

## Between learning and schooling: the politics of human rights monitoring at the Universal Periodic Review

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## RESEARCH ARTICLE

### **Between Learning and Schooling: The Politics of Human Rights Monitoring at the Universal Periodic Review**

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This article explores the politics of monitoring at the Universal Periodic Review (UPR), a new United Nations human rights monitoring mechanism which aims to promote a universal approach and equal treatment when reviewing each country's human rights situation. To what extent are these laudable aims realised, and realisable, given entrenched representations of the West and the Rest as well as geopolitical and economic inequalities both historically and in the present? Based on ethnographic fieldwork at the UN in 2010-2011, the final year of the UPR's first cycle, we explore how these aims were both pursued and subverted, paying attention to two distinct ways of talking about the UPR: first, as a learning culture in which UN member states 'share best practice' and engage in constructive criticism, and second, as an exam which UN member states face as students with vastly differing attitudes and competencies. Accounts and experiences of diplomats from states that are not placed in the 'good students' category offer valuable insights into the inherent contradictions of dehistoricised and decontextualised approaches to human rights.

**Keywords:** Human Rights monitoring, United Nations, audit culture, diplomacy.

#### **Introduction**

In 2005, the United Nations (UN) began a process of reforming its human rights system. The reform was, in large part, a response to widespread accusations that the UN's long-standing Commission on Human Rights was guilty of 'politicisation' and of applying 'double standards', scrutinising some states for human rights violations while allowing other states to escape scrutiny.<sup>1</sup> In this context, a new mechanism, the Universal Periodic Review (UPR), was created as a holistic review of a state's human rights situation and launched in 2008. What set this mechanism apart from the other UN mechanisms and made it so radical was, precisely, its universal rather than selective character: all UN member states would be reviewed and all fellow member states would be invited to do the reviewing. Moreover, it sought to

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cultivate a monitoring practice that was ‘objective, transparent, non-selective, constructive, non-confrontational and non-politicised’.<sup>2</sup> Many who were initially sceptical gradually became convinced, and sometimes enthusiastic, about the potential benefits of UPR’s innovative approach for improving human rights. Even before the end of its first cycle in 2011, the UPR was being lauded as the ‘success story’ of the new Human Rights Council.

During the UPR Working Group’s Seventh Session in February 2010, one of us attended an informal presentation at the Palais des Nations in Geneva, organised by a UK-based university academic for her visiting students. The panel of speakers, which included an NGO activist for a children’s rights charity, a UN Secretariat staff member and several members of the British diplomatic mission, explained this new mechanism. Speaking with enthusiasm and admirable candour, the British ambassador described how his government wanted to ‘nurture’ the UPR process, in part by setting an example through the rigor and self-critical approach of its own review. ‘We set the bar quite high, early on’, he explained. ‘After our review, other countries that were holding back wanted to get as close as they could to our performance, or even surpass it’. He believed that the UK delegation’s performance had reassured other countries, demonstrating that ‘none of us is perfect—we’ve all got something to learn!’, and that in this way, it had helped them ‘to relax’. He acknowledged the problem of ‘the bad kids at the back of the class, playing games’ but insisted that UPR was a learning process that would ultimately prove enormously beneficial.

The UPR was designed as a periodically held, peer-based supervisory review of a state’s human rights situation. Adapted for the UN context, its architects drew ideas from peer reviews in other public international institutions (including the Organisation for Economic Cooperation and Development [OECD] and the African Peer Review Mechanism). It is a ‘soft’ global governance mechanism<sup>3</sup>, an example of what Marilyn Strathern has dubbed ‘audit culture’ in which actors are enrolled, through myriad micro-practices, in providing an account of themselves and of others.<sup>4</sup> At the heart of this particular audit process is the notion of learning: actors learn from ‘best practice’ that is ‘shared’ by their peers, and together they collaborate in a joint project of human rights improvement.<sup>5</sup> Although the UPR involves a shift in human rights monitoring from a culture of ‘naming and shaming’ to that of ‘learning’<sup>6</sup>, it actually brings to light the way that human rights work is already shaped by the

learning model, notably in the Field Operations of the Office of the High Commissioner of Human Rights (OHCHR) and in projects of Technical Cooperation and Technical Assistance--in which the UN, donor countries or other actors provide expertise or offer training to poor countries. UPR feeds into the already existing—and politically controversial-- institutional processes of expertise, ‘knowledge transfer’ and ‘capacity building’.<sup>7</sup>

During fieldwork at the UPR in 2010-2011, the last year of the mechanism’s first cycle, we witnessed the ways that UPR was talked about as—and indeed, often genuinely manifested—an ongoing and collaborative learning process.<sup>8</sup> Yet we also sometimes heard people talk about the UPR in a slightly different way: as an individually endured public ‘exam’. The ‘exam’ character was explicitly captured in the French term for the mechanism: Examen Périodique Universel (EPU). It was also implicit in the informal practices that grew up around the mechanism: the preparations and rehearsals beforehand by the government delegation of the State under Review (SuR), and the emphasis upon and constant commentary on that delegation’s performance during the UPR Working Group three-hour review (including its ability to phrase its government’s positions clearly and to answer questions). It was evident, moreover, in the relieved smiles and joking queries, ‘did we pass?’, as sympathetic fellow diplomats gathered at the front podium at a review’s end for congratulatory handshakes and backslapping, frequently followed by what delegates slyly referred to as the SuR delegation’s ‘graduation photo’ shots. These practices, along with remarks about ‘good students setting an example’ and ‘bad kids playing games at the back of the class’ alerted us to the fact that, for many diplomats, UPR felt, at least at times, more like school—with its hierarchies, cliques, ruses and exam anxieties—than a benevolent sharing of ‘best practice’ among peers.

This article takes up UPR participants’ talk about learning, schooling and exams as an entry into the politics of monitoring in the UPR. Although the novel construction of UN member states as ‘peers’ who engage each other in dialogue on equal terms is widely welcomed and has already had positive effects, this cannot by itself erase histories of cooperation and antagonism between states, nor obliterate long-held and deeply entrenched perceptions about First, Second and Third Worlds, the West and the non-West, the North and the South. Tensions between the theory of UPR and its messier actual practice are captured, we suggest, in the two distinct but intertwining versions of a discursive trope of learning, signalled above, which we

observed in words, gestures and practices. In the first, UPR is a friendly and cooperative learning experience, requiring critical self-reflection on the part of the state being reviewed, as well as constructive criticism from other states. All students are putatively equal participants in this exercise in human rights improvement focussed on the here-and-now. In the second, UPR is a hierarchical schooling process that culminates in a daunting and potentially humiliating public exam. Students face both the schooling process and the exam with vastly diverging attitudes, knowledge, skills and resources, and they make distinctions—informally, often surreptitiously—among themselves, referring to ‘good guys’, ‘good students’, students who ‘struggle’ and ‘bad kids at the back of the class, playing games’. We follow how talk and action drawing on these discourses, which coexist and intertwine, reveal and conceal aspects of the politics of monitoring at the UPR.

### **Creating ‘a Level Playing Field’**

The UPR is one element within the Geneva-based UN human rights system, which also includes the Human Rights Council, the ten Treaty Bodies (committees of experts which monitor the various international treaties on human rights), the Special Procedures, the Complaint Procedure, the Advisory Committee and a number of other working groups, forums and mechanisms. UPR is distinctive for its universality (all states are reviewed within a set cycle, initially of four years), its promise of equal treatment, its holistic orientation (the full range of human rights are addressed), its evolving nature (‘a work in progress’), its public character and its cooperative approach. Unique among the various mechanisms, UPR has no role for experts; rather, it is a state-run mechanism, assisted by the Secretariat, in which NGOs are active but may not take the floor during the Working Group proceedings. Like the UN system generally, the UPR relies on ‘interactive dialogue’ and helpful ‘recommendations’, rather than sanctions, to ‘promote and protect’ human rights.

This article focuses primarily on talk about and performance within the 3-hour review (officially called the UPR Working Group), which we theorise as a ‘public audit ritual’: the public tip of the iceberg of a plethora of practices stretching across time and space that the UPR has set in train.<sup>9</sup> The review is based on three reports: a National Report written by the State under Review (SuR), a Compilation of extracts

from reports of UN agencies, treaty bodies and special procedures, and a Stakeholders Summary, based on submissions from civil society. According to the modalities of the first cycle (2008-2011) in place during our fieldwork,<sup>10</sup> the review took place in the magnificent Salle 20, its proceedings webcast in real time from the UN website. The delegation of the SuR, chaired by the Human Rights Council President and assisted by a senior Secretariat staff member, would present its National Report describing the country's 'human rights situation' to the community of UN member states, known in this context as Participating Governments, as well as observers (UN agencies, multilateral organisations, NGOs, academics and the press). After a roughly 30 minute presentation, the Interactive Dialogue was opened: following the order of the designated Speaker's List displayed on a large video screen, with a digital clock counting down, each Participating Government would read out a short prepared statement<sup>11</sup> which would contain, in some combination, greetings, comments, questions and recommendations. Periodically, the one-after-the-other flow of statements was paused--so that the SuR could answer questions or present further information, sometimes calling on representatives of various government ministries who were part of the delegation—and then resumed. When the time allocated to Participating Governments (two hours) was used up, the SuR was given the final minutes to wrap up. Forty-eight hours later, the collectivity would gather again for the Adoption of the Report. In this shorter session (10-30 minutes), the Troika (three states charged to assist the SuR) presented the Draft Report, indicating the SuR's decisions regarding the recommendations it had received, and dealt with technical issues and queries. It should be noted that the SuR was free to accept or reject recommendations, bearing in mind both its own priorities within the vast field of human rights and the nature of its bilateral relations. In a final one-hour slot at the plenary of the next Human Rights Council session several months later, the Report would be formally adopted under Agenda Item 6. This launched the implementation phase for those recommendations that the SuR had accepted.

Key to the UPR's appeal and the high degree of 'buy in' from states has been its promise to create a 'level playing field'. Formal equality among states is ensured through dividing up the fixed amounts of time and space allocated to the UPR process with mathematical precision. Meticulous attention is given to quantification, with rules on maximum times for specific speakers to speak and maximum page lengths for documents on which the review is based standing in as proxies for equality.

Similarly, ordering (which by definition requires that some party goes first) is left to ‘fair play’, such as being determined by one’s time of arrival in the queue, and avoidance of unfair advantage is assured by utilising chance, as when the SuR selects its Troika by picking out slips of paper from a bowl. Yet the procedures that guarantee equal treatment also treat the state as an isolated entity. This is consistent with the international human rights system’s focus on the state as the primary duty bearer—arguably intensified by the holistic character of the UPR and the one-state-at-a-time and geographically random nature of the review schedule—which obscures the state’s location in history and within the contemporary global system. Each state’s relations with other states, in the past and the present, are bracketed, placed outside the frame. Historically forged structures, and ongoing relations, of economic and political inequality between states which profoundly affect the ‘human rights situation’ of every state are thus difficult to talk about directly within the UPR process.<sup>12</sup>

### **Good students, good guys and bad kids playing games**

Traces of these histories could be discerned in the varying forms of engagement that states initiated, and the reputations they developed, over the course of the first cycle. Algeria and the US committed themselves to attend, and normally to offer recommendations, at every single review. If Western liberal democracies like the United Kingdom, the United States and Belgium explicitly aimed to ‘set an example’, reviews from outside the West were also seen as exemplary. The review of Mexico—whose ambassador Luis Alfonso de Alba was the first President of the Human Rights Council and a key architect of the UPR—was cited as a ‘quality review’ for its delegation’s self-critical introduction, preparedness and willingness to discuss sensitive issues, while Kenya’s delegation was praised for its frank acknowledgment of inadequacies in its ‘policy, legal and institutional framework’ across a wide range of areas, including governance and human rights’.<sup>13</sup> Other countries from the Global South, among them Ghana and Morocco, similarly demonstrated a strong commitment to the new mechanism by regularly taking the floor and giving critical and action-oriented recommendations not only to their regional neighbours but also to their partners from the North.<sup>14</sup> Norway was frequently singled out as exemplary in balancing criticism with encouragement and

for formulating recommendations that address economic, social and cultural rights as well as civil and political rights. Some countries, like Brazil and Australia, were seen as adopting a ‘helpful’ stance toward other, smaller countries in their region. In their different ways, these were some of the ‘good students’ who followed the rules of the UPR or even tried to improve it.

The term ‘good guys’—referring to countries which, supposedly, did not have grave human rights problems and thus could confidently assume leadership positions in human rights discussions—cropped up, too, and was sometimes applied to countries like Norway, Sweden and Costa Rica. However, when used with an ironic tone, it conveyed ambivalence. The most intense ambivalence was generated by the United States who, as a number of diplomats and NGO representatives pointed out, was ‘on the right side’ of many issues yet carried out drone attacks abroad and surveillance on its own citizens, all the while ‘thinking that it has the truth’ about human rights.

In contrast to states who were setting an example, being helpful or just quietly following the rules, a few countries were regarded as ‘bad kids playing games’. This perception is captured in a description of Cuba’s stance in the UPR in an academic analysis by a German emeritus law professor and former Member of the Human Rights Committee:

Cuba has acquired a reputation as one of the most aggressive reviewing States. Clearly, its current government uses the potential of the UPR as a welcome opportunity to continue its ideological warfare against Western States...[I]n its national report, it bursts with arrogant self-righteousness...The example of Cuba [is] the most conspicuous case of a country which praises itself as infallible with a perfect balance sheet. One wonders how a country can present itself in such glorifying light without blushing.<sup>15</sup>

During our fieldwork, Cuba was indeed widely viewed as the ringleader of a group of states who were ‘playing games’. Its diplomats were seen as notorious for their ruses to subvert the ‘fair play’ of UPR procedures. For instance, Cuba was reputed to organise its allies to ensure that, in important reviews, they were first in the queue to sign up for the Speakers’ List (to support, or attack, the SuR, depending on the case); more audaciously, in several cases Cuba and ‘its friends’ actually created an



unofficial Speakers' List and got the Secretariat to accept it, much to the outrage of other diplomats patiently waiting in the queue. Many in the Geneva NGO community described with indignation how Cuba, for its own review, shamelessly orchestrated the submission of hundreds of NGO reports condemning the United States embargo and praising the government, in order to diminish the impact of critical NGO reports.<sup>16</sup> Cuba was, also, cockily clever when reviewing other states. Its blistering condemnation of the United States' human rights record during its November 2010 UPR, for instance, was phrased in impeccable, though vigorously anti-imperialist, diplomatic language, with precise references to human rights treaties and conventions. For the more rule-abiding participants in the UPR, Cuba was the quintessential smart aleck, skilled at manipulating, evading and breaking the rules.

Other states also used the UPR to expose the 'hypocrisies' of the 'good students'. At the United Kingdom's first review in 2008, Sri Lanka recommended that it 'consider holding a referendum on the desirability or otherwise of a written constitution, preferably republican, which includes a bill of rights'. At the review of the United States in 2011, an Iranian NGO—viewed by most observers as government-sponsored—invited Julian Assange to speak at a 'side event' on the just-breaking WikiLeaks story. Technically within the rules, these cheeky gestures were, for some, astute and amusing; others saw them as anti-imperialist posturing by the 'usual suspects' that contravened the spirit of collegial and constructive peer review, the abysmal human rights record of their authors' governments making them even more infuriating.

A less flamboyant form of what some considered game-playing was the common practice—endemic in the first cycle—in which certain states 'lined up to praise their friends'. Through this practice, the 'friends' closed ranks around the SuR, using most or all of the available time to offer what were judged as 'easy' or 'friendly' recommendations, thus crowding out more critical statements about, or recommendations addressing, a state's deficiencies and/or misdeeds. The friendly state participated with encouraging words, but placidly resisted the call to be constructively critical. Although a Norwegian (European but non-EU) diplomat told us that, in his view, EU countries were frequently 'too kind to each other', this kind of complaint was much more often levelled against African and Asian countries in respect to their recommendations toward members of their own regional bloc or other developing countries. Interestingly, whereas Western diplomats and international

NGOs overwhelmingly condemned what many called ‘the filibuster of praise’, some diplomats of developing countries defended this practice. A South Asian diplomat told us that since poorer countries were already constrained by obligations to donors and the conditionalities of international financial institutions, she felt it was a gesture of solidarity to find out what the SuR defined as its own priorities and then to craft a recommendation urging it to ‘continue to improve’ on one of these.

Scholars working within the Third World Approaches to International Law (TWAAIL) have emphasised the ‘remarkable...way in which the project of the civilising mission has endured over time, and how its essential structure is preserved in certain versions of contemporary initiatives’, including those of development, democratisation, human rights and ‘good governance’, positing ‘a Third World that is lacking and deficient and in need of international intervention for its salvation’.<sup>17</sup> In these performances of demonstration, defiance, resistance and recommendation aimed toward improvement in the UPR, we also discerned resonances of the project of civilising mission. It is nonetheless important to complicate the story. The historian Roland Burke has challenged the familiar narrative of the West as initiator and champion of human rights and Third World States as reluctant latecomers. He argues that by incorporating the language of human rights into their demands for self-determination at the Commission on Human Rights in the late 1940s and in the wake of the 1955 Bandung Conference, Third World States played a significant role in shaping the human rights agenda, at a time when Western states were caught up in the diplomatic intricacies of the Cold War and were, indeed, ambivalent about human rights.<sup>18</sup> The acute sensitivity to sovereignty and non-interference that newly independent Third World States understandably brought to debates on human rights in the early years of the UN has remained an important element of UN human rights culture and practice. In the UPR, sovereignty is formally respected, and indeed, small countries felt that its modalities offered an unprecedented opportunity for their voices to be heard. But UPR’s call for fellow states to make recommendations on the SuR’s domestic policies pushed at the boundary of non-interference; the cooperation among regional neighbours and protective closing of ranks around the SuR in friendly reviews expressed, we would argue, resistance to that interference.

Formerly colonised states have continued to insist upon the centrality of sovereignty within any discussion of human rights at the UN. Yet in the half century since formal independence, those states have continued to find themselves subjected

to legal regimes and economic policies in which, somehow, they are nearly always disadvantaged. Many argue that the new forms of subordination these countries experience under conditions of contemporary neoliberal capitalism, where trade agreements favour rich countries, as well as the conditionalities of aid to donors and international financial institutions, constitute a continuation of colonialism in a different, post-colonial guise. With such arguments in mind, we return to the schooling discourse to explore the predicaments of the figure that we have glossed as the ‘struggling student’.

### **Struggling students, language and diplomatic codes at the UN**

Despite frequent reference to the ‘level playing field’, it was nonetheless widely acknowledged that some states ‘struggled’ to participate. The Small Island Developing State was cited by many as a paradigmatic example of a category of state that struggled with the UPR’s demands. None of the Pacific island states, for instance, had diplomatic missions in Geneva, and for most of these, due both to ‘lack of capacity’ in their state’s small bureaucracy and the high costs of travel, the first and only UPR review they attended was their own.<sup>19</sup> For many of these states, the problem of not having the opportunity to become familiar with the UPR was compounded by the language issue. Diplomats need to be fluent in one of the six official UN languages to operate at the UN, though mastery of English—the de facto dominant language of informal meetings—was an essential element of a diplomat’s cultural capital. The handicap for those lacking such mastery was made evident in the painful-to-watch performance of one small Pacific island state, which counted only three members in its delegation, all of whom rushed to read their report in a nearly incomprehensible English within the time limit allocated to the SuR.

Yet making oneself heard in UN contexts went beyond questions of simple linguistic fluency. Although UPR casts itself as an occasion for ‘truth telling’ about human rights, such utterances had to be structured in particular ways in order to be permitted and to be heard. Apart from linguistic skills, diplomats needed to develop competence in what in the UN context is commonly called ‘UN language’.<sup>20</sup> This involved not only knowledge of specialised terminology and acronyms, but also of the specific etiquettes at play in intergovernmental dialogues, ways of addressing an international audience, diplomatic distinctions between verbs of action (‘endorse’,

‘welcome’, ‘note’, ‘note with appreciation’) and the special meanings, nuances and histories of many ordinary words and phrases when used in the UN context (‘cooperation’, ‘technical assistance’, ‘capacity’). Although some countries prioritised training their diplomats to a high standard,<sup>21</sup> we encountered several Developing Country diplomats who mentioned needing to receive extra training to learn and develop a command of these codes. A Lebanese diplomat confessed that she had spent the two first years of her assignment at the Council totally ‘lost in translation’. Feeling responsible to transmit the knowledge of diplomatic codes and UN language that she had painstakingly acquired, she had prepared a briefing document together with a glossary of UN terminologies for the diplomat who would eventually replace her, so that he or she could more quickly operate effectively in UN forums.

Beyond linguistic competences and knowledge of institutional codes and histories, however, was a more abstract issue, raised here by an Ethiopian diplomat writing about African states and the UPR:

The narrative on international human rights law and practice is disproportionately informed by the experiences of Western countries and their domestic and regional paradigms. This skewed human rights scholarship and practice risks neglecting the views of others struggling to participate in international human rights institutions and influence their evolution.<sup>22</sup>

Avoiding the more typical language of cultural difference, Abebe conveys the challenges for those who find the international human rights system a foreign institutional terrain yet who struggle to participate in them and to ‘influence their evolution’.

By contrast, Western diplomats—particularly Anglophones or those fluent in English—were ‘at home’ in the UPR and manoeuvred within that space with confidence and relative ease. They faced fewer challenges leading the conversation and setting themselves as models to be followed in the ‘UPR classroom’. During a regular session of the Human Rights Council in 2011, Canada organized a side event with four other countries (Mauritius, Mexico, Senegal, Jordan), all of which had been reviewed two years earlier. In the side event, this group of states—referred to as ‘the alumni class of the 4<sup>th</sup> session of the UPR’ in an internal meeting of the OHCHR—

presented mid-term reports on their progress in implementing their UPR recommendations. For its part, following its UPR in November 2010, the United States organised a Town Hall Meeting at the Palais des Nations in Geneva, to enable civil society organisations to engage with US government officials on the country's human rights record. The US Department of State broadcast the Town Hall live and encouraged groups unable to come to Geneva to participate by submitting questions and posting comments in the chat room. This event, which required the mobilisation of enormous technological and human resources, was quickly identified as evidence of the US' commitment to its partnership with its civil society. The live webcast bolstered the public image of the United States as a 'transparent' and cooperative state, and was an important component in the assessment of the US review by a high-level UN human rights advisor as 'a model UPR'.

The events launched by Canada and the United States are indicative of a new form of governance in which states construct desirable reputations by investing substantial resources in public performances of 'transparency'. These states aimed to set an example and to encourage other states to open themselves up to scrutiny. Being a role model is, of course, more easily achieved for the states that have the financial and human resources as well as the cultural capital necessary for the performance to be persuasive.

### **Taking more time to do human rights better versus keeping up the momentum: Review of the Human Rights Council**

A recent study among diplomats and NGOs from Germany, Canada and the United States at the Human Rights Council and the UN General Assembly's Third Committee found 'a robust consensus that the most serious conflicts over human rights are taking place between liberal, Western style democracies on the one hand, and a medley of non-liberal, non-Western states on the other'.<sup>23</sup> A similar West/non-West fault line was made visible during the Review of the Human Rights Council, which ran from October 2010 to February 2011. In broad terms, 'Western states' were pushing in the direction of what Developing Countries, represented by the Non-Aligned Movement (NAM), interpreted as a 'reform' of the Human Rights Council, which involved instituting certain new tasks, whereas Developing Countries advocated a limited fine-tuning of existing mechanisms. This divergence of approach

was also at play in the debate on the UPR modalities.<sup>24</sup> Many Developing Countries resisted, for instance, the proposal that the informal practice of mid-term reporting on the progress of implementing accepted UPR recommendations be made mandatory. This practice had emerged during the first cycle; it had been adopted enthusiastically by countries who wanted to set an example and was strongly supported by international human rights NGOs. Many Developing Countries deemed this extra round of reporting burdensome for state bureaucracies already stretched to breaking point. They asked, rather, for the UPR cycle to be extended from four to five years, with a gap year in between cycles. They insisted that this extension would give countries with limited resources and capacities more time to fully implement UPR recommendations, and asked for this demand to be understood as evidence of their commitment to the UPR. Among NGOs and Western diplomats, who saw preserving the four year cycle as extremely important for keeping up UPR's momentum, such explanations tended to be dismissed as foot-dragging. It is interesting to note that many reports written by NGOs and research foundations (most of which were based in developed Western countries or funded by Western donors) during the first cycle all came up with similar recommendations. They insisted on the importance of maintaining the four-year cycle, of formulating specific and 'action-oriented' recommendations, of mid-term reporting, and of increasing civil society's participation.<sup>25</sup>

The disagreements over the future functioning of the Human Rights Council, including the UPR modalities for the second cycle, gave rise to months of negotiations in the effort to find acceptable compromises. By the end, although UPR was identified as one mechanism where a high degree of consensus had been reached, there were still areas of disagreement. In the last session of the Working Group, when the outcome document of the review was presented for adoption, the polarisation was dramatically enacted. With regard to the UPR, the final text offered a compromise between the various proposals that had been considered over the course of numerous consultations: the cycle was extended to four and a half years, reviews were increased from 3 to 3.5 hours, 'midterm updates' remained voluntary, the procedure for the Speaker's List had changed to enable all states to speak and to prevent manipulation, and National Human Rights Institutions with A status were given space in the Summary of Stakeholders report. After the proposed outcome document was read out, the diplomat from Hungary (representing the EU) asked for its adoption to be

postponed so that EU member states could have extra time to consult with their capitals. A loud hubbub filled the space. On the white projection screen, an informal spontaneous meeting of the NAM group was announced, drawing its diplomats to one side of the room, while EU diplomats met in another corner, flanked by NGOs trying to convince them not to adopt the outcome document. A Geneva-based NGO representative approached our desk and remarked ironically: ‘a prize for the one who finds the term “human rights” in this paper!’ Another added: ‘It’s a waste of five months of our time!’

Finally, the diplomats returned to their seats and the document was adopted but Western states expressed their disappointment in vivid terms: the United States considered the document to be minimalist: ‘a race to the bottom’, Israel characterised it as ‘a farce for human rights’, France regretted the absence of innovation for dealing with urgent situations, Canada felt it reflected politicisation and double standards and Australia deemed the review a ‘missed opportunity to uphold the highest human rights standards’. Adopting a similar stance, a high level representative at the International Service for Human Rights (ISHR) read out a statement—prepared in advance in anticipation of a disappointing outcome—jointly authored with several other major NGOs including Amnesty International and the International Council of Jurists. Within the litany of the improvements that the review ‘could have’ achieved, followed by the words, ‘It has failed’, the statement condemned the compromises on the UPR:

Mr President,

....The review could have provided the second cycle of the UPR with the modalities needed to seriously and effectively work towards the ‘improvement of the human rights situation on the ground’ by ensuring that all States actually work in good faith towards the implementation of UPR recommendations. It has failed....

Whereas Western states broadly shared with human rights NGOs the feeling of failure, comments by Developing Countries were very different. Nigeria emphasised that strengthening the Human Rights Council was a continuous process: ‘The Human Rights Council is not wonderland! We have not reached a dead end. Critical issues are not understood by everybody at the same level. While we want

human rights issues to be taken seriously, the issue of development is our priority: the right to food, the right to education. Crises around the world go beyond human rights!’ Egypt, speaking on behalf of NAM, emphasised the constructive engagement of NAM in all consultations, but denounced ‘our partners’ for attempting to make certain proposals ‘coercive’.

Appeals by Developing Countries to the right to development and other basic rights, as well as their admonitions—quoting chapter and verse from the Institution-Building document—that negotiations had to be held in a ‘constructive spirit’ based on ‘collaboration’ and ‘consensus’ were frequently interpreted as alibis to resist or even undermine human rights mechanisms. ‘What is sweeping the human rights world is an epidemic of mediocrity. The language of “double standards” is used to challenge the credibility of the system. That’s the reality!’ an NGO representative told us.

The conflicts that emerged during the review of the Council illustrate the asymmetries based on structural constraints that underlie and animate the UPR, despite its efforts to create a ‘level playing field’. The ‘good students’ pushed for reforms that were unacceptable for most Developing Countries. Remaining deaf to their explanations about the impact of additional reporting obligations for their already overstretched bureaucracies, Western states forced them to adopt a defensive posture. Such performances dramatized a familiar story of Western guardians of human rights challenging non-Western human rights opponents while the background story of global inequality remained invisible because outside of the frame.

### **Articulating a critique from within**

If the rationale for objections to more frequent reporting on ‘progress’ could not be ‘heard’, the terms in which ‘accountability’ was framed in the UPR also left no space for explaining the broader historical and geopolitical context in which human rights violations occurred and were addressed. Returning to our Lebanese diplomat, she justified Lebanon’s friendly comments and recommendations to Arab countries during their UPR reviews by the fact that Lebanon had very tense relations with its neighbours – Israel and Iran, in particular - and needed their support to protect itself. In her view, maintaining cordial relationships with Arab states was an absolute



necessity in the context of Lebanon's vulnerability within the region. She regretted overall the lack of contextualisation in the discussions taking place at the Human Rights Council. She thought that issues were 'too often discussed "in the now", as if there was no before or no after, and as if countries were gated territories'. In the case of Lebanon, she found it impossible to talk about internal problems without referring to the complex relationships Lebanon had with Israel and without making explicit reference to key historical events such as occupation and war. In her view, there were too many 'unspoken' issues at the UPR: that is, issues that were ruled 'out of court' because they contravened UN procedures or 'official UN language'.

She recalled how, during Lebanon's UPR in November 2010, the Lebanese delegation had on several occasions referred to Israeli incursions onto Lebanese territory and its subsequent bombings of the country. These narratives had been immediately interrupted as a 'point of order' by the Israeli delegate, who reminded the President that the review was of Lebanon, not of Israel. When the Troika met after the review, they were able to get Israel and Lebanon to agree for these points of order to appear in the draft report but Belgium (one of the three Troika members) objected to this proposal on the basis that the word limit would be exceeded and that it would 'create a precedent'. Eventually, exchanges between Lebanon and Israel appeared in footnotes but the Lebanese diplomat remained bitter. She regretted the 'patronizing' attitude of Belgium and the fact that the UPR had to focus exclusively on national issues, when extra-territorial issues such as the foreign interventions in Iraq and Afghanistan, as well as Israel's policies in the Occupied Territories, had a dramatic impact on the human rights situation of these countries:

We cannot totally ignore what some countries are doing abroad. We cannot be completely removed from the real world. In the case of Lebanon, it does not make any sense to silence reference to Israel's incursions into our territory if we are to assess our human rights situation. The problem of the UPR is 'who is allowed to speak and what cannot be said'?

A Bangladeshi diplomat expressed similar concerns regarding the lack of space for contextualising Developing Countries' achievements in the field of human rights. 'We still carry the burden of colonialism. We don't like it. We don't want it. But it's a legacy. We cannot get rid of it in a day. Most of our laws were formulated

during the colonial period. A huge part of our economy has been affected’, she explained. It was not uncommon for Developing Countries, when participating in the review of a fellow Developing Country, to use their two-minute statements to remind their peers of the legacies of colonialism, as the context for that country’s human rights achievements and challenges. The Bangladeshi diplomat knew that Western states tended to hear such contextualisations as excuses, adding in French ‘Ils écoutent mais ils n’entendent pas’ (‘they listen but they don’t hear/understand’).

In the cases above, the Lebanese and Bangladeshi diplomats identified constraints in the UPR modalities—the focus on the ‘here and now’ and the disdain for history, the denial of the state’s embeddedness in social relations with other states, both friendly and hostile, and the effects this had for its human rights situation—to which they responded in a resistant fashion, through minor rule-breaking. But other, more complex strategies could be adopted. We encountered cases where Developing Countries felt compelled to accept recommendations that they knew they would not have the capacity to implement, in order to please donor countries. During the meeting of the troika that followed the review of a West African state, one of the world’s poorest countries and a member of the Least Developed Countries group, the government delegation considered a recommendation made by Switzerland encouraging the country to improve the working conditions of judges and prosecutors. One delegation member explained that he would have liked to accept this recommendation, but unfortunately, it contradicted the World Bank’s aid conditions that imposed a limitation of public expenditures in the justice sector. The OHCHR Secretariat staff suggested accepting the recommendation anyway and requesting Switzerland’s financial assistance in order to ensure implementation. Deprived of any real capacity to negotiate, the delegation—looking bored—rushed through the list of recommendations, bluntly commenting: ‘This one, we have implemented already... and this one, we’ll need substantial technical assistance in order to be able to implement it’.

Accepting recommendations that they could not afford to implement, and then asking for technical or financial assistance from the international community, some very poor countries adopted an apparently subservient posture toward donors’ exhortations to improve. At the same time, such spoken requests, articulated by themselves or by other delegations, were quietly defiant. They audibly registered poor countries’ material constraints, reminding the international community that improving

human rights involves resources. Yet the structural assumptions of the human rights system made those requests seem like plaintive nagging. In as much as the international human rights system deems states responsible for human rights protection and promotion, such assistance as might be offered was understood as ‘remedying a national deficiency, rather than expressing a global responsibility’.<sup>26</sup>

## **Conclusion**

The model of the UPR as a learning culture in which all countries ‘have something to learn’ has tremendous ethical appeal. Yet it is haunted by an older model of tutelage in which an enlightened West guides a backward non-West in its efforts to ‘catch up’ with the norms that the West has set. Formal sovereign equality, a temporal focus on lessons learned in the present that look toward human rights improvement in the future, and the key principle—true for the global human rights system generally but particularly emphasised in the UPR’s holistic, national focus—that states are responsible for promoting and protecting human rights, all inform the mechanism’s architecture. They converge to situate outside the frame, and thus divert attention, from both colonial histories and the political, legal and economic asymmetries of the postcolonial present. To the extent that those histories and their contemporary concomitants cannot be spoken about or conceptually addressed, it becomes difficult to ‘hear’ voices from the Global South regarding the challenges of protecting and promoting human rights and talk about the UPR easily slips into a schooling discourse where some students are diligent, some have more to learn than others and some are simply playing games at the back of the class.

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## Notes

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<sup>1</sup> Alston, “Reconceiving the UN Human Rights Regime”; Gaer, “A Voice Not an Echo”.

<sup>2</sup> United Nations Human Rights Council, HRC Res 5/1 on Institution-Building, Annex, para. 3(g). UN Doc A/HRC/Res/5/1.

<sup>3</sup> Cowan, “The Universal Periodic Review”; De la Vega and Lewis, “Peer Review in the Mix”.

<sup>4</sup> Strathern, *Audit Culture*. We have analysed UPR as a ‘public audit ritual’ (see Cowan, “Before Audit Culture” and Cowan, “The Universal Periodic Review”). On the micropractices within the Secretariat, see Billaud “Keepers of the Truth”.

<sup>5</sup> Li, *The Will to Improve*.

<sup>6</sup> Domínguez-Redondo, “The Universal Periodic Review”.

<sup>7</sup> For insightful discussions of these processes within development projects, see Mosse, *Cultivating Development*, Li, *The Will to Improve*, and contributors to Müller, *The Gloss of Harmony*.

<sup>8</sup> We gratefully acknowledge the support of the British Academy which funded the research project, “International Human Rights Monitoring at the Reformed Human Rights Council: An Ethnographic and Historical Study”, October 2010-September 2011. The information presented here draws on participant observation, interviews with UPR participants (diplomats, NGO representatives, Secretariat staff) and analysis of documents.

<sup>9</sup> Cowan, “The Universal Periodic Review”; Cowan, “Before Audit Culture”.

<sup>10</sup> Some changes in the modalities have been introduced for the second cycle (2011-2015), as discussed later in the article.

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- <sup>11</sup> Members of the Human Rights Council had 3 minutes, Observer States had 2 minutes, but if the number of states wishing to speak was high—as frequently happened—the President would declare a 2-minute limit for all states.
- <sup>12</sup> Marks, “Human Rights and Root Causes”.
- <sup>13</sup> FIACAT, “Universal Periodic Review”, 15; Tomuschat, “The Universal Periodic Review”, 622.
- <sup>14</sup> This trend was even more noticeable during the second cycle of the UPR.
- <sup>15</sup> Tomuschat, “The Universal Periodic Review”, 619-620.
- <sup>16</sup> FIACAT, “Universal Periodic Review”, 9. For Cuba’s February 2009 review, there were 326 stakeholder submissions; for its May 2013 review, there were 454 submissions. For the October 2011 review of Venezuela, Cuba’s close ally, there were 571 submissions. To put these figures in perspective, Colombia’s December 2008 review had 25 submissions and its April 2013 review, 24 submissions.
- <sup>17</sup> Anghie and Chimni, “Third World Approaches”, 86.
- <sup>18</sup> Burke, *Decolonization*. See also Chatterjee, “Empire and Nation Revisited” and Moyn, *The Last Utopia*.
- <sup>19</sup> Sen, *Universal Periodic Review*, 38.
- <sup>20</sup> ‘UN language’ refers to the accepted ways of speaking in the UN context. It is distinct from the six official UN languages (English, French, Spanish, Russian, Arabic, Chinese), all of which were used in the UPR Working Group, with simultaneous translation always provided. English was, nonetheless, the dominant language within the UPR Working Group and at side events and informal meetings.
- <sup>21</sup> According to one Geneva-based NGO representative, diplomats from Russia, Cuba, Egypt and India ‘are very often smarter and more capable than many EU diplomats’; we also heard praise for Chinese diplomats. See also Heins, Badami and Markovits, “A West Divided?”, 9.
- <sup>22</sup> Abebe, “Of Shaming and Bargaining”, 2.
- <sup>23</sup> Heins, Badami and Markovits, “A West Divided?”, 8.
- <sup>24</sup> This polarization was already noticeable during the negotiations related to the Institution Building Package that set the rules of the UPR. See Abebe, “Of Shaming and Bargaining”, for more details.
- <sup>25</sup> See, e.g., FIACAT, “Universal Periodic Review”, McMahon, “The Universal Periodic Review”, UPR-Info.Org, “Analytical Assessment”.
- <sup>26</sup> Cowan, “The Universal Periodic Review”, 62.

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