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The Temporal Ontology of the Human Rights Council’s Universal Periodic Review

Kathryn McNeilly*

ABSTRACT

This article explores the relationship between the Universal Periodic Review (UPR) of the United Nations Human Rights Council and temporality. In contrast to dominant understandings which view time as an external constraint or pressure acting on the system – the UPR existing in time – I argue that internal temporal logics underpin the UPR in important and constitutive ways. In other words, time is an ontological feature of the UPR. This internal temporal ontology is multiple, complex and often paradoxical. It includes cyclicality, linearity, discontinuity, and duration. Rather than threatening to undermine the UPR process, I argue that the tensions and paradoxes of these coexisting temporalities actually work to maintain its operation. This way of apprehending time and the UPR facilitates fresh insights for scholars and practitioners who wish to understand this monitoring mechanism more deeply as a phenomenon. It offers a new lens through which to read the UPR’s identity and operation.

KEY WORDS: Universal Periodic Review; Human Rights Council; Resolution 60/251; Resolution 5/1; International Human Rights Monitoring; Time; Temporality

1. INTRODUCTION

Since its creation in 2006, the United Nations (UN) Human Rights Council’s Universal Periodic Review (UPR) has been a topic of great interest to human rights scholars.1 Currently completing its third cycle, the UPR is a fascinating mechanism which is still maturing, and

* School of Law, Queen’s University Belfast (k.mcneilly@qub.ac.uk). The research underpinning this article was facilitated by a Leverhulme Research Fellowship 2019-2020. Sincere thanks to Professor Brice Dickson for his insightful comments on an earlier draft of this piece. Any errors remain mine alone.

which must continue to be explored from a variety of angles. Indeed, there is much that remains to be known about the UPR as a phenomenon within the wider international human rights law system. One neglected area of analysis in literature exploring the process to date has been the temporal nature of the UPR. In other words, its connection to ideas and rhythms of time. Those reflecting on the UPR in scholarly work have not yet apprehended the temporal intricacies of the mechanism. Where time is engaged in discussion, it is most usually noted as an external constraint acting on the review process: deadlines for submission of documentation, the time period set for the Working Group meeting, the time allocated for each speaker, etc. In this article I undertake a deeper analysis of the UPR’s relationship to time. In it I examine the internal temporal logics that underpin the UPR at a constitutive level; what may be called its ‘temporal ontology’. On first blush this may seem like a straightforward endeavour: surely the UPR is, as its name suggests, a cyclical process. However, I argue that while cyclicity is the form of time most immediately thought to characterise and drive the UPR, it is just the starting point for investigation. This mechanism is in fact constituted by multiple internal temporalities. To better understand the UPR process – and build on existing scholarly literature to date – it is essential to apprehend this temporal complexity and begin, as scholars and practitioners, to engage with the UPR as a temporally multitudinous phenomenon.

My argument proceeds as follows. First, a brief overview of the UPR is provided. This includes an explanation of how time has been apprehended within it. Here a distinction is drawn between external time – dominant understandings of the UPR as existing in time – and internal time – an idea, drawing from law and time literature, that time can be understood as an ontological feature of the UPR. In an effort to further explore the latter, in the article’s second section four temporal logics which can be read as internally constituting the UPR process are investigated. These are cyclicity; linearity; discontinuity; and duration. Analysis highlights the foundational sources of these temporalities in UN texts as well as where they underpin the everyday activity of the review in its Geneva-based events and wider practice. While some of these temporalities may appear common sensical to those familiar with the UPR, others are not and have been under-considered as equally defining the review process. The UPR emerges from this as a rich and intricate temporal artefact within which ostensibly incompatible ideas of time coexist. Thirdly, reflections are provided in the article’s final section on how this temporal complexity can best be navigated and apprehended. I argue that rather than threatening to undermine the UPR, the tensions and paradoxes of these coexisting temporalities actually work to maintain the operation of the process as a whole. This insight offers new paths
of analysis for scholars and practitioners who wish to understand the UPR more deeply as a phenomenon. It offers a new lens through which to read the UPR’s identity and operation.

2. THE UNIVERSAL PERIODIC REVIEW AND EXTERNAL/INTERNAL TIME

The UPR is a unique monitoring system created as one of the flagship functions of the new UN Human Rights Council in 2006. Aiming to respond to crippling politicisation and a lack of universal scrutiny in the Council’s predecessor, the UN Commission on Human Rights,2 the UPR established a system whereby all 193 UN states are cyclically reviewed, without distinction or exception, on their international human rights obligations.3 This review, unlike any other UN monitoring process, is undertaken by states acting as peer reviewers. As well as furthering the values of universality and equal treatment, the UPR aims ultimately to ‘improve the human rights situation in all countries and address human rights violations wherever they occur’4 by complementing the longstanding treaty monitoring body system.5 States are examined in relation to their obligations under the UN Charter, the Universal Declaration of Human Rights, the international human rights instruments to which they are party, any voluntary commitments or pledges made, and applicable international humanitarian law.6

The review comprises four stages.7 In the first stage, three documents are created which communicate information on the state’s human rights situation in the period under review. These are a national report; a summary of comments made by UN bodies compiled by the UN Office of the High Commissioner for Human Rights (OHCHR); and a summary of comments submitted by civil society stakeholders also compiled by the OHCHR. These documents inform the second stage, which is the meeting of the UPR Working Group and its interactive dialogue with the state under review (SuR). This takes place in at the UN Headquarters in Geneva and

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3 UNGA Res. 60/251 (3 April 2006), A/RES/60/251 at para 5(e).
5 For commentary on the relationship between the two see Collister, ‘Rituals and Implementation in the Universal Periodic Review and the Human Rights Treaty Monitoring Bodies’ in Charlesworth and Larking supra n 1 109.
is transmitted globally via webcast. In this meeting, Human Rights Council member and observer states engage in scrutiny of the SuR’s record, offering comments, questions and recommendations for action. An outcome report from the Working Group is drafted by a Troika of three Human Rights Council member states, with support from the Secretariat, and is adopted in draft by the Working Group two to three days later. This report records all comments made, including – crucially – recommendations which the SuR must either support or ‘note’, the former constituting an acceptance and the latter a rejection. The third stage of the process is the final adoption of the outcome report of the review at the next plenary session of the Human Rights Council, usually three to four months later. In the final stage, the SuR must follow up on accepted recommendations in the years which follow until its next review. Following successful completion of its first (2008-2011) and second (2012-2016) cycle, the UPR is presently finishing its third cycle (2017-2022).

From the beginning, time has been a key concern in the review. Human Rights Council institution-building Resolution 5/1, which detailed the mechanics for the UPR, aspired that the process should ‘not be overly long… and not absorb a disproportionate amount of time’. The rationale being that the review should not be onerous on states, or on the resources of the Human Rights Council. Given the work involved in state consultation, creation of the national report, engagement in the session in Geneva, and follow up activities, as well as the three two-week sessions per year that the UPR occupies in the Council, whether these aspirations have been met is questionable. Further specific time-related guidance was also laid down from the outset. Resolution 5/1 instructed states to submit national reports six weeks prior to the Working Group session, and specified the periodicity of the first review, which was four years. This periodicity was extended in the second cycle to four and a half years, with a break inserted between cycles two and three leading, in practice, to a most recent periodicity of five years. Concern exists as to whether this period allows enough time, especially for smaller states and those from the Global South, to action recommendations, often substantial in number, effectively.

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8 Res 5/1, supra n 6 at para 32.
9 Ibid. at para 33-38.
10 Ibid. at para 3(i).
12 Res 5/1, supra n 6 at para 17.
13 Ibid. at para 14.
Resolution 5/1 additionally provided strict guidelines on time allocation in the Working Group meeting itself.\textsuperscript{15} Three hours was allocated to each review: 60 minutes for the SuR to present with the remaining two hours divided among Human Rights Council member states who received three minutes each, and observer states who received two minutes each. If the number of speakers was high, two minutes were allocated to all states. These strict time limits were a cause for concern in the opening cycle as allies of the SuR would often sign up to the speakers list, operating on a first-come-first-served basis, leading to the limitation of genuine critique in the interactive dialogue and many circumstances where states could not participate due to lack of time.\textsuperscript{16} For example, in China’s first review 55 states were not able to make statements.\textsuperscript{17} In the second cycle, the time of the Working Group session was lengthened to three and a half hours, with 70 minutes allocated to the SuR for opening and closing statements, as well as responses to comments raised during the interactive dialogue. All states signing up are now permitted to make statements, with the result that speaking times are determined by the number of participants. This does lead, however, to occasions where time is too limited for meaningful engagement.\textsuperscript{18} As an example, states got as little as 51 seconds to speak in Cuba’s second review.\textsuperscript{19}

This preoccupation with time constraints, mandated by Resolution 5/1, can be traced back to the value of equality which, as noted above, the UPR was designed to be driven by.\textsuperscript{20} All states must be treated fairly in terms of the time they are allocated, whether under review or reviewing, and the calendar with which they must comply. It has, however, encouraged a particular approach to understanding time in UPR. This is evident in scholarly literature which has sought to expand our knowledge of the review in the first decade of its operation. Whether evaluating the effectiveness of the UPR,\textsuperscript{21} or aiming to stand back and conduct a broader

\textsuperscript{15} Res 5/1, supra n 6 at para 22.
\textsuperscript{16} Kälin, supra n 11 at 32. See also Abebe supra n 7.
\textsuperscript{18} Kälin, supra n 11 at 32.
assessment of the mechanics of the process,\textsuperscript{22} analysis has approached time as something external to the review. The UPR is thought to exist in time, working against a background of temporal rhythms – specifically, clock time and calendar time – which exist independently and act on its process. Time is something that must be grappled with, adhered to, and worked alongside. It is frequently described by authors as something that exerts ‘pressure’ on the process.\textsuperscript{23} For instance, Jane Cowan, who has offered one of the most sophisticated analyses of the UPR as an anthropological and regulatory phenomenon, exemplifies this view in her assertion that the UPR’s ‘public moments are highly ordered \textit{in time} and space’.\textsuperscript{24} What this approach, which is dominant in scholarly commentary to date, misses is a deeper understanding of the UPR as having – indeed, producing – its own internal temporal logics which are constitutive of the process. In this view, time is not something external to the UPR but an internal, ontological element of it, one that defines its operation at a foundational level.

Support for this assertion can be found in law and time literature. Rapidly growing in recent years, this body of work provides a more complex understanding of law’s relationship to time. It demonstrates how legal institutions and processes operate to produce various conceptions of time, and how these conceptions, in turn, influence social understandings of temporality more generally.\textsuperscript{25} In particular, most relevant for the present discussion, Kunal Parker\textsuperscript{26} and Renisa Mawani,\textsuperscript{27} the latter most explicitly situated within thinking on law and time, have taken up investigation of law as having an ontological identity that is temporal in nature. Parker explores the common law in early America as driving history rather than being produced by it, law’s ability to ‘embod[y] the current needs of the people even as it reflected the wisdom of an illimitable past’ giving it authority during this period.\textsuperscript{28} Building on Parker’s study, for Mawani, ‘time is rarely conceptualized as an ontological, requisite, or constitutive features of law. And yet, it is. The common law has its own internal temporal rhythms’.\textsuperscript{29} While reflecting on the common law, the insights of this work have resonances for international law,

\textsuperscript{22} For example, Cowan, ‘The Universal Periodic Review as a Public Audit Ritual: An Anthropological Perspective on Emerging Practices in the Global Governance of Human Rights’ in Charlesworth and Larking, supra n 142; Berotti supra n 14.
\textsuperscript{23} Smith, supra n 21 at 45.
\textsuperscript{24} Cowan, supra n 22 at 51. Emphasis added.
\textsuperscript{26} Parker, \textit{Common Law, History, and Democracy in Early America, 1790-1900: Legal Thought Before Modernism} (2011).
\textsuperscript{28} Parker, supra n 26 at 16.
\textsuperscript{29} Mawani, supra n 27 at 255.
including the international human rights system. International human rights law also has a temporal nature which stands to be investigated.\textsuperscript{30} The UPR monitoring system offers one space where the insights of domestic-focused time and law literature might be engaged to help us understand this system better as a phenomenon.

Following Parker and Mawani, I argue that the UPR has a temporal ontology which has been overlooked in the midst of work situating and analysing the UPR \textit{in time}. This ontology, however, is more complex than might first be thought. Drawing on Carol Greenhouse’s insight that law is constituted in multiple temporalities\textsuperscript{31} and extending it to the international level, I advance that the UPR is best understood as having \textit{times} rather than \textit{a time}. By this, I mean that it is underpinned by multiple temporal logics that exist simultaneously, often in competition.\textsuperscript{32} Rather than frustrating the UPR process, these differing temporalities, paradoxically, support and maintain its overall operation. Much like a patchwork quilt, they are woven together to create the UPR as a rich and intricate temporal artefact. Before turning to this latter point, it is necessary to explore what these differing temporalities look like and include. In the following section I bring four of the UPR’s internal temporal logics into view: cycicality, linearity, discontinuity, and duration. These are not advanced as the only times underpinning the process. Rather, they are select examples engaged to initiate a new point of departure in our understanding of time as an internal, constitutive feature of the UPR.

3. THE INTERNAL ONTOLOGICAL TEMPORALITIES OF THE UNIVERSAL PERIODIC REVIEW

A. Cycicality

When beginning to think about the internal temporality of the UPR, cycicality is an obvious place to start. Cycicality has been highlighted as one of the defining features of the UPR as an emergent ritual in the international human rights system.\textsuperscript{33} UN General Assembly Resolution 60/251 establishing the new Human Rights Council firmly envisaged that the Council would


\textsuperscript{31} Greenhouse, supra n 25 at 1633.

\textsuperscript{32} See also Johns, supra n 30, discussing the temporal rivalries surrounding international human rights work more generally. For Johns, however, these include external as well as internal times.

\textsuperscript{33} Kälin, supra n 11 at 40.
undertake a review that was periodic in nature.\textsuperscript{34} Human Rights Council Institution-Building Resolution 5/1 added to this by fleshing out details of this periodicity and noting that reviews should be driven by the outcome of the previous cycle, so creating a cyclical loop.\textsuperscript{35} Indeed, cyclicalitly was even stressed in the naming of the review. An intentional decision was made by UN member states to name the new mechanism based on its periodicity as opposed to its modality. While early discussion of the process engaged the term ‘peer review’, negotiations in creating Resolution 60/251 solidified use of the term ‘periodic review’ instead in order to stress the mechanism’s robustness over its intergovernmental nature.\textsuperscript{36}

Following from these foundational texts, in practice the UPR’s ‘carefully managed calendar of events’\textsuperscript{37} has an unmistakable cyclical rhythm. The process is defined by repetition and an ongoing periodic re-view of state records without end. All parties – states, non-governmental organisations, and other stakeholders – must conform to the cyclical calendar to participate.\textsuperscript{38} This includes adhering to dates set for submission of reports as well as for scheduling of the Working Group meeting in Geneva. These dates are set many months in advance and follow a predictable flow. To date, all 193 states have participated in the process and, largely, have adhered to this cyclical timetable. A small number of states, including Cape Verde, Comoros and South Africa, have presented an oral report as opposed to submitting a written version.\textsuperscript{39} While this reduces the amount of material available to reviewing states in advance, it is permitted.\textsuperscript{40} More problematically in terms of maintaining the cyclical schedule, however, some states such as Israel and Papua New Guinea have submitted reports late.\textsuperscript{41} On these occasions, reviewing states have been swift to critique. This includes in Israel’s case, where non-participation in the review was threatened for political reasons relating to the Human Rights Council’s operation, the Islamic Republic of Iran going as far as to say that Israel’s non-compliance with the timetable ‘seriously jeopardized the periodicity, sanctity, reliability, credibility and integrity of the whole UPR process.’\textsuperscript{42}

\textsuperscript{34} UN GA Res 60/251, Human Rights Council, 3 April 2006, A/RES/60/251 at para 5(e).
\textsuperscript{35} Res 5/1, supra n 6 at para 5-14, 34.
\textsuperscript{36} Dominiguez Redondo, supra n 1 at 725.
\textsuperscript{37} Charlesworth and Larking, ‘Introduction: The Regulatory Power of the Universal Periodic Review’ in Charlesworth and Larking, supra n 1, 1 at 9.
\textsuperscript{38} Ibid.
\textsuperscript{39} All during the first cycle. See Smith, ‘Form over Substance: China’s Contribution to Human Rights Through Universal Periodic Review’ (2011) 17 Asian Yearbook of International Law 85 at 90.
\textsuperscript{40} Res 5/1, supra n 6 at para 15(a).
\textsuperscript{41} Israel did so during the second cycle, Papua New Guinea during the first cycle.
More generally, states are frequently commended for, or encouraged to enhance, the manner in which their actions align with and bolster the cyclical nature of the review. This includes attention to their development of effective follow-up activities, submission of the optional mid-term report in between reviews, and consultation towards the latter stage of the cycle when drafting the national report. This praise or critique is often undertaken by their peers in the interactive dialogue, but UN bodies and civil society actors also make these kinds of comments in their respective report documents. In addition, it is not unusual to observe states under review themselves voluntarily reinforcing the UPR’s cyclicity, outlining their adherence to it, and professing the benefits of this cyclical scrutiny in the national report or the interactive dialogue. Here the state buys into the periodic nature of the review and its utility in enhancing human rights protections. For example, the United Kingdom opened its second cycle national report by outlining that,

the report demonstrates the progress we have made since the last review; there is much to be proud of. But it also acknowledges areas where there is room for improvement and more to be done. The Government welcomes scrutiny of its record – there is no better safeguard of rights than the kind of open dialogue the UPR process offers.

Sweden began its third cycle national report in a similar way by stating that,

[t]he UN’s Universal Periodic Review (UPR) is of the utmost importance in efforts to protect and promote human rights on the national and international stage. Sweden works through the UPR to ensure greater transparency regarding the human rights situation through constructive dialogue… Compliance with the recommendations that Sweden has accepted within the UPR process is a

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high priority and this report focuses on the accepted recommendations in line with the guidance from the UN for the national reports in the third cycle of UPR.46

In this respect, participants in the process are central to upholding the internal cyclicalality of the UPR as the formal calendar is performatively maintained by them throughout the review’s practice. As a result of this combined self-regulation and discipline by peers, UN bodies and other stakeholders, the UPR has indeed been much more successful in maintaining a cyclical rhythm than the treaty monitoring body system where reports are often overdue – or not submitted at all – and significant backlogs exist, leading to irregular reporting and review cycles.47 The UPR’s cyclicality has so far been the most successful across all international human rights monitoring activity.

Beyond its foundational texts and the practice of the review itself, cyclicalality also underpins the broader strategic aims of the process. As a mechanism with the overarching goal of enhancing human rights compliance worldwide, the UPR encourages thinking about human rights obligations in terms of long-term cyclical engagement and planning. The internal cycle of the UPR is intended to provide a new flow for human rights work at the national level, encouraging cyclical deliberation and strategising beyond the Geneva-based events and the formalities of the review itself.48 States are part of implementing this longer-term cyclical strategising through adjusting their human rights planning, but NGO and other civil society stakeholders also play a key role. NGO stakeholders participating in the UPR are encouraged to think in terms of a four-year rhythm attached to each cycle.49 This encompasses, in the months prior to the review, engagement with their state on the national report, submission of stakeholder materials, participation in activities such as the UPR Info pre-sessions in Geneva, lobbying other states who might be persuaded to raise a particular issue in the interactive dialogue session, as well as raising any issues neglected or missed in the review at the Plenary. In the rest of the four-year cycle, NGOs develop strategic action in harmony with the UPR

48 Milewicz and Goodin, supra n 19. As of 31 October 2019, 81% of states parties have treaty body reports overdue, amounting to 569 reports in total: UN GA, Status of the Human Rights Treaty Body System: Report of the Secretary-General, 10 January 2020, A/74/643 at para 12.
cycle at the national level to encourage implementation of accepted recommendations and to monitor obligations.\textsuperscript{50} Geneva-based NGO UPR Info has played a key role in promoting this longer-term cyclical strategising around the UPR through its follow-up programme, established in 2011, and extensive capacity-building activities across states, National Human Rights Institutions, and civil society stakeholders.\textsuperscript{51}

In the cyclical logic which informs and drives the UPR in the ways outlined above, a particular approach to temporality can be detected. This is one that divides time into discrete sections, or periods: the past human rights record of the SuR; the review itself (usually thought as a present); and the follow up period taking place in the future. Each of these divided sections is apprehended – and scrutinised – individually, and they loop endlessly to feed into a larger cyclical monitoring and adherence aim which the UPR was created to fulfil. All of this should sound somewhat familiar. It is not contentious to advance cyclicality as an internal temporal feature constituting the UPR. On the contrary, this is a common sensical assertion, one that is immediately recognisable in the review’s founding documentation and in its everyday operation. However, to fully comprehend the ontological temporality of the UPR it is not enough to remain with the above observations on cyclicality alone. The UPR produces other, less obvious – even counter-intuitive – forms of time which are equally important, and which coexist with the cyclical.

\textbf{B. Linearity}

Alongside this foundational cyclical it is possible, somewhat paradoxically, to locate an internal linearity also driving the process in significant ways. Again, this is built into the review’s foundational documents. Resolution 60/251 commits the Human Rights Council to ‘undertake a universal periodic review… of the fulfilment by each State of its human rights obligations and commitments’\.\textsuperscript{52} It is the word ‘fulfilment’ here which is important to consider. In this term human rights are implicitly understood as something which can be ‘achieved’, ‘worked towards’ or ‘realised’. This point of future fulfilment being the goal which states should progress towards. This kind of language indeed echoes the understanding of human rights more generally which is promoted by the international human rights law system. Such

\begin{itemize}
\item \textsuperscript{50} Schokman and Lynch, ‘Effective NGO Engagement with the UPR’ in Charlesworth and Larking supra n 1, 126.
\item \textsuperscript{51} UPR Info, \url{https://www.upr-info.org/en} (last accessed 5 November 2020); Chauville, ‘The UPR’s First Cycle: Successes and Failures’ in Charlesworth and Larking supra n 1, 87 at 93.
\item \textsuperscript{52} Res 60/251, supra n 24 at para 5(e).
\end{itemize}
is exemplified in the focus, led by the OHCHR, on explaining states’ obligations in terms of the tripartite action to ‘respect, protect, and fulfil’.\(^{53}\) In this narrative we find a linear stacking of past, present and future which coheres with a modern approach to time.\(^{54}\) States are encouraged to move from a past where human rights are not best protected, to remedial action in the present, towards a future where all citizens enjoy human rights and an ideal relationship between the citizen and state is brought into being.

This linear understanding of human rights can be found throughout UPR documentation and, as cyclicality, is reiterated by participants in the process themselves. There are many examples in UPR documentation where states stress their progress in fulfilment of obligations, or are called upon to enhance or hasten, their progress towards achieving a particular right. For example, France’s comments that ‘the increase in the poverty rate… has been stemmed and progress has been made’;\(^{55}\) one stakeholder’s comment that ‘Albania is still far from adequately protecting and promoting children’s rights’;\(^{56}\) Australia’s assertion that it ‘continues to make progress in protecting human rights’;\(^{57}\) UNESCO’s comment that Nigeria had made ‘limited progress towards achieving universal basic education’.\(^{58}\) The language of ‘non-regression’ can also be detected in some reviews.\(^{59}\) From these statements, common throughout the review’s practice, linear progress is the standard by which human rights protection is judged.

Commitment to a linear temporality is evident in Institution-Building Resolution 5/1 where the UPR is envisaged as ‘action-orientated.’\(^{60}\) This action is future-focused, intended to change human rights outcomes in the future from the present. Practically, this is achieved via the generation of recommendations in the process. The SuR is encouraged to take action to improve fulfilment of human rights in the future via recommendations which, alongside their cyclical function as driving work until the next review, also commit to an idea of the future which follows from the past and present in a linear movement. Recommendations made by


\(^{60}\) Res 5/1, supra n 6 at para 3(e).
reviewing states have rapidly increased as the UPR matures: the first cycle generating 21,355 recommendations, the second 36,331.\textsuperscript{61} It is common for a SuR to receive over 200 recommendations in the course of a review. Recommendations are the beating heart of the UPR process, the core around which states plan and report their progress and against which UN bodies, stakeholders, and reviewing states assess this progress, or lack of it. Some states have gone as far as to create an ‘implementation matrix’ or annex to their national report mapping domestic measures adopted as a result of the review.\textsuperscript{62} In this focus on progress towards implementation of a recommended future, Hilary Charlesworth and Emma Larking note that attention to pressing or urgent human rights issues is often missed.\textsuperscript{63} The linear thread between past, present and future action in the review does not easily accommodate emerging or urgent situations of violation. In addition to participants in the process being caught up with focus on their implementation of action towards a recommended future, literature on the review has done the same. Much work has been undertaken assessing the extent to which recommendations made to a particular state, or on a thematic rights issue, have been successful.\textsuperscript{64} For example, Karolina Milewicz and Robert Goodin, undertaking a comparison of recommendations received by states across the first and second cycles, conclude that generally states ‘do progress’.\textsuperscript{65} Quantitative work conducted by UPR Info has been directed at a similar evaluation of effectiveness.\textsuperscript{66} The result is that the internal linear pulse of the UPR is reiterated.

This complementary conceptualisation of human rights as norms to be ‘worked towards’, ‘fulfilled’ or ‘achieved’, and the prioritisation of action to fulfil a recommended future goal operate together in the UPR to generate a temporality which lines up past present and future in a progressive way. States are encouraged to identify which stage in the linear journey of human rights they are currently positioned at, and to continue to progress forward with recommendations as their guide and aid. This linear nature of the UPR provides the process with a clear purpose which resonates with the overarching narrative of international human

\textsuperscript{61} Jordaan, supra n 21 at 46.
\textsuperscript{63} Charlesworth and Larking, supra n 37 at 16.
\textsuperscript{64} De La Vega and Yamasaki, ‘The Effects of the Universal Periodic Review on Human Rights Practices in the United States’ in Charlesworth and Larking, supra n 1 213. Chaney, supra n 21; Higgins, supra n 21; Cowell and Milon, supra n 21.
\textsuperscript{65} Milewicz and Goodin, supra n 19 at 524.
\textsuperscript{66} Chauville, supra n 51 at 93-94.
rights law more generally: that the international community is working towards a future world where human rights are fully achieved.\textsuperscript{67} Without this form of overarching linear purpose or goal, monitoring of state activity is a futile endeavor. In many ways this linear logic is in tension with the cyclical looping of past, present and future reflected on above. Nevertheless, as in domestic legal systems,\textsuperscript{68} this tension does not prohibit their coexistence and co-working. In the UPR, we find time expressed as both a periodic cycle looping without end and as an arrow moving in a straight line towards a final goal.

C. Discontinuity

Adding further complexity to the ontological picture coming into view, internal temporal rhythms of discontinuity also characterise the UPR. These are evident in times of interruption, tension, or revision which reveal the UPR as not driven by exclusively smooth and continuous temporal logics. To make these instances visible, we can begin with one of the most obvious examples: the discontinuity often generated between the various reports submitted for each review. As Benjamin Authers comments, ‘ultimately, the UPR offers multiple and frequently conflicting descriptions of each state that are composed of self-produced texts and interrogations of (and counter-assertions to) those texts by other actors.’\textsuperscript{69} The OHCHR-compiled summaries which supplement the national report have proven useful in highlighting discrepancies in the picture of human rights compliance advanced by the SuR.\textsuperscript{70} There are many examples of where this kind of discontinuity has occurred. For instance, in Australia’s first review, a strong narrative regarding the place of indigenous peoples in national life and initiatives to support indigenous needs contrasted starkly with evidence of ongoing severe disadvantage noted by UN sources.\textsuperscript{71} In Afghanistan’s second review, the UN body compilation report noted that honor killings are not criminalised in the state,\textsuperscript{72} while the national report stated that they are prosecuted.\textsuperscript{73} We could also consider the Democratic

\textsuperscript{67} This narrative is longstanding: see Eleanor Roosevelt, ‘The Promise of Human Rights’ (1948) 26 Foreign Affairs 470.
\textsuperscript{68} Greenhouse, supra n 25.
\textsuperscript{69} Authers, ‘Representation and Suspicion in Canada’s Appearance Under the UPR’ in Charlesworth and Larking, supra n 1, 169 at 171.
\textsuperscript{70} Milewicz and Goodin, supra n 19 at 517.
\textsuperscript{71} UN Human Rights Council,Compilation Prepared by the OHCHR, 15 November 2010, A/HRC/WG.6/10/AUS/2 at para 17.
People’s Republic of Korea’s third review where the state’s presentation of civil and political rights protection in the Constitution and other laws was in tension with stakeholder information detailing a range of violations in this area. This discontinuity, which is common across the process, has often led to the generation of tension. States such as The Gambia and the Democratic Republic of the Congo have responded to discrepancies generated by UN and stakeholder information and publicly refuted their accuracy in the interactive dialogue. A particularly strong example of this can be found in Nigeria’s first review where the national delegation commented that it was, surprised by the reports on Nigeria, not only by their many unsupported statistics and unfounded allegations, but also by the quality of the language used to characterize a free and sovereign State. Preposterous allegations were not only patently false, but also completely unhelpful to the UPR process. One was left wondering if there are no ethical limits to the allegations that NGOs can make against sovereign States in the UPR process.

The result of these occasions where reports clash is that a sense of discontinuity permeates the mechanism and must be grappled with by reviewing states as they endeavour to gather a full picture of human rights in the SuR. In spite of the tension it may produce in some instances, this is the very work of the review itself and its critical nature in enhancing human rights protections. Reviewing states are not just looking for continuous linear threads in the human rights narrative under scrutiny, but also places where these threads are tangled, cut short or cannot be found.

A further example of discontinuity, challenging the cyclical continuity of the process in particular, is what has turned out to be in practice the disappointingly marginal discussion of accepted recommendations in subsequent reviews. In the Working Group, there is a tendency for reviewing states not to follow up on the recommendations previously directed to the SuR, including those they themselves have made. In other words, the focus of the

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79 Bertotti, supra n 14 at 13.
Working Group in the second and third cycles has overwhelmingly been directed towards the generation of new recommendations. This tendency to under-engage with recommendations from the previous cycle extends across the process more generally. While states are instructed that their subsequent reports should include ‘identification of achievements, best practices and challenges in relation to the implementation of accepted recommendations,’ the extent to which national reports demonstrate this continuity varies. The same can be said of state comments as they open the Working Group session by orally presenting their report. For example, in its second review, Guatemala made no reference at all to recommendations received in the previous cycle in its opening remarks. Similarly, while some stakeholder reports include submissions that have clearly provided information on implementation of recommendations, others provide information that is detached from scrutiny of the obligations accepted in the previous cycle.

Discontinuity is also often generated in the process of states communicating their position on recommendations made to them. While the SuR may respond to recommendations during the time of the review in Geneva, allowing these responses to be included in the draft report, it is possible to stay response until the final adoption of the report at the Human Rights Council Plenary. The mechanism for doing so is a written document submitted as an Addendum. While the majority of states do submit this document, there have been instances where this does not occur, with the result that the SuR’s position on recommendations is not clear. Examples in the first cycle include Chile, Indonesia, Albania, China, North Korea, the Democratic Republic of the Congo, The Gambia, Israel, South Africa and Guatemala, and in the second cycle Nigeria and Congo. On some occasions, UN bodies and stakeholders have raised this issue. For example, in South Africa’s second review Human Rights Watch noted that the state’s failure to outline its position on recommendations made during the first cycle ‘had made an assessment of implementation problematic’. These instances where states fail

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84 Res 5/1, supra n 6 at para 29.
to take a position on recommendations received interrupt the continuity of the process, prohibiting smooth examination of accepted recommendations from one cycle to the next.

Continuous linear alignment of past, present and future is similarly disrupted in instances of revisionism where the past is revisited in an attempt to alter it. This can be detected when states attempt to amend their position on recommendations previously accepted. An example of this occurred in the third review of the United Kingdom in relation to recommendations made on a number of issues including treaty ratification and reservations, compliance with the European Court of Human Rights, and detention of migrants. More commonly, revisionism is also evident in changes to the wording or emphasis of recommendations made in the interactive dialogue after the fact. One reason behind this is states under review lobbying peers to change their recommendations to make them less onerous. This occurs after the interactive dialogue but before publication of the Working Group report two to three days later. Where a recommendation has been revised retrospectively in this way, a footnote in the Working Group report will indicate the original wording of the recommendation as delivered in the session. Indeed, UPR Info claims that in sessions 13 and 14 of the UPR, 12 out of 28 states engaged in this kind of negotiation. In these instances of revisionism, which remain controversial, the linear progression between past, present and future is interrupted. States are able to amend the past in the present, with the result that time in the UPR process becomes out of joint.

The above foregrounds a range of ways in which discontinuous temporal rhythms characterise the review process, sometimes productively, other times less so. Either way, this complicates the logics of cyclicality and linearity and often come into conflict with them. While these occasions of discontinuity have been discussed to greater or lesser extents in reflections on the UPR, they have not yet been thought as linked to a temporal movement underpinning the process itself. Without taking this step, the tendency may be to judge their less positive

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87 Chauville, supra n 51 at 99.
instances as inadequacies of, or threats to, the process. When read through the lens of time and an understanding of the UPR as a mechanism with a complex temporal ontology, however, a more nuanced comprehension of these examples, and their roots in the process’s own internal constitutive features, can begin to emerge. The UPR cannot be thought of as driven by smooth and continuous temporalities alone.

D. Duration

The temporal logics discussed so far, while divergent in nature, will have been largely recognisable to the reader. There is, however, another form of time detectable in the UPR which may be less familiar but equally defines its internal temporal workings: that of duration. This term, drawn from the work of French philosopher Henri Bergson, refers to time as an irreducible flux and flow which characterises all human and non-human life. For Bergson, time does not follow a linear path – an approach he saw as incorrectly advanced by science and metaphysics – rather, it is characterised by ongoing movement and change without ceasing.

Bergson develops this idea with reference to individual psychology, observing that in our own consciousness ‘there is no feeling, no idea, no volition which is not undergoing change every moment.’ Time in this context is defined by heterogeneity and continuity. It is a rich qualitative multiplicity in which ‘several conscious states are organized into a whole, permeate one another, [and] gradually gain a richer content.’ What this means is that, contrary to the three temporal logics encountered above, the past, present and future are not distinct states which exist side by side and are passed between in some form (linearity, cyclicity, (dis)continuity) but states which coexist together. The past endures in the present, informing it. As Bergson elaborates, ‘our duration is not merely one instant replacing another… duration is the continuous progress of the past which gnaws into the future and which swell as it advances’, meaning that the past ‘lean[s] over the present, which is about to join it.’

Duration is, essentially, memory: it conserves the past in the present. The past exists a virtual form in the present until it is actualised, a process which Bergson describes as

91 Ibid., *Creative Evolution*, ibid. at 3.
92 Ibid. at 4.
93 Bergson, *Time and Free Will*, supra n 90 at 122.
94 Bergson, *Creative Evolution*, supra n 90 at 6-7.
95 Ibid. at 7.
‘detach[ing] ourselves from the present in order to replace ourselves, first, in the past in general, then, in a certain region of the past – a work of adjustment, something like the focusing of a camera.’\textsuperscript{96} This gives time an irreversible character. Because life is always swelling with the duration of the past, ‘rolling upon itself, as a snowball on the snow’,\textsuperscript{97} consciousness ‘cannot go through the same state twice.’\textsuperscript{98} Each moment adds something new and directs towards an unforeseeable future.\textsuperscript{99} Here Bergson uses the example of an artist to illustrate. Even with a vision and a colour palette, the artist cannot foresee exactly what the painting will look like before it is produced. Additionally, the talent of the artist is modified with each work s/he produces, accumulating experience which is carried with her/him into subsequent work.\textsuperscript{100} Following this qualitative conception of time, ‘what I call “my present” has one foot in my past and another in my future’.\textsuperscript{101} To endure is to pass on to the absolutely new with the accumulated past and present. While duration begins as an individual psychological experience for Bergson, in his later work duration is thought further to take the form of an ontological concept more generally.\textsuperscript{102}

In none of his writing did Bergson engage law substantively or speculate upon legal systems as having an ontological duration. Nevertheless, scholars have extended the reach of Bergson’s duration to think through law and its temporality.\textsuperscript{103} Most relevant for the present discussion, Mawani argues that the themes of unity, multiplicity, and ceaseless change which define time as duration are mirrored in the ontology of the common law.\textsuperscript{104} It is possible, I argue, to translate the insights this work provides to the international level and consider duration as an internal ontological logic which also shapes the UPR process. Duration can be read as characterising the review in a number of ways. Beginning with the most obvious, the UPR – as life more generally for Bergson – is an ongoing becoming which is defined by a state of flux and change. Again, this character can be traced back to the texts founding this mechanism. In a footnote, easily missed but essential to grasp, Resolution 5/1 describes the UPR explicitly as ‘an evolving process.’\textsuperscript{105} Commentators have indeed explored the UPR as ‘a

\textsuperscript{96} Bergson, \textit{Matter and Memory}, supra n 90 at 133-134.
\textsuperscript{97} Bergson, \textit{Creative Evolution}, supra n 90 at 4.
\textsuperscript{98} Ibid. at 8.
\textsuperscript{99} Ibid. at 9.
\textsuperscript{100} Ibid. at 9.
\textsuperscript{101} Bergson, \textit{Creative Evolution}, supra n 90 at 177.
\textsuperscript{102} Deleuze, \textit{Bergsonism} (1988) at 34.
\textsuperscript{103} For example, Lefebvre, \textit{The Image of Law: Deleuze, Bergson, Spinoza} (2008); Lefebvre, \textit{Human Rights as a Way of Life: On Bergson’s Political Philosophy} (2013); Chowdry, \textit{Time, Temporality and Legal Judgment} (2020).
\textsuperscript{104} Mawani, supra n 27
\textsuperscript{105} Res 5/1, supra n 6 at para 14.
work in progress’, seeking to capture the way in which its rules, procedures, and nature more generally have evolved over review cycles. We see this in changes to the periodicity of the review, the format of documentation, and the organisation of the interactive dialogue, just to name a few. Movement, flux and change can also be thought to characterise the internal operation of the mechanism more generally. As Jane Cowan and Julie Billaud comment, the UPR takes place ‘in an inherently transient space, where faces and positions [are] constantly shifted.’ The UPR appears from Cowan and Billaud’s observations as a mechanism that is continually reshaped through new actors entering the field – the increasing work of international NGO UPR Info supporting the review is a good example of this – and new practices develop – for instance, surrounding lobbying, fringe events, and follow up. Accordingly, beyond its structural evolution, the everyday functions of the UPR are defined by ongoing movement and change, a constant differing from itself in internal division while maintaining continuity overall. This apprehension of the UPR as a ceaseless becoming mirrors the overarching ontological impetus of duration as one of change without ceasing.

Beyond this, the review process demonstrates an internal logic of duration in its engagement with past, present and future. When states are reviewed, past, present and future may be comprehended not as successive moments, but as coexisting. When a state is scrutinised, its past, present and future are not ‘distinct solid colours, set side by side like the beads of a necklace.’ Rather, there is a continuity which unfolds between these three states as the past human rights record and the present experience of the review merge into one another like ‘a flux of fleeting shades.’ Past experiences – coups, constitutional changes, national action planning, legislative changes, etc. – exist virtually in the present review and are actualised in it when drawn upon by the SuR, reviewing states, UN bodies, or stakeholders. In this respect, the present review moment is not distinct from the past, but the past is preserved and leans over it. In this process, something new is added and the review moves towards a new future – recommendations and action pertaining to them – which cannot be fully foreseen or predicted in advance. It also follows that each review process is unique – the same review cannot be conducted twice. While the procedural circumstances may be the same, a SuR will not go

106 Cowan, supra n 22 at 48.
108 Cowan and Billaud, supra n 20 at 121.
109 Ibid 124.
110 Bergson, Creative Evolution, supra n 90 at 3.
111 Ibid at 6.
112 Ibid.
through the same UPR experience again. This point is indeed picked up by Gayatri Patel, who observes that while the process is repetitive, each review is singular.\textsuperscript{113} Patel is making reference to variations such as the composition of state delegations and the nature of discussions in each interactive review, but an understanding of duration adds to this. It reveals that in subsequent reviews the experience of the SuR, built up with each instant (day, month, year), has snowballed in accumulation to also prohibit a pure repetition. The review four to five years later does not encounter and act on the same SuR, because it has changed and ripened with the accrual of the past which exists virtually in the review.

From the above, it is possible to see the UPR as having a duration: it is characterised by heterogeneity and continuity as an ongoing becoming, and in the review process itself the past coexists with the present to create new, unforeseeable futures and prohibits the same review occurring twice. This stands in direct contrast to the logics of cyclicality and linearity which demonstrate an understanding of past, present and future as divisible and successive moments in time. Duration also underplays the significance of moments of discontinuity. Bergson describes such moments as ‘beats of the drum which break forth here and there in the symphony’,\textsuperscript{114} each is only the best illuminated point of the broader flow of duration. Despite these tensions, duration operates within the UPR alongside these other logics. Indeed, in doing so the UPR mirrors wider understandings of human rights within the international human rights system. In addition to conceptualising human rights as obligations to be fulfilled in a linear manner – as noted earlier – through its structures and everyday processes international human rights law simultaneously implies that these rights are ongoing becomings; norms whose achievement must be endlessly strived towards.\textsuperscript{115} The temporal logic of time as duration fits with and captures this simultaneously existing overarching narrative of human rights as norms.

4. APPREHENDING THE UNIVERSAL PERIODIC REVIEW AS A RICH AND INTRICATE TEMPORAL ARTEFACT

At this point, discussion has encountered four very different times constituting the UPR mechanism. Important questions remain. How can we navigate the conflicts and paradoxes...
which exist between these multiple internal temporalities? Should one be understood as dominating the other? Do their competing pulls threaten to frustrate the process from the beginning? What might the wider resonances of these complex temporalities be outside the UPR itself? Given that thinking on time and the UPR is very much in its infancy, it is essential to address these questions. In doing so, it is also possible to unpack the consequences of the preceding analysis and what it means for understanding the UPR as a phenomenon.

In work to think through time more deeply in this process it is not enough to focus on one of the temporal logics outlined alone. Neither should attempt be made to rank them in order of importance or weight. The temporalities highlighted may take on different weightings at different moments in the review process and its related activity and, ultimately, must be thought together to fully apprehend the multifaceted nature of time in this mechanism. This inevitably leads to the issue of tension. Cyclicality, linearity, discontinuity and duration do not easily align. They generate various pulls and frictions. On first glance this appears highly problematic for the stability of the process. For example, a linear conception of time as a progressive line might be thought to sit uneasily with a cyclical approach which advances time as endlessly looping. Similarly, conceiving time as duration might be considered deeply incompatible with linear and cyclical understandings of human rights and their monitoring which do not consider past, present and future to exist simultaneously. Additionally, discontinuity could be understood to threaten any form of temporal continuity in the review process which is essential in holding states accountable for their human rights record. However, I argue that these tensions are not as concerning as they might seem. Indeed, the contrary is the case.

While sometimes the conflicts and paradoxes created do gesture towards problems which need to be addressed in the system – for example, discontinuity in discussion of recommendations in subsequent cycles, buy-in to the myth that human rights protection is always a linear journey – largely these conflicts and paradoxes actually work together to maintain the overall operation of the process. The cohesive work that the divergent temporalities undertake is evidenced in the fact that sometimes discontinuity is necessary to enhance scrutiny of linear narratives of human rights progress: think of the discrepancy created by UN and stakeholder summary reports, for instance. It is also detectable in that time must be thought of as an ongoing process of constant change and accumulation – duration – to understand how states, and the UPR mechanism, exist as ongoing becomings in cyclical human rights monitoring. Similarly, sometimes a focus on linear progress is necessary to conserve a raison d’être for an ongoing cyclical loop holding states to account. In this respect, the UPR
is usefully interwoven with diverse temporal logics which make up, and sustain, the process as an overarching whole.

Returning to the imagery engaged earlier, the result is that the UPR is comparable to a patchwork quilt of different temporalities sewn together to create something bigger. Each of these temporalities remains distinct and performs a function in holding up one or more parts of the whole. This is what it means to apprehend the UPR as a rich and intricate temporal artefact, one that it is possible to pick up and examine from a range of angles to gain a better view of its complexity. For practitioners and scholars interested in the process, this assertion encourages them to stand back and observe the UPR and its constitutive foundations in an unfamiliar way. It is useful in enabling the structures and practice of the review to be perceived through a new lens, and to enhance our understanding of this monitoring mechanism, its identity and operation further. Time as an internal creation as opposed to an external constraint, undoubtedly, is not something that states considered when creating the UPR. Yet, inescapably, it is an inherent part of the review. The analysis above highlights issues perhaps already known to those engaging with the work of the UPR. These include the productivity and challenges of discontinuity, the tension between future-focused recommendations and cyclicality, and perhaps even the qualitative experience of past, present and future in each review. The utility of the lens I am advocating, however, is to encourage UPR actors to rethink their work in the process as involving all these, indeed often lying at the intersection and requiring navigation of this intersectional complexity, and to understand this as central to the review’s identity. To fully apprehend the UPR as an evolving entity within the international human rights law system it is necessary not only to look at the politics surrounding it, the review’s effectiveness in terms of national action, policies and legislation, and issues of procedure within the Human Rights Council. Alongside this, it is imperative to consider and examine the UPR as a phenomenon with a temporal ontological identity we have not yet fully explored and encountered as the very glue – divergent, messy and sticky – holding the process together.

In this new apprehension of competing temporalities as maintaining the UPR process, scholars and practitioners should also reflect on the wider effects and significance of the review’s paradoxical temporal ontology beyond the review process itself. As the common law, the conceptions of time produced by international legal processes and structures have resonances outside their own spheres. They shape how we view time in the world around us, including the temporalities of human rights obligations, their violation, and redress. As a

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116 Grabham, supra n 25; Greenhouse, supra n 25.
flagship monitoring mechanism, the UPR produces ideas of time which drive its process but also influence understandings of what it means to ‘do’ human rights internationally and on the ground. If we understand human rights in linear or cyclical ways or as ongoing becomings, this is in part due to the internal temporal ideas produced in authoritative mechanisms such as the UPR. Understanding this broader significance of the temporal flows it produces is also part of what it means to comprehend the UPR as a rich temporal artefact. All of this takes us far beyond apprehending time as an external pressure acting on the review of states, to begin to investigate the significance of the internal times of the review and their functions both within the UPR and in wider ways beyond it.

5. CONCLUSION

Fifteen years from the creation of the UPR in 2006, and thirteen years from the commencement of its first cycle in 2008, the UPR has established itself as a key ritual in the international human rights law system.\(^\text{117}\) Its effects have been wide-ranging and include not only stimulating legislative, policy and other action at the national level, but also enhanced ratification of human rights treaties and engagement with UN bodies such as the Special Procedures.\(^\text{118}\) Scholars have made much progress in assessing the review, reflecting on its development, and beginning to investigate its functioning as a process more generally. This does not mean, however, that as scholars and practitioners we now know all there is to know about this unique monitoring mechanism and its defining features. This article has suggested that the temporal nature of the UPR stands to be engaged with further and has aimed to offer first steps in this endeavor.

Moving our focus beyond time limits, deadlines, the hands of a clock or countdown of a timer, calendars and schedules, and other pressures of time as an external force allows an understanding of the internal, constitutive nature of time in the process to come into view. In other words, that the UPR has an internal ontology that is temporal in nature.

Rather than something that is singular, I have argued that this internal ontology must be grasped as multiple and complex as differing temporal logics exist alongside one another and perform divergent functions which support the overall operation of the process itself. Linearity, cyclicality, discontinuity, and duration are all part of the UPR in more or less obvious

\(^{117}\) Charlesworth and Larking, supra n 1.

ways and coexist together. These temporalities come to the fore at different moments and junctures, interacting in ways that compete but never derail the review. Beginning to think about internal, ontological time in this way offers space to move towards a deeper understanding of the UPR which has not previously been possible. As the mechanism continues to progress in maturity, this starting point of defamiliarising time as purely external aims to stimulate further insights regarding the temporal nature and resonances of the UPR. It also encourages us not to be complacent about current understandings of the connection between time and the everyday practice of international human rights law, to critically question the limits of these understandings. Like the UPR itself, this work must be ongoing, ever-evolving, innovative and investigative.