Evolution Not Revolution

The First Two Cycles of the UN Human Rights Council
Universal Periodic Review Mechanism

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- The Universal Periodic Review (UPR) is a process, initiated in 2007, in which all UN member states' human rights performances are examined over a four-and-a-half year period (»cycle«) by other states. The UPR's stated purpose is to promote and deepen respect for human rights through the provision of feedback to UN member states on their human rights performance. The fundamental, underlying question is to what extent is this a meaningful exercise, or, by contrast, a feel-good exercise without substance?

- Based on the analysis of the first two cycles of the UPR, this paper suggests that the mechanism does appear to be generating some traction in promoting human rights. Key indicators include the number and types of recommendations being made, the kinds of issues being raised, and the levels of acceptance of recommendations by states. Perhaps unsurprisingly it also finds that more democratic states make more active use of the UPR. Areas of concern include continuing significant levels of recommendations that are vague or of limited substance.

- As a peer review mechanism, the UPR process emphasizes state-to-states relations and has thus established a precedent regarding the legitimacy of examining a state's human rights records. In the current international environment states want to »look good« and to at least appear to be respecting human rights. This has the potential effect of enmeshing them in the spider web of international norms and rules regarding promotion of human rights. In addition, though there are only limited formal opportunities for civil society engagement, the UPR process can provide valuable cover to civil society domestically.

Dialogue on Globalization

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List of Acronyms

APRM	African Peer Review Mechanism
CAT	Convention Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
CSO	Civil Society Organization
EEG	East European Group
GRULAC	Latin American Group
ICCPR	International Covenant on Civil and Political Rights
ICERD	Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social, and Cultural Rights
IGO	Intergovernmental Organization
OECD	Organization of Economic Cooperation and Development
R2P	Responsibility to Protect
SuR	State under Review
UNHRC	UN Human Rights Council
UPR	Universal Periodic Review
WEOG	Western European and Others Group

1. Introduction[1]

It is important to examine the functioning of the UN Human Rights Council (UNHRC) Universal Periodic Review process for several key reasons. First, it stands at the intersection of, and has the potential to supersede the debate concerning universal versus culturally relative interpretations of the human rights concept. In recent years a burgeoning literature has posited the existence of middle ground between these two perspectives; the UPR appears to fit into this nexus.[2]

Second, its success can counter arguments that the evolving international human rights legal regime simply isn't working. This argument suggests that the legal regime evolves in a mainly consensual fashion, and that human rights – abusing states are unlikely to support the development of a legal environment which could be employed against them. Proponents of this perspective therefore posit that efforts to create a binding system of international norms promoting human rights is doomed to failure.[3] In response, defenders of the human rights regime suggest that its primary nature is evolutionary, rather than revolutionary; that its intent has been to promote change gradually from within states rather than to have it imposed externally. In referring to human rights treaties, Hurst Hannum has observed that »The goal has always been to persuade governments to change laws and policies, not to impose human rights law primarily through courts, economic sanctions, or military campaigns lead by ›foreigners‹.«[4] Providing just a few examples of state-initiated change as a result of this emerging human rights regime, Kenneth Roth has noted that:

»Kenya cited the women's rights treaty to grant women equal access to inheritances. Europe's human rights treaty led Britain to end corporal punishment in schools, Ireland to decriminalize homosexual acts, and France to grant detained people access to lawyers. A new labor treaty spurred an increased minimum wage, social security protections, and days off for domestic workers in parts of Asia and Africa. The South African Constitutional Court ruled that the right to health requires that people with HIV be granted access to anti-retroviral drugs, saving hundreds of thousands of lives«.[5]

Based on the analysis of the first two cycles of the UPR, this paper suggests that, while there are some questionable aspects of the UPR including continuing differences in the way it is utilized by states from various regions, the mechanism does appear to be generating some traction in promoting human rights. Key indicators include the number and types of recommendations being made, the kinds of issues being raised, and the levels of acceptance of recommendations. Another interesting factor relates to the dynamics in the utilization of the UPR according to the governance typology of participating states – more democratic states make more active use of the UPR.

In this paper we first briefly place the UPR in the context of developing international organization peer review norms. We then describe the UPR functioning and present research into patterns of and compliance with recommendations to support this perspective. This is followed by analysis of the research and discussion of overall conclusions.

2. The UPR and its Context

It is possible to map an emerging continuum of actions the international community can take bilaterally or multilaterally to promote universal human rights norms of conduct. In a descending i.e. most-to-least order of magnitude of intervention these include a) the Responsibility to Protect (R2P) doctrine; b) targeted sanctions; c) naming and shaming; d) international organization normsetting, including peer reviews; e) bilateral or multi-lateral statements, and f) no action. In general, the less coercive of these – including peer reviews – incur lower costs in financial, political or other terms to the states imposing and receiving them as compared to, for example, military interventions undertaken under Basket 3 of R2P. There is thus a utility in exploring how they can be utilized most effectively.

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1. Research support provided by the Friedrich-Ebert-Stiftung, Geneva.

2. See, for example Reza Afshari, »Relativity in Universality: Jack Donnelly's Grand Theory in Need of Specific Illustrations«, *Human Rights Quarterly*, vol. 37, #4, November, 2015 and David Kinley, »Bendable Rules: The Development Implications of Human Rights Pluralism, *Sydney Law School Legal Studies Research Paper*, #10/104, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1695304.

3. Eric Posner, Eric, *The Twilight of Human Rights Law*, Oxford University Press, 2014. See also Stephen Hopgood, *The Endtimes of Human Rights*, Cornell, 2013.

4. Hurst Hannum, Review of Posner, Eric, »The Twilight of Human Rights Law«, *Human Rights Quarterly*, v. 37, #4, November 2015, 1106.

5. Kenneth Roth, »Have Human Rights Treaties Failed?« New York Times, December 28, 2014 at http://www.nytimes.com/roomfordebate/2014/12/28/have-human-rights-treaties-failed.

In this regard, a central challenge facing standards-based intergovernmental organizations (IGOs) is thus how to promote adherence to commonly agreed-upon norms.[6] This has become an increasingly salient question with the growth of globalization in general and the number and impact of IGO organizations in particular. One method, which in recent years has been adopted by some few organizations, and which has begun to attract heightened attention more broadly, is the development of peer-based initiatives to assess performance and make recommendations on improving adherence with shared norms.

Peer reviews represent a non-coercive and cooperative approach to disseminating and inculcating universal norms. They consist of member states assessing the performance of each other according to a commonly defined set of criteria. This process is increasingly being used by international organizations. One such notable example is the Development Assistance Committee peer review process of the Organization of Economic Cooperation and Development (OECD); another is the African Peer Review Mechanism (APRM). More recently the UNHRC has instituted a peer review-based initiative, the Universal Periodic Review (UPR) mechanism. Human rights-related peer reviews are designed to be a regular part of state-to-state interactions and generally deal more with the »lesser« sins of autocratic rule and lower level human rights violations, as compared to conditions of genocide, for example.

International organization peer reviews such as the UPR take place in the context of greater global respect for human rights as reflected at one extreme by the R2P doctrine, which includes a »hard«, top-down international community-based enforcement approach. Peer reviews embrace a »softer«, bottom-up and state-centric ethos. R2P represents, in essence, the concept of tough love while peer review mechanisms are situated closer to the opposing bookend of a voluntary and less critically-based approach to nurturing human rights. While peer reviews can serve as a means of promoting accountability between governments, it eschews the »naming and shaming« approach which has been utilized by some NGOs and governments.

Both China and Russia have rejected R2P arguments, instead defending the traditional Westphalian conception of sovereignty. Nonetheless, China's decision to not veto in 2011 UN Security Council Resolution 1973 justifying the international community's military engagement against the regime of Muammar Khaddafi in Libya suggests that it is becoming harder for Council members to justify not intervening in defense of human rights in an era of responsibility to protect.[7] Nonetheless, for a variety of reasons, R2P is best left sheathed to the maximum extent possible.[8]

While an approach such as R2P has focused on international action in the face of egregious violations of human rights and enforcement of universal norms, the UPR takes a more pedestrian, day-to-day, nuts-and-bolts approach. This may, therefore, have little resonance with egregious human rights abusing countries such as North Korea which care little about the international community's concerns about its lack of respect for human rights, but can have impact on states which adhere to at least minimal standards of compliance with global human rights norms.

Peer reviews represent a more user-friendly methodology than other utensils in the international community tool box. Both risks and short-term rewards are of a lesser magnitude. In theory, however, if properly used, peer reviews can have a prophylactic effect. They can expand international human rights and democracy norms by mainstreaming them. They have the potential to enmesh states within the spider web dynamic of heightened respect for universal human rights norms and reduce the number of future instances requiring higher cost interventions. It is important to note that peer reviews are voluntary in that governments agree to participate in them; they thus serve to blunt the traditional foil of national sovereignty arguments. By having made the decision to be part of a peer review process, governments have agreed to open matters in their countries to international scrutiny.[9]

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6. See, for example, Trine Flockhart, *Socializing Democratic Norms: The Role of International Organizations for the Construction of Europe* (Palgrave Macmillan, New York, 2005) and Jon C. Pevehouse, *Democracy from Above:Regional Organizations and Democratization*. (Cambridge University Press, New York, 2005).

7. Carrie Booth Walling, »Human Rights Norms, State Sovereignty, and Humanitarian Intervention«, *Human Rights Quarterly*, vol. 37, #2, May 2015.

8. See Benjamin Valentino, »The True Costs of Humanitarian Intervention«, *Foreign Affairs*, 2011, vol. 90, #6.

9. Purna Sen, ed, »The Universal Periodic Review of Human Rights«, Commonwealth Secretariat, 2009, 6.

To date no government has declined to be the subject of a UPR review. This is in part a function of the contextual reality that international financial institutions, international organizations, fellow governments, and domestic public opinion tend to mitigate towards State engagement in the process. Standing aloof now carries a stigma that governments have something to hide or are otherwise seeking to keep authoritarian tendencies from public view. This in turn can have deleterious effects on aid, trade, and other aspects of bilateral and multilateral relations. Peer reviews can also empower domestic voices in favor of human rights promotion and protection by providing tangible evidence of the interest of the international community in these issues by spotlighting these human rights defenders. This provides to at least some extent, a protective shield for their activities.[10] They pose the potential to, over time, shift the debate and create a »new normal« in terms of international standards of domestic political behavior.

It should be emphasized, however, that international organization peer review mechanisms are, by definition, creations of the member states of the organization undertaking them. They thus have in common a tendency to be the products of a lowest-common-denominator consensus decision-making process. This in turn means that they almost invariably rely more on the carrot of positive reinforcements and inducements rather than the stick of punitive measures. Due to their voluntary nature, peer reviews thus run the risk of failing to achieve meaningful goals while providing the appearance of action, reflecting an »emperor wears no clothes« scenario.

3. The UPR and its Functioning

The UPR is a process, initiated in 2007, in which all UN member states' human rights performances are examined over a 4½ year period by other states. The reviewing states are largely but not exclusively sitting UN Human Rights Council members. It functions against the backdrop of the manifold complexities of international relations, differing worldviews, and the *modus operandi* of an international institution based on consensus. One analyst puts it this way:

»The principal UN human rights organ is not a tribunal of impartial judges, not an academy of specialists in human rights, nor a club of human rights activists. It is a political organ composed of States represented by governments that as such reflect the political forces of the world as it is.«[11]

The HRC in general, and the UPR in particular, are politically driven. As an NGO observer bluntly stated, »The HRC is not going to act like an Amnesty International or a Swedish government«.[12] It is composed of UN member states seeking to benefit from belonging to the organization. As such, dynamics such as regional or affinity affiliations (e.g. Commonwealth, Organisation of Islamic Cooperation) will continue to play a central role. And as peer review mechanisms are all by definition creations of the member states of the organization undertaking them; they all tend to be the products of consensus. This in turn means that they rely more on the carrot of positive reinforcements and inducements rather than the stick of punitive measures.

The UPR's stated purpose is to promote and deepen respect for human rights through the provision of feedback to member states on their human rights performance. It is based on the concept of »continuous improvement«, which »focuses on incremental, constantly monitored steps, rather than great leaps forward«.[13] A three-member HRC committee oversees the preparation and presentation of information regarding the State under Review (SuR) adherence to a range of human rights criteria. Each SuR presents a self-assessment of its human rights record. Member states and NGOs comment on this, and issue recommendations. The government of the SuR has the choice to either accept or not these recommendations.

UNGA Resolution 60/251 governing the functioning of the UPR emphasized that the process should be cooperative, constructive, non-confrontational and non-politicized. The process was also supposed to be inter-governmental in nature and UN member-driven, not be overly burdensome or long, be realistic and was not to absorb

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10. *See* Mary Fletcher, Bahrain Coordinating Committee, Blogpost: *UNHRC President Lasserre Puts Kingdom of Bahrain on Notice do not Threaten Activists* (26 May 2012), *available at* https://bahraincoordinatingcommittee.wordpress.com/2012/05/26/unhrc-president-lasserre-puts-kingdom-of-bahrain-on-notice-do-not-threaten-activists/.

11. Marc Bossuyt, »The New Human Rights Council: A First Appraisal«, *Netherlands Quarterly of Human Rights*, vol. 24, no. 4, 2006.

12. NGO representative interview with the author, November 9, 2011, Geneva.

13. Hilary Charlesworth and Emma Larking, eds. *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, Cambridge University Press, Cambridge, 2015, 20.

a disproportionate amount of time, human and financial resources. The lack of punitive sanctions attached to the process was very likely a *sine qua non* for the support of many southern states, who feared that the UPR could turn into a one-sided mechanism for western states to criticize their human rights records, warranted or not. At the same time, however, the relevant institutional protocols stated that the process should be »action-oriented« and »not diminish the Council's capacity to respond to urgent human rights situations«.[14]

The fundamental, underlying question is to what extent is this a meaningful exercise, or, by contrast, a feel-good exercise in emptiness? Reviews of the first cycle of the UPR, which ended in 2012, were generally guardedly positive but emphasized the incipient nature of the mechanism.[15] It is now, however, possible to generate data and perspectives regarding a) the extent of implementation of first cycle recommendations, and b) dynamics of the recommendations process within the second round compared to the first round.

a) First Cycle Recommendations Implementation

In October 2014 the non-partisan and non-governmental organization *UPR Info* issued an analysis of the extent to which SuRs have been implementing recommendations by the mid-term point between their first and second assessments in the established 4-year cycle.[16] This report is based on compliance data provided not only by SuR governments, but also from civil society organizations from 165 countries. It is of course extremely important to have had the data from CSOs since governments can be expected to have an interest in presenting their compliance record in the most favorable light. The report determined that almost half (48%) of the 11,527 recommendations for which UPR received submissions from government and non-government stakeholders had resulted in full or

partial action by the mid-term point of assessment.[17] Of these recommendations 38 percent were determined to be fully implemented, while the remainder were partially implemented.[18]

The report indicated that 19% of non-accepted recommendations were also implemented. This may be due to the fact that SuRs found that some of these recommendations which they had determined to be unrealizable were in fact possible to implement, at least partially. In addition, 55 percent of accepted recommendations were implemented fully or partially by the mid-term point. The East European (EEG) group of nations was determined to have been most effective at implementing reforms, while Asian states were deemed to have been least effective.

The report (p. 5) suggests that issues with the highest percentage of implementation dealt with HIV-Aids, human trafficking, and people with disabilities. By contrast, the greatest percentages of non-implementation within categories were of recommendations pertaining to the freedom of movement, right to land, and the death penalty, possibly because in many political contexts these issues are the most sensitive and challenging to address.

In addition, research by this author *et al* has suggested that civil society organizations engage with and have an impact in the UPR's functioning.[19] A central finding of this research is that official UPR state recommendations do in fact incorporate perspectives and themes contained in CSO recommendations, although often they are phrased or nuanced differently.[20] While there is no proof of causation, it is therefore credible to infer that CSO perspectives and input do have an impact on state recommendations. At a minimum, it appears that states share interests reflected by the CSOs. In addition, in many respects CSO recommendations mirror several overall patterns, for example in the percentage of acceptance rates, the regional distribution of recommending states, and the distribution of action categories. These

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14. (A/HRC/5/21, 2007).

15. See, for example Charlesworth and Larking, eds., op. cit.; Emma Hickey, »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«, *Vienna* Journal *on International Constitutional Law*, https://www.icl-journal.com/download/a671e91c60a30231e1067f41ba849986/ICL_Thesis_Vol_7_4_13.pdf; and Dr. Purna Sen, ed., »Two Years of Universal Periodic Review: Lessons, Hopes and Expectations«, Commonwealth Secretariat, London, 2010.

16. Beyond Promises: The Impact of UPR on the Ground; *UPR Info*, Geneva, 2014. http://www.upr-info.org/sites/default/files/general-document/pdf/2014_beyond_promises.pdf.

17. It is very likely that in most cases the compliance figure would be higher by the end of each country's 4 year cycle between reviews.

18. Note that the term »partial compliance« can cover a range of levels of compliance.

19. Edward McMahon et al. »Do CSO Recommendations Matter?« *Friedrich Ebert Stiftung International Policy Analysis, 2013*. http://library.fes.de/pdf-files/iez/10343.pdf.

20. Lawrence Moss, »Opportunities for Nongovernmental Organization Advocacy in the Universal Periodic Review Process at the UN Human Rights Council«, *Journal of Human Rights Practice*, vol. 2, #1, 1.

factors provide greater legitimacy to the UPR process, as it appears to be reflecting at least some broader societal perspectives and concerns; the process thus benefits from CSO input.[21]

These findings provide some preliminary indications that the UPR is having a positive effect on human rights promotion in a global, macro sense. And in many countries human rights organizations are seeking to advocate for compliance; anecdotally suggestions have been made that the UPR has served to give such groups »cover« and the standing with which to hold the government to its UPR-related promises. It is important, however, that this perspective be complemented by additional quantitative, qualitative and case study research that can deepen understanding of the extent to which SuR compliance with recommendations does or does not both reflect and result in meaningful human rights promotion and protection.

b) UPR Analysis Format

It is a challenging task to make sense of what is really happening in a vast and complex mechanism such as the UPR, especially given that the UN consists of 193 member states. 14 states are reviewed per session, of which there are three each year. A plethora of documentation is produced for each review. Numerous stakeholders are involved. The whole process has resulted in to date over 46,000 recommendations categorized according to 58 different issues. The analyst is thus faced with the task of finding ways to disaggregate this mass of data in ways that can make sense of it.

The method employed in this paper is to look for aggregated patterns in recommendations. Clues can be discerned from, for example, the number of recommendations made, whether they are accepted by the SuR, the issues that they address, and the extent to which they reflect geographic considerations such as North-South or other regionally-oriented dynamics. Regime typologies also pose an interesting question; do more democratic states make different use of the UPR than more authoritarian regimes?

We have also determined that the way in which recommendations are phrased can be extremely revealing in

terms of the intent of the recommending state. Are recommendations phrased in a »soft« way, which can make it easy for the SuR to accept the recommendation and later claim compliance? Or are they posed in more rigorous language, which requires specificity of action and accountability? Depending on the issue these dynamics may play out somewhat differently, but we suggest that given the large sample size of the data generated by the UPR, basic trends can become evident.

In order to provide an empirical basis for analyzing these questions we have developed an action category scale which groups recommendations made based on the verbs utilized in the recommendation language. A rating of 1 is for recommendations *directed at* non-SuR states, or calling upon the SuR to request technical assistance, or share information; a rating of 2 is for recommendations to *continue or maintain* existing efforts; a rating of 3 is for recommendations to *consider change*; a rating of 4 is for recommendations of *general action (i.e. address, promote, strengthen*, etc.); and a rating of 5 denotes recommendations calling for *specific, tangible and verifiable actions.*[22]

This approach provides a qualitative sense of the types of recommendations being made. In general Categories 1, 2 and 4 are more acceptable to SuRs and are easier to implement. Category 1 recommendations are addressed to other states to provide support and assistance. Category 2 recommendations simply require continuation of existing activities. The generality inherent in Category 4 recommendations means that the SuRs in question have considerable leeway in determining what constitutes successful fulfilment of the recommendation. Category 3 recommendations, by contrast, deal with more sensitive or unpalatable issues while Category 5 issues contain specific and verifiable required actions which more often result in rejection. The UPR Info report, for example, states that the recommendations associated with the most specific actions (Category 5) received the lowest rates of implementation, while the recommendations emphasizing continuity of action, or actions of a general nature – which makes it easier for SuRs to define and thus assert compliance with – had higher levels of implementation.

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21. Edward McMahon et al., »Do CSO Recommendations Matter?« op cit., 11.

22. More information on the action category scale is available at Edward McMahon (2012). *The Universal Periodic Review: A Work in Progress.* Friedrich-Ebert-Stiftung, http://library.fes.de/pdf-files/bueros/genf/09297. pdf and www.upr-info.org/IMG/pdf/Database_Action_Category.pdf.

Using this framework we prepared a report published in 2012 entitled *The Universal Periodic Review: A Work in Progress,* which discussed the development of the UPR.[23] It examined how the mechanism has functioned, and what dynamics had emerged in how the mechanism is used. These included analysis of the types of recommendations, who made them, to whom they were directed, and to what extent they were accepted by the States under Review (SuRs). Analysis of this data from the first cycle revealed the following trends:

- The mechanism was well-used; almost all states participated at a high level and the number of recommendations appeared (at the time) to have plateaued at just over 2000 recommendations per session.
- Slightly over 2/3rds of all recommendations were accepted, a percentage which increased moderately over the life of the first cycle. Acceptance rates were lower for more specific and action-oriented recommendations, and for those which requested States under Review (SuRs) to consider taking those types of recommendations.
- Three-quarters of all recommendations were action-oriented, although somewhat over half of these were of a vague and/or general nature.
- While recommendations were distributed regionally in proportion to UN membership, a large plurality of recommendations were made by the Western European and Other (WEOG) group.
- African and Asian states were more likely to make softer recommendations (i.e. to continue what an SuR was already doing, or to take a general action) while WEOG states were relatively more likely to issue specific action-oriented recommendations.
- The most common recommendations addressed issues related to international instruments, women's and children's rights, torture and the administration of justice.
- While it was difficult to aggregate data on Economic, Social Cultural as compared to Civil and Political Rights, the former appeared to have a higher acceptance rate.
- More democratic states tended to make more action-oriented recommendations. This was true across regions.

We now examine sessions 13 through 22 of the Second Cycle as compared to the first cycle.[24] We note that the totality of the second cycle is not represented here as the last session will be in November 2016, so we do not have

23. ibid.

24. There are a total of 26 sessions in the first two cycles.

the data for the last four of the 14 sessions in the Second Cycle. However, the number of recommendations that we do analyze is modestly greater than the total number of recommendations in the entire first cycle, and as it represents over 70 % of the session of the second cycle, and contains a statistically sufficient sample size to identify major trends.

The following data represent findings from this research.

3.1 Number of Recommendations

Graph 1: Total Number of Recommendations, Cycles 1 & 2
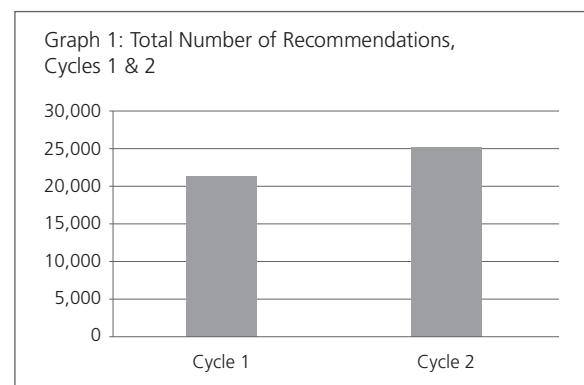
It is not surprising that the overall numbers of recommendations have increased between the two cycles. This is likely a function of the increasing familiarity and understanding of the UPR process on the part of both member states and civil society organizations, which provide suggestions for recommendations to and transparency in assessing state adherence to accepted recommendations. It is also an initial, *prima facie* suggestive indicator of interest and willingness on the part of member states to utilize this mechanism, although this does not of course necessarily reflect the utility or efficacy of the recommendations.

While in the early sessions of Cycle 1 member states tended to be tentative and exploratory in their approach to the UPR, the increase in recommendations was also evident when comparing the later sessions of Cycle 1 with Cycle 2. The overall number of recommendations per country (180) in Cycle 2 increased compared to the last four sessions of the first cycle (140). The increase continued within Cycle 2, as the number of recommendations per country averaged 153 for the first two Sessions (13 and 14) but increased to an average of 197 by sessions 21 and 22. We can speculate that the reasons

for the continued increase may be simply continued interest in the UPR. Also, they could reflect the reintroduction of unfulfilled recommendations from Cycle 1, in addition to new recommendations. Recommendations from all regions increased markedly in both absolute and relative terms with the exception of WEOG, whose share of recommendations decreased for 41% to 30%.

3.2 Responses to Recommendations

Graph 2: Responses to recommendations, Cycles 1 & 2
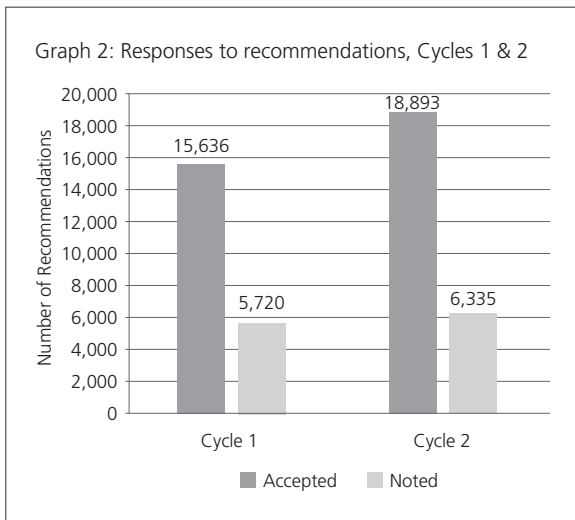
The overall percentage of accepted responses has increased slightly, from 73% to 75%.[25] This demonstrates a consistent rate of acceptance and noting of recommendations across both cycles and could be a predictor of future acceptance behavior. The fact that about three-quarters of all recommendations made are continuing to be accepted is important. Taken in conjunction with the fact that no state has refused to participate as an SuR, it suggests that states are seeking to be cooperative with the UPR.

25. In Cycle 1 non-accepted recommendations had been disaggregated according to the type of SuR response i.e. refusal, a general response, or no response at all. Given that they all reflect the same basic response – that of not accepting the recommendation, beginning with the second cycle the HRC decided to aggregate them into a single, »Noted«, category.

3.3 Breakdown of Acceptances by Region

Graph 3: Percent of Total Accepted Recommendations by Regional Group SuR, Cycle 2
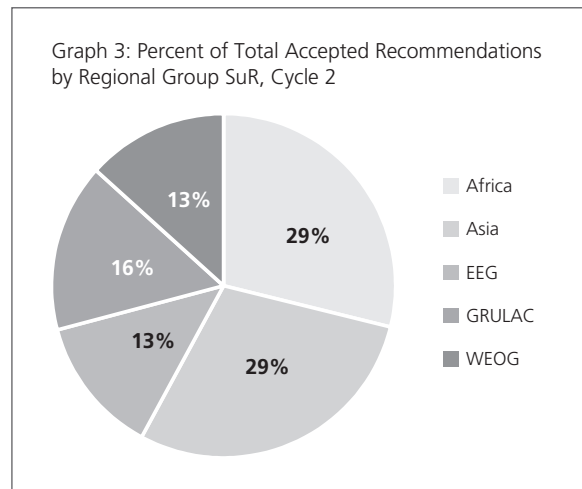
The breakdown of member states in the UN General Assembly by geographic region is as follows: Africa 28%, Asia 28%, GRULAC 17%, WEOG 15% and EEG 12%. The proportionality of accepted recommendations depicted above therefore mirrors almost exactly the UN membership by region. Also, Cycle 1 and 2 acceptance rates for the African, EEG and WEOG regions remained basically the same. By contrast, acceptance rates for Asia declined modestly from 76% to 69% while those for that Latin American states (GRULAC) were the exact opposite of Asia's, rising from 69% to 77%.

3.4 Breakdown by Action Category

Graph 4: Breakdown by Action Category, Cycles 1 and 2
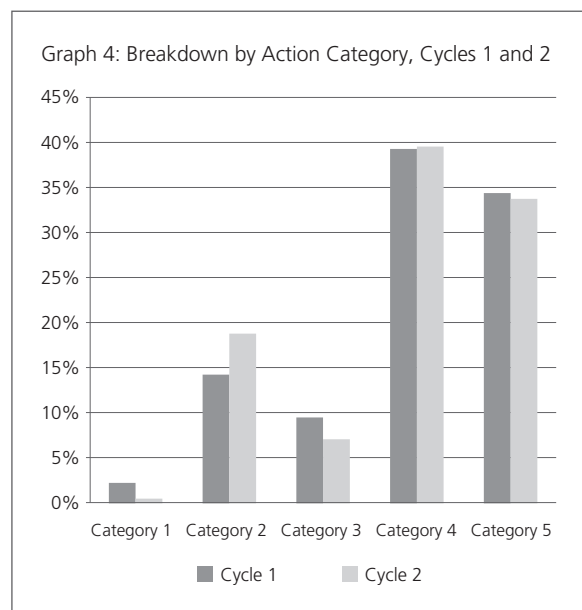
The distribution by action recommendation category has remained very constant, with slightly less than 40% of recommendations falling into Category 4 of general action recommendations, followed by about one-third being Category 5 of specific actions, and smaller percentages being accorded to the other three categories.[26] The most notable difference between the two cycles is the increase in Category 2 recommendations, asking that the SuR »continue« to undertake particular actions, from 14%, to 19%. This is intuitively logical as at least some reviewing states pay attention to whether or not states have undertaken or completed actions to which they had agreed in the first cycle. Those recommendations which have not been fulfilled would logically be the focus of renewed attention. A more pessimistic interpretation could be that states have become more prone to making »softer« recommendations but other information developed below does not appear to substantiate this.

3.5 Action Category Recommendations per Response Type

Graph 5: Action Category Recommendations per Response Type, Cycles 1 and 2
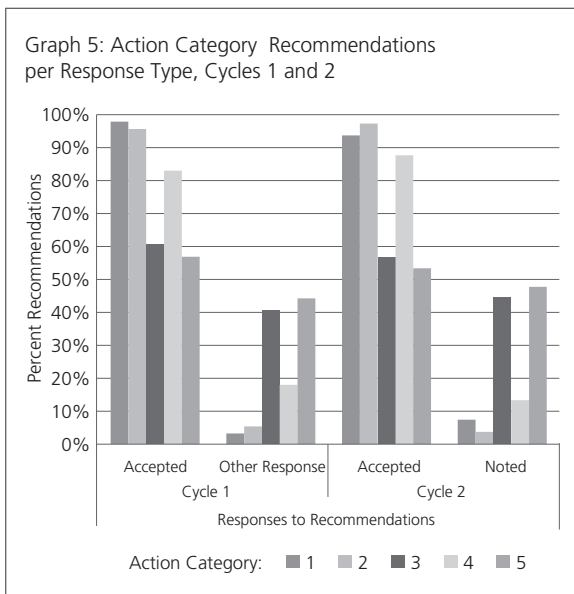
We have already seen in Point 2 above that most recommendations are accepted, a fact that is consistent between Cycle 1 and Cycle 2. When we disaggregate

26. Preliminary data from Sessions 22-24 reflect a shift in the percentage of Category 4 and Category 5 recommendations, with Category 5 recommendations totaling about 45% of recommendations and Category 4 recommendations comprising about 33%. If this data is substantiated and is reflected in succeeding sessions this will represent a significant shift towards a more activist use of the UPR.

this by action categories, Categories 1 and 2 have acceptance rates of over 90%, followed by Category 4 with a combined cycle acceptance rate of 85%. By contrast, Category 3 and 5 recommendations are less likely to be accepted, with acceptance rates slightly over 50%. The acceptance rate for Category 4 recommendations increased from 82% to 87% while, by contrast, acceptance rates for the »harder« Categories 3 and 5 actually modestly decreased, from 57% to 53%. Additional research is required to determine whether these reflect long-term trends such as a possible increased willingness of states to reject the most action-oriented recommendations and, if so, why they may be occurring.

3.6 Distribution of Recommendations by Region of SuR and Recommending Region

Graph 6: Distributions of Recommendations for Recommending Region and Region of State under Review, Cycles 1 and 2
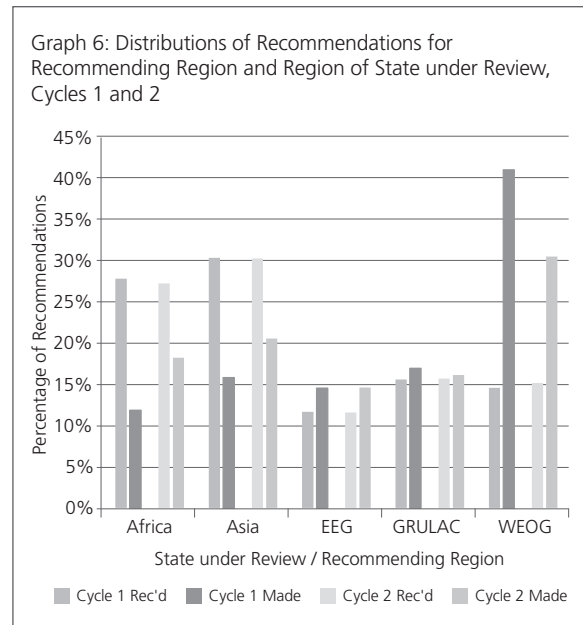
There was considerable continuity between the two cycles in terms of the distribution of recommendations received. Both Africa and Asia continue to rate highest, with each region receiving between 25–30% of all recommendations each. The EEG region increased slightly, from 11% to 14%, with both GRULAC and WEOG remaining constant with 15% and 17% respectively. By contrast, however, in terms of regions of states making recommendations, both Africa and Asia increased measurably, to 18% and 22% each. As previously noted, by contrast WEOG's share of recommendations dropped significantly, from 41% to 30%.

3.7 Regional Distribution of Recommendations

Graph 7: Regional Distribution of Recommendations (by Recommending State Region) Cycle 1

Graph 8: Regional Distribution of Recommendations (by Recommending State Region) Cycle 2
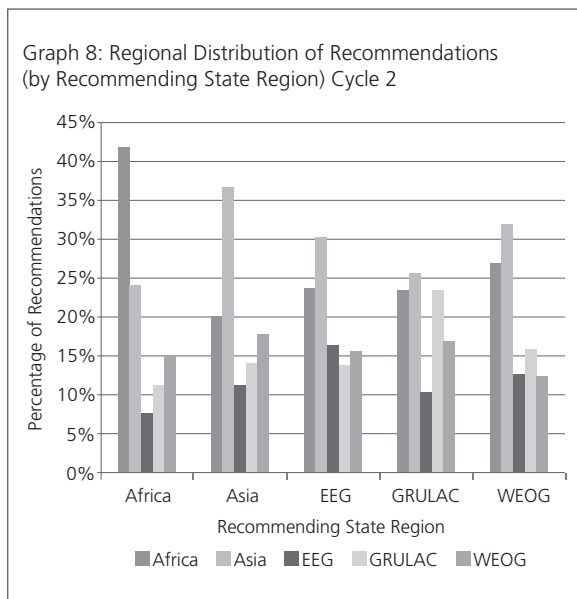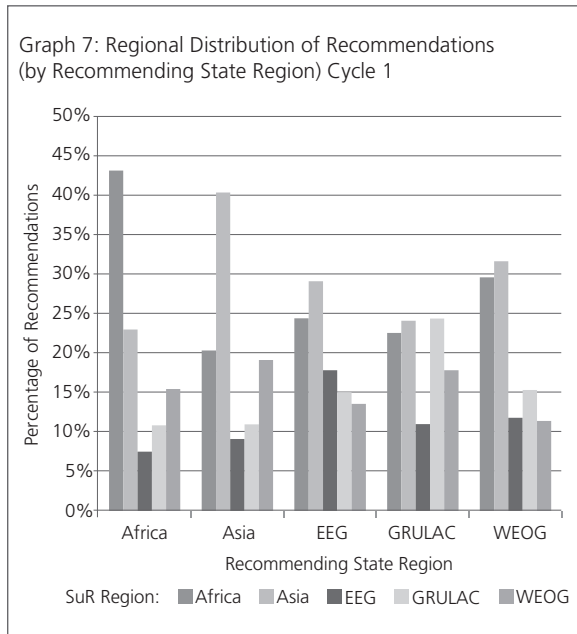
Cycle 2 data is remarkably consistent with that from Cycle 1. The only modest difference is in a decrease of recommendations from Asia to GRULAC and WEOG. All regions except Africa have a plurality directed toward Asia, which may be in part a function of the fact that it contains the greatest number of countries. Note the similarity of distribution of African and Asian recommendations – most to their own region, followed by the other one, and then very similar distributions to remaining regions.

WEOG is consistent in making the most recommendations. One reason may be because WEOG missions tend to be large, well-staffed, and take the most global approach to the recommendations process. Although WEOG has remained consistent in this regard in both cycles, the disparity between WEOG and other groups has diminished slightly. This reflects an overall evening of recommendations made to each regional group by others. There is considerable similarity between the two cycles; the most significant change is an increase in Africa to Africa recommendations from 18% to 28% of the total.

3.8 Distribution of Action Categories by Recommending State

Graph 9: Distribution of Action Categories by Recommending States – First Cycle

Graph 10: Distribution by Action Categories by Recommending States – Second Cycle
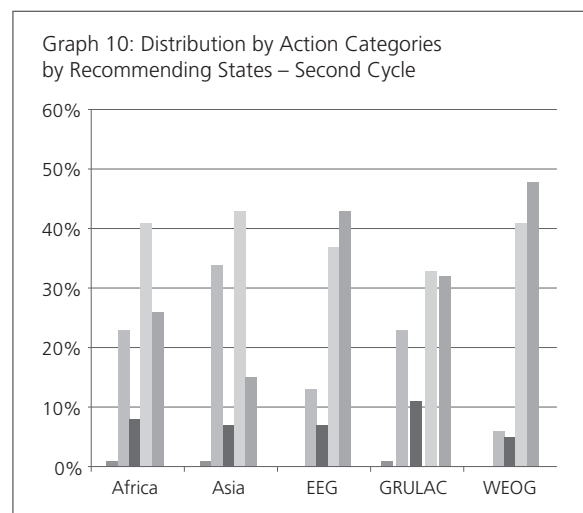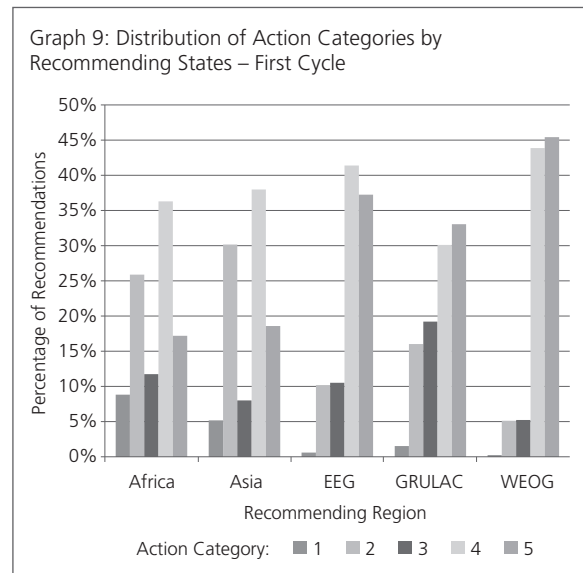
These graphs show consistent predominance in Category 2 and 4 recommendations by Africa and Asia, reflecting their apparent general preference for a less direct and confrontational approach to international promotion of human rights. Category 5 recommendations have been utilized more by EEG, GRULAC and especially WEOG states. This is notable because WEOG and GRULAC are comprised almost entirely of democratic states, and EEG contains a significant number. This demonstrates that democratic states are inclined to make more action oriented recommendations than non-democratic states, a point further developed below. There are also some modest changes from Cycle 1 to 2; for example, Africa has increased its own share of Category 5 recommendations. EEG has somewhat increased its Category 5 recommendations, and, relatedly, experienced a drop in Category 4 recommendations. GRULAC has had a significant increase in Category 2 recommendations and a drop in Category 3 recommendations.
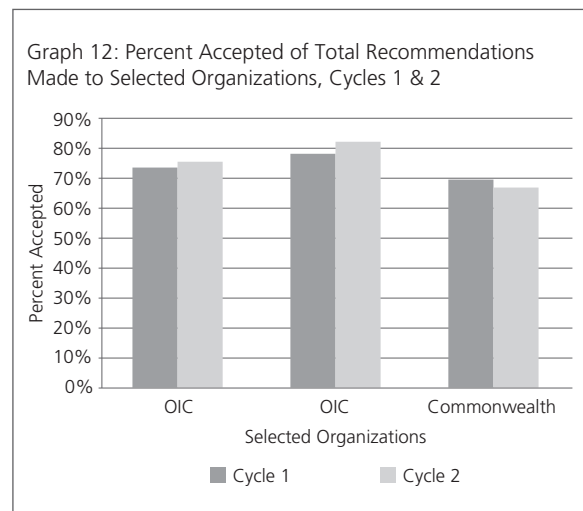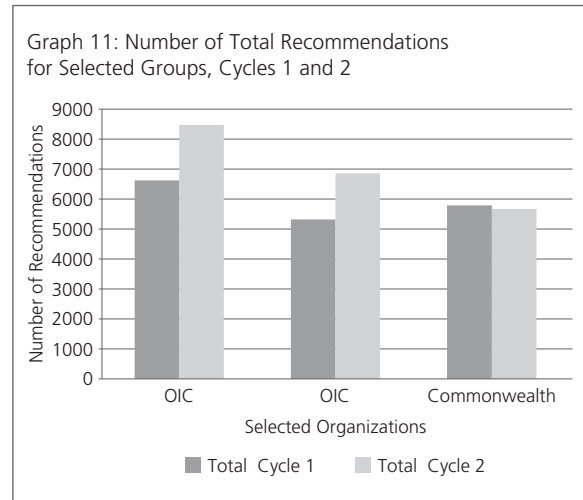
3.9 *Acceptance Rates for Selected Region Pairs*

Table 1: Percentages of Acceptance rates for Selected Region Pairs, Cycles 1 & 2 (RS – SuR)

Region	Overall % Accepted	
	Cycle 1	Cycle 2
Africa-Africa	90	87
Asia-Asia	92	89
WEOG-WEOG	62	67

There has been a high level of intra-region acceptance rates for Africa and Asia in both cycles as compared to WEOG. This suggests that WEOG treats itself tougher, i.e. makes more Category 5 recommendations to itself than some other regions. This is borne out by the facts; over both cycles 40 % of the recommendations WEOG made to itself were of Category 5 while only 17 % of Africa and Asia's recommendations to their own regions were Category 5.

3.10 *Recommendations by Affinity Group – OIF, Francophonie, Commonwealth*

Graph 11: Number of Total Recommendations for Selected Groups, Cycles 1 and 2

Graph 12: Percent Accepted of Total Recommendations Made to Selected Organizations, Cycles 1 & 2

Much of our geographic focus has been on regional groupings of states, but states may also identify with each other on grounds other than regional affiliation. We thus briefly examine affinity groupings; the Organization of Islamic Cooperation, the Francophonie grouping of French-speaking nations, and the British Commonwealth, to consider whether there are observable trends in their functioning in the UPR. We note that these organizational groupings are not mutually exclusive. We find that there have been increases in total numbers and acceptances for OIC, Francophonie, while there have been a slight decrease for Commonwealth. Because there is geographic distribution of countries for each session, we know that there were fewer recommendations

directed at Commonwealth countries being examined to date in Cycle 2; 27% for Cycle 1 and 22% for Cycle 2.

3.11 Common Issues in Recommendations

Table 2: Issues from Cycle 1 Compared to Cycle 2 [27]

	Cycle 1 %	Cycle 2 %	Increase or Decrease from C1 to C2
International Instruments	20.1	20.8	+
Women	17.3	19.3	+
Children	16.1	18.0	+
Torture	8.1	7.0	–
Justice	7.3	8.4	+
Human Rights Edu & Training	4.4	3.6	–
Detention conditions	4.3	5.6	+
Death Penalty	4.3	4.7	+
Special Procedures	4.1	3.1	–
Minorities	3.9	5.0	+

There has only been a modest change in the distribution of recommendations by issue topic. The top five issues maintained their rank order; four out of the five also increased their percentages of recommendations. The topic of adherence to international instruments, which refers to nine core internationally agreed-upon treaties and other documents comprising mechanisms for promoting human rights, has remained the single largest.[28] New issues in the top ten emphasize rights regarding labor, migrants and education. Issues no longer present among the top ten issues include those relating to Treaty Bodies, Special Procedures, Minorities and Human Rights Education. The entry of the migration issue on the Cy-

27. The table codes for more than one thematic issue per recommendation, i.e. a recommendation can be coded both as under the International Instrument category and the, for example, Children's category.

28. These include, for example, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), Convention on the Rights of the Child (CRC), the Convention Against Torture (CAT), the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Each of these instruments has established a committee of experts (treaty body) to monitor implementation of the treaty provisions by its States parties.

cle 2 list is likely due to recent global events prompting greater migration globally; there is clearly a greater global need for certain SuR programing and services to address the issue.

Table 3: Acceptance of Select Issues, Cycle 2

	Total % Recommended	% Accepted
Death Penalty	4.7	18.7
Sexual Orientation	2.4	36.7
Special Procedures	3.1	50.4

Table 4 demonstrates the sensitive nature of certain recommendations. Note that the acceptance rate for the three identified here is considerably less than the average second cycle acceptance rate of 73%. Not surprisingly, most (62%) of these recommendations were Category 5 in nature, with an additional 12% belonging to Category 3 (consider making reforms).

Table 4: Percentage of Select Issue Recommendations Made and Received by Regional Group

	% Rec's Made	% Rec's Received
Africa	9	33
Asia	4	38
EEC	19	9
GRULAC	19	14
WEOG	47	6

The geographic differentiation of these recommendations is striking. WEOG far outpaced all other regions in terms of making these types of recommendations, with Asia making only 4% of them. By contrast, Africa and Asia were the primary recipients of these recommendations, garnering at least a third of all recommendations. There was little variation in this regard between the first and second cycles.

3.12 Recommendations made to SuR Region, per Issue

Table 5: Percent Recommendations made to SuR Region, per Issue, Cycles 1 & 2

	Region of State under Review			
	Africa		Asia	
	C1	C2	C1	C2
International instruments	25	27	32	33
Women	32	32	31	30
Children	34	32	26	25
Justice	32	30	30	32
Torture	37	39	29	31

This table reflects trends that are consistent between Cycles 1 and 2. Africa and Asia garner the most recommendations for the top five most common issues. No other regional group gets more than 20% for any issue. Of the remaining issues in the top ten, EEG and WEOG receive 36% and 29%, respectively of recommendations dealing with Minorities, reflecting the sensitivity of that issue in those regions.

3.13 Recommendations made by Recommending State Region, per Issue

Table 6: Percent Recommendations made by Recommending State Region, per Issue, Cycle 2 *(25% and over are bolded)*

	Recommending Region					
	Africa	Asia	EEG	GRU-LAC	WEOG	WEOG (c1)
International instruments	18	12	18	20	32	39
Women	17	22	14	15	31	42
Children	16	21	17	15	29	37
Justice	14	13	21	13	39	51
Torture	15	8	19	17	41	50

This table depicts a trend consistent between Cycles 1 and 2; that of WEOG states making higher percentages of recommendations in the top five issues than the other regional groups. It is worthwhile noting, however, that the relative percentage decreased from the first to the second cycles. This mirrors the overall decrease of WEOG recommendations between cycles. This difference is sometimes quite marked; for example, of the total recommendations made regarding torture, WEOG made 41% while Asia made only 8%. Africa, EEG and GRULAC each showed a similar disparity with WEOG, accounting for 15%, 19% and 17% of the recommendations made regarding torture, respectively.

3.14 Recommending State Polity IV Level of Democracy and Recommendation Action Levels

Table 7: Mean Action Category by Recommending State Regional Group

Regional Group of Recommending State	Mean Action Category Cycle 1	Mean Action Category Cycle 2
Africa	2.85	3.35
Asia	2.86	3.02
EEG	3.64	3.80
GRULAC	3.70	3.50
WEOG	3.83	3.95

Table 8: Polity Classification and Mean Action Categories – Cycles 1 and 2

Polity IV level of democracy	Mean Action Category Cycle 1	Mean Action Category Cycle 2
Autocracy	2.84	2.86
Anocracy	2.82	3.04
Democracy	3.30	3.80

We now assess UPR functioning through the prism of regime typologies. Do countries that are more democratic share common traits in terms of how they use the UPR? Do autocratic states differ in their approach to the UPR compared to democratic states? What about hybrid states, which combine some features of democracy and authoritarian rule, which are characterized by some as »anocracies« a term coined by the German philosopher

and political activist Martin Buber.[29] This line of inquiry is important if, as we hypothesize, democracies make more active use than non-democracies of the UPR in order to promote human rights globally.

We therefore coded recommending states' regime typology as defined by the Polity IV index.[30] Action categories 3 and 4 were transposed to reflect the gradation of the action categories 1-5, since we know from acceptance rates that Category 3 is viewed as a »harder« category than Category 4. We then compared this to the level of action categories on the 1-5 scale. Overall, the action levels increased across the board for all regions, with the exception of GRULAC. Table 8 demonstrates that this includes, albeit modestly, autocracies and semi-authoritarian states. Perhaps most significantly, democracies have increased their recommendations from an average of 3.3 to 3.8. This also remains consistent with our findings that the mainly democratic WEOG, GRULAC and EEG states trend toward higher category recommendations.

Table 9: Mean Action level for Recommendations by Region and Government Type

Autocracy/Anocracy/Democracy Classification				
Regional Group	Overall	Autocracy	Anocracy	Democracy
Africa-Africa	3.31	3	3.14	3.55
Africa-World	3.35	2.67	3.15	3.61
Asia-Asia	2.88	2.7	2.79	3.04
Asia-World	3.02	2.92	2.91	3.16
EEG-EEG	3.58	3.71	2.86	3.68
EEG-World	3.8	3.13	3.09	3.97

We are interested here in determining intra-region dynamics related to regime type, and whether regional affinity or regime typology is a greater predictor of the type of recommendation issuance. This table depicts the average action category for recommendations made by African, Asian, and EEG States. The recommendations have been disaggregated by regional group, and by governance type.[31] Within this disaggregation we note the relationship between average action category recommendations made by African, Asian, and EEG states to other African, Asian, and EEG states and to the World, as well as the average action category of recommendations made by autocracies, anocracies, and democracies in each respective regional group, to states within their regional group and to the World. The table shows that democracies on the whole make recommendations at higher action category levels than is represented by the overall average among these three regional groups. Autocracies recommend at an action category lower than the overall average, with the intriguing exception of EEG.

Asian states, regardless of government type, made higher category recommendations to the rest of the world than to other Asian states. Democratic Asian states recommended higher than the overall average for Asia-Asia recommendations (Democratic Asian States-Asian States=3.04, Asia-Asia Overall=2.88). We can hypothesize that, for intra-Asian recommendations, regional affiliation is more important than government typology when making recommendations. In other words, Asian States will show some leniency in recommendation action category with other Asian States, regardless of their government type. This is consonant with the »Asian Way« tradition, in which national sovereignty is perceived as quasi-sacrosanct and state-to-state criticisms are muted.[32]

Like Asian and African States, EEG states had a higher category recommendation average to the World over recommendations made to other EEG states. However, unlike Asian countries, governance typology has impacted recommendation trends in a converse fashion. Autocratic EEG state recommendations were on average higher in category to other EEG states than overall EEG to EEG recommendations. Similarly, autocratic EEG states recommended on average higher action categories when recommending to the world than overall EEG-World recommendations. The same trend applies to democratic EEG states, to both other EEG states and the World. However, anocratic EEG states made lower action category recommendations to other EEG states than EEG to EEG overall.

29. Martin Buber, (1950). *Paths in Utopia.* Syracuse University Press, Syracuse, 43.

30. http://www.systemicpeace.org/polity/polity4.htm.

31. See Polity IV, Institute for Systemic Peace, http://www.systemicpeace.org/polityproject.html.

32. See, for example, Mikio Oishi, (2014). »In Search of an East Asian Way of Conflict Management: Three Regional Cases.« *International Journal of China Studies, 5*(3), 705-731.

Also EEG-World is similarly lower in action category. A possible explanation for this may be that autocratic EEG state leaderships feel sufficiently insulated from criticisms of hypocrisy from more democratic states to be able to act in this fashion; more research is needed to answer the question definitively.

4. Analysis of Data

A word search in this paper for the term »consistent« yields considerable fruit, emphasizing the first major finding. There has been a remarkable similarity in data produced from the first to the second cycle. This in and of itself may add veracity to the overall analysis generated. Some of these points of consistency include:

- The *overall percentage of accepted and noted responses* has increased only slightly, from 73% to 75%.[33]
- *Action Category Recommendations.* There is a significant similarity in the distribution of action recommendation categories.
- *Regional Distribution of Recommendations.* The regional breakdown of recommendations has remained close to equal.
- *Recommendations made to SuRs per Issue.* International Instruments, Women, Children, Torture and Justice have remained the most cited issues.
- *Recommendations made by Recommending State Region, per Issue.* This reflects a trend consistent between Cycles 1 and 2 of WEOG states making higher percentages of recommendations in the top five issues.
- *The Distribution of Action Recommendation Categories.* The ratio of »softer« types of recommendations (Categories 1, 2, 4) has remained similar, totaling overall about 58% of recommendations versus 42% for the »harder« Categories 3, 5.

It is clear that the total number of recommendations has increased. It is not obvious, however, whether this number will continue to increase given the limits on SuRs' absorptive capacities to address and fulfill accepted recommendations. This increase and the continued high level of acceptances indicate that the UPR process is being used by UN member states, whether this is for

substantive or for »show« reasons.[34] The latter refers to a situation in which states are willing to accept recommendations for reasons other than a willingness to make substantive reforms. These could include acceptance because the recommendations are »soft« in nature and easy to implement. Alternatively, the recommendation could be substantive but SuRs do not sincerely intend to fulfill them. This approach, however, carries costs with it, as states may come to be seen as, in effect, »gaming the system« and held to accountability in future cycles or, possibly, outside of the UPR.

The fact that there are more Category 2 recommendations in Cycle 2 is logical; as we have noted recommending states will want to revisit their recommendations from the first cycle and if they have not been met and remain relevant, it is understandable that they would again cite them and suggest that continued progress should be made towards their realization.

In regional terms both Africa and Asia increased their share of making recommendations slightly, to 15% and 22% each. By contrast WEOG's share of recommendations has dropped by a quarter. It is possible that these latter changes were due to the nature of the states being considered in the review (i.e. that they be of more interest to the South and less to WEOG), but given the required geographic diversity for SuRs in each session that is not likely. More probably, these changes may simply reflect greater engagement on the part of African and Asian states, and a diminution of the disproportionate level of participation of the WEOG states (which comprise only about 15% of the UN's membership). The proportionality of accepted recommendations mirrors therefore almost exactly the UN membership by region. In this regard the UPR can be considered to be becoming more truly universal in application. And this does not mean that the UPR's functioning is becoming »softer« or more watered down because we have previously noted that the distribution of recommendations by action category has remained fairly constant.

Categories 1, 2, and 4 have the highest combined acceptance rates of just over 88%, while Categories 3 and 5 total only about 55% of accepted recommendations. The high level of intra-region acceptance rates for Africa and Asia in both cycles as compared to WEOG

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33. In Cycle 1 non-accepted recommendations had been disaggregated according to the type of SuR response i.e. refusal, a general response, or no response at all. Given that they all reflect the same basic response – that of not accepting the recommendation, the HRC decided to aggregate them into a single, »Noted«, category.

34. McMahon, *UPR: A Work in Progress*, op. cit, 13.

demonstrates that WEOG in effect treats itself tougher, i.e. makes more Category 5 recommendations to fellow regional states than some other regions.

The fact that the proportions of action category distribution has remained similar from Cycle 1 to Cycle 2 shows that there has not been a softening in the types of recommendations. By the same token, however, neither has there been a move to make recommendations more targeted and specific despite suggestions from a number of observers of the process that this would be helpful, although as noted previously there are some indications that this may be changing.[35]

There is continued emphasis on international instruments as the most frequently addressed issue in recommendations. This undercuts the neo-realist argument that the expansion of such instruments lacks international support because they result in increasing workloads through compliance with treaties and covenants. Consideration of several sensitive issues (Death Penalty, Sexual Orientation and Gender Identity, and Special Procedures) reveals continuity over the two cycles both in terms of the overall numbers and regions making them. Reflecting member states' focus on these types of issues, WEOG provided a disproportionately large and growing number of these issue recommendations, rising from 47 % in Cycle 1 to 57 % in Cycle 2.

Africa and Asia receive most of the most frequently cited issue recommendations, with the exception of Minorities, for which EEG and WEOG receive the majority of recommendations. There was a marked decrease in WEOG share of recommendations in each top category from Cycle 1 to Cycle 2, providing additional demonstration that, while WEOG percentages still remain above all other regional groups, participation among all other regional groups appears to be modestly increasing. This includes some sensitive topics; Africa in particular has increased the percent of recommendations made in Cycle 2 from Cycle 1 by between 6 % (Rights of the Child) and up to 11 % (Torture). This may indicate a shift in the desire to participate in the review process among African states, spurred by the results of the Cycle 1 process.

Regarding recommending state regime typologies and recommendation action levels, with the exception of the

EEG region, democracies are more active than anocracies, which are more active than autocracies. This buttresses what is often observed in practice – that democracies place more emphasis on human rights protection than states with other forms of government. We also see that this trend has increased from Cycle 1 to Cycle 2. The data indicate that democracies are becoming more active in their recommendations, at a rate greater than their autocratic and anocratic neighbors; in the second cycle recommending states, and especially democracies, are using the UPR in an increasingly robust fashion.

5. Conclusion

What conclusions can we draw about the overall bona fides of the UPR? Where does this all fit in, given the human rights fault lines cited at the beginning of this paper? Is the UPR's overtly non-coercive nature actually a catalyst for gradual improvements, and thus a meaningful process? Or is it an »emperor wears no clothes« farce, in which there are no consequences for nations with poor human rights regimes?

We suggest that there is some utility to the UPR. In contrast to other functions of the HRC and the UN General Assembly where regional affiliations and loyalties »lock-in« North-South conflict, the UPR recommendations process emphasizes bilateral, state-to-state relations. States have greater freedom to make UPR-related decisions and act apart from regional affiliation. A successful UPR process can serve as an example to create new and potentially more positive dynamics of interaction between states in the UN system.

There is some differentiation that has occurred as a result of political reform around the world; for example some of the East European countries demonstrate approaches that are similar to those reflected in WEOG. And a few of the more democratic African states such as Zambia, Mauritius, Senegal and Botswana do not march in lockstep with the regional grouping. GRULAC's profile is much different than it would have been before widespread democratization took place on that continent.

Peer reviews embody a consensual approach, slowly chipping away at the national sovereignty argument. In light of this, one way to perceive of the UPR is that of a potential Trojan Horse: Under the guise of a voluntary

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35. UPR Info, *Beyond Promises: The Impact of UPR on the Ground*, op cit, 20.

mechanism, it makes it more legitimate for states, especially the more democratic ones, to push for change in the human rights situations in other countries. In the current international environment states want to »look good« and to at least appear to be respecting human rights. This has a creeping effect of enmeshing them in the spider web of international norms and rules regarding promotion of human rights.

The UPR is resulting in a subtle diminishment of the national sovereignty concept through evolutionary rather than revolutionary means (given the consensual nature of the UN HRC and UPR, the latter probably wouldn't work). Moravchik has suggested, for example, that newly democratic states may consciously and willingly promote some loss of their sovereignty in exchange for the reassurance of helping to »lock-in« their new democratic constitutional order by creating an international line of defense against the enemies of democracy.[36] The Inter-American Democratic Charter is a prime example of this, in that states explicitly give the Organization of American States the ability to intervene should democratic processes be undermined by autocratic leaders.[37] The African Union's prohibition on membership of regimes that have come to power by military *coups d'état,* and the African Charter on Democracy, Elections, and Governance also reflect this approach. These requirement are by no means perfect as evidenced by debates within the European Union regarding some aspirant and current certain member states' questionable adherence to democratic principles. Defining the requirements and enforcing them can be difficult. Overall, however, they reflect a direction in which international human rights protection has been headed.

The UPR provides an opportunity for states to pose serious and sometimes delicate questions about human rights that may not have been previously aired in other human rights mechanisms. The UPR is the first United Nations initiative to assess the whole range of human rights – civil, political, economic, social and cultural – in one review. A credible hypothesis is that increased respect for human rights does take time, but that it can happen – much, after all, has been accomplished since the incep-

tion of the UN Universal Declaration of Human Rights in 1948. Therefore, the reader can conclude that the UPR is a process worth supporting and strengthening.

One last point should be made about the role of civil society in the UPR process. There are challenges, including the inherently political nature of the UPR, which limit the scope of reforms that could strengthen the UPR. There are only limited formal opportunities for CSO engagement. In addition, there is a continuing lack of knowledge amongst CSOs about the UN Human Rights system, including the UPR. Civil society engagement, nonetheless, can result in sustained emphasis and attention regarding the extent to which governments comply with recommendations that they have accepted. The UPR can provide valuable cover to CSOs domestically. The UPR process enables them to bring up issues that the government would otherwise often have preferred to ignore or suppress. A key to enhancing effective engagement in the UPR process is the development of a coordinated strategic CSO coalition. This results in the provision of expertise in the scope and nature of recommendations. It also validates and renders more credible the UPR process; it is not seen as simply as a state-centric process. Finally, it can result in a long-term focus on follow-up of UPR recommendations. The UPR provides an opportunity to reinforce other human rights mechanisms and vice versa; for example, UPR reviews are based in part on information provided by treaty bodies. Many CSOs have been able to use UPR recommendations in their engagement with treaty bodies and special procedures.

We conclude that the UPR has some substantive merit. Furthermore, as an example of a globally-centered human rights initiative which is also voluntary in nature, the UPR fits into the evolving perception that there is common ground to be found in the universal rights versus cultural relativity and national sovereignty divides, and is therefore worthy of further study and policy focus. There is a clear correlation between state adherence to democratic values and functions, and a more robust utilization of the UPR. Should the Huntingtonian »Third Wave« expansion of democratic values continue, we would be likely to see more robust use made of the UPR. And whether or not the expansion continues, it is unlikely to recede significantly. And if it does, mechanisms such as the UPR, where precedents have been established regarding the legitimacy of examination of state human rights records by the international community, could become even

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36. Andrew Moravcsik, the Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe, International Organization, 2000, vol. 54 #22, 35.

37. See http://www.oas.org/OASpage/eng/Documents/Democractic_ Charter.htm for a full text of the Charter.

more important. The UPR is representative of a changing global landscape, in which universal human rights norms are gaining more traction, and bring to mind Martin Luther King Jr.'s famous maxim that »the arc of the moral universe is long, but it bends towards justice«.

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