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Paris Agreement : Accountability and Compliance

Overview

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Literature

Voigt, Christina and Xiang, Gao (2020) *Accountability in the Paris Agreement: The Interplay between Transparency and Compliance*, Nordic Environmental Law Journal 2020:1, 31-57

Christina Voigt and Xiang Gao: Accountability in the Paris Agreement:
The Interplay between Transparency and Compliance

Accountability in the Paris Agreement: The Interplay between Transparency and Compliance

Christina Voigt and Xiang Gao***

Abstract

Following the adoption and entry into force of the Paris Agreement, the “Climate Package”¹, adopted in Katowice in December 2018, is generally regarded as the “Rulebook” for the implementation

of the Paris Agreement.² The negotiations of the Agreement and the “Rulebook” were conducted on a theme-by-theme basis. However, the Paris Agreement can only be implemented as one holistic instrument. This article aims at identifying the inter-linkages of different parts of the package, especially between the procedural arrangements for

1. Accountability

- Multi-faceted term
- Answerability for actions
- Narrow understanding: Right to limit power
- Broad understanding: Responsibility for actions according to agreed standards, disclose them and increase transparency

1. Accountability

- In the context of the Paris Agreement:
- Answerability of Parties for aspects of their performance in accordance with the provisions of the Agreement and in relation to the mechanisms and procedures established under the Agreement
- Increasing degrees of accountability : **weak/medium/strong(er)**
- “Accountability continuum”
- Defined by 3 elements:
 - Rules and Guidance: Mandatory or voluntary
 - Review: Independent
 - Measures: Consequences of non-performance

1. Accountability: The Importance of Transparency

Transparency is important:

- Provides clarity on the contribution of each Party towards the collective temperature goals of the Agreement and for tracking of progress of achieving each Party's NDC (Art. 13.5)
- For building mutual trust and confidence and to promote effective implementation (of action and support) (Art. 13.1),
- Creating peer pressure between Parties in order to facilitate the improvement of their performance; and
- Enabling the public to engage in domestic decision-making which contributes to the implementation and achievement of NDC

1. Accountability: Importance of Compliance

Compliance important:

- Crucial for effective functioning of the Agreement (core obligations are backbone of the PA), recognized by UNFCCC Parties in Art. 15 PA,
- Facilitative (trade-off between inclusion of a compliance mechanism and stringency of other provisions, participation),
- Enhances trust and confidence that Parties do what they signed up for...
-if not: mechanism designed to hold Parties accountable for their performance in light of the nature of relevant provisions of the Agreement and in relation to the provisions, mechanisms and procedures established under the Agreement

1. Accountability Continuum

NDC Information
(Arts. 4.2, 4.8 and 4.9)

Enhanced Transparency
Framework
(Art. 13)
Biennial Communications
(Art. 9.5)

Committee to Facilitate
Implementation and
Promote Compliance
(Art. 15)

Increasing Degrees of Accountability

2. Aspect I: NDC Communication and Information

«Each Party shall prepare, communicate and maintain successive nationally determined contributions that **it intends to achieve**. Parties shall pursue domestic mitigation measures, **with the aim of achieving the objectives of such contributions**» (Art. 4.2)

“Each Party's successive nationally determined contribution **will represent a progression** beyond the Party's then current nationally determined contribution and **reflect its highest possible ambition**, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.” (Art. 4.3)

2. Aspect I: NDC Communication and Information

- When communicating NDC (second and successive) (Art. 4.2)
- Information necessary for Clarity, Transparency and Understanding (ICTU)
- Legal obligation (“all Parties **shall provide information...**”) Art. 4.8
- Guidance: Decision 4/CMA.1
- (Interim) Registry
- Accountability: **weak**
 - Guidance: “shall apply...as applicable to their NDC” (4/CMA.1, para 7)
 - Review: No (neither of ICTU, nor arts. 4.3 and 4.4 elements)
 - Measures: No

3. Aspect II: Transparency (Art. 13)

- Each Party shall provide a **biennial transparency report** (BTR) , from 2024
- Content: MPGs (Decision 18/CMA.1, paras 10 and 11):

Must include:

- National GHG inventory report
- Information to track progress in achieving and implementing NDCs (Art. 4)
- Support provided by developed countries (Art. 13.9; Arts. 9, 10,11)

Should include:

- Info on impacts and adaptation (Art. 7)
- Info on support by other Parties (Art. 13.9)
- Support needed and received by developing countries (Art. 13.10)

3. Aspect II: Transparency

- Technical Expert Review
 - Consistency of information with MPGs (not adequacy of NDC, actions or support)
 - Consideration of a Party's implementation and achievement of its NDC
 - Consideration of support provided
 - Identification of areas of improvement
- Measures: Technical Expert Review Team report (with recommendations for mandatory ("shall") and encouragements for "non-shall" provisions)
- Facilitative Multilateral Consideration of Progress (FMCP) (Art. 13.11)

3. The Enhanced Transparency Framework



3. Aspect II: Transparency

- Accountability: **medium**
 - Guidance: Modalities, Procedures and Guideline: mandatory and non-mandatory elements (Decision 18/CMA.1)
 - Review: Yes (Technical Expert Review)
 - Measures: Recommendations and encouragements

4. Aspect III: Implementation and Compliance

- Facilitate implementation of and promote compliance with the provisions of the Paris Agreement (Art. 15.1)
- Facilitative in nature, transparent, non-adversarial, **non-punitive** (Art. 15.2)
- Avoid duplication of effort, shall not function as enforcement or dispute settlement mechanism, **not impose sanctions or penalties**, shall respect national sovereignty (Decision 20/CMA.1, Annex para 4)

4.1 Membership



- Recognized competence in relevant scientific, technical, socio-economic or legal fields
- Serving for a term of 3 years, with possibility of re-election for one more term

Current composition of the committee

Africa

Member: Ms. Selam Kidane-Abebe* (Ethiopia), alternate: Ms. Mominata Campaore* (Burkina Faso)

Member: Mr. Cornelius Schultz* (South Africa), alternate: Mr. Choukhri Meghazi* (Tunisia)

Asia-Pacific

Member: Mr. Shang Baoxi*** (China), alternate: Mr. Tomonobu Sato*** (Japan)

Member: Mr. Haseeb Gohar** (Pakistan), alternate: Mr. Seung Jick Yoo** (Republic of Korea)

Eastern Europe

Member: *vacant*, Alternate: Mr. Grzegorz Grobicki** (Poland)

Member: Ms. Iryna Stavchuk*** (Ukraine), alternate: Mr. Ivan Narkevitch*** (Belarus)

GRULAC

Member: *Nomination pending*, alternate: Mr. Michai Robertson*** (Antigua and Barbuda)

Member: *Nomination pending*, alternate: *Nomination pending*

WEOG

Member: Mr. Jacob Werksman*** (United Kingdom of Great Britain and Northern Ireland), alternate: Mr. Johan Lundberg*** (Sweden)

Member: Ms. Christina Voigt** (Norway), alternate: Ms. Julia Gardiner** (Australia)

LDCs

Member: Mr. Ziaul Haque** (Bangladesh), alternate: Ms. Edith Kasajja** (Uganda)

SIDS

Member: Ms. Rueanna Haynes*** (Trinidad and Tobago), alternate: Ms. Danielle Yeow*** (Singapore)

** *Elected for a 2 years term*

*** *Elected for a 3 years term*

4. Implementation and Compliance

Three modes of initiation:

1. Self-referral by a party on any provision of the PA (20/CMA.1, para 20) with regard to its **own** implementation/compliance
2. **"Automatic"** initiation of the committee by a violation of certain, specified obligations listed in para 22(a) of Decision 20/CMA.1
3. Discretionary initiation, with consent of Party, in cases of ***significant and persistent inconsistencies*** of the information submitted under art. 13.7 and 13.9 with MPGs, based on recommendations in TER-R (para 22(b))

4. Implementation and Compliance

22. The Committee:

(a) **Will** initiate the consideration of issues in cases where a Party **has not**:

(i) Communicated or maintained a nationally determined contribution under Article 4 of the Paris Agreement, based on the most up-to-date status of communication in the public registry referred to in Article 4, paragraph 12, of the Paris Agreement;

(ii) Submitted a mandatory report or communication of information under Article 13, paragraphs 7 and 9, or Article 9, paragraph 7, of the Paris Agreement;

(iii) Participated in the facilitative, multilateral consideration of progress, based on information provided by the secretariat;

(iv) Submitted a mandatory communication of information under Article 9, paragraph 5, of the Paris Agreement;

4. Implementation and Compliance

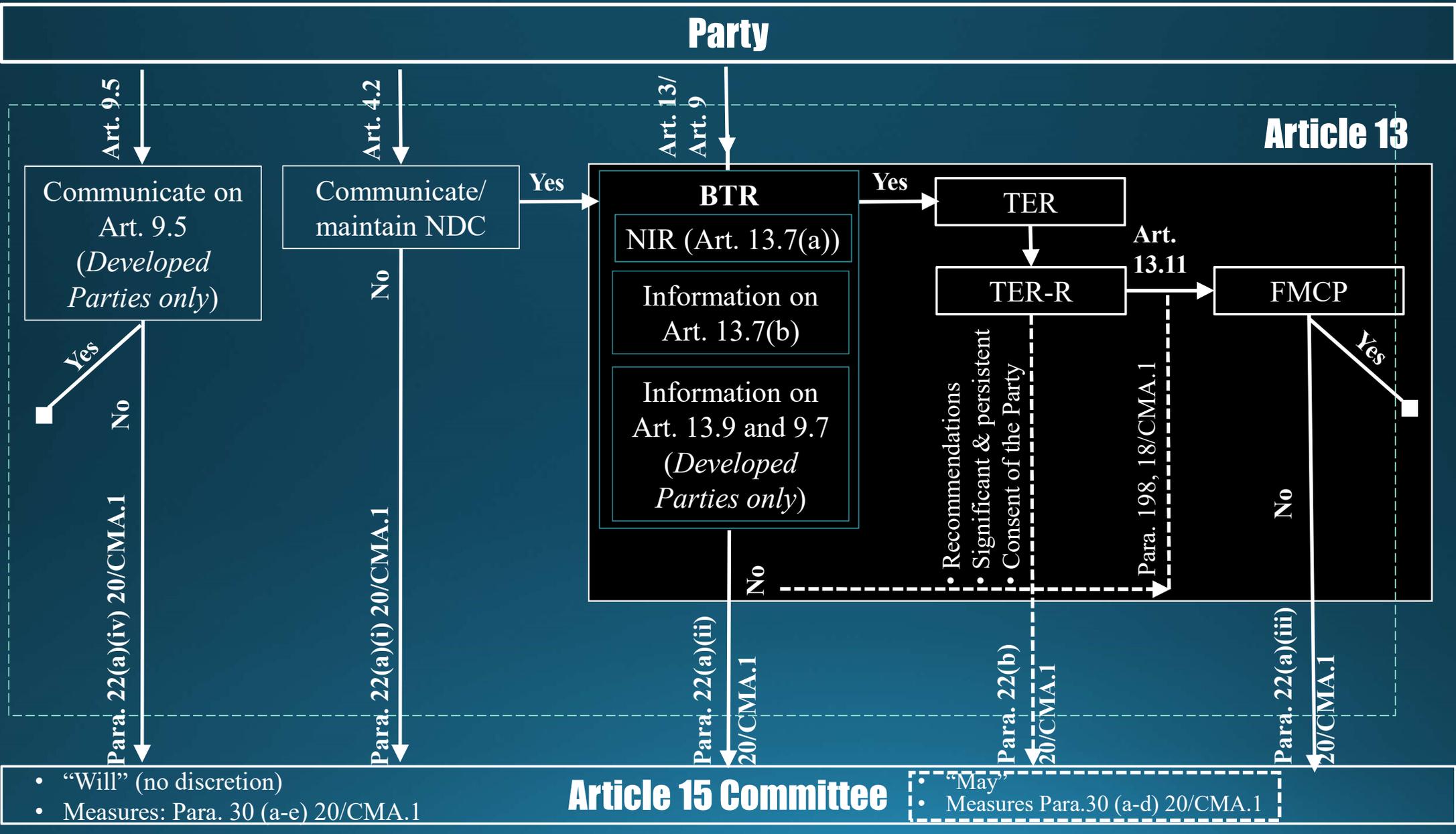
(b) **May**, with the **consent** of the Party concerned, engage in a **facilitative consideration** of issues in cases of **significant and persistent inconsistencies** of the information submitted by a Party pursuant to Article 13, paragraphs 7 and 9, of the Paris Agreement with the modalities, procedures and guidelines referred to in Article 13, paragraph 13, of the Paris Agreement. This consideration will be based on the recommendations made in the final technical expert review reports, prepared under Article 13, paragraphs 11 and 12, of the Agreement, together with any written comments provided by the Party during the review. In its consideration of such matters, the Committee shall take into account Article 13, paragraphs 14 and 15, of the Agreement, as well as the flexibilities provided in the provisions of the modalities, procedures and guidelines under Article 13 of the Paris Agreement for those developing country Parties that need it in the light of their capacities.

The consideration of the issues referred to in paragraph 22(a) **will not address the content** of the contributions, communications, information and reports.

4. Implementation and Compliance

Shall take appropriate measures, which may include:

1. Engaging in a dialogue with the Party to share info, identify challenges and recommend solutions (para 30 a)
2. Assist the Party in engaging with support arrangements and make recommendations to the Party (and communicate those to the support arrangements) (para 30 b and c)
3. Recommend development of an action plan (30 d)
4. Issue findings of fact in relation to matters listed in para 22 a (para 30 e)



- “Will” (no discretion)
- Measures: Para. 30 (a-e) 20/CMA.1

Article 15 Committee

- “May”
- Measures Para.30 (a-d) 20/CMA.1

4. Implementation and Compliance

- Accountability: **strong(er)**
 - Guidance: Implementation and Compliance does not establish new guidance on parties
 - Review: Consideration by the committee
 - Of performance of core obligations (yes/no)
 - Of “significant and persistent” inconsistencies with transparency MPGs
 - Of systemic issues (faced by a number of Parties)
 - Measures: list of measures, including recommendation of development of an action plan, and issuing findings of fact (“teeth”?)

**IMPLEMENTING AGREEMENT TO THE PARIS AGREEMENT
BETWEEN THE SWISS CONFEDERATION AND THE REPUBLIC OF PERU**

ARTICLE 20 Suspension of recognition of transfers

1. Any Party may suspend a recognition of transfer if
 - a. The other Party is in non-compliance with Article 4.2 of the Paris Agreement, whereby consideration of compliance should be based on relevant considerations by the committee established under Article 15 of the Paris Agreement;
 - b. The other Party is in non-compliance with the provisions of this Agreement.
2. Such suspension of recognition of transfer shall be communicated by written notification to the other Party and shall take effect 30 calendar days from the date of receipt of the written notification or on a later date as specified in that notification.

4. Current work

- Development of Rules of Procedure (for recommendation and adoption by CMA 3, Glasgow, November 2021)
- Working virtually
- First issues for consideration?

6. Summary

- **Strong accountability**

- For individually, legally binding obligations (few and procedural!); “Spine” of the Paris Agreement
- Most of them do not go through the Enhanced Transparency Framework
- Get “picked up” by PAICC

- **Medium accountability**

- For reporting and accounting obligations, including provisions in Transparency MPGs
- Go through Enhanced Transparency Framework
- If inconsistencies: Recommendations/Encouragement in TER reports
- Can become a matter for the compliance committee, only in cases of “significant and persistent” inconsistencies with “shall” MPGs, and consent of Party
- “Accountability continuum”

- **Weak accountability**

- Some legal obligations, e.g. arts. 4.3, 4.4, and 4.8, do give rise to only weak accountability
- Peer pressure and “bottom-up pressure” (civil society); climate litigation

6. Degrees of Accountability

	NDC Information (art. 4.8)	Transparency (art. 13)	Compliance (art.15)
Guidance	"shall apply..., as applicable"	"shall" and "non-shall" provisions in MPGs	No
Review	No	Technical Expert Review FMCP	Consideration
Measures	No	TER report with recommendations and encouragements	"shall take appropriate measures" List in 20/CMA.1, para 30

Expectations for COP26/CMA3

- Completion of rules on:
 - Common Timeframes – CTF,
 - Common reporting tables for Biennial Transparency Reports (BTRs),
 - Outline for Technical Expert Review Report,
 - (Art. 6)
- Rules of Procedure for Paris Agreement Compliance Committee (PAICC)
- Communications of ex-ante finance according to Art. 9(5)
- “Updating/Enhancing” of NDCs