

**UNDERSTANDING THE UN HUMAN RIGHTS COUNCIL
UNIVERSAL PERIODIC REVIEW: METHODS OF ASSESSING
ITS FUNCTIONING**

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I. Introduction.

A. Overview. The UN Human Rights Council's Universal Periodic Review (UPR) reflects a relatively new approach to promoting human rights globally. It fits within a growing number of other international organization initiatives based on member state peer reviews, in which participating states assess their peers' levels of adherence to commonly agreed-upon norms of conduct. Such initiatives include the OECD Development Assistance Committee peer reviews, the African Peer Review Mechanism and the UN Convention Against Corruption Implementation Review Mechanism. One academic observer of peer reviews has placed their utility in the following terms:

The challenge today is how to ensure that international standards are actually applied in practice. There must be two preconditions for progress: Governments must have the political will, technical capacity, and resources to enforce these norms, and they must offer opportunities for civil society participation and oversight. One of the most important tools for promoting these conditions has been peer review. Through peer review, governments have been held accountable and encouraged to move toward implementing convention commitments to good governance.

Peer review mechanisms have identified obstacles and, where technical capacity and financial resources were needed, helped mobilize them. Peer review mechanisms that are transparent and permit civil society to participate have successfully identified laggards.¹

These types of processes enable the international community to focus on issues which many nation-states have traditionally argued are shielded from scrutiny due to the principle of national sovereignty. The UPR, which has functioned since 2008, is thus an object of attention to many different communities of interest. These include diplomatic missions accredited to the UN

¹Nancy Boswell, "The Impact of International Law on Domestic Governance", Proceedings of the American Society of International Law Annual Meeting, Vol. 97, 2003, pp. 133-134, American Society of International Law URL: <http://www.jstor.org/stable/25659843> Accessed: 17-01-2017.

Geneva-based organizations, governments around the world, human rights and other civil society organizations, development agencies and organizations, journalists and academics.

The UPR is increasingly mooted by some as an innovative and possibly helpful element of the global human rights infrastructure. Others, however, are skeptical of its practical, meaningful, long-term impact. International organization peer review mechanisms are, by definition, creations of the member states of the organization undertaking them. They thus have in common a tendency to be the products of a lowest-common-denominator consensus decision-making process. This in turn means that they almost invariably rely more on the carrot of positive reinforcements and inducements rather than the stick of punitive measures. Due to their voluntary nature, peer reviews thus run the risk of failing to achieve meaningful goals while providing the appearance of action, reflecting an “emperor wears no clothes” scenario.²

Given these two contrasting perspectives, developing an empirically-based understanding of the UPR can provide a needed fact base upon which determinations regarding the functioning of the UPR can be made. However, given the massive and complex nature of the UPR, which has already generated over 50,000 recommendations in 25 sessions spanning two cycles of global state reviews over the past eight years, it can be a challenge to develop a clear conceptual picture of its functioning. Especially given the ambiguous nature of the UPR’s perceived functioning to date, without a clear perception on the part of the stakeholders and the public of the utility of its output in terms of recommendations and their implementation, the UPR risks descending into

² Edward McMahon, “Evolution Not Revolution: The First Two Cycles of the UN Human Rights Council Universal Periodic Review Mechanism”, FES, Geneva, 2016, https://www.upr-info.org/sites/default/files/general-document/pdf/mcmahon_fes_evolution_not_revolution.pdf, p. 7.

irrelevance as did its predecessor, the UN Commission on Human Rights. This paper is designed to stimulate consideration of the UPR's work. It a) frames the issue; b) describes two methodological approaches and articulates findings emerging from them; c) presents comparative analysis of the approaches; and d) provides final thoughts on advancing the state of the art.

B). Why are Sound Methodologies Needed? How much is the UPR achieving, and how do we know this? To date, there have been a number of positive references to the functioning of the UPR. For example, one study has stated that:

Despite its novelty, after the completion of its first cycle (2008–2012), the UPR was largely considered a success, receiving strong political support from member states. This political traction resulted in an effective universal review of all UN member states, as had been initially planned. Moreover, the fact that the state under review must formally express its views about the recommendations made by other reviewing states, either by “supporting” or “noting” them, generates an added expression of commitment that enhances accountability. This feature is unique among international and national human rights mechanisms.³

Other reports are more critical. Hickey, amongst others, for example, has faulted the UPR in terms of evaluation of implementation and a lack of specificity in recommendations.⁴ Obonye's analysis concludes that “mutual political engagement among African states in the UPR and the APRM is largely uncritical, less than frank, and highly romanticized”.⁵ In terms of methodology,

³ Kate Gilmore *et al*, *The Universal Periodic Review: A Platform for Dialogue, Accountability, and Change on Sexual and Reproductive Health and Rights*, Health and Human Rights, Harvard School of Public Health, Vol. 17, No. 2, 2015, p. 168 URL: <http://www.jstor.org/stable/healthumarigh.17.2.167>

⁴ Emma Hickey, “The UN's Universal Periodic Review: Is it Adding Value and Improving the Human Rights Situation on the Ground? A Critical Evaluation of the First Cycle and Recommendations for Reform”, *ICL Journal*, Vol. 7, No. 4, 2013) p. 24.

⁵ Jonas Obonye, “Reflections on the practices and experiences of African states in the African Peer Review Mechanism (APRM) and the Universal Periodic Review Mechanism (UPR): a human rights perspective”, *The Comparative and International Law Journal of Southern Africa*, Vol. 45, No. 3 (NOVEMBER 2012), pp. 428-453

these types of analyses, whether pro or con, would benefit from a more empirical, grounded basis for justifying their conclusions. Without such information, it is difficult to conclude whether the UPR is worth the time and investment of resources that it requires. Indeed, the UPR could become viewed as an amorphous example of do-gooder international overreach and a potential waste of resources.

There are clearly particular challenges associated with understanding the UPR. Methodological creativity is needed to shine light on how it is functioning. The UPR is generating “big data” through its recommendations process; it is now producing almost 3,000 recommendations in each of three sessions per year. Each recommendation, in turn, contains a number of variables including the State under Review and its region, the State making the recommendation and its region, the recommendation itself, the issue being addressed in the recommendation, and the session in which the recommendation is being made. There need to be ways to disaggregate this deluge of information, in order to make it relevant and useful for the variety of stakeholders seeking to both impact its functioning and to benefit from its output.

Given the nascent nature of this initiative, it is valid and important to have pluralism in methodological approaches to examining the functioning of the UPR. Researchers and policy-makers are seeking to identify methods and approaches that can yield credible data on the performance of the UPR. To the extent that they are successful it will invariably impact positively perceptions of the UPR; the converse is also true. A particularly crucial question is whether the process is seen to be “fair” in a global sense, so that it is not perceived to be the cudgel of one regional or political bloc to hammer others. The generation of objective data will

also, relatedly, impact resource allocations for the UPR (the paucity of which is a point of contention for many involved in administering the UPR process).

There have been some initial reports that seek to provide independently-based data and analysis of the aspects of the UPR's performance. Two non-governmental Geneva-based organizations in particular have sought to develop sound criteria and empirically-based methods for assessing and analyzing the functioning of the UPR. The first is UPR-Info. UPR Info has developed a comprehensive recommendations database, including an innovative feature which codes recommendations on the basis of the type of action recommended. It also prepared a report in 2014 on the extent of implementation of accepted recommendations.⁶ The other organization, the Universal Rights Group (URG), has created a method of analysis presented in a recent URG publication entitled "Towards the Third Cycle of the UPR: Stick or Twist?"⁷

Both organizations have identified two core questions of analysis; that of the *quality* of the recommendations, and their *level of implementation*. The central importance of these questions to the UPR's success is undisputable. The first emphasizes the need for the process to result in recommendations that are relevant, meaningful and measurable. The second addresses the question of whether host governments actually do what they have pledged to do by accepting their peers' recommendations.

II. Description and Findings of the Two Approaches

⁶ UPR Info, "Beyond Promises: The Impact of UPR on the Ground", UPR Info, Geneva, 2014. http://www.upr-info.org/sites/default/files/general-document/pdf/2014_beyond_promises.pdf.

⁷ URG, "Towards the Third Cycle of the UPR: Stick or Twist?", <http://www.universal-rights.org/urg-policy-reports/towards-third-cycle-upr-stick-twist/>.

A. UPR Info. UPR Info has created an on-line database that includes a wide range of information. The database facilitates research examining patterns in recommendations. Clues can be discerned from, for example, the number of recommendations made, whether they are accepted by the SuR, the issues that they address, and the extent to which they reflect geographic considerations such as North-South or other regionally-oriented dynamics. Regime typologies also pose an interesting question, as initial research suggests that more democratic states may tend to more energetically employ the UPR than more authoritarian regimes.⁸

The database includes a wide range of fields. These include basic data such as:

- the State under Review;
- the Recommending State;
- the cycle in which the particular review took place; and
- a coding of the issue that the recommendation addressed.

The advanced page of website provides further data, including:

- the regional and affinity groups of the SuR and Recommending States;
- the text of the recommendation;
- the reaction of the SuR to the recommendation;
- the recommendation's action category (see below); and
- the specific session in which the state review took place.

⁸ McMahon, op. cit, pp. 14-16.

Action Categories. The way in which recommendations are phrased can be extremely revealing in terms of the intent of the recommending state. Are recommendations phrased in a “soft” way, which can make it easy for the SuR to accept the recommendation and later claim compliance? Or are they posed in more rigorous language, which requires specificity of action and accountability? Depending on the issue these dynamics may play out somewhat differently, but given the large-n nature of the data generated by the UPR, basic trends can be identified.⁹

In order to provide an empirical basis for analyzing these questions the author, with UPR- Info’s assistance, has developed an action category scale which is housed in the database, and which groups recommendations made based on the verbs utilized in the recommendation language. Recommendations are coded in an ordinal 1-5 scale. Generally speaking, the categories reflect increasing levels of effort, including political and financial resource allocation, on the part of the state to implement. Thus, a rating of 1 is for recommendations *directed at* non-SuR states, or calling upon the SuR to request technical assistance, or share information; a rating of 2 is for recommendations to *continue or maintain* existing efforts; a rating of 3 is for recommendations to *consider change*; a rating of 4 is for recommendations of *general action* (*i.e. address, promote, strengthen, etc.*); and a rating of 5 denotes recommendations calling for *specific, tangible and verifiable actions*.¹⁰

⁹ The database, and a full description of its functioning, including the action category coding process, can be found at https://www.upr-info.org/database/files/Database_Help_Guide.pdf.

¹⁰ More information on the action category scale is available at Edward McMahon (2012). *The Universal Periodic Review: A Work in Progress*. Friedrich-Ebert-Stiftung, <http://library.fes.de/pdf-files/bueros/genf/09297.pdf> and www.upr-info.org/IMG/pdf/Database_Action_Category.pdf.

This approach provides a quantitative sense of the types of recommendations being made. In general Categories 1, 2 and 4 are more acceptable to SuRs and are easier to implement. Category 1 recommendations (which only total about 1 percent of all recommendations) are addressed to other states to provide support and assistance. Category 2 recommendations (16 percent) simply require continuation of existing activities. The generality inherent in Category 4 recommendations (40 percent) means that the SuRs in question have considerable leeway in determining what constitutes successful fulfillment of the recommendation. Category 3 recommendations (8 percent), by contrast, tend to deal with either more politically sensitive or unpalatable issues while Category 5 issues (36 percent) contain specific and verifiable required actions which more often result in rejection.

What are some key findings from this research? There has been a remarkable similarity in data produced from the first (2008-2012) to the second (2012-2016) cycle, which reinforces the veracity of the overall trends noted. Some of these points of consistency include:

- The *overall percentage of accepted and noted/other responses* has increased slightly, from 73 percent to 76 percent.¹¹ This demonstrates a consistent rate of acceptance.
- *Acceptance rates between categories vary.* Recommendations associated with the most specific actions (Category 5) received the lowest rates of implementation, while the recommendations emphasizing continuity of action, or actions of a general nature – which makes it easier for SuRs to define and thus assert compliance with - tended to have

¹¹ In Cycle 1 non-accepted recommendations had been disaggregated according to the type of SuR response i.e. refusal, a general response, or no response at all. Given that they all reflect the same basic response – that of not accepting the recommendation, the HRC decided to aggregate them into a single, “Noted”, and category.

higher levels of implementation. The former tend to be associated with higher costs (financial and/or political) than the latter.

- *Action Category Recommendations per Response Type.* The distribution of recommendations by action category has been consistent between Cycle 1 and Cycle 2.
- *Regional Distribution of Recommendations.* In both cycles all regions except Africa direct a plurality of recommendations to Asia. Asia and African make most recommendations to each other and their own region.
- *Distribution of Action Categories by Recommending State.* There has been consistent predominance in Category 2 and 4 recommendations by Africa and Asia.
- *Recommendations made to SuR Region, per Issue.* WEOG states made higher percentages of recommendations in the top five issues than the other regional groups, although this decreased somewhat in the second cycle.
- *The distribution of “softer” and “tougher” recommendations.* The “softer” types of recommendations (Categories 1, 2, 4) total about 56 percent of recommendations versus 44 percent for the “harder” Categories 3 and 5. The fact that these proportions have remained similar from Cycle 1 to Cycle 2 shows that there has not been a softening in the types of recommendations. By the same token, however, neither has there been a move

to make recommendations more targeted and specific despite suggestions from a number of observers of the process that this would be helpful.¹²

In addition, UPR Info has provided a glimpse into the challenging question, from a methodological perspective, of the extent to which UPR Info recommendations are actually being implemented.¹³ Its study, “Beyond Promises”, provides insight into the extent to which recommendations made in the first cycle of the UPR have been implemented by the States under Review. UPR Info examined mid-term reporting and also solicited feedback from in-country civil society organizations regarding levels of recommendation implementation.

The data generated suggests that that almost half of all recommendations studied have triggered some type of action within 2 ½ years of acceptance. The regional group that was most successful at midterm is the Eastern European group, while Asia has proved to be the laggard. Surprisingly, the report determined that even 19 percent of noted recommendations also had engendered some type of action by midterm, suggesting that noted recommendations should not be disregarded in the implementation phase. Issues such as women’s rights, international instruments, and children’s rights had the overall highest number of recommendations with some level of implementation, but the issues with the highest percentage of implementation within the issue categories were HIV-Aids, human trafficking, and people with disabilities. By contrast, the highest percentages of non-implementation within categories were of recommendations pertaining to the freedom of movement, right to land, and the death penalty.

¹² See discussion on SMART recommendations in “Beyond Promises”, op cit. p. 60.

¹³ Ibid, p. 20.

B. URG.¹⁴ URG, in its “Stick or Twist” report, has also sought to tackle both the quality of the recommendations and the extent of their implementation. The report took as a point of departure the recognition that the heart of the UPR lies in the quality of the recommendations that are produced and accepted by SuRs but that beyond general agreement by stakeholders that recommendation quality is important, there is to date little agreement as to what constitutes a ‘good’ or a ‘bad’ recommendation. URG sought to address this question by reviewing over 5,000 first- and second-cycle recommendations. URG’s methodological approach reflected the view that analysis of recommendations could be best undertaken by utilization of the twin concepts of “usefulness” to the SUR, and “measurability” for reviewing States. URG thus coded recommendations according to its determination regarding the extent to which the recommendations reflected the content of these terms. URG also sought to analyze the selected recommendations through the twin prisms of a) the level of implementation by States under Review of recommendations received and accepted during the first cycle; and b) the degree to which reviewing States used the second cycle to follow-up on the implementation of first cycle recommendations. To do this URG separated recommendations into four categories: those implemented, partly implemented, not implemented, and not indicated.

URG determined that over 85 percent of UPR recommendations in both the first and second cycles were ‘normal’ in the sense that they aligned with the wording with the precepts laid out in the Council’s Institution-Building Package, and that they could be identified as useful to SuRs and measurable in the context of the UPR mechanism. URG determined that an average of only

¹⁴ This section describing the URG approach is drawn from the URG report, “Towards the Third Cycle of the UPR: Stick or Twist?”, op cit.

12 percent of first and second cycle UPR recommendations were ‘unspecific’ i.e. that they were not useful to the SUR and unmeasurable in the context of the UPR mechanism. URG also determined that the quality of recommendations ranged significantly between the five regionally-based UN groupings: for example, reviewing States from the African or Asia-Pacific Groups tended to issue more ‘unspecific’ recommendations (38 percent and 27 percent respectively) than States elsewhere. In addition, the number of ‘unspecific’ recommendations was higher in intra-regional group recommendations.

The results of the URG implementation analysis suggested a number of interesting patterns and trends. *First*, almost half (48 percent) of all accepted first cycle UPR recommendations were, according to SuRs’ second cycle reports, implemented. A further 20 percent were partially implemented, and only 25 percent were not implemented. *Second*, it appeared that implementation levels were significant (e.g. on or above average) in all regions except for Asia. Even across that Group, nearly 40 percent of all accepted recommendations were reported as implemented. *Third*, implementation rates varied significantly given the particular thematic issues. For example, accepted recommendations focusing on women’s rights (12 percent of all analyzed recommendations) and children’s rights (10 percent of all analyzed recommendations) reflected high implementation rates: 54 percent and 62 percent, respectively. By contrast, accepted recommendations that addressed the more ‘politically sensitive’ issues, such as the death penalty, showed low implementation rates (14 percent). Implementation rates also varied significantly by type of recommendation. For example, accepted recommendations calling for the signature or ratification of international human rights instruments had an overall implementation rate of 52 percent. This contrasts with recommendations for domestic level

reform, in areas such as freedom of expression and opinion, which showed an implementation rate of around 24 percent.

The URG report suggested that after States have implemented the more achievable recommendations over the course of the first and second cycles, implementation of the remaining recommendations may become increasingly challenging. Some types of recommendations, or recommendations covering certain issues, may be easily accepted by States and have a high acceptance rate but then prove difficult to implement. The report cited as an example of this recommendations relating to the ratification of and compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR). Nearly 80 percent of all such first cycle recommendations were accepted by the SUR. However, only 14 percent were subsequently implemented. Another finding was that almost 30 percent of ‘noted’ recommendations, even though they were not accepted by the SUR, nevertheless were either fully or partly implemented. The quality of recommendations (i.e. whether they are useful and measurable) had a significant impact on levels of implementation. Vague or imprecise (unspecific) recommendations also tended to have a far higher implementation score than normal recommendations.¹⁵

III. Comparative Analysis of the Two Approaches

There are both similarities and differences between the UPR Info and URG approaches. In a number of important areas the URG and UPR Info findings are consonant with and reinforce findings made by the other organization. For example, both approaches point out the growth in

¹⁵ “Stick or Twist”, op. cit, p. 6.

the overall number of recommendations throughout two cycles. In addition, URG's finding that recommendations with lower levels of specificity tend to have a higher implementation rates is similar to UPR Info findings regarding acceptance rates of recommendations in light of UPR Info's action categorization construct (e.g. Category 4 recommendations which are less specific have higher acceptance rates than more action-oriented Category 5 recommendations).

Also common to the two approaches is a finding that recommendations focusing on more politically sensitive issues show lower implementation rates. These types of recommendations are particularly found in UPR Info's Action Categories Three and Five. Specific examples of issues include recommendations pertaining to the freedom of movement, the death penalty, visits by Special Procedures mandate holders, and LGBTQ issues. Regarding issue identification, the URG percentage breakdown of issue distribution is generally corroborated by UPR Info analysis of all recommendations, which places women's rights at about 17 percent of first cycle recommendations, and Rights of the Child, at about 16 percent.

The two approaches concur on the importance of specific, action-oriented recommendations. They also observe that a significant percentage of "noted" recommendations were in fact implemented, at least to some extent, by the SuR (the URG report put the figure at 30 percent, the UPR Info report at 19 percent). This finding has been corroborated by other research. For example, Gilbert *et al* determined that "An examination of information contained in national reports, UN compilations, and stakeholders' reports makes clear that, in some cases, states are implementing recommendations that were not formally accepted."¹⁶

¹⁶ Gilmore *et al*, *op. cit.*, p. 173

Furthermore, both approaches also identify significant regional disparities in how the UPR is utilized. Both approaches indicate that the Asian and African groups tend to use the UPR in a softer fashion, making relatively more recommendations (including to each other) to each other that are less specific and measurable than their Latin American, EEG or WEOG counterparts.

A lack of specificity in recommendation language, of course, allows the SuR to define for itself the criteria upon which implementation of these recommendations can be determined. One example that is borne out in both the URG and UPR Info approaches relates to analysis of the geographic distribution of these types of recommendations. Through Session 22 over 40 percent of all Category Two recommendations had been made by either the African or Asian groups to member states in those two regions. 98 percent of these were accepted; a clear indicator of states from the global South “taking it easy” on each other.

Both approaches note the need to ensure the participation of NGOs and NHRIs in providing an independent domestic assessment of implementation, and then giving that information more weight in the UPR process. The URG report refers to “The apparent exclusion of civil society NHRIs and other domestic human rights actors from many national consultation processes.” It then suggests that as a result civil society does not have much impact or input into recommendations.¹⁷ Observational evidence suggests, it is argued, that many recommending state diplomats only quickly skim the other stakeholders’ report, while focusing most attention on the national report, as supplemented by the UN system report.

¹⁷ URG, *Stick or Twist*, op. cit, p. 4

So, overall there is much consonance and commonality in these two approaches' findings. There are also, however, a number of striking differences between them. Perhaps most notably, different pictures are painted of the extent to which recommendations are determined to be "measurable" or "specific". URG's methodology leads to a conclusion that a high percentage (about 85 percent) of recommendations meet their criteria for measurability and specificity, while UPR Info's is much lower (about 35 percent of recommendations are determined to be Action Category 5). Similarly, regarding implementation, the URG report cites an almost 50 percent full implementation rate of recommendations, with another 20 percent partially implemented. UPR Info, by contrast, identified a total of 48 percent of recommendations having some level of implementation, of which only 18 percent were fully implemented.

What factors may explain these variations in data? One partial explanation may be the differences in sample size; the URG methodology involved a sample of about 10 percent of all recommendations while the UPR Info approach has been more universal, covering all recommendations. Were this to be the case, however, then it would appear to be unlikely that the two approaches would have generated such similar data for some aspects of the research, but not for others. Another explanation centers on differences in definition and interpretation of the particular concepts of "measurability" and "specificity". The URG's measurability concept relates to Action Category Five of the UPR Info methodology to the extent that specific actions are by definition more measurable. The URG paper, however, critiques the UPR Info definition base as being too restrictive i.e. that it omits a certain number of recommendations that are important and useful based on the URG's definitional parameters. The UPR Info criteria are

outlined in https://www.upr-info.org/database/files/Database_Action_Category.pdf. while the URG definition is guided by the UPR's Institution-building package (IBP) itself.¹⁸

The URG approach could be heightened by more detailed explanation as to how a) URG arrived at the "normal" concept, as well as b) how the figure of 85 percent of recommendations being considered "normal" was generated. The paper simply states that they are normal "in that they align with the wording in the spirit of the Council's IBP and in that they can be described as useful to SuRs and measurable the context of UPR mechanism".¹⁹

There is undoubtedly some subjectivity inherent in determining whether a recommendation is "general" or specific" in nature. As referred to in footnote 9, UPR Info has sought to develop a protocol that is consistent and logical in this regard. The most challenging action category coding decisions usually relate to whether a particular recommendation should be coded as action category 4 or 5. Internal tests designed to identify potential coder discrepancies, however, have tended to yield a discrepancy rate of less than 5 percent.

The URG paper could usefully include more detail regarding its methodological approach. The paper does not, for example, explain the choice of the 74 countries that were surveyed for data. Which are these countries? Are they larger or smaller? More powerful or less? How were they chosen? The only descriptive information provided is that they came from all of the regions. It is thus not clear as to the representativity of these countries as a whole, or whether the 5,000 recommendations analyzed can be considered to be a representative sample of the entire body of

¹⁸ The IBP is located at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1.

¹⁹ "Stick or Twist", op. cit, p. 32.

recommendations. URG has indicated that it has this information and will be updating their report to include it.

A challenge inherent in examining recommendations is how to interpret their importance and value, given the reality that each country has its own particular context. Neither approach reflects in any depth country specific contextual perspectives. The URG paper does not specify, for example, how it may or may not have integrated context into the analytic concept of “usefulness”. And not all Category Two (continue to undertake a particular action) or Category Four (of a general nature) recommendations in the UPR Info methodology, for example, are useless or bad. Not all Category Five recommendations are helpful, as is suggested in the URG report; more accuracy at this level of analysis would require more country context. The challenge, of course, is that creating a system that could somehow objectively incorporate and reflect all the nuances and particularities of specific issues at the country level in the coding of every recommendation, would require significantly greater levels of resources and support than is currently available. And even then subjective disputes about the merits of particular recommendations would be likely.

Nonetheless, given the content of recommendations, and by reviewing the totality of the more than 50,000 recommendations through Session 24 by issue coding and content analysis, it is possible to identify aggregate trends through use of these categories. Detailed analysis of the Category 4 recommendations, for example, indicates that a large percentage of them are hortatory in nature and appear to be designed to allow states to accept easily fulfillable and unspecific recommendations.

Concerns can also be raised about the URG paper's reliance upon second cycle state reports to provide data regarding implementation. URG relied on second cycle national reports to mirror the actual reality of the UPR, where assessment of implementation is heavily State self-assessment. In addition, there is little discussion or analysis regarding the levels at which states actually agree to accept recommendations. It would seem to be important to focus on what factors may influence state levels of recommendation acceptance.

IV). Conclusions and Ideas for the Future

This discussion of the UPR Info and URG analysis of the UPR reveals both important commonalities, and differences. The fact that the two approaches have independently arrived at a number of common perspectives regarding the UPR is striking, and may reflect a larger consensus amongst many stakeholders about those particular issues. Both approaches place considerable emphasis on the importance of actionable recommendations. Indeed, progress in this regard may already be occurring as, according to UPR Info data, Category 5 recommendations have resulted in an increase by almost one-third in Sessions 22-25, as the UPR has neared the end of its second cycle. Initiatives such as the UPR Info and the URG are thus valuable and need to be broadened and deepened to bring analytic rigor to the assessment of the UPR. They may also lead to more consensus on other relevant items in the future.

The relative differences in assessing the UPR's functioning highlighted by the two approaches mirror, to a certain extent, the somewhat schizophrenic approach taken by the UN to the UPR. This, of course, not surprising given the range of perspectives of the UN member states towards

such an initiative. The UN General Assembly resolution authorizing the UPR's creation stated that the process should be "guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation."²⁰ The process was also designed to be inter-governmental in nature and UN member-driven, not be overly burdensome or long, be realistic and was not to absorb a disproportionate amount time, human and financial resources. The lack of punitive sanctions attached to the process was very likely a *sine qua non* for the support of many southern states, who feared that the UPR could turn into a one-sided mechanism for western states to criticize their human rights records. At the same time, however, the relevant institutional protocols stated that the process should be "action-oriented" and "not diminish the Council's capacity to respond to urgent human rights situations".²¹ The URG approach, at least in terms of defining measurability and results reflects more closely the former perception of the UPR, while the UPR Info work is more reflective of the latter.

Both approaches note a need for more civil society input into the recommendations process. It is definitely true that in many contexts civil society is given short shrift by governments in terms of having meaningful input into the country report preparation and recommendation implementation monitoring processes. But other evidence suggest that civil society input may positively impact the formulation of recommendations by recommending states. A paper (by this author) has comparatively analyzed civil society reports as incorporated into the country stakeholder reports and the issuance of recommendations. While not arguing causality, it does outline the "considerable extent to which official UPR state recommendations do in fact reflect

²⁰ UNGA Resolution 60/25, (A/RES/60/251).

²¹ (A/HRC/5/21, 2007).

perspectives and themes contained in recommendations of Civil Society Organizations.”²² So this is at least worth further focus and examination.

More resources are needed to improve UPR assessment-related methodologies. There should be the development of greater consensus amongst stakeholders on the application of the measurability and specificity concepts. There should be a more rigorous system for independent assessments of SuR compliance. Assessment processes should be designed not only to articulate and identify trends within the UPR, but to suggest ways that the process could be strengthened. States should, for example, seek ways to minimize actions which can undercut the universality of the process. While regional dynamics will invariably be part of future UPR functioning, more commonly and broadly accepted definitions of democracy and human rights could help to limit what are at times sterile and unproductive regionally-based dynamics in the recommendations process.

The bottom line is that a general consensus is emerging that UPR is helpful. Much remains to be done to strengthen the process and to render it more relevant and meaningful in the lives of people around the world, and strengthening the evaluation and assessment processes around the UPR will be an important part of assuring its place in the contemporary international human rights scaffolding. More broadly, this analysis suggests that properly constructed peer review methodologies can be a useful tool in promoting universal values regarding a wide range of issues and topical fields, while respecting the principle of respect for national sovereignty concerns.

²² (McMahon et al “The Universal Periodic Review: Do Civil Society Organization-Suggested Recommendations Matter?”, FES, 2013, 1).

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