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**Peer Reviewing the World: Increasing Civil
Society Participation in the United Nations
Universal Periodic Review**

Lucien O'Brien
Honors Thesis

Advised by Professor Wendy Weber
Macalester College
Department of Political Science
April 27th, 2022

Abstract

The Universal Periodic Review (UPR) is an exceptional mechanism within the framework of international human rights. The fact that it evaluates all UN member states' human rights records on a universal basis sets it apart from other enforcement mechanisms that do not give equal time to all countries or do not seek to cover all human rights. Following the introduction of hybrid modalities in the third cycle, the UPR faces a turning point in terms of who is included in the process and how. Drawing on semi-structured interviews with UN officials, diplomatic mission members, civil society representatives, and academics, as well as personal reflections on my experience attending the 40th session of the UPR in Geneva, this project examines the participation of states and civil society actors throughout the existence of the mechanism. In regard to state participation, it finds that as states have learned “what to expect” out of the UPR process, they have become increasingly adept at using the language of human rights to make it appear as though they are engaged while maintaining ultimate control over their fate in the outcome of their review. Conversely, while civil society actors possess extremely limited agency within the formal UPR process, their strong engagement with the mechanism through informed, specific recommendations demonstrates their potential to exert “public pressure” on states if given the platform to do so. Given these findings, as well as the solidification of the mechanism after fifteen years of existence, I argue that visible civil society participation at the review stage is a risk worth taking.

*List of Interviewees*¹

Interview 1: Anonymous NGO Advocate (September 2021)

Interview 2: Anonymous NGO Advocate (September 2021)

Interview 3: Emilie Thage, Legal Department Adviser at the Danish Institute for Human Rights (DIHR) (November 2021)

Interview 4: Anonymous Academic (November 2021)

Interview 5: Phil Lynch, International Service for Human Rights (November 2021)
(Email Interview)

Interview 6: Anonymous NGO Advocate (November 2021)

Interview 7: Ashleigh Shields, Policy and Advocacy Programme Manager at UPR Info (November 2021)

Interview 8: Anonymous NGO Advocate (November 2021) (Email Interview)

Interview 9: Gianni Magazzeni, Chief of UPR Branch, OHCHR (November 2021, March 2021)

Interview 10: Elvira Dominguez Redondo, Associate Professor of International Law at Middlesex University (December 2021)

Interview 11: Joshua Cooper, Lecturer at University of Hawaii & Universal Periodic Review Task Force Co-Chair at US Human Rights Network (January 2022-April 2022)

Interview 12: Anonymous Former Diplomatic Mission Member (January 2022)

Interview 13: Rhona Smith, Professor of International Human Rights/Head of Newcastle Law School at Newcastle University & United Nations special rapporteur for Cambodia (January 2021)

Interview 14: Edward McMahon, Associate Professor at University of Vermont (January 2021)

Interview 15: Kristi Rudelius-Palmer, Kristina Eberbach & Glenn Mitoma: NGO Advocates, Human Rights Educators USA (January 2022)

Interview 16: Rosemary Blanchard, Co-Vice Chair of Human Rights Educators USA (January 2022)

Interview 17: Anonymous NGO Advocate (January 2022) (In-Person in Geneva)

¹ All interviews were conducted virtually over video call unless otherwise noted.

List of Acronyms

BRICS	Brazil, Russia, India, China, & South Africa
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
GONGO	Government-Organized Non-Governmental Organization
HRC	Human Rights Council
LMDC	Like Minded-Group of Developing Countries
NGO	Non-Governmental Organization
NHRI	National Human Rights Institution
OHCHR	Office of the High Commissioner for Human Rights
SuR	State Under Review
UDHR	Universal Declaration of Human Rights
UN	United Nations
UPR	Universal Periodic Review
WEOG	Western European and Others Group

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There are many people without whom this project would not have been possible. For her excellent feedback, encouragement, and good humor, I would like to express my gratitude to Dr. Wendy Weber, my thesis advisor. Elsewhere at Macalester, I would like to thank Dr. Nadya Nedelsky for graciously agreeing to be on my defense committee, and my honors squad (Dr. Lesley Lavery, Sophia Sahm, Cande Torres Jimenez, Rock Park) for friendship, support, and doughnuts throughout the past two semesters. Outside of my college, I am extremely grateful to UPR expert and civil society activist Joshua Cooper for meeting with me numerous times throughout the spring semester and serving as a member of my defense committee. I would like to specially acknowledge Gianni Magazzeni for granting me the amazing opportunity to sit in on the floor of Salle XX, and the entire OHCHR staff for being incredibly gracious to me throughout my time in Geneva. Finally, I would like to thank everyone whom I interviewed for this project. You provided me with a wealth of valuable insight and inspiration that was instrumental in shaping the direction of my thesis.

Chapter 1: Introduction

On the Floor of Salle XX: A Glimpse into UPR 40

For much of my time attending “interactive dialogue” sessions in Salle XX of the Palais des Nations—three-and-a-half-hour meetings during which United Nations member states peer review each other’s human rights records—I was seated a few rows behind the delegate from the permanent mission of Burundi. While some permanent missions attending the meetings in-person rotated which delegates they sent on a day-to-day basis, some, like Burundi, always sent the same person. When it was time for him to make comments about other states’ human rights track records, he was almost exclusively complimentary toward allied states, failing to provide substantive criticism of their human rights records. Although this trend showed a generally poor level of engagement with the mechanism, I was struck by the fact that he continued to show up every day, in person, and wait on the floor for hours until it was his turn to speak, rather than simply providing a pre-recorded statement as many other state delegates did during the session.

During the interactive dialogue for Venezuela, the Burundian delegate gave an especially complimentary “recommendation” in which nothing was recommended beyond that Venezuela “continue taking appropriate measures to strengthen the various institutions in charge of protecting and promoting human rights.”² A few minutes later,

² Using Edward McMahon’s “action category” system of sorting UPR recommendations by specificity/the type of action being requested from the SuR, this would be considered a Category 2 recommendation, i.e. a “recommendation “emphasizing continuity in actions and/or policies” (McMahon, “The Universal Periodic Review: A Work in Progress”, 14). Although Category 2 recommendations can be somewhat substantive when focused on specific policies that are creating active change within the SuR, they are generally considered to be among the weakest recommendations. Burundi’s Category 2 recommendation is particularly weak in that it broadly encourages improvement of human rights institutions as a whole without identifying a specific area/subject matter in need of improvement.

he got up and, instead of leaving like he usually did after speaking, walked up to the front of the room to talk to the Venezuelan delegation. The Venezuelans welcomed him, smiling and talking like old friends. While the President of the Human Rights Council was trying to call on Costa Rica to speak, the Venezuelan delegation was busy taking pictures with the Burundian delegate.

While there might not be any way for the OHCHR (Office of the High Commissioner for Human Rights) to prevent complimentary recommendations in a state-driven peer review forum, something about this scene rubbed me the wrong way. For Venezuela to do this in the middle of getting their human rights record reviewed demonstrated they had become far too comfortable with the process. In an overarching sense, some might view this type of state behavior as a natural result of the shift away from the “naming and shaming” practices (using the United Nations human rights framework as a means of singling out human rights violators and discrediting them in front of their peers) that had once been common in the Commission on Human Rights. Since the Commission was scrapped in 2006, the United Nations has moved toward a more non-confrontational, cooperative model of human rights enforcement, in which all states are invited to engage in mutual improvement rather than finger-pointing.³ However, some might argue that this “softer” approach has negative consequences—although Burundi and Venezuela are both showing up to the UPR (Universal Periodic Review), they are failing to participate in a meaningful capacity.⁴

³ Elvira Dominguez-Redondo, “The Universal Periodic Review: Is there Life Beyond Naming and Shaming in Human Rights Implementation?”, *New Zealand Law Review* .4 (2012), 705.

⁴ Hillary Charlesworth & Emma Larking, “Introduction: the regulatory power of the Universal Periodic Review”, in *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, edited by Hillary Charlesworth & Emma Larking, Cambridge University Press (2014), 10-11.

What is the Universal Periodic Review?

The Universal Periodic Review is an intergovernmental peer review mechanism in which all UN (United Nations) member states have their human rights records evaluated. Every five years since 2008, each one of the United Nations' 193 member states has gone through the UPR process. Each state is required to prepare and submit a self-report to the OHCHR, engage with other member states via an "interactive dialogue" (a three-and-a-half-hour session in which the "SuR" (state under review) makes a presentation and other member states are allowed to comment), and make commitments to address the issues that their peers raised over the course of the next five years.

The fact that the UPR evaluates all UN member states' human rights records on a universal basis makes it an exceptional mechanism within the framework of international human rights. Its universality differentiates it from its predecessor (the Commission on Human Rights) and parallel international human rights mechanisms such as the treaty bodies. Overall, the universal nature of the mechanism is designed to "ensure equal treatment for every country."⁵

Basis for Review

Throughout the UPR process, the standards that any SuR is held to are based on five key components: the Charter of the United Nations, the UDHR (Universal Declaration of Human Rights), international human rights instruments to which the SuR is party, voluntary pledges and commitments made by states, and applicable international

⁵ United Nations General Assembly, General Assembly Resolution 60/251, UN Doc. A/RES/60/251, (2006), para. 5(e).

humanitarian law.⁶ The first two of these standards, the Charter and the UDHR, are largely universal, in that almost all UN member states accept them.⁷ However, despite the universal nature of the review, the UPR process does vary state-by-state based on the international human rights instruments,⁸ voluntary pledges, and international law applying to the state in question. This mixture of universal standards and country-by-country standards is intended to “[allow] tailor-made country-specific evaluation without detriment to consistency and universality of the human rights standards within the review.”⁹

Stages of the UPR Process

When states and non-state actors engage it to its fullest capacity, the UPR process is ongoing, with a substantial amount of work being put into pre-review preparation and post-review follow-up/implementation. Throughout each five-year cycle, there are a number of key events that happen before (pre-review preparation), during (the Working Group and the plenary session), and after (implementation and follow-up) the review portion of the UPR process.

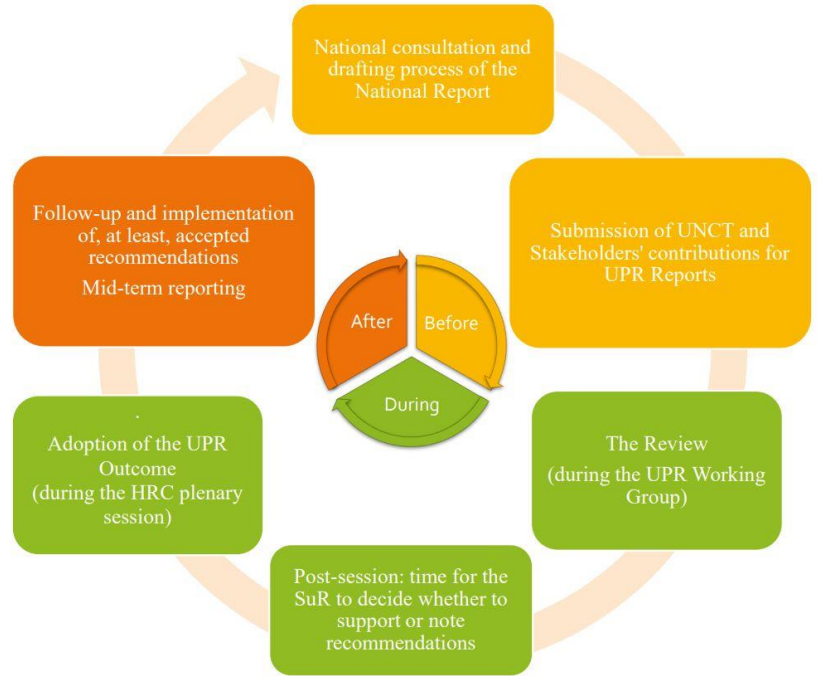
⁶ OHCHR, *Universal Periodic Review: A Practical Guide for Civil Society*, (2014), 12.

⁷ Rhona K.M. Smith, “To See Themselves as Others See them”: The Five Permanent Members of the Security Council and the Human Rights Council's Universal Periodic Review”, *Human Rights Quarterly* 35.1, (2013), 9.

⁸ In light of this, many UPR recommendations have revolved around encouraging states to ratify international human rights instruments.

⁹ Dominguez-Redondo, “An Assessment of the First Sessions”, 726.

Key Phases of a UPR cycle within 4.5 / 5 years



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Preparation

The preparation stage is defined by the OHCHR preparing the preliminary documents that will be referenced during the review stage, as well as NGO (non-governmental organization) lobbying efforts and meetings between states. Beginning with the documentation, three preliminary documents are prepared for each SuR: a “National Report” prepared by the SuR (a ≤20-page self-assessment report), a “Compilation of UN Information” prepared by the OHCHR (a ≤10-page OHCHR report on human rights conditions within the SuR based on information sourced from the treaty bodies, special procedures, and other relevant United Nations documents), and “Stakeholder Submissions” prepared by civil society (a ≤10-page compilation of

¹⁰ OHCHR, *Universal Periodic Review: Tips for Engagement at Country Level for National Human Rights Institutions and Civil Society*, (2021), 5.

submissions sourced from various organizations both within and outside of the SuR in question).¹¹

The preparation stage is also defined by extensive civil society lobbying efforts, during which civil society representatives meet with state diplomats in Geneva in hopes that the diplomats will bring up their issues of concern when they make recommendations during upcoming state reviews. Civil society members rely on state diplomats during this stage of the process because they are not allowed a public speaking role during the review stage. All in all, it is up to state diplomats to choose what background information to utilize when preparing their recommendations, whether that be the three preliminary documents, information from civil society meetings, information from meetings with fellow states, the media, or internal intelligence.¹²

The Universal Periodic Review: From the Working Group to the Plenary Session

The review stage of the UPR is centered around the “Working Group on the Universal Periodic Review” and the interactive dialogue sessions that are conducted within it. The Working Group on the UPR meets on a triannual basis via two-week-long sessions (held separately from plenary Council sessions). Over the course of each two-week session, fourteen UN member states are reviewed, adding up to 42 state reviews every year. During each Working Group session, each SuR undergoes a three-and-a-half-hour long “interactive dialogue”, during which the state delegation presents on human rights issues within their country (70 minutes) and receives recommendations from other states in attendance (140 minutes). Speaking time for recommending states varies by

¹¹ OHCHR, *A Practical Guide for Civil Society*, 11.

¹² Bertotti, “Separate or inseparable?”, 1145.

review. Speaking time for interactive dialogues is officially three minutes for Council members and two minutes for UN member states/observer states. However, full-length slots for speaking time are a rare occurrence and only apply when a small number of states seek to present recommendations to the SuR. Most interactive dialogues have enough states seeking to present their recommendations that the OHCHR diverts to dividing the speaking time evenly among recommending states, usually resulting in around 50-60 seconds of speaking time per state.¹³ Finally, after a SuR's interactive dialogue is completed, the statements delivered by the SuR delegation and the recommendations that other states put forth are compiled into the "Report of the Working Group on the Universal Periodic Review." A draft of the report is distributed a few days after the interactive dialogue and is finally "adopted" by the Working Group.

Although SuRs may sometimes list initial responses to recommendations in the Report of the Working Group itself, they are not required to respond to recommendations until the next plenary session of the Human Rights Council. When a SuR responds, they categorize all the recommendations that they received as either "Supported" or "Noted." In UPR terminology, "Noted" almost always means "rejected." SuR responses are compiled in a thematically organized "Matrix of Recommendations." In addition, some SuRs publish additional documents containing more in-depth explanations of their decisions to accept or reject the recommendations that they were faced with. These documents often include more explicit rejections of "Noted" recommendations and more conditional acceptances of certain "Supported" recommendations, adding a wider variety of hues to state responses than the black-and-white nature of the Matrix.

¹³ Charlesworth & Larking, "Introduction", 5.

Implementation & Follow-Up

Although the spotlight is often placed on the review stage, much of the “action” in the UPR process takes place between review sessions, during which states implement accepted recommendations and the OHCHR attempts to hold them to their commitments. The question of how recommendations can be implemented on a domestic level is extremely broad, but a number of consistent strategies meant to encourage successful implementation are employed by the OHCHR. Since 2009, the OHCHR has maintained a UPR Trust Fund (the “Voluntary Fund for financial and technical assistance in the implementation of the universal periodic review”). The fund receives contributions from UN member states, NGOs, and individuals. It awards need-based funding to states in order to target specific thematic issues from accepted recommendations, as well as overarching efforts to support NHRIs (National Human Rights Institutions) and public awareness of human rights. Beyond the UPR Trust Fund, the OHCHR works year-round to encourage implementation of accepted recommendations, working to hold states accountable through communication with national legislatures and civil society.

Civil Society and the UPR

Civil society actors are also involved in the UPR process, but, as a whole, it is an overwhelmingly state-controlled process.¹⁴ With no speaking role during the interactive dialogue, they are only allowed to submit “stakeholder submission” reports to the OHCHR, which are compiled into a ≤10-page summary report by the OHCHR and may

¹⁴ Lilliebjerg, “An NGO Perspective on Opportunities and Shortcomings”, 311.

or may not be read by state delegations. In order to supplement these reports, many civil society actors attempt to strategically lobby UN member states that they think will support their agenda before a given UPR session, in hopes that the state in question will relay their recommendations to the SuR during the interactive dialogue. However, using states as a mouthpiece is a flawed system that speaks strongly to civil society's lack of agency within the UPR process. This low level of agency often goes unquestioned in academic discourse surrounding the UPR, as many observers are afraid that empowering civil society would repel states from the process.¹⁵ In spite of all this, the UN continues to emphasize on the importance of civil society participation in legitimizing the UPR process.

Following the introduction of hybrid modalities in the third cycle, the UPR faces a turning point in terms of who is included in the process and how. This turning point represents a prime opportunity for the OHCHR to reevaluate the role of civil society within the UPR process going forward into the fourth and fifth cycles. Although this approach diverges somewhat from the OHCHR's original vision of the UPR as a cooperative, non-confrontational model of human rights enforcement, my research shows that giving the UPR some "teeth"¹⁶ in the form of publicly visible civil society participation is both a feasible and a desirable reform strategy. Now that the legitimacy of the mechanism has solidified over fifteen years of existence, it is time to remove the UPR's training wheels and fully realize its potential as a platform to empower civil society within the UN human rights system. Although a more cooperative model of

¹⁵ Interview #10; Interview #14.

¹⁶ Lilliebjerg, "An NGO Perspective on Opportunities and Shortcomings", 311.

human rights discourse does have its advantages,¹⁷ the current state of the UPR calls for this to be balanced out with more direct confrontations initiated by non-state actors.¹⁸ In order to achieve this balance, the UPR must reign back the overwhelming level of control that states are given over the process and create a space for actors that will provide honest, well-informed criticism of SuRs. Analyzing the internal dynamics of state and civil society participation within the UPR, I assert that increased inclusion of civil society voices would dramatically improve the mechanism's ability to hold certain states accountable for their human rights responsibilities, keeping the best aspects of the UPR's collaborative nature while addressing its shortcomings when dealing with non-compliant states.

Research Background

Throughout my analysis of the UPR, much of my argumentation regarding state and civil society participation is based on a series of semi-structured interviews with UN officials, diplomatic mission members, civil society representatives, and academics conducted from September 2021-April 2022. As additional background for my analysis of state participation, I reflect on attending the 40th Session of the UPR in Geneva. Analyzing civil society participation, I reflect on the UPR 40 Pre-session and provide a first-hand look into civil society participation through The Advocates for Human Rights, a Minneapolis-based NGO that regularly participates in the UPR via Stakeholder

¹⁷ Dominguez-Redondo, "Is there Life Beyond Naming and Shaming in Human Rights Implementation?", 683.

¹⁸ While some states do their best to keep "mutual praise" in check with specific, critical recommendations, they are often shut down by the state under review/allied states via points of order. This was a frequent occurrence throughout UPR 40.

Submissions and lobbying efforts.¹⁹ Beyond my interviewees and my personal experiences, I draw on a diverse variety of secondary sources as a means of constructing a nuanced perspective on the UPR, including academic discourse surrounding the mechanism, United Nations archival material, media coverage, and informational literature produced by civil society.

Outline

Following the introduction and the literature review, the main body of this thesis is divided into four primary sections. Chapter 3 provides in-depth background on the creation of the UPR mechanism and its modalities. The background that this chapter provides serves as an explanation for many states' aversion to "naming and shaming" models of human rights enforcement, outlines the history of civil society exclusion within the mechanism, and thoroughly orients the reader to the structure and modalities of the UPR mechanism. Chapter 4 goes on to assess the history of state participation in the UPR to date, highlighting positive and negative trends of state engagement with the mechanism through a mix of first-hand accounts from UPR 40, interview data, and academic literature. Chapter 5 mirrors this model with a focus on civil society, drawing primarily on interview data, academic literature, and first-hand experience from my involvement in UPR-adjacent civil society activities throughout Fall 2021-Spring 2022. Finally, Chapter 6 uses the findings from the previous chapters to envision a model for a civil society speaking role at the review stage of the UPR.

¹⁹ Although I maintained an internship with The Advocates for Human Rights during much of my research, I functioned as an independent academic throughout, applying for UN accreditation on my own.

Rationale

“...going forward, the fact that 3rd cycle reviews can hardly be distinguished from 2nd cycle ones is arguably going to raise questions regarding the effectiveness and the credibility of the UPR among observers of the mechanism. A tendency to respond to this issue through exclusively quantitative methods [...] can already be detected.”

—Sara Bertotti, ““Separate or inseparable?”²⁰

By examining state and civil society participation over its first three cycles, I bring the literature on the UPR’s internal dynamics up to date, as much of the most important academic literature on civil society involvement was written around the first UPR cycle.²¹ In spite of many UPR commentators’ focus on state attendance and recommendation acceptance rates, I assert that in-depth examination of the UPR’s internal dynamics from a variety of actors’ perspectives is essential to understanding the current state of the mechanism. If the UPR is “shaped by those who participate in the process”,²² far more attention needs to be paid to the conduct of these participants than the current body of literature on the UPR provides. For this purpose, rather than presenting a quantitative analysis based on thousands of recommendations or seeking to piece together human rights outcomes of the UPR, I attempt to humanize a process that is often unfriendly, obtuse, and bureaucratic to people outside of the UN system.

²⁰ Sara Bertotti, “Separate or inseparable? How discourse interpreting law and politics as separable categories shaped the formation of the UN Human Rights Council's Universal Periodic Review”, *The International Journal of Human Rights*, 23:7, (2019), 1157.

²¹ Hillary Charlesworth & Emma Larking, *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, Cambridge University Press (2014); Lilliebjerg, “An NGO Perspective on Opportunities and Shortcomings.”

²² Charlesworth & Larking, “Introduction”, 8.

Chapter 2: Literature Review

This chapter provides an overview of UPR scholarship, with a specific focus on works that, in line with my thesis, analyze the internal dynamics of state and civil society participation within the mechanism. They are often broad analyses of the mechanism as a whole²³ rather than spotlight articles focused on specific states or international human rights issues within the context of the UPR.²⁴ The selected works explore a wide variety of the overarching dynamics inherent to state and civil society engagement with the UPR, such as the structure of the UPR mechanism, specificity of UPR recommendations, and politicization within the UPR.

When the UPR was first being assessed by the academic community after its launch in 2008, much of the initial literature adopted a broader scope than articles written during later cycles. Although they are mostly concerned with state participation rather than civil society participation, they provide valuable insight into state engagement trends during the early stages of the process. One of the key authors who contributed to this initial literature on the UPR's internal dynamics was Elvira Dominguez-Redondo. Dominguez-Redondo's contextualization of the UPR within the context of the Commission sets her contributions apart from other literature that portrays the newborn UPR in a vacuum. Her 2008 article "The Universal Periodic Review of the UN Human

²³ Edward R. McMahon, "The Universal Periodic Review: A Work in Progress: An Evaluation of the First Cycle of the New UPR Mechanism of the United Nations Human Rights Council", Friedrich-Ebert-Stiftung, (2012); Charlesworth & Larking, "Introduction."; Valentina Carraro, "The United Nations treaty bodies and Universal Periodic Review: Advancing Human Rights by Preventing Politicization?", *Human Rights Quarterly* 39.4, (2017).

²⁴ While some articles of this nature do contain some valuable insights related to my research, and are cited throughout my thesis (Duggan-Larkin, "Can an Intergovernmental Mechanism Increase the Protection of Human Rights?"; Smith, "More of the Same or Something Different"; Smith, "To See Themselves as Others See them"), I have excluded them from this chapter in order to focus my literature review on papers whose primary topics directly parallel issues that are central to this thesis.

Rights Council: An Assessment of the First Session” is a primary example of this, assessing the initial configuration of the UPR process as of the first session in April 2008 (after which many changes took place). Overall, Dominguez-Redondo adopts a generally positive view of the first UPR session, viewing the UPR as an improvement on the Commission in many ways. She paints state engagement in the first session as mostly positive, asserting that no state used the session as a platform to “challenge the universality of human rights” as many had in the days of the Commission. For outside actors such as academics and civil society, the mechanism’s public nature is a helpful improvement on the closed-door policies perpetuated by the Commission. However, in spite of its publicity, she harbors concerns about public engagement with the process and ends her article by foreshadowing problems that the UPR continues to struggle with to this day—

“While it remains early to assess this phenomenon, the severe lack of reporting of the first session in various national media indicates a level of apathy towards the process. At worst, this suggests that the process is taken much more seriously in Geneva than at home; at best, it may seem that it is relatively easy to suppress the process, despite being public, from national consciousness.”²⁵

The other key academic analysis of the first UPR session was Juliana Vengoechea-Barrios’ “The Universal Periodic Review: A New Hope for International Human Rights Law or a Reformulation of Errors Past?.” Vengoechea-Barrios’ paper in particular offers valuable insight in the transition of the review process “from paper to

²⁵ Elvira Dominguez-Redondo, “Universal Periodic Review of the UN Human Rights Council: An Assessment of the First Sessions”, *Chinese Journal of International Law* 7, no. 3, (2008), 734.

practice.”²⁶ She emphasizes the overarching goals of mutual support, cooperation, and sharing of best practices that the UPR was intended to promote, and uses intimate, firsthand accounts of first session interactive dialogues to examine how these goals were or were not reached in the example states’ reviews. Her findings reveal a wider-ranging levels of state engagement than Dominguez-Redondo’s article, including SuRs engaging in constructive self-criticism (the UPR of Brazil), rosters of recommending states who fail to provide meaningful criticisms of the SuR (the UPR of South Africa), and rosters of critical recommending states who place a strong emphasis on SuR accountability as a whole (the UPR of Poland).²⁷ Overall, Vengoechea-Barrios remains optimistic and open-minded throughout, defending the mechanism’s already-apparent politicization as “both [an] asset and a drawback”, in that while political dynamics between states can cause disputes unrelated to human rights to arise within the mechanism, they can also provide a platform type of soft power peer pressure that leads to positive change in the domestic human rights practices of states being reviewed.²⁸

In addition to more exploratory articles written during the first cycle, it is also important to acknowledge the highly critical angle that some commentators immediately adopted toward UPR upon the beginning of its first cycle. One of the most critical voices in the initial discussion surrounding the newborn UPR were NGOs that felt that they were excluded from the process. A key example of this can be found in Marianne Lilliebjerg’s 2008 article “The Universal Periodic Review of the UN Human Rights Council - An

²⁶ Juliana Vengoechea-Barrios, “The Universal Periodic Review: A New Hope for International Human Rights Law or a Reformulation of Errors Past?”, (Bogota: Revista Colombiana de Derecho Internacional, 2008), 101.

²⁷ Vengoechea-Barrios, “The Universal Periodic Review”, 111-113.

²⁸ Vengoechea-Barrios, “The Universal Periodic Review”, 115. This is an argument that authors such as Carraro would expand on in their analysis of later cycles.

NGO Perspective on Opportunities and Shortcomings.” Lilliebjerg, an Amnesty International representative involved in UPR negotiations, joins Dominguez-Redondo & Vengoechea-Barrios in offering an intimate view of early UPR proceedings, but uses this perspective to fuel a much more critical argument about the UPR’s lack of meaningful NGO involvement. While she acknowledges some positive aspects, Lilliebjerg is frustrated that the pleas of organizations such as Amnesty for “a review mechanism with human rights expertise at its centre, thorough analysis of each situation, a dedicated follow up mechanism and a greater role for civil society” went unheeded, leaving the UPR with “considerably less ‘teeth’ than NGOs had originally hoped for.”²⁹ While she declines to comment on its long-term effectiveness due to lack of perspective on the newborn mechanism, she expresses an overall sentiment of concern that the mechanism’s lack of civil society input may lead to unchecked mutual praise among state participants.³⁰

Moving on to the end of the first cycle, Edward McMahon and Marta Ascherio’s “A Step Ahead in Promoting Human Rights?”³¹ takes advantage of being able to look back on four years of the mechanism’s existence with a cycle-spanning analysis of regional recommendation trends. They proceed to assess these trends by introducing McMahon’s “action category” system for sorting UPR recommendations. McMahon’s system attempts to organize UPR recommendations into five action categories: (1) minimal action, (2) continuing action, (3) considering action, (4) general action, and (5) specific action. While these categories do not explicitly evaluate the “quality” of

²⁹ Lilliebjerg, “An NGO Perspective on Opportunities and Shortcomings”, 311.

³⁰ Lilliebjerg, “An NGO Perspective on Opportunities and Shortcomings”, 314.

³¹ Edward R. McMahon, and Marta Ascherio, “A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council”, *Global Governance* 18, (2012).

recommendations,³² they vary based on three primary factors: the specificity of the recommendation, the type of action that the recommendation is requesting from the SuR, and the firmness of the language employed within the recommendation. The system has gone on to be widely adopted by UPR scholars and even UN-adjacent organizations such as UPR Info.³³ Although five categories may not be able to fully capture the scope of the tens of thousands of recommendations given over the course of the UPR's existence, it is an extremely useful tool for discussing the specificity and actionability of any given recommendation, one of the most important issues facing the UPR.

In their article, McMahon and Asherio use their data on state recommendation trends (filtered by region and McMahon's five-category system) to place state participants in the UPR into two distinct camps. They argue that "state behavior within the UPR can be explained largely by the extent to which states emphasize a universal human rights approach to international relations, versus those embracing cultural relativism",³⁴ the latter of which they view as a "problematic stance."³⁵ To justify their argument, they measure each regional groups' number of recommendations and recommendation responses throughout the first session of the UPR. Throughout the piece, they use their data to reveal patterns of "friendly state" dynamics that cause

³² According to McMahon "it would be highly subjective and of no utility to attempt to assess recommendations on the basis of whether they are 'good' or 'bad'" (McMahon, "The Universal Periodic Review: A Work in Progress", 15). It is possible that this is a direct response to earlier recommendation categorization attempts such as UN Watch's "Mutual Praise Society" a 2009 study that attempted to assign normative categories to UPR recommendations on a scale ranging from "Very Constructive" to "Destructive" (UN Watch, Mutual Praise Society: Country scorecard and evaluation of the Universal Periodic Review system of the U.N. Human Rights Council, (2009).

³³ Understanding McMahon's system is more or less essential to engaging in contemporary discourse around the UPR. For example, although UPR Info is not an official branch of the OHCHR, the fact that it employs McMahon's system as a tag/filter in their "UPR Info Database" is quite notable.

³⁴ McMahon & Ascherio, "A Step Ahead in Promoting Human Rights?", 231.

³⁵ McMahon & Ascherio, "A Step Ahead in Promoting Human Rights?", 247.

recommending states to give SuRs uncritical recommendations.³⁶ In turn, these recommendations allow SuRs to cultivate high recommendation acceptance percentages in order to appear that they are constructively engaging in the UPR process.

Overall, while many articles on the UPR criticize weak recommendations, McMahon and Asherio's offers valuable insight into the prevalent issue of "friendly state" dynamics that leads to weak recommendations being given in the first place. They use the divide between states that embrace universal rights and those that defer to cultural relativism to explore whether a universal approach to human rights is possible, in the context of the UPR or in a larger sense. Overall, they conclude with a strong vision of criticism as cooperation, placing stock in the UPR's ability to break the universal rights versus cultural relativism divide by fostering an "interactive, relevant, and sophisticated" global dialogue on human rights.³⁷

After his joint article with Asherio, McMahon published another important article on the UPR³⁸ that adopted a broader scope towards the first cycle as a whole, entitled "The Universal Periodic Review: A Work in Progress." Published shortly after the close of the first cycle, "A Work in Progress" shares much of its scope and analytical strategies with Dominguez-Redondo and Vengoechea-Barrios' 2008 articles. However, McMahon

³⁶ "Many states [...] appear to conflate the concept of cooperation with only praise or positive statements [...] The long-term success of the HRC [Human Rights Council] will depend on states being able to recognize that criticism can be a component of cooperation [...the UPR must] establish a norm of critiquing at least aspects of fellow member states' human rights performances without engendering counterclaims of disloyalty..."

³⁷ McMahon & Ascherio, "A Step Ahead in Promoting Human Rights?", 246.

³⁸ While McMahon has published many articles on the UPR over the past ten years, I chose to outline these two in my literature review because they were ones I consulted the most throughout my research. Nevertheless, other articles such as "More Honey Than Vinegar: Peer Review As a Middle Ground between Universalism and National Sovereignty", "Universal Periodic Review: Do Civil Society Organization-Suggested Recommendations Matter?", and "Evolution Not Revolution: The First Two Cycles of the UN Human Rights Council Universal Periodic Review Mechanism" are also cited throughout my thesis.

was able to make more authoritative recommendations thanks to a more informed perspective on the mechanism gained from years of observation as opposed to the single review session that Dominguez-Redondo and Vengoechea-Barrios had to base their initial articles on. Mixing recommendation data sets similar to those found in “A Step Ahead”, and observational evidence and interviews with people involved in the mechanism,³⁹ McMahon emphasizes need for both heightened NGO engagement with the process (“having a meaningful and substantive role in the preparation of the national report, having a recognized role in the Geneva country review process, and engaging in oversight of SuR state compliance with accepted recommendations”)⁴⁰ and for heightened state engagement strategies (action-oriented recommendations, mid-term reporting)⁴¹ in contributing toward the overall goal of cementing the UPR as an “important instrument in the mainstreaming of universal human rights norms into regular state practice.”⁴²

Later in 2012, Dominguez-Redondo would join McMahon in reflecting on the first cycle of the UPR as a whole and follow up on her prior research with “The Universal Periodic Review: Is There Life Beyond Naming and Shaming in Human Rights Implementation.” Also benefiting from the ability to look back on the first cycle as a whole, “Is There Life Beyond Naming and Shaming” presents a much more assertive, authoritative assessment than Dominguez-Redondo’s previous foray into academic

³⁹ Although many of his findings and resulting suggestions for the future of the UPR are based on his data, some of his most illuminating findings on the internal dynamics of state engagement come in the form of anecdotes from his supplemental interviews with various permanent mission members. Some of these interviews reveal an underlying self-consciousness present in some states’ relationship with the UPR, exploring states’ desire to look good on the global stage and the dubious lengths they go to in order to achieve this goal. For more on this, see Chapter 4.

⁴⁰ McMahon, “The Universal Periodic Review: A Work in Progress”, 26.

⁴¹ Ibid.

⁴² Ibid.

discourse on the UPR. Identifying the UPR as a “non-confrontational” human rights enforcement mechanism, she assesses the value of this approach in relation to “naming and shaming” approaches that defined past mechanisms such as the Commission. She defends the UPR’s methodology against critics who view it as a “toothless” or overly politicized⁴³ mechanism, criticizing overarching trends of “legal fetishism” in international human rights discourse. As a retort to this, she explores the potential for cooperative human right enforcement strategies to change human rights norms through sustained state engagement and move human rights enforcement from “a blame culture to a learning culture”⁴⁴ placing an emphasis on sharing best practices as initially outlined in the Human Rights Council Institution Building Package.⁴⁵ This is a prime example of positive arguments applauding the UPR’s cooperative nature that many supportive actors (including the OHCHR itself) continue to employ to this day.

The most extensive collection of academic literature solely focused on the UPR to date is 2014’s *Human Rights and the Universal Periodic Review: Rituals and Ritualism*. Edited by Hilary Charlesworth and Emma Larking, *Rituals and Ritualism* is a compilation of articles topically centered around the first cycle of the UPR and thematically centered around the titular concept of the UPR as a “ritual” of sorts. Rituals, as defined by Charlesworth and Larking, are “ceremonies or formalities that, through repetition, entrench the understandings and the power relationships that they embody.”⁴⁶

⁴³ Later on in the second cycle, Valentina Carraro would join Dominguez-Redondo in speaking out in opposition towards the camp of critics characterizing the UPR’s politicization as a completely negative trait (Carraro, “Advancing Human Rights by Preventing Politicization?”, 968-969).

⁴⁴ Jane Cowan, “The Universal Periodic Review as a public audit ritual” in *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, edited by Hillary Charlesworth & Emma Larking, Cambridge University Press (2014), 44.

⁴⁵ Human Rights Council, *Resolution 5/1 - Institution-building of the United Nations Human Rights Council*, UN Doc. A/HRC/RES/5/1, (2007), para. 4.(d)

⁴⁶ Charlesworth & Larking, “Introduction”, 8-9.

This fits both the UPR's structure (its formal, ceremonial quality) and many supporters' long-term goals for it (to gradually entrench an understanding of universal human rights within the UN's member states). Meanwhile, UPR "ritualism" ("a distinct concept from rituals") is characterized by "participation in the process of reports and meetings, but an indifference to or even reluctance about increasing the protection of human rights."⁴⁷

After they lay the initial groundwork, Charlesworth and Larking turn the volume over to various authors who approach the UPR from different angles in each of their chapters, including the mechanism's relationship with the media, the treaty bodies, and NGOs.⁴⁸

Overall, Charlesworth, Larking, and the compilation's various contributors view the UPR as an enforcement mechanism with strong potential, while simultaneously identifying the dangers of ritualism and stagnation that are inherent to repetitive, bureaucratic mechanisms of this nature. Their compilation provides a unique anthropological perspective on the UPR, further reinforcing the applicability of a humanistic perspective towards the UPR as opposed to a data-based perspective. As Jane Cowan states in her chapter, she (and most other *Rituals and Ritualism* contributors) are less concerned with the question of "does it [the UPR] work?" and more concerned with the questions of "what is it?" and what does it do?"⁴⁹ This emphasis on the mechanism's process and internal dynamics rather than its effectiveness (which other UPR literature thoroughly interrogates) places *Rituals and Ritualism* in the same sphere of UPR discourse that my thesis occupies.

⁴⁷ Charlesworth & Larking, "Introduction", 10-11. These are both key concepts that I carry forth into my analysis of state participation in the UPR.

⁴⁸ The latter chapter in particular, written by Ben Schokman and Phil Lynch, provides valuable insight into the strategies that NGOs use to "work around" their lack of a publicly visible space to participate in the UPR process.

⁴⁹ Cowan, "The Universal Periodic Review as a public audit ritual", 45.

After the scholarly excitement around the first cycle of the UPR died down, the second cycle (2011-2016) and third cycle (2017-2022) of the UPR were defined by articles surrounding specific states and overarching human rights debates within the UPR rather than articles looking at the UPR process in a broader sense. Although many articles from the first cycle that approached the mechanism from a broad standpoint called for follow-up assessments building on their work during and after the second cycle, few scholars stepped up to the plate to attempt an analysis of this nature.

One of the handful of authors to break this trend was Valentina Carraro. In her 2017 article “The United Nations Treaty Bodies and the Universal Periodic Review: Advancing Human Rights by Preventing Politicization”, Carraro interrogates the issue of politicization in the UPR and the treaty bodies by questioning whether it should be viewed as a problem. Although politicization can be defined in several ways depending on the context, Carraro defines politicization within the Council and its various mechanisms as “the pursuit of political objectives unrelated to human rights.” Overall, based on the results of her study, Carraro suggests that politicization is an inherent and even advantageous aspect of the UPR process because it increases the mechanism’s capacity to create an environment in which peer pressure can be exerted to coerce states into improving their human rights practices.⁵⁰

In order to “measure [perceived] politicization,” Carraro focuses on the subjective views of the actors involved, surveying a few dozen “principal actors” close to these mechanisms.⁵¹ Carraro’s subjects from both the UPR and the treaty bodies were asked to

⁵⁰ Carraro, “Advancing Human Rights by Preventing Politicization?”

⁵¹ Carraro’s methodology and emphasis on subjective views of people involved in the UPR process were very influential on the methodology for/scope of my interview process.

rank how often three phenomena related to politicization took place within each respective mechanism on a scale of “Never”/“Seldom”/“Often”/“Always.” The three issues in question were “country bias” (bias taking place when “certain countries receive differential treatment than others with a virtually comparable human rights performance.”⁵²) “issue bias” (bias taking place when “some human rights issues are [...] given more attention than others are.”⁵³) and cultural relativism-related conflicts (“universal values” clashing with countries’ cultural, religious, or ideological values.⁵⁴).

Overall, Carraro finds that the UPR displays a higher level of perceived politicization in the UPR than in the treaty bodies across the board, particularly in the categories of country bias and issue bias. However, although “politicization is universally considered a negative phenomenon,” from a credibility standpoint, she observes from a practical standpoint that in terms of producing “actual compliance with undertaken commitments,” the UPR is perceived to be more effective than the treaty bodies. This can be related to the dynamics of state-to-state human rights discourse versus the dynamics of expert-to-state human rights discourse, an important debate regarding the structure of the UPR dating back to the mechanism’s formation.⁵⁵

Carraro’s most recent contribution to literature on the UPR, “Promoting Compliance with Human Rights: The Performance of the United Nations’ Universal Periodic Review and Treaty Bodies”, further explores the avenues that the UPR and the

⁵² In the article, one of Carraro’s interviewees identifies Cuba as a good example of a politically controversial country that is liable to be treated with a significant amount of country bias during its review sessions. However, other countries, such as China, may have the reverse experience of being treated with leniency in spite of their poor human rights record during their review sessions due to their extensive political and economic international connections.

⁵³ Issue bias conflicts in the Council often arise around issues such as the Israeli occupation of Palestine.

⁵⁴ Cultural relativism conflicts in the Council often arise around social issues such as women’s rights and LGBT rights.

⁵⁵ Dominguez-Redondo, “An Assessment of the First Sessions”, 722.

treaty bodies use to promote human rights compliance. Moving in a more theoretical direction than her 2017 article, she frames both mechanisms within the three main schools of human rights enforcement—the constructivist school, the managerial school, and the enforcement school. In relation to the UPR, all three of these schools have a place within the conversation surrounding the mechanism. Throughout its existence, the OHCHR has highlighted the UPR’s potential to trigger learning among state delegations and promote best practices for the promotion of human rights on a domestic level, strongly speaking to the constructivist approach. Over time, much of the discourse surrounding UPR has also become somewhat managerial, as civil society members, academics, and state delegations concerned with human rights strategize how to draft and present “practically feasible” recommendations that will lead to positive outcomes on the ground in target SuRs. However, based on surveys sent out to diplomats involved with both mechanisms, Carraro finds that constructivist points of focus such as best practices and mutual learning were fairly insignificant outcomes of the mechanism from the standpoint of her interviewees. Conversely, she finds the most important perceived quality of the UPR to be its ability to generate pressure on states, a defining sentiment of the enforcement school. Carraro also identifies that, in the context of the UPR, this pressure can be exerted both by peers and by the broader public. This sentiment in particular has been an important influence on my decision to advocate for an increased civil society role in the process.⁵⁶

⁵⁶ Valentina Carraro, “Promoting Compliance with Human Rights: The Performance of the United Nations Universal Periodic Review and the Treaty Bodies”, *International Studies Quarterly*, (2019), 1082.

In spite of relatively low public awareness of the mechanism in most countries,⁵⁷ the last fifteen years have produced a rich body of academic literature on the UPR. However, this literature is not without its gaps. While a select few authors such as Schokman & Lynch, Sweeny & Saito, and McMahon have written articles focused on civil society participation dynamics within the UPR, it remains an underrepresented subfield of UPR discourse, especially considering that all of the aforementioned articles were published relatively early in the UPR's existence. This also ties into the overarching issue of the majority of academic discourse concerning the UPR (especially discourse assessing the mechanism as a whole rather than through a narrow lens of a single state or human rights issue) being written around the first cycle. Overall, I seek to correct these trends by providing an in-depth, up-to-date civil society-focused analysis of the mechanism that draws equally from existing academic literature and contemporary first-hand sources such as my interviewees and my personal involvement with the 40th cycle of the UPR.

⁵⁷ Joseph, "Global media coverage of the Universal Periodic Review process."

Chapter 3: Background

The Formation of the UPR (2006-2008): Forging a New Path

When looking back on the formation of the UPR, it is important to note the largely unprecedented, trailblazing nature of the mechanism within the context of the United Nations.⁵⁸ At the time of its formation, the UPR was regarded by many as not just the “only substantial change” from the Commission to the Council⁵⁹ and the “most significant product” of the United Nations 60th anniversary reform process as a whole,⁶⁰ but, in its focus on peer review and universal standards, a new type of human rights mechanism markedly different from any previous UN approach to human rights enforcement.⁶¹ Although the Commission and ECOSOC had briefly toyed with a periodic human rights review applying to all member states in the 1960s-1970s,⁶² the UPR was taken much more seriously from the beginning of its formation process than any

⁵⁸ The UPR’s universal scope and lofty ambitions led the first president of the Council, Luis Alfonso de Alba, to call it “a difficult and risky attempt to deal in an improved way with human rights issues within the United Nations” (Vengoechea-Barrios, “A New Hope for International Human Rights Law”, 115).

⁵⁹ Dominguez-Redondo, “An Assessment of the First Sessions”, 721.

⁶⁰ Charlesworth & Larking, “Introduction”, 2.

⁶¹ Although the human rights branch of the United Nations had meager experience conducting intergovernmental peer reviews of its membership body, other branches of the UN and exterior international organizations were already familiar with the intergovernmental peer review process by the time the UPR was being formed. Intergovernmental peer review practices of the International Monetary Fund, the International Labor Organization, the World Trade Organization, and the African Union were used as reference points in designing the UPR. Best practices presentations focused on each of these organizations were deemed “particularly useful for all participants” by

⁶² ECOSOC’s “periodic reporting process” lasted from 1965-1980. It required UN member states to submit self-reports on civil and political rights, economic and social rights, and freedom of information to the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities every three years (Dominguez-Redondo, “An Assessment of the First Sessions”, 723-724). It was eventually abolished due to the resulting reports “generat[ing] a paucity of attention and prov[ing] to be of little use” (McMahon, “The Universal Periodic Review: A Work in Progress”, 6)—indeed, the Sub-Commission “generally failed to read” state reports (Cosette D. Creamer and Beth A. Simmons, “The Proof is in the Process: Self-Reporting Under International Human Rights Treaties”, *The American Journal of International Law* Vol. 114:1, (2019), 10).

mechanism preceding it. As stated by Mohammed Loulichki, the chief facilitator for the UPR negotiation process—

“...the UPR is in fact a new mechanism that had to be created and ‘built up’; [this was] an asset because the Facilitator was free to improvise and innovate without being impeded by the weight of an existing mechanism...”⁶³

Given that the “end result could have been achieved in a wide variety of forms”,⁶⁴ analysis of Commission’s fall from grace and the negotiation process between GA Resolution 60/251 (the initial mandate for the UPR) and Council Resolution 5/1 (the primary founding document of the Council and the UPR) is vital to understanding the intentions behind the mechanism and the foundation that was laid for state and NGO participation dynamics.

The Commission

During the formation of the UPR, the conversation around how the mechanism should be constructed was largely driven by an overarching desire to distance the UPR from the Commission’s “naming and shaming” methods of addressing human rights violations.⁶⁵ In spite of its many critics, the Commission undoubtedly had many remarkable achievements over the years, including specific landmarks such as drafting important international human rights documents⁶⁶ and overarching progress in

⁶³ Mohammed Loulichki, “The Universal Periodic Review or the Promise of a New Mechanism for the Protection of Human Rights, in *The First 365 Days of the United Nations Human Rights Council*, edited by Lars Müller, (2007), 81.

⁶⁴ Walter Kälin, “Ritual and ritualism at the Universal Periodic Review: a preliminary appraisal”, in *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, edited by Hillary Charlesworth & Emma Larking, Cambridge University Press (2014), 29.

⁶⁵ Cowan, “The Universal Periodic Review as a public audit ritual”, 49.

⁶⁶ Examples of this include the Universal Declaration of Human Rights and the covenants and treaties that now make up the treaty body system.

establishing human rights norms that continue to function as pillars of international human rights discourse to this day.⁶⁷ However, this did not change the fact that the Commission had become extremely unpopular by 2005. Many Western democracies such as the United States were infuriated by the fact that autocracies were allowed to hold positions of power within the mechanism. Conversely, many states from the Like-Minded Group of Developing Countries (LMDC)⁶⁸ saw the Commission as “a neo-colonial tool having little to do with real human rights concerns.”⁶⁹

Throughout its existence, the Commission sought to “examine, monitor and publicly report” on human rights situations specific to certain countries, as well as broader overarching human rights issues.⁷⁰ As opposed to its successor (the Council), the Commission was mostly operated behind closed doors—however, this did not stop it from building a reputation as a highly controversial mechanism. The Commission’s country-specific inquiries often drew controversy in that they were “highly politicized” having no consistent “universal” pattern and leading to certain countries being targeted far more often than others with similar or worse human rights records.⁷¹ Although

⁶⁷ In spite of many developing countries’ criticisms of the Commission, Müller asserted shortly after the founding of the Council that the Commission would be “warmly remembered in the developing countries for its contribution to the downfall of apartheid, at which time some key Western countries branded it as an ‘activist’ body.” (Lars Müller, *The First 365 Days of the United Nations Human Rights Council*, (2007) 129).

⁶⁸ Composed of twenty-four countries including major world powers such as China, India, and Iran, the LMDC represents about half of the world’s population.

⁶⁹ Dominguez-Redondo, “An Assessment of the First Sessions”, 723.

⁷⁰ ECOSOC Administrative Committee on Coordination, “The United Nations System and Human Rights: Guidelines and Information for the Resident Coordinator System” (Geneva: United Nations, 2000), 15.

⁷¹ Vengoechea-Barrios, “The Universal Periodic Review”, 104; Dominguez-Redondo, “An Assessment of the First Sessions”, 722-723; Dominguez-Redondo, “Is there Life Beyond Naming and Shaming in Human Rights Implementation?”, 678-679. Country-specific inquiries were often hindered on a technical level by the Commission’s reliance on Special Rapporteur visits. Special Rapporteur visits depend entirely on the target country’s consent in order to take place, and, as a result, target countries can and often do deny visit requests on the grounds of sovereignty preservation. Visits were unpopular at the time (and remain unpopular to this day) due to the negative political implications that a visit had on a target country’s

regional dynamics of this targeting varied, LMDC delegates were often the primary opponents of this practice, as well as the overarching concept of “naming and shaming” enforcement as a whole.⁷² In addition to rejecting double standards, many LMDC states fought against naming and shaming practices in order to avoid real-life consequences of country-specific inquiries such as economic sanctions and reduction in foreign aid.⁷³ On the other side of the aisle, while LMDC states sought to prevent the UPR from “degenerat[ing] into an inquisition panel”,⁷⁴ Western democracies had their own grievances with the Commission. The poor human rights records of many Commission members were a huge point of contention throughout the Commission’s existence. Many Western democracies saw the inclusion of non-democracies as a detriment not only to the Commission’s reputation but the UN’s reputation as a whole.⁷⁵

Since the Commission had attracted controversy long before the early 2000s, the fact that it took over fifty years for serious reform to take place can be attributed to two primary factors: increased power and influence within the developing world, and the

reputation regardless of the Special Rapporteur’s findings (Vengoechea-Barrios, “A New Hope for International Human Rights Law”, 104).

⁷² Dominguez-Redondo, “An Assessment of the First Sessions”, 723; Dominguez-Redondo, “Is there Life Beyond Naming and Shaming in Human Rights Implementation?”, 678-679.

⁷³ Dominguez-Redondo, “Is there Life Beyond Naming and Shaming in Human Rights Implementation?”, 690, citing James H. Lebovic, and Erik Voeten, “The Cost of Shame: International Organizations and Foreign Aid in the Punishing of Human Rights Violators”, Oslo: Journal of Peace Research 46, no. 1, (2009). In “The Universal Periodic Review: Is there Life Beyond Naming and Shaming Is Human Rights Implementation”, Dominguez-Redondo criticizes sanctions (a common result of the Commission’s country-specific inquiries/condemnations) as a means of effective human rights enforcement due to their negative humanitarian results. Beyond this, James Lebovic and Erik Voeten’s 2009 study “The Cost of Shame: International Organizations and Foreign Aid on the Punishing of Human Rights Violators” further explores the real-life effects of Commission resolutions on targeted countries, concluding that a Commission resolution condemning a given country’s human rights record generally resulted in foreign aid being reduced by about one third for that country (Dominguez-Redondo, “Is there Life Beyond Naming and Shaming in Human Rights Implementation?”, 690, citing James H. Lebovic, and Erik Voeten, “The Cost of Shame: International Organizations and Foreign Aid in the Punishing of Human Rights Violators”, (Oslo: Journal of Peace Research 46, no. 1, 2009)).

⁷⁴ Bertotti, “Separate or inseparable?”, 1153.

⁷⁵ Interview #1; Dominguez-Redondo, “Is there Life Beyond Naming and Shaming in Human Rights Implementation?”, 705.

spread of democracy worldwide.⁷⁶ As previously mentioned, developing countries' complaints about naming and shaming had been a cornerstone of criticism against the Commission from the beginning of its existence but, with the rise of the BRICS (Brazil, Russia, India, China, & South Africa) and other emerging economies in the decade preceding the Council's establishment, these countries were gaining political influence that they had not possessed twenty-to-fifty years earlier. From the democratic side of the critical conversation surrounding the Commission, the tide of democracy following the Cold War "heighten[ed] expectations and pressures on the [Commission], which it generally failed to meet."⁷⁷ However, despite overwhelming disapproval of the Commission from all sides,⁷⁸ internally-based reform was rendered all-but-impossible by a 2003 Commission resolution stating that "[a]ny decision on working methods should be adopted by consensus."⁷⁹ This necessitated a more "dramatic" overhaul,⁸⁰ which Kofi Annan would adopt as one of his final projects before the end of his term as Secretary-General.

In Larger Freedom

In 2005, Kofi Annan penned "In Larger Freedom: Towards Development, Security and Human Rights for All", an open letter to the President of the UN General Assembly. One of the many reforms Annan called for within this letter was for the

⁷⁶ McMahon, "The Universal Periodic Review: A Work in Progress", 6.

⁷⁷ Ibid.

⁷⁸ Dominguez-Redondo, "Is there Life Beyond Naming and Shaming in Human Rights Implementation?", 678-679.

⁷⁹ Kälin, "Ritual and ritualism at the Universal Periodic Review", 29, citing *Commission on Human Rights, Enhancement of the Working Methods of the Commission*, (Geneva: United Nations, 2002) para. 3.

⁸⁰ Dominguez-Redondo, "An Assessment of the First Sessions", 722.

Commission on Human Rights to be replaced by a Human Rights Council.⁸¹ While other actors such as mainstream Western media had been running a “well-orchestrated campaign” calling for the Commission’s dissolution since 2004, the campaign’s success can be attributed to Annan’s endorsement as reflected in the report.⁸² In the passage concerning the Commission, Annan acknowledges the mechanism’s achievements while strongly criticizing its flaws and expressing concern for its impact on the UN’s overarching institutional legitimacy—

“...the Commission’s capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism. In particular, States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. As a result, a credibility deficit has developed, which casts a shadow on the reputation of the United Nations system as a whole.”⁸³

Annan’s appeal was highly successful—around a year later on March 15th 2006, the General Assembly overwhelmingly voted to abolish the Commission and adopt the Council via GA Resolution 60/251.⁸⁴ This resolution included a mandate for a “universal periodic review” to be conducted, stated as follows:

“The General Assembly [...] Decides that the Council shall, inter alia [...] Undertake a universal periodic review, based on objective and reliable information, of the fulfilment 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

⁸¹ Annan chose to dub the new mechanism a “Council” in order to “heighten its institutional profile along the lines of the Security Council or ECOSOC” (McMahon, “The Universal Periodic Review: A Work in Progress”, 7), thereby making human rights one of the “three pillars” of the new UN model along with security and development (Chauville, “Successes and Failures”, 89).

⁸² “The campaign would not have succeeded but for a seminal report *In Larger Freedom* by Secretary-General Kofi Annan” (Müller, *The First 365 Days of the United Nations Human Rights Council*, 129).

⁸³ United Nations, *Report of the Secretary-General - In Larger Freedom: Towards Development, Security and Human Rights for All*.

⁸⁴ General Assembly Resolution 60/251 was adopted on March 15th 2006 with 170 in favor, 4 against (Israel, Marshall Islands, Palau, United States), with 3 abstentions (Belarus, Iran, Venezuela) The United States fought against the resolution during negotiations because it “did not go far enough to exclude some of the world’s worst human rights abusers from membership in the new body” (United Nations Department of Public Information, “General Assembly Establishes New Human Rights Council By Vote of 170 In Favour to 4 Against, With 3 Abstentions”, (2006)).

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 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.”⁸⁵

This paragraph-long mandate was extremely open-ended for the establishment of a mechanism that would go on to define the Human Rights Council. The lack of operational details⁸⁶ caused the year-long negotiation period outlined in Resolution 60/251 to be defined by intense, “somewhat torturous”⁸⁷ intergovernmental debate around what a universal human rights review mechanism of this nature should look like in practice.

UPR Negotiations: A Rigorous Process or a Light Process?

During UPR negotiations, Canada made an initial “concept proposal” before the rest of the Working Group outlining what the UPR could potentially look like, which went on to be one of the most influential documents that shaped the UPR’s structure and procedure.⁸⁸ Although it was written by one state, Canada’s concept proposal was unique in that it outlined two different sides⁸⁹ of the primary overarching debate within UPR negotiations: whether to adopt a “rigorous process” or a “light process”—

⁸⁵ United Nations General Assembly, General Assembly Resolution 60/251, UN Doc. A/RES/60/251, (2006), para. 5(e).

⁸⁶ Dominguez-Redondo, “An Assessment of the First Sessions”, 721.

⁸⁷ Rhona K.M. Smith, “More of the Same or Something Different - Preliminary Observations on the Contribution of Universal Periodic Review with Reference to the Chinese Experience”, *Chinese Journal of International Law* 10, no. 3 (2011), 570

⁸⁸ Benjamin Authers, “Representation and Suspicion in Canada's Appearance Under the Universal Periodic Review”, in *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, edited by Hillary Charlesworth & Emma Larking, Cambridge University Press (2014), 169-170.

⁸⁹ While Canada’s “two-sided” proposal is notable in the concept of other states’ much more one-sided participation in UPR negotiations, it is important to note that, as FES points out, Canada appeared “to prefer the lighter, interactive dialogue approach” out of the two (ISHR & FES, *A New Chapter for Human*

“...the UPR could be an extensive, rigorous undertaking with emphasis on quantity and quality of information and assessment. At the other end of the spectrum, it could be a light process with emphasis on an open and frequent discussion among peers.”⁹⁰

The proposal’s “rigorous” model, also called the “comprehensive approach”, would have been much different from the UPR we know today. Drawing from other international peer review mechanisms such as the Organization for Economic Cooperation and Development, the African Peer Review Mechanism, and the World Trade Organization, the comprehensive approach called for extensive background research conducted by experts and/or member states, including SuR country visits and consultation of in-country stakeholders. This would culminate in a “formal open hearing” including “comments from the expert panel, the [SuR], and other [s]tates.” The proposal argues that the adoption of this model would result in “an extensive, objective, and authoritative assessment a [SuR]’s human right’s performance”,⁹¹ while acknowledging the fact that such a model would likely prove labor-intensive, costly, and risked overlapping with the work of the treaty bodies.⁹²

The “light” UPR model, also called the “interactive dialogue model”, is much more in line with what the mechanism turned out to be. The interactive dialogue model called for preparation of background information by the OHCHR accompanied by a self-report by the SuR and additional submissions from other states and civil society

Rights, 79). This should be taken into account especially when analyzing their portrayal of a somewhat overbearing “rigorous” system from a political standpoint.

⁹⁰ International Service for Human Rights & Friedrich Ebert Stiftung, *A New Chapter for Human Rights: A handbook on issues of transition from the Commission on Human Rights to the Human Rights Council* (Geneva: ISHR & FES, 2006), 78.

⁹¹ ISHR & FES, *A New Chapter for Human Rights*, 78-79.

⁹² ISHR & FES, *A New Chapter for Human Rights*, 79-80.

organizations. This would culminate in “a three-hour session of interactive dialogue where the [SuR] would make a presentation on the state of human rights within the country [...] followed by comments and questions by other states and responses by the [SuR]. The proposal argues that the advantages of the light process would be its simplicity and its ability to incentivize states, “through peer advice and public opinion, [...] to improve their human rights performance”, while acknowledging that it would not result in the “authoritative [...] reports [and] findings” than a more rigorous process would. In its overview of the concept proposal, FES comments that while “[t]he lighter process may be easier to administer”, it “would raise fundamental questions about the value added by the mechanism and whether such a process would allow for a genuine review of the State’s obligations and commitments.”⁹³

Besides providing an overview of the formation process behind the UPR as a whole, it is also important to understand the role of states within the UPR negotiation process. Since the final guidelines of the UPR were to be outlined in a Human Rights Council resolution, the Council’s member states had ultimate control over the resolution’s content in spite of any input that the OHCHR and/or civil society had to offer throughout the process. Accordingly, states were the ones that got their way—thus, the Institution Building Package set the tone for the “entirely state-driven”⁹⁴ nature of the UPR. While states’ exclusion of NGOs during UPR negotiations will be discussed at length in Chapter 5, this section will cover states’ input on the publicity of the UPR

⁹³ This is a vitally important question that is still extremely relevant to analysis of the UPR today, especially since the mechanism has almost exclusively followed the path of Canada’s “light” model rather than the “rigorous” model since its inception.

⁹⁴ Takele Soboka Bulto, “Africa’s Engagement with the Universal Periodic Review; Commitment or Capitulation”, in *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, edited by Hillary Charlesworth & Emma Larking, Cambridge University Press (2014), 248.

mechanism (one of the defining features of the UPR and post-commission Human Rights efforts at the UN as a whole).

The final product of the UPR negotiations made it very clear that the UPR would be an extremely public process. All background documentation for every country review was made available online via the OHCHR, as was the “Report of the Working Group” and other outcome documentation. In addition, every interactive dialogue session would be broadcast live from Geneva and preserved via a video archive on the UN Web TV website. This last point in particular made the UPR a special kind of “public theater” of human rights, standing in stark contrast to closed-door mechanisms such as the Commission and treaty bodies. However, this was not always set to be the case—during UPR negotiations, the African Group and the OIC voiced their “vehement opposition” towards livestreaming the interactive dialogue segment.⁹⁵ This stance sits in line with overarching themes of LMDC states trying to eliminate elements of “shaming” present in the Commission throughout UPR negotiations. However, in the end WEOG (Western European and Other States Group) democracies were able to counter this movement, and the push to make the UPR a publicly visible mechanism by livestreaming the interactive dialogue prevailed.

Although the term “peer review” was used heavily to describe the process throughout the negotiations and preliminary documentation leading up to Resolution 60/251,⁹⁶ the General Assembly settled on the title of “Universal Periodic Review” in the

⁹⁵ Dominguez-Redondo brings this up in her paper because of another academic, Olivier de Frouville, questioning why the UPR is webcast instead of the treaty bodies “during which good questions are put to the [SuR].” Dominguez-Redondo strongly rejects this stance, defending the UPR’s value and criticizing commentators who presume experts bodies to be “the only ones that can tackle human rights implementation” (Dominguez-Redondo, “Is there Life Beyond Naming and Shaming in Human Rights Implementation?”, 680).

⁹⁶ Smith, “More of the Same or Something Different”, 570

final draft of the resolution in order to “[underline] that the UPR is not exclusively an intergovernmental process but one based on reliable information from a variety of sources.”⁹⁷ However, considering that the Working Group went on to design a state-centric, primarily intergovernmental mechanism that largely excludes NGOs,⁹⁸ “peer review” arguably remains the more accurate label, as reflected in the title of this thesis.

Shortly after the passage of Resolution 60/251 in 2006, Friedrich Ebert Stiftung’s *A New Chapter for Human Rights* asserted that whether or not to involve human rights experts such as NGO representatives and independent human rights experts (academics, lawyers) in the UPR process was “the most important decision” that was made during the UPR’s formation process.⁹⁹ In accordance with this, beyond overarching topics such as the overall rigor of the process, civil society and expert involvement turned out to be the most contentious topics of the formational debates. The debate was marked by a clear divide between the majority of NGOs and experts advocating for their own inclusion¹⁰⁰ and the majority of states advocating for a peer review mechanism partially or fully excluding NGOs¹⁰¹ and experts¹⁰² from the process.

NGOs that participated in the UPR negotiation process such as Human Rights Watch, Friedrich Ebert Stiftung, and Amnesty International fought not only for civil

⁹⁷ “...the Western Group, and many Latin American countries mainly support[ed] the term "periodic" in opposition to other countries belonging to the African Group and the OIC” (Dominguez-Redondo, “An Assessment of the First Sessions”, 725).

⁹⁸ In order to justify diminishing the role of civil society during negotiations, opposition states “invoked the difference between the English (rather proactive) and French (merely permissive) versions of paragraph 11 of the resolution creating the Human Rights Council” (Loulichki, “The Universal Periodic Review”, 83).

⁹⁹ ISHR & FES, *A New Chapter for Human Rights*, 74.

¹⁰⁰ ISHR & FES, *A New Chapter for Human Rights*; Human Rights Watch, “Universal Periodic Review”, (2006); Lilliebjerg, “An NGO Perspective on Opportunities and Shortcomings.”

¹⁰¹ Carraro, “Advancing Human Rights by Preventing Politicization?”, 950.

¹⁰² Jessica Duggan-Larkin, “Can an Intergovernmental Mechanism Increase the Protection of Human Rights? The Potential of Universal Periodic Review in Relation to the Realisation of Economic, Social and Cultural Rights,” *Netherlands Quarterly of Human Rights* 28, no. 4 (2010), 580.

society and expert participation in the UPR process, but specifically for NGOs to be able to speak in the interactive dialogue.¹⁰³ Arguments in favor of NGO inclusion were often centered around the idea that civil society and expert involvement in the UPR would improve the integrity of the mechanism and prevent politicization.¹⁰⁴ Indeed, some argued that the only way to put a stop to politicization in the Council as a whole would be to “create a [Council] composed of experts.”¹⁰⁵ However, this was not meant to be. In the end, despite the opportunities for NGO involvement in the assembly of background documentation and during the plenary session, the states opposing visible participation for civil society and experts (LMDC states in particular) triumphed—when examining the finished product, the lack of expert and NGO involvement is undoubtedly “one of the distinctive features of the UPR” in relation to other human rights mechanisms.¹⁰⁶ While states were pleased with the prospect of state-driven interactive dialogue model, many NGOs¹⁰⁷ became discouraged as the more rigorous aspects of the mechanism were stripped away over the course of the negotiation process—

“...the UN has little need for another toothless mechanism for “cooperative dialogue.” We call on Council members to fashion a mechanism that will, in a fair manner, apply real scrutiny, to hold governments to account and cite them for violations and abuses.”¹⁰⁸

¹⁰³ Human Rights Watch, “Universal Periodic Review”, 4.

¹⁰⁴ ISHR & FES, *A New Chapter for Human Rights*, 75.

¹⁰⁵ Dominguez-Redondo, “An Assessment of the First Sessions”, 722.

¹⁰⁶ Carraro, “Advancing Human Rights by Preventing Politicization?”, 950.

¹⁰⁷ Lilliebjerg, “An NGO Perspective on Opportunities and Shortcomings”, 311; Sweeny & Saito, “An NGO Assessment of the New Mechanisms of the UN Human Rights Council”, 205-206.

¹⁰⁸ Dominguez-Redondo, “Is there Life Beyond Naming and Shaming in Human Rights Implementation?”, 679, citing UN Watch, “UN Watch Statement on the UN Human Rights Council” (2006).

Standards for Review: Attempting Universality

The task of making the UPR truly “universal” in sharp contrast to the Commission’s selectivity was a top priority throughout the UPR negotiation process.¹⁰⁹ Analyzing GA Resolution 60/251 (particularly the line stating that the UPR process must be undertaken “in a manner which ensures universality of coverage and equal treatment with respect to all States”) Walter Kälin asserts that “it is hard to imagine stronger language to express the notion that states’ human rights obligations are universal.”¹¹⁰ Although some questioned how consistent standards for review would be established in light of the varying human rights commitments that member states have undertaken,¹¹¹ the Working Group eventually settled on the mixture of universal standards and country-by-country standards that it continues to use to this day. However, some observers such as Jane Cowan question this approach, arguing that “[the] assumed equality [of the UPR] ‘ignore[s] or downplay[s] the asymmetries existing [outside] of the review’” and that consideration of “the power relations which are obscured in the UPR’s disconcerting friendly phrases” is essential in analysis of the mechanism.¹¹²

The Final Outcome: Human Rights Council Resolution 5/1

On June 18th, 2007 the Council adopted Resolution 5/1, an “Institution Building Package” outlining the structure and technical details of the Council and the UPR

¹⁰⁹ In addition to overarching standards for review, many attempts at universality are reflected within the small-scale technical details of the Institution Building Package. For example, the troika is “selected by the drawing of lots among the members of the Council and from different Regional Groups” (United Nations Human Rights Council, *Resolution 5/1*, para. 18.(d)).

¹¹⁰ Walter Kälin, “Ritual and ritualism”, 29.

¹¹¹ ISHR & FES, *A New Chapter for Human Rights*, 76.

¹¹² Cowan, “The Universal Periodic Review as a public audit ritual”, 50.

mechanism. Chief facilitator Mohammad Loulichki proudly noted the expanded scope and ambition of the UPR mechanism as outlined in the Institution Building Package in relation to GA Resolution 60/251's original mandate.¹¹³ However, the final product was a compromise that left many states and civil society actors with mixed feelings. NGOs who participated in/observed the process were disappointed that more rigorous proposals were left by the wayside during negotiations.¹¹⁴ This division between those who express the UPR's novelty and ambition in the scope of international human rights enforcement and those who criticize its lack of rigor/enforcement capabilities persists to this day. As stated by Edward McMahon:

...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 [...it is] a compromise between states with greater and lesser commitments to human rights protection, and between states with vastly differing perceptions of what should be the role and function of the HRC [Human Rights Council] and the UPR.¹¹⁵

Guided by the base principles for the mechanism as outlined in sections 3(a)-3(m) of Resolution 5/1, the OHCHR proceeded into the first cycle of the Universal Periodic Review—

The universal periodic review should:

- (a) Promote the universality, interdependence, indivisibility and interrelatedness of all human rights;
- (b) Be a cooperative mechanism based on objective and reliable information and on interactive dialogue;
- (c) Ensure universal coverage and equal treatment of all States;
- (d) Be an intergovernmental process, United Nations Member-driven and action-oriented;
- (e) Fully involve the country under review;
- (f) Complement and not duplicate other human rights mechanisms, thus

¹¹³ Loulichki, "The Universal Periodic Review", 86.

¹¹⁴ Lilliebjerg, "The Universal Periodic Review."

¹¹⁵ McMahon, "The Universal Periodic Review: A Work in Progress", 3-4 & 8.

- representing an added value;
- (g) Be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicised manner;
 - (h) Not be overly burdensome to the concerned State or to the agenda of the Council;
 - (i) Not be overly long; it should be realistic and not absorb a disproportionate amount of time, human and financial resources;
 - (j) Not diminish the Council's capacity to respond to urgent human rights situations;
 - (k) Fully integrate a gender perspective;
 - (l) Without prejudice to the obligations contained in the elements provided for in the basis of review, take into account the level of development and specificities of countries;
 - (m) Ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions.¹¹⁶

The First Three Cycles of the UPR

As of January 2022, the UPR has finished three full cycles, meaning that all UN member states have stood for three review sessions. Over the course of these three cycles, numerous formal and informal changes have taken place. While I will be focusing more on the informal changes in Chapters 4 & 5, the main differences between the UPR cycles to date are as follows:

The First Cycle of the UPR (2008-2011)

In spite of the fact that many states and stakeholders initially found the UPR to be “unfamiliar and confusing”, the first cycle was a period largely defined by excitement over the new mechanism.¹¹⁷ Much of the academic literature that holistically assesses the UPR as a mechanism comes from this period. The number of states seeking to give their

¹¹⁶ United Nations Human Rights Council, *Resolution 5/1*, para. 3.(a)-(m)

¹¹⁷ Purna Sen, *Universal Periodic Review of Human Rights: Towards Best Practice*, Commonwealth Secretariat, (2009), 1-2.

peers recommendations increased drastically over this period, going from 430 recommendations given in the first session of the cycle to 2434 recommendations being given in the final session of the cycle.¹¹⁸ The process also triggered a wave of constructive engagement with UN human rights instruments for some countries.¹¹⁹

The Second Cycle of the UPR (2012-2016)

The second cycle is notable for being the only cycle to date that was subject to explicit structural changes from the previous cycle based on Council resolutions 16/21 and 17/119, which came as part of a scheduled institutional review that was part of the UPR's original founding agreement. Other than minor technical changes, the main outcome of these resolutions was a declaration of the OHCHR's intention to emphasize accountability for implementation of accepted recommendations going into the second cycle and reform measures intended to put a stop to first cycle "jury-rigging" practices in the recommending state sign-up system (Resolution 16/21; Resolution 17/119). The second cycle is also notable for being the first time the UPR was able to follow up on previously accepted recommendations. Overall, the fact that the UPR retained 100% participation of all 193 UN member states (in stark contrast to the inconsistency of treaty body submissions) throughout the second cycle cemented it as a mechanism capable of motivating states to voluntarily participate in a periodic human rights review.

¹¹⁸ UPR Info, *UPR Info Database*.

¹¹⁹ In his 2009 study on the UPR's effect on the Commonwealth of Nations, Sen remarked that "[t]he first year of the UPR saw an impressive wave of ratifications, signatures and removal of reservations across the commonwealth" (Sen, *Towards Best Practice*, 35).

The Third Cycle of the UPR (2017-2022)

Without any explicit structural changes, the third cycle of the UPR has proceeded in a similar fashion to the second cycle, albeit with slightly increased participation from the second cycle in terms of total number of recommendations.¹²⁰ Over the course of this cycle, the number of Stakeholder Submissions have notably increased¹²¹ as familiarity with UPR procedures and deadlines has gradually increased among the NGO community.

¹²⁰ UPR Info, *UPR Info Database*.

¹²¹ OHCHR, *Universal Periodic Review (Fourth Cycle): Information and guidelines for relevant stakeholders' written submissions*, OHCHR, (2022).

Chapter 4: State Participation in the UPR

Introduction to State Participation (2008-2022)

“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.”
—Edward McMahon, “Evolution Not Revolution”¹²²

Despite a number of specifications, expectations, and goals outlined in the Institution Building Package, nobody knew what the UPR was really going to look like until the first session began. At the close of the third cycle, the conduct of states has become the primary determinant of the quality of the discourse within the mechanism.¹²³ With this in mind, I use this chapter to focus on state participation in both a broad sense and in terms of specific case studies. In my broad analysis, I showcase a diverse variety of participatory issues that demonstrate the ways in which many states have failed to engage with the UPR in a constructive manner over the last fifteen years. These issues include blatant attempts by states to sabotage the process, lack of inter-state interactivity, and performative/ritualistic state participation. Overall, my analysis of state participation serves two purposes. First, it demonstrates that states have almost total control over the UPR mechanism and its outcomes, serving as a direct contrast to the level of agency afforded to civil society.¹²⁴ Second, it asserts that state participation in the UPR is generally low enough to warrant a serious reform of the mechanism, with many SuRs adopting performative engagement styles and recommending states failing to serve as honest, informed critics.

¹²² McMahon & Johnson, “Evolution Not Revolution”, 5.

¹²³ Interview #9.

¹²⁴ For analysis of the level of agency afforded to civil society within the UPR process, see Chapter 5.

Interactive Dialogue & The Art of Peer Pressure

As asserted by many of my interviewees, much of the action surrounding the UPR happens outside of the review stage. With post-review implementation efforts becoming the primary focus of the OHCHR throughout the second and third cycles, some see the meetings in Salle XX as “a small part of the overall UPR process” and that the country-level work that takes place after the review is much more important than the review itself.¹²⁵ While this may be true for implementation, when it comes to avenues for recommending states to influence the UPR process, the interactive dialogue is undoubtedly the central component of the process for two reasons: its ability to exert soft power through peer pressure and its public visibility.

As asserted by Carraro, “the UPR’s main perceived strength lies in generating pressure on states.”¹²⁶ This pressure comes from two main sources—the diplomatic ties between states giving each other recommendations and the publicity of the mechanism. Even though states only get about a minute to speak during most interactive dialogue sessions, every UN member state, as well as observing members such as Palestine and the Holy See, has the power to give direct recommendations to the SuR in a publicly visible forum. The SuR then has to respond to every one of these recommendations. Recommendations are not legally binding—even when the SuR agrees to them on paper, if it chooses not to follow them in practice, the worst that can happen is them being publicly shamed at the next UPR for not keeping their promises.¹²⁷ However, depending

¹²⁵ Interview #4; Interview #9.

¹²⁶ Valentina Carraro, “Promoting Compliance with Human Rights: The Performance of the United Nations’ Universal Periodic Review and Treaty Bodies”, *International Studies Quarterly*, (2019), 1080.

¹²⁷ United Nations Human Rights Council, *Resolution 5/1*, para. 26-38.

on the SuR in question, the threat of being perceived by its international peers as non-compliant with its human rights obligations can be a strong deterrent.

In spite of this, some states are not easily swayed by concepts such as peer pressure or public shame. Attempting to pressure certain types of countries into changing their human rights practices by means of a peer review mechanism may prove ineffective due to the country in question's political standing. Major world powers such as China and the United States hold much more economic, military, and political power than most other states, which is evident in all of their international interactions despite the UPRs intended equality. Deeply entrenched authoritarian states such as Venezuela, North Korea, and Cuba have already been forced to survive under extreme international pressure long before the establishment of the UPR (or, for that matter, contemporary human rights discourse as a whole). In addition, the state giving the recommendation is often a key factor in whether or not it is taken seriously by the SuR.¹²⁸

Another reason that the mechanism may be ineffective at pressuring some states into changing their human rights practices may be due to the fact that the UPR, in its current form, does a poor job of exerting public pressure on states. Although public pressure is a commonly discussed feature of the UPR,¹²⁹ the mechanism's theoretically public nature can be deceiving. Open access to interactive dialogue recordings and documentation does not necessarily equate to public awareness of the mechanism on the ground. This problem is exacerbated by the media's disinterest and/or open hostility towards the mechanism. Furthermore, the lack of a platform for publicly visible civil

¹²⁸ A key example of this would be LMDC states that are more responsive to their regional peers rather than Western states, the latter of which some LMDC diplomats have dubbed "the club of criticizing countries" (Cowan, "The Universal Periodic Review as a public audit ritual", 58).

¹²⁹ Carraro, "Promoting Compliance with Human Rights", 1082-1083.

society engagement at the review stage diminishes NGOs' ability to generate interest in the UPR among the public in their home countries.¹³⁰

Overall, many states see the UPR as an opportunity to “look good” and to at least “appear to be respecting human rights”¹³¹ in front of their international peers, whether or not the general public is engaged with the mechanism. However, the more difficult question facing the mechanism is whether this pressure can be translated into actual compliance rather than performative engagement. Since the UPR is a state driven process, to what degree pressure is strategically exerted (or left untapped) is largely up to states themselves. With this in mind, it is essential to examine not just the avenues for states to pressure their peers within the UPR framework, but how they use these avenues in practice.

How States Use Their Power

Now that the potential for exertion of soft power pressure within the UPR mechanism has been established, I will provide an in-depth examination of some of the ways that recommending states have used and failed to use this power over the course of the UPR's existence. While the case studies presented within—largely sourced from my own experiences at UPR 40 and various anecdotes from my interviewees—are not intended to be a comprehensive account of recommending state participation in the UPR (which, taking over 578 reviews into account, would be difficult to make sense of in anything other than broad quantitative terms), it is intended to provide a sense of both the

¹³⁰ For more on media engagement with the UPR and publicity of the mechanism in theory versus in practice, see Chapter 5.

¹³¹ Edward R. McMahon & Elissa Johnson, “Evolution Not Revolution: The First Two Cycles of the UN Human Rights Council Universal Periodic Review Mechanism”, Friedrich Ebert Stiftung, (2016), 1.

highs and the lows of state participation in the mechanism. By contrasting the positive potential of state engagement with some of the most enduring problems that the mechanism faces in this category, I argue that the overwhelmingly state-driven nature of the review stage requires reform.

Breaking New Ground and Sharing Best Practices

Although I adopt a critical stance towards state participation practices throughout much of this chapter, many of the most constructive moments in the UPR's history (which, as a whole, have been notable) can be attributed to the constructive participation of SuRs and recommending states. These constructive interactions have often revolved around breaking new ground in human rights discourse and the sharing of best practices between states. A notable example of breaking new ground occurred in the first cycle of the first review (April 2008), during the interactive dialogue session for Ecuador. During the review, Slovenia made a recommendation that Ecuador "implement measures to combat discrimination on the ground of sexual orientation and gender identity, as well as other human rights violations against the gay, lesbian, bisexual, transsexual and transvestite community."¹³² After the recommendation was given, the Egyptian delegation called a point of order, objecting that because LGBT rights were not part of Ecuador's human rights obligations (the Charter, the UDHR, or any treaties/conventions that Ecuador was party to) Slovenia did not have the right to include them in a recommendation.¹³³ However, Ecuador pushed back against Egypt, asserting their right to

¹³² Human Rights Council, *Outcome of the universal periodic review: Ecuador*, UN Doc. A/HRC/8/102, (2008).

¹³³ Interview #10.

accept any recommendation they wanted,¹³⁴ and proceeded to formally accept Slovenia's recommendation along with the nine other recommendations given during the review.¹³⁵ Later that year, Ecuador would legalize civil unions for same-sex couples under their new constitution.

“[T]he farcical situation of Egypt telling Ecuador that it could not accept a recommendation that it was happy to accept”¹³⁶ created a unique situation where “no one knew what to do.”¹³⁷ Beyond the “tacit agreement that you didn’t talk about LGBT rights” that had been maintained throughout the existence of the Commission, the implication that a recommendation like this would be admissible in the context of the UPR considerably opened up a wider range of thematic issues eligible for discussion within the context of the mechanism.¹³⁸ As highlighted by Egypt, Resolution 5/1 states that, beyond the UN Charter and the UDHR, the basis for review is limited to “human rights instruments to which a State is party”, “voluntary pledges and commitments made by states”, and “applicable international humanitarian law.”¹³⁹ Given that Slovenia’s recommendation did not follow under any of these categories, Ecuador would have been well within their rights to note it and move on, but instead they explicitly asserted their right to accept it. According to some observers,¹⁴⁰ this exchange set a valuable precedent for a wider array of human rights topics open for discussion within the context of the UPR, emphasizing the mechanism’s potential for “draw[ing] all rights together into one

¹³⁴ Ibid.

¹³⁵ Human Rights Council, *Outcome of the universal periodic review: Ecuador*.

¹³⁶ Sweeny & Saito, “An NGO Assessment of the New Mechanisms of the UN Human Rights Council”, 212.

¹³⁷ Interview #10.

¹³⁸ Ibid.

¹³⁹ United Nations Human Rights Council, *Resolution 5/1*, A. Basis of the review.

¹⁴⁰ Sen, *Towards Best Practice*, 38; Interview #10.

conversation”¹⁴¹ and the benefits that a model of this nature has over mechanisms such as the treaty bodies, which only focus on a specific, pre-established set of issues.

Beyond breaking new ground, another constructive dynamic that has appeared in the UPR over the years has been sharing of best practices. Sharing best practices was something that had been explicitly stated as a goal for the UPR from the 2007 Institution Building Package onward.¹⁴² Although most UPR recommendations are not framed along these lines, constructive moments of this nature have been highlights of the UPR throughout the years. In practice, the sharing of best practices has often involved recommending states offering SuRs strategies for promoting human rights through legislation, and even offering technical assistance for implementing these measures. One example of this was Switzerland requesting a copy of France’s manual on detecting signs of torture during France’s first cycle review. Another, as recounted by Dominguez-Redondo, was Sri Lanka offering the UK technical assistance on the Troubles in Northern Ireland—a notable reversal of the usual dynamic of “Western countries as saviors for Global South countries” that usually defines UN interactions of this nature. As stated by Dominguez-Redondo, at the Commission “it was always the same states talking and saying the same things”¹⁴³—with its universal scope and equal-time structure, the UPR was structured around breaking this loop, and, in some instances, succeeded.

Overall, these constructive moments have led to some refreshing moments of transcendence from the UN’s underlying regional trends, moving past “sterile and polarized regional group interactions” in favor of “collective action in favor of the

¹⁴¹ Ibid.

¹⁴² United Nations Human Rights Council, Resolution 5/1, para. 4.(d)

¹⁴³ Interview #10.

promotion of human rights.”¹⁴⁴ By viewing the process as “a dialogue and exchange” rather than “an examination”¹⁴⁵ or an empty performative exercise, states are able to use the UPR as a learning experience through which they can gain valuable knowledge of “relevant human rights standards and what they mean for their country.”¹⁴⁶ As stated by Sen, the states who feel that they gain the most from the process are those who “treat[...] the UPR as a chance to listen, learn, and harness support.”¹⁴⁷ However, although this type of constructivist discourse around mutual learning is common among UN officials¹⁴⁸ and academics,¹⁴⁹ diplomats involved in the process are well aware of the fact that most states do not approach the mechanism with this degree of openness.¹⁵⁰

“Rigging the Jury”

The public forum of the UPR causes many states to become extremely self-conscious about their image. States will typically act upon this self-consciousness in two ways. At times, they attempt to convey strong engagement with human rights through their participation in the mechanism. Although this performative engagement may or may not hold any real “weight” behind it (i.e. tangible human rights improvements taking

¹⁴⁴ McMahon, “The Universal Periodic Review: A Work in Progress”, 6.

¹⁴⁵ Sen, *Towards Best Practice*, 1-2.

¹⁴⁶ Kälén, “Rituals and ritualism”, 37.

¹⁴⁷ Sen, *Towards Best Practice*, 1-2.

¹⁴⁸ Interview #9.

¹⁴⁹ Elvira Dominguez-Redondo & Edward R. McMahon, “More Honey Than Vinegar: Peer Review As a Middle Ground between Universalism and National Sovereignty”, *Canadian Yearbook of International Law* (2013), 94.

¹⁵⁰ In her 2019 study “Promoting Compliance with Human Rights”, Carraro found that a majority of her interviewees (state diplomats involved with the UPR and the Treaty Bodies) believed that the UPR successfully triggered mutual learning among states only to some degree or not at all. Furthermore, in her semi-structured interviews, she found that not one interviewee mentioned mutual learning or sharing of best practices as one of the substantial outcomes of the UPR (Carraro, “Promoting Compliance with Human Rights”, 1085).

place within the SuR post-review) it is better than the alternative—states engaging in strategic political manipulation to weaken the interactive dialogue. As stated by Chauville, “while most states to this point have played by the rules of the UPR, some have been inventive in their attempts to prevent the mechanism from working.”¹⁵¹

Political manipulation within the UPR goes back to the first cycle. During the first session, some states quickly discovered that a technical loophole in the sign-up system allowed them to “rig the jury” for any given review.¹⁵² As outlined by the initial guidelines for the mechanism, a limited number of recommending state slots were offered for each state review on a first-come-first-served basis.¹⁵³ Taking advantage of this, some SuRs would solicit as many friendly states as they could before their review and ask them to fill up the signup list before critical states had a chance to do so.¹⁵⁴ In turn, the soliciting state would promise their friendly peers that they would help fill up the sign-up list before their review,¹⁵⁵ creating a vicious cycle of mutual praise that has gone on to plague the UPR system to this day.

In practice, these under-the-table negotiations between friendly states often resulted in dozens of diplomatic mission interns sleeping in their cars outside the main

¹⁵¹ Chauville, “Successes and Failures”, 108.

¹⁵² Sweeny and Saito cite the April 2008 review of Bahrain as the first instance of this practice, meaning that it has been inherent to the UPR since the first day of the first Working Group session (Gareth Sweeny & Yuri Saito, “An NGO Assessment of the New Mechanisms of the UN Human Rights Council”, (Human Rights Law Review 9:2, 2009), 210).

¹⁵³ Although there was an initial limit of 45 recommending state slots before the list was closed (Dominguez-Redondo, “An Assessment of the First Sessions”, 728), the OHCHR did its best to get as many recommending states in as possible, resulting in some recommending state lists of up to 57 delegations for popular SuRs during the first cycle (Human Rights Council, *Universal Periodic Review: Report of the Working Group on the Universal Periodic Review - Iran*, UN Doc. A/HRC/14/14, (2010), para. 16.

¹⁵⁴ McMahon, “The Universal Periodic Review: A Work in Progress”, 11; Kälin, “Rituals and ritualism”, 32; Interview #2.

¹⁵⁵ McMahon, “The Universal Periodic Review: A Work in Progress”, 13.

gate of the Palais des Nations so that they could be the first to sign up the morning before the interactive dialogue.¹⁵⁶ Once the jury was stacked, the SuR could enjoy a stress-free review consisting primarily of congratulations from friendly states for their human rights successes, deemed by critics to be an “exercise in filibustering.”¹⁵⁷ This led to interactive dialogue sessions such as the first cycle review of Cuba, during which only eight out of the fifty-three states that spoke gave recommendations containing any genuine critical content.¹⁵⁸ Furthermore, first cycle jury stacking practices often led to glaring omissions of active human rights crises from the interactive dialogues of offending states. For example, although it was discussed extensively in the background documentation produced by the OHCHR¹⁵⁹ and civil society stakeholders,¹⁶⁰ the issue of violence against the Tamil minority in Sri Lanka was completely overlooked by recommending states during its interactive dialogue session.¹⁶¹

After the first cycle, a series of reforms changed the sign-up system to eliminate the first-come-first-serve policy going forward. Instead, once the signup list was closed, the OHCHR would pick a random point in the alphabet to start from, and recommending states would speak in alphabetical order starting from there. Furthermore, there would be

¹⁵⁶ McMahon, “The Universal Periodic Review: A Work in Progress”, 11; Kälin, “Rituals and ritualism”, 32; Interview #2.

¹⁵⁷ Gareth Sweeny & Yuri Saito, “An NGO Assessment of the New Mechanisms of the UN Human Rights Council”, *Human Rights Law Review* 9:2, (2009), 210.

¹⁵⁸ Kälin, “Rituals and ritualism”, 32.

¹⁵⁹ Human Rights Council, *Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1: Sri Lanka*, UN Doc. A/HRC/WG.6/2/LKA/2, (2008).

¹⁶⁰ Human Rights Council, *Summary Prepared Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1: Sri Lanka*, UN Doc. A/HRC/WG.6/2/LKA/3, (2008).

¹⁶¹ Duggan-Larkin, “Can an Intergovernmental Mechanism Increase the Protection of Human Rights?”, 553

no limit to the number of states allowed to speak at any given review.¹⁶² In order to compensate for this, the more states signed up to speak for a review, the smaller the allotted speaking time for each state became. Although this change was “a step in the right direction”¹⁶³ in that it prevented outright jury rigging in the style of Cuba’s first cycle review, the UPR sign-up system remains prone to political manipulation by SuRs and their allies. The new system’s main flaw is that the more states sign up, the less time there is to talk, allowing self-conscious SuRs to “make sure that all [their] friends register, [which] ends up leaving forty seconds to everyone and the quality of the review goes down.”¹⁶⁴

On the surface, states’ desire to be perceived as respecting human rights in order to be accepted by their peers¹⁶⁵ might appear to be a positive, if gradual, step towards eventual human rights compliance. However, when states respond to this pressure by simply soliciting a stack of easy-to-accept recommendations from their friends,¹⁶⁶ human rights violators are encouraged to continue their practices¹⁶⁷ and the mechanism is delegitimized. This solicitation process also involves disturbing political power dynamics, such as developing countries being passively or actively coerced into being complimentary toward donor countries, further challenging the “universal” nature of the review. As stated by an anonymous North African diplomat in Cowan’s *Rituals and Ritualism* article, “If you are a developing country receiving aid from a donor country,

¹⁶² In spite of these changes, many states still rushed to be first on the sign-up list early on in the second cycle, not fully understanding the scope of the changes that had been enacted (Interview #11).

¹⁶³ Kälin, “Ritual and ritualism”, 33.

¹⁶⁴ Carraro, “Advancing Human Rights by Preventing Politicization?”, 953.

¹⁶⁵ McMahon, “Evolution Not Revolution”, 1.

¹⁶⁶ McMahon & Ascherio, “A Step Ahead in Promoting Human Rights?”, 237-237.

¹⁶⁷ Interview #8.

are you going to criticise it? Let's be frank. You will not do something that will affect bilateral relations. We have to be realistic.”¹⁶⁸

Another key opportunity for states to manipulate the UPR occurs between the review stage and the final plenary session adoption, when the Report of the Working Group is being drafted. During this period, SuRs can pressure the drafters to move certain recommendations that they deem to be “off-topic” from the main body into the footnotes of the report. A particularly infamous example of this practice occurred during Russia's 2013 review, during which Russia successfully persuaded the drafters to move two recommendations from Georgia about the Russian occupation to the footnotes section.¹⁶⁹ Overall, while this type of manipulation is not an extremely common UPR practice, it does speak to the high level of power that SuRs (particularly states with political power such as the five permanent members of the United Nations Security Council) have over their own fate within the context of the mechanism.

The fact that criticism at the UPR is so often equated with lack of support¹⁷⁰ may be an unavoidable reality of international diplomacy. However in the UPR, states have created a space where they can comfortably appear to engage with human rights on the global stage while still maintaining an overwhelming level of control over the process when it is their time to stand for review.¹⁷¹ While some first cycle commentators initially suggested that this type of non-confrontational environment would lead to states being

¹⁶⁸ Cowan, “The Universal Periodic Review as a public audit ritual”, 59.

¹⁶⁹ Heather Collister, “Rituals and Implementation in the Universal Periodic Review and the human rights treaty bodies”, in *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, edited by Hillary Charlesworth & Emma Larking, Cambridge University Press (2014), 112; Interview #2.

¹⁷⁰ McMahon, “The Universal Periodic Review: A Work in Progress”, 16, citing an anonymous African diplomat.

¹⁷¹ Collister, “Rituals and Implementation, 116.

more self-critical,¹⁷² many observers argue that this has not proved to be the case to any significant degree.¹⁷³ At a certain point, this safe space of mutual praise becomes not just a blemish on the surface of the mechanism, but an open wound that erodes healthy dynamics and encourages toxic ones.

Lack of Interactivity

“...during the interactive dialogue, one is on occasion left with a sense that states are talking past each other. Sometimes it seems as if there has not been a true meeting of the minds.”

—Natalie Baird, *Rituals and Ritualism*¹⁷⁴

From the beginning of the UPR process, many observers have been frustrated by the fact that, within the review portion, there exists a “lack of real opportunities to engage and contest the language of human rights.”¹⁷⁵ Although the interactive dialogue has provided a platform for positive interactions, there are a number of glaring participatory and technical issues that prevent this stage of the process from living up to its name. The disconnect between the (commonly pre-written) SuR presentations and the comments being given on the floor by other states is often problematic, with disproportionate attention being placed by the SuR on issues that recommending states display no interest in.¹⁷⁶ Furthermore, since the SuR has a limited amount of time to speak, it may use the

¹⁷² Duggan-Larkin, “Can an Intergovernmental Mechanism Increase the Protection of Human Rights?”, 553.

¹⁷³ Interview #1.

¹⁷⁴ Natalie Baird, “The Universal Periodic Review: Building a Bridge Between the Pacific and Geneva?”, in *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, edited by Hillary Charlesworth & Emma Larking, Cambridge University Press (2014), 208.

¹⁷⁵ Kälin, “Rituals and ritualism”, 40.

¹⁷⁶ This was a particular problem during the 2020 interactive dialogue for the United States’ UPR, during which the United States delegation made extensive use of pre-recorded statements throughout the review. These statements were often extremely disconnected from the issues that recommending states were bringing up in real time, skimming over or altogether ignoring a number of key issues such as racism in the

majority of that time on a lengthy opening statement (often primarily consisting of repeat information from their pre-written State Party Report), eliminating the opportunity for direct, in-time responses to recommending states' concerns.¹⁷⁷

Another key factor that has had a major impact on interactivity within the UPR has been the introduction of hybrid modalities during the COVID-19 pandemic. Hybrid modalities, as acknowledged by the OHCHR itself,¹⁷⁸ have been a double-edged sword for the UPR. The main benefit from the OHCHR's point of view has been the capacity to attract higher-level delegations by allowing state officials to participate in the interactive dialogue via Zoom rather than having to physically travel to Geneva.¹⁷⁹ This has helped produce larger, more diverse delegations that include specialized members from a wide variety of SuR governmental departments. This diversity can help ensure informed responses on specific issues that these departments work on (health care, policing, etc). Hybrid modalities also encourage higher-level government representatives to participate. This was particularly evident at UPR 40, which included a lengthy pre-recorded statement from Icelandic Prime Minister Katrín Jakobsdóttir and a virtual intervention by Venezuelan Vice-President Delcy Rodríguez (who fronted the Venezuelan delegation throughout the review). Although I would reject some observers' claims that high-level delegations automatically signify "the seriousness with which [SuRs] take the UPR process", I do agree that increasing the UPR's profile through methods such as this

United States' police force, the Death Penalty, and use of torture (United Nations Media, "United States of America Review - 36th Session of Universal Periodic Review", UN Web TV, (2020)).

¹⁷⁷ Duggan-Larkin, "Can an Intergovernmental Mechanism Increase the Protection of Human Rights?", 552-553.

¹⁷⁸ Interview #9.

¹⁷⁹ As stated by Magazzeni, this change has been particularly helpful for small states who do not maintain a permanent mission in Geneva and/or cannot afford to send large delegations (Interview #9).

legitimizes the mechanism and increases the potential for governments to “buy in” to the process as a whole.¹⁸⁰

In spite of the advantages that hybrid modalities have provided, they also present a significant number of new problems surrounding interactivity within the mechanism. One of these problems was decreased engagement resulting from the ease of access inherent to virtual participation. While some would say that virtual access is better than no access, this becomes a particular problem when states that are capable of intervening in-person choose to do so virtually out of convenience. This was particularly evident at UPR 40 with one Syrian delegate, who, after appearing in Salle XX physically for her own country’s review, intervened virtually from her hotel room for other countries’ reviews, only appearing in person again for Syria’s adoption segment at the end of the week. This points to the risk that normalizing virtual participation post-COVID could potentially lead to an increase in half-hearted participation and/or the practice of strategically overfilling the recommending state sign-up list to decrease speaking time and quality of discourse outlined in the previous section.

In addition to passive engagement, state delegates who choose to engage virtually when they could do so physically lose many opportunities to engage in active diplomacy with other states concerning human rights topics. A powerful example of the power of in-person diplomatic engagement during UPR 40 occurred during Moldova’s interactive dialogue. After receiving critical comments from the Netherlands regarding judicial transparency and hate speech, a member of the Moldovan diplomatic mission approached

¹⁸⁰ Sen, *Towards Best Practice*, 37. I reject Sen’s claim about high-level delegations equating to seriousness and even “goodwill” on behalf on the SuR in question based on my experience at UPR 40, during which certain high-level delegates from states such as Venezuela displayed some of the most antagonistic engagement with the mechanism that I saw throughout the week I was in attendance.

the Dutch representative. After some friendly conversation, the Dutch delegate handed the Moldovan delegate some papers, possibly containing additional info regarding the recommendations that had been given. This interaction represented both a case of a SuR responding well to constructive criticism and the power of ad-hoc, in-person diplomatic interactions in facilitating the sharing of best practices between states.

Another major interactivity issue brought about by the introduction of hybrid modalities has been the prevalence of pre-recorded statements by recommending states. Although pre-recorded statements are useful for states located in drastically different time zones to Geneva, they decrease the overall interactivity of the dialogue. Although recommending states leaving sessions after giving their recommendations (a common occurrence) or not paying attention to the Zoom call during the virtual dialogue are problems in and of themselves, it is impossible to promote a “dialogue” with the SuR when the recommending state is physically and virtually absent from the review altogether. The combination of pre-recorded virtual statements and states leaving after speaking often called into question whether or not direct SuR responses to recommending states later in the review (a welcome but inconsistent occurrence in and of itself) held any purpose, considering the delegates whose points they were addressing were often absent for various reasons.¹⁸¹

¹⁸¹ Some particularly notable instances of the disconnect caused by pre-recorded statements occurred during state disputes. During Syria’s review, the state delegation called two consecutive points of order on the United Kingdom’s pre-recorded statement purely for dramatic effect. Later, during Venezuela’s review, after the SuR delegation called two consecutive points of order against a pre-recorded statement from the US, the Cuban delegation suggested that the video be stopped altogether due to the fact that the statement was pre-recorded and could not be altered to use official UN language as requested. In response to this, the Venezuelan delegation thanked Cuba but requested that the video be played all the way through due to there being a “need the world to witness the disrespect shown by the United States to Venezuela.”

All in all, many of the truly “interactive” moments between states at UPR 40 came about not in the form of constructive dialogue, but via points of order and interstate hostilities. Many of the instances in which states directly addressed each other were fueled by a desire to counter recommending states’ criticisms and portray them as hypocrites. Some particularly memorable examples of this occurred during Venezuela’s review. Shortly after the Brazilian delegation criticized their handling of the COVID-19 pandemic, the head of the Venezuelan delegation printed out a graph showing Brazil’s COVID rates. After Colombia expressed their concerns about the independence of the Venezuelan judiciary and the issue of Venezuelan refugees spilling over into Colombia, the Venezuelan delegation responded with completely unrelated statistics regarding recent violence committed by non-state actors in Colombia. Perhaps the most striking hostile interaction came during the interactive dialogue of Moldova, when, in reaction to the Moldovan delegation calling Belarus’ strategic funneling of migrants into Moldova an “attack”, the Belarussian delegation responded by effectively holding the rest of the review hostage with the following point of order—

“I ask you to call on the delegation to keep to the standard United Nations terminology. Otherwise I will, on a number of occasions, have to bring points of order of this kind. Thank you.”

Overall, although positive interactions between states still occur during the interactive dialogue, many technical and state participation issues stand in the way of the level of interstate interactivity that the review portion of the UPR was originally intended to foster. The fact that hostile exchanges exemplify many of the truly “interactive” moments of the dialogue speaks to the fact that mutual praise, which is often the other major component of the review, is not a particularly interactive dynamic. If the

interactive dialogue is truly meant to foster back-and-forth exchanges between states, dispensation and acceptance of constructive criticism must play a larger role in state interactions. Unfortunately, this is a task that few states are willing to truly commit to. Many would rather focus their energy on carefully fostering positive relationships with international allies rather than fostering true interactivity by showing willingness to accept honest criticism of their own practices and taking diplomatic risks with other states. This type of stagnant, repetitive engagement also points to the issue of ritualism.

Ritualism and Performative Engagement

As stated by Hillary Charlesworth and Emma Larking in *Human Rights and the Universal Periodic Review. Rituals and Ritualism*, terms, UPR ritualism is defined by “participation in the process of reports and meetings, but an indifference to or even reluctance about increasing the protection of human rights.”¹⁸² Some commentators see assessments of the UPR having “fallen into ritualism” as overly critical and emblematic of the disconnect between the academic view of the UPR and the reality of proceedings on the ground in Geneva.¹⁸³ In spite of this viewpoint, while I agree that dismissal of the UPR as a ritual that produces no results sells the mechanism’s accomplishments short, Charlesworth & Larking’s framework is helpful when assessing later cycles of the UPR, as many of their predictions have partially, if not fully, come true. Furthermore, the lens of ritualism is a particularly useful tool for critically assessing the OHCHR’s prioritization of the UPR’s 100% participation rate,¹⁸⁴ in that attendance does not

¹⁸² Charlesworth & Larking, “Introduction”, 10.

¹⁸³ As stated by an NGO advocate, from a civil society perspective, “If you're down there doing the work on the ground, there’s a lot more to it” (Interview #11).

¹⁸⁴ Interview #9.

necessarily equate to engagement. In this sense, I join the growing body of contemporary commentators who assert that ritualism, as defined by Charlesworth & Larking, remains one of the greatest threats to the UPR.¹⁸⁵

As outlined by various authors in *Rituals and Ritualism*, common signs of ritualism include reluctance to make action-oriented recommendations, “states respond[ing] to recommendations by claiming to recognize rights when this is clearly not the case”, and a general sense of “disconcerting friendliness” throughout the process.¹⁸⁶ Overall, the wide-ranging “sincerity” of state engagement¹⁸⁷ begs the question of how many states are simply “go[ing] along” with the process without genuine interest in constructive engagement.¹⁸⁸ This issue became apparent during many state reviews throughout the week that I attended UPR 40.

A prime example of ritualism (and the difficulty of pinning it down) occurred at UPR 40 during the interactive dialogue session for Zimbabwe. In the scope of UPR 40 as a whole, the Zimbabwean delegation was one of the most prepared and engaged throughout their interactive dialogue. During their state presentation, the delegation (helmed by their Minister of Justice) focused exclusively on their own government’s human rights efforts rather than unrelated political matters. They took a great deal of time to outline numerous specific programs being undertaken by their NHRI (the Zimbabwe Human Rights Commission) intended to address various human rights problems. They

¹⁸⁵ Bertotti, “Separate or inseparable?”; Interview # 13.

¹⁸⁶ Charlesworth & Larking, “Introduction”, 16.

¹⁸⁷ Roland Chauville, “The Universal Periodic Review’s First Cycle: Successes and Failures”, in *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, edited by Hillary Charlesworth & Emma Larking, Cambridge University Press (2014), 88.

¹⁸⁸ McMahon, “The Universal Periodic Review: A Work in Progress”, 1. The lack of formal development beyond the mandatory reforms implemented at the end of the first cycle makes this prediction ring true when viewed in a post-third cycle context.

also highlighted the fact that they intended to adopt mid-term reporting in the upcoming cycle, a significant undertaking indicative of strong engagement with the UPR from the standpoint of the OHCHR.¹⁸⁹

Zimbabwe's interactions with other states throughout their review made it clear that they were here to make friends, not enemies. During their opening statement, they took care to respond specifically to each of the advance questions provided by their peers before the review, showing a level of preparedness and engagement with the questions that surpassed any of the other states in the first week of UPR 40. When other states made critical comments, they took them in stride, responding gently even if they were outright denying the allegations made by the recommending state. Even when there were clear opportunities to call out recommending states' hypocrisy, they held back. When faced with a recommendation from the United States concerning police brutality, Zimbabwe declined to make a point of order, despite being presented with a painfully perfect opportunity to make a fool out of the United States that other countries in the room (whose human rights reputation in the international community had drastically decreased within the past few years, in large part due to this topic) would have taken in a heartbeat.

While the overall picture they painted may have been rosy considering the flawed state of civil and political rights within the country, Zimbabwe's engagement showed that they cared deeply about how they looked to the international community. As the review went on, the primary reason that peer pressure had affected their behavior so much became apparent—Western sanctions. While Syria and Venezuela also touched on sanctions during their UPR 40 reviews, these were unapologetic authoritarian states who

¹⁸⁹ Interview #9.

knew that good behavior during a UPR session would do nothing to improve their international reputation. Thus, they behaved as such, engaging in a confrontational, unconstructive manner (using the sanctions to portray the West as a scapegoat for all of their countries' human rights problems). In contrast to this, when Zimbabwe discussed their sanctions, they used careful, non-confrontational language, reflecting a sense of hope that, if their international peers saw them constructively engaging in human rights discourse, the sanctions might be lifted.

Referring to archival footage of Zimbabwe's second cycle review after witnessing their third cycle performance during UPR 40, it became apparent that, although the state delegation had engaged with the mechanism just as enthusiastically during the second cycle,¹⁹⁰ the human rights situation in-country has not only failed to improve but has declined significantly between the second cycle and the third cycle.¹⁹¹ Overall, the case of Zimbabwe speaks to the failure of peer pressure as a sole means of pressuring states into complying with their human rights obligations. While peer pressure may lead to human rights compliance in some instances, in many others it may lead to self-conscious states such as Zimbabwe putting their energy into performative, ritualistic UPR engagement rather than actual change on the ground.

One of the defining qualities of UPR ritualism that makes it difficult to pinpoint is its subtlety. As opposed to "outright rejection of human rights standards and institutions",¹⁹² states participate in performative engagement, "accept[ing] most recommendations without any apparent ability to, or intention of, implementing them,

¹⁹⁰ United Nations Media, "Zimbabwe Review - 26th Session of Universal Periodic Review", UN Web TV, (2016).

¹⁹¹ Human Rights Watch, *World Report 2021: Zimbabwe*, (2021).

¹⁹² Charlesworth & Larking, "Introduction", 18.

[and] masking their unwillingness by sending a very high level delegation that uses strong human rights rhetoric.”¹⁹³ When states participate in this manner, their engagement becomes ritualistic in an almost religious sense, “confessing their faith” by accepting recommendations and withholding their reservations about human rights “precisely as those with religious doubts cannot raise them during a religious ceremony.”¹⁹⁴ *Rituals and Ritualism* argues that this empty ceremony is not only useless, but dangerous in its potential to turn the UPR into “a vehicle to cover up human rights violations and divert from reality by invoking and celebrating the language of human rights without any intention to respect, protect and fulfill them.”¹⁹⁵ Overall, the worst-case scenario that *Rituals and Ritualism* envisions for the future of the UPR is that “over time, the willingness of states to serve as peers will decline to a core group of diehards.”¹⁹⁶

Although this final prediction may be a bit more extreme than the reality that the UPR faces today, it is not wildly off the mark. Although some have applauded the UPR’s “trojan horse”¹⁹⁷ approach to human rights discourse by “[teaching states to] talk the language even if they’re not necessarily walking the walk”,¹⁹⁸ after fifteen years of review sessions, the fact that many states have learned a great deal about strategic use of human rights rhetoric with little-to-no on-the-ground progress is extremely concerning.

¹⁹³ Kälin, “Rituals and ritualism”, 31. The latter sentiment is very pertinent to Zimbabwe’s performance at UPR 40.

¹⁹⁴ Kälin, “Ritual and ritualism, 29-30.

¹⁹⁵ Kälin, “Ritual and ritualism, 28.

¹⁹⁶ Kälin, “Ritual and ritualism, 31.

¹⁹⁷ McMahon & Johnson, “Evolution Not Revolution”, 17.

¹⁹⁸ Interview #14.

With an abundance of weak, repetitive, easily accepted recommendations¹⁹⁹ and articulate, strategic SuR delegations that are becoming increasingly adept at performative human rights engagement, UPR proceedings have developed a sense of burnout that stands in sharp contrast to the initial “honeymoon period”²⁰⁰ of optimism surrounding the mechanism in its early days.²⁰¹ While some states continue to send high-level delegations, others have “sent progressively lower status personnel to UPR” after the concern around “putting their best put forward” in the first cycle diminished.²⁰² Going into the fourth cycle, rumor has it in Geneva that underneath all of the human rights niceties, “many countries just want to get rid of [the UPR] at this point.”²⁰³

How State Participation Illustrates the Need for Reform

“The fact that the country undergoing review can determine the issues under discussion, the conduct of operation and even the outcomes of the whole exercise may be a potential weakness of the system. Under the UPR process, member states are at the same time both parties and judges.”

—Purna Sen, *Towards Best Practice*²⁰⁴

¹⁹⁹ In terms of recommending states engagement, one anonymous former state delegate, criticized states for repeating past recommendations out of convenience (Interview # 12), while an anonymous NGO representative languished over the fact that “the same recommendations that were given during the first cycle are now being given again in the third” (Interview #6). Addressing the issue of weak recommendations, many NGOs have advocated for recommending states to adopt a “S.M.A.R.T.” (Specific, Measurable, Achievable, Relevant and Time-bound) model for their recommendations throughout the second and third cycles. However, as stated by a representative of an anonymous NHRI (National Human Rights Institution), in spite of the fact that “some states are very mindful of [giving] S.M.A.R.T. recommendations [...] we haven't seen recs that are necessarily ‘S.M.A.R.T.er’” as the UPR has progressed (Interview #3).

²⁰⁰ Chauville, “Successes and Failures”, 108.

²⁰¹ Chauville, “Successes and Failures”, 87; Interview #6.

²⁰² Interview #4.

²⁰³ Interview #6.

²⁰⁴ Although Sen hoped that this weakness would be countered by the “collegial nature of the exercise” later on in the mechanism’s lifespan, I would argue that this aspiration has failed to come to fruition (Sen, *Towards Best Practice*, 6).

In contrast to early predictions that the UPR might gradually make the process of giving and receiving constructive human rights criticism “less awkward” over time,²⁰⁵ the truth has emerged that most states will always be averse to engaging in these types of critical conversations, especially during interactions with their regional and ideological allies.²⁰⁶ As illustrated by my findings in this chapter, predictions that a softer, less confrontational model of dialogue might normalize human rights interactions and open the door for “norm cascade and norm infiltration”²⁰⁷ are in strong need of reevaluation. Although the mechanism has occasionally achieved some semblance of this in some of its best moments, the global human rights cascade envisioned by first-cycle optimists is nowhere in sight. This could be attributed to “a clear correlation between state adherence to democratic values [...] and [...] robust utilization of the UPR.”²⁰⁸ With global democracy on the decline over the past sixteen years²⁰⁹ (coincidentally coinciding with the original mandate for the UPR in 2006), the cases outlined in this chapter exemplify the steep struggle of convincing a decreasingly democratic world to constructively engage in human rights enforcement.

As states have learned “what to expect” out of the UPR process,²¹⁰ they have become increasingly adept at using the language of human rights to make it appear as though they are engaged, even when they are indifferent towards the process or actively

²⁰⁵ Charlesworth & Larking, “Introduction”, 19.

²⁰⁶ As stated by Kofi Annan during the formation of the council, “[s]tates that are truly determined to uphold human rights must be prepared to take action even when that means, as it sometimes will, giving offence to other states within their own region.” (Müller, *The First 365 Days of the United Nations Human Rights Council*, 129).

²⁰⁷ Takele Soboka Bulto, “Africa’s Engagement with the Universal Periodic Review; Commitment or Capitulation”, in *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, edited by Hillary Charlesworth & Emma Larking, Cambridge University Press (2014), 254.

²⁰⁸ McMahon & Johnson, “Evolution Not Revolution”, 18.

²⁰⁹ Freedom House, *Freedom in the World 2022: The Global Expansion of Authoritarian Rule* (2022).

²¹⁰ Interview #7.

seeking to sabotage it from within. This creates an increasingly dangerous dynamic of performative engagement that necessitates structural reform. While the United Nations aims to move past the Commission's naming and shaming practices, the current model's focus on non-confrontation is sorely in need of a more substantive counterpoint.

Although naming and shaming may be a contentious method of addressing human rights violations from many states' perspectives, carefully re-introducing elements of it has strong potential to make full use of the UPR's ability to exert soft power pressure on states (particularly those that are unlikely to respond positively to more cooperative, non-confrontational efforts) through its use of a "public spotlight", a feature that was not present in the Commission.²¹¹ Furthermore, the constructive "peer pressure" aspect of the mechanism could be maintained if non-state actors were the ones directly confronting states about their human rights abuses. This suggests the prospect of increased civil society participation in the UPR.

²¹¹ While some states may never change their human rights practices no matter the amount of public pressure exerted on them, publicly visible civil society participation will ensure that the review sessions for these non-compliant states will provide, if nothing else, increased public awareness around the human rights violations people on the ground are currently facing.

Chapter 5: Civil Society Participation in the UPR

Introduction to Civil Society Participation: Engaged but Absent

Emerging from the UPR negotiations, the initial role of civil society in the process was “somewhat unclear.”²¹² On a formal level, they had been afforded “no active role in the review itself.”²¹³ However many observers saw their participation as integral to the credibility of the mechanism.²¹⁴ Facing this challenge, civil society spent the next fifteen years creatively carving out a space for themselves within the UPR process, attempting to gain influence through both formal and informal methods. However, over the years, the paradox of civil society participation has become more and more evident—although they are some of the most engaged, informed actors involved in the UPR, they are still afforded little to no agency. In order to justify my call for a re-evaluation of civil society’s role in the UPR, I draw on my personal experience attending civil society events and testimonials from civil society members to provide an in-depth picture of the formal and informal avenues (Stakeholder Submissions, the plenary session, media engagement, ad-hoc state lobbying, and the UPR Info Pre-session) that civil society organizations use to participate in the process. As I assemble this evidence, I use it to argue that increased civil society participation would not only increase the UPR’s overall legitimacy, but would also allow it to exert a new level of “public pressure” that it has been unable to tap into up until this point.

²¹² Duggan-Larkin, “Can an Intergovernmental Mechanism Increase the Protection of Human Rights?”, 579

²¹³ Sweeny & Saito, “An NGO Assessment of the New Mechanisms of the Human Rights Council”, 208.

²¹⁴ Sen, *Towards Best Practice*, 7; Charlesworth & Larking specifically identify the mechanism’s ability to transcend ritualism as “depend[ing] heavily on effective NGO and civil society involvement” (Charlesworth & Larking, “Introduction”, 16).

Avenues for Civil Society Participation: Silence of the NGOs

Stakeholder Submissions

“You send this out into the stratosphere and you have no idea if anyone is receiving it”

—Civil Society Interviewee²¹⁵

The other formal opportunity for civil society participation in the UPR process is through Stakeholder Submissions. Stakeholder Submissions are written submissions provided either by individual or coalitions of civil society organizations, and, along with the National Report and the OHCHR Compilation, are one of three primary background documents that the interactive dialogue is intended to be based around. On a technical level, Stakeholder Submissions run from about 5-10 pages, with submissions drafted by coalitions of stakeholders being afforded more space than submissions by individual organizations.²¹⁶ However, before each review session, all Stakeholder Submissions are compiled by the Secretariat into a ≤10-page summary report.²¹⁷

The process of compiling this report is in and of itself, fraught with political drama and controversy. Although the Secretariat aspires to rise to their “moral duty” of representing voices in the field in a transparent and apolitical manner,²¹⁸ a number of

²¹⁵ Interview #15.

²¹⁶ Individual Stakeholder Submissions are limited to 2815 words while submissions drafted by coalitions of stakeholders are limited to 5630 words.

²¹⁷ Notably, the page limit on the “Stakeholder Submissions” report limits it to a mere half the size of the State Party Report provided by the SuR, emphasizing the “pre-eminence” of the latter report above all else (Loulichki, “The Universal Periodic Review, 84). Subsequent observers have since confirmed that this difference in attention has been reflected in recommending states’ engagement with the State Party Report above all else. This trend has lasted from UPR 1 (Dominguez-Redondo, “An Assessment of the First Sessions”, 730) to UPR 40, during which multiple states explicitly referenced the State Party Report in their interventions but none explicitly referenced the Stakeholder Submissions summary report.

²¹⁸ Julie Billaud, “Keepers of the truth: producing ‘transparent’ documents for the Universal Periodic Review”, in *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, edited by Hillary Charlesworth & Emma Larking, Cambridge University Press (2014), 67.

complications make this task a difficult one. Firstly, Secretariat drafters often experience attempts at “intimidation” from SuRs who object to certain critical NGO submissions being included in the Stakeholder Submissions summary report.²¹⁹ While these attempts are often unsuccessful due to the drafters’ pride in their “capacity to resist the pressures of states”, these pressures can still lead to some questionable practices from the Secretariat. A primary example of this is how certain controversial issues are sometimes filed in different sections of the compilation in order to present them in a way that would be less offensive to certain SuRs (i.e. filing LGBT rights issues under “Right to Privacy” rather than “Non-Discrimination”).²²⁰ Although this practice is not universal, it holds disturbing implications for the credibility of the Secretariat drafters and, in a larger sense, of the overall credibility of a state-driven model of human rights enforcement.

Secondly, certain SuR governments have an extensive history of strategically using fake civil society organizations known as “GONGOs” (government-organized non-governmental organizations). Although there is some dispute as to what type of organization qualifies as a GONGO,²²¹ they can generally be identified as local organizations whose work is often unrelated to human rights used by SuRs and their allies to flood the stakeholder submission pool with hundreds of complimentary

²¹⁹ Some SuRs will use the UPR submissions as an opportunity to dismiss critical NGO submitters as terrorist groups. This was the case in the third cycle review of Israel, when the Israeli delegation attempted to designate multiple Palestinian NGOs who submitted critical reports as terrorists. This situation was deemed “a very bleak situation” for the integrity of the UPR by an academic interviewee (Interview #4).

²²⁰ Billaud, whose article is informed by her time as an unpaid intern for the Secretariat, reports that the Secretariat would “systemically” place LGBT rights submissions under the “Right to Privacy” section of the summary report rather than the “Non-Discrimination” section when dealing with certain SuRs in order to “accommodate the sensitivity of states” and “ensure that the appearance of neutrality and non-politicization [be] maintained” (Billaud, “Keepers of the truth”, 68). However, as stated above, this practice is not universal— for example, Uganda, a country with some of the harshest anti-LGBT legislation in the world, has LGBT rights submissions listed in the “Non-Discrimination” section of its Stakeholder Submissions summary reports across all three cycles.

²²¹ Edward R. McMahon, “Universal Periodic Review: Do Civil Society Organization-Suggested Recommendations Matter?”, Friedrich Ebert Stiftung, (2013), 6.

submissions.²²² These are highly problematic in that the Secretariat is obligated to include one citation per submitted NGO report in the final Stakeholder Submissions summary report,²²³ which gives SuRs flooding Stakeholder Submissions with complimentary GONGO reports a similar effect to SuRs “rigging the jury” with complimentary states during the interactive dialogue—the more complimentary submissions are provided, the less overall space for meaningful criticism within the ≤10-page summary report.

The last major issue surrounding Stakeholder Submissions is the fact that the background documentation submission deadlines give SuRs a considerable strategic advantage over NGOs. While the deadline for individual stakeholder submissions is five-to-seven months before the interactive dialogue of the target SuR, the deadline for the state party report is only six weeks before the review.²²⁴ This gives SuRs ample time to review the Stakeholder Submissions report and strategically downplay NGO criticisms via the State Party report. When asking an experienced civil society representative how prevalent this was in practice, he reported that any strategically savvy state would make sure to review the Stakeholder Submissions report before writing their State Party report.²²⁵ Although this practice is not as problematic as GONGO submissions, it is yet

²²² A particularly egregious example of this was Venezuela’s October 2016 Review, for which a total of 519 NGO submissions were included in the Stakeholder Summary report. For comparison, the next-most popular country for NGO submissions in the October 2016 session was Uganda with 54. The vast majority of organizations contributing to Venezuela’s summary report were overwhelmingly complimentary towards the government. Submitting organizations included “the Bolivian Baseball Association”, “the Cuban Federation of Canine Sports”, “the Cuban Federation of Underwater Activities”, and “The Cuban Society for Urology” (UN Watch, “Fraud on the UN: Venezuela’s Corruption of its 2016 UPR Human Rights Review”, UN Watch, (2016)).

²²³ The only Stakeholder Submissions that the Secretariat is allowed to outright reject are those that contain “abusive language” (i.e. “direct accusations of government officials”), “second-hand information”, or reports “written in a non-official UN language”) (Billaud, “Keepers of the truth”, 70). This makes the bar for acceptance extremely low, opening the door to any GONGOs that submit within these guidelines, without regard to whether or not their reports contain actual criticisms of the SuR.

²²⁴ Sweeny & Saito, “An NGO Assessment of the New Mechanisms of the Human Rights Council”, 207.

²²⁵ Interview #11.

another example of a strategic advantage that states have in controlling their own framing within the scope of the process.

From the beginning of the UPR, some actors have lauded Stakeholder Submissions as “an outstanding feature” of the UPR process that represents a well-informed, “bottom-up” approach to human rights enforcement.²²⁶ However, from an NGO perspective, writing Stakeholder Submissions is often an unrewarding process. While some NGOs appreciate the opportunity to “communicate with their governments in an official capacity”,²²⁷ as well as the UPR’s predictable schedule (which makes it easier to keep up with than the treaty bodies),²²⁸ an overall sense of frustration still pervades.²²⁹ Quality submissions, which require extensive effort to produce, are often distilled down to single sentences in the final summary report due to the overall number of submissions.²³⁰ The weight placed on the State Party Report often leads to the fact that recommending states might not even read the summary report for guidance,²³¹ much less

²²⁶ Sen, *Towards Best Practice*, 6.

²²⁷ Interview #14.

²²⁸ Collister, “Rituals and Implementation”, 110.

²²⁹ Interview #6.

²³⁰ Seeking guidance on strategically effective Stakeholder Submissions, one NGO representative asked me what types of submissions tended to be prominently featured in the Secretariat’s summary report. Unfortunately, beyond the fact that the Secretariat sought to include one citation per organization and to include an equitable distribution of different rights issues facing the SuR, I was able to provide no insight into this matter (Interview #15).

²³¹ Throughout the first week of UPR 40, although multiple recommending states explicitly referenced SuR national reports, no state explicitly referenced the Stakeholder Submissions summary report or any individual stakeholder report. One of the only noticeable exceptions to this was Venezuela highlighting the fact that Lithuania has the highest suicide rate in the world during the latter state’s review (the framing of which appeared to be more focused on publicly shaming Lithuania than offering any constructive recommendation). Although this fact could be considered common knowledge, it is notable that it was only listed in the Stakeholder Submissions report, not the OHCHR Compilation or the State Party Report. The other review during which Stakeholder Submissions seemed to be a possible influence was during the review of Iceland, during which Afghanistan, making their first UPR intervention since the rise of the Taliban government, made an extremely specific recommendation about the high percentage of migrant children dropping out of school that was repeated almost verbatim from a passage of Iceland’s Stakeholder Submissions report.

Although it is difficult to determine with such a small set of examples, these cases could potentially indicate that recommending states might be more likely to utilize background documentation such as the

an individual submission (which are only accessible via a footnote on the “UPR Submissions” page of the OHCHR website).²³² Overall, “lack of transparency”, “water[ing] down” of NGO contributions in the summary report²³³ and “low-level bureaucrats at OHCHR [making] up their own rules and [...] bullying NGOs into following them”²³⁴ has eroded the relationship between the Secretariat and many NGOs over time. This has led NGOs to seek influence outside of the formal avenues presented to them by the UPR’s official guidelines.

Outside the UN Bubble: Raising Awareness Through Public Engagement and Media Coverage

From the beginning of the UPR’s existence, many commentators have touted its public nature as one of its strongest assets.²³⁵ However, publicity does not equal public awareness.²³⁶ Although the UPR process is made public through the availability of

Stakeholder Submissions report when the SuR is a small, lesser-known country (Lithuania, Iceland) and/or if the SuR is engaged in overwhelmingly positive human rights practices to the point where it is difficult to determine an area in which to provide criticism without consulting the background documentation (Iceland). Although these reasons only apply in a limited number of cases, they can be considered positive practices in the context of the current UPR structure in that recommending states’ ignorance is forcing them to consult civil society.

²³² One notable exception to this lies in individual Stakeholder Submissions for smaller states such as Pacific Island states, which, according to Baird, recommending states seem to consult on a more regular basis due to their own lack of “diplomatic relations with Pacific states and [...] lack of familiarity with their human rights issues” (Baird, “Building a Bridge Between the Pacific and Geneva?”, 201-202).

²³³ Billaud, “Keepers of the truth”, 77.

²³⁴ Interview #2.

²³⁵ Interview #9.

²³⁶ In her concern about “the severe lack of reporting of the first session” Dominguez-Redondo suggests that this may be due to the fact that “it is relatively easy to suppress the process, despite being public, from national consciousness” (Dominguez-Redondo, “An Assessment of the First Sessions”, 734). In *Rituals and Ritualism*, Cowan further expands on this idea, stating as follows:

“... ‘public’ has very specific meanings in the United Nations context, and there is much contestation around the degree of ‘public-ness’ that is appropriate or desirable for UPR. As you enter Door 40 of the UN complex, a large board announces the day’s meetings, indicating each as ‘public’ or ‘private’. UPR is marked as ‘public’, yet it is impossible for a member of the public to enter unless she or he has institutional knowledge, connections and has made arrangements in advance. [...] ‘public’ access to the UPR space is

webcasts and archival footage of interactive dialogue via UN Web TV, the availability of UPR documentation via the OHCHR website, and so on, these measures do not automatically mean that the media and the public will engage with these resources. Thus, the burden of forging a bridge between the UPR and the public falls on civil society actors,²³⁷ who have attempted to raise awareness through a variety of strategies over the years.²³⁸ However, awareness campaigns to engage the public and the media with the UPR have generally fallen flat, especially in many Western democracies where mainstream media tends to take a hostile stance towards the notion of Western democracies being held as “peers” alongside non-democracies.²³⁹ As stated by Sarah

highly controlled and ‘public’ information both reveals and conceals.” (Cowan, “The Universal Periodic Review as a public audit ritual”, 53).

²³⁷ Interview #7.

²³⁸ Some organizations such as The Advocates for Human Rights have even raised awareness at public events such as the Minnesota State Fair, inviting visitors to their booth to guess when the United Nations’ next review of the US’ human rights record will be (most people’s guess—“never”).

²³⁹ “...the formal equality conferred by the UN on all UN member states [...] is a cherished feature for smaller states, whereas it may be an irritation for Western countries, which are more used to a prominent and even decisive role in world affairs.” (Sarah Joseph, “Global media coverage of the Universal Periodic Review process”, in *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, edited by Hillary Charlesworth & Emma Larking, Cambridge University Press (2014) 165). Some past sources of hostile UPR coverage include UN Watch, Eye on the UN, Daily Mail, and Fox News. A recent and notable example of Western media participating in hostile coverage of the UPR process is Brett D. Schaefer’s “Universal Periodic Review Reflects ‘Deficiencies’ of Human Rights Council.” Throughout the piece, Schaefer raises overarching questions regarding the mechanism’s intended purpose, criticizing the concept of “sharing best practices” in that “the idea that the United States leaves the universal periodic review more knowledgeable about its human rights situation is farcical.” He also highlights how these problematic states spread misinformation throughout their respective review processes, and are praised for it by allies during their interactive dialogues. He joins UN Watch in rejecting the UPR’s non-confrontational approach to human rights enforcement, asserting that international human rights standards are “about principle, not compromise.” Beyond being useless (at least for a country such as the United States), one of Schaefer’s main arguments about the UPR is that it is actively detrimental to human rights discourse. He focuses on the number of recommendations that the United States received (at 347, higher than any other country in any review/cycle up to that point) drawing a “false equivalence” to non-democracies. This is indicative of the approach that many critics of the UPR have taken throughout its lifespan. The Commission/Council’s composition and electoral procedures are issues that go back decades, and the UPR’s creation was intended to help satisfy critics who perceived the Commission to be dangerous/unbalanced—still, these critics have a variety of new criticisms specific to the UPR process. Although the UPR is built to be an equal process in which all 193 member states are reviewed on the same terms, critics of this nature assert that state reviews taking place in a public UN peer review creates a platform which is used by human rights violators to distort human rights discourse, and bestows “UN endorsement” on their lies by including them in the official documentation surrounding the review (Brett D. Schaefer, “Universal Periodic Review Reflects ‘Deficiencies’ of Human Rights Council”, The Heritage Foundation, (2021)).

Joseph, “even outlets which have a reputation for exceptional human rights reporting, such as The Guardian and Al Jazeera English, do not report much on the UPR.”²⁴⁰ This can be attributed to the fact that, in spite of its grand scale, it is difficult to formulate a news hook around any aspect of the UPR other than hostile interactions between states. As described in Chapter 4, the types of diplomatic acts of cooperation that show the UPR at its best lend themselves far better to the format of academic analysis than mainstream media coverage, and are often indicative of possible legislative changes yet to come rather than attention-grabbing “breaking news” stories.

As a result of these barriers, there is generally a very low level of awareness around the UPR process among the general public, and even within the international affairs community, throughout most countries in the world. While some early commentators saw increased media coverage as “a spotlight” with the potential to “shame states into taking measures to improve their implementation of their human rights obligations” and “remove the UPR from the ritualized confines of a UN building in Geneva”,²⁴¹ this optimism has been dampened as it has become increasingly clear over time that the media has “very limited interest” in the UPR process,²⁴² proving to be “at best an unreliable ally in promoting human rights”²⁴³ with some exceptions.²⁴⁴

²⁴⁰ Joseph, “Global media coverage of the Universal Periodic Review process”, 149.

²⁴¹ Joseph, “Global media coverage of the Universal Periodic Review process”, 148.

²⁴² Interview #3.

²⁴³ Joseph, “Global media coverage of the Universal Periodic Review process”, 166.

²⁴⁴ As outlined by Joseph in her *Rituals and Ritualism* chapter, most exceptions to the rule of sparse and/or low-quality media coverage of the UPR come from media outlets in developing countries. Joseph asserts that these outlets “generally take the UPR and its potential to improve human rights more seriously than their more cynical developed world counterparts” (Joseph, “Global media coverage of the Universal Periodic Review process”, 148).

Plenary Session

Despite their “very limited role in the formal process”,²⁴⁵ civil society representatives are given one speaking role within the UPR. As dictated by the Institution Building Package, “other relevant stakeholders will have the opportunity to make general comments before the adoption of the outcome by the plenary.”²⁴⁶ In practice, this has taken the form of NGO representatives being granted a limited number of two-minute speaking slots at the plenary session of the Human Rights Council when the final adoption of a UPR report takes place (also known as “Item 6” on the Council agenda).²⁴⁷ These slots are provided on a first-come-first-serve basis, with the OHCHR attempting to fit in as many speakers as possible during the twenty minutes allotted to NGOs during this segment (usually adding up to a maximum of about ten speakers). However, as outlined by Jessica Duggan-Larkin, NGOs are not always eager to sign up in the first place—

“Despite being the only opportunity for stakeholders to present, in many plenary sessions there has been limited or no NGO presentations, perhaps indicating that NGOs see little value in this aspect of the process.”²⁴⁸

There are a number of problems with the plenary sessions speaking slot that prevent it from being an effective avenue for civil society influence on the UPR process. On a technical level, “the high-level delegations seen at the working group are often not present for the plenary stage”. Some of the state delegates that do show up have a history

²⁴⁵ Bertotti, “Separate or inseparable?”, 1150.

²⁴⁶ United Nations Human Rights Council, *Resolution 5/1*, 31. Although the vague nature of this mandate has caused considerable confusion among states and civil society—in particular, what “general comments” entail (Duggan-Larkin, “Can an Intergovernmental Mechanism Increase the Protection of Human Rights?”, 554-555)—it has yet to be updated by the OHCHR.

²⁴⁷ The plenary session final adoption occurs about four months after the corresponding Working Group session.

²⁴⁸ Duggan-Larkin, “Can an Intergovernmental Mechanism Increase the Protection of Human Rights?”, 554

of interfering with civil society participation by questioning the extent of their speaking rights²⁴⁹ as outlined in the Institution Building Package.²⁵⁰ Furthermore, although the session is technically public (broadcast live and archived via UN Web TV), Item 6 videos are extremely difficult for uninitiated observers to locate because they are labeled by their meeting and session numbers (i.e. “XXth Meeting, XXth Regular Session of the Human Rights Council), with no mention of “UPR” or “Item 6” in the video titles. This labeling technique makes it effectively impossible to locate footage for any given SuR’s plenary session UPR Outcome segment unless the person searching the archive knows the exact meeting of the session during which the UPR Outcome of their target SuR’s took place.²⁵¹ Even if one finds the correct video, the video in question is usually around nine hours long with no timestamps indicating when any given SuR’s UPR Outcome takes place, much less individual NGO speaking slots. Although it is difficult to determine whether this is merely a technical deficiency or an intentional obfuscation, it is reasonable to assume that if the OHCHR made a significant move to make these sessions more accessible to the general public (i.e. posting them on YouTube, posting highlights clips, implementing a working one-click timestamp system) it would be met with strong resistance from the same countries that originally protested the session being made available on UN Web TV via livestream and archival footage.

²⁴⁹ Early on in Item 6, many reports criticized states interrupting NGO comments with “banging and waving” every time they made a comment that was critical of the SuR, even if their statement was explicitly drawing on the Report of the Working Group. Although they were unsuccessful, the Egyptian delegation even went so far as to propose that “all NGO comments be removed from the official record of the session.” Sweeny and Saito note with disappointment that only a small number of states came to the defense of NGOs during these disputes (Sweeny & Saito, “An NGO Assessment of the New Mechanisms of the UN Human Rights Council”, 216).

²⁵⁰ HRC, *Resolution 5/1*, 31.

²⁵¹ Which meeting Item 6 occurs during varies by session. For example, while Item 6 may have occurred during the 41st-43rd meetings of one session, searching for footage of these meetings from another session might yield entirely different results.

Beyond this, the biggest problem with plenary session Item 6 as the only NGO speaking role within the UPR process is the fact that the plenary session speaking slot occurs too late to make a difference in the process.²⁵² Although these speaking slots enable NGOs to directly address state delegations, they are relatively unhelpful in that they fall at the end of the UPR process after all opportunities to influence the outcome have long since passed.²⁵³ Indeed, many plenary session comments by civil society representatives largely amount to recaps of recommendations that the SuR accepted and did not accept. Civil society statements often revolve around recommendations for the SuR to consider implementing by the next cycle, which, four-and-a-half years down the line, is likely far from most SuR delegates' minds. Civil society can use the platform of the plenary session to poke holes in inaccurate information provided by the SuR during the interactive dialogue, but even this is so far removed from the Dialogue itself that its impact is significantly lessened. All in all, while the plenary session speaking slot is an interesting anomaly in the scope of civil society participation, the real focus of civil society UPR engagement is on paper via stakeholder submissions and behind the scenes in various lobbying scenarios.

Lobbying States

From the start of the UPR, in order to supplement the suggestions outlined in their Stakeholder Submissions, civil society organizations have pivoted towards lobbying

²⁵² Ben Schokman & Phil Lynch, "Effective NGO Engagement with the Universal Periodic Review", in *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, edited by Hillary Charlesworth & Emma Larking, Cambridge University Press (2014), 132.

²⁵³ Civil society being included "after the fact" is a broad issue in UN Human Rights Discourse which groups such as "UNmute" are currently targeting in their activist efforts.

states as another primary avenue in their attempts to influence the process. Although the OHCHR “strongly encourage[s]” SuRs to consult civil society throughout their UPR process,²⁵⁴ they provide no official venue for interactions to occur, making these connections dependent “on the will of the States alone”²⁵⁵ and therefore extremely uneven. Even when some states such as the United States host civil society UPR forums as a matter of routine every cycle, some civil society actors in attendance see them as superficial.²⁵⁶

Throughout the existence of the UPR, many organizations have come to focus their lobbying efforts primarily on recommending states rather than SuRs in hopes that these states will serve as a mouthpiece for their issues during the interactive dialogue. In the interest of this, NGOs typically organize strategically targeted ad-hoc meetings with individual states²⁵⁷ and parallel events for recommending state delegations to attend in

²⁵⁴ Cowan, “The Universal Periodic Review as a public audit ritual”, 56.

²⁵⁵ Dominguez-Redondo, “An Assessment of the First Sessions”, 732.

²⁵⁶ One U.S.-based NGO representative reported having to travel to Washington on their own expense during the second cycle to attend “town hall sessions” hosted by the State Department between the interactive dialogue and the plenary session. They called these sessions “the height of polite hypocrisy”, where State Department officials would “nod and smile” but refuse to discuss implementation, usually diverting to the excuse that they didn’t have the authority to carry out recommendations (Interview #16). Later on in Geneva the U.S. delegation went on to use these town halls as evidence of their constructive engagement with the UPR mechanism, repeatedly highlighting civil society consultation in their oral statements at both the second cycle and third cycle interactive dialogues (United Nations Media, “USA Review - 22nd Session of Universal Periodic Review”, UN Web TV, (2015); United Nations Media, “United States of America Review - 36th Session of Universal Periodic Review”, UN Web TV, (2020)). Furthermore, some countries forgo NGO engagement altogether, refusing to participate even in symbolic dialogue (Takele Soboka Bulto, “Africa’s Engagement with the Universal Periodic Review: Commitment or Capitulation”, in *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, edited by Hillary Charlesworth & Emma Larking, Cambridge University Press (2014), 245), leading some commentators to suggest that “most member states are not ready or willing to engage in open and transparent dialogue” with civil society (Yuyun Wahyuningrum, “Indonesia and the Universal Periodic Review: Negotiating Rights”, in *Human Rights and the Universal Periodic Review: Rituals and Ritualism*, edited by Hillary Charlesworth & Emma Larking, Cambridge University Press (2014), 262). However, in spite of these perspectives, some SuRs take NGO consultation quite seriously, even going so far as to include NGO representatives in their state delegation at the UPR (Interview #12).

²⁵⁷ Schokman & Lynch, “Effective NGO Engagement with the Universal Periodic Review”, 141.

order to effectively convey their issues through strategic lobbying.²⁵⁸ While ad-hoc lobbying efforts speak to the creativity and resourcefulness of civil society, they are problematic as a primary venue for civil society influence in that not every NGO has the connections necessary to effectively lobby states. From the first cycle²⁵⁹ to the present,²⁶⁰ NGOs' ability to lobby states effectively has been heavily dependent on their resources and their connections in Geneva.²⁶¹ As reported by one NGO advocate, “your sole voice is difficult to get across. A small NGO is probably not going to be heard unless they have a strong backing and connections in Geneva.”²⁶² Another interview with a Geneva-based NGO advocate took this a step further, specifically emphasizing the importance of a physical presence in Geneva (either via a Geneva office or regular visits to Geneva) in order to build relationships with state delegates through in-person meetings.²⁶³ This poses a major disadvantage to the vast majority of NGOs throughout the world, who lack physical and/or political ties to Geneva.

Another major issue currently facing NGO representatives seeking to lobby state delegates is the COVID-19 pandemic. The pandemic has significantly altered civil society lobbying tactics, leading NGOs to lean more on virtual side events and one-on-one meetings throughout much of the third cycle. While some NGOs have reported

²⁵⁸ Some NGOs such as The Advocates for Human Rights also supplement meetings and events with targeted email campaigns addressed to state delegations.

²⁵⁹ Charlesworth & Larking, “Introduction”, 16-17.

²⁶⁰ Interview #3; Interview #17.

²⁶¹ Some well-connected NGOs, such as The Advocates for Human Rights, have attempted to correct this disparity by using their stature to provide a platform for smaller local NGOs and individual civil society members to participate in lobbying. For instance, at a panel on the death penalty hosted by The Advocates in preparation for UPR 40, The Advocates invited state PMs who they thought would pick up their issue and devoted most of the session to civil society organizations in target countries so that they could inform recommending states about the situation on the ground.

²⁶² Interview #3.

²⁶³ Interview #17.

frustrations with virtual lobbying,²⁶⁴ some see this as a positive change, reporting increased state delegation attendance of virtual side events as opposed to physical side events²⁶⁵ and increased capacity for civil society members who cannot afford to travel to Geneva to participate in the process.²⁶⁶ Nonetheless, many NGOs without extensive Geneva connections still feel lost within the process—as stated by one representative from a small U.S.-based NGO, “every time I attempt to have an insight, the terrain changes.”²⁶⁷ Overall, while some NGOs have become increasingly savvy at lobbying over the course of the UPR’s existence,²⁶⁸ the importance of Geneva connections and limited formal opportunities for engagement have caused many NGOs to feel left out of the process. Furthermore, with no guarantee that states will take up their issues no matter how hard they lobby,²⁶⁹ even well-connected, Geneva-based NGOs sometimes display a sense of burnout over the process.²⁷⁰

The UPR Info Pre-Session

Beyond the ad-hoc lobbying that civil society does in the months leading up to any given Working Group session, the UPR Pre-session, hosted by UPR Info,²⁷¹ has

²⁶⁴ Interview #6.

²⁶⁵ Interview #2.

²⁶⁶ Interview #13.

²⁶⁷ Interview #16.

²⁶⁸ Interview #2.

²⁶⁹ An anonymous NGO representative highlighted the problem of organizations focusing on issues such as the death penalty and LGBT rights being pushed aside by the states they were attempting to lobby due to the fact that these subjects were not viewed to be as important as other issues such as civil and political rights (Interview #2).

²⁷⁰ Interview #6.

²⁷¹ UPR Info is a non-partisan, Geneva-based NGO tasked with handling the Pre-session and compiling various data on the UPR. Although not explicitly connected to the OHCHR, they are primarily funded by various Western European government entities such as the Ministry of Foreign Affairs of Denmark, the Federal Foreign Office of Germany, and the City of Geneva.

become a key venue for civil society to connect with state delegations in order to have their issues picked up. The Pre-session takes place about six weeks before each UPR Working Group, and consists of an hour-long session for each state during which civil society representatives outline issues for recommending states to bring up during the interactive dialogue. Although it is not a formal UN event, the Pre-session gives civil society a structured, consistent platform to inform state delegates about their issues of concern and serves as a “more direct and relatable method of communication” between civil society and states than the Stakeholder Submissions report.²⁷²

Similar to the interactive dialogue, one of the most important changes to occur within the Pre-sessions over the course of the UPR’s existence has been the transition to virtual modalities during the COVID-19 pandemic. However, while the interactive dialogue has adopted hybrid modalities (maintaining partial in-person Salle XX participation throughout the pandemic), the Pre-sessions have transitioned to entirely virtual modalities. Similar to the interactive dialogue, this has had both positive and negative impacts on the process. One major positive aspect is that civil society representatives speaking at the Pre-sessions no longer have to travel in-person to Geneva for three to four nights in order to participate.²⁷³ However, when discussing the impact of hybrid modalities with a UPR Info representative, the representative reflected on lack of state engagement with the online Pre-sessions. While the state delegations in attendance had usually asked the civil society speakers one or two questions per session when the

²⁷² Bertotti, “Separate or inseparable?”, 1150.

²⁷³ “Based on the feedback of former participants, CSOs and NHRIs should plan to stay in Geneva for approximately three to four nights, if their financial resources so permit. The exact length of the stay should depend on the date of the country's Pre-session, and whether the organisation plans to participate in both the UPR training and the networking reception.” (UPR Info, “Pre-sessions Overview: Frequently Asked Questions”).

Pre-sessions were hosted in-person, the virtual Pre-sessions had been getting nearly “no engagement” from the state delegations in attendance. While twenty-minutes of each hour-long Pre-session had been reserved for Q&A before the pandemic, this time slot had been minimized because the UPR Info hosts knew that no state delegates were likely to speak up. When UPR Info reached out to state delegates to figure out why they weren’t speaking, delegates responded that “[the Pre-session is] great, don’t change anything” or “just have them [NGO representatives] speak slower.”²⁷⁴

At the UPR 40 Pre-session in December 2021, this dynamic and many others were put on display. Although many state delegates were present on the Zoom call (usually about 10-15 delegates per Pre-session) all of the delegates present except for one refused to engage with the NGO representatives throughout the entirety of the Pre-session. The UPR Info host tried a number of strategies to spark state engagement during each SuR’s Q&A segment, from asking her own question during the review of Uganda in an attempt to get the conversation started to offering state delegates the chance to have their questions read anonymously by submitting them to her via private Zoom DM. The failure of the latter offer proved that the states’ silence wasn’t about politics—it was about lack of engagement. Later, when speaking to an anonymous state delegate about the Pre-sessions, some light was shed on this issue—although they hadn’t taken up the offer, the delegate had been told by their superiors that, after logging into the call, they could go get some coffee, take a walk, and generally do whatever they wanted. This adds another dimension to state disengagement with virtual Pre-sessions—when UPR Info is

²⁷⁴ Interview #7.

begging state delegates to engage with NGOs, it is entirely possible that many of them are off doing something else entirely.

“I would like to thank UPR Info for giving us this platform for the permanent missions to hear our pleas.”

—Anonymous NGO representative at the UPR 40 Pre-session

In spite of this, the UPR 40 Pre-session contained a number of promising moments of interactivity between states and civil society. Although only one state delegate asked questions throughout the entire Pre-session, the questions that they presented were highly constructive and contributed toward important dialogue with the civil society representatives in attendance. The first question concerned an accepted recommendation concerning use of force by the state police that the delegate’s country had given the SuR during its previous UPR, and whether the SuR had made any progress in implementation of the recommendation. This was an excellent recommendation in that the NGO’s answers gave the delegate ammunition that they later used to apply pressure to the SuR during their UPR 40 interactive dialogue session.

The state delegate’s second question, asked at a subsequent Pre-session, concerned whether or not the SuR in question had signed and ratified the Optional Protocol to CEDAW (the Convention on the Elimination of All Forms of Discrimination against Women). While this question initially seemed less relevant than the last due to the fact that every UN member state’s treaty ratification records are publicly available information on the OHCHR website,²⁷⁵ it led to an extremely informative discussion with a civil society representative. The representative said that while the SuR had not ratified

²⁷⁵ In response to this question, a diplomatic mission member that had not engaged in the Pre-session up to this point posted a link to the OHCHR’s treaty body Database in the Zoom chatbox.

the Optional Protocol to CEDAW, they did not think asking the SuR to ratify it would be a productive recommendation, since implementation for the SuR's accepted conventions such as the core CEDAW treaty was extremely poor. All in all, the NGO representative's response, which included illuminating examples of the poor implementation of the core CEDAW treaty (sexist content in state-issued textbooks) and explanation of the root of the problem exemplified the purpose of the dialogue between states and civil society that UPR Info had intended for the Pre-session to facilitate. The civil society representative had provided everyone in attendance with valuable insight into on-the ground problems in the SuR not available in the State Party report, the OHCHR Compilation report, or mainstream media coverage of the SuR. Furthermore, even if the submissions for the SuR's Stakeholder Submissions compilation were sparse enough that the NGO in question could have gotten some of their key points included, their core advice (that recommending states should move away from suggesting that their SuR ratify new treaties and focus on criticizing their implementation of already-ratified treaties) was much more nuanced than the Stakeholder Submissions compilation would have allowed for in the best of circumstances.

The other notably positive aspect of the UPR 40 Pre-session was the handful of SuR delegations that attended their own Pre-sessions.²⁷⁶ This created a unique opportunity for direct engagement between NGOs and their corresponding SuRs, allowing NGO representatives to make direct appeals to their own governments. Some SuRs even gave opening statements at their own Pre-sessions. Overall, SuR delegation attendance significantly changed the dynamic of the Pre-sessions at which it occurred,

²⁷⁶ "In the spirit of cooperation and transparency, UPR Info always invites the State under Review to attend its own Pre-session" (UPR Info, "Pre-sessions Overview: Frequently Asked Questions").

switching the Pre-session from a one-sided dialogue between NGOs and various unresponsive state delegates to a sort of mini-interactive dialogue in which the NGOs in attendance occupied the roles that would usually be taken up by recommending states.²⁷⁷

“Using States As a Mouthpiece”: How Civil Society Participation Illustrates the Need for Reform

“...while [NGOs] have responded to the UPR process with energy and enthusiasm, this should not divert attention from the numerous difficulties they face.”

—Roland Chauville, *Rituals and Ritualism*²⁷⁸

Although not every NGO is well-connected enough to engage states at a diplomatic level,²⁷⁹ their adeptness at “using states as a mouthpiece”²⁸⁰ through various lobbying efforts has increased over the course of the UPR’s existence. Furthermore, in spite of the limited avenues for formal civil society participation, some actors have come to appreciate the strategic potential of “getting the first word and the last word” via Stakeholder Submissions and the plenary session speaking slot.²⁸¹ However, the fact that civil society actors are afforded little-to-no formal agency within the UPR process has gradually taken its toll. Even organizations that are based in Geneva and/or maintain strong connections to state delegations and the OHCHR have developed a sense of burnout from being forced to engage in a song and dance of constant networking over the

²⁷⁷ Witnessing this dynamic was highly influential in the construction of my final proposal outlined in Chapter 6.

²⁷⁸ Chauville, “Successes and Failures”, 103.

²⁷⁹ Interview #15; Interview #16.

²⁸⁰ Interview #2.

²⁸¹ Interview #11.

last fifteen years,²⁸² often having their suggestions “watered down”²⁸³ by recommending states with softer, less specific²⁸⁴ language when they are presented during the interactive dialogue for political purposes.²⁸⁵

Throughout analysis of civil society participation in the UPR process, it is essential to keep in mind that everything civil society does to participate in the UPR comes at a cost. Assembling stakeholder submission reports, building relationships with state delegations, and learning to navigate the idiosyncrasies of the UN system costs time and money that could be devoted to direct aid efforts to address human rights issues on the ground in SuRs. Furthermore, civil society actors engaged with the UPR face increased exposure and potential reprisals as a result of their contributions in the form of surveillance, smear campaigns, threats, and harassment.²⁸⁶ Overall, looking at the UPR process from a civil society perspective makes it clear that their price of admission to participate in the UPR—time, money, effort, and even personal danger—is not equal to

²⁸² Interview #6.

²⁸³ Interview #2.

²⁸⁴ As stated by Carraro, the UPR Info database confirms that “nonspecific recommendations represent the large majority in the UPR” (Carraro, “Promoting Compliance With Human Rights”, 1087).

²⁸⁵ Although a 2013 study by McMahon examining states attentiveness to NGO lobbying did show an overall positive trend of states speaking out on the issues articulated in NGO briefings, the level of specificity often failed to capture the original sentiment of the NGO statement. (McMahon, “Do Civil Society Organization-Suggested Recommendations Matter?”, 7) Due to the lack of causal evidence in the study, it is difficult to determine whether this should be attributed to states watering down NGO recommendations for political purposes or states not having enough time during their interactive dialogue intervention to fully articulate the subtleties of NGO recommendations. From a more cynical perspective, it could also be because recommending states failed to read the NGO recommendations in the first place, making the original correlation between state recommendations and NGO recommendations being based around the same core thematic issues a product of chance rather than a truly causal relationship caused by successful lobbying efforts. McMahon himself acknowledges this limitation, stating that “while there is no assertion of causation [...] at a minimum, it appears that states share interests reflected by [NGOs]” (McMahon, “Do Civil Society Organization-Suggested Recommendations Matter?”, 11).

²⁸⁶ In the first cycle alone, the office of the Secretary-General found that the governments of Yemen, Bangladesh, Rwanda, Sudan, Bahrain, the Philippines, and China were found to have engaged in reprisals against individuals and NGOs that had provided critical Stakeholder Submissions to the UPR (Charlesworth & Larking, “Introduction”, 17; International Service for Human Rights, “Two cycles on: Towards a UPR which is accessible, strong, effective and protective”, (2016), 1-2). Some of these reprisals have even led to individuals having to flee their home countries (Chauville, “Successes and Failures”, 107).

what they get out of the process. As this disparity causes the energy and enthusiasm displayed by civil society in the early days of the UPR to fade into burnout and discontentment, a re-assessment of civil society's role and overall agency within the UPR process becomes increasingly necessary.

When state participation is taken into consideration, increased civil society participation becomes not just a victory for NGOs and their constituents, but for the overall UPR mechanism as well. Although civil society actors are not usually given high-profile speaking roles within the UN Human Rights System, a notable recent exception to this was when Philonise Floyd, (brother of George Floyd, an African-American murdered by police in the United States) was allowed to speak during the June 2020 Human Rights Council Urgent Debate on Systemic Racism and Police Brutality. This event (particularly Floyd's speaking role within it) induced a level of widespread news coverage by mainstream Western media unparalleled by any human rights-related news story since the United States withdrew from the Human Rights Council in 2018. As a result of the media coverage surrounding it, Floyd's speech was highly encouraging not only to many civil society actors on the ground in the United States, but also to ordinary United States civilians who may not have been previously engaged with UN human rights proceedings.²⁸⁷

Overall, as outlined in Chapter 4, while supporters of the UPR regularly point to its ability to generate pressure on states,²⁸⁸ peer pressure often fails to materialize due to

²⁸⁷ Nick Cumming-Bruce, "George Floyd's Brother Urges U.N. to Investigate Police Killings in U.S.," *New York Times*, (2020); Ryan Heath, "George Floyd's family appeals to United Nations for justice", *Politico*, (2020); Colin Dwyer, "George Floyd's Brother To U.N. Human Rights Council: 'I Am Asking You To Help Us'", *NPR*, (2020); Justin Wise, "George Floyd's brother calls on United Nations to study police brutality in US", *The Hill*, (2020).

²⁸⁸ Carraro, "Promoting Compliance with Human Rights", 1080.

most states' unwillingness to give and receive constructive criticism. However, my findings show that increased opportunities for publicly visible civil society participation would not only give civil society an improved platform to raise awareness around important human rights issues, but could allow the UPR to wield "public pressure" to an extent that has not been present in the mechanism thus far. In order to explore this potential for public pressure, I have compiled a proposal for a publicly visible civil society speaking role at the review stage of the UPR.

Chapter 6: The Future of the UPR

A Crucial Moment

“...the third and fourth cycle will be crucial moments in the life of a procedure that is still in its infancy.”

—Walter Kälin, *Rituals and Ritualism*²⁸⁹

At the beginning of the fourth cycle of the UPR, the mechanism stands at a crossroads. Hybrid modalities have dramatically changed the way in which the mechanism operates, both inside and outside of Salle XX. When the pandemic subsides, it will be up to the OHCHR and the Human Rights Council to decide who will be included in the process and how. Based on my findings, I argue that the most positive change to combat ritualism and increase the mechanism’s potential for public pressure on states would be the introduction of formal, publicly visible civil society participation at the review stage.

Proposal for Increased Civil Society Participation

Throughout my research, a number of interviewees have expressed interest in a more meaningful role for civil society in the UPR.²⁹⁰ This is also a sentiment that has been expressed by many civil society commentators throughout the UPR’s existence.²⁹¹ Furthermore, some commentators have framed ritualistic UPR engagement by states as a direct result of “the fact that they do not fear questions from NGOs.”²⁹² Based on my research concerning issues with state participation, this strongly suggests that increased

²⁸⁹ Kälin, “Ritual and ritualism”, 41.

²⁹⁰ Interview #5.

²⁹¹ Human Rights Watch, “Universal Periodic Review”, 4; Lilliebjerg, “An NGO Perspective on Opportunities and Shortcomings”, 311; ISHR, “Two cycles on”, 2-3.

²⁹² Bulto, “Africa’s Engagement with the Universal Periodic Review”, 247.

civil society participation could be a powerful remedy to many of the most serious problems facing the UPR.

While the state-on-state nature of the UPR is undoubtedly a useful asset, states' inability to engage in constructive criticism often leaves important issues out of the process. Conversely, as civil society engagement in the UPR clearly shows, the vast majority of civil society actors have no interest in tiptoeing around controversial issues. This more direct approach would strongly re-legitimize the UPR and the Council as a whole. Furthermore, while state-on-state peer pressure can sometimes be an effective avenue for initiating human rights reforms on the ground, the UPR's potential for exerting public pressure remains largely untapped due to the minor role that civil society actors are given in the process. While the media will never follow a mechanism as bureaucratic as the UPR with the same level of interest of a sports tournament, a high-profile civil society speaking role could drastically increase the amount of attention that the general public pays to the process. This extra attention would vastly improve the UPR's potential for exerting public pressure on self-conscious states in the form of media coverage, domestic political discourse, and even social movements.

Although there are a number of technical and political barriers to implementing a plan along these lines (which will be addressed later in this chapter) I have used a mixture of NGO testimony and my own conclusions from attending various UPR events to construct a model for formal, publicly visible civil society participation at the review stage. The core model would function as follows:

1. Each interactive dialogue session at the Working Group on the UPR will be accompanied by an hour-long “Civil Society Dialogue” session.
2. The dialogue will consist of a two-minute opening statement by the SuR delegation, followed by a series of two-minute statements by various NGO representatives, and closing with another two-minute statement by the SuR.
3. The dialogue will take place in Salle XX, on the same day as the SuR’s interactive dialogue.
4. The dialogue will function in a similar manner to the UPR Info Pre-session, with civil society members providing information about the human rights situation in the SuR from an on-the-ground perspective.
5. However, instead of a private event that only diplomatic missions are allowed to spectate on, the Civil Society Dialogue will be open to the public, both physically via the Salle XX Public Gallery and virtually via livestream and archival video footage.

Beyond these core guidelines, there would be a number of technical details to ensure the functionality and integrity of the model, listed as follows:

- The sign-up list for NGOs to speak at the Civil Society Dialogue will function on a first-come, first-served basis, with no preferential treatment given to ECOSOC-accredited NGOs. However, to ensure the integrity of the sign-up system and prevent “jury rigging” practices, all NGOs applying to speak at the Civil Society Dialogue must provide evidence of having submitted two Stakeholder Submission reports on the SuR in question during previous cycles of the UPR. In addition, the recommendations submitted by the NGO in their most recent full-length stakeholder submission must include a minimum of three “Category 5” recommendations.²⁹³
- NGOs participating in the Civil Society Dialogue are invited to participate physically in Salle XX or virtually via live/pre-recorded video intervention, with no preferential treatment given to Geneva-based NGOs.
- NGOs wishing to remain anonymous for security reasons may submit a transcript of their statement to be read by an OHCHR “stand-in” representative. The NGO in question will go through the same OHCHR vetting process as other NGOs, but will simply be listed as anonymous when the OHCHR stand-in is called to speak at the Civil Society Dialogue.
- In order to ensure maximum public engagement, the Civil Society Dialogue will be livestreamed via UN Web TV, the United Nations YouTube channel, and the United Nations Human Rights Facebook page. Full-length recordings will be uploaded to each of these platforms as soon as possible following each dialogue. Recordings will include individually labeled time-stamps marking each NGO speaking slot in the description of the video.

²⁹³ Based on Edward McMahon’s “Action Category” system for sorting UPR recommendations. Category five recommendations are “recommendations of specific action (key action verbs: undertake, adopt, ratify, establish, implement, recognize)” (McMahon, “The Universal Periodic Review: A Work in Progress”, 15).

A Risk Worth Taking: Civil Society as Informed, Reliable Critics

Throughout my research for this project, it has become abundantly clear that there is a large amount of resistance against increasing civil society participation in the UPR from both within and outside of the UN. As illustrated in Chapters 3 & 5, many UN member states fear increased civil society involvement because civil society members are immune to diplomatic pressure and often extremely well-informed about the on-the-ground situation in the SuR. Some within the OHCHR see the current modalities and practices of the UPR as fine the way they are, adopting a “why fix it if it is not broken”²⁹⁴ attitude towards the mechanism and claiming that “improvement needs to happen on a national level.”²⁹⁵ Some academics, despite often being sympathetic to the plight of NGOs,²⁹⁶ feel that NGO involvement is good as-is, supporting the current state-driven model because “it is easier to catch bees with honey than vinegar”²⁹⁷ while claiming that a disruption of state ownership over the mechanism would threaten its 100% state participation rate.²⁹⁸ This participation rate is something many observers view as one of the UPR’s most important achievements.²⁹⁹

“The UPR is based on and draws its legitimacy from its universal and non-selective character, and thus would quickly degenerate into ritualism should some states decide to withdraw from the process [...]The UPR would lose much of its soul and its raison d’être if states were no longer interested in acting as peers. The success or failure of the UPR thus depends to a large extent on states showing up and actively participating.”

—Walter Kälin, *Rituals and Ritualism*³⁰⁰

²⁹⁴ Bertotti, “Separate or inseparable?”, 1157.

²⁹⁵ Interview #9.

²⁹⁶ Interview #10.

²⁹⁷ Elvira Dominguez-Redondo & Edward R. McMahon, “More Honey Than Vinegar: Peer Review As a Middle Ground between Universalism and National Sovereignty”, *Canadian Yearbook of International Law* (2013), 94.

²⁹⁸ Interview #14.

²⁹⁹ Chauville, “Successes and Failures”, 87; Interview #10.

³⁰⁰ Kälin, “Rituals and ritualism”, 30.

While I agree that the UPR's high participation rate is an important factor in its longevity, I have found through my analysis of state participation that there are a number of highly problematic dynamics at play within the mechanism that render much of this participation to be performative, ritualistic and even actively harmful to human rights enforcement. After fifteen years, the mechanism had largely failed to "enmesh [...] states within the spider web dynamic of heightened respect for universal human rights norms" as early supporters had hoped it would.³⁰¹ On the other hand, when examining the internal dynamics of NGO participation (a severely under-represented field of UPR discourse), I found that, while NGOs are afforded very little agency within the UPR process, their criticisms are usually more informed and specific than those of recommending states, whose potential as critics is often limited by diplomatic niceties (a problem which is further exacerbated when recommending states are faced with criticizing their and ideological regional allies).

As the UPR approaches its fourth cycle, it has become clear that some states will never assimilate to UN human rights norms no matter how many times they go through the process. While these may have once been limited to a select few hostile states within the UN system (Venezuela, North Korea, Cuba), the steady global decline in democratic values over the past sixteen years³⁰² suggests that this may become more and more of a problem as time goes on. For this reason, while I affirm that a "constructive" model of UN human rights discourse is largely preferable to a "naming and shaming" model, I assert that the addition of a properly vetted NGO speaking role during the review stage

³⁰¹ McMahon & Johnson, "Evolution Not Revolution", 4.

³⁰² Freedom House, *Freedom in the World 2022: The Global Expansion of Authoritarian Rule*.

would strengthen the mechanism's ability to generate public pressure on states. However, in contrast to the toxic interstate dynamics of the Commission on Human Rights, naming and shaming in the form of publicly visible civil society testimony would provide the UPR with a renewed level of public pressure while retaining the diplomatic advantages of a peer review.³⁰³ Overall, while I absolutely agree that continued state participation in the UPR is an highly important component of its longevity, and that increased civil society participation does put state participation at a certain level of risk, the combination of weak state participation, strong NGO participation, and the solidification of the mechanism after fifteen years of existence make it a risk worth taking.³⁰⁴

Limitations and Further Research

As stated by Edward McMahon in "Evolution Not Revolution", "it is a challenging task to make sense of what is really happening in a vast and complex mechanism such as the UPR."³⁰⁵ With this in mind, there are two main ways to go about

³⁰³ Although some might argue that the treaty bodies already fulfill the role of a more informed, critical human rights body, low state engagement and low public visibility makes their potential for the elevation of UN human rights discourse nowhere near as high as the UPR's. By the same token, while some states give critical comments to their peers during the UPR, the diplomatic relationships between the recommending states and the SuR often undermines rather than strengthens the criticisms they are putting forward. This can be ascribed to the delicate dynamics of Western states giving critical comments to Global South states (as exemplified at UPR 40, where states such as Venezuela and Syria often highlighted the fact that their critics were Western states), and to the fact that many states are reluctant to criticize their regional peers (McMahon, "The Universal Periodic Review: A Work in Progress", 16).

³⁰⁴ Although many NGOs were unhappy with the fact that they were not given a Working Group speaking role from the start of the first cycle onward (Lilliebjerg, "An NGO Perspective on Opportunities and Shortcomings", 311), I would actually argue that this was the correct decision on the part of the OHCHR. Civil society participation from the start of the UPR may have caused the mechanism to be viewed by states much differently. Only now after fifteen years of consistent participation is the mechanism secure enough to handle the added tension that public NGO participation at the review stage will inevitably bring about.

³⁰⁵ McMahon & Johnson, "Evolution Not Revolution", 7. This sentiment is also reflected throughout UPR literature from every cycle to date. In her discussion of the difficulties surrounding causal assertions on the UPR, Carraro observes that "assessing the performance of a public organization is challenging, as it requires isolating the role played by the organization in stimulating compliance from a variety of intervening factors [...] An organization might be successful in producing all necessary conditions to

attempting to make sense of the mechanism—quantitative methods (analyzing recommendation data through the lens of regional trends, action categories, and so on) and qualitative methods (interviews, observation of the UPR and UPR-adjacent events). I originally chose the latter approach because I wanted to humanize the process to outside observers, and stuck with it as I discovered that my interviewees’ thoughts on the mechanism were often full of compelling insights absent from academic discourse on the UPR. However, with a database as vast and detailed as UPR Info, quantitative analysis of the mechanism is still a rich avenue of study, holding the potential to produce more sweeping, authoritative conclusions on the mechanism than individual anecdotes are capable of providing.³⁰⁶

As with most studies on the UPR, my thesis is limited in that it is difficult to outline a causal relationship between domestic legal progress on human rights within target countries and the outcome of any given UPR review. This makes any type of analysis focused on the current state of the UPR’s efficacy or the results that it produces/fails to produce difficult to formulate. In order to remedy this, qualitative research on the causal relationship between on-the-ground human rights advancements and the UPR (possibly by means of interviews with state legislators) would be an invaluable addition to the discourse surrounding the mechanism.

Another contribution to UPR research that would be extremely welcome would be a study attempting to measure NGOs’ impact on the UPR process through more empirical means than I chose to employ. While Edward McMahon’s 2013 study measuring to what

stimulate compliance, and yet states might still be breaching international obligations due to a variety of other reasons.” (Carraro, “Promoting Compliance with Human Rights”, 1079).

³⁰⁶ As articulated throughout this paper, Edward McMahon’s articles on the UPR are all excellent examples of this.

extent states “pick up” NGO recommendations³⁰⁷ is a helpful resource, an updated study of this nature with a broader scope and deeper investigation into the level of causation between NGO lobbying and state recommendations would be invaluable to the discourse surrounding NGOs’ role in the process.

Conclusion

My study on the UPR has yielded a number of key findings in relation to state participation and civil society participation. As states have learned “what to expect” out of the UPR process, they have become increasingly adept at using the language of human rights to make it appear as though they are engaged while maintaining ultimate control over their fate in the outcome of their review. Conversely, while civil society actors possess extremely limited agency within the formal UPR process, their strong engagement with the mechanism through informed, specific recommendations demonstrates their potential to exert “public pressure” on states if given the platform to do so.

While Stakeholder Submissions and state lobbying may have been a good start for civil society participation in the UPR fifteen years ago, it is time to move forward. Now that the mechanism is up and running, the OHCHR can afford to take its training wheels off. As acknowledged earlier in the chapter, I am aware that this is a controversial assertion, but I would hope that even readers who disagree with my proposal come out of this thesis with a deeper understanding of the problems that the UPR faces. In particular, I hope that any UN officials who read this will become aware of problems that may not

³⁰⁷ McMahon, “Do Civil Society Organization-Suggested Recommendations Matter?.”

be visible to them from their vantage point. Conversely, I hope that civil society readers will feel that awareness is being raised to the barriers that they face and be encouraged to renew their efforts in pushing for more meaningful avenues for participation in the UPR. While the mechanism does not seem to be poised for any sort of structural reform between the third and fourth cycles,³⁰⁸ I would hope that discourse surrounding these issues increases over the course of the fourth cycle to the point that reform measures addressing them (either a model similar to the one outlined in my proposal or a completely different model designed to address the same structural problems) are formally implemented via a Human Rights Council resolution, possibly between the fourth and fifth cycles.

While much of my thesis is very critical of the UPR,³⁰⁹ I am extremely supportive of the mechanism overall. I specifically chose the UPR to be the subject of my research because I genuinely believe that it is a largely well-constructed model of human rights enforcement with great potential to improve human rights practices around the world. I sincerely hope that my contributions can have a positive impact on discourse surrounding the UPR, orienting new people to the mechanism and making those who are already oriented aware of some of the less visible issues that it faces.

³⁰⁸ Interview #11.

³⁰⁹ “As with sausage-making, the details of the politicised UPR process often do few favours to its image” (Joseph, “Global Media Coverage of the UPR Process”, 156).