

# **Deliberative Capacity Building through International Organizations: The Case of the Universal Periodic Review of Human Rights<sup>1</sup>**

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**Abstract**

Theories of deliberation, developed largely with respect to domestic politics, are becoming increasingly relevant for international politics. The recently-established Universal Periodic Review (UPR) operating under the auspices of the UN's Human Rights Council is an excellent illustration. Our analysis of responses to its reports and recommendations suggests that the deliberative processes surrounding the UPR do indeed evoke cooperative responses even from countries with poor human rights records. Its highly inclusive, deliberative, repeated-play and peer-to-peer nature can serve as a model for how international organizations more generally can enhance deliberative capacity across the international system.

**Keywords:** International Organizations; deliberative capacity; Universal Periodic Review; Human Rights Council; human rights; decision making; accountability.

Pinning any great hopes on international organizations has, since the failure of the League of Nations, generally been thought to be the province of dewy-eyed idealists. Hard-headed realists know that international organizations are just that – the products of deals struck by nation states for their own purposes. They are creatures of states, at the service of states; states can enter reservations and derogations upon joining them and, by and large, states can leave them whenever they want with due notice. Realists have trouble seeing how such organizations could ever transcend the narrow purposes of the states that created them. It's hard for them to see how such organizations can get states to do anything they seriously do not want to do.

Organizational sociologists, however, know all is not quite as it seems to the self-styled realists. International organizations “bring people together”. They “convene”; they “orchestrate”.<sup>2</sup> Once created, international organizations – like all organizations – take on a life of their own. They acquire purposes and missions, proud histories and follow-on aspirations, all of which infuse the lives of those working within them and with them.<sup>3</sup> Maybe they make only soft, unenforceable law in the first instance.<sup>4</sup> But that takes on increasingly hard forms over time, as actors in and around the organizations increasingly invest their outputs with normative force.<sup>5</sup>

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<sup>2</sup> Abbott et al. 2015.

<sup>3</sup> Barnett and Finnemore 1999.

<sup>4</sup> Abbott and Snidal 2000.

<sup>5</sup> Chayes and Chayes 1993; Schimmelfennig 2001.

Realists may scoff, saying that demands that are ultimately unenforceable are practically irrelevant.<sup>6</sup> But norms developed within and around international organizations can increasingly come to constrain even powerful players. Note well Gunnar Myrdal's description of what happened in the "talking shop" that was the Economic Commission for Europe, of which he was the founding Executive Secretary:

[Once an] organization ... settles down to a tradition of work, ... the same state officials come together at regular intervals.... Certain substitutes for real political sanctions can then gradually be built up. They are all informal and frail. They assume a commonly shared appreciation of the general usefulness of earlier results reached, the similarly shared pride of, and solidarity towards, the "club" of participants at the meetings.... Not upholding an agreement is something like a breach of etiquette in a club.<sup>7</sup>

It is well-documented that international institutions, rules and norms can get a grip on even the most powerful states in just that way.<sup>8</sup>

A principal instrument of international governance is diplomacy. That is largely a matter of "government by talk",<sup>9</sup> a mechanism extensively explored by deliberative theorists in other domains. This article aims to further that deliberative project in relation to

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<sup>6</sup> Downs, Rocke and Barsoom 1996.

<sup>7</sup> Myrdal 1955, 8, 20. This is close to March and Olsen's (2006) "logic of appropriateness".

<sup>8</sup> Cottrell 2009; Price 1997; Risse, Ropp and Sikkink 1999; Risse 2004.

<sup>9</sup> Chambers 2003.

international politics.<sup>10</sup> Our emphasis is on the role that international organizations – here, concretely, the Human Rights Council’s (HRC) Universal Periodic Review (UPR) – can play in instigating and orchestrating cooperative deliberation across the international system, with seriously consequential effects.

Operating under the auspices of the Human Rights Council, the UPR is designed as a cooperative rather than confrontational exercise that examines the human rights records of all member states of the United Nations (UN) on a four-and-a-half-year rolling cycle.<sup>11</sup> Our evidence suggests that the UPR effectively sets in motion a deliberative process to promote human rights around the globe. In that respect, the UPR serves as a model of what IOs can do by way of enhancing the deliberative capacity of the international system.

## **1. Conceptualizing the Deliberative Capacity of a System**

In international politics, talk takes many forms. Everyone concedes an important role for certain sorts of talk, such as negotiation and bargaining, threats and offers. Much of that is bluff and bluster, of course; but even seemingly inconsequential “cheap talk” can nonetheless lead to equilibrium outcomes, as game theorists have shown.<sup>12</sup> Those forms of talk are undeniably important, too. But it is talk in a more cooperative, problem-solving

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<sup>10</sup> Búrca, Keohane and Sabel 2014; Deitelhoff 2009; Risse 2000.

<sup>11</sup> This is in sharp contrast to the confrontational approach of the UN Commission on Human Rights that the HRC replaced (Davies 2010; Dominguez-Redondo 2012; Hafner-Burton 2008).

<sup>12</sup> Aumann and Hart 2003; Farrell and Rabin 1996.

mode upon which deliberative theorists focus, and that will be at the heart of our discussion here.

Deliberative theory emphasizes how, by talking together, we can learn more about one another's position and perspective, desires and constraints. In explicating our own desires and constraints in order to help others understand them, we come to a richer understanding of our own desires and constraints, principles and purposes, as well. The "free give and take of discussion" provides an impetus to creativity in discovering novel solutions to shared problems.

When men who are serving a common purpose meet to pool their experience, to air their difficulties and even their discontents, there comes about a real process of collective thinking. The narrowness and one-sidedness of each person's point of view are corrected, and something emerges which each can recognize as embodying the truth of what he stood for, and yet (or rather therefore) is seen to serve the purpose ... better than what any one conceived for himself.<sup>13</sup>

For all these reasons, we should regard government by discussion "not [as] a makeshift or a compromise or a means of keeping people quiet by the production of a sham unanimity, or a process of counting heads to save the trouble of breaking them, but [as] the ideal form of government".<sup>14</sup> So say the large raft of today's theorists of deliberative democracy.<sup>15</sup> In

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<sup>13</sup> Lindsay 1929, 36.

<sup>14</sup> Lindsay 1929, 36-7.

international relations, too, scholars have come to appreciate the virtues of deliberation in this more cooperative, problem-solving mode.<sup>16</sup>

In assessing the deliberative capacities of a political system, international or domestic, we need to consider two separate elements. The first relates to inputs – the capacity for “high quality deliberation” to occur. The second relates to outputs – the capacity for that deliberation to have some “effects” outside of itself.

What is required for those criteria to be fully met would be a deliberative system with all of the following elements:<sup>17</sup>

For High Quality Deliberation:

*Inclusiveness:* Deliberation is open to and inclusive of all interested parties.

*Authenticity:* Deliberation evokes authentic expressions of the points of view of interested parties, or their authentic representatives.

*Public space:* There is an open arena in which civil society can come together (physically or virtually) for discussion of matters of common concern, aimed at identifying problems and/or finding solutions.

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<sup>15</sup> See, e.g.: Bohman and Rehg 1997; Dryzek 2000; Dryzek 2006; Dryzek 2010; Elster 1998; Fishkin 2009; Gutmann and Thompson 2004; Habermas 1996; Macedo 1999; Parkinson and Mansbridge 2012; Ryfe 2005; Steiner et al. 2005; Thompson 2008.

<sup>16</sup> Dryzek, Bächtiger and Milewicz 2011; Fung, 2003; Higgott and Erman, 2010; Mitzen 2005; Risse 2004.

<sup>17</sup> Our operationalization of deliberative capacity builds on Dryzek (2009), who builds on Habermas (1996) in turn.

*Discursive discipline:* Within that forum there are mechanisms to ensure that participants engage in non-coercive, sustained, considered, mutually responsive communicative engagement with one another's views.

For Deliberation with Effect:

*Empowered space:* There is an arena in which decisions are made that may be formally binding or have practical effects in more informal ways.

*Transmission:* There is some mechanism by which public space can formally or informally influence empowered space.

*Feedback loop:* There is some mechanism by which empowered space reports back to, and is (formally or informally) held accountable by, the deliberating parties in the original public space. This is instrumental in ensuring that the effects of the process are indeed those intended.

We expand on all of these elements more fully in relation to the UPR in Section 2.2 below. Throughout, we emphasize that deliberative capacity is an attribute of a system as a whole, with different parts of that system contributing in different ways.<sup>18</sup> A high-profile discursive moment at the heart of the UPR process (in the form of the Interactive Dialogue between states in Geneva) catalyzes even more extensive deliberation across the system as a whole; this occurs both in the run-up to and backwash of the UPR process, and also within and between states around the world.

Deliberative theorists have identified a great many functions that deliberation can serve. At its best, deliberation promotes the pooling and probing of one another's

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<sup>18</sup> Goodin 2005; Parkinson and Mansbridge 2012.

information and perspectives. And it does so in a cooperative, collaborative context that is conducive to developing and furthering shared purposes and goals. These attributes of deliberative engagement have been well documented in domestic settings.<sup>19</sup> As our discussion will show, the same attributes are found in the deliberations in and around the UPR, globally. The function of deliberation there is to improve implementation of human rights norms, by providing an occasion for information-sharing in a highly visible way while engaging a wide range of stakeholders, both nationally and internationally.

## **2. Deliberating Over Human Rights: The UPR**

To explore how international organizations can contribute to the deliberative capacity of the international system, we examine the case of the recently created Universal Periodic Review operating under the auspices of the UN's Human Rights Council. We begin by describing the UPR process, explaining the respects in which it is a genuinely deliberative process, and assessing the quality of the deliberation involved. In Section 3 we explore its effects.

### ***2.1. The Universal Periodic Review Process***

The UPR process was established at the same time as the new HRC by a 2006 Resolution of the United Nations General Assembly.<sup>20</sup> That Resolution charged the Human Rights

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<sup>19</sup> Luskin, Fishkin and Jowell 2002; Luskin et al. 2014.

<sup>20</sup> For the political back-story, see Rajagopal (2007). The UPR process was modeled on other pre-existing peer review mechanisms in the international system, most especially the OECD's (Pagani 2002). Similar

Council, inter alia, to “undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments”.<sup>21</sup> The Resolution further enjoins the Council to work in a transparent, fair and impartial manner that enables genuine dialogue (including follow-up discussions on recommendations and their implementation) and that is results-oriented.<sup>22</sup>

The Universal Periodic Review established under article 5(e) of that Resolution is explicitly in the spirit of the larger dialogic mandate governing the Human Rights Council as a whole. The UN High Commissioner for Human Rights tellingly characterizes the UPR as “one of the key elements of the new Council which *reminds* States of their responsibility to fully respect and implement all human rights and fundamental freedoms”.<sup>23</sup> The founding Resolution specifies that “the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned”.<sup>24</sup> This point is reemphasized in the HRC’s statement of “Principles and Objectives” for the UPR.<sup>25</sup> Not only is the UPR supposed to ensure the full participation of the country under review; it is

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interactive dialogues, involving expert panels rather than state-to-state accountability, are found in many treaty bodies (Rodley 2009).

<sup>21</sup> UNGA 2006, art. 5.

<sup>22</sup> UNGA 2006, art. 12.

<sup>23</sup> UNOHCHR 2012b, emphasis added.

<sup>24</sup> UNGA 2006, art. 5(e).

<sup>25</sup> UNHRC 2007b, Annex art. 3(b), see also art. 27.

also supposed to engage all relevant stakeholders, including non-governmental organizations and national human rights institutions.<sup>26</sup>

In the UPR, each of the 193 member states of the United Nations comes under scrutiny on a rolling basis, every four-and-a-half years.<sup>27</sup> Universality of coverage is key to the UPR, and what distinguishes it from the previous, discredited practices of the UN Commission on Human Rights.<sup>28</sup> Two states volunteered to be reviewed in early sessions. Beyond that, the order in which states were initially reviewed was determined by lot, after stratifying to ensure regional balance within each session. The composition of the regionally diverse Troika of member states that serves as facilitators and rapporteurs for each state's review is also determined by lot.<sup>29</sup>

The centerpiece of the UPR is a three-and-a-half hour<sup>30</sup> open session – the Interactive Dialogue – in which the State under Review (SuR) is subjected to comments and recommendations concerning its human rights record. This is state-to-state accountability. While other stakeholders are welcome to attend, only UN member states

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<sup>26</sup> UNHRC 2007b, Annex arts. 3(e) and 3(m).

<sup>27</sup> Extended from four years, in the first cycle (UNHRC 2007b, Annex art. 14; UNHRC 2011b, Annex art. 3).

<sup>28</sup> Dominguez-Redondo 2012; Rajagopal 2007. The Commission's modus operandi was to pick out particular states for "naming and shaming", which has generally been shown to be counterproductive (Hafner-Burton 2008).

<sup>29</sup> UNHRC 2007b, Annex art. 18(d).

<sup>30</sup> Extended from three hours in the first cycle (UNHRC 2007b, Annex art. 22; UNHRC 2011a, Annex art. 3).

(together with two observers, Palestine and the Holy See) are allowed to speak.<sup>31</sup> Their interventions are required to be short – initially as short as two minutes,<sup>32</sup> reduced to 51 seconds in Cuba’s 2013 UPR.<sup>33</sup> In the Interactive Dialogue itself, the SuR’s responses must also be brief – the spokesperson for the State under Review cannot speak for more than 70 minutes in total, including his or her opening presentation.<sup>34</sup>

Each UPR is based on documentation of various sorts. Some is supplied by the State under Review, some by the UN’s Office of the High Commissioner for Human Rights (UNOHCHR) and some by other relevant stakeholders. The SuR submits a national report of up to 20 pages; that report is supposed to be prepared in consultation with all relevant national stakeholders. The UNOHCHR submits a compilation of information of up to 10 pages, based on reports and official documents from relevant treaty bodies, special procedures and other UN agencies. It also supplies up to another 10 pages summarizing information provided by the relevant stakeholders,<sup>35</sup> which include non-governmental

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<sup>31</sup> UNHRC 2007b, Annex art. 18. In practice NGOs often work through “friendly states” to get issues that they raised in their written submissions discussed during the UPR; and up to ten NGOs are allowed to speak, after the SuR, in the subsequent public Working Group Report Adoption plenary session of the HRC a few months after the Interactive Dialogue (Chauville 2014).

<sup>32</sup> UNHRC 2011a, Annex arts. 6-7.

<sup>33</sup> Fully 132 “reviewing States” – a record number – took the floor during that Cuban dialogue (UPR Info 2013a).

<sup>34</sup> UNHRC 2011a, Annex art. 3.

<sup>35</sup> UNHRC 2007b, Annex art. 15.

organizations, national human rights institutions, academic and research institutes, regional organizations, and civil society representatives.<sup>36</sup>

Throughout the first two cycles of the UPR, that information from other stakeholders has been essential for assessing SuRs' human rights practices. Stakeholders' summaries proved particularly useful in detecting discrepancies between the different reports, and enabled critical judgments about SuRs' actual human rights achievements.<sup>37</sup>

At the end of an UPR exercise, a Troika of rapporteurs, with the assistance of UNOHCHR, compiles an "outcome report" consolidating and organizing comments, questions and verbatim recommendations made during the Interactive Dialogue.<sup>38</sup> That report is then open for comments by other member states as well as relevant non-state stakeholders, and it is adopted (invariably without change) after discussion involving the SuR, other member states and NGOs at the next plenary session of the HRC a few months after the Interactive Dialogue.

The SuR may respond to any given recommendation by accepting it, rejecting ("noting") it, or giving a more equivocal response.<sup>39</sup> Accepting a recommendation constitutes a voluntary commitment and pledge on a given issue.<sup>40</sup> The State under Review

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<sup>36</sup> UNOHCHR 2012a.

<sup>37</sup> For full description of NGOs' involvement before, during and between the reviews see UPR Info 2013e.

<sup>38</sup> SuRs can negotiate with recommending states to change their recommendations, but the text of the original recommendation must nonetheless appear as a footnote in the report (Chauville 2014).

<sup>39</sup> UNHRC 2007b, Annex art. 26.

<sup>40</sup> UNHRC 2007b, Annex art. 27e.

is expected to say what it intends to do in that respect, by reference to its key national priorities, initiatives and commitments.<sup>41</sup>

At the next review, the SuR will then be expected to report on the implementation status of recommendations that it accepted in the previous cycle, as well as reporting on achievements made and outstanding challenges and difficulties in advancing the human rights situation in that country.<sup>42</sup> “Other relevant stakeholders are” also specifically “encouraged to include in their contributions information on the follow-up to the preceding review”.<sup>43</sup>

Thus, the UPR is a cooperative process in which SuRs are invited to enter into voluntary commitments regarding their human rights practices. The UPR is an evolving process, with further decisions yet to be made by the Council concerning follow-up modalities and how to handle “cases of persistent non-cooperation with the mechanism”.<sup>44</sup>

## ***2.2. Assessing the UPR's Contribution to the Deliberative System***

Standing back from all that institutional detail, let us now assess the ways in which the UPR process contributes to the deliberative capacity of the international system.

A threshold question is whether there is really very much deliberation involved in the UPR process at all. Its centerpiece is indeed a highly public moment of state-to-state discursive accountability, during the Interactive Dialogue in the grand Salle XX of the

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<sup>41</sup> UNHRC 2007a, I. E.

<sup>42</sup> UNHRC 2007a, I. G; UNHRC 2007b, Annex art. 34; UNHRC 2011b, Annex art. 6.

<sup>43</sup> UNHRC 2011b, Annex art. 8.

<sup>44</sup> UNHRC 2007b, Annex arts. 37 and 38.

Palais des Nations in Geneva. That is a hugely important event, where national governments are questioned on their human rights performance by other states, with NGOs in the room and many of their citizens back home watching the live or archived webcast. The live webcast of their countries' Interactive Dialogue were watched by some 5000 people in China, 6000 in Malaysia, and an astonishing 7000 in tiny Vanuatu (almost 3 percent of its population). In some cases, citizens were seeing their rulers publicly account for their human rights practices for the first time; the Saudi delegation seems to have felt this particularly, coming to their first UPR with an exceptionally large, senior and well-prepared delegation.

Nevertheless, that Interactive Dialogue lasts only three-and-a-half hours. States intervening during that session are allowed to speak only very briefly (sometimes as little as 51 seconds each); and they typically read out prepared texts, typically consisting of comments and "recommendations" rather than questions as such. The SuR is also strictly limited in the time available to respond to those interventions on the day itself – its representative may speak for no more than a third of the 210 minutes, including opening remarks. In consequence, the SuR does not respond on the spot to each intervention, and even when it does the other state making that intervention is permitted no further follow-up. In all those respects, the UPR's Interactive Dialogue seems not very dialogic at all.

While the proceedings on the day itself may fall short of the highest deliberative ideal, the requirement that states present themselves for questioning induces a great deal of high-quality deliberation in the run-up to and the backwash of the open session. There are protracted discussions within the government of the SuR – and with and among

stakeholders<sup>45</sup> – in formulating the national report to be submitted to the UPR and in anticipating challenges that might arise during it. There are protracted discussions within the UNOHCHR and between them and stakeholders in preparing the stakeholder report<sup>46</sup>, and within the UNOHCHR in preparing its own submission to the UPR. The Troika passes questions from other states to the SuR in anticipation of the Interactive Dialogue, and facilitates discussion among states over their recommendations afterwards.<sup>47</sup> While the SuR does not have time enough to respond to all the interventions and recommendations on the day, it is expected to give a written response to each one of the recommendations within a few months of its Interactive Dialogue. Furthermore – crucially – each country will be subject to another Interactive Dialogue in four-and-a-half years. So responding to the last Interactive Dialogue blends into preparing for the next, as part of an ongoing dialogic process.

In short, the Universal Periodic Review taken as a whole is thus a protracted deliberative process, with a moment of highly public state-to-state accountability at its heart. The Interactive Dialogue of the UPR itself may be only minimally deliberative – although that highly public moment of peer-to-peer accountability is arguably the key to its evoking commitments from states regarding their human rights performance. The prospect

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<sup>45</sup> The UPR has prompted the formation of coalitions among civil society organizations, involving e.g. 100 NGOs in Kenya and more than 1000 in Columbia (Chauville 2014).

<sup>46</sup> For an anthropological participant-observer's account of the process see Billaud (2014).

<sup>47</sup> Most dramatically, when Russia insisted the two recommendations made by Georgia – which under UPR rules had to be reported verbatim – nonetheless be dropped to a footnote in the Troika's report (UPR Info 2013c; UNHRC 2013, para 141).

of being held to account in that way generates intense and ongoing deliberation before and afterwards that, as the next section shows, actually seems to have made a positive difference to states' human rights performance.<sup>48</sup>

Let us now assess the quality of the deliberation involved in terms of the elements introduced in Section 1 above. A first element of a high-quality deliberative system is “inclusiveness”. The UPR is insistently open and inclusive, certainly with respect to all UN member states and to all internationally recognized human rights organizations. It is specifically designed to “ensure universal coverage and equal treatment of all States” and to “promote the universality, interdependence, indivisibility and interrelatedness of all human rights”.<sup>49</sup>

Universality is not merely UPR's aspiration: it is its hallmark. Every state took part in its first UPR and, so far, every state has taken part in its second. They have done so even when it was costly or inconvenient, as it was for Pacific Island and African states in particular.<sup>50</sup> They have done so even when it was politically awkward: Israel threatened not

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<sup>48</sup> Baird (2008, 10) reports, a propos Tonga, “A lot of issues can be thrashed out during the preparation process, and for those on the ground, this process is likely to be as important as what subsequently happens in Geneva. For example, the external facilitator has reported that during the consultation process, the Government of Tonga, initially reluctant to admit that domestic violence was a problem in Tonga, when confronted with statistics from the hospital's accident and emergency unit, admitted that domestic violence does exist.”

<sup>49</sup> UNHRC 2007b, Annex art. 3 (c) and (a).

<sup>50</sup> Abebe 2009, 22-5.

to take part in its Wave 2, but eventually did so in Session 17.<sup>51</sup> Confronted with the prospect of being the only state in the world not to take part, no state ultimately seems prepared to stay away.

Looking beyond member states, the UPR also mandates the participation of all relevant stakeholders, “guided by the principles of universality, impartiality, objectivity and non-selectivity”.<sup>52</sup> This de-monopolizes states as suppliers of information. NGOs provide independent information and transparency, especially in situations where states themselves fail to report fully or reliably.<sup>53</sup> Taken as a whole, NGOs introduce a diversity and range of views that would be missing under standard practices of monitoring and reporting. What is more, NGOs also play a leading role on the ground, gathering together different segments of their society in UPR related events prior to the review, disseminating information and providing training to less experienced, newer NGOs.

High-quality deliberation also requires “authenticity”, that the views expressed are genuinely those of the agent concerned. International politics is rife with strategic behavior, and the UPR process is hardly exempt from that. The comments and recommendations that states make to their political friends under review sometimes veer between polite fictions and barefaced lies.<sup>54</sup> Nevertheless, we still find plenty of apparently genuine, non-strategic

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<sup>51</sup> UPR Info 2013d.

<sup>52</sup> UNHRC 2007b, Annex arts 3(m) and 54.

<sup>53</sup> Dai 2007; Mitchell 1998.

<sup>54</sup> Charlesworth and Larking (2014, 14-5) comment on “evidence of cynicism in states’ involvement” as “it has become increasingly common for states to respond to recommendations by claiming that they are already

comments and recommendations being made over the course of the UPR. SuRs insistently (and we think not entirely disingenuously) echo the remarks of Malaysia:

In order for the UPR to be effective and meaningful, we believe that countries participating in the process must approach this important exercise in a spirit of sincerity, openness and transparency. We are of the view that observations and recommendations, raised during the session, no matter how difficult should be addressed and dealt with in a constructive manner. If we choose to be defensive, in denial, cynical and not wanting to engage with others in good faith, we will render the whole process meaningless.<sup>55</sup>

Issues of “authenticity” sometimes also surround NGOs. Are they truly representative of civil society, or are they in effect agents of the national government? In the modalities specified for its second cycle of UPRs, the HRC attempts to help assuage these concerns by stipulating:

The summary of the information provided by other relevant stakeholders should contain, where appropriate, a separate section for contributions by the national human rights institution of the State under Review that is accredited in full compliance with the Paris Principles. Information provided by other accredited national human

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recognizing rights when this is clearly not the case”. Similar complaints were registered by UN Watch (2009) and in a Joint NGO Statement (Asian Legal Resource Centre et al. 2008). See further Abebe (2009, 19-21).

<sup>55</sup> Quoted in Brett 2009, 13.

rights institutions will be reflected accordingly, as well as information provided by other stakeholders.<sup>56</sup>

Those Paris Principles for accreditation specifically require a pluralist representation of civil society.<sup>57</sup> True, there have been some egregious cases of “Government supported NGOs” swamping the UNOHCHR with submissions – 326 in the case of Cuba, 579 in the case of Venezuela – many of which were virtually identical and containing almost no criticisms of the Government.<sup>58</sup> The very fact that such biased reporting can be detected and discounted in itself inspires confidence in the UPR process, however.

Another essential element of high-quality deliberation is “discursive discipline”. Participants must engage in the deliberation in a free and open manner, without coercion or intimidation. The UPR is represented as an insistently cooperative enterprise. In the course of a UPR, a State under Review may make commitments, and its progress toward honoring those commitments will be a focus of discussion in its subsequent UPRs. But it is all insistently voluntary. The mechanism at work may be more the “civilizing force of hypocrisy”<sup>59</sup> than just “the forceless force of the better argument”.<sup>60</sup> But “forceless” both are.

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<sup>56</sup> UNHRC 2011b, Annex art. 9.

<sup>57</sup> UNGA 1993.

<sup>58</sup> Chauville 2014; ISHR 2009.

<sup>59</sup> Elster 1986.

<sup>60</sup> Habermas 1975, 108.

The UPR encourages “deliberation with effect” by drawing human rights discourse in the “public space” of civil society into the “empowered space” of the Palais des Nations in Geneva, where states hold other states to account at the Interactive Dialogue for their human rights performance. As we have seen, mechanisms are in place for “transmitting” the views of those relevant stakeholders into that process. And even if no formal mechanisms are in place to assure the accountability of that empowered space to global/national civil society, more informal ways of reporting back to the original public space seem to emerge with NGOs as the main transmitters. Back home, NGOs often engage their governments in constructive (rather than confrontational) dialogue over solutions to problems identified in the last UPR in preparation for the next. Thus, the UPR is equipped with all the procedural elements required for ensuring effectiveness.

But does the UPR actually affect states’ behavior? That is the larger worry. How can a procedure that is so insistently cooperative as the UPR really make a difference to the human rights performance of any underperforming state? Next we will present evidence suggesting that it does, concluding with some observations as to how and why.

### **3. Effects of the UPR Process**

In assessing the effects of the UPR’s deliberative process, three questions arise:

1. To what extent do States under Review *agree*, in the course of their UPR, to undertake specific human-rights promoting actions that they had not previously undertaken?
2. To what extent have States under Review *progressed* toward implementation of human rights from one UPR to the next four-and-a-half years later?

3. To what extent can that progress be plausibly *attributed to* the UPR process itself (as opposed to all the other things that might have happened in the intervening period)?

We confine our analysis almost entirely to evidence internal to the UPR process.<sup>61</sup>

Although limited in that way, our analysis is at least exhaustive of what can be gleaned from that source. Our findings will thus be suggestive rather than conclusive. Still, we can on that basis make a strong circumstantial case that the UPR process has indeed been a deliberative force for good. Even if it is too early to say what the ultimate effects of the process will be on states' overall human rights performance, as measured by the familiar cross-national indicators, our evidence identifies the UPR as a credible mechanism for such improvement.<sup>62</sup>

We base our analysis on the full sample of 55 states having an initial UPR in one of the 12 sessions of Wave 1 and their second review in one of the first four sessions of Wave 2 of UPRs (13<sup>th</sup> to 16<sup>th</sup> sessions). We examine the recommendations that other states made to the State under Review in each of those sessions, and the SuR's response.

On average SuRs received around 60 recommendations in Wave 1 and around 162 in Wave 2. Some of those recommendations were vague or general. Others, however,

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<sup>61</sup> "Almost," because we supplement our analysis with treaty ratification data in Section 3.3 below.

<sup>62</sup> It is too soon to see the UPR's impact on the Cingranelli-Richards (CIRI) Empowerment Rights Index, which has not been updated recently enough for our purposes.

required specific new actions on the part of the SuR. A considerable proportion of recommendations – over 30 per cent of them in each Wave – were of this “specific” sort.<sup>63</sup>

Some recommendations contain terms like “conduct”, “develop”, “eliminate”, “abolish”, “enforce”, “ratify”. Those terms point to “actions” – sometimes specific, sometimes general – that the SuR should undertake. Other recommendations contain words like “continue”, “intensify”, “maintain”, “strengthen”. Those terms imply that the SuR is already taking action and is simply being encouraged to do more along the same lines. They thus imply that the SuR is at the “post-action” stage.<sup>64</sup>

Bases on such phrasing, we might infer at what “stage of implementation” of human rights the SuR is (or anyway is perceived to be by other states making recommendations to it at its UPR). That would however be a naïve way of reading those recommendations. Sometimes “post-action” recommendations like “continue” mean just

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<sup>63</sup> See Table 1 and, for further details, Appendix A, Tables A1 and A2. We rely on the coding done by UPR Info (2012a) which classifies recommendations into five categories: 1 (minimal action), 2 (continuing action), 3 (considering action), 4 (general action), and 5 (specific action). Specific recommendations contain words such as “abolish”, “enforce”, “implement”, “ratify”, etc. Note that, given our operationalization of “sincere”, all recommendations that are “specific” are also “sincere”. Hence the bottom entry in each cell in Table 1 is a subset of the middle one.

<sup>64</sup> Our “action” category is UPR Info’s (2012a) category 5, and our “post-action” category is their category 2. We set aside their categories 1 and 3 on the grounds that what they call for (“consider”, “examine”, “reflect upon”, “share information”, etc.) are things that might be recommended to SuRs whatever their current level of human rights performance (we refer to these recommendations as “pre-action” recommendations; see also Table A2 in Appendix A). Their 4 straddles all of our categories and we recoded accordingly.

what they seem to mean (“You have made a good start, now continue along that path”). But sometimes “post-action” recommendations are more disingenuous and strategic. Sometimes they amount to UN-speak meaning, roughly: “You are my friend and I’m not going to embarrass you by pointing out that you’ve not even started doing what you should; so I am going to phrase my recommendation as ‘continue’, pretending you have already started something which both of us know that you haven’t and should”.

Our way of drawing that distinction, operationally, is this. We treat State A’s “post-action” recommendations to state B as sincere if and only if State A also made at least one explicitly “action” recommendation to State B. By that standard some 86 per cent of all recommendations in Wave 1 counted as “sincere” and 78 per cent in Wave 2.<sup>65</sup> All of our subsequent discussion will be confined to sincere recommendations alone.

States can be distinguished according to their pre-existing human rights performance, using the Cingranelli-Richards (CIRI) Empowerment Rights Index.<sup>66</sup> Doing so we see, just as would be expected, that the bottom group of human rights performers received most recommendations in each Wave of the UPR – about half again more than the top group (see Table 1).

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<sup>65</sup> The percentage of recommendations that are “sincere” is given below the number of total recommendations in Table 1. See further Appendix B on the making and receiving of insincere recommendations.

<sup>66</sup> Cingranelli and Richards 2010. We distinguish between three groups of SuRs: the 12 SuRs with CIRI scores between 0 and 4 constitute the bottom group of human rights performers; the 14 SuRs with scores between 5 and 9 the middle group; and the 29 SuRs that score 10 or above the top group.

Human rights performance	Average number of recommendations	
	Wave 1	Wave 2
<i>Top group</i> (29 states)	52.07 (90.79% were sincere recommendations) (33.97% were specific recommendations)	145.83 (80.85% were sincere recommendations) (31.02% were specific recommendations)
<i>Middle group</i> (14 states)	52.5 (84.22% sincere) (26.94% specific)	157.07 (78.44% sincere) (31.47% specific)
<i>Bottom group</i> (12 states)	86.17 (81.53% sincere) (29.79% specific)	206.08 (71.33% sincere) (31.62% specific)
<b>All SuRs</b>	<b>59.62</b> (86.4% sincere) (31.08% specific)	<b>161.84</b> (77.61% sincere) (31.3% specific)

**Table 1. Average number of recommendations, by states' human rights performance level.**

### **3.1. Do SuRs Agree to Specific Recommendations?**

The first issue to be investigated is the extent to which SuRs *agree* to undertake new human rights promoting actions in response to their UPR. To assess that, we focus on SuRs' decisions to "accept" recommendations that require *specific* actions departing from previous practice (e.g. to ratify a particular human rights treaty).<sup>67</sup> Accepting a

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<sup>67</sup> Evidence on this question is adduced from the written responses of SuRs to the recommendations they received in their first UPR (UPR Info 2013b). We retain the enumeration of recommendations as reported by UPR Info, although states sometimes "split" recommendations in responding to them to appear to be "accepting" a larger proportion of recommendations.

recommendation is a very public signal of the SuR's willingness, and indeed intention, to take the indicated action with respect to human rights.

A few countries rejected or equivocated on all recommendations made during Wave 1. A few accepted all recommendations. The great majority lies somewhere in between.<sup>68</sup> On average, SuRs accept about half of specific recommendations made to them during their UPR (see Table 2).

<b>Human rights performance</b>	<b>Percentage of “specific” recommendations accepted</b>	
	<i>Wave 1</i>	<i>Wave 2</i>
<i>Top group</i>	9.03/17.69=51.05%	27.38/45.24=60.52%
<i>Middle group</i>	7.07/14.14=50.00%	28.93/49.43=60.55%
<i>Bottom group</i>	8.67/25.67=33.77%	22.50/65.17=34.53%
<b><i>All SuRs</i></b>	<b>8.60/18.53=46.42%</b>	<b>26.71/50.65=52.73%</b>

**Table 2. Proportion of specific recommendations accepted, by states' human rights performance level.**

Although top and middling human rights performers accept a much higher proportion of specific recommendations, even weak human rights performers on average accepted over a third of specific recommendations in each Wave of the UPR. Thus, a

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<sup>68</sup> For country-level details see Appendix A, Table A1.

considerable proportion of specific recommendations are accepted, even by poor human rights performers.<sup>69</sup>

The fact that, over the course of their UPR, states agree to do something they could have previously done, but had not done, suggests that the UPR process is indeed effective in inducing states to agree to comply with human rights standards.

### ***3.2. Is There Progress From One UPR to the Next?***

Agreeing to do something is one thing, doing it is another. Did the SuR actually make *progress* toward implementing human rights, from one UPR to the next four-and-a-half years later? Indirect evidence on this second question can be gleaned from two sources. One is internal to the UPR process itself, while the other employs our only form of external cross-check.

For the internal test, we compare the contents of all sincere recommendations the SuR received in each Wave. From those, we infer which “implementation stage” (“action” or “post-action”) the SuR is seen to be at in each of those Waves. If the SuR is seen to be at a substantially higher “implementation stage” in Wave 2 compared to Wave 1 (judged in terms of “sincere” recommendations alone, remember), we infer that the SuR actually

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<sup>69</sup> Furthermore, there is much more similarity in the absolute numbers of recommendations accepted by states within each of those groups: the percentages are largely driven by the fact that the bottom group receives more recommendations than the others. Insofar as all states have similarly limited implementation capacity (e.g., time on the legislative agenda [Van Mechelen and Rose 1986]) the absolute number may be the more appropriate measure.

made progress toward implementing human rights – at least in the eyes of the states making the recommendations.

Examining evidence of this sort suggests that states generally do progress, in many cases substantially, between Waves 1 and 2. We determine this by looking at: (a) the average number of “action”-stage recommendations SuRs received in their Wave 1 UPR; (b) the average number of sincere “post-action”-stage recommendations states received in their 1st and 2nd Wave; and (c) the difference between these numbers. States under Review that received many “action” recommendations in Wave 1, and then received many more sincere “post-action” recommendations in Wave 2 than in Wave 1, can be interpreted as having taken appropriate actions in between the two Waves (at least in the eyes of states making recommendations to them).

That was clearly the case for virtually all States under Review.<sup>70</sup> In general, SuRs received a substantial number of “action”-stage recommendations (35.58, on average) in Wave 1; and markedly more “post-action” recommendations in Wave 2 than in Wave 1 (14.38 more, on average). The bottom group of human rights performers received most recommendations for “actions” in Wave 1, as one would naturally expect. But interestingly, that same group also showed the greatest progress between Waves 1 and 2 (on average, they had 16.58 more “post-action” recommendations in Wave 2 than Wave 1) (see Table 3).

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<sup>70</sup> See Appendix A, Table A1 for details on specific countries and Table A2 for further summary data.

Human rights performance	“Action” recommendations	“Post-action” recommendations		Difference, “post-action” recommendations
	<i>Wave 1</i>	<i>Wave 1</i>	<i>Wave 2</i>	<i>Wave 2-1</i>
<i>Top group</i>	33.24	6.03	19.62	13.59
<i>Middle group</i>	28.21	7.50	21.64	14.14
<i>Bottom group</i>	49.83	8.50	25.08	16.58
<b><i>All SuRs</i></b>	<b>35.58</b>	<b>6.95</b>	<b>21.33</b>	<b>14.38</b>

**Table 3. Average numbers of “action” and “post-action” recommendations, by states’ human rights performance level.**

That is pleasing, but at first blush surprising. Other things being equal, we would expect better human rights performers to be more responsive to UPR recommendations than poorer ones. But presumably states take the easier steps first (e.g. basic civil rights) and harder steps only later (e.g. rights of migrant workers). If so, then it should come as no surprise that good-performing states that have already taken many steps to implement human rights will find the next steps harder than will poor-performing states that have yet to take those easier first steps.

For our second test of whether there is progress between the two waves of UPRs, we consider evidence external to the UPR process itself. Here we look to the most specific, and checkable, recommendation that states make to one another during the UPR: to ratify some particular treaty.<sup>71</sup>

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<sup>71</sup> “Ratify” is one very specific step in the process of acceding to a treaty, as set out in the Vienna Convention on the Law of Treaties. Recommendations to “sign”, which does not require a full commitment, are weaker and thus not counted; likewise recommendations to “consider ratifying”.

First, we note the average number of recommendations to ratify treaties that states received.<sup>72</sup> Then, we note the proportion of those recommendations each group of SuRs said they “accept”. Finally, we note the proportion of those accepted recommendations to ratify treaties that SuRs actually ended up acting upon (see Table 4).<sup>73</sup>

	Column 1	Column 2	Column 3
<b>Human rights performance</b>	<b>Average number of ratifications recommended</b>	<b>Percentage, column 1 accepted by the SuR</b>	<b>Percentage, column 2 actually ratified</b>
<i>Top group</i>	82/29 = 2.83	53.66%	56.82%
<i>Middle group</i>	28/14 = 2.00	53.57%	46.67%
<i>Bottom group</i>	43/12 = 3.58	37.21%	37.50%
<b><i>All SuRs</i></b>	<b>153/55 = 2.78</b>	<b>49.02%</b>	<b>50.67%</b>

**Table 4. Ratification of human rights treaties.**

<sup>72</sup> As reported in Table 4. States often receive multiple recommendations from different states to ratify the same treaty: 1.99 recommendations per treaty on average for states in the top group, 2.32 for states in the middle group, 2.23 for states in the bottom group. Recommendations to ratify a treaty (including multiple recommendations to ratify the same treaty) constituted around 11 per cent of recommendations addressed to each group.

<sup>73</sup> Some SuRs ratified treaties despite having given negative (“noted”) responses to the recommendation, a general response or no response. That happened twice for “noted” responses in each of the middle and bottom groups; for “no response” once in the bottom group and twice in the middle group; and for “general response” 5 times in the top group. It may be that the UPR recommendation actually induced the SuR to ratify, despite the negative or ambiguous response it gave to the recommendation; but in Table 4 we report only cases where we can trace the clear “recommendation → acceptance → implementation” pattern.

States in the bottom group of human rights performers receive the most recommendations to ratify more treaties. That is unsurprising, because poor performers typically have more treaties left to ratify (besides attracting particular attention because they are seen as problem cases). Top and middle groups accept recommendations to ratify treaties about half the time, and they go on to do so in about half of those cases (slightly more so in the top than the middle group). But, significantly, even the bottom group accepts a substantial proportion (about 37 per cent) of recommendations to ratify specific treaties – and then actually acts on a substantial proportion (38 per cent) of those promises.

Of course this does not constitute ironclad proof that receiving the recommendation, and accepting it, is what made those poor human rights performers actually ratify the treaties.<sup>74</sup> Still, those treaties had typically been open for ratification for some time at the point of the first UPR. That such a substantial portion of UPR recommendations to ratify ended in ratification, even among the least human rights respecting states, strongly suggests that the UPR played an important role.

### ***3.3. Is the Progress Plausibly Attributable to the UPR?***

The third issue to be investigated is whether this progress with respect to human rights between Waves 1 and 2 of the UPR can actually be *attributed* to the UPR process, rather than something else. One way to assess that is to look at the timing of the implementation of UPR recommendations. If most of the progress came in the more immediate run-up to

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<sup>74</sup> Sometimes ratification came so hard on the heels of the SuR's UPR that it must have been in train ahead of that – perhaps in anticipation of the upcoming UPR.

Wave 2 of UPRs, it is not unreasonable to suspect that – at least in many cases – their implementation of “action” recommendations from Wave 1 is *attributable* to the prospect of having to give a public account to other states at Wave 2 of UPRs questioning.

We investigate the timing of implementation of UPR recommendations in two ways. The first relies on Mid-term Implementation Assessment reports which have been compiled by UPR Info for some but not all SuRs.<sup>75</sup> These documents provide assessments of whether recommendations made to the SuR in its Wave 1 had been implemented (and if so, whether fully or partially) by the end of the first two years after the first UPR had been conducted (see Table 5).<sup>76</sup>

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<sup>75</sup> UPR Info 2013f.

<sup>76</sup> For country-level data see Appendix A, Table A1. In a subsequent document, UPR Info (2012b, 8ff.) reports that the proportion of recommendations fully or partially implemented as being substantially higher – 12.16 per cent fully implemented and 28 per cent partially. That report is for a larger sample of countries across all SuR in Wave 1. But the real source of the discrepancy between the statistics they report and Table 5 based on the UPR Info “Midterm Assessments” is this. In its later document, UPR Info expresses their “percentages of recommendations fully or partially implemented” as a percentage of recommendations on which SuRs or NGOs in those states reported back at all, in response to their questionnaire. They received reports on only 3294 out of 6542 recommendations made to the 66 SuRs that report discusses. The percentages reported in UPR Info “Midterm Assessments”, on which Table 5 is based, are instead reported as the proportion of all recommendations, treating recommendations on which not even the SuR reported any progress as being “unimplemented”.

<b>Human rights performance</b>	<b>Percentage, recommendations implemented within 2 years (<i>Wave 1</i>)</b>	
	<i>fully</i>	<i>partially</i>
<i>Top group</i>	9.18%	13.03%
<i>Middle group</i>	10.17%	13.02%
<i>Bottom group</i>	1.34%	7.31%
<b><i>All SuRs</i></b>	<b>7.40%</b>	<b>11.54%</b>

**Table 5. Timing of implementation, by states' human rights performance level.**

On average, States under Review implemented only around 7 per cent of Wave 1 recommendations fully (and another 12 per cent partially) by the time of the Mid-term Implementation Assessment. Of the 27 SuRs in question, 19 implemented fewer than 20 per cent of recommendations either partially or fully during those first two years after their Wave 1 of UPRs. Thus, in most countries – but most especially in the bottom group of human rights performers<sup>77</sup> – rather little happened in terms of implementation activities immediately after Wave 1 of the review process in most cases. Recommendations were typically implemented only nearer the time of the next review, when the prospect of giving public account to other states was looming.

These findings are confirmed by looking once again at Wave 1 recommendations to ratify treaties, this time paying special attention to the *timing* of ratifications in relation to the SuR's next UPR (see Table 6). Top human rights performing states ratified treaties recommended to them reasonably promptly after their first UPR – 60 per cent were ratified

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<sup>77</sup> The proportion of recommendations for the bottom group implemented fully or partially by the mid-term was 8.65 per cent, compared to 22.21 per cent for the top group. See Table 5.

within the first two years of the SuR's Wave 1 UPR. Middle and bottom human rights performing states, in contrast, tended to ratify treaties recommended to them in the more immediate run-up to their next UPR.<sup>78</sup> For those two groups of states, around two-thirds of ratifications recommended were accomplished only in the last two years before the next UPR.

Human rights performance	Average number of recommended ratifications completed after Wave 1	Percentage of ratifications following Wave 1	
		<i>within first 2 years</i>	<i>within last 2 years</i>
<i>Top group</i>	30/29=1.03	60.00	40.00
<i>Middle group</i>	11/14=0.79	36.36	63.64
<i>Bottom group</i>	9/12=0.75	33.33	66.67
<b><i>All SuRs</i></b>	<b>50/55=0.91</b>	<b>50.00</b>	<b>50.00</b>

**Table 6. Timing of treaty ratification, by states' human rights performance level.**

To summarize: A substantial proportion of recommendations got implemented only in the run-up to the next UPR, especially among poor human rights performing states. And that suggests (although of course it does not prove) that it was prospect of the upcoming UPR that led the state to take action.

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<sup>78</sup> Average time from UPR recommendation to treaty ratification was 22.8 months for the top group, 32.64 months for the middle group, and 29.33 months for the bottom group.

## 4. Why It Works: Deliberative Capacity in Action

The case of the Human Rights Council’s Universal Periodic Review reveals “what it takes” for deliberation to “have effect” in the international setting. Three features of the deliberation seem highly useful in that connection.

One crucial source of the UPR’s deliberative capacity is the fact that it is a *repeated game* among the same players. Repeat-play can evoke more cooperative behavior, simply because players will have an opportunity to reward or punish one another in subsequent rounds of the game, depending on how they behave in this round; and the shadow of the future makes players better behaved in the current round in consequence.<sup>79</sup> This is one plausible interpretation of how international law gets a grip on states in general.<sup>80</sup>

This is an important part of the UPR story. The prospect of returning to Salle XX of the Palais des Nations for another Interactive Dialogue in just four-and-a-half years’ time is plausibly what induces many states to make credible commitments and to keep them. The timing of implementation of Wave 1 recommendations, particularly by states without good human rights records, clearly suggests this mechanism at work.

Note, importantly, that the UPR is *not* something that happens “under the radar” of foreign ministries, where cozy cabals of diplomats can do as they please. Instead, it is a high-profile, high-level event, with some 80 per cent of Wave 1 delegations being led by someone at ministerial level.<sup>81</sup> Thus, a SuR’s response to UPR recommendations is driven

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<sup>79</sup> Axelrod 1984.

<sup>80</sup> Axelrod & Keohane 1985; Keohane 1984; cf. Downs and Jones 2002.

<sup>81</sup> Chauville 2014, fn. 6.

not so much by fear of personal embarrassment at “breach of etiquette in a club”<sup>82</sup> and much more by fear of the consequences of damage to the reputation of the state as a whole, come the next UPR.

A second, related source of the UPR’s deliberative success is found in *peer-to-peer accountability*.<sup>83</sup> It matters greatly that the UPR is a system of peers reviewing one another’s performance. Peers care what their peers think about them. As observers of the UPR process repeatedly say, “States are proud in front of other states”. Experts they can dismiss, NGOs they can dismiss – but other states they cannot dismiss.

Among some states, particularly of the global South, it is a point of pride to boast of the large percentage of UPR recommendations that they accepted. The Moroccan delegation is famous for this. Uruguay, likewise, proudly accepted all 88 recommendations made to it in its 2009 Interactive Dialogue.<sup>84</sup>

But the peer pressure is felt equally keenly by the most powerful states in the world. Members of the G20, all the more of the P5, are under special scrutiny in the UPR precisely because they are ordinarily immune.<sup>85</sup> They feel particularly the obligation to

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<sup>82</sup> As Myrdal’s (1955) image suggests.

<sup>83</sup> Brennan and Pettit 2004.

<sup>84</sup> “With one caveat,” Brett (2009, 10) wryly adds: “they thought, but had been unable to confirm, that they had already ratified the UNESCO Convention against Discrimination in Education.”

<sup>85</sup> Russia received the second-highest number of recommendations in Wave 1 of UPRs, Canada the fifth-highest. In the UPR the US was reviewed against other aspects of their human rights performance beyond binding obligations under treaties and conventions it had explicitly committed to, such as the right to health embedded in the Declaration of Human Rights.

“look good” – or anyway as good as they can – at their UPR in order to vindicate their position of international leadership.

The third crucial element of the UPR process is *discursive entrapment*. This is a particular instance of a more general process by which recalcitrant states are socialized into international norms, human rights ones among others. “Norm-violating governments accepted the norms rhetorically in order to decrease the international and domestic pressures against them”.<sup>86</sup> But having made what started as a purely tactical rhetorical concession, states are increasingly held responsible (by themselves as well as others) for acting upon it. This leads to increasingly cooperative joint action toward increasingly convergent goals.<sup>87</sup> Parties have simply “talked themselves into a corner”,<sup>88</sup> as a result of “rhetorical coercion”, “persuasion” or “socialization”.<sup>89</sup>

An analogous cycle of self-entrapment seems to be at work in the UPR. In one cycle, the State under Review receives a raft of recommendations. As a tactical concession to placate critics (at least in the short term) a SuR that is under heavy pressure over its

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<sup>86</sup> Risse 2004, 307.

<sup>87</sup> “Both sides accept each other as valid interlocutors, try to establish some common definition of the human rights situation, and to agree on the norms guiding the situation. Moreover, the actors do not simply repeat their arguments in the public discourses, but respond in increasing detail to the points made by their communication partners” (Risse 2004, 308; see similarly Risse 1999; Risse, Ropp and Sikkink 1999). Schimmelfennig (2001) points to a similar pattern of “rhetorical entrapment” to explain the Eastern enlargement of the EU, when several important existing members deemed it not in their interests to do so.

<sup>88</sup> Krebs and Jackson 2007, 36.

<sup>89</sup> cf. Crawford 2002; Johnston 2001; Johnston 2005; Krebs and Jackson 2007.

human rights record might “accept” some of the recommendations. But then at its next UPR in four-and-a-half years’ time, it will have to account for its follow-through on the recommendations it accepted.

Some seriously recalcitrant states may of course simply brazen it out at that point, waiting to see what “further measures” (as yet unspecified) the HRC finds to deploy. But for the same reason they felt it necessary to make the tactical concession in the first place, most states would presumably prefer to be able to report at least some progress in the next review.

The combination of these three mechanisms helps make the UPR process a relatively successful instrument for promoting human rights around the world. Early fears that it would simply collapse have proven unfounded; and while there is naturally a certain amount of “gaming the system” and a certain amount of disingenuous testimony and even sheer bullying, overall the UPR process has been at least a qualified success. The deliberative capacity of other international organizations might be enhanced if they mimicked these mechanisms.

## **5. Conclusion**

The Universal Periodic Review of human rights is, on its face, a toothless mechanism. Realists would scoff at its absence of any serious sanctions. But under some conditions seemingly toothless mechanisms can have a real impact. Peer-to-peer accountability – universal in scope and repeated in form – engages states in cooperative dialogue leading for example to their ratifying human rights treaties that they had failed to ratify before. Furthermore, the deliberative engagement is not only with other states but also with civil society, and the dialogue is continuous in form, occurring not only in anticipation of those

moments of peer-to-peer accountability but also in consequence of them. In this way, the UPR is a mechanism that induces a much more cooperative, deliberative culture across the system as a whole.

The peer-to-peer accountability and the requirements to consult civil society more generally are not unique to the UPR. Something similar is found in the OECD peer-review procedures,<sup>90</sup> and in the Paris Principles governing the civil-society consultative practices of UN bodies.<sup>91</sup> The techniques for engagement and publicity that were pioneered by the UPR (especially webcasting of country review meetings) are being mimicked by the other human rights bodies charged with the implementation of international treaties.<sup>92</sup> In short, contrary to the expectations of hard-bitten realists, the UPR's "soft" way of inducing system-wide deliberation is both increasingly common and consequential in world politics.

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<sup>90</sup> Pagani 2002.

<sup>91</sup> UNGA 1993.

<sup>92</sup> Grossman et al. 2014, IV.

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## A Country level data.

	SuR	CIRC	Total no. of recommendations		Total no. of sincere recommendations		% of 'specific' recommendations		% of specific recommendations 'accepted'		No. of 'action' recomm.	Difference, 'post-action' recomm.	% of implemented recommendations within 2yrs.	
			1st Wave	2nd Wave	1st Wave	2nd Wave	1st Wave	2nd Wave	1st Wave	2nd Wave			fully	partly
	Algeria	3	36	170	29	121	8.33	33.53	33.33	12.28	16	17	na	na
	Argentina	12	41	133	36	97	9.76	23.31	100.00	74.19	19	11	na	na
	Azerbaijan	2	91	167	72	119	19.78	23.35	44.44	100	51	3	6.59	13.19
	Bahamas	13	73	113	72	96	45.21	40.71	30.30	28.26	42	2	0	0
	Bahrain	5	12	176	12	151	33.33	46.59	75.00	80.49	7	20	na	na
	Bangladesh	7	100	232	75	166	21.00	27.59	52.38	40.63	41	21	1	14
	Barbados	13	64	117	59	96	31.25	42.74	25.00	48	36	5	0	0
	Benin	8	35	129	28	97	20.00	26.36	100.00	88.24	16	11	na	na
	Botswana	10	101	176	92	136	32.67	31.25	42.42	38.18	56	7	0	0.99
	Brazil	12	15	170	8	143	13.33	18.24	100.00	100	6	35	na	na
	Burkina Faso	9	86	166	70	121	26.74	28.31	56.52	61.70	48	16	6.98	8.14
	Burundi	9	104	174	94	145	25.96	29.89	55.56	73.08	56	17	5.77	19.23
	Cameroon	3	97	177	84	126	38.14	41.24	48.65	52.05	53	0	2.06	21.65
	Canada	14	114	216	108	188	41.23	39.81	63.83	40.7	79	15	6.14	7.02
	Cape Verde	13	50	123	47	90	34.00	26.02	82.35	100	29	11	0	0
	Colombia	11	112	167	98	125	26.79	24.55	66.67	51.22	67	11	11.61	66.07
	Cuba	0	148	386	87	224	20.95	23.58	12.90	6.59	44	45	0	0
	Czech Rep.	12	37	161	37	145	45.95	48.45	94.12	89.74	31	19	na	na
	Djibouti	7	80	179	48	124	18.75	24.58	40.00	63.64	27	15	0	0
	Ecuador	10	12	139	10	89	8.33	16.55	100.00	86.96	9	17	na	na
	Finland	13	17	87	14	74	5.88	28.74	100.00	88	3	6	na	na
	France	12	36	166	33	136	33.33	19.88	0.00	69.7	23	13	55.56	25
	Gabon	5	41	115	38	88	53.66	28.70	0.00	87.88	31	20	na	na
	Germany	10	72	203	65	172	30.56	28.08	63.64	63.16	43	24	13.89	44.44
	Ghana	10	56	150	54	118	26.79	35.33	46.67	67.92	39	10	na	na
	Guatemala	11	62	138	56	119	40.32	22.46	100.00	64.52	51	26	na	na

**Table A1.** Country level data.

Note: na: not available; %: percentage; no.: number; recomm.: recommendations.

*continued on next page*

SuR	CIRC	Total no. of recommendations		Total no. of sincere recommendations		% of 'specific' recommendations		% of specific recommendations 'accepted'		No. of 'action' recomm.	Difference, 'post-action' recomm.	% of implemented recommendations within 2yrs.	
		1st Wave	2nd Wave	1st Wave	2nd Wave	1st Wave	2nd Wave	1st Wave	2nd Wave	1st Wave	2nd-1st Wave	fully	partly
India	8	30	170	28	133	36.67	32.94	0.00	0	18	20	na	na
Indonesia	6	13	180	13	129	23.08	33.89	33.33	67.21	7	21	na	na
Japan	13	62	177	60	143	46.77	34.46	58.62	52.46	43	17	na	na
Liechtenstein	13	48	92	40	70	33.33	36.96	56.25	76.47	23	1	0	0
Luxembourg	13	47	128	42	92	23.40	25.00	0.00	81.25	26	6	2.13	0
Mali	8	46	148	41	128	26.09	27.70	58.33	60.98	28	14	6.52	15.22
Montenegro	10	55	127	49	105	29.09	23.62	100.00	86.67	39	21	10.91	3.64
Morocco	4	16	160	13	99	25.00	19.38	75.00	87.1	4	12	na	na
Netherlands	12	52	130	47	117	28.85	30.00	46.67	28.21	34	12	na	na
Pakistan	2	101	199	89	139	29.70	34.17	80.00	35.29	73	10	na	na
Peru	10	39	136	27	96	20.51	27.21	25.00	67.57	19	13	na	na
Philippines	10	24	165	19	121	41.67	32.73	60.00	48.15	16	23	na	na
Poland	11	33	124	30	112	39.39	34.68	0.00	93.02	24	13	na	na
Rep. of Korea	11	47	175	46	152	51.06	37.14	25.00	36.92	40	16	na	na
Romania	9	55	159	52	118	21.82	18.87	75.00	56.67	34	4	50.91	34.55
Russian Fed.	2	121	242	97	187	45.45	30.58	36.36	36.49	78	26	0	0
Serbia	10	79	145	73	114	18.99	24.83	60.00	91.67	53	6	15.19	20.25
South Africa	10	29	153	26	110	41.38	29.41	0.00	66.67	21	14	na	na
Sri Lanka	4	95	208	87	151	31.58	32.69	20.00	25	71	13	na	na
Switzerland	12	47	184	47	161	61.70	39.67	24.14	38.36	39	21	na	na
Tonga	9	51	97	47	86	37.25	54.64	68.42	60.38	30	-3	0	0
Tunisia	1	28	165	19	135	0.00	36.36	*	70	11	23	na	na
Turkmenistan	0	87	188	80	138	37.93	37.77	21.21	0	62	11	0	3.45
Tuvalu	11	51	97	44	78	49.02	44.33	92.00	44.19	32	9	3.92	1.96
Ukraine	8	44	147	41	127	22.73	33.33	80.00	63.27	29	13	na	na
UAE	2	74	205	60	157	31.08	41.95	34.78	25.58	37	16	0	0
UK	13	35	137	32	124	31.43	35.04	45.45	43.75	22	10	na	na
Uzbekistan	0	140	206	126	168	31.43	31.07	11.36	32.81	98	23	0.71	12.86
Zambia	7	38	127	32	112	31.58	36.22	50.00	28.26	23	9	na	na

**Table A1 (conti.). Country level data.**

Note: \*Tunisia did not receive 'specific' recommendations; na: not available; %: percentage; no.: number; recomm.: recommendations.

Human rights performance	Total no. of recomm.		Diff.	Total no. of sincere recomm.		Diff.	‘Pre-action’ recomm.		Diff.	‘Action’ recomm.		Diff.	‘Post-action’ recomm.		Diff.
	<i>1st Wave</i>	<i>2nd Wave</i>	<i>2nd–1st Wave</i>	<i>1st Wave</i>	<i>2nd Wave</i>	<i>2nd–1st Wave</i>	<i>1st Wave</i>	<i>2nd Wave</i>	<i>2nd–1st Wave</i>	<i>1st Wave</i>	<i>2nd Wave</i>	<i>2nd–1st Wave</i>	<i>1st Wave</i>	<i>2nd Wave</i>	<i>2nd–1st Wave</i>
<i>Top group</i>	52.07	145.83	93.76	47.28	117.90	70.62	8	14.48	6.48	33.24	83.79	50.55	6.03	19.62	13.59
<i>Middle group</i>	52.5	157.07	104.57	44.21	123.21	79.00	8.5	12.86	4.36	28.21	88.71	60.50	7.50	21.64	14.14
<i>Bottom group</i>	86.17	206.08	119.92	70.25	147.00	76.75	11.92	16.17	4.25	49.83	105.75	55.92	8.50	25.08	16.58
<b><i>All SuRs</i></b>	59.62	161.84	102.22	51.51	125.60	74.09	8.98	14.44	5.45	35.58	89.84	54.25	6.95	21.33	14.38

**Table A2.** Average numbers of recommendations.

Note: ‘Average number of pre-action recommendations’ refers to recommendations of action category ‘1’ and ‘3’; recomm.: recommendations; Diff.: Difference.

## B Sincere recommendations.

Friendship relations exist among states, with all the same consequences as friendship among individuals. Among other things, states are more tactful in their criticism of states that are their friends. This has the effect, in the UPR, of states phrasing their recommendations to their friends more gently – and misleadingly so, viewed from the outside. When commenting on the human rights practices of their friends, states will engage in the polite fiction that their friends are already engaged in good practices, and recommend that they ‘continue’ or ‘maintain’ or ‘expand’ those good practices that are already underway – when in truth no such good practices are already underway, and what the states are really meaning to recommend, in this veiled fashion, is that their friend initiate such actions. All of the informants we interviewed in Geneva who were familiar with the UPR described this practice and warned us to beware of it in our analysis of UPR recommendations.

As reported in the main text, we developed in response an operational indicator of ‘sincere’ recommendations (ones not affected by this ‘polite fiction’ practiced when states are making recommendations to their friends). That operational indicator deems all ‘post-action’ (‘continue’ etc.) recommendations from State A to State B ‘sincere’ if and only if State A makes at least one recommendation requiring ‘action’ from State B at the same time. When one state makes only ‘post-action’ recommendations to another state, we eliminate all those recommendations from our analysis on the grounds that they might be recommendations contaminated by the polite fictions that friends adopt in their dealing with one another.

Table 2 shows that sincere recommendations were only 86 per cent of total recommendations for all states in Wave 1, and only about 78 per cent of total recommendations in Wave 2. That table further shows that the proportion of total recommendations that were sincere was highest for those recommendations directed at the top group of human rights performers and lowest for those directed

at the bottom group of human rights performers, within each wave of the UPR.

Table B1 below indicates which states made, and which states received, the most insincere recommendations as we have operationalized that concept. In each case we calibrate that as a proportion of the total number of recommendations (whether sincere or insincere) that the state makes or receives.<sup>1</sup>

In Table B1 we confine our attention to states that were States under Review in UPR sessions 1 through 4 (and hence repeat reviews in sessions 13 through 16). There are other states that made a substantial proportion of insincere recommendations in those sessions, but which were not themselves under review in those sessions. (Some 69 per cent of Saudi Arabia's and 73 per cent of Viet Nam's recommendations were 'insincere' by our operationalization, for example, but since neither state was a SuR in those sessions those states do not appear in the left hand columns of Table B1.) We make this restriction, because we want to explore the possibility of reciprocal friendship relations systematically affecting patterns of recommendation making in the UPR - i.e., do states that make a large proportion of 'friendly', insincere recommendations receive a large proportion of 'friendly', insincere recommendations in return?

Table B1 shows the top twenty countries which received and made relatively large proportions of insincere recommendations. Eleven out of these top twenty countries (55 per cent) and five out of the top ten countries (50 per cent) appear in both columns suggesting a substantial extent of reciprocal back-scratching.

As we also see from Table B1, the practice of insincere recommendations is the particular province of poor human rights performers. 40 per cent of makers and recipients of insincere recommendations are in the bottom group of human rights

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<sup>1</sup>This is important, because different states make vastly different numbers of total recommendations. In the Wave 1 sessions under examination, for example, the UK made 12 insincere recommendations: that is a high number in absolute terms (only 8 states made more insincere recommendations than that in those sessions), but it is a smaller percentage (7.74 per cent) of the total of 155 recommendations made by the UK across those sessions. In comparison, Belarus also made 12 insincere recommendations across those sessions, but that is a much higher percentage (66.67 per cent) of the total of 18 recommendations made by Belarus across those Sessions.

performers. Put differently, within this group of poor human rights performers 75 per cent of states is actively and passively involved in making and receiving insincere recommendations.

Rank	States making largest proportion of insincere recommendations		States receiving largest proportion of insincere recommendations	
	<i>Recommending state</i>	%	<i>SuRs</i>	%
1	Uzbekistan*	100.00	Brazil	46.67
2	Burundi	75.00	<i>Cuba*</i>	41.22
3	Ghana	70.00	<i>Djibouti</i>	40.00
4	Botswana	66.67	<i>Tunisia*</i>	32.14
5	<i>Cuba*</i>	66.67	Peru	30.77
6	<i>Bangladesh</i>	51.43	<i>Bangladesh</i>	25.00
7	<i>Benin</i>	50.00	<i>Azerbaijan*</i>	20.88
8	<i>Morocco*</i>	50.00	<i>Philippines</i>	20.83
9	<i>Philippines</i>	45.16	<i>Benin</i>	20.00
10	<i>Azerbaijan*</i>	40.74	<i>Russian Federation*</i>	19.83
11	Republic of Korea	39.29	<i>Algeria*</i>	19.44
12	Bahrain	37.50	<i>United Arab Emirates*</i>	18.92
13	<i>Tunisia*</i>	37.50	<i>Morocco*</i>	18.75
14	<i>United Arab Emirates*</i>	33.33	Burkina Faso	18.60
15	Indonesia	31.58	Finland	17.65
16	<i>Djibouti</i>	25.00	Ecuador	16.67
17	South Africa	20.59	Liechtenstein	16.67
18	India	20.00	Zambia	15.79
19	<i>Algeria*</i>	19.58	Tuvalu	13.73
20	<i>Russian Federation*</i>	14.63	Cameroon*	13.40

**Table B1.** *Ranking of states making and receiving insincere recommendations.*

Note: \* indicates that state is in the bottom group of human rights performers; *italics* denote that a state made and received a large proportion of insincere recommendations.