

AN IN-DEPTH EXAMINATION OF THE INTERNATIONAL CLIMATE REGIME: SPOTLIGHT ON NATIONALLY DETERMINED CONTRIBUTIONS AND PARIS AGREEMENT COMPLIANCE

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A. INTRODUCTION

The purpose of this essay is to determine whether the international climate regime has failed and is not fit for purpose by critically assessing two aspects of the climate regime. Initially, I will clarify the terms of the question and establish the context for the paper (Section 2). This will include the identification of the criteria that will be used to assess the success/failure of the regime (Section 2.3). Next, I will identify the two specific aspects of the climate regime that will be scrutinized: namely, the concept of nationally determined contributions (NDCs) and compliance under the Paris Agreement. I will then provide a rationale for their selection as the focal points of my analysis (Section 3). Following this, I will present an overview and analysis of the first identified aspect (Section 4), employing a parallel structure for the analysis of the second aspect (Section 5). The subsequent section will entail an overall analysis of the impact of both aspects on the international climate regime (Section 6). Ultimately, the essay will conclude by asserting that in its current state, the international climate regime is not fit for purpose and is therefore a failure; however, there is potential for the regime to evolve and become more successful in the future (Section 7).

This essay was written during the 28th Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) and was therefore unable to include updates from this conference in the analysis. This essay will consider the updates of the international climate regime up until November 2023,

with the publication of the most recent Adaptation Gap and Emissions Gap Reports by the United Nations Environment Programme (UNEP).¹

Furthermore, to differentiate among the various groups of states with distinct responsibilities within the framework, the terminology of "developed" and "developing" countries will be employed, aligning with the language used in the legal documents studied in this paper.

B. DEFINITIONS

(1) Defining “Regime”

Regimes are social institutions comprising principles, norms, rights, rules, legal instruments, decision-making processes, initiatives, and/or institutions.² These elements facilitate the alignment of interests and social practices, either accepted or created by actors, to direct or coordinate interactions within specific issue areas.³

(2) Defining “International Climate Regime”

The international climate regime refers to the current global framework that aims to govern the behaviour of states with the overarching goals of preventing the progression of human-induced climate change at a catastrophic rate and implementing adaptation measures to prepare for the consequences of the changing global climate.⁴ The international climate regime was primarily developed through the UNFCCC in 1992.⁵ Since then, there have been several developments within the regime, most notably the creation of the Kyoto Protocol and the Copenhagen Accord, ultimately culminating in the adoption of the 2015 Paris Agreement.⁶ The Paris Agreement is widely regarded as an attempt to synthesize the structures of the Kyoto Protocol (a top-down, legally binding instrument with targets and timetables) with the Copenhagen Accord (a diplomatic agreement of a bottom-up architecture consisting of NDCs).⁷ As of this writing, the Paris Agreement is the primary instrument at the heart of the international climate regime, affecting all other institutions and instruments within the regime,⁸ and will therefore be the primary focus of this paper.

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¹ UNEP, 'Adaptation Gap Report 2023: Underfinanced. Underprepared. Inadequate Investment and Planning on Climate Adaptation Leaves World Exposed' (2023)

<<https://www.unep.org/resources/adaptation-gap-report-2023>> accessed December 2023; UNEP, 'Emissions Gap Report 2023: Broken Record – Temperatures Hit New Highs, yet World Fails to Cut Emissions (Again)' (2023) <<https://www.unep.org/resources/emissions-gap-report-2023>> accessed December 2023.

² Marc A Levy, Oran R Young, and Michael Zürn, 'The Study of International Regimes' (1995) 1 Sage Publications 267, 274.

³ Ibid.

⁴ Benoit Mayer, 'Construing International Climate Change Law as a Compliance Regime' (2017) 7 *Transnational Environmental Law* 115, 123.

⁵ Daniel Bodansky, Jutta Brunnée and Lavanya Rajamani, *International Climate Change Law* (Oxford University Press 2017) 352.

⁶ Ibid, 351.

⁷ Ibid, 23, 351.

⁸ Bodansky, Brunnée, and Rajamani (n 5) 189.

Although the UN climate regime is widely regarded as the heart of international climate change law,⁹ it is important to acknowledge that general international law, other treaty regimes, regulations and institutions at all levels of government, and judicial decisions by domestic and international courts can and do all contribute to the international climate regime.¹⁰ Some notable overlaps exist with the human rights regime,¹¹ the law of the seas regime,¹² and the world trade regime.¹³ However, the scope for these regimes regarding climate change law is much more limited compared to the UN regime,¹⁴ so they will not be included as a focus of this paper.

(3) Defining “Failed” and “Fit for Purpose”

The purpose of the international climate regime is made evident in the primary objectives of the Paris Agreement. By building off of the original goals of the UNFCCC, the Paris Agreement clearly states the aim of Parties to (1) “[hold] the increase in the global average temperature to well below 2 °C above preindustrial levels and [pursue] efforts to limit the temperature increase to 1.5 °C above pre-industrial levels.”¹⁵ This is followed by the objective to (2) “[increase] the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development.”¹⁶ Throughout the essay, these objectives will be referred to as (1) mitigation and (2) adaptation. It is widely recognized that these are the primary objectives of the international climate regime, with all other general objectives focusing on the financing or implementation of these goals.¹⁷

Determining whether the international climate regime is fit for purpose requires determining whether the current regime is conducive to achieving these objectives. In the context of this essay, two specific aspects of the climate regime, namely NDCs and the Paris Agreement’s compliance mechanism, will be analysed in terms of their ability to facilitate reaching these goals. If they are ineffective in doing so, it can then be concluded that the current regime has failed, as it cannot fulfil its ultimate purpose. Although these are just two of the numerous components of the international climate regime, I will argue that they wield substantial influence over the overall success or failure of the regime.

C. JUSTIFICATION OF FOCI AND FURTHER DEFINITIONS

(1) Nationally Determined Contributions

⁹ Lavanya Rajamani, ‘Ambition and Differentiation in the 2015 Paris Agreement: Interpretive Possibilities and Underlying Politics’ (2016) 65 *International and Comparative Law Quarterly* 493, 494.

¹⁰ Bodansky, Brunnée, and Rajamani (n 5) 10-11.

¹¹ Alan Boyle and Navraj Singh Ghaleigh, ‘Chapter 2: Climate Change and International Law beyond the UNFCCC’ in Kevin R Gray, Richard Tarasofsky and Cinnamon P Carlarne (eds), *The Oxford Handbook of International Climate Change Law* (Oxford University Press 2016) 40-43.

¹² *Ibid*, 46-49.

¹³ *Ibid*, 49-51.

¹⁴ *Ibid*, 53.

¹⁵ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) [2016] UNTS 54113, Article 2.1(a).

¹⁶ *Ibid*, Article 2.1(b).

¹⁷ Bodansky, Brunnée, and Rajamani (n 5) 11-12.

The first aspect of the international climate regime considered in this essay is the concept of NDCs. NDCs are action plans focused on how to address climate change crafted by individual states for their specific national contexts.¹⁸ The rationale behind this approach is rooted in the belief that states possess the most detailed and accurate knowledge of their national circumstances, enabling them to customize NDCs according to their capacities and needs.¹⁹ The mandate for all states to formulate NDCs provides flexibility, allowing states the freedom to determine their contributions while ensuring that a commitment is made to developing plans that align with the objectives of the Agreement.²⁰

Originating from the 2013 Warsaw Conference, the idea of NDCs emerged as Parties were tasked with formulating their intended NDCs for the year 2015.²¹ This marked a departure from Kyoto's less successful top-down, prescriptive approach, embracing a more bottom-up, facilitative method.²² Further guidance on the content of NDCs was provided during the 2014 Lima Conference.²³ Ultimately, the Paris Agreement integrated NDCs as a key component.²⁴ The agreement established binding procedural obligations for Parties to prepare and submit NDCs, striking a balance between a top-down and bottom-up approach by allowing individual Parties the freedom to create their own NDCs.²⁵ Parties are not legally bound to achieve their NDCs.²⁶

The use of NDCs is a primary reason why the Agreement was able to achieve such widespread ratification.²⁷ It additionally resolved a key weakness of the Kyoto Protocol by including developing states as Parties required to develop plans for intended contributions.²⁸ However, the question of whether the NDCs possess the capacity to fulfil the goals of the Agreement and the broader climate framework remains a subject of debate and will be further investigated in subsequent sections of this paper.

Due to their integral role in the Paris Agreement, NDCs have substantial influence over the success of the Agreement.²⁹ This influence extends to the broader international climate regime as NDCs delineate the actions that states plan to undertake as their primary response to the threat of climate change.³⁰ Consequently, the success of NDCs is intertwined with the success of both the Paris Agreement and the international climate regime as a whole.

¹⁸ Daniel Bodansky, 'The Paris Climate Change Agreement: A New Hope?' (2016) 110 *The American Journal of International Law* 288, 304.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Rajamani (n 9) 495.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*, 496.

²⁵ *Ibid.*, 497.

²⁶ Bodansky (n 18) 304.

²⁷ Bodansky (n 18) 289.

²⁸ *Ibid.*, 289-290.

²⁹ Frauke Röser and others, 'Ambition in the Making: Analysing the Preparation and Implementation Process of the Nationally Determined Contributions under the Paris Agreement' (2020) 20 *Climate Policy* 415, 416.

³⁰ *Ibid.*, 417.

(2) Compliance

The next aspect that this essay will consider is the role of compliance instruments in the international climate regime. Compliance, in this context, pertains to the mechanisms or procedures established within regimes to address breaches of obligations by actors or Parties.³¹ The purpose of compliance mechanisms is to deter the violation of treaty objectives and obligations.³² They are particularly useful in securing compliance in global environmental treaties that involve a multiplicity of actors.³³

Compliance mechanisms can take on a variety of forms, ranging from purely facilitative approaches to more sanction-based enforcement approaches.³⁴ The more common approach often prioritizes non-punitive measures, emphasizing facilitation and assistance for states encountering challenges in meeting their obligations.³⁵ Compliance mechanisms often rely on monitoring, reporting, and verifying (MRV) information, making it closely linked to provisions on transparency.³⁶ This essay will analyze transparency and corresponding MRV measures as components of compliance.

Within the UN climate regime, the Paris Agreement established its most recent compliance mechanism, which has been further elaborated through the Katowice climate package.³⁷ This compliance mechanism is extremely wide-reaching, covering the 195 Parties to the Paris Agreement, and will therefore be the compliance mechanism of the international climate regime that is subject to analysis.

The choice to focus on compliance in this essay stems from its pivotal role as the primary method of ensuring adherence to obligations by all Parties.³⁸ Determining whether the international climate regime is fit for purpose depends on how cases of non-compliance are addressed within the regime.³⁹ Without a robust compliance mechanism, there is the dangerous potential for states to evade their duties, either deliberately or due to incapacity.

D. NATIONALLY DETERMINED CONTRIBUTIONS

(1) Overview

³¹ Sebastian Oberthür, 'Chapter 6: Compliance under the Evolving Climate Change Regime' in Kevin R Gray, Richard Tarasofsky and Cinnamon P Carlarne (eds), *The Oxford Handbook of International Climate Change Law* (Oxford University Press 2016) 121.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*, 248-249.

³⁶ Chrysa Alexandraki, 'MRV of Emissions and Mitigation Action: The Paris Agreement and Financial Support for Transparency Related Capacity Building in Developing Countries' (2020) 10 *Climate Law* 308, 309.

³⁷ Lavanya Rajamani and Daniel Bodansky, 'The Paris Rulebook: Balancing International Prescriptiveness with National Discretion' (2019) 68 *International and Comparative Law Quarterly* 1023, 1024.

³⁸ Oberthür (n 31) 121.

³⁹ *Ibid.*; Christina Voigt, 'The Compliance and Implementation Mechanism of the Paris Agreement' (2016) 25 *Review of European, Comparative & International Environmental Law* 161, 161-162.

As previously explained, the NDCs are the primary instrument of the Paris Agreement.⁴⁰ They are properly introduced in Article 4 paragraph 2, where it is stated that each Party is obliged to “prepare, communicate and maintain successive nationally determined contributions that it intends to achieve,” and implement such contributions through domestic measures.⁴¹ A key characteristic of NDCs is that they are meant to become more ambitious over time.⁴² There are additional rules in place to ensure that all Parties properly communicate the progress made regarding their NDCs.⁴³ Transparency provisions and the global stocktake are also implemented to enhance the effectiveness of the NDCs.

The latest updates from COP27 at Sharm el-Sheikh do not provide many significant implications for NDCs. Calls for further prioritizing the 1.5 °C temperature goal over the 2 °C temperature goal, which was introduced at COP26 in Glasgow, were reaffirmed.⁴⁴ There was also a restatement of the imperative to attain the funding goal of US\$100 billion per year, a target that has not been met since its intended commencement in 2020.⁴⁵ The call for more ambitious NDCs has been reiterated in virtually every COP since the 2015 Paris Agreement, a sentiment mirrored in the title of the latest Emissions Gap Report, “Broken Record.”⁴⁶ Still, the current NDCs are insufficient for achieving the objectives of the Agreement.⁴⁷

(2) Mitigation

As the NDCs primarily embody a commitment of conduct rather than result, the Parties have the discretion to decide how to integrate mitigation measures into their NDCs and there is no obligation to achieve them.⁴⁸ The binding obligations on states necessitate the preparation and communication of NDCs, along with a commitment to progressively enhance their goals.⁴⁹ Developed country Parties are advised to adopt economy-wide absolute emission reduction targets while developing countries are urged to reinforce their mitigation efforts.⁵⁰ Least developed countries and small island developing states are granted more flexibility, with the recommendation to formulate action plans for mitigation.⁵¹

⁴⁰ WP Pauw and others, ‘Conditional Nationally Determined Contributions in the Paris Agreement: Foothold for Equity or Achilles Heel?’ (2019) 20 *Climate Policy* 468, 469.

⁴¹ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) [2016] UNTS 54113, Article 4.2.

⁴² *Ibid*, Article 4.3.

⁴³ *Ibid*, Articles 4.8, 4.9, 4.12, 4.16.

⁴⁴ UNFCCC, ‘Government Ministers at COP27 Call for More Ambitious Climate Action’ (*unfccc.int* 15 November 2022) <<https://unfccc.int/news/government-ministers-at-cop27-call-for-more-ambitious-climate-action>> accessed December 2023.

⁴⁵ OECD, ‘Climate Finance Provided and Mobilised by Developed Countries in 2013-2021: Aggregate Trends and Opportunities for Scaling up Adaptation and Mobilised Private Finance’ (OECD Publishing 2023) 8.

⁴⁶ UNEP (n 1).

⁴⁷ *Ibid*, 31.

⁴⁸ Bodansky (n 18) 300, 304; Alexander Zahar, ‘The Nature of Climate Law’ (2023) 35 *Journal of Environmental Law* 295, 298.

⁴⁹ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) [2016] UNTS 54113, Articles 4.2, 4.3, 4.8, 4.9.

⁵⁰ *Ibid*, Article 4.4.

⁵¹ *Ibid*, Article 4.6.

It is specified that “Parties shall pursue domestic mitigation measures with the aim of achieving the objectives of [NDCs].”⁵² This does appear to create a binding obligation on states to implement domestic measures and suggests an obligation to achieve NDCs. Given the qualifying phrase “the aim of achieving,” it is highly unlikely that this can serve as a justification for asserting that states can be held accountable for meeting their NDCs.⁵³ There are no legally binding provisions regarding the substantive content of NDCs for any of the Parties.⁵⁴

While the provisions related to transparency and the imperative for Parties to continually elevate the ambition of their NDCs hold considerable potential for effectiveness, they are constrained by the fact that the overall success in achieving mitigation targets relies on the willingness of individual states. States have the autonomy to determine the extent of their actions and there is a persistent tendency to prioritize national interests.⁵⁵ This is evident from the original set of NDCs which were not aligned to reach the 2 °C goal.⁵⁶

Since the Paris Agreement's adoption, there have been limited advancements in terms of updates on mitigation actions under NDCs. As of November 2023, the full implementation of unconditional NDCs would lead to a projected temperature increase of 2.9 °C.⁵⁷ On the other hand, implementing conditional NDCs, which necessitate additional financial resources and support for execution,⁵⁸ would result in a temperature rise of 2.5 °C.⁵⁹ Evidently, the NDCs are currently falling short of fulfilling their intended purpose to achieve the mitigation targets of the Paris Agreement, as well as the reiterated goals in recent COPs.

(3) Adaptation

Adaptation receives little attention in Article 4, which is most focused on the structure of NDCs.⁶⁰ Article 7, which primarily centers on adaptation, establishes a global goal to enhance adaptive capacity.⁶¹ The language employed is generally weak, lacking substantial legally binding obligations. Many paragraphs merely express that Parties “acknowledge,” “recognize,” or “should” undertake certain actions, none of which impose specific requirements on Parties.⁶² Even in formulating plans for the implementation of adaptation actions, the use of the term “shall” is accompanied by the qualifier “as appropriate,” allowing states discretion in their implementation approaches.⁶³

⁵² Ibid, Article 4.2

⁵³ Anna Huggins, ‘Debate 4: Compliance ~B~ the Paris Agreement’s Article 15 Mechanism: An Incomplete Compliance Strategy’ in Benoit Mayer and Alexander Zahar (eds), *Debating Climate Law* (Cambridge University Press 2021) 106.

⁵⁴ Bodansky (n 18) 304.

⁵⁵ Zahar (n 48) 298.

⁵⁶ Röser and others (n 29) 416.

⁵⁷ UNEP (n 1) 31.

⁵⁸ Pauw and others (n 40) 469.

⁵⁹ UNEP (n 1) 31.

⁶⁰ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) [2016] UNTS 54113, Article 4.

⁶¹ Ibid, Article 7.1.

⁶² Ibid, Articles 7.2, 7.4, 7.5, 7.6, 7.7, 7.10.

⁶³ Ibid, Article 7.9.

The strongest language emerges in the concluding paragraphs related to transparency, enhanced support, and the global stock take.⁶⁴ Overall, NDCs seem to offer limited prospects for the effective implementation of adaptation measures, apart from ensuring a gradual increase in ambition over time. However, the significance of this depends on the initial state of individual states' NDCs, rendering it potentially inconsequential. Once again, the impetus for prioritizing the implementation of adaptation lies with the willpower of states, as the Paris Agreement lacks substantive obligations in this regard.

In the COPs that have convened since the inception of the Paris Agreement, there has been a consistent emphasis on the necessity for adaptation, yet tangible and substantive actions have not been undertaken.⁶⁵ While US\$40 billion of the targeted US\$100 billion per year fund was supposedly designated for adaptation efforts, as agreed in Glasgow,⁶⁶ the overarching goal of reaching US\$100 billion annually remains unfulfilled⁶⁷. Even if it were to be fulfilled, recent research has revealed that US\$387 billion per year is needed to implement the adaptation plans that exist in the current NDCs.⁶⁸ Consequently, it is evident that the available resources are inadequate to ensure the realization of the adaptation measures outlined in NDCs.

E. COMPLIANCE

(1) Overview

The compliance section of the Paris Agreement is set out in Article 15, but it is closely interlinked with the provisions on transparency (Article 13)⁶⁹ and the global stocktake (Article 14),⁷⁰ as it is through the information collected through these processes that the compliance mechanism can function properly.

The rules regarding transparency apply to all Parties with some differentiation.⁷¹ All information is to be subjected to a technical expert review which considers the progress of the NDC, "taking into account the flexibility accorded to the Party."⁷² Developing countries are to be supported in the implementation and development of their commitments under this article.⁷³

The global stocktake, as set out in Article 14, is meant to keep track of the progress of the Parties in meeting the ultimate objectives of the Agreement.⁷⁴ The

⁶⁴ Ibid, Articles 7.11-7.14.

⁶⁵ OECD (n 45) 3.

⁶⁶ UNFCCC, "Decision 1/CMA.3: Glasgow Climate Pact" (8 March 2022) FCCC/PA/CMA/2021/10/Add.1, para 18.

⁶⁷ OECD (n 45) 9.

⁶⁸ UNEP, 'Adaptation Gap Report 2023: Underfinanced. Underprepared. Inadequate Investment and Planning on Climate Adaptation Leaves World Exposed' (2023)

<<https://www.unep.org/resources/adaptation-gap-report-2023>> accessed December 2023, 30.

⁶⁹ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) [2016] UNTS 54113, Article 13.

⁷⁰ Ibid, Article 14.

⁷¹ Ibid, Article 13.2

⁷² Ibid, Article 13.12

⁷³ Ibid, Articles 13.14, 13.15

⁷⁴ Ibid, Article 14.1

global stocktake is set to begin in 2023 and occur again every 5 years;⁷⁵ Parties are expected to enhance their NDCs throughout this process.⁷⁶

Article 15 briefly establishes the compliance mechanism, along with its corresponding Committee, emphasizing that it is facilitative, non-adversarial, and non-punitive and that it shall consider the “capabilities and circumstances of Parties.”⁷⁷

The Katowice Climate Package includes the decisions that further specify the structure of the compliance mechanism. The modalities and procedures established in this decision provide the Committee with the ability to initiate proceedings regarding binding procedural obligations in non-compliance cases where a Party fails to “[communicate] or [maintain] a nationally determined contribution” on time, “[submit] a mandatory report or communication of information” with regards to their NDC or finance, or “[participate] in the facilitative, multilateral consideration of progress.”⁷⁸ While this does provide an additional layer of accountability,⁷⁹ the Committee is still limited in that they cannot initiate proceedings related to *any* provision of the Agreement, unlike the Parties themselves.⁸⁰ Possible measures that can be set by the committee include dialogue, assistance, recommendations, or fact-finding, the latter being the most stringent output possible and only allowed in relation to the procedurally binding obligations mentioned previously.⁸¹ The Committee may also consider systemic issues, but can only provide recommendations for the CMA to consider.⁸² Overall, the compliance mechanism is extremely facilitative.

(2) Mitigation

Regarding mitigation, reports of emissions and removals are necessary as well as progress made in achieving NDCs.⁸³ This is formatted in mandatory language, meaning that failure to comply would trigger the compliance mechanism.⁸⁴ Again, in cases of non-compliance, the compliance mechanism can only act on the procedural obligations⁸⁵ of states in a facilitative matter.⁸⁶ Due to the voluntary nature of NDCs and the lack of enforcement power in the compliance mechanism, action cannot be taken on the substantive obligations of states. This makes the mechanism’s

⁷⁵ Ibid, Article 14.2

⁷⁶ Ibid, Article 14.3

⁷⁷ Ibid, Article 15.2

⁷⁸ UNFCCC, “Decision 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” (19 March 2019) FCCC/PA/CMA/2018/3/Add.2, para 22(a).

⁷⁹ Rajamani and Bodansky (n 37) 1038-1039.

⁸⁰ UNFCCC, “Decision 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” (19 March 2019) FCCC/PA/CMA/2018/3/Add.2, para 20.

⁸¹ Ibid, para 28.

⁸² Ibid, para 32-34.

⁸³ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) [2016] UNTS 54113, Article 13.5, Article 13.7(a), Article 13.7(b).

⁸⁴ Ibid, Article 13.7.

⁸⁵ UNFCCC, “Decision 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” (19 March 2019) FCCC/PA/CMA/2018/3/Add.2, para 22(a).

⁸⁶ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) [2016] UNTS 54113, Article 15.2.

effectiveness limited when it comes to assisting with the achievement of the overarching temperature limit objective of the Paris Agreement.

Aside from this issue, the Compliance Mechanism does appear to offer value in the preparation, communication, and transparency of the NDCs. The facilitative nature of the compliance mechanism may help when states lack the capacity necessary to comply with their procedural obligations. While it may not directly affect the potential attainment of the mitigation objective, it can still contribute by mandating the creation of mitigation plans and aiding states that encounter difficulties in compliance.⁸⁷

(3) Adaptation

The provision on reporting on adaptation measures is less stringent, using hortatory language and additionally qualifying the statement that requests Parties to provide relevant information.⁸⁸ Ultimately, this provision suffers from the same weaknesses regarding substantive obligations as the provisions regarding compliance with mitigation; it is then additionally weakened because it cannot even rely on binding procedural obligations. This would only be successful in cases where states request assistance themselves, again limiting this provision's contributions to the overall achievement of the adaptation goal.

The absence of stringency regarding the transparency provisions for adaptation is concerning. This may have been done with the goal of differentiation in mind, but as Alexandraki explains, this “[undermines] the ability, or motivation, of developing countries to report reliable information related to their greenhouse gas emissions and mitigation action, as well as undermine their ability to gain additional finance needed to sustain their capacity-building efforts.”⁸⁹ Inadequate transparency provisions have a direct adverse effect on compliance measures. This is because it results in a reduced amount of reliable information for the Committee to work with, leading to a diminished capacity to assist.

F. ANALYSIS

The Paris Agreement signifies a paradigm shift in addressing climate change by introducing legally binding obligations, most notably through NDCs, and fostering a collaborative international forum. Despite these positive aspects, critical shortcomings hinder its ability to achieve its ambitious goals.

NDCs exhibit inherent weaknesses in their current structure. They, as individualized action plans, allow flexibility based on national circumstances.⁹⁰ While this approach garnered widespread ratification, it has limitations, primarily stemming from the absence of legally binding provisions compelling states to achieve their NDCs.⁹¹ Mitigation under NDCs faces challenges due to the discretionary nature of

⁸⁷ Alan Boyle and Catherine Redgwell, *Birnie, Boyle, and Redgwell's International Law and the Environment* (Oxford University Press 2018) 255-256.

⁸⁸ *Ibid.*, Article 13.8.

⁸⁹ Alexandraki (n 36) 326.

⁹⁰ Bodansky (n 18) 304

⁹¹ Zahar (n 48) 298.

states in determining the extent of their actions.⁹² The lack of enforceable substantive obligations result in a prioritization of national interests, often undermining the collective goal of limiting temperature rise.⁹³ Adaptation measures within NDCs suffer from weak language and a lack of binding obligations.⁹⁴ The emphasis on voluntariness and the limited financial resources further diminishes the effectiveness of adaptation goals.⁹⁵ For NDCs to have a sufficient impact, states must begin increasing ambition and making long-term plans.⁹⁶

The compliance mechanism is characterized as facilitative, non-adversarial, and non-punitive.⁹⁷ However, its effectiveness is limited by its focus on procedural obligations and the absence of enforcement power.⁹⁸ The compliance mechanism's role in ensuring mitigation objectives faces challenges due to the voluntary nature of NDCs.⁹⁹ The most robust aspect of the compliance mechanism lies in its capacity to prompt action when procedural obligations are unmet, thereby introducing an additional layer of accountability.¹⁰⁰ Its facilitative nature holds considerable significance, as it can effectively improve the transparency of actions taken by states that struggle to satisfy their procedural obligations.¹⁰¹ On the other hand, reporting on adaptation measures relies on voluntary provisions, diminishing its efficacy.¹⁰² The purely facilitative approach of the mechanism has been heavily criticized, with some scholars calling for the addition of coercive measures and claiming the mechanism is incomplete in its current state.¹⁰³ While the compliance mechanism may not be perfect, considering the worldwide scope of this treaty, it is commendable that it has reached its current state.¹⁰⁴ Other scholars have pointed out that the inclusion of stricter enforcement measures in the compliance mechanism would have deterred states from entering the Agreement and prevented the achievement of universal participation, which is a quality that is imperative for a treaty addressing the global problem of climate change.¹⁰⁵ It has been further argued that this is the strongest and most suitable mechanism possible given the lack of a top-down element in the Paris Agreement.¹⁰⁶ There is the potential for further enhancement of this compliance mechanism, particularly if transparency provisions for all Parties are strengthened¹⁰⁷

⁹² Ibid.

⁹³ Bodansky (n 18) 289-290.

⁹⁴ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) [2016] UNTS 54113, Article 7.

⁹⁵ Ibid.

⁹⁶ Röser and others (n 29) 416.

⁹⁷ Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) [2016] UNTS 54113, Article 15.2.

⁹⁸ Huggins (n 53) 102.

⁹⁹ Ibid, 106.

¹⁰⁰ Rajamani and Bodansky (n 37) 1038.

¹⁰¹ Meinhard Doelle, 'Debate 4: Compliance ~A~ in Defence of the Paris Agreement's Compliance System: The Case for Facilitative Compliance' in Benoit Mayer and Alexander Zahar (eds), *Debating Climate Law* (Cambridge University Press 2021) 97.

¹⁰² Bodansky (n 18) 308.

¹⁰³ Huggins (n 53) 104.

¹⁰⁴ Doelle (n 101) 87.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Alexandraki (n 36) 333-334.

and if Parties are eventually obliged to both achieve and establish sufficiently ambitious NDCs.¹⁰⁸

G. CONCLUSION

In summary, the international climate regime faces significant hurdles in achieving its goals through the Paris Agreement, primarily as a result of the common challenges associated with global treaties. Therefore, in its current state, the international climate regime has failed and is not fit for purpose. NDCs, while designed for flexibility, lack binding provisions, hampering their efficacy in both mitigation and adaptation. The compliance mechanism is commendable due to its facilitative nature and its relatively strong emphasis on procedural obligations but is still limited in achieving the objectives of the Agreement so long as the NDCs remain insufficient. Despite these challenges, the potential for improvement exists, specifically through future enhancements that mandate states to achieve and establish more ambitious NDCs and for transparency provisions to be strengthened for all states. This offers a pathway for the international climate regime to evolve and address current shortcomings.

¹⁰⁸ Doelle (n 101) 98.