

# Global Warming is 'hot', yet not hot enough

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The climate on earth is determined mainly by the warmth of the sun. Natural gases, especially CO<sub>2</sub>, form a kind of blanket, which prevents a large part of this warmth received from flowing back into space. More greenhouse gases in the atmosphere cause an increase to the temperature on earth. In anticipation of the climate summit in Glasgow in November, the Intergovernmental Panel on Climate Change (IPCC) issued the report 'Climate Change in 2021; The Physical Science Basis'. This report confirms that it is now certain that mankind, by the combustion of fossil fuels, agriculture, livestock farming and land use, and the accompanying emission of greenhouse gases, has caused the earth to warm ever faster since the industrial revolution.

The IPCC is not 'just another opinion'. It was founded in 1988 by the United Nations. The IPCC does not do research itself. Around the world, it collects all peer-reviewed scientific articles about climate change and analyses them. Then, the IPCC records the conclusions that can be drawn in its reports intended to help policymakers create climate policies, of which there are now six. 195 countries, including the Netherlands and the United States, are a member of the IPC. The texts of the IPCC reports are debated by these countries, which eventually results in a consensus document. In this process of negotiation, extreme interpretations are filtered out.

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## DISASTROUS CONSEQUENCES FOR HUMANS, ANIMALS AND ECOSYSTEMS

Since 1900, the temperature on earth has increased by approximately 1.1 degree. In the worst-case scenarios, this may have become a five degrees increase at the end of this century. In climate science, it is common opinion that a rise in temperature of more than two degrees, calculated from the start of the industrial revolution, will have disastrous consequences for humans, animals and the ecosystems on earth. According to recent understandings, even a temperature rise of more than one and a half degree will have such disastrous consequences.

By the end of this century, if greenhouse gas emissions remain equal, the sea level could have risen 32 to 101 centimetres or more. In more extreme scenarios, this may go up to 12 to 55 metres in the distant future. Back in 2012, the European Environment Agency already described an ever-growing risk of flooding in North-West Europe, and mentioned the Netherlands in particular. Other gloomy predictions from the IPCC reports of the past twenty years concern, for example, the increase of extreme weather (heat, drought and extreme rainfall). The overwhelming forest fires, extreme heat of above fifty degrees Celsius in West Canada, and the floods of the river Meuse with the highest drainage levels ever measured in the summer of 2021 seem to illustrate this. In the meantime, according to the IPCC, the current climate change is affecting all regions inhabited by humans.



### NO MATTER OF 'IF', BUT OF 'WHEN'

Since its first report was published in 1990, the IPCC has become ever more adamant about the disasters that will hit and are already hitting the world if policies are not changed. When we talk about CO2 emissions and global warming, what matters is how much is emitted on a worldwide scale. This is the sum or total of emissions throughout the years (referred to as 'carbon budget'). CO2 remains in the air for hundreds of years. This makes the problem even more urgent. Even if the whole world would stop emitting anything tomorrow, global warming would still continue for a long time.

Time and again, I find it strange to experience that although many people now accept that man-made global warming exists, they also say that the consequences will probably not be so bad. I suspect that this is only a gut feeling. Besides, it is hard for people to make the right choices at present. Now is the time to pay the price for good choices that will bring potential long-term gains. Psychologists will confirm that people are not inclined to pay this price in the short term. Given the disaster scenarios that serious science predicts with ever greater certainty, I believe that the only conclusion possible is that the CO2 flow should be contained and reduced to nil as soon as we can. What we are doing now seems like walking into a dark tunnel, although 99% of scientists say that this tunnel will cause you serious injuries. Every person in his right mind would decide against entering this tunnel. I also believe that we owe it to our children not to burden them with untenable future situations.

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### ALMOST THE DIRTIEST LITTLE BOY IN EUROPE

Of course, science can only tell us how things are, but not what must be done. It can tell us the facts, but not which consequences we should draw from them. As far as policy choices and regulations are concerned, this is up to politicians. The problem is that politicians, who usually have a short-term focus on things like the economy and COVID, have been failing collectively in this field for a long time already. On an international level, many solemn and non-binding promises are made, but these are not sufficiently converted into national policy. I was therefore not surprised by the judgment of the Dutch Supreme Court at the end of 2019, ordering the Dutch State to ensure, through policies, that CO2 emissions will be reduced faster. In its judgment, the Supreme Court noted that in the international arena, the State had insisted on this great global necessity more than once. Therefore, the State cannot get away with saying that Dutch emissions do not make much difference to global warming. This has always struck me as an argument from a children’s playground: if someone else does something wrong, I can do something wrong too. In the case law on asbestos and the ‘Kalimijnen’ ruling (the Potash Mines ruling), the Dutch Supreme Court already refused to accept this defence. If every nation would use this defence, nothing would get done anymore. Incidentally, the Netherlands, as a small country, emits approximately 0.46% of the worldwide CO2. Only 33 out of the 208 countries are emitting more. And there are only nine countries with a higher per capita emission; India and China, for example, are not among these. How a small country can be big...

I also have never been a fan of the State’s argument, which was dismissed by the Court, that it is up to the politicians to decide how soon emissions should be reduced. As correct as this principle may be, the problem is precisely that politicians are manifestly failing in this. The inconsistency of politicians makes it even worse: they pay lip service to international standards, but fail to meet these standards in their own country. Otherwise, it is up to the courts to assess whether the policies conducted by politicians respect human rights, or whether these policies create hazardous negligence. I wish to add here that I am not impressed by the efforts made by the Netherlands so far. When it comes to CO2, we are still almost the dirtiest child in Europe, if not the dirtiest. Countries like Germany and Great Britain, for example, are performing much better.

### DOES POWER COME WITH RESPONSIBILITY?

In the meantime, on 26 May 2021 the Court of The Hague ordered Shell, one of the world's major CO2 emitters – larger than the Netherlands, even – to reduce its emissions by net 45% at the end of 2030, compared to 2019. This concerns an obligation to achieve a result in respect of Shell's own emission, and a serious best efforts obligation for Shell to induce its business relations, including its end users, to reduce their emissions. Opinions may differ on this ruling, against which Shell has appealed. On the one hand, one could argue that power comes with responsibility and that a multinational company like Shell, as long as it complies with local rules, would in fact become untouchable if the courts would not be allowed to give such a ruling. It could also be said that Shell does not deserve much pity; already in 1986 Shell published an internal report that left little to the imagination – 'The Greenhouse Effect' – but failed to take any substantial action afterwards. But of course, one could also be of the opinion that the Court, with its ruling against Shell, has wrongly assumed the position of a government and has treated Shell unfairly compared to its competitors who are not bound by this ruling, and that Shell will never be able to fulfil the obligation imposed on it, at least not with regard to its end users.

In any case, it is certain that thousands of climate-related lawsuits against governments and businesses are currently underway around the world. The German Constitutional Court, for example, ruled on 29 April 2021 that the German government had to improve the newly adopted German Climate Act, whilst observing that climate change is a 'catastrophic or even apocalyptic threat to society'. It also does not seem impossible that a Peruvian farmer will successfully bring the German energy giant RWE – a large CO2 emitter – before a German court to claim compensation on a pro rata part for the costs he has to incur in order to prevent flooding in his home town Huaraz. Growing scientific certainty about the consequences of climate change, and occurrences of large damage, will strengthen the call for damages to be awarded by the courts, increasing the temptation for the courts to become less reticent on this point. Bear in mind that the cases that are won, are won because of the overwhelming evidence of imminent disasters.

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### IMPACT ON THE INSURANCE SECTOR

All the above should prompt insurers to seriously consider what current and future global warming means for their insured risks, such as storm and flooding. Which damage do they wish or not wish to cover? The climate responsibilities of insurers and other financial institutions do, however, reach much further than pondering the question what the impact of climate change will be for their insured or for insurable risks. Apart from the innovation that will be demanded of insurers in this context – as new risks will require new insurance solutions under the social mission of insurers – insurers will also have to start practising more transparency vis-à-vis their clients and the wider community. And I suppose that the insurers themselves will also want to become more transparent about 'non-financial' or 'ESG' matters: the Environmental, Social and Governance aspects of their own business operations. We are not just talking about anti-corruption matters here, but also about human rights and the impact of their business operations on the environment. As far as insurers are active as investors, they will want to consider more carefully whether the economic activities in which they invest are sufficiently sustainable. They will want to enable their business partners in the distribution chain, such as insurance brokers and their clients, to give policyholders sustainable choices – or to make such choices personally. In the years to come, these expectations will also be underlined on a legal and regulatory level through European and international rules.

As early as 1990, Swiss Re already stated that climate change will shake the insurance sector to the core. It is high time to do everything we can to prevent this shaking as much as possible.