summary Report of the Office of the United Nations High Commissioner for Human Rights on the Outcome of the Full-Day Discussion on Specific Themes Relating to Human Rights and Climate Change', 1 May 2015, 29th session, A/hrc/29/19, para. 77.

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".[216]

199. According to the most recent report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change "around the globe, many people are being denied the right to life as a consequence of climate change. This is due to direct impacts such as floods, droughts, storm surges, heat stress, hurricanes, typhoons and cyclones"[217]. The Cancun Agreements adopted in 2010 stated that "the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights"[218].

200. The adverse effects of climate change, including both rapid onset and slow-onset events, thus impact a range of human rights. More than 30 million people were displaced in 2020 due to natural disasters, most of which were climate-induced. In addition to causing protracted displacement, the sudden and slow-onset climate change impacts impact the right to life and security of person, the right to food and water, livelihoods, and socio-economic development.

201. Resolution 7/23 adopted in 2008 by the Human Rights Council stated that "climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights"[219].

202. The Independent Expert on "*the issue of human rights obligations relating to the enjoyment of a safe clean, healthy and sustainable environment*", in his report submitted to the Human Rights Council stated that: "environmental degradation can and does adversely affect the enjoyment of a broad range of human rights, including rights to life, health, food and water"[220].

203. Although none of the human rights treaties explicitly includes a right to healthy environment, this does not preclude the application of human rights law to the environment, for the reason that it is now undoubtedly clear that climate change interferes with the

[216] Paris Agreement, preamble.
[217] Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, A/78/225, 28 July 2023, available at: https://www.ohchr.org/en/documents/thematic-reports/a78255-report-special-rapporteur-promotion-and-protection-human-rights
[218] Decision 1/CP.16, "The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention", FCCC/CP/2010/7/Add.1, 15 March 2011.
[219] UNHRC, Resolution 7/23 'Human Rights and Climate Change', 28 March 2008, Doc.A/hrc/res/7/23.
[220] UNHRC, 'Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment', Preliminary Report, John H. Knox, 2012, A/hrc/22/43, p. 12.

enjoyment of human rights[221]. There are general obligations under international human rights law that States are required to abide by, namely the obligation to respect, to protect and to fulfill human rights[222].

204. Regional human rights courts have repeatedly held States responsible for conduct relating to environmental degradation as a violation of human rights, even when the associated environmental harm could not be directly attributed to the State.[223] The Advisory Opinion of the Inter American Court of Human Rights (IACtHR) recognized that climate change adversely affected the enjoyment of the right to a healthy environment under the additional protocol, as well as social and cultural rights embodied in Article 26 of the American Convention on Human Rights.[224]

205. It logically stems from the above, that States also have an obligation under human rights law to protect the climate system in order to be able to comply with their obligations under human rights law. This is elaborated in further detail in the following sub-sections.

a) The right to life: States must adopt effective mitigation and adaptation measures to protect the right to life and prevent loss of life

206. The Universal Declaration of Human Rights (hereinafter the "**UDHR**") stipulates that "everyone has the right to life"[225]. The International Covenant on Civil and Political Rights (hereinafter the "**ICCPR**") stipulates in its article 6 that "every human being has the inherent right to life. This right shall be protected by law"[226]. The right to life is also protected under article 4 of the African Charter on Human and Peoples' Rights[227] and other regional human

[221] Part III Climate Change – Principles and Emerging Norms Concepts in International Law, Ch.11 Human Rights Principles and Climate Change, John H. Knox, from the Oxford Handbook of International Climate Change Law, Cinnamon P. Carlarne, Kevin R. Gray, Richard Tarasofsky, Oxford Scholarly Authorities on International Law, 24 March 2016, [hereinafter "*Human Rights Principles and Climate Change*"]

[222] "The Foundation of International Human Rights Law", Universal Declaration of Human Rights, available at: https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law#:~:text=The%20obligation%20to%20respect%20means,groups%20against%20human%20rights%20abuse; Albers, J. H. (2018). Human Rights and Climate Change: Protecting the Right to Life of Individuals of Present and Future Generations. *Security and Human Rights*, *28*(1-4), 113-144. https://doi.org/10.1163/18750230-02801009, [hereinafter "*Human Rights and Climate Change*"].

[223] See e.g., Powell & Rayner v. United Kingdom, (1990) 12 EHRR 355 (ser. A); Lopez Ostra v. Spain, 20 EHRR. Rep. 277 (1994); Guerra & Others v. Italy (1998) 26 EHRR; McGinley & Egan v. United Kingdom (1998) 27 EHRR. Rep. 1; Öneryildiz v. Turkey (2005) 41 EHRR 20; Fadeyeva v. Russian Federation (2007) 45 EHRR 10; the Saramaka People v. Suriname (2007) IACHR Series C no. 172; Tătar v. Romania (2009) ECtHR. See Maiko Meguro, "Litigating climate change through international law: Obligations strategy and rights strategy", Leiden Journal of International Law (2020), 33, pp. 933–951, at p. 938.

[224] Advisory Opinion OC-23/18, (Nov. 15, 2017), Inter-American Court of Human Rights, (ser. A) No. 23.

[225] Universal Declaration of Human Rights, UN General Assembly Resolution 217 (III), 10 December 1948, available at: https://documents.un.org/doc/resolution/gen/nr0/043/88/pdf/nr004388.pdf?token=7snvTZZqoPpRTUPVsy&fe=true

[226] The International Covenant on Civil and Political Rights, General Assembly Resolution 2200 A (XXI), 16 December 1966, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

[227] The African Charter on Human and Peoples' Rights, adopted on June 1st, 1981, entered into force in October 1986, can be accessed through: https://au.int/en/treaties/african-charter-human-and-peoples-rights

rights instruments, as well as article 6 of the Convention on the Rights of the Child (hereinafter the "**CRC**"). It is the "supreme right" from which no derogation is permitted, even in times of national emergency,[228] and forms part of the corpus of customary international law.

207. As indicated above, the IPCC has confirmed that African countries are to face increased human morbidity and mortality (high confidence) with further global warming, and are projected to face compounding risks from increased heat related mortality[229].

208. According to the World Health Organization, "between 2030 and 2050, climate change is expected to cause approximately 250 000 additional deaths per year, from undernutrition, malaria, diarrhea and heat stress alone"[230].

209. Article 6(1) ICCPR comprises two broad categories of obligations, namely the prohibition of the arbitrary deprivation of life, as well as a positive obligation to take measures to ensure the right to life, including by ensuring its protection through law.[231] The African Commission on Human and Peoples' Rights has interpreted the right to life as requiring 'preventive steps to preserve and protect the natural environment',[232] and found a violation of the right to life resulting from unacceptable levels of environmental degradation.[233] A State's responsibility under international human rights law can also arise for failing to regulate or control the conduct of private persons to prevent violations of the right to life resulting from climate change.

210. States' positive obligations to protect, respect and ensure human rights intersect with obligations arising under international environmental law, including due diligence and the precautionary principle.[234] The standard of diligence and care required is one of 'reasonableness', namely to "do all that could be reasonably expected of them to avoid a real and immediate risk to life".[235] This language indicates that "the standard of care may differ from one State to another", with the result that States' common but differentiated

[228] UNHRC *General Comment No. 6: The right to life (Article 6)*, UN Doc HRI/GEN/1/Rev 6 (30 April 1982) 127, para 1; *General Comment No. 14: Nuclear Weapons and the Right to Life (Article 6)*, UN Doc HRI/GEN/1/Rev1 (9 November 1984) 18, para 1.
[229] IPCC, 2022: Africa.
[230] World Health Organization, Fact Sheets, Climate Change, 12 October 2023, available at: https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health#:~:text=Between%202030%20and%202050%2C%20climate,diarrhoea%20and%20heat%20stress%20alone.
[231] UNHRC *General Comment No. 6: The right to life (Article 6)*, UN Doc HRI/GEN/1/Rev 6 (30 April 1982), paras. 3–5.
[232] *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)*, adopted during the 57th Ordinary Session of the ACHPR (4–18 November 2015, para 3.
[233] 155/96 : Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria,, para 46.
[234] *Tatar C. Roumanie*, Application no 67021/01 (ECtHR, 5 July 2007).
[235] *Osman v. United Kingdom, (87/1997/871/1083)*, ECtHR, 28 October 1998, paras 115–16.

responsibilities and respective capabilities may be considered as part of an assessment of whether or not the State has met the standard of 'reasonableness'."[236]

211. Egypt respectfully submits that States, under their obligation to protect human rights, are required. to take and implement effective and ambitious measures and policies "against foreseeable and preventable loss of life" through mitigation and adaptation to climate change[237], while taking into consideration States' common but differentiated responsibilities and respective capabilities

b) The right to development: States must implement effective mitigation measures, provide necessary finance to developing countries to mitigate climate change, and co-operate:

212. The ICCPR and the International Covenant on Economic, Social, and Cultural Rights (the "**ICESCR**")[238] state that "all peoples should determine their political status and freely pursue their economic, social and cultural environment"[239].

213. This right to development, and in particular economic development, is to be pursued in light of and in conformity with the concept of sustainable development, as indicated by the Court Gabcikovo-Nagymaros case where it emphasized that the "need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development"[240].

214. As previously outlined above, the concept of sustainable development is central in the Climate Change Treaty Regime as well as under international environmental law.

215. In this regard, the UNFCCC stipulates that Parties have "a right to, and should, promote sustainable development"[241]. The Paris Agreement, in the same line, indicates that its objective is to "strengthen the global responses to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty"[242].

216. In the report of the Secretary General and the United Nations High Commissioner for Human Rights, on the right to development, it was indicated that: "the adverse impacts of

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[236] Wewerinke-Singh, Margaretha. *State Responsibility, Climate Change and Human Rights Under International Law*. Oxford,: Hart Publishing, 2018, p. 110.

[237] *Human Rights and Climate Change*, *op.cit.*; "Understanding Human Rights and Climate Change", Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf

[238] Article 1 of the International Covenant on Economic, Social and Cultural Rights, General Assembly Resolution 2200A (XXI), 16 December 1966, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

[239] Article 1 of the ICCPR and the ICESCR.

[240] *Gabcikovo- Nagymaros Judgement*, *op.cit.*, para. 140.

[241] UNFCCC, Article 3 (4).

[242] Paris Agreement, Article 2(1). See also Preamble.

climate change pose visible challenges and obstacles for States, particularly developing countries, to achieving sustainable development"[243]. It was further indicated that: "the poorest people in developing countries, who contributed least to climate change, are most vulnerable to its adverse impacts"[244].

217. In light of the above, States have the obligation to implement measures to effectively mitigate the adverse impacts of climate change and reduce GHG emissions[245].

218. Developed countries, in particular, have an obligation to provide the necessary and needed finance support to developing countries to be able to mitigate climate change and adapt to its adverse impacts, to be able to sustainably develop[246].

219. States also must comply with their duty of international cooperation with respect to the protection of human rights from the adverse impacts of climate change[247]. This obligation is enshrined under the United Charter, whereby States have pledged "to take joint and separate action in co-operation with organization for the achievement of (…) universal respect for, and observance of human rights".

220. This duty of cooperation requires States to "jointly assess the effects of their actions, that they bring those assessments to the attention of the public, and that they provide for informed public participation in international climate decisions"[248].

c) The right to food and water: States have to adopt mitigation policies and cooperate and provide the needed climate finance to developing countries to adapt and mitigate climate change.

221. The Universal Declaration of Human Rights states in article 25 that: "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food"[249].

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[243] Report of the Secretary-General and the United Nations High Commissioner for Human Rights, Right to development, A/HRC/36/23, Thirty-sixth session, Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary General, 26 July 2017, available at: https://documents.un.org/doc/undoc/gen/g17/223/63/pdf/g1722363.pdf?token=Gd8Pwucp8HAX4KiEBa&fe=true

[244] Report of the Secretary-General and the United Nations High Commissioner for Human Rights, Right to development, A/HRC/36/23, Thirty-sixth session, Annual Report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary General, 26 July 2017, available at: https://documents.un.org/doc/undoc/gen/g17/223/63/pdf/g1722363.pdf?token=Gd8Pwucp8HAX4KiEBa&fe=true

[245] "Frequently asked questions on human rights and climate change", United Nations Human Rights Office of the High Commissioner, Fact Sheet No. 38, 8 September 2021.

[246] "Poor and Vulnerable Countries Need Support to Adapt to Climate Change", IMF Blog, March 23, 2022, available at: https://www.imf.org/en/Blogs/Articles/2022/03/23/blog032322-poor-and-vulnerable-countris-need-support-to-adapt-to-climate-change

[247] *Human Rights Principles and Climate Change, op.cit*.

[248] *Ibid*.

[249] Article 25 of the Universal Declaration of Human Rights.

222. Article 11 of the ICESCR, recognizes the right to standard of living, including adequate food, and guarantees the fundamental right of everyone to be free from hunger[250]. This right is also reflected in articles 5(e)(iii) and 7 of the Convention on the Elimination of All Forms of Racial Discrimination[251], article 14(2)(h) of the Convention on the Elimination of All Forms of Discrimination Against Women[252] (hereinafter the "**CEDAW**"), articles 24(2)(c) and 27 of the CRC and article 28 of the Convention on the Rights of Persons with Disabilities[253] (hereinafter the "**CRPD**"). It is widely recognized that the right to an adequate standard of living comprises both the rights to adequate food and water, (the latter is also a stand-alone right recognized as such by the UN General Assembly[254]).

223. Resolution 37/10 of the Human Rights Council has indicated that climate change threatens "food and nutrition security, in particular in developing countries"[255].

224. The IPCC has further indicated that due to climate change "in Africa, agricultural productivity growth has been reduced by 34% since 1960 (…) more than any other region"[256]. It further indicated that 'future warming will negatively affect food systems in Africa by shortening growing seasons and increasing water stress (high confidence)"[257].

225. The IPCC has also indicated that "currently, roughly half of worlds ~8 billion people are estimated to experience severe water scarcity for at least some part of the year due to climatic and non-climatic factor"[258], and that "anthropogenic climate change has contributed to the increased likelihood and severity of the impact of droughts (especially agricultural and hydrological droughts) in many regions (high confidence). Between 1970 and 2019, 7% of all disaster events worldwide were drought-related. Yet, they contributed to 34% of disaster-related deaths, mostly in Africa"[259]. This climate-induced global water crisis poses grave risks

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[250] Article 11 of the ICESCR.
[251] The International Convention on the Elimination of All Forms of Racial Discrimination was adopted in 1965 and entered into force in 1969, can be accessed through: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en
[252] The Convention on the Elimination of all forms of Discrimination against Women, adopted in 18 December 1979, entered into force 3 September 1981, ratified by 189 States, can be accessed through: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=_en
[253] The Convention on the Rights of Persons with Disabilities, adopted 13 December 2006, entered into force 3 May 2008, ratified by 191 States, can be accessed through: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en
[254] UNGA Resolution A/RES/64/292, "The human right to water and sanitation", 28 July 2010.
[255] Human Rights Council Resolution A/HRC/RES/37/10, "the right to food", 22 March 2018.
[256] "Fact Sheet – Africa", Climate Change Impacts and Risks, 6th Assessment Report, Working Group II – Impacts, Adaptation and Vulnerability, available at: https://www.ipcc.ch/report/ar6/wg2/downloads/outreach/IPCC_AR6_WGII_FactSheet_Africa.pdf
[257] *Ibid.*
[258] Caretta, M.A., A. Mukherji, M. Arfanuzzaman, R.A. Betts, A. Gelfan, Y. Hirabayashi, T.K. Lissner, J. Liu, E. Lopez Gunn, R. Morgan, S. Mwanga, and S. Supratid, 2022: Water. In: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 551–712, doi:10.1017/9781009325844.006.
[259] Caretta, M.A., A. Mukherji, M. Arfanuzzaman, R.A. Betts, A. Gelfan, Y. Hirabayashi, T.K. Lissner, J. Liu, E. Lopez Gunn, R. Morgan, S. Mwanga, and S. Supratid, 2022: Water. In: Climate Change 2022: Impacts,

for freshwater, the aquatic environment and the people that depend on them, while displacement due to intense water scarcity is constantly on the rise.

226. In addition to the above, the IPCC has indicated that due to the interdependency between water, energy and food, risks to one of these elements are transmitted to the other two "with cascading risks to human health"[260].

227. Similar to States' obligations to uphold the right to development, they are required to adopt, and implement effective mitigation measures and cooperate in order uphold the right to food and water. Developed States in particular are required to assist developing countries in this regard by providing the needed and climate finance. Failure to meet these obligations is a violation of, inter alia, article 25 UDHR and article 11 ICESCR.

d) Protection of people in vulnerable situations from climate change: women, children and persons with disabilities

228. Several reports of different UN bodies have identified women, children and persons with disabilities as most affected by climate change[261]. According to the most recent IPCC report, climate change has "reduced food and water security", and this particularly impacts children, women and elderly people[262]. It was further indicated in the same report that "3.3 to 3.6 billion people live in contexts that are highly vulnerable to climate change", and that "global hotspots of high human vulnerability" are mainly located in developing regions such as Africa, South Asia, Central and South America[263].

a) Women

229. Women are particularly vulnerable to the adverse impacts of climate change as "they constitute the majority of the world's poor and are more dependent for the livelihood on natural resources that are threatened by climate change"[264] especially in rural areas in developing countries. In fact, "women farmers currently account for 45-80 per cent of all food production

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Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 551–712, doi:10.1017/9781009325844.006.

[260] Trisos, C.H., I.O. Adelekan, E. Totin, A. Ayanlade, J. Efitre, A. Gemeda, K. Kalaba, C. Lennard, C. Masao, Y. Mgaya, G. Ngaruiya, D. Olago, N.P. Simpson, and S. Zakieldeen, 2022: Africa. In: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 1285–1455, doi:10.1017/9781009325844.011.

[261] "Frequently asked questions on human rights and climate change", United Nations Human Rights Office of the High Commissioner, Fact Sheet No. 38, 8 September 2021; Report of the Secretary General – Human Rights Council, Fiftieth session, 13 June – 8 July 2022, "The impacts of climate change on the human rights of people in vulnerable situations", A/HRC/50/57.

[262] IPCC, 2022: Summary for Policymakers.

[263] *Ibid.*

[264] "Fact Sheet: Women, Gender Equality and Climate Change", available at: https://www.un.org/womenwatch/feature/climate_change/downloads/Women_and_Climate_Change_Factsheet.pdf

in developing countries (…). About two-thirds of the female labour force in developing countries, and more than 90 percent in many African countries are engaged in agricultural work"[265].

230. Due to gender inequality, women also face "social, economic, and political barriers that limit their coping capacity"[266].

231. The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 37 (2018) on "the gender-related dimensions of disaster risk reduction in the context of climate change", indicated that the CEDAW and other relevant international frameworks "should be understood to apply at all stages of climate change and disaster prevention, mitigation, response, recovery and adaptation"[267].

232. In the Gender Action plan (hereinafter the "**GAP**") adopted in Decision 3/CP.23 of COP 23, under the Lima Work Programme on Gender, it was agreed that "Gender-responsive climate policy requires further strengthening in all activities concerning adaptation, mitigation and related means of implementation (finance, technology development and transfer, and capacity-building) as well as decision-making on the implementation of climate policies. The GAP recognizes the need for women to be represented in all aspects of the UNFCCC process and the need for gender mainstreaming through all relevant targets and goals in activities under the Convention as an important contribution to increasing their effectiveness"[268].

233. The Paris Agreement acknowledges that "adaptation action should follow a country-driven, gender-responsive, participatory and full transparent approach, taking into consideration vulnerable groups"[269].

234. State are thus under the obligation to first "take affirmative measures to prevent human rights harms caused by climate change"[270] in particular to women, they should also ensure that their mitigation and adaptation measures reflect gender equality and non-discrimination.

b) Children

235. It is well established that children "because of their physiology and immune systems are less developed than adults, experience the effects of climate-related stresses more intensely"[271].

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[265] *Ibid*.
[266] *Ibid.*
[267] Committee on the Elimination of Discrimination against Women, "General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change", para. 16.
[268] Decision 3/CP.23, FCCC/CP/2017/11/Add.1, available at: https://unfccc.int/sites/default/files/resource/decision_3_cp23.pdf
[269] Article 7.5 of the Paris Agreement.
[270] "Frequently asked questions on human rights and climate change", United Nations Human Rights Office of the High Commissioner, Fact Sheet No. 38, 8 September 2021.
[271] United Nations Human Rights Office of the High Commissioner, Fact Sheet No. 38, 8 September 2021; Report of the Secretary General – Human Rights Council, Fiftieth session, 13 June – 8 July 2022, "The impacts of climate change on the human rights of people in vulnerable situations", A/HRC/50/57.

236. According to the Children's Climate Risk Index, prepared by the UNICEF in 2021, "approximately 1 billion children live in the 33 countries [developing countries] that are classified as extremely risk"[272] from the impacts of climate change while they emit only and collectively 9% of global CO_2 emissions[273].

237. The CRC stipulates in its article 24 that States "recognize the right of the child to the enjoyment of the highest attainable standard of health".

238. The Committee on the Rights of the Child, in its general comment No. 26 (2023) "on children's rights and the environment, with a special focus on climate change" indicated that "the right to life is threatened by environment degradation, including climate change"[274].

239. The preamble of the Paris Agreement explicitly states "parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the right of (…) children"[275].

240. In light of the above, Egypt submits that States have an obligation to "take positive measures to ensure that children are protected from foreseeable premature or unnatural death and threats to their lives (…)"[276], as indicated by the Committee on the Rights of the Child. Such measures include GHG emissions reduction and effective mitigation and adaptation measures.

c) Persons with disabilities

241. According to a 2020 Report by the Office of the United Nations Commissioner for Human Rights, "persons with disabilities – an estimated 1 billion individuals worldwide may experience [climate change impacts] differently and more severely than others"[277]. The report further elaborates that: "persons with disabilities are often among those most adversely affected in an emergency, sustaining disproportionately higher rates of morbidity and mortality, and are among those least able to access emergency support. Sudden-onset natural disasters and slow-onset events can seriously affect the access of persons with disabilities to food and nutrition, safe drinking water and sanitation, health-care services and medicines"[278].

242. The CRPD stipulates that States "undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without

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[272] . The Climate Crisis is a Child Rights Crisis:: Introducing the Children's Climate Risk Index. New York: United Nations Children's Fund (UNICEF), 2021, available at: https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf

[273] *Ibid*.

[274] Committee on the Rights of the Child, "General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change", CRC/C/GC/26, 22 August 2023.

[275] Preamble Paris Agreement.

[276] Committee on the Rights of the Child, "General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change", CRC/C/GC/26, 22 August 2023.

[277]Report of the Office of the United Nations High Commissioner for Human Rights, "Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change", A/HRC/44/30, 22 April 2020.

[278]*Ibid*.

discrimination of any kind on the basis of disability"[279]. It furthers stipulates that States "recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability".[280]

243. In light of the above, States have a duty to ensure that persons with disabilities are protected from the adverse impacts of climate change, through the adoption of effective mitigation and adaptation measures, they also have to ensure that these measures are non-discriminatory.

e) Protection of human rights from the activities of private actors causing harm to the climate system

244. While we have in the preceding chapters established that States have a duty to mitigate climate change through the reduction of their GHG emissions, their compliance with this obligation would only lead to protecting human rights from the adverse impacts of climate change to a certain extent if the conduct of private operators is not adequately regulated and monitored and if the polluting activities affecting human rights are not penalized.

245. The due diligence obligation "entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators"[281]

246. According to the Guiding Principles on Business and Human Rights, "States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations"[282]. In this regard, private actors should "avoid causing or contributing to adverse human rights impacts through their own activities"[283], and "seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations"[284]. This includes the emission of GHGs activities[285].

247. In light of this, Egypt submits that States are under the obligation, through its rules, policies and regulations, to regulate the conduct of and to penalize private entities operating

[279] Article 4.1, of the Convention on the Rights of Persons with Disabilities.
[280] Article 25 of Convention on the Rights of Persons with Disabilities.
[281] *SRFC Advisory Opinion, op.cit*, para. 131; *Pulp Mills Case*, para. 197.
[282] "Guiding Principles on Business and Human Rights, Implementing the United Nations "Protect, Respect and Remedy" Framework", United Nations Human Rights Office of the High Commissioner, endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011, available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf
[283] *Ibid.*
[284] *Ibid.*
[285] "Frequently asked questions on human rights and climate change", United Nations Human Rights Office of the High Commissioner, Fact Sheet No. 38, 8 September 2021.

under its jurisdiction[286] for their polluting activities[287], as failure by States to implement adequate mitigation laws will allow private operators to "remain business as usual in emitting GHGs"[288].

f) The right to sustainable development

248. The concept of sustainable development started to emerge and first appeared in the 1970 Stockholm Declaration of 1972[289]. In 1987, the Brundtland Commission or the World Commission on Environment and Development[290] defined sustainable development as: "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"[291].

249. Sustainable development "seeks in essence to reconcile the need for development with environmental protection"[292].

250. Sustainable development comprises several elements of significant importance:

i) The principle of intergenerational equity which entails the preservation of natural resources for future generations[293].

ii) The principle of equitable use or intrageneration equity which entails that the use of natural resources should be sustainable, meaning that it should take into account the needs of other States, in view of conserving and developing these resources[294].

251. When it comes to the principle of intergenerational equity, "the idea that as members of the present generation, we hold the earth in trust for future generations is well known to international law"[295]. Reference to the protection of the climate system for future generations is explicitly stated in the UNFCCC and its Paris Agreement[296].

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[286] *The No-Harm Principle as the Foundation of International Climate Law, op.cit.; Riccardo, the Due Diligence Rule, op.cit*.
[287] *Riccardo, the Due Diligence Rule, op.cit*.
[288] Tsang, Vanessa S.W., "Establishing State Responsibility in Mitigating Climate Change under Customary International Law" (2021). LL.M. Essays & Theses. 1. https://scholarship.law.columbia.edu/llm_essays_theses/1
[289] The Report of the United Nations Conference in the Human Environment, Stockholm, June 1972, can be found here: https://www.un.org/en/conferences/environment/stockholm1972
[290] This Commission was established in 1983 by virtue of General Assembly Resolution A/42/427. It is a "special and independent" Commission chaired by Gro Harlem Brundtland, see more: Brundtland Report, https://documents-dds-ny.un.org/doc/UNDOC/GEN/N87/184/67/IMG/N8718467.pdf?OpenElement
[291] *Matz, Fuchs, Marine Living Resources, op.cit.*, p. 495; the United Nations Website: https://www.un.org/en/academic-impact/sustainability; the Brundtland Report, para. 27.
[292] *Tanaka, Yoshifumi, The International Law of the Sea, University of Copenhagen, Faculty of Law, Second Edition, Cambridge University press, 2015*, p. 249.
[293] *General Principles and Rules in Principles of International Environmental Law, op.cit.*
[294] *SFRC Advisory Opinion, op.cit*., para. 190.
[295] *General Principles and Rules in Principles of International Environmental Law, op. cit.*
[296] Article 3 (1) of the UNFCCC; The Preamble of the Paris Agreement (intergenerational equity).

252. This was further asserted by this Court in its Nuclear Weapons Advisory Opinion has explicitly stated that: "the environment (…) represents the living space, the quality of life and the very health of human beings, including generations unborn"[297].

253. As for intragenerational equity, the Stockholm Declaration called for the "non exhaustion of renewable natural resources and the maintenance and improvement of the capacity of the earth to produce viable renewable resources"[298].

254. Article 3 (4) of the UNFCCC stated that "the Parties have a right to, and should, promote sustainable development".

255. Development is crucial and a human right imperative for developing countries. As indicated under the UNFCCC, and its Paris Agreement, special treatment is given to developing countries to enable them to develop while also protecting the environment.

256. The concept of sustainable development for developing countries, should be implemented in light of their legitimate pursuit of development and eradication of poverty. It should be noted that 34% of Africa's population live under poverty[299].

257. Sustainable development entails a duty of cooperation between States to ensure a development that does not cause the degradation of the environment. It further enhances the obligation incumbent on developed countries to provide support to developing countries to be able to mitigate and adapt to climate change.

8.Averting, minimizing and addressing loss and damage

258. Under Article 8 of the Paris Agreement States have recognized "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"[300].

259. According to the IPCC latest report: "climate change has caused widespread adverse impacts and related losses and damages to nature and people"[301].

260. As identified by the IPCC, loss and damage can be economic and non-economic[302]. Economic loss and damages are quantifiable and are manifested in infrastructure destruction

[297] *Nuclear Weapons Advisory Opinion*, *op.cit.*, para. 226 ; *Gabcikovo-Nagymoros Judgement, op.cit*, para. 53.
[298] Principles 3 and 5 of the Stockholm Declaration.
[299] "Africa is losing the battle against extreme poverty", 13 July 2022 in ISS Today,https://issafrica.org/iss-today/africa-is-losing-the-battle-against-extreme-poverty
[300] Article 8.1 of the Paris Agreement.
[301] IPCC Sixth Assessment Report – Synthesis Report 2023.
[302] *Ibid*.

due to extreme weather events or slow onset events, or in the loss of livelihood[303]. Whereas, non-economic loss and damages are seen in loss of human life, due to climate change[304].

261. The latest report of the IPCC asserted that "losses and damages are unequally distributed across systems, regions and sectors and are not comprehensively addressed by current financial, governance and institutional arrangements, particularly in vulnerable countries"[305]. As previously demonstrated, developing countries "face the worst loss and damage and are least able to cope with the impacts"[306].

262. Several COP decisions have tackled the issue of loss and damage to address the losses and damages incurred by developing countries[307]. This culminated with the establishment of a Loss and Damage Fund in COP27 in November 2022.

263. It is evident that if States do not adopt and implement effective mitigation and adaptation measures, "losses and damages will continue to disproportionately affect the poorest and most vulnerable"[308] (i.e. developing countries), and therefore developed States are required to comply with their obligation to provide support to developing countries to meet the cost of adaptation to the adverse impacts of climate change as indicated in the UNFCCC and its Paris Agreement. On the same note, "accelerated financial support for developing countries from developed countries and other sources is a critical enabler to enhance mitigation action"[309].

264. On another note, and as indicated in the Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the context of climate change "from a human rights perspective, loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation"[310].

265. In another report by the Special Rapporteur in 2023, it was indicated that States' legislations should ensure that "compensation funding is provided to victims of climate change impacts"[311]. They should also "create provision for compensation, liability and reparations to

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[303] "The UNFCCC Loss and Damage Fund and related processes", Vicente Paolo B. Yu III, Third World Network Briefing Paper, September 2023, available at: https://www.twn.my/title2/briefing_papers/twn/Loss%20and%20damage%20TWNBP%20Sep%202023%20Yu.pdf

[304] *Ibid*.

[305] IPCC Sixth Assessment Report – Synthesis Report 2023.

[306] "The UNFCCC Loss and Damage Fund and related processes", Vicente Paolo B. Yu III, Third World Network Briefing Paper, September 2023, available at: https://www.twn.my/title2/briefing_papers/twn/Loss%20and%20damage%20TWNBP%20Sep%202023%20Yu.pdf

[307] *Ibid.*

[308] IPCC Sixth Assessment Report – Synthesis Report 2023.

[309] *Ibid.*

[310] Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, "Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation", UNGA, A/77/226, 26 July 2022.

[311] Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, "Exploring approaches to enhance climate change legislation, supporting climate change litigation and advancing the principle of intergenerational justice", UNGA, A/78/255, 28 July 2023.

ensure that major greenhouse gas polluters – countries and corporations alike – pay for the harm they are causing. This should include domestic and transnational liability"[312]

266. In a report by the Committee on the Right of the Child, it was stated that "it is critical to acknowledge loss and damage as a third pillar of climate action, along with mitigation and adaptation. States are encouraged to take note that, from a human rights perspective, loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation"[313].

267. In light of the above, developed States have an obligation to provide financial and technical assistance to address loss and damage incurred by developing countries in order to "advert, minimize and address" loss and damage resulting from past and current emissions.

268. Lastly, it is opportune to note that despite the neglect of the loss and damage issue over the years, decision 2/CMA.4 of COP27 where all States agreed on the establishment of a Loss and Damage Fund is a welcoming development that reflect the consensus of all States, including developed States on the need to provide support to developing countries for loss and damage incurred due to climate change.

269. In this regard, the aforementioned decision states that the COP acknowledges "the urgent and immediate need for new, additional, predictable and adequate financial resources to assist developing countries that are particularly vulnerable to the adverse effects of climate change in responding to economic and non-economic loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, especially in the context of ongoing and ex post (including rehabilitation, recovery and reconstruction) action"[314]. This was followed by the adoption at COP28 of the decision on the work of the transitional committee[315] and the announcement of pledges towards the Loss and Damage fund by a number of Parties.

9.UNCLOS

270. Egypt has addressed the obligations of States arising from the provisions stipulated under UNCLOS in relation to the protection of the marine environment from GHG emissions in its written submission in the context of the Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law before

[312] *Ibid.*

[313] Committee on the Rights of the Child, "General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change", CRC/C/GC/26, 22 August 2023.

[314] Decision 1/CP. 28, "Operationalization of the new funding arrangements, including a fund, for responding to loss and damage referred to in paragraphs 2–3 of decisions 2/CP.27 and 2/CMA.4", Annex I, FCCC/CP/2023/11/Add.1.

[315] Report of the Conference of the Parties on its twenty-eighth session, held in the United Arab Emirates from 30 November to 13 December 2023, FCCC/CP/2023/11/Add.1, 15 March 2024.

ITLOS. We would therefore respectfully refer the Court to Egypt's submission for a detailed elaboration of Egypt's position[316].

271. We will briefly outline these obligations in the subsequent paragraphs.

A] States have an obligation to reduce their emissions of GHGs to protect the marine environment.

272. The chapeau of the questions submitted to the Court makes explicit reference to "the duty to protect and preserve the marine environment", which requires the Court to take into consideration, and to render its advisory opinion on question 1 on "the obligations of States to ensure the protection of the climate system and other parts of the environment" in light of the "duty to protect and preserve the marine environment". This duty is enshrined, in Part XII of UNCLOS

273. Preservation of the oceans is key to stabilizing GHG concentrations. Article 4 paragraph 1 (d) of the UNFCCC clearly stipulates that "all parties taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall: promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, ***of sinks and reservoirs[317] of . . . greenhouse gases*** . . . including biomass, forests and ***oceans*** as well as other terrestrial, coastal and marine ecosystems[318]".

274. The Paris Agreement building on the UNFCCC, stipulates in article 5 (1) that "Parties should take action to conserve and protect, as appropriate, sinks and reservoirs of greenhouse gases as referred to in article 4, paragraph 1 (d), of the convention, including forests".

275. On the other hand, GHGs cause pollution of the marine environment through ocean acidification, ocean warming and sea level rise. The phenomenon of ocean warming is caused by the absorption of the oceans to the excess in global temperature heat causes from GHGs.[319] Such absorption of heat causes a rise in the temperature of the surface of the oceans.[320] This heat, consequently, penetrates the surface of the ocean and starts altering the ocean and its

[316] Egypt's written submission, available at: https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/

[317] Sinks are defined under Article 1, para. 8 of the UNFCCC as "any process, activity or mechanism which removes a greenhouse gas, an aerosol, or a precursor of a greenhouse gas from the atmosphere"; Reservoirs are defined under Article 1, para. 7 of the UNFCCC as "a component or components of the climate system where a greenhouse gas or a precursor of greenhouse gas is stored".

[318] UNFCCC, article 4, para. 1 (d).

[319] IUCN, Issues Brief, Ocean warming, accessible on: https://www.iucn.org/resources/issues-brief/ocean-warming

[320] *NASA, "Vital Signs: Ocean Warming"*, available at: https://climate.nasa.gov/vital-signs/ocean-warming/

ecosystem negatively.[321] As a result, the absorbed carbon dioxide dissolves into the ocean, and the ocean loses its oxygen, and consequently, the acidification of the ocean occurs.[322]

276. As to sea level rise, it is attributed to global mass loss and ocean thermal expansion, which are caused by rising global temperature and ocean warming. This, in turn, is caused by the pollution resulting from the emission of GHGs, and in particular CO_2.[323] Climate change and global warming is therefore one of the major challenges confronting the marine environment, with particularly devastating impacts for low-lying states, deltas, and states depending on fisheries for food security.[324]

277. Part XII of UNCLOS covers the protection and preservation of the marine environment.

278. Article 192 of UNCLOS, which is the core of Part XII of UNCLOS, establishes a specific affirmative and overarching obligation on State Parties "to protect and preserve the marine environment".[325] States have "the positive obligation to take active measures to protect and preserve the marine environment, and by logical implication, […] the negative obligation not to degrade the marine environment".[326]

279. Under Part XII of UNCLOS, States have an affirmative duty to take "all measures that are necessary" using "the best practicable means at their disposal" and "in accordance with their capabilities" to prevent, control and reduce pollution of the marine environment, which includes carbon dioxide and other GHGs, as long as they directly or indirectly result or likely to result in deleterious effects to the marine environment. Furthermore, these measures shall include those necessary to protect and preserve rare or fragile ecosystems and other forms of marine life including coral reef ecosystems. This is an obligation of conduct and depends on the differentiated capabilities of States. It is "an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result".[327]

280. Article 194 (3) stipulates that states are required to adopt and take measures that "minimize to the fullest possible extent the release of toxic, harmful or noxious substances,

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[321] *IPCC, "2013: Summary for Policymakers", in Thomas Stocker et al (eds) Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC WG1 AR5 SPM) (Cambridge University Press 2013), p.24*, available at: https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_SPM_FINAL.pdf.

[322] IPCC, 2019: *Summary for Policymakers. In: IPCC Special Report on the Ocean and Cryosphere in a Changing Climate* [H.-O. Pörtner, D.C. Roberts, V. Masson-Delmotte, P. Zhai, M. Tignor, E. Poloczanska, K. Mintenbeck, A. Alegría, M. Nicolai, A. Okem, J. Petzold, B. Rama, N.M. Weyer (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, pp. 3–35 [hereinafter *the IPCC 2019 Report*], available at: https://www.ipcc.ch/site/assets/uploads/sites/3/2022/03/01_SROCC_SPM_FINAL.pdf

[323] *Ibid.*

[324] Boyle, Alan "Protecting the Marine Environment from Climate Change: The LOSC Part XII Regime", p. 83.

[325] UNCLOS, article 192.

[326] *South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China) (Award of 12 July 2016) PCA Case No. 2013–19*, p.373, para. 941

[327] *Responsibilities and Obligations of States in the Area, op.cit*, para. 110.

especially those which are persistent, from land-based sources [such as rivers, estuaries, pipelines and outfall structures][328], from or through the atmosphere as or by dumping".[329]

281. Articles 207 and 212 of UNCLOS respectively, require States to adopt laws and regulations, as well as other non-legal measures to prevent, reduce and control the pollution of the marine environment derived from land-based sources and from or through the atmosphere.[330] Furthermore, States are required to enforce these rules and regulations.[331]

282. In order to effectively comply with their duty to protect the marine environment, States parties to UNCLOS are thus required, *inter alia*, to reduce GHG emissions in line with their relevant obligations under the UNFCCC and its Paris Agreement. Failure to fulfil their NDCs, cooperate in formulating rules and practices for the protection and preservation of the marine environment, and adopting laws and regulations to prevent, reduce and control pollution of the marine environment, all constitute breaches of UNCLOS. State parties shall implement these obligations in accordance with the principles of the UNFCCC and its Paris agreement, in particular the principles of equity and CBDR, and the fact that developed countries have the largest share of historical and current global emissions.

B] States have an obligation to conduct "Environmental Impact Assessments when there is "plausible indications of potential risks" to the climate system arising from their activities

283. The precautionary principle is "an integral part of the general obligation of due diligence" as explained above.[332] Further, ITLOS confirmed it in the *Southern Bluefin Tuna* Case, in which it ordered parties to act with prudence and caution to prevent serious harm to Southern Bluefin Tuna Stock.[333]

284. According to this principle, States should take all appropriate measures to prevent damage "when there are plausible indications of potential risks"[334], and therefore, States are not required to act only when there is an absolute certainty of harm. This means that States are under an obligation to take precautionary measures to prevent potential environmental harm, even where scientific evidence is uncertain.

285. Article 206 of UNCLOS requires States to conduct environmental impact assessments where there are reasonable grounds to believe that activities under their jurisdiction or control may cause substantial pollution or significant and harmful changes to the marine environment.

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[328] UNCLOS, article 207 (1).
[329] UNCLOS, article 212.
[330] UNCLOS, articles 207 and 212.
[331] UNCLOS, articles 213 and 222.
[332] *Responsibilities and Obligations of States in the Area, op.cit,* para. 131.
[333] *Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan), Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999, p.280,* paras. 77-80.
[334] *Responsibilities and Obligations of States in the Area, op.cit,* para. 131.

Environmental impact assessment is crucial to ensure that human activities do not harm the environment, particularly in shared and transboundary contexts and is a general obligation under customary international law.[335]

[335] *Responsibilities and Obligations of States in the Area*, *op.cit*, para 145.

VII. Question (B): Legal Consequences under the obligations detailed above for States which through their conduct (act or omission) have caused significant harm to the climate system and other parts of the environment.

286. In the subsequent paragraphs, we will address how developed States have failed to conform to their obligations under customary international law as well as under the Climate Change Legal Regime, and the legal consequences arising from these violations.

A] Responsibility of States for internationally wrongful acts

287. Under the ILC Draft Articles Responsibility of States for Internationally Wrongful Acts ("**ARSIWA**") "every internationally wrongful act of a State entails the international responsibility of that State"[336]. A State is considered to have violated an international obligation, when its act or omission[337] is not in conformity with what is required of that State under that obligation[338]. This international obligation may be established by treaty, by a customary rule of international law or by a general principle of international law[339]. The occurrence of harm or injury is not a precondition to the establishment of State responsibility under international law.

288. It must be emphasized that the general law of State responsibility applies fully to the issue of climate change, and the existence of a specific climate law regime does not exclude the applicability of these general principles. While it could be argued, at face value, that the Climate Change Legal Regime (i.e. UNFCCC, Kyoto Protocol, and Paris Agreement) consists of a *lex specialis* that displaces the general law of State responsibility under article 55 ARSIWA, this argument does not survive closer scrutiny. The wording of article 55 excludes the applicability of ARSIWA only where there are 'special rules' in place *specifically* regarding conditions for the existence of an internationally wrongful act or the content or implementation of State responsibility. The UNFCCC, however, does not contain such 'special rules', neither does it embody any provisions addressing the consequences of breaches of the treaty. While the framework for loss and damage is often framed as one of compensation, reparations or liability, these terms appear nowhere in the UNFCCC or article 8 of the Paris Agreement. In fact, the loss and damage framework was established under the

[336] Article 1 of Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, 2001, "text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10)", [hereinafter "*ARSIWA*"]

[337] Article 2 of ARSIWA

[338] Article 12 of ARSIWA.

[339] Commentary No. 3 to Article 12 of ARSIWA; Part VIII Compliance, Implementation, and Effectiveness, Ch.58 International Environmental Responsibility and Liability by Christina Voigt, in the Oxford Handbook of International Environmental Law (2nd Edition), Lavanya Rajamani, Jacqueline Peel, 12 August 2021, Oxford Scholarly Authorities on International Law.

adaptation provisions of the climate change legal regime and uses no terms related to breaches of obligations, reparations or compensation. Moreover, article 14 of the UNFCCC, which addresses dispute settlement and enforcement, is fully reconcilable with the applicability of the full corpus of 'secondary rules' reflected in the general law of State responsibility.[340]

289. In fact, the question submitted to the Court by the General Assembly addresses States' obligations under a broad range of legal regimes that apply simultaneously and concurrently, including the UN Charter, international human rights law, and international environmental law, in addition to the Climate Change Legal Regime.

290. According to ARSIWA, an internationally wrongful act consists of an act or omission which is "(a) attributable to the state under international law and (b) constitutes a breach of an international obligation of the state"[341].

291. There are thus two main components of an internationally wrongful act. First, with respect to attribution, conduct is attributable to a State when it is undertaken by any state organ, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit"[342]. Articles 8 and 11 ARSIWA further provide that the conduct of private actors is attributable to a State if they are acting on its instruction, or under its direction or control, or if the State acknowledges and adopts the conduct as its own. Read together, articles 4, 8, and 11 indicate that even if the conduct in question is not under the direction or control of the State, it suffices to establish that the State failed to carry out its international obligations to prevent such conduct.

292. As for the second component of an internationally wrongful act, State responsibility arises when a State breaches its obligations under treaties to which it is a party and customary international law. Examples include non-compliance with commitments under the UNFCC and the Kyoto Protocol to limit or reduce GHG emissions, the Montreal Protocol on Substances that Deplete the Ozone Layer[343], the Convention on long-range transboundary air pollution[344] and its eight protocols as well as breaches of the obligation to protect and preserve the marine environment and to take measures to prevent, reduce and control marine pollution

[340] Article 8 of the Paris Agreement; Article 14 of the UNFCCC; Warsaw Inter- national Mechanism for Loss and Damage Associated with Climate Change Impacts (22 November 2013) UN Doc FCCC/CP/2013/L.15; *State Responsibility, Climate Change and Human Rights*, 67-69.
[341] Commentary No.3 to article 2 of ARSIWA..
[342] Article 4 of thr ARSIWA.
[343] Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in 16 September 1987, entered into force in 1 January 1989, ratified by 198 States, can be accessed through: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-2-a&chapter=27&clang=_en
[344] Convention on Long-Range Transboundary Air Pollution, adopted in 13 November 1979, entered into force in 16 March 1983, can be accessed through: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-1&chapter=27&clang=_en

and prevent transboundary harm under UNCLOS.[345] This is also applicable to violations of positive obligations under human rights treaties or failure to prevent such violations by private actors. State responsibility also arises for breaches of customary international law, including non-compliance with the principle of the prohibition of transboundary environmental harm.

293. Article 15 of ARSIWA provides that State responsibility also arises from a "breach consisting of a composite act".[346] In such cases, "the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation".[347]

294. State responsibility, therefore, could arise in relation to climate change in cases where the cumulative actions of a State do not meet the due diligence requirement for preventing damage to the environment or the risk thereto, consistent with the no-harm principle.[348]

295. Also, in the case of cumulative actions constituting breach of the no-harm principle, the inability to apportion or attribute the wrongful conduct to a single State is not a bar to the application of the principle of responsibility of a wrong-doing State. According to Article 47 ARSIWA, "where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act". This article reflects the basic principle that wrongful conduct can be attributed to multiple States simultaneously, where each State is individually and independently responsible for breaches of its international legal obligations.[349] This principle was reflected in the Court's decision in *Certain Phosphate Lands in Nauru*.[350]

296. A State responsible for a continuing breach of an international obligation is under three principal obligations, namely cessation, full reparation through restitution, compensation, and satisfaction, either singly or in combination, and non-repetition.[351]

297. In light of the obligations of States elaborated under Part VI. ANSWER TO QUESTION 1 (A): 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:, Egypt submits that developed countries, through the conduct of their government and legislative organs (State

[345] UNCLOS, Part. XII
[346] Article 15 of ARSIWA.
[347] *Ibid*.
[348] *State Responsibility, Climate Change and Human Rights*, at p. 92.
[349] *Report of the ILC on the Work of its 63rd session*, Official Records of the General Assembly, 55th session, Supplement No 10, UN Doc A/66/10 (2011), Roda Verheyen, *Climate Change Damage and International Law: Prevention Duties and State Responsibility* (Leiden, Martinus Nijhoff, 2005) p. 236, *State Responsibility, Climate Change and Human Rights*, p. 92.
[350] *Certain Phosphate Lands in Nauru (Nauru v Australia) (Preliminary Objections)* [1992] ICJ Reports 240, para 48.
[351] Articles 30 and 31 ARSIWA.

organs as indicated under ARSIWA) are continuously breaching their obligations under the UNFCCC, the Paris Agreement, as well as under relevant human right treaties, and UNCLOS. They are also in continuous breach of their obligations under the no harm principle and rules of general international law as will be further elaborated below.

1. The no-harm principle threshold triggering the responsibility of developed countries for violation of the no-harm principle

298. Egypt recalls that the no-harm principle (as a primary obligation) contains no specific harm threshold[352] to be able to determine the conduct that may constitute a violation of this principle and, as a consequence engage the responsibility of wrong-doing State . However, international jurisprudence as well as relevant UNGA resolutions assist in identifying this threshold.

299. The Trail Smelter case indicated that: "under the principles of international law (…) no state has the right to use or permit the use of territory in such a manner as to cause injury by fumes in or to the territory of another of the properties or persons thereon, when the case is of serious consequences and the injury is established by clear and convincing evidence"[353].

300. The UNGA in its resolution 1629 (XVI) of 1961 declared that: "the fundamental principles of international law impose a responsibility on all States concerning actions which might have harmful biological consequences for the existing and future generations of peoples of other States, by increasing the levels of radioactive fallout"[354].

301. The UNGA in its resolution 2849 (XXVI) of 1972 stated that the Stockholm Conference must "respect fully the exercise of permanent sovereignty over natural resources, as well as the right of each country to exploit its own resources in accordance with its own priorities and needs and in such a manner as to avoid producing harmful effects on other countries"[355].

302. The 1985 Vienna Convention for the Protection of the Ozone Layer defined adverse effects as "changes in the physical environment or biota, including changes in climate, which

[352] *Climate Change in Principles of International Environmental Law*; Sands, P., Peel, J., Fabra, A., & MacKenzie, R. (2018). Liability for Environmental Damage. In Principles of International Environmental Law (pp. 735–804). Chapter 16, Cambridge: Cambridge University Press

[353] Trail Smelter Case (United States, Canada), 16 April 1938 and 11 March 1941, Volume III, p. 1964.

[354] UNGA Res. 1629 (XVI), Report OF the United Nations Scientific Committee on the Effects of Atomic Radiation, 27 October 1961; *General Principles and Rules in Principles of International Environmental Law, op.cit., p. 208.*

[355] UNGA Res. 2849 (XXVI), "Development and environment", 20 December 1971; *General Principles and Rules in Principles of International Environmental Law, op.cit., p. 208.*

have significant deleterious effects on human health or on the composition, resilience and productivity of natural and managed ecosystems, or on materials useful to mankind"[356].

303. The UNFCC similarly defined in article 1, adverse effects of climate change as "changes in physical environment or biota resulting from climate change which have significant deleterious effects on composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare".

2. Violation of the no-harm principle by developed countries since early 1950s is a violation of an erga omnes obligation

304. If we consider that the threshold which triggers liability of the responsible State under the no-harm principle in relation to climate change, needs to be "significant", it is no doubt that, the conduct (acts or omissions) of developed countries over time in relation to activities within their jurisdiction or control that have emitted anthropogenic GHGs resulting in an interference with the climate system have caused harm to the climate system and to the environment. This harm exceeds, in Egypt's view and as proven by scientific evidence, the highest thresholds that could be chosen in order to determine the degree of harm in the term 'significant".

305. It may be argued however that as early as the 1950s, developed States could not have known that excessive CO_2 concentrations in the atmosphere resulting from their activities (whether past or present) cause harm to the environment. Therefore, it cannot be required of a State to comply with an international obligation (arising from customary international law) when it did not know that this obligation existed/ or is applicable to it.

306. In response to this, it should be noted that "high accuracy measurement of atmospheric CO_2 concentration"[357] dates back to 1958. Since as early as 1956, scientists have stated that "in the middle of the 19th century appreciable amounts of carbon dioxide began to be added to the atmosphere through the combustion of fossil fuels"[358].

307. In 1965, the President of the United States, Lyndon Johnson, in a message to the congress declared that: "air pollution is no longer confined to isolated places. This generation

[356] Vienna Convention for the Protection of the Ozone Layer, adopted in 22 March 1985, entered into force in 22 September 1988, article 1.2, can be accessed through: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-2&chapter=27&clang=_en

[357] *Historical Overview of Climate Change, op. cit.*,

[358] Revelle, R., & Suess, H. E. (1957). Carbon dioxide exchange between atmosphere and ocean and the question of an increase of atmospheric CO2 during the past decades. Tellus, 9(1), 18-27, available at: https://onlinelibrary.wiley.com/doi/abs/10.1111/j.2153-3490.1957.tb01849.x and https://www.smokeandfumes.org/documents/document8

has altered the composition of the atmosphere on a global scale through radioactive materials and a steady increase in carbon dioxide through the burning of fossil fuels"[359].

308. It cannot thus be denied that harm to the climate from human activities were known and the risks were identified, and this prior to discussing and addressing the issue of climate change and global warming in particular under the realm of the United Nations in 1972.

Further, the UN Scientific Conference or the First Earth summit held in Stockholm, Sweden, in 1972, which adopted the Stockholm Declaration, as well as an Action Plan for the Human Environment, stated in its recommendations for action at the international level, that "it is recommended that Governments be mindful of activities in which there is an appreciable risk of effects on climate"[360]. It was further indicated under the action plan that "it is recommended that governments use the best practicable means available to minimise the release to the environment of toxic or dangerous substances (…) until it has been demonstrated that their release will not give rise to unacceptable risks or unless their use is essential to human health or food production, in which case appropriate control measures should be applied"[361].

309. In addition to the aforementioned, it was further recommended that "not less than 100 stations be set up, with the consent of the States involved, for monitoring proprieties and constituents of the atmosphere on a regional basis and especially changes in the distribution and concentration of contaminants"[362].

310. In light of the above, it could be noted that international warnings were given to governments as early as 1970s for activities that could lead to climate change[363].

311. Moreover, it was also recognized in Annex I of the Vienna Convention for the protection of the Ozone Layer, adopted in 1985 and ratified by 198 States[364], that CO_2 is among the chemical substances that "are thought to have the potential to modify the chemical and physical properties of the ozone layer"[365].

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[359] "Special Message to the Congress on the Conservation and Restoration of Natural Beauty", available at: https://www.presidency.ucsb.edu/documents/special-message-the-congress-conservation-and-restoration-natural-beauty; Air pollution is defined as the "degradation of air quality with negative effects on human health or the natural or built environment due to the introduction, by natural processes or human activity, into the atmosphere of substances (gases, aerosols) which have a direct (primary pollutants) or indirect (secondary pollutants) harmful effect. (IPCC Glossary).

[360] Action Plan for the Human Environment, B. Recommendations for action at the international level, Recommendation 70, available at: https://documents.un.org/doc/undoc/gen/nl7/300/05/pdf/nl730005.pdf?token=wc9xJ8DMJCaZ4H83mS&fe=true

[361] *Idem*., Recommendation 71.

[362] *Idem*., Recommendation 79.

[363] "From Stockholm to Kyoto: A brief History of Climate Change" , Peter Jackson, From Vol. XLIV, No. 2, "Green Our World!", June 2007 available at: https://www.un.org/en/chronicle/article/stockholm-kyoto-brief-history-climate-change

[364] Vienna Convention for the Protection of the Ozone Layer 1985, can be accessed through: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-2&chapter=27&clang=_en

[365] UNEP, "The Ozone Treaties", 2019, can be accessed through: https://ozone.unep.org/sites/default/files/2019-12/The%20Ozone%20Treaties%20EN%20-%20WEB_final.pdf

312. In 1988, the UN General Assembly adopted resolution 43/53 in which it stated that "emerging evidence indicated that continued growth in atmospheric concentrations of greenhouse gases could produce global warming with an eventual rise in sea levels, the effects of which could be disastrous for mankind if timely steps are not taken at all levels"[366]. The resolution further recognized that "climate change is a common concern of mankind, since climate is an essential condition which sustain life on earth"[367].

313. The Resolution urged governments to treat climate change as a priority issue[368].

314. Despite the above, the IPCC has proven that: "historical cumulative net CO_2 emissions from 1850 to 2019 were 2400 ± 240 $GtCO_2$ of which more than half (58%) occurred between 1850 and 1989", it indicated that cumulative net CO_2 emissions since 1850 are increasing at an accelerating rate, emphasizing that about 62% of total cumulative CO_2 emissions from 1850 to 2019 occurred since 1970[369]. It further indicated that CO_2 emissions from fossil fuel combustion and industrial processes contributed about 78% to the total GHG emission increase between 1970 and 2010, with a contribution of similar percentage over the 2000-2010 period"[370], and that "the majority of the warming has occurred since 1975, at a rate of roughly 0.15 to 0.20°C per decade"[371]. These harmful activities have mainly been situated in the west in developed countries.

3. Violation of the no harm principle from 1992 onwards and up to the present moment:

315. Efforts to protect the climate from global warming culminated with the adoption of the UNFCCC in 1992, followed by the Kyoto Protocol in 1997 which particularly aimed "to reduce the industrialized countries 'overall emissions of carbon dioxide and other greenhouse gases by at least 5 per cent below the 1990 levels in the commitment period of 2008 to 2012"[372]. The Doha Amendment to the Kyoto Protocol, which entered into force in December 2020, established a second commitment period of 2012 to 2020 for the industrialized/developed countries.

316. Despite the above, emissions of GHGs from developed countries continued to increase. The IPCC confirmed that "Developed countries contributed 57% [to cumulative Co2- FFO emissions between 1850 and 2019]"[373], whereas "the three developing regions [i.e. Africa,

[366] UNGA Res A/43/905, Protection of global climate for present and future generations of mankind, Preamble para. 3, available at: https://research.un.org/en/docs/ga/quick/regular/43
[367] *Idem*., op.1
[368] *Idem*., op.6,
[369] IPCC, 2022: Emissions Trends and Drivers.
[370] IPCC Fifth Assessment Report – Synthesis Report 2014.
[371] See, National Aeronautics and Space Administration, "World of Change: Global Temperatures", available at https://earthobservatory.nasa.gov/world-of-change/global-temperatures
[372] https://www.un.org/en/chronicle/article/stockholm-kyoto-brief-history-climate-change
[373] IPCC, 2022 : Emissions Trends and Drivers.

Asia and Pacific] together contributed 28% to cumulative Co2 – FFI emissions"[374] in the same period. Noting that Africa's contribution to is 3 per cent[375].

317. The IPCC has also proven that "Co2 emissions from fossil fuel combustion and industrial processes contributed about 78% to the total GHG emission increase between 1970 and 2010, with a contribution of similar percentage over the 2000-2010 period"[376]. The IPCC in 2022 confirmed that emissions of GHG continued to grow since 2010[377].

318. According to a 2023 report by the UNEP, several developed countries continue to be among the global top emitters[378]. The report explicitly states that "collectively, the United States of America and the European Union contributed nearly a third of the total cumulative emissions from 1850 to 2022"[379].

319. The report further indicated that "developed Countries sustained high levels of per capita CO2-FFI emissions at 9.5 tCO2 per capita in 2019 (but with a wide range of 1.9–16 tCO2 per capita). This is more than double that of three developing regions: 4.4 (0.3–12.8) tCO2 per capita in Asia and Pacific; 1.2 (0.03–8.5) tCO2 per capita in Africa; and 2.7 (0.3–24) tCO2 per capita in Latin America"[380].

320. In addition to the above, the UNEP report also confirmed that "globally, the 19 per cent of the population with the highest income accounted for nearly half (48 per cent) of emissions with two thirds of this group living in developed countries. The bottom 50 per cent of the world population contributed only 12 per cent of total emissions"[381].

321. Additionally, and as indicated under paragraph 49, the production of fossil fuels amount to 110% more fossil fuels "than would be consistent with limiting global warming to 1.5°C, and 69% more than would be consistent with limiting warming to 2°C"[382]. It is also important to note that "the remaining carbon budget from 2020 onwards is much smaller than the total CO_2 emissions released to date"[383].

322. Egypt is of the view that failure by the developed States to take all best available measures to minimize the risk of climate change is sufficient to engage their responsibility[384].

323. Developed States have violated the no harm principle – the duty to prevent - which reflects customary international law. Their wrongful conduct – breach of the prevention

[374] *Ibid.*
[375] *Ibid.*
[376] IPCC Fifth Assessment Report – Synthesis Report 2014.
[377] IPCC, 2022: Emissions Trends and Drivers.
[378] UNEP Emissions Gap Report 2023: Broken Record, *op.cit*, p. 6
[379] *Idem*., p. 8
[380] IPCC, 2022: Emissions Trends and Drivers.
[381] UNEP Emissions Gap Report 2023: Broken Record, p. XVII
[382] UNEP Production Gap Report, p. 4
[383] *Ibid.*
[384] Mayer B, Zahar A, eds. Debate 7: Historical Responsibility. In: Debating Climate Law. Cambridge University Press; 2021:170-205.

obligation- is of continuing character as the obligation remains existent and its violation is continuing by developed countries in light of the current status of the climate system and the continued emissions increase. This was further confirmed by the Trail Smelter arbitration, in which the tribunal stated that "the obligation to prevent transboundary damage by air pollution (…) was breached for as long as the pollution continued to be emitted"[385].

324. Egypt further submits that developed countries have violated their due diligence obligation sine they have failed to act preventively "to address foreseeable harm through climate change since the early 1990"[386] when the IPCC published its first assessment report.

325. Developed countries by their conduct (acts and omissions) have failed to 'adequately regulate emitting activities carried out within their jurisdiction"[387], thus failing to prevent the adverse impacts on the climate system.

326. Developed countries have also failed to "deploy adequate means, to exercise best possible efforts, to do the utmost"[388] to prevent environmental harm resulting from the emission of CO_2. They have breached their obligation of conduct under the due diligence obligation.

327. Developed countries have also breached their obligation under the precautionary principle (part of the due diligence obligation) when they have failed to adopt effective rules and policies to reduce GHG emissions activities, despite scientific evidence of the harm caused by the GHG emissions to the environment. Egypt submits, and as stated by ITLOS ignoring "plausible indications of potential risks" would amount to a violation of the due diligence obligation. This is further aggravated by the fact that scientific knowledge and evidence of the harm caused by the GHGs were available since 1990.

328. The breach of the no harm principle under customary international law cannot be seen separately or in isolation from the breach of developed countries of their mitigation obligations under the UNFCCC, the Kyoto Protocol and the Paris Agreement. Egypt is of the view that both customary international law and treaty obligations in relation to climate change apply simultaneously.

[385] Commentary on article 14 of ARSIWA; Trail Smelter Case (United States, Canada), 16 April 1938 and 11 March 1941, Volume III, p. 1905.
[386] *Climate Change – The Practice of Shared Responsibility in International Law*, *op.cit*., p. 1034.
[387] *The No-Harm Principle as the Foundation of International Climate Law, op.cit*.
[388] *Responsibilities and Obligations of States in the Area Advisory Opinion, op.cit*., para. 110.

4.Violation of Climate Change Legal Regime's obligations

4.1 The violation of the mitigation obligation under the treaties

329. As an unavoidable consequence of the continued violation of the no harm principle after the entry into force of the UNFCCC and its Paris Agreement, developed countries have violated their mitigation obligation under the UNFCCC, and the Paris Agreement.

330. Egypt is of the view that States, through their failure to implement adequate climate change laws (omission), have breached their obligation to mitigate climate change. This omission extends to the conduct of the private actors operating under their jurisdiction[389]. As stated by this Court in the Corfu Channel judgement, every State has an obligation "not to allow knowingly its territory to be used for acts contrary to the rights of other States"[390].

4.2 The violation by developed countries of their obligations under the UNFCCC and the Paris Agreement, particularly with regards to providing finance to developing countries

331. As previously indicated, Article 9 of the Paris Agreement imposes on developed countries an obligation to provide financial resources to assist developing countries in their mitigation and adaptation efforts, in continuation of Developed States' existing obligations under article 4(3) of the UNFCCC.

332. Developed States have violated their obligation to provide financial resources to developing countries for adaptation and mitigation purposes, as expressly stated in Resolution 77/276: "expressing serious concern that the goal of developed countries to mobilize jointly USD 100 billion per year by 2020 in the context of meaningful mitigation actions and transparency on implementation has not yet been met, and urging developing countries to meet the goal",

333. With regards to adaptation and as evidenced by the report of the UNEP issued in 2023, the costs of adaptation for developing countries this decade (2020 – 2030) is estimated to be "in a plausible central range of US$ 251- 387 billion/year"[391], however, the international public aptation finance flows to developing countries are estimated at US$ 21 billion in 2021[392], which is a far cry from the actual needs of developing countries.

5. Climate-induced violations of human rights by developed countries

334. As previously indicated, States' conduct that contributes to climate change can also amount to a breach of human rights obligations (such as the obligation to take all necessary

[389] Tsang, Vanessa S.W., "Establishing State Responsibility in Mitigating Climate Change under Customary International Law" (2021). LL.M. Essays & Theses. 1. https://scholarship.law.columbia.edu/llm_essays_theses/1
[390] *Corfu Channel Case, op.cit*, p. 22.
[391] UNEP Adaptation Gap Report.
[392] *Ibid.*

measures to protect against serious risks to human life). The responsibility of the State is automatically engaged when it breaches such obligations. Moreover, a victim's right to remedy under international human rights law is a substantive right guaranteed in both human rights treaties[393] as well as customary international law.

335. Like the obligations reflected in the UNFCCC and Paris Agreement (and parallel customary norms, such as the no-harm rule), many human rights obligations, such as the right to life, are obligations *erga omnes*, owed to the international community as a whole.

6.The Legal Consequences for "injured" and "specially affected States"

336. Under article 42 of ARSIWA, "A State is entitled as an injured State to invoke the responsibility of another State if the obligation breached is owed to:

a) That State individually; or
b) A group of States including that State, or the international community as a whole, and the breach of the obligation:
    i) Specially affects that State; or
    ii) Is of such a character to change radically the position of all the other States to which the obligation is owed with respect to the further performance of the obligation.

337. Injury is defined under ARSIWA as "any damage caused by that act [the act or omission constituting the breach of the international obligation]"[394]. The injury includes "any material or moral damage caused thereby"[395].

a] Egypt is specially affected by the violation of the no harm principle:

338. Egypt submits that the no harm principle in relation to the environment is an obligation owed to a group of States, States that are particularly vulnerable, including Egypt, and also to the international community as a whole.

339. For a State to be considered injured under article 42 para b (i) "it must be affected by the breach in a way which distinguished it from the generality of other States to which the obligation is owed".

340. In this regard, it is important to note that the commentary of the ILC on this subparagraph indicated that, as example of a wrongful act that "may have particular adverse effects on one state or on a small number of States", the "pollution of the high seas in breach of article 194 of UNCLOS may particularly impact on one or several States whose beaches

[393] See e.g. Article 2(3) ICCPR.
[394] Commentary 5 to article 31 of ARSIWA
[395] Commentary 5 to article 31 of ARSIWA

may be polluted by toxic residues or whose coastal fisheries may be closed. In that case, independently of any general interest of the States parties to the Convention in the preservation of the marine environment, those coastal States parties should be considered injured by the breach"[396].

341. Egypt submits that it is specially affected by the violation of the no harm principle by developed countries for two reasons:

a- Being an African developing state, it is particularly vulnerable to the adverse effects of climate change as indicated under paragraph 8 of Resolution 77/276 itself "noting with all profound alarm that emissions of greenhouse gases continue to rise despite the fact that all countries, in particular developing countries, are vulnerable to the adverse effects of climate change".

b- Being a costal African state, it is, and as indicated in the question of Resolution 77/276, an injured State and one specially affected by the adverse impacts of climate change due to its geographical circumstances and level of development.

b] The violation by developed countries of their treaty obligations in relation to climate change is "of such a character as radically to change the position of all the other States to which the obligation is owed with respect to the further performance of the obligation":

342. The ILC commentary on Article 42 subparagraph b (ii), indicates that this subparagraph concerns "a special category of obligations, the breach of which must be considered as affecting *per se* every other state to which the obligation is owed"[397]. The ILC further indicated that this can include a treaty "where each party's performance is effectively conditioned upon and requires the performance of each of the others"[398].

343. Egypt submits that the violation by developed countries of their obligation to provide finance to developing countries for adaptation to climate change hinders the latter's ability to adapt to and mitigate climate change.

344. By violating their obligation to provide financial resources to developing countries for adaptation and mitigation purposes, as expressly stated in Resolution 77/276, and as evidenced by the UNEP 2023 Report, developing countries are hindered from satisfying their obligations in relation to mitigation under the Climate Change Treaty Regime, but also it renders adaptation impossible for developing countries.

345. This is further demonstrated due to the linkage that exists between adaptation and mitigation, it is clear that "greater levels of mitigation can reduce the need for additional

[396] Commentary 12 to article 42 of the ARSIWA.
[397] Commentary 13 on article 42 of the ARSIWA.
[398] Commentary 13 on article 42 of the ARSIWA.

adaptation efforts"[399]. This is also prescribed for under article 2 of the UFCCC and articles 4 and 7 of the Paris Agreement.

7. State responsibility for violation of an erga omnes obligation

346. Even before the adoption of the UNFCCC, States had an obligation owed to the international community as a whole to prevent significant damage to the climate system[400].

347. In 1988, the UN General Assembly "recognized that protecting the climate system is a prerequisite for the survival of humankind"[401]. It was declared in the UNFCCC and the Paris Agreement that climate change is a "common concern of humankind".

348. This august Court has recognized that in cases of alleged environmental harm, particular difficulties may arise with respect to causation and the existence of damage. In the Court's own words:

> *The damage may be due to several concurrent causes, or the state of science regarding the causal link between the wrongful act and the damage may be uncertain. These are difficulties that must be addressed as and when they arise in light of the facts of the case at hand and the evidence presented to the Court. Ultimately, it is for the Court to decide whether there is sufficient causal nexus between the wrongful act and the injury suffered.*[402]

349. The Court further found that "the absence of adequate evidence as to the extent of material damage will not, in all situations, preclude an award of compensation for that damage".[403] Quoting the Trail Smelter arbitration, the Court opined that "where the tort itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny relief to the injured person, and therefore relieve the wrongdoer from making any amend for his acts."[404]

350. Egypt submits that developed countries have violated their due diligence obligation and in particular the precautionary principle, as part of the no harm rule, when they by their conduct failed to take appropriate measures to prevent harm to the climate despite knowledge of the risk GHGs cause to the climate even if in the absence of scientific certainty. As shown, the adverse impacts on climate from GHG was discussed and known to scientists and the public

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[399] Article 7 para. 4 of the Paris Agreement.
[400] Mayer B, Zahar A, eds. Debate 7: Historical Responsibility. In: Debating Climate Law. Cambridge University Press; 2021:170-205.
[401] UNGA Resolution 43/53, UN Doc A/RES/43/53 (1988) ; UNGA, Report of the Second Committee: 'Conservation of the Climate as Part of the Common Heritage of Mankind', UN Doc A/43/905 (1988).
[402] *Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, ICJ Reports 2018*, para 34, [hereinafter "*Certain Activities Carried out by Nicaragua in the Area, Compensation*"]
[403] *Idem*., para 35.
[404] *Ibid*.

as early as 1950, in particular with regards to air pollution. Developed countries, nevertheless continued unabated to conduct and allow the conduct of activities emitting CO_2.

B] Legal consequences arising from the violation of these obligation with respect to States, peoples and individuals of the present and future generations.

351. Under Article 28 of ARSIWA, there are legal consequences for the breach of an international obligation by a State. These consist of cessation of the wrongful act, and reparations. These consist of cessation of the wrongful act, and reparations, notwithstanding the continued duty of performance of the primary obligation.

1) Continued duty of performance

352. Article 29 of ARSIWA clearly indicates that the legal consequences of an internationally wrongful act do not affect the continued duty of the responsible State to perform the obligation it breached[405], meaning that the responsible State is not "relieved" from its continuing duty to comply with its primary obligation[406] that was breached.

353. In this regard, this Court has clarified in the Gabcikoco – Nagymaros case that the continuing breach of treaty obligations by the parties concerned in the case, does not have the effect of terminating the treaty violated[407]. The Court further indicated "it would set a precedent with disturbing implications for treaty relations and the integrity of the rule *pacta sunt servanda*"[408] if it concludes that a treaty in force between States "might be unilaterally set aside on grounds of reciprocal non-compliance"[409].

354. In light of the above, breaching States have the obligation to continue respecting and abiding by their due diligence obligation in relation to emissions' reduction and the protection of the climate system from harm. States have to continue complying with their mitigation, and adaptation obligations, as well as their obligation to provide support to developing countries. This continued duty of performance of the obligation breached takes place in parallel with the obligation to cease the wrongful act and to make full reparations by the responsible State.

2) Cessation of the wrongful act:

355. Article 30 indicates that "a State responsible for the internationally wrongful act is under the obligation to: a) cease that act if it is continuing, b) offer assurances and guarantees of non-repetition, if circumstances so require"[410].

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[405] Article 29 of ARSIWA.
[406] Commentary 2 and 4 to Article 29 of ARSIWA.
[407] *Gabčíkovo-Nagymaros Judgement, op.cit.*, para. 114.
[408] *Ibid.*
[409] *Ibid.*.
[410] Article 30 of ARSIWA

356. Cessation of the wrongful act/omission "is the first requirement in eliminating the consequences of wrongful conduct"[411]. It consists of "putting an end to a violation of international law and to safeguard the continuing validity and effectiveness of the underlying primary rule"[412].

357. As indicated by the tribunal in the Rainbow Warrior arbitration, two conditions "intimately linked" must exist for an order of cessation "namely that the wrongful act has a continuing character and that the violated rule is still in force at the time in which the order is issued"[413].

358. Egypt submits that developed countries continue to violate a customary international rule – the no-harm principle- as well as treaty obligations that are still in force through their acts and omissions by failing to prevent excessive greenhouse gas emissions within their jurisdiction" and they "must act without unreasonable delay to reduce these emissions"[414].

359. They must therefore comply with their primary obligations, and that is to comply with the no-harm principle and their treaty obligations by implementing "effective" rules and laws that permit to regulate GHGs emitting activities and reduce GHG emissions.

360. In this regard, Egypt submits that the Court could be guided by domestic litigation to inform developed countries on the conduct expected from them that is in line with their obligations.

361. For instance, the US Supreme Court in Massachusetts v. EPA, rejected the Agency's argument that its decision not to regulate GHGs from new motor vehicles would not contribute to climate change damage in Massachusetts, noting that US motor vehicles emissions (at around 6 per cent of worldwide carbon dioxide emissions) make a meaningful contribution to GHG concentrations and global warming"[415].

362. In the Urgenda Case, the Supreme Court of the Netherlands, found that the Netherlands breached its obligations under the UNFCCC and its Paris Agreement when, and taking "into account the global target to reduce emissions to 2˚ Celsius and to strive for a 1.5˚ Celsius goal", because its policy stated a reduction target to 20% in 2020 of GHG emissions, which was below the 25% to 40% reduction standard set internationally[416].

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[411] Commentary 4 under article 30 of ARSIWA.
[412] *Ibid*.
[413] Rainbow Warrior (New Zealand/France), (1990) 82 ILR 500, 573; Crawford J. In: State Responsibility: The General Part. Cambridge Studies in International and Comparative Law. Cambridge University Press; 2013:i-i.
[414] Mayer, Benoit, State Responsibility and Climate Change Governance: A Light Through the Storm (September 14, 2014). 13 Chinese Journal of International Law (2014), Available at SSRN: https://ssrn.com/abstract=2495989
[415] *Climate Change – The Practice of Shared Responsibility in International Law, op.cit.,*; Massachusetts v. Environmental Protection Agency, 549 US 497 (2007), at 525.
[416] "The Positive Obligation to Prevent Climate Harm under the Law of State Responsibility", Agnes Chong, available at: https://www.law.georgetown.edu/environmental-law-review/wp-content/uploads/sites/18/2023/05/The-Positive-Obligation-to-Prevent-Climate-Harm.pdf

363. On another note, developed countries have failed to "meet the goal" of providing the necessary climate finance for developing countries. They are thus required to cease this wrongful act – omission to provide the needed and required finance to developing countries. It is also worth noting that the USD 100 billion goal is in fact an arbitrary figure which is demonstrably unrelated to the actual financial needs of developing countries. Consequently, the fulfillment of this pledge to provide USD 100 billion collectively should not be construed as meaningfully fulfilling the obligation of developed countries to provide finance in accordance to the UNCCC and the Paris Agreement.

3) Reparations:

364. Article 31 of ARSIWA stipulates that: "1- the responsible state is under an obligation to make full reparation for the injury caused by the internationally wrongful act".

365. Injury includes any damage, whether material or moral caused by the internationally wrongful act of a State".

366. As stated by the PCIJ in the Chorzow Factory case: "It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form. Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself. Differences relating to reparations, which may be due by reason of failure to apply a convention, are consequently differences relating to its application"[417]. This entails, as further indicated by the PCIJ, that "the responsible state must endeavour to wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed"[418].

367. Reparation is only made for an injury caused by the wrongful act, which leads us to the issue of the causal link between climate change and the conduct of developed countries.

368. Under international law, several States can be responsible of the same wrongful act. And in such case, each state is to be held separately responsible for its conduct[419].

369. It is further established under international law that several States "by separate internationally wrongful conduct" can contribute to "causing the same damage"[420]. The ILC, in its commentary on the relevant article of ARSIWA in this regard explained that this is the

[417] *Case Concerning the Factory at Chorzow, (Claim for Indemnity) (Jurisdiction), PCIJ, Series A. No.9,* July 26th, 1927.
[418] *PCIJ, Series A. – No. 17, September 13th, 1929, Case Concerning the Factory at Chorzow (Claim for Indemnity) (Merits),* 1928, p. 47 [hereinafter "*Factory at Chorzow*"].
[419] Article 47 of ARSIWA; Commentary 3 to article 47 of ARSIWA
[420] Commentary 8 to article 47 of ARSIWA

situation when "several States might contribute to polluting a river by the separate discharge of pollutants"[421].

370. As shown above, it is undisputed that there is a general causal link between anthropogenic GHG emissions and the damages caused to the climate system[422]. This is mostly due to past emissions of developed countries as well as their current practices.

371. Moreover, Egypt is of the view that the fact that climate change is a result of "many interacting causes should not be an impediment for establishing causation. In this regard, it is important to mention that the tribunal in the Trail Smelter arbitration stated that: "the fact that the injury was at least partially caused by the pollution activity (…) appeared to be sufficient"[423].

372. Developed countries are responsible in large part for climate change, "onward from the time when they had foreseeability or knowledge of harm"[424] of their activities on the climate system, and therefore they have to repair the harm they have caused to developing countries.

373. With reference to the 2019 Urgenda Decision, Egypt submits that each developed state must, in accordance with the no-harm principle and its treaty obligations, make its own contribution to reducing GHG emissions, and must do 'its part' to reach the target considered necessary by the international community (this can be further infirmed by the targets indicated under the Kyoto Protocol as well as the IPCC Reports). The Supreme Court of the Netherlands found in favour of a 'partial responsibility': each country is 'responsible for its part, and can therefore be called to account in that respect'[425]. The Court used an IPCC report to determine the 'part' that the State should play in global efforts"[426]

374. In light of the above, and as stated in ARSIWA, reparation can take the form of restitution, compensation, and satisfaction, either singly or in combination[427].

a) Restitution:

375. Restitution can be defined as "re-establishing the status quo-ante, i.e. the situation that existed prior to the occurrence of the wrongful act"[428].

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[421] Commentary 8 to article 47 of ARSIWA; *Corfu Channel Case, op.cit*, pp.22-23

[422]Voigt, C. (2021). "Chapter 9: State responsibility for damages associated with climate change". In *Research Handbook on Climate Change Law and Loss & Damage*. Cheltenham, UK: Edward Elgar Publishing. Retrieved Mar 20, 2024, from https://doi.org/10.4337/9781788974028.00016

[423] Part V Climate Change Litigation, Ch.21 Climate Change and Damages, Christina Voight, in the Oxford Hanbook of International Climate Change Law, Cinnamon P. Carlarne, Kevin R. Gray, Richard Tarasofsky, 24 March 2016, Oxford Scholarly Authorities on International Law.

[424] *Debating Climate Law: Redressing Historical Responsibility, op.cit.*

[425] The State of the Netherlands v. Stichting Urgenda, Supreme Court of the Netherlands, Judgement, 20 December 2019, para 5..7.5, can be accessed through: https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf

[426] *Idem.*, para. 7.4.1

[427] Article 35 of ARSIWA

[428] Commentary 2 to article 35 of ARSIWA

376. The PCJI has confirmed the primacy of restitution, as compared to other forms of reparation[429]. In other words, other forms of reparation come into play when it is concluded that restitution for one reason or another is not possible[430].

377. As indicated under article 35 of ARSIWA, these reasons are the situation where restitution is materially impossible, and when restitution "involve a burden out of all proportion to the benefit deriving from restitution instead of compensation"[431].

378. The ICJ has confirmed that compensation or satisfaction (or both) may be appropriate forms of reparation, particularly in cases of environmental harm where restitution is materially impossible or unduly burdensome"[432].

379. Egypt is of the view that restitution of the climate system to where it was before is materially impossible, and therefore compensation would be considered the suitable choice for the reparation of climate change damages caused to developing countries from the internationally wrongful conduct of developed States in breach of their international obligations.

b) Compensation:

380. Article 36 of ARSIWA stipulates that "the State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby, insofar as such damage is not made good by restitution"[433].

381. The Court in Gabcikovo-Nagymaros stated that: "It is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it"[434].

382. In relation to environmental damage, the ICJ stated that 'it is consistent with the principles of international law governing the consequences of internationally wrongful acts, including the principle of full reparation, to hold that compensation is due for damage caused to the environment, in and of itself, in addition to expenses incurred by an injured State as a consequence of such damage'[435], this in Egypt's view also applies to climate change damages as they are also environmental damage.

383. It was stated by ITLOS Chamber that 'each State Party may also be entitled to claim compensation in light of the *erga omnes* character of the obligations relating to the

[429] *Factory at Chorzow, op.cit.*, p. 48.
[430] Commentary 3 to article 35 of ARSIWA.
[431] Article 35 of ARSIWA, paras. a and b
[432] *Pulp Mills Case, op. cit.*, pp. 103-104
[433] Article 36 of ARSIWA.
[434] *Gabcíkovo-Nagymaros Judgement, op.cit.*, p. 81, para. 152
[435] *The No-Harm Principle as the Foundation of International Climate Law, op.cit.*; *Certain Activities Carried out by Nicaragua in the Area, Compensation, op.cit.*, para. 4; Similarly, see Inter-American Court of Human Rights, Advisory Opinion OC-23/17, The Environment and Human Rights, Ser A No 23 (2017) [72].

preservation of the environment of the high seas and in the Area'[436]. As previously stated, Egypt submits that this ruling can also be transposed to the compensation for climate change damages[437].

384. Courts have previously awarded compensation for environmental damages. For instance, in the Trail Smelter Case, "payments have been directed to reimbursing the injured State for expenses reasonably incurred in preventing or remedying pollution, or to providing compensation for a reduction in the value of polluted property"[438]. Further, the ILC has indicated that "environmental damage will often extend beyond that which can be readily quantified in terms of clean-up costs or property devaluation. Damage to such environmental values (biodiversity, amenity, etc.—sometimes referred to as "nonuse values") is, as a matter of principle, **no less real and compensable than damage to property,** though it may be difficult to quantify"[439].

385. In assessing the amount of compensation, the Court has previously stated that: "damage to the environment, and the consequent impairment or loss of the ability of the environment to provide goods and services, is compensable under international law. Such compensation may include indemnification for the impairment or loss of environmental goods and services in the period prior to recovery and payment for the restoration of the damaged environment"[440].

386. It has further indicated that: "absence of adequate evidence as to the extent of material damage will not, in all situations, preclude an award of compensation for that damage"[441].

387. Egypt is of the view that the aforementioned findings of the Court regarding compensation should guide its consideration of the issue of compensation for climate change damages under the current Request for advisory opinion.

[436] *Responsibilities and Obligations of States in the Area Advisory Opinion, op.cit*., para.180.
[437] *The No-Harm Principle as the Foundation of International Climate Law, op.cit*
[438] Commentary 17 to article 36; Trail Smelter Case (United States, Canada), 16 April 1938 and 11 March 1941, Volume III, p. 1911.
[439] Commentary 15 to article 36 of ARSIWA.
[440] *Certain Activities Carried out by Nicaragua in the Area, Compensation, op.cit*., para. 42.
[441] *Idem.*, para. 35

VIII.CONCLUSIONS

388. The Court should find that there is a historical responsibility on developed countries with regard to climate change due to their excessive emissions of GHGs, and that the legal regime established within the climate change realm has recognized this historical responsibility and manifested it in a clear differentiation of responsibilities of developed and developing countries.

389. The whole regime in its most recent legal instrument, i.e. the Paris Agreement, has established that there is a common responsibility upon all countries to make contributions to the efforts to combat climate change, it has explicitly acknowledged that such a responsibility is not equal but rather differentiated between States parties in light of their respective capabilities, which represents along with equity the guiding principles under which the entire Paris Agreement should be implemented[442].

390. Hence, and in light of the Court's finding that: "absence of adequate evidence as to the extent of material damage will not, in all situations, preclude an award of compensation for that damage"[443], it is our view that the bare minimum expectation of developed countries in light of their historical responsibilities, and their continued and current responsibility as major emitters in absolute terms or per capita, should be found by the Court to be:

391. Cessation of the wrongful act i.e. fulfillment of their obligation to take the lead in mitigation efforts which they thus far have failed to do. According to a 2023 Report by the UNEP, several developed countries continue to be among the global top emitters[444]. According to a UNEP report on fossil fuel production gap, it was found that the production of fossil fuels will amount to 110% more fossil fuels in 2023 "than would be consistent with limiting global warming to 1.5°C, and 69% more than would be consistent with limiting warming to 2°C"[445].

392. Meaningful provision of financial support out of public sources, as previously indicated, governments of developed countries have hardly met the obligation to provide collectively USD 100 billion on an annual basis to assist developing countries in making their contributions to the global efforts to combat climate change being it in undertaking necessary mitigation, emission reduction measures, or in adaptation to the negative impacts of climate change. It is that the USD 100 billion figure is an arbitrary one which is not based or remotely commensurate to the actual needs of developing countries which are estimated to be in the trillions of dollars. Developed countries have resorted to shifting their responsibility to provide financial support to developing countries through contending that the private sector will bear their responsibility. This contention raises several issues firstly it absolves developed countries

[442] Article 2.2. of the Paris Agreement
[443] *Certain Activities carried out by Nicaragua in the Area, Compensation, op.cit*, para. 35
[444] *UNEP Emissions Gap Report 2023: Broken Record*
[445] *UNEP Production Gap Report*, p. 4.

if their responsibility for their historical emissions, second it shifts this responsibility to the private sector which is not a part to the legal regime and hence cannot be held accountable. In case of default. And third it ignores the very fact that private sector is logically driven by pursuit of profit and hence while it could potentially represent a significant or sizable portion of investment in emission reduction efforts such as solar and wind energy production or energy efficiency technology, the potential for private sector investment in adaptation and resilience is extremely limited due to the absence of meaningful, profitable business model.

393. Hence, Egypt believes that the Court should find that there is a continued responsibility upon developed countries to ensure provision and mobilization of public funds to developing countries through the operating entities of the financial mechanisms under the UNFCCC and its Paris Agreement (i.e. GCF, GEF, Adaptation Fund) as well as bilaterally, and that the amounts provided should reflect to the extent possible the actual needs as estimated by the IPCC and other scientific reports.

394. Loss and damage is also another area where there is responsibility upon developed countries to make finance available in accordance with article 8 of the Paris Agreement and more recently in light of the adoption of decisions at COP27 November - December 2022 and COP28 December 2023 in Dubai establishing funding arrangement and a fund for loss and damage.

395. It is noteworthy in assessing the amounts expected from developed countries to highlight the fact that the USD 100 billion expectation falls short of the actual needs and have not been consistently delivered since called for in 2009 hence the expectation that the New Collective Quantified Goal (hereinafter NCQG) which is expected to be negotiated later this year in Azerbaijan Baku should reflect the urgency and the needs of developing countries.

396. And to further put the matter in perspective, Egypt wishes to highlight that climate change and its negative impacts are in accordance with science, man-made existential threat, caused by a handful of countries who continue to be the major emitters, while an overwhelming majority of countries and populations in the global south are suffering the most dire consequences without adequate support. The world recently was confronted by devastating health crisis in the form of the Covid-19 pandemic, and collectively responded through rapidly mobilizing resources to the tune of more than 10 trillion dollars within a limited time span. The climate challenge is also an existential threat to humanity which warrants an equal sense of urgency and ambition of action including with regard to mobilizing and providing adequate financial resources to deal with this crisis.

SUBMISSIONS

1. Egypt, respectfully, submits that the Court should answer the questions put to it by the General Assembly as follows:
   a. The Court is competent to give the advisory opinion requested by the General Assembly in its Resolution 77/276;
   b. Having due regard to the principle of common but differentiated responsibilities and respective capabilities and socio-economic conditions, and historical responsibility, States have an *erga omnes* obligation under international law to protect and prevent significant damage to the climate system, the marine environment, and to respect, protect and fulfil human rights threatened by anthropogenic emissions of GHGs;
   c. Developed States, which bear the greatest responsibility for causing climate change, are in a continuous breach of international obligations, including:
      i. Obligations under the UNFCCC, the Kyoto Protocol, the Paris Agreement;
      ii. the duty to protect and preserve the marine environment under customary international law and the relevant principles the UN Convention on the Law of the Sea;
      iii. the due diligence obligation and in particular the precautionary principle, as part of the no harm rule;
      iv. the relevant provisions of the International Covenant on Civil and Political Rights, particularly the right to life;
      v. the relevant provisions of the International Covenant on Economic, Social and Cultural Rights; including the right to an adequate standard of living;
      vi. the right to adequate food and the right to water;
      vii. the right to sustainable development;
      viii. the rights of persons in vulnerable situations, including women, children, and persons with disabilities.
   2. The failure of developed States, which bear the greatest responsibility for causing climate change, to provide adequate financial resources to developing countries for adaptation and mitigation purposes as required by the UNFCCC and its Paris Agreement constitutes an internationally wrongful act.

3. States that bear the greatest responsibility for causing climate change are obliged under general international law to:
    i. effect restitutio in integrum by ceasing immediately their unlawful conduct through, inter alia:
        1. acting immediately and without unreasonable delay to reduce GHG emissions to what is strictly necessary; including through regulating activities of private entities operating under their jurisdiction.
        2. bringing all relevant existing regulations and policies in line with the goals of the Paris Agreement and the objectives and principles of the UNFCCC;
        3. scaling-up funding for adaptation, mitigation, and capacity-building.
    ii. provide compensation, covering the damage suffered by developing States, particularly specially affected States;
    iii. implement fully their obligations under the Climate Change Legal Regime, international environmental law, international human rights law, UNCLOS and other relevant legal instruments and customary international law.
4. All States and international organisations, and in particular the United Nations and all its organs, have a duty to cooperate and to take the appropriate measures, in order to induce developed States to comply with the aforementioned obligations;
5. Finally, Egypt respectfully invites the Court to recommend to the General Assembly to take all necessary measures to ensure the implementation of this Advisory opinion and all relevant resolutions without further delay.

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Sameh Shoukry

Minister of Foreign Affairs

The Arab Republic of Egypt

Annex 1:
The impacts of climate change on Egypt

1. This annex presents an introduction to the catastrophic consequences of climate change in Egypt.

2. The phenomenon of climate change and global warming negatively affects all areas of life in Egypt and around the world. Egypt is located in the north-eastern corner of Africa and has a total land area of 995,450 km^2 and a coastline of 3,500 km along the Mediterranean and the Red Sea. The Mediterranean shoreline is most vulnerable to sea level rise due to its relative low elevation compared to the land around it.[1]

3. Egypt is highly vulnerable to the catastrophic impacts resulting from climate change and is ranked 107 out of 181 countries in the 2019 ND-GAIN Index of States vulnerable to climate change. The degree of Egypt's vulnerability is relatively high for its primary dependence on the Nile River, which serves needs for potable water, agriculture, industry, fish farming, power generation, inland river navigation. This dependence on the Nile River's water makes the country vulnerable to heat waves, reduced rainfall for the upper Nile Basins as well as the reduction of rainfall and sea level rise on the east Mediterranean coastal zone.[2] This makes Egypt exposed to the critical impacts by the repercussions of climate variability and change with respect to food and water security, agriculture and livestock, increasingly adverse conditions to health, human settlements.

4. Egypt's climate is dry, hot, and dominated by desert. It is a highly arid country and receives very little annual precipitation. The majority of rain falls along the coast, with the highest amounts of rainfall received in the city of Alexandria, of 200 mm of precipitation per year. Precipitation decreases southward and areas south of Cairo receive only traces of rainfall.[3]

5. The combination of the country's high evaporation rate and the virtual absence of permanent surface water over large parts of the country result in water as a highly scarce resource. Primary challenges are centered around water resource availability, changing precipitation patterns and increasing population demands. Egypt has observed a statistically significant reduction of annual total precipitation amounts over the past 30 years, a reduction by approximately 22%. This has resulted in reduced water availability in some areas and

[1] Climate Risk Profile: Egypt (2021): The World Bank Group. URL: https://climateknowledgeportal.worldbank.org/sites/default/files/2021-04/15723-WB_Egypt%20Country%20Profile-WEB-2_0.pdf

[2] Egyptian Environmental Affairs Agency (2016). Egypt Third National Communication under the United Nations Framework Convention on Climate Change. URL: https://unfccc.int/sites/default/files/resource/TNC%20report.pdf

[3] Climate Risk Profile: Egypt (2021): The World Bank Group, p.4.

increased periods of drought and dry spells.[4]

6. According to analysis from the German Climate Service Center (GERICS) of 32 Global Climate Models (GCMs), Egypt is expected to experience a change in annual mean temperature from 1.8°C to 5.2°C by the 2080s. Maximum temperatures are expected to increase by 2.1°C to 5.7°C by the 2080s. Heat waves will also increase significantly in their severity, frequency and duration.[5] Across all emission scenarios, temperatures will continue to increase for Egypt throughout the end of the century. Rainfall trends in Egypt are highly variable. Analysis from the German Climate Service Center (GERICS) global climate models (GCMs) indicate that the reduction in precipitation, observed over the past 30 years, is expected to continue by the end of the century. Reduced precipitation and increased temperature are expected to impact evaporation, water balance as well as drought conditions.[6]

7. Egypt has a high degree of risk to natural hazards and is highly vulnerable to climate change impacts. Future projections indicate Egypt will suffer from sea level rise, water scarcities and deficits, as well as an increase in the frequency and intensity of extreme weather events such as heat waves, sand and dust storms, flash floods, rock slides and heavy rains.[7]

8. Egypt's Nile Delta is recognized as one of the world's three 'extreme' vulnerability hotspots.[8] Most of the country's population and infrastructure are concentrated in the Nile Delta and along the Mediterranean coast, making the country additionally vulnerable to the impacts of sea level rise. The rise of the sea level due to climate change is projected to lead to the loss of a sizable proportion of the northen part of the Nile Delta due to a combination of inundation, erosion and salt water intrusion with consequential loss of agricultural land, infrastructure and urban areas. Key sectors impacted include water resources, agriculture, fisheries, health, housing, biodiversity, telecommunications, energy, tourism, and coastal zones.[9]

9. The country is expected to become generally hotter and drier under a projected future climate. Egypt is already severely impacted by and susceptible to droughts, which are expected to be more frequent and pronounced. Disaster risks arising from increased temperatures are expected to exacerbate existing tensions for water resources between agricultural and livestock needs and human population needs, especially during periods of high aridity and drought. The existing quality of available water from surface water and groundwater, is also expected to be altered.[10]

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[4] GERICS (2019). Climate Fact Sheet – Egypt. URL: https://www.climate-service-center.de/products_and_publications/fact_sheets/ climate_fact_sheets/index.php.en

[5] *Ibid.*

[6] Climate Risk Profile: Egypt (2021): The World Bank Group, p.8.

[7] Climate Risk Profile: Egypt (2021): The World Bank Group, p.9.

[8] UNDP (2018). National Adaptation Plans in Focus: Lessons from Egypt. URL: https://www.adaptation-undp.org/sites/default/files/ resources/naps_in_focus_lessons_from_egypt.pdf

[9] *Ibid.*

[10] Climate Risk Profile: Egypt (2021): The World Bank Group, p.10.

10. Climate change is expected to increase the risk and intensity of water scarcity and drought across the country. The primary sectors affected are water, agriculture, forestry, human health, and livestock. Water scarcity and changing rainfall patterns are also expected to play a significant role for the agricultural sector. Increased temperatures and degraded agricultural conditions will adversely affect 'working days', impacting livelihoods and economic resilience of vulnerable groups.[11]

11. Additionally, increased frequency of intense precipitation events will lead to a heightened risk of flooding, river bank overflow and flash flooding. This may also result in soil erosion and water logging of crops, thus decreasing yields with the potential to increase food insecurity; particularly for subsistence-scale farmers.[12]

12. Higher temperatures, coupled with increased aridity may also lead to livestock stress and reduced crop yields. This is likely to result in economic losses, damage to agricultural lands and infrastructure as well as human casualties. Furthermore, land degradation and soil erosion, exacerbated by recurrent flood and drought adversely impacts agricultural production, further affecting the livelihoods of the rural poor. Small rural farmers, are more sensitive to impacts of disasters (floods, dry periods) because they have limited resources with which to influence and increase adaptive capacity.[13]

13. Egypt remains highly vulnerable to climate variability and change in the immediate as well as longer-term. The negative impacts from climate change in Egypt are already being experienced across various sectors including coastal zones, water resources, agriculture, and health, in addition to damages related to food security, which leads to economic losses estimated at billions.

1. Coastal Zones

14. Sea Level Rise "SLR" is one of the main negative impacts of Climate Change. Global sea level rose by about 2 millimeters per year over the past century. About half of this rise may be attributed to thermal expansion of the ocean and glacier melting.[14]

15. Egypt enjoys coastal zones that extend for about 3,500km along the Mediterranean and the Red Sea. These costal zones are perceived as vulnerable to the impacts of climate change due to the direct impact of SLR and other potential impacts of climate changes on their water resources, agriculture, tourism and human settlements. The Nile Delta and its north coast are hosts to important historic and industrial cities such as Alexandria, Port Said, Damietta, and Rosetta, all with populations of several million, and large investments in industrial, touristic, maritime and agricultural activities and

[11] Climate Risk Profile: Egypt (2021): The World Bank Group, p.10.
[12] Climate Risk Profile: Egypt (2021): The World Bank Group, p.11.
[13] FAO (2018). Drought Characteristics and management in North African and the Near East. URL: http://www.fao.org/3/CA0034EN/ ca0034en.pdf
[14] Dyurgerov, M.B., and Meier, M.F., "Twentieth Century Climate Change: Evidence From Small Glaciers", PNAS, Vol. 97, No. 4, pp. 1406-1411, 1997.

infrastructure.[15] These cities would be victims of SLR.[16]

16. The Nile Delta region constitutes the main agricultural land of Egypt and hosts over one-third of the population and nearly half of all crops.[17] It is identified as one of the most vulnerable areas in North Africa and the Middle East due to the impacts of SLR based on the present rates of relative SLR to 2050.[18]

17. The expected SLR's effects include flooding, the erosion of coastal barriers, increase of soil salinity, degrading its fertile quality, threats to food security and damage to the large investments in the tourism sector along the North West Coast [19] Further implications will be the relocation of more than 10 million people from the coastal zone to other areas to the already over populated Nile Valley that will have a direct and critical effect on Egypt's entire economy.

18. The IPCC estimates that the Mediterranean Sea will have risen by one meter by 2050 as a result of global warming, ending in the loss of one third of the most productive land in the Nile Delta.[20] Further scientific studies estimate that 0.5 m SLR would lead to the permanent submersion of 1,800 km2 of cropland in low areas of the Nile Delta and accelerate the trend of desertification in the form of increased soil salinity in the remaining land.[21] Several studies on the vulnerability of Alexandria, the second largest coastal city in Egypt, indicated that a 0.3 m SLR would inundate large parts of the city, resulting in billions of dollars' damage to infrastructure. displacement of over half a million inhabitants, and a loss of about 70,000 jobs.[22]

19. "Changes in global and regional weather patterns are also altering the seasonal timing and intensity of rainfall in Egypt's coastal areas, which will cause more frequent and intense flash-flood events in Egypt, putting an additional 1.1 million people annually at risk[23].

20. Densely populated cities and urban areas in the Nile Delta will be significantly impacted by the combined effects of sea level rise, increasing flood events and water availability challenges. 2 Sea levels rose in Egypt from 1.8 mm annually until 1992 to 3.2 mm annually after 2012 and are

[15] Egyptian Environmental Affairs Agency (2016). Egypt Third National Communication under the United Nations Framework Convention on Climate Change, [hereinafter: "EEAA, 2016"] URL: https://unfccc.int/sites/default/files/resource/TNC%20report.pdf

[16] M. Hagag, A. EL-Shazly, K Raka, Impact of the Sea Level Rise on the Nile Delta, Egypt, Journal of Engineering and Applies Science, VOL. 60, No. 3, June 2013, pp.211-230.

[17] El Raey, M., "Vulnerability Assessment of the Coastal Zone of the Nile Delta, Egypt, To the Impacts of Sea Level Rise", Ocean and Coastal Management, Vol. 37, No. 1, pp. 29-40, 1997.

[18] Nicholls, R. J., "Planning for the Impacts of Sea Level Rise. Oceanography", Vol. 24, No. 2, pp. 144-157, 2011.

[19] EEAA, 2016.

[20] IPCC, 2007: Climate Change 2007: Synthesis Report. Contribution of Working Groups 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, 104 pp.

[21] EEAA, 1999.

[22] Green Climate Fund, 2017.

[23] World Bank (2022). Egypt Country Climate and Development Report. URL: https://documents1.worldbank.org/curated/en/099510011012235419/pdf/P17729200725ff0170ba05031a8d4ac26d7.pdf

expected to rise 1-6 mm/year along the coastal zones[24].In addition, Egypt's updated NDC underlined that the spatial concentration of cities and fertile agricultural lands in the Nile Delta, which lies ~1 m above mean sea level, and along the Mediterranean Sea and Red Sea coasts, amplifies the potential climate change impacts of SLR on Egypt's population and economic productivity.

21. Egypt ranks fifth in the world in terms of SLR's potential economic impact on urban areas, with damage costs of around 1% of GDP annually by 2030[25]. Greater Cairo contributes between 47% and 49% of Egypt's GDP, while coastal governorates contribute between 24% and 28% of GDP[26]. A major proportion (between 80% and 100%) of the people in the major cities is exposed to at least one major climate risk, and a substantial fraction faces more than one such risk[27]. These risks include flooding, heat stress, air pollution, desertification, and, for coastal areas, SLR[28]."

2. Water Resources

22. Egypt is a hyper-arid country, suffering from absolute water scarcity, that depends almost entirely on the Nile for its existence. The Nile provides Egypt with 98% of its annual renewable water resources, making it the second most dependent country on external water resources. The water per capita in Egypt is currently less than 550 cubic meters/per capita/per year, which is far below the global water poverty line defined as 1000 cubic meters/per capita/per year. Furthermore, water per capita is projected to drop to below the absolute water poverty line, 500 cubic meters/per capita/per year, by next year 2025. Moreover, the water available for Egypt is already insufficient. Although Egypt receives 55.5 billion cubic meters annually from the Nile River, the reality is that Egypt's water needs are over 120 billion cubic meters. This deficit is bridged by intensive water-recycling and reuse and virtual water, i.e. water embedded in food imports.

23. Furthermore, Egypt has a water-dependent economy, whose water-stressed agriculture

[24] Climate Change and Future Flood Impacts in Alexandria Egypt, CCDR Background Note, World Bank (2021); Resilient Cities and Coastal Economies, Egypt's CCDR Background Note, World Bank (2021).
[25] Medium SLR (RCP 4.5, SSP2) scenario follows the historical growth SLR patterns, with an estimates SLR of .13 meters by 2030, .24 meters by 2050 and .58 meters by 2100, The SLR estimates for Egypt were produced using the DIVA model (Dynamic Interactive Vulnerability Assessment model 2.0.1, database 32), a global model to estimate the long-term impacts of SLR. For details in the model, please refer to Nicholls RJ, Hinkel J, Lincke D and van der Pol T, 2019. Global Investment Costs for Coastal Defense through the 21st Century, World Bank Policy Research Working Paper 8745, World Bank, Washington DC. The latest estimates of the DIVA model were updated for the Egypt CCDR background paper, Resilient Cities and Coastal Economies. Egypt CCDR Background Note. World Bank (2021).
[26] GDP data from Ministry of Planning and Economic Development. (https://mped.gov.eg/Governorate/Index?lang=en).
[27] Source: Resilient Cities and Coastal Economies. Egypt CCDR Background Note. World Bank (2021) using data from the Urban Climate Risk Analysis (World Bank,GFDRR City Resilience Program)
[28] Resilient Cities and Coastal Economies, Egypt's CCDR Background Note, World Bank (2021).

sector sustains the livelihoods of more than half its population. A decrease of only 1 billion cubic meters of water in Egypt would lead, in the agricultural sector alone, to 290,000 people losing their incomes, a loss of 130,000 hectares of cultivated land, an increase of $150 million USD in food imports, and a loss of $430 million USD of agricultural production. As water shortages increase and continue over an extended period, the impacts on every sector of Egypt's economy and its socio-political stability are immeasurable.

24. The wide range of water utilization increases concern and vulnerability regarding climate change trends which may impact the natural flow of the River Nile due to the reduction of rainfall on the upper Nile Basins, reduction of rainfall on the east Mediterranean coastal zone as well as the effect of sea level rise on the quality of groundwater in the coastal aquifers.[29]

25. There remains significant uncertainty regarding the anticipated impacts of climate change on Nile River flows, with some studies suggesting increased evaporation rates due to rising temperatures could decrease water availability by up to 70%. As the Nile River's sources are located outside Egypt, the country is highly vulnerable to changing climate conditions and shocks both within and outside the country's borders.[30]

26. The impact of climate change and climate variability will further complicate the management of shared water resources of the Nile River. Additional projected climate impacts on the Nile include, the Upper Blue Nile River Basin becoming wetter and warmer in the 2050s.[31] Moreover, Egypt is the most downstream state on the Nile River, and is affected by the impacts of climate change not only within its borders, but also within the whole basin, which is shared with 10 other riparian states. In addition, Egypt, as the most downstream country, is particularly vulnerable to unplanned and unsustainable adaptation actions and projects across the Nile basin. Maladaptation could have the opposite of the intended effect by increasing vulnerability rather than decreasing it. Thus, the selection and implementation processes of water-related climate action measures in transboundary water basins must be inclusive and complying with the principles of cooperation, mutual benefit, and no harm.

27. The expected impacts from increased temperatures and decreased rainfall is likely to increase water demand, particularly from the agricultural sector which currently consumes approximately 80% of all available freshwater resources. Water demand will not only be tied to

[29] Egyptian Environmental Affairs Agency (2016). Egypt Third National Communication under the United Nations Framework Convention on Climate Change. URL: https://unfccc.int/sites/default/files/resource/TNC%20report.pdf
[30] Climate Risk Profile: Egypt (2021): The World Bank Group,p.16.
[31] Climate Risk Profile: Egypt (2021): The World Bank Group,p.16.

rising temperatures but also by the rising population in the region.[32] Egypt is projected to experience significantly heightened dry conditions and significant drought severity, which will increase pressure on water resources for the country.

28. Rainfall and evaporation changes also impact rates of surface water infiltration and the recharge rates for groundwater. Water scarcity and drought conditions are expected to continue to increase risks of food insecurity and may exacerbate conflict situations over scarce resources, settlements, and population movements. Additionally, the majority of the population lives in close proximity to the Nile River, increasing potential exposure to flood events, with the urban poor particularly exposed and vulnerable.[33]

3. Agriculture

29. Agriculture contributes about 14% to the GDP, making it a key sector of the Egyptian economy. Just 2.8% of Egypt's land is arable, largely located along the Nile. The country's agriculture is predominantly irrigated and almost entirely dependent upon the flow of the Nile River.[34] The sector consumes about 80% of the freshwater resources. Egypt's agricultural land in the Nile Valley and the Nile Delta represents about 80% of the cultivated area.[35]

30. Egypt's agricultural sector is particularly vulnerable to climate change, due to its dependence on the Nile River as the primary water source, as well as the intensifying development and erosion along coastal areas. The country faces increasing challenges to agriculture and food security, which are expected to be negatively impacted by climate stressors. Climate change is also predicted to result in increasing crop-water stress, as well as significant land inundation, salt water intrusion, and salinization of about 15% of the most fertile arable land in Egypt.[36]

31. The combined effect of temperature increase, SLR, water shortage and other environmental conditions would worsen Egypt's agriculture productivity and food security.[37] The potential impact of climate change could decrease national agricultural production by 11 to 51%. An estimated 55% of the labor is engaged in agricultural activities and any reduction in such activities would push down employment in the agricultural sector presenting considerable risks to the fragile socioeconomic situation of many rural Egyptians.

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[32] USAID (2018). Climate Risk Profile – Egypt. Fact Sheet. URL: https://www.climatelinks.org/sites/default/files/asset/document/ 2018_USAID-ATLAS-Project_Climate-Risk-Profile-Egypt.pdf

[33] Climate Risk Profile: Egypt (2021): The World Bank Group, p. 16.

[34] *Ibid*.

[35] Climate Risk Profile: Egypt (2021): The World Bank Group, p. 13.

[36] Climate Risk Profile: Egypt (2021): The World Bank Group,12.

[37] Egyptian Environmental Affairs Agency (2016). Egypt Third National Communication under the United Nations Framework Convention on Climate Change. URL: https://unfccc.int/sites/default/files/resource/TNC%20report.pdf

4. Health

32. The Egyptian health care system faces multiple challenges. The expected increase in heat waves, dust storms and weather events are likely to have a significant impact on the health of the population. The intensity and severity of such weather conditions are associated with numerous infectious and noninfectious diseases that will adversely impact vulnerable groups such as children, the elderly and outdoor laborers.[38]

[38] Egyptian Environmental Affairs Agency (2016). Egypt Third National Communication under the United Nations Framework Convention on Climate Change. URL: https://unfccc.int/sites/default/files/resource/TNC%20report.pdf