

568/138927

Supreme Court of the Netherlands  
Hearing of 22 May 2026 at 10:00 a.m.  
Case number: 25/00497

## NOTES OF THE ORAL ARGUMENTS

of P.A. Fruytier and R.H.J. Cox

in the case of:

1. the association with full legal capacity **VERENIGING MILIEUDEFENSIE**, having its registered office in Amsterdam (the Netherlands)
2. the foundation **STICHTING GREENPEACE NEDERLAND**, having its registered office in Amsterdam
3. the association with full legal capacity **LANDELIJKE VERENIGING TOT BEHOUD VAN DE WADDENZEE** (Association for the preservation of the Wadden Sea), having its registered office in Harlingen (the Netherlands)
4. the foundation **STICHTING TER BEVORDERING VAN DE FOSSIELVRIJ-BEWEGING** (Foundation for the promotion of the fossil-free movement), having its registered office in Amsterdam
5. the foundation **BOTH ENDS FOUNDATION**, having its registered office in Amsterdam
6. the association with full legal capacity **JONGEREN MILIEU ACTIEF**, having its registered office in Amsterdam

appellants in the principal appeal in cassation  
and respondents in the cross-appeal in  
cassation

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to be jointly referred to hereafter (in the plural)  
as: “**Milieudefensie et al.**”,  
counsel: P.A. Fruytier and J.P. Jas

versus:

the legal entity under foreign law  
**SHELL PLC**,  
having its registered office in London (United  
Kingdom)  
respondent in the principal appeal in cassation  
appellant in the cross-appeal in cassation  
to be referred to hereafter as: “**Shell**”  
counsel F.E. Vermeulen and  
A.G. Colenbrander

and versus:

the foundation **STICHTING MILIEU EN MENS**,  
having its registered office in Zwolle (the  
Netherlands),  
party joining on Shell’s side  
to be referred to hereafter as: “**M&M**”  
counsel: C.S.G. Janssens

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Your Honours,

## I INTRODUCTION

1 This case is about Shell’s role in solving the greatest challenge of our time: dangerous climate change. That danger is rapidly approaching us. Since the start of this lawsuit in 2019, the Earth has already warmed by approximately 0.2°C. The dangerous threshold of 1.5°C of warming is now staring us straight in the face.<sup>1</sup> The current climate crisis is, in the words of the International Court of Justice, an “existential problem of planetary proportions”.<sup>2</sup>

2 If crucial players fail to take action, everyone will start to feel the consequences of dangerous climate change. Shell is one of those key players. Its CO<sub>2</sub> emissions are higher than those of every country in the world, except China, the United States, India and Russia.<sup>3</sup> Shell must therefore take action.

3 Shell recognises the grave danger of climate change. It also sees that action is urgently needed.<sup>4</sup> However, it believes that it does not need to take action on its own. This passive stance is, essentially, based on two arguments:

(a) The world will simply continue to need oil and gas for a long time to come – and that demand is actually growing. Shell meets that demand. It presents this argument under the banner of “energy security”.

(b) Action by Shell would be pointless. If Shell does not meet the demand, others will. It presents this argument under the banner of “effectiveness”.

4 According to Shell, the responsibility for the climate crisis therefore lies with governments: they must regulate the entire system. In addition, citizens and businesses must make their energy consumption more sustainable. Shell will then adapt its supply accordingly.

5 This Court is therefore faced with two opposing views on Shell’s role in society. Does Shell have its own climate obligations? Or should governments and citizens take action, whilst Shell is free to wait and see how that plays out?

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<sup>1</sup> For information on the speed of global warming, see, for example, the European Environment Agency: <https://www.eea.europa.eu/en/analysis/indicators/global-and-european-temperatures>.

<sup>2</sup> ICJ 23 July 2025, No. 187 (Obligations of States in respect of climate change), para. 456.

<sup>3</sup> Notes of the Oral Arguments (Part 1) of Milieudéfensie et al. dated 4 April 2024, para. 5; Opening Arguments on Appeal (Part 1) of Milieudéfensie et al. dated 2 April 2024, para. 23; Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, paras. 26 and 627.

<sup>4</sup> See, for example, the Statement of Defence in Cassation of Shell dated 7 November 2025, para. 3, and the Speaking Notes on Appeal (Hearing Day 1 – Part 1 of 2) of Shell dated 2 April 2024, paras. 1.2.2 and 1.2.3.

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6 You cannot allow your decision to be guided by a societal view. You must determine whether our liability law forces Shell to take climate action – and whether the Court of Appeal has correctly applied those rules. It is therefore solely about what the legal standards entail.

7 Our liability law points in one clear direction: Shell must reduce its emissions very substantially in line with the international climate targets. This is indicated by the international climate regime, the doctrine of hazardous negligence, a long series of international climate protocols, human rights and consistent scientific findings. We will explain this over the next hour.

8 In the first part, I will briefly discuss the danger of climate change and the crucial role of the oil and gas industry as the cause of it. I will then discuss why the applicable law requires Shell to achieve reductions – and why the judgment of the Court of Appeal is therefore wrong.

9 In the second part of the oral arguments, Mr Cox will discuss that the required oil and gas reductions are both achievable and necessary. This necessity does not stem from the climate crisis alone; the energy security presented as an argument by Shell also makes it imperative.

10 He will then examine the role that Shell has actually played so far in preventing dangerous climate change. That has been a negative role. In that context, he will also discuss the role of Dutch liability law in more detail and end with the main conclusions of the oral arguments.

## II CLIMATE CHANGE AND THE ROLE OF THE OIL AND GAS INDUSTRY

11 The consequences of dangerous climate change are almost impossible to comprehend due to their diversity, scale and complexity.<sup>5</sup> As the parties do not disagree on this point, I will confine myself to a brief outline.

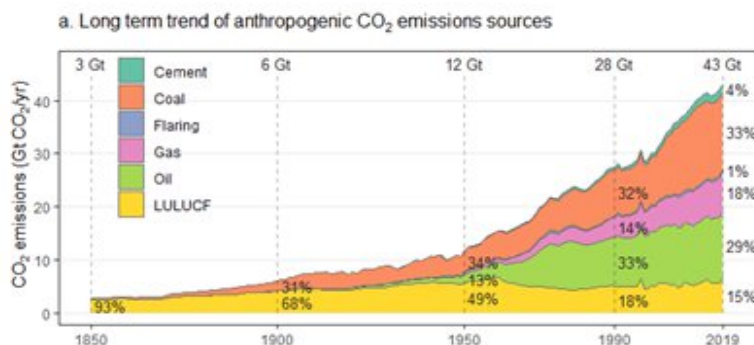
12 If global warming reaches 1.5°C, ecosystems will disappear, weather conditions will become extreme, ice sheets will continue to melt and flooding will increase significantly, among other consequences. These risks will, in turn, lead to water and food shortages, energy problems and the displacement of populations. If global warming exceeds 1.5°C, the consequences will be even more severe.

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<sup>5</sup> Exhibit MD-347 (IPCC AR6 WG II Technical Summary), pp. 68 up to and including 70; Exhibit MD-113 (IPCC AR5 WGII SPM), pp. 11 up to and including 14. See also, for example, the Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, paras. 616 and 617; the Summons of Milieudéfensie et al. dated 5 April 2019, paras. 420 up to and including 435. See also the judgment of the District Court, ground 2.3.5. See further, in great detail, the Written Arguments of Milieudéfensie et al. dated 19 March 2024, paras. 1 up to and including 99.

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- 13 The UN has previously calculated that dangerous climate change will lead to 300,000 deaths annually, 325 million people being severely affected and 4 billion people finding themselves in a vulnerable position. According to the UN, 500 million people will face extreme risks year after year.<sup>6</sup> It is therefore no exaggeration for the International Court of Justice to speak of an existential problem of planetary proportions.<sup>7</sup>
- 14 The cause of this existential problem is much simpler. After all, the climate crisis is a *fossil* crisis. 81% of global CO<sub>2</sub> emissions come from oil, gas and coal. Oil and gas account for 48% of global emissions.<sup>8</sup> The IPCC has illustrated this in the graph below:<sup>9</sup>



- 15 The 1.5°C target requires a global reduction in emissions of at least 45% by 2030 on the way to net zero by 2050 at the latest.<sup>10</sup> Shell endorses this.<sup>11</sup> This therefore means that the use of fossil fuels must be reduced very significantly, including the use of oil and gas. After all, on balance, their use is the biggest contributor to the climate crisis. Oil and gas companies must therefore, one way or another, make a significant contribution to those reductions. This applies in particular to major system players such as Shell. There is no other solution.

### III THE INTERNATIONAL CLIMATE REGIME AND SHELL'S DUTY OF CARE

- 16 That brings us to the crucial question of why our liability law requires Shell to make its contribution to the necessary reductions. This first requires a discussion of the UN climate regime. We can then focus on Dutch liability law.

<sup>6</sup> Exhibit MD-214 (UN Report), p. 1. See also the Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, para. 270 and the Summons of Milieudéfensie et al. dated 5 April 2019, para. 659.

<sup>7</sup> ICH 23 July 2025, No. 187 (Obligations of States in respect of climate change), para. 456.

<sup>8</sup> Oil: 29%. Gas: 18%. An additional 1% of CO<sub>2</sub> emissions is caused by the flaring of gases released during the extraction and processing of oil and gas. This adds up to 48%.

<sup>9</sup> Exhibit MD-349 (IPCC AR6 WGIII Technical Summary), p. TS-16. See also the Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, paras. 477 up to and including 479 with further references.

<sup>10</sup> Exhibit MD-348 (Glasgow Climate Pact), para. 22. See also the Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, paras. 470 up to and including 476 with further references.

<sup>11</sup> Notice of Appeal of Shell dated 22 March 2022, paras. 1.4.1, 3.2.10.b and 3.2.16.

## III.1 The UN climate regime and the pivotal role of private companies

- 17 The UN climate regime<sup>12</sup> comprises the framework of obligations and principles to combat dangerous climate change. It sets a limit of 1.5°C of warming. That regime is, of course, primarily aimed at states. It is now widely recognised that states must proceed with CO<sub>2</sub> reductions in line with the 1.5°C target. This is reflected in both the UN climate regime and human rights<sup>13</sup>, and even in customary law.<sup>14</sup>
- 18 The UN climate regime also recognises a crucial role for private actors. All parties to the Paris Agreement have emphasised that it is of great importance for the private sector to proceed with emission reductions in a proactive and independent manner.<sup>15</sup> With the Paris Agreement, action by the private sector, so by non-state actors, has become an integral part of the UN climate regime.<sup>16</sup> Action by non-state actors is even cited as being at its very heart.<sup>17</sup>
- 19 This emphasis on non-state action is driven by two important, interrelated insights.
- 20 Firstly, the number of multinational companies has grown significantly in recent decades. The world has become globalised. Nation states are often barely able to effectively regulate these companies anymore, because their activities are spread across too many countries. Shell is a clear example of this. It operates in almost every part of the world.<sup>18</sup> Moreover, multinational companies can relocate their operations with relative ease, for example if the national legislation is holding them back too much. Shell moved its headquarters from The Hague to London in 2022.
- 21 This is known as the “governance gap”: a power vacuum within which multinational companies can operate without an excessive level of government regulation. It is partly for this reason that states are unable to solve the global climate problem through regulation.<sup>19</sup> They have not managed to do so for 34 years and it is not expected any time soon either. In this context, the UN Special Rapporteur on Human Rights and the

<sup>12</sup> The UN Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement together form the framework of the UN climate regime.

<sup>13</sup> ICJ 23 July 2025, No. 187 (Obligations of States in respect of climate change); ECHR 9 April 2024, No. 53500/20 (*Verein KlimaSeniorinnen Schweiz/Switzerland*); IACTHR 29 May 2025, OC-32/25 (*Climate Emergency and Human Rights*); judgment of the Dutch Supreme Court of 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*).

<sup>14</sup> ICJ 23 July 2025, No. 187 (Obligations of States in respect of climate change).

<sup>15</sup> See, inter alia, Exhibit MD-146 (Adoption of the Paris Agreement dated 12 December 2015), paras. 117, 118, 134 and 135. See also the Notes of the Oral Arguments (1) in the First Instance of Milieudéfensie et al. dated 1 December 2020, paras. 130 up to and including 147 with further references. See also the judgment of the District Court, ground 2.4.7.

<sup>16</sup> Exhibit MD-368 (UNEP Emissions Gap Report 2021), p. 28. See also the Motion in Reply to the Motion commenting on Exhibits of Milieudéfensie et al. dated 19 December 2023, para. 74, and the Notes of the Oral Arguments (1) in the First Instance of Milieudéfensie et al. dated 1 December 2020, para. 142.

<sup>17</sup> D. Klein et al., *The Paris Agreement on Climate Change. Analysis and Commentary*, Oxford University Press: Oxford 2017, pp. 43 and 49.

<sup>18</sup> Judgment of the Court of Appeal, ground 3.53.

<sup>19</sup> See, inter alia, Exhibit MD-218 (Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises dated 7 April 2008). See also the Summons of Milieudéfensie et al. dated 5 April 2019, para. 697.

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Environment identified the governance gap as a problem in relation to the oil and gas industry in particular.<sup>20</sup>

22 Secondly, the impact on human rights of multinational companies is significant, and sometimes greater than that of nation states. The climate crisis is a prime example of this. This crisis is primarily caused by the CO<sub>2</sub> emissions of companies, not by government action. This applies in particular to the oil and gas industry. As I already said at the start of the oral arguments, Shell's CO<sub>2</sub> emissions exceed those of virtually all nation states. We have also already seen that 48% of global CO<sub>2</sub> emissions come from oil and gas consumption. Shell's contribution to dangerous climate change is therefore also much greater than that of most nations.

23 These insights prompted organisations such as the UN and the OECD to develop climate protocols specifically aimed at businesses. The UNGP<sup>21</sup>, the Race to Zero initiative<sup>22</sup> and the OECD guidelines<sup>23</sup> are important examples of this. Essentially, they give shape to the climate role that the international community believes companies should fulfil. These protocols require companies to maximise their efforts to reduce their emissions in line with the 1.5°C target.

24 The OECD succinctly summarises the above in the following quote:

*“Enterprises have an important role in contributing towards net-zero greenhouse gas emissions and a climate-resilient economy, necessary for achieving internationally agreed goals on climate change mitigation and adaptation (...). Enterprises should ensure that their greenhouse gas emissions (...) are consistent with internationally agreed global temperature goals based on best available science, including as assessed by the Intergovernmental Panel on Climate Change (IPCC).”<sup>24</sup>*

25 It will be clear that the international community expects private companies to take action in line with the 1.5°C target.

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<sup>20</sup> Exhibit MD-385 (Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change dated 26 July 2022), para. 74. See also Exhibit MD-486 (UN experts: Fossils fuels at the heart of the planetary environmental crisis dated 30 November 2023). See also the Statement of Defence on Appeal of Milieudéfense et al. dated 18 October 2022, para. 426.

<sup>21</sup> Exhibit MD-220 (UNGP 2011), in particular Principle 11 (Commentary). See also Exhibit MD-493 (Information Note on Climate Change and Guiding Principles on Business and Human Rights 2023), p. 3. See also the judgment of the Court of Appeal, ground 7.20.

<sup>22</sup> Exhibit MD-353 (Race to Zero criteria 2022), p. 2.

<sup>23</sup> Exhibit MD-492 (OECD Guidelines 2023), paras. 76 and 77. See also the judgment of the Court of Appeal, ground 7.22.

<sup>24</sup> Exhibit MD-492 (OECD Guidelines 2023), para. 76.

## III.2 Dutch liability law

- 26 This brings me to the question of how companies' climate obligations are embedded in our liability law – and why they oblige Shell to reduce its emissions.
- 27 The search for the duty of societal care is, essentially, a balancing of interests. Parties are free to pursue their own interests. In doing so, however, they must take the interests of others into account insofar as they can reasonably be expected to do so. The duty of care sets that boundary.<sup>25</sup>
- 28 This abstract criterion is further shaped through objective points of reference.<sup>26</sup> The most important ones are (i) the doctrine of hazardous negligence,<sup>27</sup> (ii) human rights,<sup>28</sup> (iii) soft-law sources<sup>29</sup> and (iv) general legal principles.<sup>30</sup> Due to its objective nature, this method guarantees the legal certainty.<sup>31</sup> These sources determine not only *whether* a party has a duty of care, but also *what concrete action* it must take in order to comply with it.<sup>32</sup>
- 29 These sources unanimously indicate that Shell has climate obligations and will have to make its contribution to preventing a climate disaster. I will now discuss the most important sources.
- 30 Firstly, the doctrine of hazardous negligence. Oil and gas consumption accounts for 48% of global emissions and is therefore the main contributor to climate change. Shell is one of the largest players within that industry and has sky-high emissions. It therefore contributes significantly to the existential climate threat. The doctrine of hazardous negligence therefore compels Shell to take action.

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<sup>25</sup> Asser/Sieburgh 6 April 2023/75.

<sup>26</sup> Asser/Sieburgh 6-IV 2023/76; K.J.O. Jansen, "GS Onrechtmatige daad" (Green Series on unlawful acts), Art. 6:162 of the Dutch Civil Code, note 6.1.9; E.G.A. van der Werf, "Overheid en maatschappelijke betamelijkheid" (Government and decency in society), Deventer: Wolters Kluwer 2025, p. 73. See also the judgment of the Court of Appeal, ground 7.2.

<sup>27</sup> Cf. E.G.A. van der Werf, "Overheid en maatschappelijke betamelijkheid", Deventer: Wolters Kluwer 2025, pp. 71 up to and including 73.

<sup>28</sup> Asser/Sieburgh 6-IV 2023/78; K.J.O. Jansen, "GS Onrechtmatige daad", Art. 6:162 of the Dutch Civil Code, note 6.1.13. See E.G.A. van der Werf, "Overheid en maatschappelijke betamelijkheid", Deventer: Wolters Kluwer 2025, p. 76; Opinion of Advocate General Valk prior to the judgment of the Dutch Supreme Court of 26 June 2020, ECLI:NL:PHR:2020:412 (*IS-uitreizigers*), para. 6.4.

<sup>29</sup> Asser/Sieburgh 6-IV 2023/79; K.J.O. Jansen, "GS Onrechtmatige daad", Art. 6:162 of the Dutch Civil Code, note 6.1.10; E.G.A. van der Werf, "Overheid en maatschappelijke betamelijkheid", Deventer: Wolters Kluwer 2025, pp. 77 and 78; C.C. van Dam, "Aansprakelijkheidsrecht" (Liability Law), The Hague: Boom juridisch 2023, paras. 225-4 and 518-2; T. Hartlief et al., "Verbintenissen uit de wet en schadevergoeding" (Statutory obligations and damages), Deventer: Wolters Kluwer 2021, para. 41; Opinion of Advocate General Valk prior to the judgment of the Dutch Supreme Court of 26 June 2020, ECLI:NL:PHR:2020:412 (*IS-uitreizigers*), para. 6.7.

<sup>30</sup> Asser/Sieburgh 6-IV 2023/78; K.J.O. Jansen, "GS Onrechtmatige daad", Art. 6:162 of the Dutch Civil Code, note 6.1.13; E.G.A. van der Werf, "Overheid en maatschappelijke betamelijkheid", Deventer: Wolters Kluwer 2025, pp. 78 and 79.

<sup>31</sup> Opinion of Procurator General Langemeijer and Advocate General Wissink prior to the judgment of the Dutch Supreme Court of 20 December 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), para. 2.19.

<sup>32</sup> Judgment of the Dutch Supreme Court of 30 October 1994, *NJ* 1996, 196 (*Staat/Shell*). See also the Opinion of Procurator General Langemeijer and Advocate General Wissink prior to the judgment of the Dutch Supreme Court of 20 December 2019, ECLI:NL:PHR:2019:887 (*Urgenda*), para. 2.18; K.J.O. Jansen, "GS Onrechtmatige daad", Art. 6:162 of the Dutch Civil Code, note 6.1.4.2.

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- 31 Human rights within<sup>33</sup> and outside<sup>34</sup> Europe also require that protection is offered against dangerous climate change. According to the ECHR and this Court, that protection must be *effective* and not illusory.<sup>35</sup> This means that oil and gas consumption will have to fall sharply. There is simply no other way to effectively combat climate change. A key player such as Shell therefore also has a human rights obligation to drastically reduce its emissions.
- 32 The climate protocols aimed at companies make this reduction obligation more concrete. As I said, they further shape the non-state action required by the UN climate regime and human rights. I already mentioned the UNGP, the Race to Zero initiative and the OECD guidelines. The list much longer and also includes, for example, the UN Expert Report,<sup>36</sup> the Net Zero Guidelines,<sup>37</sup> the 1.5°C Business Playbook,<sup>38</sup> the SBTi report<sup>39</sup> and the Oxford Report.<sup>40</sup>
- 33 At their core, these protocols all call for the same thing: every company must make every effort to achieve reductions in its own production processes, via the products offered by it and within its own value chain.<sup>41</sup> Almost all of the protocols set a reduction percentage of 45% or even more by 2030 as the benchmark. According to these protocols, the phasing out of fossil fuels is a priority.<sup>42</sup> It goes without saying that they also, and in particular, have major contributors to dangerous climate change, such as Shell, in mind.
- 34 Furthermore, three key principles of climate law are relevant: (i) the precautionary principle,<sup>43</sup> (ii) the principle of intergenerational justice<sup>44</sup> and (iii) the CBDR principle.<sup>45</sup>

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<sup>33</sup> ECHR 9 April 2024, no. 53500/20 (*Verein KlimaSeniorinnen Schweiz/Switzerland*); judgment of the Dutch Supreme Court of 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*).

<sup>34</sup> Judgment of the Court of Appeal, ground 7.12, referring to the judgment of the Lahore High Court of 4 September 2015, W.P. No. 25501/2015 (*Leghari/Federation of Pakistan*); the judgment of the Supreme Court of Colombia of 5 April 2018, No. STC4360-2018 (*Future Generations/Ministry of the Environment*); the judgment of the Federal Supreme Court of Brazil of 7 April 2022 (*PSB et al/Brazil*); the judgment of the Montana First Judicial District Court of 14 August 2023, CDV-2020-307 (*Held, et al./State of Montana, et al.*); the judgment of the Supreme Court of India of 21 March 2024, No. 3570 of 2022 (*Ranjitsinh and Others/Union of India and Others*). See also the judgment of the IACtHR of 29 May 2025, OC-32/25 (*Climate Emergency and Human Rights*).

<sup>35</sup> ECHR 9 April 2024, No. 53500/20 (*Verein KlimaSeniorinnen Schweiz/Switzerland*); judgment of the Dutch Supreme Court of 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*).

<sup>36</sup> Notes of the Oral Arguments on Appeal (Part 2) of Milieudéfensie et al. dated 4 April 2024, paras. 37, 38 and 44.

<sup>37</sup> Notes of the Oral Arguments on Appeal (Part 2) of Milieudéfensie et al. dated 4 April 2024, paras. 37, 38 and 44.

<sup>38</sup> Notes of the Oral Arguments on Appeal (Part 2) of Milieudéfensie et al. dated 4 April 2024, paras. 37, 38 and 41.

<sup>39</sup> Notes of the Oral Arguments on Appeal (Part 2) of Milieudéfensie et al. dated 4 April 2024, para. 64; Notes of the Oral Arguments (7) in the First Instance of Milieudéfensie et al. dated 15 December 2020, paras. 31 up to and including 33.

<sup>40</sup> Notes of the Oral Arguments on Appeal (Part 2) of Milieudéfensie et al. dated 4 April 2024, para. 44; Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, para. 35 under (89) and 857; Notes of the Oral Arguments (9) in the First Instance of Milieudéfensie et al. dated 17 December 2020, para. 6; Notes of the Oral Arguments (7) in the First Instance of Milieudéfensie et al. dated 15 December 2020, para. 17.

<sup>41</sup> In other words: in scopes 1, 2 and 3.

<sup>42</sup> Notes of the Oral Arguments on Appeal (Part 2) of Milieudéfensie et al. dated 4 April 2024, paras. 50 up to and including 52. See also Exhibit MD-486 (UN Expert Report), pp. 7 and 23; Exhibit MD-353 (Race to Zero criteria 2022), p. 2; Exhibit MD-488 (ISO Net Zero Guidelines 2022), p. 19; Exhibit MD-490 (ERI 1.5°C Business Playbook 2023), p. 14.

<sup>43</sup> Article 3(3) UN Framework Convention on Climate Change. See also, inter alia, ICH 23 July 2025, No. 187 (Obligations of States in respect of climate change), paras. 146, 158, 161, 172, 178, 180 and 293 and the judgment of the Dutch Supreme Court of 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), grounds 5.2.2 and 5.2.3.

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Their meaning can be summarised briefly: we must make safe reduction choices that can actually lead to averting dangerous climate change. Otherwise, we will burden the younger and future generations with a colossal climate problem that they will not be able to solve anymore. With a view to this, the strongest parties must take the lead. These principles therefore also require Shell to take action.

- 35 In the first part of its judgment, the Court of Appeal still had almost all these objective points of reference clearly in mind. The Court of Appeal systematically discussed almost all these points of reference, which, of course, led the Court of Appeal to conclude that Shell has an obligation to reduce its emissions.<sup>46</sup> That must constitute an appropriate contribution to the 1.5°C target.<sup>47</sup> According to the Court of Appeal, even *more* can be required of Shell than of most other companies.<sup>48</sup> That must therefore also lead to a concrete percentage.

### III.3 The role of the scientific reduction scenarios

- 36 This finally brings me to the determination of the reduction percentage in concrete terms based on the scientific reduction scenarios. It is here that the Court of Appeal takes an inexplicable turn.
- 37 In taking this step, the Court of Appeal unexpectedly throws all the objective points of reference overboard and seems to have forgotten all its earlier considerations. All of a sudden, the Court of Appeal demands scientific consensus on the concrete reduction percentage for a company such as Shell.<sup>49</sup> The Court of Appeal is unable to find such a clear percentage and the conclusion then is that the Court of Appeal cannot set a percentage.<sup>50</sup>
- 38 Things actually already go wrong at this point. *Whether* a party has a duty of care and *what* it must do to comply with it are two sides of the same normative coin. The same assessment framework therefore applies to both of them. This means that the Court of Appeal could not suddenly narrow down its assessment framework to scientific consensus. The Court of Appeal should have held on to the objective points of reference for determining a concrete reduction percentage.

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<sup>44</sup> Article 3(1) UN Framework Convention on Climate Change; the Paris Agreement, preamble (eleventh recital); ICJ 23 July 2025, No. 187 (Obligations of States in respect of climate change), paras. 155 up to and including 157 and 161; IACtHR 29 May 2025, OC-32/25 (*Climate Emergency and Human Rights*), para. 216.

<sup>45</sup> Article 3(1) UN Framework Convention on Climate Change; Articles 2 and 4 Paris Agreement; ICJ 23 July 2025, No. 187 (Obligations of States in respect of climate change), paras. 148 and 179; ECHR 9 April 2024, No. 53500/20 (*Verein KlimaSeniorinnen Schweiz/Switzerland*), paras. 442 and 443; judgment of the Dutch Supreme Court of 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), grounds 5.7.2 and 7.3.4.

<sup>46</sup> Judgment of the Court of Appeal, grounds 7.27, 7.57 and 7.111.

<sup>47</sup> Judgment of the Court of Appeal, ground 7.67.

<sup>48</sup> Judgment of the Court of Appeal, ground 7.57.

<sup>49</sup> Judgment of the Court of Appeal, ground 7.67.

<sup>50</sup> Judgment of the Court of Appeal, grounds 7.73 up to and including 7.81 and 7.82 up to and including 7.97.

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- 39 These objective points of reference provide solid tools for assessing reduction scenarios and determining a reduction percentage. I can explain their essence in a couple of minutes. This is discussed in great detail in the Written Explanatory Submission.<sup>51</sup>
- 40 Reduction scenarios calculate the theoretical pathways by which warming can be limited to 1.5°C. In doing so, they make different distributions across sectors, countries and the deployment of technologies. This leads to a range of scenarios and thus to different percentages for oil and gas.
- 41 These differences are not a matter of scientific disagreement.<sup>52</sup> They are the result of different modelling assumptions and starting-points. This is, essentially, caused by the fact that all scenarios make calculations, to a greater or lesser extent, on the basis of cost-efficiency. This leads to different distribution choices and thus to different outcomes of the models.
- 42 As a result, not all emission reduction scenarios can actually be applied to the real world. For example, many scenarios require unachievably high reductions from developing countries and from coal. Furthermore, they often rely on the large-scale deployment of highly uncertain technologies in the future. In theory, this leads to lower reduction percentages for oil and gas. In the real world, these scenarios cannot be implemented, or it is, at the very least, highly uncertain whether they will combat dangerous climate change. They are therefore unrealistic scenarios. The IPCC also consistently emphasises this point.<sup>53</sup>
- 43 The objective points of reference provide normative guidance to correct for this. Essentially, they require an examination, based on the scenarios, of what reduction percentage for oil and gas can *actually* contribute to preventing dangerous climate change.
- 44 After all, reduction scenarios based on unrealistically low reductions for oil and gas do not provide the *effective* protection required by, among other things, the doctrine of hazardous negligence, the precautionary principle and human rights. Moreover, such scenarios shift the burden of reduction onto future and younger generations. That is why they also conflict with, for example, the principle of intergenerational justice.
- 45 The starting-point for this investigation is, moreover, straightforward. After all, *all* relevant scientific reduction scenarios require a significant reduction in oil and gas consumption – whether those scenarios originate from party experts, the International Energy Agency

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<sup>51</sup> Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, Chapter VI.

<sup>52</sup> As the Court of Appeal wrongly held in ground 7.91 of its judgment. In response to the judgment, scientists have also emphasised this point. See, for example, S. Dietz et al., “Translating climate science into legal standards: Lessons from the Milieudéfensie v. Shell case” in *Science* 2026/1, p. 28.

<sup>53</sup> Exhibit MD-360 (IPCC AR6 WGIII H3), pp. 3 up to and including 13 and 3 up to and including 14. See also the Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, paras. 537 up to and including 539.

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(IEA) or other independent institutions. There is therefore no doubt about the fact that, according to science, Shell must reduce its emissions.

46 For the sake of convenience, I will give the table showing the various relevant scenarios below:<sup>54</sup>

<b>Reduction percentages in 2030 relative to the base year of 2019</b>			
<b>Source</b>	<b>Fuel</b>	<b>Annual change in percentage</b>	<b>Reduction in 2030 relative to 2019</b>
Tyndall report	Oil and gas	-6.4%	-51.7%
IMP Low Demand scenario	Oil	-6.2%	-50.5%
	Gas	-6.2%	-50.5%
Recalculated C1 scenarios of Prof. Hawkes	Oil	-3%	-28.5%
	Gas	-3.6%	-33.2%
C1 scenarios of Prof. Hawkes <b><i>Developed countries</i></b>	Oil	-3.6%	-33.2%
	Gas	-5.3%	-45.1%
C1 scenarios, IISD	Oil	-3.5%	-32.4%
	Gas	-3.5%	-32.4%
IEA NZE 2023	Oil	-4%	-36.2%
	Gas	-3.2%	-30.1%

The scenarios that distribute the reduction burden more fairly and realistically across sectors and countries start out from percentages that approach or even exceed 45%. These scenarios are therefore also consistent with the objective points of reference. This, in turn, is also closely aligned with the climate protocols, which also require aiming for the global average of 45%.

48 The absolute minimum is also easy to determine, as all the scenarios at the lower end of the range require reductions in oil and gas of (rounded) 30%.<sup>55</sup> The reason for this also explains why they are considered as the minimum: these scenarios make distribution choices that favour the oil and gas sector very heavily. In mirror image, they require an excessive effort from all the other sectors. In addition, they rely on future technologies on

<sup>54</sup> Judgment of the Court of Appeal, ground 7.90. See also the Notes of the Oral Arguments on Appeal (Part 4) of Milieudéfensie et al. dated 4 April 2024, para. 53.

<sup>55</sup> These are the recalculated C1 scenarios of Hawkes. See the diagram in the judgment of the Court of Appeal, ground 7.90. Exhibit MD-566 (Expert Report by J. Rogelj dated 3 March 2024), pp. 15 up to and including 21, constitutes the recalculation of Exhibit S-123 (Expert Report by A. Hawkes dated 15 December 2023), pp. 19 and 31 up to and including 36. See, in this regard, the Notes of the Oral Arguments on Appeal (Part 4) of Milieudéfensie et al. dated 4 April 2024, paras. 23 up to and including 36. Incidentally, this percentage also follows from a back-of-the-envelope calculation. After all, the basic premise is that a 45% CO<sub>2</sub> emission reduction must be achieved and that 48% of total CO<sub>2</sub> emissions come from oil and gas. If *all other sectors* were to reduce 60% of their 52% contribution to the total emissions – i.e. well above the global average – the reduction for oil and gas would still amount to 28.75%. See, for more details on this subject, the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 934.

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an unachievable scale. This is therefore the very least contribution to solving the climate crisis that we may require Shell to make.

49 The objective points of reference should therefore have led the Court of Appeal to determine a concrete percentage, no matter what. That is one of the reasons why Milieudefensie et al. have taken this appeal in cassation.

50 I give the floor to Mr Cox.

Your Honours,

## **IV REDUCTIONS IN OIL AND GAS CONSUMPTION ARE NECESSARY AND ACHIEVABLE**

### **IV.1 Reductions in oil and gas consumption are achievable for Shell**

51 Mr Fruytier has just explained that the objective points of reference indicate that an emission reduction of 30% to 45% by 2030 can be set for Shell.

52 Emission reductions within this range of 30% to 45% are certainly achievable for Shell. Shell has the capabilities and the financial resources to achieve significant emission reductions by 2030.<sup>56</sup> Furthermore, Shell has control over the emissions of the Shell Group. After all, as the parent company, Shell determines the climate policy of the entire Group. Shell also determines the energy supply and thus the energy portfolio of the Shell Group.<sup>57</sup> It can change that energy supply and thus move away from oil and gas, in which case Shell's emissions will fall. None of these facts are in dispute in this court case.<sup>58</sup>

53 A court injunction requiring Shell to reduce emissions will therefore be effective in lowering the emissions of the Shell Group.<sup>59</sup> It will also mean that Shell will gradually move away from oil and gas.

54 It is important to note that moving away from oil and gas not only serves the climate agenda, but also many other societal interests, including energy security. I will now discuss and explain this, first on the basis of the UN Sustainable Development Goals.

### **IV.2 Moving away from fossil fuels is a prerequisite for achieving the Sustainable Development Goals and is also a priority for the EU**

55 Under the auspices of the UN, both the Paris Agreement and the Sustainable Development Goals were adopted in 2015. The Sustainable Development Goals form a global agenda addressing the most important societal and economic issues. The Development Goals apply to all countries, including the Netherlands.<sup>60</sup> This global socio-

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<sup>56</sup> Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, paras. 260, 261 and 487. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, Section V.3, in particular Section V.3.11.

<sup>57</sup> Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, paras. 244 up to and including 248. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, Sections V.3.8 and V.3.9.

<sup>58</sup> Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, paras. 3, 4 and 244 up to and including 248; Notice of Appeal of Shell dated 22 March 2022, paras. 1.6.2(a), 8.4.2 and 8.4.5.

<sup>59</sup> See, regarding the effectiveness of the reduction obligation, the Statement of Defence on Appeal following Joinder of Milieudéfensie et al. dated 10 October 2023, paras. 79 up to and including 110; the Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, paras. 888 up to and including 904. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, Chapter VII.

<sup>60</sup> Exhibit MD-335 (UN General Assembly Resolution 70/1), pp. 1 and 2. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 263.

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economic agenda consists of 17 goals, one of which is combating climate change. Ensuring access to affordable, reliable, sustainable and modern energy for all is also one of the Sustainable Development Goals.

- 56 Within the UN, it is widely recognised that combating climate change is a key prerequisite for being able to achieve the other development goals. This follows both from the UN resolution adopting the Sustainable Development Goals and from the UN climate regime under treaty law.<sup>61</sup> The UN describes climate change as a risk amplifier, which undermines the ability to tackle other societal challenges everywhere in the world.<sup>62</sup>
- 57 The IPCC also emphasises that ambitious climate action is a prerequisite for achieving the other Sustainable Development Goals.<sup>63</sup>
- 58 According to the international community, it is therefore evident that there is an intrinsic connection between tackling dangerous climate change and achieving the other global development goals. This is why the other development goals must be realised in every country within the framework of the climate targets.<sup>64</sup>
- 59 The climate targets therefore provide the framework for the approach to the other development goals. For this reason, the global energy goal focuses on scaling up clean energy and improving energy efficiency, so that access to energy is improved globally.<sup>65</sup> It is precisely this transition away from fossil fuels towards a cleaner and more efficient energy system that therefore serves both climate and energy interests. All countries have agreed on this since 2015. This therefore follows both from the UN resolution adopting the Sustainable Development Goals and from the UN climate regime under treaty law.<sup>66</sup>
- 60 The EU has also pointed to this.<sup>67</sup> EU policies are therefore aimed at phasing out fossil fuels because, in the words of the European Commission:

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<sup>61</sup> Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, paras. 13 up to and including 26; Notes of the Oral Arguments (5) in the First Instance of Milieudéfensie et al. dated 3 December 2020, paras. 7 up to and including 44. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, Section III.3.1.

<sup>62</sup> Notes of the Oral Arguments (5) in the First Instance of Milieudéfensie et al. dated 3 December 2020, paras. 23 and 24. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, paras. 270 and 271.

<sup>63</sup> Exhibit MD-349 (IPCC AR6 WGIII Technical Summary), p. TS-135; Exhibit MD-355 (IPCC AR6 WGIII Summary for Policymakers), p. 44 under D.1.1: "*Accelerated and equitable climate action in mitigating, and adapting to, climate change impacts is critical to sustainable development. (high confidence)*." See also the Motion in Reply to the Motion commenting on Exhibits of Milieudéfensie et al. dated 19 December 2023, para. 81. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 273.

<sup>64</sup> This was also established by the District Court in this case. See the judgment of the District Court of The Hague of 26 May 2021, ECLI:NL:RBDHA:2021:5337, grounds 4.4.40 up to and including 4.4.42.

<sup>65</sup> Notes of the Oral Arguments (5) in the First Instance of Milieudéfensie et al. dated 3 December 2020, paras. 32 up to and including 37. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, paras. 264 up to and including 269.

<sup>66</sup> Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, paras. 13 up to and including 26; Notes of the Oral Arguments (5) in the First Instance of Milieudéfensie et al. dated 3 December 2020, paras. 7 up to and including 44. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, Section III.3.1.

<sup>67</sup> Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, paras. 967 and 968. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, Section V.6.3.

*“decarbonisation delivers not only clean energy, but also quality jobs, growth and energy security. In addition, reducing the share of fossil fuels in the European energy system would further shield consumers from market volatility.”<sup>68</sup>*

61 In light of recent geopolitical developments, the EU is also making it perfectly clear that the accelerated phase-out of fossil fuels is an urgent priority to safeguard Europe’s energy supply, European security and the EU’s competitiveness.<sup>69</sup>

### **IV.3 All authoritative institutions point to the need to phase out fossil fuels for both the climate response and energy security**

62 The gas crisis in 2022 and the oil and gas crisis we are currently experiencing, partly due to the closure of the Strait of Hormuz, illustrate that energy security and energy affordability are under pressure due to dependence on oil and gas.

63 In response to the 2022 gas crisis, the International Energy Agency (IEA) noted that high energy prices were a consequence of society’s excessive dependence on price-volatile fossil energy. A rapid energy transition is the solution to this, according to the IEA.<sup>70</sup> The IEA’s director put it very eloquently at the time. I quote:

*“Today’s crisis is a reminder of the unsustainability of our reliance on fossil fuels and can be a key turning point to move faster towards a cleaner, more affordable and more secure energy system.”<sup>71</sup>*

64 The IEA’s director recently reiterated this message in response to the oil and gas crisis caused by the war in Iran.<sup>72</sup> Furthermore, this fact is widely recognised by, amongst others, the IEA’s member states,<sup>73</sup> the European Science Advisory Board on Climate

<sup>68</sup> Action Plan for Affordable Energy dated 26 February 2025, COM(2025) 79 final, p. 5, available at <https://eur-lex.europa.eu/legal-content/NL/TXT/PDF/?uri=CELEX:52025DC0079>. See also the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, para. 614.

<sup>69</sup> State of the Energy Union Report 2025, COM(2025) 667 final, p. 2, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025DC0667>. See also the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paras. 617 and 618.

<sup>70</sup> Exhibit MD-480 (IEA World Energy Outlook 2022), pp. 29 and 35. See also the Statement of Defence on Appeal following Joinder of Milieudefensie et al. dated 10 October 2023, para. 36. See also the Written Explanatory Submission of Milieudefensie et al. dated 22 May 2026, paras. 293 and 294.

<sup>71</sup> Exhibit MD-439A (Executive Director IEA, 2022). See also the Statement of Defence on Appeal of Milieudefensie et al. dated 18 October 2022, para. 756.

<sup>72</sup> The Guardian, 24 April 2026, “The damage is done”: global oil crisis has changed fossil fuel industry for ever, IEA chief says”, available at <https://www.theguardian.com/environment/2026/apr/24/global-oil-crisis-changed-fossil-fuel-industry-for-ever-iea-chief-fatih-birol>. See also The Guardian, 7 April 2026, “As Iran war exposes global dependence on fossil fuels, the biggest emitters are reaping the rewards”, available at <https://www.theguardian.com/environment/2026/apr/07/iran-war-global-dependence-fossil-fuels-biggest-emitters-reaping-rewards>; The Japan Times, 19 March 2026, “Iran war energy shock sparks global push to reduce fossil fuel dependence”, available at <https://www.japantimes.co.jp/environment/2026/03/19/energy/iran-war-fossil-fuel-dependence/>; New York Times, 15 March 2026, “How war in Iran could remake the global energy landscape”, available at <https://www.nytimes.com/2026/03/11/climate/iran-war-oil-clean-energy-coal.html>.

<sup>73</sup> Together, these countries account for 80% of the global energy consumption and 80% of the global CO<sub>2</sub> emissions. See the Notes of the Oral Arguments on Appeal (Part 4) of Milieudefensie et al. dated 4 April 2024, para. 87. See also

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Change (ESABCC) and the European Commission.<sup>74</sup> In the words of the European Commission:

*“Reducing dependency on fossil fuels will further strengthen EU energy security and sovereignty.”<sup>75</sup>*

- 65 Moving away from fossil fuels thus contributes to greater autonomy and to stable and affordable energy. Research shows that this applies just as much to the Netherlands.<sup>76</sup>
- 66 In this context, it speaks volumes that during the IEA’s latest Energy Security Summit, a global coalition of companies and investors highlighted the risks of dependence on fossil fuels and called for the accelerated scaling up of renewable energy, out of necessity for energy security and to protect businesses and the economy.<sup>77</sup>
- 67 After all, the costs of the dependence on price-volatile fossil energy are, in fact, very high for businesses. The same is true for society as a whole. In the United Kingdom, a government advisory committee has calculated that the complete sustainable energy transition of that country costs roughly the same as one fossil fuel crisis. The costs resulting from the massive price shocks following Russia’s invasion of Ukraine were so high for the United Kingdom that they could have funded the entire energy transition with them.<sup>78</sup> This illustrates just how much capital society sees going up in smoke, literally and figuratively, due to its dependence on fossil fuels.
- 68 Fortunately, the availability of renewable energy has increased enormously in recent years, and renewable energy is the cheapest energy source worldwide. This has already led to significant benefits in the area of energy security, including for European

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the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 979.

<sup>74</sup> “Scientific advice for amending the European Climate Law: Setting climate goals to strengthen EU strategic priorities”, ESABCC, pp. 18 and 19, available at <https://climate-advisory-board.europa.eu/reports-and-publications/scientific-advice-for-amending-the-european-climate-law-setting-climate-goals-to-strengthen-eu-strategic-priorities>; State of the Energy Union Report 2025, European Commission COM(2025) 667 final, p. 2, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025DC0667>; “Roadmap towards ending Russian energy imports”, European Commission COM(2025) 440 final/2, p. 1, available at [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025DC0440R\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025DC0440R(01)). See also the Statement of Defence on Appeal following Joinder of Milieudéfensie et al. dated 10 October 2023, paras. 26 up to and including 49. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, paras. 294 and 295.

<sup>75</sup> “Roadmap towards ending Russian energy imports”, European Commission COM(2025) 440 final/2, p. 1, available at [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025DC0440R\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52025DC0440R(01)).

<sup>76</sup> “Weerbaarheid van het energiesysteem tegen een energiecrisis” (Resilience of the energy system against an energy crisis), TNO, pp. 3 and 4, available at <https://www.nvde.nl/wp-content/uploads/2025/12/TNO-2025-R11805-Weerbaarheid-van-het-energiesysteem-tegen-een-energiecrisis-2.pdf>. See also, regarding this study, <https://www.nvde.nl/nederland-met-duurzame-energie-vrijwel-immuun-voor-nieuwe-oekraine crisis/>. See also the written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 297.

<sup>77</sup> See <https://eref-europe.org/business-statement-redefining-energy-security-with-renewables-and-energy-efficiency/>. See also the written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 279.

<sup>78</sup> The Guardian, 11 March 2026, “Reaching net zero by 2050 cheaper for UK than one fossil fuel crisis”, available at <https://www.theguardian.com/environment/2026/mar/11/reaching-net-zero-by-2050-cheaper-for-uk-than-one-fossil-fuel-crisis>, with reference to the Climate Change Committee, March 2026, “Supplementary analysis of the Seventh Carbon Budget”, available at <https://www.theccc.org.uk/publication/supplementary-analysis-of-the-seventh-carbon-budget/>.

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consumers.<sup>79</sup> Regarding the expected scaling up of renewable energy, the IEA and energy think tank Ember show that global renewable energy capacity will have roughly tripled by 2030 compared to 2022.<sup>80</sup> So a threefold increase in just eight years.

- 69 In its 1.5°C climate scenario (the NZE scenario), the IEA calculates that, given the rise of renewable energy, energy affordability and energy security will improve if we move away from oil and gas to a significant extent even before 2030.<sup>81</sup>
- 70 This finding by the IEA is of particular significance. After all, the IEA was established in response to the oil crisis in 1973, with the aim of safeguarding energy security through the supply of oil and gas. The IEA's primary role is to ensure energy security and coordinate problems in times of oil and gas shortages.<sup>82</sup> If this organisation states that we can manage with significantly less oil and gas in 2030 already, then we can certainly take that at face value.
- 71 The IEA's findings are, moreover, confirmed by various other institutional and scientific sources, including the European Central Bank (ECB). After all, research by the ECB shows that European households, businesses and the financial sector will reap significant benefits in the event of a rapid transition to sustainable energy in line with the 1.5°C target. According to the ECB, these benefits will mainly materialise in a scenario where oil and gas consumption in the EU has already been halved in 2030. Conversely, the longer we wait to phase out oil and gas, the higher the energy costs and other risks will become, according to the ECB.<sup>83</sup>
- 72 Other institutional and scientific sources, including the IPCC, the United Nations Environment Programme (UNEP) and the International Monetary Fund (IMF), confirm this picture and also warn of the significant risks and (energy) costs of further delaying climate action.<sup>84</sup>

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<sup>79</sup> Exhibit MD-481 (IEA Renewable Energy Market Update 2023), pp. 4 and 5. See also the Statement of Defence on Appeal following Joinder of Milieudéfensie et al. dated 10 October 2023, para. 37 (with a further elaboration in paras. 36 up to and including 49). See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, paras. 292, 298 and 299.

<sup>80</sup> See the IEA's Renewables 2025 report, available at <https://www.iea.org/reports/renewables-2025>, and information from Ember, available at <https://ember-energy.org/latest-insights/renewable-additions-in-2025-are-once-again-expected-to-surge-putting-tripling-within-reach/tracking-progress-towards-a-global-tripling-of-ren/>. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 284.

<sup>81</sup> Exhibit MD-525 (IEA Net Zero Roadmap 2023), p. 17. See also the Response to the questions of the Court of Appeal of Milieudéfensie et al. dated 12 April 2024, p. 18. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 283.

<sup>82</sup> Notes of the Oral Arguments on Appeal (Part 4) of Milieudéfensie et al. dated 4 April 2024, para. 86. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 979.

<sup>83</sup> Response to the questions of the Court of Appeal of Milieudéfensie et al. dated 12 April 2024, p. 18. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 281.

<sup>84</sup> Exhibit S-140 (IPCC AR6 WGIII), pp. 267 and 298; Exhibit MD-522 (UNEP Emissions Gap Report 2022), pp. 31 and 32; Exhibit MD-579F (IMF, Benefits of Accelerating the Climate Transition Outweigh the Costs 2023), pp. 1 up to and including 3. See also the Response to the questions of the Court of Appeal of Milieudéfensie et al. dated 12 April 2024, p. 19; Notes of the Oral Arguments on Appeal (Part 4) of Milieudéfensie et al. dated 4 April 2024, para. 111; Notes of

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- 73 The findings of the IPCC, the IEA, the ECB and the IMF, among other organisations, thus show that a rapid climate response serves the energy interests of society. Ensuring energy security and tackling climate change are synergistic and can be achieved together. Therefore the “energy trilemma” presented by Shell in this court case, in which energy security and climate action are presented as being mutually exclusive, does not exist.
- 74 As a result, it is also not true, as Shell is suggesting,<sup>85</sup> that continuing to rely on fossil fuels would be beneficial for energy security and affordability. An increase in fossil fuel investment will not solve the current energy crisis and will create the next one.<sup>86</sup> Energy security is not served by further increasing that dependence on oil and gas, but is served by phasing out this dependence as quickly as possible and shifting investment towards clean energy sources.
- 75 If Shell were truly concerned about energy security, it would shift its investment flows towards renewable energy, but this is not happening at all. The share of renewable energy in Shell’s total energy production is less than 0.5%.<sup>87</sup> This means that less than 1/200th of Shell’s energy production relates to renewable energy. This stands in stark contrast to Shell’s public communications, in which Shell repeatedly claims to play a substantial role in the transition to a low-carbon energy system.<sup>88</sup> In reality, Shell’s primary objective is therefore not to contribute to energy security, but rather to maximise profits and maintain its own fossil business model.<sup>89</sup>

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the Oral Arguments on Appeal (Part 3) of Milieudéfensie et al. dated 4 April 2024, para. 98. See also the judgment of the Court of Appeal, ground 3.8 under C.2. See further the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 243.

<sup>85</sup> The oil and gas industry has, in fact, seized upon the war in Ukraine and the war in Iran to present fossil fuels, through intensive lobbying activities and public communications, as the key to global energy security and affordability. This is a lobbying narrative that has existed since the 1970s. See the Opening Arguments on Appeal (Part 2) of Milieudéfensie et al. dated 2 April 2024, paras. 70 up to and including 77. See, more recently, <https://influencemap.org/insight/The-Battle-over-Energy-Security-Challenging-the-Fossil-Fuel-Playbook-37937>; “How the Oil Industry has Sustained Market Dominance through Policy Influence, A historical analysis of the Oil and Gas Playbook against renewables and electric vehicles”, available at <https://influencemap.org/briefing/Undermining-Progress-Investigating-the-Fossil-Fuel-Sector-s-Continual-Dominance-26562>.

<sup>86</sup> Notes of the Oral Arguments on Appeal (Part 4) of Milieudéfensie et al., dated 4 April 2024, paras. 104 up to and including 106. Shell continues to aim for ongoing dependence and enjoys significant benefits from this. See <https://www.nu.nl/economie/6394994/shell-maakt-flinke-winst-door-oorlog-in-midden-oosten.html>; <https://nos.nl/artikel/2613421-bijna-miljard-euro-extra-winst-voor-shell-door-oorlog-midden-oosten>. See also the Written Explanatory Submission of Milieudéfensie et al. dated 19 March 2024, paras. 102 and 103 and the Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, para. 1158.

<sup>87</sup> “Oil and gas industry’s marginal share of global renewable energy” in *Nature Sustainability* 2025, pp. 1256 and 1257, available at <https://climateintegrity.org/news/view/big-oil-is-not-a-partner-in-the-energy-transition-new-research-shows>. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 172.

<sup>88</sup> “Oil and gas industry’s marginal share of global renewable energy” in *Nature Sustainability* 2025, pp. 1256 and 1257, available at <https://climateintegrity.org/news/view/big-oil-is-not-a-partner-in-the-energy-transition-new-research-shows>. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 139.

<sup>89</sup> Written Arguments of Milieudéfensie et al. dated 19 March 2024, paras. 112 up to and including 119; Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, para. 757, with reference to <https://nos.nl/artikel/2448193-shell-wilde-dat-aardbevingen-door-gaswinning-weer-geaccepteerd-werden>. See, more recently, <https://www.rtl.nl/nieuws/economie/artikel/5598480/conflict-opslagen-nam-bewust-leeggpompt-door->

76 The problem is that if the world's largest energy companies, such as Shell, continue to invest exclusively in oil and gas and continue to offer consumers almost nothing but fossil fuels, the global climate targets will not be met. That conclusion is endorsed widely, and for several reasons, which I will discuss shortly. However, this conclusion cannot be viewed in isolation from the problem of the governance gap identified within the UN framework either, which I will now explain.

## **V THE NEED FOR CLIMATE ACTION BY THE OIL AND GAS INDUSTRY**

### **V.1 The governance gap and the influence of the oil and gas industry on society**

77 The governance gap was already briefly mentioned by Mr Fruytier just now; it is the power vacuum created by the globalisation of markets and supply chains. Because nation states can only create regulations within their own borders, they do not have much grip on the international trading activities of multinational companies. This lack of regulatory grip by nation states on international trading activities is a key aspect of the governance gap.

78 Mr Fruytier discussed the widespread recognition within the international community that, due to the governance gap, companies must start taking action to combat climate change independently. It is important to pause for a moment to consider the recognition by states that they cannot tackle the climate challenge on their own. This is a significant factor that must be taken into account when determining what can be required of Shell under national liability law.

79 At UN level, it was established 15 years ago that the governance gap has negative consequences for the ability of states to provide protection against the adverse impacts of international trade practices. A nation state wishing to regulate the headquarters of a multinational company to protect human rights and the environment will almost certainly face the threat of that company relocating abroad to persuade the legislator to refrain from such regulation.

80 This threat of relocation is also used to steer the public debate and to undermine support for regulation. Several examples of this have been given in this case, including in relation to Shell.<sup>90</sup>

81 Through the process of globalisation, multinational companies have become, as it were, more elusive for national legislators and even for regional legislators such as the EU. At the same time, globalisation has also resulted in economies of scale, which, in its turn,

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<sup>90</sup> For examples of threats to leave by Shell, see the Opening Arguments on Appeal (Part 1) of Milieudéfensie et al. dated 2 April 2024, paras. 32 up to and including 34; Notes of the Oral Arguments (1) in the First Instance of Milieudéfensie et al. dated 1 December 2020, paras. 112 up to and including 123.

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has led to even larger multinational companies and to concentrations of power in almost all economic sectors.

82 In the oil and gas industry, it is multinationals such as Saudi Aramco, Shell and ExxonMobil that are at the top. They are all gigantic global conglomerates with annual revenues running into the hundreds of billions of dollars.<sup>91</sup> Annual revenues of hundreds of billions are figures that exceed the gross domestic product of the vast majority of the world's national economies. The economic power of these oil and gas companies is therefore greater than that of most countries.

83 But their political and social influence is also very significant. This has been described very well by Professor John Ruggie, the person who investigated the governance gap and published his findings, under a UN mandate. Ruggie is also the person who drew up the UNGP, the authoritative human rights guidelines for businesses, in consultation with states, companies and non-governmental organisations,

84 In one of his publications, Ruggie refers to more than 100 academic and institutional publications. On this basis, he concludes that globalisation has caused Brussels and Washington in particular to become veritable magnets for lobbying activities by multinational corporations. His conclusion is that these companies exert a major influence on what happens in Brussels and Washington, whilst citizens have virtually no influence on the decision-making processes taking place there.<sup>92</sup>

85 Ruggie points out that, collectively, companies spend no less than 30 times as much money on lobbying as the combined expenditure of all trade unions and civil-society organisations.<sup>93</sup> There is a huge imbalance between the access that multinational companies have to politics and the access that the rest of society has to politics.

86 Shell, too, is working intensively to influence political decision-making in Brussels and Washington in order to mitigate the risks posed to the company by regulatory initiatives relating to climate action and the energy transition. The fact that Shell is doing so should not come as a surprise to anyone who has ever read one of Shell's annual reports.

87 After all, in its annual reports, Shell explicitly acknowledges that potential regulation in the areas of climate change and the energy transition poses significant risks to its business model.<sup>94</sup> According to Shell, it could have a substantial negative impact on

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<sup>91</sup> Notes of the Oral Arguments on Appeal (Part 1) of Milieudéfense et al. dated 4 April 2024, paras. 23 and 24.

<sup>92</sup> Exhibit MD-273 (Ruggie 2018), pp. 321 up to and including 323. See also the Statement of Defence on Appeal of Milieudéfense et al. dated 18 October 2022, paras. 35 under (68) and (69) and 746; Notes of the Oral Arguments (1) in the First Instance of Milieudéfense et al. dated 1 December 2020, paras. 86 and 87.

<sup>93</sup> Exhibit MD-273 (Ruggie 2018), pp. 321 up to and including 323. See also the Statement of Defence on Appeal of Milieudéfense et al. dated 18 October 2022, para. 35 under (68) and (69) and 746; Notes of the Oral Arguments (1) in the First Instance of Milieudéfense et al. dated 1 December 2020, paras. 86 and 87.

<sup>94</sup> Exhibit MD-377 (Shell Annual Report 2021), p. 86; Exhibit MD-314 (Shell Annual Report 2019), pp. 29, 30 and 236. See also the Statement of Defence on Appeal of Milieudéfense et al. dated 18 October 2022, para. 35 under (122) up

Shell's profits, cash flows and financial position. Nevertheless, Shell indicates in its annual reports that it accepts these risks and will not allow the threat of emerging climate legislation to deter it from continuing to invest in the growth of fossil fuels.<sup>95</sup>

- 88 The reason why Shell is not afraid to accept these material risks to its business model is as simple as it is telling. It has to do with the fact that Shell can manage these legislative risks by actively engaging in political lobbying. That is what risk management looks like when you communicate to your shareholders that climate legislation is a material risk to the oil and gas business, but propose to produce and sell more fossil fuels nevertheless.<sup>96</sup> That this is part of Shell's risk management can also simply be read on a website about Shell's Government Relations team:

*"The mission of Shell's Government Relations team is (...) to advance business objectives, enhance the reputation of Shell, affect public policy, and minimize government risks to our businesses."<sup>97</sup>*

- 89 In practice, this means that Shell, together with four other major oil and gas companies and their industry associations, has spent no less than 250 million euros over an eight-year period on lobbying activities in Brussels alone. So a quarter of a billion euros just to influence the EU organisation in Brussels and the legislative processes taking place there. On an annual basis, Shell spends approximately 50 million euros per year globally on political lobbying.<sup>98</sup> A similar amount is spent annually by Shell on influencing public opinion.<sup>99</sup> That amounts to 100 million euros per year on global political lobbying and shaping public opinion, by Shell alone.

## V.2 The inhibiting influence of the oil and gas industry on climate action

- 90 It will therefore come as no surprise that it is widely recognised, both scientifically and institutionally, that the large-scale political and social influence exerted by Shell and other

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to and including (124) and 710 up to and including 714; Notes of the Oral Arguments (8) in the First Instance of Milieudéfense et al. dated 15 December 2020, para. 90; Notes of the Oral Arguments (1) in the First Instance of Milieudéfense et al. dated 1 December 2020, paras. 69 up to and including 82.

<sup>95</sup> Statement of Defence on Appeal of Milieudéfense et al. dated 18 October 2022, paragraphs 710 up to and including 714; Notes of the Oral Arguments (1) in the First Instance of Milieudéfense et al. dated 1 December 2020, paragraphs 71 up to and including 79.

<sup>96</sup> Statement of Defence on Appeal of Milieudéfense et al. dated 18 October 2022, paras. 713 and 714; Notes of the Oral Arguments (1) in the First Instance of Milieudéfense et al. dated 1 December 2020, paras. 83 up to and including 85.

<sup>97</sup> Exhibit MD-428 (Shellvoices.com website). See also the Statement of Defence on Appeal of Milieudéfense et al. dated 18 October 2022, para. 746.

<sup>98</sup> Notes of the Oral Arguments (1) in the First Instance of Milieudéfense et al. dated 1 December 2020, paras. 88 up to and including 94.

<sup>99</sup> Statement of Defence on Appeal of Milieudéfense et al. dated 18 October 2022, paras. 729, 730, 735, 736 and 739 up to and including 741; Notes of the Oral Arguments (1) in the First Instance of Milieudéfense et al. dated 1 December 2020, paras. 99 up to and including 108.

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major oil and gas companies has an inhibiting influence on the ability of states to implement effective climate policies.<sup>100</sup>

- 91 A recent report issued by the UN with support from, among other organisations, the IEA, the IMF, the OECD and the World Bank, concludes that fossil-fuel companies have an inhibiting influence on political climate action at national, regional and international levels, that this has been going on for decades and that it stands in the way of an effective climate response.<sup>101</sup> The fact that the most leading international organisations have reached this unequivocal conclusion regarding the negative influence that the fossil-fuel industry has on climate action and the energy transition is telling.
- 92 These organisations are not the only ones to hold this view. The UNEP has also stated that the political activities of fossil-fuel companies constitute a “major barrier” to the decarbonisation of society.<sup>102</sup>
- 93 In this context, the UN Special Rapporteur on Human Rights and the Environment again pointed to the governance gap as the relevant background to the inhibiting influence of fossil-fuel companies and their disproportionate access to policymakers.<sup>103</sup>
- 94 The IPCC has also frequently emphasised that the fossil-fuel industry serves as a major obstacle to climate action.<sup>104</sup> In addition to the intensive political lobbying, the IPCC points out that the industry uses targeted public campaigns to try and shift the responsibility for the climate problem onto individuals and their personal choices, which strategically diverts people’s attention from the major responsibility that the companies have themselves for greenhouse gas emissions and the perpetuation of a fossil-energy system.<sup>105</sup>
- 95 This narrative, which Shell also uses – i.e. that it is the customers who must make sustainable energy choices and not the oil and gas companies themselves – has now become so ingrained that the IEA has felt compelled to label it as one of the most

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<sup>100</sup> Opening Arguments on Appeal (Part 2) of Milieudéfense et al. dated 2 April 2024, paras. 1 up to and including 31. See also the Written Explanatory Submission of Milieudéfense et al. dated 22 May 2026, para. 128.

<sup>101</sup> United Nations. Seizing the moment of opportunity: Supercharging the new energy era of renewables, efficiency, and electrification, New York 2025, available at <https://www.un.org/en/climatechange/moment-opportunity-2025>. See also the Written Explanatory Submission of Milieudéfense et al. dated 22 May 2026, para. 129.

<sup>102</sup> Exhibit MD-356 (UNEP Production Gap Report 2020), p. 34. See also the Opening Arguments on Appeal (Part 2) of Milieudéfense et al. dated 2 April 2024, para. 26. See also the Written Explanatory Submission of Milieudéfense et al. dated 22 May 2026, para. 151.

<sup>103</sup> Exhibit MD-385 (Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change of 26 July 2022), para. 14. See also the Statement of Defence on Appeal of Milieudéfense et al. dated 18 October 2022, para. 426. See also the Written Explanatory Submission of Milieudéfense et al. dated 22 May 2026, para. 123.

<sup>104</sup> See, in great detail, the Opening Arguments on Appeal (Part 2) of Milieudéfense et al. dated 2 April 2024, paras. 14 up to and including 31. See also the Written Explanatory Submission of Milieudéfense et al. dated 22 May 2026, Section II.3.2.

<sup>105</sup> Exhibit MD-496C (IPCC AR6 WGIII H5), p. 557. See also the Opening Arguments on Appeal (Part 2) of Milieudéfense et al. dated 2 April 2024, para. 28. See also the Written Explanatory Submission of Milieudéfense et al. dated 22 May 2026, paras. 148 and 149.

important misconceptions about the energy transition. The IEA has therefore explicitly warned for this narrative presented by Shell and other oil and gas companies. According to the IEA, the success of the energy transition is certainly also dependent on the investment choices made by oil and gas companies.<sup>106</sup>

### V.3 The carbon lock-in effect

- 96 The fact that different investment choices need to be made in the oil and gas industry is also easy to explain. Investments in oil and gas fields and the associated infrastructure, such as drilling platforms, oil tankers and gas pipelines, are, after all, investments running into billions with payback periods often spanning decades. As a result, the investors involved have a strong incentive to continue selling as much oil and gas as possible throughout that long period in order to recoup their investments and generate as much profit as possible. In this way, they are forcing society to continue to use fossil fuels for several decades again, as the Court of Appeal has also rightly established.<sup>107</sup>
- 97 This forced use of fossil fuels caused by continued investments in the oil and gas infrastructure is known in scientific terms as “the carbon lock-in effect”. It means that investments made in the oil and gas sector today will continue to lead to oil and gas production for decades to come and will therefore also lead to significant CO<sub>2</sub> emissions for decades to come. Thus from the moment of investment, these CO<sub>2</sub> emissions become fixed for the future and have thus become locked-in, or inevitable. Global warming cannot be halted in time in that case. *That* is why the ongoing investments in new oil and gas infrastructure are so dangerous and so damaging to the global climate response.<sup>108</sup>
- 98 Another adverse side-effect of these ongoing investments in the oil and gas infrastructure is that the oil and gas companies involved will continue to defend these new investments tooth and nail. After all, they will not want to write off their investments prematurely and will therefore continue to oppose, amongst other things, government measures affecting the production or use of fossil fuels. And so we have come full circle and we find ourselves back again with the risk management practised by Shell and its industry peers through,

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<sup>106</sup> Exhibit MD-528 (IEA, “The Oil and Gas Industry in Net Zero Transitions”, 2023), pp. 15, 16 and 40. See also the Oral Arguments on Appeal (Part 4) of Milieudéfensie et al. dated 4 April 2024, paras. 124 up to and including 126. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 163.

<sup>107</sup> Judgment of the Court of Appeal, grounds 7.58 and 7.59.

<sup>108</sup> Notes of the Oral Arguments on Appeal (Part 4) of Milieudéfensie et al. dated 4 April 2024, paras. 105 and 106; Notes of the Oral Arguments on Appeal (Part 3) of Milieudéfensie et al. dated 4 April 2024, paras. 107 up to and including 110; Notes of the Oral Arguments on Appeal (Part 2) of Milieudéfensie et al. dated 4 April 2024, para. 51; Opening Arguments on Appeal (Part 2) of Milieudéfensie et al. dated 2 April 2024, paras. 10 up to and including 18; Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, para. 951; Notes of the Oral Arguments (8) in the First Instance of Milieudéfensie et al. dated 3 December 2020, para. 106; Notes of the Oral Arguments (3) in the First Instance of Milieudéfensie et al. dated 3 December 2020, para. 57; Summons of Milieudéfensie et al. dated 5 April 2019, paras. 586 up to and including 589, 788, 789 and 829. See also the judgment of the Court of Appeal, ground 7.59. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, paras. 154 up to and including 169.

among other things, political lobbying and public opinion shaping to protect their own investments.<sup>109</sup>

99 In this court case, Shell keeps emphasising that it is merely meeting “the demand”, but the above makes it clear that Shell has a significant influence on that demand through its investments and the resulting forced supply of fossil fuels. This is why it is also so problematic that Shell intends to invest approximately USD 100 billion in oil and gas activities in the period between 2023 and 2030, more than half of which will go to new oil and gas fields.<sup>110</sup> These investments not only create a massive carbon lock-in effect, but also provide Shell with a lasting incentive to undermine global climate action and to continue driving up demand for oil and gas.

100 Another problem is that all major oil and gas companies are pursuing a strategy similar to Shell’s and also act in concert within the many industry organisations of which they are all members. Due to these ongoing investments in the oil and gas sector, it is inconceivable that the Paris Agreement targets will be met. All major organisations such as the IPCC, UNEP and the IEA confirm this.<sup>111</sup> The IPCC has emphasised that the carbon lock-in can only be overcome if the dominant influence of the fossil-fuel industry is broken.<sup>112</sup>

101 It is not a cheerful story, because what I have just discussed will have made it clear that companies such as Shell (together with their industry peers) have society in a stranglehold and that the choices they make now will be very decisive for the success of global climate action. It is evident that they will not make the right choices themselves, and it is also evident that governments cannot be expected to be able to turn the tide in time, partly due to the governance gap. They have also not succeeded in doing so in the 34 years since the adoption of the UN Climate Convention.

#### **V.4 The role of liability law**

102 What, then, is the significance of all of the above for Dutch liability law, and of its application law to Shell? The answer to this question brings me to the more positive part

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<sup>109</sup> Notes of the Oral Arguments on Appeal (Part 4) of Milieudéfensie et al. dated 4 April 2024, paras. 105 and 106; Notes of the Oral Arguments on Appeal (Part 3) of Milieudéfensie et al. dated 4 April 2024, paras. 107 up to and including 110; Notes of the Oral Arguments on Appeal (Part 2) of Milieudéfensie et al. dated 4 April 2024, para. 51; Opening Arguments on Appeal (Part 2) of Milieudéfensie et al. dated 2 April 2024, paras. 10 up to and including 18; Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, para. 951; Notes of the Oral Arguments (8) in the First Instance of Milieudéfensie et al. dated 3 December 2020, para. 106; Notes of the Oral Arguments (3) in the First Instance of Milieudéfensie et al. dated 3 December 2020, para. 57; Summons of Milieudéfensie et al. dated 5 April 2019, paras. 586 up to and including 589, 788, 789 and 829. See also the judgment of the Court of Appeal, ground 7.59. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, paras. 154 up to and including 169.

<sup>110</sup> Judgment of the Court of Appeal, grounds 3.49, 3.51 and 7.60. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 170.

<sup>111</sup> Notes of the Oral Arguments on Appeal (Part 4) of Milieudéfensie et al. dated 4 April 2024, paras. 99 up to and including 112. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 160.

<sup>112</sup> Exhibit S-140 (IPCC AR6 WGIII), pp. 267, 298 and 1745. See also the Notes of the Oral Arguments on Appeal (Part 4) of Milieudéfensie et al. dated 4 April 2024, paras. 99 and 100.

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of my oral arguments. For it is precisely that liability law that plays a special role in protecting us against the dangers that are bearing down on us at an increasingly higher speed, as a result of the status quo discussed above.

- 103 Liability law is an important part of the constitutional fabric of a democratic constitutional state.<sup>113</sup> One of the reasons for this is that the protection against human rights violations is largely provided via liability law. This protection is afforded by the courts by granting horizontal effect to human rights on a large scale through the societal duty of care.<sup>114</sup> In this way, human rights shape the duty of care that citizens and businesses must observe towards each other. Liability law thus serves a higher, if not the highest, purpose of a constitutional state, namely the protection of the fundamental rights enjoyed by every citizen.
- 104 This function of liability law becomes even more important when private-law organisations, such as Shell, have acquired such a large economic, political and social influence that the need for legal protection against that influence may be comparable to the need for legal protection against the influence of public institutions.<sup>115</sup> That is certainly the case here. Shell's influence on society, human rights and the environment is comparable even to that of a sovereign superpower.
- 105 It is therefore unimaginable that liability law could not be applied in this case, as Shell is arguing in various ways. After all, that would deprive society of the most fundamental legal remedy it has to protect itself against socially dangerous behaviour of others, precisely when protection in the form of legislation is lacking.<sup>116</sup>
- 106 In this context, it is important to note that the legislature has not set liability law aside for legal actions relating to climate issues. There is not a single piece of implemented climate legislation in the Netherlands or the EU in which the legislature has set liability law aside, let alone in a manner that is explicit and unmistakable.<sup>117</sup>
- 107 Moreover, liability law applies to everyone. Other companies – similar to Shell – also have climate obligations. The fact that not every party that is acting unlawfully is immediately held accountable for it does not constitute arbitrariness, nor does it detract from a claimant's right to first seek protection against the conduct of one of such parties.

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<sup>113</sup> C.C. van Dam, "Aansprakelijkheidsrecht" (Liability I aw), The Hague: Boom juridisch 2023, para. 107.

<sup>114</sup> *Asser/Hartkamp 3-I 2022/226 to 231* with further reference(s) to case law.

<sup>115</sup> *Asser/Hartkamp 3-I 2023/226*.

<sup>116</sup> The same applies to the asbestos problems. See, in this regard, the Notes of the Oral Arguments on Appeal (Part 1) of Milieudéfensie et al. dated 4 April 2024, paras. 110 up to and including 116 and the Notes of the Oral Arguments (4) in the First Instance of Milieudéfensie et al. dated 1 December 2020, paras. 11 up to and including 17.

<sup>117</sup> The fact that these are the minimum requirements for being able to consider whether liability law can be set aside is well expressed in a climate ruling of the Supreme Court of New Zealand in the climate case *Smith/Fonterra*. See Exhibit MD-570A (Supreme Court of New Zealand, 7 February 2024, SC 149/2021 [2024] NZSC 5 (*Smith/Fonterra*)), paras. 98 and 101. See also, in this regard, the Opening Arguments on Appeal (Part 1) of Milieudéfensie et al. dated 2 April 2024, paras. 69 up to and including 74.

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Anyone who bears a shared responsibility must be held accountable for that shared responsibility, even if others are not yet taking sufficient action. Otherwise, the collective action problem of climate change could never be resolved.<sup>118</sup>

108 The breakthrough that is so essential to tackling the climate crisis will therefore also have to come from Shell, to a not insignificant extent. For if one of the world's largest fossil companies continues, in this critical decade, to focus solely on selling as much oil and gas as possible and continues to devote all its financial resources, organisational strength and power of influence to that end, then our fate is sealed.<sup>119</sup> This is why, within the UN climate regime, it has been emphasised for more than 10 years that without independent action by the business sector, the climate targets of the Paris Agreement cannot be achieved.<sup>120</sup> With these oral arguments, I wished to clarify why this is indeed the case.

109 And with the above, Your Honours, I speak directly to you, as justices of the Supreme Court of the Netherlands. It is precisely in situations where states and large corporations fail to take sufficient responsibility that courts of law have a major role to play in ensuring, through the application of the law, that the responsibility resting on states and large companies is taken seriously.<sup>121</sup> Human rights must not be violated by governments or by companies such as Shell, which wield power over society that is comparable to that of governments. Neither of the two can hide behind political failure or political compromises when it comes to protecting the most fundamental rights upon which our society and the democratic constitutional state are based.

## VI CONCLUSION

110 I will now conclude.

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<sup>118</sup> See ICJ 23 July 2025, No. 187 (Obligations of States in respect of climate change), paras. 430 and 431; IACtHR 29 May 2025, OC-32/25 (*Climate Emergency and Human Rights*), para. 325; ECHR 9 April 2024, No. 53500/20 (*Verein KlimaSeniorinnen Schweiz/Switzerland*), para. 442. See also the judgment of the Dutch Supreme Court of 20 December 2019, ECLI:NL:HR:2019:2006 (*Urgenda*), grounds 5.7.7 up to and including 5.7.9. See also the judgment of the Court of Appeal of Brussels of 30 November 2023, 2021/AR/15gs, grounds 259 up to and including 261; BVerfG 24 March 2021, 1 BvR 2656/18 (*Neubauer*), grounds 119 up to and including 203; the judgment of the Supreme Court of the United States of 2 April 2007, 549 U.S. 497 (2007) (*Massachusetts et al./EPA*), pp. 22 and 23. See also the Statement of Defence on Appeal following Joinder of Milieudéfensie et al. dated 10 October 2023, paras. 79 up to and including 110; the Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, paras. 888 up to and including 904. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, Sections VII.2.3 and VII.3.

<sup>119</sup> See, regarding the critical decade (meaning that emission reductions in this decade are decisive for the success of the climate strategy), Exhibit MD-348 (Glasgow Climate Pact), preamble and para. 5. See also the Statement of Defence on Appeal of Milieudéfensie et al. dated 18 October 2022, paragraphs 473, 516, 609 up to and including 614, 967 and 968. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, para. 201.

<sup>120</sup> Exhibit MD-146 (Adoption of the Paris Agreement dated 12 December 2015), paras. 117, 118, 134 and 135. See also the Notes of the Oral Arguments (1) in the First Instance of Milieudéfensie et al. dated 1 December 2020, paras. 130 up to and including 147 with further references. See also the judgment of the District Court, grounds 2.4.7 and 4.4.26. See also the Written Explanatory Submission of Milieudéfensie et al. dated 22 May 2026, Section II.2.2.

<sup>121</sup> ECHR 9 April 2024, no. 53500/20 (*Verein KlimaSeniorinnen Schweiz/Switzerland*), paras. 412, 450, 451 and 635 up to and including 639. See also the Response to the questions of the Court of Appeal of Milieudéfensie et al. dated 12 April 2024, p. 7 and the Motion in Reply to the Motion commenting on Exhibits of Milieudéfensie et al. dated 19 December 2023, paras. 19 and 20.

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- 111 An emission reduction injunction issued against Shell will make a significant and urgently needed contribution to combating major climate risks and thus help to protect the human rights and the environment. An emission reduction injunction is therefore perfectly aligned with the structure and purpose of Dutch liability law.
- 112 Despite all the narratives presented by Shell and the oil and gas industry (which you will no doubt hear again any moment now), the scientific and institutional sources also indicate that moving away from oil and gas will lead to cheaper energy and greater energy security.
- 113 All this shows that the issue of a reduction injunction against Shell is not only necessary from a climate perspective, but will also serve other societal interests.
- 114 The reverse is also true. If Shell is allowed to continue without any restrictions, we must conclude that modern society and the choices made within it have created private-law entities that are more destructive than states, but which cannot no be kept in control anymore by anyone. Not by politicians and not by the law. In that case, the democratic constitutional state and the international legal order will have proved to be more vulnerable than we thought, and we will collectively have to pay the price for that. That price will be high, unimaginably high.
- 115 Thank you for your attention.

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This case is being handled by Mr P.A. Fruytier and Mr J.P. Jas, BarentsKrans Coöperatief U.A., P.O. Box 30457, 2500 GL The Hague, telephone: 070 - 376 07 81 , fax:070 - 376 06 01 :