

Herding Cats and Sheep: Assessing State and Regional Behavior in the Universal Periodic Review Mechanism of the United Nations Human Rights Council

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Abstract

Increasing attention is being focused on the utility of peer review processes in inter-governmental organizations. In 2008 the Universal Periodic Review (UPR) mechanism of the United Nations Human Rights Council (HRC) began functioning. This process in which governments make recommendations to fellow UN member states on how to promote and protect human rights is a leading feature of the HRC, which succeeded the widely discredited UN Commission on Human Rights (CHR). A key question confronting the HRC, and the broader international community is whether the UPR is a fresh initiative which can succeed in breaking free of past regionally-based gridlock and whether the UPR can spearhead greater effectiveness of the HRC. Analysis based on an innovative rating of UPR recommendations by level of action requested shows some significant regional differentiation, compared to the previous north-south dichotomy. The relatively more democratically-oriented governments in the GRULAC (Latin American) and East European regions occupy middle ground between Africa and Asia, and the Western European and Other (WEOG) regions in how they utilize the UPR. This regional differentiation suggests that the UPR, and by extension, the HRC, may be able to play a more positive role than the CHR.

1. Introduction and Background

A central challenge facing standards-based intergovernmental organizations (IGOs) is how to promote adherence to commonly agreed-upon norms.¹ This has become an increasingly salient question with the growth of globalization in general and the number and impact of IGOs organizations in particular. One method, which in recent years has been adopted by a few organizations, and which has begun to attract heightened attention more broadly, is the development of peer-based initiative to assess performance and make recommendations on improving adherence with shared norms. One such notable example is the Development Assistance Committee peer review process of the Organization of Economic Cooperation and Development; another is the African Peer Review Mechanism.² Most recently the United Nations Human Rights Council has instituted a peer review-based initiative, the Universal Periodic Review (UPR) mechanism.

Systems of peer review are at an early stage of development and implementation. The jury, in general, is still out on their effectiveness. In addition, the UPR's structure varies significantly from both the APRM and OECD processes in that its information development component is not based on country visits by a team of experts. As peer review mechanisms,

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¹ See Trine Flockhart, *Socializing Democratic Norms : The Role of International Organizations for the Construction of Europe* (Palgrave Macmillan, New York, 2005) and Jon C. Pevehouse, *Democracy from Above: Regional Organizations and Democratization*. (Cambridge University Press, New York, 2005).

² See, for example, Ravi Kanbur, "The African peer review mechanism (APRM): an assessment of concept and design", *Politikon*, 31, 2 November 2004 .

however, are by definition creations of the member states of the organization undertaking them, they all tend to be the products of consensus. This in turn means that they rely more on the carrot of positive reinforcements and inducements rather than the stick of punitive measures. It is not too soon, however, to analyze their functioning, and understand the dynamics behind their operation. In the case of the UPR the importance of this assessment is heightened by two upcoming events on the HRC calendar. First, the UPR experiment is critical to the fate of the HRC, the performance of which will be examined in 2011. Second, the next round of UPR reviews will begin in 2012; there is growing demand for information about how it has functioned to date.

The UPR mechanism is a key element of the HRC. The UPR's stated purpose is to promote and deepen respect for human rights through the provision of feedback to member states on their human rights performance. It is a process in which a small working group oversees the preparation and presentation of information regarding country adherence to a range of human rights criteria, and reports to the HRC as a whole. The HRC's 47 members, who are elected by the UN General Assembly, as well as other UN member states, then have an "interactive dialogue" during a UPR session in Geneva with representatives of the government of the State under Review (SuR) and make recommendations, which the SuR is then free to accept, reject, provide a general answer, or ignore. The UPR began activity in 2007; 48 countries are reviewed per year.

This paper examines state behavior in the UPR. The underlying contextual question is how effective is the United Nations Human Rights Council (HRC) in promoting human rights around the world? More specifically, does the Universal Periodic Review mechanism of the HRC contribute to the HRC's mandate to promote world-wide human rights? We examine the

recommendations process and consider what patterns exist in country and regional behavior. In doing so we can determine whether new patterns of interaction are developing, or whether the UPR in reality reflects the continuance of the status quo.

At its core the UPR represents a new and largely untested forum in which states make policy recommendations to each other. The multilateral context in which it functions is highly complex and sensitive. In part for exactly those reasons this topic represents an important case study in whether a universally-inspired initiative can be designed to help advance human rights in real and concrete terms. To date there is only limited information and analysis about the actual functioning of the UPR, and virtually no related comparative analysis in the literature.

The UPR's importance within the HRC lies not only in its function, but also in its symbolic value. How it fares, and how credibly its work is viewed, will impact considerably on perceptions of the HRC more broadly. Various stakeholders in the international community have been willing to give the HRC a trial period for it to develop a track record and "get its legs under it". Increasingly, however, there is focus on its overall performance, and whether the HRC as a whole will mirror the weaknesses of the CHR, or prove to be a more effective organization.

A frequently expressed statement amongst observers and participants in the UPR process is that by contrast to other functions of the HRC and the UN General Assembly where regional affiliations and loyalties "lock-in" North-South conflict, the UPR recommendations process emphasizes bilateral, state-to-state relations. This view holds that states have greater freedom to make decisions and act apart from regional affiliation. If this is true, a successful UPR process could serve as an example to create new and potentially more positive dynamics of interaction between states in the UN system.

This paper examines a database of 6,077 UPR recommendations made in the first five HRC sessions devoted to the UPR, which took place in 2008 and 2009.³ Underlying questions are: How do states approach this process? Do they utilize it as a way to improve human rights? Or is it a “you scratch my back and I’ll scratch yours” exercise, in which tough issues are largely avoided? Do states actively critique each other through their recommendations, or do they take a softer, longer-term approach, on the grounds that positive reinforcement will eventually lead to human rights improvement?

This database contains several unique features. It permits aggregation of information and results, which can lead to a wide range of analysis. It allows analysis by recommending country and regional group, not just by the State under Review and its regional group. It also includes characterization of each recommendation by action requested, the type of responses, and the issue(s) addressed.

The database includes a number of sections. Categories A-F contains factual information and are self-explanatory. By contrast, categories G-I, which are discussed in greater detail below, are more interpretative in nature and reflect analysis and judgments based on largely objective criteria (all quality-controlled by a second coder) which should be generally replicable. For illustrative purposes I include in parentheses here an actual example from the database.

Category:

- A. Session Number (5)
- B. State under Review – SuR (Afghanistan)
- C. Regional Group of the SuR (Asia, OIC)
- D. State making Recommendation (Austria)

³ This database is accessible at <http://www.upr-info.org/database/>.

E. Regional Group of the State making Recommendation (WEOG)

F. Recommendation (Establish a mechanism in order to systematically monitor human rights in the administration of justice and to organise human rights training courses for public officials).

G. Action Level (5)

H. SuR Response to Recommendation (Accepted)

I. Issue(s) addressed (Human rights education and training, Justice)

Action Level (G)

As a key value-added element of the database, this category requires particular explanation. It would, of course, be highly subjective and of no utility to attempt to assess recommendations on basis of whether they are “good” or “bad”. It is possible, however, to make a more objective assessment based on a characterization by level of action, as expressed by verbs contained in the recommendation. In doing so I use a 1-5 scale. In general Category 1 requires the least cost and effort to the State under Review, while Category 5 represents the greatest potential cost, as specific and tangible actions are being requested.⁴ I hypothesize, based on rational choice theory, that the percentage of recommendations accepted will tend to decline as the perceived cost to the state of accepting these recommendations increases. So states should find Category 1 recommendations easiest to accept and those from Category 5 hardest to embrace. I also suggest that Category 5 recommendations will generally tend to be the farthest-reaching and most important.

Category 1 – Recommendations directed at non-SuR states, or calling upon the SuR to request financial or other assistance from, or share information with, non-SuR states

⁴ The term “cost” is employed broadly here and it can mean utilization of financial, personnel, physical, or political capital.

Examples:

- Seek contributions from the international community in the Government's efforts to promote rights (Ghana to Botswana, Session 3).
- Share its experiences and best practices with other countries in establishing national legislation and mechanisms and pursuing international cooperation to curb human trafficking (Philippines to United Arab Emirates, Session 3).

Category 2 – Recommendations emphasizing continuity in actions and/or policies (other verbs in this category include continue, persevere, maintain)

Examples:

- Continue its efforts to develop the work of its national institution for human rights, as an effective human rights watchdog (Egypt to Bangladesh, Session 4).
- Continue the efforts to combat trafficking in persons with a special emphasis on women and children (Canada to Japan, Session 2).

Category 3 – Recommendations to consider change (consider, reflect upon, review, envision)

Examples:

- Consider subsequent measures towards the complete abolition of the death penalty (Switzerland to Cuba, Session 1).
- Consider becoming party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Azerbaijan to Mauritius, Session 4).

Category 4 – Recommendations of action that contains a general element (take measures or steps towards, encourage, promote, intensify, accelerate, engage with, respect, enhance)

Examples:

- Further improve the professionalism of the police force (Netherlands to Barbados, Session 3).
- Take the necessary steps to reduce discriminatory practices and violence against women (France to Mali, Session 2).

Category 5 – Recommendations of specific action (undertake, adopt, ratify, establish, implement, recognize –in international legal sense).

Examples:

- Abolish the death penalty (Chile to Burkina Faso, Session 3).
- Adopt legislative measures to outlaw domestic violence if it has not done so already (South Africa to Russian Federation, Session 4).

When there is a perfectly even rationale for two different actions in a recommendation, emphasis is generally placed on the first one.⁵ In few cases, depending upon the context, the recommendation has been split into two.

I acknowledge that the level of progression in terms of costs from Category 1 to Category 5 is not necessarily axiomatic. For example, *most* recommendations in the second category of continuity tend to be hortatory in nature, express a positive view of steps taken by the SuR, and require no additional action beyond which that already being taken. Some Category 2 recommendations, however, may in fact be very challenging to implement. In the context of a government which is making significant human rights reforms in the face of entrenched opposition, for example, simply a recommendation to continue on that reform process can prove to be important and useful. Similarly, while *most* Category 5 recommendations appear to be

⁵ See, for example, Cuba recommendation to Bahamas in Session 3 on continuing positive efforts and sharing experiences.

significant and require substantive actions on the part of the SuR, others may not be very important, given the context in which they are being made.

Responses to Recommendations (H)

The four types of responses by the SuR include Accepted, Rejected, No Response, and General Response. While the first three are self-explanatory, general responses are mainly comments on the subject matter recommendation, without clearly stating acceptance or rejection. Further research on this issue is needed, but many of these responses appear to be *de facto* rejections of recommendations without so stating officially.

Typology of Issues (I)

This category provides recommendations by issue raised. These include, *inter alia*, women's rights, children, torture, justice, migrants, death penalty, and freedom of the press.

The information presented below represents aggregated data from the first five sessions. We must be circumspect in comparing data from session to session, as there are likely to be variations in the regime types and level of commitment to human rights between SuRs in the different sessions. For example, while this may not have been pre-ordained, in fact the HRC examined countries with less controversial human rights records in the first session when the UPR procedure was new. It had the practical effect, then, of serving, in a sense, as a “shake-down cruise”. Beginning in the second session, by contrast, the HRC began to consider some of the thornier country contexts. As a future research agenda it will be useful to control for these differences in more detail through the use of human rights democratization indices such as

Freedom House or Polity IV. I undertake some initial analysis in this regard at the end of this chapter.

The following tables and accompanying analysis are designed to yield insights on state and regional behaviour in the UPR. More specifically, they address *inter alia* the following types of themes:

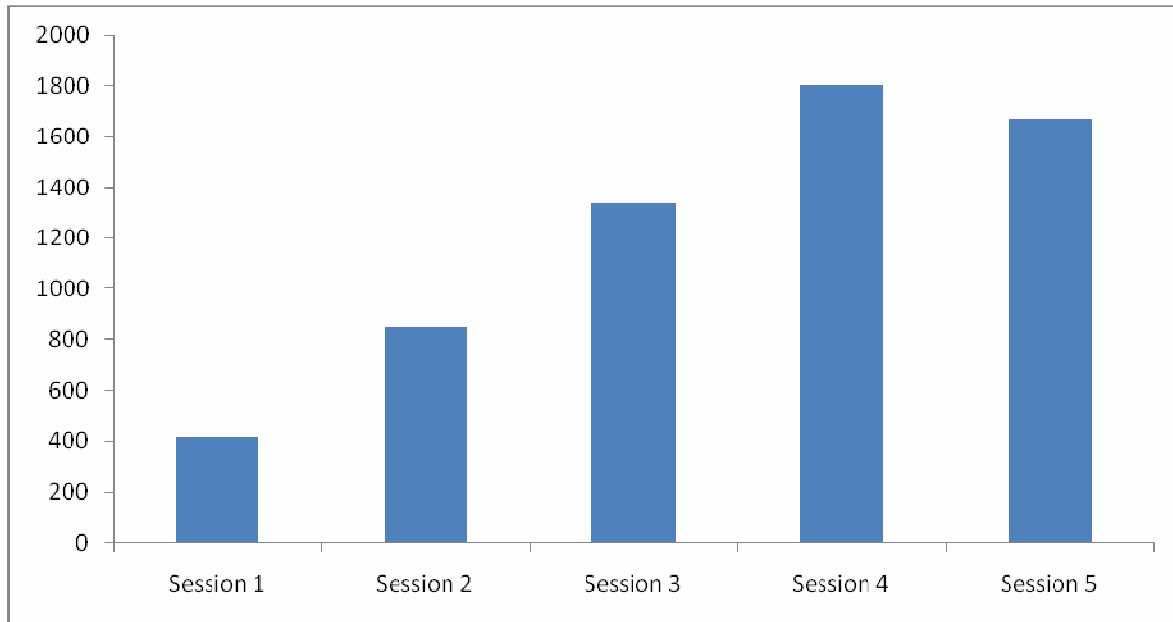
- Overall number of recommendations
- Recommendations by action category
- SuR responses to recommendations
- SuR responses by action category
- Recommendations and SuR responses by action category and region
- Breakdown of recommendations by issue and region

In considering the data presented below it is useful for purposes of reference to keep in mind the percentage of UN member states that belong to each regional grouping. Africa and Asia, with 53 and 54 countries respectively, each total approximately 28% of the UN membership. The Latin American states of the GRULAC grouping account for 33 states, or 17% of the total, followed by WEOG (28, 15%) and EEG (23, 12%).⁶

Table 1

Total Number of Recommendations

⁶ A full listing of states belonging to each regional group is included as an appendix.



The total number of recommendations increased by 400-500 recommendations per session until Session 5, when they dropped by about 140, or slightly less than 10%. This was most likely due to increased familiarity with the UPR process. Under the current rules of procedure the 1,801 recommendations total of Session 4 likely come close to the upper end of recommendations per session.⁷ States only have a total of three minutes each to make recommendations. Only those which are orally presented during the UPR working session are entered into the record. This has resulted in a situation in which SuRs solicit the input of friendly states, often with promises of reciprocal treatment when the recommending state's turn to be examined arrives. The limited amount of time has also lead to many states not being able to speak at all, and diplomats lining up in the pre-dawn darkness to register to speak.

A number of ideas on how to reform the recommendations process have been raised by member states, especially from WEOG countries. These range from changing the number of

⁷ In fact Sessions 6 and 7 totaled 2,095 and 2,108 recommendations respectively.

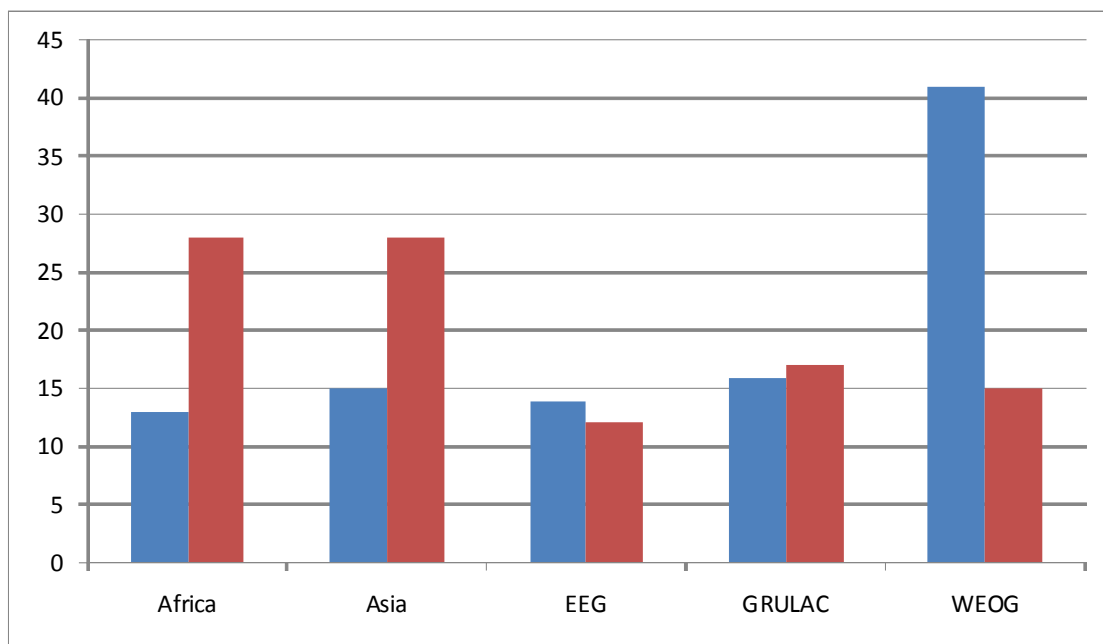
countries to be reviewed, the amount of speaking time available in the working sessions, or the introduction of a lottery system to determine speakers. Many states, however, appear to be content with the current system and believe that it serves their purposes.

Table 2

Distribution of Recommendations

Blue bar = Percentage of Recommendations Made

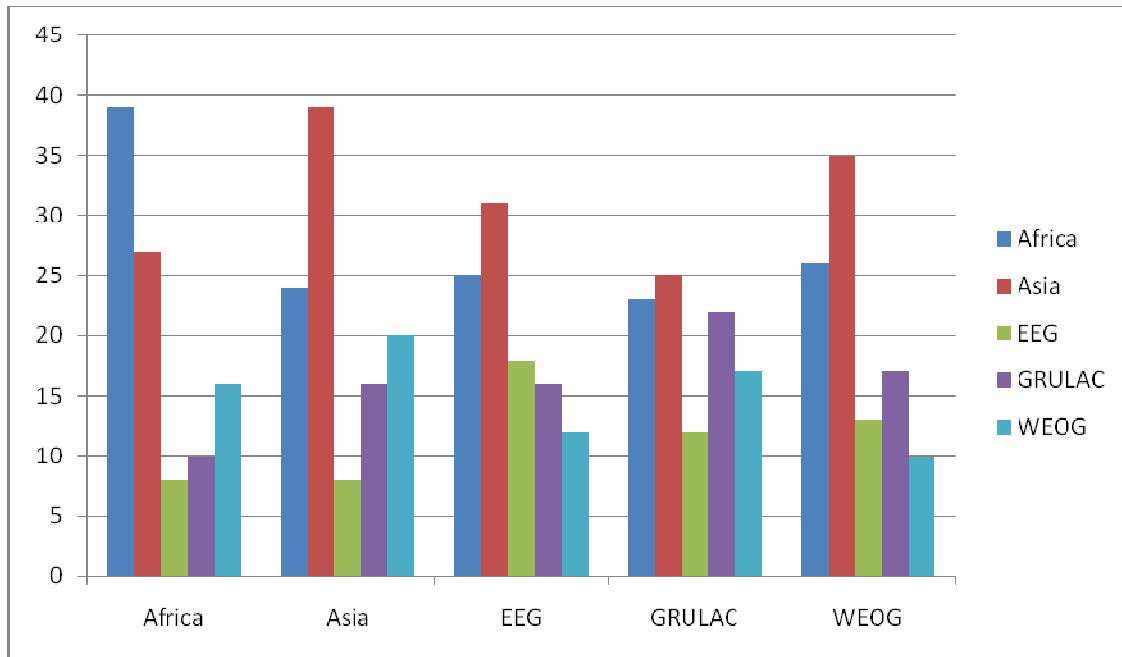
Red bar = Percentage of UN Member States in Region



We note here the distribution commonalities shared between Africa and Asia, in which the number of recommendations equals approximately half the number of member states. EEG and GRULAC also demonstrate a similar pattern, in which the number of recommendations almost equals the number of member states. By contrast, WEOG far surpasses the other four regions, with recommendations representing close to three times the number of member states.

Table 3

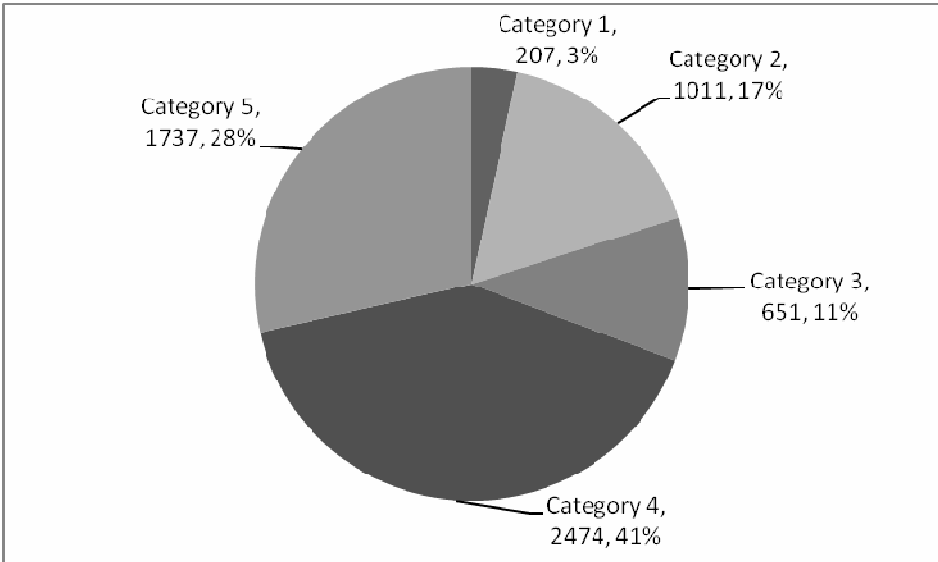
Distribution of Recommendations by Region



Again, we see a remarkably similar distribution pattern between Asia and Africa. We also see commonality between EEG and GRULAC, with a smaller range of recommendation variation by region, demonstrating a broader geographic utilization of the UPR process. WEOG's distribution pattern fell in-between the other two groups of regions.

Table 4

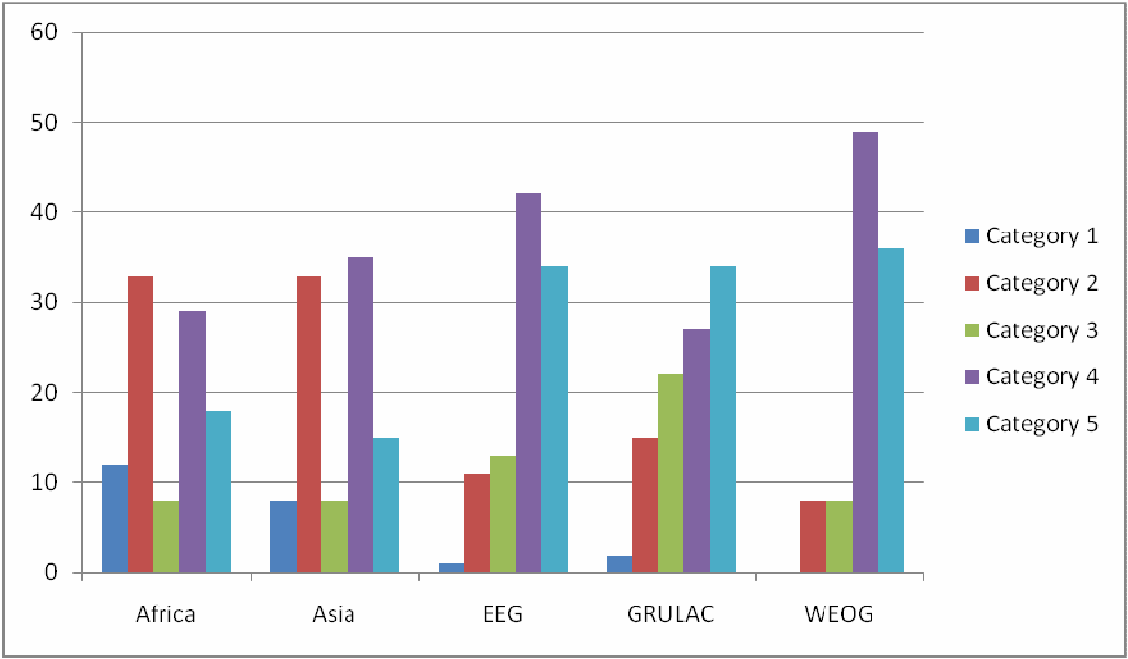
Breakdown by Categories



It is important to note here that the largest numbers of recommendations fall into Categories 4 and 5. The fact that just over two-thirds of all recommendations are action-oriented suggests that states are taking the UPR seriously in that they are using it to ask that states take reform actions. This perspective, however, needs to be tempered somewhat as one analyzes the content of the recommendations, especially those in Category 4. The generality of those types of recommendations facilitates governments' acceptance of them, as the government has considerable leeway to define how it fulfils the recommendations.

Table 5

Distribution of Recommendations by Categories and Recommending Region



In examining the regional distribution of recommendations by categories we see that Africa and Asia place highest emphasis on Categories 1, 2 and 4. By contrast EEG, GRULAC and most notably WEOG emphasize Categories 3 and 5.

Table 6

Response to Recommendations

Total (6079)	3999 (66 %)	795 (13%)	780(13%)	505 (8%)
	Accepted	Rejected	General Response	No response

A key finding is that two-thirds of all recommendations are accepted. A number of different dynamics are probably at play here. First, states are likely to want to have as high an acceptance rate as possible, either because they agree that the recommendations are useful and

valid, and/or because they are concerned about the visuals of not accepting a large number of recommendations. In addition, or alternatively, recommending states seek to a significant extent to make their recommendations palatable to the SuRs. Many participating states also view recommendations (of which they only have time to make a very limited number) not accepted as “wasted” since SuRs have no obligation to take action on them.

The overall high acceptance rate reflects the view of many states that reform through the UPR must be largely evolutionary, rather than revolutionary. This is especially reinforced by the established parameters of the UPR mechanism and the consensus-driven nature of the HRC’s decision-making processes, both which mitigate against an adversarial recommendations process confrontational. This is demonstrated by the fact that rejections account for less than 15 per cent of the recommendations. General responses account for more of the recommendations than do the rejections; in many circumstances these appear to be designed to reject a recommendation without going on the record to do so. Whatever the combination of dynamics in play, the high acceptance rate reflects the political nature of the process.

Table 7

Response to Recommendations by Category

	Accepted	Rejected	General response	No response
Category 1	202 (5%)	0 (0%)	2 (0%)	2 (0%)
Category 2	913 (23%)	25 (3%)	37 (5%)	36 (7%)
Category 3	328 (8%)	154 (19 %)	126 (16%)	43 (9%)

Category 4	1741 (44%)	211 (27%)	307 (39%)	215 (43%)
Category 5	815(20%)	405 (51%)	308 (39%)	209 (41%)
Total (6079)	3999	795	780	505

A very important finding here is that over half of the rejections are found in Category 5. Rejections in Category 4 come second, far behind at 27%. This, combined with high levels of Category 5 general and non-responses reflect the controversial nature of recommendations which call upon the SuR to undertake a specific and actionable reform, and support the hypothesis that these action recommendations carry increased costs and are more likely not to be accepted. Further analysis of the Category 5 recommendations reveals that slightly more than half of them come from WEOG states.

Table 8

Response to Recommendations within Categories

	Category 1	Category 2	Category 3	Category 4	Category 5
Accepted	202 (98%)	913 (90%)	328 (50%)	1741 (70%)	815 (47%)
Rejected	0 (0%)	37 (4%)	154 (24%)	211 (9%)	405 (23%)
General response	2 (1%)	36 (%)	126 (19%)	307 (12%)	308 (18%)
No response	2 (1%)	25 (3%)	43 (7%)	215 (9%)	209 (12%)
Total	206	1011	651	2474	1737

This table shows that the large majority of Category 1, 2 and 4 recommendations are accepted, while slightly less than half of the Category 3 and 5 recommendations are accepted. The latter two categories also have the highest rates of general responses, which, we suggest, serve as proxies for rejections. In fact, the breakdown of percentages for Category 3 and Category 5 is very similar. Few Category 1 or 2 recommendations are rejected or receive general responses; their respective breakdown is also similar.

It may at first appear counterintuitive that Category 3 recommendations, which do not even ask states to actually do anything, find less acceptance than Category 4 recommendations, which call for actions to be taken. The rationale for this, however, becomes clear when we consider further the nature and context of the recommendations included in this category. Analysis of the Category 3 recommendations reveals that many of them contravene deeply held beliefs or policy positions of the governments, and possibly also the populations involved. One clear example of this are recommendations that many western states make to African states for decriminalization of same-sex relations. These types of recommendations are hyper-sensitive to many governments, making it “radioactive” for the SuR to even think about adopting the reforms, especially as they could subsequently be called upon to present the results of their consideration. By contrast, the Category 4 recommendations, by virtue of their lack of specificity, can often prove to be low-hanging fruit for an SuR to pick. Examples include Italy’s recommendation to Algeria in Session 1 to “Take appropriate measures to address violence against children” or Haiti’s call for France to “Intensify its struggle against racism” in Session 2. Compared to Category 5 recommendations, governments have a relatively easier task of taking actions in response to the more general Category 4 recommendations which they can then present as evidence of fulfilment of the recommendation.

Table 9

Geographic Distribution of Recommendations

Percentage of Recommendations Made by African Region Member States						
Category	1	2	3	4	5	Total
Africa-Africa	17	38	6	26	13	100
Africa-Asia	14	42	6	29	9	100
Africa-EEG	--	38	9	36	17	100
Africa-GRULAC	12	31	10	34	13	100
Africa-WEOG	2	7	13	37	41	100

Percentage of Acceptance Rate by Category						
Category	1	2	3	4	5	Overall acceptance rate
Africa-	96	97	84	91	79	92

Africa						
Africa-Asia	100	99	71	89	64	91
Africa-EEG	--	64	83	73	59	67
Africa-GRULAC	100	96	63	93	91	92
Africa-WEOG	100	44	32	64	22	39

We now examine the regional breakdown of recommendations by category. The percentage of recommendations received by each SuR in regional groups almost exactly mirrors the distribution of countries by region in the review process. In the Africa region there is a strong emphasis on making recommendations in categories 1,2 and 4, although the exception is the 54% of Category 3 and 5 recommendations that African states made to WEOG. The combined average rate is 92% for recommendations Africa made to Africa, Asia and GRULAC, while it is only 67% for recommendations to EEG. Most notably, WEOG states accepted only 37% of Africa's recommendations.

Table 10

Percentage of Recommendations Made by Asian Region Member States						
Category	1	2	3	4	5	Total

Asia-Africa	12	38	6	35	8	100
Asia-Asia	11	47	6	28	9	100
Asia-EEG	3	25	7	54	10	100
Asia-GRULAC	7	30	7	38	17	100
Asia-WEOG	0	7	16	40	36	100

Percentage of Acceptance Rate by Category

Category	1	2	3	4	5	Overall acceptance rate
Asia-Africa	95	98	67	94	100	95
Asia-Asia	100	99	75	89	78	93
Asia-EEG	44	76	80	73	86	76
Asia-GRULAC	100	93	82	91	92	92
Asia-WEOG	0	69	48	54	16	41

We see very similar distribution patterns between Asia to Asia and Asia to Africa. The large majority of recommendations are in Categories 1, 2 and 4, with the exception of recommendations to WEOG, in which 50% fell into Categories 3 and 5. Similarly there is a 94% acceptance rate for all recommendations made to Africa, Asia and GRULAC, compared to 76% for EEG and only 41% for WEOG.

These data reflect a “softer” approach taken by both Africa and Asia grouping to itself and GRULAC and conversely, a somewhat “tougher” approach to EEG and certainly to WEOG. This is not surprising given cross-cutting membership affinities such as membership in south-south organizations such as the G-77 and, for many states, the Organization of Islamic Conference.

Table 11

Percentage of Recommendations made by EEG Region Member States

Category	1	2	3	4	5	Total
EEG-Africa	1	10	17	41	31	100
EEG-Asia	1	14	17	37	32	100
EEG-EEG	1	8	5	49	37	100
EEG-GRULAC	--	14	10	47	29	100
EEG-WEOG	--	5	14	44	38	100

Percentage of Acceptance Rate by Category

Category	1	2	3	4	5	Overall acceptance rate
EEG-Africa	100	95	31	68	42	56
EEG-Asia	100	86	59	72	30	58
EEG-EEG	100	82	57	64	48	59
EEG-GRULAC	--	100	62	88	61	79
EEG-WEOG	--	60	27	49	46	45

These data differ from Africa and Asia, with significantly greater percentages of recommendations in categories 4 and 5. There is also a more even geographic distribution. The percentages of acceptances ranged from 79% for EEG-GRULAC to a low of 41% for EEG-WEOG. Only 59% of the EEG-EEG (Eastern Europe Group) recommendations were accepted.

Table 12

Percentage of Recommendations made by GRULAC Region Member States						
Category	1	2	3	4	5	Total
GRULAC-Africa		13	24	26	35	100%
GRULAC-Asia	3	15	27	28	29	100%
GRULAC-EEG	--	14	14	36	36	100%
GRULAC-GRULAC	7	22	19	25	27	100%
GRULAC-WEOG	1	9	21	28	41	100%

Percentage of Acceptance Rate by Category						
Category	1	2	3	4	5	Overall acceptance rate
GRULAC-Africa	100	90	60	58	53	62
GRULAC-Asia	100	97	30	66	33	52
GRULAC-EEG	--	61	71	78	67	70

GRULAC-GRULAC	100	91	67	87	70	80
GRULAC-WEOG	100	54	34	29	39	37

These data are very similar to those for EEG. Compared to Africa and Asia there is greater weighting of recommendations towards Categories 4 and 5. There are similar acceptance rates, with WEOG having the lowest rate, of 37%.

Table 13

Percentage of Recommendations made by WEOG Region Member states						
Category	1	2	3	4	5	Total
WEOG – Africa	1	6	6	54	34	100%
WEOG-Asia	1	7	9	43	41	100%
WEOG-EEG	--	5	5	65	25	100%
WEOG-GRULAC	1	9	7	50	33	100%
WEOG-WEOG	--	13	13	47	28	100%

Percentage of Acceptance Rate by Category						
Category	1	2	3	4	5	Overall acceptance rate
WEOG-Africa	100	92	49	70	52	64
WEOG-Asia	67	82	29	64	36	51
WEOG-EEG	--	74	50	70	52	64

WEOG-GRULAC	100	86	63	85	61	76
WEOG-WEOG	0	74	43	42	36	45

More so than for any other region WEOG recommendations were heavily weighted towards Categories 4 and 5. This was true for WEOG recommendations across all regions. Interestingly, WEOG had the lowest acceptance rate of recommendations coming from its own region. The behaviour of WEOG states, including their low acceptance rate on the surface suggests a lack of willingness to improve human rights situations in WEOG countries. It may, however, reflect a greater realism than other regions about which recommendations can actually be implemented meaningfully.

Table 14

Percentage of Accepted Recommendations Within Regions

Africa-Africa	92
Asia-Asia	93
EEG-EEG	58
GRULAC-GRULAC	80
WEOG-WEOG	45

This table shows that Asia and Africa (and, to a slightly lesser extent GRULAC) were most inclined to accept recommendations coming from within their own regions. This,

combined with the pattern of action category distributions contained in earlier tables suggests that Africa and Asia were most inclined to take a “soft” approach to utilization of the UPR, while WEOG was farthest in the other direction.

Issues

So far we have focused on overall recommendation trends and process. To deepen our understanding of the UPR mechanism and how it is being used by participating states we also need to look at a range of themes regarding the specific topics, or issues that are addressed. We have previously noted that Category I in the database provides recommendations by issue raised. I have identified a total of 56 different issues covering a wide range of topics. These include, inter alia, women’s rights, children, torture, justice, migrants, death penalty, and freedom of the press.⁸

Some of the questions we address here are: a) what issues are raised most frequently , and b) what regional dynamics are at play in the selections of recommendations. The following tables identify the most frequently cited issues; the first breaks them down by SuR regions and the second by recommending states.

I have identified a total of 9,654 issues cited in the 6,077 recommendations (some covered more than one issue). Only 3 of the 56 issue categories appeared in more than 10% of the recommendations, and only 6 figured in more than 5% of the total recommendations. By contrast, 26, or almost half of the total number of issues, were found in at least 2% of the recommendations.

⁸ A full list of the issues can be found at <http://www.upr-info.org/database/>, click on advanced search.

The following is the list of the ten most frequently cited issues by SuR, with regional breakdowns.

Table 15

Issues by Percentage and SuR Regional Distribution

Issue	% of Total Recommendations	SuR Region					%
		Africa	Asia	EEG	GRULAC	WEOG	
International instruments	18	24	32	10	14	20	100
Women	16.2	32	33	10	14	11	100
Children	13.7	39	24	12	14	11	100
Justice	8.2	25	26	13	31	5	100
Torture	7.3	36	34	9	11	10	100
Treaty bodies	5.1	25	23	13	18	21	100
Detention conditions	4.4	25	30	14	18	13	100
Special procedures	4.3	25	45	9	13	8	100
Minorities	4.1	9	18	52	5	16	100

The highest percentage of recommendations in this table (53%) were to East European states regarding treatment of minorities, such as the Roma. Asia also received 44% of recommendations for use of HRC Special Procedures (typically visits of Special Rapporteurs on geographic or thematic issues). Africa and Asia also both received 30% or over of recommendations pertaining to the death penalty (almost all of the UPR death penalty recommendations were to ban capital punishment), torture and women’s issues. By contrast, the largest set of issues (40%) devoted to EEG were related to treatment of minorities. The only issue above 20% (29%) made to GRULAC were recommendations relating to the justice sector. Issues of focus in the WEOG region were migrants (43%) and minorities (22%).

The following is the list of most frequently cited issues with regional breakdowns by recommending states.

Table 16

Issues by Percentage and Recommending State Regional Distribution

Issue	% of Total Recommendations	Recommending Regional Group					%
		Africa	Asia	EEG	GRULAC	WEOG	
International instruments	18	10	7	16	31	36	100
Women	16.2	11	14	15	14	46	100
Children	13.7	10	14	17	15	44	100
Justice	8.2	8	10	14	15	53	100
Torture	7.3	5	6	19	19	51	100
Treaty bodies	5.1	13	14	14	15	44	100

Detention conditions	4.4	6	6	20	6	62	100
Special procedures	4.3	1	12	29	24	34	100
Minorities	4.1	12	19	12	12	45	100
Human rights education and training	4.1	18	20	18	9	35	100

As we have seen previously, Africa and Asia exhibit common approaches to the UPR. Here they had very similar patterns of recommendations by issue, and consistently made the fewest recommendations with the exception of minorities and human rights education and training. EEG recommendations were very evenly distributed across the board. GRULAC focused most on the use of international instruments and Special Procedures i.e. the process of international protection of human rights, more so than on specific thematic areas. WEOG's activist approach to the UPR is further reflected by its across the board prominence in making recommendations; it made at least a third of the recommendations in all of these issue categories, and more than 50% in justice, and torture and detention conditions (62%).

The four largest percentages of issues which were not accepted by Africa and Asia included women's rights, death penalty, torture, and use of HRC Special Procedures. Key issues rejected by northern countries included abolition of the death penalty and greater protection for the rights of children.

The divergent nature of state behaviour by issue type is starkly defined by the following table. The first two issues relate to the international human rights regime, and ways that it can be

used to protect human rights. The second two issues relate to themes included in the broader define of human rights, and form part of the “economic and social” basket, as opposed to political and civil rights.

Table 17

Percentage Distribution of Issues and Action Level

Action Level	1	2	3	4	5
International Instruments	1	5	24	18	53
Special Procedures	1	5	24	20	51
Women’s Rights	1	19	9	47	23
Rights of the Child	1	17	8	47	27

We see here that, as has been demonstrated in previous analysis, that action categories 3 and 5 function in similar ways, as do categories 1, 2 and 4. In addition, there appears to be a difference between how international human rights procedures are addressed in the UPR, as opposed to the more economically and socially oriented rights. The former are associated with

“stronger” action recommendation levels, while the latter are linked to the “softer” action categories.

Table 18

Percentage of Distribution of Issues by Recommending State Region

Issue	WEOG	GRULAC	EEG	Asia	Africa
International instruments	35	31	16	6	12
Special procedures	34	24	29	12	1
Women's rights	46	14	15	14	10
Rights of the Child	43	15	17	14	11

Based on our understanding of regional patterns of behaviour, we would suggest that in the case of these recommendations we will find that most of the international human rights procedures recommendations will have been made by WEOG, while most of the latter two recommendations will be made by Asia and Africa. In fact the data do substantiate the former point. Regarding the latter, however, WEOG is the most active in all four issues, followed by GRULAC and EEG. I do not have a quick answer as to why Africa and Asia have such a low percentage of the economic and socially-oriented recommendations other than to note their low overall participation in making recommendations.

Finally, we now turn our focus to consideration of the data in light of state levels of freedom within regions. We are interested here in identifying the extent to which levels of freedom correlate with certain patterns of recommendation issuance. We want to see if states that are rated Free share their region’s recommendation patterns in terms of action levels. To produce this data I have utilized the Free/Partly Free/Not Free typology developed in the Freedom House Annual Survey of Political Rights and Civil Liberties, a widely accepted, used and cited tool for characterizing state level of freedom.⁹ This analysis focuses on the Africa, Asia and EEG regions as states in the WEOG and GRULAC regions are almost all rated Free and thus have little variance for study. I a) calculated for the mean action level, then b) disaggregated this by Free, Partly Free and Not Free state categorization and c) compared these results to the mean.

Table 19

Mean Action level for Recommendations Correlated to Free/Partly Free/Not Free Classification¹⁰

Region	Mean action level	Mean action level of free states	Mean action level of Not Free States	Mean action level of Partly Free States
Africa	2.841	2.943 (+.102)	2.851 (+.01)	2.734 (-.107)

⁹ For more information on Freedom House’s methodological approach see <http://freedomhouse.org/template.cfm?page=15>.

¹⁰ Classification data from Freedom House Annual Survey of Political Rights and Civil Liberties. There are several democracy assessment methodologies which could have been used here but the Freedom House methodology (<http://freedomhouse.org/>) provides a three point aggregated scale (Free, Partly Free and Not Free) which was appropriate for this study. It is a tested and highly referenced methodology which is also used by donors in making resource allocations, such as the Millennium Challenge Corporation in the U.S.

Asia	2.875	3.226 (+.351)	2.692 (-.183)	2.665 (-.21)
EEG	3.669	3.849 (+.18)	3.165 (-.504)	3.476 (-.193)

Note the positive correlation of all three region's Free states over the mean. There is a negative correlation of 5 of 6 Partly Free and Not Free states, and an insignificant positive correlation of the 6th. The positive correlations of Free states to mean show that they are more likely to make stronger recommendations. Almost all NF and PF recommendations are negative, or below the mean.

It is interesting to note that while the EEG deviation from mean was less for Partly Free than for Not Free states, as would be expected, this was not the case for the Asia or Africa region states. The differences are small but I have not been able to identify a reason why it would exist at all.

Similarly, I compared the distribution of recommendations made by all EEG states with those made by EEG states rated Free. I found a modest increase in the percentage of recommendations in Categories 3 and 5 as compared to all EEG recommendations (the ratio of recommendations falling into Categories 1,2 and 4 compared to Categories 3 and 5 was 54/46 for all EEG states and the exact opposite for EEG Free states. This is clearly an area for fruitful future research.

Summary Observations

Many diplomats and observers of the UPR process suggest that unlike the other HRC functions – and the U.N. General Assembly – the UPR process is not regionally driven; that states make their recommendations largely on individual basis. Optimists suggest that this

example, if successful, could help lead to a diminution of the regional bloc dynamic which has tended to create blockages in global relations. The analysis contained here reflects the challenges in this regard. Clear regional patterns exist which continue to reflect the polarized nature of the contemporary international community. The southern states in Asia and Africa tend to take a softer approach to addressing human rights issues amongst themselves. This may be avoidance of the tough decisions needed or it may represent a less confrontational cultural orientation. The Latin American region finds itself in-between WEOG on the one hand, and Asia and Africa on the other. EEG data is somewhat consonant with that of WEOG.

One general observation is that the GRULAC (Group of Latin America and Caribbean Countries) and perhaps EEG regions appears poised to play a mediating role between WEOG and Africa/Asia. GRULAC can be generally considered “southern” as a result of its colonial heritage and role in the global economy, while its stance on human rights reflects greater consonance with WEOG’s orientation. This has useful policy implications in that GRULAC could play a greater leadership role in creating common purpose between states from different regional groups.