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Development, differentiation and the Paris Agreement in national courts: The UKEF Mozambican gas litigation

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Abstract: This article examines the UK judicial review of export finance for gas development in Mozambique: (*R (Friends of the Earth) v UK Export Finance*). The proceedings challenged UKEF's decision on the ground that funding was inconsistent with the UK and Mozambique's Paris Agreement commitments. The article argues that the outcome was defensible on its own terms, despite there being no way to meaningfully engage with the principle of common but differentiated responsibilities, respective capabilities (CBDR-RC) and its implications for how the UK should assess the 'Paris-consistency' of finance for projects in states at different levels of development. The article focuses in particular on two aspects of the judgments: the discussion of the assessment of Scope 3 emissions, and the determination of whether and how affording public funding for a gas project abroad could be consistent with article 2(1)(c) of the Paris Agreement, which required flows of finance to be consistent with a pathway towards low carbon development. The article contends that assessments of this nature must properly

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account for historical responsibility, current inequities in emissions attribution, and the development pathways set out in states' own nationally determined contributions (NDCs). It concludes that the UKEF litigation illustrates a broader challenge in how domestic courts might operationalise differentiation in transnational climate cases.

Key words: climate litigation; CBDR-RC; climate justice; gas development; Scope 3 emissions

1 Introduction

In 2022, the High Court in London adjudicated a challenge to the United Kingdom (UK) government's decision to provide export credits for liquefied natural gas development in Mozambique.[1] The judicial review, brought by the non-governmental organisation (NGO) Friends of the Earth, challenged UK Export Finance (UKEF)'s decision on grounds that funding the project was inconsistent with the Paris Agreement.[2] There was no majority finding in the court *a quo*, with Stuart-Smith LJ finding for the defendants, while Thornton J dissented.[3] Due to the split bench, the matter went to the Court of Appeal, which came to the same conclusion as Stuart-Smith LJ, although with different reasoning.[4] The case has been characterised as yet another disappointing climate change judicial review in UK courts, criticised as unduly deferential and failing to support adequate environmental protection.[5] Commentary has focused on questions of the intensity of review in climate change judicial reviews, the approach to interpreting unincorporated international treaties, and how downstream emissions were and should be assessed.[6] Much of this commentary proceeds from the assumption that had the Paris Agreement been 'properly' enforced, the decision to support the project would have been found unlawful.[7]

This article takes a different approach, advancing four core arguments in its analysis of the litigation. Central to these arguments is the principle of common but differentiated responsibilities (CBDR-RC), and the differentiated commitments to which this principle gives rise. As recently stated in the International Court of Justice (ICJ) Advisory Opinion (AO),

1 *R (oao FOE) v SoS for UKEF and Chancellor of the Exchequer* [2022] EWHC 568 (Admin) (*UKEF*).
2 *UKEF* (n 1) [5].
3 As above.
4 Where a two-judge court is divided and the matter is resolved against the defendant, the matter can be referred to the Court of Appeal – *Cambridgeshire CC v Associated Lead Mills Ltd* [2005] EWHC 1627 (Admin) [14]. The progress to the CA is discussed in [36] *R (oao FOE) v SoS for UKEF and Chancellor of the Exchequer* [2023] EWCA Civ 14 (Court of Appeal).
5 See A Sanger & AL Young 'Deference and dualism are not friends of the earth' (2023) 82 *The Cambridge Law Journal* 195, and other sources cited herein.
6 N Helme and others 'Significant UK environmental law cases 2022-23' (2023) 35 *Journal of Environmental Law* 481, 487-89; Sanger & Young (n 5).
7 S Hockman QC & D Scott 'Enforceability of the Paris Agreement hampered as the Court of Appeal rules it will not interfere with 'tenable' interpretations' *elaw*, UKELA, April 2023.

> the principle of common but differentiated responsibilities and respective capabilities reflects the need to distribute equitably the burdens of the obligations in respect of climate change, taking into account, inter alia, states' historical and current contributions to cumulative GHG emissions, and their different current capabilities and national circumstances, including their economic and social development.[8]

The most visible instrument to foster equity in international environmental law, differentiation is a firm anchor thereof,[9] 'relevant for the interpretation of treaties and the determination of rules of customary law relating to the environment'.[10] This article asks what the consequences of a differentiated approach are, when considering states' domestic climate commitments. It does so by questioning whether a developed country funding fossil fuel development in a least developed country could be understood to be acting consistently with its commitments under the climate regime.

First, it uses the *UKEF* litigation to illustrate the challenges in operationalising the principle of common but differentiated responsibilities and the differentiation this requires. Second, it asserts that the final decision was correct, but only because of the approach taken in UK climate change judicial reviews rather than due to a clear recognition that in such cases the question of whether a development pathway is 'consistent' with the Paris goals should be assessed against the recipient state's development pathway.[11] Third, the consequence of this is a missed opportunity better to understand when and how CBDR-RC might be actionable in domestic legal disputes. Finally, it argues that the litigation's focus on 'global' emissions and questions of consistency with a universalised understanding of the Paris commitments, obscured fundamental questions about emissions attribution, and nuance that is required in the assessment of downstream emissions relating to production in developing countries.

The need to carefully consider the implications of continued fossil fuel extraction and the relative nature of climate change obligations has been further underscored by the ICJ's July 2025 Advisory Opinion on climate change.[12] In its unanimous opinion, the ICJ confirmed that the production and consumption of fossil fuels, granting exploration licences, or providing subsidies for fossil fuels 'may constitute an internationally wrongful act' under international law.[13] However, while the ICJ affirmed CBDR-RC as a binding principle,[14] the ICJ's AO can be understood to have provided insufficient guidance as to how

8 *Obligations of States in Respect of Climate Change (Advisory Opinion)* (2025) General List 187 (International Court of Justice ICJ) para 148.
9 P Cullet 'Differential treatment in environmental law: Addressing critiques and conceptualising the next steps' (2016) 5 *Transnational Environmental Law* 305.
10 *Obligations of States in Respect of Climate Change (Advisory Opinion)* (n 8) para 149.
11 Differentiation is explained in more detail in part 3.1. below.
12 *Obligations of States in Respect of Climate Change (Advisory Opinion)* (n 8).
13 *Obligations of States in Respect of Climate Change (Advisory Opinion)* (n 8) 427.
14 *Obligations of States in Respect of Climate Change (Advisory Opinion)* (n 8) 161.

differentiation should be operationalised.[15] African scholars have criticised the Opinion for adopting an insufficiently differentiated approach to fossil fuel obligations,[16] suggesting that continued fossil fuel consumption was unlawful, yet failing to provide guidance for an equitable management of the end of the global dependence on fossil fuels.[17] This makes careful and contextual analysis of the *UKEF* case – decided before the ICJ AO but raising issues that do not always sit comfortably alongside its interpretation – all the more important.

The article is structured as follows. Part 2 provides essential background on the *UKEF* litigation and the Mozambican gas project at its centre. Part 3 introduces differentiation, and examines Mozambique's climate commitments and development context, demonstrating why its trajectory legitimately differs from developed countries. Part 4 analyses how the judges approached differentiation and emissions attribution, explaining that the decision is consistent with a differentiated approach but that the reasoning could not reflect this. Part 5 questions what 'consistency' with article 2(1)(c) might mean in relation to finance flows between states with differentiated obligations. Part 6 draws on African climate justice perspectives to situate the case within broader questions of equity, and part 7 concludes the article.

2 The *UKEF* case: Background and litigation

2.1 UK export finance and the Mozambique project

UKEF is a statutory body and department of the Secretary of State.[18] It provides export credits as financial support in relation to the supply of UK goods or services overseas,[19] to ensure 'that no viable UK export fails for lack of finance or insurance from the private sector'.[20] The Secretary of State is afforded broad discretion in decision making across the portfolio.[21] In early 2019, UKEF agreed to provide financial support to a liquefied natural gas project in Mozambique's Rovuma Basin. By then, a financing and support package backed by a multinational group of lenders had already been substantially structured,[22] and it was understood that the project was viable without UKEF's support.[23] As such, a core rationale for the UK's involvement included the need to secure associated economic benefits

15 L Rajamani 'Untangling the Gordian knot: Differentiation in the ICJ's advisory opinion on climate change' (2026) *Journal of Environmental Law* eqag012.
16 E Boshoff & SG Damtew 'Can Africa still drill? What the ICJ climate opinion means for oil and gas exploration in Africa' in MA Tigre, M Bönnemann & A de Spiegeleir (eds) *The ICJ's advisory opinion on climate change* (2025) 235.
17 Boshoff & Damtew (n 16).
18 Sec 4 Export and Investment Guarantees Act 1991.
19 Secs 1(1) and 1(4) of the 1991 Act.
20 *UKEF* (n 1) [8].
21 Sec 3(1) of the 1991 Act.
22 *UKEF* (n 1) [46].
23 *UKEF* (n 1) [214].

for UK partners and companies.[24] It was also suggested (although not entirely accepted) that the involvement of a UK agency could, to some extent, improve environmental, social and governance compliance.[25] UKEF provided export credits – loans, guarantees or insurance in relation to an investable project – rather than allocating or investing public funding.[26] The final decision to provide credits was made, with some cabinet resistance 'due to climate change concerns',[27] in June 2020.[28]

The project involved extracting gas from Mozambique's Rovuma Basin over a period of approximately 32 years. The gas project was an integral part of the low-carbon development plans of the government of Mozambique, as the income generated by it would be used to develop a grid as Mozambique expanded its renewable energy provision.[29] The project purported to offer significant economic transformation if implemented in line with sustainable development principles; indeed, at the time, it offered the 'only available pathway' to a low-carbon economy and poverty alleviation, as *no other funding was available* for any other significant energy development.[30]

2.2 Shifting UK policy context

Within six months of UKEF's decision, it would have been contrary to UK government policy. In the run-up to COP26 in Glasgow in 2021,[31] the UK government resolved that no more financing would be offered to fossil fuel projects abroad.[32] This was justified on the basis of the UK's climate change

24 'UKEF's support was conditional on Total procuring UK goods and services and is expected to create approximately 2 000 UK jobs.' *UKEF CA* (n 4) [5].

25 *UKEF* (n 1) [57]. The Prime Minister's office, however, did ask that facilities for the provision of carbon capture, utilisation and storage be investigated – see *UKEF CA* (n 4) [16].

26 *UKEF* (n 1) [8]. The provision of export credit is not necessarily equivalent to any kind of cash, grant or loan; export credits are government financial support which can include direct financing, guarantees, insurance or interest rate support provided to foreign buyers to assist in the financing of the purchase of goods from national exporters – see OECD Glossary of Statistical Terms, https://stats.oecd.org/glossary/ (accessed 1 October 2024).

27 *UKEF* (n 1) [87] & [89].

28 Due to the statutory approvals process this was granted in three stages, see [3].

29 I Detelinova and others 'From climate risk to resilience: Unpacking the economic impacts of climate change in Mozambique' (African Climate Foundation, International Food Policy Research Institute 2023), https://ebrary.ifpri.org/digital/collection/p15738coll2/id/136961 (accessed 16 January 2024). The on-grid electrification rate is only about 40% due to 'an underdeveloped transmission and distribution network', at 15.

30 *UKEF* (n 1) [229]. This in response to the claimant's proposals for renewables-only projects, none of which were available. Although the funding was agreed not to be climate finance, this is where funding for renewable energy projects could be expected to be received. Mozambique has a significant 'climate finance gap', and what is available is prioritised for adaptation and resilience – see Detelinova and others (n 29) 33-34.

31 The Conference of the Parties to the UNFCCC – see outcome 'Glasgow Climate Pact, 1/CMA.3, FCCC/PA/CMA/2021/10/Add.1'.

32 See https://www.gov.uk/government/news/pm-announces-the-uk-will-end-support-for-fossil-fuel-sector-overseas (accessed 1 October 2024). This decision appears to be have been made on 12 December 2020. DESNZ 'Aligning UK international support for the clean energy transition' (2021), https://assets.publishing.service.gov.uk/media/65840f10fc07f300128d45e9/aligning-uk-international-support-for-the-clean-energy-transition.pdf (accessed 1 October 2024).

commitments and the need to reduce emissions,[33] presumably from other states, as the UK continued to issue licences to develop oil and gas within its own territory.[34] After the summer of 2019, the UK government steadily introduced measures to reduce or proscribe funding for fossil fuel projects abroad.[35] Over this period, a series of multilateral institutions, as part of their funding strategies, announced that they would not fund fossil fuel projects that were 'misaligned' with the Paris Agreement.[36] This was contemporaneous with increasing pressure to limit public finance provision that was not 'aligned' with the goals of the Paris Agreement,[37] including multilateral commitments to end export credits for fossil fuel energy projects, despite continued high levels of investment in fossil fuel infrastructure from export credit agencies.[38] In any event, from March 2021, it became UK government policy not to provide financial assistance to any fossil fuel projects abroad, other than in very limited circumstances.[39] The support for the Rovuma gas project was eventually withdrawn.[40]

Of course, subsequent changes in government policy regarding financial support for fossil fuel extraction do not affect the merits of the *UKEF* litigation itself. However, it does go to illustrate some of the issues discussed in this article. It demonstrates that, in general, the way in which the UK government is assessing its obligations in terms of the provision of development finance and export credits is determined by 'climate' considerations that are specific to its national goals,[41] not to the context of the recipient party. As argued herein, this to some extent foreclosed consideration of the national context of donor states whose climate contributions were differentiated.

2.3 The litigation

R (Friends of the Earth) v Secretary of State for International Trade and UK Export Finance was brought before the High Court in London in 2022,[42] and the Court of Appeal the following year.[43] The defendants were UKEF and the Chancellor of the Exchequer. Total Mozambique, the prospective operator, and other project funders appeared as interested parties. The claimant was Friends of the Earth (FOE). The claimant sought to establish that 'the project and its funding' were

33 As above. This is discussed by the *UKEF CA* (n 4), [18] & [19].
34 D Shapovalova 'Climate change and oil and gas production regulation: An impossible reconciliation?' (2023) 26 *Journal of International Economic Law* 817, 826-829.
35 See n 32 above.
36 *UKEF CA* (n 4), see [9]-[17].
37 C Downie & MJ Peterson 'Public financial institutions in the energy transition: The impact of export credit agencies' (2025) 178 *Climatic Change* 40, 42.
38 Downie & Peterson (n 37) 40-44.
39 DESNZ (n 32). See *UKEF CA* (n 4) [19].
40 P Foster & I Johnston 'UK withdraws financing for Total's Mozambique LNG development' *Financial Times* 1 December 2025.
41 Downie & Peterson (n 37) 49-50 discuss the way climate concerns changed UKEF's interpretation of its mandate during the relevant period.
42 *UKEF* (n 1).
43 *UKEF CA* (n 4).

not 'aligned' with the UK and Mozambique's climate change commitments under the Paris Agreement, including because of the failure to assess Scope 3 emissions in the assessment process.[44] The proceedings were a judicial review of the defendants' decisions to provide support for the gas project.[45] The claimant contended that the defendants' decisions were based on an error of law or fact in that 'the Project and its funding was compatible with the United Kingdom's commitments under the Paris Agreement and/or assisted Mozambique to achieve its commitments under the Paris Agreement' (Ground 1(a)) and/or was reached without due regard to material relevant considerations 'in reaching the view that funding the Project aligned with the UK and Mozambique's obligations under the Paris Agreement' (Ground 1(b)).[46]

As discussed in more depth below, in evaluating whether it should provide support, UKEF took it upon itself to assess climate change impacts and 'consistency' with the Paris Agreement, and in the absence of any established methodology for this, sought to devise one by itself.[47] This evaluation became the Climate Change Report, (CCR). Although the project was viable without UKEF support, the judicial review could have laid foundations to ensure similar projects could not be funded by changing perceptions of financial risk around investment. Commentators have suggested that such cases aim 'to increase the cost of capital for high emitting activities to the point where such activities become economically unviable even if they remain legally permissible'.[48] This is why it is still worth thinking about the implications of the *UKEF* litigation even though the challenge was unsuccessful and the project would have been viable without UKEF support; because the litigation could be considered part of a broader litigation strategy targeting financial support decisions, as well as a broader campaign by NGOs (including FOE) to put an end to the gas project.[49]

2.3.1 The High Court

In the High Court, the leading judgment in *UKEF* was delivered by Stuart-Smith LJ with a minority judgment from Thornton J.[50] Stuart-Smith LJ understood

44 *UKEF* (n 1) [5]. On appeal, the challenge was only to the question of whether the UK's commitments were being met. I explain Scope 3 emissions in the next part.
45 This was a three-stage decision: *UKEF* (n 1) [3], [4].
46 *UKEF* (n 1) [5].
47 *UKEF* (n 1) [46]-[48]; also see discussion in the judgment of Thornton J [283]-[288].
48 J Setzer & C Higham 'Global trends in climate change litigation: 2022 Snapshot' (Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science 2022) 19. See generally on the instrumental potential of failed cases: K Bouwer & J Setzer 'Climate litigation as climate activism: What works?' (British Academy 2020), https://www.thebritishacademy.ac.uk/publications/knowledge-frontiers-cop26-briefings-climate-litigation-climate-activism-what-works/ (accessed 20 July 2026).
49 Regular updates appear on FOE's website; see https://friendsoftheearth.uk/climate/whats-happening-mozambique (accessed 20 July 2026).
50 Where a two-judge court is divided, then the matter is resolved against the defendant, but the matter can be referred to the Court of Appeal – *Cambridgeshire CC v Associated Lead Mills Ltd*

there to be 'no general rule' that a court in a dualist system should not determine treaty interpretation questions,[51] but only to determine whether it was 'tenable' to conclude that defendants' approach aligned with the Paris Agreement.[52] This is the approved approach to treaty interpretation in the UK courts. The court can examine only whether a view as to the meaning on a point of international law is 'tenable', rather than seeking to provide a definitive interpretation of a treaty as if it were 'a hard-edged point of domestic law'.[53] The judge highlighted that the Agreement's scope is wide-ranging, and that 'articles 2(1)(a)-(c) are not statements of exclusive or exhaustive obligations' but needed to be read 'in the context of sustainable development and efforts to eradicate poverty' and 'to reflect equity and [CBDR-RC]'.[54] While acknowledging 'no established jurisprudence' as to article 2(1)(c)'s meaning,[55] he considered himself 'not authorised' to provide a definitive interpretation.[56] However, the guidance from the Court clearly emphasised the need to read article 2(1)(c) in the full context of the Paris Agreement.[57]

Thornton J thought flaws in the Climate Change Report (CCR), particularly failure to assess Scope 3 emissions, meant that there was 'no rational basis' to demonstrate that the decision to award funding was consistent with article 2(1)(c) of the Paris Agreement.[58] The judge noted the urgency of climate change and the transnational waves of litigation aimed at improving ambition on climate change mitigation.[59] This included the UK Heathrow litigation, which did offer a 'glimmer of light for environmental groups which emerged from the Court of Appeal's quashing of the National Policy Statement (NPS) on Airports ... on climate policy grounds', even though it failed on appeal.[60] The judge expressed concern about the climate crisis, the importance of achieving the temperature goal,[61] and the emissions which would result from the project.[62] She explained that, in her analysis, the finance goal was relevant to the UK's obligations under the Paris Agreement, which she justified due to differentiation.[63]

[2005] EWHC 1627 (Admin) [14]. The progress to the CA is discussed in [36] *UKEF CA* (n 4).

51 *UKEF* (n 1) [119]i.

52 *UKEF* (n 1) [119]-[120].

53 P Sales QC & J Clement 'International law in domestic courts: The developing framework' (2008) 124 *Law Quarterly Review* 388, 405-406. This approach was adopted by the UK House of Lords in *R (Corner House Research) v Serious Fraud Office* [2008] UKHL 60. The Supreme Court has, on occasion, taken a different approach – noting that if it is necessary to determine a question of international law in order to 'resolve a justiciable issue', then the court must do so; see *Benkharbouche v Embassy of the Republic of Sudan* [2017] 3 WLR 977 [35].

54 *UKEF* (n 1) [121].

55 *UKEF* (n 1) [123].

56 *UKEF* (n 1) [124].

57 Art 2(1)(c) is discussed in more depth in part 5.

58 *UKEF* (n 1) [244].

59 *UKEF* (n 1) [248]-[253].

60 S Tromans and others 'Significant UK environmental law cases 2020-21' (2021) 34 *Journal of Environmental Law* 467.

61 *UKEF* (n 1) [249]-[252].

62 *UKEF* (n 1) [257].

63 *UKEF* (n 1) [264].

These are all valid considerations, but they were considered in a decontextualised manner; her analysis focused on mitigation and climate action as it would apply in developed countries. Given that the Paris Agreement was being interpreted in some sense, its full range of goals, aims and obligations needed to be taken into account. This is because, even if (as stated) the obligation under consideration was that of the UK, the effect of that decision was fundamentally transnational, and lay between a developed state and a least developed country. Thornton J did recognise that differentiation can literally mean that states bear different obligations,[64] but her reasoning does not reflect article 2(2), which makes CBDR-RC an express interpretive provision for the whole agreement.[65] Reading article 2(1)(c) as needing to be 'understood by reference to the temperature goal in article 2(1)(a)' and for the furtherance of pathways that at the least reduce the 'risk of negative climate outcomes',[66] reflects an understanding of 'climate' goals focused on urgent mitigation, not the achievement of sustainable development in contexts where emissions could increase in the short term.

2.3.2 The Court of Appeal

Before the Court of Appeal, the arguments were different. The questions before the Court were the following: whether it was an error of law for the defendants to have concluded that the decision was 'aligned with the UK's obligations under the Paris Agreement';[67] whether in assessing the consistency of the defendants' decision with the Paris Agreement, the Court should find the correct interpretation rather than the tenable one; and if so, what the proper construction of article 2(1)(c) was.[68]

Sir Geoffrey Vos noted that it would not be workable for courts to be expected 'definitively to construe' unincorporated treaties whenever a public body chose to refer to them in relation to their decision making.[69] It was tenable to conclude that the project was aligned with the UK's obligations under the Paris Agreement, given the huge complexities contained in the CCR.[70] As such, he declined to provide any definitive interpretation of the Paris Agreement, other than in a negative sense, that is, that the interpretation of Thornton J and the claimant was

64 As above.
65 L Rajamani 'Ambition and differentiation in the 2015 Paris Agreement: Interpretive possibilities and underlying politics' (2016) 65 *International & Comparative Law Quarterly* 493, from 507.
66 *UKEF* (n 1) [265], [266] quoting from the Standing Committee on Finance.
67 *UKEF CA* (n 4) [21]. The claimants did not contend that the decision was irrational on the basis that it would, if it had been made some 6 months later, have contravened the government's then climate change policy – see [20].
68 *UKEF CA* (n 4) [21].
69 *UKEF CA* (n 4) [50].
70 *UKEF CA* (n 4) [40] iv. It also mattered not that UKEF had reached the 'definitive view that their approval decision was compliant with the UK's obligations under the Paris Agreement' – see [40] viii.

not correct,[71] and in relation to what it did *not* require the UK to do.[72] He did provide guidance as to the structure of the Agreement, in order to clarify what it seeks to achieve.[73] He noted the various 'specific obligations on state parties', including those pertaining to mitigation (article 4) and the provision of finance (article 9), and that the provisions of article 2 'represent the purposes of the Paris Agreement', the achievement of which should be the role of the obligations.[74]

Sir Geoffrey Vos recognised the urgency of the climate crisis, but noted that the case was a judicial review of government actions and should be determined on the basis of 'accepted and familiar principles of public law', which should not be seen as 'supporting or opposing any political view of the issues'.[75] He does emphasise, also quoting from the Heathrow litigation, that there are no binding obligations to adopt targets to ensure that the Paris objectives are met, and that the specific legal obligation is to meet the nationally determined contributions of the state in question.[76] This, of course, refers to domestic legal obligations; the UK and other states have a range of commitments of varying legal character under the Paris Agreement,[77] but these are not directly enforceable in the domestic courts. Sir Geoffrey made no reference to differentiation explicitly, focusing on the domestic obligations. However, he did so implicitly with reference to the representations of the interested parties, noting that the Paris Agreement invokes

> the equitable principle that least developed countries should be permitted to address their high levels of poverty and low economic growth by exploiting their natural resources so that their emissions [peak] later than those of the developed world, [because] the impacts of climate change had overwhelmingly been caused by the developed nations.[78]

As such, this implicitly does reflect an appreciation of the range of priorities reflected in the Paris Agreement, but in a subtle way which, consistently with a more orthodox approach to dualism, does not rely on international law to interpret domestic obligations.[79]

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71 *UKEF CA* (n 4) [55] v. 'In our judgment also, and because of the complexity we have mentioned, the respondents' view was indeed tenable. It was supported by the initial Wood Mackenzie report and by the CCR. In essence, however, the argument to the contrary could only succeed if Thornton J at [262]-[268] and Friends of the Earth's submissions as to the proper meaning of the Paris Agreement were correct. In our view, they are not.' There is a further point about funding in [55]vi. which I discuss later in the article.

72 Sanger & Young (n 5) 197.

73 *UKEF CA* (n 4) [46].

74 *UKEF CA* (n 4) [38].

75 *UKEF CA* (n 4) [2].

76 *UKEF CA* (n 4) [47], quoting from *R (on the application of Friends of the Earth Ltd & Others) v Heathrow Airport Ltd* [2020] UKSC 52) [71].

77 Generally, L Rajamani 'The 2015 Paris Agreement: Interplay between hard, soft and non-obligations' (2016) 28 *Journal of Environmental Law* 337.

78 *UKEF CA* (n 4) [32].

79 The UK has a formally dualist system but one in progressive judges have made use of international law to develop the common law and to interpret statutes, which has resulted in a more open and flexible approach to dualism in public law – see Lord Lloyd-Jones 'International law before the United Kingdom courts: A quiet revolution' (2022) 71 *International and Comparative Law Quarterly* 503; S Fatima 'The domestic application of international law in British courts' in CA Bradley (ed) *The Oxford handbook of comparative foreign relations law*

3 CBDR-RC: Mozambique's climate commitments and development context

3.1 CBDR-RC

This part discusses Mozambique's climate commitments and national context. The previous part, introducing the litigation, made some passing references to CBDR-RC. This sub-part, while not purporting to be comprehensive, offers a focused discussion of CBDR-RC to support the parts that follow. In so doing, it is unavoidable to refer to the recent ICJ AO, as the first 'substantial judicial articulation' of CBDR-RC,[80] although it must be acknowledged that this did not exist at the time the *UKEF* case was argued. CBDR-RC has been subject to contestation and disagreement,[81] and tensions are managed through the multilateral process by means of skilful negotiation, careful drafting and a strategic use of ambiguity.[82] Many issues have been resolved (although not definitively) by the AO,[83] including CBDR-RC's core content and implications.

Differentiation, as the broader manifestation of 'common but differentiated responsibilities and respective capabilities' (CBDR-RC), is an established (albeit contested) concept in international environmental law.[84] States agree to common burdens and benefits through multilateral negotiations, but distinguish respective contributions to reflect the equity concerns between states in different stages of development.[85] In the Paris Agreement, CBDR-RC is given effect through a system of 'bounded self-differentiation',[86] in terms of which parties to determine what their emissions reductions strategies are to be – expressed in their periodical nationally determined contributions (NDC) – taking into account their CBDR-RC.[87] Developing countries agree to take on additional

(2019). A relatively recent Supreme Court decision may be seen as a 'reassertion of dualist orthodoxy' which 'inevitably limits the usefulness of international sources as tools of judicial argumentation' – *R (on the application of SC, CB and 8 children) v Secretary of State for Work and Pensions and others* [2021] UKSC 26; R Masterman 'Reasserting/reappraising dualism' *UK Const L Blog*, 7 December 2021.

80 M Wewerinke-Singh & JE Viñuales 'Differentiation through due diligence: Common but differentiated responsibilities and respective capabilities in the ICJ's 2025 Climate Advisory Opinion' (2026) 35 *Review of European, Comparative & International Environmental Law* 302-310.

81 See D Shapovalova 'In defence of the principle of common but differentiated responsibilities and respective capabilities' in A Zahar & B Mayer (eds) *Debating climate law* (2021) 63; T Leclerc 'The notion of common but differentiated responsibilities and respective capabilities: A commendable but failed effort to enhance equity in climate law' in A Zahar & B Mayer (eds) *Debating climate law* (2021) 76.

82 A Roberts 'Comparative international law? The role of national courts in creating and enforcing international law' (2011) 60 *International and Comparative Law Quarterly* 57, 85.

83 Rajamani (n 16).

84 Principles 6 and 7 of the Rio Declaration. See discussion in A Boyle & C Redgwell *Birnie, Boyle, and Redgwell's international law and the environment* (2021) 110-112.

85 S Atapattu & CG Gonzalez 'The north-south divide in international environmental law: Framing the issues' in S Alam and others (eds) *International environmental law and the Global South* (2015) 1; Cullet (n 9).

86 Rajamani (n 65) 509-510.

87 Rajamani (n 65) 510.

burdens but can also expect increased support, including the provision of climate finance.[88] The provision of climate finance to developing countries is one of few 'hard' obligations in the Paris Agreement,[89] and many developing countries make their Paris pledges conditional on receipt of support. It is not clear to what extent developing country parties will be held to the conditional commitments they have made if adequate support is not received.[90] What is clear is that despite the nature of the finance and other support provisions and their wording, there is no enforceable legal duty to provide climate finance because of the climate treaties; these obligations are given effect to through the multilateral review and compliance mechanisms.[91]

While CBDR-RC does not give rise to free-standing legal obligations,[92] the consequence of a differentiated approach is that identifying 'rules and principles of international environmental law, does not mean that the law is the same for all states regardless of their capabilities or differing circumstances'. [93] All states clearly do share in the goals and obligations of the Paris Agreement,[94] but they are not the *same* obligations, and some countries can expect support from others in order successfully to achieve what they have committed to.[95] For instance, the ambition of the regime is now represented by the temperature goal encapsulated in the Agreement's article 2(1).[96] However, a common goal does not mean that all parties are required to do identical things to achieve it; this is an aspiration for all, and does not give rise to individual obligations to comply with it.[97] The understanding is that each state would make a contribution to emissions reduction based on various criteria, which should be equitable.[98] So, when it comes to emissions reduction, all parties have agreed to reach global peaking of

88 Boyle & Redgwell (n 11) 124. For an explanation as to why implementation aid is as much differentiation as differing commitments, see Cullet (n 9).
89 Paris Agreement (FCCC/CP/2015/L9/Rev1) art 9(1); Rajamani (n 77).
90 WP Pauw and others 'Conditional nationally determined contributions in the Paris Agreement: Foothold for equity or Achilles heel?' (2020) 20 *Climate Policy* 468; O Woolley 'Developing countries under the international climate change regime: How does the Paris Agreement change their position?' (2016) *Ethiopian Yearbook of International Law* 179.
91 Rajamani (n 77) 353.
92 *Obligations of States in Respect of Climate Change (Advisory Opinion)* (n 8) para 151.
93 Boyle & Redgwell (n 11) 110.
94 Rajamani (n 77).
95 See generally P Cullet 'Differential treatment in international law: Towards a new paradigm of inter-state relations' (1999) 10 *European Journal of International Law* 549; C Holz, S Kartha & T Athanasiou 'Fairly sharing 1.5: National Fair Shares of a 1.5 °C-Compliant Global Mitigation Effort' (2018) 18 *International Environmental Agreements: Politics, Law and Economics* 117, 128-129.
96 For a discussion as to how this headline goal moved from a qualitative to a quantitative measure, see S Biniaz 'Comma but differentiated responsibilities: Punctuation and 30 other ways negotiators have resolved issues in the international climate change regime' (2016) 6 *Michigan Journal of Environmental & Administrative Law* 37, 60-61.
97 B Mayer 'Prompting climate change mitigation through litigation' (2023) 72 *International & Comparative Law Quarterly* 233, 280.
98 H Winkler and others 'Countries start to explain how their climate contributions are fair: More rigour needed' (2018) 18 *International Environmental Agreements: Politics, Law and Economics* 99; L Rajamani and others 'National 'fair shares' in reducing greenhouse gas emissions within the principled framework of international environmental law' (2021) 21 *Climate Policy* 983; K Dooley and others 'Ethical choices behind quantifications of fair contributions under the Paris Agreement' (2021) 11 *Nature Climate Change* 300.

greenhouse gas emissions 'as soon as possible',[99] in order to achieve the long-term temperature goal.[100] However, these obligations are differentiated, with developed countries taking the lead,[101] reflecting each party's 'highest possible ambition', but taking into account CBDR-RC, and differing national circumstances.[102] Developing countries have a 'soft obligation' to continue 'enhancing mitigation efforts' with an expectation that they move towards emissions cuts in time.[103] As such, it has been argued that developing countries have 'an ill-defined licence to increase ... greenhouse gas emissions in connection with economic and social development';[104] this is because there is an understanding that emissions peaking for developing countries can take longer.[105]

A significant question raised about differentiation subsequent to the ICJ's AO is how it might be operationalised, as the main opinion gave no guidance as to how CBDR-RC should be applied whether within the climate treaties or beyond.[106] It has been noted that in relation to mitigation, 'there are limited multilateral avenues for equitable burden sharing in mitigation to be considered, and no dedicated mechanisms for these to be operationalised', including because the stock-taking process only assesses collective progress towards mitigation goals.[107] This also raises questions as to how and whether differentiation is judicially actionable in climate-related disputes.[108] To date, most references to differentiation in national (or regional) courts arise in relation to mitigation ambition, where courts deal with the burden-sharing dimensions of their climate change duties,[109] but even if CBDR-RC is discussed, the courts' analysis relies on their own constitutional frameworks rather than their obligations under international law. It has, however, also been suggested that a domestic measure that disregards historical or current contributions or capabilities could be challenged through the interpretation or application of an existing treaty or customary obligation or as a breach of CBDR-RC.[110]

99 Paris Agreement art 4(1).
100 Under art 2(1)(a) of the Paris Agreement, parties agree to hold the 'increase in the global average temperature to well below 2°C above pre-industrial level', or lower if possible.
101 Paris Agreement art 4(4). See AJ Saiger 'Domestic courts and the Paris Agreement's climate goals: The need for a comparative approach' (2020) 9 *Transnational Environmental Law* 37, 52 re the substantive meaning of these obligations in different national contexts.
102 Paris Agreement art 4(3).
103 Paris Agreement art 4(4); Rajamani (n 77) 349.
104 O Woolley 'Developing countries under the international climate change regime: How does the Paris Agreement change their position?' (2016) *Ethiopian Yearbook of International Law* 179, 180; Boshoff & Damtew (n 15); see, however, R Maguire & X Jiang 'Emerging powerful southern voices: Role of BASIC nations in shaping climate change mitigation commitments' in CG Gonzalez and others (eds) *International environmental law and the Global South* (2015) 214.
105 Paris Agreement, preambular paragraph 8, arts 4(1) & (4).
106 Rajamani (n 16) 12.
107 Rajamani (n 16) 12, 13.
108 Also posed by Wewerinke-Singh & Viñuales (n 80) 2.
109 *The State of the Netherlands v Urgenda Foundation (III)* ECLI:NL:HR:2019:2007; *Neubauer et al v Germany* (2021) BVerfG, Order of the First Senate of 24 March 2021-1 BvR 2656/18-Rn. 1-270 (German Federal Constitutional Court); *Verein KlimaSeniorinnen Schweiz v Switzerland* (2024) Application 53600/20 (European Court of Human Rights (ECtHR), Grand Chamber). See Wewerinke-Singh & Viñuales (n 80) 7.
110 Wewerinke-Singh & Viñuales (n 80) 4.

3.2 Mozambique's climate commitments

Mozambique is a least developed country.[111] It is frequently and severely affected by natural disasters such as floods, cyclones and droughts, whose impacts are compounded by historically rooted vulnerabilities.[112] 'Existing financial, infrastructure, and organisational challenges' make it difficult to respond to these events, and existing structural vulnerabilities mean that the cumulative impact of these events is severe.[113] Mozambique is a low emitter[114] which, as discussed above, means that it could be legally permissible under the Paris Agreement for Mozambique's emissions peaking to come later.[115]

Mozambique's nationally determined contribution (NDC) includes a mitigation commitment target that is ambitious,[116] albeit conditional on receiving support. This is so ambitious, in fact, that the extent of the mitigation commitments has been criticised as excessive and 'maladjusted', given that Mozambique is dependent on foreign aid and lacks the resources properly to attend to climate *adaptation*.[117] To contextualise: Mozambique's proposed emission reductions would represent about 1.2 tCO2eq per capita by 2025, compared to Mozambique's total GHG emissions per capita of 0.6 tCO2eq in 1990 and about 2 tCO2eq in 2021. For comparison, per capita emissions of developed countries (Annex I) in 1990 and 2019 were 16 tCO2eq and 12 tCO2eq respectively. Globally these values are 6 tCO2eq and 7 tCO2eq. [118] In other words, Mozambique's proposed emissions growth at the time was a small fraction of developed-country per capita emissions, and extremely ambitious given its overall circumstances.

3.3 Gas, renewable energy and development pathways

Mozambique has considerable, largely unexploited, reserves of natural gas, which make up a small proportion of its energy mix (10 per cent), with most energy

111 https://www.un.org/development/desa/dpad/least-developed-country-category-mozambique.html#:~:text=Least%20Developed%20Country%20Category%3A%20Mozambique,of%20Economic%20and%20Social%20Affairs (accessed 20 July 2026).
112 IPCC Sixth Assessment Report Climate Change 2022: Impacts, Adaptation and Vulnerability, 8-3, 8-36.
113 JM do Rosário Chilaúle Langa and others 'Extreme climatic events and climate change policies: A call for climate justice action in Mozambique' in N Crawford, K Michael & M Mikulewicz (eds) *Climate justice in the majority world* (2023) 42.
114 Eg, in 2013 Mozambique's GHGs were 0.14% of the global total – see Climate Links 'Greenhouse Gas Emissions Factsheet: Mozambique' 16 May 2017, https://www.climatelinks.org/resources/greenhouse-gas-emissions-factsheet-mozambique (accessed 20 July 2026).
115 Paris Agreement art 4(4); Rajamani (n 77) 349.
116 Ministry of Land and Environment, Republic of Mozambique 'Update of the First Nationally Determined Contribution to the United Nations Convention on Climate Change, Mozambique, 2020-2025', 1 November 2021, 20-21.
117 Chilaúle Langa and others (n 113).
118 Ministry of Land and Environment (n 116) 20-21.

supplied from renewable sources.[119] Petroleum is one of Mozambique's exports and a major source of revenue.[120] At present, Mozambique is at what has been called a 'crossroads' between the use of fossil fuels and renewable energy.[121] In a study of diverse optimal development pathways in Africa, it was suggested that 'if managed by strong multistakeholder institutions mandated by society-wide co-benefits' Mozambique could use gas exports to generate economic gains,[122] even while expanding energy access through deployment of renewables, especially solar.[123] Consistently, its updated NDC states that Mozambique will continue to use gas to alleviate poverty and aid development.[124] The gas project was an integral part of the low-carbon development plans of the government of Mozambique, as the income generated by it would be used to develop a grid as Mozambique expanded its renewable energy provision.[125]

UKEF's CCR concluded that the project would inevitably increase Mozambique's direct emissions, but that the gas from the project would play an important role in Mozambique's energy transition and align well with Mozambique's 'longer-term' climate change plans.[126] The transformative potential of the project for Mozambique, including the contribution that revenues from the project could make to the reinforcement of the electricity grid and alleviation of poverty, were important considerations in the decision to grant export credits for the project.[127]

As discussed earlier, the ICJ AO has made clear that continued fossil fuel development may be an internationally wrongful act, although the implications of this for developing countries that have not yet benefited from their natural resources, is unclear.[128] Elsewhere, with others, I have argued that the urgency motivating the fossil fuel phase-out must not override considerations of equity, and that the legal basis for an equitable fossil fuel phaseout already exists in international law.[129] Least developed countries such as Mozambique cannot finance projects themselves, and an argument can be made that it is legitimate for developed countries, in line with broad Paris commitments, to help finance such projects, even if (due to their climate commitments) they probably should not be

119 Ministry of Land and Environment (n 116) 57-58. This does include traditional forest biomass, but most electricity is generated by hydropower. At the time, gas comprised 40% of the UK's energy mix; see UKEF's submissions to the defendant discussed in the judgment from the Admin Court; *UKEF* (n 1) [79]-[81].
120 Detelinova and others (n 29).
121 Y Mulugetta and others 'Africa needs context-relevant evidence to shape its clean energy future' (2022) 7 *Nature Energy* 1015.
122 Mulugetta and others (n 121) 1018.
123 Mulugetta and others (n 121) 1019.
124 This is also reflected in Mozambique's Natural Gas Master Plan – see [42]-[43].
125 Detelinova and others (n 29): The on-grid electrification rate is only about 40% due to 'an underdeveloped transmission and distribution network', at 15.
126 *UKEF* (n 1) [77].
127 *UKEF* (n 1) [77] iv, [82].
128 See the discussion in the introductory part.
129 K Bouwer, D Shapovalova & M Fermeglia 'Towards a principle-based framework for an equitable global fossil fuel phase-out' (2026) 75 *International & Comparative Law Quarterly* 193.

exploiting their own existing reserves. Of course, there is no enforceable legal duty on the UK (or similar state) to provide such financing. Developed countries do have a hard obligation under the Paris Agreement to provide climate finance,[130] but the public financing here was not that,[131] and in any event that is not an obligation that can be domestically enforced. However, it is probably defensible to argue that under certain circumstances a state's climate commitments would not be a reason not to provide such finance to another state with quite different climate commitments due to the latter's level of development. This is a difficult argument to make in a world not on track to deliver required emissions reductions. I discuss this further below, when I consider what article 2(1)(c) potentially entails when the recipient state is a developing country.

4 Differentiation, emissions attribution, and the judges' reasoning

4.1 Scope 3 in the UKEF context – Replacement and attribution

In the *UKEF* case, Scope 1 and 2 emissions were expected to account for approximately 5 to 10 per cent of Mozambique's total emissions during the project.[132] During the assessment process, however, there were questions about whether and how to assess Scope 3 emissions, most of which would arise due to the consumption of gas by importer states. This was important for the litigation because the eventual decision not to assess Scope 3 emissions was central to the legal challenge. This is also worth examining further due to the growing 'judicial consensus' that project downstream emissions should be assessed,[133] including statements from the ICJ AO, which could be read as supporting 'an extensive framing of the obligation to prevent harm to the climate irrespective of where the source of harm originates'.[134] In general, this is positive, as it should lead to greater alignment between climate goals and fossil fuel development in developed countries, but in cases such as the one considered here, it is worth asking questions about emissions attribution and responsibility, as well as whether other considerations are equally important.

In undertaking its CCR,[135] UKEF considered whether it should assess Scope 3 emissions, and if so, what that assessment should be,[136] or whether assessing 'cumulative committed carbon emissions', or 'lock-in', provided more insight into

130 Paris Agreement (FCCC/CP/2015/L9/Rev1) art 9(1); Rajamani (n 77) 348, 353.
131 *UKEF* (n 1) [267].
132 *UKEF* (n 1) [63], [73], [77].
133 A Adeyemi 'Judicial consensus on end-user emissions as indirect environmental effects: The case of *R (Finch) v Surrey County Council and Ors*' (2026) *Journal of Energy & Natural Resources Law* 1; *R (on the application of Finch on behalf of the Weald Action Group) v Surrey County Council and others* [2024] UKSC 20.
134 Adeyemi (n 133) 17. See *Obligations of States in Respect of Climate Change (Advisory Opinion)* (n 8) paras 287-298 and Joint Declaration by Judges Bhandari and Cleveland paras 11-17.
135 *UKEF* (n 1) [46]-[48]; [283]-[288].
136 *UKEF* (n 1) [64] and generally.

whether the project could be said to stay within what was identified as carbon budgets[137] (presumably those of the UK, which did not apply to Mozambique). UKEF explored questions of compatibility, including with the temperature goal,[138] and did try initially to assess Scope 3s.[139] The CCR concluded that the uncertain final destination of the gas made it too difficult to assess downstream emissions, but it was accepted that they would be considerable.[140] Tension emerged later in the process between the obvious 'gap in the analysis' presented by the failure to assess Scope 3s,[141] and the uncertainties underlying any assessment. These arose from uncertainty about where the gas would be burned and whether the fuel it displaced there had a favourable, unfavourable or negligible impact on global emissions.[142]

Assessing the use of the gas abroad is important because of its contribution to global greenhouse gas emissions. Depending on the destination, the use of gas from the Rovuma Basin could have resulted in a net reduction in emissions if, for instance, it replaced coal in that country. Most countries that do not have a national oil commissioning authority will buy and sell fossil fuels on global markets, but in Mozambique's case, it sells its gas to South Africa, displacing coal and, therefore, having a net positive impact on global emissions.[143] While this is expected to diversify going forward,[144] the project's likely positive impact on South Africa's coal consumption was seen as one of its benefits.[145]

Therefore, there are always degrees of uncertainty about where fossil fuels would be consumed and where endpoint emissions would occur; consequently, it was unclear what kind of fuel it would displace (whether lower or higher in emissions). This creates problems both when determining whether the gas would have a net benefit (by replacing 'worse' fossil fuels) and when attributing responsibility for Scope 3 emissions to the producer state, particularly when that state is a developing country. Regarding the state needing to account for gas consumption as part of territorial emissions, that would apply to the importing country, as most consumption would be outside Mozambique's territory, so it would not be appropriate to assess it against Mozambique's emissions. This does, admittedly, raise questions about whether importer states would actually account for their consumption emissions in their NDCs.

137 *UKEF* (n 1) [60].
138 *UKEF* (n 1) [281].
139 *UKEF* (n 1) [282].
140 *UKEF* (n 1) [92].
141 *UKEF* (n 1) [303]. This statement by UKEF's expert advisor is quoted in several places in the judgments.
142 See *UKEF* (n 1) [295], [307]-[315]. This is not the same as the 'substitution' argument, which is premised on the notion that if the fossil-fuel development in question is not approved, other production elsewhere will be approved to meet market demand – see G Dwyer "'Market substitution' in the context of climate litigation' (2022) 12 *Climate Law* 1, 5-6.
143 C Santos Cruz & P Duarte Rocha 'Oil & Gas Laws and Regulations Report 2024 Mozambique' (ICLG 2024).
144 As above.
145 *UKEF* (n 1) [80iii].

4.2 Scope 3 emissions: The attribution problem

The Greenhouse Gas (GHG) Protocol was developed by the World Resources Institute and the World Business Council for Sustainable Development. It is the most widely used international standard for measuring, managing and reporting greenhouse gas emissions. It is used by numerous organisations, cities and governments to track and mitigate their climate impact.[146] The Protocol classifies emissions into three 'scopes'. In fossil fuel industries, Scope 1 and 2 are direct and indirect emissions associated with extraction and the associate businesses,[147] which can include generation.[148] Scope 3 includes all indirect emissions not included in Scope 2, such as the use of sold products at their final destination. They include 'emissions that are not produced by the company itself and are not the result of activities from assets owned or controlled by them'.[149] Generally, the quantity of Scope 3 emissions will exceed the other two categories from any industry or project.

The classification of fossil fuels and their emissions is key to the *UKEF* case. Understanding where emissions from production and consumption arise and where they are ultimately used is essential to making sense of who is responsible for which emissions. When states produce their emissions inventories under the international climate regime, they tend to consider 'production' or 'territorial' emissions; these can roughly be assumed to be Scope 1 and 2 emissions.[150] Therefore, a fossil fuel exporter would have to account for emissions generated by fossil fuel production, but not for those generated by their use abroad. Focusing only on production emissions provides an 'incomplete picture' both of the factors behind these emissions and the impact of the global trade in fossil fuels, simply by neglecting the environmental impacts of *consumption*.[151] While, on the one hand, fossil fuel producers should be mindful of their downstream emissions, it is difficult to understand why the calculation and attribution of responsibility for fossil fuel extraction in the international climate regime are based solely on production rather than consumption.[152] This serves the short-term interests of high-consumption states because they can and do outsource high-emission industries to developing countries.[153] From this perspective, requiring an assessment of Scope 3 emissions for proposed new projects in high-emitting states is definitely sensible because it makes it more difficult for them to outsource

146 https://ghgprotocol.org/about-us (accessed 20 July 2026).
147 As above.
148 As above.
149 As above.
150 AA Shariati 'Examining states' emissions responsibilities: Assessing the strengths and weaknesses of the production-based accountability system for greenhouse gases' (2023) 28 *Environmental Liability* 60, 61-62.
151 E Karakaya, B Yılmaz & S Alataş 'How production-based and consumption-based emissions accounting systems change climate policy analysis: The case of CO2 convergence' (2019) 26 *Environmental Science and Pollution Research* 16682, 16683.
152 Shariati (n 150) 62-63.
153 PG Harris & J Symons 'Norm conflict in climate governance: Greenhouse gas accounting and the problem of consumption' (2013) 13 *Global Environmental Politics* 9, 11.

emissions, but very different issues arise when developing countries are expected to account for consumption emissions in developed countries that are past and present high-emitters.

4.3 How the judges approached the attribution of Scope 3 emissions

The different judges analysed the relevance of Scope 3 emissions differently, but none of them got to grips with the attribution issues discussed earlier in this part.

Stuart-Smith LJ took the view that the climate change impacts of the project were a matter for Mozambique, and that the kind of enquiry conducted by the defendant was not needed at all.[154] He thought that UKEF had no statutory or other legal obligation to conduct a climate change assessment or to 'calculate or report on Scope 3 emissions or to ensure that any investment support for fossil fuels affecting emissions was in line with the Paris Agreement temperature goals and transition plans'.[155] It had taken this on due to a variety of factors including criticisms of its funding of fossil fuel projects,[156] and consequent pressure from the government to 'appropriately take into account' the UK's climate change commitments.[157]

This approach probably is correct and also unsustainable. There is increasing pressure on, particularly, public sector bodies to conduct due diligence regarding business relationships and funding decisions.[158] Furthermore, the summer after *UKEF* reached the Court of Appeal, the decision in *Finch*,[159] a judicial review relating to the assessment of downstream emissions on a UK-based oil project, was handed down by the UK Supreme Court. Although noting that oil and gas production was only included in the calculation of UK emissions where the project's effects fall in the UK,[160] the majority found that indirect effects of any project should be assessed,[161] meaning that all 'significant impacts' must be evaluated, irrespective of their location.[162] The decision has had a global impact,[163] and will undoubtedly change the regulation of the oil and gas industry, because

154 *UKEF* (n 1) [219].
155 *UKEF* (n 1) [47].
156 By the House of Commons Environmental Audit Committee – see *UKEF* (n 1) [33]-[34].
157 *UKEF* (n 1) [47].
158 Eg, in relation to export credit agencies, see Downie & Peterson (n 37); K Bouwer 'Global perspectives on corporate climate legal tactics: UK National Report' (British Institute of International and Comparative Law 2024) 11-13.
159 *Finch* (n 133).
160 *Finch* (n 133) [144].
161 *Finch* (n 133) [83].
162 *Finch* (n 133) [93].
163 The ICJAO even suggested (in a separate statement) that states would need to assess downstream emissions even where this entails assessing the implications on other states of projects on their own territory – Joint Declaration of Judges Bhandari and Cleveland, paras 11-19, in which they follow the reasoning in UK Supreme Court case *Finch v Surrey County Council* [2024] UKSC 20 (and the decision of the European Free Trade Association [EFTA Court] in *Norwegian State v Greenpeace Nordic, Nature and Youth Norway* [Judgment of 21 May 2025] E-18-24.

Scope 3 emissions will now need to be assessed as part of the approvals process. This does not mean that it will *necessarily* prohibit licence approvals for future oil and gas projects.[164] What is important is that, in assessing downstream emissions, this is done sensibly so that states are accountable for their own territorial emissions, and that, if consumption emissions are assessed, account is taken of where a project might reduce consumption emissions (as in *UKEF*).[165]

Sir Geoffrey Vos confirmed that the uncertainty and complexity surrounding the emissions from the project made it clear that it could not definitively be predicted to what extent the project would contribute to the fossil fuel transition.[166] It was always clear that Scope 3 emissions would be high, but he held that it was not irrational for UKEF to have taken the funding decision without accurately quantifying them, as these fell within the substantial margin of appreciation afforded to decision makers in technical cases.[167] As such, the decision was not irrational even though Scope 3s had not been definitively assessed,[168] as at best this would have been 'an estimate'.[169] He thought it would be better to remove uncertainty from the modelling process by obtaining stronger evidence about the fuel source that the gas would displace. This is referenced very briefly: 'Quantification of the Scope 3 emissions did not answer the far more difficult question considered in both the CCR and the Wood Mackenzie report, which was whether, and to what extent, gas from the project would replace more polluting fossil fuels and over what timescale.'[170] This would have offered a better way to assess the project's overall climate impacts, but it would not have changed much regarding the relatively small quantity of emissions attributable to the host state.

Most of Thornton J's dissenting judgment is dedicated to the issue of Scope 3s. She found that UKEF had failed in its duty of enquiry regarding the quantification of Scope 3 emissions, and that this failure meant there was no rational basis to conclude that the decision to fund the project was consistent with the Paris Agreement.[171] She relied heavily on the legal framework for environmental impact assessments, the purpose of which is to evaluate the effects of major projects with

164 Shapovalova (n 135) 372-373.
165 In the post-Finch litigation about the Whitehaven coal mine, the Court firmly rejected the 'substitution argument', in which it is argued that the substance to be extracted would replace supply from elsewhere – see *Friends of the Earth Limited & Others v Secretary of State for Levelling Up, Housing and Communities & Others (Whitehaven)* [2024] EWHC 2349 (Admin), [37]. This is not the same as a net emissions calculation.
166 *UKEF CA* (n 4) [55] i]. In the Court of Appeal, the question of whether downstream emissions should have been assessed is discussed in relation to rationality, intensity of review and whether funding the project constituted an error of law.
167 *UKEF CA* (n 4) [57].
168 *UKEF CA* (n 4) [63].
169 As above.
170 *UKEF CA* (n 4) [62].
171 *UKEF* (n 1) [244]. She did, however, decline to make a finding on that basis – [336].

the potential to affect the environment.[172] Her understanding was that UKEF 'envisaged the same procedural role' for the climate assessment.[173]

However, she failed to identify that the territory in which emissions happen is relevant regarding which state takes responsibility under the climate regime, or that where the state in question is an LDC, different issues arise, as is the case in *Finch*, where the UK can be expected to exercise leadership when it comes to its downstream emissions. Her judgment focuses entirely on project impact, identifying it as a 'highly significant generator' of greenhouse gas emissions,[174] without referencing the potential of the gas to displace more carbon-intensive fuels. She attributes all the emissions to Mozambique, noting that the 'emissions from the Project will constitute approximately 6 - 10% of Mozambique's annual greenhouse gas emissions under the Paris Agreement (as per its nationally determined contribution under the Agreement)'.[175] This is despite her recognition that only 5 per cent of the emissions from the project would be Mozambique's territorial emissions.[176] Given the arguments made above about the relative ambition of Mozambique's NDCs, trajectory toward emissions peaking, and the need to calculate emissions based on national territories, it is difficult to see how this is justifiable. Yet, this approach has been praised as moving toward greater scrutiny and better environmental decision making.[177]

4.4 Implications for African states

Thornton J's dissent in *UKEF*, along with *Finch*, made inroads toward acceptance that Scope 3 emissions must form part of climate assessment, and was seen at the time to potentially lay foundations for future climate cases.[178] Irrespective of inevitable legislative changes, the effect of *Finch* is that any decision maker approving a project where downstream emissions have not been assessed would be open to criticism and judicial review.[179]

However, the details and complexities of the *UKEF* case demonstrate the need for more careful reflection concerning how decisions about funding/financing fossil fuel projects – and litigation about that funding – should be made in circumstances where climate resilience and poverty alleviation in developing countries are at stake. For African fossil fuel producers, the implications are stark: Assessment of Scope 3 emissions at the point of production, without

172 *UKEF* (n 1) [274].
173 *UKEF* (n 1) [276].
174 *UKEF* (n 1) [257].
175 *UKEF* (n 1) [258].
176 *UKEF* (n 1) [257].
177 N Westaway 'Why a judge's dissent on funding for a foreign gas project could further push the boundaries of climate law' *The Ends Report* 21 April 2022 223, https://www.endsreport.com/article/1753600/why-judges-dissent-funding-foreign-gas-project-further-push-boundaries-climate-law (accessed 20 July 2026).
178 As above.
179 Adeyemi (n 133) 18.

proper attribution, effectively holds African states responsible for consumption emissions properly belonging to importers. This could also mean that states that may be entitled to a longer pathway towards emissions peaking due to their historical contribution to climate change are *de facto* prevented from doing so.

4.5 The ICJ Advisory Opinion and African fossil fuel production

It was mentioned earlier that the ICJ's Advisory Opinion found that fossil fuel production, consumption, and subsidies 'may constitute an internationally wrongful act' under international law.[180] In their Joint Declaration, Bhandari and Cleveland JJ stated that 'the obligation to transition away from fossil fuel dependence ... applies to all states', with differentiation not exempting 'any state from measures that are necessary, consistent with their capabilities and national circumstances'.[181] Whether fossil fuel development will be considered an internationally wrongful act depends on whether the state complied with its obligations under the Paris Agreement and other relevant international agreements, as well as customary law obligations to 'act with due diligence in taking measures in accordance with their common but differentiated responsibilities and respective capabilities' in order to prevent significant harm to the environment.[182] The judges emphasised that states with greater capabilities should transition 'faster', but made it clear that the obligation applies universally.[183] This could be read to license exactly the Paris-alignment approach sought by the claimants in *UKEF*, without reference to how the parties' respective commitments are differentiated.

This may allow some scope for the rate and pace of the fossil fuel phase-out to differ across states, but it has still been criticised as universalising by both members of the Court and scholars. Three African judges on the ICJ bench expressed dissatisfaction with the Court's approach. [184] With a nuanced approach to Africa's need to balance climate action with developmental needs, particularly improving energy access, scholars have criticised the universalised nature of these statements about wrongfulness, even going so far as to question whether they apply. Yusuf J concluded that the Opinion 'failed to rise to the occasion and to provide the international community with the legal tools necessary for combating climate change in an equitable manner for all states'.[185] Boshoff and Damtew state:

180 *Obligations of States in Respect of Climate Change (Advisory Opinion)* (n 8) 427.
181 Joint Declaration of Judges Bhandari and Cleveland, paras 24, 27.
182 Boshoff & Damtew (n 15) 237 quoting *Obligations of States in Respect of Climate Change (Advisory Opinion)* (n 8) para 457.
183 Boshoff & Damtew (n 15) para 24.
184 D Lupin 'Looking for an African perspective on the ICJ's Climate Advisory Opinion' in MA Tigre, M Bönnemann & A de Spiegeleir (eds) *The ICJ's Advisory Opinion on Climate Change* (2025) 324-326.
185 *Obligations of States in Respect of Climate Change (Advisory Opinion)* (n 8) Separate Opinion of Yusuf J.

> In our view, while fossil fuel development and licensing would in most cases constitute a violation of the obligation to protect the climate system, there may be instances where, based on CBDR-RC and national circumstances of African states and the extent of external support, such actions could not, in all justice and equity, be considered wrongful.[186]

A pending request for an advisory opinion by African civil society organisations at the African Court on Human and Peoples' Rights (African Court) on climate change could help to fill the gaps left by the ICJ Advisory Opinion.[187]

5 Article 2(1)(c) and flows of finance: The Paris Agreement in context

5.1 The ambiguity in article 2(1)(c)

The judges in *UKEF* all had slightly different views when it comes to the question of whether a UK-based agency could honour its own Paris commitments while funding high-emitting projects abroad. To some extent, this turned on what was meant by the 'foundational, long-term goal'[188] in article 2(1)(c), to make 'finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development'.[189] Its purpose is to support 'climate compatible' and 'Paris aligned' investment.[190] It represents a recognition that achieving the objectives of the Paris Agreement will require 'structural transformation' of the global economy, and this will require the redirection of financial flows from 'unsustainable to sustainable infrastructure and practices'.[191]

Article 2(1)(c) is under-studied and 'little-considered',[192] and under-discussed in the climate negotiations,[193] as a consequence of which there was never a 'clear, shared understanding among countries or other stakeholders of what [it] means for climate policy development and implementation'.[194] Parties were reluctant to address this due to a lack of clarity about what this would

186 Boshoff & Damtew (n 15) 244.
187 As above.
188 UNFCCC 'Sharm El-Sheikh Dialogue on the scope of article 2, Paragraph 1(c), of the Paris Agreement and Its Complementarity with Article 9 of the Paris Agreement' (20 November 2023) FCCC/PA/CMA/2023/7/Rev.1 para 25, https://unfccc.int/sites/default/files/resource/cma2023_07r01.pdf (accessed 27 January 2024).
189 It seems that this was characterised as an obligation in the claimant's grounds – see *UKEF* (n 1) [122], [133].
190 S Whitley and others 'Making finance consistent with climate goals' (Overseas Development Institute 2018) 6-8.
191 H Thorgeirsson 'Objective (Article 2.1)' in D Klein and others (eds) *The Paris Agreement on Climate Change: Analysis and commentary* (2017) 128.
192 M Bowman 'Polaris and pluralism: Presenting a legal analytical framework for climate finance' (2023) 17 *Carbon & Climate Law Review* 3, 4.
193 LH Zamarioli and others 'The climate consistency goal and the transformation of global finance' (2021) 11 *Nature Climate Change* 578, 580-581.
194 Whitley and others (n 190) 11.

require from them.[195] As mentioned above, these kinds of tensions can arise due to fundamental disagreements around responsibility and contribution, and are resolved through strategic use of ambiguity.[196] As Biniaz explains, skilled negotiators make significant use of semantic sophistry and constructive ambiguity in order to achieve agreement during fraught negotiations.[197] This is useful if it enables agreement in the multilateral negotiations, but it has resulted in unclear understandings of the basis for and implications of differentiation.[198] This can create hostages to fortune when it comes to implementation, where strategic ambiguity in the treaties can be interpreted in a way to suit more powerful parties.[199]

Irrespective, article 2(1)(c) is linked to ambition and in the interest of all parties, even those who do not share similar priorities,[200] and, at least in theory, the dynamic character of article 2(1)(c) means that it should allow developing countries to address poverty alleviation and sustainable development.[201] Significantly, while it does not specify that flows must be north to south, it does entail that what is and is not consistent with the Paris Agreement would be subject to determination by the donor party, who would likely interpret it in a way consistent with their own climate change obligations.

The fundamental ambiguity identified has been confirmed through subsequent United Nations Framework Convention on Climate Change (UNFCCC) processes. At COP30 in Belém in November 2025, the ongoing Sharm el-Sheikh dialogue on article 2(1)(c) was succeeded by two new processes: the 'Veredas Dialogue' (a two-year process) and annual 'Xingu Finance Talks' on aligning financial flows.[202] However, observers noted that the mandates of these new processes remain 'vague' and lack 'depth and clarity', and COP30 did not achieve consensus on article 2(1)(c) implementation.[203]

195 R Bodle & V Noens 'Climate finance: Too much on detail, too little on the big picture?' (2018) 12 *Carbon & Climate Law Review* 248, 252.
196 E Antonio 'The effect of constructive ambiguity on differentiation in the climate change regime: Mitigation and climate justice' (2025) 21 *Loyola University Chicago International Law Review* 77.
197 Biniaz (n 96). Also see B Mayer *The international law on climate change* (2018) 101.
198 Antonio (n 196).
199 E Friedman 'Evasion strategies in international documents: When 'constructive ambiguity' leads to oppositional interpretation' (2017) 14 *Critical Discourse Studies* 385, 398; L Vanhala 'Putting the constructive ambiguity of climate change loss and damage into practice: The early work of the UNFCCC WIM ExCom' (2023) 32 *RECIEL* 428.
200 Bodle & Noens (n 195) 250.
201 J Gastelumendi & I Gnittke, 'Finance (Article 9)' in D Klein and others (eds) *The Paris Agreement on Climate Change* (2017) 248.
202 LGMA Constituency 'COP30 outcomes on Climate Finance and Loss & Damage' (2025), https://www.cities-and-regions.org/cop30-outcomes-on-climate-finance-and-loss-damage/ (accessed 21 July 2026).
203 Debt Justice 'How did COP30 stack up against demands for debt and climate justice?' 27 November 2025, https://debtjustice.org.uk/blog/how-did-cop30-stand-up-against-debt-and-climate-justice-demands (accessed 21 July 2026).

5.2 Lord Justice Stuart-Smith

Stuart-Smith LJ engages with the ambiguity in the article, and the tensions between the commitments under the Paris Agreement to support development, and the very obviously problematic global ambition problem. Rejecting the defendant's 'hard-edged' interpretation of article 2(1)(c),[204] he stated that it is not clear what is meant by 'pathway' in this context, whether it be towards low emissions or climate resilient development.[205] He recognised that Mozambique's most feasible chance of a route towards low-carbon development would be from income generated by the project, noting that the meaning of the provision was 'unclear' given the global shortfall in emissions reductions needed to meet the temperature goal.[206] He recognised the relevance of different national circumstances when it comes to the interpretation of the Paris Agreement,[207] because the obligations in the agreement are subject to differentiation. Mozambique's NDC set out very clearly its conditional mitigation commitments, as well as a feasible plan as to how gas would form part of its low carbon development.

5.3 Sir Geoffrey Vos

Sir Geoffrey Vos noted that he should not seek 'definitively to construe' an unincorporated treaty,[208] because 'multilateral treaties are the result of an intensely deliberative process in which the language is minutely debated',[209] thereby implicitly recognising how ambiguity is instrumentalised to achieve broader agreement.

He provided clarity, however, on what the Paris Agreement says, noting that article 2 'represents the purpose' of the Agreement, with article 2(1)(c) being a 'clear objective' of the Paris Agreement,[210] given effect to by the obligations the Agreement contains in other articles.[211] He did not think that article 2(1)(c) necessarily entailed that hard lines must be drawn around certain activities – in this case that this necessarily means that countries such as the UK cannot ever fund fossil fuel development abroad, if this were consistent with sustainable development pathways. However, he also understood that article 2(1)(c) *did not* create an obligation for the UK that was linked to the temperature goal.[212] This

204 *UKEF* (n 1) [233].
205 *UKEF* (n 1) [227].
206 As above.
207 See, eg, the discussion in Saiger (n 101).
208 *UKEF CA* (n 4) [50].
209 *UKEF CA* (n 4) [48]. '… apparent reticence of the court to provide an interpretation is made even more striking because it does say what Article 2(1)(c) of the Agreement does not require the UK to do. Admittedly, in this respect, the court was stuck between a rock and a hard place: it would be accused of circumventing dualism by offering an interpretation and it is criticised for not holding the Government to account for not so doing.' Sanger & Young (n 5) 197-198.
210 *UKEF CA* (n 4) [45]. This is surely correct – art 2 sets out the goals of the Agreement – see Rajamani (n 77).
211 *UKEF CA* (n 4) [38].
212 *UKEF CA* (n 4) [55] vi.

is not true to the usual construction or negotiating history of the Agreement, however, as the consensus on article 2 was only achieved due to a comprehensive approach being taken to the objective.[213] As discussed above, all parties' climate actions should be informed by the temperature goal. The ICJ's AO suggests that how *much* each party does must be sufficient to reach the temperature goal.[214]

5.4 Mrs Justice Thornton: Universalising obligations

Thornton J agreed with the approach regarding the applicability of international law,[215] but nevertheless *does* go on to construe the relevant article in a 'hard-edged' way.[216] She recognised the importance of the temperature and finance goals,[217] and that the temperature goal is 'relevant to the UK's obligations under the Paris Agreement but not those of Mozambique'.[218] This is not correct. The goals of the Paris Agreement are shared by all parties; what differs is the extent and timing of each party's contribution towards that goal.[219]

However, Thornton J goes on to say that article 2(1)(c) must be understood with reference to the temperature goal, indicating that the 'provision of finance' must be consistent with a pathway towards achieving the temperature goal.[220] She therefore finds that in order for UKEF to demonstrate compliance, it had to demonstrate that funding 'would be consistent with a pathway towards limiting global warming to well below 2°C and pursuing efforts to 1.5°C'.[221] She explains that this does not mean that all projects must have 'explicitly beneficial climate outcomes', but must at least 'reduce the likelihood of negative climate outcomes'.[222] This interpretation would mean that 'beneficial climate' is read consistently with climate action required by developed country parties, and ignores the different obligations each state has. Even less defensibly, this neglects evidence before the Court and the scholarship on point, which suggested that in any event that project did put Mozambique on a 'pathway' towards doing its bit for emissions reduction and low-carbon development.[223]

Be that as it may, although some might regret the lack of 'enforcement' of the Paris Agreement through the domestic courts,[224] this was never a realistic

213 Thorgeirsson (n 191) 127.
214 *Obligations of States in Respect of Climate Change (Advisory Opinion)* (n 8), paras 437 and 245, and Declaration of Judge Tladi, paras 17-23.
215 *UKEF* (n 1) [262].
216 *UKEF CA* (n 4) [34].
217 *UKEF* (n 1) [263].
218 *UKEF* (n 1) [264].
219 See n 208 above.
220 *UKEF* (n 1) [265].
221 *UKEF* (n 1) [268].
222 *UKEF* (n 1) [266], quoting from the Standing Committee on Climate Finance.
223 UKEF (n 1) [77]; Mulugetta and others (n 121).
224 Hockman QC & Scott (n 7).

prospect in the UK courts.[225] Nevertheless, a decision of the Court of Appeal declaring that the provisions of the Paris Agreement are at least justiciable in the domestic courts, even against a very low (or high) bar, means that in some instances this could still be litigated.[226] This raises the obvious question, of why it would be either helpful or necessary to look to international obligations in a context where a state already has domestic climate commitments.[227] Sir Geoffrey does give a steer to future litigants that the specific legal obligations imposed on states were to meet their own NDCs.[228] He refers to the decision in the Heathrow litigation, where the Court noted that the obligation on parties to the Agreement is to meet the pledges, that they have made under the Agreement.[229]

As discussed above, there is no obligation or requirement for developed states to fund fossil fuel development elsewhere, notwithstanding obligations to provide climate finance (which in this case, the export credit was not). However, the issue here is not that, but rather how institutional assessments of funding decisions are made and (if relevant) scrutinised. The structure of the Paris Agreement favours a model of 'self-differentiation' through which states' NDCs reflect their contributions to climate change,[230] and this should reflect their 'pathway towards low greenhouse gas emissions and climate-resilient development' under article 2(1)(c). The relevant pathway against which consistency must be judged, therefore, is the recipient state's own, not a universalised one and not one that is necessarily consistent with the donor state's pathway. So, in *UKEF*, having chosen to assess Paris-consistency, it was correct to base the assessment against Mozambique's own pathway.

6 Discussion

6.1 Historical responsibility and contemporary inequity

From an African climate justice perspective, the *UKEF* litigation exemplifies problems with how climate action is understood. Africa contributes minimally to global emissions (approximately 3 to 4 per cent of historical cumulative emissions) yet faces disproportionate climate impacts.[231] This fundamental inequity is recognised in the Paris Agreement through CBDR-RC. However, while all

225 See text to n 79 above; J Kimblin 'Climate change, the courts and the constitution' (The Constitution Society 2022) 13, 16, 33-35.
226 Hockman QC & Scott (n 7) 24.
227 See K Bouwer 'The unsexy future of climate change litigation' (2018) 30 *Journal of Environmental Law* 483, 492; citing Lord R Carnwath JSC 'Climate change adjudication after Paris: A reflection' (2016) 28 *Journal of Environmental Law* 5.
228 *UKEF CA* (n 4), [47], quoting from *R (on the application of Friends of the Earth Ltd and others) v Heathrow Airport Ltd* (n 76), [71].
229 *R (on the application of Friends of the Earth Ltd and others) v Heathrow Airport Ltd* (n 76) [71].
230 Rajamani (n 65) 510.
231 HO Pörtner and others (eds) *Climate Change 2022: Impacts, Adaptation and Vulnerability: Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2022).

parties now share mitigation burdens, this does not mean that good and effective climate action will look the same in every jurisdiction. Indeed, the consequence of a differentiated approach is quite simply this: To say we can identify 'rules and principles of international environmental law, does not mean that the law is the same for all states regardless of their capabilities or differing circumstances'.[232]

Various factors place differentiation under the climate regime under pressure. To some extent, this can arise because the increased sense of urgency about the climate crisis and increasing pressure on planetary resources could dilute the commitment to fairness that was negotiated in 2015.[233] In the Paris Agreement CBDR-RC is operationalised in a way which is dynamic and individualised,[234] with the further element of 'in light of national circumstances' introduced by the Agreement; this also, however, means that it is vulnerable to erosion.[235] One way in which this can arise is by refusing to recognise the implications of CBDR-RC when taking a view as to what, for instance, a pathway towards low greenhouse gas emissions and climate-resilient development might look like.

At present, the mitigation contributions of developed countries are insufficient;[236] this entails by necessity that an increased burden would fall on the developing world.[237] As such, while there is genuine growing urgency in terms of how the global community will keep climate change within safe limits, the actions that need to be taken by parties at different stages of development to meet this challenge, are not equivalent, if global contributions are to be in any way fair. Reducing the staggered nature of climate commitments to urgent mitigation for all, does not do justice to the principle of CBDR-RC. The *UKEF* litigation, which aimed to prevent financing for fossil fuel development in developing countries with the ultimate goal of making this unfeasible, while the UK continues licensing North Sea oil and gas,[238] exemplifies this dynamic.[239]

232 Boyle & Redgwell (n 11) 110.
233 Cullet (n 9); K Dingwerth & S Herr 'The reinterpretation of common but differentiated responsibilities in the climate regime' in K Dingwerth and others *The unmaking of special rights* (2024) 57.
234 Rajamani (n 65) 509. See for instance K Anderson, JF Broderick & I Stoddard, 'A factor of two: How the mitigation plans of "climate progressive" nations fall far short of Paris-Compliant Pathways' (2020) 20 *Climate Policy* 1290, who propose a 'Paris-compliant' approach which they acknowledge that such an approach 'falls far short of an equitable sharing of the climate burden', 1294.
235 K Dingwerth and others 'The unmaking of special rights' in K Dingwerth and others *The Unmaking of special rights* (2024), 5, 12-3. Also S Atapattu 'Climate change, international environmental law principles, and the north-south divide' (2016) 26 *Transnational Law and Contemporary Problems* 247.
236 Holz and others (n 95); Anderson and others (n 233).
237 C Okereke & P Coventry 'Climate justice and the international regime: Before, during, and after Paris' (2016) 7 *Wiley Interdisciplinary Reviews: Climate Change* 834, 847; Dingwerth & Herr (n 233).
238 See D Bol 'Rishi Sunak defends plan to drain 'every last drop' of North Sea oil' *The Herald* 28 September 2023; J Pickard, G Parker & T Wilson 'Starmer wants contentious North Sea oil and gas fields to go ahead' *Financial Times* 5 February 2025.
239 See text at nn 47-49.

6.2 Development needs and energy development

African climate justice requires more than emissions counting. Action taken – including through the courts – must be informed by African priorities and values, and serve the purposes and needs of African peoples.[240] I would argue that this applies also where litigation occurs in foreign courts; least developed countries should not be required to meet the UK's level of climate ambition just because an action is brought in London. While many priorities are shared between all nations, the relative importance or urgency of them may not be the same in all contexts.[241] However, this does raise questions as to the relevance of 'global' strategies and what is needed locally to address the impacts of a changing climate.

Most African states are in need of further development, may have some dependence on fossil fuels, and often lack capacity to transition away from this.[242] The Paris Agreement explicitly recognises that climate action must be undertaken 'in the context of sustainable development and efforts to eradicate poverty',[243] and must be implemented to reflect equity.[244] Mozambique's ongoing electrification rate of only about 40 per cent reflects profound energy poverty.[245] Simultaneously, climate finance for developing countries consistently falls short of commitments, or if delivered may load an already unmanageable debt burden,[246] and Mozambique has a significant 'climate finance gap', with available finance prioritised for adaptation and resilience.[247] In this context, to argue that Mozambique should forego gas revenue and instead rely on renewable energy,[248] when financing for that is not actually available, and even if available could delay structural change and the buildup of physical infrastructure,[249] is to impose an impossible constraint on Mozambican development. The gas project offered transformative potential for addressing this – not only through direct revenue but through enabling grid development for renewable energy expansion. To characterise this as inconsistent with the Paris Agreement, without considering whether alternative pathways are actually available, adequately financed and able to achieve the same development goals, is to prioritise abstract global emissions accounting over concrete human development needs.

240 DA Owona Mbarga 'Climate change litigation in civil law African countries: An assessment of barriers and potentialities in Cameroon' in K Bouwer and others (eds) *Climate litigation and justice in Africa* (2024) 2.
241 Owona Mbarga (n 240) 1-2.
242 S Fakir *Navigating Africa's climate development nexus: Risk and opportunities in the just transition* (2025) 1-20.
243 Paris Agreement art 2(1).
244 Paris Agreement art 2(2).
245 Detelinova and others (n 29) 15.
246 Fakir (n 242) 10.
247 Detelinova and others (n 29) 33-34.
248 Boshoff & Damtew (n 15) 240-241.
249 M Jakob & JC Steckel, 'How climate change mitigation could harm development in poor countries' (2014) 5 *Wiley Interdisciplinary Reviews: Climate Change* 161, 164.

At the same time, there are legitimate concerns about stranded asset risk and shifting global gas markets that could reduce economic gains from future gas extraction.[250] New gas development at this stage of history is relatively high cost and could carry particularly high stranding risk if global gas markets contract.[251] However, the International Energy Agency has confirmed that gas will remain part of the global energy mix in the medium term,[252] so how real this risk is, is unclear. Certainly, fossil fuel use needs to be phased out, but this raises all sorts of other questions about who phases out first, and which assets do end up being stranded. These questions should be resolved with equity as a central consideration.[253]

6.3 Who decides?

A fundamental question the *UKEF* litigation raises is: Who decides Mozambique's development pathway? Under the Paris Agreement Parties determine their own pathways through nationally determined contributions.[254] Mozambique has determined that gas development forms part of its climate-resilient development pathway.

Most of this article has discussed the question of public finance by developed states of fossil fuel projects abroad, and how a decision as to whether this is legally permissible could take account of CBDR-RC. However, this does not mean that there are not other reasons that continuing with gas development, might be considered objectionable from an equity perspective. The development and extraction of energy and natural resources raise significant issues on their own terms. For a variety of reasons, natural resource extraction in developing countries has not been associated with significant benefits for local populations.[255] Instead – as is the case in the Cabo Delgado region of Mozambique where most of the gas reserves are found – the profits of extraction have been used to enrich multinational companies and elites.[256] Despite this, the rhetoric of the importance of gas for economic development has been used to encourage compliance with ongoing gas extraction, even if local benefits did not materialise as expected.[257] Other concerns with extractive projects that arise in the Mozambican gas

250 Mulugetta and others (n 121) 1018; Detelinova and others (n 29).
251 F Denton and others 'Africa's development in the age of stranded assets' (UNU-INRA 2019) https://collections.unu.edu/view/UNU:7674#viewMetadata (accessed 6 July 2026).
252 IEA (2025) *World Energy Outlook 2025*, IEA, Paris https://www.iea.org/reports/world-energy-outlook-2025 (accessed 21 July 2026).
253 For a detailed discussion, see Bouwer and others (n 129).
254 Paris Agreement art 4(2); Rajamani (n 65) 345.
255 RM Auty 'The political economy of resource-driven growth' (2001) 45 *European Economic Review* 839.
256 RA Dwumfour & M Ntow-Gyamfi 'Natural resources, financial development and institutional quality in Africa: Is there a resource curse?' (2018) 59 *Resources Policy* 411; E Namaganda, K Otsuki & G Steel 'Learning from Africana critical theory: A historicized contextualization of the impacts of Mozambique's natural gas project' (2022) 10 *The Extractive Industries and Society* 101075.
257 Namaganda and others (n 256).

industry include serious shortcomings in participatory processes, both that underlie the planning stages of the project, as well as ongoing shortcomings with participation, exclusions of communities including loss of land rights or culturally relevant spaces, and failure properly to conceptualise and set up, or adhere to, benefit sharing and compensation agreements.[258]

All the above – as well as the local environmental implications of gas development – could form the basis of very serious questions about the desirability of the project continuing from both equity, and local economic and social development, perspectives. Basic principles of sovereignty require that it is for Mozambique to decide how to weigh up the risks and costs of different development pathways, and that the route to challenge is through their national courts at first instance. This is not to say that transnational litigation cannot be an effective and legitimate route to justice for communities in developing countries. However, the *UKEF* litigation was not brought by community groups or activists in Mozambique, but by an NGO based in London, with the argumentation and focus on the challenge being the contribution the gas produced by the project would make to climate change. This is significant because it determined how the litigation was framed, including a failure (certainly in the claimant's presentation of its case in the High Court) to recognise that Mozambique's climate commitments would allow some LNG development. Notably, there has been litigation in the Mozambican courts, not about the UKEF project, but about other gas projects in the same region.[259] This litigation challenged the consequences of community displacement, rather than aimed to stop the project in its entirety.[260] While there has been some community activism, including about environmental concerns, there has not been any further court action brought locally seeking to stop the project entirely. While clearly there will be local activists who want to put an end to the project entirely, this suggests that there is a range of perspectives towards the use of the gas at local level, and some activists do not necessarily want to curtail development.

The point is not that Mozambique *must* exploit its gas, but rather that there seems to be space to make a case that continued gas production for developing countries can be consistent with their commitments under the Paris Agreement or international environmental law in general,[261] even though there may be other very good reasons not to. Irrespective, this should be a decision for Mozambique, not one imposed by an English court. I say this despite the fact that this particular project would have been economically viable without UKEF support, because of

258 As above; Y Omorogbe 'Resource control and benefit sharing in Nigeria' in L Barrera-Hernández and others (eds) *Sharing the costs and benefits of energy and resource activity* (2016) 259.

259 Namaganda and others (n 256); See generally S Dunn & F Curtis 'Litigation funding: Practical aspects' in R Meeran & J Meeran (eds) *Human rights litigation against multinationals in practice* (2021).

260 K Symons, 'Transnational spaces, hybrid governance and civil society contestation in Mozambique's gas boom' (2016) 3 *The Extractive Industries and Society* 149.

261 See also Boshoff & Damtew (n 15); Bouwer and others (n 129).

the implications that a successful judicial review would have had for other, similar projects, but also because even failed cases of this nature can have implications for future projects, including because they shift funders' perception of risk.[262] There is ongoing campaigning from Global North-based NGOs to curtail public financing to Mozambique for gas development.[263]

7 Conclusion

In this article, I examine litigation in the English courts about the UK's funding for gas development in Mozambique. The *UKEF* litigation was brought with a focus on whether the project was 'Paris-aligned', through a universalised lens of emissions urgency. The claimants argued that funding the project was inconsistent with both the UK's and Mozambique's Paris commitments, specifically that article 2(1)(c) specified that 'flows of finance' must be consistent with a pathway towards low carbon development. I have argued that this litigation is different and raises distinct and important legal issues, and that the outcome was defensible even though the reasoning throughout the case does not (and could not) provide helpful guidance as to how differentiation bears on developing state finance decisions, leaving no usable guidance for future cases.[264] However, these distinct aspects of the case have not been adequately explored in the literature, where it is seen as yet another disappointing UK climate change judicial review,[265] or (due to the dissent) potentially a harbinger for more interventionist judges in the climate change context.[266]

The case demonstrates how vulnerable differentiation is to erosion at national level. All three judges struggled to engage meaningfully with what differentiation this means in practice. Thornton J's universalising approach, treating Mozambique's obligations as essentially equivalent to developed countries', most clearly illustrates the problem, but this does give rise to dilemmas as well. The judges quite rightly found that they could not provide a definitive interpretation of article 2(1)(c), and were probably correct in not doing so. Yet, the consequence of this not being interpreted is that there is no clear guidance on how to understand (in this case) the UK's position regarding climate and development actions in other countries, or how differentiation should be taken account of when financing decisions are made.

262 See discussion at nn 47-49 above.
263 See, eg, updates at https://oilchange.org/?s=mozambique (accessed 21 July 2026).
264 I have explained that I understand that the case was a judicial review application and, as Sir Geoffrey made clear, as such should be determined using ordinary principles of public law. So, I am not suggesting that the case should have been decided based on any of the following. The reason it is relevant to consider these, is because the case – and the commentary about it – have normative content and contributes to our understandings of climate law and climate justice.
265 See Sanger & Young (n 5).
266 Westaway (n 179).

UKEF also raises important and neglected considerations about the assessment of consumption emissions from oil and gas production. This is increasingly relevant, particularly given the approaches taken by recent national and international courts. As I explain above, there are problems in assessing Scope 3 emissions at point of production both without proper consideration of attribution, and (which might be more difficult) without a proper understanding of what the relevant fuel will do in the marketplace. Treating all downstream emissions as Mozambique's responsibility, when 95 per cent will occur outside Mozambican territory and properly belong to consuming states, certainly is an approach that focuses on reducing fossil fuel use, but it is not consistent with an approach where state's emissions are assessed based on territory. However defensible this approach might be when relating to UK oil extraction,[267] other issues arise when the same reasoning is used to impose this burden on developing countries.

Finally, the case raises profound questions about sovereignty and the determination of how to balance climate and development priorities. When UK courts are asked to adjudicate whether UK funding for Mozambican gas development is 'Paris-aligned', a claimant is seeking to impose determinations that override Mozambique's own assessment of its climate-resilient development pathway. To reiterate, of course, I appreciate that the case did not ask the Court to prevent the project, but it was brought as part of a campaign to do so, and sought to set a precedent that could progressively undermine funding for African gas projects. The *UKEF* case, despite its specific context, raises fundamental questions about power, sovereignty and justice in global climate governance. When a UK-based NGO uses UK courts to challenge UK funding for gas development in Mozambique – development that Mozambique has determined is part of its climate-resilient development pathway – this raises serious questions about how international NGOs understand climate justice. The subsequent ICJ AO also demonstrates that even the highest international court struggles with how to operationalise CBDR-RC when it comes to fossil fuels. These are genuinely difficult questions that domestic courts in developed countries are ill-equipped to resolve, particularly when their determinations affect developing countries. If climate justice means anything, it must mean more than the urgent quest for net zero.[268] It should mean recognition of historical responsibility, respect for differentiated obligations, acknowledgment of development rights and deference to sovereignty. It must mean that the urgent imperative of climate action does not become yet another mechanism for constraining African development and imposing on them the priorities and burdens of other countries.

267 *Finch* (n 133) [93]-[100].
268 M Hulme 'Climate emergency politics is dangerous' (2019) *Fall Issues in Science and Technology* 23.