

The global stocktake

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ARTICLE 14

THE GLOBAL STOCKTAKE

Marjan Peeters¹

- 1. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall periodically take stock of the implementation of this Agreement to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals (referred to as the ‘global stocktake’). It shall do so in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science.**
- 2. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall undertake its first global stocktake in 2023 and every five years thereafter unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Agreement.**
- 3. The outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action.**

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COMMENTARY

A. A STRONG COLLECTIVE COMMITMENT WITH MANY OPEN ENDS

1. Aim of this collective obligation – backed up with an individual obligation

The global stocktake is an essential part of the international governance mechanism established by the Paris Agreement.² With this provision, information will be collected, appreciated and disclosed regarding the *collective progress towards achieving the purpose of the Paris Agreement and its long-term goals*. Since the problem of climate change is caused by an immense number of multiple actors across the world, situated in countries with often very different opportunities in terms of, inter alia, welfare, geographical conditions, political culture, and legal systems, it is not easy to gauge whether the totality of the efforts from parties governing these actors develops sufficiently. Nonetheless, the *global stocktake* aims to provide not only insight into the collective performance of parties³ to the Paris Agreement towards the agreed global decrease of greenhouse gas emissions (*mitigation*),⁴ but also to the efforts related to *adaptation* to the effects of climate change, and the *means of implementation and support*.⁵ With its establishment in the Paris Agreement, international environmental law has seen the emergence of a new, unique provision: a mechanism to monitor progress of more than 190 countries towards a codified global goal.⁶ The aim of carrying out this global stocktake is to try to increase ambition of countries if needed, which is at the time of writing of this chapter (2019) certainly the case: the reason for introducing the global stocktake is obviously related to the gap between the efforts pledged by parties and the aim to be reached.⁷ As we will see below, the success of this challenging exercise will not only depend on how the mechanism will be carried out, for which the adoption (and the possible improvement) of the Paris Agreement Work Program

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- 2 The Paris Rulebook even refers to the fact that the global stocktake is ‘crucial’, see 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, Decision 19/CMA.1: *Matters relating to Article 14 of the Paris Agreement and paragraphs 99–101 of decision 1/CP.21*. This document will henceforth be referred to as the Global Stocktake Rulebook 2018, or, in short, the GS Rulebook.
- 3 It will be interesting to see to what extent discussions will take place related to the collective efforts of countries not being a party to the Paris Agreement (this footnote was written at the time the US has announced to withdraw from the Agreement), and how this relates to the collective effort of the Parties to the Paris Agreement.
- 4 Jonathan Pickering et al, ‘Global Climate Governance Between Hard and Soft Law: Can the Paris Agreement’s “Crème Brûlée” Approach Enhance Ecological Reflexivity?’ (2019) 31(1) *Journal of Environmental Law* 1–28 remark that the global stocktake is concentrated on existing goals, and is not about a review of the temperature goals codified in the Paris Agreement (23).
- 5 Northrop et al raise the question whether this list is exhaustive or not; if not, the global stocktake should also take into account for instance the provision regarding loss and damage, Eliza Northrop et al, ‘Achieving the Ambition of Paris: Designing the Global Stocktake’ (PACT and World Resources Institute, Working Paper May 2018) 9.
- 6 This includes the EU, being a party to the Paris Agreement. Manjana Milkoreit and Kate Haapala qualified the global stocktake as a ‘global governance innovation’. Particularly the purpose of increasing the ambition makes this mechanism special compared to other existing mechanisms: Manjana Milkoreit and Kate Haapala, ‘The Global Stocktake: Design Lessons for a New Review and Ambition Mechanism in the International Climate Regime’ (2018) *International Environmental Agreements*, 18 December 2018, 1. See also Harro van Asselt, ‘The role of Non-State Actors in Reviewing Ambition, Implementation, and Compliance under the Paris Agreement’ (2016) 6 *Climate Law* 91–108, 101.
- 7 Milkoreit and Haapala, *ibid.*, 2.

(PAWP), also known as the 'Paris Rulebook' marks an important step, but also on the effective implementation of other key provisions of the Paris Agreement.⁸

- 14.02** Article 14 belongs to the group of collective obligations established by the Paris Agreement.⁹ This is particularly the case with regard to the carrying out of the global stocktake, as regulated in the first two paragraphs of the article. However, the third paragraph establishes an individual duty for the parties, since it prescribes that 'The outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action'. In this sense, in short, there is a hard obligation for the individual parties to use the information *resulting from* the global stocktake for their national plans.¹⁰ The carrying out of the global stocktake is a collective obligation, but its output has to be taken into account by the parties when developing their nationally determined contributions.
- 14.03** Nonetheless, with regard to the collective obligation to conduct the global stocktake, it seems fair to assume that the individual parties have a *duty to cooperate* to realize the global stocktake in the best way, particularly through the *Conference of the Parties serving as the meeting of the Parties to this [Paris] Agreement* (commonly abbreviated as CMA). As Stoll has observed, because of the fact that collective action is required to address climate change, international cooperation is key. In his opinion, in the field of international climate law, 'a customary duty of cooperation did already emerge, which obliges States to individually and jointly engage in respective research activities and to share resulting information'.¹¹ The obligation to conduct a global stocktake is a collective obligation to be observed by the CMA, and the effective participation and cooperation of the members to the CMA – the parties to the Paris Agreement – is key. Apart from the cooperation by parties, society at large, including NGOs but also academic institutions, can comment on, and in this respect, exert appreciation on how the CMA has observed its obligation.¹² In this respect, it is not impossible that next to the official global stocktake, informal progress reports will be published by societal organizations

8 For instance, the pledged actions before the COP meeting in Paris in 2016 were ambiguously described, which is an important hurdle to take stock of the progress of the intended actions to address climate change, see Joeri Rogelj et al, 'Understanding the Origin of Paris Agreement Emission Uncertainties' (2017) *Nature Communications*, published 6 June 2017, at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5467211/pdf/ncomms15748.pdf> accessed 30 November 2020. Provisions for making national pledges (by means of the nationally determined contributions) more comparable are in this respect needed. The enforceability of such provisions also matters.

9 Rajamani regards Article 14 as a provision that creates obligations for the Conference of Parties, and not as a provision that is addressed to states, Lavanya Rajamani, 'The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations' (2016) 28 *Journal of Environmental Law* 337–58, particularly 352, footnote 49: '(...) provisions that are addressed to States, and not, for instance, provisions that create obligations for the Conference of Parties (such as Article 14)'. However, as will be stated in this chapter, the third paragraph constitutes an individual hard obligation for parties, while the first two paragraphs constitute collective obligations.

10 I am grateful to Leonie Reins who emphasized this point.

11 Peter-Tobias Stoll, 'The Climate as a Global Common' in Daniel A Farber and Marjan Peeters (eds), *Climate Change Law* (Edward Elgar, 2016) 138. He argues '(...) there is reason to believe that a customary duty of cooperation has already emerged, which obliges States to individually and jointly engage in respective research activities and to share resulting information'.

12 Of course, also the national political dimension of the respective parties can influence how the members will take position in the decision-making of the CMA on the global stocktake.

that also aim to take stock. It is not unthinkable that these informal stocktaking reports take different approaches, and, in this vein, lead to different outcomes.

2. Historical context and learning process

The global stocktake is not new in the sense that never a kind of a stocktake was carried out before the mechanism got codified in the Paris Agreement.¹³ The COP decided in Cancun in 2010 ‘(...) to periodically review the adequacy of the long-term global goal (...), in the light of the ultimate objective of the Convention, and overall progress towards achieving it, in accordance with the relevant principles and provisions of the Convention’.¹⁴ This review had to include an ‘assessment of the overall aggregated effect of the steps taken by Parties in order to achieve the ultimate objective of the Convention’.¹⁵ It is particularly interesting to note that, according to the UNFCCC website, the review that took place in 2013–2015 ‘was a contributing factor to Parties’ strengthening of the long-term global goal’.¹⁶ Also, the secretariat to the UNFCCC was mandated to compile (and was requested to update) a synthesis report on the aggregate effect of intended nationally determined contributions communicated by parties by 1 October 2015.¹⁷ Next to this, it was decided in Paris in 2015 to ‘convene a facilitative dialogue among Parties in 2018 to take stock of the collective efforts of Parties in relation to progress towards the long-term goal (, ...) and to inform the preparation of nationally determined contributions’ (emphasis added).¹⁸ This process has become known as the ‘Talanoa dialogue’.¹⁹ But also, outside the formal context of the UNFCCC, stocktakes are

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- 13 Also the UNFCCC in its Article 7(2) already referred to a kind of stocktaking process, see about this Alexander Zahar, ‘Collective Progress in the Light of Equity under the Global Stocktake’ (2019) 9 *Climate Law* 101–21 (particularly 102). Moreover, also Article 16 (3) PA states that the CMA ‘shall keep under regular review the implementation of this Agreement (...)’.
- 14 Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010. Addendum. Part two: *Action taken by the Conference of the Parties at its sixteenth session*, available at <https://unfccc.int/sites/default/files/resource/docs/2010/cop16/eng/07a01.pdf>, accessed 30 November 2020 doc number FCCC/CP/2010/7/Add.1, 15 March 2011, para. 138.
- 15 *Ibid.*, para. 139. See on this review and its position in the overall evolution of the international climate change governance architecture: Pickering et al (n 4) 19.
- 16 UNFCCC website: <https://unfccc.int/topics/science/workstreams/periodic-review> accessed 14 January 2020. This observation is supported by Milkoreit and Haapala (n 6), 13. The result of the review is reported in: Report on the Structured Expert Dialogue on the 2013–2015 Review (4 May 2015) FCCC/SB/2015/INF.1, available at: <https://unfccc.int/resource/docs/2015/sb/eng/inf01.pdf> accessed 14 January 2020.
- 17 Paris Decision, para. 19. See on this action by the Secretariat: Van Asselt (n 6), 105, thereby also reflecting on the ‘omission’ to estimate end-of-century temperature, although this was reflected on in a press release by the head of the Secretariat, based on information produced by a non-state actor.
- 18 Paris Decision, para. 20. See also para. 120 concerning the organization of a high-level event in conjunction with each COP session during the period 2016–2020 that inter alia includes a stocktaking.
- 19 ‘Talanoa is a traditional approach used in Fiji and the Pacific to engage in an inclusive, participatory and transparent dialogue’, see Annex II to 1/CP.23, Informal note by the Presidencies of COP 22 and COP 23, 17 November 2017, published at <https://unfccc.int/files/bodies/cop/application/pdf/approach_to_the_talanoa_dialogue.pdf#page=1> accessed 14 January 2020. According to the progress tracker published on the UNFCCC website, after its launch by decision 1/CP.23, ‘the Talanoa Dialogue has progressed through over 300 inputs from Parties and non-Party Stakeholders, and regional and national events.’ (Progress tracker, published at <<https://unfccc.int/sites/default/files/resource/Progress%20Tracker%20PAWP.pdf>> accessed 14 January 2020). See for more information on the Talanoa dialogue: <<https://unfccc.int/topics/2018-talanoa-dialogue-platform>> accessed 14 January 2020.

developed, among which the UNEP in its annual reports called ‘*The Emissions Gap*’ in which the aggregate effect of states’ disclosed efforts is analysed.²⁰

3. Legal qualification and the importance of the Paris Rulebook

a. An obligation of result for the CMA, but with a lot of discretion

14.05 Article 14 contains strong language, particularly that the CMA ‘*shall periodically take stock*’. The use of ‘*shall*’ in paragraphs 1 and 2 implies that there is no discretion whether or not to carry out the stocktake.²¹ Also, the text indicates a result: the global stocktake. In this sense, one can argue that Article 14 contains an obligation of result, not of conduct.²² However, how that result, the global stocktake, should look is only vaguely described. In this sense, one can conclude that while Article 14 provides an obligation of result, there rests discretion on how to build that result. Given the specific prescribed criteria in light of which the global stocktake has to be carried out, which are ‘*equity*’ and ‘*best available science*’, a large room for discretion is embedded, particularly with regard to the (undefined) criterion of equity, a term already included in the UNFCCC but very hard to find a common interpretation on.²³ In connection to this, it is for the CMA ‘*to assess the collective progress*’, and with the elaboration of the extent to which the interim collective result contributes to the purpose and long term goals of the Paris Agreement, a lot of policy appreciation seems to exist. Section B will discuss whether the Paris Rulebook has provided more clarity on how the global stocktake has to be carried out, and to what extent in this respect, the discretion or flexibility as embedded in Article 14 is further constrained.

14.06 Meanwhile, for getting a complete picture of the requirements that have to be observed for carrying out the global stocktake, a reading of Article 14 does not suffice. For example, Article 9(6) of the Paris Agreement prescribes that the global stocktake ‘*shall take into account the relevant information provided by developed country Parties and/or Agreement bodies on efforts related to climate finance*’. Also here, a strong wording is chosen, by means of ‘*shall*’, but then, the obligation is about to ‘*take into account*’, again providing some discretion to the

20 United Nations Environment Program (2018) *The Emissions Gap Report 2018* (Nairobi: United Nations Environment Program).

21 Bodansky: “‘shall’ generally denotes that a provision in a treaty creates a legal obligation”. Daniel Bodansky, ‘The Legal Character of the Paris Agreement’ (2016) 25(2) *Review of European Community and International Environmental Law*, 145. Of course, and acknowledged by Bodansky, in the vein of Article 31 of the Vienna Convention on the Law of Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 8 *ILM* 679 (Vienna Convention), a textual interpretation is not enough, context and other dimensions play a role too. See for the defining elements of identifying the ‘legal character’ of a treaty provision, and the provisions of the PA more specifically: Rajamani (n 9), 343; she argues: ‘If the provision uses the imperative “shall”, it typically creates rights and obligations for Parties. If it uses “will”, it implies a promise or expectation. If it uses terms such as “should”, “strive” or “encourage”, it is recommendatory’.

22 While the legal character of Article 14 seems strong, this does not necessarily lead to success. See about the issue of legal character, and to what extent it is relevant, Bodansky, *ibid*.

23 UNFCCC Article 3(1): ‘The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.’ What is considered to be equitable, or fair, may remain contested among parties, see also Van Asselt (n 6) 101. Alexander Zahar gives a specific take on the consequences of the use of the criterion of equity, and defends that equity cannot be meaningfully discussed if individual state progress is not part of this discussion: Zahar (n 13).

CMA when carrying out the global stocktake. The bottom line is that the information on finance cannot be neglected and has, at least, to be considered.²⁴

When scrutinizing Article 14, it becomes clear that it only very vaguely prescribes how to assess the collective progress (Articles 2 and 3). Article 14 PA refers to *'the purpose of'* the agreement and to its *'long-term goals'*. In fact, for understanding how to measure the global stocktake, consensus has to exist on how to interpret particularly the purpose of the Paris Agreement, such as codified in Article 2 PA.²⁵ At first glance, important clarity seems to exist given the specific formulation in Article 2 PA of the temperature target ('well below 2°C above pre-industrial levels', although the 'well below' is subject to further interpretation, for which scientific input may play an important role) but this is complicated by the interpretation of 'pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels'. Furthermore, a crucial question implied in this temperature target formulation is whether it is possible to assess with great certainty whether a certain progress (at the global level) at a certain moment is sufficient for reaching the formulated world-wide temperature goals. **14.07**

With regard to *'long-term goals'* – in plural in Article 14 – it needs to be identified what long-term goals are exactly prescribed in the PA (Article 9). Article 4(1) PA refers to the 'long-term temperature goal set out in Article 2'.²⁶ Immediately, several considerations emerge when scrutinizing this text, such as: can the aim to limit the global average temperature to well below 2°C and preferably to 1.5°C actually be qualified as a *long-term* goal? Is this not a threshold that never should be passed, and, given the fact that the warming is already above the 1°C, is it not rather a short-term goal than a long-term goal? The global stocktake shall be undertaken for the first time *in 2023*. The IPCC has made clear in 2018 that limiting global warming to 1.5°C would require 'rapid, far-reaching and unprecedented changes in all aspects of society'.²⁷ How much time (in the long run) can be afforded to take action to achieve the purpose of the Paris Agreement? It seems that the first global stocktakes (those from 2023 and 2028, which will be respectively relevant for the NDC's for the periods 2025–2030 and 2030–2035)²⁸ will be crucial to assess whether anyway the mitigation goal, particularly the strive to keep temperature rise at 1.5°C can still be reached. Of course, the Paris Agreement also provides other goals than mitigation goals, but also with other 'long-term' goals one can easily identify short-term needs. For example, Article 7 PA on adaptation stipulates the 'long-term global response to climate change to protect people, livelihoods and ecosystems' but, in this respect, account has to be taken of the 'urgent and immediate needs of those developing country parties that are particularly vulnerable to the adverse effects of climate change'. The global stocktake – which is an inventory on how the global effort fares – can come simply too late for pressing needs.²⁹ **14.08**

24 This of course depends on what to understand with 'take into account'.

25 See, in this respect the reference made in Article 2 PA to the objective of the UNFCCC, which is, according to Article 2 UNFCCC the 'stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system'.

26 Zahar however states that the long-term goals of the Paris Agreement are unspecified, Zahar (n 13), 107.

27 IPCC, Press release October 8, 2018, <<https://www.ipcc.ch/2018/10/08/summary-for-policy-makers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments>> accessed 23 December 2018.

28 See Zahar (n 13), 103.

29 See in this sense critical: Massimiliano Montini, 'The Paris Agreement on Climate Change: Miracle or Disaster?' (2015) 5 *Environmental Liability* 161–6, 164, who observes that the timing of the global stocktake (first one in 2023)

- 14.09** The criteria for assessing the collective progress becomes even more complicated in the field of adaptation. While for mitigation, the ‘degree targets’ have been formulated, the Paris Agreement does not provide a quantified adaptation aim.³⁰ Moreover, adaptation is very much related to local circumstances, and probably more difficult to measure as a global collective effort or progress. Still, adaptation is included in Article 14 so it has to be part of the global stocktake, thereby reflecting an ‘egalitarian coverage to all areas’.³¹ The third goal mentioned in Article 2 PA, ‘making finance flows consistent with a pathway towards low greenhouse gas emissions and climate resilient development’, seems of a more concrete nature and therefore easier to take stock of. Article 9(6) Paris Agreement states that the global stocktake ‘shall take into account the relevant information provided by developed country Parties and/or Agreement bodies on efforts related to climate finance’.³² The goal formulated in Article 2 PA on finance flows is, at least textually, not limited to public resources, and, while businesses and investors may want to keep their finance flows to a great extent confidential, even governments may want to keep insight into some public resources confidential.³³ In this respect, it would be important to examine to what extent insight into the finance flows may be hindered by confidentiality concerns.
- 14.10** Rajamani pointed at the recognition in the Paris Agreement of the inter-linkages between mitigation and adaptation in Article 7(4) PA: ‘Parties recognize that the current need for adaptation is significant and that greater levels of mitigation can reduce the need for additional adaptation efforts, and that greater adaptation needs can involve greater adaptation costs.’³⁴ While this according to Rajamani can hardly be called an obligation (‘Parties recognize’), it may play a role for the global stocktake for assessing (also in the sense of appreciating) the collective progress, since if less mitigation action occurs, the greater the adaptation need and related costs can be.³⁵ In other words, Article 7(4) may serve as a benchmark for the global stocktake assessment, although Article 7(4) is addressed to the parties, not to the CMA directly. Meanwhile, Article 7(4) may play a role when interpreting the vague criterion of ‘equity’ mentioned in Article 14.³⁶

b. Legal consequence for the parties

- 14.11** The global stocktake is aimed to be an important feature to take into account by individual parties when developing their nationally determined contribution. Paragraph three stipulates that *the outcome of the global stocktake shall inform Parties in updating and enhancing (...) their actions and support*. However, this has to be done in a *nationally determined* manner which

‘does not appear to be in line with the recognition of the “urgent threat of climate change” that is contained in the preamble of the Paris Agreement itself.’

30 Milkoreit and Haapala (n 6), 3 observe that the adaptation goal is unclear ‘given the current lack of measurable indicators for adaptation progress and its context-dependent nature’.

31 For understanding this, it is useful to read about the ‘fundamental disagreement between Parties on the scope of the Agreement’ as discussed by Rajamani (n 9), 357–9 (quote from 359).

32 Next to this, Article 10(6) PA states that the global stocktake shall take into account available information on efforts related to support on technology development and transfer for developing country parties.

33 Access to information laws may be important in this respect.

34 Rajamani (n 9), 357.

35 Ibid., qualifying Article 7(4) a non-obligation.

36 In this respect, Zahar argues that an assessment of individual (mitigation) progress of states is important for discussing equity – thereby holding the view that equity is a ‘non-collective notion’ (Zahar (n 13), 105); related to this, it remains to be seen whether during the global stocktake also adaptation consequences for individual parties will be discussed.

seems to safeguard discretion for parties, the extent of which is hard to predict, particularly in view of potential litigation in domestic orders.³⁷ Also Article 4(9) PA stipulates that each party, for its nationally determined contribution, ‘be informed by the outcomes of the global stocktake referred to in Article 14’. One could derive from this provision, jointly read with Article 14(3), that in the successive NDC’s at least an explanation has to be provided how the individual effort contributes to the overall collective progress as assessed through the global stocktake.³⁸ If this is taken seriously, this approach consisting of an interplay between the global stocktake and the updating of the national pledges ‘could over time pave the way for a progressive improvement and enhancement of the international cooperation efforts in the climate change field, without the need for formal amendment of the Paris Agreement’.³⁹

c. Temporal scope of the global stocktake and individual assessments

Shall the global stocktake assess the collective progress *thus far* at a certain moment in time, or shall it have a forward look, predicting how the intended actions that are pledged at a certain moment in time will play out? For the latter, a complex forecasting will be needed of the effects of the intended actions.⁴⁰ Assumedly, particularly implementation *thus far* is a key focus. Article 14 states that a global stocktake shall take place ‘of the *implementation* of this Agreement to assess the collective progress (...). It shall do so in a *comprehensive* and facilitative manner, considering mitigation, adaptation and the *means of implementation* and support’ (emphasis by author). The reference to ‘implementation’ suggests that not only the actions that are presented on paper will be assessed, but that also the effectuation of this in practice needs to be considered. The Global Stocktake is interpreted by Milkoreit and Haapala as to concern the collective progress by ‘considering the aggregate effects of all national and cooperative efforts’.⁴¹ It is however uncertain whether the global stocktake may or will delve into implementation issues of individual parties, since the stipulation of what individual parties do, including short falling action, is a very sensitive manner, which is to some extent addressed by other provisions of the treaty, particularly the enhanced transparency framework which enables individualized technical expert review (Article 13) and the provision to establish an implementation and compliance committee (Article 15).⁴² Nonetheless, in literature a strong plea was

14.12

37 Thus far, in an exceptional case, discretion of a national government regarding its national climate policy was limited by a national court on the request of an ENGO (*Urgenda v State of the Netherlands*, confirmed now by the Supreme Court of The Netherlands, 20 December 2019, ECLI:NL:GHDHA:2018:2591). However, the country submitted to the litigation did not submit an individual NDC (a joint NDC is submitted on behalf of the EU and on behalf of the Member States).

38 See however, very critical Zahar (n 13), 103, stating ‘the COP in 2015 did not have a clear idea on how directive the stocktake should be’.

39 Montini (n 29), 164.

40 The text of Article 14 contains some indications that at least some forecasting of intended actions included in the Nationally Determined Contributions is expected. See about this important *ex ante* element Van Asselt (n 6), 93.

41 Milkoreit and Haapala (n 6), 5.

42 Furthermore, legal literature attempts to argue that Article 4(2) PA, particularly also the text stating that ‘Parties shall pursue domestic mitigation measures’ is an important obligation of conduct: Benoit Mayer, ‘Obligations of Conduct in the International Law on Climate Change: A Defence’, (2018) 27 *Review of European Community and International Environmental Law*, 130–140.

made by Zahar that, given the fact that ‘equity’ is part of the framework for carrying out the global stocktake, it is unavoidable to include the assessment of individual progress into the stocktake.⁴³

4. The complex puzzle

14.13 The aim of the provision is to understand how the collective progress fares *towards achieving the purpose of this Agreement and its long-term goals*. In light of this, it makes sense to forecast what the pledges mean for the future, including the long-term future. Also, according to paragraph 3, the *outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action*. Hence, an understanding is needed of how the actual pledges play out for achieving the long-term goal, so that parties can consider how to update and improve their pledges and their international cooperation. In this sense, the global stocktake can be framed as ‘a hybrid between an effectiveness review and an ambition mechanism’.⁴⁴

14.14 However, it is important to acknowledge that this long-term scope of the global stocktake can only be done if complex assessments will be undertaken, the complexity of which will fall beyond the knowledge level of average lawyers. Forecasting to what extent the collective pledges contribute to keeping global temperature rise at the required level rests on various models, while the development of for instance computational modelling of future scenarios is still subject to further research.⁴⁵ As projected by scientists working on such models ‘different model types can contribute complementary parts to a complex puzzle’.⁴⁶ Literature on how to take stock of national pledges has pointed at uncertainties such as socioeconomic baseline variation, historical emission variation, and conditionality in the pledges.⁴⁷ For instance, when NDC targets are specified in terms of carbon intensity improvements, the future socio-economic development is a key but uncertain factor.⁴⁸ Moreover, the target may be presented in an ambitious or in a conservative way, which of course affects the outcome of the global stocktake.⁴⁹ All in all, compared to another already existing global review mechanism, which is

43 Zahar (n 13) (in the abstract of the article) stating ‘Whatever the negotiators may have intended (...), an objective construction of the Rulebook shows that an assessment of the individual progress of states is permitted to occupy a substantial part of the stocktaking process, except when it comes to formal reporting on the stocktake’s outputs.’

44 Milkoreit and Haapala (n 6), 2.

45 See, e.g., (a more elaborated survey falls beyond the scope of this contribution) Toon Vandyck et al, ‘A Global Stocktake of the Paris Pledges: Implications for Energy Systems and Economy’ (2016) 41 *Global Environmental Change* 46–63. While this article provides an interesting insight into the complexity of using models for forecasting the result of pledges, it is interesting to see that it contains some statements that are imprecise from a legal perspective, for instance that there is a ‘legally binding 2°C target’ (46). In turn, if lawyers start to describe the complex modelling, the risk exist that alike misunderstandings can easily take place, this is a risk embedded in transgressing one’s discipline.

46 See, *ibid.*, 47.

47 Rogelj et al (n 8), 3 Table 1 (overview of explanation and implementation of assessed NDC uncertainty dimensions), also pointing at the high political dimension of how the NDC’s are formulated, which largely contributes to the uncertainty that is part of the global stocktake, 2. See also on uncertainty analysis, and arguing for a different approach for assessing NDC’s in view of the total global greenhouse gas emissions this: H el ene Benveniste et al, ‘Impacts of Nationally Determined Contributions on 2030 Global Greenhouse Gas Emissions: Uncertainty Analysis and Distribution of Emissions’ (2018) 13 *Environmental Research Letters* 014022.

48 Rogelj et al, *ibid.*, 5.; see also Benveniste et al, *ibid.*, 7.

49 Benveniste et al, *ibid.*, refer to China, stating that China ‘presented a rather conservative intensity target’, *ibid.*, 9.

the Montreal Protocol's Implementation Review, the Global Stocktake is less technical, since the former is 'a mere collection and aggregation of emission data'.⁵⁰ In case of the global stocktake, the process, which obviously in part is also about the collection of technical data, is entrenched with (difficult to measure) qualitative elements, such as the economic-social developments.⁵¹

Moreover, since the provision explicitly refers to '*in the light of equity*', it can be argued that at least to some extent – but perhaps even to a large extent – the economic and social effects of climate mitigation and adaptation measure have to be taken into account. This could include the effects of the intended collective progress on employment rates and GDP developments in particularly developing countries.⁵² **14.15**

In vein to the reference of '*best available science*', the global stocktake should rest on the knowledge that is present at the time of carrying it out. Nonetheless, it will be interesting to see how potential innovations, such as the invention of fossil free kerosene (synthetic kerosene), will be incorporated into the global stocktake. This also relates to the question whether measures related to global aviation and shipping will be included into the global stocktake.⁵³ There is no explicit reference to aviation and shipping in the Paris Agreement, which implies there is also no explicit exclusion of such global transport emissions from the scope of the agreement. This example, out of many other possibilities, illustrates that the choices made in how to carry out the global stocktake are crucial, and, therefore, prone to complex political debates at the international level. Particularly difficult dimensions in this respect are for instance assumptions related to demographic and economic forecasts underlying the models.⁵⁴ **14.16**

5. The inter-connectedness of the governance provisions

As stated above, the global stocktake is an essential part of the governance mechanism introduced by the Paris Agreement. Other essential elements are for instance the procedural obligation of parties to submit their nationally determined contributions (Article 4), the so-called 'enhanced transparency framework for action and support' (Article 13) and the implementation and compliance mechanism (Article 15).⁵⁵ **14.17**

- The obligation for all parties to submit NDC's is essential to get information on what, for the future, the potential emission reduction measures of all parties will be in order to

⁵⁰ Milkoreit and Haapala (n 6), 5.

⁵¹ Ibid., referring to other literature, and stressing also that for the adaptation and finance goals non-scientific expertise is needed.

⁵² In the paper (Vandyck et al (n 45)), the energy-related and economic implications of the INDCs are assessed, and it is stated that 'global job creation in renewable energy technologies is not sufficient to compensate for the employment reduction due to lower electricity demand and for the jobs lost in coal-based electricity generation', 55.

⁵³ Northrop et al (n 5) argue that the global stocktake will need to look at mitigation efforts taking place in other places, such as ICAO, 9.

⁵⁴ For instance, the examination carried out in the paper from Vandyck et al (n 45) explicitly excluded these dimensions, 56.

⁵⁵ A schematic overview of the potential linkages between Article 14 with specifically Articles 13 and 15 of the Paris Agreement is provided by Northrop et al (n 5), 14.

achieve the long-term temperature goal set out in Article 2.⁵⁶ Moreover, parties are obliged to submit updates of their NDC's after a global stocktake, and, in this respect, they have to 'be informed by the outcomes of the global stocktake' (Article 4(9) PA). Moreover, the successive NDCs will need to represent progression and 'reflect its highest possible ambition'.⁵⁷ With this, a reiterative process is created between NDCs and the global stocktakes, which will hopefully lead to an effective reflexive regime.⁵⁸

- The enhanced transparency framework includes obligations for parties on what information to provide on a regular basis, including (a) an inventory report of emissions by sources and removals by sinks, and (b) information for tracking realized progress concerning the NDCs.⁵⁹ Moreover, these reports and other information just mentioned has to undergo a 'technical expert review'.
- The implementation and compliance mechanism, which deals with both individual and collective obligations, is relevant for reviewing Articles 4 and 13.⁶⁰ It however needs to be noted that the provision obligating parties to provide, in their NDCs, information necessary for clarity, transparency and understanding is not referred to in the modes for which the Committee can initiate a case.⁶¹ However, regarding the obligation for individual parties to deliver information as regulated by the enhanced transparency mechanism – information that seems very relevant for the global stocktake – the committee 'will initiate the consideration of issues'.⁶² This terminology indicates that the Committee is required to initiate a consideration.⁶³

Moreover, the implementation and compliance mechanism is also relevant for collective obligations such as the global stocktake: the committee is also tasked with issues of a systemic

56 Next to NDC's, all parties should strive to formulate and communicate 'long-term low greenhouse gas emission development strategies', Article 4(19) PA.

57 See in full, precise: Article 4(3) PA.

58 See on this reflexivity Pickering et al (n 4), 24–6. Of course, the way the NDCs will be formulated, and the comparability, including the common timeframe, will affect the way how the global stocktake can be undertaken. See Article 4.10 PA and also Northrop et al (n 5), 13. See for assessing NDCs ('interpreting the NDCs is not straightforward') Benveniste et al (n 47), 2. The CMA decided in 2018 that 'Parties shall apply common time frames to their nationally determined contributions to be implemented from 2031 onward' and it requested the Subsidiary Body of Implementation to consider in June 2019 these common time frames. CMA, Decision 6/CMA.1, Common time frames for nationally determined contributions referred to in Article 4, paragraph 10, of the Paris Agreement, FCCC/PA/CMA/2018/3/Add.1, available at: https://unfccc.int/sites/default/files/resource/cma2018_3_add1_advance.pdf, accessed 30 November 2020.

59 Article 13(7).

60 See for a detailed discussion: Gu Zihua, Christina Voigt and Jacob Werksman, 'Facilitating Implementation and Promoting Compliance with the Paris Agreement Under Article 15: Conceptual Challenges and Pragmatic Choices' (2019) 9 *Climate Law* 65–100. The authors of this article took part in negotiating the provisions of the implementation and compliance committee.

61 *Ibid.*, 86–7. This concerns Article 4(8) of the Paris Agreement.

62 Para. 22 of the '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', 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, Addendum, Part two: *Action taken by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement*, FCCC/PA/CMA/2018/3/Add.2, available at https://unfccc.int/sites/default/files/resource/cma2018_3_add2_new_advance.pdf accessed 14 January 2020.

63 See for a more in-depth explanation of this issue, including the complementary role of the implementation and compliance committee to the enhanced transparency framework, including its Technical expert review, Zihua et al (n 60), 87–8.

nature.⁶⁴ This provision covers the global stocktake.⁶⁵ The ultimate competence to decide on how to improve the approach so as to avoid any negative systemic issues rests with the CMA; the committee may (only) make recommendations.⁶⁶

Other provisions also provide important obligations that contribute to the way how the global stocktake can be carried out: for instance, Article 9 obliges developed country parties to provide financial resources to assist developing country parties with respect to both mitigation and adaptation. This provision in principle requires to provide support, on which information has to be provided according to Article 9(5). Article 9(6) PA states that the global stocktake shall take into account such information. **14.18**

B. INSTITUTIONAL PROVISIONS AND THE RULEBOOK

1. The process towards the adoption of the rulebook

a. *The request for the rulebook and the time relevance*

The 'Paris decision', which was adopted by the Conference of the Parties to the UNFCCC in 2015, included a request to the then established Ad Hoc Working Group on the Paris Agreement (APA) to 'identify the sources of input for the global stocktake' and to 'develop modalities for the global stocktake'.⁶⁷ In connection to this, the APA was requested to report to the Conference of the Parties to the UNFCCC 'with a view to the Conference of the Parties making a recommendation to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement for consideration and adoption at its first session'. This implies that parties to the UNFCCC while not being (yet) a party to the Paris Agreement, such as Iran, but also the United States of America, still being a party but intending to leave the Agreement, have a say in the (consensual) decision-making process. **14.19**

In addition, the COP requested the Subsidiary Body for Scientific and Technological Advice (SBSTA) to provide to the APA advice on how the assessments of the IPCC can inform the global stocktake.⁶⁸ In this advice, adopted in Marrakech in November 2016, it is affirmed that 'the products of the IPCC assessment cycles will be key inputs to the global stocktake', and that **14.20**

64 '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', paras 32–34.

65 Zihua et al (n 60), 95. According to these authors, the committee on implementation and compliance could improve the 'effectiveness and efficiency of the Agreement', but how this would work out with regard to the global stocktake is yet unclear.

66 Ibid.

67 Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015, FCCC/CP/2015/10/Add.1, available at <http://unfccc.int/files/home/application/pdf/decision1cp21.pdf> accessed 14 January 2020 paras 99 and 101 (summarised in the main text). At the moment of this writing, a draft text is available at: <https://unfccc.int/sites/default/files/resource/APA11_7_DT_i6v3.pdf> accessed 14 January 2020 (draft text on APA 1.7 agenda item 6 Matters relating to the global stocktake referred to in Article 14 of the Paris Agreement: (a) identification of sources of input for the global stocktake; and (b) development of the modalities of the global stocktake Version 08/12/2018 08:23).

68 Report, *ibid.*, para. 100.

they will provide the best available scientific knowledge ‘that is policy-relevant but not policy-prescriptive’.⁶⁹

14.21 Article 14 stipulates that the first global stocktake has to take place in 2023, but it does not stipulate explicitly that the stocktake has to be completed in the same year. One can imagine that the duration of a global stocktake is not very short, given the challenging exercise (the complex puzzle). However, in order to reach its aim, which is to inform the parties to the agreement in developing their NDCs, it is clear that the global stocktake needs to be ready before the national decision-making on the NDCs can be concluded. In many parties, such as the parties that are also a party to the regional UNECE Aarhus Convention, proper public participation is required in case an (environmental) plan, programme or policy is developed.⁷⁰ So, in order to be well informed and to discuss the consequences with the public, clarity on the modalities for the global stocktake is needed sufficiently before the date on which the parties have to submit their NDC.⁷¹ In other words: if the process for concluding the modalities of the global stocktake is delayed, the delicate governance mechanism of the Paris Agreement that aims to increase ambition through a re-iterative process is at risk. As we will see below, the APA managed to conclude the rulebook on the global stocktake in December 2018; the question is however whether the rules indeed enable sufficient clarity and workability to get the global stocktake concluded in 2023. Literature has already observed that, when reviewing the rulebook, the global stocktake seems to be ‘extraordinarily time-intensive, spanning a period of at least two years, if not three years’.⁷²

b. The adoption of the rulebook in 2018

14.22 The APA negotiated the rulebook between 2016 and 2018, resulting in its adoption during the third part of the first session of the CMA held from 2 to 15 December 2018 in Katowice. The progress of developing specific rules for carrying out the global stocktake can be tracked by disclosed interim documents; for instance a document from 15 October 2018 provides joint reflections by the presiding officers chairing the discussions for the Paris Rulebook.⁷³ By then, it was observed that the text ‘still contains many options and sub-options, especially for the modalities of the global stocktake and in particular for key issues’.⁷⁴ This includes ‘the governance of, and the guidance for, conducting the process’ and ‘the substantive coverage of its components’.⁷⁵ Nonetheless, about two months later, the parties could succeed in adopting the rulebook for several key elements of the climate governance system including the global stocktake.⁷⁶ While this can be marked as a crucial step, the necessity for adjusting the rules over

69 Report of the Subsidiary Body for Scientific and Technological Advice on its forty-fifth session, held in Marrakech from 7 to 15 November 2016, FCCC/SBSTA/2016/4, paragraph 50, available at <https://unfccc.int/resource/docs/2016/sbsta/eng/04.pdf> accessed 14 January 2020.

70 See Article 7 of the Aarhus Convention.

71 Article 12 of the Paris Agreement also refers to public participation; this contribution will however not discuss whether Article 12 has any relevance for developing the NDCs.

72 Zahar (n 13), 111, see also his schematic overview, pointing at the fact that the whole process could take three years, or more.

73 Joint reflections note by the presiding officers of the Ad Hoc Working Group on the Paris Agreement, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation <https://unfccc.int/sites/default/files/resource/APA_SBSTA_SBI.2018.Informal.2.Add.7.pdf> accessed 14 January 2020.

74 See, *ibid.*, para. 3.

75 See *ibid.*

76 For particularly Article 6 PA no agreement was reached.

time is already emphasized in literature.⁷⁷ This is confirmed in the rulebook, by deciding to consider refining elements of the overall global stocktake process on the basis of experiences.⁷⁸ The need to revise the rules also stems from the experimental governance approach, and probably (many) lessons need to be learnt.

2. Main content of the global stocktake rulebook

The rulebook for the global stocktake (henceforth referred to as the GS rulebook) contains a couple of decisions, next to (for instance) requests and invitations by the CMA.⁷⁹ **14.23**

a. Key provisions

First, it is decided that the criteria mentioned in Article 14 PA ('equity' and 'best available science') will be considered in a 'Party-driven and cross-cutting manner', which applies for the whole global stocktake process.⁸⁰ What this exactly means is hard to say from a purely literal interpretation, but the term 'party-driven' emphasizes most likely that the parties themselves want to sit behind the steering wheel, not accepting any top-down authority on this matter.⁸¹ Throughout the GS rulebook rather open ended qualitative criteria can be found, such as that the stocktake has to be conducted in a 'comprehensive, facilitative, effective and efficient manner (...)'.⁸² A lot of debate can emerge regarding such criteria (what is sufficiently comprehensive? And how does this relate to efficiency?)⁸³ **14.24**

Furthermore, it is decided that the global stocktake will consist of three components: (1) information collection and preparation; (2) a technical assessment, and (3) consideration of outputs.⁸⁴ The global stocktake will be conducted 'with the assistance of the SBSTA (already mentioned above) and the Subsidiary Body of Implementation – SBI, for which a *joint contact group* will be established.⁸⁵ This joint contact group will be assisted by a *technological dialogue*.⁸⁶ The chairs of the SBSTA and the SBI are requested to organize the global stocktake 'in a **14.25**

⁷⁷ Milkoreit and Haapala (n 6), 6, drawing lessons from existing review mechanisms.

⁷⁸ See for the precise text para. 15 of the rulebook.

⁷⁹ 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, Decision 19/CMA.1: *Matters relating to Article 14 of the Paris Agreement and paragraphs 99–101 of decision 1/CP.21*.

⁸⁰ The GS rulebook, para. 2.

⁸¹ The author of this chapter was not part of the negotiations, nor did she carry out any interviews. Of course, a more comprehensive understanding of the terminology of the rulebook can be developed by carrying out interviews with negotiators, although different interpretations could exist among them. See on the 'party-driven' process of the First Progress Review Milkoreit and Haapala (n 6), 10: the review was seen as a learning environment, not necessarily meant to achieve political goals. Nonetheless, the FPR became political at the end 'with the decision to create a formal output of the FPR'. See on the interpretation of 'party-driven' mentioned in Article 14 of the Rulebook: Zahar (n 13), 116.

It is not very clear what this means, unless it means simply that the parties themselves will decide (at some later stage, perhaps on the basis of their 'voluntary inputs' (...)) how to assess equity, or that equity will be considered not only in relation to mitigation but also in relation to adaptation, etc. (thus 'cross cutting' all the thematic content of the stocktake).

⁸² GS Rulebook para. 9.

⁸³ See for example also the qualitative criteria in paras 27 and 30 of the GS Rulebook.

⁸⁴ *Ibid.*, para. 3.

⁸⁵ *Ibid.*, para. 4.

⁸⁶ *Ibid.*, joint contact group: para. 4; technical dialogue: para. 6 (and 5).

flexible and appropriate manner'.⁸⁷ This phrasing indicates that a lot of leeway is left in how to organize the global stocktake. This is also evident given the request to the chairs of the SBSTA and the SBI to develop 'guiding questions' for all components of the stocktake.⁸⁸ These guiding questions are the first step; the next step is the information collection and preparation (assumedly within the frame of the guiding questions). However, the technical assessment does not have to wait for the finalization of the Information Collection and Preparation: overlap is explicitly allowed.⁸⁹

14.26 The specific mandate of the technical dialogue is also decided in the rulebook.⁹⁰ In this vein, it is explicitly stated that the global stocktake may take social and economic consequences and impacts of response measures into account, as appropriate.⁹¹ In this sense, the characteristic of the global stocktake being a (multidimensional) 'complex puzzle' is confirmed in the rulebook.

b. Schematic overview

14.27 A summarizing overview of the architecture of the global stocktake is presented in Figure 14.1 below.⁹²

c. Information

14.28 Given the provisions on information as provided by the rulebook, the global stocktake will have an 'open source of input of information'.⁹³ This implies that next to IPCC findings, additional sources of knowledge and expertise can or even have to be used.⁹⁴ In literature, it is even stated that 'major research oriented think tanks and policy advocacy platforms are in a better position than the IPCC to develop (...) dynamic knowledge in conversation with the policy community'.⁹⁵ On the other hand, practice has learnt that reports from non-party actors can be contested by the parties.⁹⁶ Of course, from a legal perspective, the neutrality and correctness of the information used will be a crucial point of attention. In the words of Van Asselt: 'This raises the question of which body could be a truly independent, apolitical gatekeeper of information.'⁹⁷ While the IPCC reports are based on peer-reviewed information, other non-scientific sources may develop information with less quality control; at least, it would be careful when, before using information for the global stocktake, the approaches applied to the production of the information submitted for input for the global stocktake will

87 Ibid., para. 16.

88 Ibid., para. 7.

89 Ibid., respectively para, 26.

90 Ibid., para. 6. See about the technical character of the First Progress Review 2013–2015, Milkoreit and Haapala (n 6), 12. They also argue that the technical dialogue established by the Rulebook builds on the experience from the First Progress Review, 14.

91 Ibid., para. 6(b).

92 A figure estimating the duration of the global stocktake is presented by Zahar (n 13), 114.


93 Zihua et al (n 60), 95–6. This for instance means that recommendations from the committee for implementation and compliance may serve as input too.

94 Milkoreit and Haapala (n 6), 6. See also Van Asselt (n 6), 100.

95 Milkoreit and Haapala, *ibid.*

96 See for an example Van Asselt (n 6), 100.

97 *Ibid.*

| Institutional setting | | Steps to be taken |
|---|---|--|
| SBSTA / SBI Joint contact group | Non state actor involvement | Guiding questions for the global stocktake, including the three components below (para. 7) |
| | | Components global stocktake (sources of input: para. 36, plus additional sources identified by the SBSTA, para. 38) |
|  <p>Supported by a Technical dialogue, led by 2 co-facilitators, with 'expert consideration of inputs', and with roundtables, workshops, etc</p> <p>preparing 'factual synthesis report' and other outputs, assistance by secretariat</p> | IPCC – SBSTA dialogue (para. 29, to be used in the context of the global stocktake) | Information collection and preparation Secretariat: synthesis reports (23) |
| | | Technical Assessment |
| | | Consideration of Outputs Including key political messages Chaired by high level committee (para. 33) Cop decision or Declaration (para. 34(c)) |
| Special event under auspices of the Secretary-General of the United Nations: invitation to parties to present NDCs – particularly how they are informed by the global stocktake (para. 17). | | |

Overlap possible, (para 26)

Source: Figure developed by the author.
 Figure 14.1 Schematic overview of the architecture of the global stocktake

be scrutinized.⁹⁸ Perhaps the criterion of ‘best available science’ can serve as a criterion for scrutinizing information, but this is not explicitly stated in the rulebook. In other words, it will be challenging to see what kind of information will be submitted and how this will be processed.

- 14.29** The rulebook also prescribes *what* information has to be considered, and, importantly, this information is to be considered ‘at a collective level’.⁹⁹ This emphasizes the aim to avoid individual party assessments, although it remains to be seen how this can be done without mentioning specific country-data.

d. Non-party stakeholders

- 14.30** In line with Article 12 of the Paris Agreement, in which inter alia it is provided that Parties¹⁰⁰ shall cooperate in taking measures, as appropriate, to enhance public participation and public access to information, also the rules on the global stocktake address participation and transparency.¹⁰¹ For instance, the ‘party driven process’ by which the global stocktake will be carried out will be ‘conducted in a transparent manner and with the participation of non-Party stakeholders’.¹⁰² The terminology is quite strong, in the sense that it is decided by the CMA that participation will take place. It is also decided in the rulebook that ‘submissions from non-Party stakeholders and UNFCCC observers’ belong to the sources of input for the global stocktake.¹⁰³ One could read these provisions as establishing participatory rights to specific actors, the non-party stakeholders.¹⁰⁴ However, what is understood as ‘participation’ is not clear. Basically, in order to effectuate participation, participants to a decision-making process have to be well informed and should be allowed to submit their inputs and opinions, which then will form part of the considerations. However, the rulebook states that access to all inputs is only provided for the parties, which contradicts the just-mentioned decision to provide participation to non-party stakeholders.¹⁰⁵ Furthermore, when enabling third-party contributions to the information sources, some information selection might be needed, since there

98 In a webinar, the methodologies and assumptions used to aggregate the inputs have to be clarified by the secretariat, see GS rulebook para. 21.

99 GS Rulebook para. 36.

100 Note that Article 12 is addressed to parties, not directly the CMA.

101 Milkoreit and Haapala even qualify ‘inclusiveness and transparency’ as essential for the success of the global stocktake, (n 6), 14.

102 GS Rulebook para. 10. The preamble to the Paris Decision provides the following description of non-party stakeholders: ‘(...) including civil society, the private sector, financial institutions, cities and other subnational authorities, local communities and indigenous peoples (...)’. Van Asselt defines, for the purpose of this article, ‘non-state actors’ which include ‘not only civil society, business, and research organizations, but also subnational authorities’, Van Asselt (n 6), 94. Of course, the question emerges whether the term ‘non-state actors’ and the term ‘non-party stakeholders’ are interchangeable. One difference between both definitions is that Van Asselt points explicitly at research organizations.

103 GS Rulebook para. 37(i). Apparently, two different groups exist, non-Party stakeholders and UNFCCC observer organizations; only the first one is eligible for participation in the global stocktake (para. 10). Van Asselt (n 6) points at the fact that non-state actors may also be part of the delegations of national governments, 95.

104 See about the remarkable difference with the Transparency Framework – ‘There thus exists a stark contrast between the absence of active roles for observers in the Transparency process and the more inclusive approach underpinning the Global Stocktake’, Sébastien Duyck, ‘Delivering on the Paris Promises? Review of the Paris Agreement’s Implementing Guidelines from a Human Rights Perspective’, (2019) 9 *Climate Law* 217.

105 GS Rulebook, para. 10. Van Asselt (n 6), 107 observes that the Paris Agreement does not specify any clear role for non-state actors (meanwhile, the rulebook provides some role to them).

could, potentially, be a large number of submissions.¹⁰⁶ Next to this, also scrutinizing the quality of the information could be necessary. Meanwhile, providing ample opportunity for non-state actors to participate could hinder the progress of the work, making the whole process difficult to manage, thereby risking the timely conclusion of the global stocktake in 2023.¹⁰⁷ As stated by Van Asselt, ‘while appealing in theory, opening up input to non-state actors may lead to a range of practical challenges’.¹⁰⁸

e. Outputs and special event

The third component of the global stocktake is the ‘Consideration of outputs’ and the rulebook includes provisions on how this has to be carried out. The outputs will be considered at ‘high-level events’ during which the findings will be presented, and the ‘implications discussed and considered by Parties’.¹⁰⁹ It is also decided that the outputs ‘should’ summarize ‘key political messages, including recommendations’ from the high level events ‘for strengthening action and enhancing support’.¹¹⁰ However, whether the output of the global stocktake will be adopted by the CMA is not certain, since a declaration is given as an alternative to a CMA decision.¹¹¹ **14.31**

According to Article 14(3) PA, the global stocktake serves to inform parties for (if necessary) enhancing their actions. As stressed above, a hard ‘shall’ obligation is provided in this third paragraph, which amounts to an obligation that parties have to take into account the outcome of the global stocktake in their NDCs. In this respect, the rulebook provides that parties are invited to present their NDCs, ‘informed by the outcome of the global stocktake, at a special event under the auspices of the Secretary-General of the United Nations’.¹¹² The prospect of such an event during which parties can be famed but also blamed depending on their NDCs, and the appreciation of these individual documents by societal actors, including ENGOs and the media, can influence the national political decision-making in updating the NDC. The ‘race to the top’ – or ‘race to the bottom’ will become visible if indeed the parties are willing to participate at such a high-level UN event. Not being present does not prevent society for carrying out some blaming or shaming on individual countries. It is also recognized that ‘other related events within *and outside* the UNFCCC can contribute to the global stocktake and the implementation of its outcome’ (emphasis by author).¹¹³ It will be interesting to see how non-state actors will supplement the formal global stocktake process: they may reflect on criteria that are not assessed, or not well elaborated, in the formal process, and may issue value judgments.¹¹⁴ **14.32**

106 Milkoreit and Haapal (n 6), 6.

107 Milkoreit and Haapala, *ibid.*, 15 also mention ‘efficiency’ as being paramount for achieving the goals of the review process, but a possible trade-off, or prioritisation vis-à-vis participation, is not elaborated by them.

108 Van Asselt (n 6), 100.

109 GS Rulebook, para. 33.

110 *Ibid.*, para. 34(b).

111 *Ibid.*, para. 34(c).

112 *Ibid.*, para. 17.

113 *Ibid.*, para. 18.

114 Van Asselt (n 6), 106. Furthermore, an elaboration of non-state actors reflecting on the (potential) rules for the global stocktake, see Northrop (n 5).

3. Reflection on the rule book

- 14.33** It is not easy to give a first scholarly appreciation of the strength, or weakness, of the agreed rules for the global stocktake: the question of what benchmarks are adequate for assessing the agreed rules has yet to be elaborated.¹¹⁵ Below, a couple of considerations are presented as a first step for more detailed and comprehensive assessments of the agreed rules.¹¹⁶
- 14.34** First, when reading the rulebook on the global stocktake, the picture emerges that a lot has yet to be fleshed out; it seems it was politically not achievable to develop a more concrete global stocktake process. The ‘rules’ for the global stocktake are rather general (are often more of a principled nature than taking the form of ‘rules’ in the traditional sense), are often open-ended, in the sense of not-exhaustive (for instance concerning input of information).¹¹⁷ A ‘technical dialogue’ is established, and, while the word ‘technical’ can generally be understood as something that is not very political, in reality the process that has to be conducted is prone to political sensitivities, which may hinder the progress of the global stocktake action.¹¹⁸ While the rulebook notes that the output of the global stocktake should have ‘no individual Party focus’, and states that the collective progress should be prescribed in a ‘non-policy’ manner,¹¹⁹ in reality individual sensitivities of parties could frustrate the debate. The political sensitivity may also explain why the rulebook provides that the output could be put into a declaration instead of a CMA decision – so the form in which the result should be presented is not decided in the rulebook.
- 14.35** Also the complex institutional structure is a striking characteristic.¹²⁰ The process should on the one hand be party driven, but on the other hand encompasses the SBI, the SBSTA, a dialogue with the IPCC, including a joint working group between the SBSTA and the IPCC, and includes possibilities for non-party stakeholders.¹²¹ It is highly uncertain whether the process to carry out a global stocktake will be successful – including delivering a meaningful output in time in order to inspire the next round of NDCs.
- 14.36** Finally, it is uncertain what political effect the global stocktake will have. While its aim is to function as a ratchet mechanism, in order to get the ambition of parties stepped up, unintended positive and negative other effects may happen. While the most important feature of the global stocktake will be its ability to serve ‘as a collective learning platform for the Parties to the PA’, it may have – as a consequence of the openly carried out discussions, presumably

115 See for an attempt to qualify the agreed rules, Milkoreit and Haapala (n 6). They took into account the experiences with the First Periodic Review that was carried out prior to the Paris Agreement, from 2013–2015, 2.

116 For further research, a multidisciplinary assessment going beyond a traditional legal approach seems to fit better for assessing the global stocktake.

117 GS Rulebook para. 38 refers to the ‘non-exhaustive lists’.

118 Milkoreit and Haapala (n 6), 15 state that the global stocktake should focus on the technical work of assessment and learning, and, if these are done well, political effects can follow. Whether it will be possible to carry out indeed a technical (a-political) dialogue remains to be seen.

119 GS Rulebook, para. 14.

120 Having said this, it is not clear whether a simplification is possible in view effectively achieving the aim: to take stock of the collective progress in a three-dimensional way. I have not examined literature regarding alternative institutional structures.

121 GS Rulebook, para. 29 illustrates this complexity.

broadly covered by media – a broader impact, for instance on sectors, such as aviation,¹²² and other on non-party stakeholders.¹²³ However, next to positively motivating specific sectors and non-state actors to take more responsibility for reducing greenhouse gases, potential negative effects could also emerge out of the society wide debate spurred by the global stocktake. It is for instance not unimaginable that one or more parties will consider leaving the Paris Agreement if they fear that as a consequences of the global stocktake the pressure on them will become too high. This could be the case if the stocktake suggested that higher interim collective goals would be necessary.¹²⁴

All in all, the real consequences should become visible into the round of nationally determined contributions following a global stocktake, although it is not yet clear how the aggregate progress shall inform individual NDCs.¹²⁵ Hence, how effective the global stocktake will be (if it will be finished in time), remains yet to be seen.¹²⁶ **14.37**

C. CONCLUSION

The global stocktake is a crucial element of the climate governance system established by the Paris Agreement. Although some reference to a kind of a global stocktaking process can already be found in the UNFCCC, the Paris Agreement has provided a unique provision and explicitly calls for what should be a truly global stocktaking process. While one may wonder to what extent the parties who agreed to Article 14 of the Paris Agreement had clear in mind how the mechanism would be carried out,¹²⁷ the Paris Rulebook has introduced more detailed provisions on how to carry out the global stocktake. However, a complex architecture has emerged, which contains, still, many open ends. The next years will be important to gain further lessons on how to carry out a global stocktake. **14.38**

Generally, lawyers, who are trained to point at risks and short falling approaches (among which criticism on non-binding and/or vague provisions), may be very sceptical about the legal provisions for the global stocktake, particularly the rather open-ended provisions of the rulebook. Indeed, the effectiveness of the system still hangs in the balance: will important, large emitting parties be really willing to draw conclusions from the collective stocktake for their individual contribution?¹²⁸ Or does Article 14(3) – with the ‘shall’ obligation for parties – provide a basis for successful climate litigation in (some) national jurisdictions in the sense of obligating national governments to step up ambitions in their NDCs? Also, it is ‘unclear whether collective naming and shaming could work’.¹²⁹ Moreover, the global stocktake can **14.39**

122 Northrop et al (n 5), 9 argue that this needs to be covered by the global stocktake.

123 Quote from Milkoreit and Haapal (n 6), 16, and arguing that the global stocktake could potentially involve non-state actors in a meaningful way that goes beyond the status quo in global governance.

124 See on this issue Pickering et al (n 4), 23, thereby observing (19) that the global stocktake is not aimed at reviewing the goals as codified in the Paris Agreement.

125 Van Asselt (n 6), 100.

126 See also generally that the success of the Paris Agreement is hard to predict: Pickering et al (n 4), 27.

127 Zahar (n 13), 103. Of course, it would be interesting to carry out interviews with the negotiators to get more insight on this matter.

128 See in this respect Jürgen Friedrich (very critically) discussed by Zahar, *ibid.*, 111.

129 Milkoreit and Haapala (n 6), 9.

come simply too late for pressing needs.¹³⁰ A more positive appreciation is however that more than 190 states have agreed to carry out a global stocktake and have accepted that this shall inform them when developing their next NDC. Perhaps transparency and the discussion of the process by society at large, not only with regard to the global stocktake itself, but also within the national jurisdictions, are the most important drivers for making the global stocktake a worthwhile exercise and, in this respect, an important new instrument for international climate law.

130 See in this sense critical: Massimiliano Montini (n 29), 164, who observes that the timing of the global stocktake (first one in 2023) 'does not appear to be in line with the recognition of the "urgent threat of climate change" that is contained in the preamble of the Paris Agreement itself'.