

Linking Non-State Actors and Transnational Climate Initiatives to the Paris Agreement

How Non-State Actors and Transnational Governance Initiatives Can Help to Raise Ambition under the Paris Agreement

Key Policy Recommendations:

- *Establish Technical Examination Processes (TEPs) and high-level events for non-state action as permanent processes alongside the Paris Agreement*
- *Include non-state actors and transnational climate initiatives in the global stocktake*
- *Link Technical Examination Processes with expert reviews under the Paris Agreement Transparency Framework*
- *Draw on results of Technical Examination Processes to recommend/require policies and/or policies as means of the facilitative compliance mechanism*

The Paris Agreement as Part of a Polycentric Governance Landscape

The international governance landscape on climate change mitigation is increasingly complex across multiple governance levels. Climate change mitigation initiatives by non-state stakeholders can play an important role in governing global climate change and contribute to avoiding unmanageable climate change. It has been argued that the UNFCCC could and should play a stronger role in ‘orchestrating’ the efforts of these initiatives within the wider climate regime complex and thus inspire new and enhanced climate action.

The advent of the Paris Agreement clearly does not render transnational climate initiatives obsolete. Quite contrary, ambitious climate action beyond the level of nation states is more required than ever. The Paris Agreement imposes legal obligations on signatories to formulate and communicate climate policy objectives, the so-called Nationally Determined Contributions (NDCs). However, it does not obligate them to achieve those contributions. The Paris Agreement aims to compensate this lack of legal compulsion by creating a reputational risk through the establishment of mandatory transparency framework and review provisions. These ‘global stocktakes’ will create moments of concentrated political attention every five years that may be used to foster the dynamic of the process.

It has been argued that environmental multilateralism cannot achieve results that substantially transcends what has been prepared on the national level. Diplomacy does not happen in a vacuum. The positions countries take internationally are determined by their domestic political situations. The Paris Agreement now deploys a pacemaker that stimulates and synchronizes the “heartbeat” of climate policy making on the national and international levels. It creates periodic political moments, each of which can move us closer to a sustainable, carbon-free future. Actors from all political levels are needed to breathe life into these political moments. Transnational climate initiatives and non-state actors can and should play a central role in creating and managing the required momentum. But how can this outside dynamic be fed back inside the negotiations?

How Non-State Actors and Transnational Climate Initiatives can influence UNFCCC negotiations

Decisions at the UNFCCC are ultimately taken by negotiators. Negotiators are typically authorized by a negotiation mandate provided by their respective national government. These mandates vary in how widely or narrowly defined they are, but even in relatively narrowly defined mandates, i.e. mandates that feature numerous explicitly defined ‘red lines’, negotiators typically have some freedom to bargain and approve of compromises if necessary. Within their remaining room to manoeuvre negotiators will take into account both dynamics and the rules of the game of the acute negotiations under the UNFCCC as well as influences emanating from their respective national discourses. Alongside negotiators, national governments play therefore a key role. Under the Paris Agreement, Parties are obliged to “prepare, communicate and maintain successive nationally determined contributions [...and to] pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions” (Paris Agreement, Art. 4.2). NDCs are determined in sovereign capitals and not under international law and the immediate negotiation pressure of a UNFCCC conference of the parties.

Both negotiators and the national government are influenced to some extent by their respective national discourse. The national discourse and dominant narratives therein delimit the scope of the ‘politically feasible’. Ultimately, politicians need to provide meaningful explanations for their decisions and these explanations need to resonate in the political discourse of their countries. If not, legitimation will erode and at least in a democratic system, political power will hardly endure without legitimation.

To date, no immediate channels exist by which non-state actors and transnational governance initiatives can provide feedback to negotiators and national governments. The

only feedback channel is through influencing national discourses. Non-state actors and transnational climate initiatives may do so by:

- experimenting with new forms of governance. If successful, these experiments may demonstrate the viability of new modes of governance and further engrain sustainable ideas, artefacts and practices.
- reinforcing epistemic communities and empowering constituencies that may help to shift the political economy in a desired direction.
- demonstrate the feasibility and economic viability of mitigation activities. This in turn can help to establish new narratives in the national political discourse and thus allow to reshape the room of the politically feasible.
- reducing the required mitigation effort in other parts of the economy, making more ambitious overall mitigation goals more attainable.

Non-State Actors and Transnational Climate Initiatives under the UNFCCC

The recognition of trans- and subnational climate initiatives has hardly been institutionalized under the UNFCCC. Given the intergovernmental nature of the UNFCCC the status of non-state actors is originally limited to an observer role. In the past, there had not been many avenues for successful transnational climate initiatives to communicate their achievements into the UNFCCC process, apart from presentations at side events.

However, in recent years, there was growing attention and appreciation of transnational climate initiatives in one particular negotiation stream under the UNFCCC. Under Workstream 2 of the Adhoc Working Group on the Durban Platform (ADP) a series of technical expert meetings (TEMs) were convened, starting off with an in-session workshop on urbanisation and the role of sub-national governments in facilitating climate action in cities at COP19 held in Warsaw 2013. Building on this positive experience, parties agreed to continue this format, yet shift from a rather generic exchange of information to a more action-oriented approach.

In Lima (COP20), this technical process was complemented with a high-level political event to showcase good practices and provide a spotlight for policy makers to announce new initiatives and/or to increase the ambition of existing ones. This high-level process was continued in Paris under the banner of the Lima-Paris Action Agenda (LPAA). And the idea of putting climate initiatives on the spotlight worked well. The LPAA did provide an attractive setting in the public spotlight for non-party actors to communicate their contribution. Still the recognition of non-state actors and transnational climate initiatives must be seen rather as a means to amplify and publicise the initiatives to the media and the outside world than as an input for the negotiation process. In fact, the LPAA was still rather detached from the core negotiations in Paris, not only in terms of content but also physically: the LPAA meetings were held at the official side event space in a building separate from the negotiation rooms.

Still, the Paris decisions should be recognized as a significant step forward. The decision to continue the TEPs and to house them under the joint auspices of SBI and SBSTA promises to contribute to a further integration of non-party actors and initiatives with the UNFCCC formal negotiations. A much more focused mandate for the TEPs will likely improve on the already successful format. The mandate for the UNFCCC Secretariat to produce and maintain technical reports that synthesise the work of the TEP and summaries for policy makers will almost certainly contribute to making good practices and lessons learned as well as opportunities to implement successful policies and practices much more digestible for those interested in implementing similar measures. Ideally, the summary for policy makers would take the form of a 'policy menu'¹ that integrates good practices, lessons learned and support opportunities. Also the explicit inclusion of UNFCCC bodies – GCF, TEC and CTCN – in the TEPs goes a long way to incorporate the technical infrastructure of the UNFCCC in the process.

¹ Höhne, N., Braun, N., Ellermann, C., & Blok, K. (2014). *Towards a policy menu to strengthen the ambition to mitigate greenhouse gases*. Cologne: Ecofys.

Integrating Non-State Actors and Transnational Governance Initiatives in the Paris Agreement's Legal Framework

The TEPs and the LPAA have become much more than a means to increase near term ambition. They have become a forum for transnational climate initiatives and non-state actors within the UNFCCC. Given the increasing importance of non-party actors and the ever growing number of transnational climate initiatives, the COP should decide to **establish the TEPs permanently alongside the Paris Agreement.**

Despite some progress, there still does not exist a direct channel to shortcut feedback through national discourses: successful transnational climate initiatives still cannot feed back immediately, neither into the acute negotiations nor directly in the NDC process. One way to improve on this would be to link the TEPs with elements of the Paris Agreement: the global stocktake, the transparency framework, and the facilitative compliance mechanism (Paris Agreement, Art. 13-15).

- **Include non-state actors and transnational climate initiatives in the global stocktake:** the Paris Agreement has established a 5-yearly cycle (starting in 2023) “to take stock of the implementation of this Agreement to assess the collective progress [...]. As current NDCs are widely out of line with the Paris Agreements long-term goal, the first global stocktake will almost certainly identify a significant gap. Transnational climate initiatives not only can contribute to close this gap, insights and experiences from transnational climate initiatives, condensed and refined through the TEPs, may help to identify viable solutions that can then be taken up by nation states in their subsequent NDCs.
- **Linking the TEPs with the transparency framework of the Paris Agreement** would create an even closer feedback channel. The purpose of the transparency framework is *inter alia* to track progress towards achieving individual NDCs (Paris Agreement, Art. 13.5). An expert review has an explicit mandate to “identify areas of improvement for the Party” (Paris Agreement, Art. 13.12). This task could also be facilitated by and through the TEPs. Reviewers should make specific recommendations for each country drawing on the ‘policy menu’, the portfolio of good practices developed and maintained in the TEPs.
- **Linking the TEPs to the compliance mechanism of the Paris Agreement** would go even one step further. Article 15.2 establishes a compliance committee that is “facilitative in nature and functions in a manner that is transparent, non-adversarial and non-punitive”. Formulating recommendations or requirements based on the results of the TEPs could strike a balance between the non-punitive and non-adversarial nature of the compliance committee yet maintain some form of compulsion. Arguably, this would impact on national sovereignty and may therefore be difficult to agree on internationally. Formulating the recommendations in the form of a directive that leaves some leeway for the concerned Party with respect to the details of the implementation or requiring to formulate compliance plans that draw on the ‘policy menu’ where gaps exist in their national policy frameworks may reconcile some of the concerns for national sovereignty.

Linking the (permanent) TEPs with elements of the Paris Agreement – the global stocktake, the transparency framework and the compliance mechanism – could establish a more direct feedback loop for transnational climate initiatives and non-state actors. Now is the time to foster the integration of transnational climate initiatives and non-party actors in the multilateral framework. Negotiations regarding the detailed provisions on those three elements have just started. This leaves ample opportunity to create spaces that help transnational climate initiatives resonate within the Paris Agreement's architecture and thereby contribute more directly to increased ambition in subsequent NDCs.

DISCLAIMER: The views expressed in this paper are strictly those of the author and do not necessarily represent the opinion of the Wuppertal Institut.

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