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| **District Court of The Hague** |
| Case number: | C/09/571932 2019/379 | **STATEMENT ON THE RECORD EXPLAINING THE AMENDMENT OF CLAIM RELIEF SOUGHT PART 1A**  |
| Session: | 6 November 2020 | in the matter of:1. **Vereniging Milieudefensie** both on its own behalf, and in its capacity of representative ad litem and representative of the co-claimants who are listed on **Annex A**, which annex is attached to the summons and forms part thereof,

having its registered office in Amsterdam, the Netherlands;1. **Stichting Greenpeace Nederland**,

having its registered office in Amsterdam, the Netherlands;1. **Landelijke Vereniging tot Behoud van de Waddenzee**, having its registered office in Harlingen, the Netherlands;
2. **Stichting ter bevordering van de Fossielvrij-beweging**, having its registered office in Amsterdam, the Netherlands;
3. **Stichting Both ENDS**, having its registered office in Amsterdam, the Netherlands;
4. **Jongeren Milieu Actief**, having its registered office in Amsterdam, the Netherlands;
5. **Stichting ActionAid**, having its registered office in Amsterdam, the Netherlands

ClaimantsHereinafter also called: “Milieudefensie et al.” |
|  |  | Counsel: R.H.J. Cox |
| Versus |
|  |  | **Royal Dutch Shell plc**Having its registered office in The Hague, the Netherlands DefendantCounsel: J. de Bie Leuveling Tjeenk, N.H. van den Biggelaar and D. Horeman  |
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1. Milieudefensie et al. has taken note of Royal Dutch Shell plc's statement on the record of 28 October 2020 objecting to Milieudefensie et al.'s amendment of claim and has also taken note of the notice of the District Court of 29 October 2020 in which Milieudefensie et al.'s amendment of claim of 21 October 2020 was allowed, on condition that Milieudefensie et al. provided a brief explanation of part 1(a) of the amendment of claim on 6 November the latest.
2. Milieudefensie et al. will explain and provide substantiation below: (i) that the summons is evidently based on an unlawful act of which Royal Dutch Shell plc (hereinafter: RDS or Shell) has already been accused and that in connection therewith Milieudefensie et al. has explicitly stated at various points in the summons that the claimed emissions reduction is intended to eliminate the existing unlawful situation; (ii) that the facts and circumstances which form the basis of the unlawful act in question have been substantiated in very great detail in the summons; (iii) what is meant by the aggregate annual volume in C02 emissions into the atmosphere (scope 1, 2 and 3) which is connected with the business activities and energy-carrying products of RDS and the Shell group.

Re 2(i) According to the summons, the claim is to eliminate the existing unlawful situation

1. In the summons Milieudefensie et al. came to the following conclusion on the basis of the discussion of the hazardous negligence criteria:

*“With a view to all of this, Milieudefensie et al. conclude that Shell is guilty of unlawful hazardous negligence, an unlawful situation that should be eliminated by means of the emission reduction order to be imposed.”* (para. 638 summons)

1. In the summons Milieudefensie et al. is thus basing its position on unlawful hazardous negligence on the part of Shell, which unlawfulness must be eliminated by means of the requested order for a reduction in emissions. This summarising para. 638 can be found in the concluding chapter "**VIII.3 Conclusion relating to the hazardous negligence criteria**", in which everything that was discussed in Chapter VIII relating to the unlawful act has been recapitulated in a summarising conclusion. In view of the position of para. 638 in the summons and in view of the literal wording thereof, there can be no misunderstanding as to what Shell is being accused of. There can, moreover, be no misunderstanding about this for the following additional reasons.
2. Firstly, in the same concluding chapter prior to para. 638 the following was already remarked in para. 634 in the run-up to para. 638:

*“According to Milieudefensie et al., the foregoing shows that if the five hazardous negligence criteria are viewed together, the only conclusion that we can draw is that Shell is also guilty of unlawful hazardous negligence, just like the State of the Netherlands. The court corrected the latter in that respect by means of a reduction order.”* (para. 634 of the summons, emphasis added by counsel)

1. It ensues from this quotation as well – which precedes the conclusion of para. 638 - that Milieudefensie et al. is claiming that Shell is guilty of unlawful hazardous negligence in the same way as the State of the Netherlands, something for which the State was made subject to corrective measures by the District Court, as has been pointed out. Milieudefensie et al. then requests a correction of the unlawful situation in para. 638 with regard to Shell as well. This concerns a current unlawful hazardous negligence which Shell is continuing and the elimination of which is being requested. It cannot have escaped the attention of (the attorneys of) Shell that the Urgenda judgment of the District Court concerns an unlawful act committed by the State which has given rise to a corrective order. See in this respect inter alia the District Court under para. 4.93:

*“Based on the foregoing, the court concludes that the State [...] has acted negligently and therefore unlawfully towards Urgenda by starting from a reduction target for 2020 of less than 25% compared to the year 1990.”* (emphasis added by counsel)

1. Secondly, in the introduction to Chapter VIII on unlawful act Milieudefensie et al. already indicated with regard to the unlawful act that pursuant to Article 6:162 of the Dutch Civil Code, Shell is guilty of unlawful hazardous negligence and is thus acting contrary to the social duty of care, the open standard which can be fleshed out on the basis of, inter alia, convention and legislation provisions and general principles of law (paras. 504 and 505 of the summons). Milieudefensie et al. then asserted in the summons:

*“Given the nature of the social standard of care as an open standard and given (among other things) the global climate target laid down in the Paris Agreement and the climate-scientific findings on which they are based, Milieudefensie et al. are of the opinion that the extent of current and future CO2 emissions linked to Shell are such that the consequences are serious to the extent that these CO2 emissions - of this extent - and the Shell policy they are based on are in conflict with the social duty of care and are, therefore, unlawful towards Milieudefensie et al. The reduction of these emissions demanded by Milieudefensie et al. is necessary in order to eliminate the unlawfulness of Shell’s actions.”* (para. 506 of the summons, emphasis added by counsel).

1. The introduction to Chapter VIII regarding the unlawful act also therefore clarified that the hazardous negligence unlawfulness relates to both the current and the future emissions which are connected with Shell policy and that the claimed emissions reduction is necessary to eliminate the continuing unlawfulness of Shell's actions.
2. Thirdly, in the summons, as of the introduction (in particular paras. 41-55) a clear parallel was drawn with the Urgenda case against the State and on the basis of that comparison it was indicated that Shell too, in the opinion of the claimants, is guilty of unlawful hazardous negligence and human rights violations and that Shell, just like the State of the Netherlands, must modify its policy and bring it in line with the global climate target. Milieudefensie et al. then again clarified this in the introduction:

*“Based on everything that will be elaborated in this summons, the claimants come to the conclusion that Shell, with its current inadequate climate policy, like the State of the Netherlands, violates the right to life and the right to an undisturbed family life as stipulated in Articles 2 and 8 of the ECHR. Shell has to stop this unlawful situation by following the global climate target of the Paris Agreement, with due observance of the precautionary principle. According to the claimants, this means that when it comes to reducing its emissions, Shell, as an internationally operating company, will have to follow the emission reduction scenario shown above [...]. This means achieving the net zero CO2 emissions by 2050 with an interim emission reduction of 45% by 2030*” (paras. 44 and 55 of the summons, emphasis added by counsel)

1. It has therefore also already been established in the general introduction to the summons that the current scope of emissions connected to the policy implemented by Shell is unlawful and must be reduced and that the claimed emission reduction is required to eliminate the existing unlawful situation.
2. Fourthly, the other parts of the summons also clarify that Shell, by breaching its duty of care, is already guilty of unlawful hazardous negligence, that this unlawful act is attributable to it and must thus lead to the determination of Shell's liability, with awarding of Milieudefensie et al.'s claim (see para. 510 and the further elaboration thereof as well as the rest of the summons).
3. Fifthly, Milieudefensie et al. has even argued in detail that in essence since 2007 on the part of Shell there has been action in contravention of the social duty of care and that Shell should then already have started reducing its emissions scope; and if not at that time, then certainly in the years thereafter and at latest after the concluding of the Paris Agreement in 2015, the year in which this District Court passed judgment in the Urgenda case. This fifth point will be briefly discussed below to demonstrate that the unlawfulness existing today and the need to eliminate it has already been explained in very great detail in the summons.

Re 2(ii) The existing unlawful act has been explained in detail in the summons

1. Milieudefensie et al. argued in detail in the summons that the unlawful hazardous negligence started back in 2007, in view of all the knowledge that Shell had then (and earlier) regarding all relevant subjects (paras. 530-580 of the summons).
2. In this respect it has already been discussed, inter alia, that in 2007 in the Bali Action Plan which was established at the UN Conference of that year, reference was made to the urgency which is required to limit the warming up of the earth to 2˚C and that toward that end the concentration level in the atmosphere must be stabilised at a maximum of 450 ppm CO2-eq. In the Bali Action Plan reference was also made to the fact that toward that end the global emissions in 2050 would have to be reduced by minus 85% to minus 50% (paras. 385-391 of the summons).
3. It was therefore clear in 2007 that the global emissions scope had to be cut urgently and be reduced very drastically in the coming 40 years. In the event of a linear reduction from 2010 this converts to a reduction of 12.5% to 21% per decade (to be realised for the first time in 2020) to come to the necessary reduction of 50% to 85% in 2050.[[1]](#footnote-1)
4. By way of explanation and for the context with the Urgenda case, it is pointed out that the Bali Action Plan not only refers to the global reduction specification (which is relevant for this case) but reference was also made to a division of the global task between developed countries and developing countries.[[2]](#footnote-2) The UN Climate Convention encompasses the principle of "common but differentiated responsibilities" (CBDR).[[3]](#footnote-3) This CBDR principle is an important principle to which Shell rightly refers in its statement of defence. On the basis of that principle, it was agreed in 1992 (and also in 2007) that the developed countries would have to make a larger reduction contribution to the global task than the developing countries. In other words: the developed countries must, for example, reduce more as of 2020 than the average global reduction requirement; the developing countries may reduce less as of 2020 than the average global reduction requirement. However, the reductions of the developed countries and the developing countries together must arrive at the global reduction level to be achieved. Because of this CBDR principle an emissions reduction of 25-40% was deemed necessary for the developed countries with regard to the 450 ppm scenario for 2020, i.e. a higher reduction percentage than is globally required for 2020 (see above for a comparison).[[4]](#footnote-4) For the Urgenda case this reduction task of 25-40% in 2020 was thus a leading point because the Netherlands (of course) belongs to the group of developed countries.[[5]](#footnote-5) It was ultimately decided in the Urgenda case that the Netherlands was to achieve at least the lower limit of a 25% reduction by 2020.
5. In the summons it was made clear in paras. 555-571 that Shell was already taking the 2˚C/450 ppm scenario into account prior to 2007 and was aware of the consequences thereof, on the basis of which Milieudefensie et al. concluded:

*“When in 2007, due to the Bali Action Plan and the IPCC report of that same year, it became clear that the 450 scenario would have to be followed, it was once again clear to Shell that urgent (precautionary) measures were needed, that is, if Shell did not want to be guilty of contributing to dangerous global warming of 2˚C or more.”* (para. 571).

1. Milieudefensie et al. has also demonstrated in detail in this respect that Shell prior to 2007, because of the need for urgent emissions reductions acknowledged by Shell, had embarked upon a sustainable course with greater attention for sustainable energy and the phasing out of oil and gas, so that the emissions connected with Shell – both the emissions of its own activities and those of its products – would be cut (paras. 562-571 of the summons). Prior to that Milieudefensie et al. demonstrated that this change in course to sustainable energy and phasing out of oil was in line with (i) what Shell already knew since the 1950s with regard to the climate problem, (ii) its knowledge in the 1980s about the very serious and possibly irreversible consequences of climate change, (iii) its measures as of the 1980s to protect its assets against a future rise in sea levels and more powerful storms and (iv) its familiarity in the 1980s with the fact that with its activities and products it was substantially contributing to the global C02 emissions and concomitant increase in the CO2 concentration in the atmosphere (paras. 532-554 of the summons). The change in course to sustainable energy and phasing out of oil and gas will for Shell at that time in part have been based on the fact that the company fully realised in 1998, as appears from internal documentation, that it could face lawsuits in the future if, despite the warnings of scientists, it did not take any action against climate change. According to its own estimation, the company could in time suffer the same fate as the tobacco companies (para. 566 of the summons).
2. Milieudefensie et al. then made it clear in detail that Shell as of 2007 no less – i.e. after the establishing of the Bali Action Plan and the publication of the fourth IPCC report on which the Bali Action Plan was based - embarked upon a course with which the emissions scope of the company increased instead of decreased and as a result of which a few years later the company in fact became the most CO2-intensive oil company in the world (paras. 575-580). Milieudefensie et al. therefore qualified Shell's behaviour as of 2007 in the summons as extraordinarily careless, contrary to the social duty of care and as highly reproachable.
3. Milieudefensie et al. in part used these qualifications to describe Shell's actions because in the first few years after the Bali Action Plan it was made clear at UN level that fundamental human rights are being violated by climate change and that the warming up might have to be limited to 1.5˚C. This demanded even greater caution on the part of RDS. The following, inter alia, was made clear in the summons in this respect: that as early as the start of the Copenhagen Accord of 2009 there was mention of the tightening of the 2˚C target to 1.5˚C; that the UN Climate Conference in 2010 emphasised that climate change leads to the violation of fundamental human rights and partly for that reason asserted that “*deep cuts in global greenhouse gas emissions are required*”; that the UN conference a year later stated “*that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires to be urgently addressed*”; that the UN conference of 2011 also indicated with *“grave concern*” that there was a great gap between the emission reductions committed by the individual countries on the one part and what reductions were necessary at global level to prevent climate change on the other (emissions gap). All of this and more was discussed in paras. 392-418 of the summons.
4. As of 2007 it became clearer from one year to the next (including for Shell) that there was a large and urgent need to reduce global CO2 emissions for the protection of humans, society and the environment and that therefore a transition to emissions-free sustainable energy was necessary in all relevant sectors, including the energy sector, as had also already been established in the UN Climate Convention of 1992 (Art. 4.1.c of the UN Climate Convention). This had already been announced a few years earlier at the UN Conference of 1988 with the notice to industry that “*budgets must be massively directed to low and non-CO2 emitting energy options*” (paras. 356-362). Shell started to heed the call from 1988 to switch investments to sustainable energy in the 1990s, but ceased to do so, oddly enough, from 2007 on.
5. In 2007 and the first years thereafter, i.e. 20 years after this call out to the industry in 1988, it was clearer than ever that the energy sector and thus certainly the big players in that sector such as Shell, would have to change urgently and would have to switch their investment flows so that global emissions could be reduced. Despite this knowledge, as of 2007 Shell opted for the collision course with the climate goal discussed in the summons (paras. 577-580). In addition, the urgent need for an energy transition has also been emphasised by UNEP every year since 2010 in the annual Emissions Gap reports. As of 2010 the key message of UNEP has been the same every year, as was made clear in the 2019 Emissions Gap Report (Exhibit 274, p. XIII):

*“Each year for the last decade, the UN Environment Programme’s Emissions Gap Report has compared where greenhouse gas emissions are headed, against where they should be to avoid the worst impacts of climate change. Each year, the report found that the world is not doing enough. Emissions have only risen, hitting a new high of 55,3 gigatonnes of CO2 equivalents in 2018. The UNEP Emissions Gap Report 2019 finds that even if all unconditional Nationally Determined Contributions (NDCs) under the Paris Agreement are implemented, we are still on course for a 3.2˚C temperature rise.”* (emphasis added by counsel)

1. Every subsequent UNEP report since 2010 has shown that the emissions gap has only increased because the world keeps pushing the reduction task forward, so that the chance of still being able to avoid dangerous climate change is decreasing even further. According to UNEP the slow approach is leading to far higher quantities of CO2 which are annually added to the atmosphere (cumulatively), to an ever-increasing lock-in of CO2-intensive infrastructure, to further rising transition costs, to greater economic disruption, to a greater dependence on certain technologies and to greater risks that the temperature limit of dangerous climate change will be exceeded. Consequently, according to UNEP avoiding dangerous climate change may in practice turn out to no longer be possible if the emissions gap is not closed quickly; a very urgent message which UNEP has been sending out since 2013 (para. 629) and still is sending out.[[6]](#footnote-6) A message to which the District Court attached great significance in the Urgenda case, when it held that postponement of the necessary emission reductions could not be tolerated any longer.[[7]](#footnote-7)
2. It is this concern regarding postponement and consequently insufficient pre-2020 action which was again expressed by the countries participating in the UN Climate Convention in 2015 in the decision to ratify the Paris Agreement. The decision therefore again emphatically points to the urgency to keep efforts geared to closing the emissions gap before 2020:

*“Emphasizing with serious concern the urgent need to address the significant gap between the aggregate effect of Parties’ mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with holding the increase in the global average temperature to well below 2°C above preindustrial levels and pursuing efforts to limit the temperature increase to 1.5°C above preindustrial levels,*

*Also emphasizing that enhanced pre‐2020 ambition can lay a solid foundation for enhanced post‐2020 ambition,*

*Stressing the urgency of accelerating the implementation of the Convention and its Kyoto Protocol in order to enhance pre-2020 ambition,” [[8]](#footnote-8)* (emphasis added by counsel)

1. The Paris decision leaves no room for doubt that farther-reaching reduction should have already taken place in 2020. The Paris decision therefore calls upon companies “*to scale up their efforts*” (paras. 706-709 of the summons). Both prior to the Paris Agreement and thereafter, the role of companies and other non-state actors were attributed extra weight (which will be explained in the oral arguments by means of, inter alia, Exhibits 271-273). The Paris decision also makes it clear that the pre-2020 action lays the foundation for accelerated post-2020 action. It was made clear in this respect in the summons that via the Paris decision the IPCC was asked to publish a special report for the 1.5˚C target, inter alia to clarify the post-2020 task. It ensues from the SR15 report published by the IPCC that there could still be a 50% chance of a maximum warming up of 1.5˚C if in 2030 the global emissions are reduced in an absolute sense by 45% (paras. 413-418).
2. The fact that the world has now ended up in the situation that even with an almost halving of the global emissions in the coming ten years, there will only be a maximum 50% chance that the warming up can be limited to 1.5˚C, has everything to do with what has been discussed above in paragraphs 23 and 24 and the fact that the richest countries and companies (several dozen in total) have not taken their responsibility in relation to a substantial part of the global emissions up to 2020 so that the emissions are now higher than ever. Consequently, an entire decade was lost between 2010 and 2020, which is why according to the IPCC when continuing the current approach, the level of 450 ppm that belongs with a 2˚C warming up will already be a fact in 2030 with all related irreversible consequences (para. 329). See also the UNEP 2019 report (Exhibit 274, p. 26):

*“[A] failure to reduce GHG emissions adequately in the next decade will frustrate and undermine the possibility of achieving the deep emissions reductions that are required by 2050 in order to keep emissions in line with the temperature goal of the Paris Agreement.”*

1. That the coming ten years must be qualified as a "use it or lose it" moment for combating dangerous climate change, is very well known to the RDS executive board or in any event it should be. This applies all the more because the chairman of the board of Royal Dutch Shell plc, Chad Holliday (the most important RDS executive next to CEO Ben van Beurden), has been a member of the Global Commission on the Economy and Climate since its founding in 2013. This commission was founded in 2013 on the request of a group of countries and comprises approx. 25 former heads of state, ministers of finance and CEOs and board chairmen of globally leading companies, including Shell. In 2018 the commission published a report (Exhibit 291), in which the following Key Finding can be read on p. 8:

*“The next 10-15 years are a unique ‘use it or lose it’ moment in economic history. We expect to invest about US$90 trillion in infrastructure to 2030, more than the total current stock. Ensuring that this infrastructure is sustainable will be a critical determinant of future growth and prosperity. The next 10-15 years are also essential in terms of climate: unless we make a decisive shift, by 2030 we will pass the point by which we can keep global average temperature rise to well below 2˚C.”*

1. This critical point, in which everything depends on the coming 10 years, has been reached due to the lack of pre-2020 climate action of the richest countries and richest globally operating energy companies. In light of where we have ended up now in history, it is incomprehensible that the CEO of one of the richest and most dominant energy companies in the world, years after the making of the Paris Agreement, still makes statements like *“I will pump up everything I can pump up to satisfy demand*” and “*Shell will not go soft on the future of oil and gas*”. It is equally incomprehensible that the entire RDS board, of which the CEO and the chairman of the board are the most important directors, as of 2015 and recently even in 2020, have rejected every shareholders’ resolution which calls for Shell to act in conformity with the Paris targets (Exhibits 316-317). Knowing about the importance of pre-2020 action and the fact that we are now entering the last 10 years in which it is a matter of *‘use it or lose it’* for both the climate and the economy, the degree of social carelessness on the part of RDS is without limit and is extraordinarily serious and reproachable, particularly if the following is taken into account.
2. Where it can be said for many countries, including the Netherlands, that as of 2007 they at least set an absolute emissions reduction target for 2020 (even though that Dutch reduction target was judicially held to be too low), Shell went in completely the opposite direction, starting in 2007 no less, and never had a reduction target for 2020. Even at its management days in June 2019 RDS announced that the (sustainability) trend started in 2017 to invest a maximum of 1 to 2 billion of the annual investments of 25-30 billion in more sustainable alternatives every year, would be continued up to 2025 (Exhibit 279). This means that in the first 5 years of the decade in which the large and all-decisive transition to an almost halving of global emissions must be made, Shell will invest 3% to 8% in more sustainable alternatives and 92%-97% will be invested in conventional and unconventional oil and gas production (Exhibit 279, pp. 1 and 2). For the coming 9 years RDS is investing 149 billion dollars in new oil and gas fields (Exhibit 277, p. 5). For 2030 the growth of Shell's oil production will come to 22% to 38% (Exhibits 275 and 333). Shell not only produced excess emissions in the past, it will continue doing so in the future, at the same time leaving the world saddled with a further lock-in of fossil infrastructure for the coming decades, something which according to the IPCC, UNEP but also, e.g., the Global Commission on the Economy and Climate, will be both economically and climatologically disastrous. According to RDS, however, it is not up to RDS but states and consumers to bring about the halving of the global emissions in 2030 and concomitant shifts of billions in investments from fossil energy to sustainable energy. The absurdity of this statement speaks for itself.
3. In short, while a good 1.2% of the annual global emissions are connected to Shell (para. 552), Shell not only never had a goal to reduce its emissions in an absolute sense by 2020, to this day it does not have this goal for 2030 or another date in the future. Because Shell did not have an absolute emission reduction target for 2020, nor has it brought about any reduction in emissions in an absolute sense, it has been established that to date it has not made any contribution whatsoever to reducing global emissions. Indeed, as has been explained in the summons, as of 2007 it has embarked upon a path toward emissions growth and actively counteracted the reduction of global emissions (paras. 586-602 et seq. for clarification on the basis of Exhibits 324-332). Nor does Shell intend to provide the contribution which Milieudefensie et al. believes necessary to reduce global emissions in line with the Paris Agreement target. The measures that it is willing to take are merely a drop in the ocean and are not even remotely adequate (paras. 795-814 of the summons). This applies all the more because globally far too much oil is being and will continue to be produced, whereby every relationship with a 1.5˚C and well below 2˚C scenario is completely missing: the production gap. Just like the emissions gap, the production gap is getting bigger every year (bigger even than the emissions gap) because no single oil and gas company is taking its own responsibility to invest in new energy on a large scale and move away from oil and gas, the need for which was in fact completely clear back in 1988. All of this will be explained in further detail in the oral arguments on the basis of, inter alia, Exhibits 276-284.
4. For all these reasons Milieudefensie et al. argued in the summons that both the current and the future emissions of Shell are too high and will therefore have to be reduced to eliminate the existing unlawful situation by means of the implementation of the emissions reduction which is the subject of the claim (see Re (i) above). The legal grounds therefore have been explained in detail in the introduction to the summons (in particular paras. 41-55) and Chapters VIII – XII of the summons.
5. The relief sought as formulated under 1(a) in the statement on the record amending the claim is, in view of the above, fully in line with the assertions and substantiations in the summons. Detailed arguments and substantiation were presented for the claim in that part of the relief sought in the summons, said claim is underscored by this statement on the record and will where necessary be further substantiated during oral arguments. Part 1(a) only supplements the relief sought with what was already evidently encompassed in the summons relating to the unlawfulness of Shell's actions.

Re 2(iii) the aggregate annual volume in CO2 emissions to the atmosphere (scope 1, 2 and 3)

1. As has been made clear in the summons and the relief sought, by means of this summons Milieudefensie et al. is objecting to the CO2 emissions which are emitted into the atmosphere and which are connected with Shell's business activities and products. The emissions which are connected with business activities and products are technically referred to as scope 1, 2 and 3 emissions. This was briefly explained in the summons under para. 810 and explained by RDS under para. 96 of the statement of defence. The text of the relief sought has been tightened up on this point so that the relief sought and the technical terminology are correctly aligned with each other. It has now also been made clear in the relief sought how the claim against RDS, being the head of the Shell group, must be viewed in relation to the group companies under its management.
2. It was argued in the summons that RDS is not only responsible for the emissions which are connected with the Shell group's own business activities but is also responsible for the emissions of energy-carrying products (falling under the term scope 3). It has been pointed out in this respect that Shell itself realised this responsibility in the 1990s and understood even at that time that it would also have to reduce the emissions of its customers by offering sustainable energy to its customers (paras. 565-571).
3. That Shell and other oil and gas companies have a responsibility for these scope 3 emissions and have the opportunity to reduce this appears, inter alia, from the fact that six oil and gas companies have in the meantime included the reduction of the emissions scope of scope 3 emissions in their goals. In addition to Shell this concerns BP, Repsol, Total, ENI and Equinor (see Exhibit 282, p. 5). These matters will be explained in further detail in the oral arguments.
4. Taking responsibility for the scope 3 emissions also fits in with a correct interpretation of the UN Guiding Principles on Business and Human Rights, as appears from the 2019 report of the UN Special Rapporteur on Human Rights and the Environment (Exhibit 270, p. 32), in which it is established:

*“71 [..] corporations should comply with the Guiding Principles on Business and Human Rights as they pertain to human rights and climate change. 72 The five main responsibilities of businesses specifically related to climate change are to reduce greenhouse gas emissions from their own activities and their subsidiaries; reduce greenhouse gas emissions from their products and services; minimize greenhouse gas emissions from their suppliers; publicly disclose their emissions, climate vulnerability and the risk of stranded assets; and ensure that people affected by business-related human rights violations have access to effective remedies. In addition, businesses should support, rather than oppose, public policies intended to effectively address climate change.”* (emphasis added by counsel)

1. A final note. The matters described in parts 2(i)-(iii) of this statement on the record intend to provide a concise explanation of (the background of) part 1(a) of the relief sought as formulated in Milieudefensie et al.'s statement on the record amending the claim of 21 October 2020. Because the District Court has already admitted this amendment of claim and consequently has set aside the objections in RDS' statement on the record of 28 October 2020, Milieudefensie et al. did not go into RDS' procedural objections in this statement on the record. Milieudefensie et al. therefore reserves the right to respond to this should this turn out to be necessary at a later time.

Let this be entered in the record!

Counsel,

This case is being handled by R.H.J. Cox and D.M.J. Dexters

Paulussen Advocaten N.V. in Maastricht, the Netherlands

1. For a general explanation of the linear reduction, see paras. 754 and 755 of the summons. Further: these reduction percentages for 2050 which were determined in 2007 became stricter later due to the tightening of the temperature target in the Paris Agreement and the fact that the global emissions continued to increase from 2007 to date, while the models on which these percentages were based assumed a more rapid stabilisation and drop in global emissions. Consequently, today there are far more emissions in the atmosphere than were foreseen in the models used in 2007. [↑](#footnote-ref-1)
2. The footnote cited in para. 387 of the summons which is included in the Bali Action Plan by the word “urgency” refers to three different pages from the IPCC AR4 report of 2007. For the global task the action plan refers to p. 39 of the Technical Summary (TS, Exhibit 132) discussed in paras. 388-391 of the summons. With regard to the division task between developed and developing countries reference is made in the Action Plan to p. 90 of the TS as well as to p. 776 of Chapter 13 of the IPCC work group III which provides a schematic and split representation of the division task of the 450 ppm and 550 ppm scenario, where the summons on p. 90 TS joins both scenarios together. All three of these IPCC pages and the schedules included therein were discussed in the Urgenda case in relation to the 450 ppm scenario because in that case the division between developed countries and developing countries was relevant for determining the task of the State of the Netherlands. See the District Court in the Urgenda case under 2.13-2.16 with reference to the Bali Action Plan and under 2.48. This division task is not relevant in this case against Shell and the issue is the global task. [↑](#footnote-ref-2)
3. Articles 3.1 and 4.1 of the UN Climate Convention (Exhibit 96). [↑](#footnote-ref-3)
4. See footnote 2. [↑](#footnote-ref-4)
5. District Court in the Urgenda case, paras. 4.20-4.34. [↑](#footnote-ref-5)
6. Emissions Gap Report 2019, Exhibit 274, p. 26 with reference to the 2018 report. [↑](#footnote-ref-6)
7. District Court in the Urgenda case, paras. 2.30 and 4.71-4.73. [↑](#footnote-ref-7)
8. UNFCCC 2015 COP 21 Adoption of the Paris Agreement, Exhibit 146, p. 2. [↑](#footnote-ref-8)