

Court of Appeal of The Hague  
Case number: 200.302.332  
Session date 2 April 2024

**OPENING ARGUMENT OF MILIEUDEFENSIE ET AL.**  
**PART 2**

*in the matter of:*

- 1. Vereniging Milieudefensie**  
having its registered office in Amsterdam, the Netherlands;
- 2. Stichting Greenpeace Nederland**  
having its registered office in Amsterdam, the Netherlands;
- 3. Landelijke Vereniging tot Behoud van de Waddenzee**  
having its registered office in Harlingen, the Netherlands
- 4. Stichting ter bevordering van de Fossielvrijbeweging**  
having its registered office in Amsterdam, the Netherlands;
- 5. Stichting Both ENDS**  
having its registered office in Amsterdam, the Netherlands;
- 6. Jongeren Milieu Actief\***  
having its registered office in Amsterdam, the Netherlands;

Respondents, original claimants,

Collectively called: “**Milieudefensie et al./Friends of the Earth Netherlands et al.**” (hereinafter: Milieudefensie et al.)

Legal counsel:

*mr. R.H.J. Cox, mr. M.J. Reij, mr. A.J.M. van Diem*

*versus:*

**Shell plc**

having its registered office in London, United Kingdom

Appellant, original defendant

Legal counsel:

*mr. D.F. Lusingh Scheurleer, mr. T. Drenth*

*and:*

**Stichting Milieu en Mens**

\* Vereniging Jongeren Milieu Actief, the youth organisation of Vereniging Milieudefensie, was dissolved as of 1 September 2022. Its activities have continued within Milieudefensie.

having its registered office in Zwolle, the Netherlands

Joined party on the part of Shell plc

Legal counsel:  
*mr. Dr D.J.B. Bosscher*

Your Honours,

## **Introduction**

1. Shell is one of the biggest industrial polluters and one of the most influential companies in the world. Notwithstanding its advertising of sustainability and alleged support for climate ambitions, Shell is globally still active in the exploration, production, refining, marketing and purchase and sale of oil and gas.
2. It has been explained in the written arguments that Shell does not intend to phase out its fossil fuel activities. On the contrary, Shell's group policy foresees significant investments in the production and sale of oil and gas in the future. Shell continues to approve new oil and gas projects and Shell continues to search for new, as yet undiscovered fields. In addition, Shell's policy provides for a considerable growth in a specific segment of the natural gas market, the LNG market. LNG stands for Liquefied Natural Gas. LNG is natural gas that is super-cooled so that it takes on liquid form and can be shipped across the oceans all over the world like oil.
3. Shell's policy and investment decisions relating to the further production and sale of oil and gas are at odds with the global ambition of limiting global warming to 1.5°C. Milieudefensie et al. has already extensively gone into this in these proceedings.
4. But Shell's influence goes much further than only the policy that has been implemented and the related investment decisions. For decades Shell has been influencing and delaying the political decision making relating to climate action and the energy transition, both publicly and behind the scenes, directly and through hundreds of interest groups.<sup>1</sup> Shell has also been exerting influence via lobby offices and consultants, and via media and PR activities. These are just some of the many ways in which Shell has been stimulating the global demand for oil and gas globally.
5. Shell is not the only party to use its influence in this manner, at the expense of the 1.5°C target. Other oil and gas companies act pretty much the same way as Shell and they work together with Shell in this respect. This takes place, inter alia, through the many interest groups in which they participate together, but also through the many oil and gas projects in which they interact with each other. Not only Shell, but the oil and gas sector in general therefore has a lot of influence on the climate approach.
6. In this part of the oral arguments, Milieudefensie et al. will go into all of this in greater detail and explain that this inhibitory effect of Shell and the fossil fuel industry on the climate approach is widely recognised in climate science. This will also be made specific on the basis of new publications and examples. All of this is important for this case, because it shows that it is necessary to break through this inhibitory effect, if the global climate approach is to succeed.

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<sup>1</sup> Exhibit MD-433, p. 10.

7. The exceptional effect that Shell has, directly and indirectly, on both causing and preventing dangerous climate change, is therefore relevant to give substance to the duty of care to which it is subject. After all, whoever has a greater influence on the danger, also has a greater duty of care to limit that danger.
8. This inhibitory effect that Shell has on the climate approach shows, moreover, that Shell cannot hide behind government policy, nor can it hide behind the continuing demand for oil and gas. Both government policy and the demand for oil and gas are, after all, influenced by Shell and the fossil fuel sector to a considerable degree.

### **The fossil fuel industry, including Shell, stands in the way of achieving the 1.5°C target**

9. As I just remarked, it is widely acknowledged in science that the fossil fuel industry has been standing in the way and is still standing in the way of achieving the 1.5°C target. We can see this reflected, inter alia, in various chapters of the last IPCC report.<sup>2</sup> We also see it reflected in the UNEP Production Gap Report, in the findings of UN rapporteurs, in investigative journalism and in dozens of scientific sources. It appears, what is more, from the many documents and lobby reports and from analyses of NGOs that keep a close eye on the lobbying efforts of the fossil fuel industry. In total, Milieudefensie et al. has entered more than 100 items into evidence in these proceedings, all of which provide insight into the political and societal influence of Shell, of other large international oil and gas companies and the interest groups they all form part of.<sup>3</sup>
10. This inhibitory effect arises from what science calls the carbon lock-in. Carbon lock-in is the umbrella term for a large number of obstacles that impede the required societal transformation from a fossil fuel system to a sustainable energy system. The term has various dimensions, that reinforce each other and create collective inaction.<sup>4</sup> There is thus a lock-in of fossil fuel infrastructure, because so much has been invested in fossil fuel projects over the years, that the expected related emissions will far exceed the still remaining carbon budget for 1.5°C.<sup>5</sup> In order to remain within the carbon budget, the production and sale of fossil fuels will have to be quickly limited.

### **The IEA warns against planned over-investments of USD 3600 billion**

11. The IEA warns in this respect that the planned investments in fossil fuel infrastructure are now 3600 billion dollars higher than the investments that are required according to the IEA net zero scenario.<sup>6</sup> To give you a picture: that 3600 billion is equal to 3.5 times the gross domestic product of Saudi Arabia. This does indicate how much higher the planned investments in fossil fuel infrastructure are, compared to what still fits within the IEA net zero scenario.
12. These forms of infrastructure lock-in create an enormous barrier to bringing about the necessary change. The remaining high supply of fossil fuels not only actively creates and maintains demand, but also becomes an economic and societal hurdle for change.

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<sup>2</sup> This relates to IPCC AR6, WGIII.

<sup>3</sup> This concerns, inter alia: Exhibits MD-172-175, 177, 188, 204 to 210, 254, 255, 273, 324 to 333, 357, 382, 385, 401, 404 to 432, 435 to 438, 486, 496A to F, 503, 524, 538, 539A, 539D, 540A to 547, 551B and C, MD-560, MD-570C, MD-573D, MD-574B, MD-579H.

<sup>4</sup> Exhibit MD-255, pp. 426-427. See also Exhibit MD-496A, p. 189 for a brief overview of the various dimensions.

<sup>5</sup> Exhibit MD-523, p. 35.

<sup>6</sup> Exhibit MD-525, pp. 150-151.

13. Shell actively contributes to maintaining that economic and societal hurdle, inter alia by encouraging the demand for fossil fuels. Under the heading of ‘creating demand’ Shell has been calling on the gas industry to cooperate with making natural gas cheaper and more attractive in other ways and to work hard to tap new markets for the sale of natural gas. I cite from a speech of a director of Shell from a few years ago: “*we must relentlessly open up new markets for gas: new countries as well as new sectors.*”<sup>7</sup>

#### IPCC findings on the inhibitory effect of the fossil fuel companies on the climate approach

14. Another important form of lock-in, is the lock-in that is institutional in nature. This form of lock-in relates to the various ways in which the established industry reinforces a status quo that is favourable to the industry and seeks to protect its own position.

15. The IPCC has determined that the established industry has limited the options of governments to implement an ambitious climate policy. I quote the IPCC:

*“One factor limiting the ambition of climate policy has been the ability of incumbent industries to shape government action on climate change.”*<sup>8</sup>

16. As will be further explained in these oral arguments, the fossil fuel industry has a significant influence on all dimensions of the carbon lock-in. This lock-in is, for the moment, keeping society dependent on fossil fuels and is consequently standing in the way of the transformation to a sustainable energy system. Again, in the words of the IPCC:

*“Still existing locked-in infrastructures and business models advantages fossil fuel industry over renewable and energy efficient end use industry. The fossil fuel energy generation and delivery system therefore epitomises a barrier to the acceptance and implementation of new and cleaner renewable energy technologies.”*<sup>9</sup>

17. According to the IPCC, breaking through the carbon lock-in therefore demands a radical change in the power structures between the fossil fuel industry and governments. To quote the IPCC again:

*“Overcoming the carbon lock-in is not simply a matter of the right policies or switching to low-carbon technologies. Indeed, it would mean a radical change in the existing power relations between fossil fuel industries and their governments.”*<sup>10</sup>

18. In short, what the IPCC makes clear in these quotations is that the fossil fuel industry not only through its investments, but certainly also through its influential position vis-à-vis governments, forms a barrier to the sustainable energy transition. This shows the significant influence that companies like Shell have on the climate approach. As previously stated, this significant influence on the climate approach is also important when it comes to finding that Shell has a duty of care.

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<sup>7</sup> Exhibit MD-202, p. 3.

<sup>8</sup> Exhibit MD-496A, p. 170. In this quotation and all following quotations, references to scientific sources have not been included for the sake of reading convenience.

<sup>9</sup> Exhibit MD-496C, p. 557. See also p. 558 (under 5.4.4).

<sup>10</sup> Exhibit MD-496F, p. 1745.

19. This influencing of climate policy has been going on for decades. The way in which this has occurred in the past decades is also described by the IPCC. I will explain this.

20. It was discussed at first instance that at latest in the 1980s, the need for a sustainable energy transition was evident. At that time the international community called on the industry to shift business investments to sustainable alternatives on a mass scale.<sup>11</sup> The UN Climate Convention of 1992 also made it clear that a transition to emission-free sustainable energy was required.<sup>12</sup> It was also discussed in great detail at first instance that these developments were the starting gun for intense political and societal influencing by the fossil fuel industry, including Shell. This happens through lobbying and PR campaigns and the use of interest groups that have started supporting Shell and other fossil fuel companies in relation to maintaining the fossil fuel business model and the status quo.<sup>13</sup>

21. The IPCC has also established that the industry has influenced climate policy, this appears from the findings that I just cited, as well as from the following determination:

*“Corporate actors often influence policies and their adoption. Corporate actors acting individually or through industry associations, have worked to sway climate policy.”<sup>14</sup>*

22. The Global Tipping Points report, also discussed in these proceedings, speaks of “intense lobbying from the oil and gas industry”<sup>15</sup> and points out that the efforts of fossil fuel companies to obstruct, dilute, reverse or delay climate policy, are well-known. I quote:

*“in the political domain, the efforts of fossil fuel companies to obstruct, dilute, reverse or delay climate policy [are] well documented.”<sup>16</sup>*

23. Similar findings can be found in many other scientific documents, including in a recent peer-reviewed article in the magazine Climatic Change, in which it is established that, and I quote:

*“the political activities of business actors in industries that produce and consume fossil fuels have proven to be one of the key reasons why government efforts to implement climate policies have failed.”<sup>17</sup>*

24. As Milieudefensie et al. also explained at first instance, the political arrows of Shell and the fossil fuel industry as of the 1990s were primarily aimed at the most important western regions which should have taken the lead in the climate approach under the UN Climate Convention. This too was confirmed by the IPCC. I quote the IPCC:

*“Drawing upon wider networks, campaigns by oil and coal companies against climate action in the United States of America and Australia are perhaps the most well known and largely*

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<sup>11</sup> Summons, paras. 25-26, paras. 356-362. Claimant’s Brief explaining the amendment of claim of 6 November 2020, para. 21.

<sup>12</sup> Ibid.

<sup>13</sup> Summons, paras. 593-602, Claimant’s Brief explaining the amendment of claim of 6 November 2020, paras. 22-30, Notes on Oral Arguments 1, paras. 85-98, paras. 126-128, paras. 155-158.

<sup>14</sup> Exhibit S-140, p. 1373.

<sup>15</sup> Exhibit MD-561B, p. 329 (under 4.4.2.2).

<sup>16</sup> Exhibit MD-561B, p. 293 (under 4.2.3.3).

<sup>17</sup> Exhibit MD-541A, pp. 14-15. See also pp. 1-2.

*successful of these, although similar dynamics have been demonstrated in Brazil and South Africa, Canada, and Norway and Germany, for example.*"<sup>18</sup>

25. The traditionally close ties between the political domain and the fossil fuel industry entail that fossil fuel companies have easier access to the top political decision makers than others. Revolving door constructions contribute to this. A revolving door construction is the transfer of employees of fossil fuel companies to government bodies and vice versa. This is a strategy that Shell applies, both within and outside the Netherlands.<sup>19</sup>

26. The UNEP Production Gap Report describes how laws and regulations in Western countries are subject to the political influence of the fossil fuel sector, including by means of these revolving door constructions. This political influence is an important threshold to sustainability, according to the UNEP Production Gap Report. To quote UNEP:

*"firms in the sector tend to be highly politically organized, investing considerable resources into lobbying, campaign finance, public relations, and think tank sponsorship, and exerting influence through a "revolving door" between business and government. This political activity is widely considered to be a major barrier to decarbonization."*

27. The IPCC report contains more findings on the inhibitory influence of the fossil fuel industry. The IPCC pays attention, inter alia, to the rise of climate scepticism, to which the US oil industry, including Shell, has contributed to a considerable degree and spread abroad.<sup>20</sup> It has also been established that the business community's resistance to climate policy is often facilitated by a broad coalition of companies.<sup>21</sup> According to the IPCC, there is proof that the American opposition to climate measures by fossil fuel industries is wide-spread and very organised, and is accompanied by "extensive lobbying".<sup>22</sup>

28. In addition to the lobby against climate action, the fossil fuel industry, including Shell, has also made use of media strategies to undermine climate science. I will once again quote a finding of the IPCC:

*"A good number of corporate agents have attempted to derail climate change mitigation by targeted lobbying and doubt-inducing media strategies. A number of corporations that are involved in both upstream and downstream supply chains of fossil fuel companies make up the majority of organisations opposed to climate action."*<sup>23</sup>

29. This behaviour and these strategies of Shell and other oil and gas companies now form the basis of various climate lawsuits of U.S. states and cities against Shell and other supermajors, like ExxonMobil and Chevron. The summons of the U.S. State of California versus Shell and others,

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<sup>18</sup> Exhibit MD-496A, p. 170.

<sup>19</sup> Exhibit MD-551C, pp. 435 – 437. See also Exhibit MD-184, pp. 1 to 8.

<sup>20</sup> Exhibit S-140, p. 1374.

<sup>21</sup> Exhibit S-140, p. 1374.

<sup>22</sup> Exhibit MD-496C, p. 557: "There is evidence that US opposition to climate action by carbon-connected industries is broad-based, highly organised, and matched with extensive lobbying." With regard to the significance thereof for the global climate approach, see: Exhibit MD-543, pp. 56-57. See also Exhibit MD-541B, pp. 2-3.

<sup>23</sup> Exhibit MD-496C, p. 557.

which Milieudefensie et al. submitted into the proceedings, is an example of this.<sup>24</sup> In total, in the middle of 2023 more than 20 lawsuits were ongoing in the United States to hold the oil majors liable, in part on the basis of public deception.<sup>25</sup> The city of Chicago recently announced it was filing suit against Shell, among others. The press release on the case states that the 200-page summons presents a detailed picture of the history of the knowledge of the oil and gas companies and their deception regarding the role that their products play in causing climate change.<sup>26</sup>

30. Media strategies are not only used to undermine climate science. The way in which Shell and other fossil fuel companies make intensive use of PR and advertising activities for creating loyalty in society and the influencing of regulations has been extensively discussed in these proceedings. In a scientific recommendation to the Dutch House of Representatives it was confirmed last year that fossil fuel advertisements are used to delay the regulation of the fossil fuel industry. The recommendation establishes that advertisements are used to profile fossil fuel companies as sustainable, despite their very negative influence on causing climate change.<sup>27</sup> Advertising also shifts the responsibilities of companies to individuals. To quote the scientific recommendation to the Dutch House of Representatives: *“Through this kind of ‘framing’ the emphasis is placed on the idea that it is the individual consumer who is maintaining the demand for fossil fuels. This detracts attention from the role that the fossil fuel industry plays in causing climate change and the responsibilities that the fossil fuel industry has in tackling climate change”*, so reads the recommendation to the Dutch House of Representatives.<sup>28</sup> The conclusion is drawn in the recommendation that a prohibition on fossil fuel advertising can be an essential link in achieving a social tipping point in the sustainable transition.<sup>29</sup>
31. The IPCC and many other sources are crystal clear when concluding that the fossil fuel industry had and has influence on the climate policy of countries and the societal supporting base for climate action. An analysis in The Guardian summarises the message of the IPCC as follows: *“we can tackle climate change if big oil gets out of the way.”*<sup>30</sup>
32. For a better understanding of the start of the structural and coordinated resistance of Shell and other large oil and gas companies to national and international climate regulations, it is useful to briefly review the activities of the Global Climate Coalition as of the end of the 1980s until far into the 1990s. This is a brief excursion to the past, but it is of great importance. The founding of this coalition is seen as the tipping point in organised climate obstruction, which to this day is still occurring on a large scale.<sup>31</sup>

### The disastrous influence of the Global Climate Coalition

33. Contrary to what the name implies, the Global Climate Coalition was a collaboration between dozens of companies and their interest groups, including Shell, ExxonMobil, Chevron, BP and the

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<sup>24</sup> Exhibit MD-560, pp. 25, 28, 30, 53, 61 to 64.

<sup>25</sup> Exhibit MD-532A, p. 53.

<sup>26</sup> Exhibit MD-570C, pp. 1-2.

<sup>27</sup> Exhibit MD-544, p. 6.

<sup>28</sup> Ibid.

<sup>29</sup> Exhibit MD-544, pp. 3 and 6.

<sup>30</sup> Exhibit MD-496I, pp. 1-2.

<sup>31</sup> Exhibit MD-543, p. 21 and pp. 45-47. See also p. 53: *“Brulle emphasises how the CGC [GCC, added by legal counsel] carried out four main obstruction practices [...]. These practices have been common and still remain widely used in combination with the tropes mentioned above.”*

American Petroleum Institute.<sup>32</sup> The Global Climate Coalition was founded at the end of the 1980s in response to the growing knowledge of the dangers of climate change and the international community's appeal to fossil fuel companies to urgently take action.<sup>33</sup>

34. The industry did indeed come into action, but not in the way the international community asked them to. On the contrary, through the Global Climate Coalition the industry combined its forces to obstruct government climate measures and to confuse the public about how serious the problem is.<sup>34</sup> Toward this end the Global Climate Coalition made use of various strategies, including disputing climate science, and in fact did so in contradiction of the findings of their own scientists.<sup>35</sup> The Global Climate Coalition also started with a campaign to undermine the credibility of the IPCC, which was founded in 1988.<sup>36</sup>
35. Another strategy of the Global Climate Coalition was to engage consultants to prepare economic studies and spread narratives regarding the adverse economic impact of climate regulations.<sup>37</sup> Those studies, making use of experts who at first glance appear to be independent, were used to exaggerate the costs of climate action and trivialise the benefits of climate action.
36. In addition, the Global Climate Coalition started PR campaigns to influence the public's understanding about climate change, while at the same time engaging in intensive lobbying among policymakers to combat binding reduction targets.<sup>38</sup> All of this took place alongside the action of conservative think tanks that were also in part founded with financing from the industry. The industry also initiated "citizens movements", that positioned climate policy as a threat to citizens and freedoms.<sup>39</sup> This alleged resistance from society could in turn be used to restrain policymakers from making ambitious policy.
37. The strategies of the Global Climate Coalition have developed further over the years. After the entry into force of the UN Climate Convention in 1992, substantial media campaigns were conducted to emphasise the scientific uncertainties and to announce the message of the Global Climate Coalition that climate policy would chase away the industry and that jobs would be lost.<sup>40</sup> In 1993 the Global Climate Coalition decided that its message had to be spread by hired professionals, based on the belief that they enjoyed greater credibility among the media and the public at large than representatives of the industry.<sup>41</sup> The plan was to pay climate sceptics to hold speeches or write opinion pieces and to arrange media tours so that they could appear on local TV and radio stations.<sup>42</sup>
38. This strategy turned out to be successful. In 1995 the PR adviser of the Global Climate Coalition, also known by the abbreviation GCC, wrote, and I quote: "*the GCC has successfully turned the*

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<sup>32</sup> Exhibit MD-418, p. 2, Exhibit MD-421, p. 1, Exhibit MD-543, p. 52.

<sup>33</sup> Summons, paras. 356 to 362.

<sup>34</sup> Exhibit MD-543, p. 46.

<sup>35</sup> Exhibit MD-543, pp. 46-47. Exhibit MD-560, pp. 61-62.

<sup>36</sup> Exhibit MD-543, pp. 57-58. Exhibit MD-560, pp. 62-63.

<sup>37</sup> Exhibit MD-543, pp. 52-53.

<sup>38</sup> Exhibit MD-543, p. 52. See also Exhibit MD-559E, para. 36.

<sup>39</sup> Exhibit MD-543, pp. 44, 48-50 and pp. 53-55.

<sup>40</sup> Exhibit MD-418, pp. 4-5.

<sup>41</sup> Ibid, pp. 5-6.

<sup>42</sup> Ibid.



*tide on press coverage of global climate change science, effectively countering the eco-catastrophe message and asserting the lack of scientific consensus on global warming.*"<sup>43</sup>

39. However, this doubting of global warming was at odds with the best available climate science, and was also at odds with the internal advice of the fossil fuel industry itself. In an internal memorandum an adviser wrote to the Global Climate Coalition in that same year: "*The scientific basis for the Greenhouse Effect and the potential impact of human emissions of greenhouse gases such as CO2 on climate is well-established and cannot be denied.*"<sup>44</sup>
40. Shell had indeed itself already drawn that conclusion in 1988 in its internal report entitled "The Greenhouse Effect".<sup>45</sup> In that internal report of 1988 Shell also warned of the serious consequences that warming would have for the living environment of humans, for the future living standard of humans and Shell referred to the large social, economic and political consequences that this could have in the future.<sup>46</sup>
41. Despite these climate science findings, known within Shell since at least 1988, Shell nevertheless subsequently joined the Global Climate Coalition. Shell did not withdraw until 1998. This is six years after the UN Climate Convention was made and nine years after it joined the Global Climate Coalition.
42. But the many strategies for climate obstruction developed and implemented by the Global Climate Coalition had already become mainstream in 1998. This is what Shell helped to create and the consequences of which are felt to this day. All these forms of climate obstruction still exist to a great extent.<sup>47</sup>
43. In light of all of the above, it is striking that at first instance Shell itself presented its withdrawal from the Global Climate Coalition as proof of its good behaviour.<sup>48</sup> This is remarkable, because this cooperation between Shell and other big industrial companies by the former vice-president of the US, Al Gore, is described as "*the moral equivalent of a war crime*".<sup>49</sup> It is not exactly something to be proud of. As stated, the activities of Shell and the other oil majors from that time are also the subject of many lawsuits in the United States.
44. In addition, after its withdrawal from the Global Climate Coalition, Shell simply remained a member of the American Petroleum Institute. This industry organisation then continued the campaign against regulation of the climate approach partly on behalf of Shell. These activities ultimately contributed to the US withdrawing from the Kyoto Protocol in 2001.<sup>50</sup> In 2021, an Exxon lobbyist described the American Petroleum Institute as "*the industry's 'whipping boy' to direct public and political criticism away from individual companies.*"<sup>51</sup> To date, the American

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<sup>43</sup> Ibid, p. 7.

<sup>44</sup> Exhibit MD-172, p. 16.

<sup>45</sup> Summons, paras. 541-545. Judgment, para. 2.5.9.

<sup>46</sup> Ibid.

<sup>47</sup> Exhibit MD-543, p. 53, Exhibit MD-418, p. 8, Exhibit MD-560, p. 62.

<sup>48</sup> Shell's Speaking notes of 15 December 2020: facts and questions of the District Court, p. 29.

<sup>49</sup> Exhibit MD-435C, p. 8.

<sup>50</sup> Exhibit MD-560, pp. 61-62 (footnote 92), where a memorandum of the government is cited in which the effectiveness of GCC's lobby is confirmed: "*POTUS rejected Kyoto, in part, based on input from you.*" See also Exhibit MD-560, pp. 64 to 67. See also Exhibit MD-559E, para. 36.

<sup>51</sup> Statement of Defence on Appeal, para. 752, with reference to Exhibit MD-437, pp. 1-2.

Petroleum Institute is the most important industrial organisation of which Shell is a member and to which Shell donates at least 10 million US dollars every year.<sup>52</sup>

45. So although Shell withdrew from the Global Climate Coalition in 1998, this did not decrease its inhibitory influence on climate action. The strategy has simply been shifted to other forms of obstruction to protect the fossil fuel business model, as has also been explained in the Statement of Defence on Appeal.<sup>53</sup> A scientific publication sets out that the many ‘discourses of climate delay’ cover shifting responsibility to the consumer, arguing that action is pointless because other companies and countries are not taking enough action, emphasising the need for perfect regulations, emphasising the importance of fossil fuels for economic development and positioning gas as a climate solution.<sup>54</sup>

46. I would like to remind the Court that I am discussing this inhibitory influence of Shell and its interest groups to make it clear that this influence on climate policy and the energy transition is significant and that this contributes toward the interpretation of Shell’s duty of care. The examples that have been given show in what manner not only government policy, but also the market demand for fossil fuels is influenced. I will explain this on the basis of a concrete example.

#### The global script of the gas industry to anchor fossil gas as a fuel for the future

47. This brings me to the rather astonishing documents of the International Gas Union, the “IGU”. These documents – the most recent of which are from 2021 – provide a striking description of the sophisticated strategy by which the fossil fuel industry to this day still influences politics, the public, media and relevant institutional organisations. The aim of this influence is to commit the world for as long as possible to a fossil fuel energy system.

48. The International Gas Union, IGU, is a worldwide interest group for the gas industry. IGU calls itself “*the Global Voice of Gas*” and represents approximately 95% of the worldwide gas industry.<sup>55</sup> This of course includes Shell, as Premium Associate Member.<sup>56</sup> This is an exclusive membership reserved for the most important gas companies. In addition, Shell is represented in the Executive Committee of IGU, thereby contributing to determining IGU’s course.<sup>57</sup>

49. Shell is, in any event, not only represented on the IGU Executive Committee. Shell also has a seat on the board of many dozens of interest groups in the oil and gas industry. For example, Shell donates not only at least 10 million dollars to the American Petroleum Institute every year, but it also sits on the board of the American Petroleum Institute. This follows from the Shell overview set out below.<sup>58</sup> This overview shows that in addition to the American Petroleum Institute, Shell is also on the board of the US Chamber of Commerce, the International Association of Oil and Gas Producers, Offshore Energies UK and many other associations that represent the interests of the oil and gas sector. The overview below is only the first page of the overview provided by Shell, but it shows that Shell, by means of million-dollar donations and seats on boards, also influences the course followed by the interest groups of which it forms part. InfluenceMap, an

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<sup>52</sup> Statement of Defence on Appeal, para. 751.

<sup>53</sup> Statement of Defence on Appeal, section 6.3.3. Exhibit MD-382, p. 4 (Table 2).

<sup>54</sup> Statement of Defence on Appeal, section 6.2.9. Exhibit MD-401, pp. 1-2.

<sup>55</sup> Exhibit MD-539D, p. 4.

<sup>56</sup> Exhibit MD-539D, p. 7.

<sup>57</sup> Exhibit MD-539C, p. 1.

<sup>58</sup> Exhibit S-166, p. 26. See also p. 27.

important international lobby watchdog, says the following about this, and I quote: “BP and Shell both maintain a vast network of highly oppositional industry associations, which have successfully weakened numerous climate policies globally, and continue to advocate for oil and gas build out. BP and Shell hold some of the highest number of industry association memberships.”<sup>59</sup>

**Shell payments to industry associations in 2022 (Table 2)**

Shell payments in 2022 (USD range)	Industry associations	Member of board or executive committee as of December 31, 2022	Shell entity that pays membership fee	
10 - <12.5M	American Petroleum Institute (API)	Board, executive committee	Shell USA, Inc.	
7.5 - <10M	-	-	-	
5 - <7.5M	-	-	-	
2.5 - <5M	-	-	-	
1 - <2.5M	American Chemistry Council (ACC)	Board, executive committee	Shell Chemical LP	
	European Chemical Industry Council (Cefic)	Board, executive committee	Shell Chemicals Europe B.V.	
	European Fuel Manufacturers Association (EFMA, formerly EPRA, which includes FuelsEurope and Concawe)	Board	Shell International Petroleum Company Limited	
	International Association of Oil and Gas Producers (IOGP)	Board	Shell International Exploration and Production B.V.	
	Offshore Energies UK (OEUK, formerly OGUK)	Board	Shell U.K. Limited	
	U.S. Chamber of Commerce (USCC)	Board	Shell USA, Inc.	
	Western States Petroleum Association (WSPA)	Board	Shell Oil Products Company LLC	
	500,000 - <1M	Australian Petroleum Production & Exploration Association (APPEA)	Board <sup>[22]</sup>	Shell Australia Pty Ltd
		Electric Power Supply Association (EPSA)	Board	Shell Energy North America (US), L.P
		Ipieca	Executive committee	Shell Global Solutions International B.V.
National Association of Manufacturers (NAM)		Board	Shell Oil Products Company LLC	
Oil & Gas Climate Initiative (OGCI)		Executive committee	Shell Global Solutions International B.V.	
Vereniging Energie voor Mobiliteit en Industrie (VEMOBIN, formerly VNPI)		Board	Shell Nederland Verkoopmaatschappij B.V. and Shell Nederland Raffinaderij B.V.	

50. In any event, Shell only reported about 39 interest groups, and only about organisations in Europe, North America and Australia. Shell does not provide any insight into the activities of and the influence of Shell on the many dozens of interest groups outside of these Western regions.<sup>60</sup>

51. Having provided a better picture of Shell’s influence on interest groups, I will return to the International Gas Union, where Shell, as stated, is also represented in the Executive Committee.

52. The published documents of the International Gas Union, IGU, provide a detailed description of the way in which the gas industry conducts an intensive and coordinated global strategy, to solidify the role of natural gas as a fuel for the future. I would like to take a more detailed look at those IGU documents, as only then can a good picture be obtained of the many ways in which and roads over which Shell and the gas industry develop strategies to influence the public and political decision makers. It will be made clear, inter alia, that the idea of gas as a transition fuel,

<sup>59</sup> Exhibit MD-540A, p. 1. See also pp. 6 to 9.

<sup>60</sup> Exhibit MD-573D, pp. 3-4.

which was also promoted by Shell,<sup>61</sup> is nothing other than a slogan coordinated within the gas industry to be able to continue selling gas in the future; note well - to be able to continue selling increasing volumes of gas in the future. It will become clear that the last thing that Shell and the gas industry are working on, is contributing to finding a solution to the climate problem. Having said this, I will now show you how IGU went to work to secure the future of the gas industry from the first conference under the UN Climate Convention.

53. The IGU documents show how IGU was present from the very first climate conference of 1995, and how over the years it wished to make its mark ever more emphatically at those annual climate conferences.<sup>62</sup>

54. During the climate conference in Copenhagen in 2009, there were to be negotiations on an extension of the Kyoto Protocol. In view of the interests at stake, IGU decided to launch a new event under the name *"The role of natural gas in a sustainable energy future"*, with the goal of informing the country delegations, civil servants, NGOs, the press and the industry about the supposed benefits of natural gas.<sup>63</sup>

55. As is clear from the IGU documents, the gas industry realised all too well at that time that natural gas would not by itself become an integral part of the energy system of the future. As a result of the increasing concerns about climate change, the increasing pressure of environmental organisations and the increasing political attention to climate measures, IGU knew that an effective and consistent communication strategy was necessary to convince policymakers that natural gas had to become part of the solution.<sup>64</sup>

56. As of 2010, IGU decided to additionally focus its attention on other institutional stakeholders and on the public.<sup>65</sup> It established the *"gas advocacy initiative"* toward this end.<sup>66</sup> IGU was to seek intensive contact with international organisations like the International Energy Agency, the G20 and the World Bank for this purpose. To quote IGU:

*"Collaboration and relationship building with these organizations is critically important, as they can be influential in the fuel choice that countries make".*<sup>67</sup>

57. During that time IGU started distributing reports and created a gas advocacy toolkit. This was to help its members be better able to communicate more effectively about the importance of natural gas. In addition, complete presentations were made available for use by its members.<sup>68</sup>

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<sup>61</sup> See also: Statement of Defence on Appeal, para. 581, with reference to Exhibit MD-276, UNEP et al., Production Gap Report 2019, p. 18, Box 2.2. (Gas as transition fuel?). Statement of Defence on Appeal, paras. 591 to 599. See also at first instance, Milieudéfensie et al.'s Notes on Oral Arguments 7, paras. 55 et seq. and Milieudéfensie et al.'s Notes on Oral Arguments 9, para. 12 et seq. See also Exhibit MD-538, p. 582 (abstract) and p. 585 (outlook).

<sup>62</sup> Exhibit MD-539D, pp. 120 to 126.

<sup>63</sup> Exhibit MD-539D, pp. 122 and 123.

<sup>64</sup> Exhibit MD-539D, pp. 77-78.

<sup>65</sup> Exhibit MD-539D, p. 11 and p. 138.

<sup>66</sup> Exhibit MD-539D, pp. 77-78.

<sup>67</sup> Exhibit MD-539A, p. 29, with reference to an IGU report from 2020 (Document H, extract 1 on pp. 72 to 75).

See also Exhibit MD-539D, p. 11.

<sup>68</sup> Exhibit MD-539D, p. 138.

58. In 2011 IGU also launched a new initiative with six European gas organisations under the name GasNaturally. GasNaturally was specifically intended to influence European policymakers. Again, in the words of IGU:

*“GasNaturally [...] targeted the European Commission and Parliament with the aim of ensuring that natural gas was well represented in discussions of the future energy mix in Europe.”<sup>69</sup>*

59. It has already been explained at first instance that Shell and the interest groups of which it forms part objected to binding European goals for energy efficiency and renewable energy around that time.<sup>70</sup> Recent research also shows that interest groups that Shell forms part of have been objecting to the support for renewable energy since the 1960s.<sup>71</sup>

60. With the “gas advocacy initiative” properly in the works, IGU then focused on the development of a global vision for natural gas. The goal was to confirm the role of natural gas and to actively create the demand for gas in as many sectors as possible, as can be read in the documents:

*“The goal was to reaffirm and consolidate the role of natural gas – at times mistakenly perceived as a “transitional fuel” – as an integral part of the global energy system for the long term, and to build confidence in the future demand for gas across a variety of sectors.”<sup>72</sup>*

61. To provide some background, it is good to make it clear that the active stimulating of the demand for natural gas was already at odds with the climate approach in 2011. In 2011 the IEA published a scenario in which the IEA indicated: “a golden age of gas does not mean a golden age of emissions reductions.”<sup>73</sup> That scenario with a lot of gas use would, according to the IEA, even lead to a warming of 3.5°C.

62. With increasing attention for climate change since the making of the Paris Agreement, the influence of IGU is increasing. The IGU Executive Committee, in which Shell is represented, established in 2021 that the active debate about climate change could well be an existential threat to the global natural gas industry. This threat may not be ignored: a positive message must be found to defend and increase the role of gas in the global energy dynamic, according to the IGU Executive Committee, and I quote:<sup>74</sup>

*“This debate could be potentially existential for the global natural gas value chain. Potential regulatory changes combined with a restriction of liquidity to the sector could have highly damaging effects to the industry. It is not in the IGU's interest to ignore the issue, but to find a positive message to defend and enhance the role of gas in the global energy dynamic.”<sup>75</sup>*

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<sup>69</sup> Ibid.

<sup>70</sup> Summons, paras. 594 to 599 with reference to Exhibits MD-189 (pp. 23 to 25), MD-204 to MD-209.

<sup>71</sup> See <https://www.theguardian.com/environment/2024/mar/08/oil-industry-has-sought-to-block-state-backing-for-green-tech-since-1960s>.

<sup>72</sup> Exhibit MD-539D, p. 139.

<sup>73</sup> Exhibit S-20, p. 24 with reference to the analysis of 2011.

<sup>74</sup> Exhibit MD-539A, pp. 12 and 13, as well as p. 41 (Document B, extract 1) and p. 43.

<sup>75</sup> Ibid.

63. According to IGU, to spread that positive message relating to gas, the activities in the area of “*communication, outreach and advocacy*” must be intensified. Those activities must protect and reinforce the role of gas for the coming decades.<sup>76</sup>
64. The following can be read about this in the related PowerPoint presentation from 2021:<sup>77</sup>
- (i) In the area of communication, important media and influencers must have a positive sentiment with regard to gas;
  - (ii) The societal acceptance of natural gas must be enhanced and set off against other fossil fuels;
  - (iii) In the area of lobbying, policymakers must be positively influenced to encourage the role of gas in investment and regulatory decisions;
  - (iv) In the area of PR (outreach), the credibility and the leadership of IGU must be enhanced within influential organisations, in order to shape the energy debate.
65. A following document contains an “*Updated Communications, Outreach and Advocacy Plan*”.<sup>78</sup> This is a global IGU script with a detailed action plan to make the role of natural gas as big as possible. This plan contains a separate communication strategy for every region in the world and a separate narrative.<sup>79</sup>
66. In Europe the focus seems to be on “making gas green”, whereby natural gas is presented as part of a broader category of ‘gases’, like biogas, biomethane and hydrogen produced with natural gas.<sup>80</sup> For Africa, parts of Asia and Central and South America, IGU’s proposed communication strategies focus on the use of the Sustainable Development Goals, with the emphasis on energy poverty and clean air.<sup>81</sup>
67. A long list of key targets from 2021, including media and international institutions, shows which organisations IGU believes it has to influence to secure the role of natural gas for the future. Examples of important media outlets are the Financial Times, the Economist, Bloomberg, the Wall Street Journal and the New York Times.<sup>82</sup>
68. The lobby furthermore focuses on, inter alia, the large development banks of Asia, Africa and the Middle East, as well as the World Bank. Other targets mentioned by IGU are the International Energy Agency, OPEC, the Conference of the Parties of the UN, the European Commission, the US Department of Energy, the OECD and the Chinese National Energy Administration.<sup>83</sup>
69. Furthermore, retaining and building up collaborations with “*top-tier think tanks and consultancies*” are noted as an important priority.<sup>84</sup>
70. The topic of energy security also recurs frequently in the IGU script from 2021. It is clear for the gas industry that it is important to emphasise to the public and to political decision makers that

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<sup>76</sup> Ibid.

<sup>77</sup> Exhibit MD-539A, pp. 8, 9, 12 and 34, as well as p. 39 (Document A, extract 1).

<sup>78</sup> Exhibit MD-539A, pp. 10, 13, 16, 20 and pp. 49 to 62 (Document E, extract 1 to 5).

<sup>79</sup> Exhibit MD-539A, p. 5.

<sup>80</sup> Exhibit MD-539A, pp. 15 to 18, and p. 47 (Document D, extract 1).

<sup>81</sup> Exhibit MD-539A, pp. 10, 13, 16, 20 and pp. 49 to 62 (Document E, extract 1 to 5).

<sup>82</sup> Exhibit MD-539A, p. 10, and p. 62 (Document E, extract 5).

<sup>83</sup> Exhibit MD-539A, p. 10, and p. 62 (Document E, extract 5).

<sup>84</sup> Exhibit MD-539A, p. 10, and p. 65 (Document E, extract 8).

more gas means more energy security and more supply security. For example, the talking points have references to the importance of Russian gas. The importance of Russian gas for European energy security is emphasised as a talking point.<sup>85</sup> That importance of Russian gas is also continually being emphasised by Shell, inter alia in the context of the Nord Stream 2 project, of which Shell forms part.<sup>86</sup>

71. The IGU documents show, however, that the gas industry was prepared for shifts in the geopolitical landscape that could be of significance for the position and future of natural gas. It can be concluded from its presentation from 2021 that between 2022 and 2025 IGU was expecting a “*Black swan event*” which would turn the global political agenda on its head.<sup>87</sup>
72. The term “*Black swan event*” has its origin in literature and is described as an unpredictable event that has catastrophic consequences. One will, of course, immediately think of Russia’s invasion of Ukraine in 2022, which took place within one year after the drawing up of this IGU document. Of course, this does not mean to suggest that IGU had foreseen this Russian invasion, but rather that with its tactics and strategies it had prepared to respond as best as possible to such a large crisis, and to be able to gain as much benefit from this as possible for the further promotion of natural gas.
73. This is also confirmed by the analysis of InfluenceMap, which shows that after the war in Ukraine broke out, the gas industry virtually immediately switched from promoting Russian gas for energy security to promoting LNG for energy security and promoting the need to increase LNG capacity.<sup>88</sup> Of course, all of this is for the purpose of scaling up global gas sales.
74. Another new promotional narrative of the oil and gas industry is to make national oil and gas extraction a key point in the alleged interest of energy security. Milieudefensie et al. already pointed this out in its statement of defence on appeal.<sup>89</sup> We will return to the nonsense of these desperate attempts of the fossil fuel industry to place their products in a key position in every crisis situation as a solution to all problems, on day 3 of the oral arguments.
75. InfluenceMap concludes that the oil and gas industry, by developing these narratives and communication strategies in advance, was probably able to respond to the gas crisis very quickly with worldwide consistent messaging, at a critical time in which policymakers were still determining how to respond to this.<sup>90</sup>
76. The IGU documents provide unique insights into the way in which the gas industry tries to defend and reinforce its interests in relation to the increasing concern about climate change and the energy transition of the public, the political domain and international institutions. It provides evidence of a very substantial and coordinated strategy which is intended to protect the commercial interests of IGU’s base. In this strategy, climate change is not seen so much as an existential problem for humankind, but particularly as an existential problem for the gas industry.

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<sup>85</sup> Exhibit MD-539A, p. 10, and pp. 54-55 (Document E, extract 1).

<sup>86</sup> Exhibit MD-548, pp. 1-2.

<sup>87</sup> Exhibit MD-539A, p. 23 and p. 40 (Document A, extract 2).

<sup>88</sup> Exhibit MD-539A, p. 3, p. 23.

<sup>89</sup> Statement of Defence on Appeal, paras. 742-743, with reference to Exhibits MD-426A, pp. 1 to 4 and MD-426B, pp. 1-2.

<sup>90</sup> Exhibit MD-539A, p. 23.

77. It may not be forgotten that IGU is only one of the hundreds of organisations in which Shell and its colleagues in the industry participate.<sup>91</sup>
78. The insights I have provided as to the Global Climate Coalition and the International Gas Union present a picture of the extent to which and the intensity with which these kinds of organisations exert influence on the public and political discourse about climate change, but it is only the tip of the iceberg.
79. For some years now Shell has been reporting on a small selection of the hundreds of organisations it forms part of. As already mentioned, this is 39 organisations. The International Gas Union is one of those organisations, as is the previously mentioned American Petroleum Institute, the US Chamber of Commerce, the International Association of Oil and Gas Producers and Offshore Energies UK. Other organisations concerned include the National Association of Manufacturers, Eurogas, Vereniging Nederlandse Petroleum Industrie (now VEMOBIN), the Australian Petroleum Production & Exploration Association, the Western States Petroleum Association, the European Fuel Manufacturers Association, the Texas Oil and Gas Association, the Canadian Association of Petroleum Producers and many others. This long list of organisations that serve the interests of the oil and gas industry are, according to Shell's own statement, influential in the area of climate policy and the energy transition.<sup>92</sup> This influence is, of course, not being used to have the oil and gas business shrink in line with science. On the contrary. In the words of Shell, the lobbying occurs "*to advance business objectives, enhance the reputation of Shell, affect public policy, and minimize government risks to our businesses.*"<sup>93</sup>
80. In its reporting on these organisations, Shell provides little to no insight into the actual activities of these organisations. This is strange, as Shell should have better insight than anyone else, particularly as Shell, as already pointed out, often has a seat on the board of these organisations.<sup>94</sup>
81. In addition, it is clear that the reporting is limited to its activities in North America, Europe and Australia in particular. There is no reporting at all about other regions in the world. The Australasian Centre for Corporate Responsibility recently investigated this. That investigation report, that has been submitted as an exhibit, identifies, in addition to the 101 organisations for which it was already known that Shell was involved, another 80 interest groups about which Shell provides no information whatsoever.<sup>95</sup> Half of the organisations are in emerging markets and Shell has a seat on the board or other important role in no fewer than 53 organisations.<sup>96</sup> The Australasian Centre for Corporate Responsibility maps out how Shell, to this day, based on its own LNG Outlook, strives for a growth strategy for LNG that exceeds even the highest demand scenarios of the IEA.<sup>97</sup> The lobby activities are geared to ensuring that this growing demand for LNG, predicted by Shell itself, is actually realised. The investigation report provides concrete examples of this.<sup>98</sup>

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<sup>91</sup> Exhibit MD-433, p. 10.

<sup>92</sup> Exhibit MD-433, p. 10. See also Exhibit S-166 (Shell's most recent report), p. 28.

<sup>93</sup> Milieudefensie et al.'s Statement of Defence on Appeal, para. 746, with reference to Exhibit MD-428.

<sup>94</sup> See, for example, Exhibit MD-433, p. 9.

<sup>95</sup> Exhibit MD-573D, p. 7 and pp. 35-37 for the list of organisations.

<sup>96</sup> Ibid.

<sup>97</sup> Exhibit MD-573D, p. 11 and pp. 12 to 16.

<sup>98</sup> Exhibit MD-573D, pp. 16-21.



82. The report shows Shell's role in influential interest organisations in India, the Philippines, Vietnam, China, Mexico and South Africa.<sup>99</sup> In addition to this lobbying to increase the demand for LNG, the report also provides examples of the lobby for the expansion of fossil fuel projects and infrastructure in Malaysia, Kazakhstan, Nigeria, Tanzania, Brazil, Trinidad and Tobago, Namibia and Colombia.<sup>100</sup> A good example, that left me personally rather flabbergasted, is the fact that Shell and the Malaysian Gas Association – that Shell itself helped to set up – are still promoting gas in Malaysia to this day, with slogans like “*natural gas is the cleanest-burning hydrocarbon, thus is good for the environment*”, and the slogan “*there would be enough recoverable gas resources to last around 230 years.*”<sup>101</sup> It should be noted that the same statement was determined to be misleading by the Dutch Advertising Code Committee 12 years ago. The Committee considered at the time that Shell had wrongly suggested in a comforting manner that there was sufficient natural gas for the coming 250 years, while the same communication also speaks of “*cleaner energy*”.<sup>102</sup> In other words: the consumer is being put on the wrong path, because gas is being presented as a climate solution. As if gas can still be used for more than 200 years without any problem. None of this has stopped Shell from simply continuing to use these kinds of misleading narratives outside of the Netherlands.
83. It shows once again that Shell directly and indirectly through interest groups continues to lobby for a growing demand and a growing supply of fossil fuels, in contradiction of every credible climate scenario. Shell is only too happy to present itself as part of the solution, and it is very good at this. It is also appealing to believe this. But it does not align with the facts. The fact is, Shell's activities and investments are at odds with the global climate target.
84. Where according to the IEA gas only plays a limited and supporting role in the sustainable energy transition, a role which according to the IEA, moreover, must decrease further as time goes by,<sup>103</sup> Shell is continuing to focus on a strong, growing gas market. This has nothing to do with the limited and ever-decreasing role of gas on the road to a sustainable energy supply. That natural gas is thus not a transition fuel, has already been explained in these proceedings.<sup>104</sup> Shell's narrative of gas as a transition fuel therefore does not justify the significant investments and growth of gas that Shell is working toward.
85. As mentioned, Shell is geared to a fossil fuel future. The marginally increased investments in a number of sustainable projects and companies – often projects in the Netherlands or elsewhere in Europe where Shell is under scrutiny – does not change this.

## Conclusion

86. I will now conclude this section.

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<sup>99</sup> Ibid.

<sup>100</sup> Exhibit MD-573D, pp. 24 to 28.

<sup>101</sup> Exhibit MD-573D, p. 24.

<sup>102</sup> Milieudéfense et al.'s Statement of Defence on Appeal, para. 735 and Exhibit MD-197, p. 6.

<sup>103</sup> Exhibit MD-525, p. 198, which shows that the CO<sub>2</sub> emissions from gas will fall by a good 55.6% between 2022 and 2035 (from 7499 Mt in 2022 to 3327 in 2035). See also MD-528, pp. 46-47 on the declining role of and over-investments in LNG.

<sup>104</sup> See also: Statement of Defence on Appeal, para. 581, with reference to Exhibit MD-276, UNEP et al., Production Gap Report 2019, p. 18, Box 2.2. (Gas as transition fuel?). Statement of Defence on Appeal, paras. 591 to 599. See also at first instance, Milieudéfense et al.'s Notes on Oral Arguments 7, paras. 55 et seq. and Milieudéfense et al.'s Notes on Oral Arguments 9, para. 12 et seq. See also Exhibit MD-538, p. 582 (abstract) and p. 585 (outlook).

87. On 30 November 2023 – the first day of COP28 in Dubai – six UN experts in the area of human rights issued an urgent request for the rapid phase-out of all fossil fuels. The experts referred in particular to the need to remove important thresholds to adequate climate action. According to them these thresholds are primarily found in the domain of the fossil fuel industry. Among other things, the disproportional political influence of the fossil fuel industry and its commercial and vested interests stand in the way of achieving the global climate targets, according to these UN experts.<sup>105</sup>
88. The Special Rapporteur on human rights and the environment also holds this opinion and words it as follows in a recent new report:
- “For decades, large businesses have undermined the procedural elements of the right to a healthy environment, through greenwashing, deceit, denial, fraud, sabotaging science, aggressive lobbying, massive political donations, corruption, manipulating public opinion, revolving-door hiring practices, regulatory capture and other strategies that exploit their disproportionate economic, social and political power.”*<sup>106</sup>
89. He added the following with regard to the fossil fuel industry: *“the fossil fuel industry denied the existence of climate change, knowingly misled the public about climate science, and continues to spread misinformation about the challenges of powering the world with renewables.”*<sup>107</sup>
90. By means of these oral arguments, Milieudefensie et al. has further substantiated the accuracy of the analysis of these UN experts. In this manner we have tried to provide the Court with further insight into the broad consensus on the significant influence that the fossil fuel industry, including Shell, has had for decades on the climate approach, the energy transition and the demand for oil and gas products.
91. Without exaggerating, based on the foregoing it can be determined that virtually every politician, every organisation and every medium with any relevant influence in the area of climate and energy will directly or indirectly have to deal with Shell. All of them receive more or less the same thoroughly-prepared stories from Shell and the fossil fuel sector.
92. These are the same stories that the Court has been hearing in these proceedings. These are stories that have been aligned with each other in the oil and gas sector, and that are followed and repeated by the entire industry. The average politician, citizen or organisation will tend to think that if so many are saying precisely the same thing, the stories must be true. In addition, these are stories that at first sight seem plausible. It is only upon closer inspection of the matter that the inaccuracy thereof can be made visible, based on supporting evidence. But many people and organisations do not have the time and manpower to separate truth from fiction through proper research. These companies and their interest groups know this very well and they are only too happy to use this to their advantage.
93. The fact that the fossil fuel companies like Shell with all their power, influence and money, have turned out to be so capable of enabling important narratives globally; narratives that are

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<sup>105</sup> Exhibit MD-486, pp. 2 and 3.

<sup>106</sup> Exhibit MD-579G, p. 8, para. 27.

<sup>107</sup> Exhibit MD-579G, p. 8, para. 28.

repeated by many politicians, citizens and organisations; narratives that have become part of our collective thoughts and actions; all of this is also a part of the previously discussed governance gap.

94. This public influencing by Shell and other oil and gas companies is just as much a part of the governance gap as the fact that national states cannot get a grip on international enterprises, or as the fact that there is no global legislator that can regulate international enterprises. This became painfully clear at European level when various member states turned against the Corporate Sustainability Due Diligence Directive after intensive lobbying by the business community. The responsible rapporteur was rightly furious about the lobbying, and I quote her: *"We had a deal. But business lobbies would not give up and here we are, these leaders have now become convinced that accountability is a burden and human rights are a nice to have. [...] The cynicism of today's developments, the shamelessness, the outrageous injustice of big business lobbies who tell their political leaders what to do instead of the other way around."*<sup>108</sup> It is just one more of many examples of the inhibitory influence of the industry.
95. The existence of the governance gap in all its facets and the existence of the carbon lock-in in all its facets, are only two of the reasons why Shell is subject to a significant individual duty of care and why the judgment passed by the District Court is a proper interpretation of that duty of care.
96. Milieudéfensie et al. will return to the interpretation of Shell's duty of care established by the District Court - which encompassed an obligation for Shell to reduce emissions by 45% in 2030 for its Scope 1, 2 and 3 emissions relative to its emissions in 2019 - extensively on day 3 of the oral arguments, which we very much look forward to.
97. For the moment we would like to suffice on the part of Milieudéfensie et al. by repeating the words of Cees van Dam in his handbook on liability law: There can be little doubt that Shell is subject to a duty of care to reduce CO<sub>2</sub> emissions.
98. Thank you for your attention.

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<sup>108</sup> Exhibit MD-579H, p. 1.