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THE PARIS AGREEMENT COMPLIANCE MECHANISM: BEYOND COP 26

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Without an international tribunal or tools like trade sanctions, there is little to coerce or encourage adherence with environmental treaties. The Paris Agreement, the governing global agreement to address climate change, relies on voluntary global cooperation. Countries determine their own commitments by setting nationally determined contributions of greenhouse gases emissions. The main mandatory elements of the agreement are reporting requirements. The success of the agreement turns on whether countries comply with these requirements. Article 15 of the Paris Agreement establishes a Compliance Committee and sets forth the mechanisms to ensure and facilitate compliance with the agreement. Yet, as with the rest of the Paris Agreement, Article 15 does not have teeth and relies on the good behavior of the countries of the world. This brief contribution describes the mechanics of Article 15 while also highlighting concerns and issues at stake. This background should be helpful in responding to COP 26 in Glasgow and beyond.

INTRODUCTION

The implementation of international law suffers from longstanding difficulties. A treaty's terms could be eloquent or powerful, but without mechanisms to carry out or implement the treaty, it remains symbolic.¹ Implementation consists of measures—

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1. See Sander Happaerts, *Sustainable Development and Subnational Governments: Going Beyond Symbolic Politics?*, 4 ENV'T DEV. 2, 10 (2012); see also Dirk Matten, *Symbolic Politics in Environmental Regulation: Corporate Strategic Responses*, 12 BUS. STRATEGY & ENV'T 215, 216 (2003) (discussing these issues in a domestic context and specifically related to environmental regulations). That

legislative, administrative, or judicial—that signatories take to make international agreements operative under international and domestic law.² Traditional means of response to violations of international obligations (like trade sanctions or international tribunals) do not fit the needs of the environmental field.³ Even though international dispute settlement mechanisms are developing, they are still uncommon and lack an established pattern.⁴ Overall, they are poorly tailored mechanisms for enforcing compliance with multilateral environmental treaties.⁵ Countermeasures are not particularly suited for environmental protection because states’ obligations are nonreciprocal and are based on a common interest.⁶

One way to address these implementation challenges and enhance environmental protection is to improve the monitoring and response mechanisms for noncompliance.⁷ Such monitoring must be tailored to the peculiarities of this specific field of international cooperation.⁸ In implementing the Paris Agreement (“the Agreement”),⁹ the parties to the Agreement (“the Parties”) have chosen not to pursue traditional treaty compliance mechanisms.¹⁰

is not to say that symbols cannot advance environmental or social goals, but we must then acknowledge the role the international agreement is playing.

2. *See generally* ULRICH BEYERLIN & THILO MARAUHN, INTERNATIONAL ENVIRONMENTAL LAW (2011) (describing the important elements of national implementation of international environmental law and the requirements imposed by international environmental law with respect to national implementation).

3. *See generally* THE EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL REGIMES: CAUSAL CONNECTIONS AND BEHAVIORAL MECHANISMS (Oran R. Young ed., 1999) (examining how international regimes influence the behavior of their members and actors operating under their members’ jurisdiction).

4. *See* Rüdiger Wolfrum, *Means of Ensuring Compliance with and Enforcement of International Environmental Law*, 272 COLLECTED COURSES HAGUE ACAD. INT’L L. 9, 96–99 (1998).

5. *See id.*

6. *See id.* at 98–100.

7. *See* PETER H. SAND, THE EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL LAW: A SURVEY OF EXISTING LEGAL INSTRUMENTS 30, 40, 47 (1992).

8. *See generally* IMPLEMENTATION OF INTERNATIONAL ENVIRONMENTAL LAW (Sandrine Maljean-Dubois & Lavanya Rajamani eds., 2011) (detailing concerns related to soft law instruments, treaties with imprecise contextual and discretion-laden obligations, institutions with weak and overlapping mandates, poor or even perverse incentives for compliance, sanctions without teeth, and resource and capacity constraints at the domestic level).

9. Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

10. *See generally* Michaela Danneman, *The Paris Agreement’s Compliance Mechanism* (2016) (International Environmental Law thesis, Stockholm University), <https://www.diva-portal.org/smash/get/diva2:1049560/FULLTEXT01.pdf> (explaining and analyzing the intricacies of the Agreement’s compliance mechanisms).

Considering the common interest pursued, Parties viewed financial and technical assistance to those struggling with compliance as preferable to imposing liability on those not in compliance with their climate change obligations.¹¹ That is, the majority of Parties believed it is more important to promote compliance than to punish noncompliance, especially as the use of sanctions would discourage countries' participation in the treaty and thus encourage free riding.¹²

All these factors prompted efforts to prevent disputes and introduce innovative international monitoring procedures—inspired in part by tried and tested methods in other legal fields (such as human rights).¹³ Since the 1990s, several environmental agreements have succeeded in reinventing themselves and established reporting and other monitoring methods (monitoring networks, inquiries, etc.) with more specific, ambitious, global, and coherent mechanisms to institutionalize monitoring and response to noncompliance.¹⁴ The first noncompliance procedure for environmental agreements—drawn up in 1990 in the framework of the Montreal Protocol of the ozone regime¹⁵—has been taken up and adapted by other environmental conventions, slowly becoming a standard practice.¹⁶ Although inspired by the Montreal Protocol model, all these procedures have peculiarities of their own.

The Kyoto Protocol of the climate change regime gave rise to the most comprehensive and intrusive noncompliance procedure to date.¹⁷ Divided into two branches—a facilitative branch and an

11. *See id.* (describing how “focus when addressing non-compliance with environmental obligations have [*sic*] moved away from . . . trying to determine liability and remedies for damages caused, to preventing them occurring and if they do occur, resolving them peacefully in a non-contentious and non-adversarial manner”).

12. *See* ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH TREATIES IN INTERNATIONAL REGULATORY REGIMES* 2–4 (1995).

13. *See* OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, *RESPONSE TO THE REQUEST OF AD HOC WORKING GROUP ON THE PARIS AGREEMENT* 2–4 (2017), https://www.ohchr.org/Documents/Issues/ClimateChange/OHCHR_APA%20sub_mission_May2017.pdf.

14. *See* Lindsay Maizland, *Global Climate Agreements: Successes and Failures*, COUNCIL ON FOREIGN RELS. (Oct. 29, 2021, 9:00 AM), <https://www.cfr.org/backgroundunder/paris-global-climate-change-agreements>.

15. The Montreal Protocol on Substances that Deplete the Ozone Layer art. 10, June 29, 1990, 30 I.L.M. 537 (establishing the financial mechanism for developed countries to provide financial and technical assistance to developing countries).

16. *See, e.g.*, Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Jan. 29, 2000, 39 I.L.M. 1027; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, 2161 U.N.T.S. 447; Convention on Long-Range Transboundary Air Pollution, Nov. 13, 1979, 18 I.L.M. 1442.

17. *See* Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162; *see also* Malgosia

enforcement branch—the Kyoto Protocol’s compliance committee was quasi-judicial.¹⁸ Potential sanctions were essentially intended to be dissuasive.

To convince (almost) all countries to become signatories, the form and substance of the Agreement differs from that of its predecessor, the Kyoto Protocol.¹⁹ The Agreement is more flexible. It is based on contributions nationally determined by Parties,²⁰ making the provisions ensuring transparency and control all the more important. These provisions introduce “top-down” enforcement mechanisms into an enforcement scheme that is mostly “bottom-up,” the Parties determining the content of their contributions for themselves.²¹ The compliance provisions play a major role: the provisions foster confidence among Parties (thereby hopefully leading them to increase their commitment), and enable the monitoring of the Parties’ efforts to ensure conformance with the global target emissions trajectory.²² Negotiators were well aware of the importance of these provisions and special care was dedicated to this matter on which a great part of the robustness of the Agreement depended.²³ The control and implementation procedure takes the form of a triptych composed of three articulated parts: (1) the transparency framework (Article 13),²⁴ (2) the global stocktake (Article 14),²⁵ and (3) the compliance mechanism (Article 15).²⁶ This Article examines the compliance mechanism of Article 15 and explains how it works, its remaining

Fitzmaurice, *The Kyoto Protocol Compliance Regime and Treaty Law*, 8 SING. YEAR BOOK INT’L L. 23, 24, 26–27, 40 (2004).

18. See Andries Nentjes & Ger Klaassen, *On the Quality of Compliance Mechanisms in the Kyoto Protocol*, 32 ENERGY POL’Y 531, 531, 542 (2004) (describing the compliance mechanisms and the two branches).

19. See Brad Plumer, *Past Climate Treaties Failed. So the Paris Deal Will Try Something Radically Different.*, VOX (Dec. 14, 2015, 10:50 AM), <https://www.vox.com/2015/12/14/10105422/paris-climate-deal-history>.

20. See *id.*

21. See Christina Voigt, *The Compliance and Implementation Mechanism of the Paris Agreement*, 25 REV. EUR. CMTY. & INT’L ENV’T L. 161, 161 (2016) (discussing “the bottom-up approach” of the Agreement). See also Paris Agreement, *supra* note 9, at arts. 6.4, 15.1., 15.2 (establishing “[a] mechanism to facilitate implementation of and promote compliance with” the Agreement, which is “facilitative in nature . . . and non-punitive” and therefore used “on a voluntary basis”).

22. See Paris Agreement, *supra* note 9, at art. 13.1 (creating “an enhanced transparency framework” so that Parties can “build mutual trust and confidence . . . to promote effective implementation”).

23. See Voigt, *supra* note 21, at 164 (discussing the “week-long facilitated negotiations” that resulted in compliance provisions and marked “a significant achievement” in light of “long-standing opposition to any compliance arrangement”).

24. Paris Agreement, *supra* note 9, at art. 13.

25. *Id.* at art. 14.

26. *Id.* at art. 15.

controversies, and ideas for how to move beyond the twenty-sixth annual Conference of the Parties (“COP”) in Glasgow.²⁷

I. KEY FEATURES

A. *History*

The negotiators of the Agreement dedicated special care to the procedure to facilitate implementation and promote compliance on which a great part of the robustness of the Agreement depends.²⁸ The structure of the adopted provisions comes from the efforts of an informal group of key negotiators—a coalition of developing and developed countries—including in particular South Africa, the European Union, the United States, Switzerland, New Zealand, Australia, and Singapore.²⁹ This informal group of countries, referred to as “friends of rules,” was formed after the Lima Climate Change Conference (“Lima Conference”) in 2014. Members of the friends of rules realized during the Lima Conference that the rules of the game—which are of great significance for the integrity and effectiveness of the Agreement—were being rushed through by a process focused mostly on political questions.³⁰ The Agreement gives a glimpse of a procedure that respects sovereignties but can ensure the accountability of the States, in the sense of being “in a position to be held responsible in the broad sense of the term.”³¹

The Agreement lays down fundamental principles in Articles 13 to 15.³² It was up to the subsequent meetings of the Parties to operationalize these principles.³³ Given that in these matters the

27. Although the Parties are supposed to meet annually, no meeting (or COP as they are called) was held in 2020. Press Release, COP Bureau of the United Nations Framework Convention on Climate Change, COP26 Postponed (Apr. 1, 2020), <https://unfccc.int/news/cop26-postponed>. COP 26 began on October 31, 2021. Lisa Friedman, *What Is COP26? And Other Questions About the Big U.N. Climate Summit*, N.Y. TIMES (Oct. 27, 2021, 3:18 PM), <https://www.nytimes.com/article/what-is-cop26-climate-change-summit.html>.

28. See Voigt, *supra* note 21, at 164.

29. Lavanya Rajamani, *Ambition and Differentiation in the 2015 Paris Agreement: Interpretive Possibilities and Underlying Politics*, 65 INT’L & COMPAR. L. Q. 493, 500 (2016).

30. Daniel Bodansky, *The Paris Climate Change Agreement: A New Hope?*, 110 AM. J. INT’L L. 288, 301 (2016) (describing the “friends of rules” group and its efforts).

31. Vanessa Richard, *L’accountability Comme Alternative à la Responsabilité? Réflexions en Droit International de l’Environnement*, in DROIT, SCIENCES ET TECHNIQUES, QUELLES RESPONSABILITES? 523, 523 (Sandrine Maljean-Dubois trans., Etienne Vergès ed., 2011), <https://halshs.archives-ouvertes.fr/halshs-00799686/document>.

32. See Paris Agreement, *supra* note 9, at art. 13–15.

33. See, e.g., Brad Plumer, *Climate Negotiators Reach an Overtime Deal to Keep Paris Pact Alive*, N.Y. TIMES (Dec. 15, 2018),

devil is in the details, the effectiveness of the mechanism thus depended on the operationalization decisions.³⁴ Negotiations, which were difficult, concluded in 2018 during COP 24 in Katowice, Poland.³⁵ During a “Conference of the Parties serving as the meeting of the Parties to the Paris Agreement,” also called “CMA,” the Parties adopted a series of decisions that gave the details for how the Agreement would function.³⁶ These decisions are sometimes referred to as the “Paris Rulebook” or the “Katowice Workplan.”³⁷ The key rules that guide compliance with the Agreement are 18/CMA.1 (“Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement”),³⁸ 19/CMA.1 (“Matters relating to Article 14 of the Paris Agreement and paragraphs 99–101 of decision 1/CP.21”),³⁹ and 20/CMA.1 (“Modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement”).⁴⁰

While this Article focuses on the compliance mechanism (that is, Article 15 and associated rule 20/CMA.1), the compliance mechanism is best understood as part of a trio that includes transparency and the global stocktake. Transparency rules help the Parties understand and access the Agreement’s processes and reporting requirements.⁴¹ The global stocktake is a mechanism to assess the progress (or lack thereof) made globally and by individual Parties in attaining the

<https://www.nytimes.com/2018/12/15/climate/cop24-katowice-climate-summit.html>.

34. *See id.* (describing “a detailed set of rules to implement the pact” as “what we need to get the Paris Agreement off the ground” and thus “build a virtuous cycle of trust and cooperation among countries”).

35. *See id.* (reporting that “[d]iplomats from nearly 200 countries reached a deal . . . after an all-night bargaining session” in Katowice, Poland).

36. *See id.* (discussing “a uniform set of standards for measuring [signatories’] planet-warming emissions and tracking their climate policies” for purposes of the Agreement’s implementation).

37. *See id.* (referring to the deal as “the Paris rule book”); *COP 24*, UN WOMEN, <https://www.unwomen.org/en/how-we-work/intergovernmental-support/climate-change-and-the-environment/united-nations-framework-convention-on-climate-change/cop-24> (last visited Nov. 10, 2021) (referring to the deal as the “Katowice Workplan”).

38. Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement, *Report of the Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement on the Third Part of its First Session, Held in Katowice from 2 to 15 December 2018*, U.N. Doc. FCCC/PA/CMA/2018/3/Add.2, at 61 (Mar. 19, 2019) [hereinafter, *Report of the Conference Held in Katowice from 2 to 15 December 2018*].

39. *See id.* at 53–58.

40. *See id.* at 59–65.

41. *See* Catherine Martini, *Transparency: The Backbone of the Paris Agreement*, YALE CTR. FOR ENV’T. L. & POL’Y. (May 29, 2016), <https://envirocenter.yale.edu/transparency-the-backbone-of-the-Paris-Agreement>.

nationally determined contributions (“NDCs”) and other broad goals of the Agreement.⁴²

B. Purpose and Nature of the Compliance Mechanism

Article 15 establishes a committee “to facilitate implementation” and “promote compliance” with the “provisions of this Agreement.”⁴³ This language is the result of a compromise among the Parties. Initial discussions centered on determining the two different (or perhaps not so different) roles for the Compliance Committee (commonly referred to as “the Committee” or “Article 15 Committee” and sometimes as the “Paris Implementation and Compliance Committee” or “PAICC”).⁴⁴ Some Parties lobbied for strong compliance rules with sanctions while others wanted a purely voluntary agreement without a compliance mechanism.⁴⁵ The compromise created a Committee without teeth, one that promotes instead of enforces.

There was also debate surrounding the “provisions of this Agreement” phrase regarding whether the Committee would review only mandatory obligations or also nonmandatory obligations.⁴⁶ The Parties now seem to agree that “facilitating implementation” applies to all parts of the Agreement, while “promoting compliance” only refers to the mandatory elements and is therefore mandatory, largely centered on reporting requirements.⁴⁷ The modalities (discussed below) detail how the facilitation will occur.⁴⁸

Use of the terms “facilitate” and “promote” in Article 15.1⁴⁹ indicates that the Committee is to play an assisting role, helping Parties figure out *how* to comply with the Agreement and not judging whether they have (and importantly not sanctioning them when they do not).⁵⁰ Article 15.2 requires that the Committee be “expert-based and facilitative” while functioning in a “transparent, non-adversarial

42. *Global Stocktake*, UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE, <https://unfccc.int/topics/global-stocktake> (last visited Nov. 10, 2021).

43. Paris Agreement, *supra* note 9, at art. 15.1.

44. Gu Zihua et al., *Facilitating Implementation and Promoting Compliance with the Paris Agreement Under Article 15: Conceptual Challenges and Pragmatic Choices*, 9 CLIMATE L. 65, 67 (2019); *Paris Agreement Implementation and Compliance Committee (“PAICC”) Adopts Work Plan for 2020-21*, UNITED NATIONS CLIMATE CHANGE (Nov. 6, 2020), <https://unfccc.int/news/paris-agreement-implementation-and-compliance-committee-paicc-adopts-work-plan-for-2020-21>.

45. *Id.* at 69–70, 82.

46. See, e.g., Lisa Benjamin, R. Hayes & B. Rudyk, *Article 15 Compliance Mechanism*, in A COMMENTARY ON THE PARIS AGREEMENT ON CLIMATE CHANGE (Geert Van Calster & Leonie Reins eds., 2021) (forthcoming 2021).

47. LAVANYA RAJAMANI, ELABORATING THE PARIS AGREEMENT: IMPLEMENTATION AND COMPLIANCE 3 (2017), <https://www.c2es.org/wp-content/uploads/2017/11/elaborating-the-paris-agreement-implementation-and-compliance-11-17.pdf>.

48. See *infra* text accompanying notes 64–75.

49. Paris Agreement, *supra* note 9, at art. 15.1.

50. RAJAMANI, *supra* note 47, at 4.

and non-punitive” manner.⁵¹ The language of Article 15.2 deepens the view of the Committee as a “help desk,” as some commenters have labeled it.⁵² Such a role could include helping to coordinate technical assistance or assisting parties to understand funding opportunities.⁵³

Importantly, the Parties decided that the compliance mechanism would not be adjudicative or punitive.⁵⁴ The Committee is not a tribunal.⁵⁵ It cannot penalize Parties for failure to submit NDCs or for failure to meet NDCs.⁵⁶ Despite an apparent lack of teeth, Parties seem to view this soft compliance provision as having substantive implications.⁵⁷ Parties hope that together with the transparency framework, the Article 15 Committee’s identification of noncompliance will spur action, but the Committee has no ability to ensure compliance.⁵⁸

The Paris Rulebook protects the facilitative nature of the Committee by emphasizing it will not “function as an enforcement or dispute settlement mechanism.”⁵⁹ While all the Parties are subject to the same compliance mechanisms,⁶⁰ the Paris Rulebook addresses differences in national capacities and capabilities by emphasizing the need for flexibility and understanding of the situations in different countries.

C. *Composition and Functioning of the Committee*

The decision document adopting the Agreement provided further details on the Committee.⁶¹ It is COP decision 1/CP.21 section 102 that explains the Committee will be composed of twelve members with recognized expertise in “relevant scientific, technical,

51. Paris Agreement, *supra* note 9, at art. 15.2.

52. SUSAN BINIAZ, INSTITUT DU DÉVELOPPEMENT DURABLE ET DES RELATIONS INTERNATIONALES, ELABORATING ARTICLE 15 OF THE PARIS AGREEMENT: FACILITATING IMPLEMENTATION AND PROMOTING COMPLIANCE 2 (2017).

53. *See id.*

54. RAJAMANI, *supra* note 47, at 1.

55. *Id.*

56. *See* BINIAZ, *supra* note 52, at 1–2.

57. RAJAMANI, *supra* note 47, at 1–2.

58. *Id.* at 1–4.

59. Alicia Nicholls, *COP 24: Paris Agreement Rule Book Agreed but Is It Enough?*, CARIBBEAN TRADE L. & DEV. (Dec. 18, 2018), <https://caribbeantradelaw.com/2018/12/18/cop-24-paris-agreement-rule-book-agreed-but-is-it-enough/>.

60. *See* Paris Agreement, *supra* note 9, at art. 15.

61. Conference of the Parties, *Report of the Conference of the Parties on its Twenty-First Session, Held in Paris from 30 November to 13 December 2015*, U.N. Doc. FCCC/CP/2015/10/Add.2, at 1 (2016), <https://unfccc.int/resource/docs/2015/cop21/eng/10.pdf>.

socioeconomic or legal fields.”⁶² The CMA elects the members, and it must consider gender balance and geographical representation when it does so.⁶³

The Paris Rulebook provides the details for the Committee’s operation, explaining that the members shall be elected by the Parties and serve for three years with a maximum of two consecutive terms.⁶⁴ The first twelve-person committee was elected following COP 25 in Madrid.⁶⁵ Once formed, the Committee elected two co-chairs.⁶⁶ The Committee is to meet at least twice a year and is encouraged to hold meetings “in conjunction with the sessions of the subsidiary bodies” serving the Agreement.⁶⁷

While the Committee is to operate in a “manner that is transparent,”⁶⁸ its proceedings are confidential.⁶⁹ Committee member meetings are closed with only members, alternates, and secretariat officials allowed to be present.⁷⁰ The Committee is to “make every effort to reach agreement on any decision by consensus” but can resort to voting with three-quarters majority of those present and participating.⁷¹ The Committee annually reports to the CMA but the nature of the reports is not yet clear.⁷² The first report was a

62. *Id.* at 2, 15.

63. *Id.*

64. *Navigating The Paris Agreement Rulebook: Compliance Deeper Dive*, WORLD RES. INST., <https://www.wri.org/paris-rulebook> (last visited Nov. 10, 2021). In the first year, six members were elected to two-year terms and six were elected to three-year terms. *Id.*

65. *Key Paris Agreement Implementation and Compliance Work Initiated*, UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (June 26, 2020), <https://unfccc.int/news/key-paris-agreement-implementation-and-compliance-work-initiated>.

66. Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement, *Report of the Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement on its Second Session, Held in Madrid from 2 to 15 December 2019*, U.N. Doc. FCCC/PA/CMA/2019/6/Add.1, at 13 (Mar. 16, 2020), https://unfccc.int/sites/default/files/resource/cma2019_06E.pdf.

67. *Id.* at 14.

68. Paris Agreement, *supra* note 9, at art. 15.2.

69. Comm. to Facilitate Implementation & Promote Compliance Referred to in Article 15, Paragraph 2, of the Paris Agreement, Rep. of the Second Meeting of the Comm. Referred to in Article 15, Paragraph 2, of the Paris Agreement, U.N. Doc. PAICC/2020/M2/7, at 2.1.6 (2020), https://unfccc.int/sites/default/files/resource/PAICC_2020M_2_7_Meeting%20report%20with%20annexes_final.pdf.

70. *Report of the Conference Held in Katowice from 2 to 15 December 2018*, *supra* note 38, at 61.

71. *Id.*; see also ANJU SHARMA ET AL., EUR. CAPACITY BUILDING INITIATIVE, COP24 KEY OUTCOMES 15 (2019), https://ecbi.org/sites/default/files/COP24Outcomes%20Final_0.pdf

72. Paris Agreement, *supra* note 9, at art. 15.3.

proposal for the rules of procedure.⁷³ These rules detail the roles of the members, co-chairs, timelines, and the reasoning and deliberation processes for the Committee.⁷⁴ They were adopted at CMA 3 in Glasgow, which then encouraged the Committee to move to substantive matters.⁷⁵

D. Process

Article 15.1 states that the Committee's competencies are related to all the provisions of the Agreement,⁷⁶ which leaves room for interpretation. Calls were made to limit the scope of the Committee's operations by explicitly specifying and limiting the provisions within the scope of the Committee's work.⁷⁷ The sources of information on the basis of which the Committee shall evaluate compliance with the agreement are mentioned in Articles 4 and 13.⁷⁸

Under Article 4, Parties shall "prepare, communicate and maintain successive nationally determined contributions that [they] intend[] to achieve."⁷⁹ Article 4 then goes on to precisely outline other details relevant to the submission of the NDCs. For example, Article 4 differentiates responsibilities between developed countries on the one hand and developing, least developed, and small-island developing countries on the other hand.⁸⁰ Article 4.4 encourages developing countries to reach their emission reduction targets in accordance with different national circumstances.⁸¹ Moreover, a party can adjust its NDCs at any time "with a view to enhancing its

73. See JENNIFER HUANG, CTR. FOR CLIMATE & ENERGY SOLUTIONS, A BRIEF GUIDE TO THE PARIS AGREEMENT AND 'RULEBOOK' 5 (2019), <https://www.c2es.org/wp-content/uploads/2019/06/paris-agreement-and-rulebook-guide.pdf>; *id.* at art. 15.3 (mandating that the Committee adopt rules of procedures during its first session).

74. *Report of the Conference Held in Katowice from 2 to 15 December 2018*, *supra* note 38, at 61.

75. See generally Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement, *Report of the Conference of the Parties Serving as the Meeting of the Parties to the Paris Agreement Third Session, Held in Glasgow from 31 October to 12 November 2021*, U.N. Doc. FCCC/PA/CMA/2021/L.1, at 61 (Mar. 19, 2019) (explaining these adopted provisions).

76. Paris Agreement, *supra* note 9, at art. 15.1 (establishing the Committee as "[a] mechanism to facilitate implementation of and promote compliance with the provisions of" the Paris Agreement).

77. Sebastian Oberthür & Eliza Northrop, *The Mechanism to Facilitate Implementation and Promote Compliance with the Paris Agreement: Design Options* 9 (World Res. Inst., Project for Advancing Climate Transparency, Working Paper, 2018), <https://files.wri.org/d8/s3fs-public/mechanism-facilitate-implementation-promote-compliance-paris-agreement-design-options.pdf>.

78. Paris Agreement, *supra* note 9, at arts. 4.2, 4.4, 4.8, 4.13, 13.7–13.10.

79. *Id.* at art. 4.2.

80. *Id.* at arts. 4.2–4.6.

81. *Id.* at art. 4.4.

level of ambition.”⁸² A special acknowledgement of the “Parties with economies most affected by the impacts of response measures, particularly developing country Parties” was made, requiring consideration of their concerns in the implementation of the Agreement.⁸³

Article 4 outlines obligations related to NDCs, while Article 13 requires Parties to report other types of information.⁸⁴ For example, Article 13.7 requires Parties to provide “[a] national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases” and “[i]nformation necessary to track progress made in implementing and achieving its nationally determined contribution.”⁸⁵ Some reporting requirements are correlated to the status of the country involved. For example, developed countries provide “information on financial, technology transfer and capacity-building support” while developing countries provide information on the support needed.⁸⁶ There are even mechanisms to help some countries comply with their reporting requirements; developing countries can get assistance in identifying capacity-building needs after technical expert review.⁸⁷

It is important to understand the reporting requirements of Articles 4 and 13 because compliance with these requirements will likely be a central task for the Committee. Reporting on NDCs and the compliance process occurs in the context of a “transparency framework for action and support, with built-in flexibility, which takes into account Parties’ different capacities and builds upon collective experience.”⁸⁸ The framework acknowledges special circumstances of the least-developed countries and small-island developing states.⁸⁹ Transparency arrangements include “national communications, biennial reports and biennial update reports, international assessment and review and international consultation and analysis.”⁹⁰ The framework for transparency of action requires clarity of the progress made by the Parties to reach the objectives of the Agreement, while the framework for transparency of support tracks the support provided and received by the countries.⁹¹ Matters related to compliance can be raised by self-referral⁹² or by the

82. *Id.* at art. 4.11.

83. *Id.* at art. 4.15.

84. *Id.* at arts. 4, 13.7–13.10.

85. *Id.* at arts. 13.7(a)–(b).

86. *Id.* at arts. 13.9–13.10.

87. *Id.* at art. 13.11.

88. *Id.* at art. 13.1.

89. *Id.* at art. 13.3.

90. *Id.* at art. 13.4.

91. *Id.* at arts. 13.5–13.6.

92. *Report of the Conference Held in Katowice from 2 to 15 December 2018*, *supra* note 38, at 61.

Committee.⁹³ When a compliance matter originates with the Committee, it is either automatically or discretionarily initiated.⁹⁴ If a violation is automatically initiated, it is initiated by a violation of specified legally binding provisions of the Agreement in accordance with paragraph 22(a).⁹⁵ If a violation is discretionarily initiated, it is initiated with the consent of the concerned Party and involves cases of significant and persistent inconsistencies of the information submitted under Articles 13.7 and 13.9.⁹⁶

The role of the Committee is a facilitative one, and it must adopt a nonadversarial and nonpunitive approach. Still, the Committee has several options aimed at either facilitating implementation or promoting compliance:

- (a) Engage in a dialogue with the Party concerned with the purpose of identifying challenges, making recommendations and sharing information, including in relation to accessing finance, technology and capacity-building support, as appropriate;
- (b) Assist the Party concerned in the engagement with the appropriate finance, technology and capacity-building bodies or arrangements under or serving the Paris Agreement in order to identify possible challenges and solutions;
- (c) Make recommendations to the Party concerned with regard to challenges and solutions referred to in paragraph 30(b) above and communicate such recommendations, with the consent of the Party concerned, to the relevant bodies or arrangements, as appropriate;
- (d) Recommend the development of an action plan and, if so requested, assist the Party concerned in developing the plan;
- (e) Issue findings of fact in relation to matters of implementation and compliance referred to in paragraph 22(a) above.⁹⁷

Finally, recurrent issues, including barriers to implementation and compliance, “could hinder implementation of the agreement as a

93. *Id.* at 61–62.

94. *Id.* at 62 (discussing automatic initiations); Christina Voigt, *The ‘Article 15 Committee’ to Facilitate Implementation and Promote Compliance*, EUR. ROUNDTABLE ON CLIMATE CHANGE & SUSTAINABLE TRANSITION 3 (Apr. 15, 2019), <https://ercst.org/the-article-15-committee-to-facilitate-implementation-and-promote-compliance> (discussing discretionary initiations).

95. *Id.* at 62.

96. Voigt, *supra* note 94, at 3.

97. *Report of the Conference Held in Katowice from 2 to 15 December 2018*, *supra* note 38, at 63.

whole.”⁹⁸ Unlike issues of individual Parties, systemic issues apply to the process and include things like due process rights.⁹⁹ These cross-cutting issues can be tackled with collective recommendations and not just individual ones.¹⁰⁰ Examples of systemic issues include:

the implementation of Parties’ reporting obligations under Articles 9 (on past and projected future provision and mobilization of financial resources) and 13 (on emissions and the implementation of NDCs as well as on support provided by developed countries), the actual enhancement of financial, technology transfer, and capacity-building support under Articles 9, 10, and 11; the submission of adaptation communications under Article 7; or action taken to conserve and enhance sinks and reservoirs of greenhouse gases under Article 5.1, among other things.¹⁰¹

Nothing in Article 15 prevents the Committee from addressing systemic issues.¹⁰² In fact, the “Committee may identify issues of a systemic nature with respect to the implementation of and compliance with the provisions of the Paris Agreement faced by a number of Parties”¹⁰³ but “shall not address matters that relate to the implementation of and compliance with the provisions of the Paris Agreement by an individual Party.”¹⁰⁴

II. OVERALL ASSESSMENT AND FUTURE PROSPECTS

From the analysis above, it seems that the compliance mechanism of the Agreement should provide the Committee with the power to make recommendations to the CMA, which would make the final decision. If so, then the effectiveness of the compliance mechanism will depend on the willingness of a noncompliant Party to honor its commitments and apply the recommendations.¹⁰⁵ Hence, the compliance mechanism should have a technical/political approach to be successful. Such an approach is crucial as the introduction of enforcement tools may push Parties to withdraw from the Agreement

98. *Addressing Systemic Issues of Compliance and Implementation Under Article 15 of the Paris Agreement: Models from MEAs*. LEGAL RESPONSE INT’L 2 (Aug. 11, 2017), <https://legalresponse.org/legaladvice/addressing-systemic-issues-of-compliance-and-implementation-under-article-15-of-the-paris-agreement-models-from-meas/>.

99. Oberthür & Northrop, *supra* note 77, at 10–11.

100. *Id.*

101. *Id.* at 11.

102. *Id.*

103. *Report of the Conference Held in Katowice from 2 to 15 December 2018*, *supra* note 38, at 63.

104. *Id.*

105. *Legal and Procedural Remedies in Cases of Non-Compliance with Paris Agreement*, LEGAL RESPONSE INT’L (Aug. 1, 2017), <https://legalresponse.org/legaladvice/legal-and-procedural-remedies-in-cases-of-non-compliance-with-paris-agreement/>.

instead of confronting the negative consequences of noncompliance.¹⁰⁶ The coming few years will tell whether the mechanism has been effective and the potential role that this mechanism can play as the Parties work to comply with the transparency framework of Article 13.

CONCLUSION

The review of compliance will occur by 2024.¹⁰⁷ Until then, the Parties must fulfill the annual reporting requirements, which will then go through two review mechanisms: a Technical Expert Review (“TER”) and another form of peer review called Facilitative Multilateral Consideration of Progress (“FMCP”).¹⁰⁸

Parties might leave the Agreement if the compliance mechanism does not account for their differing capacities and interests while ensuring its technical implementation. Ensuring compliance will be the mark of success of the Agreement.¹⁰⁹ The Agreement offered a pragmatic approach to ensure compliance by accepting that “most major emitters are reluctant to tie themselves into a rigid set of predetermined emissions reductions that are legally binding” and sidestepping the distributional conflict inherent in negotiating mitigation targets.¹¹⁰ Embracing this approach offered more chances for Parties to implement their NDCs and all the technical elements stipulated within the Agreement.¹¹¹ But to reach this objective, there is a need to consider the suggestions made by different legal scholars to enhance the compliance mechanism and the Agreement in general.¹¹²

If the compliance mechanism succeeds in its mission, the mechanism would become a role model for other environmental treaties. Success, however, will only occur by adopting a hybrid technical/political approach that balances the need to comply with the Agreement with Parties’ interests and capacities. The alternative is a compliance mechanism no one complies with.

106. See Robert Falkner, *The Paris Agreement and the New Logic of International Climate Politics*, 92 INT’L AFFAIRS 1107, 1119 (2016).

107. HUANG, *supra* note 73, at 2.

108. *Id.* at 3.

109. K. Madhava Sarma, *Compliance with the Multilateral Environmental Agreements to Protect the Ozone Layer*, in ENSURING COMPLIANCE WITH MULTILATERAL ENVIRONMENTAL AGREEMENTS: A DIALOGUE BETWEEN PRACTITIONERS AND ACADEMIA 25, 36–37 (Ulrich Beyerlin et al. eds., 2006).

110. Falkner, *supra* note 106, at 1119.

111. *Id.* at 1120.

112. See S.I. Karlsson-Vinkhuyzen et al., *Entry into Force and Then? The Paris Agreement and State Accountability*, 18 CLIMATE POL’Y 593, 597–98 (2018); Alexander Zahar, *A Bottom-Up Compliance Mechanism for the Paris Agreement*, 1 CHINESE J. ENV’T L. 69, 98 (2017).