From blabla to concrete obligations: The Oslo Principles and the Principles on Climate Obligations of Enterprises*

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Abstract

This article explores the Principles on Climate Obligations of Enterprises adopted by an international group of experts. The now second edition of this non-legally binding document provides a guideline for corporate behaviour and emphasises corporate social responsibility in climate change. The expert group, which the author was part of, assumes an obligation of enterprises to reduce their greenhouse gas emissions – the internationally agreed well below 2°C target thereby serves as the point of reference. The complex and all-encompassing task of climate change poses decision-makers with difficult decisions that do not always favour climate protection. Therefore, all actors need to work together to solve the problem as large-scale emission reductions could be achieved if enterprises assumed responsibility for their emissions along their value chain. Against this background, this article provides an introduction to the Principles on Climate Obligations for Enterprises and a first-hand account of how they were created.

1 Introduction

Over the centuries, major evils rarely came fully unexpected. Wars and revolutions are perfect examples. If history tells us anything, it is that humankind is unable or unwilling to ward off self-created catastrophes.

Most people – probably genuinely – want to respect basic moral values. It is not easy to understand how they could reconcile that view with evils such as slavery, the inquisition, torture and discrimination.

It is glaringly obvious that insufficiently abated climate change is going to cause global catastrophes of a magnitude so far only seen in horror movies. Happily, some politicians and captains of industry go at pains to stem the tide. For the time being, they are exceptions to the rule. It rains laudable and promising speeches, declarations and what have you. Too often, they are not translated into meaningful action.

This unfortunate state of affairs is fuelled by, among other issues:

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- short-sightedness;
- hugely diverging interests;
- the fear of compromising the level-playing field;
- a lack of vision and/or ambition;
- a state of paralysis; and
- a lack of support from the public.

Taking the required measures comes at a cost. The benefits will not be visible for decades. Even if it would be possible to reduce GHG emissions to zero within, say, ten years, the climate will change for the worse for decades to come. The COVID-19 crisis probably taught us that 'society' is too impatient to accept sacrifices that do not visibly pay soon.

The law can be of little use to overcome part of these issues. It can contribute to a level playing field and bridge the gap between the diverging interests. It can provide an ambitious roadmap for action. Such a roadmap could – and should – stimulate investors and NGOs to strongly promote compliance with the resulting obligations. It can serve as a source of inspiration for courts and other adjudicators.

There are more reasons why a focus on 'the law' is promising. Seeing the inertia of international politics and the lack of ambition of a major part of the business community, investors and NGOs, it is important to make an attempt to discern the legal obligations of the major players – States, enterprises and investors – in the face of climate change. Why? Without a keen understanding of one's legal obligations, it is impossible to comply and to assess whether an entity did comply. Investors, credit rating agents, and accountants are in the dark about how to assess the risks of non-compliance. Naturally, they can compare the action taken by a specific State or enterprise with States or enterprises in a more or less similar position. Such a comparison is useful but does not shed any light on whether the relevant action sufficed.

2 A focus on prevention

The Principles discussed in this contribution aim to keep the increase of global temperature below a fatal threshold. That, we[1] think, the most important and challenging task of our time.[2] The Principles do not express a view on compensation, nor on adaptation. These are important topics in their own right.

1 'We' refers to the members of the relevant expert group.

2 Expert Group on Global Climate Change edited by Jaap Spier, *Principles on climate obligations of enterprises* (Legal Perspectives for Global Challenges no 5 (2nd edn, Eleven International Publishing 2020), available at https://climateprinciplesforenterprises.org/ accessed 8 November 2021.

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3 The Oslo Principles[3]

3.1 Introduction

In 2012 Thomas Pogge (Yale) and I convened an international group of experts from all continents[4] with the aim of drafting legal obligations of States and Enterprises in the face of climate change. In the course of four meetings (The Hague, New York, London and Oslo), the group discussed several drafts. A group of Jim Silk's (Yale) students wrote a report about the human rights and international law aspects.[5] A commentary, including just mentioned report, explains the legal basis and the meaning of the 30 Principles.

A preamble, drafted by the Hon. Michael Kirby, explains the need for and key elements of our Principles in colloquial language

The group could not reach an agreement on more than a few obligations of enterprises. As will be explained below, that probably was a blessing in disguise.

The Oslo Principles (hereinafter OP) contain reduction obligations, obligations concerning activities (Principle 8), 'lawful and appropriate trade consequences for States that fail to comply with the' (Principle 20), 'new subsidies, aid, grants, guaranties, or insurance for installation of major new facilities … that will result in the emission of unnecessarily high, or, in the given circumstances, unsustainable quantities of GHG, either within or outside their territories' (Principle 21), and access to justice (Principle 25).

Principles 27-30 contain the obligations of enterprises.

The OP have quite a lot in common with the Principles on Climate Obligations of Enterprises (EP); see for elaboration below.

3.2 Key reduction obligation

According to OP Principle 6:

3 See for further elaboration Philip Sutherland, 'Obligations to reduce emissions: From the Oslo Principles to Enterprises' (2017) 11(2) JETL 177; Jaap Spier, 'The Oslo Principles and the Enterprises Principles: Legal strategies to come to grips with climate change' (2017) 8(2) JETL 218; Jaap Spier, 'Pogingen om het debat over klimaatverandering handen en voeten te geven: De Oslo Principles en de Principles on Climate Obligations of Enterprises' (2018) 6 Tijdschrift voor Milieurecht 632.

4 For the members of the group see: Expert Group on Global Climate Obligations, *Oslo Principles on Global Climate Obligations* (Legal Perspectives for Global Challenges no 3, Eleven International Publishing 2015) 10, <https://climateprinciplesforenterprises.org> accessed 8 November 2021.

5 See Oslo Principles on Global Climate Obligations (n 4) 22 ff.

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> States and enterprises must take measures … to ensure that the global average temperature increase never exceeds pre-industrial temperature by more than 2 degrees Celsius.

The measures must be ‘based on’ the Precautionary Principle. The commentary briefly explains why we have opted for 2°C.[6] This, we believed, was those days the common understanding of the upper limit.[7]

The final text of the OP was adopted in March 2015,[8] i.e., before the Paris Agreement[9] (hereinafter PA) was concluded. One may wonder whether the OP have become obsolete since. I do not think so. However laudable as the very maximum that could be agreed upon in Paris, the PA sticks to Nationally Determined Contributions, i.e., goals set by the respective countries. Admittedly, the PA contains valuable guidance on the required ambitions when formulating the NDCs.[10] The fact remains that even the crucial Articles 2 and 4 fall short of a binding and enforceable obligation:

> Article 2
>
> 1. This Agreement … *aims to strengthen* the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:
>
> (a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change. [Emphasis added].
>
> Article 4:
>
> 1. In order to achieve the *long-term temperature goal* set out in Article 2, Parties *aim* to reach global *peaking of greenhouse gas emissions as soon as possible*, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases *in the second half of this century*, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty. [Emphasis added].

In 2015, the drafters of the PA may have believed that peaking ‘as soon as possible’ and to achieve net-zero emissions ‘in the second half of this century’ would suffice to achieve the ‘goal’ mentioned in Article 2 para 1 (a). Perhaps they also lived under the impression that insufficient NDCs between 2020 and 2030 could be ‘offset’ by more ambitious NDCs after 2030.[11] Developments since, discussed below, leave no room for doubt: this slow trajectory will almost certainly lead to global catastrophe. It does

6 Ibid 11.

7 Spier, The Oslo Principles and Enterprises Principles (n 3) 221; the group believed that this was, based on the available information, reconcilable with the precautionary principle; see Principle 6 under a.

8 Oslo Principles on Global Climate Obligations (n 4) 18.

9 Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTC No 54113, available at <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement> accessed 8 November 2021.

10 See Paris Agreement Article 3 and 4.

11 Paraphrasing Halldór Thorgeirsson, ‘Objective (Article 2.1)’ in Daniel Klein et al. (eds), *The Paris Agreement on Climate Change* (Oxford University Press 2017) 127.

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not stand a realistic chance of achieving the goal formulated in Article 2 PA. Hence, the OP have not become redundant, if not for other reasons, because they also map additional obligations.

It is of limited avail to dwell upon the key reduction obligation because, in the meantime, we have adopted a more stringent approach, as will be demonstrated below.

3.3 Principle 20

To me, Principle 20, quoted above, is of utmost importance. Strikingly, at the many presentations my learned friends and I have delivered to explain and discuss the OP, this Principle was never challenged.

For now, few countries (the commentary is less blunt; it speaks of 'not every country'[12]) reduce their GHG emissions to the extent necessary. On paper, the laggards could be sued before their own courts or before international courts or tribunals. If litigation before international courts or tribunals ended up in victory on the plaintiffs' side, that would be a welcome moral triumph, but it would not be very effective, seeing the difficulties of enforcing international judgments.

Hence, if complying countries would be willing to put in place 'trade consequences' (we meant: sanctions), a lot would be gained. Readers may wonder whether we lived in a fantasy world when drafting this Principle. They should be reminded that it was borrowed from Article 4.4 of the Montreal Protocol on Substances that Deplete the Ozone Layer.[13]

3.4 Principle 21

Fossil fuels are the main obstacle to come to grips with climate change. Surprisingly, they were and still are majorly subsidised.[14] Principle 21 goes a step beyond fossil fuels by challenging subsidies, grants, guarantees, credits or insurance for unnecessarily high or unstainable emissions caused by new or expanded facilities. If one

12 Oslo Principles on Global Climate Obligations (n 4) 77.
13 Ibid.
14 See IEA, 'Energy subsidies, Tracking the impact of fossil-fuel subsidies' (IEA 8 November 2021) <www.iea.org/topics/energy-subsidies> accessed 8 November 2021; Assia Elgouacem, 'Designing fossil fuel subsidy reforms in OECD and G20 countries' (OECD Environment Working Papers No 168, 21 October 2021) <https://doi.org/10.1787/d888f461-en> accessed 8 November 2021.

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seriously wants to keep climate change below fatal thresholds, this is low hanging fruit, also inspired by the Montreal Protocol (Article 4.6).[15]

Naturally, not all states can be lumped together, as the final sentence of this Principle emphasises.

3.5 Other principles

I only referred to a few key principles. Most principles left untouched reappeared in the Principles on legal obligations of enterprises. They will be discussed in that context. That also goes for the legal basis for the OP.

4 The next step: The first edition of the Principles on Climate Obligations of Enterprises

4.1 Why a focus on the obligations of enterprises matters?

In an ideal world, politicians would agree on legal instruments containing obligations that suffice to prevent a global catastrophe. That may well happen at some stage. So far, too many politicians confine themselves to rhetoric. We cannot wait for miracles. It is high noon. That implies: we need to explore *additional* strategies.

A focus on the corporate world is important. Enterprises can influence the entire chain from suppliers to their products and services. They can – and must – phase out their own emissions. If enterprises could be brought to assume responsibility for emissions throughout their value chain, a major part of the global reductions can be achieved without action by politicians.

With an increasing number of exceptions, enterprises are unlikely to take sufficiently bold action if they are not legally bound to do so. Hence, it is important to explore whether they have legal obligations to change course.

The Expert Group on Climate Obligations of Enterprises has no doubt that they do have such obligations. If that assessment is right, the law, if necessary the sword of the law, can majorly contribute to a carbon-neutral world.

4.2 The first step

As already mentioned, the Oslo group was unable to reach an agreement on more than a few obligations of enterprises. Part of the Oslo group and two new members

15 Oslo Principles on Global Climate Obligations (n 4) 77.

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(Justice Brian Preston and Daniël Witte) took up the gauntlet to draft a more elaborate roadmap: the Principles on Climate Obligations of Enterprises (EP1).[16] We felt the urgent need for doing so. This decision was influenced by the hugely insufficient pledges which would end up in an increase of global temperature between 2.3 and 3.5°C and the unlikelihood that international politics will solve the problem.[17]

After intensive discussions, we decided not to change the 2°C threshold adopted in the OP,

> an ambition around which politicians, policymakers and scientists have converged. … We believe that the legal maximum at the time of writing lies at 2C. Although such clearly and narrowly defined threshold may not be the best option in light of the science, it is in light of politics. It provides a clear, binding target toward which humanity can, and must, work.[18]

Further on, we acknowledged that the PA was more ambitious, setting the bar at ‘well below 2 degrees’. However, we were unable to ‘to discern what “well below” 2°C or “pursuing efforts to limit the temperature increase to 1.5°C”’ meant.[19]

We observed that, seeing that global emissions were still rising, ‘1.5°C will soon be out of reach.’[20] Promoting the unachievable might be counter-productive as it would ‘undermine the credibility or acceptance of our principles.’[21]

At the 2018 conference in Graz, I explained the key features of the EP1. It would not be overly useful to provide such an overview right now. First, I can refer to other publications.[22] Secondly, and more importantly, they have become, so to speak, history.

16 Expert Group on Climate Obligations of Enterprises, *Principles on Climate Obligations of Enterprises* (Legal Perspectives for Global Challenges, 1st edn, Eleven International Publishing 2018), available at <https://bit.ly/3vxt1cH> accessed 3 March 2022.

17 Principles on Climate Obligations of Enterprises 1st edn (n 16) 15 and 16.

18 Ibid 23 and 52.

19 Ibid 50.

20 Ibid 51.

21 Ibid 52ff.

22 See Jaap Spier, ‘The Principles on Climate Obligations of Enterprises: An attempt to give teeth to the universally adopted view that we must keep global warming below an increase of two degrees Celsius’ (2018) 23(2) Uniform Law Review 319; Jaap Spier, ‘Legal obligations of enterprises and investors in the face of climate change’ (2018) 2 Chinese Journal of Environmental Law 99; Jaap Spier, ‘De “Principles on Climate Obligations of Enterprises”: een zoektocht naar concrete verplichtingen van bedrijven en beleggers’ (2018) 20 Milieu & Recht 105.

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5 The updated Enterprises Principles[23]

Quite soon, our expert group came to believe that it would be desirable to update the EP1. Hence, we worked on an update which was published in November 2020.[24] The commentary to the majorly enlarged and elaborated second edition (hereinafter EP2) explains at length why that decision was taken:

- the intrusive IPCC Special Reports of 2018 and 2019
- an increasing number of unprecedented natural catastrophes
- new climate cases, reports, academic publications and
- the growing awareness that the window of time is closing.[25]

We challenge the emerging consensus that net-zero emissions have to be achieved by 2050, on which many NDCs and corporate pledges are built. More likely than not, the global carbon budget will be depleted well before 2050.[26]

The main differences between the EP1 and EP2 are:

- more emphasis on products and services (Principles 9-11, 19, 20, and 22). Thus, we include part of the emissions caused by the use of products and services, often by private persons
- the EP2 contain obligations on buyers of fossil fuels, outsourcing, and governance (respectively Principles 21, 23, and 24-26)
- obligations of important players have been added: (re)insurers, accountants, credit rating agents and attorneys (Principles 45-48).

The 49 Principles are accompanied by an extensive commentary that elaborates on their meaning and legal basis.

5.1 Legal basis of the EP2

The commentary provides an extensive overview of the legal underpinning of the obligations emanating from the EP2. We have borrowed from a myriad of sources: human rights, environmental, liability and company law, declarations, pledges, authoritative reports, codes of conduct and governance, case law and academic writings.[27] Part of these sources are ‘soft law’; the commentary explains why soft law

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23 Part of the text is borrowed from a virtual Yale conference in fall 2020, organised by Thomas Pogge.
24 Principles on Climate Obligations of Enterprises 2nd edn (n 2).
25 Ibid 22ff.
26 Ibid 68f.
27 Ibid 70ff, also for a wealth of further references.

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can serve as a legal underpinning.[28] We openly acknowledge that some principles are aspirational.[29]

We do not only focus on the law as it 'stands' (which requires an interpretation of all these sources) but also on how it will likely develop. The reason for including the likely development of the law is that it will be shaped in *future* judgments. In the absence of clear and pertinent black letter law and precedents, courts tend to 'find' the law as they believe it stands at the time of rendering the judgment. Say: a case about injunctive relief is initiated in 2016. The highest court renders its judgment in 2022. Without much ado, the law as 'found' in 2022 will mostly be applied to, in my example, the emissions as from 2016, i.e., de facto with retroactive effect. Hence, it is important to assess how the law will likely develop.[30]

Critics may argue that the interpretation of – in their view – non-existing law is nothing else than a political or moral judgment that should be left to the legislator. This supposed criticism confuses unchartered territory and a lawless realm. The administration of justice does not come to a standstill at the boundaries of unchartered terrain. Since time immemorial, judges have tried to keep pace with the changing demands of society. The law is a 'living instrument', as the European Court of Human Rights puts it.[31] That means indeed that moral views and a desirable outcome play a role in shaping the law. That is nothing new. Do not make a mistake: conservative judgments are no less influenced by these features.

In his autobiography, the former UK Prime Minister Gordon Brown, who wrote a very supportive preface to the EP2,[32] quotes Albert Camus: 'If we were to acknowledge such things as moral values, 'that would be the beginning of hope''.[33]

5.2 Ambition and realism

Our Principles aim to pair ambition with realism. It would have been possible to map more stringent obligations. In our assessment, that would not have been a brilliant idea. At the end of the day, each initiative aims to have an impact. Time for idle talk has elapsed. We need action, not tomorrow, but right now. That means: we need to get the ears of those at the wheel. Overly activist principles will be ignored by the corporate world, investors, politicians and courts.

28 Ibid 99ff.
29 Ibid 71 and in relation to f.i. Principle 18.4 and 18.5; they are 'a bit aspirational, arguably on the fringe of revolutionary' as the commentary put it. See: Principles on Climate Obligations of Enterprises 2nd edn (n 2) 211.
30 Principles on Climate Obligations of Enterprises 2nd edn (n 2) 71.
31 For the first time in *Tyrer v the United Kingdom* App no 5856/72 (ECtHR, 25 April 1978).
32 Gordon Brown, *My Life, Our Times* (Vintage 2018) xvii/xviii.
33 Brown (n 32) 431.

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In his auto-biography Gordon Brown discusses the only way a progressive party can succeed:

> by being both radical and credible. It can be radical without being credible, but it will never be a successful party of power. It can also be credible without being radical, but it will no longer be progressive. In neither condition will it achieve anything truly worthwhile.[34]

That is not any different for our principles.

5.3 Difficult choices

We could not escape making difficult choices. A few examples:

5.3.1 1.5, 1.75 or 2°C?

As we have seen, Article 2 para 1 of the PA mentions two targets:

> holding the increase in the global average temperature to well below 2°C above pre-industrial levels and *pursuing efforts* to limit the temperature increase to 1.5°C above pre-industrial levels.

The at the time of writing latest Special Reports issued by the IPCC (2018 and 2019) leave no room for doubt:

- passing the threshold of 1.5°C is fraught with serious risks and
- an increase by 1.5°C is already too high, seeing the increasing number of ever more devastating natural catastrophes.[35]

In our assessment, it is unrealistic to set the bar below 1.75°C.[36]; see. It would require emission reductions at a rate that do not stand any realistic chance of acceptance.[37]

Our approach already requires steep reductions of enterprises in most developed countries.[38] Enterprises keen to set the bar higher would do the world and themselves a great favour: it will greatly add to their reputation, attractiveness to the brightest people and investors. But it is not an obligation, we think. On paper, the 1.5°C is not impossible if one is willing to *bet* on future technology to capture and store GHG emissions at a major scale. We did not want to bet on technology that may not be available at a scale required to stay below 1.75°C. This approach leaves untouched the desirability to return to 1.5°C, or even less, if possible and reasonably affordable.

34 Ibid 437.
35 Principles on Climate Obligations of Enterprises 2nd edn (n 2) 141ff.
36 See for 1.75°C the definition of the Global Carbon Budget (Principle 1).
37 Principles on Climate Obligations of Enterprises 2nd edn (n 2) 142.
38 Ibid 168.

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Because our update focusses on what needs to be done in the, say, 10 years to come, we did not need to discuss the more distant future.[39]

5.3.2 Precautionary principle

Naturally, the OP and EP embrace the precautionary principle – the better safe than sorry paradigm. It has become a cornerstone of environmental law.[40]

Seeing the different scenarios painted by the IPCC, a stringent interpretation of the precautionary principle may require adopting a worst-case scenario which reduces the risk of passing fatal thresholds. It is certainly not self-explanatory to adopt a scenario that entails a chance of approximately 33% that global catastrophe will set in, as the EP do in accordance with the prevailing view. Adopting a worst-case scenario would require extremely steep emission reductions in developed countries. That would not necessarily be unfair, nor make life necessarily significantly less enjoyable. It might well appeal to the most vulnerable countries and people in these countries. However, the law is not a beauty contest.

The precautionary principle can play a valuable role in the context of impact assessments, e.g., concerning the exploitation of new oil or gas fields. For the remainder, a strict application would imply formulating obligations that will never be accepted by those in a position to bring about the bitterly needed change. In this respect, we were guided by realism. Others, in particular NGOs, may make a different choice. I can only hope that they will be successful.

5.3.3 The 2050 paradigm

It rains pledges to effectuate net zero emissions by 2050, although they rarely indicate *how* they will be achieved.[41] Based on extensive research mentioned in the commentary, we are afraid that the carbon budget will be depleted well before 2050.[42] That makes net zero-pledges by 2050 no less welcome, but those who issue them should realise that there is a fair chance that they will not suffice to keep the increase of global temperature below fatal thresholds.

We are not in a position to say *when* the carbon budget will be depleted. That depends on future developments: the global reductions to be achieved, non-anthropogenic emissions, new insights from climate science and possible tipping

39 Ibid 69.

40 See OP Principle 6, EP1 Principle 2.1, referring to the OP and EP2 Principle 1 (definition of global carbon budget); see also commentary to EP2 95 ff, and 143, to EP1 59f and to OP 47 ff.

41 Principles on Climate Obligations of Enterprises 2nd edn (n 2) 102ff.

42 Ibid 68 and 154ff.

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points. These uncertainties are the reason for our stance that the global carbon budget has to be reassessed every five years (Principle 2.2.1 (g)).

5.3.4 Obligations towards future generations

In the debate on sustainability issues, obligations towards future generations pop up time and time again. We do not deny at all that such obligations exist. So far, however, the debate got stuck in abstract discussions. We could not discern any concrete guidance.[43]

In our view, we do not need obligations towards future generations to accept far-reaching obligations of all kinds of States and enterprises. Obligations towards the current generation, part of which will still be alive by the end of this century, suffice.

We believe that our Principles are on the brink of ‘the acceptable’. Mapping more stringent obligations would be counter-productive.

5.3.5 Common but differentiated responsibilities and capabilities

Throughout the Principles, we have adopted the common but differentiated responsibilities and capabilities maxim.[44] The most vulnerable countries and people in these countries are hugely affected by climate change. They minimally contributed to the global mess. Hence, it is only fair that *local* enterprises in those countries have limited obligations. See, inter alia, Principles 2.1.1 in conjunction with Principle 2.2.1 (c) and (d) and 5, as well as the interpretation of excessive emissions in Principles 9.1 and 10.1.[45]

5.3.6 Attribution of emissions

Richard Heede’s research contends that well over 50% of global GHG emissions can be attributed to less than 100 companies. In his approach, all historical emissions and emissions of products or services put on the market by an enterprise have to be attributed to that company. Take fossil fuel company F. In Heede’s calculations F is responsible for the emissions from oil/gas extraction, transport, refining, and the ultimate users’ combustion of oil and gas.

43 Ibid 105.
44 See also Oslo Principles on Global Climate Obligations (n 4) 14f.
45 See Principles on Climate Obligations of Enterprises 2nd edn (n 2) 187.

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Let us assume that his calculations are right (I have no reason to believe they are not). Do they carry any *legal* weight? We don't think so. In Heede's approach, the lion's share of the responsibility would fall on the shoulders of fossil fuel companies and a handful of cement factories. Many fossil fuel companies are based in countries where litigation does not stand a favourable chance; examples obtrude themselves. Even in countries with a world-class judiciary (whatever that may mean), there is no guarantee whatsoever that they will adopt Heede's approach. Hence, it is an illusion to expect that the fossil fuel industry as a whole will reduce its emissions and those of its fossil fuels to the extent required.

It would also be unfair to put all the blame on the 'oil majors'. No doubt they are happy that most countries made themselves dependent on their products and that they did not and still do not switch to alternative energy at a greater pace. Only if there would be a sound legal basis for an obligation of this branch of industry to switch from fossil fuels to renewable energy *and* to refrain from selling fossil fuels to countries that did not participate in the bitterly needed transition to renewable energy when the carbon budget is close to depletion, they would be the main culprits. There may be arguments for such a far-reaching position; it is by no means self-explanatory, to say the least. Hence, the legal basis for Heede's approach – he is not a lawyer and does not have any legal pretension – is weak.

Adopting Heede's approach would also be counter-productive. It could stimulate other enterprises to take a sit-and-wait position, arguing: we are not the problem; the fossil fuel industry is.

We believe that the better approach is to attribute GHG emissions to those who actually cause them, say, a factory burning oil or gas; an electricity company combusting fossil fuels.[46]

5.4 A bird's eye view of the 49 Principles of the EP2

It is impossible to properly explain our 49 Principles and the 300 pages of the commentary in a few pages. So, I will stick to a few highlights. For the remainder, I refer to our website, which can be downloaded at no cost.

5.4.1 Reduction obligations

Formulating the key reduction obligation of enterprises was quite a brain teaser. We had to make a choice between a formula based on balancing a series of factors and a

46 See for the issues discussed in this paragraph Principles on Climate Obligations of Enterprises 1st edn (n 16) 32ff and Principles on Climate Obligations of Enterprises 2nd edn (n 2) 60ff.

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rule of thumb with some flexibility to tailor it to the peculiarities of a case in point. Prima facie, an open(-ended) formula would be the fairest option. In reality, it is very much up to debate whether that would be the case. Such a formula would not shed much light on the reductions to be achieved by an enterprise, seeing that the outcome of the balancing of the relevant factors would be rather unpredictable. Put differently: adopting such a formula would mean a clash between (legal) certainty and a fair outcome, assuming that the outcome would ultimately be (considered) fair.[47]

The urgent need to reduce global emissions at a great pace and to a significant extent is irreconcilable with unworkable formula. Hence, we had to explore other options. The best we could think of was to link the primary reduction obligation of enterprises to the reductions to be achieved by the States in which they operate. The idea behind this approach is that countries cannot achieve their reductions if the corporate world does not assume responsibility for their share (see Principle 2.1.1). Because we were mindful that this might be unfair in specific cases, e.g., if an enterprise had already reduced its GHG emissions significantly, States should be allowed to reallocate the reduction burden within their countries, say enterprise X has to do more and Y less. Also, to incentivise States to comply with their own reduction obligations, it makes sense to create more flexibility for States that comply with their own obligations (Principle 3) compared to non-complying States (Principle 4). In any case, the reallocating State has to consider a series of factors enumerated in Principle 3.1.[48]

Because our EP are not ‘law’, it is unlikely that any State will make use of Principle 3 or 4 in the near future. EP2 has added some room for self-determination by an enterprise that wants to challenge the rule of thumb. Naturally, this flexibility should be restricted. Otherwise, we would undermine the rule of thumb and, by the same token, any chance to achieve the required global emissions. Self-determination requires a stringent application of Principle 3.1 if the enterprise is based in a complying country and application of the rule of thumb should be manifestly unreasonable if the enterprise is based in a non-complying country (respectively Principles 3.3.1[49] and 4.3.1).[50]

I already alluded that the EP link the reduction obligations of enterprises to the country in which they are based. The EP2 not insignificantly reformulated the reduction obligation of States compared to the OP. The new formula consists of several steps:

47 Principles on Climate Obligations of Enterprises 2nd edn (n 2) 152.
48 Ibid 171ff.
49 Ibid 174ff.
50 Ibid 180.

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1) to determine the global carbon budget (GCB)[51] to ensure that the 1.75°C threshold will not be exceeded. The GCB includes both anthropogenic and non-anthropogenic GHGs (see definition in Principle 1 and Principle 2.2.1 (a));
2) to calculate the GCB per capita, i.e., per head of the world's population (Principle 2.2.1 (a);
3) to calculate the permissible quantum of GHG emissions per capita per period of five years. This should be based on 'a glidepath of steady reductions towards net zero emissions without exceeding the' GCB (Principle 2.2.1 (b));[52]
4) if a country's GHG emissions per capita are below the permissible quantum[53] for the relevant five years period, it has to reduce its GHG emissions at the rate of its NDCs (Principle 2.2.1 (c));
5) if a country's GHG emissions are higher than the permissible quantum for the relevant five years period, it has to reduce its GHG emissions to the higher of
   - the extent to which they exceed the permissible quantum per capita[54] or
   - the rate of its NDCs (Principle 2.2.1 (d)). Applying this formula may look difficult, it is workable. The commentary explains that the relevant information is available.[55]

We did a reality check to figure out whether our approach would be unfair in relation to one or more countries. With the exception of Iraq, we do not think that to be the case, although we acknowledge that this Principle is demanding for many countries.[56]

We strongly believe that it would be unfair to lump together a domestic enterprise and a subsidiary of a multinational in, say, Bangladesh. Principle 5, which is about what we have labelled global enterprises, aims to offer a balanced solution. I refer to this Principle and the commentary thereto, emphasising that many in-depth discussions – in particular with our South African member Philip Sutherland – lie at the basis of this Principle in EP1. My associate reporter Bastiaan Kock and I spent several days on a reformulation in EP2,[57] which was discussed with Brian Preston and accepted by the other members.

In addition to their key reduction obligation, discussed above, enterprises have to take reduction measures that can be achieved without incurring relevant additional costs, f.i., switching from fossil fuel energy sources to renewable energy if the price

51 The commentary to the 2nd edition of the Principles on Climate Obligations of Enterprises explains that the IPCC findings are to be used to determine the carbon budget, albeit that they may be challenged, see Principles on Climate Obligations of Enterprises 2nd edn (n 2) 139.

52 See for a graphic illustration of the glidepath Principles on Climate Obligations of Enterprises 2nd edn (n 2) 166.

53 In most instances developing countries.

54 The formula is a bit more sophisticated; see Principle 2.2.1 (d).

55 Principles on Climate Obligations of Enterprises 2nd edn (n 2) 138ff.

56 Ibid 168.

57 Ibid 180ff and Principles on Climate Obligations of Enterprises 1st edn (n 16) 129ff.

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is by and large the same, or switching off lamps and heating if an office is not in use (Principle 7).

Measures that incur costs have to be taken if the costs will beyond reasonable doubt be offset by future savings or gains within a reasonable time period (Principle 8).[58] The installation of f.i. solar panels may serve as an example if an enterprise would otherwise be dependent on energy from fossil fuels.[59]

5.4.2 Products, services, advertising products, enticing consumers, supermarket chains and internet selling

It would be against the odds if all – arguably even most – States and enterprises are going to curb their GHG emissions to the extent required to keep climate change below 1.75°C or any other meaningful threshold. In addition, many uncertainties make it likely that the carbon budget will be depleted at a greater pace than many seem to believe. That means that we should not confine ourselves to the *direct* emissions of enterprises.

The update puts significant emphasis on suppliers, products and services in line with the strongly emerging view that enterprises bear at least some responsibility for scope 2 and scope 3 emissions.[60] By including these issues, the update encompasses a much broader range of emissions, in particular those of consumers. That is important because it would be quite a challenge to formulate convincing legal obligations of private persons. Even if that would be possible, enforcement would be fraught with serious difficulties. The emissions of consumers have to be regulated by States which emphasises the importance of the OP.

Excessive emissions of products and services must be avoided unless countervailing measures are taken. As a rule, emissions will be deemed excessive

- if they are much higher than those of the enterprise's competitors;
- if the cost of taking countervailing measures could reasonably be offset by increasing the price of the products or services; or
- if the profits generated by the products or services easily allow for taking these measures.[61]

Principle 10.2-10.4 distinguishes between indispensable, non-luxury and non-indispensable products and services and luxury products and services, in that the reduction bar is set increasingly higher. Local circumstances have to be taken into

58 Principles 7 and 8 are also incorporated in the Oslo Principles (Principles 7 and 9).
59 Principles on Climate Obligations of Enterprises 1st edn (n 16) 140.
60 Principles on Climate Obligations of Enterprises 2nd edn (n 2) 47 ff.
61 Principles 10 and 11, also for further elaboration.

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account when interpreting 'luxury' and 'indispensable'; that is not easy to explain to poor people in developing countries; it is a sad reality in our wicked world.[62]

5.4.3 Advertising products and enticing consumers, supermarket chains and internet selling

A focus on advertising products, enticing consumers, supermarket chains and internet selling (Principles 19, 20, and 22) is another means to achieve a greater reach of our Principles.

This approach allows cautiously emphasising the urgent need to reduce the sale of products and services with a high carbon footprint, such as f.i. meat and chocolate. According to the commentary, offering chocolates 'two for the price of one' requires a justification. Restaurants should refrain from offering excessively sized beef steaks on the menu (they may offer them on demand).[63]

As to supermarkets, we also mention soya or palm oil from logged tropical wood.[64] We did not dare to say that the sale of meat must be phased out, if not for other reasons, because our EP aim to have a global reach. There may not (yet) be viable alternatives to meat in quite a few countries.

Transport is an important source of GHG emissions. Principle 22.2 formulates an obligation to inform the prospective buyer about the GHG emissions of the home-delivery options and to promote the least emitting mode of transport. It is inspired by an article in the Financial Times: Amazon's carbon footprint allegedly nears the footprint of Denmark.[65]

5.4.4 Consideration of suppliers' GHG emissions

When selecting its suppliers, an enterprise has, to the extent reasonable and feasible, to ascertain and take into account whether its suppliers comply with the Principles (Principle 18.1). Ascertain and taking into account is more than ticking the box. If, f.i., a supplier's emissions are significantly higher than those of its competitor, the selection of the former requires extensive justification. The mere fact that the preferred supplier is cheaper should not serve as a justification. Obviously, this Principle and all other Principles should be applied with common sense. It does not apply to f.i. buying relatively cheap products in very small quantities.[66]

62 Principles on Climate Obligations of Enterprises 2nd edn (n 2) 188.
63 Ibid 212ff, and for the example 214.
64 Principles on Climate Obligations of Enterprises 2nd edn (n 2) 217.
65 Ibid 218.
66 Ibid 209f.

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We do not hide that ascertain and take into account whether one's prospective suppliers comply with our Principles is an overstatement because our Principles are not 'law', but our group's *interpretation* of the law. Naturally, enterprises may challenge our interpretation. In that scenario, they have to explain (would be well-advised to explain) what, in their view, the suppliers' legal obligations are. In that scenario, the suppliers have to comply with these 'alternative' obligations.[67]

The selection of a supplier that provides energy from coal-fired power plants, or other excessively GHG emitting fossil fuels, requires a compelling justification (Principle 18.2). It will be very difficult to justify such a choice.

5.4.5 Fossil fuel companies

I reiterate that we challenge the emerging view that the oil majors are, so to speak, the *one and only* problem. In our view, the more promising approach is to focus on the obligations of *all enterprises,* including specifically, buyers of fossil fuels.[68] According to Principle 21.1, purchasing coal for production purposes requires a compelling justification. An enterprise is only allowed to increase its purchasing of coal or oil for the purpose of increasing production during respectively the shortest possible period to allow the materialisation of its transition to renewable energy (in case of coal), or to gas or renewable energy (in case of oil) (Principle 21.2 and 21.3). As time progresses, the same will go for gas.

5.4.6 Governance

Governance is an important feature. The update introduces a series of principles to the effect that the board of enterprises has to take appropriate steps to cope with the challenges of climate change, both for the enterprise and the world at large.

The board should ensure that it has access to sufficient knowledge, skills, and experience to effectively debate and decide on climate-related risks and opportunities (Principle 24). This includes knowledge of the enterprise's legal obligations in the face of climate change.[69] That does not mean that our Principles have to be applied. However, the board should genuinely aim to discern the enterprise's legal obligations. If the answer to their questions would be: enterprises do not have legal obligations, they should make further inquiries. If the answer to this further inquiry is: we

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67 Ibid 109 and 286.

68 Ibid 215, pointing to comparable obligations in Principle 7 if alternatives are available at no relevant additional costs, 8, 9 and indirectly 18 and 19.1.

69 Principles on Climate Obligations of Enterprises 2nd edn (n 2) 228.

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do not know, the board should go at pains to find experts who have a keen understanding of the law.[70]

As a rule, and whatever the legal opinion tells them, the boards of most enterprises should understand that, at the very least, they should reduce their GHG emissions at a significantly higher rate.

In addition, the board should ensure, among other issues, that:

- the management assesses on an ongoing basis the short-, medium- and long-term materiality of climate change-related risks to the enterprise;
- the enterprise's climate change-related accounting assumptions and reporting procedures are robustly tested; and
- the enterprise does not engage in lobbying irreconcilable with keeping the increase in global average temperature below 1.75°C (Principle 25).

The board shall ensure that executive incentives, such as bonuses, are not linked to profits generated from or otherwise linked to activities or actions that are irreconcilable with keeping global warming below 1.75°C (Principle 26).

5.4.7 Disclosure

Principles 27-34 contain obligations in the realm of disclosure. With one exception, they align with, inter alia, the authoritative TCFD report. We have added the need to provide information about compliance with the EP, or, perhaps I should say, the enterprise's legal obligations (Principle 29).[71] I will come back to this issue in the context of Principle 46.

5.4.8 Environmental impact assessment of new facilities

Environmental impact assessments of new facilities are increasingly becoming a weapon in the fight against climate change. It is one of the few realms of the law where courts in several countries have shown willingness to assume a role to stem the tide.[72] Among the issues to be assessed are

- the proposed facilities' carbon footprint;
- the adverse upstream and downstream effects and the ways to reduce such effects; and
- the potential effect that future climate change may have on the proposed facility (Principle 35).

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70 Ibid 229.
71 Ibid 243.
72 Ibid 251 and Principles on Climate Obligations of Enterprises 1st edn (n 16) 192ff.

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The mere fact that the carbon footprint of a new facility likely is quite significant does not necessarily mean that there is no room for the new facility. New runways or airports are the perfect examples. One may regret that some courts shy away from giving decisive weight to the adverse carbon footprint,[73] courts cannot avoid operating within the boundaries of what society finds acceptable.

5.4.9 Financiers

Financiers must ascertain and take into account the GHG emissions of any project that they consider financing and the likelihood of the borrower's ability to repay the loan granted in light of the risks posed to the project by climate change and the liability risk posed to the enterprise (Principle 36). The commentary emphasises that this Principle also applies to f.i. pension funds that finance projects.[74]

'Risks posed by climate change' refers, f.i., to houses built in a flood-prone area. The liability risk refers to non-compliance by the borrower with its climate obligations.[75]

5.4.10 Investors

Our Principles about the obligations of investors focus on all kinds of equity, irrespective of whether it is issued by a State or an enterprise.[76]

Investors belong to the very few institutions that can effectively influence the behaviour of both States and enterprises to scale up their efforts to avoid catastrophic climate change. That is commonly accepted concerning enterprises. To the extent I am aware of, it is not in relation to States. It is not easy to understand why that is the case because many investors, by no means only pension funds and insurers, have bought significant amounts of bonds issued by States. To the extent reasonably pos-

73 See e.g., *R (on the application of Friends of the Earth Ltd and Others) v Heathrow Airport Limited* (2020) UKSC 52, available at <www.supremecourt.uk/cases/uksc-2020-0042.html> accessed 8 November 2021; Austrian Bundesverwaltungsgericht (the Highest Administrative Court) 2 February 2017 W109 2000179-1/291E <blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2017/20170202_W109-2000179-1291E_decision-2.pdf> accessed 9 November 2021.

74 Principles on Climate Obligations of Enterprises 2nd edn (n 2) 258.

75 Ibid 261.

76 Ibid 267 and explicitly Principles 37.1, and 38.1.

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sible, they could – and should – use their power as a bondholder,[77] or refrain from buying bonds of poorly performing States.

Investors' unwillingness to buy equity – bonds or shares – may have an adverse impact on the issuer's reputation. That being said, investors face an inconvenient truth. Assuming that our OP and EP are, by and large, right in discerning the legal obligations of States and enterprises, for the time being, only a few States and enterprises comply with their obligations. Hence, if investors would only be allowed to buy equity issued by compliers, they would have to compete in buying the relevant shares or bonds. The prices would unavoidably be(come) extremely high. Many investors, in particular pension funds and (re)insurers, need a return on invested capital to pay the pensions of their insureds or to remain solvent. If the equity would be hugely overpriced, they cannot generate any meaningful return. We could not close our eyes to this state of affairs. This meant that we could not avoid a delicate balancing of the diverging interests.[78]

In our assessment, any investor must ascertain and take into account whether or not the entity in which it aims to invest or has already invested complies with its obligations under the Principles (Principle 37.1). I refer to what I already observed about our Principles not being 'law'. Investment in a *non-complying entity* requires a justification (Principle 38.1). Because there are not many fully complying entities, in the short term, it will not be overly difficult to justify such an investment. If investors have the choice between non-complying entities, they should opt for the best in class, or, at least, refrain from buying the worst in class.[79]

It belabours the obvious that investment in coal-fired power plants, enterprises engaged in energy generation from other excessively emitting fossil fuels, or in otherwise excessively GHG emitting enterprises requires a compelling justification (Principle 39). The meaning of 'excessive' will change over time. It will probably be different in developed and developing countries.

Keeping or buying equity issued by non-compliers requires action: forcefully promoting compliance with their obligations (Principle 40).

We have resisted the strongly emerging current: promoting to refrain from investing in fossil fuel companies. We appreciate the moral connotation of the debate but wonder whether non-investment will make much of a difference. We also acknowledge the possibility, which will hopefully become a reality soon, that such investments are doomed to become stranded (for practical purposes: the value will collapse due to the alleged swiftly decreasing demand). The stranded asset question

77 In many (probably most) countries bondholders do not have much, if any, 'formal' power to influence the actions of the issuers of the bonds. Informally, major bondholders do have because issuers cannot avoid to lend their ears to concerns aired by major investors.

78 See in much more detail Principles on Climate Obligations of Enterprises 1st edn (n 16) 205ff and Principles on Climate Obligations of Enterprises 2nd edn (n 2) 262ff.

79 Principles on Climate Obligations of Enterprises 2nd edn (n 2) 270.

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is not a legal issue; it depends on how the sale of fossil fuels will proceed and at what price. That is very uncertain; we did not want to speculate on that issue. All we are saying is: the alleged prospect of stranded assets could be a sound reason for not buying this kind of equity.[80]

On the occasion of several presentations of the EP, our principles on the obligations of investors were criticised for being conservative. We beg to differ. The legal debate is about questions such as:

- are investors allowed to take sustainability issues into account?
- should they only care about return on capital?[81]

We answer both questions in the affirmative and go way beyond these issues. Hence, I don't think that our approach is conservative. We did not want to overstate our case and preferred to be realistic.

Major investors should appoint, vote for, or, if they are appointed by others, promote the appointment of auditors familiar with, among other issues, the legal obligations of enterprises and their boards (Principle 41.1). Investors shall vote against, or, if they are appointed by others, promote non-appointment of directors to the board of a non-complying enterprise (Principle 41.2).[82]

5.4.11 Other key players: common denominator

Seeing the apathy of the greater part of the corporate world, we must explore strategies to bring the boards of enterprises to their senses, if necessary in a case in point. Accountants, credit rating agents, insurers and attorneys *can and have* to play a role to stem the tide.[83]

All these entities cannot do a proper job if they do not have a clue about the obligations of the enterprises they have to audit, rate, advice, or insure. Without a keen understanding of the enterprises' legal obligations, insurers, accountants and rating agencies cannot assess the inherent liability and reputational risks of non-compliance.

Auditors and *credit rating agents* do not only have fiduciary obligations towards their clients but, in our view, also to those who – as they know or should know – rely on their opinions and reports. Insurers have an obligation to their insureds: to pay the amounts insured if the insured risk materialises. That implies that they have to ensure to keep solvent.

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80 Principles on Climate Obligations of Enterprises 1st edn (n 16) 236 and Principles on Climate Obligations of Enterprises 2nd edn (n 2) 272; see also Spier, The Principles on Climate Obligations of Enterprises (n 22) 331.
81 Principles on Climate Obligations of Enterprises 1st edn (n 16) 218ff.
82 See for elaboration, Principles on Climate Obligations of Enterprises 2nd edn (n 2) 273ff.
83 Ibid 278.

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According to the update, *credit rating agents* and *accountants* must assess whether the rated or audited enterprises comply with their legal obligations. If they do not, the inherent liability (and reputational) risk has to be assessed. The outcome of the assessment must be reflected in the rating or accountant reports, along with a transparent explanation of the way the assessment was executed (Principles 46 and 47).

We believe that *liability insurance for climate-related losses* has to be significantly restricted (Principle 45). That would majorly contribute to lower GHG emissions because it would bring enterprises and their boards to their senses. We do not express a view on other coverages.[84]

Attorneys have to investigate the material climate change consequences of any activity in which they are engaged and inform their clients about these consequences (Principle 48). If enterprises seek a legal opinion about their legal obligations, attorneys have to provide a state-of-the-art answer. That requires a keen understanding of the relevant realms of the law.[85]

There is much reason to believe that most of these entities do not have the required knowledge and do not want to have it either. Hence, they expose themselves to liability. Apart from hopefully a deterrent effect, their liability is of no avail to the climate. The more important issue is that they comply with their fiduciary duties.

5.4.12 EP are not 'law'

Our update aims to provide guidance about key obligations of enterprises and other entities. I reiterate that our Principles are not 'law'. Accountants et alios may arrive at the conclusion that, in their assessment, 'the law' is different in one or more respects. It would, however, be irresponsible towards their clients, society and themselves to assume that, in the absence of pertinent black letter law, enterprises do not have (enforceable) obligations.[86]

The 'nicety' of climate change as a global issue is that enterprises and the other players I have mentioned can often be sued before courts in multiple countries. Betting on a global judiciary that will abstain from rendering useful judgments is a very risky game.

84 Ibid 283.
85 Ibid 287.
86 Ibid 109f.

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5.4.13 Obligations to reduce GHG emissions apply, even if minimal

Enterprises and States unwilling to accept that they have legal obligations may hope that courts will grant victory to them, seeing their (very) small contribution to global climate change.[87] From a doctrinal angle, this minimal contribution-issue is not unproblematic. It is, however, even more problematic to honour a defence based on the absence of legally relevant causation. If that argument would have to be honoured, only the emissions of a very few States would – perhaps – qualify as legally relevant. That would mean that climate change would basically be a lawless realm. Both the OP (Principle 11), the EP1 (Principle 14) and EP2 (Principle 15) take the view that minimal causation is not a defence. The idea that the law is toothless in relation to the greatest challenge to mankind, the environment and other living species is so appalling that it is unavoidable to explore solutions, if necessary, by means of magic words.[88]

5.5 Other principles

The OP contains principles on flexibility on how to comply with the State's obligation (Principle 10), high cost or lack of financial means is not a defence (Principle 23), and the need to regulate GHG emissions to comply with the OP (Principle 24).

Both the OP and both versions of the EP contain provisions on how to deal with less demanding domestic or international legislation (OP Principle 12, EP2 Principle 16), undue hardship (OP Principle 17, EP2 Principle 17), and measures to be taken if the reductions cannot be achieved (OP Principle 18, and 22, and EP 2 Principles 13 and 14). EP2 also provides obligations concerning controlling enterprises (Principle 6), and outsourcing (Principle 23).

5.6 The reception of the EP

Authoritative reports, such as David Boyd's brilliant Safe Climate,[89] refer to the EP1. The EP1 and the EP2 are endorsed by over 80 distinguished experts from around the globe. Eminent experts kindly wrote prefaces to the EP2 (the former UK Prime Min-

87 Only the emissions of a handful of States have measurable impact on the climate.

88 See in considerable detail Oslo Principles on Global Climate Obligations (n 4) 69f, Principles on Climate Obligations of Enterprises 1st edn (n 16) 153ff and Principles on Climate Obligations of Enterprises 2nd edn (n 2) 202ff, also for further references.

89 Office of the High Commissioner, 'Safe climate report' (United Nations Human Rights 2019) <www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SafeClimate.aspx> accessed 9 November 2021.

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ister Gordon Brown, a former executive director of the Bank of England (Paul Fisher), the former President of the East African Court of Justice Emmanuel Ugirashebuja, a former Supreme Court Justice (Lord Robert Carnwath), Luc Lavrysen, at the time of his endorsement Justice in the Belgian Constitutional Court, currently President of the EU Forum of Judges for the Environment, David Pitt Watson, former Chair of UN Environment Finance Initiative and last but not least the driving force behind the Global Pact for the Environment Yann Aguila. Our website is visited daily by people from around the globe (from all European, almost all Asian, Latin American, and many African countries, the US, Canada, Australia and New Zealand). Some international law firms explicitly refer to our Principles on their websites and otherwise.

See for details about members, the endorsers of the EP1 and EP2, the prefaces, and news our website mentioned in footnote 4.

6 Finally

> Evil progresses cunningly. (…). It is necessary to intervene before it is too late. A conscience must exist somewhere which will sound the alarm … to warn of the peril and to show [those at the wheel] that they are progressing down a long road that leads far (…).[90]

For now, it is still possible to ward off global catastrophe.[91] We are, however, in the face of the Apocalypse. And we know it. Time for prattle, for insufficient action, for vague and undetermined promises about future action has elapsed. We must discuss what needs to be done globally to keep the increase of global temperature below a fatal threshold, be it 1.5, or 1.75°C and what must be done by whom and to act accordingly, of course. That message is unwelcome but no less important.

Although my learned friends and I hope that our Principles will serve as guidance for what needs to be done by whom, we appreciate that they are not perfect. At the very least, we need an in-depth discussion on allocating *sufficient* measures to get the job done. This should be done at a great pace. That is what we owe to nature, future generations, the most vulnerable countries, and people and the present youth.

90 Pierre-Henri Teitgen, those days the French Minister of Justice, quoted by: Rick Lawson, 'Het EVRM als motor voor verandering' (2021) Nederlands Tijdschrift voor de Mensenrechten 10; I have deliberately deleted the most ominous parts of the quote.

91 See e.g., Simon Dietz et al., 'The economics of 1.5°C climate change' (2018) 43 Annual Review of Environment and Resources 455, available at <https://bit.ly/36RRyyW> accessed 28 March 2022; Ruth DeFries et al., 'The missing economic risk in assessments of climate change impacts, policy insight September 2019' (Grantham Research Institute on Climate Change and the Environment, The Earth Institute Columbia University, Potsdam Institute for Climate Impact Research 2019) <https://bit.ly/3KdoNLB> accessed 8 November 2021.

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