

**Dutch case should influence the commitments made by Canada to COP21 in Paris.
Canada should commit to 25% below 1990 levels by 2020**

By Joan Russow PHD

Global Compliance Research Project

Before COP21, The Trudeau government should make a commitment based on the principles of the Dutch cas; 25% below 1990 by 2020

After doing a content analysis of the successful Dutch Court Case, brought by environmentalists against the the Dutch government, I could see that there were many precedents in the decision that could be used, by advocates, in Canada. In the content analysis, I have isolated sections; such as norms, targets, international principles, obligations, pace of reduction, urgency, definitive science, per capita relevance etc.

A CONTENT ANALYSIS OF THE DUTCH COURT DECISION

Joan Russow PHD

Global Compliance Research Project

SEE COURT DECISION AT <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2015:7196&keyword=urgenda>

****ENDORSED THE PRINCIPLE OF FAIRNESS

The principle of fairness (i) means that the policy should not only start from what is most beneficial to the current generation at this moment, but also what this means for future generations, so that future generations are not exclusively and disproportionately burdened with the consequences of climate change. The principle of fairness also expresses that industrialised countries have to take the lead in combating climate change and its negative impact. The justification for this, and this is also noted in literature, lies first and foremost in the fact that from

a historical perspective the current industrialised countries are the main causers of the current high greenhouse gas concentration in the atmosphere and that these countries also benefited from the use of fossil fuels, in the form of economic growth and prosperity. Their prosperity also means that these countries have the most means available to take measures to combat climate change. [26](#)

**** AFFIRMED THE OBJECTIVE OF THE UNFCCC IPCC

The UN Framework Convention on Climate Change and the IPCC

4.11.

Well before the 1990s, there was a growing realisation among scientists that human caused (anthropogenic) greenhouse gas emissions possibly led to a global temperature rise, and that this could have catastrophic consequences for man and the environment. This realisation led to the UN Climate Change Convention in 1992, of which the objective is formulated in Article 2, referred to in

2.37, as follows: to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. As stated previously, 195 countries, including the Netherlands and the EU, have endorsed this objective.

4.15.

The IPCC reports referred to here also state that the anthropogenic greenhouse gas emissions need to be decreased substantially in order to prevent dangerous climate change. This, too, has been acknowledged by the signatories to the UN Climate Change Convention, including during the 2007 climate conference (Bali Action Plan) and again in 2010 (Cancun). From AR5/2013, supported by publications of other knowledge institutes, such as EDGAR (see 2.25) and UNEP (see 2.29), it is apparent that the global anthropogenic emissions of greenhouse gases is increasing rather than decreasing. The court also considers this information as certain.

4.16

**** SUPPORTED THE NORM % BELOW 1990 BY 2020

2.19

The parties agree that the severity and scope of the climate problem make it necessary to take measures to reduce greenhouse gas emissions. Based on the State's current policy, the Netherlands will achieve a reduction of 17% at most in 2020, which is below the norm of 25% to 40% for developed countries deemed necessary in climate science and international climate policy.?

25% below 1990 levels by 2020 is less than previously agreed to 24,398 million metric tons

2,72 Previously Netherlands stated it remains important for the developed countries to take the lead by committing to a joint 30% reduction of their greenhouse gas emissions by 2020, compared to 1990

4.26.

In the period 2007-2009, the Netherlands initially focused its climate policy on a reduction target of 30% in 2020 compared to 1990, which was therefore higher than the EU's target of 20%.

European Union

2.76 The European Union's objective of reducing greenhouse gas emissions by 20% is within reach. The European Union has not decided to raise it to the conditional target of 30%, partly because there is no agreement whether or not the formulated condition – a significant reduction by other major economies – has been met

4.25.

In the European context, in response to AR4/2007, the European Council considered that the industrialised countries should take the lead and commit to a collective 30% reduction of their greenhouse gas emissions by 2020, compared to 1990. The Council also believed that the countries should also do this in order to reduce their collective emissions by 60-80% by 2050, compared to 1990. Therefore, the European Council established the reduction target at 30% in 2020, provided that other industrialised countries and economically more advanced countries commit to similar emission reductions. Therefore, the European Council commits to realising an international emission reduction of 20% in 2020 compared to 1990, and to a 30% reduction target if the aforementioned condition is met. However, the condition has not been met so far, keeping the EU-wide reduction target at 20%

****ACKNOWLEDGED GAP PERCEIVED BY UNITED NATIONS ENVIRONMENT PROGRAMME

4.79.

It is an established fact that climate change is a global problem and therefore requires global accountability. It follows from the UNEP report that based on the reduction commitments made in Cancun, a gap between the desired CO₂ emissions (in order to reach the climate objective) and the actual emissions (14-17 Gt CO₂) will have arisen by 2030. This means that more reduction measures have to be taken on an international level. It compels all countries, including the Netherlands, to implement the reduction measures to the fullest extent as possible. The fact that the amount of the Dutch emissions is small compared to other countries does not affect the obligation to take precautionary measures in view of the State's obligation to exercise care

**** CONFIRMED NO DISPUTE ABOUT SCIENCE

4.16

It is not disputed between the Parties that dangerous climate change has severe consequences on a global and local level. The IPCC has reported that the ice at the North and South Poles as well as alpine glaciers are melting due to global warming, which will result in a rise in sea levels. Moreover, the warming of the oceans is expected to result in increased hurricane activity, expansion of desert areas and the extinction of many animal species because of the heat, the latter causing a decline in biodiversity. People will suffer damage to their living environment because of these changes, for instance, a deterioration of food production. Furthermore, the temperature rise will lead to heat-related deaths, particularly among the elderly and children. The IPCC reports also state that the current temperature rise causes damage to man and the environment. The 2 °C target, also assumed by the Netherlands, is intended to prevent climate change from becoming irreversible: without intervention, the aforementioned processes will become unstoppable.

.**** ACCEPTED THE CREDIBILITY OF IPCC

4.12

The UN Climate Change Convention also made provisions for the establishment of the IPCC as a global knowledge institute. The IPCC reports have bundled the knowledge of hundreds of scientists and to a great extent represent the current climate science. The IPCC is also an intergovernmental organisation. The IPCC's findings serve as a starting point for the COP decisions, which are taken by the signatories to the UN Climate Change Convention during their climate conferences. Similarly, the Dutch and European decision-making processes pertaining to the climate policies to be pursued are also based on the climate science findings of the IPCC. The court – and also the Parties – therefore considers these findings as facts.

Executive SUMMARY

According to the latest findings of the Intergovernmental Panel on Climate Change (IPCC), without urgent action, climate change will bring severe, pervasive and irreversible impacts on all the world's people and ecosystems. Limiting dangerous rises in global average temperature to below 2°C compared with pre-industrial levels (the below 2°C objective) will require substantial and sustained reductions in greenhouse gas emissions by all countries.

**** TOOK AS A GIVEN ANTHROPOGENIC (HUMAN-CAUSED) CAUSES OF CLIMATE CHANGE INCLUDING FOSSIL FUEL CONSUMPTION AND DEFORESTATION

2.18

In 2013-2014, the IPCC published its latest insights into the scope, effects and causes of climate change. In the report concerned (AR5/2013) the IPCC, in accordance with AR4/2007, established that the earth has been warming as a result of the high increase of CO₂ concentrations in the atmosphere since the Industrial Revolution (base year 1850) and that this has been caused by human activity, particularly the combustion of oil, natural gas and coal as well as deforestation:

*** OPPOSED DELAYING OF ACTIONS

Lastly, when action is delayed, options to achieve stringent levels of climate protection are increasingly lost.”

2.19

Delaying mitigation efforts beyond those in place today through 2030 is estimated to substantially increase the difficulty of the transition to low longer-term emissions levels and narrow the range of options consistent with maintaining temperature change below 2°C relative to pre-industrial levels (high confidence). Cost-effective mitigation scenarios that make it at least *as likely as not* that temperature change will remain below 2°C relative to pre-industrial levels (2100 concentrations between about 450 and 500 ppm CO₂eq) are typically characterized by annual GHG emissions in 2030 of roughly between 30 GtCO₂eq and 50 GtCO₂eq (Figure SPM.5, left panel). Scenarios

2.30 although later-action scenarios might reach the same temperature targets as their least-cost counterparts, later-action scenarios pose greater risks of climate impacts for four reasons. First delaying action allows more greenhouse gases to build-up in the atmosphere in the near term, thereby increasing the risk that later emission reductions will be unable to compensate for this build up. Second, the risk of overshooting climate targets for both atmospheric concentrations of greenhouse gases and global temperature increase is higher with later-action scenarios. Third, the near-term rate of temperature is higher, which implies greater near-term climate impacts. Lastly, when action is delayed, options to achieve stringent levels of climate protection are increasingly lost.”

4.58.

With the precautionary principle (ii) the UN Climate Change Convention expresses that taking measures cannot be delayed to await full scientific certainty. The signatories should anticipate the prevention or limitation of the causes of climate change or the prevention or limitation of the negative consequences of climate change, regardless of a certain level of scientific uncertainty. In making the consideration that is needed for taking precautionary measures, without having absolute certainty whether or not the actions will have sufficient effects, the Convention states that account can be taken of a cost-benefit ratio: precautionary measures which yield positive results worldwide at as low as possible costs will be taken sooner.

“1. EXECUTIVE SUMMARY

According to the latest findings of the Intergovernmental Panel on Climate Change (IPCC), without urgent action, climate change will bring severe, pervasive and irreversible impacts on all the world's people and ecosystems. Limiting dangerous rises in global average temperature to below 2 °C compared with pre-industrial levels (the below 2 °C objective) will require substantial and sustained reductions in greenhouse gas emissions by all countries.

This global transition to low emissions can be achieved without compromising growth and jobs, and can provide significant opportunities to revitalise economies in Europe and globally. Action to tackle climate change also brings significant benefits in terms of public well-being. Delaying this transition will, however, raise overall costs and narrow the options for effectively reducing emissions and preparing for the impacts of climate change.

All countries need to act urgently and collectively.

4;32 Urgenda argues that the first graph – whose information is detailed further in the second and third graphs – shows that a delayed reduction path results in higher emissions than does a more evenly distributed reduction effort over the entire period up to the year 2050 or with a linear approach. Urgenda claims that graph also shows that a delayed reduction (less reduction until 2030 and more thereafter) will lead to higher total emissions and thereby increases the chances of exceeding the remaining “budget”

**** REFERRED TO RANGE OF TARGET 1.5 OR 2 DEGREE RISE

2. What emission levels are anticipated for 2020?

Global greenhouse gas emissions in 2020 are estimated at 59 GtCO₂e per year under a business-as-usual scenario. If implemented fully, pledges and commitments would reduce this by 3–7 GtCO₂e per year (...).

3. What is the latest estimate of the emissions gap in 2020?

(...) Least-cost emission pathways consistent with a likely chance of keeping global mean temperature increases below 2°C compared to pre-industrial levels have a median level of 44 GtCO₂e in 2020 (range: 38–47 GtCO₂e). Assuming full implementation of the pledges, the emissions gap thus amounts to between 8–12 GtCO₂e per year in 2020 (...).

6. What are the implications of later action scenarios that still meet the 1.5°C and 2°C targets?

2.49.

At the climate conference in Cancun in 2010, the parties involved issued various decisions, including The Cancun Agreements (Decision 1/CP.16), which contains the following sections, among others:

“Recalling its decision 1/CP.13 (the Bali Action Plan) and decision 1/CP.15 (...),

Noting resolution 10/4 of the United Nations Human Rights Council on human rights and climate change, which recognizes that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability (...),

Further recognizes that deep cuts in global greenhouse gas emissions are required according to science, and as documented in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, with a view to reducing global greenhouse gas emissions so as to hold the increase in global average temperature below 2°C above pre-industrial levels, and that Parties should take urgent action to meet this long-term goal, consistent with science and on the basis of equity; also recognizes the need to consider, in the context of the first review, as referred to in paragraph 138 below, strengthening the long-term global goal on the basis of the best available scientific knowledge, including in relation to a global average temperature rise of 1.5°C;

Durban 2011

2.51.

The parties at the climate conference in Durban in 2011 issued several decisions. Decision 1/CP.17 states the following, among other things:

“ *Recognizing* that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires to be urgently addressed by all Parties (...),

Noting with grave concern 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 having a likely chance of holding the increase in global average temperature below 2°C or 1.5°C above pre-industrial levels, (...)”

IPCC has stated in each of its reports how certain or uncertain its observations and findings are.

4.14.

In AR4/2007 and AR5/2013, the IPCC has established that a worldwide climate change is taking place and that it is very probable that human actions, particularly the combustion of fossil fuels (oil, gas, coal) and deforestation, are the main causes of the observed global warming since the middle of the nineteenth century. In AR4/2007, the IPCC furthermore has stated that a temperature rise of more than 2 °C over the pre-industrial level would cause dangerous and irreversible climate change which would threaten the environment and man. This has resulted in the formulation of the aforementioned 2°C target. The IPCC has not changed this target in AR5/2013. The signatories to the UN Climate Change Convention, including, as stated previously, the Netherlands and the EU, have explicitly acknowledged these findings during the climate conference of 2010 (Cancun Agreements). The court therefore finds that the 2 °C target has globally been taken as the starting point for the development of climate policies. Incidentally, this comes with a restriction for a number of countries in the Pacific Ocean, such as Tuvalu and Fiji, for which dangerous climate change, with the associated risk of destruction of their entire territories, probably will already occur at a temperature rise of 1.5 °C. The signatories therefore decided in Cancun to “maintain a view on” a 1.5 °C target.

****ACKNOWLEDGED SEVERITY AND URGENCY

2.19

The parties agree on the severity and scope of the climate problem make it necessary to take measures to reduce greenhouse gas emissions.

2.49.

At the climate conference in Cancun in 2010, the parties involved issued various decisions,

including The Cancun Agreements (Decision 1/CP.16), which contains the following sections, among others:

“Recalling its decision 1/CP.13 (the Bali Action Plan) and decision 1/CP.15 (...),

Noting resolution 10/4 of the United Nations Human Rights Council on human rights and climate change, which recognizes that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability (...),

Further recognizes that deep cuts in global greenhouse gas emissions are required according to science, and as documented in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, with a view to reducing global greenhouse gas emissions so as to hold the increase in global average temperature below 2°C above pre-industrial levels, and that Parties should take urgent action to meet this long-term goal, consistent with science and on the basis of equity; also recognizes the need to consider, in the context of the first review, as referred to in paragraph 138 below, strengthening the long-term global goal on the basis of the best available scientific knowledge, including in relation to a global average temperature rise of 1.5°C;

2.60

“2. THE CLIMATE CHALLENGE: REACHING THE 2°C OBJECTIVE

Strong scientific evidence shows that urgent action to tackle climate change is imperative. Recent studies, such as the Stern review, reaffirm the enormous costs of failure to act. These costs are economic, but also social and environmental and will especially fall on the poor, in both developing and developed countries. A failure to act will have serious local and global security implications. Most solutions are readily available, but governments must now adopt

policies to implement them. Not only is the economic cost of doing so manageable, tackling climate change also brings considerable benefits in other respects. The EU's objective is to limit global average temperature increase to less than 2°C compared to pre-industrial levels. This will limit the impacts of climate change and the likelihood of massive and irreversible disruptions of the global ecosystem. The Council has noted that this will require atmospheric concentrations of GHG to remain well below 550 ppmv CO₂-eq. By stabilising long-term concentrations at around 450 ppmv CO₂-eq. there is a 50% chance of doing so. This will require global GHG emissions to peak before 2025 and then fall by up to 50% by 2050 compared to 1990 levels. The Council has agreed that developed countries will have to continue to take the lead to reduce their emissions between 15 to 30% by 2020. The European Parliament has proposed an EU CO₂ reduction target of 30% for 2020 and 60 to 80% for 2050.”

“1. EXECUTIVE SUMMARY

According to the latest findings of the Intergovernmental Panel on Climate Change (IPCC), without urgent action, climate change will bring severe, pervasive and irreversible impacts on all the world's people and ecosystems. Limiting dangerous rises in global average temperature to below 2°C compared with pre-industrial levels (the below 2°C objective) will require substantial and sustained reductions in greenhouse gas emissions by all countries.

Durban 2011

2.51.

The parties at the climate conference in Durban in 2011 issued several decisions. Decision 1/CP.17 states the following, among other things:

“ Recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires to be urgently addressed by all Parties (...),

Noting with grave concern 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 having a likely chance of holding the increase in global average temperature below 2°C or 1.5°C above pre-industrial levels, (...)"

2.52.

At the Durban conference, the Parties also agreed that a new legally binding climate change convention or protocol must be concluded no later than 2015 and must be implemented by 2020. The climate conference which will be held in Paris in December 2015 is a follow-up to this agreement.

In a European context

4.83.

Due to the severity of the consequences of climate change and the great risk of hazardous climate change occurring – without mitigating measures – the court concludes that the State has a duty of care to take mitigation measures. The circumstance that the Dutch contribution to the present global greenhouse gas emissions is currently small does not affect this. Now that at least the 450 scenario is required to prevent hazardous climate change, the Netherlands must take reduction measures in support of this scenario.

The State must do more to avert the imminent danger caused by climate change, also in view

of its duty of care to protect and improve the living environment

Therefore, the State should not hide behind the argument that the solution to the global climate problem does not depend solely on Dutch efforts. Any reduction of emissions contributes to the prevention of dangerous climate change and as a developed country the Netherlands should take the lead in this.

2.3:

“Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

**** ADVOCATED CALL TO ACTION

2.71.

The “New energy for the climate Work Programme of the Clean and Sustainable Project” (*We rkprogramma Nieuwe energie voor het klimaat van het*

project Schoon en Zuinig) rom 2007, in which the then cabinet formulated its climate policy, contains as a climate objective a 30% reduction for 2020 compared to 1990. According to the report, this means that as of 2020 an annual climate ceiling of 150Mt CO₂-eq. will apply. The report states the following, among other things:

“Climate change calls for action, as it threatens our security, food supply, water management and biodiversity. In this work programme, the cabinet focuses on ambitious climate targets: a 30% reduction of greenhouse gas emissions in 2020 (compared to 1990) is needed, preferably in a European context (...).

B. Reasons for these proceedings

2.6.

In its letter to the Prime Minister dated 12 November 2012, Urgenda requested the State to commit and undertake to reduce CO₂ emissions in the Netherlands by 40% by 2020, as compared to the emissions in 1990.

In her letter dated 11 December 2012, the State Secretary for Infrastructure and the Environment replied to Urgenda’s letter as follows (among other things):

“I share your concerns over the absence of sufficient international action as well as your concerns that both the scale of the problem and the urgency of a successful approach in the public debate are insufficiently tangible (...).

The most important thing is to eventually have a stable and widely supported policy framework which will lead to sufficient action to keep the long-term perspective of a 80%-95% CO₂ reduction by 2050 within reach (...)

It is also clear that collective, global actions are required to keep climate change within acceptable limits. In this context of collective actions, the 25%-40% reduction you refer to in

your letter was always the objective. The EU's offer to pursue a 30% reduction by 2020, on the condition that other countries pursue similar reductions, falls within that range. It is a major problem that the current collective, global efforts are falling short and fail to monitor the limitation of the average global temperature rise to 2 degrees. I will cooperate with national and international partners to launch and support initiatives to tackle this (...).

IPCC

2.8.

The Intergovernmental Panel on Climate Change (IPCC) is a scientific body established by the United Nations Environment Program (UNEP) and World Meteorological Organization (WMO) in 1988, under the auspices of the UN. The IPCC aims to acquire insight into all aspects of climate change, such as the risks, consequences and options for adaptation and mitigation. Mitigation (reducing the problem) is intended to prevent or limit further climate change. Adaptation (adapting to the consequences) is aimed at attempting to make nature, society and the economy less vulnerable to a changing climate. The IPCC itself does not conduct research nor does it keep climate-related data, but studies and assesses the latest scientific, technical and socio-economic information produced worldwide and publishes reports about it.

2.9.

"Fifth Assessment Report" from 2013/2014 (hereinafter: AR5/2013).

AR4/2007

2.12

In this report, the IPCC – in so far as currently still relevant – established that a global temperature rise of 2°C above the pre-industrial level (up to the year 1850) creates the risk of dangerous, irreversible change of climate: [2](#)

“Confidence has increased that a 1 to 2 oC increase in global mean temperature above 1990 levels (about 1.5 to 2.5o C above pre-industrial) poses significant risks to many unique and threatened systems including many biodiversity hotspots.”

****FACTORED IN BIODIVERSITY

2.71.

The “New energy for the climate Work Programme of the Clean and Sustainable Project” (*We rkprogramma Nieuwe energie voor het klimaat van het*

project Schoon en Zuinig) rom 2007, in which the then cabinet formulated its climate policy, contains as a climate objective a 30% reduction for 2020 compared to 1990. According to the report, this means that as of 2020 an annual climate ceiling of 150Mt CO₂-eq. will apply. The

report states the following, among other things:

“Climate change calls for action, as it threatens our security, food supply, water management and biodiversity. In this work programme, the cabinet focuses on ambitious climate targets: a 30% reduction of greenhouse gas emissions in 2020 (compared to 1990) is needed, preferably in a European context (...).

2.12.

In this report, the IPCC – in so far as currently still relevant – established that a global temperature rise of 2°C above the pre-industrial level (up to the year 1850) creates the risk of dangerous, irreversible change of climate: [2](#)

“Confidence has increased that a 1 to 2 oC increase in global mean temperature above 1990 levels (about 1.5 to 2.5o C above pre-industrial) poses significant risks to many unique and threatened systems including many biodiversity hotspots.”

2.71

“Climate change calls for action, as it threatens our security, food supply, water management and biodiversity. In this work programme, the cabinet focuses on ambitious climate targets: a 30% reduction of greenhouse gas emissions in 2020 (compared to 1990) is needed, preferably in a European context (...). The European target is a 20% reduction of greenhouse gas emissions in the absence of a global agreement. In light of the Dutch objective of -30%, there is a chance that this will cause a shortfall in attaining the overall Dutch target. If European decision-making leads to a shortfall in the reduction targets the Netherlands has committed to, the cabinet will review whether it can reach agreement with other countries in similar situations (formulating high national reduction targets). If this fails, a part of the reduction shortfall will have to be covered by the government (...) and the reduction targets of sectors will be reassessed in consultation with the sectors.”

**** WARNED OF IRREVERSIBLE THREAT

2.12.

In this report, the IPCC – in so far as currently still relevant – established that a global temperature rise of 2°C above the pre-industrial level (up to the year 1850) creates the risk of dangerous, irreversible change of climate: [2](#)

“Confidence has increased that a 1 to 2 oC increase in global mean temperature above 1990 levels (about 1.5 to 2.5o C above pre-industrial) poses significant risks to many unique and threatened systems including many biodiversity hotspots.”

3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost

Durban 2011

2.51.

The parties at the climate conference in Durban in 2011 issued several decisions. Decision 1/CP.17 states the following, among other things:

“ *Recognizing* that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires to be urgently addressed by all Parties (...),

2.63

“When the EU decided in 2008 to cut its greenhouse gas emissions, it showed its commitment to tackling the climate change threat and to lead the world in demonstrating how this could be done. The agreed cut of 20% from 1990 levels by 2020, together with a 20% renewables target, was a crucial step for the EU's sustainable development and a clear signal to the rest of the world that the EU was ready to take the action required. The EU will meet its Kyoto Protocol target and has a strong track record in climate action.

2.71

“Climate change calls for action, as it threatens our security, food supply, water management and biodiversity. In this work programme, the cabinet focuses on ambitious climate targets: a 30% reduction of greenhouse gas emissions in 2020 (compared to 1990) is needed, preferably in a European context (...). The European target is a 20% reduction of greenhouse gas emissions in the absence of a global agreement. In light of the Dutch objective of -30%, there is a chance that this will cause a shortfall in attaining the overall Dutch target. If European decision-making leads to a shortfall in the reduction targets the Netherlands has committed to, the cabinet will review whether it can reach agreement with other countries in similar situations (formulating high national reduction targets). If this fails, a part of the reduction shortfall will have to be covered by the government (...) and the reduction targets of sectors will be reassessed in consultation with the sectors.”

In summary, after the amendment, Urgenda's claim involves the court, with immediate effect:

to rule that:

(1) the substantial greenhouse gas emissions in the atmosphere worldwide are warming up the earth, which according to the best scientific insights, will cause dangerous climate change if those emissions are not significantly and swiftly reduced;

(2) the hazardous climate change that is caused by a warming up of the earth of 2°C or more, in any case of about 4 °C, compared to the preindustrial age, which according to the best scientific insights is anticipated with the current emission trends, is threatening large groups of people and human rights;

2.51

“ Recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires to be urgently addressed by all Parties (...),

3.2.

Briefly summarized, Urgenda supports its claims as follows.

The current global greenhouse gas emission levels, particularly the CO₂ level, leads to or

threatens to lead to a global warming of over 2 °C, and thus also to dangerous climate change with severe and even potentially catastrophic consequences.

4.8

In defending the right of not just the current but also the future generations to availability of natural resources and a safe and healthy living environment, it also strives for the interest of a sustainable society. This interest of a sustainable society is also formulated in the legal standard invoked by Urgenda for the protection against activities which, in its view, are not “sustainable” and threaten to lead to serious threats to ecosystems and human societies. In this context, reference can also be made to Article 2 of the UN Climate Change Convention. Relying on Articles 2 and 8 ECHR, Urgenda’s claim is an extension of its objectives formulated in its by-laws. After all, these stipulations are also aimed at protecting the interests Urgenda seeks to defend.

4.14

. In AR4/2007, the IPCC furthermore has stated that a temperature rise of more than 2 °C over the pre-industrial level would cause dangerous and irreversible climate change which would threaten the environment and man. This has resulted in the formulation of the aforementioned 2°C target.

4.32.

From the foregoing it follows that it is currently very probable that within several decades dangerous climate change will occur with irreversible consequences for man and the environment. The State acknowledges that this is a serious problem and that it is also necessary to avert this threat by mitigating greenhouse gas emissions.

4.32.

From the foregoing it follows that it is currently very probable that within several decades dangerous climate change will occur with irreversible consequences for man and the environment. The State acknowledges that this is a serious problem and that it is also necessary to avert this threat by mitigating greenhouse gas emissions.

4.49.

The scope of protection based on various articles of the ECHR regarding environmental issues has been detailed in separate chapters. In the context of this case, the court finds the following principles from the first chapter of part II (“Chapter I: the right to life and environment”) relevant, including the subsequent explanation (the footnotes referring to the rulings of the ECtHR concerned have not been included in the quotation):

“(a) The right to life is protected under Article 2 of the Convention.

This Article does not solely concern deaths resulting directly from the actions of the agents of a State, but also lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction. This means that public authorities have a duty to take steps to guarantee the rights of the Convention even when they are threatened by other (private) persons or activities that are not directly connected with the State.

1. (...) in some situations Article 2 may also impose on public authorities a duty to take steps to guarantee the right to life when it is threatened by persons or activities not directly connected with the State. (...) In the context of the environment, Article 2 has been applied where certain activities endangering the environment are so dangerous that they also endanger human life.

2. It is not possible to give an exhaustive list of examples of situations in which this obligation might arise. It must be stressed however that cases in which issues under Article 2 have arisen are exceptional. So far, the Court has considered environmental issues in four cases brought under Article 2, two of which relate to dangerous activities and two which relate to natural disasters. In theory, Article 2 can apply even though loss of life has not occurred, for example in situations where potentially lethal force is used inappropriately.

**** AFFIRMED PRECAUTIONARY PRINCIPLE

2.38

3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost^{2.53}.

Article 191 of the Treaty on the Functioning of the European Union (TFEU) currently reads as follows:

Article 191

1. Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment;

- protecting human health;

- prudent and rational utilisation of natural resources;

- promoting measures at international level to deal with regional or worldwide environmental

problems, and in particular combating climate change.

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

4.19.

Given the severity of the problem of hazardous climate change, climate scientists have investigated with which degree of probability current human actions have negative or positive effects on future climate change. Moreover, there is scientific uncertainty about the question when, where and to what extent which specific effects will occur, but also about the effectiveness and possible negative side-effects of certain precautionary measures.

4.58.

With the precautionary principle (ii) the UN Climate Change Convention expresses that taking measures cannot be delayed to await full scientific certainty. The signatories should anticipate the prevention or limitation of the causes of climate change or the prevention or limitation of the negative consequences of climate change, regardless of a certain level of scientific uncertainty. In making the consideration that is needed for taking precautionary measures, without having absolute certainty whether or not the actions will have sufficient effects, the Convention states that account can be taken of a cost-benefit ratio: precautionary measures which yield positive results worldwide at as low as possible costs will be taken sooner.

the precautionary principle;

- the prevention principle.

4.61.

With the principle of a high protection level, the EU expresses that its environmental policy has high priority and that it has to be implemented strictly, with account taken of regional differences. The precautionary principle also means that the Community should not postpone taking measures to protect the environment until full scientific certainty has been achieved. In short, the prevention principle means: "prevention is better than cure"; it is better to prevent climate problems (pollution, nuisance, in this case: climate change) than combating the consequences later on.

4.62.

Article 191, paragraph 3 TFEU also means that in determining its environmental policy, the EU takes account of:

- the available scientific and technical information;

4.64.

As has been stated before, the Parties agree that due to the current climate change and the threat of further change with irreversible and serious consequences for man and the environment, the State should take precautionary measures for its citizens. This concerns the extent of the reduction measures the State should take as of 2020.

4.76

Moreover, the State cannot postpone taking precautionary measures based on the sole reason that there is no scientific certainty yet about the precise effect of the measures. However, a cost-benefit ratio is allowed here. Finally, the State will have to base its actions on the principle of “prevention is better than cure”.

4.79.

This argument does not succeed. It is an established fact that climate change is a global problem and therefore requires global accountability. It follows from the UNEP report that based on the reduction commitments made in Cancun, a gap between the desired CO₂ emissions (in order to reach the climate objective) and the actual emissions (14-17 Gt CO₂) will have arisen by 2030. This means that more reduction measures have to be taken on an international level. It compels all countries, including the Netherlands, to implement the reduction measures to the fullest extent as possible. The fact that the amount of the Dutch emissions is small compared to other countries does not affect the obligation to take precautionary measures in view of the State's obligation to exercise care. After all, it has been established that any anthropogenic greenhouse gas emission, no matter how minor, contributes to an increase of CO₂ levels in the atmosphere and therefore to hazardous climate change. Emission reduction therefore concerns both a joint and individual responsibility of the signatories to the UN Climate Change Convention. In view of the fact that the Dutch emission reduction is determined by the State, it may not reject possible liability by stating that its contribution is minor, as also adjudicated *mutatis mutandis*□

in the Potash mines ruling of the Dutch Supreme Court (HR 23 September 1988, NJ 1989, 743). The rules given in that ruling also apply, by analogy, to the obligation to take precautionary measures in order to avert a danger which is also the subject of this case. Therefore, the court arrives at the opinion that the single circumstance that the Dutch emissions only constitute a minor contribution to global emissions does not alter the State's obligation to exercise care towards third parties. Here too, the court takes into account that in view of a fair distribution the Netherlands, like the other Annex I countries, has taken the lead in taking mitigation measures and has therefore committed to a more than proportionate contribution to reduction. Moreover, it is beyond dispute that the Dutch per capita emissions are one of the highest in the world.

**** MENTIONED THE PREVENTION PRINCIPLE

4.61.

With the principle of a high protection level, the EU expresses that its environmental policy has high priority and that it has to be implemented strictly, with account taken of regional differences. The precautionary principle also means that the Community should not postpone taking measures to protect the environment until full scientific certainty has been achieved. In short, the prevention principle means: “prevention is better than cure”; it is better to prevent climate problems (pollution, nuisance, in this case: climate change) than combating the consequences later on.

Comment joan russow

1. Misconstruing the precautionary principle

In all of them they gave their definition of the precautionary approach as the following:

"The Framework outlines guiding principles for precautionary measures and their application in science-based decision making in areas of federal regulatory activity for the protection of health, safety and the environment, as well as the conservation of natural resources. It also addresses the issue of terminology and definition directly in the introduction which states:

The application of “precaution”, “the precautionary principle” or “the precautionary approach” recognizes that the absence of full scientific certainty shall not be used as a reason for postponing decisions where there is a risk of serious or irreversible harm.

I interpret this in the following way: The application of “precaution”, “the precautionary principle” or “the precautionary

approach” recognizes that the absence of full scientific certainty [that it is safe] shall not be used as a reason for postponing decisions where there is a risk of serious or irreversible harm.

[If the emphasis is on science that demonstrates that it is safe; it is easy to ignore evidence that it is unsafe.]

On the Other hand the version in the Convention on Biological Diversity reads

"where there is a threat of significant reduction or loss of biological diversity, lack of full scientific certainty [that it is unsafe] should not be used as a reason for postponing measures to avoid or minimize such a threat"

[If the evidence is on examining science that could indicate that the substance or practice could be harmful government departments would proceed with caution

It should be noted that funding research outside of industry is much more prevalent. and currently there has also been pressure on journals to retract studies that have indicated harm.

**** AFFIRMED THE TRANSBOUNDARY PRINCIPLE

2.36

Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

Reaffirming the principle of sovereignty of States in international cooperation to address climate change,

Determined to protect the climate system for present and future generations, (...)”

BACKGROUND FOR TRANSBOUNDARY PRINCIPLE (JOAN)

Canada has signed and ratified the UN Convention on the Law of the Seas (UNCLOS 1982)

Under Art 194 2 of the Law of the Sea is the obligation

Posted by Joan Russow

Monday, 06 July 2015 14:06 - Last Updated Monday, 02 November 2015 22:56

To take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention. (Art. 194. 2., Law of the Seas, 1982)

And also Canada made a commitment in the universally adopted Rio Declaration to abide by principle 2 related to the transboundary principle:

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction (Rio Declaration, `1992)

This principle places a duty on all states to act to prevent actions on their own states from impacting on other states.

2.37.

**** PREFERRED MITIGATION OVER ADAPTION

2.51.

The parties at the climate conference in Durban in 2011 issued several decisions. Decision 1/CP.17 states the following, among other things:

“ Recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires to be urgently addressed by all Parties (...),

Noting with grave concern 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 having a likely chance of holding the increase in global average temperature below 2°C or 1.5°C above pre-industrial levels, (...)

2.8.

The Intergovernmental Panel on Climate Change (IPCC) is a scientific body established by the United Nations Environment Program (UNEP) and World Meteorological Organization (WMO) in 1988, under the auspices of the UN. The IPCC aims to acquire insight into all aspects of climate change, such as the risks, consequences and options for adaptation and mitigation. Mitigation (reducing the problem) is intended to prevent or limit further climate change. Adaptation (adapting to the consequences) is aimed at attempting to make nature, society and the economy less vulnerable to a changing climate. The IPCC itself does not conduct research nor does it keep climate-related data, but studies and assesses the latest scientific, technical and socio-economic information produced worldwide and publishes reports about it.

2.17.

The IPCC report also states that mitigation is generally better than adaptation: [6](#)

“Over the next 20 years or so, even the most aggressive climate policy can do little to avoid warming already ‘loaded’ into the climate system. The benefits of avoided climate change will only accrue beyond that time. Over longer time frames, beyond the next few decades, mitigation investments have a greater potential to avoid climate change damage and this potential is larger than the adaptation options that can currently be envisaged (medium agreement, medium evidence).”

AR5/2013

The IPCC report also states that mitigation is generally better than adaptation: [6](#)

“Over the next 20 years or so, even the most aggressive climate policy can do little to avoid warming already ‘loaded’ into the climate system. The benefits of avoided climate change will only accrue beyond that time. Over longer time frames, beyond the next few decades, mitigation investments have a greater potential to avoid climate change damage and this potential is larger than the adaptation options that can currently be envisaged (medium agreement, medium evidence).”

AR5/2013

4.14.

In AR4/2007 and AR5/2013, the IPCC has established that a worldwide climate change is taking place and that it is very probable that human actions, particularly the combustion of fossil fuels (oil, gas, coal) and deforestation, are the main causes of the observed global warming since the middle of the nineteenth century. In AR4/2007, the IPCC furthermore has stated that a temperature rise of more than 2 °C over the pre-industrial level would cause dangerous and irreversible climate change which would threaten the environment and man. This has resulted in the formulation of the aforementioned 2°C target. The IPCC has not changed this target in AR5/2013. The signatories to the UN Climate Change Convention, including, as stated previously, the Netherlands and the EU, have explicitly acknowledged these findings during the climate conference of 2010 (Cancun Agreements). The court therefore finds that the 2 °C target has globally been taken as the starting point for the development of climate policies. Incidentally, this comes with a restriction for a number of countries in the Pacific Ocean, such as Tuvalu and Fiji, for which dangerous climate change, with the associated risk of destruction of their entire territories, probably will already occur at a temperature rise of 1.5 °C. The signatories therefore decided in Cancun to “maintain a view on” a 1.5 °C target.

2.18

In 2013-2014, the IPCC published its latest insights into the scope, effects and causes of climate change. In the report concerned (AR5/2013) the IPCC, in accordance with AR4/2007, established that the earth has been warming as a result of the high increase of CO₂ concentrations in the atmosphere since the Industrial Revolution (base year 1850) and that this has been caused by human activity, particularly the combustion of oil, natural gas and coal as well as deforestation: [7](#)

“Warming of the climate system is unequivocal, and since the 1950’s, many of the observed

changes are unprecedented over decades to millenia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, sea level has risen, and the concentrations of greenhouse gases have increased (...)

Each of the last three decades has been successively warmer at the Earth's surface than any preceding decade since 1850 (...). In the Northern Hemisphere, 1983-2012 was likely the warmest 30-year period of the last 1400 years (medium confidence).

The globally averaged combined land and ocean surface temperature data as calculated by a linear trend, show a warming of 0.85 [0.65 to 1.06]°C, over the period 1880 to 2012, when multiple independently produced datasets exist. The total increase between the average of the 1850-1900 period and the 2003-2012 period is 0.78 [0.72 to 0.85]°C, based on the single longest dataset available (...).

Human influence has been detected in warming of the atmosphere and the ocean, in changes in the global water cycle, in reductions in snow and ice, in global mean sea level rise, and in changes in some climate extremes (...). This evidence for human influence has grown since AR4. It is extremely likely that human influence has been the dominant cause of the observed warming since the mid-20th century.”

**** EXAMINED RANGE OF EMISSION LEVELS

4.79

Therefore, the court arrives at the opinion that the single circumstance that the Dutch emissions only constitute a minor contribution to global emissions does not alter the State's obligation to exercise care towards third parties.

Therefore, the court arrives at the opinion that the single circumstance that the Dutch emissions only constitute a minor contribution to global emissions does not alter the State's obligation to exercise care towards third parties.

2.19

Delaying mitigation efforts beyond those in place today through 2030 is estimated to substantially increase the difficulty of the transition to low longer-term emissions levels and narrow the range of options consistent with maintaining temperature change below 2°C relative to pre-industrial levels (high confidence). Cost-effective mitigation scenarios that make it at least *as likely as not* that temperature change will remain below 2°C relative to pre-industrial levels (2100 concentrations between about 450 and 500 ppm CO₂eq) are typically characterized by annual GHG emissions in 2030 of roughly between 30 GtCO₂eq and 50 GtCO₂eq (Figure SPM.5, left panel). Scenarios

with annual GHG emissions above 55 GtCO₂eq in 2030 are characterized by substantially higher rates of emissions reductions from 2030 to 2050 (...); much more rapid scale-up of low-carbon energy over this period (...); a larger reliance on CDR technologies in the long-term (...); and higher transitional and long-term economic impacts (...). Due to these increased mitigation challenges, many models with annual 2030 GHG emissions higher than 55 GtCO₂eq could not produce scenarios reaching atmospheric concentration levels that make it *as likely as not* that temperature change will remain below 2°C relative to pre-industrial levels.”

2.20.

The following has been observed about the scope of the emissions: [9](#)

“Total anthropogenic GHG emissions have continued to increase over 1970 to 2010 with larger absolute decadal increases toward the end of this period (*high confidence*). Despite a growing number of climate change mitigation policies, annual GHG emissions grew on average by 1.0 gigatonne carbon dioxide equivalent (GtCO₂eq) (2.2%) per year from 2000 to 2010 compared to 0.4 GtCO₂eq (1.3%) per year from 1970 to 2000 (...). Total anthropogenic GHG emissions were the highest in human history from 2000 to 2010 and reached 49 (±4.5)

GtCO₂eq/yr in 2010. The global economic crisis 2007/2008 only temporarily reduced emissions.”

****CONSIDERED IMPORTANCE OF PER CAPITA CALCULATION

2.28.

Per capita emissions in the Netherlands in 2010 were 12.78 tons CO₂-eq. and in 2012 11.72 tons CO₂-eq. In China, per capita emissions in 2012 were 9.04 tons CO₂-eq.; in the United States 19.98 tons CO₂-eq.; in Brazil 15.05 tons CO₂-eq.; in India 2.43 tons CO₂-eq. and in Russia 19.58 tons CO₂-eq.

4.79.

It is an established fact that climate change is a global problem and therefore requires global accountability. It follows from the UNEP report that based on the reduction commitments made in Cancun, a gap between the desired CO₂ emissions (in order to reach the climate objective) and the actual emissions (14-17 Gt CO₂) will have arisen by 2030. This means that more reduction measures have to be taken on an international level. It compels all countries, including the Netherlands, to implement the reduction measures to the fullest extent as possible. The fact that the amount of the Dutch emissions is small compared to other countries does not affect the obligation to take precautionary measures in view of the State's obligation to exercise care. After all, it has been established that any anthropogenic greenhouse gas emission, no matter how minor, contributes to an increase of CO₂ levels in the atmosphere and

therefore to hazardous climate change. Emission reduction therefore concerns both a joint and individual responsibility of the signatories to the UN Climate Change Convention. In view of the fact that the Dutch emission reduction is determined by the State, it may not reject possible liability by stating that its contribution is minor, as also adjudicated *mutatis mutandis* in the Potash mines ruling of the Dutch Supreme Court (HR 23 September 1988, NJ 1989, 743). The rules given in that ruling also apply, by analogy, to the obligation to take precautionary measures in order to avert a danger which is also the subject of this case. Therefore, the court arrives at the opinion that the single circumstance that the Dutch emissions only constitute a minor contribution to global emissions does not alter the State's obligation to exercise care towards third parties. Here too, the court takes into account that in view of a fair distribution the Netherlands, like the other Annex I countries, has taken the lead in taking mitigation measures and has therefore committed to a more than proportionate contribution to reduction. Moreover, it is beyond dispute that the Dutch per capita emissions are one of the highest in the world.

3.1.

In summary, after the amendment, Urgenda's claim involves the court, with immediate effect:

to rule that:

(1) the substantial greenhouse gas emissions in the atmosphere worldwide are warming up the earth, which according to the best scientific insights, will cause dangerous climate change if those emissions are not significantly and swiftly reduced;

(2) the hazardous climate change that is caused by a warming up of the earth of 2°C or more, in any case of about 4 °C, compared to the preindustrial age, which according to the best scientific insights is anticipated with the current emission trends, is threatening large groups of people and human rights;

PER CAPITA(3) of all countries which emit a significant number of greenhouse gases in the

atmosphere, per capita emissions in the Netherlands are one of the highest in the world;

3.2.

Briefly summarized, Urgenda supports its claims as follows.

The current global greenhouse gas emission levels, particularly the CO₂ level, leads to or threatens to lead to a global warming of over 2 °C, and thus also to dangerous climate change with severe and even potentially catastrophic consequences. Such an emission level is unlawful towards Urgenda, as this is contrary to the due care exercised in society. Moreover, it constitutes an infringement of, or is contrary to, Articles 2 and 8 of the ECHR, on which both Urgenda and the parties it represents can rely. The greenhouse gas emissions in the Netherlands additionally contribute to the (imminent) hazardous climate change. The Dutch emissions that form part of the global emission levels are excessive, in absolute terms and even more so per capita. This makes the greenhouse gas emissions of the Netherlands unlawful.

2.21.

The IPCC expects that temperatures on earth will have increased by 3.7 to 4.8°C by 2100 and that the 450 ppm level will have been exceeded in 2030 if reduction measures fail to materialise: [10](#)

“Without additional efforts to reduce GHG emissions beyond those in place today, emissions growth is expected to persist driven by growth in global population and economic activities. Baseline scenarios, those without additional mitigation, result in global mean surface temperature increases in 2100 from 3.7°C to 4.8°C compared to pre-industrial levels¹⁰ (median values; the range is 2.5°C to 7.8°C when including climate uncertainty (...)) (*high confidence*). The emission scenarios collected for this assessment represent full radiative forcing including GHGs, tropospheric ozone, aerosols and albedo change. Baseline scenarios (scenarios without explicit additional

2.27.

In 2010, the Dutch share in the global emissions was 0.42%; the Chinese share in that year was 21.97%; the share of the United States was 13.19%; the total share of the European Union (then 27 countries) was 9.5%; the Brazilian share was 5.7%; India's share was 5.44% and Russia's share was 5.11%.

2.28.

Per capita emissions in the Netherlands in 2010 were 12.78 tons CO₂-eq. and in 2012 11.72 tons CO₂-eq. In China, per capita emissions in 2012 were 9.04 tons CO₂-eq.; in the United States 19.98 tons CO₂-eq.; in Brazil 15.05 tons CO₂-eq.; in India 2.43 tons CO₂-eq. and in Russia 19.58 tons CO₂-eq.

UNEP

2.29.

The UNEP, referred to in 2.8, has issued annual reports about the "emissions gap" since 2010. The gap is the difference between the desired emissions level in a certain year and the level of emissions anticipated for that year based on the reduction goals pledged by the countries concerned.

2.30.

The "executive summary" of the Emissions Gap Report 2013 includes the following:

“(…) This report confirms and strengthens the conclusions of the three previous analyses that current pledges and commitments fall short of that goal. It further says that, as emissions of greenhouse gases continue to rise rather than decline, it becomes less and less likely that emissions will be low enough by 2020 to be on a least-cost pathway towards meeting the 2°C target.

As a result, after 2020, the world will have to rely on more difficult, costlier and riskier means of meeting the target – the further from the least-cost level in 2020, the higher these costs and the greater the risks will be.

(…)

2. What emission levels are anticipated for 2020?

Global greenhouse gas emissions in 2020 are estimated at 59 GtCO₂e per year under a business-as-usual scenario. If implemented fully, pledges and commitments would reduce this by 3–7 GtCO₂e per year (…).

3. What is the latest estimate of the emissions gap in 2020?

(…) Least-cost emission pathways consistent with a likely chance of keeping global mean temperature increases below 2°C compared to pre-industrial levels have a median level of 44 GtCO₂e in 2020 (range: 38–47 GtCO₂e). Assuming full implementation of the pledges, the emissions gap thus amounts to between 8–12 GtCO₂e per year in 2020 (…).

6. What are the implications of later action scenarios that still meet the 1.5°C and 2°C targets?

Based on a much larger number of studies than in 2012, this update concludes that so-called later-action scenarios have several implications compared to least cost scenario's, including: (i) much higher rates of global emission reductions in the medium term; (ii) greater lock-in of carbon-intensive infrastructure; (iii) greater dependence of certain technologies in the medium-term; (iv) greater costs of mitigation in the medium- and long term, and greater risks of economic disruption; and (v) greater risks of failing to meet the 2°C target. For these reasons later-action scenarios may not be feasible in practise and, as a result, temperature targets could be missed.

(...) although later-action scenarios might reach the same temperature targets as their least-cost counterparts, later-action scenarios pose greater risks of climate impacts for four reasons. First delaying action allows more greenhouse gases to build-up in the atmosphere in the near term, thereby increasing the risk that later emission reductions will be unable to compensate for this build up. Second, the risk of overshooting climate targets for both atmospheric concentrations of greenhouse gases and global temperature increase is higher with later-action scenarios. Third, the near-term rate of temperature is higher, which implies greater near-term climate impacts. Lastly, when action is delayed, options to achieve stringent levels of climate protection are increasingly lost.”

2.29

Global greenhouse gas emissions in 2020 are estimated at 59 GtCO₂e per year under a business-as-usual scenario. If implemented fully, pledges and commitments would reduce this by 3–7 GtCO₂e per year (...).

3. What is the latest estimate of the emissions gap in 2020?

(...) Least-cost emission pathways consistent with a likely chance of keeping global mean

temperature increases below 2°C compared to pre-industrial levels have a median level of 44 GtCO₂e in 2020 (range: 38–47 GtCO₂e). Assuming full implementation of the pledges, the emissions gap thus amounts to between 8–12 GtCO₂e per year in 2020 (...).

6. What are the implications of later action scenarios that still meet the 1.5°C and 2°C targets?

Based on a much larger number of studies than in 2012, this update concludes that so-called later-action scenarios have several implications compared to least cost scenario's, including: (i) much higher rates of global emission reductions in the medium term; (ii) greater lock-in of carbon-intensive infrastructure; (iii) greater dependence of certain technologies in the medium-term; (iv) greater costs of mitigation in the medium- and long term, and greater risks of economic disruption; and (v) greater risks of failing to meet the 2°C target. For these reasons later-action scenarios may not be feasible in practise and, as a result, temperature targets could be missed.

(...) although later-action scenarios might reach the same temperature targets as their least-cost counterparts, later-action scenarios pose greater risks of climate impacts for four reasons. First delaying action allows more greenhouse gases to build-up in the atmosphere in the near term, thereby increasing the risk that later emission reductions will be unable to compensate for this build up. Second, the risk of overshooting climate targets for both atmospheric concentrations of greenhouse gases and global temperature increase is higher with later-action scenarios. Third, the near-term rate of temperature is higher, which implies greater near-term climate impacts. Lastly, when action is delayed, options to achieve stringent levels of climate protection are increasingly lost.”

2.31.

Chapter 2 of the report contains the following section:

“2.4.5 Pledged reduction effort by Annex I and non-Annex I countries

For Annex I parties, total emissions as a group of countries for the four pledge cases are estimated to be 3–16 percent below 1990 levels in 2020. For non-Annex I parties, total emissions are estimated to be 7–9 percent lower than business-as-usual emissions. This implies that the aggregate Annex I countries' emission goals fall short of reaching the 25–40 percent reduction by 2020, compared with 1990, suggested in the IPCC Fourth Assessment Report (...).”

2.32.

In contrast to previous reports, the Emissions Gap Report 2014 mainly focuses on the “carbon dioxide emissions budget”. The UNEP concludes that in order to be able to maintain the target of a maximum global temperature rise of 2°C above the pre-industrial level (hereinafter: the 2°C target), the CO₂

budget may not exceed 3,670 gigatonne (hereinafter: Gt). According to the UNEP, at the beginning of the nineteenth century this budget totaled about 2,900 Gt CO₂, of which about 1,000 Gt remains. In the report, the UNEP investigated – in short –the best way to spend this budget (and thereby: which reductions are required). Attention was also paid to the question, given the 2°C target, at what point the world needs to be CO₂-neutral (a net result of anthropogenic positive and negative CO₂ emissions of zero). The UNEP has depicted this in the following figure:

**** SUPPORTED PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITY

2.36.

The purpose of the Convention, in brief, is to reduce greenhouse gas emissions and thereby prevent the undesired consequences of climate change. Among other things, Its opening words state the following:

“Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions,

2.38.

Article 3 of the UN Climate Change Convention contains the following principles, among other things:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.

***AFFIRMED THE OBJECTIVE OF THE UNFCCC IPCC

** SUPPORTED THE NORM % BELOW 1990 BY 2020

The harper government does not accept the norm 30% below 2005 by 2030

***ACKNOWLEDGED GAP PERCEIVED BY UNITED NATIONS ENVIRONMENT PROGRAMME The Harper government has contributed to the gap

*** CONFIRMED NO DISPUTE ABOUT SCIENCE

Many of the members of the Harper government still question the science

.*** ACCEPTED THE CREDIBILITY OF IPCC

Often discredits the findings of the IPCC

*** OPPOSED DELAYING OF ACTION

There must be a global target for greenhouse gas emission reductions of at least 30% below 1990 levels by 2015, at least 50% below 1990 levels by 2020, at least 75% below 1990 levels by 2030, at least 85% below 1990 levels by 2040 and 100% below 1990 emissions by 2050

The harper government postpones target to 2030

***REFERRED TO RANGE TARGET 1.

Harper government cried foul when the African Caucus declared that if there were a global rise of 2 degrees that there would be a holocaust in Africa

***ACKNOWLEDGED SEVERITY AND URGENCY

The harper government minimizes the severity and urgency

***FACTORED IN BIODIVERSITY

***WARNED OF IRREVERSIBLE THREAT

The Harper government does not perceive climate change to be an irreversible threat

***AFFIRMED PRECAUTIONARY PRINCIPLE

At Rio = 20 the Harper government deleted reference to the precautionary principle

***MENTIONED THE PREVENTION PRINCIPLE.

***AFFIRMED THE TRANSBOUNDARY PRINCIPLE

*** PREFERRED MITIGATION OVER ADAPTION

*** EXAMINED RANGE OF EMISSION LEVELS

***** CONSIDERED IMPORTANCE OF PER CAPITA CALCULATION

The harper government dismisses the high per capita contribution

To fossil fuels

*** SUPPORTED PRINCIPLE OF COMMON BUT DIFFERENTIATED RESPONSIBILITY

At Rio +20 the Harper deleted reference to this principle

***EXAMINED CLIMATE CHANGE AND THE DEVELOPMENT OF LEGAL AND POLICY FRAMEWORKS

At numerous COPs, the Harper government has obstructed strong legal obligations

*** AFFIRMED THE PRINCIPLE OF RIGHTS OF FUTURE GENERATIONS

***APPLIED RIGHT TO LIFE AND DUTY

***ENDORSED THE PRINCIPLE OF FAIRNESS

D. EXAMINED CLIMATE CHANGE AND THE DEVELOPMENT OF LEGAL AND POLICY FRAMEWORKS

2.34.

In light of climate change, agreements have been made and instruments have been developed in an international and European context in order to counter the problems of climate change, which have impacted the national legal and policy frameworks.

In a UN context

UN Framework Convention on Climate Change 1992

2.35.

In 1992, the UN Framework Convention on Climate Change (hereinafter: the UN Climate Change Convention) was agreed and signed under the responsibility of the UN. The UN Climate Change Convention entered into effect on 21 March 1994. Currently, 195 Member States have ratified the convention, including the Netherlands and (the predecessor of) the European Union (both in 1993).

2.36.

The purpose of the Convention, in brief, is to reduce greenhouse gas emissions and thereby prevent the undesired consequences of climate change. Among other things, its opening words state the following:

“Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions,

Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

Reaffirming the principle of sovereignty of States in international cooperation to address

climate change,

Determined to protect the climate system for present and future generations, (...)”

2.37.

Article 2 of the UN Climate Change Convention describes the objective as follows:

The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

2.38.

Article 3 of the UN Climate Change Convention contains the following principles, among other things:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.

(...)

3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.

4. The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.

2.39.

The signatories to the UN Climate Change Convention constitute two groups of countries: (1) the developed countries, as listed in Annex I to the Convention, also referred to as “Annex I countries”, and (2) the developing countries, or “non-Annex I countries”, being all other countries which have ratified the UN Climate Change Convention. The Netherlands is an Annex I country. Article 4, paragraph 2 of the UN Climate Change Convention stipulates the following in particular regarding the Annex I countries:

The developed country Parties and other Parties included in Annex I commit themselves specifically as provided for in the following:

(a) Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these

Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph;

(b) In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in subparagraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in subparagraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7; (...)

2.40.

The article thus means that the Annex I countries, separately or jointly, have assumed the obligation to have reduced the growth of their greenhouse gas emissions to the level of 1990 by the year 2000. All Member States are furthermore obliged to annually report their emissions to the UN Climate Change Convention secretariat. The obligations of all other Parties to the Convention (the “non-Annex I countries”) are less far-reaching and they do not have to introduce emission reductions.

2.41.

2.41.

Several countries of the group of Annex I countries, including the Netherlands, have furthermore committed to rendering financial assistance to the non-Annex I countries, in accordance with the UN Climate Change Conventions.

2.43.

In the Protocol, the signatories set as their objective for the period 2008-2012 to reduce the mean annual greenhouse gas emissions in developed countries by 5.2% compared to 1990 (Article 3, paragraph 1 of and Appendix B to the Kyoto Protocol). The reduction percentages differ per country. A reduction target of 8% (Appendix B) was set for the European Union for the same period. The EU proceeded to determine the emission reductions per Member State, after consulting the Member States. An emission reduction of 6% was agreed for the Netherlands.

2.44.

Several countries, including the United States and China, did not ratify the Protocol and Canada withdrew from the Protocol in 2011. Before Canada's withdrawal, the Protocol covered 14% of global emissions.

2.45.

On 8 December 2012, an Amendment to the Kyoto Protocol was adopted in Doha (Qatar). In the Amendment, various countries and the European Union as a whole as well as its individual Member States agreed on a CO₂ emission reduction target for the period 2013-2020. The European Union committed to a 20% reduction target as of 2020, compared to 1990. The European Union offered to commit to a 30% reduction target, on the condition that both the developed and the more advanced developing countries commit to similar emission targets. This condition has not materialised thus far nor has the Doha Amendment entered into force yet.

2.46.

Japan, the Russian Federation and New Zealand did not commit to a particular reduction target for this second period. Therefore, the Kyoto Protocol regulates the CO2 emissions of 37 developed countries, namely the (then) 27 individual EU Member States, Australia, Iceland, Croatia, Liechtenstein, Monaco, Norway, Ukraine, Kazakhstan, Switzerland and Belarus, as well as the EU as an independent organisation.

2.49.

At the climate conference in Cancun in 2010, the parties involved issued various decisions, including The Cancun Agreements (Decision 1/CP.16), which contains the following sections, among others:

“Recalling its decision 1/CP.13 (the Bali Action Plan) and decision 1/CP.15 (...),

Noting resolution 10/4 of the United Nations Human Rights Council on human rights and climate change, which recognizes that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability (...),

4. Further recognizes that deep cuts in global greenhouse gas emissions are required according to science, and as documented in the Fourth Assessment Report of the Inter-

governmental Panel on Climate Change, with a view to reducing global greenhouse gas emissions so as to hold the increase in global average temperature below 2°C above pre-industrial levels, and that Parties should take urgent action to meet this long-term goal, consistent with science and on the basis of equity; also recognizes the need to consider, in the context of the first review, as referred to in paragraph 138 below, strengthening the long-term global goal on the basis of the best available scientific knowledge, including in relation to a global average temperature rise of 1.5°C; (...)"

2.50.

At the Cancun climate conference in 2010, the Annex I countries also took the decision which contains the following section, among others: [11](#)

"Decision 1/CMP.6 The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol at its fifteenth session

(...)

Recognizing that Parties included in Annex I (Annex I Parties) should continue to take the lead in combating climate change,

Also recognizing that the contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Climate Change 2007: Mitigation of Climate Change, indicates that achieving the lowest levels assessed by the Intergovernmental Panel on Climate Change to date and its corresponding potential damage limitation would require Annex I Parties as a group to reduce emissions in a range of 25–40 per cent below 1990 levels by 2020, through means that may be available to these Parties to reach their emission reduction targets, (...)

4. Urges Annex I Parties to raise the level of ambition of the emission reductions to be achieved by them individually or jointly, with a view to reducing their aggregate level of

emissions of greenhouse gases in accordance with the range indicated by Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Climate Change 2007: Mitigation of Climate Change, and taking into account the quantitative implications of the use of land use, land-use change and forestry activities, emissions trading and project-based mechanisms and the carry-over of units from the first to the second commitment period; (...)"

Durban 2011

2.51.

The parties at the climate conference in Durban in 2011 issued several decisions. Decision 1/CP.17 states the following, among other things:

"Recognizing that climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires to be urgently addressed by all Parties (...),

Noting with grave concern 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 having a likely chance of holding the increase in global average temperature below 2°C or 1.5°C above pre-industrial levels, (...)"

2.52.

At the Durban conference, the Parties also agreed that a new legally binding climate change convention or protocol must be concluded no later than 2015 and must be implemented by 2020. The climate conference which will be held in Paris in December 2015 is a follow-up to this agreement.

In a European context

2.53.

Article 191 of the Treaty on the Functioning of the European Union (TFEU) currently reads as follows:

Article 191

1. Union policy on the environment shall contribute to pursuit of the following objectives:

– preserving, protecting and improving the quality of the environment;

– protecting human health;

– prudent and rational utilisation of natural resources;

– promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional

measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

3. In preparing its policy on the environment, the Union shall take account of:

- available scientific and technical data,

- environmental conditions in the various regions of the Union,

- the potential benefits and costs of action or lack of action,

- the economic and social development of the Union as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

2.54.

Under Article 192 TFEU, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure (meaning on the proposal of the Commission) and after consulting the European Economic and Social Committee (EESC) and the Committee of the Regions, generally decide what action is to be taken by the Union in order to achieve the

objectives referred to in Article 191 (apart from exception formulated the paragraph 2).

2.55.

Article 193 TFEU currently reads as follows:

Article 193

The protective measures adopted pursuant to Article 192 shall not prevent any Member State from

maintaining or introducing more stringent protective measures. Such measures must be compatible

with the Treaties. They shall be notified to the Commission.

2.56.

Partly as a follow-up to the Kyoto Protocol, the EU formulated its environmental objectives and priorities in Decision no 1600/2002/EC of the European Parliament and of the Council laying down the Sixth Community Environment Action Programme as follows:

“Article 2 *Principles and overall aims* (...)

2. The Programme aims at:

— emphasising climate change as an outstanding challenge of the next 10 years and beyond and contributing to the long term objective of stabilising greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Thus a

long term objective of a maximum global temperature increase of 2 °Celsius over pre-industrial levels and a CO₂ concentration below 550 ppm shall guide the Programme. In the longer term this is likely to require a global reduction in emissions of greenhouse gases by 70% as compared to 1990 as identified by the Intergovernmental Panel on Climate Change (IPCC); (...)”

2.57.

The European Union subsequently converted its objectives in European regulations, including by introducing a large number of directives, among them Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, which introduced the European Union Emission Trading System (ETS). This system only applies to major energy-intensive businesses, such as major electricity generation plants and refineries (hereinafter also referred to as: the ETS businesses). Non-ETS sectors, including transport, agriculture, housing and small companies, do not fall under the scope of the ETS.

2.58.

The preamble to Directive 2009/29/EC amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community states the following:

“(6) In order to enhance the certainty and predictability of the Community scheme, provisions should be specified to increase the level of contribution of the Community scheme to achieving an overall reduction of more than 20%, in particular in view of the European Council’s objective of a 30% reduction by 2020 which is considered scientifically necessary to avoid dangerous climate change (...).

(13) The Community-wide quantity of allowances should decrease in a linear manner calculated from the mid-point of the period from 2008 to 2012, ensuring that the emissions trading system delivers gradual and predictable reductions of emissions over time. The annual decrease of allowances should be equal to 1.74% of the allowances issued by Member States pursuant to Commission Decisions on Member States' national allocation plans for the period from 2008 to 2012, so that the Community scheme contributes cost-effectively to achieving the commitment of the Community to an overall reduction in emissions of at least 20% by 2020.

(14) This contribution is equivalent to a reduction of emissions in 2020 in the Community scheme of 21% below reported 2005 levels, (...)."

2.59.

Articles 1 and 9 of the ETS Directive read as follows – following amendment:

Article 1 *Subject matter*

This Directive establishes a scheme for greenhouse gas emission allowance trading within the Community (hereinafter referred to as the 'Community scheme') in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner.

This Directive also provides for the reductions of greenhouse gas emissions to be increased so as to contribute to the levels of reductions that are considered scientifically necessary to avoid dangerous climate change.

This Directive also lays down provisions for assessing and implementing a stricter Community reduction commitment exceeding 20%, to be applied upon the approval by the Community of an international agreement on climate change leading to greenhouse gas emission reductions exceeding those required in Article 9, as reflected in the 30% commitment endorsed by the

European Council of March 2007.

Article 9 Community-wide quantity of allowances

The Community-wide quantity of allowances issued each year starting in 2013 shall decrease in a linear manner beginning from the mid-point of the period from 2008 to 2012. The quantity shall decrease by a linear factor of 1.74% compared to the average annual total quantity of allowances issued by Member States in accordance with the Commission Decisions on their national allocation plans for the period from 2008 to 2012.

The Commission shall, by 30 June 2010, publish the absolute Community-wide quantity of allowances for 2013, based on the total quantities of allowances issued or to be issued by the Member States in accordance with the Commission Decisions on their national allocation plans for the period from 2008 to 2012.

The Commission shall review the linear factor and submit a proposal, where appropriate, to the European Parliament and to the Council as from 2020, with a view to the adoption of a decision by 2025.”

2.60.

The Communication of the European Commission to the European Parliament, the Council, the EESC and the CoR of 10 January 2007, entitled “Limiting Global Climate Change to 2 degrees Celsius. The way ahead for 2020 and beyond”, states the following, among other things: [12](#)

2.60

“2. THE CLIMATE CHALLENGE: REACHING THE 2°C OBJECTIVE

Strong scientific evidence shows that urgent action to tackle climate change is imperative. Recent studies, such as the Stern review, reaffirm the enormous costs of failure to act. These costs are economic, but also social and environmental and will especially fall on the poor, in both developing and developed countries. A failure to act will have serious local and global security implications. Most solutions are readily available, but governments must now adopt policies to implement them. Not only is the economic cost of doing so manageable, tackling climate change also brings considerable benefits in other respects. The EU's objective is to limit global average temperature increase to less than 2 °C compared to pre-industrial levels. This will limit the impacts of climate change and the likelihood of massive and irreversible disruptions of the global ecosystem. The Council has noted that this will require atmospheric concentrations of GHG to remain well below 550 ppmv CO₂-eq. By stabilising long-term concentrations at around 450 ppmv CO₂-eq. there is a 50% chance of doing so. This will require global GHG emissions to peak before 2025 and then fall by up to 50% by 2050 compared to 1990 levels. The Council has agreed that developed countries will have to continue to take the lead to reduce their emissions between 15 to 30% by 2020. The European Parliament has proposed an EU CO₂ reduction target of 30% for 2020 and 60 to 80% for 2050.”

2.62

2020 as part of the Community's efforts to contribute to this global emissions reduction goal. Developed countries, including the EU Member States, should continue to take the lead by committing to collectively reducing their emissions of greenhouse gases in the order of 30% by 2020 compared to 1990. They should do so also with a view to collectively reducing their greenhouse gas emissions by 60 to 80% by 2050 compared to 1990. (...)

(3) Furthermore, in order to meet this objective, the European Council of March 2007 endorsed a Community objective of a 30% reduction of greenhouse gas emissions by 2020 compared to 1990 as its contribution to a global and comprehensive agreement for the period after 2012, provided that other developed countries commit themselves to comparable emission reductions and economically more advanced developing countries commit themselves to contributing adequately according to their responsibilities and capabilities.

2.63

“When the EU decided in 2008 to cut its greenhouse gas emissions, it showed its commitment to tackling the climate change threat and to lead the world in demonstrating how this could be done. The agreed cut of 20% from 1990 levels by 2020, together with a 20% renewables target, was a crucial step for the EU's sustainable development and a clear signal to the rest of the world that the EU was ready to take the action required. The EU will meet its Kyoto Protocol target and has a strong track record in climate action.

But it has always been clear that action by the EU alone will not be enough to combat climate change and also that a 20% cut by the EU is not the end of the story. EU action alone is not enough to deliver the goal of keeping global temperature increase below 2°C compared to pre-industrial levels. All countries will need to make an additional effort, including cuts of 80-95% by 2050 by developed countries. An EU target of 20% by 2020 is just a first step to put emissions onto this path.

That was why the EU matched its 20% unilateral commitment with a commitment to move to 30%, as part of a genuine global effort. This remains EU policy today.

Since the EU policy was agreed, circumstances have been changing rapidly. We have seen an economic crisis of unprecedented scale. It has put huge pressure onto businesses and communities across Europe, as well as causing huge stress on public finances. But at the same time, it has confirmed that there are huge opportunities for Europe in building a resource-efficient society.

We have also had the Copenhagen summit. Despite the disappointment of failing to achieve the goal of a full, binding international agreement to tackle climate change, the most positive result was that countries accounting for some 80% of emissions today made pledges to cut

emissions, even though these will be insufficient to meet the 2°C target. It will remain essential to integrate the Copenhagen Accord in on-going UNFCCC negotiations (United Nations Framework Convention on Climate Change). But the need for action remains as valid as ever.

2.64

2. MILESTONES TO 2050

The transition towards a competitive low carbon economy means that the EU should prepare for reductions in its domestic emissions by 80% by 2050 compared to 1990. The Commission has carried out an extensive modelling analysis with several possible scenarios showing how this could be done, (...).

This analysis of different scenarios shows that domestic emission reductions of the order of 40% and 60% below 1990 levels would be the cost-effective pathway by 2030 and 2040, respectively. In this context, it also shows reductions of 25% in 2020. (...). Such a pathway would result in annual reductions compared to 1990 of roughly 1% in the first decade until 2020, 1.5% in the second decade from 2020 until 2030, and 2% in the last two decades until 2050. The effort would become greater over time as a wider set of cost-effective technologies becomes available. (...)

Emissions, including international aviation, were estimated to be 16% below 1990 levels in 2009. With full implementation of current policies, the EU is on track to achieve a 20% domestic reduction in 2020 below 1990 levels, and 30% in 2030. However, with current policies, only half of the 20% energy efficiency target would be met by 2020.

6. CONCLUSIONS

(...) In order to be in line with the 80 to 95% overall GHG reduction objective by 2050, the Roadmap indicates that a cost effective and gradual transition would require a 40% domestic reduction of greenhouse gas emissions compared to 1990 as a milestone for 2030, and 80% for 2050. (...)

(...) This Communication does not suggest to set new 2020 targets, nor does it affect the EU's offer in the international negotiations to take on a 30% reduction target for 2020, if the conditions are right. This discussion continues based on the Commission Communication from 26 May 2010.”

2.65.

On 15 March 2012, the European Parliament adopted a resolution on the Roadmap referred to in 2.64, in which the Roadmap as well as the path and specific milestones for the reduction of the Community's domestic emissions of 40%, 60% and 80% for 2030, 2040 and 2050, respectively, were endorsed

“1. EXECUTIVE SUMMARY

According to the latest findings of the Intergovernmental Panel on Climate Change (IPCC), without urgent action, climate change will bring severe, pervasive and irreversible impacts on all the world's people and ecosystems. Limiting dangerous rises in global average temperature to below 2 °C compared with pre-industrial levels (the below 2 °C objective) will require substantial and sustained reductions in greenhouse gas emissions by all countries.

This global transition to low emissions can be achieved without compromising growth and jobs, and can provide significant opportunities to revitalise economies in Europe and globally. Action to tackle climate change also brings significant benefits in terms of public well-being. Delaying this transition will, however, raise overall costs and narrow the options for effectively reducing emissions and preparing for the impacts of climate change.

All countries need to act urgently and collectively. Since 1994, the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) have focused on this challenge, resulting in more than 90 countries, both developed and developing, pledging to curb their emissions by 2020. However, these pledges are insufficient to achieve the below 2°C objective. For these reasons, in 2012, the UNFCCC Parties launched negotiations towards a new legally binding agreement applicable to all Parties that will put the world on track to achieve the below 2°C objective. The 2015 Agreement is to be finalised in Paris in December 2015 and implemented from 2020. (...)

Well ahead of the Lima conference, the EU continued to show leadership and determination to tackle climate change globally. At the European Summit in October 2014, European leaders agreed that the EU should step up its efforts and domestically reduce its emissions by at least 40% compared to 1990 by 2030. This was followed by announcements of China and the US. In Lima, EU Member States pledged about half of the initial capitalisation of US\$10 billion to the Green Climate Fund (GCF) to assist developing countries. MORE INCLUDE MILITARY Within the EU, a new investment plan was adopted. This will unlock public and private investments in the real economy of at least €315 billion over the next three years (2015-17). These investments will help modernise and further decarbonise the EU's economy.

This communication responds to the decisions taken in Lima, and is a key element in implementing the Commission's priority of building a resilient Energy Union with a forward-looking climate change policy consistent with the President of the Commission's political guidelines. This communication prepares the EU for the last round of negotiations before the Paris conference in December 2015.”

In a national context

**** AFFIRMED THE PRINCIPLE OF RIGHTS OF FUTURE GENERATIONS

As mentioned briefly above, Urgenda accuses the State of several things, such as the State acting unlawfully by, contrary to its constitutional obligation (Article 21 of the Dutch Constitution), mitigating insufficiently as defined further in international agreements and in line with current scientific knowledge. In doing so, the State is damaging the interests it pursues, namely: to prevent the Netherlands from causing (more than proportionate) damage, from its territory, to current and future generations in the Netherlands and abroad. Furthermore, Urgenda argues that under Articles 2 and 8 of the ECHR, the State has the positive obligation to take protective measures. Urgenda also claims that the State is acting unlawfully because, as a consequence of insufficient mitigation, it (more than proportionately) endangers the living climate (and thereby also the health) of man and the environment, thereby breaching its duty of care. Urgenda asserts that in doing so the State is acting unlawfully towards Urgenda in the sense of Book 6, Section 162 of the Dutch Civil Code, whether or not in combination with Book 5, Section 37 of the Dutch Civil Code. The State contests that a duty of care arises from these sections for a further limitation of emissions than currently realised by it. The court finds as follows

4.57.

The principle of fairness (i) means that the policy should not only start from what is most beneficial to the current generation at this moment, but also what this means for future generations, so that future generations are not exclusively and disproportionately burdened with the consequences of climate change. The principle of fairness also expresses that industrialised countries have to take the lead in combating climate change and its negative impact. The justification for this, and this is also noted in literature, lies first and foremost in the fact that from a historical perspective the current industrialised countries are the main causers of the current high greenhouse gas concentration in the atmosphere and that these countries also benefited from the use of fossil fuels, in the form of economic growth and prosperity. Their prosperity also means that these countries have the most means available to take measures to combat climate change. [26](#)

4.76.

The State's options are limited further by the private-law principles applicable to the State and mentioned above. After all, these principles were developed in response to the special risk of climate change and therefore limit the State's options. This also applies, for instance, to the circumstance that Annex I countries, including the Netherlands, have taken the lead in taking

mitigation measures and have therefore committed to a more than proportional contribution to reduction, in view of a fair distribution between industrialised and developing countries. Due to this principle of fairness, the State, in choosing measures, will also have to take account of the fact that the costs are to be distributed reasonably between the current and future generations. If according to the current insights it turns out to be cheaper on balance to act now, the State has a serious obligation, arising from due care, towards future generations to act accordingly. Moreover, the State cannot postpone taking precautionary measures based on the sole reason that there is no scientific certainty yet about the precise effect of the measures. However, a cost-benefit ratio is allowed here. Finally, the State will have to base its actions on the principle of “prevention is better than cure”.

“Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

Reaffirming the principle of sovereignty of States in international cooperation to address climate change,

Determined to protect the climate system for present and future generations, (...)”

2.37.

**** REFERENCED THE RESOLUTION 10/4 OF UN HUMAN RIGHTS COUNCIL

2.49.

At the climate conference in Cancun in 2010, the parties involved issued various decisions, including The Cancun Agreements (Decision 1/CP.16), which contains the following sections, among others:

“Recalling its decision 1/CP.13 (the Bali Action Plan) and decision 1/CP.15 (...),

Noting resolution 10/4 of the United Nations Human Rights Council on human rights and climate change, which recognizes that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability (...),

Noting resolution 10/4 of the United Nations Human Rights Council on human rights and climate change, which recognizes that the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights and that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to geography, gender, age, indigenous or minority status, or disability (...),

**** APPLIED RIGHT TO LIFE AND DUTY

4.49.

The scope of protection based on various articles of the ECHR regarding environmental issues has been detailed in separate chapters. In the context of this case, the court finds the following principles from the first chapter of part II (“Chapter I: the right to life and environment”) relevant, including the subsequent explanation (the footnotes referring to the rulings of the ECtHR concerned have not been included in the quotation):

“(a) The right to life is protected under Article 2 of the Convention.

This Article does not solely concern deaths resulting directly from the actions of the agents of a State, but also lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction. This means that public authorities have a duty to take steps to guarantee the rights of the Convention even when they are threatened by other (private) persons or activities that are not directly connected with the State.

1. (...) in some situations Article 2 may also impose on public authorities a duty to take steps to guarantee the right to life when it is threatened by persons or activities not directly connected with the State. (...) In the context of the environment, Article 2 has been applied where certain activities endangering the environment are so dangerous that they also endanger human life.

2. It is not possible to give an exhaustive list of examples of situations in which this obligation might arise. It must be stressed however that cases in which issues under Article 2 have arisen are exceptional. So far, the Court has considered environmental issues in four cases brought under Article 2, two of which relate to dangerous activities and two which relate to natural disasters. In theory, Article 2 can apply even though loss of life has not occurred, for example in situations where potentially lethal force is used inappropriately.

****ENDORSED THE PRINCIPLE OF FAIRNESS

The principle of fairness (i) means that the policy should not only start from what is most beneficial to the current generation at this moment, but also what this means for future generations, so that future generations are not exclusively and disproportionately burdened with the consequences of climate change. The principle of fairness also expresses that industrialised countries have to take the lead in combating climate change and its negative impact. The justification for this, and this is also noted in literature, lies first and foremost in the fact that from a historical perspective the current industrialised countries are the main causers of the current high greenhouse gas concentration in the atmosphere and that these countries also benefited from the use of fossil fuels, in the form of economic growth and prosperity. Their prosperity also means that these countries have the most means available to take measures to combat climate change. [26](#)