

The Universal Periodic Review

A study on the effectiveness of the United Nations Human Rights Council's monitoring mechanism.

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Abstract: In 2006, the UN Commission on Human Rights, established 60 years earlier, was replaced by a new body; the Human Rights Council. It was hoped that the Council would help to resolve the main problem that influenced the Commission's ability to effectively protect human rights: its politicisation. The Universal Periodic Review was created as a monitoring mechanism under the Council. By examining the human rights record in all UN Member States, its main objective is to change the human rights situation on the ground. Arguing that UN human rights protection should require an international, trustworthy and legitimate monitoring mechanism, this thesis examines the framework in which the Council and its monitoring mechanism operate. Detailed consideration is given to the implementation status from the first UPR cycle in order to determine whether the mechanism is achieving its key objective. The thesis then relies on case studies of ten different States in order to determine whether common features can be identified within the review process of States that demonstrate high implementation status and States that demonstrate low implementation status. States commitment to fully engage in the process is argued to be the most crucial element in deciding whether the mechanism ultimately will reach true efficiency. This thesis will finally give concrete suggestions for the purpose of increase State commitment and efficiency of the Universal Periodic Review.

Keywords: Human rights, Human Rights Council, Universal Periodic Review, United Nations.

I. INTRODUCTION

A. Background

On June 26 1945, the Charter of the United Nations (the Charter) was signed. In the aftermath of war period, especially Hitler's and Stalin's terror, the framing of the Charter was the starting point in the endeavour of making human rights an official concern for the international community.¹ Its preamble stated that its purpose was to 'reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'.² The Charter does, nonetheless, not enumerate any of the human rights, nor a system for securing their enforcement.³

However, for the purpose of examining, monitoring and reporting on human rights situations, the Economic and Social Council (ECOSOC) established, in 1946, the Commission on Human Rights (the Commission) under the Charter.⁴ The Commission contributed with significant work within the field of human rights for the following 60

¹ Ed Bates, 'History' in Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran (eds.), *International Human Rights Law*, Oxford University Press, 2010, p. 34.

² Preamble, Charter of the United Nations, San Francisco 1945.

³ Bring, Ove &, Mahmoudi, Said, *Sverige och Folkkrätten*, 3rd ed., Norstedts Juridik, Stockholm, 2007, p. 154. On the other hand, according to article 55 and 56 of the Charter, Member States are obliged to take both joint and separate action in the objective of ensuring respect for and observance of human rights and fundamental freedoms for all.

⁴ Economic and Social Council, Resolution 5 (I), 29 January 1946, UN Doc E/RES/5(I) (hereinafter ESC Resolution 5 (I)).

years.⁵ However, due to politicization of the body and gross human rights violators accepted as Members, it never grew as effective as desired (see chapter 2).⁶

During the World Summit in 2005 the Member States of the United Nations (UN) consequently decided to make a significant change in the UN human rights system. The UN Human Rights Council (HRC or the Council) was created, replacing the former Commission.⁷ The reform was implemented with the purpose of establishing an organ with enhanced status⁸ and with means to meet objectives with greater frequency than the former highly criticized Commission.⁹ No other UN body has ever been abolished and replaced with a new institution for the purpose of achieving greater efficiency.¹⁰

The Council held its first session in June 2006.¹¹ One year later it adopted its institution-building package, providing elements to guide its future work and the establishment of procedures and mechanisms.¹² Considering the claims of bias in the former Commission and the claims of selectivity when electing which states to examine, the Council was created with an improved membership criterion. Furthermore, a key reform, set up to deal with some of the Commission's flaws, was a new human rights monitoring system; the Universal Periodic Review (UPR). The purpose of the UPR was to assess all human rights situations in all UN Member States, aiming at strengthening and supporting the already existing monitoring system.¹³

The crucial changes made gave promises for the Council and the UPR of being a functional and valuable tool for examining human rights situations in an objective, non-selective and transparent manner. However, the UPR may in no way be seen as a new innovation. The ECOSOC did, already in 1956, assign the Commission the responsibility for a similar procedure. This was, however, abandoned in 1980 since it was considered obsolete and of marginal usefulness.¹⁴ Whether this new monitoring mechanism is of relevance or not is thus of significant importance to discuss. Especially considering that many argue that the institutional reform has not entailed an efficiency improvement and that the system still allows Member States to protect themselves and allies from external pressure for deficient human rights protection.¹⁵

⁵ Nico Schrijver, 'The UN Human Rights Council: A New 'Society of the Committed' or Just Old Wine in New Bottles?' in *Leiden Journal of International Law*, Vol. 20, Issue 04, 2007, p. 821.

⁶ Boyle, Kevin, 'The United Nations Human Rights Council: Origins, Antecedents, and Prospects' in *New Institutions for Human Rights Protection*, Kevin Boyle. (ed.), Oxford: Oxford, 2009, p. 26.

⁷ David Fisher, *Mänskliga rättigheter, En introduktion*, 6th ed, Norstedts Juridik, Stockholm, 2012 p. 15.

⁸ The Council was established as a subsidiary organ of the GA, whereas the former Commission was one of a number of subsidiary bodies of ECOSOC. The differences between the former Commission and the Council will be discussed further in chapter 2.

⁹ Boyle (2009), p. 12.

¹⁰ Schrijver (2007), p. 822.

¹¹ General Assembly Resolution 60/251, 'Human Rights Council', 15 March 2006, UN Doc. A/RES/60/251, (hereinafter GA Resolution 60/251).

¹² Human Rights Council Resolution 5/1, 'Institution Building of the United Nations Human Rights Council', 18 June 2007, UN Doc. A/HRC/RES/5/1, (hereinafter HRC Resolution 5/1).

¹³ Ibid.

¹⁴ Nihal Jayawickrama,, *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence*, Cambridge, United Kingdom, 2002, p. 143; Commission on Human Rights, 'Report of the Sixth Session of the Commission on Human Rights', 19 May 1950, UN Doc. E/1681, para. 8. For further discussion on this mechanism and why it failed, see Philip Alston,

'Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council' in *Melbourne Journal of International Law* 185, Vol. 7, 2006, pp. 207 - 13.

¹⁵ Rosa Freedman, 'New Mechanisms of the UN Human Rights Council' in *Netherlands Quarterly of Human Rights*, Vol. 29, No.3, 2011, p. 323.

Today, the most authoritarian regimes would not publicly oppose the principle that their citizens have certain fundamental human rights. Nevertheless, we can observe gross human rights violations from all over the world on a daily basis. Hence, by assessing human rights situations within all UN Member States, the establishment of the UPR may indeed be considered one of the most important innovations within the UN machinery.¹⁶

The above description forms the roughly sketched context in which the research questions of this thesis will be examined. Considering that the UN machinery is structured by international legal obligations setting the standards of how a sovereign State may treat its citizens, human rights protection should also require an international, trustworthy and legitimate monitoring mechanism. Consequently, the Council and its monitoring mechanism need to be thoroughly scrutinized for this very purpose.

B. Purpose

The main objective of this essay is to, from an international law and human rights perspective, examine the effectiveness of the Council's monitoring mechanism; the UPR. Whether the reform of the UN human rights architecture and the establishment of the UPR has led to the desired improvement, and thus achieved efficiency, will permeate this thesis. Hence, both the architecture of the HRC and the UPR will be assessed with the ultimate intention of attempting to provide practical efficiency suggestions in regard to the monitoring mechanism.

Bearing in mind that one of the key objectives of the UPR is to change the human rights situation on the ground, true measure of efficiency of the mechanism is whether concerns addressed during the review actually promotes change.¹⁷ Hence, this thesis will focus on the most virtual outcomes of the review, namely States' implementation records. By examining the architecture of the Council and its peer review mechanism, this thesis aims at finding characteristics within the review process that might prevent the mechanism from being efficient or negatively affecting its efficiency.

To summarize, the purpose is not to, in a detailed manner, account specifically for each State review, but rather to attempt to find a general understanding of how the process is conducted. By highlighting potential negative aspects, it is the author's intention to be able to suggest improvements of the review mechanism.

C. Research questions

For an achievement of the purpose presented above, the main research question of this thesis is:

- Can the monitoring mechanism the Universal Periodic Review be considered as effective from an international law and human rights perspective?

In order to answer that question, more specific issues will have to be examined and analyzed. Hence, this thesis will additionally endeavour to answer the following questions:

- (i) Are the flaws of politicization that caused the demise of the Commission, present within the Council and the UPR?
- (ii) To what extent are recommendations made during the reviews implemented by States?

¹⁶ Allehone M. Abebe, 'The role and future of the Human Rights Council' in Sheeran Scott, Sir Rodley Nigel, Sir Nigel Rodley (eds.), *Routledge Handbook of International Human Rights Law*, Routledge, New York, 2013, p. 748.

¹⁷ See e.g. Sweeney and Saito, arguing that the only true measure of success of the overview mechanism is whether States implement recommendations and submit follow-up information on this, Sweeney, Gareth. & Saito, Yuro, 'An NGO assessment of the new mechanisms of the UN Human Rights Council', in *Human Rights Law Review*, Vol. 9, No. 2, 2009, p. 203.

- (iii) Are there any differences in the review process in regard to States that demonstrates low implementation status compared to States that demonstrate high implementation status?

Finally, in regard to the analysis made, this thesis will attempt to give suggestions of efficiency improvements. Hence, the final question is:

- (iv) Are there any efficiency improvements linked to the results that can be suggested?

D. Method and materials

The focus of the thesis has required several different methodological approaches. The introductory part (chapter 2) mainly applies a traditional legal dogmatic research method. Thus, it will endeavour to provide a description of the Council and the UPR mechanism on the basis of recognized sources of international law.¹⁸ To establish the applicable law, which may be described as relatively clear in the field of discussion, however, has not been the major challenge within the framework of this essay.

The second and main part of the paper (chapter 3-4) will somewhat differ from a strict traditional legal research method. This, since it will not only examine the applicable law and rules, but also try to analyze the dynamic process in which the UPR is conducted through. A legal comparative method will consequently be used for the purpose of establishing the level of implementation and comparing the process conducted in relation to the States examined. The method is illustrated by the author's ambition to go beyond a mere description of the framework of the Council and the UPR (which has been accounted for in the first part of the paper). The analysis will thus be made with respect to the considerations that originally motivated the design of the system. When examining the different review processes in the case studies presented in chapter 4, documents deriving from the website of the UN Office of the High Commissioner for Human Rights (OHCHR) and UPR info¹⁹ has served as a basis for analysis. The analysis has been based on the descriptive presentation of the Council and the UPR accounted for in part two of the thesis. In those parts where a more detailed description of how the analysis has been conducted is warranted, such as which factors that have been taken into account in the comparison, this will be further accounted for adjacent to the case study.

Further, in the third part of the thesis, (chapter 5) the author has, after finding the situation unsatisfactory, presented and analyzed possible alternatives in regard to the current system and its purpose. Thus, with respect to the purpose and research questions of the thesis, an inevitable element of legal political nature can be found. The analysis has however been conducted in a loyal way where the process of the UPR has been assessed in relation to the interests that formed the monitoring mechanism. A free discussion, in regard to the efficiency suggestions made, has been avoided. A discussion of that character would risk becoming purely political and thus difficult to conduct with jurisprudential ambitions.

E. Delimitations

This thesis will attempt to touch upon the elements of most significance in regard to whether the UPR can be considered as efficient or not. States implementation level is the most visual outcome of the review and a cru-

¹⁸ Article 38 (1) of the Statute of the International Court of Justice outlines the sources of international human rights law as: treaties, custom, general principles of law, and, as subsidiary sources, judicial decisions and the writings of jurists. 'Soft law' instruments, i.e. resolutions of the UN GA and the work of human rights expert bodies may also be regarded as sources of human rights law, Christine Chinkin, 'Sources' in Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran (eds.), *International Human Rights Law*, Oxford University Press, 2013, p. 103.

¹⁹ UPR-Info is an NGO that, since 2008, is working to promote the UPR. In 2011 it started a follow-up programme in which it collects information from all UPR stakeholders on the implementation of recommendations. From the first UPR cycle, 165 States have been assessed by mid-term, see <http://followup.upr-info.org/>.

cial sign of whether the process can be considered as effective or not. Hence, focus will be on implementation of recommendations made during the review and linked issues.

Naturally, not all factors have been possible to investigate when examining differences in the review processes regarding States with a high level of implementation of accepted recommendations compared to the ones with a low record. Obviously, many elements can be of relevance when analyzing the reasons as to why some states have failed in implementing their accepted recommendations and vice versa, not the least political, social and economic elements. While the analysis contain elements of such character, it has not been possible to, within the framework of this thesis, perform a detailed investigation of each country's specific circumstances. Inevitably, procedural elements will be focused upon, while of course consideration also is given to states different points of departure in regard to e.g. history, economy, democratic participation and other social situations.

F. Outline

This study will initially describe the Council, in particular its emergence and mission. Furthermore, a detailed description of the Council's monitoring mechanism, the UPR, will be made. The second part of the thesis will focus on the level of implementations of accepted recommendations from the review sessions. The third part will rely on case studies of the experiences of ten different States; for the purpose of determine whether differences can be found in the review process of States that demonstrate a high level of implementation compared to States that demonstrate low results. The final part of the thesis will analyze the conclusions drawn in previous parts for the purpose of making concrete efficiency suggestions. Given the topic and objectives of this study, the disposition will not be structured in a classic manner where a final coherent analysis will follow an introductory part. Instead, it has been necessary to complement the descriptive section with a parallel analytical one, for a better pedagogical understanding.

Chapter 2 discusses the UPR in its context, i.e. international human rights protection. The chapter primarily provides an account for the history and functions of the Council and the purpose is to give the reader a deeper understanding of the field as a basis for the following chapters. The chapter is also characterized by dealing with research question (i), *inter alia* seeking to determine whether the establishment of the Council has managed to overcome the main flaws that characterized its forerunner. For this very purpose, both mechanisms established to overcome the key failures of the Commission, the UPR and the special sessions, will be looked into. However, a more detailed appraisal of the special sessions is outside the scope of this work, although aspects of the mechanism will be explored. In order to stay focused on the main research question of the thesis, the UPR is at the centre of attention within the context.

Chapter 3 particularly deals with research question (ii) and thus accounts for the level of implementation by the time of mid-term. The statistics are based on the author's own calculations based on the mid-term assessment of the UPR. The chapter is concluded with the author's observations and conclusions.

Chapter 4 deals with research question (iii) and analyses the review process of ten different States' that have been reviewed during the first cycle of the UPR.²⁰ The chapter provides for a comparative analysis and is concluded with a few remarks that have been noted so far during the second UPR cycle.²¹

Chapter 5 will recapitulate the principal findings of the previous chapters and thus also deal with research question (iv). The introductory part of the chapter presents a few general remarks followed by the author's efficiency suggestions. Seven concrete suggestions are presented for the purpose of increase the efficiency of the UPR.

²⁰ The first cycle of the UPR came to an end in 2012.

²¹ The second cycle of the UPR started in May 2012, and will hold its last session in 2016.

Lastly, the chapter will present the thesis final remarks. The purpose is to reconnect with the objectives and research questions of the thesis.

II. The Universal Periodic Review in Context

Within the context of traditional international law, the characteristics of the approach towards an implementation that is supposed to be undertaken is not specifically defined.²² Basically, States only have to do what they commit themselves to do and there is substantial appreciation as to by which means they choose to do so.²³ However, in the field of international human rights law, a clearly different approach exists. The UN human rights treaty bodies have adopted a tripartite typology as to how human rights obligations should be secured; states must 'respect', 'protect' and 'fulfil' human rights.²⁴

Human rights protection at the international level requires clear standards and efficient monitoring mechanisms.²⁵ There are currently three main characteristics of monitoring human rights law within the UN. Firstly, a political system consisting of the mandate given to the Council and through the special procedures.²⁶ Secondly, an administrative monitoring system, consisting of presentation of State reports before the treaty bodies. This surveillance system might be considered to, because of its character, fulfil merely a modest function of surveillance.²⁷ Thirdly, quasi-judicial paths consisting of complaints mechanisms before certain treaty bodies, for instance the Human Rights Committee.²⁸ All three systems have in common that they have recently been reformed or attempted to be reformed in purpose of improvement, that none of them can produce legally binding recommendations or documents and that neither are equipped with the mandate to impose sanctions.

This chapter will further account for the establishment of the Council, its functions and its mandate. Above all, a description of its monitoring mechanism, the UPR, will be accounted for. For an understanding of its functions and in order to make an efficiency evaluation, the description needs to be placed in an historical context. Further, to whether or not it can be considered to provide a trustworthy monitoring also needs to be examined in regard to the political environment it is operating within.

A. From Commission to Council

In 1946, the ECOSOC, one of the principal organs of the UN, created the Commission on Human Rights and for sixty years thereafter, the Commission had the mandate to monitor States' respect for human rights.²⁹ In fulfilling this task, the Commission developed a monitoring system that could be initiated through resolutions from individual countries and the so-called special procedures. During the Commission's meetings countries could put

²² Frédéric Mégret, 'Nature of obligations' in Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran (eds.), *International Human Rights Law*, Oxford University Press, 2010, p. 130.

²³ Ibid.

²⁴ The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.

²⁵ Boyle (2009), p.77.

²⁶ See further discussion on this in section 2.2 and 2.2.1.

²⁷ These include, *inter alia*, the International Covenants on Human Rights, the Convention on the Rights of the Child, The Conventions against Racial Discrimination and Gender Discrimination, and the Convention against torture. Depending on the treaty, State Parties have agreed to periodically submit reports, engage in dialogues and consider recommendations.

²⁸ The third committee of the GA, the Human Rights Committee, is also debating and considering the human rights situations in different countries. Through the same body, resolutions are established, which later are adopted by the GA in plenum.

²⁹ Markus Schmidt, 'United Nations' in Daniel Moeckli, Sangeeta Shah & Sandesh Sivakumaran (eds.), *International Human Rights Law*, Oxford University Press, 2010, p. 396.

forward resolutions to address specific issues or specific countries that violated human rights. The proposals were then discussed in the Commission and after negotiations, those resolutions that received sufficient support, were adopted.³⁰ Over the years, the Commission made numerous important contributions in the field of human rights. Through the establishment of the special procedure system, independent human rights experts served as special rapporteurs investigating human rights situations in particular countries.³¹ Further, the Commission allowed civil society to participate in its operations to an extent that could not be found in any other parts of the UN system.³² Non-governmental organizations (NGO) thus played a great role in the work of the Commission since they could contribute with information that the Commission or the special rapporteurs not always had access to.

Although it recognized many human rights issues, it became clear that the Commission was a political body with members that were not experts within the field, but representatives of their country. Consequently, it inevitably became known for its unwillingness to genuinely investigate human rights issues.³³ Much criticism was directed towards the system for allowing human rights violators to become members in the Commission, since these countries could hamper efforts in improving human rights on the ground, through alliances and persuasion campaigns.³⁴ Further, it was argued that the debate in the Commission was narrow and that the body was selective in electing which countries to examine. Many argued that the North led the discussion and that the countries in the South were in disadvantage. The perception of rich countries taking advantage of the concept of human rights as a means to criticize the poor grew stronger.³⁵ Inevitably, the Commission increasingly became subject to criticism. Much attention was focused on the high level of politicisation and the fact that focus was directed to procedural rather than human rights issues. As a result of this, the Commission was very slow in reacting to human rights crises, and its credibility was undermined.³⁶

In a UN report in 2005, former Secretary General Kofi Annan recognized the flaws of the Commission by stating:

*The Commission's capacity to perform its tasks has been increasingly undermined by its declining credibility and professionalism... States have sought membership of the Commission not to strengthen the 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.*³⁷

After sixty years of fundamental progress within the field of human rights development, these remarks set the stage for the replacement of the Commission by a new inter-governmental body; the Council. On 15 March 2006, after months of thorny negotiations, the General Assembly (GA) Resolution 60/251 was adopted, establishing the Council.³⁸ One week later, the ECOSOC voted to dissolve the Commission and the fate of the Coun-

³⁰ Ibid.

³¹ Ibid., p. 393.

³² Ibid.

³³ Rosa Freedman, *The United Nations Human Rights Council: A critique and early assessment*, Routledge, New York, 2013, p. 26.

³⁴ Ibid., p. 26, f.

³⁵ Schrijver, (2007) p.812.

³⁶ Schmidt (2010), p. 397.

³⁷ Addendum to 'In larger freedom', Human Rights Council: Explanatory note by the Secretary-General, 23 May 2005, UN Doc. A/59/2005/Add.1, para. 6.

³⁸ GA Resolution 60/251, para. 1.

cil's predecessor was sealed.³⁹

B. The Human Rights Council

As mentioned above, the Council was established for the purpose of being responsible for strengthening of promotion and protection of human rights.⁴⁰ In order to overcome the flaws of the Commission, two new mechanisms were created within the mandate of the Council; (i) the undertaking of a universal periodic review of the fulfilment of obligations and commitments regarding international human rights and (ii) addressing situations of gross and systematic violations of human rights through special sessions. The third way in which the Council has a mandate to deal with country situations is through (iii) special procedures.⁴¹ The latter mandate has however remained its methods from the Commission.

The principal duties of the Council include: (i) to promote human rights education and learning, (ii) to serve as a forum for dialogue on thematic issues, (iii) to make recommendations to the GA on developing new human rights standards, (iv) to help prevent human rights violations through dialogue and cooperation, (v) to respond promptly to human rights emergencies and (vi) to undertake a 'universal periodic review' based on objective and reliable information, of the fulfilment of each State's commitment and duties in regard to international human rights.⁴² This should be done in a way that reflects universality of coverage and equal treatment.⁴³ Although the Council has no power to make decisions regarding sanctions or referral to the International Criminal Court,⁴⁴ the body is in such a unique authoritative position that its information can serve as support for e.g. the UN Security Council or the European Union (EU) when they impose sanctions or pressure on States.⁴⁵

The institutional reform and the development of a new human rights monitoring body entailed at least four significant changes. Firstly, the successor of the Commission was given an enhanced status, reporting directly to the GA, compared to the Commission that was a subsidiary organ of the ECOSOC.⁴⁶ The purpose of making the Council a subsidiary body under the GA was to make its considerations more transferable, authoritative and prominent.⁴⁷ Secondly, in contrast to the Commission, that only met six weeks per year, the Council was given a more frequent meeting schedule with a total meeting time of at least ten weeks per year and the possibility to hold special sessions (see 2.2.1).⁴⁸ Thirdly, a fundamental change in the system was the State selection process. Through the reform, the number of Members was intended to be relatively low. However, through a compromise between primarily States from the West, that wanted to have a small and 'sharp' body, and developing countries, that wanted to be abundantly represented, the number merely decreased from fifty-three to forty-seven Member States. However, in combination with the fact that Member States now were appointed by the

³⁹ Economic and Social Council, Resolution 2006/2, Procedural Resolution on the Closure of the Work of the Commission, 27 March 2006, UN Doc. E/CN.4/2006/L.2.

⁴⁰ GA Resolution 60/251, para. 4.

⁴¹ *Ibid.*, paras. 3, 5 (e), 6 and 10; Schmidt (2010), p. 397, f.

⁴² GA Resolution 60/251, para. 5

⁴³ *Ibid.*, para. 5 (e); HRC Resolution 5/1, para. 3 (c).

⁴⁴ Only the UN Security Council has such powers. See article 13 (b) of Rome Statute of the International Criminal Court, which enables the ICC to exercise jurisdiction in circumstances in which the UN Security Council has referred a situation to the Court when using its powers under Chapter VII of the UN Charter.

⁴⁵ For instance, on 22 December 2014, the Security Council decided to put the situation of systematic abuses in the DPRK on the agenda. This was the result of a resolution, adopted by the GA, to submit the report of the HRC Commission of inquiry in the country, to the Security Council, see Press Release GA/11604.

⁴⁶ Article 68 of the UN Charter explicitly required that a Commission 'for the promotion of human rights' be set up to assist ECOSOC in its work. Consequently, the Commission was established in 1946 through ESC Resolution 5(I), The Council was established in 2006, as a subsidiary organ of the GA, through GA Resolution 60/251.

⁴⁷ Schmidt (2010), p.

⁴⁸ GA Resolution 60/251, para. 10.

GA with significant emphasis on the human rights records of the candidates.⁴⁹ This mere reduction was nevertheless considered to be a great success by most of the parties.⁵⁰ It was, in a way, a crucial change from the regulatory framework of the former Commission, which allowed States with questionable human rights records to become Members.⁵¹ Fourthly, and lastly, as already indicated, the establishment of the new Council brought with it a unique monitoring process involving a peer review of the human rights situations in all 193 UN Member States, the Universal Periodic Review (see 2.3).

1. Special Sessions

GA Resolution 60/251 mandates that the Council 'be able to hold special sessions, when needed, at the request of a Member of the Council with the support of one third of the membership of the Council' also was established.⁵² This mechanism thus enables the body to address acute specific human rights situations. Giving the Council a more frequent meeting schedule has indeed enabled the body to react more promptly to critical human rights issues. This has been demonstrated through, e.g. the special session of the Council on 2 October 2007 when it decided to act on the ominous situation of the Burmese people.⁵³ The most recent example is from January 2014, when The Council concluded its special session on the human rights situation in the Central African Republic. During the latter session it adopted a resolution in which it strongly condemned the continued and widespread violations of human rights.⁵⁴ There can be no doubt as to what importance the special sessions hold in regard to investigations into grave violations of human rights. Indeed the Council has the mandate to address human rights situations according to its special procedures; (see 2.2) for instance to establish commission of inquiries in different countries during its regular sessions. This can be demonstrated through e.g. the commission of inquiry on human rights in the Democratic People's Republic of Korea (DPRK) established in 2013,⁵⁵ and the most recent example from 2014 on an established commission of inquiry into Eritrea.⁵⁶ However, as mentioned above, the special sessions are of particular importance, enabling the human rights machinery to respond to acute human rights violations. For instance, in 2011, the Council established a commission to investigate all alleged violations of international human rights law in the Syrian Arab Republic during a special session.⁵⁷

Nonetheless, it has been argued that the politicisation that was claimed to characterize much of the work of the former Commission now has transferred into the Council's mandate to address specific country situations through special sessions.⁵⁸ The concept of regional groups and alliances in the Council plays a significant part in this allegation. For instance, an alliance of Council Members named the Organization of the Islamic Conference (OIC) is most likely responsible for the fact that many of the special sessions convened so far have focused on

⁴⁹ Note however that States also are elected with regards to a particular geographical quota. Africa are assigned thirteen seats, Asia thirteen seats, EEG six seats, the GRULAC eight seats and the WEOG seven seats.

⁵⁰ Bring & Mahmoudi (2007), p. 156.

⁵¹ The small body of voters of ECOSOC's fifty-four members decided which States that were to be given membership, and consideration was rarely given to human rights situations within the candidate States.

⁵² Pursuant to para. 10 of GA Resolution 60/251, and in accordance with rule 6 of the rule of procedure of the Council as contained in the annex to HRC Resolution 5/1, the Council shall hold special sessions, when needed, at the request of a member, with the support of one third of the membership of the Council.

⁵³ Human Rights Council, Resolution S-5/2, Report of the Human Rights Council on its Fifth Special Session, UN Doc. A/HRC/S-5/2, 2 October 2007.

⁵⁴ Human Rights Council Resolution, The human rights situation in the Central African Republic and technical assistance in the area of human rights, A/HRC/S20/L-21, 20 January 2014.

⁵⁵ Human Rights Council, Resolution 22/13, Situation of human rights in the Democratic People's Republic of Korea, UN Doc. A/HRC/RES/22/13, 21 March 2013.

⁵⁶ Human Rights Council, Resolution 26/L.9, Special Rapporteur on the rights of persons with disabilities, UN Doc. A/HRC/26/L.9, 20 June, 2014.

⁵⁷ Human Rights Council, Resolution S-17/2, Report of the Human Rights Council on its seventeenth special session, UN Doc. A/HRC/S-17/2, 22 August 2011.

⁵⁸ Schmidt (2010), p. 397.

the human rights situation in the Israeli Occupied Territories.⁵⁹ This is specifically clear from the first 12 sessions, where many gross and systematic human rights violations could be observed, but however not dealt with by this procedure or the Council.⁶⁰ So far, no special sessions have been convened regarding States that may play a strategically or politically important role for Western States. Further, many sessions that Western Council Members have requested regarding countries within the African and Asian groups have been blocked with regard to those groups' unwillingness to support such sessions.⁶¹

Although the Council does not have the mandate to order sanctions, the body's inquiries receive enormous public attention and human rights groups are certain that the findings of these investigations, based on thorough research, and the following public 'naming and shaming' can encourage abusive States towards change.⁶² Nonetheless, a body comprised of representatives of governments will naturally work as a political body and despite progress made, investigations into grave violations of human rights in some countries have been blocked on political grounds, demonstrating that the Council has not conquered the deficiencies of the Commission.⁶³ Whether the Council and the mechanism of special sessions can live up to the principle of transparency, non-selectivity, inclusiveness and de-politicisation⁶⁴ thus remains yet to be demonstrated by future tests it will have to face.

In light of the above, it is no surprise that the Council has been subject to crucial criticism. Some argue that it, since its establishment, it has been as equally bad or even worse than its predecessor, where Member States did not seek to strengthen human rights but rather to escape scrutiny and criticize others.⁶⁵ Such claims could be observed even prior to the establishment of the Council.⁶⁶ Noteworthy is also that, although emphasis now should be put on human rights records regarding States candidacy for membership, its current composition illustrate that the Council not at all indicate respect for human rights by its Members in eligibility. China, Cuba and Saudi Arabia, to name a few, – Council Member States – demonstrate some of the world's worst human rights records.⁶⁷

⁵⁹ At the time of writing, almost a third of the special sessions have focused on this issue, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Sessions.aspx>.

⁶⁰ For instance, the documented human rights violations following the Presidential elections in Iran in 2009, see e.g. 'Iran: Arrests and deaths continue as authorities tighten grip', Amnesty International Public Statement, 14 July 2009, during this period of time gross violations were also occurring in China, see e.g. 'People's Republic of China The Olympics countdown – broken promises', Amnesty International, July 2008.

⁶¹ The African and Asian groups have, due to their regional country quota, a natural majority in the Council. DPRK, Zimbabwe, Venezuela, Russia and China have avoided scrutiny for similar situations as in the Israeli territories, 'The United Nations and Zimbabwe: Crimes Against Humanity', *The Economist*, 26 June 2008. Further, Iran, Libya and Syria have been protected from scrutiny by their political and regional allies, despite widespread human rights abuses, Freedman (2011), p. 320.

⁶² BBC, News, 'Eritrea faces UN human rights probe', 27 June 2014, available at: <http://www.bbc.com/news/world-africa-28053443>.

⁶³ This naturally also depends on which States that are members of the Council at the time. Nine States voted against an establishment of a commission of inquiry in Syria, including Russia, China, Bangladesh, Ecuador, Gabon, and Pakistan. Furthermore, seven States were absent during the voting. However, the support of one third of the members was achieved. Voting record available at: <http://www.ohchr.org/Documents/HRBodies/HRCouncil/SpecialSession/Session16/VotingChart.pdf>.

⁶⁴ As mentioned above, the Council's work should be based on these principles, HRC Resolution 5/1; Human Rights Council Resolution 5/2, Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, UN Doc. A/RES/5/2, 18 June 2007.

⁶⁵ Lisa Schlein, UN Human Rights Council Criticized For Politicization, Voice of America, 26 November, 2006 available at <http://www.unwatch.org/site/apps/nl/content2.asp?c=bdKKISNqEm G&b=1319279&ct=3268373>.

⁶⁶ See for instance the United States, which voiced concerns at the creation of the Council as to whether the body would be able to overcome the flaws of the Commission, Freedman (2013), p. 4.

⁶⁷ Current Membership of the Human Rights Council, 1 January - 31 December 2014, available at: <http://www.ohchr.org/EN/HRBodies/HRC/Pages/CurrentMembers.aspx>, UN Watch, 'Electing the 2014-2016 Members of the UN Human Rights Council', Presented at United Nations Headquarters, New York, 4 November,

The function of the UPR, on the other hand, is to assess each State's fulfilment of its human rights obligations and commitments, based on objective and reliable information, in a manner that ensures universality of coverage and equal treatment with respect to all States.⁶⁸ The sections below will seek to determine whether the UPR, the second mechanism within the Council created to overcome the main flaws of the Commission, has managed to conquer the failings.

C. The Universal Periodic Review

The establishment of the UPR is often described as one of the most important innovations of the HRC.⁶⁹ The basic elements are set out in Resolution 60/251, which mandates the Council to:

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 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.

Its objectives include: (a) improving human rights situations on the ground, (b) assessing positive developments and challenges that countries are facing in fulfilling their human rights obligations, (c) sharing best practices and (d) promoting technical and international cooperation.⁷⁰ In particular, the instrument has a unique universal character in a sense that it monitors *all* human rights situations in *all* UN Member States, i.e. nearly all States in the world.⁷¹ Furthermore, the review is based on international human rights key instruments (see 2.3.2) and thus all human rights issues can be addressed, from Civil and Political Rights (CP-rights),⁷² to Economic, Social and Cultural Rights (ESC-rights).⁷³ This view in universality, i.e. that all States should be scrutinized after the same benchmarks, allocated the same amount of time, treatment and resources, has however been criticised. To avoid too much attention on States that might take away valuable time from gross violations elsewhere, it has instead been argued that proportionate treatment has to be emphasized rather than equality within the process.⁷⁴

1. How does it work?

At the outset, it is alluring to believe that the UPR only exists of one process, the actual review. Three important phases can however be identified from the UPR cycle: (i) the preparation of the review, including gathering of information regarding the human rights situation in the State under Review (SuR), (ii) the review within the UPR Working Group (WG), including the interactive dialogue and (iii) the implementation phase and follow-up to the review.

2013, available at: <<http://www.unwatch.org/site/apps/ nlnet/content2.aspx?c=bdKKISNqEmG&b=1330819&ct=13382479>>.

⁶⁸ GA Resolution 60/251, para. 5(e).

⁶⁹ See e.g. The Universal Periodic Review Mechanism: Joint Statement to the First Session of the Human Rights Council, 27 June 2006, available at: <http://hrw.org/en/news/2006/06/27/universal-periodic-review-mechanism>.

⁷⁰ HRC Resolution 5/1, para. 4.

⁷¹ GA Resolution 60/251, para. 5(e).

⁷² CP-rights include, *inter alia*, the right to life, the right to freedom from slavery, the right to freedom from torture and the right to a fair trial.

⁷³ ESC-rights include, *inter alia*, the right to food, health, housing and education.

⁷⁴ Freedman (2013), p. 303.

(i) Three main documents forms the basis of the review: (a) a national report, (b) a compilation of UN information and (c) a summary of other stakeholders information.⁷⁵ The SuR prepares a national report, not allowed to exceed 20 pages. The Council's General Guidelines encourage States to prepare their reports based on broad national consultation involving all relevant stakeholders.⁷⁶ Further, the OHCHR prepares a compilation of ten pages containing information from treaty bodies and special procedures. The OHCHR also provides an additional summary of ten pages containing information from NGOs and the civil society regarding the human rights situation in the SuR.⁷⁷

(ii) The review of the human rights situation of each State takes place in one of the three WG sessions held each year. However, each State is only reviewed once every four and a half year.⁷⁸ The WG is composed of the forty-seven Council Members.⁷⁹ However, all UN Members can attend and participate. UN observers, agencies and civil society can attend as well, but they are not allowed to take the floor.⁸⁰ The WG review lasts for three and a half hours⁸¹ starting with a presentation of the national report, followed by the interactive dialogue including comments, questions and recommendations from other States. The SuR, with 70 minutes at its disposal, may respond to statements at any stage. Other States are allocated 140 minutes during the review.⁸² Prior to the review, the Council, by the drawing of lots, selects three of its Members to act as the role of *troika*. Their role is to facilitate the review, transmit advanced questions received from States to the SuR and to help draft the report of the WG.⁸³ However, the *troika* has not been mandated with any other powers than to facilitate the process. A SuR may request one of the *troika* members to be from its own region,⁸⁴ or reject a spot within the group.⁸⁵ At the end of the review, the Secretary of the Council, with help of the *troika*, drafts a report of the WG. This report is a summary of all statements and recommendations made during the review. During one of the Council's plenary sessions, a few months later, the report is adopted. Through this session, the SuR, other States and civil society have the possibility to express their final remarks on the review. This is the only stage when NGOs and civil society can take the floor.⁸⁶

(iii) The single most important phase of the UPR is the implementation phase. This is the only element that, concretely, can measure the realization of the UPR goal; the improvement of the human rights situations on the ground. It will also determine efficiency and credibility of the mechanism and demonstrate States engagement in the promotion and strengthening of human rights. Naturally, the SuR is primarily responsible for implementing the outcome of the review. However, States are encouraged to conduct broad consultations with other

⁷⁵ HRC Resolution 5/1, para. 15.

⁷⁶ Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, UN Doc. A/HRC/DEC/6/102, 27 September 2007.

⁷⁷ HRC Resolution 5/1, para. 15.

⁷⁸ This is however, a reform following the review of the UPR by the HRC in 2011, Human Rights Council Decision 17/119, 'Follow-up to the Human Rights Council resolution 16/21 with regard to the universal periodic review', 19 July 2011, UN Doc. A/HRC/DEC/17/119 (hereinafter HRC Decision 17/119). During the first cycle, each State was reviewed every fourth year.

⁷⁹ GA Resolution 60/251, para. 7; HRC Resolution 5/1, para. 18 (a).

⁸⁰ HRC Resolution 5/1, para. 18.

⁸¹ This is, however, also a reform following the review of the UPR in 2011, HRC Decision 17/119, part. III. During the first cycle, as the case studies in chapter three will be based upon, the maximum length of time allowed for the review was three hours, GA Resolution 60/251, para. 22.

⁸² These 140 minutes are divided by the number of states willing to speak.

⁸³ HRC Resolution 5/1, paras. 4 (a) and 18 (d).

⁸⁴ In order to have a regional understanding of cultural sensitivities or issues.

⁸⁵ For instance, Pakistan rejected to be a part of the *troika* facilitating the review of India in 2008, due to political tensions between the States.

⁸⁶ HRC Resolution 5/1, para. 31.

stakeholders, including civil society and NGOs, during the follow-up phase.⁸⁷ Hence, non-State actors are indeed involved in the review process. As mentioned above, they have a chance to submit information prior to the WG review regarding the human rights situation in each SuR. However, the reports are summarized by the UN into one single document and this does not have the same authority as the other two documents serving as basis for the review.⁸⁸ Furthermore, NGOs are merely entitled to observe the review and not allowed to take the floor until the end of the UPR process, just before the adoption of the final WG Report. Consequently, NGOs and civil society cannot be considered as having a significant impact on the outcome of the review.

There are, however, ways for NGOs and civil society to play a role in the UPR process as a whole. Involvement in the implementation phase is crucial and non-State actors play an important role in using the recommendations made to engage in a constructive dialogue with governments. Further, although States are encouraged to submit mid-term reports this is not mandatory,⁸⁹ nor is there an official follow-up mechanism within the UN system. However, considering reporting at the next and subsequent review as the culmination of the review,⁹⁰ much reliance is given to NGOs and civil society, which have proven to be valuable in this context.⁹¹

2. Sources

The obligations addressed during the review are set out in HRC Resolution 5/1. Thus, the basis of the Council's work under the UPR consists of the UN Charter, the Universal Declaration of Human Rights (UDHR), UN human rights instruments to which the state is party and the State's voluntary pledges and commitments.⁹² Consideration should also be given to applicable international humanitarian law.⁹³ Accordingly, the reviewed States are assessed according to universally recognized standards and their commitments and obligations. In contrast to treaty body reviews, only focusing on States' obligations under ratified treaties, the UPR thus offers a review of universal coverage of human rights obligations.

The above however raises the question regarding the relationship between the scrutiny that States are facing through the UPR, and the obligations and commitments they are already bound by. This needs to be put in the context of the very nature of the UPR mechanism. The documents stating the mandate of the Council overall agree in that it is one of international dialogue and cooperation.⁹⁴ Bearing this in mind, a State's rejection of a recommendation cannot be seen as an undermining of the legal rule of issue, but rather reluctance to be monitored on that particular implementation during its next review.⁹⁵ Hence, the UPR must naturally be seen as a platform of discussion and cooperation in respect of international human rights situations worldwide. On the other hand, regarding acceptance of recommendations, consents in this intergovernmental forum could be seen

⁸⁷ Human Rights Council, Resolution 16/21, 'Review of the work and functioning of the Human Rights Council', 12 April 2011, UN Doc. A/HRC/RES/16/21 (hereinafter HRC Resolution 16/21), paras. 17 and 8.

⁸⁸ The national report and the UN report. See also section 2.3.2.

⁸⁹ Ibid., para. 18.

⁹⁰ See e.g. HRC Resolution 16/21, para .17.

⁹¹ In absence of submitted mid-term reports, there are examples of when NGOs have taken over this task. See e.g. India. Further, the NGO UPR-Info collects information from all stakeholders within the UPR process and conducts their own mid-term assessments, see <http://followup.upr-info.org>.

⁹² Including statements made by States while seeking membership to the Council.

⁹³ HRC Resolution 5/1, paras. 1 and 2.

⁹⁴ Human Rights Council, Advisory Committee, Preliminary study on enhancement of international cooperation, UN Doc. A/HRC/AC/12/CRP.2, 19 February 2014, p. 9, f.

⁹⁵ Elvira Dominguez Redondo, 'Is there life beyond Naming and Shaming in Human Rights Implementation?' in *New Zealand Law Review*, Vol. 4, 2012, p.38. However, there are also States that have rejected recommendations on the ground that they do not consider them as universally recognized human rights principles (see chapter 3), Mainly regarding sexual discrimination and sexual orientation rights, Freedman (2011), p. 310. See also discussion in chapter 2.3.5.

as unilateral acts of States and thus creating legal obligations.⁹⁶ Taking into account the high level of participation of States in the UPR,⁹⁷ this forum could possibly also serve as evidence of *opinio juris*⁹⁸ and thus strengthen the development of customary law. However, this would require a conception of a minimization of the objective criteria confirming the legality of the norm; state practice.⁹⁹

In addition, there are also certain questionable elements in respect to the broad conception of standards of human rights that function as a ground for the review. The assignment that was given to the Council through GA Resolution 60/251 was to undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its obligations and commitments on human rights in a way that guarantees universal coverage and equal treatment with respect to all states.¹⁰⁰ Considering that the UN is a system purely structured on law, i.e. public international law instruments, its protection of human rights should also require clear substantive and procedural law.¹⁰¹ A few comments with respect to this can therefore be stated.

Firstly, by allowing both binding and non-binding instruments¹⁰² to form the basis of review, this could result in unclear and imprecise legal standards and thus a rather uncertain basis of assessment.¹⁰³ This is specifically since not all States agree on commitments and obligations being of the same legal character.¹⁰⁴ Nonetheless, it might as well be a step forward in improving the indivisibility of human rights and consequently represent a significant feature of the review.¹⁰⁵

Secondly, duplication in respect to other treaty bodies reporting procedures appears problematic (see 3.2.4). The UPR offers no specific guidelines in regard to whether issues already addressed by treaty bodies should be raised during the review process or not. Nonetheless, some argue that fears of the UPR mechanism, resulting in undermining and reducing of the effectiveness of the reporting procedures before the treaty bodies have been unjustified.¹⁰⁶ However, vagueness in this area is dangerous; duplication involves confusion and conceivably lower protection,¹⁰⁷ something that could hinder a clear approach towards implementation of human rights.

Indeed, the sources serving as a base for the review might include a rather broad and vague conception of human rights standards. However, operating as a platform of discussion involving all States in the world, the

⁹⁶ Nuclear Test Case (*Australia v France*) (Merits) [1974] International Court of Justice, paras 43 and 50, f. In this case, the Court emphasized the fact that the French statements were made publicly and therefore intended to be communicated to the world at large.

⁹⁷ Nearly one hundred per cent during the first cycle.

⁹⁸ *Opinio juris* is the subjective element (along with the more objective element; State practice) necessary to establish a legally binding custom. *Opinio juris* is referring to the belief that an action was carried out because it was a legal obligation.

⁹⁹ This has been discussed in international law doctrine. Brian Lepard is of the opinion that the evidentiary role of State practice should be reduced in cases where States have made universal statements to all other States to behave in certain way. That the norm is not complied with is just another reason to make it obligatory through the status of *opinio juris*, Brian D Lepard, *Customary International Law. A New Theory with Practical Applications*, Cambridge University Press, New York, 2010, p.124.

¹⁰⁰ GA Resolution 60/251, para. 5 (e).

¹⁰¹ Boyle (2009), p. 77.

¹⁰² As mentioned above, the UPR is based on the UN Charter, human rights treaties to which a State is party, and 'applicable international humanitarian law (a formulation that seems to cover both treaty and customary rules), binding instruments of international law or binding customary rules, on the UDHR and voluntary pledges and commitments undertaken by the State, i.e. soft law instruments.

¹⁰³ Boyle (2009) p. 77, f.

¹⁰⁴ Ibid., p. 80, ff.

¹⁰⁵ Elvira Dominguez Redondo, 'The Universal Periodic Review of the UN Human Rights Council: An Assessment of the First Session' In: *Chinese Journal of International Law*, Vol. 7, 2008, No. 3, 726.

¹⁰⁶ Schmidt (2010), p. 397.

¹⁰⁷ Boyle (2009), p. 87.

basis can also be considered a crucial innovation on the general understanding of the standards States should meet. The combination of universal and country-specific standards also has to be considered a great success, since it allows unique country assessments without particular difficulties in examining consistency and universality of human rights.

3. The UPR Reform Process

As assigned by its founding document, the Council Member States were to conduct a review of its functioning five years after its establishment. This review took place in 2010-2011 and, through HRC Resolution 16/21, revised modalities for the functioning of the Council were adopted.¹⁰⁸ The final reform package contained however only modest reforms in regard to the UPR.

Key elements included *inter alia*: (a) that States, prior to the plenary session, should clearly communicate its position on all received recommendations during the review,¹⁰⁹ (b) that States, in order to emphasize all stakeholders involvement in the process, were encouraged to conduct broad consultations with all relevant stakeholders on the follow-up¹¹⁰ (c) that other relevant stakeholders, in order to encourage NGOs to provide views and perspective on State compliance with accepted recommendations, were encouraged to include information on the follow-up to the preceding review in their contributions prior to the review,¹¹¹ (d) that the number of sessions per cycle and the number of SuR:s each was reduced to fourteen,¹¹² (e) that the duration of each review was increased from three hours to three and a half,¹¹³ (f) that all States will be given the floor, even if this means that the speaking time will be reduced from three to two minutes or that the total time will be divided by the number of speakers, (g) that States now are encouraged to, on a voluntary basis, provide the Council with a mid-term update on follow-up to accepted recommendations,¹¹⁴ (h) that the second and subsequent cycles of the review should focus on, the implementation of the accepted recommendations and the developments of the human rights situation in the relevant State.¹¹⁵

With respect to the main weaknesses that were addressed during the first UPR cycle, one of the most profound changes following the reform package can be considered to be that all States now are allowed to take the floor. During the first UPR cycle, manipulation of the speaking time, resulting in that States had to deliver their written statements after the review, could often be observed. Regional and political allies frequently took the floor to commend the SuR and to make positive statements, which took up valuable time for States wishing to ask questions or deliver tangible recommendations.¹¹⁶ However, as a result of the reform package in 2011, the speaking time was extended in order to enable all States to take the floor. Further, the list of speakers was decided to be arranged by alphabetical order and that the drawing of lots would decide the first speaker.¹¹⁷

Nonetheless, fact remains that only three and a half hours are allocated for the interactive dialogue. Although three minutes shall be allocated for Member States and two minutes for Observing States, the speaking time is

¹⁰⁸ HRC Resolution 16/21.

¹⁰⁹ *Ibid.*, para. 16.

¹¹⁰ *Ibid.*, para. 17.

¹¹¹ *Ibid.*, para. 8.

¹¹² *Ibid.*, para. 3; HRC Decision 17/119, part I.

¹¹³ HRC Decision 17/119, part. III.

¹¹⁴ HRC Resolution 16/21, para. 18.

¹¹⁵ *Ibid.*, para. 6.

¹¹⁶ Abebe, Allehone Mulugeta, 'Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council,' in *Human Rights Law Review*, Vol. 9, No.1, 2009, p. 19.

¹¹⁷ HRC Resolution 16/21; Appendix, 'Modalities for establishing the list of speakers for the Working Group on the Universal Periodic Review,' para. 3.

in general divided among all delegations in order to enable for as many as possible to take the floor.¹¹⁸ The preceding issue in regard to the speaking time being allocated to so called 'friendly States' acting in favour of the SuR could result in that universality did not permeate the process and that important issues and recommendations were not voiced during the review. Following the reform, it however appears as if manipulation of the speaking time could still be an issue. If necessary, time will be reduced to two minutes per speaker, or the total of 140 minutes will be divided by the number of speakers. Consequently, irrelevant statements could still reduce the time allocated for substantial recommendations, questions or statements.

4. The Non-Confrontational Approach

The UPR was created as a cooperative dialogue and each State obviously has crucial discretion as to whether it chooses to accept or not accept recommendations given during the review. Indeed, the freedom in decision-making is an important part of the review, guaranteeing State sovereignty. However, considering that recommendations might address serious issues that can lead to fundamental changes of the human rights situation in the country (e.g. category 5 recommendations), rejections need to be valid.¹¹⁹ There are however several examples within this context demonstrating the weakness of the review process.

Firstly, there are a few examples of when States have rejected recommendations on questionable grounds, such as because the recommendations were not 'universally recognized human rights nor conform to its existing laws, pledges and commitments',¹²⁰ and because the State claimed to be free to adopt laws 'based on their own moral standards and national traditions'.¹²¹ These reasons for rejection contradict Article 27 of the Vienna Convention on the Law of Treaties, stating: 'A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'.¹²²

Secondly, contradictions between the image portrayed by the SuR and the issues raised by other stakeholders during the review have been identified from UPR sessions.¹²³ By denying human rights violations, important recommendations can easily be rejected by the SuR during the review. For instance, Chad has denied the existence of child soldiers within its borders during both its reviews and thus rejected recommendations relating to this issue.¹²⁴ Discrepancy of the picture regarding human rights situations can also be noted from the first review of Israel. NGOs that submitted information prior to the review and many of the delegations that made statements during the review expressed their concerns about the human rights situation within the occupied territories. However, the SuR chose to only present the situation within its recognised borders.¹²⁵

Thirdly, non-participation is naturally a serious threat towards the UPR mechanism. By acknowledging recommendations, but only confer them minimal or deterring actions, or claim that implementation is scheduled or

¹¹⁸ During the 19th session of the WG (April – May 2014), 155 States took the floor and the highest number of recommendations ever made during one session was made.

¹¹⁹ A great difference can here be observed between the UPR and the treaty-body monitoring mechanisms, where a situation in which States are not trustworthy in their good will and responsibility recommendations can require mandatory implementation.

¹²⁰ See Uzbekistan, Egypt and Turkmenistan, FIACAT, 'Universal Periodic Review: An Ambivalent Exercise,' Report and Recommendations, April 2008 – December 2009, 2009, p. 19. Available at <http://www.upr-info.org/-Articles-and-analyses-.html>.

¹²¹ Ibid.

¹²² Article 27, Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980).

¹²³ FIACAT (2009), p. 15.

¹²⁴ Human Rights Council, Report of the Working Group of the Universal Periodic Review, Chad', UN Doc. A/HRC/12/5, 5 May 2009, para. 54; Human Rights Council, Report of the Working Group of the Universal Periodic Review, Chad, UN Doc A/HRC/25/14, 29 October 2013, para. 102.

¹²⁵ FIACAT (2009), p. 16.

planned, a State can easily avoid further criticism within the review mechanism. In a not as enigmatic way, States can naturally also decide to not participate at all in the review, which Israel did during the fifteenth session of the UPR.¹²⁶ Considering that State cooperation is such a significant element of the process, it has been generally accepted that States are obliged to participate. Consequently, there are no provisions on how to deal with issues of non-cooperation.¹²⁷ However, in January 2013, the Council urged the State of Israel to resume its cooperation with the UPR¹²⁸ It also requested the President of the HRC to take all appropriate steps and measures, in accordance with his mandate, to urge the State to resume its cooperation with the mechanism. The Council further considered this approach to be a precedent to be applied to all similar non-cooperation in the future.¹²⁹

Finally, in this context it is worth mentioning the doctrine of Responsibility to Protect (R2P), which was established through the UN human rights reform in 2005.¹³⁰ The UPR function in a context of greater global respect for human rights as reflected in e.g. this principle. However, the approach of examining each State on a cooperative, interactive and 'friendly' level might not be seen as quite as aggressive as the approach flowing from the R2P doctrine.¹³¹ Developed upon an understanding of compliance with universally agreed norms and values, both approaches should be able to increase respect of human rights globally and in particular develop an understanding of a more flexible interpretation of the concept of national sovereignty.¹³² Consequently, an international public forum promoting interaction and dialogue around human rights issues and working on solving human rights issues on the ground should be able to reduce the need for more aggressive actions based on the R2P doctrine. Therefore, a non-confrontational interactive system, involving all States to participate, although not equipped with any mandates to impose sanctions or produce legally binding documents, should be able to play a significant complementary role in the strengthening of the human rights situation on the ground.

D. Observations and Conclusions

Bearing in mind that the Council replaced a former highly criticized organ for efficiency reasons, it is not surprising that it has been subject to intense scrutiny since its establishment. The underlying conflicts have, naturally, not disappeared with the mere replacement of the Commission by a new institutional body.

However, looking at the review mechanism as a work in progress, there is hope for the UPR to be able to provide an adequate control of the human rights situation in Member States. So far, the vast majority of SuRs have engaged in a constructive and open dialogue with the Council.¹³³ Only a few States have sought to manipulate the dialogue by seeking to avoid the discussion on human rights issues.¹³⁴ However, the UPR relies on universality, meaning that any State that boycotts the review will seriously harm and weaken the mechanism.

¹²⁶ UPR Info, 'Universality preserved: Israel expected to be reviewed on Tuesday 29 October 2013', December 2013, available at: <http://www.upr-info.org/en/news/universality-preserved-israel-expected-to-be-reviewed-tuesday-29-october-2013>. See also discussion under chapter 4.7.

¹²⁷ Freedman (2011), p. 300.

¹²⁸ Human Rights Council, Report of the Human Rights Council on its seventh organizational meeting, UN Doc. A/HRC/OM/7/1, 29 January 2013 (hereinafter Decision OM/7/L.1).

¹²⁹ The review of Israel was rescheduled for the seventeenth session where Israel decided to participate.

¹³⁰ The R2P establish that States must protect its people from genocide, crimes against humanity, war crimes and ethnic cleansing. The international community also has a responsibility to assist the State to fulfil its primary responsibility, General Assembly Resolution 60/1. World Summit Outcome, UN Doc. A/RES/60/1, 24 October 2005.

¹³¹ Considering that the R2P approach focuses on the international community's responsibilities in acting against serious crimes, and that reviews like the UPR take on a more gentle approach by raising less acute matters and respecting national sovereignty at all times.

¹³² Edward R. McMahon, *The Universal Periodic Review: A Work in Progress*, Friedrich-Ebert-Stiftung, Dialogue on Globalization, 2012, p. 26.

¹³³ All States participated in the UPR process during the first cycle.

¹³⁴ Schmidt (2010), p. 396.

Considering the very weak steps outlined in the decision taken by the Council, following Israel's non-participation, the approach used for non-cooperation is unlikely to act as a disincentive to prevent other States from the same behaviour. However, the decision was adopted by consensus – hopefully demonstrating States concern to preserve the universality of the UPR.

As reflected in this chapter, the Council is infected by politicisation and it appears as if many of the flaws that caused the Commission's abolishment, are present within the Council. Politicisation and bias have been demonstrated within the special sessions of the Council, where scrutiny of gross human rights violations within some States has been avoided. Furthermore, despite the UPR reform in 2011, the shortcomings addressed from the first cycle of the UPR remain unresolved. State engagement so far provides a promising future for a transparent review and of human rights improvement within States. Nonetheless, it stands clear that the mechanism is dependent upon the good will of States¹³⁵ and its future will thus be determined by their political will to generate a genuine international platform for a transparent review and improvement of human rights protection.

III. Level of Implementation

A. Background

As a preliminary remark it may be noted that promoting equal, universal and non-discriminatory minimum standards of human rights in a political environment naturally is not an easy task. Especially not when the same standards are to be applied to Western States, developing countries and superpowers alike. Furthermore, it can be noted that States from the West and States from the South had different motivations for the creation of the UPR and thus also different expectations for its outcomes.¹³⁶ Many States considers human rights as primarily Western concepts¹³⁷ and some argue that State behaviour in the UPR also is dependent on this understanding.¹³⁸ Some have even argued that the mechanism ultimately will be shaped by non-allies with the West and the South.¹³⁹

Further, it would be naive to believe that behind every accepted recommendation lies a genuine will of implementation. Although States willingness to act is the primary requirement in achieving adequate results,¹⁴⁰ low implementation records certainly also need to be put within the context of 'insufficient capacity', such as financial, administrative or technical shortcomings.¹⁴¹ However, although these elements admittedly are of crucial nature, a key part of the process to assess is certain procedural elements that either prevents the mechanism to be efficient or negatively affecting its efficiency. The sections below will therefore primarily account for mid-term implementation results with respect to different procedural elements.

¹³⁵ Olivier de Frouville, 'Building a Universal System for the Protection of Human Rights: The Way Forward', in M Cherif Bassiouni and William Schabas (eds.) *New Challenges for the UN Human Rights Machinery*, Intersentia, Cambridge, 2011, pp. 241 & 253.

¹³⁶ Freedman (2011), p. 296.

¹³⁷ Ulrika Sundberg 'Five years of working in the UN Commission of Human Rights', in Gudmundur Alfredsson, Jonas Grimheden, Bertrand.G. Ramcharan and Alfred Zayas (eds.) *International Human Rights Monitoring Mechanisms*, The Raoul Wallenberg Institute human rights library, 2009, 2nd ed., p.160.

¹³⁸ Edward McMahon; Marta Ascherio, 'A Step Ahead in Promoting Human Rights? the Universal Periodic Review of the UN Human Rights Council' in: *Global Governance*, Vol. 18, 2012, No. 2, p.

¹³⁹ Alston (2006), p. 206.

¹⁴⁰ Statement by His Excellency Mr. Sihasak Phuanketheow, President of the Human Rights Council, Global Observatory on Human Rights – UPR Watch, Improving Implementation and Follow-up - Treaty Bodies, Special Procedures, Universal Periodic Review, Report of Proceedings, 22-23 November, 2010.

¹⁴¹ Joachim, J., Reinalda, B., Verbeek, B., *International Organizations and Implementation: Enforcers, Managers, Authorities?* Routledge, London, 2007, p.8.

B. Implementation Status

The top five issues raised during the first cycle were (a) international instruments (b) women's rights (c) rights of the child (d) torture and other cruel, inhuman or degrading treatment or punishment and (e) justice.¹⁴² There are three possible degrees of implementation: (i) not implemented, (ii) partially implemented and (iii) fully implemented.¹⁴³ By the time of mid-term, around 18 percent of all recommendations made during the first UPR cycle were fully implemented and around 30 percent of them partially implemented. 4 percent of the recommendations were not given sufficient information for in order to determine the implementation status. Thus, it can be observed that 48 percent of the recommendations made during the first cycle of the UPR were not implemented at mid-term.¹⁴⁴

1. Implementation by Regional Group

Following a presentation of the global implementation status by mid-term, the numbers can also be identified according to the different regional groupings.¹⁴⁵ As the figure below demonstrates, the most promising rates of implementation lie within the EEG. The Africa group demonstrated a moderate level of fully implemented recommendations. However, partially implemented recommendations were still high. The Asian group had the highest rate of non-implemented recommendations and also the lowest rate of fully implemented recommendations; only 11 per cent.

Regional Group	Fully implemented	Partially implemented	Not implemented	Not assessed
Africa	18%	32%	46%	4%
Asia	11%	22%	63%	4%
EEG	27%	36%	34%	3%
GRULAC	12%	37%	47%	4%
WEOG	24%	29%	44%	3%

2. Implementation by Response

The primary responsibility to implement the recommendations naturally lies with the SuR.¹⁴⁶ For that reason; States are expected to pronounce their own position in regard to the recommendations they receive during the

¹⁴² The author has collected and assessed this data through the OHCHR's website and UPR-Info's database, available at <http://www.ohchr.org/en/hrbodies/hrc/pages/hrcindex.aspx> and <http://www.upr-info.org/database/statistics/>.

¹⁴³ 'Not implemented' indicates that no action has been undertaken so far. 'Partially implemented' means that the State has taken some action to improve the human rights situation. 'Fully implemented' reflects full compliance with a recommendation.

¹⁴⁴ These numbers are based on the author's assessments made on the basis of UPR-Info's mid-term implementation reports, available at <http://www.upr-info.org/followup>. The author has also collected and assessed data and information through the OHCHR's website and UPR-Info's database, available at <http://www.ohchr.org/en/hrbodies/hrc/pages/hrcindex.aspx> and <http://www.upr-info.org/database/statistics/>.

¹⁴⁵ The 193 UN members act not only as individual States but also under certain geographical groupings. In order to ensure an equitable geographical quota in relation to regional and political interests a certain number of States represents a geographical area based on the number of countries in that region. The different groups are the African Group (Africa), the Asia-Pacific Group (Asia), the Eastern European Group (EEG), the Latin American and Caribbean Group (GRULAC) and the Western European and Others Group (WEOG), Official UN list of Regional Groups, available at: <http://www.un.org/depts/DGACM/RegionalGroups.shtml>.

¹⁴⁶ However, the aim of the UPR is to ensure that all countries are accountable for progress or failure in implementing the recommendations.

sessions. This is done through a categorization of either 'accepted' or 'noted'.¹⁴⁷ During the first cycle of the UPR, States accepted a high number of recommendations; around 73 per cent.¹⁴⁸ Noted recommendations were 25 per cent, and voluntary pledges¹⁴⁹ 2 per cent.

Response	Fully implemented	Partially implemented	Not implemented	Not assessed
Accepted	21%	34%	41%	4%
Noted	5%	14%	77%	4%
Voluntary pledges	35%	32%	21%	12%

As the figure above demonstrates, voluntary pledges had the highest rate of implementation.¹⁵⁰ Further, recommendations that were not accepted were not implemented to the same degree as accepted recommendations. However, 19 per cent of the non-accepted recommendations had still been taken action upon. Consequently, whether a State accepts recommendations or not is absolutely essential in regard to implementation status.

3. Implementation by Action Categories

The recommendations made during the review session can be divided into different categories of strength, from category 1 (minimal action) to category 5 (specific action).¹⁵¹ Each category is illustrated below.

i) Category 1 recommendations can be demonstrated by the following recommendation given by Chad to Mauritius: '*Call on the international community to support Mauritius by providing all assistance needed to improve its programmes for the protection and promotion of human rights*'.¹⁵² Directed to other States, or calling upon the SuR to request financial or other assistance, or to share best practices, implementation of category 1 recommendations requires very little effort and costs.¹⁵³

ii) Category 2 recommendations in general request the SuR to continue, persevere or to maintain a certain action, e.g. asking to: '*Continue to reform and upgrade its detention system in order to improve the situation of inmates*'.¹⁵⁴ Naturally, implementation of this kind of recommendations can, under accurate political and economical circumstances, be considered as uncomplicated to implement.¹⁵⁵

iii) Category 3 recommendations may also be considered as relatively trouble-free,¹⁵⁶ in general calling upon the SuR to consider, reflect upon or review something, e.g.: '*Consider establishing a separate national human rights institution at the very earliest*'.¹⁵⁷

¹⁴⁷ States cannot reject recommendations they receive during the review, instead both accepted and noted recommendations will be included in the outcome report, HRC Resolution 5/1, para. 30.

¹⁴⁸ 21 356 recommendations were made during the first cycle. 15 636 were accepted and 5 720 noted, see supra note. 142.

¹⁴⁹ Voluntary commitments expressed by the SuR during the review.

¹⁵⁰ Note however, that these were only 2 % of the recommendations during the first cycle.

¹⁵¹ This classification system was created by Professor Edward McMahon, University of Vermont, UPR-Info, 'Beyond Promises, the impact of the UPR on the ground, 2014, p. 20, available at: http://www.upr-info.org/sites/default/files/general-document/pdf/2014_beyond_promises.pdf.

¹⁵² Human Rights Council, Report of the Working Group on the Universal Periodic Review, Mauritius, UN Doc. A/HRC/11/28, 3 March 2009, para. 32.

¹⁵³ UPR-Info (2014), p. 21.

¹⁵⁴ Recommendation made by Norway to Chile during the first UPR cycle, Human Rights Council, Report of the Working Group on the Universal Periodic Review, Chile, A/HRC/12/10, 4 June 2009, para. 35.

¹⁵⁵ UPR-info (2014), p. 22.

¹⁵⁶ Ibid., p. 23.

iv) Similarly to recommendations of category 1-3, category 4 may also be considered as relatively easy to implement.¹⁵⁸ This recommendation made by Algeria to Nepal during the first UPR cycle: *'Step up its efforts to reduce poverty, particularly rural poverty'*, illustrates the vagueness of category 4 recommendations.¹⁵⁹ Since they contain a general element, not asking for a substantial outcome, they are also difficult to assess. Even a small effort by the SuR might therefore be assessed as partially or fully implemented.

v) The most action-oriented recommendation is category 5, in general asking for action on specific issues and requiring a concrete outcome.¹⁶⁰ An example can be drawn from the review of the United States where Venezuela recommended to: *'Close Guantanamo and secret centers of detention in the world, punish agents that torture, disappear and execute persons who have been arbitrarily detained, and compensate victims'*.¹⁶¹ This category of recommendations naturally requires the greatest potential cost, considering specific and tangible outcomes are requested.¹⁶²

Recommendations calling for technical assistance and sharing best practices (category 1), continue an effort in a certain matter (category 2), consider an action (category 3) and recommendations calling for a general action (category 4) are indeed in line with the objectives of the UPR. However, recommendations of specific and action-oriented character, naturally, are the most effective ones to improve the human rights situation on the ground.¹⁶³

During the first cycle of the UPR, recommendations containing a call for general action (category 4) were approximately thirty-nine per cent, while specific action oriented (category 5) recommendations were almost thirty-five per cent.¹⁶⁴ However, as the figure below demonstrates, recommendations calling for technical assistance or sharing best practices (category 1) are the ones that are most likely to be implemented. Recommendations containing a specific-oriented demand (category 5) are implemented the least.¹⁶⁵

Action category	Fully implemented	Partially implemented	Not implemented	Not assessed
Category 1	33%	23%	23%	24%
Category 2	30%	34%	31%	5%
Category 3	26%	21%	48%	6%
Category 4	16%	36%	45%	3%
Category 5	13%	22%	62%	3%

In view of the above presented implementation results, accepting recommendations of category 1, 2 and 4 naturally seems to be an opportunity for the SuR to be able to demonstrate high implementation rates by mid-

¹⁵⁷ Recommendation made by India to Portugal during the first UPR cycle, Human Rights Council, Report of the Working Group on the Universal Periodic Review, Portugal, UN Doc. A/HRC/13/10, 4 January 2010, para. 35.

¹⁵⁸ Ibid., p. 24.

¹⁵⁹ Category 4 recommendations can further contain elements like: take measures, steps towards, engage with, respect, encourage, promote or intensify, see supra note. 142.

¹⁶⁰ UPR-Info (2014), p. 25.

¹⁶¹ A recommendation that the United States accepted but, however, had not implemented by mid-term, see supra notes. 142 and 144.

¹⁶² In general requesting to undertake, establish, ratify, adopt or implement something, see supra note. 142.

¹⁶³ UPR-Info (2014), p. 20.

¹⁶⁴ During the first UPR cycle, recommendations containing minimal action (category 1) were 2 %, considering action (category 2) 10 %, continuing action (category 3) 14%, general action (category 4) 39% and specific action (category 5) 34%, supra note. 142.

¹⁶⁵ Supra note. 144.

term, despite lack of improvement on the ground.¹⁶⁶ The fact that a majority of the recommendations made during the first cycle contained a call for a general action (category 4) is therefore a part of a worrying structure. A call for a general action gives the SuR a considerable margin of appreciation in the means of implementation, since their character makes it very hard to measure implementation.

To summarize, what action-category a recommendation belongs to might play a crucial role in States implementation records on the ground. This is because States seem more keen to accept recommendations that require less effort from them. Non-specific recommendations also give great autonomy for the relevant State to define how recommendations are to be implemented and without a specific action contained in each recommendation it could be hard for a SuR to understand what is required from it.¹⁶⁷

4. Other Aspects Influencing Implementation

In addition to the above-demonstrated factors that evidently negatively influence implementation of recommendations, a number of other different aspects (besides political will) could be expected to influence the implementation, or non-implementation, of recommendations.

(i) Number of recommendations

The number of recommendations has grown steadily for each peer review session, and for some States the number of recommendations was unreasonably large during the first cycle.¹⁶⁸ Recommending States could make up to four or five recommendations in each review and a total number of 150 recommendations were not uncommon. Naturally, overlapping and lack of focus therefore became evident, factors that can lead to unmanageable situations for both the SuR during the implementation phase as well as for other stakeholders during the follow-up period.¹⁶⁹ This phenomenon does not promote serious and sustained engagement on the ground and might thus be a crucial factor regarding States implementation status.

(ii) Regional and political alliances

As discussed above (especially in chapter 2.3.5), objectivity sometimes seem to be absent in the reviews of States, demonstrated *inter alia* by discrepancies of the picture on human rights situations in States.¹⁷⁰ This element becomes even more worrying when considering the trend observed by UN Watch in that political and regional groups plays an important role in how States examine each other.¹⁷¹ Others have made similar observations of different approaches taken during the review. The African and Asian groups are argued to take on a soft approach when reviewing States within their own groupings and the GRULAC, while a tougher approach has been observed by them towards the EEG and the WEOG.¹⁷² Furthermore, various manipulative tactics, i.e. taking up valuable time with positive statements during the review, by African States and OIC members to protect allied States from scrutiny have been observed.¹⁷³ Developing States are also argued to seek to avoid criticism by focusing on advice and assistance, while States from the West concentrate on more detailed rec-

¹⁶⁶ UPR-Info, *On the Road to Implementation*, Geneva, October 2012, p. 16.

¹⁶⁷ Joint statement delivered by 19 NGOs during the Council's general debate on its 25th session, 21 March 2014. Available at: http://www.upr-info.org/sites/default/files/news/2014_03_21_upr_info_joint_statement_gd_item6_specificity_recommendations.pdf

¹⁶⁸ See e.g. Algeria, China, Pakistan, the United Kingdom, Ukraine and the United Arab Emirates.

¹⁶⁹ Emma Hickey, 'The UN's Universal Periodic Review: Is it Adding Value and Improving the Human Rights Situation on the Ground?', in *ILC Journal*, ILC Thesis, Verlag Österreich, Vol. 7, No., 2013, p.44.

¹⁷⁰ See example on Chad denying the existence of child soldiers mentioned in chapter 2.3.5.

¹⁷¹ UN Watch, *A Mutual Praise Society*, 2009, p.3. Report available at <http://www.unwatch.org/atf/cf/{6DEB65DA-BE5B-4CAE-8056-8BF0BEDF4D17}/Mutual%20Praise%20Society.pdf>.

¹⁷² McMahon (2010) pp.23 & 35.

¹⁷³ Freedman (2011), p. 309.

ommendations.¹⁷⁴ Naturally, this conduct results in non-objectivity, which can hinder real issues to be raised. This will ultimately undermine the review's outcome to be able to improve human rights within the SuR.

(iii) Lack of collaboration between different stakeholders

During the WG review, there seem to be no real consistency as to whether findings and recommendations originating from treaty bodies and special procedures are referred to.¹⁷⁵ Nor are there any guidelines regarding whether a differentiation should be made in the final WG report regarding recommendations that have already been issued by treaty bodies and recommendations issued by States during the review.¹⁷⁶ These practical gaps naturally have an affect on records of implementation. In this matter, lack of cooperation could result in situations where issues that have already been addressed in a different process might be emphasized again in the UPR.¹⁷⁷ For natural reasons and due to the time constraints during the review, this might result in unclear information regarding implementation of the issue of matter. Hence, if a State accepts a certain recommendation that has already been discussed in a different forum, and perhaps already implemented, this might result in unreliable data in regard to implementation status.

(iv) Technical and Financial Assistance

The most obvious part of implementation requires the involvement of the concerned SuR and also of other stakeholders. However, for an achievement of implementing accepted recommendations, technical and financial assistance is for some crucial in addressing issues raised during the UPR. The UPR Voluntary Trust Fund was, through Resolution 6/17, established for this very purpose, i.e. to assist developing countries in their involvement in the UPR process.¹⁷⁸ Through the same resolution, the Voluntary Fund for Financial and Technical Assistance was created to help countries in the implementation phase of the review.¹⁷⁹ Regrettably, the two financial mechanisms created to facilitate the participation of developing States within the mechanism, and support its follow-up at the national level, have been underfinanced.¹⁸⁰ States that may need support in implementing relevant UPR recommendations can consequently not receive adequate financial and technical assistance in order to enable implementation of their pledges made during the UPR.

C. Observations and Conclusions

Considering the follow-up period as the most crucial phase of the UPR, being able to demonstrate concrete achievements since the interactive dialogue, the results presented by mid-term after the first cycle indeed indicates a very promising future for the mechanism. Half way through the implementation phase, States demonstrate a global result of 48 per cent of partially and fully implemented recommendations.

In view of one of the main objectives of the UPR; to change the human rights situation on the ground, there are however a few worrying elements from the review process that can be identified. A majority of the recommendations made during the first cycle were of general character, which was also reflected in the implementation status. Indications of that States accept these recommendations that require little effort from them, not resulting in tangible results on the ground, can thus be observed. The numbers presented by mid-term therefore need to be considered within this context. Further, in regard to non-implementation, the number of recommendations and recommendations that are not action-oriented or detailed enough to facilitate their implementation could impede State action. Observations of political and regional alliances within the UPR further seem to be

¹⁷⁴ Ibid., p. 311.

¹⁷⁵ Hickey (2013), p. 51, f.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Human Rights Council, Resolution, 'Establishment of funds for the universal periodic review mechanism of the Human Rights Council,' 28 September 2007, UN Doc. A/HRC/6/17.

¹⁷⁹ Ibid.

¹⁸⁰ Hickey /2013), p. 16.

hindering an objective review of the SuR. This naturally can result in gross human rights violations not being addressed properly, thus affecting the improvement of human rights on the ground. A fundamental part for implementation to be carried out is also technical and financial assistance, an element currently deficient and inadequate within the UPR.

Based on the above, the challenge ahead is to ensure that the norms and standards of the international human rights systems are translated into actions. For an achievement of this, the above observations need to be addressed.

IV. Case Studies

Under this chapter, the review process in regard to two States from each UN regional group will be examined. As already mentioned, all States have not yet been assessed within the framework of the second UPR cycle. Consequently, it is not possible to examine all States' progress made from the first cycle up until the subsequent cycle. In order to examine the different review processes on an equal and consequent basis, the different States have been examined on the basis of implementation level by mid-term; around two and a half years after their review.¹⁸¹

The States examined have been chosen from two criteria. Firstly, they naturally fall within the specific boundaries of the region. Secondly, one of the States within the regional group shows some of the best records in implementing accepted recommendations by the time of mid-term assessment, whereas one of the States record is low.¹⁸² With respect to those parameters, the following States were chosen for the case study below: Mauritius and Egypt (African Group), Malaysia and Nepal (Asian Group), Romania and Belarus (EEG), Chile and Mexico (GRULAC) and finally Portugal and the United States (WEOG).¹⁸³ Note, however, that these States not necessarily demonstrates *the* best or *the* worst status within their regional group. Access to information regarding implementation status will naturally play a role when considering the accuracy of the results. Hence, consideration has also been given to the number of recommendations that information has been provided for within the framework of mid-term assessment.

Although the author has endeavoured to provide an overall background of each State, it is important to acknowledge the fact that there are aspects that have not been addressed at all or dealt with in an in depth-manner. That includes areas such as trade, migration, sanctions, conflicts, corruption etc.

A. Africa

Initially can be observed that Mauritius, unlike Egypt, is ranked as a free State, meaning that it reaches a certain level of respect regarding political rights and civil liberties.¹⁸⁴ It is considered as one of the world's most successful democracies and has enjoyed years of constitutional order.¹⁸⁵ Mauritius is also one of the few social and economic success stories in Africa, compared to Egypt where continuing political turmoil has paralyzed

¹⁸¹ Within the framework of UPR-Info's follow-up programme, information has been provided from all UPR stakeholders on the implementation of recommendations in 165 States.

¹⁸² These conclusions are based on the author's assessment on information and data collected from the UPR-Info follow-up programme, *supra* notes. 142 and 144.

¹⁸³ Note however that the United States has chosen to not be a member of any of the regional groups, and thus only attends meetings of the WEOG as an observer.

¹⁸⁴ Freedom House Annual Ranking. Available at: <https://freedomhouse.org/report/freedom-world/freedom-world-2014#.VKVnWOCq5ew>.

¹⁸⁵ BBC Monitoring, Mauritius country profile. Available at: <http://www.bbc.com/news/world-africa-13882233>. All country profiles can be accessed through http://news.bbc.co.uk/2/hi/country_profiles/default.stm.

government efforts to address issues regarding country resources and economy.¹⁸⁶ Although Mauritius indeed is a State with high human development, both States are categorized as developing countries.¹⁸⁷ Further, Mauritius is, unlike Egypt, not a member of the OIC.¹⁸⁸ Like almost all other African countries,¹⁸⁹ both States are however members of the Non-Aligned Movement (NAM).¹⁹⁰

1. Mauritius – Characteristics of the review process

Mauritius was, during the first UPR cycle, reviewed in February 2009.¹⁹¹ On 8 September 2008, the Council decided that the *troika* were to consist of Zambia, Malaysia and Slovakia.¹⁹² The *troika* transmitted a list of advanced written questions from five States to the SuR prior to the review.¹⁹³ During the interactive dialogue, Mauritius received 93 recommendations and accepted 66 of these.¹⁹⁴ Five other stakeholders were involved in the process – one national human rights institution (NHRI) and four NGOs. The three most raised issues during the session were (i) rights of the child, (ii) international instruments and (iii) women's rights.¹⁹⁵ Most States making recommendations belonged to the WEOG group, closely followed by States from Africa.¹⁹⁶ Although WEOG States delivered more comprehensive statements during the interactive dialogue,¹⁹⁷ the SuR in general received positive comments; *commending* Mauritius for the success achieved in eradication of absolute poverty, *welcoming* the establishment of several national institutions for the protection of human rights and *congratulating* the fact that the SuR prepared its national report in cooperation with national stakeholders. States taking the floor without making recommendations, but only positive statements, were exclusively members of the NAM or African States.¹⁹⁸ Noteworthy is that a majority of the recommendations Mauritius chose to accept were of non-specific character.¹⁹⁹ Hence, it rejected a considerable number of action-oriented recommendations, many originating from the WEOG group.²⁰⁰

a. Implementation assessment

By mid-term Mauritius had, compared to other States within the African group, a high record of implemented recommendations. Almost 40 per cent were fully implemented, and 35 per cent partially implemented.²⁰¹ Consequently, around 75 per cent of the recommendations, both accepted and not accepted,²⁰² had triggered an

¹⁸⁶ Ibid. Mauritius economy is ranked as the 8th freest in the world, compared to Egypt's, which is ranked as 135th in the same index.

¹⁸⁷ According to World Bank data, available at: <http://data.worldbank.org/>.

¹⁸⁸ Mauritius however requested full membership in 2002.

¹⁸⁹ With the exception of the newly created South Sudan and the unrecognized states of Sahrawi Arab Democratic Republic and Somaliland.

¹⁹⁰ Members of the NAM, available at: <http://www.nam.gov.za/media/040802b.htm>.

¹⁹¹ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Mauritius, UN Doc. A/HRC/11/28, 13 February 2009 (hereinafter Working Group Report, Mauritius, 2009), para. 1.

¹⁹² Ibid.

¹⁹³ The Czech Republic, Latvia, the Netherlands, Denmark and Germany submitted advanced written questions, Working Group Report, Mauritius, 2009, para. 4.

¹⁹⁴ Ibid., paras. 81, 81 and 82.

¹⁹⁵ Supra note. 142.

¹⁹⁶ Ibid.

¹⁹⁷ See e.g. statements delivered by delegations such as the UK, Germany, New Zealand and Italy, Working Group Report, Mauritius, 2009, paras. 50, 51, 55 and 70 respectively.

¹⁹⁸ See e.g. Senegal, Chad, Nigeria, Burundi, Barbados and the Democratic People's Republic of Korea, Working Group Report, Mauritius, 2009, paras. 27, 34, 48, 64, 73, 74.

¹⁹⁹ 4 minimal action, 6% (category 1), 17 continuing action, 26% (category 2), 7 considering action, 11% (category 3), 24 general action, 36% (category 4), and 14 specific action, 21% (category 5), see supra note. 142.

²⁰⁰ Out of the total 27 not accepted recommendations, 10 were of action-oriented character, supra note. 142.

²⁰¹ Supra note. 144.

²⁰² Out of 69 recommendations that had triggered an action by mid-term, 15 were not accepted during the review, supra notes. 142 and 144.

action by the time of mid-term. A majority of the recommendations that had not been implemented were action-oriented, i.e. category 5 recommendations.²⁰³ Recommendations that had been fully or partially implemented were instead mainly of general character; category 4. The most raised issues during the review were also the issues that the SuR had taken action on by mid-term. However, these issues could also be frequently observed in recommendations that had not been implemented, although of a more action-oriented character (category 5 recommendations). Regarding the mid-term assessment, comments regarding implementation were mainly submitted by the SuR itself and not by other stakeholders.²⁰⁴

2. Egypt – Characteristics of the review process

Within the framework of the first UPR cycle, Egypt was reviewed in February 2010. The Council selected China, Italy and Madagascar to facilitate the review.²⁰⁵ Egypt received a total of 171 recommendations and accepted 135 of these. Statements by 44 delegations could not be delivered during the dialogue owing to time constraints.²⁰⁶ A total of 37 other stakeholders were involved in the process; one NHRI, one Regional Intergovernmental Organization (RIO) and 35 other stakeholders representing civil society.²⁰⁷ Further, a list of questions prepared in advance by 11 States was transmitted to the SuR prior to the review.²⁰⁸

The three most raised issues during the review were (i) international instruments, (ii) women's rights and (iii) torture and other CID treatment.²⁰⁹ States from the WEOG were the most active ones in making recommendations, while States from the African group barely made any.²¹⁰ However, States taking the floor to only make a positive statement were exclusively States members of the NAM, the OIC or African States.²¹¹ From their statements and recommendations made, recurring themes were that they *welcomed, commended or appreciated* efforts taken or the progress made in the area of human rights.²¹² WEOG States, on the other hand, in general referred directly to the issue – in order to thereafter ask on actions taken or to make a recommendation.²¹³ Many recommendations contained a specific action (category 5), although a large number also called for a general action (category 4). A majority of the recommendations the SuR chose to accept also contained a general element, while almost half of the category 5 recommendations not were accepted.²¹⁴ Another characteristic from this review is that Egypt considered a total of 34 recommendations, mainly regarding counter-terrorism or freedom of opinion and freedom of the press, as already implemented and consequently, many of these were not

²⁰³ 14 out of 23 recommendations that had not been implemented were of action category 5, supra notes. 142 and 144.

²⁰⁴ UPR-Info, 'Mid-term Implementation Assessment Report, Mauritius,' p. 3.

²⁰⁵ Human Rights Council Report, Report of the Working Group on the Universal Periodic Review, Egypt, UN Doc. A/HRC/14/17, 19 February 2010 (hereinafter Working Group Report, Egypt, 2010)., para. 1.

²⁰⁶ These were however posted on the extranet of the UPR when they were available, Ibid.

²⁰⁷ Human Rights Council, Summary 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, Egypt, UN Doc. A/HRC/WG.6/7/EGY/3, 7 February 2010.

²⁰⁸ Argentina, Czech Republic, Denmark, Germany, Ireland, Latvia, Netherlands, Norway, Sweden, Switzerland and United Kingdom of Great Britain and Northern Ireland, Working Group Report, Egypt, 2010, para. 4.

²⁰⁹ Supra note. 142.

²¹⁰ Ibid.

²¹¹ Delegations of Bahrain, Oman, India, Nigeria and the Republic of Congo, Working Group Report, Egypt, 2010, paras. 33, 35, 38, 65 and 87.

²¹² See e.g. statement by Lebanon in Working Group Report, Egypt, 2010, para. 29. See also statements made by delegations of Bahrain, Oman, Kuwait, Azerbaijan, Tunisia, Venezuela, Morocco, Qatar, The United Arab Emirates, Syria, India, Indonesia, Jordan, Belarus, Malaysia, China and Nigeria, paras. 33, 35, 45, 46, 60, 62, 30, 34, 36, 37, 38, 40, 41, 43, 44, 51 and 65.

²¹³ See e.g. statement by Austria, Ibid., para. 57. See also statements made by Ireland, Switzerland, Belgium, Germany and Canada, paras. 67, 71, 72, 86 and 59.

²¹⁴ 4 minimal action, 3% (category 1), 32 continuing action, 23,5% (category 2), 13 considering action, 9,5% (category 3), 55 general action, 40% (category 4), and 33 specific action, 24% (category 5), supra note. 142.

accepted.²¹⁵ Egypt, *inter alia*, claimed to have implemented a recommendation to: '*guarantee the exercise of freedom of expression association and peaceful assembly and the right to participate in public life and politics*'. However, NGO statements at the adoption of the WG Report expressed that these rights in reality were limited under the state of emergency.²¹⁶ Further, many recommendations, mainly originating from WEOG States, did not enjoy the support by Egypt since they were considered inaccurate or factually incorrect.²¹⁷

a. Implementation assessment

By mid-term, 91 per cent of the recommendations Egypt received during the review were not implemented.²¹⁸ Only three per cent were partially implemented and six per cent fully implemented.²¹⁹ This result demonstrates that, within the African group, Egypt had one of the lowest implementation records by mid-term.²²⁰

A majority of the recommendations that had triggered an action were containing a specific action (category 5). However, on closer examination, this fact can most likely be explained by other factors than the SuR's wish to act in accordance with the recommendations it received. A majority of the recommendations that were fully implemented by mid-term regarded the Emergency Law and recommended, *inter alia*, to: '*Put an end, as soon as possible, to the state of emergency and ensure that the provisions of the future anti-terrorism law scrupulously respect human rights*'.²²¹ The state of emergency, and with it the Emergency Law, was ended by the military in 2012, following the 2011 Egyptian revolution.²²² The political nature and domestic pressure leading to the decision cannot be ignored and a genuine intention of implementing the recommendations can probably not be deduced. Nonetheless, the impact of the UPR process should not be underestimated here, considering the influence the voices raised over the issue in an international forum might have had on the ground. As a final remark however, some NGOs after the review expressed concern over violations still being able to be conducted under different laws.²²³

3. Concluding remarks

When considering the characteristics of the above-presented reviews, it can be observed that a higher number of stakeholders submitted information prior to the interactive dialogue of Egypt than Mauritius. Egypt also received and accepted almost twice as many recommendations than Mauritius, all of more action-oriented character. Hence, when looking at the high implementation level of Mauritius it is important to bear in mind that implementation of non-specific recommendations naturally requires less effort and resources and is also more difficult to assess. Furthermore, contrary to Egypt, which did not submit a mid-term report, most of the comments regarding Mauritius implementation status were made by the State it self, and not by other stakeholders.

²¹⁵ Working Group Report, Egypt, 2010, para. 96.

²¹⁶ See e.g. statement delivered by Amnesty International. Available at: http://www.upr-info.org/sites/default/files/document/egypt/session_7_-_february_2010/aioralegypt2010.pdf.

²¹⁷ Only four of these recommendations originated from States within the GRULAC and the EEG and none from African or Asian States, Working Group Review, Egypt, 2011.

²¹⁸ UPR-Info, Mid-term Implementation Assessment Report, Egypt, p. 3.

²¹⁹ Supra note. 144

²²⁰ Supra note 144.

²²¹ Recommendation made by France, Working Group Report, Egypt, 2010, para. 112. See also e.g. recommendations made by Canada, Germany, Austria and United States, paras. 5, 75, 76 and 120.

²²² The Telegraph, 'Egypt's state of emergency ends after 31 years', <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/egypt/9303195/Egypt-s-state-of-emergency-ends-after-31-years.html>.

In 2010, the Arab Spring started. The Egyptian revolution started in 2011 leading to the resignation of President Mubarak that transferred power to the armed forces of Egypt. The military dissolved the Egyptian Parliament and lifted the Emergency Laws. Mubaraks successor, Mohamed Morsi, was sworn in as President. However, he was removed from power by the military in 2013, see <http://www.bbc.com/news/world-12482291>.

²²³ UPR-Info, Mid-term Implementation Assessment Report, Egypt, p. 16.

Within both reviews could be observed various tactics used in order to avoid scrutiny. Members of the NAM, OIC and African States often took the floor to make positive statements and when they made recommendations these were in usually of general character. In the case of Egypt, this was extra worrying considering that many States did not get the chance to take the floor. Further, Egypt rejected a considerable number of recommendations originating from the WEOG group on what seem to have been non-objective grounds. Discrepancies could be noted in Egypt's view of the human rights situation and other stakeholders' view. Some enigmatic elements could be interpreted from the review of Mauritius as well. A majority of the recommendations Mauritius chose to accept were of non-specific character and many of the recommendations it rejected originated from States within the WEOG. As a concluding remark it is pertinent to mention that Egypt was marked by political disorder during its implementation phase, following the Arab Spring and the Egyptian revolution.²²⁴

B. Asia

Both Malaysia and Nepal are, according to 2009 – 2014 years rankings by Freedom House, partly free.²²⁵ At a closer examination, there are however significant differences between the States. Malaysia can, after decades of industrial growth and political stability, be considered as one of South East Asia's strongest economies.²²⁶ Nepal, on the other hand, demonstrates economic stability at levels far below global and regional averages.²²⁷ The UN estimates that about 40 per cent of Nepalis live in poverty. After political instability, that has characterized the country since the end of the civil war, it is still struggling to overcome the legacy of Maoist insurrection that lasted from 1996 to 2006.²²⁸ Both States are members of the NAM.²²⁹

1. Malaysia – Characteristics of the review process

Malaysia had its first review, facilitated by Nicaragua, Qatar and Egypt, in February 2009.²³⁰ In its national presentation, Malaysia emphasized that a group encompassing government agencies, a national human rights commission and NGOs drafted its national report prior to the review.²³¹ Malaysia received 147 recommendations from 51 different States. However, due to time constraints, 23 delegations could not deliver their statements during the dialogue.²³² 43 recommendations contained a specific action (category 5). However, Malaysia merely accepted three of those. The majority of accepted recommendations instead contained continuing action (category 2).²³³ The three main issues addressed were (i) international instruments, (ii) rights of the child and (iii) women's rights.²³⁴ Ten stakeholders from the civil society and one NHRI submitted information regarding the human rights situation prior to the review.²³⁵

Most States making interventions were from the Asian group and members of the NAM. Their recommendations primarily focused on that Malaysia should *share its best experiences* on certain issues or *continue* to promote

²²⁴ See accompanying text at supra note. 222.

²²⁵ Freedom House Annual Ranking, supra note. 184.

²²⁶ BBC Monitoring, Malaysia country profile, supra note. 185.

²²⁷ According to the Index of Economic Freedom Malaysia's economy is the 37th freest in the world as of 2014. Nepal is considered as the 149th freest.

²²⁸ BBC Monitoring, Nepal country profile, supra note. 185.

²²⁹ Members of the NAM, supra note. 190.

²³⁰ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Malaysia, UN Doc. A/HRC/11/30, 13 February 2009 (hereinafter Working Group Report, Malaysia, 2009), para. 1.

²³¹ Ibid., para. 5.

²³² These were however posted on the extranet when they were available.

²³³ 14 minimal action, 17,5% (category 1), 48 continuing action, 60% (category 2), 2 considering action, 2,5% (category 3), 13 general action, 16,25% (category 4) and 3 specific action, 3,75% (category 5), see supra note. 142.

²³⁴ Ibid.

²³⁵ One, however, was a coalition of 56 Malaysian NGOs.

human rights.²³⁶ Recommendations containing specific action instead tended to originate from other regional groups. Noteworthy is that the SuR chose to accept only 4 out of 48 recommendations made by WEOG States.²³⁷ A majority of the WEOG recommendations that Malaysia rejected were action-oriented (category 5). Hence, it can be noted that the recommendations Malaysia chose to accept were mainly of non-specific character and deriving from its own regional group and members of the NAM. As mentioned above, these recommendations often contained positive comments and acknowledgements of progress achieved in the field of human rights and were often of general and continuing action (category 4 and 2). Examples can be drawn from e.g. China, Nepal and Bhutan which, *inter alia*, noted: '[...] the impressive progress in poverty reduction [...], [...] Malaysia's long-term investments in healthcare, infrastructure, education and its comprehensive human rights system [...]', and recommended: 'that Malaysia continue its efforts to the protection of rights of migrant workers [...]'. The call for continuing efforts were in general very vague and only called for action to the extent the SuR considered this necessary and appropriate as e.g. to: '[...] continue to carry out comprehensive reviews and studies on its existing legislation [...] moving towards accessions of international human rights instruments as it deems appropriate, in the context of its institutional and legal framework, resources, and national priorities'.²³⁸ Finally, the States making interventions without giving recommendations were almost exclusively from the Asian group and members of the NAM. A majority of these statements were also of positive nature.²³⁹

a. Implementation assessment

Malaysia's mid-term assessment states that 23 per cent of the recommendations had been fully implemented and 53 per cent partially implemented.²⁴⁰ Compared to the average results regarding non-implementations within the Asian group,²⁴¹ Malaysia may be considered as having demonstrated extraordinary high implementation rates. Not implemented recommendations predominantly related to the death penalty, international instruments, migrants and asylum-seekers and a majority of these contained a specific action (category 5). However, the SuR also rejected many of these recommendations during the review. In fact, no recommendations relating to asylum-seekers were accepted. Merely two recommendations, originating from members of the NAM, relating to the death penalty were accepted. However, these recommended Malaysia to: 'Continue exercising its sovereign right of adopting national legislation and the penal code, including the application of the death penalty'.²⁴² In regard to international instruments, many WEOG States made action-oriented recommendations to Malaysia to become a party to, or ratify core international human rights treaties. However, only a few, non action-oriented recommendations, on the issue were accepted, *inter alia*, asking for Malaysia to: 'Continue with efforts to promote and protect human rights according to international commitments and religious and cultural specificities'.²⁴³

At first glance, Malaysia's high level of implementation gives the impression of that progress has been made regarding the human rights situation on the ground. However, after an assessment of the implemented recommendations, it stands clear that the initial picture might be misleading. Indeed covering important issues; poverty and women's and children's rights, a majority of the recommendations that had triggered an action by mid-term nonetheless were of non-specific character. The recommendations that were not accepted or imple-

²³⁶ See e.g. recommendations made by the Philippines, Myanmar, Morocco, Oman, Lao People's Democratic Republic, Indonesia, India and Cambodia. See Working Group Report, Malaysia, 2009, paras. 36, 30, 31, 42, 25, 68, 91 and 28.

²³⁷ All 4 of them originating from Turkey.

²³⁸ Recommendation made by Bhutan. See Working Group Report, Malaysia, para. 104 (5).

²³⁹ See e.g. statements made by delegations of Brunei, China, Viet Nam, Thailand, Singapore and Pakistan., *Ibid.*, paras. 19, 26, 27, 29, 32 and 40.

²⁴⁰ *Supra* note. 144.

²⁴¹ Average level of non-implementation within the Asian group was around fifty-five per cent, *supra* note. 144.

²⁴² Recommendations made by Egypt and Sudan. See Working Group Report, Malaysia, paras. 61 and 23.

²⁴³ Recommendation made by Kuwait. See *Ibid.*, para. 74.

mented, were however in general of more acute and critical nature, relating to *inter alia* the death penalty, asylum-seekers and becoming a party to the core international human rights treaties.

2. Nepal – Characteristics of the review process

So far, Nepal has only been reviewed once, in January 2011.²⁴⁴ A total of twenty different stakeholders were involved in the review process, nineteen representing the civil society and one representing a NHRI. The *troika* consisted of the Republic of Moldova, Cuba and Qatar.²⁴⁵ Nepal received 193 recommendations and accepted 146. The main issues addressed during the session were (i) rights of the child, (ii) women's rights and (iii) justice.²⁴⁶ Due to time constraints, six countries had to deliver their statements after the review session.²⁴⁷ Nepal received a high number of non-specific (category 2 and 4) and positive recommendations, mainly from other Asian States and members of the NAM.²⁴⁸ A majority of the recommendations Nepal chose to accept were also the category 4 recommendations, originating from the same group of States.²⁴⁹ Most of the action-oriented recommendations derived from the WEOG and Nepal rejected many of these.²⁵⁰ Further, a recurring theme in how statements were delivered can be observed. Asian States and NAM members generally started their statements with *welcoming* or *commending* certain progress or steps taken, e.g. Cambodia which: '[...] welcomed Nepal's commitment to human rights [...] and [...] appreciated Nepal's openness with human rights mechanisms' and India which: 'commended Nepal for giving priority to human rights [...] and [...] expressed its support for [...]'.²⁵¹ States from the WEOG, on the other hand, took on a more straightforward approach. Although, perhaps expressing positive comments at a later stage, they in general started with an expression of concern or a question: 'France expressed concern regarding infringements to freedom of expression [...]' and Denmark insisted on the importance of putting an end to impunity [...].²⁵²

a. Implementation assessment

By mid-term, Nepal demonstrated partial implementation of approximately 33 per cent. However, it also demonstrated a high number of non-implementations; approximately 65 per cent. Fully implemented recommendations were only 2 per cent.²⁵³ The SuR did not submit a mid-term report, nor engage in the follow-up assessment. Consequently, its mid-term assessment was based on information from NGOs and other stakeholders. A majority of the recommendations that had triggered an action by mid-term were of continuing and general character (category 2 and 4).²⁵⁴

²⁴⁴ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Nepal, UN Doc. A/HRC/17/5, 27 January 2011 (hereinafter Working Group Report, Nepal (2011), para. 1.

²⁴⁵ Ibid.

²⁴⁶ Supra note. 142.

²⁴⁷ Working Group Report, Nepal, para. 19.

²⁴⁸ See e.g. recommendations from Lao's Peoples Democratic Republic, Singapore and Pakistan which all encouraged Nepal to share experiences and best practice or continue an effort. Ibid., paras. 63, 31 and 73.

²⁴⁹ 4 minimal action, 2,7% (category 1), 27 continuing action, 18,5% (category 2), 2 considering action, 1,3% (category 3), 71 general action, 48,5% (category 4) and 42 specific action, 29% (category 5), supra note. 142.

²⁵⁰ A total of 80 recommendations originated from the WEOG and 30 of these were noted, not accepted, by Nepal. Nepal received a total of 75 recommendations of specific action character (category 5) and 49 of these originated from WEOG States, supra note. 142.

²⁵¹ Working Group Report, Nepal, 2011, paras. 38 -39.

²⁵² Ibid., paras. 64 and 80. See also e.g. Switzerland that was concerned about impunity and Finland and Austria that asked about steps taken in regard to specific issues, paras. 33 and 36.

²⁵³ Supra note. 144.

²⁵⁴ However, around 23 % were of category 5, supra note. 142 and 144..

3. Concluding remarks

As a preliminary remark can be stated that Nepal, the State demonstrating low implementation results in the Asian group, as the State with the same criterion in the previous examined regional group (Egypt) had a higher involvement of other stakeholders than the State that demonstrated high implementation records by mid-term. Following the same pattern, Nepal also had a higher acceptance rate and accepted a higher level of action-oriented recommendations than its comparing State.²⁵⁵ Similar to the African study, the State with high implementation status, Malaysia, accepted a high level of non-specific recommendations.²⁵⁶ Furthermore, it did not have a particularly significant engagement of NGOs or civil society involved in the process. From both the Malaysian and the Nepalese review can be observed regional and political assistance in avoiding scrutiny. Asian States and NAM members delivered many recommendations of non-specific character. Recommendations originating from the WEOG, often of more specific character, were not accepted to the same degree as those recommendations. Furthermore, States delivering positive statements, without making recommendations, were exclusively regional and political allies. In both cases this took up valuable time, considering that many States could not take the floor due to time restraints.

To summarize, many similarities from the African group could be observed. Besides the aspects presented above, similar to the results in the Asian group, the State with low implementation status has an unstable economy and uncertain political framework. Something that might have been of significant importance as to why the recommendations were not implemented with the same frequency as compared to the State with a more stable political and economic ground.

C. Eastern European Group

Within the EEG, the review processes of Romania and Belarus have been assessed. Both Romania and Belarus are considered developing countries.²⁵⁷ After years of economic growth, Romania suffered badly from the global financial crisis in 2008. A draconian austerity program was launched, which resulted in riots and the dismissal of the Prime Minister Emil Boc in 2012. A period of political instability followed. Nonetheless, Romania has demonstrated slow but steady economic and political recovery, with Prime Minister Victor Ponta. Unlike Romania, Belarus is considered to be a non-free State and the Belarusian government upholds an essential monopoly over the media.²⁵⁸ By declaring independence in 1991, Belarus ended centuries of ruling by Poland, Russia and the Soviet Union. Russia, however, still maintains wide political influence, both in regard to the government and the economy and although Belarus was the wealthiest republic in the former Soviet, the State has, under the authoritarian leadership of Alyksandr Lukashenka, experienced a steady economic decline.²⁵⁹ Globally, it is ranked far down in regard to economic freedom and although it, in 2014, was moved up from the status 'repressed', development of a modern diversified economy is crucial. Romania has, through structural reforms, managed to advance its economy to 'moderately free'.²⁶⁰ Belarus is the sole European member of the NAM.²⁶¹

²⁵⁵ Nepal accepted 75,6% of the received recommendations, while Malaysia merely accepted 54,4%. Further, Malaysia only accepted 3 recommendations of category 5, supra note. 142.

²⁵⁶ Nepal, on the other hand, received, accepted and implemented a significant higher number of action-oriented recommendations than Malaysia did.

²⁵⁷ According to World Bank data, supra note. 187.

²⁵⁸ Freedom House Annual Ranking, supra note. 184.

²⁵⁹ BBC Monitoring, Belarus country profile, supra note. 185.

²⁶⁰ Romania was in 2014, by the Heritage Foundation's Index of Economic Freedom, ranked as number 62, while Belarus had a world ranking as number 150.

²⁶¹ Members of the NAM, supra note. 190.

1. Romania – Characteristics of the review process

Angola, Canada and Bosnia and Herzegovina facilitated Romania's first review on 15 May 2008.²⁶² Romania received a total of 55 recommendations and accepted 52 of these.²⁶³ Twelve of the recommendations contained a specific action (category 5), and 9 of these were accepted.²⁶⁴ The majority of received and accepted recommendations however contained a general action (category 4).²⁶⁵ The main issues during the session regarded (i) minorities, (ii) rights of the child and (iii) international instruments.²⁶⁶ A total of eighteen other stakeholders, sixteen representing civil society and two representing RIOs, contributed with information for the review. Further, six States submitted advanced written questions.²⁶⁷

A majority of the recommendations made originated from the WEOG. Only a very few recommendations, mainly of non-specific character, were delivered by States from the EEG.²⁶⁸ Interventions made by the EEG States, and States from other groups than WEOG, in general *noted, commended* or *welcomed* the efforts or progress made in the field of human rights.²⁶⁹ Statements delivered by WEOG States were of stronger character though, *encouraging* the SuR to *continue its efforts* and *expressing concern* over, mainly, the issue of human rights of the Roma minority.²⁷⁰

a. Implementation assessment

With only 13 per cent of non-implementations and around 50 per cent fully implemented recommendations, Romania demonstrated great results by mid-term.²⁷¹ The few recommendations that were not accepted during the review were exclusively containing a specific action (category 5). However, one of these had, by mid-term, been partially implemented. Considering the high level of recommendations that had triggered an action by mid-term, implementations naturally reflected the characteristics of received recommendations. Hence, many of the recommendations taken action on were of general character (category 4) and relating to the main issues raised during the review.

²⁶² Human Rights Council, Report of the Working Group on the Universal Periodic Review, Romania,, UN Doc. A/HRC/8/49, 19 May 2008 (hereinafter Working Group Report, Romania, 2008), para. 1.

²⁶³ Ibid.; supra note. 142.

²⁶⁴ In total, 12 recommendations were of category 5.

²⁶⁵ 0 minimal action, (category 1), 8 continuing action, 15,5% (category 2), 1 considering action, 2% (category 3), 34 general action, 65,5% (category 4) and 9 specific action, 17% (category 5), supra note. 142.

²⁶⁶ Supra note. 142.

²⁶⁷ Germany, Denmark, Ireland, Sweden, the Netherlands and the United Kingdom of Great Britain and Northern Ireland submitted questions prior to the review, Working Group Report, Romania, 2008, para. 4.

²⁶⁸ Out of eleven recommendations in total, four contained a specific action, while two contained a continuing action and four a general action, supra note. 142.

²⁶⁹ Tunisia commended Romania on its '[...] efforts to promote the rights of the child' and Azerbaijan '*welcomed the democratization process and the progress achieved by Romania in the field of human rights*'. Angola '*welcomed the efforts of Romania to promote and foster human rights [...]*'. Republic of Korea '*noted efforts made [...], expanding freedoms and rights and paying particular attention to the protection of the human rights of children and families*.' Bangladesh '*commended Romania on steps taken towards democratization, including its efforts the area of human rights*'. See also e.g. Mexico, Morocco, China, Turkey, Senegal, Guatemala, Philippines, Japan and Egypt. See Ibid., paras. 18, 23, 26, 38, 28, 15, 17, 31, 30, 39, 41, 44 and 53.

²⁷⁰ UK remained concerned that Roma still do not enjoy full equality of access to education and asked about steps taken to address this issue. France encouraged Romania to better integrate Roma with regard to housing, health and education, Ibid., paras. 22 and 24.

²⁷¹ Supra note. 144.

2. Belarus – Characteristics of the review process

Norway, the Philippines and Senegal facilitated the first review of Belarus in May 2010.²⁷² 29 other stakeholders contributed with information for the review and advanced questions were submitted by nine delegations.²⁷³ Over 80 States sought to make comments during the interactive dialogue. However, 31 delegations were time-barred and therefore commented on the extranet.²⁷⁴ A total of 169 recommendations were made and Belarus accepted 124 of these. A majority of the recommendations related to (i) international instruments, (ii) women's rights and (iii) death penalty and civil society. Most of these were of general action character (category 4), closely followed by specific action character ones (category 5).²⁷⁵ The regional group making most recommendations was the WEOG. Similar to the Romanian case, a clear distinction as to how statements were delivered by different regional groups could be observed. Statements delivered by States from the WEOG were in general of more specific (category 5) and critical character, frequently *expressing concern* about certain issues.²⁷⁶ These recommendations were however, to a high degree, not accepted by Belarus. Recommendations made by Russia, China and members of the NAM, on the other hand, frequently *commended, congratulated, acknowledged efforts* or *noted progress or commitment* mainly in regard to ESC-rights, including the right to work, health and education.²⁷⁷ These, often non-specific recommendations, were also to a higher degree accepted by Belarus. Only a very few States from the same regional group as the SuR, the EEG, made recommendations – however, also in a more positive approach and of non-specific character.²⁷⁸

a. Implementation assessment

By mid-term, Belarus demonstrated around 81,5 per cent of not implemented recommendations. Only one per cent were fully implemented, while 17,5 per cent of the recommendations were partially implemented.²⁷⁹ The SuR did not participate in the mid-term assessment. It did, however, submit a mid-term report where it claimed to have implemented over 70 per cent of the recommendations accepted during the first UPR cycle.²⁸⁰ A fact where large discrepancies can be observed with respect to the information submitted by ten NGOs within the framework of the mid-term assessment²⁸¹ A majority of the recommendations that had triggered an action

²⁷² Human Rights Council, Report of the Working Group on the Universal Periodic Review, Belarus, UN Doc. A/HRC/15/16, 14 May 2010 (hereinafter Working Group Report, Belarus, 2010), para. 1, f.

²⁷³ Ibid., para. 4.

²⁷⁴ Ibid., para. 21.

²⁷⁵ 3 minimal action, 1, 78% (category 1), 46 continuing action, 27, 22% (category 2), 16 considering action, 9, 47% (category 3), 54 general action, 31, 95% (category 4) and 50 specific action, 29, 59% (category 5), data gathered from UPR-Info database, supra note. 142.

²⁷⁶ See e.g. Austria express '[ing] concern about the use of torture, judicial procedures falling short of fair trial, and cases of unlawful detention and Hungary which 'noted with concern anomalies in the fields of torture, ill treatment and prison conditions; the right to freedom of assembly, expression, association and religion.' Ireland 'expressed concern about reports concerning the arbitrary application of registration standards, the harassment and closure of nongovernmental organizations, the right to freedom of association, and the continuing difficulties faced by independent newspapers in being registered.' Belgium remained concerned about the situation of human rights, despite a number of positive developments since 2008. See also e.g. Finland, Canada, and the Netherlands, Ibid., paras. 40, 45, 73, 78, 82 and 85.

²⁷⁷ See Russia, the United Arab Emirates, Tunisia, Algeria, Bahrain, Egypt, Singapore, the Lao People's Democratic Republic, Morocco, China and Qatar, Cuba, Bolivia and Singapore, Ibid., paras. 23, 25, 27, 28, 29, 32, 33, 39, 43, 46, 47, 38 and 44.

²⁷⁸ See e.g. Armenia, Lithuania and Poland, Ibid., paras. 51, 31 and 81.

²⁷⁹ Supra note. 144.

²⁸⁰ The mid-term report is only available in Russian. An additional document was however submitted in which Russia claimed an implementation status of over 70 %. The document is available at: <http://www.upr-info.org/followup/assessments/session22/belarus/Belarus-State-abstract.pdf>.

²⁸¹ Worth mentioning is that the implementation status is calculated on the basis of both stakeholders and the SuR's information on implementation. If the SuR claims that the recommendation has been fully implemented

by mid-term were of general character (category 4). No action had been taken on recommendations containing a specific action (category 5). The main issues raised during the review were not properly reflected in the implementation status, but were instead mainly regarding women's rights, children's rights and trafficking.²⁸²

3. Concluding remarks

From both the above-examined reviews could be observed a high level of other stakeholders participating in the process. Similar to previous case studies, the State demonstrating low implementation status, Belarus, accepted a higher level of recommendations during the review compared to the State demonstrating better results. Following the same patterns as the above assessed regional groupings, Belarus also received and accepted a higher level of action-oriented recommendations than Romania. From both reviews it appears as if political and regional elements were present. Western States took on a more confrontational and straightforward role than others. From the Belarus review it was particularly clear that States from the NAM and other allies sought to simplify the process for the SuR. Questions submitted prior to the review were also exclusively prepared by Western States. When considering the low implementation status of Belarus, one should however bear in mind that it is considered to be a non-free State and demonstrates limited economic freedom compared to the State it is being compared to. Likewise, there are aspects that need to be considered in respect to the high-demonstrated results of Romania. Firstly, although all recommendations were responded to for the mid-term assessment, it was only the State and no other stakeholders that commented on a majority of them.²⁸³ Secondly, as mentioned above, a very low number of recommendations contained action-oriented recommendations (category 5). Lastly, Romania was reviewed when the mechanism was still in its early phase, during the second session.

D. Latin American and Caribbean Group

Chile is considered to be a free State, while Mexico only is considered to be partly free.²⁸⁴ A significant reason as to why the latter, in the report of 2014, is considered as only partly free ought to depend on both the fact that numerous allegations regarding severe human rights violations had occurred and that uncountable cases of disappearances have been registered between 2007 and 2012.²⁸⁵ Chile is ranked as number seven regarding economic freedom in the world, just above Mauritius, while Mexico appears as the 55th freest country.²⁸⁶ Chile is a full member of the NAM group, while Mexico holds only observer status.²⁸⁷

1. Chile – Characteristics of the review process

Facilitated by Cuba, Qatar and Senegal, the first review of Chile was held on 8 May 2009.²⁸⁸ Chile received 122 recommendations and accepted a remarkable number of 95 per cent of these.²⁸⁹ Main issues addressed were (i) indigenous peoples, (ii) women's rights and (iii) justice.²⁹⁰ Most of the recommendations received, and also

and a stakeholder claims it only has been partially implemented, more weight is given to the States' view on the issue., supra notes. 142 and 144.

²⁸² C.f. main issues raised during the review: international instruments, women's rights, death penalty and civil society.

²⁸³ UPR-Info, 'Mid-term Implementation Assessment Report, Romania, p. 3.

²⁸⁴ Freedom House Annual Ranking, supra note. 184.

²⁸⁵ Human Rights Watch, Report February 2014.

²⁸⁶ According to World Bank data, supra note. 187.

²⁸⁷ Members of the NAM, supra note. 190.

²⁸⁸ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Chile, UN Doc. A/HRC/12/10, 12 May 2009 (hereinafter Working Group Report, Chile, 2009), para. 1, f.

²⁸⁹ 116 accepted recommendations, UPR-Info database.

²⁹⁰ Ibid.

accepted, contained a general action (category 4).²⁹¹ A total of twelve other stakeholders, eleven representing civil society and one RIO, submitted information prior to the review.²⁹² The regional group making most recommendations to Chile was the WEOG and, although contributing with a remarkably lower number of recommendations, the GRULAC was the second largest one.²⁹³ Recommendations delivered by countries from the GRULAC were all of different character and no difference in approach regarding the interventions made by States from different regional groups could be observed from the interactive dialogue.

a. Implementation assessment

By the time of mid-term, Chile had fully implemented 32 per cent of the recommendations and partially implemented as many as 47 per cent.²⁹⁴ Hence 79 per cent of the recommendations received during the review had triggered an action by mid-term. Nevertheless, many of the recommendations that had not been addressed were however of action-oriented character (category 5) and relating to indigenous peoples and justice; two of the most raised issues during the review.

2. Mexico – Characteristics of the review process

During the first UPR cycle, Mexico was reviewed on 10 February 2009.²⁹⁵ Nicaragua, Pakistan and South Africa were overseeing the review. Prior to the interactive dialogue, a total of eighteen stakeholders provided information about the human rights situation in the State. Of these, one was a NHRI and the other seventeen represented civil society.²⁹⁶ During the interactive dialogue, 48 States made 159 recommendations of which Mexico accepted 147. Eight States were time-barred and could thus not deliver their statements during the dialogue.²⁹⁷ Recommendations mainly concerned (i) women's rights, (ii) indigenous peoples and (iii) justice and in general contained a general action (category 4).²⁹⁸ Similar to the review of Chile, States from WEOG delivered a majority of the recommendations, followed by States from GRULAC. No difference in approach or strength or specificity in recommendations deriving from different regional groups could be observed from the interactive dialogue. Mexico chose to not accept only 12 recommendations – all of different character and from different regional groups.

a. Implementation assessment

After two and a half years, Mexico demonstrated a non-implementation status of approximately 70 per cent of its accepted recommendations. Fully implemented recommendations were not even one per cent while partial implementations were around 29 per cent.²⁹⁹ The recommendations not taken action upon were all of different

²⁹¹ 0 Minimal action (category 1), 20 continuing action, 17,5% (category 2), 14 considering action, 12% (category 3), 50 general action, 43% (category 4) and 32 specific action, 27,5% (category 5), supra note. 142.

²⁹² Human Rights Council, Summary 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, Chile, UN Doc. A/HRC/WG.6/5/CHL/3, 19 February 2009.

²⁹³ Supra note. 142.

²⁹⁴ Supra note. 144.

²⁹⁵ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Mexico, UN Doc. A/HRC/11/27, 13 February 2009 (hereinafter Working Group Report, Mexico, 2009), para. 1.

²⁹⁶ Human Rights Council, Summary 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, Mexico, UN Doc. A/HRC/WG.6/4/MEX/3, 3 December 2008.

²⁹⁷ Albania, Australia, Bosnia and Herzegovina, Czech Republic, Greece, Lebanon, Liechtenstein and Slovenia, Working Group Report, Mexico, 2009, para. 22.

²⁹⁸ Out of the accepted recommendations 1 contained minimal action, 0,5% (category 1), 21 continuing action, 14,3% (category 2), 4 considering action, 2,7% (category 3), 85 general action, 58% (category 4) and 36 specific action, 24,5% (category 5), supra note. 142.

²⁹⁹ Supra note. 144.

character, i.e. no specific pattern could be identified in regard to non-implementations being of e.g. action-oriented character (category 5).

3. Concluding remarks

The reviews assessed in this case study, does not follow many of the patterns possible to observe from previous examined regional groups. Indeed, the State demonstrating low implementation status accepted a higher number of recommendations during the review than the State demonstrating good results. However, the level of accepted action-oriented recommendations were approximately the same within both reviews. Further, there is no significant difference regarding involvement of NGOs and civil society. Nor could be observed any specific approaches from different regional groups during the interactive dialogue. Finally, the number of non-accepted recommendations was low in both cases and did not seem to particularly relate to a specific group, issue or character of recommendation. The main issues raised during both reviews were the same. However, when considering the different States economical and political backgrounds, it appears that Chile is more likely to have adequate financial means to implement recommendations, which was also demonstrated through the results.

E. Western European and Others Group

Freedom House ranks both Portugal and the United States as free States in regard to political rights and civil liberties.³⁰⁰ Further, both States are considered as 'economically free', although the United States is ranked higher than Portugal.³⁰¹ Portugal was, for almost half of the twentieth century, a dictatorship. In 1974, the Revolution of the Carnations however ushered in new democracy. It became a member of the EU in 1986 and the following decade it experienced solid economic growth, although far below European average. The financial crisis in 2008 hit Portugal hard and in 2011 it had to ask international lenders for emergency assistance.³⁰² The United States, on the other hand, is the world's foremost economic and military power often associated with rhetoric to spread democracy but also to protect its national self-interest. Although it is economic freedom is ranked high up on the world list, it is worth mentioning that during the last ten years, its economic freedom has suffered a dramatic decline.³⁰³ Worth mentioning here is also that, the United States, exercise unique power and influence within the UN organization by virtue of its status as a permanent member of the UN Security Council.³⁰⁴

1. Portugal – Characteristics of the review process

During the first UPR cycle, Portugal was reviewed in November 2009.³⁰⁵ Belgium, Hungary and Qatar were selected to facilitate the review. Merely three stakeholders contributed with information prior to the review, one of which represented a RIO and two the civil society.³⁰⁶ During the interactive dialogue, recommendations mainly focused on (i) international instruments, (ii) rights of the child and (iii) minorities. Women's rights were also a matter that was debated with the same frequency as minorities' issues.³⁰⁷ Statements were made by 47 delega-

³⁰⁰ Freedom House Annual Ranking.

³⁰¹ The United States is ranked as number 12, while Portugal is ranked as number 69 and considered as 'moderately free'.

³⁰² BBC Monitoring, country profile Portugal, *supra* note. 185.

³⁰³ BBC Monitoring, country profile United States, *supra* note 185.

³⁰⁴ Article 23, the UN Charter.

³⁰⁵ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Portugal, UN Doc. A/HRC/13/10, 8 December 2009 (hereinafter Working Group Report, Portugal, 2010), para. 1.

³⁰⁶ Human Rights Council, Summary 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, Portugal, UN Doc. A/HRC/WG.6/6/PRT/3, 3 August 2009.

³⁰⁷ Information obtained from UPR-Info database.

tions, and many of these commended Portugal on its commitment to the promotion and protection of human rights, particularly ESC-rights.³⁰⁸ 115 recommendations were made and Portugal accepted 108 of these.³⁰⁹ A majority of the recommendations made originated from countries within the same regional group as Portugal, the WEOG. The recommendations not accepted were mainly originating from Africa and Asia and relating to international instruments and labour.³¹⁰ Most of the received, and accepted recommendations, regarded a general action (category 4).³¹¹ During the interactive dialogue, most States started their interventions with *welcoming* improvements, *recognizing* efforts or *commending* efforts and no difference in regard to different regional groups could here be observed.

a. Implementation assessment

Portugal voluntarily submitted a mid-term report in 2012 and its mid-term assessment demonstrated that partially implemented recommendations were around 43 per cent and fully implemented recommendations around 38 per cent.³¹² Hence, 81 per cent of the recommendations had triggered an action by mid-term. The recommendations that had not been implemented were exclusively of action-oriented character (category 5) and a majority of these were recommending Portugal to ratify or to become a party to different international instruments.³¹³ However, the SuR stated its full commitment to these recommendations and expressed that the process of ratification should be completed soon.³¹⁴

2. The United States – Characteristics of the review process

The United States has only been reviewed once so far, in November 2010. The three States that formed the *troika* during its review were Cameroon, France and Japan.³¹⁵ A remarkable large number of other stakeholders, a total of 103, submitted information regarding the human rights situation in the country prior to the review. One of these one was a RIO and five were Academic Groups. The rest were acting on behalf of civil society.³¹⁶ Out of the 280 recommendations made, the SuR accepted 183. Statements coming from 27 countries had to be delivered through the extranet after hand, since they were time-barred during the interactive dialogue.³¹⁷ In comparison to the States examined above, the accepted recommendations predominantly consisted of a remarkable high number of considering action (category 4) and specific action (category 5).³¹⁸ The main issues addressed in the interactive dialogue were (i) international instruments, (ii) detention conditions and (iii) rights

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ Ibid.

³¹¹ Out of the accepted recommendations 2 contained minimal action, 1,8% (category 1), 14 continuing action, 13% (category 2), 4 considering action, 3,7% (category 3), 64 general action, 59,25% (category 4) and 24 specific action, 22,25% (category 5), Ibid.

³¹² Ibid.

³¹³ *Inter alia*, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

³¹⁴ UPR-Info, Mid-term Implementation Assessment, Portugal, p. 3.

³¹⁵ Human Rights Council, Report of the Working Group on the Universal Periodic Review, United States of America, UN Doc. A/HRC/16/11, 9 November 2010 (hereinafter Working Group Report, US, 2011), para. 1, f.

³¹⁶ Human Rights Council, Summary 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, United States,, UN Doc. A/HRC/WG.6/9/USA/3, 20 August 2010.

³¹⁷ Colombia, Panama, Argentina, Chile, Paraguay, Slovenia, Nepal, Rwanda, Chad, Bhutan, Kuwait, Belarus, Peru, Timor- Leste, Latvia, Jordan, South Africa, Iraq, Ukraine, Nigeria, Burkina Faso, Cameroon, Afghanistan, Burundi, the former Yugoslav Republic of Macedonia, Mauritius and Namibia, Working Group Report, US, 2011, para. 5.

³¹⁸ Out of the accepted recommendations 0 contained minimal action (category 1), 8 continuing action, 4,3% (category 2), 25 considering action, 13,6% (category 3), 78 general action, 42,6% (category 4) and 72 specific action, 39,5% (category 5), supra note. 142.

of the child, although issues concerning the death penalty also were highly discussed.³¹⁹ In contrast to the other regional groups examined, more recommendations could be interpreted as calls for action founded in politics rather than objective statements regarding fulfilment of international human rights standards.³²⁰

A majority of the recommendations made during the review were of specific- oriented nature and mainly made by countries from the GRULAC and WEOG.³²¹ These States were, in general, not restrained in terms of delivering negative comments. Unwillingness by the SuR to ratify all core treaties was a major issue raised by many, especially with respect to the Convention on the Rights of the Child. Venezuela expressed the hope that President Obama would *'make a commitment to human rights'*. Iran expressed concern over the situation of human rights and systematic violations by the United States. Nicaragua stated that: *'[...] the United States had violated human rights while pretending to be the world's guardian of human rights'*.³²² Furthermore, France, Venezuela, Egypt, Ireland, China, Viet Nam and Switzerland called for the urgent closure of Guantanamo Bay, something promised by the United States, yet not executed by the time of review (or by the time of writing). With the exception of the very negative comments made by many States, the Russian Federation *'[...] positively assessed [...] efforts to eliminate a number of human rights violations that had been committed in the course of the "fight against terrorism" [...]'*. Furthermore, some States, mainly from the Asian Group, presented positive comments where they, *inter alia*, commended or appreciated the United States for its commitment to human rights.³²³

a. Implementation assessment

By mid-term, the United States demonstrated a non-implementation status of 83 per cent. Fully implemented recommendations were only two per cent.³²⁴ However, worth mentioning here is that the SuR did not itself contribute with any information for mid-term assessment. Thus, the implementation record is merely based on information submitted by other stakeholders. A majority of the 28 partially implemented recommendations were of general character (category 4).³²⁵ However, out of the three fully implemented recommendations, one was of specific-action character recommending to: *'Prohibit expressly the use of racial profiling in the enforcement of immigration legislation'*. On the other hand, information submitted by NGOs for the mid-term assessment stated that racial profiling de facto continues throughout the country considering that undocumented immigrants often are being stopped by local police not covered by federal ban on racial profiling.³²⁶ Accordingly, the only recommendation of specific character that had been taken action upon by mid-term might have been only a formal change, not leading to a substantial impact on the ground anyway.

3. Concluding remarks

As a preliminary remark can be noted that the United States, the State demonstrating low implementation status in this study, compared to States meeting the same criteria in the other groups, have better economy than Portugal and thus better means to ensure implementation of recommendations. In that aspect, it deviates from the pattern implying that better financial resources will lead to good implementation results. Following previous patterns however, The United States received a higher number of recommendations than Portugal did

³¹⁹ Supra note. 142.

³²⁰ Working Group Report, US, 2011, supra note. 144.

³²¹ Ibid.; supra note. 142.

³²² Working Group Report, US, 2011, Ibid., paras. 9, 10 and 12. Note that Venezuela, Iran and Nicaragua all are members of the NAM.

³²³ See e.g. statements and recommendations made by Malaysia, Brazil, The Republic of Korea, Israel and Japan, Ibid., 24, 25, 27, 79 and 80.

³²⁴ Supra note. 144.

³²⁵ 5 recommendations were of category 3, 16 of category 4 and 7 of category 5, supra notes. 142 and 144.

³²⁶ UPR-Info, 'Mid-term Implementation Assessment Report, United States', 14, f.

during the review. Nonetheless, it also chose to reject many of these, often action-oriented recommendations. Portugal, on the other hand, accepted a majority of the recommendations it received, although the most of the ones rejected were of action-oriented character (category 5). As has been seen in other regional groups, the State with high implementation status did not experience an impressive engagement from other stakeholders in the process. This was particularly true in the current study where Portugal only had engagement from three other stakeholders and the United States from a total of 103. Finally, it appears that the United States attracted many negative comments in comparison to Portugal (and in comparison to other States examined within the framework of this thesis). These negative comments mainly originated from NAM members and GRULAC and WEOG States. A number of possible reasons, especially grounded in international politics and diplomacy, could be the reason for this. For instance, the NAM group includes many United States critics.³²⁷

F. Final Remarks Case Studies

Although it already entered into its second cycle, it appears it still might be too early to assess the impact of UPR on human rights globally. From the above section, providing an overview and surveying the interactive dialogues from ten different States from all the UN regional groups, it however stands clear that this relatively newborn UN mechanism contributes with something new and exciting on human rights monitoring. Today, no system of measuring human rights performance exists. However, when examining the above elected States, comparatively good performance could be identified with some States compared to others. The figure below seek to demonstrate the findings from the above studies with regard to aspects identified within reviews of States able to demonstrate a better implementation status than the States they were compared to.

COMPREHENSIVE OVERVIEW

HIGH IMPLEMENTATION STATUS

- Lower number of received recommendations
- Lower involvement of other stakeholders, such as civil society and NGOs, in the process.
- Lower obtainment of recommendations containing a specific action (category 5)
- Better financial resources*

LOW IMPLEMENTATION STATUS

- Higher number of received recommendations
- Higher involvement of other stakeholders, such as civil society and NGOs, in the process.
- Lower obtainment of recommendations containing a specific action (category 5)
- Weaker economic resources*

*Note however that this was not the case within the WEOG group (see further discussion on this in section 4.5.3).

When assessing the above findings, it is important to bear in mind that the human rights situation in every country is unique and that the distinction between States' success and failure in implementing recommendations has been created in order to enable further studies. As the above observations have demonstrated, a State demonstrating high implementation status does not necessarily suggest an improvement of the human rights situation on the ground

Although a number of common themes could be noted within the reviews of the States that demonstrated high status and vice versa, the results of this study suggest that the answer as to what aspects that promotes im-

³²⁷ CBC News, 'Non-aligned nations slam U.S, 16 September 2006, available at: <http://www.cbc.ca/news/world/non-aligned-nations-slam-u-s-1.599827>.

plementation is not clear cut. States demonstrating high implementation status appear to receive and accept a lower level of recommendations, in general of non-specific character, than States with poor implementation rates. Although, in general, better financial conditions and to a greater extent considered as free States, it appears as if many of the States demonstrating high implementation rates have adopted a strategy whereby they accept many non-specific recommendations. In general, implementations of these recommendations are difficult to assess and their vague nature requires little effort by the SuR.³²⁸ On the other hand, compliance with international human rights standards is easier to systematize within richer more democratic States. Despite the typical need for implementation of human rights within poorer countries, these are, due to lack of resources, less likely to be a priority.³²⁹ This might explain the fact that States with better financial resources³³⁰ tended to receive less recommendations, generally of non-specific character, than States with limited resources.³³¹

Higher involvement of NGOs and civil society in the process could also be noted within the States demonstrating poor results. Following the same argument as above, a possible reason for this finding might be that these, often non-developed and financially challenged, States attracts more attention of other stakeholders wishing to address and resolve issues within the country. Most likely, this also contributes to a higher level of transparency regarding the human rights situation in the country, which could affect the number of recommendations made.

A major threat to the effectiveness of the monitoring mechanism could be observed within regional and political alliances that seemed to act to avoid attention or special scrutiny of sensitive issues. A North-South divide could be noted where developing States often sought to stay away from denunciation, instead focusing on vague, non-specific recommendations. Western States, on the other hand, were more straightforward in their approach and made more action-oriented recommendations. From the African and Asian case studies it appeared specifically clear that regional States and NAM and OIC members sought to protect allies.³³² For all reviews examined above, questions were submitted in advance to the *troika*. However, these were exclusively submitted by Western States and, since States are not obliged to answer questions during the review, they were not answered during the reviews.³³³

On the same theme, manipulation of the speaking time could be observed in several reviews. Regional and political alliances making positive interventions, often not even culminating in recommendations, took up valuable time, which resulted in that many delegations had to submit written statements or recommendations after hand.³³⁴ States from the WEOG tended to use time allocated most effectively, in general limiting their statements to questions, criticism or specific recommendations.

To summarize, most States have demonstrated engagement in the review process,³³⁵ including those examined in the above case studies. The engagement as such demonstrates willingness to accept international scrutiny of human rights situations. However, based on the above observations, it stands clear that politicisation and bias, elements that sought to be avoided through the creation of the Council, are present within the UPR process; negatively affecting its efficiency to fulfil its key objective in changing human rights on the ground.

³²⁸ Hickey (2013), p. 6.

³²⁹ Freedman (2013), p. 10.

³³⁰ In general States that demonstrated high implementation status.

³³¹ In general States that demonstrated low implementation status.

³³² See above presented case studies of Mauritius, Egypt, Malaysia and Nepal.

³³³ Supra note. 144.

³³⁴ See case studies of Egypt, Malaysia, Mexico, Belarus and the United States.

³³⁵ The first UPR cycle demonstrated a 100% participation rate.

G. A few remarks on the Second UPR Cycle

The second UPR cycle commenced in 2012 and is now half way through its process.³³⁶ It is therefore of relevance to make a few remarks. During the first cycle of the UPR, a total of 21 356 recommendations were made. So far, during the second session, a total of 16 942 recommendations have been made, which indicates an increase of recommendations. Furthermore, an increase of action-oriented recommendations (category 5) can be noted.³³⁷ During the first cycle, 39 countries chose to not make any recommendations, a number that so far, over the course of seven sessions, have decreased to a number of 31 countries.

Ideally, the number of recommendations would have been lower during the second cycle, leaving room for more tailored and action-oriented recommendations. However, although it seems as if the total numbers of recommendations will have been higher during the second cycle, action-oriented recommendations seem to face a steady increase. On the other hand, there has been no increase of advanced written questions prior to the dialogue.³³⁸ Nor does it seem as if the UPR reform process resolved any major deficiencies identified from the first cycle. The issue of manipulation of speaking time during the interactive dialogue sought solution by giving all States an opportunity to take the floor. However, merely three and a half hours are still allocated for the dialogue, and this might instead result in low quality and reiterative statements, especially in the light of the increased number of recommendations.³³⁹ Furthermore, higher influence of NGOs has not been enhanced for the second cycle.

A crucial step forward for the UPR is the increased mid-term reporting that can be noted so far during the second cycle.³⁴⁰ When creating the UPR, the intention was for States to continue working on both accepted and noted recommendations during the implementation phase.³⁴¹ However, the reform of the Council in 2011 stated that: '*The second and subsequent cycles [...] should focus on, inter alia, the implementation of the accepted recommendations [...]*'.³⁴² Consequently, SuRs refer to accepted recommendations when accounting for which recommendations they are taking action on. The review mechanism would become toothless if only accepted recommendations were considered at mid-term reports and subsequent reviews. Furthermore, it is clear that States *do* implement noted recommendations.³⁴³ Therefore, rejected (noted) recommendations should be considered throughout the entire process, in order to enable consideration on progress made relating to *all* issues identified during the first cycle.

Finally, the most concerning challenge raised during the second cycle has been the case of non-cooperation, when Israel in 2013 became the first country to refuse to attend its review session.³⁴⁴ The Council decided to

³³⁶ A majority of the States examined in the above case studies have been reviewed within the second cycle; Mauritius, Egypt, Malaysia, Romania, Russia, Chile, Mexico and Portugal. The second cycle of the UPR started in May 2012, and will hold its last session in 2016.

³³⁷ Over a period of 12 sessions, during the first cycle, 7 731 action-oriented recommendations were made. So far, over a period of seven sessions, 5 407 recommendations containing specific action have been made. The 19th session during the second cycle has demonstrated the highest number of recommendations made so far.

³³⁸ *Supra* notes. 142 and 144.

³³⁹ A better solution would have been to establish clear rules in regard to recommendations and give more authority to the role of *troika*. See suggestions for improvement in chapter 5.2.

³⁴⁰ At the time of writing, 50 States had submitted mid-term reports related to the first UPR cycle.

³⁴¹ HRC Resolution 5/1, para. 34.

³⁴² HRC Resolution 16/21, para. 6.

³⁴³ See e.g. Ireland. During its UPR in 2011 it was recommended to: '*Introduce legislation to implement the European Court of Human Rights judgement in the A, B and C vs. Ireland case*'. This recommendation was rejected (noted) by the SuR but, however, fully implemented by mid-term.

³⁴⁴ See discussion in chapter 2.3.5.

postpone the review, a response that some argue was regrettable.³⁴⁵ The decision was adopted by consensus by the Council and the steps outlined were intended to work as a precedent for future cases of non-cooperation.³⁴⁶ However, postponing a review because a State is not present could send out worrying signals to other States and consequently make it very easy to not cooperate with the mechanism.³⁴⁷ Clear guidelines would instead be desirable to be developed in order to be able to address situations of persistent non-cooperation.

V. Discussion and Conclusions

A. General Remarks

Let us return to the question of whether the UPR can be considered as efficient from an international legal and human rights perspective. Arguing from a point of departure where efficiency of the monitoring mechanism can only be measured by the improvement of the human rights situation on the ground,³⁴⁸ the mid-term results from the first UPR cycle, demonstrating that 48 per cent of the recommendations made were either partially or fully implemented, indeed can be considered an achievement. However, this study has shown that this initial picture, creating an idea of that great results have been accomplished on the ground, might be misleading. A number of elements that undermine credibility and effectiveness of the mechanism have been identified. Firstly, procedural aspects allowing for manipulation of the review process is an unfortunate fact. Secondly, it has been noted that politics is intimately related to the review process. Thirdly, lack of real engagement, flowing from the non-confrontational approach of the mechanism, has been observed.

The UPR was created to 'improve the human rights situation on the ground', by ensuring universal examination of all States.³⁴⁹ Although implementation might be the most concrete demonstration of the effectiveness of the UPR, many other benefits seem likely to follow from the process. This includes *inter alia* the development of the general understanding of the universal standards States should meet with respect to international human rights law. It may therefore be difficult to measure the overall effectiveness of the mechanism, considering it might need more time in order to be able to demonstrate tangible positive results. However, for now, it appears as if the mechanism is moving towards a direction in which the same aspects that caused the abolishment of the Commission are growing. Based on the above findings, it appears as if the founding principles of the UPR, universality, non-selectivity and lack of bias, are absent within the review mechanism.

It stands clear that the Council has been characterized by the similar struggles of politicisation and selectivity as its predecessor. Establishing a new institution, with just a 'soft' membership criterion to solve the issue of selectivity and bias has clearly not solved any concerns, as demonstrated by the use of special sessions within the work of the Council. The recurring focus on Israel and exclusion of other grave and systematic human rights violations demonstrates that the Council does not fulfil its mandate in a transparent, non-selective, inclusive and de-politicised manner. Furthermore, accepting gross human rights violators as members of the Council can seriously harm the credibility of the body and the monitoring mechanism.

In conclusion, the execution of recommendations, more or less, depends on the political interests of the SuR rather than the fear of plausible sanctions. However, as the case studies in this thesis have demonstrated, there are certain procedural elements that might negatively influence the implementation levels of the States.

³⁴⁵ See e.g. UPR-Info, Non-cooperation with the UPR: Paving the way, 18 March 2013, available at: <http://www.upr-info.org/en/news/non-cooperation-upr-paving-way>.

³⁴⁶ Decision OM/7/L.1.

³⁴⁷ See e.g. UPR-Info (2013).

³⁴⁸ See e.g. Sweeney and Saito, arguing that the only true measure of success of the overview mechanism is whether States implement recommendations and submit follow-up information on this, Sweeney and Saito (2009), p. 203.

³⁴⁹ HRC Resolution, paras. 3 (c) and 4 (a).

It should be stressed that the UPR is an intergovernmental, non-confrontational political system without effective accountability and thus is at risk of exploitation and abuse. The procedural suggestions presented for efficiency improvements (see below) must therefore be considered in light of this particular structure of the mechanism.

B. Suggestions for Efficiency Improvements

As a State-driven mechanism, the UPR is also an intergovernmental mechanism.³⁵⁰ Consequently, political sensitivity and complexity is deeply influencing its work.³⁵¹ Attempts to redress the Council's and the UPR's shortcomings must therefore take this into account. Without undermining the intergovernmental element and the basic elements of universalism and equality of scrutiny, there are however a few suggestions that can be made for the purpose of limiting the observed elements of politicisation and bias within the UPR; thus developing a more efficient monitoring mechanism. With respect to the findings of this study, at least seven concrete suggestions can be made for this very purpose: (i) require mid-term reports and national action-plans, (ii) strengthen the role of the *troika*, (iii) set out clear rules for statements, (iv) emphasize the need for clear recommendations, (v) allocate additional time for advanced written questions, (vi) strengthen the UPR funds and (vii) strengthen the role of other stakeholders.

(i) *Require mid-term reports and national action-plans*

As has been emphasized on several occasions throughout this thesis, the follow-up is the most crucial phase of the UPR process.³⁵² Indeed, the significance of mid-term reporting is emphasized within the work of the Council,³⁵³ and an increasing number of States are submitting mid-term reports.³⁵⁴ However, there is no specific course of action on how a follow-up evaluation should be undertaken and although the key for effectiveness within the UPR is implementation of recommendations, States merely have a voluntarily duty to submit a follow-up report.³⁵⁵ By making mid-term reporting a norm, the review process could reach higher transparency, making it possible for States to bring to light challenges in their implementation and ask for assistance if necessary. Furthermore, the importance of starting work towards implementation right after the review would be emphasized, since progress made will be reported on half way through the implementation phase.³⁵⁶ Finally, by giving recommending States a chance to build their recommendations on information submitted by mid-term, the risk of having to 'start all over again', perhaps emphasizing the same issues as during the last review, could be expected to be reduced.

Recommendations relating to national action plans within the SuR are frequent within the UPR.³⁵⁷ This is not without reason. As an example, the Ugandan Government launched the process to develop its national human rights action plan within the framework of the UPR in 2013. The Uganda State Minister for Foreign Affairs, Asuman Kiyingi, stated that: '*no country has a perfect human rights record and that each country must start*

³⁵⁰ Freedman (2011), p. 304.

³⁵¹ Abebe (2009), p. 8.

³⁵² The importance of mid-term reporting has been stressed since it fills the four-year gap between each review and reflects the substantive action taken by States.

³⁵³ HRC Resolution 16/21, para. 18.

³⁵⁴ Thailand, Morocco, Denmark, Finland and Togo all serve as good examples in voluntarily submitting mid-term reports. As mentioned above, 50 States have, at the time of writing, submitted mid-term reports related to the first UPR cycle.

³⁵⁵ HRC Resolution 16/21, para. 18.

³⁵⁶ At the time of writing, 50 States had submitted mid-term reports related to the first UPR cycle. See also chapter 4.7.

³⁵⁷ During the first cycle, 275 recommendations relating to national action plans were made, *supra* note. 142.

from its own actual political, cultural, historical and legal circumstances'.³⁵⁸ Further, in respect to this initiative, the head of the UN Human Rights Office in Kampala, Birgit Gerstenberg, acknowledged that: 'a national action plan is not an all-encompassing solution but can be a great tool for mobilizing social energy, for increasing basic social consensus through dialogue and for promoting respect and tolerance for each other'.³⁵⁹ Submissions of national action plans, outlining timeframes, responsible agencies and consultative processes for recommendations can thus be of great assistance in facilitating and organizing the implementation of recommendations.³⁶⁰

By establishing a requirement of mid-term reports together with national action plans, higher pressure could be placed on States during the implementation phase. This requirement would however most likely require the establishment of a formal UPR-body to monitor the implementation phase, to guarantee that all recommendations are being addressed and to assist States in avoiding duplication of work.³⁶¹

(ii) *Strengthen the role of the troika*

In practice, the *troika's* role is weakened by the fact that it does not have any real authorities within its mandate.³⁶² Furthermore, the group is composed by the drawing of lots among Council members and has no other impartial external human rights experts. By supplementing the original group with impartial UN experts, giving them the mandate to require recommendations intended to be delivered prior to the review to be submitted in advance, the quality of the review could be enhanced. The new group of *troika* could assess the recommendations prior to the review, in order to enable consultations with relevant recommending States regarding non-objective or reiterative recommendations. This would consequently address the issue of many, repetitive and duplicating recommendations. Furthermore, elements of politicisation within the outcome of the review could be reduced as well. Given that the *troika* prepares the final WG Report, the outcome currently depends on the group's expertise and its shield of influence from the SuR or its allies.³⁶³ Impartial, supplementary, members of the group could contribute with country knowledge and objectivity. Other significant advantages from remodeling the *troika* could be that practical gaps in regard to technical cooperation and exchange of best practices would be addressed by identifying these matters already prior to the dialogue.

(iii) *Set out clear rules for statements*

As demonstrated through the case studies in chapter 4, regional or political allies of the SuR often took the floor to deliver positive statements.³⁶⁴ During the first UPR cycle, this behaviour resulted in that many States were not able to take the floor, due to time restraints.³⁶⁵ Although all States, through the UPR reform in 2011, now are allowed to take the floor, positive statements could still take up valuable time that would be better spent dealing with concerns. By setting out clear procedural rules, in which statements must be limited to questions, criticisms or clear recommendations, this kind of manipulation of speaking time could be addressed. This would

³⁵⁸ OHCHR, 'A National Human Rights Action Plan – Uganda follows through on its commitment to the Universal periodic Review,' available at: <http://www.ohchr.org/EN/NewsEvents/Pages/UgandaNationalHumanRightsActionPlan.aspx>.

³⁵⁹ *Ibid.*

³⁶⁰ Open Society Justice Initiative, the Brookings Institution's Foreign Policy program and UPR-Watch's *Conference on Improving Implementation and Follow up of the Treaty Bodies, Special Procedures and UPR, The Report of Proceedings*, November 22 – 23, 2010, statement delivered by Rachel Brett, Representative for Human Rights and Refugees, Quaker UN Office in Geneva, p.16.

³⁶¹ Hickey (2013), p. 46.

³⁶² As mentioned in chapter 2, the *troika* is given the mandate to facilitate the UPR. This should be accomplished by receiving written questions prior to the review, assisting the actual review and prepare and present the final WG Report, HRC Resolution 5/1, para. 18 (d).

³⁶³ Freedman (2011), p. 304.

³⁶⁴ This was particularly clear within the African and the Asian groups.

³⁶⁵ *Supra* note 142. See also case studies in chapter 4.

most likely also solve the issue of the high number of recommendations (see chapter 3.2.4), which has increased during the second cycle.³⁶⁶

(iv) *Emphasize the need for clear recommendations*

From the case studies presented in chapter 4, a pattern emerged whereby regional and political allies refrained from raising controversial issues and making recommendations of more specific character. Further, States sovereign right in choosing which recommendations to accept or reject resulted in that action-oriented recommendations, in general requiring more efforts and financial resources, were far less likely to be accepted and implemented than recommendations of more general character.³⁶⁷ Furthermore, States demonstrating high implementation records tend to accept vague recommendations and reject more specific ones. Failure to deliver clear recommendations most certainly limits the possibility to measure implementation and progress on the ground.³⁶⁸ Some recommendations have even been so vague that the relevant State has been unable to understand how to implement them.³⁶⁹ Consequently, clear, understandable and transparent recommendations should be required within the review. In accomplishing this objective, the *troika* (see suggestion ii above) could be of assistance in consulting with recommending States. Important to bear in mind here though is the political environment the UPR works within and that diplomatic considerations might hinder States from making certain specific recommendations.³⁷⁰

(v) *Allocate additional time for advanced written questions*

Currently, advanced written questions are supposed to be answered by the SuR during the presentation of its national report.³⁷¹ During the first UPR cycle, this practice however was underutilised.³⁷² Even in cases where the SuR allocated time for questions during the dialogue, advanced written questions were less likely to be answered than questions voiced from the floor.³⁷³ To deal with this issue, all advanced submitted questions could be dealt with during a separate session, prior to the interactive dialogue. The *troika* could assess the questions intended to be posed during the dialogue, consult with States that submitted them regarding reiterative matters, and prepare the separate and additional question time. Tactics used to deflect attention from certain issues could as a result be conquered.

(vi) *Strengthen the UPR Funds*

It would be easy to say that States that demonstrates low implementation results are also the ones that put in least effort and engagement in the process. Such a finding would, in the light of what has emerged from the above comparative analysis, be utterly wrong - perhaps even contradictory. A high level of accepted recommendations could also be a sign of engagement. However true efficiency of the mechanism naturally depends on whether States improve the human rights situation on the ground through implementation of the recommendations made during the review. As indicated by the case studies in chapter 4, poorer States tended to receive a high number of recommendations of action-oriented and costly nature. Naturally, this requires more effort and financial resources than fewer recommendations of more general character. The strengthening of the UPR Voluntary Trust Fund and the Voluntary fund for Financial and Technical Assistance seem to be vital in order to fulfil the key objective of the UPR. Given the very nature of the funds, strengthening of it naturally lies

³⁶⁶ See chapter 4.7.

³⁶⁷ As demonstrated by data presented in chapter 3 and through the case studies in chapter 4. See also chapter 2.3.5 for further discussion regarding rejections of, or non-implementation of recommendations without legitimate reasons.

³⁶⁸ Hickey (2013), p. 5.

³⁶⁹ UPR-Info (2014), p.60.

³⁷⁰ Ibid.

³⁷¹ Annex to HRC Resolution 5/1, para. 29.

³⁷² Hickey (2013), p. 43. This was also identified from the case studies in chapter 4 where the SuR often neglected to deal with advanced submitted questions during the review.

³⁷³ Freedman (2011), p. 306.

in the hand of the States and other stakeholders. However, for the purpose of giving incentives to contribute to the funds, recommending States should be encouraged submit a rough estimate of costs linked to their recommendations. Furthermore, SuRs should be required to state their needs in regard to implementation costs. For this purpose, the required mid-term report (see suggestion i above) could serve an important purpose.

(vii) Strengthen the role of NGOs and civil society

Lastly - and perhaps most importantly - the role of other stakeholders needs to be strengthened. According to the GA Resolution 60/251, the work of the Council 'shall be transparent, fair, impartial and shall enable genuine dialogue'.³⁷⁴ Further, the HRC Resolution 5/1 calls for the UPR to 'ensure' participation of all relevant stakeholders.³⁷⁵ Currently, however, the examination of the SuR is based on a self-written report reflecting the human rights situation in the country. Furthermore, civil society only has a very limited role in the review process.

There are several examples of NGOs managing to influence the UPR process in a successful way. For instance, establishment of national action plans has been the result of work by NGOs and other stakeholders.³⁷⁶ Furthermore, NGOs are very active in submitting information regarding human rights situations in SuRs, delivering oral statements at the time of adoption of the WG Report and taking part in the process by other means;³⁷⁷ activities that should be encouraged.

Emphasizing the role of civil society and NGOs in the process and enhancing the reports submitted by civil society to the same level as the State's self-written report on the human rights situation could lead to a higher transparency of the human rights situation.³⁷⁸ Currently, NGOs are only allowed to take the floor a few minutes before the adoption of the final WG Report and thus, they have no significant influence in the review process. Although genuine commitment by States is fundamental for the realization of recommendations during the review, enhancement of the role of civil society and NGOs in the process can put higher pressure on States during the implementation phase. Furthermore, encouragement of increased cooperation between States and non-State actors would most likely lead to higher transparency of the human rights situation in the country.³⁷⁹

Above seven suggestions for improvement of the UPR have sought to address the aspects that this thesis have found to negatively affect the efficiency of the mechanism. Currently, the peer-review mechanism does not seem well equipped as a decisive and enforcing mechanism. Instead, it appears more like a platform to collect, evaluate and disseminate information for consumption by States and the international community. Commitment to fully engage in the process, by both States and non-State actors, will be the most crucial element in deciding whether the monitoring mechanism will reach true efficiency.³⁸⁰ However, in order to increase States' commitment and to motivate them to implement their recommendations, greater transparency, clear procedural rules and balance between domestic and international concerns will play a crucial role.

C. Final Remarks and Challenges Ahead

This thesis has explained the gradual and complex path towards an efficient, trustworthy and legitimate human rights monitoring mechanism within the UN machinery. It has demonstrated the challenges that the new institutional reform - established to de-politicise and work more efficient than its predecessor - has encountered and is still facing. Although the mechanism still has to be considered as a political body, it has great potential to

³⁷⁴ GA Resolution 60/251, para. 12.

³⁷⁵ HRC Resolution 5/1, para. 3 (m).

³⁷⁶ Hickey (2013), p. 47.

³⁷⁷ *Ibid.*, p. 48.

³⁷⁸ FIACAT (2009), p. 8.

³⁷⁹ *Ibid.*

³⁸⁰ Sweeney and Saito (2009), p. 203.

strengthen human rights on the ground. Especially considering its non-confrontational, interactive character, which aims to complement other UN-protection mechanisms.

However, this thesis has also shown that the same elements that may be considered the strength of the mechanism might be characteristics that negatively affect its effectiveness and legitimacy. Although the mechanism indisputably can be considered a great success in terms of State engagement,³⁸¹ the political context that the UPR works within limits its capability to, in an equal way, scrutinize and monitor the human rights situations in States. Despite that it was created for the very purpose of overcoming the flaws of its predecessor, the Council has developed similar elements of politicisation and bias. Political and regional allies seem to be helping each other to avoid international scrutiny of sensitive issues within the UPR and various tactics are being used during the review for that same reason. It thus stands clear that flaws that were direct causes of the Commission's demise are also prevalent within the Council and its monitoring mechanism.

Indeed the second UPR cycle has been able to demonstrate progress, whereby States have increased their mid-term reporting and delivers clearer and more action-oriented recommendations.³⁸² However, the Council's inability to act with power makes the postponing of Israel's review a worrying precedent in regard to State cooperation. It has been determined that the Council, as an intergovernmental body, is and will be a political body, negatively affecting the improvement of human rights on the ground. However, the political characteristics must also be considered essential for States willingness to submit themselves to international scrutiny of their human rights situations. Any future attempts of reform will therefore have to take this into consideration in order to not be contra productive.

States commitment to fully engage in the process is the most crucial element in deciding whether the UPR ultimately will be a legitimate, trustworthy international platform that allows for transparent review and improvement of human rights protection. Although true efficiency of the mechanism can only be measured in the success of implementation of its recommendations, one should also bear in mind the international publicity the mechanism has brought with it, naturally enabling an improvement of the general understanding of international human rights standards and transparency of global human rights situations. Hence, there can be no doubt that the UPR has added value to the status quo and improved the human rights on the ground. Furthermore, despite plausible misrepresentation of results,³⁸³ almost half of the recommendations were implemented by mid-term. An overall efficiency of the mechanism can thus be observed. The challenge ahead is to develop a stronger framework, accepting the inevitable political context the UPR works within, but at the same time manage to limit the impact politicisation will have for the fulfilment of the mechanism's objective; to improve the human rights on the ground. Naturally, this is not an easy task the Council is facing, and patience for visible results seems to be essential. Bearing in mind that many of the flaws that were direct causes of the Commission's demise are prevalent at the Commission and the UPR, the time to act is now. Before the Council meets the same fate as its predecessor.

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³⁸¹ During the first cycle of the UPR, all Member States participated in the review process.

³⁸² See further discussion on this in chapter 4.7.

³⁸³ See e.g. Egypt and the United States, which both demonstrated implementation of category 5 recommendations. Other stakeholders however claimed that violations could occur under different laws, see chapter 4.1.2.1 and 4.5.2.1. Furthermore, as this thesis has demonstrated, many of the implemented recommendations were of general character, meaning that they might not have had a real impact on the ground.

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