INTERNATIONAL COURT OF JUSTICE

OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

(REQUEST FOR ADVISORY OPINION)

Written comments

of the Arab Republic of Egypt

15 August 2024

TABLE OF CONTENT

Contents

I- Introduction

1. On 29 March 2023, the United Nations General Assembly (hereinafter the "UNGA") adopted by consensus resolution 77/276 (hereinafter the "Resolution 77/276") to request the International Court of Justice (hereinafter the "ICJ" or the "Court") to render an advisory opinion 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 State 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. By order of 15 December 2023, the Court extended the time-limit within which written statements on the questions may be submitted to the Court to 22 March 2024, date on which the Arab Republic of Egypt duly submitted its written statement to the Court.

3. By order of 30 May 2024, the Court extended the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements submitted to the Court.

4. Egypt seizes this opportunity to submit to the Court, within the deadline indicated in its order of 30 May 2024, its written comments on some of the written statements submitted to the Court.

5. These written comments of Egypt will address certain specific issues arising from the written statements submitted by other States and international organizations. They are organised in three parts.

II- Issues arising from the written statements submitted to the Court

A- Jurisdiction/admissibility

6. At the outset, Egypt recalls the longstanding position of the Court, through its previous advisory opinions, which confirmed that the answer to a request for an advisory opinion "represents [the Court's] participation in the activities of the Organization [i.e. the United Nations], and, in principle, should not be refused"[1]. While the Court has stated that the fact that it has jurisdiction does not mean that it is obliged to exercise it[2], the Court's jurisprudence has been consistent in maintaining that only "compelling reasons" may lead it to decline the request for an advisory opinion.[3]

7. In its written statement, Egypt noted that the request referred to the Court by Resolution 77/276 of the UNGA, presents two legal questions that are precisely formulated in clear legal terms and on issues of international law. The UNGA'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 UNGA being a duly authorized organ) and *ratione materiae* (the request being for a legal question). Accordingly, Egypt concluded that the Court is invited to render the requested advisory opinion given that there are no compelling reasons for the Court to decline to provide the advice requested by the UNGA.

8. This section of Egypt's written comments will, therefore, be limited to responding to the arguments advanced by a few States participating in the proceedings which argued that: (1) the questions referred to the Court are not precise enough, are phrased in broad terms,

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[1] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019, para. 65, p.113 [hereinafter the "Chagos Archipelago Advisory Opinion"]; Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 71 [hereinafter "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 (I), pp. 78-79, para. 29; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ, Reports 2004, [hereinafter the "The Wall Advisory Opinion"], p. 156, para. 44.*

[2] *Chagos Archipelago Advisory Opinion, p. 113, para. 63.*

[3] *Ibid.*

and that the Court may consider reformulating the question, (2) the questions invite the Court to enter *lex ferenda*, (3) the Court should "take care in exercising its jurisdiction because of the political nature of ongoing negotiations on the international law of climate change", and (4) pronouncements from multiple international courts/tribunals on climate change may lead to "fragmentation in international law, creating uncertainty and potentially allowing for forum shopping". These will be addressed, in turn, in the following paragraphs.

1- The claim that the questions referred to the Court are not precise enough and phrased in broad terms:

9. It has been argued that the formulation of the question addressed to the Court lacks clarity and needs to be reformulated as it "has mystified its contours hindering its clarity and precision."[4] The premise of the argument is that while the chapeau of the questions presented invites the Court to render its advisory opinion having particular regard to certain international instruments (i.e. the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, and the United Nations Convention on the Law of the Sea), reference to "obligations of States under international law in paragraph (a) has obscured the crux of the question."[5]

10. It has been further argued that some States are not parties to certain international instruments mentioned in the chapeau of the questions, therefore, they are not legally bound by them, and that if "the questions include all States regardless of the specific instruments" then "it is not clear what the function of reference to the instruments is."[6]

11. Egypt reaffirms, as set out in its written statement, that the questions addressed to the Court and their chapeau in Resolution 77/276 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.

12. The questions addressed to the Court are neither ambiguous nor vague, and all preambular paragraphs, read together and as a whole, of General Assembly resolution 77/276, offer enough interpretative elements for the Court.

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[4] Witten Statement of the Islamic Republic of Iran p.5, para. 17.
[5] *Ibid.*
[6] *Ibid.*

13. Further, the questions submitted by the General Assembly have been "framed in terms of law and raise problems of international law", hence they are squarely questions of a legal character.[7]

14. The questions were carefully negotiated and drafted, co-sponsored by an unprecedented number of 132 States, and adopted by consensus, with a view to obtaining the necessary clarification of international law. Egypt submits that adopting the UNGA resolution by consensus strongly suggests that all Member States support – or at least do not oppose – the premise that the UN General Assembly was acting within its powers when it adopted the resolution, and that the questions formulated within it are clear legal questions which the Court can address under its advisory function.

15. Egypt also notes that, as explained by the Court in its advisory opinion on *the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, the Court may depart from the language of the question put to it in cases where the question is not adequately formulated, does not reflect the "legal questions really in issue"[8], or "where the question asked is ambiguous or vague,."[9] Further, "[a]lthough, in exceptional circumstances, the Court may reformulate the questions referred to it for an advisory opinion, it only does so to ensure that it gives a reply based on law."[10]

16. In addition, this Court has affirmed that the "abstract" nature of a question is to be expected in an advisory proceeding, which by definition does not purport to settle a specific dispute between States.[11] Any perceived lack of clarity does not deprive the questions of their legal character, but rather reflects the UN General Assembly's expectation that this Court would provide much-needed guidance by clarifying the obligations of States and their legal consequences. The desire for legal clarity is indeed a

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[7] *Western Sahara Advisory Opinion, I.C.J Reports 1975, p. 18, para. 15*, [hereinafter "*The Western Sahara Advisory Opinion*"]; *The Wall Advisory Opinion, p. 153, para. 37*

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

[9] *Kosovo Advisory Opinion*, p. 423, para. 50; *Interpretation of the Greco- Turkish Agreement of 1 December 1926 (Final Protocol, Article IV), Advisory Opinion*, 1928, P.C.I.J., Series B, No. 16.

[10] *Chagos Archipelago Advisory Opinion*, p. 95, at para. 135. In addition, in its Advisory Opinion on *the Legality of Nuclear Weapons*, the Court had made clear that it can answer abstract questions: "it is the clear position of the Court that to contend that it should not deal with a question couched in abstract terms is 'a mere affirmation devoid of any justification', and that 'the Court may give an advisory opinion on any legal question, abstract or otherwise" (*Conditions of Admission of a State to Membership in the United Nations (Article 4 of Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, p. 61; see also *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal, Advisory Opinion, I. C.J. Reports 1954*, p. 51 ; and *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I. C.J. Reports 1971*, p. 27, para. 40)". *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 15 [hereinafter "*Nuclear Weapons Advisory Opinion*"].

[11] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 15.

constant refrain in the declarations of member States on their adoption of Resolution 77/276 by consensus.

17. In response to the argument that not all the States are party to the instruments mentioned in the chapeau of the questions submitted to the Court, two main arguments are advanced. First, it is indisputable that the enumerated legal instruments are binding on their State parties. Given that these instruments are widely ratified, a clarification of State party's obligations, in respect of climate change, under these treaties, would be most valuable. Second, it is important to note that the chapeau makes reference to "rules of international law". According to article 38 VCLT, a State that is not a party to a treaty containing a particular norm can still be bound by that norm if it also exists as a matter of customary international law. In the non-exhaustive list of legal instruments and rules mentioned in the chapeau of the questions, several instruments (or at least a number of their provisions) reflect customary international law, which is binding for all States. This includes a number of provisions of UNCLOS,[12] the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. The same chapeau also refers to the principle of prevention of significant harm to the environment and the duty of due diligence which reflect customary international law.[13]

18. In light of the above, Egypt considers that there is no need for the Court to reformulate the questions submitted to it, and that any reformulation or restrictive interpretation of the legal questions before this Court would amount to reversing the long and detailed process undergone by the member states of the UNGA, and would potentially deny the General Assembly and its member States the authoritative guidance they are seeking from the Court on both the obligations and the legal consequences of the conduct responsible for climate change.

2- The claim that "the question invites the Court to enter *lex ferenda*"[14]:

19. It has been argued that "since the obligation to ensure the protection of the climate system and other parts of the environment is not solidly rooted in the cited instruments, the Court would be obliged to enter *lex ferenda* which departs from its functions and precedent".[15]

20. Egypt notes that the Court, in rendering its advisory opinion, is only "engaged in its normal judicial function of ascertaining the existence or otherwise of legal principles and

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[12] *Territorial and Maritime Dispute (Nicaragua/Colombia), Judgment, ICJ Report*, paras. 114-118, 138-139.
[13] *Pulp Mills Judgement*, para. 159; the *South China Sea Arbitration*, paras 941-942.
[14] Written Statement of the Islamic Republic of Iran, p. 6, title (ii).
[15] Witten Statement of the Islamic Republic of Iran, p.6, para. 22.

rules applicable…"[16]The argument that the Court is invited to enter *lex ferenda* is contrary to the express and clear wording of Resolution 77/276 which requested the Court to render its advisory opinion while "hav[ing] particular regard to" certain existing international legal instruments and rules "lex lata". The Court is then asked to clarify the obligations of States "under international law" (Question (b)) and, finally, to determine "legal consequences under these obligations" (Question (b)). In doing so, the Court may "revisit the concepts and norms debated before it and … indicate, if appropriate, any emerging new trends in their interpretation and in the determination of their scope".[17] This interpretive exercise is not an invitation to delve into what the law "ought to be", but rather – as the Court has often done in the past - to examine and apply the law as it currently exists, having evolved in time.

3- The claim that the political nature of the question or ongoing negotiations are an impediment to the Court's exercise of its advisory function:

21. One statement submitted that the "complexity of the underlying circumstances and the highly political nature of the ongoing negotiations on climate change" will require the Court to "exercise caution in determining how to respond to the two questions put to it."[18]

22. Egypt recalls that the political nature of a question, including the existence of ongoing negotiations, did not prevent the Court from giving its advice on requests submitted to it. On the contrary, when these arguments were raised, the Court proceeded with rendering its advisory opinion. The Court has previously acknowledged that obtaining an advisory opinion may be "particularly necessary" to clarify "the legal principles applicable with respect to the matter under debate."[19]

23. The Court has made it clear that, in determining whether it is confronted with a legal question, it is not concerned with the political nature of the motives which may have inspired the request, or the political implications which its opinion might have.[20] The purpose and motives inspiring the request are irrelevant to the question of jurisdiction.

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[16] *Nuclear Weapons Advisory Opinion*, p. 237, para. 18.
[17] *Jurisdictional Immunities of the State (Germany v. Italy; Greece intervening), Judgment of 3 February 2012* (separate opinion of Judge Bennouna), 2012 ICJ Reports 99, para 19.
[18] Written Statement of the Kingdom of Saudi Arabia p.23, para. 3.7.
[19] *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, I.C.J. Reports 1980, p. 73, para. 33.
[20] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p. 415, para. 27. [hereinafter "The Kosovo Advisory Opinion"]; The Wall Advisory Opinion, p. 155, para. 41, Nuclear Weapons Advisory Opinion, p. 234, para.13.*

24. In addition, the Court repeatedly stated that "the fact that a question has political aspects does not suffice to deprive it of its character as a legal question",[21] or to "deprive the court of a competence expressly conferred on it by its statute".[22] In this regard, It was further indicated that even when the question posed is political, the Court, affirming its long-standing jurisprudence on this point, confirmed that: "as, in the nature of things, is the case with so many questions which arise in international life, does not suffice to deprive it of its character as a legal question, and to deprive the court of a competence expressly conferred on it by its statute"[23].

25. The Court further explained that "whatever its political aspects, the Court cannot refuse to respond to the legal elements of a question which invites it to discharge an essentially judicial task, namely, in the present case, an assessment of an act by reference to international law."[24]

26. The Court has also emphasized that it cannot second-guess the General Assembly's judgement on the need for an advisory opinion—a consideration weighing even more heavily when the resolution requesting the opinion was adopted by consensus. This sends an unequivocal signal that, at this precise juncture, the Court's advice is deemed crucial. Climate negotiations can greatly benefit from an authoritative statement regarding the main obligations and their implications for the conduct which is the cause of climate change. In the *Kosovo* advisory opinion, the Court expressly mentioned that:

> "Nor does the Court consider that it should refuse to respond to the General Assembly's request on the basis of suggestions, advanced by some of those participating in the proceedings, that its opinion might lead to adverse political consequences. Just as the Court cannot substitute its own assessment for that of the requesting organ in respect of whether its opinion will be useful to that organ, it cannot — in particular where there is no basis on which to make such an assessment — substitute its own view as to whether an opinion would be likely to have an adverse effect. As the Court stated in its Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons, in response to a submission that a reply from the Court might adversely affect disarmament negotiations, faced

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[21] *The Kosovo Advisory Opinion, p. 415, para. 27; Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, p. 172, para. 14. [hereinafter the "United Nations Administrative Tribunal Advisory Opinion].*
[22] *Nuclear Weapons Advisory Opinion., p. 234, para. 13; United Nations Administrative Tribunal Advisory Opinion, op. cit., p. 172, para. 14.*
[23] *Nuclear Weapons Advisory Opinion, p. 234, para. 13.*
[24] *Ibid.*

with contrary positions on this issue "there are no evident criteria by which it can prefer one assessment to another."[25]

27. Similarly, in the *Wall Advisory Opinion*, the Court dealt with the contention that an advisory opinion could complicate and undermine the negotiations envisioned by the Security-Council endorsed Roadmap, and that the Court should therefore exercise its discretion to decline to answer the question. The Court further indicated that, "it is conscious that the Roadmap which was endorsed by the Security Council in resolution 1515 (2003) constitutes a negotiating framework for the resolution of the Israeli-Palestinian Conflict"[26] and that "it is not clear, however, what influence the Court's opinion might have on those negotiations".[27] The Court concluded that it "cannot regard this factor as a compelling reason to decline to exercise its jurisdiction".[28]

28. In light of the above, Egypt submits that the General Assembly, as a duly authorized organ, has validly invited the Court to address a legal question that is clearly within its judicial function, and that the ongoing negotiations on climate change do not constitute compelling reasons depriving the Court of exercising its advisory jurisdiction.

4- The claim that multiple international courts/tribunals have been seized with climate change matters – similar to the one submitted to the Court – which may lead to the fragmentation of international law and allow for forum shopping.

29. One written statement submitted to the Court indicated that that Inter-American Court on Human Rights and the International Tribunal for the Law of the Sea have been seized with requests for advisory opinions on climate change, which "may lead to a fragmentation in international law, creating uncertainty and potentially allowing for forum shopping", thus "undermin[ing] the developments that have already been achieved in the context of climate change"[29].

30. In response to this argument, Egypt submits that, in principle, the existence of proceedings before different international courts and tribunals on the same matter does not constitute a compelling reason for this Court to refuse to exercise its advisory function.

31. Second, Egypt wishes to emphasize that the other Courts and Tribunals addressing the issue, namely; the International Tribunal for the Law of the Sea, and the Inter-American

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[25] *The Kosovo Advisory Opinion*, p. 403, para. 35.
[26] *The Wall Advisory Opinion, op. cit.*, p. 160, para. 53.
[27] *Ibid.*
[28] *Ibid.*
[29] Written Statement of South Africa, para. 11.

Court of Human Rights are seized only with specific aspects of climate change which are relevant to their mandates, whereas the normative scope of the advisory opinion sought from this Court is significantly -and appropriately- broader.

32. Lastly, Egypt submits that contrary to what has been suggested, requesting the advisory opinion of multiple international courts and tribunals in relation to climate change, would potentially lead to more clarity regarding the obligations of States, and would thus contribute to creating a comprehensive legal picture. Further, international courts and tribunals, as well as regional courts often reference each other, therefore instead of leading to forum shopping, this leads to a more harmonious and cooperative international judicial space.

B- Applicable law – The Court should consider the whole corpus of international law in answering the questions submitted to it and not limit itself to the UNFCCC, the Kyoto Protocol and the Paris Agreement.

33. Some written statements have argued that the legal obligations in respect of climate change are to be found exclusively in the climate change regime[30] (i.e. UNFCCC, and the Paris Agreement). Other States considered that the Court should only look into "the specialized treaty regime on climate change"[31] (i.e. the UNFCCC, the Kyoto Protocol, and the Paris Agreement), and that other environmental, human rights treaties as well as UNCLOS do not override this "specialized regime"[32]. This argument further considered that the "Court should avoid seeking to formulate new or additional legal rules or obligations that go beyond those which States already have agreed to in the "specialized treaty regime on climate change"[33].

34. To the same effect, the view was expressed that States parties to the UN climate change regime (i.e. the UNFCCC, the Kyoto Protocol and the Paris Agreement) are not subject to non-treaty based international obligations – and in the case of customary international law, the obligations imposed are general[34] and are satisfied through the implementation of the obligations indicated under the UNFCCC and "the" Paris Agreement[35].

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[30] Written Statement of the USA para. 3.1. Written Statement of Saudi Arabia, para. 1.16.
[31] Written Statement of Saudi Arabia, para. 1.9 and 1.10; Written Statement of China, para. 92: "the objectives, principles and norms of the UNFCCC regime serve as specialized laws tailored to address climate change and its adverse effects and constitutes a *sui generis* body of law".
[32] Written Statement of Saudi Arabia, para. 1.15.
[33] Written Statement of Saudi Arabia, para. 1.19.
[34] Written Statement of the USA, para. 4.1.
[35] Written Statement of the USA, para. 4.1.

35. Further and in the same line, some statements considered that the "specialized climate change regime" is *lex specialis*[36] (and that, consequently, the Court should limit itself to it).

36. Egypt submits that in addressing the issue of Governing law these arguments are different facets of one main argument which seeks to persuade the Court -in answering the questions submitted to it- to limit itself to only two or three treaties namely the UNFCCC, the Kyoto Protocol and the Paris Agreement (hereinafter the "**Climate Change Legal Regime**").

37. In its written statement submitted on March 22, 2024 Egypt was of the clear view that in answering the questions the Court should take into account the entire corpus of international law, and that contrary to the aforementioned views, the Court should not limit itself to interpreting and applying the "Climate Change Legal Regime" but rather should identify the obligations relevant to climate change from the entire corpus of international law, and determine the legal consequences of conduct resulting in climate change under international law. A detailed argument to this effect can be found in the written statement of Egypt in paragraphs 68 to 75.

38. In the following paragraphs we will respond to the main points made by those states calling for restricting the applicable law to the Climate Change Legal Regime.

B.1 The wording of UNGA Resolution 77/276 indicates that the Court, in answering the questions submitted to it, should not limit itself to the Climate Change Legal Regime

39. Egypt submits that limiting the consideration of legal obligations to those emanating from the Climate Change Legal Regime, while disregarding the remaining corpus of international law dealing with climate change, is inconsistent with the wording and the intention of the UNGA resolution 77/276. This resolution asked the Court to identify the obligations of States "*under international law* to ensure the protection of the climate system *and other parts of the environment*…".

40. The clear intention of the carefully drafted and negotiated resolution, adopted by consensus, is to request the Court to consider the questions in light of international law, as a whole, and not solely treaty law. Furthermore, the use of the term "and other parts of the environment" further indicates that the UNGA is seeking the legal advice of the Court regarding not only the obligations of States in relation so the impacts of anthropogenic GHG emissions on the climate system but also on other broader components of the

[36] Written Statement of Saudi Arabia, para. 4.90, 4.95, and 5.6; Written Statement of South Africa, paras. 14 -17.

environment..This goes beyond the scope of the narrow climate change legal regime, but encompasses other legal treaties and instruments that govern protection from the impacts resulting from anthropogenic GHG emissions such as, *inter alia*, UNCLOS, the Convention on Biodiversity and several relevant instruments pertaining to Human Rights, as evidenced by the use of the term "having particular regard" in the chapeau of the questions, before enumerating a non-exhaustive list of treaties.

41. The wording of the resolution also explicitly referred to principles of "international law", which includes customary international law[37]. Preambular paragraph 5 of the Resolution refers to a number of treaties, principles of international law, and other resolutions that the General Assembly considered important in answering the questions submitted to the Court, along with the use of the terms "among other instruments" and "including" to emphasize that these references do not constitute an exhaustive list[38].

B.2 The Climate Change Legal Regime does not constitute a *lex specialis* that derogates from other applicable international law

42. Egypt submits that it is erroneous to claim that the Climate Change regime is the only source of obligations regarding the obligations of States in respect of climate change, as the said regime does not address climate change in an integrated, comprehensive manner. Indeed, the conduct of States subject of the questions submitted to the Court – anthropogenic emissions of greenhouse gases over time whether through action or omission - has resulted and continues to cause climate change, and is concurrently governed by other rules and treaties of environmental law, human rights law and general international law, and is not only limited to the Climate Change Legal Regime. The fact that the latter regime has been constructed to deal specifically with the climate crisis, does not lead to a conclusion that it exclusively addresses the climate change crisis, nor that it does so in a comprehensive manner. Further evidence to this is the fact that the Montreal Protocol addresses obligations pertaining directly to the ozone layer, while the ICAO, IMO, ISO WMO all address climate change related issues within their mandate and through legal instruments distinct from the UNFCCC and the Paris Agreement.

43. This very matter was addressed in the recent advisory opinion rendered by the International Tribunal for the Law of the Sea (hereinafter "**ITLOS**"), unanimously, where it indicated that: "the UNFCCC and the Paris Agreement, as the primary legal instruments addressing the global problem of climate change are relevant in interpreting and applying

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[37] Written Statement of Egypt, paras. 69 and 70.

[38] Egypt respectfully refers the Court to its Written Statement, paragraphs 68 to 72 for a detailed answer on this point.

the Convention [i.e. UNCLOS] with respect to marine pollution from anthropogenic GHG emissions".[39] However, ITLOS emphasized that the obligations under UNCLOS for the protection of the marine environment from pollution caused by anthropogenic GHG emissions would not be satisfied if States simply complied with the Paris Agreement,[40] and that article 194 (1) UNCLOS imposed an obligation on them to take measures to reduce their emissions. ITLOS further indicated that the relationship between UNCLOS and the Paris Agreement is a relationship of complementarity[41].

44. It is equally important here to recall the recent finding of the European Court of Human Rights (hereinafter the "**ECtHR**") in its judgement rendered on 9 April 2024, in the *Verein Klimaseniorinnen Schweiz and others v. Switzerland* case, where the ECtHR recognized the adverse effects of climate change on the enjoyment of human rights, [42] and found that policies for net-zero emissions and carbon budgets "can hardly be compensated for by reliance on the State's NDC under the Paris Agreement",[43] as suggested by the Swiss government.This is a further affirmation that the obligations of States in respect of climate change go beyond the central obligation under the Climate Change Legal Regime (submitting a Party's NDC).

45. Further, and in accordance with article 31 (3) paragraph (c) of the Vienna Convention on the Law of Treaties (hereinafter the "**VCLT**")[44], the rule of systemic integration permits the concurrent application of international rules from different instruments and sources[45] when they are compatible and address the same issue[46]. They ought therefore to "be interpreted as to give rise to a single set of compatible obligations"[47]. This Court has further confirmed this when it observed in its advisory opinion on the presence of South Africa in Namibia that: "an international instrument has to be interpreted and applied

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[39] Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, ITLOS, 21 May 2024, Case No. 31, para.222 [hereinafter "*ITLOS Climate Change AO*"].
[40] *ITLOS Climate Change AO*, para. 223.
[41] *Ibid.*
[42] *Case of Verein Klimaseniorinnen Schweiz and others v. Switzerland*, ECtHR Application no. 53600/20, Judgment of the Grand Chamber (9 April 2024), paras. 410,411, 413, 542 [hereinafter the "*Verein Klimaseniorinnen Schweiz and others v. Switzerland Case*"]
[43] *Id.*, para. 571.
[44] Vienna Convention on the Law of Treaties, adopted on 23 May 1969, entered into force on 27 January 1980, [*hereinafter the* "VCLT"]
[45]Written Statement of Vanuatu, para. 227; 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.4/1..682, 13 April 2006, para 414, [hereinafter "*M. Koskenniemi, Fragmentation of International Law*"]
[46] *M. Koskenniemi, Fragmentation of International Law, p.8.*
[47] *Ibid.*

within the framework of the entire legal system prevailing at the time of the interpretation"[48].

46. The legal regime governing the conduct in question – namely anthropogenic GHG emissions over a period of time causing harm to the environment –constitutes a coherent whole. This regime includes the Climate Change Legal Regime along with other instruments such as UNCLOS, the Universal Declaration of Human Rights, relevant human rights treaties, as well as customary international law (namely the no-harm principle and the principle of prevention), and rules of general international law. These complement each other and operate to support each other when identifying the obligations of States to protect the climate system from GHG emissions.

47. ITLOS in its most recent advisory opinion on climate change indicated that "the term "any relevant rules of international law" used in article 31 (3) (c) of the VCLT includes both relevant rules of treaty law and customary law"[49].

48. This Court also noted that: "even if a treaty norm and a customary norm relevant to the present dispute were to have exactly the same content, this would not be a reason for the Court to take the view that the operation of the treaty process must necessarily deprive the customary norm of its separate applicability"[50]. Egypt is therefore of the view, that all relevant treaties and principles of international law, as indicated in the chapeau of the questions submitted to the Court, are applicable separately and independently, and that the application of any of these is not subsumed by the application of another[51].

49. In addition to the above and in the same line, Egypt submits, as previously indicated under its written statement, that the existence of treaties constructed solely to deal with climate change, such as the Climate Change Legal Regime, does not preclude the application of other relevant treaties or principles of international law[52], when they are not incompatible. In other words the "*lex specialis derogate legi generali*" does not apply in this case to

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[48] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16., para. 53 [hereinafter "*Presence of South Africa in Namibia AO*"].
[49] *ITLOS Climate Change AO*, para. 135.
[50] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 14, para. 175, [hereinafter "*Military and Paramilitary Activities in Nicaragua*"]
[51] To the same effect see the written Statement of Vanuatu, para. 227.
[52] Written Statement of Egypt, para. 73.

exclude the applicability of general international law[53] or of other principles and rules existing under other treaties, when harmonious interpretation is possible[54].

50. Furthermore, the Climate Change Legal Regime does not address the protection of human rights impacted by climate change, protection of the environment, including the marine environment, protection of the atmosphere from emissions emanating from airlines or shipping, as it does not address these issues *ratione materiae*. In this regard, ITLOS has explicitly indicated that: "the Paris Agreement is *not lex specialis* to the Convention [i.e. UNCLOS] and thus, in the present context, *lex specialis derogate legi generali* has no place in the interpretation to the Convention. Furthermore, as stated above, the protection and preservation of the marine environment is one of the goals to be achieved by the Convention. Even if the Paris Agreement had an element of *lex specialis* to the Convention, it nonetheless should be applied in a such a way as not to frustrate the very goal of the Convention"[55] (*emphasis added*).

51. Other than the reasons identified throughout these written comments in favour of the applicability of the whole corpus of international law to the questions submitted to the Court, if the Climate Change Legal Regime is the only set of rules applicable to combat climate change, then in that case any State that is not party to the Climate Change Legal Regime, or which has withdrawn from it, would not be under any obligation in relation to the protection of the climate from anthropogenic emissions of GHGs, which is undoubtedly inconceivable and unimaginable given the magnitude of the climate crisis.

B.3. The Paris Agreement does not override the application of the UNFCCC

52. One statement appeared to contend that the main source of applicable law should be the Paris Agreement due to its relation with the UNFCCC as *lex posterior*[56], and as "the cornerstone of the UN climate change regime"[57]. Egypt submits, in addition to our

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[53] Written Statement of Egypt, para. 73; 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

[54] 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*"].

[55] *ITLOS Climate Change AO*, para. 224.

[56] Written Statement of the USA, para. 3.3; Joint Written Statement of Denmark, Finland, Iceland, Norway, Sweden, para. 5.2

[57] Written Statement of the USA, para. 3.4.

arguments above which assert that the Paris Agreement is only part of a whole addressing the climate crisis, that this argument is not substantiated by fact nor law.

53. First, the UNFCCC is the principal framework of the Climate Change Legal Framework. The adoption of subsequent implementation agreements or other related agreements/protocols does not in any way override its provisions (i.e. the provisions of the legal framework agreement). This is further supported by the preamble of the Paris Agreement itself which states that it is "in pursuit of the objective of the Convention"[58] and that it is guided by its principles. And further, y Article 2 of the Paris Agreement, also referenced enhancing the implementation of the UNFCCC, including its objective. Egypt therefore submits that the Paris Agreement does not override the UNFCCC, that its provisions are to be read in light of the Convention, and that the focus cannot be exclusively nor even primarily on the Paris Agreement as it forms *part* of the whole corpus of international law addressing climate change.

54. Second, there has been and continues to be wide academic debate about the very legal nature or character of the Paris Agreement due to the "Nationally Determined" character of the "Contributions" of parties and the consequent blurring of the mandatory or non-mandatory provisions within the Agreement on mitigation, adaptation and provision of climate finance. Indeed, a close examination of the Paris Agreement demonstrates that the main legal obligation of Parties is to report. Mainly, to submit NDCs and to report on progress of their delivery. Hence, while there is wide agreement that the Paris Agreement constitutes an international treaty according to the VCLT definition, there continues to be serious debate and divergent views, including within the ongoing UNFCCC negotiating process, as to whether the provisions of the Paris Agreement impose specific legal obligations on Parties to mitigate, adapt, and provide climate finance and support, beyond the obligation "to report".

55. Third, with respect to the lack of enforcement and compliance mechanisms in the Paris Agreement, article 15 of this Agreement establishes a mechanism to facilitate implementation and promote compliance. Paragraph 2 of article 15 explicitly states that this mechanism shall consist of a committee that shall be expert-based and *facilitative* in nature and function in a manner that is transparent, *non-adversarial* and *non-punitive*. Therefore, despite the presence of a compliance mechanism by virtue of this article, the reality as explicitly stated within the article and later confirmed in the negotiations finalizing the "Paris Agreement Work Program" demonstrates that the committee was not

[58] Preambular paragraph 3 of the Paris Agreement.

intended to enforce implementation and certainly not to penalize non-compliance, which is consistent with the nationally determined, bottom-up nature of the Paris Agreement and further disputing the validity of the claim that the Agreement can be deemed the cornerstone of the legal regime governing state responsibility regarding climate change.

B.4 The temporal aspect: The claim that knowledge of the effects of GHG emissions was only recognized in 1990s, and as a result the Climate Change Legal Regime cannot apply retrospectively.

56. Some States in their written statements argued that knowledge of the effects of GHG emissions was been recognized in the 1990s[59], and that only with the publishing of the first IPCC report[60] and the adoption of the UNFCCC that the scientific consensus was established[61]. In line with these arguments, some statements further asserted that, as a consequence, the Climate Change Legal Regime cannot apply retrospectively[62], and rules of customary international law in relation to preventing harm to the environment cannot apply before the 1990s[63].

57. Egypt wishes to emphasize that from a *ratione temporis* standpoint, knowledge of the adverse effects of GHG emissions on the environment, in general, and more particularly on the atmosphere was established long before the 1990s (and the adoption of the Climate Change Legal Regime). States had and still have the obligation not to cause environmental damage to other States or in areas outside their jurisdiction[64]. Particular rules of international law already formed, established, and in place were expected to be complied with by States before the publication of the first IPCC report (1990), and the entry into force of the UNFCCC soon thereafter. Egypt refers, in particular, to the duty of due diligence as well as the no harm principle or the prevention principle that finds its origins in the due diligence obligation, as indicated by this Court[65].

58. In order to demonstrate that knowledge of the adverse impacts of GHG emissions on the environment predates the UNFCCC, Egypt reiterates, as previously indicated under our written statement, that "high accuracy measurement of atmospheric CO_2 concentration"[66]

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[59] Written Statement of Russia, p. 16.
[60] Written Statement of Germany, para. 39 – 40.
[61] Written Statement of Switzerland, para. 5 and 35.
[62] Written Statement of Japan, para. 20.
[63] Written Statement of Russia, p. 16; Written Statement of Japan, para. 20.
[64] Written Statement of Egypt, para. 83.
[65] *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, para. 101 [hereinafter "Pulp Mills Case"].*
[66] 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*"].

dates back to 1958. In 1965, the Environmental Pollution Panel to the United States President's Science Advisory Committee stated that

> 59. [T]hrough his worldwide industrial civilization, Man is unwittingly conducting a vast geophysical experiment. Within a few generations he is burning the fossil fuels that slowly accumulated in the earth over the last 500 million years. The CO_2 produced by this combustion is being injected into the atmosphere; about half of it remains there. The estimated recoverable reserves of fossil fuels are sufficient to produce nearly a 200% increase in the carbon dioxide content of the atmosphere. By the year 2000 the increase in atmospheric CO_2 will be close to 25%. *This may be sufficient to produce measurable and perhaps marked changes in climate, and will almost certainly cause significant changes in the temperature and other properties of the stratosphere* [...] The climatic changes that may be produced by the increased CO_2 content could be deleterious from the point of view of human beings"[67] (emphasis added).

60. In the same year, the President of the United States Lyndon Johnson, in a message to Congress, confirmed that the composition of the atmosphere is altered by "steady increase in carbon dioxide through the burning of fossil fuels"[68].

61. The issue of climate change and global warming was then brought before the United Nations in 1972. The Stockholm Declaration, as well as the Action Plan for the Human Environment, adopted during the First UN Scientific Conference recommended that "Governments be mindful of activities in which there is an appreciable risk of effects on climate"[69]. In 1985, it was recognized in Annex I of the Vienna Convention for the protection of the Ozone Layer, adopted in 1985 and ratified by 198 States[70], that CO_2 is among the chemical substances that "are thought to have the potential to modify the

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[67] *Restoring the Quality of Our Environment, Report of the Environmental Pollution Panel to the United States President's Science Advisory Committee*, The White House, November 1965, Appendix Y4, pp. 126-127 (link); Written Statement of Vanuatu, para. 181.

[68] "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); Written Statement of Egypt, para. 307.

[69] Action Plan for the Human Environment, B. Recommendations for action at the international level, Recommendation 70. See also Recommendation 71 which 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", available at: https://documents.un.org/doc/undoc/gen/nl7/300/05/pdf/nl730005.pdf?token=we9xJ8DMJCaZ41I83mS&fe=true

[70] 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

chemical and physical properties of the ozone layer"[71], and in 1988, the UNGA in its resolution 43/53 urged governments to treat climate change as a priority issue"[72].

62. While it may be understood that emissions that occurred in the 19th century or the first half of the 20th century were not deemed by most governments to be detrimental to the environment to the extent that we are aware of today, it is nonetheless evident that in the later part of the 20th century, around the 1970s onwards, this knowledge has become evident as demonstrated by the timeline presented in the paragraphs above. And here it is also relevant to reference the findings of the IPCC, where it asserted that "about 62% of total cumulative CO_2 emissions from 1850 to 2019 occurred since 1970"[73], and 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"[74]. Emissions activities have mainly been situated in developed countries, which have not exercised any diligent conduct, in compliance with international law (due diligence obligation and the no harm principle), despite knowledge of the harm caused to the environment.

63. On the other hand, Egypt submits that since the adverse effects of GHG emissions became known to the international community, States were required to abide by the international rules already in place before the adoption of the UNFCCC. In this regard, Egypt wishes to indicate that as early as 1941, in a transboundary context, in the much-cited Trailer Smelter arbitration, 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"[75]. It was further stated in the Trail Smelter arbitration that a "State owes at all times a duty to protect other States against injurious acts by individuals from

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[71] 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

[72] UNGA Res A/43/905, Protection of global climate for present and future generations of mankind, op.6, available at: https://research.un.org/en/docs/ga/quick/regular/43

[73] 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*"].

[74] 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*"].

[75] 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*"].

within its jurisdiction"[76]. This was later confirmed, in 1949, by this Court where the no-harm principle was formulated in its dictum in the Corfu Channel Case. The Court indicated that States have an obligation "not to allow its territory to be used for acts contrary to the rights of other States"[77]. The Stockholm Declaration of 1972 reiterated the same in its Principle 21 which 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 not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction"[78].

64. In 1996, this Court recognized that

> the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control 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.[79]

65. The Court reiterated the same in 1997 in its decision in the *Gabcikovo-Naymaros*[80] case and noted in the *Pulp Mills* case that this principle of prevention is a customary rule[81].

66. Lastly, it is well established that due diligence, as a corollary to the principle of sovereignty, limits the freedom of a State through the obligation to "not allow knowingly its territory to be used for acts contrary to the rights of other States"[82]. This was already highlighted as early as 1928 in the Island of Palmas arbitration, where the tribunal indicated that territorial sovereignty "has as a corollary a duty: the obligation to protect within the territory the rights of other States"[83].

67. In light of this, States cannot plausibly claim that there were no established legal obligations governing their conduct prior to the entry into force of the UNFCCC. As demonstrated, the conduct of States in relation to the protection of the environment from

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[76] Trail Smelter Arbitration, RIAA, vol. III, pp. 1905–82, p. 1963
[77] *Corfu Channel case, Judgement of April 9th*, 1949: ICJ. Reports, p. 22, [hereinafter "*Corfu Channel Case*"]; Written Statement of Egypt, para. 84.
[78] 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
[79] *Nuclear Weapons Advisory Opinion*, p. 242, para. 29
[80] Gabcikovo-Nagymaros Project (Hungary/Slovakia), Judgment, *I. C. J. Reports 1997*, para. 53.
[81] *Pulp Mills Case, para. 101.*
[82] *Corfu Channel (United Kingdom v. Albania)*, Merits, *Judgment*, I.C.J. Reports 1949, p. 22.
[83] Island of Palmas Case, (Netherlands v. USA), Award, the Hague, April 1928, Reports of International Arbitral Awards, 4 April 1928, Volume II pp. 829 -871, p. 839.

GHG emissions – and as a consequence the protection of the atmosphere - was regulated by different rules of international law. However, developed States continued with their actions and omissions to harm the environment.

B.5 The claim that the Climate Change Legal Regime contains compliance mechanisms that displace the general law on State Responsibility, and/or is a self-contained regime.

68. Some States have argued that the Court should not apply the general rules on State Responsibility, reflected in various parts of the Articles on Responsibility of States for Internationally Wrongful Acts (hereinafter "**ARSIWA**")[84] in answering paragraph (b) of the questions submitted to it[85]. These statements argued that the UNFCCC and "the" Paris Agreement contain dispute settlement mechanisms[86], they also include a compliance mechanism[87], and that the issue of loss and damage is addressed by the UNFCCC, Paris Agreement[88] and COP decisions[89]. They also argue that it was agreed by the UNFCCC COP that article 8 of the Paris Agreement does not provide a basis for compensation[90]. Another argument claimed that the financial assistance provided in these agreements addresses the issue of the damage caused[91]. In the same vein, one statement argued explicitly that the climate change legal framework (i.e. the UNFCCC, the Kyoto Protocol and Paris Agreement) are *lex specialis*[92] and a self-contained regime[93].

69. Egypt submits that all these arguments are refutable for the following reasons:

70. First, as argued and demonstrated in *sub-section B.2* above, the Climate Change Legal Regime is not *lex specalis*. It rather represents a part of a broader framework of obligations, including UNCLOS, the due diligence obligation, the no-harm principle, and relevant human rights instruments. The breach of these obligations engages the responsibility of States for wrongful acts. The principle of State responsibility forms part of the whole corpus of international law that is applicable in case of violation of primary norms found in the obligations identified under question (a).

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[84] 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*"]
[85] Written Statement of Japan, para. 41; Written Statement of China, para. 133; Written Statement of the UK, para. 136.
[86] Written Statement of the EU, para. 327.
[87] Written Statement of the EU, para. 334; Written Statement of China, para. 139 – 140; Written Statement of Saudi Arabia, para. 6.6.
[88] Written Statement of Japan, para. 42; Written Statement of China, para. 141.
[89] Written Statement of the EU, para. 329 – 332' Written Statement of Japan, para. 45.
[90] Written Statement of Korea, para. 48.
[91] Written Statement of the EU, para. 351; Written Statement of Japan, para. 45.
[92] Written Statement of Saudi Arabia, paras. 5.6 – 5.9, 6.3, 6.7.
[93] Written Statement of South Africa, para. 131.

71. Second, Egypt submits that the Climate Change Legal Regime is not a self-contained regime for the following reasons:

a- For a regime to be self-contained *vis-à-vis* the customary international law of state responsibility it needs to have a "special set of (secondary) rules concerning breach and reactions to breach"[94]. The commentary to article 55 ARSIWA clarifies that the general law of State responsibility is excluded "where and to the extent that the conditions for the existence of an internationally wrongful act or its legal consequences are determined by special rules of international law".[95] For instance, this Court indicated in United States Diplomatic and Consular Staff in Tehran: "the rules of diplomatic law, in short, constitute a self-contained regime which, on the one hand, lays down the receiving State's obligations regarding the facilities, privileges and immunities to be accorded to diplomatic missions and, on the other foresees their possible abuse by members of the mission and specifies the means at the disposal of the receiving States to counter any such abuse"[96].

b- On the contrary, the Climate Change Legal Regime lacks such specific rules concerning the conditions for the existence of a breach, and the legal consequences of such a breach, which would qualify as a self-contained regime that displaces the customary international law of State responsibility. Egypt thus submits that the UNFCCC and its Paris Agreement do not contain any rules on State responsibility. Article 14 of the UNFCCC (dispute settlement), articles 15 and 24 of the Paris Agreement (compliance mechanism and dispute settlement respectively) do not constitute a regime on State responsibility. Also, these articles do not exclude the application of the general principles of State responsibility because there is no "inconsistency between them, or else a discernible intention that one provision is to exclude the other"[97].

72. It is also essential to note that several States upon ratifying or acceding to the UNFCCC declared that signing this Convention "shall, in no way, constitute a renunciation of any rights under international law concerning state responsibility for the adverse effects of climate change, and that no provision in the Convention can be interpreted as derogating from the principles of general international law"[98]. Similar declarations were made under

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[94] *ILC, Conclusions of the work of the Study Group on the Fragmentation of International Law*, para. 12.
[95] Commentary, Article 55 of ARSIWA, p. 140.
[96] *United States Diplomatic and Consular Staff in Tehran, Judgment, I. C. J. Reports* 1980, para. 86.
[97] Commentary 4, Article 55 of ARSIWA.
[98] Declaration made by Fiji, Kiribati, Nauru, Papa New Guinea, Tuvalu, upon signature, separately, can be accessed here: https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en

the Paris Agreement stating that signing and ratifying the Paris Agreement: "shall in no way constitute a renunciation of any rights under international law concerning State responsibility for the adverse effects of climate change and that no provision in the Paris Agreement can be interpreted as derogating from principles of general international law or any claims or rights concerning compensation due to the impacts of climate change"[99]. These declarations, under both agreements, are a further indication of the applicability of the law of State responsibility to breaches of obligations as a consequence of climate change, under international law and the Climate Change Legal Regime, and reflects the apprehension of those States making the declarations that the claim could be made in the future that the responsibility of States is limited to the obligations contained in the Paris Agreement, to the exclusion of obligations emanating from international law. This apprehension is now evidently justified by claims alleging exactly what those countries were concerned about.

73. In the same line, the claim that article 8 of the Paris Agreement, as well as paragraph 51 of COP decision 1/CP.21[100] regarding loss and damage exclude the applicability of the general law on State responsibility does not stand. First, there is no express exclusion of the law of State responsibility, in either article 8 or in the above-mentioned COP decision[101]. Second, "compensation" mentioned in paragraph 51 of the COP decision is not the only form of reparation provided for in ARSIWA[102]. Fourth, Article 8 read together with paragraph 51 of the COP decision 1/CP.21 demonstrates that States Parties did not exclude the application of the principles of State responsibility.

74. Most importantly, the references in Resolution 77/276 to "acts and omissions", "injured or specially affected" indicate that States intended for the Court to apply the general principles of State responsibility in responding to the questions submitted to it.

75. Lastly, it is worth mentioning here that this Court, in several advisory opinions, has considered that "legal consequences" means the legal consequences arising from the international law on State responsibility. In its advisory opinion on the presence of South Africa in Namibia, "the Court has held referring to one of its decisions declaring a situation as contrary to a rule of international law: 'this decision entails a legal

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[99] Declaration made by Cook Islands, similar declaration with slight difference were made by the Federated States of Micronesia, Nauru, Niue, the Philippines, Solomon Islands, and Tuvalu, can be accessed through: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en

[100] COP Decision 1/CP. 21, paragraph 51 of this decision states that the Conference of the Parties: "agrees that Article 8 of the [Paris] Agreement does not involve or provide a basis for any liability or compensation", can be accessed through: https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf

[101] See also: 'Loss and Damage in Paris and State Responsibility", can be found here: https://legalresponse.org/legaladvice/loss-and-damage-in-the-paris-agreement-and-cop-decision-and-state-responsibility/

[102] *Ibid.*

consequence, namely that putting an end to an illegal situation'"[103]. In the separation of Chagos advisory opinion, the Court stated: "having established that the process of decolonization of Mauritius was not lawfully completed in 1968, the Court must now examine the consequences, under international law, arising from the United Kingdom's continued administration of the Chagos Archipelago"[104]. It proceeded by stating that: "having found that the decolonization of Mauritius was not conducted in a manner consistent with the right of people to self-determination, it follows that the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State"[105]. Since the Climate Change Legal Regime contains no special principles on breach and legal consequences, the Court must, therefore, apply the general principles of State responsibility.

B.6 It is possible to establish a State's responsibility for climate change under general international law, including considering attribution and causation

76. Some States have also argued that it would be difficult to apply the general law of State responsibility given the complexity of matters of attribution, the difficulty that arises due to "the diffuse geographic sources of anthropogenic greenhouse emissions"[106], the causation link between the breach and the harm caused[107] or more precisely the contribution of each State to climate change[108], the fact that climate change is the result of combined GHG emissions over a certain period[109], the impossibility of identifying the responsible State[110], and that the UNFCCC and "the" Paris Agreement are designed to address the issue of loss and damage, which is not possible under the general law of State responsibility.[111]

77. First, the fact that the relevant conduct – GHG emissions harming the environment - occurred over time does not exclude the applicability of the law of State responsibility. Article 15 of ARSIWA specifically addresses this issue of a breach consisting of a *composite act*, meaning a breach that occurs "through a series of actions or omissions defined in aggregate as wrongful (…). In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long

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[103] *Presence of South Africa in Namibia AO*, para. 117.
[104] *The Chagos Archipelago Advisory Opinion*, para. 175
[105] *Ibid.*
[106] Written Statement of Australia, para. 5.9; Written Statement of the Russian Federation, p. 17; Written Statement of China, para. 136.
[107] Written Statement of Australia, para. 5.9; Written Statement of the Russian Federation, p. 16; Written Statement of Korea, paras. 46, 47; Written Statement of China, para. 136; Written Statement of Saudi Arabia, para. 6.7; Written Statement of the UK, para. 137.4.1.
[108] Written Statement of the Russian Federation, p. 17.
[109] Written Statement of Australia, para. 5.9.
[110] Written Statement of the Russian Federation, p. 17.
[111] Written Statement of Australia, para. 5.10; Written Statement of the EU, paras. 329 – 332.

as these actions or omissions are repeated and remain not in conformity with the international obligation", which is precisely the case of the conduct in question.

78. As for the difficulty, alleged by some States, in establishing States' responsibility because of the challenge of establishing the causation link between the act/or omission and the harm caused, and the contribution of each State to climate change[112], as well as the impossibility of identifying the responsible State[113], Egypt notes that national domestic courts as well as the recent decision of the European Court of Human Rights have indicated that there is no difficulty in establishing State's responsibility.

79. The ECtHR found that:

> while climate change is undoubtedly a global phenomenon which should be addressed at the global level by the community of States, the global climate regime established under the UNFCCC rests on the principle of common but differentiated responsibilities and respective capabilities of States (Article 3 §1). This principle has been reaffirmed in the Paris Agreement (Article 2 §2) and endorsed in the Glasgow Climate Pact (…) as well as in the Sharm el-Sheikh Implementation Plan (…). It follows, therefore, that each State has its own share of responsibilities to take measures to tackle climate change and that the taking of those measures is determined by the State's own capabilities rather than by any specific action (or omission) of any other State (…) The Court considers that a respondent State should not evade its responsibility by pointing to the responsibility of other States, whether Contracting Parties to the Convention or not (…). This position is consistent with the Court's approach in cases involving a concurrent responsibility of States for alleged breaches of Convention rights, where each State can be held accountable for its share of the responsibility for the breach in question. It is also consistent with the principles of international law relating to the plurality of responsible States, according to which the responsibility of each State is determined individually, on the basis of its own conduct and by reference to its own international obligations. (…)
>
> Lastly, as regards a "drop in the ocean" argument implicit in the Government's submissions – namely, the capacity of individual States to affect global climate change – it should be noted that in the context of a State's positive obligations under the Convention, the Court has consistently held that it need not be

[112] Written Statement of the Russian Federation, p. 17.
[113] Written Statement of the Russian Federation, p. 17.

determined with certainty that matters would have turned out differently if the authorities had acted otherwise. The relevant test does not require it to be shown that "but for" the failing or omission of the authorities the harm would not have occurred. Rather, what is important, and sufficient to engage the responsibility of the State, is that reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm"[114].

80. According to this analysis, individual responsibility is intricately tied to the principle of common but differentiated responsibility ("**CBDR**"), which takes account of historical responsibilities and therefore places varying and differentiating obligations on developed and developing countries.[115] In its recent advisory opinion, ITLOS recognised that the Paris Agreement requires developed countries to take the lead in mitigation efforts, including in taking measures to reduce anthropogenic GHG emissions causing marine pollution.[116]

81. In another example, the Urgenda case, the Supreme Court of the Netherlands pointed to IPCC reports and Annex I Countries to stress the urgent need for GHG emissions reductions by developed countries[117]. It further indicated that "each country is responsible for its own share. This means that a country cannot escape its own share of the responsibility to take measures by arguing that compared to the rest of the world, its own emissions are relatively limited in scope and that a reduction of its own emissions would have very little impact on a global scale. The State is therefore obliged to reduce greenhouse gas emissions from its territory in proportion to its share of the responsibility"[118]. The Supreme Court of the Netherlands indicated that developed countries were required to reduce their emissions by at least 25-40% in 2020[119]. It ruled that the Netherlands must comply with this target and reduce its emissions by at least 25% in 2020[120]. This share of responsibility is in Egypt's view also based on the historical responsibility of developed countries with regard to climate change due to their excessive emissions of GHGs, which determined the reduction quotas required or individual targets of developed countries as indicated in Annex I of the Kyoto Protocol.

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[114] *Verein Klimaseniorinnem Schweiz and others v. Switzerland Case*, para. 442 to 444.
[115] Egypt's written statement, para 140-150.
[116] ITLOS, para 227-229.
[117] The State of the Netherlands v. Stichting Urgenda, Supreme Court of the Netherlands, Judgement, 20 December 2019, para. 6.1 – 7.3.6, [hereinafter "*Urgenda Case*"] can be accessed through: https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf
[118] *Urgenda Case*, paras. 5.6.1-5.8
[119] *Verein Klimaseniorinnem Schweiz and others v. Switzerland Case* referencing Urgenda Case, para. 261.
[120] *Ibid.*

82. In light of the above, and current judicial practice, establishing a State's responsibility for climate change should not be problematic, despite the particular nature of climate change.

83. Lastly, Egypt submits that the argument advanced by some States in their written statements, which considers that there would be difficulty applying the principles of State responsibility, means that these States concede that these principles are applicable. They do not deny a possible application of the law of State responsibility, their only contention to its applicability is that some difficulties might arise in applying it. This is a clear admission that the law of State responsibility is applicable.

C- The conduct of States underpinning the two questions put to the Court

84. Egypt submits that clearly identifying the conduct subject of the questions submitted to the Court is of significant importance. Simply put, the identification of such conduct is essential in determining whether there is a breach of the obligations indicated under question (a) submitted to the Court, and to determine the legal consequences arising from such breach as indicated under question (b).

85. While several statements submitted by developed countries have either chosen to ignore addressing the issue of the conduct in question, or preferred to dilute it within the parts dedicated to the inapplicability of the law of State responsibility or in response to question (b) on "legal consequences", this appears to be an attempt to derail the Court and to devoid this advisory opinion of any practical legal response to the questions submitted to the Court.

86. These attempts aimed at avoiding or diluting the issue of characterization of the conduct subject of the questions submitted to the Court or seeking to evade the historical responsibility of the countries with the scientifically proven largest share of GHGs over time are represented in the following arguments made by some States: a statement argued that climate change is the result of cumulative emissions of *all* States (emphasis added), and that "all States must work collectively to reduce their emissions"[121]. Another statement argued that "increased atmospheric concentrations of GHGs have come from activities that are essentially universal in the modern world, occurring in every economy worldwide"[122]. Several statements have indicated that the term "legal consequences" in question (b) submitted to the Court "should not be understood as inviting the Court to make general statements as to the international responsibility of certain States or

[121] Written Statement of New Zealand, para. 28. (b); Written Statement of the US, para. 2.2. and para. 2.28.
[122] Written Statement of the US, para. 2.7.

categories of States, *vis-à-vis* other"[123]. Another statement considers that if developed countries were historically the major emitters and have the greater historical contribution to GHG emissions, "the Paris Agreement represents the most recent expression of its Parties commitment in relation to climate change"[124], and that "it does not apply the Annex-based approach (…) the UNFCCC Annexes no longer accurately reflect States' emissions levels (past, present and projected)"[125].

87. Egypt's response to the above is as follows:

C.1] The conduct subject of the questions submitted to the Court is clearly identified in the text of Resolution 77/276:

88. In order to identify the conduct subject of the questions submitted to the Court (hereinafter the "**Relevant Conduct**"), Egypt submits that the Court need not look beyond the wording of Resolution 77/276 to identify the Relevant Conduct, and that any attempt to ignore characterizing this Relevant Conduct is only a misleading tactic to absolve developed countries of their responsibility.

89. First, question (a) in Resolution 77/276 asks the Court to identify the obligations of States to ensure the protection of the environment from anthropogenic emissions of greenhouse gases. Preambular paragraph 9 of Resolution 77/276 indicates that there is a scientific consensus that "anthropogenic emissions of greenhouse gases are unequivocally the dominant cause of the global warming observed since the mid-20th century". Then preambular paragraph 5 further helps determine that the Relevant Conduct is the "conduct of States *over time* in relation to activities that contribute to climate change and its adverse effects" (emphasis added). Reading question (a) in light of preambular paragraphs 5 and 9, we understand that the activity in question is anthropogenic emissions of greenhouse gases, which is attributable to States, and which have occurred over time in reference to historical emissions of GHGs which have culminated over time.

90. Second, question (b) in Resolution 77/276 comes in with more precision in identifying the Relevant Conduct. It determines the Relevant Conduct by indicating that it is the acts and omissions of individual States – or a particular group of States - which have caused significant harm to the climate and other parts of the environment, through anthropogenic emissions of GHGs (as indicated under question (a) and preambular paragraphs of

[123] Written Statement of the EU, para. 65.
[124] Written Statement of the UK, para. 141 -142.
[125] Written Statement of the UK, para. 142.

Resolution 77/276), and which as a consequence harmed other States, as well as people and individuals of future generations.

91. The term "significant harm" indicates that there is a threshold to attribute responsibility to States for the harm caused to the climate and other parts of the environment. This threshold requires that the harm be significant.

92. While there may be no agreed definition of the term "significant" in this context, it would be disingenuous to claim that the harm caused to the climate and the environment has not crossed the highest possible threshold that could be applied to determine the degree of harm in the term "significant".

93. In light of the above, the Relevant Conduct subject of the questions submitted to this Court is the acts and omissions of a specific group of States that, *over time*, have caused significant harm to the climate through cumulative anthropogenic emissions of GHGs, as well as to other States, peoples and individuals of the present and future generations.

94. In other words, Egypt deems it important to emphasize that the "significant" harm has already been caused to the climate by this specific group of States through the culmination of their excessive historical emissions and is still occurring. The Court is thus asked to opine on the legality of this Relevant Conduct and the legal consequences arising from the breach by this Relevant Conduct of the obligations identified under question (a).

C.2] The specific group of States undertaking the Relevant Conduct

95. As to "which States" are concerned with undertaking the Relevant Conduct, it suffices to consider the scientific basis for climate change and the reports of the IPCC and other UN agencies on the matter as previously indicated above and in Egypt's written statement. As demonstrated above [under *sub-section B.4*], the adverse effects of climate change were known to the international community well before the adoption of the UNFCCC (1990s). Despite such knowledge, developed countries continued, through their acts and omissions, to cause significant harm to the climate and other parts of the environment. Although the climate change crisis is a global problem to which all States contribute, this contribution, past or present is not equal. The contribution of many industrialized, developed countries to the problem is of such magnitude that they are considered, according to readily available scientifically proven data, to be the instigators of the crisis, their excessive cumulative emissions which have been thoroughly and precisely quantified are the main reason behind the crisis, and their continued actions and omissions

in relation to anthropogenic greenhouse gases are the reason why the crisis is of greater harmful consequences.

96. In this regard, the IPCC has confirmed that "developed countries contributed 57% [to cumulative CO2- FFO emissions between 1850 and 2019]"[126], whereas "the three developing regions [i.e. Africa, Asia and Pacific] together contributed 28% to cumulative CO2 – FFI emissions"[127] in the same period, while noting that Africa's contribution is 3 per cent[128].

97. The IPCC further indicated that, and as mentioned above, cumulative net CO_2 emissions since 1850 are increasingly accelerating, that about 62% of total cumulative CO_2 emissions from 1850 to 2019 occurred since 1970,[129] and that "CO_2 emissions from fossil fuel combustion and industrial processes contributed about 78% to the total GHG emission increase between 1970 and 2010," while similar percentage was contributed between 2000 and 2010.[130] It has also stated that "the majority of the warming has occurred since 1975, at a rate of roughly 0.15 to 0.20°C per decade"[131]. These harmful activities have mainly been situated in developed countries, i.e. the industrialized countries.

98. In addition to the above, according to the United Nations Environment Programme (hereinafter the "**UNEP**"), several developed countries continue to be, today, among the global top emitters despite the existence and knowledge of the scientific evidence to their significant contribution to the climate crisis.[132] 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"[133]. Further, 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

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[126] 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*"].
[127] *Ibid.*
[128] *Ibid.*
[129] IPCC, 2022: Emissions Trends and Drivers.
[130] IPCC Fifth Assessment Report – Synthesis Report 2014.
[131] See, National Aeronautics and Space Administration, "World of Change: Global Temperatures", available at https://earthobservatory.nasa.gov/world-of-change/global-temperatures
[132] 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*"].
[133] *Id.*, p. 8

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"[134]. The UNEP emissions gap report (2023) has 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"[135].

99. It has also been scientifically proven, and according to the IPCC that "the remaining carbon budgets amount to 500 and 400 billion tonnes of CO2, respectively, from 1 January 2020 onward"[136]. Noting that "of the about 2560 billion tonnes of CO2 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"[137]. And as a consequence, "the remaining carbon budget from 2020 onwards is much smaller than the total CO2 emissions released to date"[138]. Meaning, that developed 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"[139].

100. Over and above, States parties to the UNFCCC (that many developed countries have contended is the "Regime" governing climate change, along with the Paris Agreement), adopted the Cancun Agreements in 2010 where it was explicitly recognized that the "largest share of historical global emissions of GHGs originated in developed countries"[140].

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[134] 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.

[135] *UNEP Production Gap Report*, p.4

[136] 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

[137] *Ibid.*

[138] *Ibid.*

[139] 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*"]

[140] 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

101. The Kyoto Protocol is also another indication that the Relevant Conduct concerns the developed countries. As an implementation agreement to the UNFCCC, the Kyoto Protocol imposes only on developed countries – referred to as Annex I Countries – quantified emission limitation and reduction commitments following a top-down approach[141].

102. Furthermore, Egypt wishes to draw the attention of the Court to the practice of national courts pertaining to the share of responsibility of developed countries in the climate crisis.

103. For instance, the Federal Constitutional Court of Germany stated in its Neubauer Case that: "since the start of the industrialization, more than half of all anthropogenic greenhouse gas emissions have been caused by today's industrialised countries. In recent years, emissions from emerging nations have also skyrocketed. The largest current emitters of greenhouse gases are the United States of America, the European Union, China, Russia and India. Historically, Germany accounts for 4.6% of greenhouse gas emissions. Per capita CO2 emissions in Germany were 9.2 tonnes in 2018 – almost twice as high as the global average of 4.97 tonnes per capita"[142], and that "While accounting for approximately 1.1% of the world's population, Germany is currently responsible for almost 2% of annual greenhouse gas emissions"[143].

104. The Appellate Court in Belgium found that article 3.1 of the Kyoto Protocol : « vise plus explicitement la responsabilité des parties visées à l'annexe I »[144], the Belgium Court indicated further that

> les normes en vigueur au sein de l'Union européenne n'empêchaient nullement les Etats membres de poursuivre individuellement des objectifs supérieurs de réduction des émissions de GES. Et d'autre part, il est acquis que ces normes étaient, en ce qui concerne les objectifs de réduction des émissions de GES assignés, insuffisant pour rencontrer le risque d'un réchauffement climatique dangereux. De plus, si ces objectifs européens (une réduction des émissions de GES de 20%) vont au-delà de ceux définis dans un premier temps par l'amendement de Doha, en 2021 (COP -18,

[141] What is the Kyoto Protocol?" , available at: https://unfccc.int/kyoto_protocol#:~:text=In%20short%2C%20the%20Kyoto%20Protocol,accordance%20with%20agreed%20individual%20targets; Article 2 of the Kyoto Protocol.
[142] The Federal Constitutional Court, Neubauer, et al. v. Germany, 24 March 2021, can be accessed through: https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210324_11817_order-1.pdf
[143] The Federal Constitutional Court, Neubauer, et al. v. Germany, 24 March 2021.
[144] Cour d'appel Bruxelles, Arret, 2eme Chambre F Affaires Civile, 30 November 2023, "Affaire Klimaatzaak", p.90, can be accessed through: https://climatecasechart.com/non-us-case/vzw-klimaatzaak-v-kingdom-of-belgium-et-al/

soit une réduction de 18%), ces objectifs ont été très rapidement dépassés puisqu'il était prévu qu'ils devraient être revus à la hausse des 2014.[145]

105. This further proves the disproportionate cumulative emissions of GHGs of developed countries, as well as their present GHG emissions that continue to cause harm to the environment.

106. It is also worth mentioning, among other cases, the case of Held vs. State of Montana, where the US Court ruled against the State's support for fossil fuel projects as it violates the constitutional rights of the young plaintiffs to a healthy and clean environment. This Court order rendered in August 2023, is further proof that developed countries continue to harm the environment and to exacerbate the climate crisis through their acts and omissions in breach of their obligations under question (a).

C.3] The temporal dimension of the Relevant Conduct and its non-compliance with international law

107. Some States have contested the existence of "a wrongful act,"[146] and thus the applicability of the law of State responsibility, as this is "premised on the assumption that an internationally wrongful act constituted by conduct of a State or States that fails to comply with the obligations identified in answering paragraph (a) of the question may cause significant harm to the climate system."[147] According to this view, "in any individual case, that assumption could not be made; and causation would have to be proved".[148]

108. It is, in our view, inaccurate to say that emissions of GHGs constitute by themselves wrongful acts, when in fact they do not. However, Egypt submits that the arguments mentioned in the preceding paragraph do not reflect the correct nature of the Relevant Conduct, and the fact that the temporal dimension is at the heart of this Relevant Conduct.

109. Egypt wishes to stress the importance of correctly characterizing the Relevant Conduct and understanding that it is a breach arising from a *composite act* as elaborated under article 15 of ARSIWA.

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[145] Affaire Klimaatzaak, para. 239.
[146] Written Statement of Japan, para. 40;
[147] Written Statement of Australia, para. 5.9.
[148] *Id.*

110. A composite act, as indicated above, is a "series of actions and omissions defined in aggregate as wrongful"[149]. A breach by a composite act as clarified under the commentary to ARSIWA is thus the result of "an *aggregate of conduct and not individual acts*"[150].

111. This means that each individual act or omission does not need to be unlawful for a composite act, in breach of international law, to be formed. The breach of an obligation occurs when a series of acts or omissions, assessed as a whole, constitute a violation of that international obligation[151].

112. In this case, as clarified by paragraph 2 of Article 15 of ARSIWA, once this series of acts and omissions taken together become unlawful, "the breach extends over the entire period starting with the first of 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"[152]. This means that "the breach is dated to the first of the acts in the series"[153].

113. Egypt submits that the Relevant Conduct underpinning the questions submitted to the Court is a composite act for the following reasons:

a- ***On an individual level***: Developed States, individually, have violated the obligations identified under question (a), when each State through its cumulative anthropogenic emissions of GHGs over time (the aggregate of its acts and omissions) has reached the threshold of causing significant harm to the environment, and as a consequence, to the climate system. It is important to stress that what is to be considered a violation of the obligations indicated under question (a) is the fact that a State individually - through its cumulative GHG emissions - has caused significant harm to the environment, and not that that State alone caused climate change.

b- Individual significant harm caused to the environment, and as a consequence to the climate, through GHG emissions has been accurately and precisely proven by science. For instance, we can consider that the threshold of causing significant harm to the environment is already reached when a State emits more GHG emissions than the allowable quantity of emissions, hence contributing significantly to climate change, or simply by measuring the amount of emissions of GHGs for certain present or future projects. This is not a difficult task with the readily available

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[149] Article 15 (1) of ARSIWA.
[150] Article 15 of ARSIWA, para. 2 Commentary.
[151] Article 15 of ARSIWA, para. 8, Commentary.
[152] Article 15 (2) of ARSIWA.
[153] Article 15 of ARSIWA, para. 10, Commentary.

scientific processes and technologies, and the presence of abundant relevant information on the effects of certain amounts of GHG emissions on the atmosphere.

c- Relevant practice includes the recent judgment by the Supreme Court of the United Kingdom, which referred to an EU directive stating that "certain projects – such as oil refineries (…) are regarded as inherently likely to have significant effects on the environment". These projects include "extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 cubic meters/day in the case of gas"[154]. As found in this judgment, the Supreme Court referring to the UNEP Production Gap Report, indicated that the "UNEP has consistently found that, viewed overall, the world's governments plan to produce more than twice the amount of fossil fuels in 2030 than would be consistent with limiting global warming to 1.5°C".[155]

d- On the causation link, the Supreme Court in the same case found that "it is known with certainty that the extraction of oil at the proposed well site (…) would initiate a causal chain that would lead to the combustion of the oil and release of greenhouse gases into the atmosphere". The Court proceeded to state that "it is not necessary to consider what is meant by "likely" [in inherently likely to have significant effects on the environment"] because it is an agreed fact that, if the project goes ahead, this chain of events and the resulting effects on climate are not merely likely but inevitable"[156].

e- In another case, an Australian Court upheld the decision of the government not to grant a license for the development of a coal mine indicating that "the exploitation of the coal resource (…) would not be a sustainable use and would cause substantial environmental and social harm"[157], and that the project will cause air pollution. The Court further ruled out the argument "that the increase in GHG emissions associated with the project would not necessarily cause the carbon budget to be exceeded, because (…) reductions in GHG emissions by other sources (…) or increases in removals of GHGs by sinks (…) could balance the increase in GHG emissions

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[154] Supreme Court of the UK, judgement on the application of Finch on behalf of the Weald Action Group (Appellant) v. Surrey County Council and others (Respondents), before Lord Kitchin Lord Sales Lord Leggatt Lady Rose Lord Richards, judgement given on 20 June 2024, para. 14, [hereinafter the "*UK Weald Action Group v. Surrey County Council*"] can be accessed through: https://www.supremecourt.uk/cases/docs/uksc-2022-0064-judgment.pdf

[155] *UK Weald Action Group v. Surrey County Council*, para. 142, UNEP report 2023, page 4 and page 11.

[156] *Id.*, para. 79.

[157] Gloucester Resources Limited v. Minister of Planning, Land and Environment Court, New South Wales, Australia, 8 February 2019, para. 696, [hereinafter the "*Gloucester Resources Limited Case*"], can be accessed through: https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2019/20190208_2019-NSWLEC-7-234-LEGRA-257_decision.pdf

associated with the project"[158]. The Court considered this argument as "speculative and hypothetical"[159].

f- In this regard, even if we are to measure these GHG emissions, for each developed country, from the 1990s until now (as developed States claim that scientific consensus on the adverse effects of GHG emissions became known to the international community since that date), we will find that the IPCC indicated that "about half of the anthropogenic CO_2 emissions between 1750 and 2011 have occurred in the last 40 years"[160], and that "emissions of CO_2 from fossil fuel combustion and industrial processes contributed for the increase during the period 2000 to 2010"[161]. This took place mainly in developed countries.

g- Additionally, if we are to compare emissions reduction numbers in developed countries since the Kyoto Protocol, we are to find that some developed countries have failed to meet their targets, emitting more GHGs than what is admissible into an already saturated atmosphere due to their excessive, unchecked historical emissions.

h- ***On a collective level***: the anthropogenic emissions of GHGs of developed countries taken together are proven by science to be the reason for causing climate change. The conduct (aggregate 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 not only significant harm to the climate system and to the environment but resulted in climate change. This is a composite act undertaken by several responsible States that has resulted in harm to the environment of unprecedented magnitude in the form of climate change.

i- According to the principle reflected in article 47 of 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"[162]. The responsibility of developed States is thus not only individual but also collective. As a group, their responsibility is engaged for causing climate change, and each State is "separately responsible"[163] for its contribution to climate change through its series of acts and omissions that have caused significant harm to the environment (which are an internationally

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[158] *Gloucester Resources Limited Case*, para. 529.
[159] *Id.*, para. 530
[160] 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/
[161] IPCC Fifth Assessment Report – Synthesis Report 2014.

[162] Article 47 of ARSIWA.
[163] Article 47 of ARSIWA, para. 1, Commentary.

wrongful act as they are a breach arising from a composite act). This is similar to the situation where several States are to be held responsible for "contributing to polluting a river by the separate discharge of pollutants"[164].

j- In the Corfu Channel Case, this Court found Albania to be responsible "for the explosions which occurred on October 22nd, 1946, in Albanian Waters, and for the damage and loss of human life which resulted from them" because Albania knew of the laying of mines by Yugoslavia and failed to warn and notify the ships crossing this area. The Court precisely concluded that "the laying of the minefield which caused the explosions on October 22nd, 1946, could not have been accomplished without the knowledge of the Albanian Government", and therefore the Court found not only Yugoslavia to be responsible for the explosions, but also Albania.

114. Drawing parallels with the climate change crisis, Egypt submits that each developed country individually is responsible for climate change due to its significant contribution to the harm made to the environment through its anthropogenic emissions, and that they are collectively responsible for causing climate change.

D - Specific legal consequences

115. With respect to the legal consequences arising as a result of the breach of an international obligation, the arguments submitted by States in this regard are primarily that the regime reflected in the relevant provisions of ARSIWA is not applicable. These submissions do not envisage the application of the regime of legal consequences for an internationally wrongful act attributable to a State for climate change, namely cessation and non-repetition of the wrongful act, reparation in the form of restitution, and compensation.

116. Specifically, when it comes to compensation, States have argued, that the issue of loss and damage is addressed by the UNFCCC, Paris Agreement[165] and COP decisions[166]. They also argue that it was agreed by the UNFCCC COP that article 8 of the Paris Agreement does not provide a basis for compensation,[167] and that the financial assistance provisions of these agreements address the issue of the harm caused[168].

117. Egypt emphasizes that the issue of loss and damage provided for under the UNFCCC, its Paris Agreement and COP decisions is not a substitute for a reparation in the form of compensation arising from a breach of international obligations that has caused harm to

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[164] Article 47 of ARSIWA, para. 8, Commentary.
[165] Written Statement of Japan, para. 42; Written Statement of China, para. 141.
[166] Written Statement of the EU, para. 329 – 332' Written Statement of Japan, para. 45.
[167] Written Statement of Korea, para. 48.
[168] Written Statement of the EU, para. 351; Written Statement of Japan, para. 45

the environment and the climate system and that caused injury to States. Further, as these submissions have argued, the Conference of the Parties in COP Decision 1/CP.21 agreed that "article 8 [in relation to loss and damage] of the [Paris] Agreement does not involve or provide a basis for any liability or compensation"[169], hence States cannot use the loss and damage argument to say that it replaces reparation in the form of compensation. This is a self-contradicting argument.

118. In the same vein, States cannot claim that the financial assistance provided for under the Climate Change Legal Regime addresses the issue of the harm caused, precluding the application of the law on State responsibility, and specifically compensation. Egypt submits that there is a distinction between financial assistance under the Climate Change Legal Regime and compensation under the law of responsibility of States for internationally wrongful acts. The former is, in fact, a primary obligation provided for under the Climate Change Legal Regime that States should comply with to help developing countries adapt to the adverse impacts of climate change, while the latter is the result of a wrongful act that has caused harm (i.e. non-compliance by States with their primary obligations in relation to the protection of the environment from climate change).

119. Egypt has amply discussed the issue of legal consequences in its written statement. The following is a summary of the main points Egypt wishes to reiterate:

a- Egypt submits that developed countries through the conduct of their governments and legislative organs have breached, and continue to breach their obligations under the Climate Change Legal Regime, the relevant human rights treaties, UNCLOS, the no harm principle, and other rules of international law.

b- The no-harm principle in relation to the protection of the environment is an obligation owed to States that are particularly vulnerable, including Egypt (in the terms of article 42 (b) (i) of ARSIWA), and also owed to the international community as a whole (in terms of article 42 (b) (ii) of ARSIWA).

c- Further, Egypt submits that the violation by developed countries of the Climate Change Legal Regime 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", insofar as the violation by developed countries of their obligations to provide finance to developing countries for adaptation to climate change hinders the latter's ability to adapt and mitigate climate change.

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[169] COP Decision 1/CP. 21, paragraph 51 of this decision states that the Conference of the Parties: "agrees that Article 8 of the [Paris] Agreement does not involve or provide a basis for any liability or compensation", can be accessed through: https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf

d- Developed States that have breached the primary obligations indicated under question (a) have the obligation to continue performing the primary obligation that they have violated.

e- Developed Countries which continue to breach their primary obligations are under the obligation to cease that wrongful conduct through, for instance, the adoption and implementation of effective rules to regulate GHG emissions. The Court can be respectfully guided by the decisions of domestic courts in this regard. Egypt has indicated in its written statement two domestic decisions that it deems important, Massachusetts v. EPA (2007), and the Urgenda Case in the Netherlands[170].

f- Developed States are also required to cease the wrongful act consisting of omission to provide the necessary climate finance to developing countries. This includes meeting their USD 100 billion goal.

g- As previously demonstrated, there is no doubt that the acts and omissions of developed countries, whether past or present, are in breach of their primary obligations and have caused significant harm to the environment which resulted in climate change, therefore reparations are due to injured States.

h- Egypt has previously indicated that restitution of the climate system to where it was before is materially impossible, and therefore compensation would be the suitable choice for reparation of climate change-related damage.

i- Egypt respectfully refers the Court to the corresponding paragraphs on compensation in its written Statement[171].

E- Conclusions and submissions

120. First, Egypt respectfully submits that the Court has jurisdiction and that there are no compelling reasons preventing the Court from rendering this Request for an advisory opinion.

121. Second, Egypt respectfully submits that the whole corpus of international law should be considered by the Court when answering the questions submitted to it. The Court should not limit itself to the Climate Change Legal Regime (i.e. the UNFCCC, the Kyoto Protocol, the Paris Agreement), for the following reasons:

(a) The formulation of the questions submitted to the Court, as well as the wording of Resolution 77/276 of the UNGA, adopted by consensus, clearly requests the Court

[170] Written Statement of Egypt, para. 361 – 362.
[171] Written Statement of Egypt, para. 380 to 387.

to consider the whole corpus of international law when answering the questions submitted to it.

(b) The Climate Change Legal Regime is not *lex specialis* in addressing climate change, and the Paris Agreement in particular is only part of this whole corpus addressing climate change.

(c) General international law, along with the Climate Change Legal Regime, are compatible and are to be applied concurrently, according to the rule of systemic integration under article 31 (3) paragraph (c) of the VCLT, and interpreted harmoniously.

(d) From a *ratione temporis* standpoint, knowledge of the effects of the GHG emissions on the environment, and more particularly on the atmosphere was established long before the 1990s (and the adoption of the Climate Change Legal Regime), and there are rules of international law that were already formed (before the 1990s) in relation to the protection of the environment from harm, and as a consequence the climate that States were expected to comply with, such as the duty of due diligence, and the no harm principle. Therefore, if the Court limits itself to the Climate Change Legal Regime, States which have actually caused climate change would not be held accountable for the damage they have caused through their cumulative GHG emissions and would be absolved of their responsibility.

122. Third, when considering all the above, the Court is also requested under question (b) to apply the principles of State Responsibility to any breach of the relevant obligations identified under question (a) which, as a consequence, engage the responsibility of States. The Climate Change Legal Regime is not a self-contained regime, as it lacks rules "concerning breach and reactions to breach."[172] In other words, it does not contain any rules on State responsibility. This is further evidenced by the declaration made by some States upon signing the UNFCCC, and the Paris Agreement where they declared that signing these treaties does not "constitute a renunciation of any rights under international law concerning state responsibility for the adverse effects of climate change"[173], or of "any claims or rights concerning compensation due to the impacts of climate change"[174].

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[172] *ILC, Conclusions of the work of the Study Group on the Fragmentation of International Law*, para. 12.

[173] Declaration made by Fiji, Kiribati, Nauru, Papa New Guinea, Tuvalu, upon signature, separately, can be accessed here: https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en

[174] Declaration made by Cook Islands, similar declaration with slight difference were made by the Federated States of Micronesia, Nauru, Niue, the Philippines, Solomon Islands, and Tuvalu, can be accessed through: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en

123. Fourth, Egypt submits that it is of crucial importance for the Court to identify the conduct of States subject of the questions submitted to the Court (**the Relevant Conduct**). This is essential in determining whether there is a breach of the obligations indicated under question (a) submitted to the Court, and to determine the legal consequences arising from such breach as indicated under question (b).

124. In this regard, Egypt submits that the Relevant Conduct is clearly identified in the text of Resolution 77/276. It consists of the acts and omissions of developed countries, which *over time* have caused significant harm to the climate through their cumulative anthropogenic emissions of GHGs. This Relevant Conduct is a breach arising from a composite act as reflected under article 15 of ARSIWA.

125. In light of the above, Egypt concludes that each developed country, individually, has violated the obligations indicated under question (a) by causing significant harm to the environment, and as a consequence to the climate, through its cumulative GHG emissions (the aggregate of its actions and omissions which caused significant harm to the environment). Developed counties are also collectively responsible for causing climate change in light of their cumulative GHG emissions (the collective aggregate of their acts and omissions in relation to anthropogenic GHG emissions that have not only caused harm to the environment and to the climate, but also caused climate change).

126. Consequently, States responsible for the breach of rules of international law are required to continue performing the obligation breached, to cease the wrongful act, and to make full reparation for the injury caused by their breach of their relevant obligations.

127. Egypt considers that, as restitution of the climate system to where it was before is materially impossible, compensation would be the suitable choice for reparation of climate change damage. Contrary to the arguments made by some States, the issue of loss and damage provided for under the Climate Change Legal Regime and COP decisions is not a substitute for reparation in the form of compensation arising from a breach of international obligations that has caused harm to the environment and the climate system and that caused injury to States, nor is the provision of financial assistance (a primary obligation provided for under the Climate Change Legal Regime that is not a result of breach of an internationally wrongful act).

14 August 2024

H.E. Dr. Badr Abdelatty

Minister of Foreign Affairs, Emigration and
Egyptian Expatriates
of the Arab Republic of Egypt

Submission of the Arab Republic of Egypt's Written Comments on the following request for advisory opinion – The International Court of Justice:

"Obligations of States in respect of Climate Change"