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# Review or Rhetoric? An Analysis of the United Nations Human Rights Council's Universal Periodic Review

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Review or Rhetoric?  
An Analysis of the United Nations Human Rights Council's Universal Periodic Review

By Sameer Rana

Fall 2015

SIT Switzerland: International Studies and Multilateral Diplomacy  
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## Abstract

Fifty, thirty, or even just twenty years ago, would one ever imagine a powerful country like the U.S., China, or Russia preparing a national report on the human rights situation in their country, then presenting it in front of a UN political body, engaging in dialogue, answering questions, and responding to recommendations from fellow Member States? This became a reality in 2006 when the UN Human Rights Council (UNHRC) replaced the problematic UN Commission on Human Rights (UNCHR) and established a new and unprecedented mechanism known as the Universal Periodic Review (UPR). Under this instrument, the human rights records and situations of every single country in the world would be examined through a common procedure. With its 1<sup>st</sup> cycle complete and 2<sup>nd</sup> cycle in progress until 2016, the UPR has displayed both its strengths and potential weaknesses. These were examined through the presentation and analysis of numerous primary and secondary sources, as well as six formal interviews with extremely relevant professionals and experts. Ultimately, it is primarily the responsibility of UN Member States to participate and cooperate with genuine political will, good faith, and belief in the process. At the same time, the interaction of and between other stakeholders in the review is equally as important. By outlining the transition from the Commission to the Council, the creation and functioning of the UPR, the primary achievements of and challenges to the universal mechanism and a few final thoughts, this research paper seeks to encourage discussion and critical thought into the significance of the peer and periodic review process and how it can be improved before the beginning of the 3<sup>rd</sup> cycle in order to achieve its stated objectives.

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### **List of Abbreviations**

AI	Amnesty International
AU	African Union
APRM	African Peer Review Mechanism
ECOSOC	United Nations Economic and Social Council
FIDH	International Federation for Human Rights
GA	(United Nations) General Assembly
IBP	Institution Building Package
IGO	Intergovernmental organization
LDCs	Least Developed Countries
NGO	Non-governmental organization
NHRI	National Human Rights Institution
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
SIDS	Small Island Developing States
SuR	State under review
UNCHR	United Nations Commission on Human Rights
UNHRC	United Nations Human Rights Council
UN	United Nations
UPR	Universal Periodic Review
WEOG	Western European and Others Group
WG	Working Group

## **Introduction**

Since its creation in 1946, the United Nations Commission on Human Rights (UNCHR) served as a functional commission mandated under the Economic and Social Council (ECOSOC) to act as the UN's principle mechanism and international forum concerned with the promotion and protection of human rights around the world. Instead, this body was often criticized for its excessive politicization, selectivity, and double standards. Therefore, in 2006, the UN Human Rights Council (UNHRC) was established to replace the Commission.

Though the transition from the Commission to the Council retained a large degree of continuity in terms of both criticisms levied against and working methods within the body, the Council did introduce an entirely new procedure: the Universal Periodic Review (UPR). Under this mechanism, for the first time ever, the human rights records and situations of all UN Member States, regardless of size, wealth or political power, would be examined through a common process. Accordingly, the UPR is regarded as the Council's flagship procedure and one that is set up to solve some of the previous Commission's most systematic and institutional issues. It functions as a cooperative mechanism with a non-adversarial and interactive dialogue-centered approach, with a focus on promoting the universality, interdependence, and indivisibility of all human rights and the equal treatment of all States.

Though the UPR has its strengths, ranging from its universality and public documentation to the engagement between countries and involvement of different stakeholders, it also faces many challenges. Critics slate the procedure for its superficiality, continued politicization, lack of punitive sanctions, and much more.

Ultimately, the UPR can succeed but only if these criticisms are addressed and governments participate and cooperate through genuine political will, good faith, and belief in the process. Other stakeholders in the review play an extremely important role as well.

Examining the UPR is critical because its functioning impacts the perception of the reformed Council as a whole. With its 1<sup>st</sup> cycle complete and 2<sup>nd</sup> cycle in progress until 2016, analyzing the primary strengths of and challenges to the procedure will shed some light on where it stands today and whether it will rise, or fall, tomorrow.

### Research Question and Purpose

The research questions ask: How was the new and unprecedented UPR set up to try and mitigate the issues of the Commission? What are the mechanism's primary strengths and weaknesses? How can the Council, along with other stakeholders, improve the UPR's efficiency and impact?

This paper is not an overly comprehensive analysis of the UPR. Instead, it intends to encourage discussion on the procedure and serve as a concrete foundation for future research during my final year at Pomona College.

### Literature Review

The first set of secondary sources examines the transition from the Commission to the Council. Here, I primarily use Paul Gordon Lauren's publication, "The Journey from the Commission on Human Rights to the Human Rights Council,"<sup>1</sup> which assesses the Commission's beginnings, achievements, and criticisms and then analyzes how these factors affected the decision to replace it with the new Council in 2006. Although the

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<sup>1</sup> Lauren, Paul Gordon. "To Preserve and Build on Its Achievements and to Redress Its Shortcomings": The Journey from the Commission on Human Rights to the Human Rights Council. *Human Rights Quarterly* 29, no. 2, 307-345. Accessed October 10, 2015. <http://www.jstor.org/stable/20072801>.

Commission was supposed to be the world's premier political forum in which to discuss human rights and confront governments over their violations, it had many issues: a small and underfunded staff; constrained time; problematic voting procedures for membership; an expansion of membership itself; and accusations of excessive politicization, selectivity, and double standards. The Council aimed to solve or mitigate some of these issues by becoming a subsidiary organ to the UN General Assembly, increasing the duration of annual sessions, reforming voting procedures and requirements, reducing membership to forty-seven states, and introducing the UPR.

The second set of sources outlines the creation of the UPR and the tensions surrounding the discussions on how this mechanism would function in practice. Here, I often refer to Allehone Mulugeta Abebe's "Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council"<sup>2</sup> and Rachel Brett's "Neither Mountain nor Molehill, UN Human Rights Council: One Year On."<sup>3</sup> Abebe, an Ethiopian diplomat who participated in both the negotiations on the institution-building text of the Council and the first two sessions of the Working Group on UPR, explains how defining the procedures of the new review mechanism was a protracted matter and the subject of a great deal of debate and discussion. He primarily highlights the use of the African Peer Review Mechanism (APRM) as one possible model and the attempt by many African, and other developing, States to limit NGO and expert participation in the review process. Similarly, Brett refers to the initial confusion on whether this mechanism would be "peer" or "periodic" and though "periodic" was

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<sup>2</sup> Abebe, A. M. "Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council." *Human Rights Law Review* 9, no. 1 (2009).

<sup>3</sup> Brett, Rachel. "Neither Mountain nor Molehill - UN Human Rights Council: One Year On." *Quaker United Nations Office*, August 2007.

eventually adopted, many governments emphasized the peer-driven aspect of the procedure. Both also highlight other key areas of disagreement and debate, which included the sources of information to be used, the role of different stakeholders, and so on.

The third set of sources helps analyze the primary strengths of and challenges to the UPR. Since I used many of these articles and publications, I will primarily highlight one of them here: Emma Hickey's "The UN's Universal Periodic Review: Is it Adding Value and Improving the Human Rights situation on the Ground? A Critical Evaluation of the First Cycle and Recommendations for Reform."<sup>4</sup> This thesis critically evaluates the performance of the Council's UPR process at the conclusion of its first cycle by analyzing the mechanism compared to its stated principles and objectives and establishing a firm framework from which to provide concrete recommendations for improvements to the system. Hickey outlines the merit and sustainability of the UPR but also the difficult task of addressing its weaknesses. I use this analysis, as well as those from other sources, to analyze the primary strengths of the UPR: universality; public documentation, catalyst, and accessibility; engagement between countries; and involvement of different stakeholders. Then, I do the same in regards to the procedure's weaknesses: superficiality; politicization; lack of punitive sanctions and surplus of empty rhetoric; recommendations; non-cooperation; and excessive focus on the Geneva round. The primary theoretical and analytical approach surrounds the study of international organizations and the use of peer-based initiatives to assess performance and adherence to shared norms.

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<sup>4</sup> Hickey, Emma. "The UN's Universal Periodic Review: Is it Adding Value and Improving the Human Rights Situation on the Ground?" *ICL Journal*.

### Research Methodology and Analytical Framework

I formally interviewed the following six experts and professionals: Maria Francisca Ize-Charrin, former Secretary of the Commission from 1996-2001; Blaise Godet, former Swiss Ambassador to the UN in Geneva and Vice President of the Council's First Cycle; Ljiljana Stancic, Human Rights Officer at the OHCHR HRC Branch; Andrew Clapham, Professor of Public International Law at the Graduate Institute of International and Development Studies in Geneva; Nicolas Agostini, International Federation for Human Rights (FIDH) Representative to the UN in Geneva; and Peter Splinter, Amnesty International (AI) Representative to the UN in Geneva. I recruited these interviewees through the help of Mariette Grange (see Acknowledgements), the widespread network in Geneva, as well as extensive e-mail correspondence. In terms of ethical considerations, I explained the importance of informed consent, specifically privacy, anonymity and confidentiality. Each interviewee allowed me to record the interviews, take notes, and use their names in this research report.

In terms of other primary sources, I have read and analyzed UN resolutions and decisions, UPR State Reports, OHCHR compilations, stakeholder submissions, UPR recommendations, outcome reports, and other UN documents. My secondary sources include various books, academic research papers and analyses accessed through online databases and journals, as well as NGO reports and other online articles. These sets of data were divided into three general themes – the transition from the Commission to the Council, the creation and procedures of the UPR, and the primary strengths and weaknesses of the procedure – and then analyzed through a qualitative, historical, and institutional lens.

## Transition from the Commission to the Council

### The UN Commission on Human Rights: Principal Criticisms

In 1946, the UN Economic and Social Council (ECOSOC) established the UN Commission on Human Rights (UNCHR or the Commission) as a functional commission mandated to act as the UN's principal mechanism and international forum concerned with the promotion and protection of human rights around the world. Since the Commission met only once a year for a frenzied period of six weeks, it became extremely difficult to coordinate complex and multifaceted activities, especially since the staff was small and underfunded.<sup>5</sup> This was further complicated as membership expanded from an original eighteen to a total of fifty-three. Member States, based on their regions, only needed twenty-eight votes or a two-thirds majority in the ECOSOC to be elected for three-year terms. Therefore, many states with extremely poor human rights records – such as Sudan, Sierra Leone, Uganda, Libya, Saudi Arabia, and Cuba – joined the Commission. Numerous members focused attention on the practices and problems of others, while ignoring their own or those of their allies.<sup>6</sup> Additionally, smaller and less powerful states were easy targets for criticism and punishment.<sup>7</sup> Amnesty International (AI) accused the body of routinely resorting to double standards, declaring that “membership is too often used to shield the Commission members from human rights scrutiny instead of to protect and promote human rights.”<sup>8</sup> In addition to grievances against double standards, the Commission was also consistently criticized for its excessive politicization and

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<sup>5</sup> Lauren, Paul Gordon. "To Preserve and Build on Its Achievements and to Redress Its Shortcomings": The Journey from the Commission on Human Rights to the Human Rights Council. *Human Rights Quarterly* 29, no. 2, 326. Accessed October 10, 2015. <http://www.jstor.org/stable/20072801>.

<sup>6</sup> Ibid, 327.

<sup>7</sup> Ibid.

<sup>8</sup> Amnesty International. “2005 UN Commission on Human Rights: The UN’s chief guardian of human rights?” 2005, 1, available at <https://www.amnesty.org/download/Documents/88000/ior410012005en.pdf>.

selectivity, which were only heightened with the tangible presence of regional alliances, bloc voting, and the use of procedural devices to prevent debate on proposed action against certain countries and on controversial issues.<sup>9</sup> Maria Francisca Ize-Charrin, Secretary of the Commission from 1996-2001, recounted these condemnations and concluded that, “This situation could not continue due to all the reasons mentioned. Something had to change...and this was a moment of change within the UN. However, that was easy to say, difficult to create.”<sup>10</sup> Understanding the criticisms levied against the Commission is vital because it helps explain why and how a new human rights body was created.

#### High-level Panel and “Larger Freedom” Report

In its December 2004 report, a UN High-level Panel on Threats, Challenges, and Change called for an upgraded “Human Rights Council” which would no longer be subsidiary to the ECOSOC but would rather serve as a Charter body standing alongside it and the Security Council.<sup>11</sup> Similarly, in his landmark March 2005 report, “In larger freedom: towards development, security and human rights for all,” then UN Secretary General Kofi Annan emphasized the urgent need for a new and improved human rights body. He severely criticized the Commission, declaring that its “capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism...as a result, a credibility deficit has developed, which casts a shadow on

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<sup>9</sup> Abraham, Meghna. “A New Chapter for Human Rights: A handbook on issues of transition from the Commission on Human Rights to the Human Rights Council.” *International Service for Human Rights and Friedrich-Ebert-Stiftung*, June 2006, 11.

<sup>10</sup> Maria Francisca Ize-Charrin, Former Secretary of the UN Commission on Human Rights, interviewed by Author, October 27 2015, Geneva, Switzerland.

<sup>11</sup> United Nations, Report of the Secretary-General’s High-Level Panel on Threats, Challenges, and Change, “A More Secure World: Our Shared Responsibility,” 2004, 90, available at [http://www.un.org/en/peacebuilding/pdf/historical/hlp\\_more\\_secure\\_world.pdf](http://www.un.org/en/peacebuilding/pdf/historical/hlp_more_secure_world.pdf)

the reputation of the United Nations system as a whole.”<sup>12</sup> Annan called UN Member States to place a strengthened pillar of human rights alongside those of security and development by agreeing to replace the Commission with a smaller standing Human Rights Council, whose members would “abide by the highest human rights standards.”<sup>13</sup>

#### Establishment of the Human Rights Council and the Universal Periodic Review

With Resolution 60/251 in March 2006, the UN General Assembly (GA) established the UN Human Rights Council (UNHRC or the Council). This new body would meet for at least three sessions of ten weeks or more throughout the year and would focus on fourteen country specific and thirty-nine thematic human rights issues. In order to make the Council more representative and legitimate, it would serve as a subsidiary organ to the entire membership of the GA, rather than just the ECOSOC. The Council’s size was decreased to forty-seven member states, the first time that the membership of any UN body has ever been reduced in order to achieve greater effectiveness.<sup>14</sup> Seats would be geographically distributed, with thirteen for Africa, thirteen for Asia, eight for Latin America and the Caribbean, seven for the Western European and Others Group (WEOG), and six for Eastern Europe. Voting would be carried out by secret ballot and states would require an absolute majority of the GA in order to be elected. Members would serve for three-year periods and would not be eligible for immediate re-election after two consecutive terms. Most importantly, the actual behavior and human rights records of governments would serve as the ultimate

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<sup>12</sup> United Nations, General Assembly, Report of the Secretary-General “In larger freedom: towards development, security and human rights for all,” A/59/2005, 21 March 2005, 45, available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/59/2005](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/59/2005)

<sup>13</sup> Ibid, 45-46.

<sup>14</sup> Lauren, “To Preserve and Built on Its Achievements and to Redress Its Shortcomings”: The Journey from the Commission on Human Rights to the Human Rights Council, 335.

criteria for membership. This provision, never officially pronounced in the past, was designed to exclude the most serious human rights abusers.<sup>15</sup> Those guilty of grave and systematic violations could have their membership revoked with a two-thirds majority vote in the GA.

Though many of the working practices of the Council have remained largely similar to those of the Commission, Resolution 60/251 also introduced a new and unprecedented mechanism under which the human rights records and practices of every single UN Member State would be reviewed and scrutinized: the Universal Periodic Review (UPR). This procedure was lauded as the Council's most innovative and ambitious instrument because, unlike UN treaty bodies which could only scrutinize the human rights records of States that were Parties to the treaty, the UPR would be universal in nature, regardless of a country's size, wealth, or influence.<sup>16</sup> By establishing a review of the human rights records of every UN Member State, it was hoped that the persistent criticisms of selectivity, politicization, and double standards that had plagued the Commission could be alleviated.<sup>17</sup>

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<sup>15</sup> Lauren, "To Preserve and Built on Its Achievements and to Redress Its Shortcomings": The Journey from the Commission on Human Rights to the Human Rights Council, 336.

<sup>16</sup> Ghanea, Nazila. "From UN Commission on Human Rights to UN Human Rights Council: One Step Forwards or Two Steps Sideways?" *ICLQ International & Comparative Law Quarterly* 55, no. 3 (2006): 704. Accessed October 2, 2015. <http://www.jstor.org/stable/4092647>.

<sup>17</sup> Hickey, Emma. "The UN's Universal Periodic Review: Is it Adding Value and Improving the Human Rights Situation on the Ground?" *ICL Journal*: 1.

## Creation of the UPR

### From CHR Mechanism to Resolution 60/251

The idea of monitoring human rights implementation through review of periodic reports was first established, at the Commission's initiative, in 1956 by an ECOSOC Resolution that requested states to submit reports on progress every three years.<sup>18</sup> However, with the proliferation of international human rights treaties that included reporting requirements themselves, the review of periodic reports was deemed progressively obsolete and was formally abolished by GA Resolution 35/209 in December 1980.<sup>19</sup>

The idea of the UPR itself is often credited to Walter Kälin, a Swiss legal scholar and professor who published a paper on the topic.<sup>20</sup> However, it was Secretary-General Kofi Annan who, in an April 2005 address to the Commission's final session, reasoned that the Council "should have an explicitly defined function as a chamber of peer review. Its main task would be to evaluate the fulfillment by all states of all their human rights obligations...under such a system, every Member State could come up for review on a periodic basis."<sup>21</sup> Initially, WEOG Member States, along with a few large non-governmental organizations (NGOs), were against the idea of a universal review process, instead preferring to preserve the strength of country-specific resolutions.<sup>22</sup> However, proponents of the UPR argued that, for the sake of the Council's credibility, there would

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<sup>18</sup> Alston, Philip. "Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council." *Melbourne Journal of International Law* 7 (2006).

<sup>19</sup> Ibid.

<sup>20</sup> Peter Splinter, Amnesty International Representative to the UN in Geneva, interviewed by Author, November 2 2015, Geneva, Switzerland.

<sup>21</sup> Secretary General Kofi Annan's Address to the Commission on Human Rights, 7 April 2005, available at <http://www.un.org/sg/STATEMENTS/index.asp?nid=1388>

<sup>22</sup> Peter Splinter, Amnesty International Representative to the UN in Geneva, interviewed by Author, November 2 2015, Geneva, Switzerland.

need to be some sort of mechanism to ensure that every country's record would be reviewed.<sup>23</sup> That same year, Canada circulated two non-papers on Peer Review: the first offering two approaches for the review – a Comprehensive Approach and the Interactive Dialogue – and the second combining the two approaches.<sup>24</sup> The Comprehensive Approach comprised of compiling a wide-ranging state report, giving recommendations, a formal interactive dialogue, and publication of conclusions.<sup>25</sup> The Interactive Dialogue proposed a three-hour discussion of a state's pre-published statement on its national human rights situation, with extra information made available by the Office of the High Commissioner for Human Rights (OHCHR).<sup>26</sup> As would be seen later, Canada's proposals effectively guided and shaped the subsequent UPR process. There were also conceptions of the review offered by Mexico and Switzerland, though they varied significantly from their Canadian counterpart's.<sup>27</sup>

Reflecting Annan's vision, GA Resolution 60/251 established the UPR's general outline. Paragraph 5(e) states that the Council shall:

“Undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a

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<sup>23</sup> Peter Splinter, Amnesty International Representative to the UN in Geneva, interviewed by Author, November 2 2015, Geneva, Switzerland.

<sup>24</sup> Gaer, F. D. "A Voice Not an Echo: Universal Periodic Review and the UN Treaty Body System." *Human Rights Law Review* 7, no. 1 (2007): 114.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Peter Splinter, Amnesty International Representative to the UN in Geneva, interviewed by Author, November 2 2015, Geneva, Switzerland.

mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session”<sup>28</sup>

### UPR Tensions during Institution Building Stage

During its first session, the Council established an open-ended Working Group (WG) to determine the UPR’s modalities.<sup>29</sup> Defining the procedures of the new review mechanism was a protracted matter and the subject of a great deal of debate and discussion.<sup>30</sup> During these negotiations, the African Peer Review Mechanism (APRM) was regarded as one possible model.<sup>31</sup> There was some initial confusion as to whether this mechanism would be based on “peer” or “periodic” review.<sup>32</sup> Though the term “periodic” was adopted, many governments persisted that it should still be a review by peers and wished to minimize or exclude NGO and expert involvement.<sup>33</sup> This was despite the active participation of NGOs during the WG.<sup>34</sup> Some other key areas of disagreement and debate included: the sources of information to be used; the composition of the WG facilitating the review; the role of the Troika, OHCHR, special rapporteurs and other stakeholders; and many other concerns such as who would lead discussions, who could intervene, and how recommendations should be framed.<sup>35</sup> These complex

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<sup>28</sup> General Assembly, “Human Rights Council,” A/RES/60/251, 3 April 2006.

<sup>29</sup> Human Rights Council, A/HRC/Resolution/1/103.

<sup>30</sup> Abebe, A. M. "Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council." *Human Rights Law Review* 9, no. 1 (2009): 4.

<sup>31</sup> Ibid.

<sup>32</sup> Brett, Rachel. “Neither Mountain nor Molehill - UN Human Rights Council: One Year On.” *Quaker United Nations Office*, August 2007, 6.

<sup>33</sup> Ibid.

<sup>34</sup> Peter Splinter, Amnesty International Representative to the UN in Geneva, interviewed by Author, November 2 2015, Geneva, Switzerland.

<sup>35</sup> Ibid.

tensions and lengthy deliberations eventually helped shape the UPR into what it is today. Ultimately, consensus on the mechanism's modalities enshrined in the June 2007 GA Resolution 5/1, or the Institution Building Package (IBP), was easily achieved, as the UPR's firm establishment was recognized by all those involved as key for the Council's credibility and success.<sup>36</sup>

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<sup>36</sup> Sweeney, G., and Y. Saito. "An NGO Assessment of the New Mechanisms of the UN Human Rights Council." *Human Rights Law Review* 9, no. 2 (2009): 205.

### **Council Resolution 5/1: How the UPR Works**

Council Resolution 5/1's section on the UPR contains details on the basis, principles, objectives, periodicity, general order, documentation, modalities, outcome, and follow-up of the review.<sup>37</sup> Placed here are the review's basis, principles and objectives, as they are critical to consider while analyzing the procedure as a whole.

#### Basis of the Review

The basis of the review is: the Charter of the United Nations; the Universal Declaration of Human Rights; Human Rights instruments to which a State is party; Voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council; and applicable international humanitarian law.

#### Principles

The universal periodic review should:

1. Promote the universality, interdependence, indivisibility and interrelatedness of all human rights
2. Be a cooperative mechanism based on objective and reliable information and on interactive dialogue
3. Ensure universal coverage and equal treatment of all States
4. Be an intergovernmental process, UN Member-driven and action oriented
5. Fully involve the country under review
6. Complement and not duplicate other human rights mechanisms, thus representing an added value

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<sup>37</sup> Human Rights Council, "Institution-building of the United Nations Human Rights Council," A/HRC/RES/5/1, 18 June 2007.

7. Be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner
8. Not be overly burdensome to the concerned State or to the agenda of the HRC
9. Not be overly long; it should be realistic and not absorb a disproportionate amount of time or human and financial resources
10. Not diminish the HRC's capacity to respond to urgent human rights situations
11. Fully integrate a gender perspective
12. Take into account the level of development and specificities of countries
13. Ensure the participation of all relevant stakeholders, including non-governmental organizations (NGOs) and national human right institutions (NHRIs).

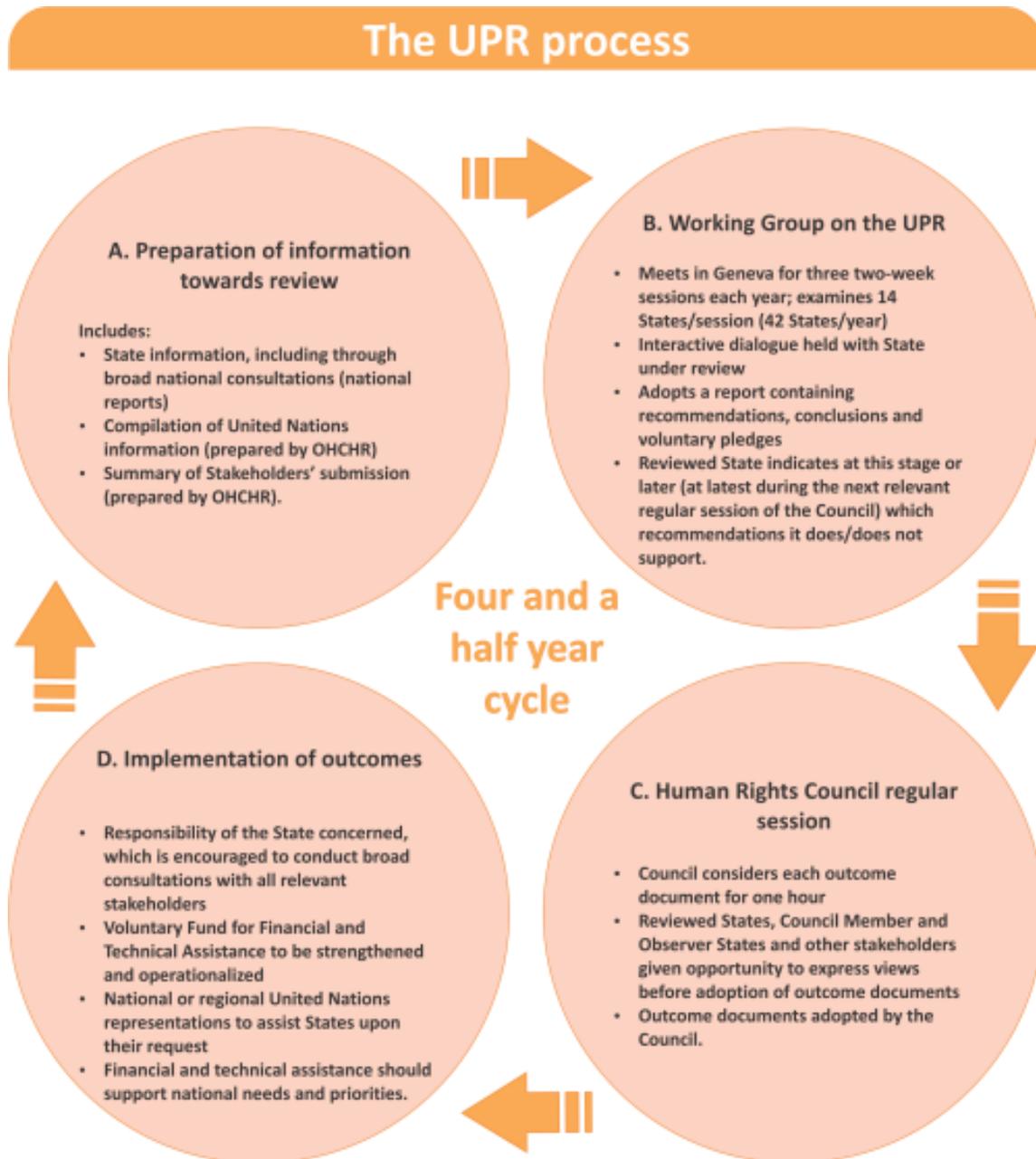
### Objectives

The objectives of the review are:

1. The improvement of the human rights situation on the ground
2. The fulfillment of the State's human rights obligations and commitments and assessment of positive developments and challenges faced by the State
3. The enhancement of the State's capacity and of technical assistance, in consultation with, and with the consent of, the State concerned
4. The sharing of best practice among States and other stakeholders
5. Support for cooperation in the promotion and protection of human rights
6. The encouragement of full cooperation and engagement with the HRC, other human rights bodies and the Office of the UN High Commissioner for Human Rights (OHCHR).

## Procedure

In the interest of limited space and the purposes of this research paper, the lengthy UPR process will be illustrated through the diagram below.<sup>38</sup> This diagram does not explain each aspect of the process in detail but does illustrate the key ones in order to paint a general picture of how the mechanism functions.



<sup>38</sup> Available at <http://co-guide.org/mechanism/universal-periodic-review-upr>

### **Analyzing the UPR**

A central contemporary challenge facing the international community, especially standards-based intergovernmental organizations (IGOs) is how to promote both a vision of and adherence to commonly agreed-on norms.<sup>39</sup> This has become an increasingly important question with the expansion of globalization and the growth and impact of IGOs working in fields such as human rights. One method, which in recent years has been adopted by a few organizations and which has begun to attract increased attention more broadly, is the development of peer-based initiatives to assess performance and make recommendations on improving adherence to shared norms.<sup>40</sup> Notable but significantly differing examples include the Development Assistance Committee peer review process of the Organization for Economic Co-operation and Development (OECD), the previously mentioned APRM of the African Union (AU), and the Council's UPR process. Examining the UPR, which is unlike any other mechanism in the UN human rights system, is critical because how it functions and how it is perceived considerably impacts the functioning and perception of the Council as a whole.

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<sup>39</sup> McMahon, Edward. "Herding Cats and Sheep: Assessing State and Regional Behavior in the Universal Periodic Review Mechanism of the United Nations Human Rights Council." University of Vermont, July 2010: 3.

<sup>40</sup> Ibid.

## Primary Strengths of the UPR

### Universality

The principal strength of the UPR undoubtedly lies in its universality. In the Commission, many countries felt that standing agenda items did not provide equal attention to all UN Member States.<sup>41</sup> On the other hand, treaty bodies could only address specific issues and special rapporteurs could only visit countries that agreed to invite them. Therefore, human rights situations, however grave, in some countries garnered little to no discussion for years. It became an informal custom to place more attention on regions traditionally associated with human rights challenges, thus neglecting the challenges facing countries with supposedly high human rights standards.<sup>42</sup> This ultimately led to complaints of selectivity and double standards, especially from the States and regions being criticized regularly. Before the UPR was established, it was difficult to imagine the human rights situations of powerful countries under public or peer scrutiny. Through the universal mechanism, the Council has examined country situations that are rarely spotlighted in international forums, and has also shed light on human rights concerns in states with generally strong human rights performance where such issues would otherwise have been overlooked.<sup>43</sup> While the mechanism's functional value in examining all human rights issues in each and every State is apparent, it is also powerful symbolically. The UPR validates the idea that human rights is a legitimate matter of concern for the international community and cannot be covered by the veil of national

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<sup>41</sup> UPR Info, "A Guide for Recommending States at the UPR," 6, available at [http://www.upr-info.org/sites/default/files/general-document/pdf/upr\\_info\\_guide\\_for\\_recommending\\_states\\_2015.pdf](http://www.upr-info.org/sites/default/files/general-document/pdf/upr_info_guide_for_recommending_states_2015.pdf)

<sup>42</sup> UPR Info, "Analytical Assessment of The Universal Periodic Review 2008-2010," 10, available at [http://www.upr-info.org/sites/default/files/general-document/pdf/upr-info\\_analytical\\_assessment\\_of\\_the\\_upr\\_2008-2010\\_05-10-2010.pdf](http://www.upr-info.org/sites/default/files/general-document/pdf/upr-info_analytical_assessment_of_the_upr_2008-2010_05-10-2010.pdf)

<sup>43</sup> Human Rights Watch, "Curing the Selectivity Syndrome: The 2011 Review of the Human Rights Council," June 2010, 12, available at <https://www.hrw.org/sites/default/files/reports/hrc0610webwcover.pdf>

sovereignty.<sup>44</sup> It also conveys the message that human rights belong to everybody, and that each government is accountable.<sup>45</sup> Lastly, according to Blaise Godet, former Swiss Ambassador to the UN in Geneva and Vice President of the Council's First Cycle, "Most countries have understood that human rights is a necessary dimension in international relations. It is a fact of life. It is not a dirty word. It is something that every country has to face, respect, implement, and improve."<sup>46</sup>

### Public Documentation, Catalyst, and Accessibility

Besides the twenty-page national report prepared by the State under review (SuR), the OHCHR also prepares a ten-page compilation of UN information (including Special Procedures reports, human rights treaty body reports, and other relevant UN documentation) as well as another ten-page summary of information received from civil society stakeholders such as National Human Rights Institutions (NHRIs) and NGOs. Andrew Clapham, Professor of Public International Law at the Graduate Institute of International and Development Studies in Geneva, commented, "There are documents, official and NGO, for every single State which you can look up online. We now have a concrete evaluation of every state's human rights records and what needs to be done...and that is very valuable"<sup>47</sup>

In this way, the UPR serves as a genuine catalyst for other instruments in the UN human rights protection system, including the Treaty Bodies and Special Procedures. It brings together the knowledge and information of these systems, and strengthens their

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<sup>44</sup> Nicolas Agostini, International Federation for Human Rights Representative to the UN in Geneva, interviewed by Author, October 30 2015, Geneva, Switzerland.

<sup>45</sup> Peter Splinter, Amnesty International Representative to the UN in Geneva, interviewed by Author, November 2 2015, Geneva, Switzerland.

<sup>46</sup> Blaise Godet, former Swiss Ambassador to the UN in Geneva and Vice President of the UN Human Rights Council's First Cycle, interviewed by Author, October 30 2015, Geneva, Switzerland.

<sup>47</sup> Andrew Clapham, Professor of Public International Law at the Graduate Institute of International and Development Studies in Geneva, interviewed by Author, October 15 2015, Geneva, Switzerland.

observations and proposals by providing them with a global tribunal and, in many cases, by including them in the recommendations issued to the SuR.<sup>48</sup> Being a policy plus practice model, the interrelatedness of the UPR with these other mechanisms reinforces and strengthens the work of the Council and the broader UN human rights system.<sup>49</sup>

Another positive aspect of the UPR is its accessibility through public webcast on the OHCHR's website, and the fact that it is recorded and can be viewed at any time, therefore making the entire process more transparent.<sup>50</sup> Besides the secretariat's resources online, there are also NGOs such as UPR Info that maintain open databases and statistics on all UPR recommendations and voluntary pledges across several categories, as well as links to key UPR documents and analyses.

### Engagement between Countries

One of the main sources of success for the UPR is the fact that it is a shared experience for governments in which all States both make and receive recommendations from their peers.<sup>51</sup> Precisely because the process is political and peer-driven, recommendations delivered by other States can carry more weight than those delivered by experts, mechanisms, or similar bodies.<sup>52</sup> Additionally, States that normally may not engage in discussion with each other are able to do so within this forum. Ljiljana Stancic, Human Rights Officer in the Council Branch of the OHCHR agreed that “the sheer magnitude of engagement of countries with one another is a very good by-product of this

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<sup>48</sup> Hickey, “The UN’s Universal Periodic Review: Is it Adding Value and Improving the Human Rights Situation on the Ground?” 50.

<sup>49</sup> UPR Info, “Analytical Assessment of The Universal Periodic Review 2008-2010,” 10, available at [http://www.upr-info.org/sites/default/files/general-document/pdf/upr-info\\_analytical\\_assessment\\_of\\_the\\_upr\\_2008-2010\\_05-10-2010.pdf](http://www.upr-info.org/sites/default/files/general-document/pdf/upr-info_analytical_assessment_of_the_upr_2008-2010_05-10-2010.pdf)

<sup>50</sup> Human Rights Watch, “Curing the Selectivity Syndrome,” 12-13.

<sup>51</sup> Human Rights Watch, “Curing the Selectivity Syndrome,” 12.

<sup>52</sup> Nicolas Agostini, International Federation for Human Rights Representative to the UN in Geneva, interviewed by Author, October 30 2015, Geneva, Switzerland.

process...even the big countries are forced to think about the issues and problems of their less powerful counterparts, listen to them, and provide recommendations...and vice versa.”<sup>53</sup> A positive element that could develop from such engagement is, for example, bilateral assistance agreements or programs between developed and developing nations.

#### Involvement of Different Stakeholders: OHCHR and NGOs

In addition to documentation and public webcasting, the OHCHR supports the UPR process in numerous ways. The Office, with separate branches for both the Council and the UPR, also develops training modules, briefs States and other stakeholders on the mechanism, provides technical assistance to strengthen national processes to engage with the UPR and other human rights mechanisms, as well as support to follow-up on recommendations.<sup>54</sup> The secretariat serves as institutional memory for the Council and an impartial international civil service to provide advice and guidance to governments on procedures, rules and regulations.<sup>55</sup> For example, the Office supports the troika<sup>56</sup> in the performance of their role and helps prepare the outcome report for the troika’s and reviewed state’s approval. Most importantly, since the UPR is so political, the OHCHR functions to safeguard and facilitate the entire process.<sup>57</sup>

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<sup>53</sup> Ljiljana Stancic, Human Rights Officer at OHCHR Human Rights Council Branch, interviewed by Author, October 14 2015, Geneva, Switzerland.

<sup>54</sup> “About OHCHR,” OHCHR Report 2014, available at [http://www2.ohchr.org/english/OHCHRReport2014/WEB\\_version/allegati/2\\_About\\_OHCHR\\_2014.pdf](http://www2.ohchr.org/english/OHCHRReport2014/WEB_version/allegati/2_About_OHCHR_2014.pdf)

<sup>55</sup> Ljiljana Stancic, Human Rights Officer at OHCHR Human Rights Council Branch, interviewed by Author, October 14 2015, Geneva, Switzerland.

<sup>56</sup> The troika assists the Working Group (WG) with the human rights review of a state. It is a group of three delegates from Human Rights Council members selected by drawing lots. The troika representatives have two main roles: (1) receive all written questions and/or issues raised by the WG and relays them to the State under Review (SuR) and (2) help preparing the report of the WG with the assistance of the UN Secretariat and the SuR. One Troika member is in charge of introducing the list of recommendations before its adoption at the WG.

<sup>57</sup> Ljiljana Stancic, Human Rights Officer at OHCHR Human Rights Council Branch, interviewed by Author, October 14 2015, Geneva, Switzerland.

Civil society, specifically NGOs, also play a vital role. The UPR has provided a valuable platform for these stakeholders to engage with a wide range of relevant actors on pressing human rights issues. Firstly, States are encouraged to conduct broad consultations with NGOs and other civil society stakeholders at the national level in the preparation of their report. According to Peter Splinter, Amnesty International's Representative to the UN in Geneva, the argument behind this was that "if the UPR is going to be successful, it has to include the broader society, not just the national ministry...now, more than a majority of nations have some kind of consultations with larger civil society."<sup>58</sup> Secondly, NGOs can forward joint or individual reports on the SuR's human rights situation to the OHCHR summary. Though they do not actively participate in the WG review, NGOs can observe the session, organize parallel or side events, provide briefings, advocate and lobby governments, and make oral statements on the floor during the consideration and adoption of reports in the Council plenary session.

The UPR presents unprecedented advocacy opportunities at the international and national level for human rights supporters seeking to spotlight concerns and push for change.<sup>59</sup> At the international or institutional level, various States have displayed openness in listening to the concerns of NGOs and NHRIs, and echoing them by formulating related questions and recommendations to the SuR.<sup>60</sup> At the national level, there has also been a greater willingness among relevant national state actors to initiate or

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<sup>58</sup> Peter Splinter, Amnesty International Representative to the UN in Geneva, interviewed by Author, November 2 2015, Geneva, Switzerland.

<sup>59</sup> Human Rights Watch, "Curing the Selectivity Syndrome," 12.

<sup>60</sup> Rathgeber, Theodor. "The HRC Universal periodic Review: A preliminary assessment," *Friedrich Ebert Stiftung*, July 2008, available at <http://library.fes.de/pdf-files/bueros/genf/05479.pdf>

continue dialogue or cooperation with civil society on contentious human rights issues.<sup>61</sup> Lastly, though States are primarily responsible for implementing their accepted UPR recommendations, NGOs play an important role in monitoring and following up on the process. According to Nicolas Agostini, Representative of the International Federation for Human Rights (FIDH) to the UN in Geneva, while accepted recommendations are evidently useful, even “those that have not been accepted provide NGOs like us with a certain advocacy value... especially when there are a large number of recommendations on a specific issue.”<sup>62</sup> Though the role of civil society is limited, due to previously mentioned State emphasis on the peer-led aspect of this process, the UPR certainly provides a more institutionalized and bottom-up avenue to engage with national governments and facilitate the realization, promotion, and protection of widespread international human rights.

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<sup>61</sup> CIVICUS, “Enhancing the Effectiveness of the UN Universal Periodic Review: A Civil Society Perspective,” September 2015, 3, available at [http://www.upr-info.org/sites/default/files/general-document/pdf/civicus\\_enhancing\\_the\\_effectiveness\\_upr\\_2015.pdf](http://www.upr-info.org/sites/default/files/general-document/pdf/civicus_enhancing_the_effectiveness_upr_2015.pdf)

<sup>62</sup> Nicolas Agostini, International Federation for Human Rights Representative to the UN in Geneva, interviewed by Author, October 30 2015, Geneva, Switzerland.

## **The Primary Challenges to the UPR**

### Superficiality

Given that the duration of the review for each country in the WG was three hours during the first cycle and is now three and a half hours during the second cycle, many have criticized the superficial nature of the UPR. In this time, it is impossible to address all the human rights issues within a country, especially considering the amount of information that goes into a review. However, the UPR's WG session is a political and discussion-based process and is not meant to serve as a rigorous technical review of States' human rights records and situations. As implied in its principles, the review must complement and help enforce, rather than compete with or replace, recommendations from other more expert-led and detail-oriented human rights mechanisms such as treaty bodies and Special Procedures.

### Politicization

Since the UPR interactive dialogue is primarily conducted on an intergovernmental basis, there is a tangible danger that the process becomes overly politicized. In a number of cases, governments have been able to avoid critical assessments by rallying the support of "friends" eager to praise their human rights record without devoting any attention to the shortcomings that exist regarding human rights in all States.<sup>63</sup> For example, for its first cycle, Iran lobbied and rallied friendly nations not particularly known for their respect for human rights - such as Sudan, China, Cuba, Syria, and Zimbabwe - to provide a counterpoint to the criticisms they were facing.<sup>64</sup> Similarly, Venezuela was accused of manipulating its list of speakers by rallying allied states before

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<sup>63</sup> Human Rights Watch, "Curing the Selectivity Syndrome," 13.

<sup>64</sup> Zarnow, Zach. "Universal Periodic Review: Problems and Potential." *Human Rights Brief*. April 6, 2010. Accessed October 3, 2015. <http://hrbrief.org/2010/04/universal-periodic-review-problems-and-potential/>.

the WG, resulting in the monopolization of speaking time and the exclusion of more pertinent recommendations.<sup>65</sup> This practice, informally known as “stacking the audience,” undermines the UPR’s principle of transparency and objectivity, as well as its goal of engendering meaningful discussion around human rights records and situations.

Furthermore, States belonging to the same or similar regional groupings rarely criticize each other. For example, out of the 65 statements made during the first review of Tunisia, at a time when it was facing numerous human rights challenges, 50 of them were “favorable” and came mainly from African and Muslim countries.<sup>66</sup> This sort of regional leniency has become apparent because “if you look at the general recommendations made by, for example, EU member states to other EU member states or African countries to other African countries, they are quite weak. What seems to be the general thrust is that proximity leads to softness as opposed to rigor.”<sup>67</sup> Correspondingly, members of the 57-strong Organization of the Islamic Conference (OIC) have also largely followed the trend of praising each other’s records.<sup>68</sup>

Devolving into a mutual admiration or praise society serves as a looming danger to the UPR process. Within this context, States hope that the positive comments they make, whether warranted or not, about others will be echoed in return when they themselves face review. This is especially true for like-minded states with significant

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<sup>65</sup> “Venezuela Rallies to Avoid Genuine Reivew.” *UN Watch*. Accessed October 17, 2015.

<http://blog.unwatch.org/index.php/2012/03/15/venezuela-rallies-allies-to-avoid-genuine-review/>

<sup>66</sup> Abebe, “Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council,” 19-20.

<sup>67</sup> Peter Splinter, Amnesty International Representative to the UN in Geneva, interviewed by Author, November 2 2015, Geneva, Switzerland.

<sup>68</sup> UN Watch, “Mutual Praise Society,” 2009, 3, available at <http://www.unwatch.org/atf/cf/%7B6DEB65DA-BE5B-4CAE-8056-8BF0BEDF4D17%7D/Mutual%20Praise%20Society.pdf>

political, policy or other affinities and interests in common.<sup>69</sup> A Geneva-based NGO, UN Watch, claims that in the first cycle of the UPR, a majority of 32 out of 55 countries acted as a mutual praise society, misusing the process in order to legitimize human rights abusers, instead of holding them to account.<sup>70</sup> It considers 19 of these countries as “destructive” i.e. States that specifically praised, legitimized and encouraged country policies and practices that violate human rights.<sup>71</sup> In a scathing criticism of the process, a joint NGO Statement during the Council’s eighth session read:

“On the UPR Working Group, we note the value of a cooperative approach but express serious concern at the practice of some States which have been lining up only to praise their allies. This approach runs contrary to the agreed principle that the UPR should be conducted in an ‘objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner’. In this sense, the UPR has not lived up to the expectations of a move away from the ‘politicisation’ of the past. Indeed, in many cases, this ‘politicisation’ has seemed more pronounced than ever. In several instances information provided by states under review, or by those praising them, has been misleading at best.”<sup>72</sup>

Undoubtedly, these trends are worrying and do undermine the principal principles and objectives of the UPR. However, given the immensely political dimensions of human rights, as well as the political nature of the Council and the intergovernmental UPR process itself, criticisms of “politicization” are rather unhelpful. In an April 2003

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<sup>69</sup> McMahon, Edward, and Marta Ascherio. "A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council." *Global Governance* 18 (2012): 245.

<sup>70</sup> UN Watch, “Mutual Praise Society,” 8.

<sup>71</sup> Ibid.

<sup>72</sup> NGO Statement on Item 6 at the Human Rights Council’s 8<sup>th</sup> session, 13 June 2008, available at [http://olddoc.ishr.ch/lca/statements\\_council/otherngos/upr\\_statement\\_final\\_13\\_june\\_2008.pdf](http://olddoc.ishr.ch/lca/statements_council/otherngos/upr_statement_final_13_june_2008.pdf)

statement to the fifty-ninth Session of the Commission, Sérgio Vieira de Mello, former UN High Commissioner for Human Rights, noted: “Most of the people in this room work for governments or seek to affect the actions of governments. That is politics. For some to accuse others of being political is a bit like fish criticizing one another for being wet. The accusation hardly means anything anymore.”<sup>73</sup> The practices of stacking the audience, regional leniency, and mutual praise among like-minded States are not surprising given the sizeable political umbrella under which they operate. The long-term success of the UPR will depend on the ability of States to establish a norm of critiquing at least aspects of fellow member states’ human rights situations without engendering counterclaims of disloyalty or lack of cooperation.<sup>74</sup> Ultimately, it is the responsibility of civil society, media, and most importantly, States themselves, to ensure that this process, however politicized it may be, remains meaningful and contributes to the concrete improvement of human rights situations on the ground.

#### Lack of Punitive Sanctions and Surplus of Empty Rhetoric

Like many mechanisms within the UN system, the UPR lacks punitive sanctions in cases of non-compliance or non-implementation. The recommendations are non-binding and after the discussions and reports in Geneva, the SuR is free to implement what it sees fit. Though countries must report back on progress, either through voluntary mid-term reports or updates during their second and subsequent cycles of review, there are few ramifications for inadequate compliance. Rather, the UPR operates as a cooperative and dialogue-centered mechanism that is non-adversarial in nature. Due to

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<sup>73</sup> Statement of the High Commissioner for Human Rights Sergio Vieira De Mello to the closing meeting of the 59<sup>th</sup> Session of the Commission on Human Rights, 25 April 2003, available at <http://www.usp.br/svm/textos/t-dh-07.php>

<sup>74</sup> McMahon and Ascherio, "A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council," 246.

this fact, “there is an inherent danger of this mechanism just becoming a talking shop...but this is how it works in politics.”<sup>75</sup> While this danger of the UPR becoming just a talking shop has always existed and will continue to do so, there are potential safeguards.

Ultimately, as with the aspects of politicization, it is the responsibility of civil society, the OHCHR, special rapporteurs, and other stakeholders to prevent this from establishing itself into the working culture of the Council. At the same time, when detractors complain about the lack of enforcement or punishment mechanisms, they suggest in a way that there is some way to apply these. However, critically thinking, “What would that enforcement mechanism do? Clearly the Council cannot use force...and sanctions are not very useful instruments here...so what are we left with? Some sort of dialogue and cooperation, which is what the Council has with the UPR.”<sup>76</sup>

Peer reviews, like the UPR, have become one of the most widely used “soft instruments” of global governance and function primarily as tools for international cooperation that respect sovereignty and diversity.<sup>77</sup> While some dismiss these types of instruments, regulatory scholarship suggests that peer review of the kind undertaken by the UPR can be effective in some circumstances, which is certainly better than nothing.<sup>78</sup> It has been argued that although states may initially participate in cooperative regulatory regimes in a perfunctory manner, or for reasons at odds with stated purposes, they are frequently drawn into more meaningful commitments simply through their

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<sup>75</sup> Ljiljana Stancic, Human Rights Officer at OHCHR Human Rights Council Branch, interviewed by Author, October 14 2015, Geneva, Switzerland.

<sup>76</sup> Andrew Clapham, Professor of Public International Law at the Graduate Institute of International and Development Studies in Geneva, interviewed by Author, October 15 2015, Geneva, Switzerland.

<sup>77</sup> Conzelmann, Thomas. "Reporting and Peer Review in the Implementation of International Rules: What Role for Non State Actors?" *The Ashgate Research Companion to Non State Actors*, 2011, 321.

<sup>78</sup> Charlesworth, Hilary, and Emma Larking. "Introduction." In *Human Rights and the Universal Periodic Review Rituals and Ritualism*. Cambridge: Cambridge University Press, 2014, 20.

representatives' embodied experience of participation and their desire to earn the esteem and respect of their peers.<sup>79</sup> Arguably, this can be seen at the UPR, as States often announce human rights initiatives prior to their review and multiple mission staffs in Geneva display a marked willingness to engage with other diplomats and civil society throughout the review process.<sup>80</sup> Lastly, one must consider that a number of States do participate in genuinely good faith during the UPR.

### Recommendations

While an entire research paper could be devoted to analyzing, both qualitatively and quantitatively, the type of recommendations made and accepted by States during the UPR, this section seeks to highlight some of the core challenges concerning this central aspect of the review process. Firstly, recommendations are made and ascribed individually to the State making them, without any attempt to produce agreed recommendations, and without any quality control on wording or substance.<sup>81</sup> Secondly, there seems to be “a trend of a certain number of countries making recommendations that are vague, not measurable, and that ultimately are not relevant in terms of pushing for human rights reform at the national level.”<sup>82</sup> For example, in session 3, Ghana vaguely recommended Botswana to “seek contributions from the international community in the Government’s efforts to promote rights.” Imprecise recommendations are counterproductive and make monitoring implementation and follow-up impossible.

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<sup>79</sup> Milewicz, Karolina, and Robert Goodin. "The Deliberative Capacity of International Organizations." In *Human Rights and the Universal Periodic Review Rituals and Ritualism*. Cambridge: Cambridge University Press, 2014, 10-11

<sup>80</sup> Schokman, Ben, and Phil Lynch. "Effective NGO Engagement with the Universal Periodic Review." In *Human Rights and the Universal Periodic Review Rituals and Ritualism*. Cambridge: Cambridge University Press, 2014, 132.

<sup>81</sup> Brett, Rachel. “A Curate’s Egg - UN Human Rights Council: Year 3.” *Quaker United Nations Office*, June 2009, 7.

<sup>82</sup> Nicolas Agostini, International Federation for Human Rights Representative to the UN in Geneva, interviewed by Author, October 30 2015, Geneva, Switzerland.

FIDH deplures that it is these types of recommendations that are the most accepted by the SuR because they involve little to no action in terms of policy, legislative, or other societal changes at the national level.<sup>83</sup> Similarly, in March 2015, a group of 47 NGOs released a statement maintaining that it is not the number of high recommendations that challenges the UPR but argue rather that “weak and vague recommendations are the issue... what really undermines the promotion of human rights is the sole acceptance by some states of the least binding recommendations.”<sup>84</sup> Additionally, the SuR can choose which recommendations to accept, which to give further consideration to, and which to note. “Noted” recommendations are, in other words, rejected. Most importantly, SuRs are not obliged to explain or justify why a recommendation is noted, which is unfortunate considering that these recommendations are most likely the ones to make tangible differences in practice. Rather, only recommendations distinctly accepted by the SuR can be monitored within the formal process.

The quality and quantity of accepted and noted recommendations reflects the view of many States that reform through the UPR must be largely evolutionary, rather than revolutionary.<sup>85</sup> Even so, States must be encouraged to make SMART - Specific, Measurable, Achievable, Relevant, and Time-Bound – recommendations.<sup>86</sup> Furthermore, though unlikely to happen in the near future, States should also be obliged to provide reasons for their rejection of recommendations, especially if numerous recommending States repeat a certain “noted” recommendation.

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<sup>83</sup> Ibid.

<sup>84</sup> NGO Statement on Item 6 at the Human Rights Council’s 28<sup>th</sup> session, 20 March 2015, available at <http://en.alkarama.org/oman/1630-united-nations-47-ngos-call-upon-un-member-states-to-focus-on-quality-of-recommendations-issued-during-the-universal-periodic-review>

<sup>85</sup> McMahon, “Herding Cats and Sheep: Assessing State and Regional Behavior in the Universal Periodic Review Mechanism of the United Nations Human Rights Council,” 17.

<sup>86</sup> UPR Info, “A Guide for Recommending States at the UPR,” 27-29.

## Non-Cooperation

As mentioned before, the principal strength of the UPR lies in its universality. Therefore, the entire exercise is in danger if even one State decides not to or fails to cooperate. The only attempt to deal with this is vaguely described in Article 38 of Resolution 5/1 which states, “After exhausting all efforts to encourage a State to cooperate with the universal periodic review mechanism, the Council will address, as appropriate, cases of persistent non-cooperation with the mechanism.”

The most significant testing point of this hazard was in March 2012 when Israel’s foreign minister severed all working relations with the Council and the OHCHR due to the perceived selectivity and disproportionate bias of the Council against the Jewish State.<sup>87</sup> This confirmed Israel’s likely non-participation in their January 2013 UPR, which would make it the first country to miss a scheduled review for reasons other than a domestic urgency.<sup>88</sup> Echoing concerns from many in civil society, AI criticized this decision by reasoning that, “The UPR stands to lose the compelling legitimacy it derives from being applied even-handedly to all...why should states that would prefer to escape scrutiny...or are severely resource constrained submit to this process if Israel’s non-compliance demonstrates that it is no longer universal?”<sup>89</sup> Ultimately, the Council voiced regret at Israel’s decision, postponed the country’s examination to later that year, and called on the President of the Council to “take all appropriate” steps to encourage Israel

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<sup>87</sup> Connor, Richard. "Israel Severs Relations with UN Human Rights Council."

*DW*. March 26, 2012. Accessed October 24, 2015. <http://www.dw.com/en/israel-severs-relations-with-un-human-rights-council/a-15838831>.

<sup>88</sup> Navoth, Michal. "Israel's Relationship with the UN Human Rights Council: Is There Hope for Change?" *Jerusalem Center For Public Affairs*. April 6, 2014. Accessed October 24, 2015. <http://jcpa.org/article/israels-relationship-un-human-rights-council/>.

<sup>89</sup> Splinter, Peter. "The Universal Periodic Review, Human Rights, and Israel: What's at Stake." *Amnesty International*. January 29, 2013. Accessed October 24, 2015. <https://www.amnesty.org/en/latest/campaigns/2013/01/the-universal-periodic-review-human-rights-and-israel-what-s-at-stake/>.

to resume its cooperation.<sup>90</sup> Israel eventually returned to the Council for its rescheduled second review in October 2013, albeit with strong reservations.

While Israel's non-cooperation was the biggest political challenge to universality, there are also many practical and logistical difficulties of participation for many developing states. A frequently cited criticism of the UPR has been that smaller and less developed countries do not have adequate resources to sufficiently prepare for and participate in the process.<sup>91</sup> In the first cycle, many of these states submitted extremely scant national reports while some countries, such as Cape Verde, did not submit a report at all. Understandably, it is also extremely difficult for these states to bring experts or high-level national representatives to Geneva multiple times a year, let alone deal with the implementation of countless recommendations.

Concerning the political challenge to universality, one must remember that a State's participation in the UPR is completely voluntary. In the early stages of the first cycle, if a solitary State or group of States decided not to participate for political reasons, it might have led to the total downfall of the procedure. However, this was not the case and besides Israel's challenge in 2013, there have not been many critical situations of non-cooperation or participation due to political reasons. Rather, the practical and logistical difficulties of participation and cooperation, with the UPR in specific and the Council in general, have been and are much more acute. In response, the OHCHR, in addition to already providing a range of advisory services and technical assistance, has

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<sup>90</sup> "In Face of Non-cooperation, UN Calls on Israel to Take Part in Human Rights Review." UN News Center. January 29, 2013. Accessed October 24, 2015.  
<http://www.un.org/apps/news/story.asp?NewsID=44026#.VjtcbMru5pk>.

<sup>91</sup> Hickey, "The UN's Universal Periodic Review: Is it Adding Value and Improving the Human Rights Situation on the Ground?" 16.

established resources such as the Voluntary Technical Assistance Trust Fund to Support the Participation of Least Developed Countries (LDCs) and Small Island Developing States (SIDS) in the work of the Human Rights Council (HRC) and the Voluntary Fund for Financial and Technical Assistance for the Implementation of the Universal Periodic Review. States, intergovernmental and non-governmental organizations, or private institutions and individuals must make contributions voluntarily. Predictably, the OHCHR is struggling to secure financial commitments from donors, forcing it to prioritize requests and therefore considerably limit coverage.<sup>92</sup>

#### Excessive Focus on Geneva Round

Though many focus on the Geneva round of the UPR, what happens in the “Capital of Peace” is sandwiched between two rounds that occur in the SuRs themselves – consultations and documentation beforehand and implementation and follow-up after. Though the process in Geneva serves as an important tool and catalyst, perhaps what is much more important is what happens in-country for preparation and what happens in-country afterwards.<sup>93</sup> While the interactive dialogue, exchange of recommendations, and so on are valuable components of the process, what ultimately matters the most in reality is the national implementation of recommendations and the tangible improvement of human rights situations on the ground.

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<sup>92</sup> Abebe, "Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council," 25.

<sup>93</sup> Peter Splinter, Amnesty International Representative to the UN in Geneva, interviewed by Author, November 2 2015, Geneva, Switzerland.

## Conclusion

It is highly unlikely that the shortcomings of the UPR or the Council are going to be addressed through structural and procedural reform in the short term, and whatever changes do occur, for better or worse, will come out of practice.<sup>94</sup> It is thus the responsibility of, first and foremost, UN Member States to participate and cooperate with genuine political will and good faith, from the documentation to the implementation stage and everything in between. The interaction of and amongst OHCHR, national and international civil society, scholars, and other stakeholders in the process will play an increasingly important role in determining the effectiveness of the procedure, both in and out of Geneva. Ultimately, the UPR is a compromise, born out of the need to have a meaningful instrument to promote universal human rights norms while respecting the reality of a consensus-based decision-making process.<sup>95</sup> As mentioned before, it is largely evolutionary rather than revolutionary in nature. However, the sheer existence and functioning of such a mechanism undoubtedly lends both legitimacy and added value to the reformed Council. Therefore, it should not be taken for granted. Rather, it should be nurtured with the understanding that all states – developed and developing, North and South, East and West – face human rights challenges, but that these situations can be addressed and improved through collaboration between all those involved. Only then can we inch one step closer towards Kofi Annan’s vision of development, security, and human rights for all.

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<sup>94</sup> Ibid.

<sup>95</sup> McMahon, Edward. “The Universal Periodic Review: A Work in Progress,” *Freidrich Ebert Stiftung*, September 2012, 3, available at <http://library.fes.de/pdf-files/bueros/genf/09297.pdf>

### Potential Future Research

As mentioned in the introduction, I am seeking to build on this research and analysis for my final year thesis at Pomona College. As the UPR's second cycle nears its conclusion, I could advance in numerous different ways. The following are a few:

- Analyze recommendations by collecting data on the overall number of recommendations, recommendations by action category, SuR responses to recommendations, SuR responses by action category, recommendations and SuR responses by action category and region, and breakdown of recommendations by issue and region to conclude if any patterns or trends emerge from the data.
- Conduct case studies, perhaps one country from each UN regional group, to examine national level measures before and after the UPR process in Geneva.
- Critically compare and contrast the UPR to the OECD or AU peer review mechanisms.
- Analyze the UPR in the broader context of the Council, along with Special Procedures, Treaty bodies and so on, keeping in mind that the UPR cannot directly respond to immediate human rights violations and concerns on the ground.

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