



OVERVIEW OF THE UNIVERSAL PERIODIC REVIEW IN 2008

INTRODUCTION

The first three sessions of the new universal periodic review (UPR) of the Human Rights Council (the Council) took place on 7-18 April, 5-19 May, and 1-14 December 2008 with the review of 16 United Nations (UN) member States at each session.¹ The first States to be reviewed under the UPR, in order of review, were:

- Bahrain
- Ecuador
- Tunisia
- Morocco
- Indonesia
- Finland
- The United Kingdom (the UK)
- India
- Brazil
- The Philippines
- Algeria
- Poland
- The Netherlands
- South Africa
- The Czech Republic
- Argentina

The 2nd session comprised of the review of the following States:

- Gabon
- Ghana
- Peru
- Guatemala
- Benin
- The Republic of Korea
- Switzerland
- Pakistan
- Zambia
- Japan
- Ukraine
- Sri Lanka
- France

- Tonga
- Romania
- Mali

The 3rd session comprised of the review of the following States:

- Botswana
- The Bahamas
- Burundi
- Luxembourg
- Barbados
- Montenegro
- The United Arab Emirates
- Israel
- Liechtenstein
- Serbia
- Turkmenistan
- Burkina Faso
- Cape Verde
- Colombia
- Uzbekistan
- Tuvalu

By the 3rd session in December 2008, the practices of the Working Group on the UPR became more established and it is now possible to provide a general assessment of the process. The following chapter provides an analytical overview of the first three sessions of the UPR in 2008, as well as the adoption of all UPR reports at the 8th session of the Human Rights Council in June 2008 and the general debate on the UPR that took place at the 8th and 9th sessions.

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All information related to the UPR is available on OHCHR's UPR page at www.ohchr.org/EN/HRBodies/UPR/Pages/UPRmain.aspx. Most statements made at the Working Group on the UPR can be found at <http://portal.ohchr.org/portal/page/portal/UPR/1session/>. Fill in the form at www.ohchr.org/english/bodies/hrcouncil/form.htm to receive username and password. Audiovisual archives of the meetings of the Working Group 'webcast' are available at www.un.org/webcast/unhrc/index.asp.

BACKGROUND TO THE SESSIONS

The weeks and days before the 1st session of the UPR were marked by an air of nervousness among States, knowing that a sizeable degree of the Council's credibility rested on the UPR's success. Much of this arose from the uncertainty of how the process would function. At the same time, many issues related to the working methods of the Working Group on the UPR had still not been resolved. Despite ongoing bilateral and group meetings with the President of the Council in the weeks before, this confusion lasted right up to the last day before the UPR was scheduled to begin,² into the first meeting on Monday 7 April³ and throughout the first week of the review.⁴ These outstanding issues included: whether reports submitted by non-governmental organisations (NGOs) and other stakeholders should be published on the website of the Office of the High Commissioner for Human Rights (OHCHR);⁵ whether questions submitted to the State under review via the troika⁶ may also be published on the website at the request of the State under review; how time would be allocated to States under review to present their report and to answer questions, and how the interactive dialogue would be conducted; outstanding issues related to the format of the report of the Working Group; and whether the Working Group on the UPR meetings should be webcast.⁷ Egypt (on behalf of the African Group), Palestine (on behalf of the Arab Group), and Pakistan (on behalf of the Organization of the Islamic Conference(OIC)) presented a non-paper on these issues to the President four days before the first meeting of the Working Group.⁸ The late submission of this paper led many States to question the 'transparency' of its sponsors and their intentions.⁹

The President informed all States at the organisational meeting three days before the session that no decisions could be made on these issues before the first meeting of the Working Group on the UPR on Bahrain on the following working day, and that time could not be allocated to discussing these issues during the morning session as it was dedicated strictly to the review of Bahrain. On the first morning of the UPR, the President circulated his final statement on modalities and practices¹⁰ and declared that no decisions would be taken on issues related to

the format of the reports of the Working Group until the adoption of the report on Bahrain two days later. This meant that the five reviews that took place before then would not establish a precedent for the Working Group's working methods. 'Webcasting' of the session proceeded on the basis of that agreement.

Outstanding issues relating to the report of the Working Group overshadowed the process in the first week and created an uneasy beginning to the UPR. These issues are addressed in the relevant sections below.

WORKING METHODS

Presentation by the State under review

The President's final statement on modalities established that States would have a maximum of 60 minutes for their **presentation** of the national report and responses to written questions received through the troikas, to reply to questions from the floor during the dialogue, and to offer concluding comments. While the President had initially proposed that the State would be given 30 minutes to introduce its report and respond to written questions, it was finally agreed, in line with a non-paper circulated by the African Group,¹¹ that States under review could use the 60 minutes as they chose. The President also clarified at the organisational meeting that the State under review could choose to take questions individually, in clusters of its choosing, or at the end of the interactive dialogue.

States under review were generally represented by high-level **delegations**, usually at ministerial level,¹² and large delegations,¹³ which seemed to signify that they took the process seriously. In the case of Colombia, the delegation was headed by the Vice President, whereas Israel and South Africa were represented by their ambassadors in Geneva. Elsewhere, there tended to be an equal division between delegations headed by Ministers of Foreign Affairs and Ministers of Justice.¹⁴ The former, however, is less favourable as it would suggest that the State under review

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See ISHR's *UPR Alert* of 4 April 2008, at www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_alert_4_april_2008.pdf.

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For a summary of the President's opening statement and positions put forward relating to outstanding modalities, see www.ishr.ch/upr_monitor.

4

See the adoption of the reports of Bahrain, Ecuador, Morocco and Tunisia, at www.ishr.ch/upr_monitor.

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It was not decided that they be removed and the reports remain accessible on the website via footnote link (as of January 2009).

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This was agreed and the questions are now available on the UPR Extranet page for each State under review. For an explanation of the role and purpose of the troika, see Council *Resolution 5/1*, Para. 18 (d) at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1. For a full summary of the selection of troikas, see ISHR's *Council Alert* for the 7th session of the Council (25 February 2008) at www.ishr.ch/council_alerts.

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It was also decided that the sessions of the UPR be webcast on the basis that other meetings, such as the Preparatory Committee of the Durban Review Conference, also be webcast.

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For a review of the content of the non-paper and the arguments put forward for and against its content, see ISHR's *Council Alert*, 4 April 2008, at www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_alert_4_april_2008.pdf.

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For example, in the organizational meeting of 4 April the UK was of the view that an informal agreement had been reached on various issues through bi-lateral and group meetings, and that the re-opening of these issues in the non-paper raised questions about the transparency of its signatories.

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A/HRC/8/L.1, 8/PRST/1, available on the Extranet of the UPR.

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The State under review will be given a maximum of 60 minutes in the WG to be used for: a) initial presentation of the national report/responses to written questions; b) replies to the questions raised from the floor during the interactive dialogue, if desired; and: c) concluding comments at the end of the review'.

perceives the UPR as an exercise in foreign relations rather than an ongoing national process. It is also less likely that the Minister of Foreign Affairs will be in a position to integrate UPR recommendations into the work of other relevant ministries.

The **allocation of one hour** for the State under review worked reasonably well, although there were variations in practice and there remains the possibility of misuse in the future. For instance, in the 1st session the Netherlands chose not to focus on information already provided in the State report, and instead succinctly addressed questions submitted via the troika, thus ensuring that 45 minutes were left to engage in answering questions from the floor. Others, such as Argentina in the 1st session and Ghana, Peru, Sri Lanka, and Romania¹⁵ in the 2nd, used up to 40 minutes to present their report, with the result that they were not able to address points raised in the interactive dialogue. By the 3rd session, however, the general practice of using 30 minutes or less was observed.

One of the clearer critical questions arising from the 1st session of the UPR related to the questionable value of submitting written questions to the troika for each country under review, and by extension the **value of the troika per se**.¹⁶ In the 1st session, less than half the States under review allocated time to address questions submitted to them via the troika, with only the Netherlands referring to the authors of specific questions submitted by the troika.¹⁷ This practice was continued through the 2nd session, and in the 3rd session, Botswana, Luxembourg, Burkina Faso, the Bahamas, and Luxembourg dedicated time to address written questions. However, by this stage only a small handful of States (almost exclusively European) continued to submit questions to the troika.¹⁸

Finally, it was only by the 2nd session that a State under review - Benin - requested **technical assistance** to help it improve the situation of human rights on the ground. Benin was also the first 'least developed country', as categorised by the UN,¹⁹ to have been reviewed under the UPR so far. By the 3rd session, however, the increase of smaller countries in the session also resulted in an increase in requests for assistance, namely from Botswana, Barbados, Burkina Faso, Burundi, and Tuvalu. The national report

of Burundi explicitly listed areas that required international assistance.²⁰ In almost all cases, this correlated to member States of the Working Group recommending that the international community offer its support. In limited cases, such as that of Tuvalu, States also offered direct assistance in specific areas in order to improve the State's capacity to protect human rights.²¹

Patterns and trends in the interactive dialogue

It was agreed from the first modalities non-paper of the President of 27 March 2008 that member and observer States would be given three and two minutes respectively to provide comments, questions, and recommendations to the State under review. The State could address these questions individually, in clusters of its choosing, or at the end. The prevailing practice was to **answer questions in clusters**, although in the case of India and Brazil in the 1st session and Guatemala in the 2nd, for example, the clusters were so large that specific questions and/or recommendations were left unanswered, intentionally or otherwise. Gabon, in the 2nd session, was the first country to take all of the questions at the end rather than by clusters, and also avoided addressing many points. The approach of Ecuador of responding after each grouping of seven or eight interventions appeared to be a more workable practice.²²

The first **list of speakers** for Bahrain consisted of 36 States. After the smooth completion of the first interactive dialogue, the President of the Council announced that the figure of 36 to 38 interventions would be optimum for the interactive dialogue. However, during the review of Tunisia, 61 States requested to speak. Due to the resulting impossibility for all States to intervene, it was decided thereafter that the cut-off point would be 45 interventions. The number of speakers varied from as high as 61 for Tunisia to as low as 21 for Finland and the Czech Republic in the 1st session. However, the practice of limiting speakers was discarded by the President without clear explanation in the review of Pakistan at the 2nd session, where 70 States were permitted. While almost all States respected an imposed time limit of two rather than three minutes, the review of Pakistan still ran considerably

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For example, India – Solicitor General, Netherlands – Secretary of State, Ecuador – Minister of Justice, Tunisia – Minister of Justice, Morocco – Minister of Justice, Indonesia – Deputy Minister of Multilateral Affairs, Finland – Secretary of State, UK – Minister of State, Brazil – Executive Secretary of the special secretariat for human rights of the Presidency, Philippines – Executive Secretary of the Presidential Human Rights Committee, Poland – Under-secretary of State, Netherlands – State Secretary for Justice, Czech Republic – Government Agent before the European Court of Human Rights. The delegation of South Africa, led by its Permanent Representative to the United Nations, was the exception.

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Bahrain's and Poland's delegations each consisted of 27 delegates.

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Ministers for Foreign Affairs have included Bahrain, Algeria, Luxembourg, Liechtenstein, United Arab Emirates.

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It was particularly surprising that Romania would follow such a course of action, given that its Ambassador, as President of the Council, had originally proposed that States' presentations be limited to 30 minutes.

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For an explanation of the role and purpose of the troika, see Council *Resolution 5/1*, Para. 18 (d), at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1. For a full summary of the selection of troikas, see www.ishr.ch/hrm/council/councilalert/council_update_7session.pdf.

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These questions are now available on the OHCHR extranet at <http://portal.ohchr.org/portal/page/portal/UPR/1session/>. Fill in the form at www.ohchr.org/english/bodies/hrcouncil/form.htm to receive username and password.

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These were primarily Canada, Denmark, Finland, Germany, Ireland, Latvia, the Netherlands, Sweden, and the UK.

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The list of the 'Least Developed Countries' is available at www.un.org/special-rep/ohrls/ldc/list.htm.

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A/HRC/WG.6/3/BDI/1, Para. 121.

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A/HRC/10/84. Switzerland (in preparation for submissions to treaty bodies), the Philippines (in establishing a national human rights institution), the UK (in supporting efforts to fully implement the *Convention on the Rights of the Child*).

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Review of Ecuador available at www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_ecuador_final.pdf.

overtime. This anomaly raised serious questions about whether more powerful States could wield undue influence over the Chairperson. During the interactive dialogue on Sri Lanka, the Chairperson also allowed 56 States to speak, while the remaining long list of States were requested to submit their comments in writing. Elsewhere throughout the 2nd session the unwritten limit of 45 interventions was upheld.

The first negative trend in the interactive dialogue became apparent at the very outset of the review of Bahrain. Palestine (on behalf of the Arab Group) and twelve 'friendly States'²³ commended Bahrain for its comprehensive report and for its 'range of achievements' and 'wealth of experience in human rights'.²⁴ However, none of them put forward critical comments, questions or recommendations. The practice reached a dangerous low in the review of Tunisia, when the **list of speakers was so dominated by 'friendly States'** that it appeared an orchestrated exercise in filibustering.²⁵ This occurred again in case of the United Arab Emirates in the 3rd session. The lack of critical comments and recommendations resulted in reports of the Working Group that are less likely to reflect the reality of the situation of human rights on the ground, diminishing the possibility that the first objective of the UPR to 'improve of the human rights situation on the ground' could be realised.²⁶

Fortunately, this practice abated in the 2nd session, due to the fact that fewer States under review held strong affiliations to particular groups, with the notable exception of Pakistan. However, a more visible trend in the 2nd session was the fact that **smaller States were far less inclined to engage in interactive dialogues with States from different regions** than their own. African States, with the exception of Morocco, Algeria, Egypt, and to a certain degree Tunisia, were only likely to take part in the interactive dialogue with other African States. For example, in the review of Gabon, 13 of the 36 States that provided comments were from the African Group, whereas in the review of Peru only Algeria provided comments, and they were joined solely by Tunisia in the review of Guatemala.²⁷ This reached an extreme in the review of Colombia in the 3rd session in December 2008, when only one of the 43 States that took the floor was from Africa – South Africa. In the reviews of

Montenegro, Turkmenistan, and Liechtenstein only Algeria took the floor, while only Ghana joined it in the review of Serbia.

Of the Group of Latin America and Caribbean States (GRULAC), only Brazil, Mexico, and Cuba tended to continually engage cross-regionally. The same could be credited to Indonesia, the Philippines, Malaysia, and Azerbaijan from the Asian Group. Contributions from the European Union (EU) States tended to be more evenly spread across the regions, although the level of engagement from States varied enormously, with Slovenia, as Presidency of the EU, tending to comment on most States in its individual capacity. However, the selectivity employed by States in deciding when to engage in the interactive dialogue has raised legitimate questions about the 'universality and non-selectivity' of the review process so far. It may also have illustrated, even accounting for the capacity of small permanent missions in Geneva, that States in one region are not particularly interested in what is happening in another when it comes to human rights. In the case of Colombia and Serbia, it suggests that certain States are not interested in even the most critical situations that are supposed to be of concern to the 'international community', as long as they are taking place in a different region.

A final general comment, of relevance perhaps to the longevity of States' commitment to the UPR, concerned a **decrease in attendance** by member and observer States by the 3rd session of the UPR in December 2008. The 1st session was generally fully attended as a new and evolving mechanism, as was the 2nd session, which took place one month later and set new precedents in the reviews of Sri Lanka and Tonga, for the reasons described above. However, by the 3rd session there was a notable drop off in attendance. While Israel and Colombia were reviewed by a 'standing room only' Working Group, and Colombia and Burundi received the highest number of recommendations to date,²⁸ attendance for the review of States such as the Bahamas and Tuvalu reached a new low. On account of this, the **number of specific and useful recommendations provided to less prominent States has decreased**, as well as, perhaps, the time that has been given to considering these recommendations.²⁹ This would suggest that the novelty of commenting on less politically-

²³ Palestine, India, Pakistan, Qatar, Tunisia, United Arab Emirates, Saudi Arabia, Turkey, Malaysia, Algeria, Libya, Cuba.

²⁴ Palestine.

²⁵ For example, the first 15 countries to speak in the interactive dialogue were Kuwait, Palestine, Pakistan, the Philippines, Chad, Saudi Arabia, the Russian Federation, Slovenia, China, India, Madagascar, Ghana, Mauritania, Bangladesh, and Angola. ISHR's report on the UPR of Tunisia is available at www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_tunisia_final.pdf.

²⁶ Council Resolution 5/1, Para. 4(a), available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1.

²⁷ Algeria, the Democratic Republic of the Congo, Tunisia, Senegal, the Republic of the Congo, Morocco, Nigeria, Guinea, Ethiopia, Chad, Cameroon, Mauritania.

²⁸ Burundi received 79 recommendations. Colombia received 78.

²⁹ The Bahamas received 24 recommendations. Tuvalu received 27.

involved States under review may have waned, and only the most committed and well-resourced of States may continue to permanently engage during each session of the UPR.

Concerning the procedure adopted by member and observer States of the Working Group on the UPR, States developed a **general practice** during the 1st session of first noting positive developments in the country under review, then (if they chose to progress beyond compliments) to issues of concern, leading then to questions and to possible recommendations. However, it became clear at the outset that if a State wished for a recommendation to be registered as such in the report of the Working Group, it had to use the word 'recommend' in its statement. Overall, the **percentage of positive comments** far outweighed criticisms. In the case of Brazil for example, positive comments were approximately ten times more numerous than critical observations. In the case of Sri Lanka in the 2nd session, which was anticipated as the first test case of how the UPR would address a particularly serious human rights situation, positive comments actually outweighed critical interventions, although these were generally phrased as commending Sri Lanka in the face of the 'challenges' it has to meet.³⁰ **Questions and recommendations** were also of such **variable quality** that it is difficult to give an overall assessment. However, it is worth noting that while States were selective about whom they directed their questions to, genuinely robust questions and recommendations were raised in almost all meetings.³¹ Nonetheless, recommendations were often so broad, vague, and weak that it will be very difficult for States and other stakeholders to measure their implementation.³² This practice has begun to improve over the three sessions on account of calls for States to be more specific, although there remains room for improvement across the spectrum.³³

The Working Group addressed the widest **range of thematic issues** over the course of the first two UPR sessions. As could be expected, member and observer States focused on issues of interest for themselves. However, the issue of discrimination on the basis of sexual orientation drew significant attention on account of the position of Egypt that sexual orientation did not fall under the 'basis of review'³⁴ of the UPR unless it was included in a particular State's 'voluntary

pledges and commitments', including those taken by the State upon seeking membership to the Council.³⁵ As the State in question, Ecuador, had taken up the issue in its voluntary pledges, the procedural issue was passed over. The issue resurfaced in the review of Tonga during the 2nd session. Following recommendations from the Netherlands, the Czech Republic, and Canada that Tonga should decriminalise sexual activity between consenting same sex adults, Bangladesh recommended that Tonga continue to criminalise such activity 'if this is in accordance with the country's values' as the purpose of the UPR is 'not to impose the values of one country on another'.³⁶ This constituted the first instance where a State was faced with two directly opposing sets of recommendations. In the final report, Tonga responded by stating that it is 'a Christian society that believes in tolerance and respect across difference', and that this respect for difference 'allows the widest margin of appreciation' to lawmakers and other stakeholders to engage in 'robust discussion' on issues related to equality.³⁷

Egypt's particular sensitivity to the question of sexual orientation continued in the 3rd session, beginning with its objection to 'certain States imposing controversial subjects' on Botswana and the United Arab Emirates. Then, during the adoption of the UPR report on Israel, Egypt asked for a summary record of the UPR review of Israel as it wished to confirm that no State had recommended it to 'legitimise same-sex marriage'. Therefore, according to Egypt, such recommendations were targeted only at Arab, African, and Muslim States.

Several issues, including that of sexual orientation, served to illustrate the positive and negative aspects of States speaking in an individual capacity. A **move away from regional or other group statements** and positions was a very positive development of the UPR in allowing States not to be constrained by a lowest common denominator approach. However, in certain cases these individual statements led to repetition. For instance several EU States lined up to ask Poland to criminalise discrimination on the basis of sexual orientation. While this appeared to improve in the 2nd and 3rd sessions, there is still a need to strengthen coordinated planning among States so that duplication of questions could be avoided in the future.

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For the review of Sri Lanka, see www.ishr.ch/hrm/council/upr/upr_2nd_session_2008/upr_002_sr%20lanka_final.pdf.

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See for example the UK and Peru in the case of Brazil (www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_brazil_final.pdf); Senegal in the case of Tunisia; the Democratic Republic of the Congo in the case of South Africa (www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_south_africa_final.pdf); Algeria in the case of the Netherlands (www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_netherlands_final.pdf); the Russian Federation and Cuba in the case of Poland (www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_poland_final.pdf); Belgium in the case of Algeria (www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_algeria_final.pdf).

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Some examples include the following recommendations to Tunisia: 'Recommendations that Tunisia pursue its programmes and consolidated approach in the promotion and protection of all human rights including in the field of education, health and the promotion of the status of women (Syrian Arab Republic) as well as the empowerment of women (Cuba)'. 'Several vague recommendations were made to Morocco, such as 'to continue its achievements in the field of Human Rights (Saudi Arabia)', 'while recognizing the efforts of Morocco to promote a culture of human rights and human rights education and training, to carry on with its efforts to disseminate and consolidate the human rights culture in the country (Syrian Arab Republic)', 'to continue, as it has done, to ensure respect for the human rights of all migrants (Mexico)'. The following recommendation was also made to India: 'Consider new ways of addressing growing economic and social inequities arising out of rapid economic growth and share experiences/results of best practices in addressing poverty (Algeria)'.

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For example, recommendations to Luxembourg were generally very vague.

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The 'basis of review' of the UPR is a) the Charter of the United Nations; b) the Universal Declaration of Human Rights; c) human rights instruments to which a State is party; d) voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council; e) applicable international humanitarian law. Council Resolution 5/1, Para. 1 (d), available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1.

The interactive dialogue also witnessed the practice by certain States of asking the same **standard thematic questions** to all States. In its questions sent to the troika, the UK included a standard question on the role of civil society in the preparation of the national report. During the dialogue, Slovenia raised the gender perspective of the UPR, France queried the ratification of the *International Convention for the Protection of All Persons from Enforced Disappearance* through both sessions, Luxembourg intensified its practice in the 2nd session of focusing its questions on alleviating poverty, and Australia enquired whether the State under review had a national human rights institution. While the intention may have been to avoid selectivity, and the practice was in certain cases positive, the latter example also illustrated a perfunctory approach to the process, as it was clear in many cases that Australia had not first checked whether the State under review did already have a national institution. Moreover, the question had in some cases already been answered by the State under review.³⁸

The review of **Sri Lanka** in the 2nd session was anticipated as a revealing test of the **UPR's ability to respond to particularly grievous human rights situations**. The State's presentation, as expected, concentrated on its cooperation with the Council and the international system, and focused its areas of concern on the activities of non-State actors. As mentioned, there was an equal balance of positive and critical comments. Critical recommendations came from EU and other Western countries, while Sri Lanka's regional neighbours commended Sri Lanka for its efforts in the face of severe challenges and for its institutional human rights framework.³⁹ Notably, India shied away from sensitive issues and simply inquired into the status of minority language education in schools, returning the favour shown to it by Sri Lanka as part of India's own review on 10 June 2008.⁴⁰ Recommendations from Pakistan and Belarus were directed towards the international community, and not the State under review, to assist it in its fight against terrorism. An assessment by any casual observer with a passing knowledge of the situation in Sri Lanka would reveal a glaring bias in the way that Sri Lanka was approached.

Nonetheless, on account of the individual allocation of recommendations, Sri Lanka was provided with over 70 recommendations of varying

quality. It is also worth noting that Sri Lanka rejected 26 of these recommendations, a high proportion, and gave further consideration to ten recommendations in an addendum report to the Council on 16 June 2008.⁴¹ Sri Lanka accepted recommendations that tended to be related to 'further encouraging efforts' and 'continuing to strengthen' existing activities, whereas substantive recommendations such as the acceptance of independent international monitoring and the need to avoid unduly constraining the activities of civil society, including through registering human rights defenders, were rejected without explanation.⁴² This highlighted the **sovereign right that the UPR affords States in deciding which recommendations it can accept**, in stark contrast to the recommendations of the treaty bodies, for example. And while the compilation on the human rights situation in Sri Lanka now exists, as well as a long list of recommendations aimed generally at improving the human rights situation, the percentage of those recommendations accepted by Sri Lanka is low. This illustrated that the UPR may not be most useful in such serious cases, further highlighting the importance of maintaining the country mandates of the Council.

The 3rd session included two countries, **Israel** and **Colombia**, which further tested the ability of the UPR to respond objectively and effectively to grievous human rights situations. The review of **Israel** took place four weeks before its attack on Gaza in late December 2008. Fifty-four States took part in the review, including a high number of States from the Middle East. The review was very politically charged, and witnessed the first intervention by the Chairperson to censure a statement by an observer State.⁴³ The review was also relatively ineffectual as Israel had chosen to focus on domestic issues in its national report and omitted any references to the occupied Palestinian territories (OPT) from its list of national priorities. Accordingly, while the vast majority of States criticised Israel's human rights violations in the OPT, Israel referred primarily to the need to balance the fight against terrorism with respect for human rights (without elaborating upon how this was presently achieved or could be improved) and focused its answers instead on questions related to domestic issues. In many ways, therefore, the UPR exercise simply replicated the routines that take place around Israel in the Human Rights Council.

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For a summary of this debate, see the adoption of the report of Ecuador at www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_ecuador_final.pdf.

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See the review of Tonga at www.ishr.ch/hrm/council/upr/upr_2nd_session_2008/upr_002_tonga_final.pdf.

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A/HRC/8/48, Para. 65.

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See for example the case of Brazil, after Brazil had detailed its various institutions responsible for human rights protection and promotion, at www.ishr.ch/hrm/council/upr/upr_1st_session_2008/upr_001_brazil_final.pdf.

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India, the Maldives, Pakistan, Bhutan, Nepal.

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Sri Lanka stated that their neighbouring country's handling of such a multifaceted society 'served as a model to them and it reminded the Council that many delegations received India's efforts as examples of best practices'.

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A/HRC/8/46/Add.2.

42

Para. 26(b) (Sweden); Para. 32(d) (Ireland).

43

Iran for referring to Israel as a 'Zionist regime'.

There were higher expectations for the review of **Colombia**, as the State had traditionally shown a greater willingness to engage at the international level on the question of human rights protection. At the outset, Colombia had volunteered to be reviewed in the first year of the UPR, and its delegation was headed by the Vice President, signalling a very different commitment to the process than Israel. While States acknowledged this effort, very specific questions and recommendations were made relating to police conduct and the use of torture, the lack of protection of defenders, and the culture of impunity. The State's general answers, and allegations of 'political evaluations based on erroneous information',⁴⁴ as well as its clearly antagonistic relationship with civil society, exposed the tension throughout the process. However, the State's inclusion of 'voluntary principles', and the response of domestic civil society to the review,⁴⁵ indicated that the UPR was a useful process in the case of Colombia.

The case of **Tonga**, as the first 'micro-State' to be reviewed under the UPR and a State that is not usually involved in or referred to by the Council, served as a useful counterpoint to the example of Sri Lanka. Even prior to the review, the Government of Tonga submitted a report that was publicly endorsed by civil society in the country.⁴⁶ The delegation's presentation was candid, and many of the questions and recommendations provided to it were well-prepared and absent of the bias that flavoured recommendations to Sri Lanka, although a high percentage still fell into the category of recommending that Tonga seek technical assistance. While Tonga did shy away from accepting certain important recommendations, including an amendment to women's inheritance rights and observers' access to prisons,⁴⁷ it also accepted strong recommendations, including ratifying the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and 'developing the practical steps to enhance freedom of speech and freedom of the press'. In the case of Tonga and other such States that are not embroiled in the politics of the Council, but who may genuinely seek assistance in improving their human rights situation, it seemed like the UPR process could yield useful dividends.

However, for this to become a precedent the

Working Group on the UPR would need to maintain a keen level of interest in smaller States, and not treat Tonga as a novel case. The 3rd session saw an increase in smaller States under review, including Tuvalu, Cape Verde, the Bahamas, and Barbados. While these States were generally receptive of the opportunity to come before a UN body, all drew attention to their limited resources and sought specific advice on how to call on international assistance. However, it appeared that the level of detail afforded to Tonga was not provided to the small States mentioned above, as illustrated in the decrease of member States present for the review and by the general quality of questions and recommendations.

The review of Burkino Faso was also notable in at least one regard. While a high number of States commended Burkino Faso for its well detailed and self-critical national report, as well as its informative presentation, noticeable advancements in human rights protection, and constructive dialogue with the Working Group, the State then proceeded to summarily reject a record 18 of the 45 recommendations presented to it within two days, including the proposals to enact legislation in relation to violence against women and corruption, to ensure the independence of the judiciary, and to invite the Special Rapporteur on torture to visit the country.

Finally, in accordance with the requirement that the UPR not duplicate but complement the work of **treaty bodies**, the interactive dialogue proved to be quite useful in drawing attention to the recommendations of treaty bodies and of special procedures of the Council, and recommending their implementation. An initial count of references to treaty body recommendations at the 2nd session of the UPR, for instance, runs to over 220. On a procedural level, many States have also used their presentation to commit to submitting overdue reports to various treaty bodies within a fixed period of time. Others have declared their intention to ratify outstanding treaties,⁴⁸ while Pakistan, whether by coincidence or otherwise, ratified the *International Covenant on Economic, Social and Cultural Rights* and signed the *International Covenant on Civil and Political Rights* on 17 April 2008, less than three weeks before it was to be reviewed under the UPR. In this instance it could be stated that the UPR has succeeded thus far in not duplicating, but complementing the work of treaty bodies, both in encouraging

44 Colombia's response to a question raised by Denmark.

45 See the press release of the Colombian Commission of Jurists and a number of national NGOs, 'United Nations: Critical assessment of the situation of human rights in Colombia', 10 December 2008.

46 A/HRC/WG.6/2/TON/1, available at www.ohchr.org/EN/HRBodies/UPR/PAGES/TOSession2.aspx.

47 A/HRC/8/48, Paras 28(c) and 39(b).

48 See for example the commitment of the Bahamas to sign the ICCPR and ICESCR.

States to meet their procedural obligations and as a form of interim follow-up to outstanding substantive issues raised by the treaty body. This has been facilitated, in turn, by NGOs linking ongoing human rights concerns to unimplemented treaty body recommendations in their submissions.

Conversely, it still remains to be seen **how the recommendations of the UPR will be taken up by the various treaty bodies** in their examination of States.⁴⁹ Twenty-one States appeared before both the UPR and the treaty bodies in 2008, as outlined below:

HRC	CESCR	CERD	CEDAW	CAT	CRC
Botswana	Benin	Ecuador	Bahrain	Algeria	Republic of Korea (2 OPs)
France	France	Switzerland	Burundi	Indonesia	Philippines (OPAC)
Japan	India		Finland	Montenegro	Serbia
Tunisia	Philippines		France	Serbia	UK
UK			Luxembourg	Zambia	
			Morocco		
			UK		

In the examination of Finland before CEDAW, considerable reference was made to the UPR review, including references to the implementation of previous recommendations by CEDAW.⁵⁰ In the case of Indonesia before CAT, some cross-referencing of the outcomes of the UPR report was made during the examination,⁵¹ and in the case of France, HRC member Ms Wedgwood declared that she had found the report of France to be useful in preparing for its examination before the Committee. Elsewhere, however, references were non-existent. The Inter-Committee meetings (ICM) of the treaty bodies, which took place from 23-25 June and 1-3 December 2008, were characterised by caution that the UPR could undermine the treaty body system, despite the fact that UPR practice tends to indicate otherwise.⁵² Substantive complaints raised by treaty body members included: the political selectivity in which treaty body recommendations were referenced by States in the UPR Working Group; the fact that States under review in the UPR may reject recommendations of the Working Group that had already been made to them by treaty bodies; and the generality of UPR recommendations. The point was also raised that States under

review appeared to be able to negotiate the content of final recommendations in the draft report with troika members (and even the States that made them) in order to reach an acceptable compromise, an arrangement that was alien to the treaty bodies. It was clear from the outcome of the ICMs that treaty bodies require more information on the UPR's performance - a practice that the Human Rights Committee is conducting internally.

Format and content of the final report

A revised non-paper of the President from 3 April 2008 established that each UPR report would be a factual summary of the proceedings in the Working Group reflecting the recommendations made.⁵³ Long discussions followed into the 1st session on whether the recommendations reflected in the report should be attributed to individual States, and, in the case of the draft Indonesia report, whether the report could refer to conclusions and recommendations reached

⁴⁹ Indonesia and Algeria are due to appear before the Committee against Torture in May 2008. See www2.ohchr.org/english/bodies/cat/cats40.htm.

⁵⁰ For a review of Finland's examination before CEDAW, see www.ishr.ch/hrm/tmb/treaty/cedaw/reports/cedaw_41/cedaw_41_finland.pdf.

⁵¹ See www.ishr.ch/hrm/tmb/treaty/cedaw/reports/cedaw_41/cedaw_41_lithuania.pdf.

⁵² For a more detailed summary of the ICM discussions on the UPR, see the chapter on treaty bodies in the current edition.

⁵³ For a summary of discussions leading up to this non-paper, see ISHR's *Analytical Overview* of the first session of the UPR at www.ishr.ch/upr_monitor.

during the interactive dialogue or only to recommendations.⁵⁴ The format of the report of the report is now relatively settled.

The **quality of the summary** of the interactive dialogue in the draft UPR report was quite accurate, and even more so by the 2nd and 3rd sessions. It is difficult to gauge how often States needed to use the two-week window to request amendments to various reports, as this communication took place confidentially between States, the State under review, and troika members. Some NGOs did assume a watchdog function by notifying States that their own statements had not been adequately reflected in the summary of the interactive dialogue.

During the 1st UPR session, States already adopted different **approaches to the recommendations**. While some States agreed to all recommendations made,⁵⁵ others could only agree to some recommendations while leaving others to be 'considered'.⁵⁶ Other States, still, decided to only review the recommendations, reserving their decision for later.⁵⁷ Only Algeria rejected out of hand some of the recommendations. The content of the summary of recommendations was much more seriously challenged, however, in the 2nd session by Pakistan. Prior to the adoption of the report itself, Pakistan sought to include a paragraph that read: 'Pakistan further *notes* that other recommendations in paragraphs 23(b) and (f), 30(b) and (d), 43(c), and 62(b) and (e)⁵⁸ in section II above neither fall under the framework of **universally recognised human rights** nor conform to its current laws, pledges and commitments, hence, cannot be accepted.'

Pakistan argued that these recommendations did not fit within the parameters of universal human rights principles, and were not compatible with its own legal system. Slovenia (on behalf of the EU) argued that Pakistan's proposed wording had no basis in the institution-building package and was not in spirit of the exercise. Switzerland, Mexico, and others pointed out that it did not correspond to any reporting model that had been accepted, and that the country under review was not in a position to make a value judgment on the applicability of recommendations under international law or to introduce new criteria for the acceptance of recommendations.⁵⁹ Egypt argued that any recommendations

falling outside the parameters of the institution-building package should not be called 'recommendations', and agreed with Pakistan that such issues were not covered by human rights law.

The Chairperson had no option but to announce that the report would have to be considered the following day. Following further discussions, the reworded paragraph finally read: 'Pakistan *considers* that recommendations contained in paragraphs 23(b) and (f), 27(b), 30(b) and (d), 43(c), and 62(b) and (e) in chapter II above are neither universally recognised human rights nor conform to its existing laws, pledges and commitments, and cannot accept them.' The report was then adopted by consensus.

This issue has not been resolved and may in future raise the possibility of States under review commenting on recommendations as they choose to interpret international law. At the time of writing, it has at least been limited to the States' *individual* interpretations, rather than a statement of fact (as was the attempt of Pakistan's first draft), yet this remains a potentially damaging new development in relation to the basis of recommendations.

The **attribution of individual recommendations to States** is now settled, and allows for the inclusion of recommendations that would not be able to enjoy the support of the Working Group as a whole, or would be weakened if they had to be subject to negotiations. A good example of an issue that has been included in the reports, despite some heated discussion, is recommendations on sexual orientation.⁶⁰ While there are concerns about the lack of collective ownership by the Working Group on the UPR, the value of having these recommendations seems to surpass the likely alternative of a consensus text that would ultimately contain very few strong recommendations.

CONSIDERATION AND ADOPTION OF REPORTS BY THE HUMAN RIGHTS COUNCIL

The second week of the 8th session of the Council was dedicated first to the adoption of the reports of 32 States under review from the 1st

54 Pakistan, Nigeria, the Russian Federation, and China argued that there was no room for conclusions in the report as States had only made recommendations.

55 Ecuador, Finland, Argentina, Tunisia.

56 Algeria, Bahrain, Morocco, Indonesia.

57 UK, India, Philippines, Poland, Netherlands, South Africa, Czech Republic.

58 23(b) regards repealing provisions criminalising non-marital consensual sex and failing to recognise marital rape – recommendation made by Canada; 23(f) decriminalising defamation (Canada); 30(b) reviewing the death penalty, with a view towards introducing a moratorium and abolishing it (UK); 30(d) repealing the *Hadood* and *Zina* Ordinances (UK); 43(c) declaring a moratorium on executions and moving towards abolition (Switzerland); 62(b) decriminalising adultery and non-marital consensual sex (Czech Republic); 62(e) prohibiting provisions of the *Qisas* and *Diyat* law in cases of honour killings (Czech Republic).

59 Canada, Netherlands, Italy.

60 For the debate on the inclusion of these issues, see ISHR's report on Ecuador, at www.ishr.ch/hm/council/upr/upr_1st_session_2008/upr_001_ecuador_final.pdf.

and 2nd sessions of the UPR,⁶¹ with each report being allocated one hour for consideration by the Council. The Council agenda also allocated two hours for a general debate on the UPR, providing the first opportunity for States and civil society to comment on the process so far (Item 6).

It had not been decided in advance of the 8th session **how time would be allocated** to States under review, member and observer States to comment on the outcome, and - for the first time in the process - NGOs and national human rights institutions (NHRIs) to provide general comments. At the organisational meeting of the Council on 19 May, it was clear, however, that Pakistan (on behalf of the OIC) and Bangladesh sought to limit NGO engagement to the maximum extent possible. Following lengthy consultations, it was finally decided the day before the consideration that the State under review, member and observer States, and other stakeholders would each be allocated 20 minutes. While this appeared to be a fair allocation, the lateness of the decision hindered the participation of national NGOs in the debate on the UPR outcomes. Also, in presenting this proposal to the Council, the President of the Council stated that NGOs should not use this time to 're-open discussions of the Working Group' - a statement that would later create enormous difficulties for NGOs and the President alike, as explained below.

The report on Bahrain was the first to be considered. The Bahraini delegation used its speaking time to comment vaguely on plans undertaken to implement UPR recommendations.⁶² This was followed by eight out of nine States who had time to speak, all members of the OIC, entirely complimenting Bahrain on its efforts.⁶³ However, it should be noted that it was not always easy for States or NGOs to comment on the State under review's response to recommendations, as the **final edited UPR reports**, containing the State's final position on various outstanding recommendations, **were not always available** before the consideration of the report. It should be expected that this anomaly will be addressed by the new President of the Council prior to the next consideration of UPR reports by the Council in March 2009.

When NGOs spoke in relation to Bahrain, a difference in understanding of the guidelines for

participation became apparent. Frontline International, as the second NGO speaker, declared that human rights defenders were harassed, detained, and subjected to excessive force in the country. Pakistan then recalled the previous words of the President that NGOs 'should not re-open discussions discussed in the Working Group'. The President then asked that NGOs 'stick to the provision of *Resolution 5/1* as well as all relevant documents', which he claimed were 'perfectly clear'. However, as these documents state that NGOs may make '**general comments**', the President's directions were anything but clear.⁶⁴

The failure of the President to clearly rule on the issue meant that the impasse continued throughout the week. Any NGO that addressed the situation of human rights in a country under review was interrupted,⁶⁵ even when the statement was linked to the outcome report of the Working Group, with the request (usually from Egypt) that the President uphold his own ruling and that the comments of the NGOs in question be removed from the final report of the session. This was followed by States such as Canada, Mexico, and Switzerland challenging this 'excessively narrow' interpretation of Council *Resolution 5/1* and the President's own statement on modalities.⁶⁶

It is worth noting that complaints by States were limited to NGO interventions directed at African or OIC States.⁶⁷ Egypt, Algeria, and Pakistan were notably silent when NGOs criticised the human rights situation in France or the Republic of Korea, for example, even without clear links to the recommendations of the UPR report. It is also worth noting that many States who often claim to be advocates of the work of human rights defenders, including those who continually raised the issue during the UPR itself, were generally silent throughout the procedural controversy (with the exception of those States mentioned above).

Concerning the **general process of the consideration of reports**, there were varying practices by States under review on how they used their allotted speaking time. The vast majority of States explained which outstanding recommendations of the UPR they had finally accepted and rejected, with Switzerland and the UK focusing on recommendations they could not accept and providing detailed reasons why.⁶⁸ The majority

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The States reviewed during the 1st session of the UPR were: Bahrain, Ecuador, Tunisia, Morocco, Indonesia, Finland, the UK, India, Brazil, the Philippines, Algeria, Poland, Netherlands, South Africa, the Czech Republic, and Argentina. The 2nd session covered: Gabon, Ghana, Peru, Guatemala, Benin, the Republic of Korea, Switzerland, Pakistan, Zambia, Japan, Ukraine, Sri Lanka, France, Tonga, Romania, and Mali. The summaries of the consideration of all reports are available under ISHR's *Daily Updates* at www.ishr.ch/daily_updates.

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Available on the extranet, at <http://portal.ohchr.org>

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Slovenia was the exception, which regretted that Bahrain had not accepted its recommendation on women migrant workers.

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Council *Resolution 5/1*, Para. 32 states that NGOs may 'make *general comments* before the adoption of the outcome by the plenary' (emphasis added).

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NGOs increasingly linked their references to human rights to recommendations in the UPR report, which lessened the opportunity for Egypt and others to interrupt the proceedings with 'points of order'.

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President's statement on modalities and practices for the Universal Periodic Review Process, 8/PRST/1, available on the Extranet at <http://portal.ohchr.org>

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Interruptions took place during the adoption of the reports regarding Bahrain, Morocco, Algeria, and Pakistan.

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See also Finland, Benin, the Republic of Korea, Ukraine, Romania, Mali, Sri Lanka, on the other hand, summarily dismissed 26 recommendations by simply stating that many were linked to establishing an OHCHR field office, on which their position was 'very clear'. See www.ishr.ch/hrm/council/dailyupdates/session_008/13_june_2008.pdf.

of States detailed efforts they were undertaking to implement recommendations and voluntary commitments. This was useful, as it created an immediate follow-up mechanism through the consideration of reports by the Council. The practice of Ecuador of listing initiatives in relation to each UPR recommendation proved to be a particularly good example. A number of States chose to once again respond to sensitive issues that had been raised by member States during the interactive dialogue of the Working Group on the UPR, including for example Indonesia on the Ahmadiyah minority, India on caste-based discrimination, and France on the wearing of religious symbols.⁶⁹ A final and less useful practice was that of simply reiterating elements of statements made during the Working Group on the UPR and reaffirming the State's commitment to the UPR process.⁷⁰

As mentioned, the contribution of member and observer States was surprisingly muted. When States did speak, they tended to be complimentary to the State under review.⁷¹ Notable exceptions included criticism by Denmark, Sweden, Japan, and Canada of the non-acceptance by Sri Lanka of 26 recommendations, while condemning the prevailing culture of impunity in the country. Algeria, on the other hand, deplored the 'politicisation of human rights' that occurred when States addressed the situation in Sri Lanka, yet sternly listed several of its recommendations to the UK that it had not accepted. Canada used the intervention in relation to Pakistan to state that the UPR report did not 'accurately reflect' its suggestion that Pakistan take steps to end discrimination against minorities, as the paragraph omitted a list of specific groups in need of protection. Certain States also used this space to request that States under review report back to the Council on implementation before the next cycle of the UPR,⁷² while France volunteered to do so as a State under review.

One general practice of the Working Group on the UPR was also replicated, whereby regional or other groupings lined up to commend their allies. For example, in the case of Morocco, nine out of ten speakers were members of the OIC.⁷³ Often, however, no member or observer State wished to comment, as was the case when the reports of Finland, Poland, the Netherlands, the Czech Republic or Peru were considered.

NGOs that were not interrupted were generally more critical than member and observer States of the human rights situations in States under review, and provided specific examples of issues addressed during the UPR. Many NGOs also used the speaking time to propose means by which States could implement recommendations,⁷⁴ and/or challenged the State's position on particular issues or recommendations that the State had rejected.⁷⁵ Some of the more critical discussions related to Pakistan, where many NGOs⁷⁶ expressed concern over the State's rejection of a number of recommendations, as listed above.⁷⁷ In the case of Algeria, among others, NGO interventions were useful in pointing out that the recommendations that the State had rejected were in fact the most relevant recommendations in the report. In relation to Argentina, NGOs stressed that the recommendations of the UPR had not addressed many of the most serious issues in the country. Concerning South Africa, NGOs highlighted the apparent lack of commitment of South Africa to the UPR process.⁷⁸ In rare instances, such as in the case of Tunisia, many national NGOs chose to commend the State on its efforts in relation to poverty reduction and women and children's rights, while remaining resolutely silent on any critical issues raised in OHCHR's summary report of information submitted by other stakeholders.

It was more difficult to gauge the nature of interventions by NHRIs as only those from India, Indonesia, the Republic of Korea, and France spoke. KOMNAS – HAM from Indonesia and the National Commission of the Republic of Korea interestingly drew attention to the limits of their own powers, and they and the National Consultative Commission of France all levelled criticism of their respective States' performances. India and Sri Lanka, as States under review, pointed to the existence and functioning of national institutions in their countries as evidence of the State's commitment to human rights despite challenges in the same forum to their independence. The National Human Rights Commission of India used its statement to provide general comments on the UPR process and the status of NHRIs, and objected to being 'clubbed together with NGOs'. Aside from the fact that the agenda item for such a statement was the general debate on the UPR and not the consideration of State reports, the idea of discussing a review of the categorisation of 'other

69 Others included Tunisia (torture), the Netherlands (health services, human rights education), Ghana (death penalty), Pakistan (religious freedom, women's rights), and Japan (death penalty).

70 See for example Indonesia, Brazil, the Czech Republic, Gabon, Guatemala, Pakistan, Zambia, Tonga.

71 Council Resolution 5/1, Para. 31.

72 For example, the Netherlands recommended that India inform the Council before the next review in four years on any developments regarding the implementation of the recommendations made, including those not agreed to.

73 The same patterns were evident in relation to Bahrain and Tunisia and OIC co-member States, and Gabon and Benin and African Group States.

74 For example, Action Canada for Population and Development, speaking on behalf of partner organisations in Ecuador, welcomed Ecuador's inclusion of sexual orientation in their voluntary commitments, and called for sexual orientation to be listed as grounds for discrimination in accordance with recommendation 7 of the UPR report.

75 See for example the Centre on Human Rights and Evictions (COHRE) in relation to Switzerland and economic, social and cultural rights, and the National Human Rights Commission of Korea in relation to the *National Security Act*.

76 International Federation of Human Rights Leagues (FIDH), Human Rights Watch, International Commission of Jurists, Amnesty International, Asian Legal Resource Centre, Women's Rights Action Watch.

77 See above, p. 10, and A/HRC/B/42, Para. 108, referring to recommendations in paras. 23(b) and (f), 27(b), 20(b) and (d), 43 (c), 62(b) and (e).

78 Amnesty International.

stakeholders' at this stage illustrated the need for further work to be done to clarify for NHRIs their role in the UPR process. The Commission's failure to address the situation of human rights in India also did nothing to alleviate accusations of a lack of independence.

On a more positive note, a high percentage of States under review were happy to respond to issues posed by NGOs in their interventions,⁷⁹ thus making use of the opportunity for engagement, despite the best efforts of Egypt to restrict NGO involvement. In particular, Ecuador and Argentina, as States under review, underlined the importance of NGO participation at this stage of the UPR process.

Overall, relatively few stakeholders spoke.⁸⁰ This may have been attributable to the short time between the last session of the UPR and the Council, and the lack of clarity surrounding modalities for participation leading up to the session. Many NGOs may also have considered that a two-minute allocation of speaking time was not the best use of limited resources, and others may have wished to see how practice evolved following the first round.

NGOs also used the opportunity of the **general debate on the UPR** to relay their views of the first sessions of the UPR and recent developments. Again, NGOs were more constructively critical of the process than States, with a general sense that judgement was still reserved on the UPR. The issues raised included: a lack of inclusion of NGOs in national consultations; the practice of certain groups of States lining up to praise their allies; a lack of clarity about NGO participation in the adoption of the outcome; a lack of response by the State under review to some of the recommendations made; and attempts by some States to call into question universal human rights law and principles. Once again Egypt attempted to interrupt NGOs under the general debate on the UPR⁸¹ when reference was made to country situations, even when used as examples of the UPR process, and once again the issue was not resolved by the President.

Finally, concerning the **adoption of UPR reports by the Council**, the President had drafted a standard procedural decision to be used by the Council for all reports, which simply states that the Council adopts the relevant report and the

addendum report summarising the information presented by the State under review, comments made by member and observer States, and general comments by NGOs before the adoption of the outcome. There were no objections to the formulation, and in each instance the decision was adopted by consensus.⁸²

However, the final complication of the UPR process occurred after the close of the session, when the Council had to adopt its **draft report of the session**, which included an addendum containing a draft summary of the views expressed on the outcome of the UPR review.⁸³ Both were adopted *ad referendum*, with States given two weeks to propose any technical comments to the drafts. Immediately thereafter, Egypt (on behalf of the African Group) and Pakistan (on behalf of the OIC) objected to the existence of a separate addendum of the UPR outcomes and to its descriptive content. The Ambassadors of Pakistan and Egypt sent a letter to the new President of the Council, Ambassador Martin Uhoimoibhi of Nigeria, on 8 July 2008 claiming that the addendum did 'not conform to the agreement reached in paragraph 4.3 of the President's statement of 9 April 2008'⁸⁴ and 'accordingly, the report does not stand adopted'. The intention was to simply list the names of speakers and to remove the views and general comments expressed, in direct contradiction to *Resolution 5/1* and the Presidential statement on modalities. This resulted in a decision from the new President two days later to appoint Ambassador Luis de Alba of Mexico to facilitate negotiations on the status of the report. On 28 July 2008, Ambassador de Alba published a note explaining the decision arising from his consultations. It was decided that the addendum report on the UPR would be included in the report of the Council and that the views expressed by the State under review in the plenary of the Council on the outcome of the review would also be integrated into the report, rather than as an addendum to the report of the Working Group.

Such disputes illustrate the sensitivity of certain States to the entire process. It is hoped, however, that this constitutes the last opportunity to procedurally undermine the UPR, and that the review process is now clear from beginning to end.

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See for example Bahrain in relation to women's participation in public life; Brazil in relation to human rights defenders and collaboration; Poland on renditions; Peru on the advancement of women; and Switzerland on economic, social and cultural rights.

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For example no NGOs spoke in relation to Gabon and Mali, and only one in relation to Zambia.

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For a review of the general debate on the UPR on 13 June 2008, see ISHR's *Daily Update* at www.ishr.ch/hrm/council/dailyupdates/session_008/13_june_2008.pdf.

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All decisions are available on the Extranet under the heading 'Resolutions, decisions and President's statements', at <http://portal.ohchr.org>.

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A/HRC/8/L.10/Add.1

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Para. 4(3) of the President's statement provides that 'A summary of the views expressed on the outcome of the review by the State under Review, and Member and Observer States of the Council, as well as general comments made by other relevant stakeholders before the adoption of the outcome by the plenary, will be included in the report of the Council's session'.

CONCLUDING COMMENTS

Several positive elements can be drawn from the first three sessions of the UPR in 2008. States that would not be questioned before the Council or any other intergovernmental body on their human rights record, either by virtue of their size or influence, have to consider questions and criticism of the human rights situation in their countries. The fact that it is an intergovernmental process has on occasion been a positive factor in spurring States to challenge the human rights records of others. Certain States have used the opportunity to ask important and difficult questions to States on issues that would most likely not find a platform through the Council or other intergovernmental bodies. Likewise, States under review are on occasion answering questions that they would not consider answering before the Council or in other fora. In so doing, this has opened new opportunities for NGOs to enter into dialogue with particular States that would not have existed in the past. The comments, questions, and recommendations presented during the dialogue are also being recorded in official UN documents, as well as the States' commitments (or lack thereof) to implement these recommendations if they agree with them. Combined with the compilation of information submitted for the review (namely the national report, compilation of UN documents, and summary of submissions by other stakeholders), this amounts to a useful compendium on the situation of human rights in the country under review. However, it could also be argued that the information submitted for the review has so far been of more value than the outcome, as it provides a more comprehensive overview of the human rights situation in the country.

The process has so far served to complement the work of treaty bodies and act as a form of interim follow-up measure to outstanding recommendations. It has also in some cases encouraged States to make procedural commitments to the treaty bodies in advance of their examination under the UPR. Reference to the reports and recommendations of the Council's special procedures has also been relatively encouraging. In certain cases, concrete recommendations were proposed and a genuine political will was evident in accepting criticism and incorporating recommendations. During the consideration of

reports before the Council, a reasonable number of States used the opportunity to outline specific plans to implement recommendations from the UPR, illustrating a tangible outcome of the process. The process has also generated a new avenue for dialogue and cooperation at the domestic level between governments and civil society, both in preparation for the UPR and in terms of developing plans for the future.

Many areas of concern can also be identified. The debates around the modalities of the process were very negative and sought to reverse agreements already contained in Council *Resolution 5/1*. The role of the troika was undermined by the fact that very few States under review referred to questions submitted to them via the troika, and by the fact that the same very few States are continuing to submit written questions. The role that the troika has played in ensuring that the outcome report adequately reflects the dialogue of the Working Group without undue interference by the State concerned has also been called into question. The practice of some States filling the speaking time to praise their allies also provided an excessively positive picture of the human rights situation in some States, and was contrary to the purpose of the UPR. Similarly, the selectivity exhibited by many States in what they chose to address and to which States under review, and the manner in which they chose to address it, belied any collective commitment to adhere to a fundamental principle of the UPR, namely the 'universal coverage and equal treatment of all States'. The lack of clear coordination among States also resulted in questions and recommendations being duplicated. The vagueness of recommendations needs to be improved and remains a very important issue prior to the 3rd session of the UPR in December 2008. Finally, although unsurprisingly, a number of States with serious human rights situations have not exhibited the political will to engage meaningfully with the UPR, thus undermining the UPR's ability to meet its objectives.

A final broad and very serious concern remains whether States will attempt to argue at forthcoming Council sessions that the UPR replaces any need for discussing country situations, including country-specific resolutions and country mandates of special procedures.⁸⁵ Recommendations of the UPR are usually very general and are not endorsed by the Working Group as such

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This was already attempted by the Democratic People's Republic of Korea during the adoption of the resolution to continue the mandate of the UN Special Rapporteur on the DPRK at the 7th session of the Council in March 2008. For a summary of the discussion, see ISHR's *Daily Update* of 27 March 2008 at www.ishr.ch/hm/council/dailyupdates/session_007/27_march_2008.pdf, p. 11.

but reflect individual States' concerns. Moreover, a country is only reviewed for three hours every four years under the UPR cycle, unlike the country mandates of the Council, which provide ongoing and systematic scrutiny. Attempts to replace such a system by deferring to the UPR would therefore constitute a serious setback to the relevance of the work of the Council.