

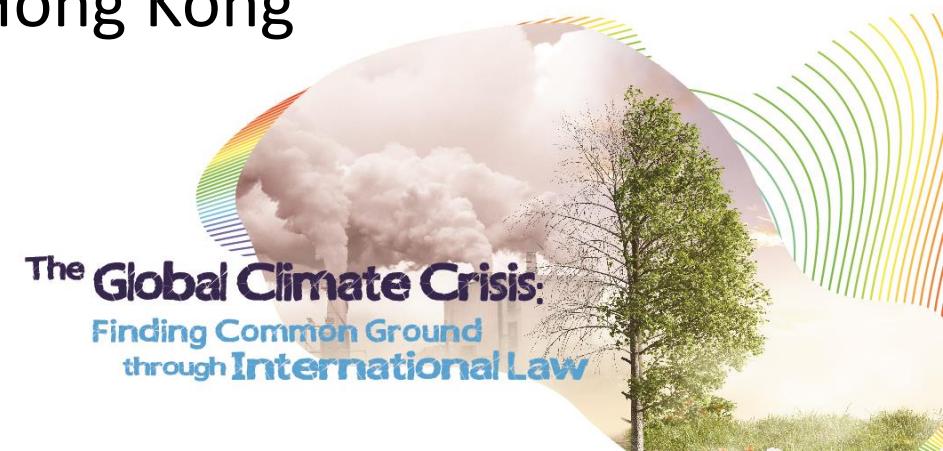
An International Solution to An International Problem?

Professor Benoit Mayer

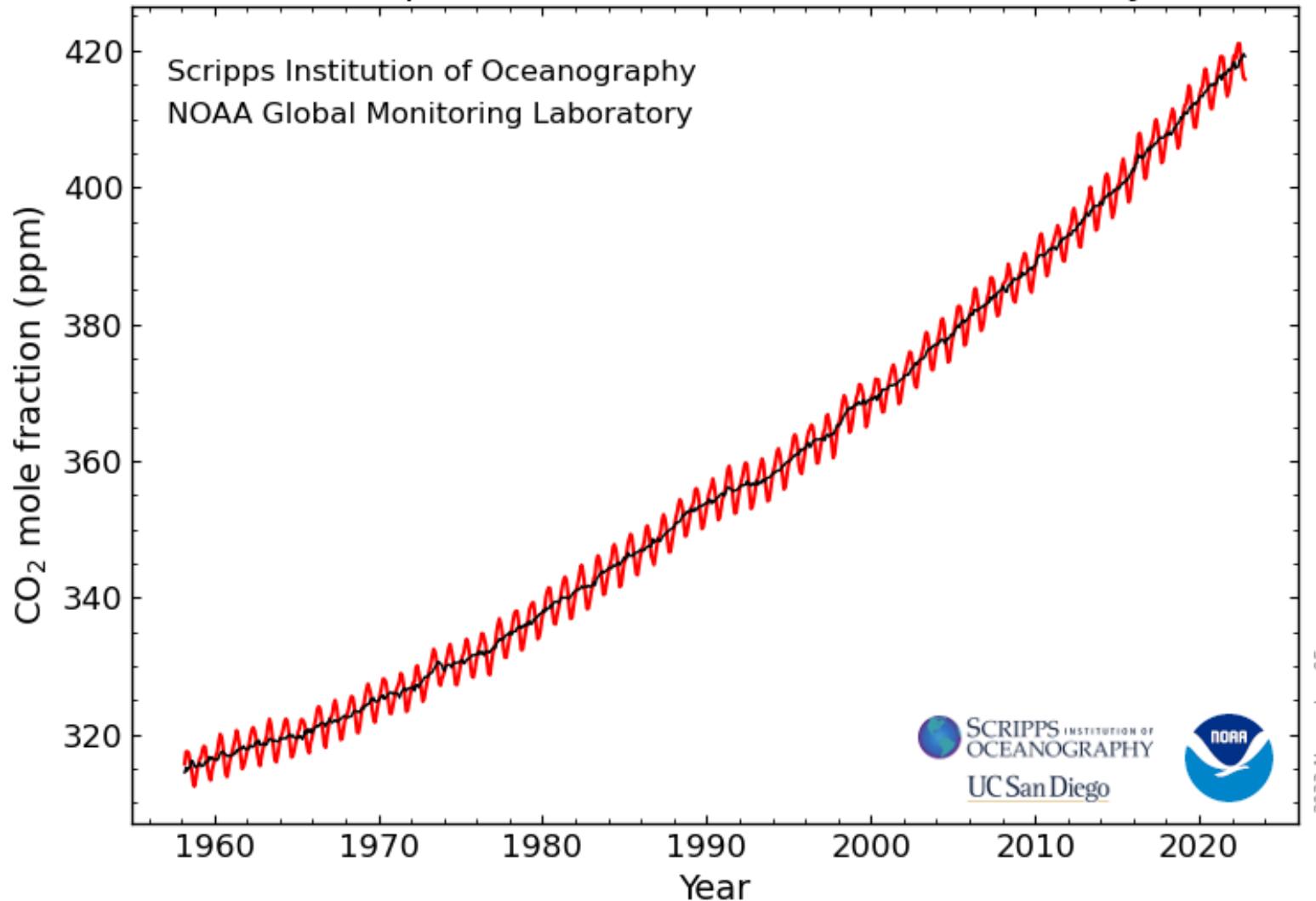
Associate Professor

Faculty of Law, The Chinese University of Hong Kong

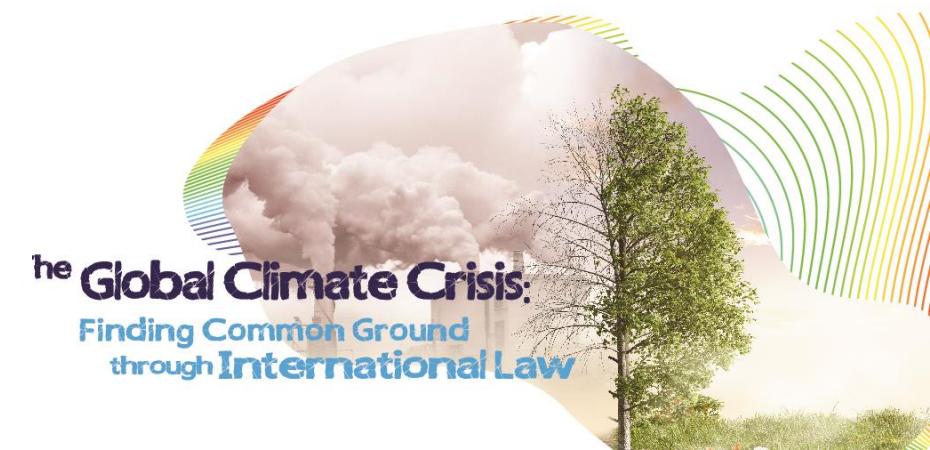
2022 COLLOQUIUM ON INTERNATIONAL LAW



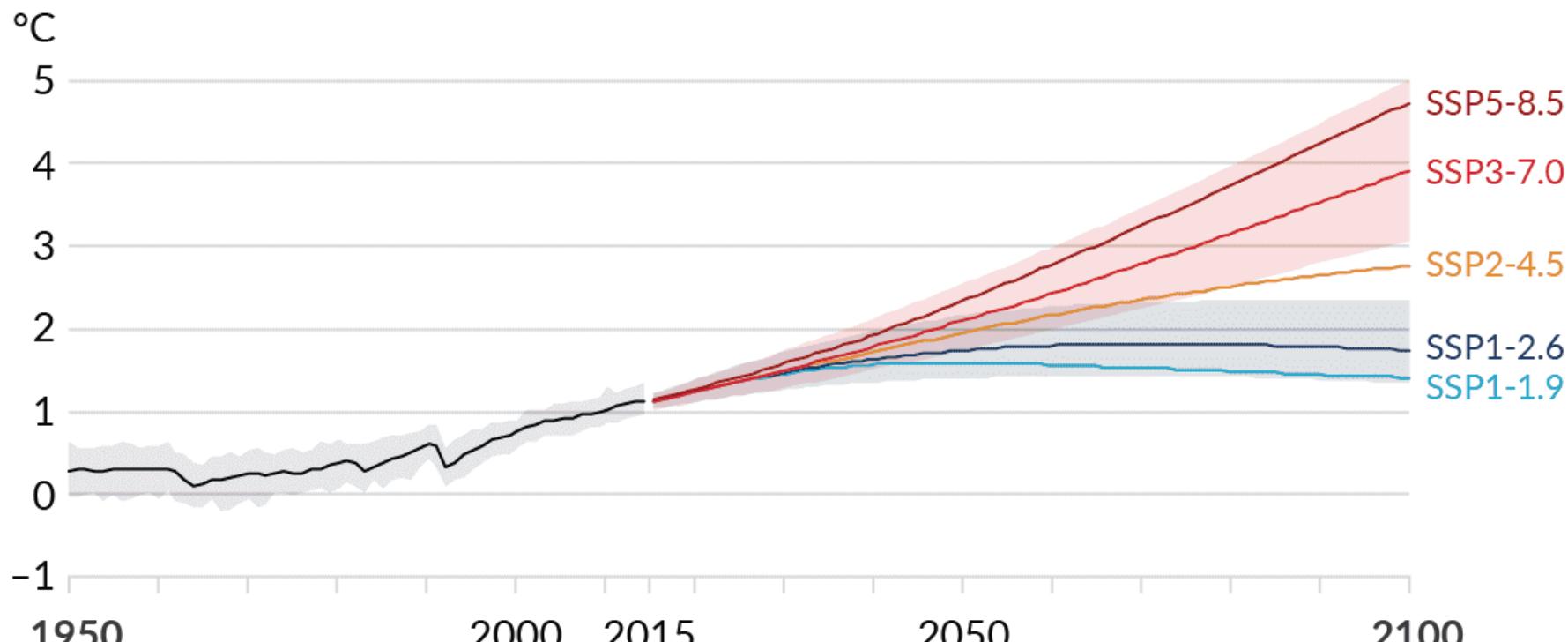
Atmospheric CO₂ at Mauna Loa Observatory



- *50% increase in carbon dioxide concentration in the atmosphere*



(a) Global surface temperature change relative to 1850–1900



• 1°C warming to date

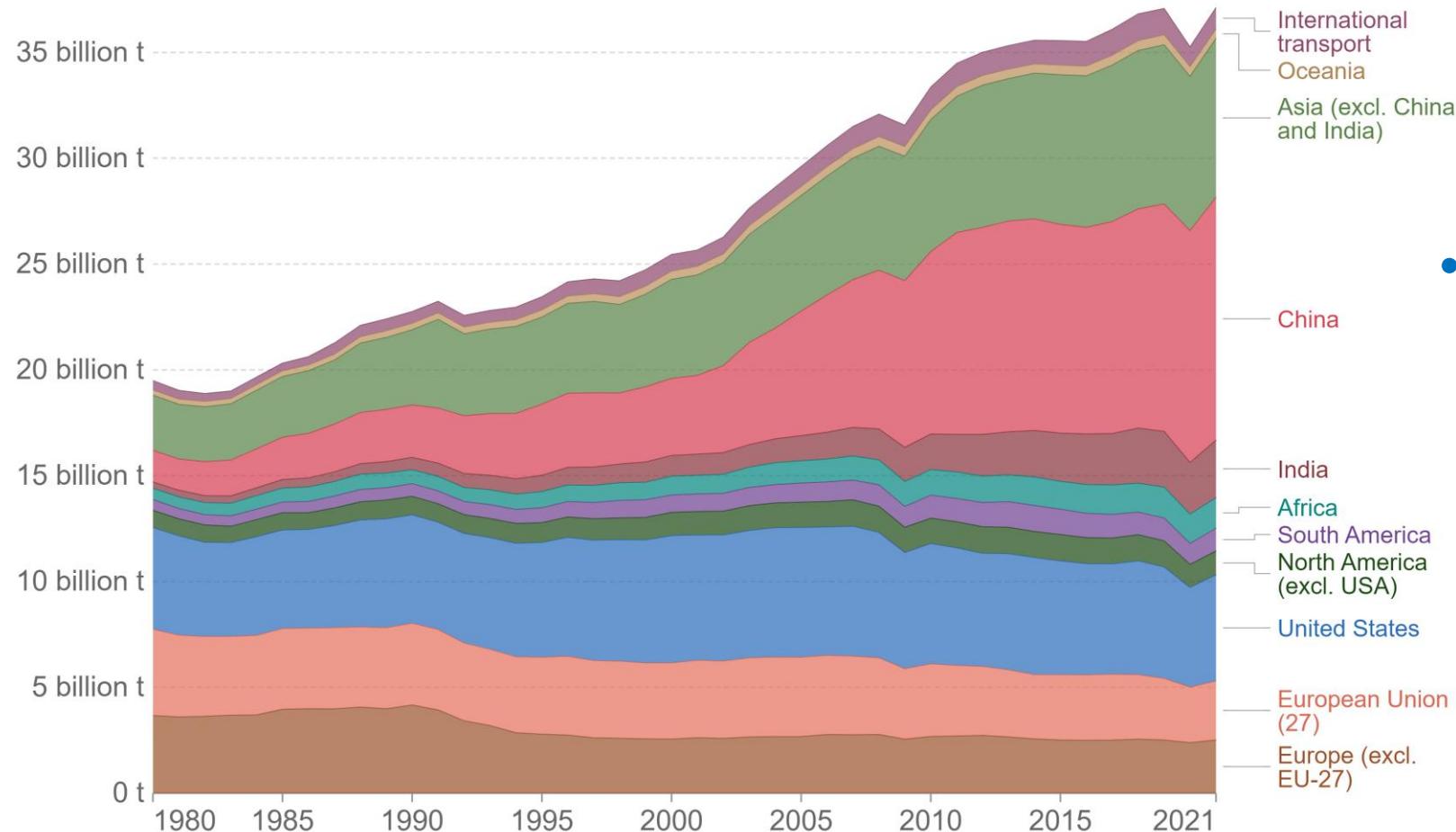
• Long-term warming function of
future emission pathway

IPCC 2021
(AR6 WGI,
figure SPM.8)

Annual CO₂ emissions by world region

This measures fossil fuel and industry emissions¹. Land use change is not included.

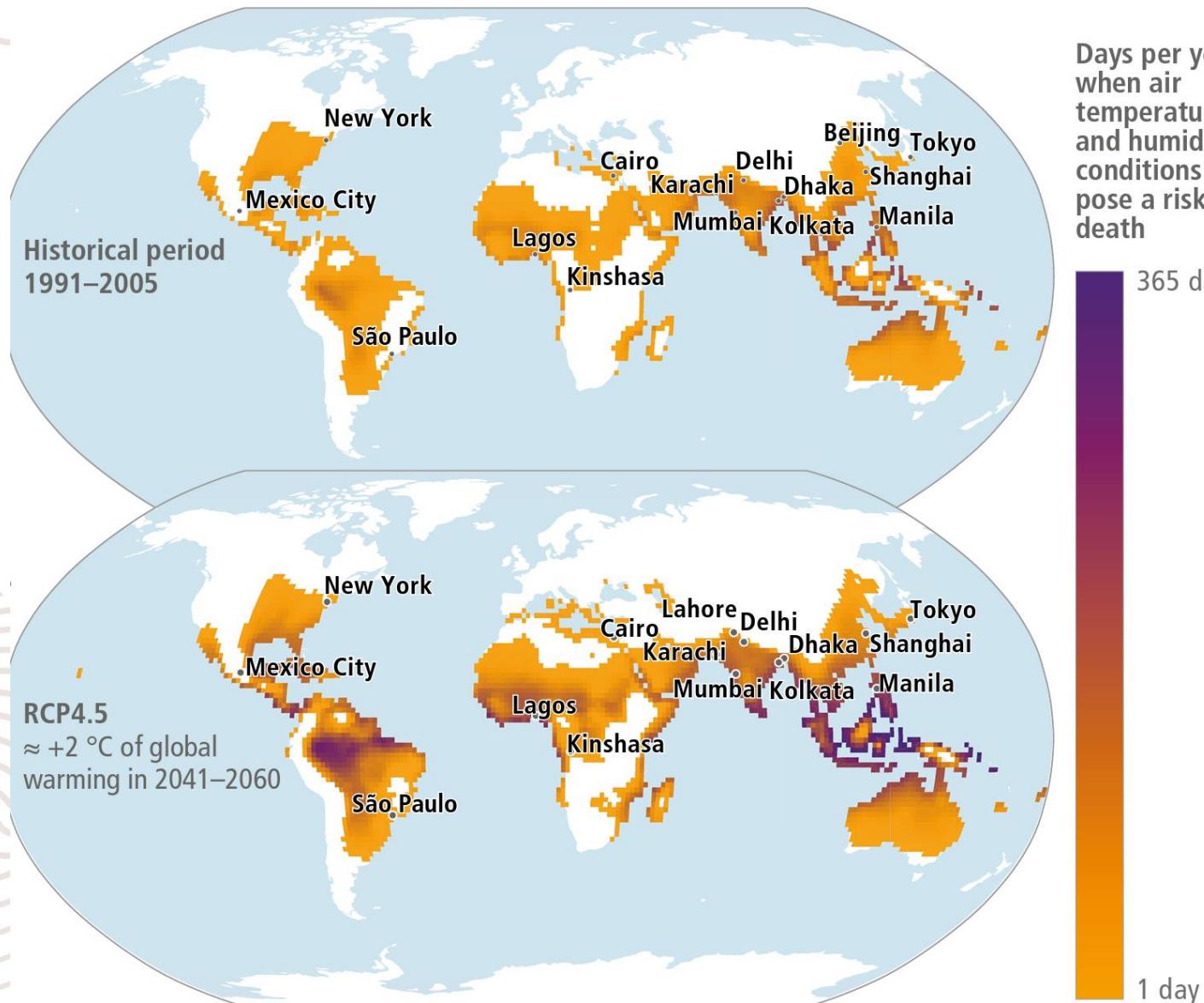
Our World
in Data



- *GHG emissions occur in all industrial economies*

Source: Our World in Data based on the Global Carbon Project (2022)

OurWorldInData.org/co2-and-other-greenhouse-gas-emissions • CC BY



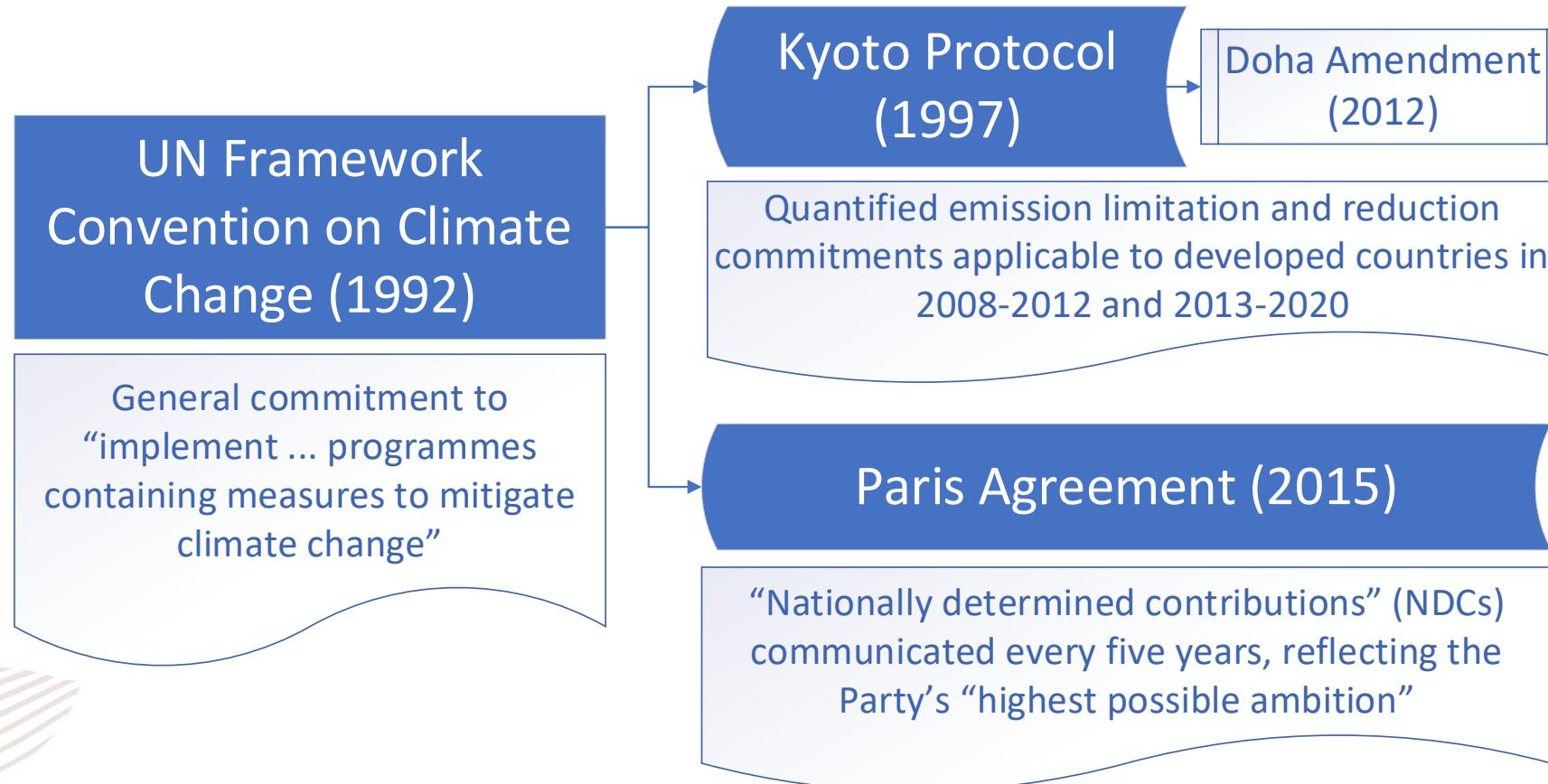
- *Widespread impacts, for instance on heatwaves*

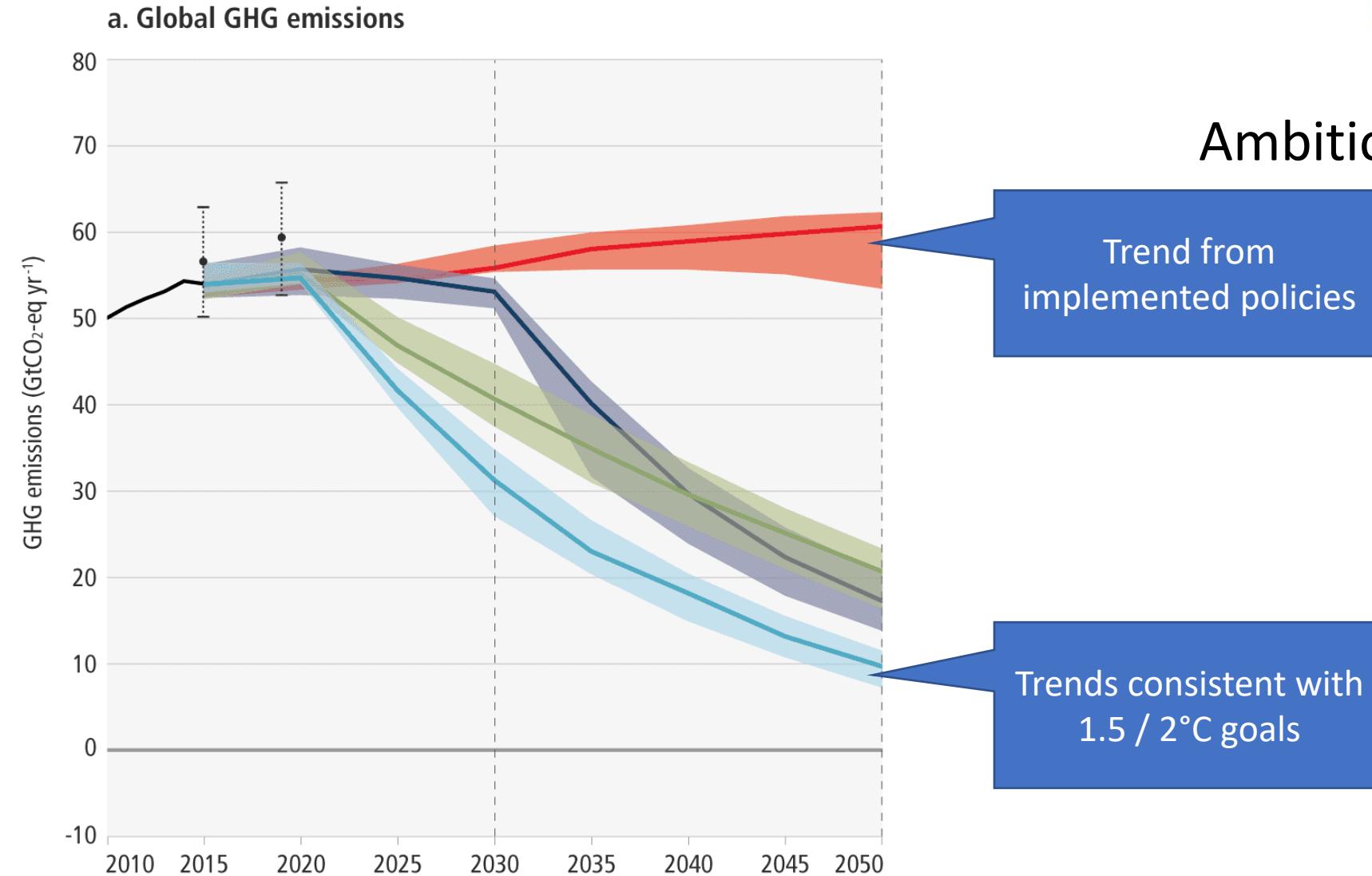
A Challenge to International Institutions

1. *Cost of mitigating climate change*
2. *Collective action problem*: national action for global benefit
3. *Intergenerational problem*: present action for future benefits
4. *Moral indeterminacy*: multiple alternative grounds for determining national ‘fair shares’ in global GHG emissions



Climate Treaties





- *NDCs are inconsistent with the global goals on climate change mitigation*

IPCC 2022
(AR6 WGIII,
figure SPM.4)

Addressing the Ambition Gap

Political processes

- Norm of ‘progression’ in successive NDCs
- Paris Agreement’s ‘Global Stocktake’
- National legislation

Judicial processes

- Domestic litigation
 - *Urgenda v the Netherlands* (Supreme Court, 2019)
 - But also *Juliana v US* (9th Cir., 2020)
- International advisory proceedings?
 - Draft UN General Assembly resolution -> ICJ
 - Commission of Small Island States on Climate Change and International Law -> ITLOS

Responsibility and ‘Loss and Damage’

Legal responsibility

- International law
 - Breach of an obligation?
 - Causal relation to an injury?
- Tort law: duty of care?
Minister for the Environment v Sharma (FCAFC, Aust., 2022):
‘it is a political duty, not a legal duty of care’

Political responsibility

- Adaptation (1992 onward)
- ‘Loss and damage’ (2013 onward)
COP27: decision of principle to establish a fund ‘for assisting developing countries ... in addressing loss and damage’



The Global Climate Crisis:
Finding Common Ground
through International Law

Conclusion: Is the Climate Regime Failing?



- Half empty glass
 - Ambition gap
 - Limited role of international law

- Half full glass
 - NDCs are making a difference
 - Increasing momentum for ambition

