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Country-to-Country Review under the Next Climate Treaty: Lessons from Other Intergovernmental Review Processes

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Introduction

In December 2011 countries agreed – through the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) – to negotiate a new treaty by 2015. Many proposals for this agreement include a mechanism through which countries' "contributions" to the 2015 agreement and beyond will be reviewed by other countries pre- and/or post-adoption.[1]

The extent to which national contributions reflect goals determined domestically (a "bottom up" system) or negotiated targets (a "top-down" approach) remains a central topic of discussion, as do the nature of the contributions themselves and how they will be distributed across countries. But regardless of how these balances are stuck, some form of country-to-country review seems likely to play a significant role in the post-2015 climate regime, as part of a "multi-lateral adjustment process."[2]

What role can review play in the UN Framework Convention on Climate Change (UNFCCC)? How can the mechanism be designed to maximize benefits and avoid pitfalls?

Key points

1. The next climate treaty will likely include a process through which national contributions to emissions mitigation are reviewed by other countries. As negotiators deliberate the design of this system, they can learn from the experiences of other intergovernmental review processes, e.g. in the realm of human rights and economic cooperation.

2. Advantages of review:
   a. Benchmarking contributions
   b. Institutionalizing a flexible process for ongoing action
   c. Enhancing transparency and accountability
   d. Capacity building

3. Best practices identified in other realms of international cooperation include:
   a. Regular meetings
   b. Universal participation on a rotating basis
   c. Specific metrics and criteria to guide review
   d. Engagement with publics and civil society

To help answer these questions, this memo summarizes research on intergovernmental review processes in other areas of global politics and proposes a structure for UNFCCC review. Review is a common feature of international cooperation. It is particularly appropriate when countries face substantially different national situations but share a common goal they aim to realize progressively—as with climate change. In some cases review has facilitated collectively beneficial outcomes; in others, it has achieved little. Below we extract lessons from these experiences and suggest design principles for a climate review mechanism. Our focus is the review process itself. We therefore avoid questions regarding the substance of national contributions, their legal form, the monitoring and reporting mechanisms around them, or how they should be distributed equitably across countries.

The memo covers the following elements:

1. Functions intergovernmental review can serve
2. The experience of intergovernmental review in other issue areas
3. Best practices
4. The design of a UNFCCC review mechanism

Functions a review mechanism can serve

Across issue areas, intergovernmental review processes serve a number of common functions.

Benchmarking contributions. Review creates a way to measure countries' contributions against those of their peers, allowing for recognition of leaders and laggards. In this way it provides states and other stakeholders an opportunity to reflect on the adequacy of individual countries' commitments. It creates a space for what Milewicz and Goodin call "deliberative capacity" at the global level.[3]

Institutionalizing ongoing action. An ongoing review process creates what Haites, Yamin and Höhne (2013) term "a framework of continuous implementation."[4] Regular reporting on progress to other governments (and potentially other stakeholders) puts pressure on countries to act constantly and consistently to implement international obligations. It also generates a normative expectation for increasing climate action.

At the same time, review processes increase the responsiveness and flexibility of a regime. Standards or targets inevitably require additional refinement and clarification in the course of implementation, as well as principles for interpretation. Review processes provide a forum for these adjustments and allow interpretive principles to develop. Perhaps even more importantly, review processes are able to address fluctuating national circumstances, a problem the UNFCCC has struggled with to date.

Compliance and accountability. Review can help ensure that commitments made under a climate change treaty are not merely rhetorical. A review mechanism creates a channel for accountability, and what Morgan et al. call "national ownership" of responsibility.[5] It encourages countries' pledges to be precise: as Metz points out, current pledges are "lacking specificity regarding the national policies that will be implemented to get to the desired outcomes".[6] Furthermore, review empowers parties and, potentially, other stakeholders, to challenge whether a country has lived up to commitments. The mechanism gives a range of parties meaningful participation in the global dialogue on climate change.

Capacity building. Review provides a useful mechanism not just to hold countries to account, but to identify ways for the international community to support convergence on the desired outcome. For example, a climate review process could provide a ready way to link national actions to funding from the Green Climate Fund or other sources (as with NAMAs). It could also build on existing capacity-building efforts in the UNFCCC.

Existing review mechanisms at the international level

Examining existing review mechanisms is helpful in drawing out the optimal shape of a climate change review mechanisms. We focus on five mechanisms: the Universal Periodic Review, the Human Rights Committee processes, the OECD peer review mechanism, the International Labour Organization model for supervision, and the World Heritage Committee procedures.

The Universal Periodic Review

The Universal Periodic Review (UPR) operates under the auspices of the United Nations Human Rights Council and was set up in 2006. The review operates in four and a half year cycles, with 42 or 43 countries reviewed over the course of three meetings each year (so that all 193 states in the world are review over the course of each cycle). Other countries make recommendations about particular countries' human rights records: for example, the Russian Federation recommended that the United Kingdom set up a national programme to tackle overcrowding in prisons. Countries will respond to recommendations, and can accept the recommendations, not accept the recommendations, reject the implication of certain recommendations, and/or choose to act in certain ways (for instance, countries can agree to implement recommendations immediately). Early research by Redondo shows that 68% of recommendations have been so far accepted. Initial design of the UPR gave three hours to reviewing a state's record; half an hour for adopting a report; and then a further hour per country for approval of the report by the Human Rights Council, though recently some modifications have been made to these timings.[7]

Information for the review comes from three sources: a national report compiled by each country (around 20 pages in length); reports produced for other United Nations treaty bodies (and compiled in a document no more than 10 pages long); and reports from other stakeholders, such as

non-governmental organisations (not more than 10 pages long). The information can relate to alleged violations of the United Nations Charter, the Universal Declaration of Human Rights, human rights instruments to which a state is a party, voluntary pledges and commitments, and relevant international humanitarian law. Thus, the review traverses a wide range of pertinent international human rights law.

The UPR is said also to have functions of capacity-building and sharing best practice. These would seem to be positive features of the regime. It is also worth noting that the first review has been webcast, raising awareness of many of the issues raised. Other clear strengths of the UPR thus far include that it has attracted comprehensive participation of countries, and has led to emerging consensus amongst states on human rights issues.

However, while the UPR is a new mechanism, it has been the subject of some criticism, too. Henderson has suggested that much of the discussion takes place at a high level of abstraction. She has also noted that while there is a perception of NGO involvement, many NGO concerns have not been taken through into the UPR dialogue.[8]

The Human Rights Committee

The Human Rights Committee is a quasi-judicial body that is arguably more confrontational in the way that it deals with human rights issues. It focuses on alleged breaches of the International Covenant on Civil and Political Rights.

It is possible for inter-state complaints to be made: in other words, for one state to bring a claim to the Human Rights Committee that another state has violated human rights. However, this mechanism has not been used to date. The more commonly used mechanism is for individuals to bring complaints against states. There is no need for the complaint to be prepared by a lawyer (although this helps); the complaint need only be in writing, and contain relevant information making out a breach of the Covenant. The complaint is sent to a state for comment. The Committee looks at the admissibility of a complaint, and then the merits of the complaint, and will produce a "view" or opinion on the complaint.

In addition to the individual complaints system, states must submit periodic reports every five years to indicate their progress towards implementing the International Covenant on Civil and Political Rights. A state, or its representatives, must appear before the Human Rights Committee and a set of 'Concluding Observations' are written about a state's compliance with the International Covenant on Civil and Political Rights. NGOs may also submit shadow reports, and have done so with increasing frequency in practice. The Committee that considers these reports is made up of experts: usually academics and retired practitioners. This model (involving inter-state complaints, citizen-state complaints, and periodic reports) is also the approach used by other United Nations instruments, such as those on torture and children's rights.

The system has both strengths and weaknesses. As O'Flaherty notes in a perceptive paper, the practice of writing a report requires a state to be more sensitive to human rights concerns. But follow-up procedures are "poorly resourced" and ineffectual; this was, indeed, part of the reason for the establishment of the UPR described above.[9]

The Organization for Economic Cooperation and Development (OECD)

The OECD uses a peer review system to allow comparison of experiences and the sharing of best practices. Peer reviews are used in different ways by different OECD committees or working parties. Economic surveys on individual member countries of the OECD happen every 18 months. Environmental performance reviews happen every 5–7 years. Peer reviews by the OECD Development Assistance Committee occurs approximately every 4 years. Particularly rigorous peer review occurs under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The OECD notes that there are "share[d] … structural elements" of all peer reviews, but these are somewhat general:[10]

- A basis for proceeding;
- An agreed set of principles, standards and criteria for review;
- Designated actors to carry out the review; and
- A set of procedures leading to a final result.

The OECD observes that peer reviews allow the exchange of information (often involving civil society, as well); further cooperation; capacity-building (through mutual learning); and encouraging compliance through "soft law". A paper by Pagani praising the OECD model adds that the model produces policy dialogue and transparency.[11] According to the OECD, there are also certain preconditions for successful review mechanisms. There must be shared values on the part of nations participating, mutual trust to ensure cooperation and confidence-building through the disclosure of information, and credibility of the process. An independent Secretariat to is key to managing the process.

The International Labour Organization (ILO) model for supervision

In addition to the ILO's special procedures for complaints (lodged by a member state and leading to a Commission of Inquiry, which carries out an investigation and makes recommendations), the ILO has a regular supervision model.

The Committee of Experts on the Application of Conventions and Recommendations responds to country reports submitted by governments every two years (for fundamental or priority conventions) or every five years (for other conventions). The Committee of Experts examines these reports, and is made up of 20 jurists, who sit for three-year terms. These come from different regions and are meant to provide an impartial assessment of the reports. The Committee can make observations (comments on governments' application of conventions), which are published in the Committee's annual report, and direct requests (requests for more information, or technical questions), which are not published but are communicated to governments. A glance at recent Committee reports shows that there is acknowledgment that

Committee comments are non-binding. There is, however, a focus on compliance, and a desire to collaborate with other United Nations organisations – as well as an emphasis on the complementary nature of international legal protections.

Meanwhile, the Conference Committee on the Application of Standards considers the annual report of the Committee of Reports. This Conference Committee is made up of worker, employer, and government representatives. Observations are discussed, and governments referred to in comments are invited to respond and to provide further information. The Committee then concludes that governments should take specific steps; alternatively, the Committee can recommend ILO missions or technical assistance. This information is compiled in a report.[12]

A 2011 ILO publication highlighted progress that had been achieved through the Conference Committee, and underscored the importance of technical assistance as well as cooperation with other international organizations.[13] Questions remain, however, over whether these mechanisms can ensure lasting change – due to their non-binding character – and whether the ILO standards are visible or clearly understood by States involved.

The World Heritage Committee

The UNESCO World Heritage Committee provides a useful further example of a form of review mechanism, as its approach to reviewing matters takes a different form, and it works in part in the environmental space.

The Committee meets once a year and is made up of 21 countries, nominated from the 190 states that have ratified the World Heritage Convention. The role of the Committee is to review reports on existing world heritage sites, to consider adding new sites to the World Heritage List, and to make other decisions about how the World Heritage Convention ought to be implemented. It relies heavily on the work of the International Council on Monuments and Sites and the World Conservation Union.[14]

The Committee functions less as a review mechanism and more as an updating body, which provides authoritative statements on the law that it helps to administer, the World Heritage Convention. There are arguably questions over its legitimacy, given that 21 countries make decisions on behalf of the 190 countries that have ratified the Convention – but this is valuable as an example of a different approach to a review mechanism.

Summary table

The table below highlights key features that are present or absent in these different mechanisms:

	Universal Periodic Review	Human Rights Committee	OECD	ILO	World Heritage Committee
Regularity of meetings (every 4 years or more regularly)	✓	✗	varies	varies	✓
NGO involvement	✓	✓	✓	✓	✗
Strong record on compliance	✓	✗	✓	✗	✓
Wide range of country representation	✓	✓	✗	✓	✗

Best practice

The criticisms of these five review mechanisms, as well as the positive comments made, can be synthesized into the following five best practice features for a climate change review mechanism:

- **Regularity of meeting:** review mechanisms that meet too irregularly have been shown to be ineffective.

- **Specificity:** the UPR has been criticized for dealing too generally with human rights complaints. Part of this problem comes from the fact that international law instruments, and especially human rights instruments, are expressed in very open-ended terms. What is clear, however, is that the closer a review mechanism can get to facts on the ground and specific treaty provisions, the more teeth it has.

- **Publicity of coverage:** the best review mechanisms seem to have drawn attention to complaints. The UPR's use of webcasting would seem to be good practice worth copying.

- **Representation:** the World Heritage Committee's arguable lack of representativeness shows that review mechanisms work best when all countries can take part, and – as with the UPR – when all countries can direct questions and inquiries at each other.

- **Participation of civil society:** review mechanisms are most well-received and lauded when there are openings for NGOs and other civil society groups to participate, and to participate in a meaningful way (note the criticism of the UPR that it seems to allow participation, but does not follow through in taking NGO views onboard).

These desiderata provide a starting point for the design of a climate change review mechanism within a 2015 climate treaty.

Toward a climate review mechanism

The best practices identified above suggest a number of specific elements that a UNFCCC review process may include.

Review schedule: we propose regular meetings of the review body. The review mechanism should involve all countries participating, but 48 or 49 of the world's countries (a quarter of all states) should be reviewed each year. These should be selected randomly, by ballot. Under this system (the Universal Periodic Review rotation system), countries would make comments and could ask questions about other contributions each year, but would have their own contributions scrutinized only once over a four-year cycle. We suggest that the review body meets three times a year, to address 16 or more countries on each occasion, in order to ensure that all countries are given sufficient time to be reviewed. As with UPR, adequate technical and financial support is needed to ensure the effective participation of all countries. These meetings ought, if possible, to coincide with other UNFCCC meetings. We acknowledge, however, that the optimal timing of the reviews might well be influenced by the substance of a future global agreement on contributions or pledges, which this memo has not commented on.

Reporting: countries should supply a progress report on contributions or pledges undertaken, consistent with the monitoring, reporting, and verification standards agreed in 2015. When reviewed, they can be asked questions of their progress. These might be friendly questions regarding the sharing of best practices or could be more challenging questions about compliance. As with the UPR system, the UNFCCC Secretariat – which should be empowered to coordinate the process – could coordinate the writing of a short report appearing alongside a country report that contains expert opinions relating to the country's work over the previous four years. A UNFCCC expert body could be set up to carry out this task, akin to the ILO's expert body procedure, perhaps drawing on existing bodies. We also propose a short report be compiled containing the views of NGOs, civil society, and other stakeholders. In the UPR process, the country report is 20 pages; the international expertise report is 10 pages; and the other stakeholders report is 10 pages. We see these report lengths as appropriate for the UNFCCC context.

Clear metrics: Regardless of the form national contributions take under the 2015 agreement, it is important, that the review process focus on the specifics of national contributions. As noted above, effective intergovernmental review processes such as the OECD mechanism involve clarity around the principles underpinning review. To the extent possible, countries should agree common standards to which countries, or at least similar groups of countries, should be held.

Discussion and questioning: UPR review provides a good model for the process for discussion. At each review, a country should present its report and be given time to discuss, answer questions, and consider recommendations from other countries (of which it should receive notice in advance). Before the end of that review meeting, the country should be given a chance to offer a statement indicating the contributions and pledges to be undertaken for the following four years.

Participation of civil society: opportunities should be given for the participation of NGOs, civil society, business, cities and other sub-national governments, and other stakeholders. Shadow reports should be encouraged, just as they are encouraged within the Human Rights Committee system. Civil society group should be able to attend the review forum. We also recommend that the review be webcast to encourage participation. Civil society could play a role, as well – alongside the UNFCCC – in providing resources and capacity-building at each meeting, to support countries in the writing of their progress reports.

Notes

[1] See for example Haites, E., F. Yamin, and N. Höhne. 2013. "Possible Elements of a 2015 Legal Agreement on Climate Change." Working Paper No. 16. Institut du développement durable et des relations internationals, Paris. Morgan, J., D. Tripak, K. Levin, and Y. Dagnet. 2013. "A Pathway to a Climate Change Agreement in 2015: Options for Setting and Reviewing GHG Emission Reduction Offers." World Resources Institute Working Paper. October. Hale, T. 2013. "How the UNFCCC Can Drive Climate Ambition in Advance of a Treaty: Record, Review, Reinforce, Recruit." Blavatnik School of Government Policy Memo. October.

[2] Winkler, H. 2013. "Multilateral Adjustment of National Commitments." Discussion Note, 'Building the Hinge: Reinforcing National and Global Climate Governance Mechanisms' workshop.

[3] Milewicz, K., and R.E. Goodin. 2012. "Deliberative Capacity Building through International Organizations." American Political Science Association, 2012.

[4] Haites, E., F. Yamin, and N. Höhne. 2013. "Possible Elements of a 2015 Legal Agreement on Climate Change." Working Paper No. 16. Institut du développement durable et des relations internationals, Paris, at 1.

[5] Morgan, J., D. Tripak, K. Levin, and Y. Dagnet. 2013. "A Pathway to a Climate Change Agreement in 2015: Options for Setting and Reviewing GHG Emission Reduction Offers." World Resources Institute Working Paper. October, at 1.

[6] Metz, B. 2013. "Making a Pledge and Review System Work: National Green Growth Plans, Policies and a Different Approach to Equity." Discussion Note, 'Building the Hinge: Reinforcing National and Global Climate Governance Mechanisms' workshop.

[7] This statistic and the other information in this section is drawn from: Redondo, E.D. 2012. "The Universal Periodic Review – Is There Life Beyond Naming and Shaming in Human Rights Implementation?" New Zealand Law Review.

[8] See Henderson, T. 2008. "Towards Implementation: An Analysis of the Universal Periodic Review Mechanism of the Human Rights Council." Online at http://www.upr-info.org/IMG/pdf/Towards_Implementation_by_Tiffany_Henderson.pdf.

[9] O'Flaherty, M. 2010. "The Strengths and Weaknesses of the UN Human Rights Treaties System." 'Promoting Human Rights in Japan Through UN Treaties' conference, Tokyo.

[10] This information is drawn from "OECD: Peer Review At A Glance", online at http://www.oecd.org/site/peerreview/peerreviewataglance.htm.

[11] Pagani, F. 2002. "Peer Review: A Tool for Cooperation and Change: An Analysis of the OECD Working Method." Internal OECD Paper, General Secretariat, Directorate for Legal Affairs, at 11–12.

[12] This information is drawn from "ILO Supervisory System/Mechanism", online at http://ilo.org/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang--en/index.htm.

[13] See International Labour Office. 2011. "The Committee on the Application of Standards of the International Labour Conference: A Dynamic and Impact Built on Decades of Dialogue and Persuasion." International Labour Organization, Geneva.

[14] See "UNESCO World Heritage Centre – World Heritage Committee", online at http://whc.unesco.org/en/committee/.

Photo: COP19 at National Stadium, Wikimedia Commons

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