The Climate Change Regime: Compliance and Enforcement
Geir Ulfstein

- The importance of national implementation
- Enforcement in international law
  - Breach of treaty
  - State responsibility
  - International courts
  - Treaty bodies
• Compliance in international environmental law
  – Protection of the global commons
  – Common but differentiated responsibility
  – Different kinds of obligations
  – The economic and social costs of control of emissions of greenhouse gases

• Different compliance theories
  – Facilitative approach
  – Enforcement approach
Non-compliance mechanisms in MEAs

- The Montreal Protocol
- CLRTAP
- CITES
- The Aarhus Convention
- UNFCCC
Different features of the non-compliance mechanisms

- Legal basis
- Composition
- Procedures
- Trigger mechanisms
- Consequences
The compliance system of the Kyoto Protocol

• Three functions
  – Fact-finding
  – Legal assessment
  – Determination of consequences

• Legal basis
  – Expert Review Teams (KP art. 8)
  – Non-compliance procedure (KP art. 18)
    Dec. 24/CP.7 (Marrakesh Accords)
    Dec. 27/CMP.1
    Rules of Procedure (Dec. 4/CMP.2 revidert Dec. 4/CMP. 4)
## Compliance Committee

<table>
<thead>
<tr>
<th></th>
<th>Annex I</th>
<th>Non-Annex I</th>
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Due process guarantees

- Time limits for decision-making
- Preliminary assessment of non-compliance
- Notification to the party
- Information to the party
- Information from the party
- Representation by the party
- Hearing at the request of the party
- Reasons for decisions
- Decisions by consensus, or $\frac{3}{4}$ majority and double majority (Annex I/Non-Annex I)
- Limited possibility to appeal
## Sanctions

| Non-compliance with emissions obligations | • Compliance action plan  
• Suspension of the rights to sell emission quotas  
• Reduction of emission quota for the next commitment period x 1.3 |
| Non-compliance with methodological and reporting obligations | • Declaration of non-compliance  
• Compliance action plan |
| Non-compliance with requirements for flexibility mechanisms | • Suspension of the rights to use the relevant flexibility mechanism |
Legal status of sanctions

• Compliance action plan
• Suspension of right to sell quotas
• Suspension of right to use the relevant flexibility mechanism
• Reduction of quota for the next commitment period
• What are the consequences of non-binding consequences?
Experiences

- Informal nomination and election process
- Expertise
- Independence
- Number of cases
- Due process guarantees
- Judicial review
XI. Appeals

1. The Party in respect of which a final decision has been taken may appeal to the Conference of the Parties serving as the meeting of the Parties to the Protocol against a decision of the enforcement branch relating to Article 3, paragraph 1, of the Protocol if that Party believes it has been denied due process.

2. The appeal shall be lodged with the secretariat within 45 days after the Party has been informed of the decision of the enforcement branch. The Conference of the Parties serving as the meeting of the Parties to the Protocol shall consider the appeal at its first session after the lodging of the appeal.

3. The Conference of the Parties serving as the meeting of the Parties to the Protocol may agree by a three-fourths majority vote of the Parties present and voting at the meeting to override the decision of the enforcement branch, in which event the Conference of the Parties serving as the meeting of the Parties to the Protocol shall refer the matter of the appeal back to the enforcement branch.

4. The decision of the enforcement branch shall stand pending the decision on appeal. It shall become definitive if, after 45 days, no appeal has been made against it. the Protocol shall consider the appeal at its first session after the lodging of the appeal.
Post-Kyoto agreement

- Control of emissions by developed states
- Control of funding and capacity-building by developed states
- Control of mitigation measures by developing states
- Control of adaptation actions by developing states funded by developed states
- Control of eligibility to use flexibility mechanisms, such as trade in emission quotas
- Control of procedural obligations, such as reporting