

Opinion

WHAT ARE THE MAJOR FACTORS HAMPERING THE EFFECTIVENESS OF THE HUMAN RIGHTS COUNCIL?

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I. Introduction

The Human Rights Council (HRC), an intergovernmental body of the United Nations (UN), was established by the UN General Assembly Resolution (GA) 60/251² in 2006, thereby replacing its predecessor, the Human Rights Commission. Its mandate is to promote ‘universal respect for the protection of all human rights and fundamental freedoms for all’ and ‘address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon’.³ The Council aims to maintain ‘transparent, fair and impartial’ dialogue between states.⁴ It is not a body that can legally compel states to act in a certain way, but rather encourages state led change. In executing its mandate, the HRC makes use of various mechanisms. One such example is the Universal Periodic Review (UPR), which for the purposes of this essay will be discussed at length.

The UPR, stipulated specifically by GA Resolution 60/251,⁵ works to provide ‘a co-operative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity building needs’.⁶ The UPR is a review of the human rights records of UN Member States, conducted by peers – these being the 47 Member States of the HRC, rather than independent experts – on the other Member States. The UPR is a cooperative mechanism that requires peer reviews ‘to be conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicised manner’.⁷ The recommendations that are made in seeking to hold states accountable must be based in international law. Relevant instruments include the Charter of the United Nations, the Universal Declaration of Human Rights, international human rights treaties that states are voluntarily party to and commitments that they have made.⁸ Thus, although the recommendations themselves are not legally binding, they are rooted in a legal framework that adds weight and influence.

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² UNGA Res 60/251 (15 March 2006) UN Doc A/RES/60/251.

³ *Ibid.*

⁴ UNGA Res 60/251 (15 March 2006) UN Doc A/RES/60/251.

⁵ *Ibid.*

⁶ N. Schrijver, ‘The UN Human Rights Council: A New “Society of the Committed” or Just Old Wine in New Bottles?’ *Leiden Journal of International Law* 2007-20, p. 809.

⁷ Institution-building Package of the United Nations Human Rights Council (18 June 2007) UN Doc A/HRC/RES/5/1.

⁸ E.R. Draluck, ‘Law, Politics and Obligations in the Universal Periodic Review: In Search of Effective Balance,’ (Thesis, University of Oslo 2010), p. 24-25.

This essay will assess the effectiveness of the HRC by specifically looking at the UPR, Special Procedures and Member States' interactions with them. It will assess these in two regions of the world, Africa and Asia, looking closely at China and South Africa's relationship with the HRC. In this regard, several factors which have the potential to hamper the effectiveness of the HRC will be addressed. Culturalism and regionalism pose a threat to the effectiveness of the HRC in Africa and are often used as a means to reject recommendations. China has challenged the effectiveness of the HRC by holding state sovereignty in a higher regard than human rights, which translates to general hostility and a lack of genuine cooperation between China and the HRC. Politics also play a role in the ineffectiveness of the HRC. The UPR in particular has become the "face" of the HRC and has come to overshadow other mechanisms within the HRC. It also often produces reports that do not reflect those of the experts. Moreover, the recommendations that are given are frequently unsupported by a legal framework and can often carry a degree of politicisation evident in the type of recommendations given to a Member State – either hard or soft depending on political alliances. The United States' withdrawal from the HRC, citing alleged bias against Israel, also poses a challenge to the Council's credibility.

All of the above is not to say that the UPR has not contributed to improving human rights across the world. For example, in Vietnam and Sri Lanka, the UPR was a key factor in driving the legality and legitimacy of LGBT activists. Canada had not adopted the Declaration on the Rights of Indigenous Peoples until 2016,⁹ validating the rights of their indigenous communities. The UPR has also led to the creation of new civil society coalitions in Australia, Singapore, and Ireland. Notwithstanding the foregoing, this essay will put forward a number of recommendations to increase the effectiveness of the UPR even further, as an integral part of the HRC, such that the HRC mandate can be better achieved. On balance, the HRC is an important intergovernmental body that is necessary and achieves change across the world, though more could be done to ensure it acts more effectively.

II. Africa

African states have a complex relationship with the HRC, so much so that it sometimes prevents the Council from being able to do their best work. Whilst Africa remains the region with the most interaction with the HRC, every state in Africa has missed deadlines when producing an UPR review since the Council was founded in 2006. Having said this, the quality of their reports has been extremely high, and their engagement with the UPR appears to be better than their engagement with the African regional human rights mechanism, the African Peer Review Mechanism. However, despite the enthusiasm shown, there are challenges that work to negate the effectiveness of the African states' contribution to the UPR. Regionalism, cultural relativism, selectivity, and ritualism propose difficulties in truly

⁹ House of Commons Canada, BILL C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, First Reading, December 3, 2020.

improving the human rights situation on the continent.¹⁰ These challenges mean the UPR mechanism, and in turn the HRC, cannot achieve their mandate in improving human rights as well as they would hope to.

II.1 Regionalism

Regionalism within an international organisation occurs when a group of interdependent states form a subgroup within the main body. The view from the regional body formed on the African continent is that the HRC votes in such a way that represents the views of Western experiences, without considering the views, cultures, or experiences of developing groups.¹¹ When it comes to recommendations being made or accepting recommendations, the source of the recommendations will often play a role in whether or not they will be accepted. African states are more likely to accept recommendations from other African states than they are from Western states. For example, Kenya accepted recommendations from Angola and Rwanda in relation to the death penalty but rejected similar sentiments from France and Poland.¹² Likewise, Nigeria accepted a recommendation on the death penalty from Benin but rejected a similar recommendation from the UK and Sweden.¹³ Regionalism can offer both positive and negative outcomes in relation to the UPR. In a positive light, it can create change where states within a region offer recommendations that protect human rights and other states accept them because the recommendations have come from their allies. It can also create cooperation and forge relationships and dialogues on issues concerning human rights, that may otherwise not have been possible. On the other hand, it can have a polarising effect within the Council, creating a developing state versus western state dynamic. Polarising the mechanism may be detrimental to the effectiveness of the Council as a whole.

II.2 Cultural Differences

Cultural differences have also posed a challenge to the state led recommendation system with the UPR and HRC. Blackburn¹⁴ notes that the UPR offers an open platform to contrast cultural assertions,¹⁵ such as human rights, depending on the context and cultures in which they are applied. Despite this, states have used cultural differences to justify their stance on sexual orientation or gender-based rights more widely. Africa as a region has received the highest number of recommendations on sexual orientation, and yet no African state has made any changes to reflect these recommendations,¹⁶ with the exception of South Africa. It

¹⁰ D. Etone, 'African States: Themes Emerging from the Human Rights Council's Universal Periodic Review' *Journal of African Law* 2018-62, p. 201.

¹¹ *Ibid.*

¹² *Idem*, p. 205.

¹³ *Ibid.*

¹⁴ R.L. Blackburn, 'Cultural Relativism in the Universal Periodic Review of the Human Rights Council' *International Catalan Institute for Peace, Working Paper No. 2011/3* 2011, at: <<http://www.ssrn.com/abstract=2033134>> (accessed 15 January 2021).

¹⁵ As defined by Blackburn, cultural assertions meaning the concrete showing of oneness or locating oneself in similarities, e.g. linguistics, national or regional identity etc.

¹⁶ Etone 2018, *supra* note 10, p. 205.

appears that the more entrenched the cultural and religious beliefs are, for example, on same-sex marriage, the harder it is for a state to accept a recommendation for decriminalisation.¹⁷ This was seen in both Uganda and Nigeria, who have recently strengthened their legislative positions on same-sex marriage, outlawing it. Nigeria, speaking on behalf of the African Group, stated that same-sex marriage does not stand in line with African values.¹⁸ The African group holds 13 seats on the HRC. States hold a seat for a period of time before it changes to another state within the region. Together they are referred to as the African Group. South Africa is often seen to distance itself from the recommendations or comments made by the African Group, as it did when Nigeria, speaking on behalf of the African Group, stated that same-sex marriage is not in line with African values.

II.3 South Africa at the Intersection of Regionalism and Culturalism

South Africa poses a good example of coupling regionalism and culturalism. South Africa has some protection for sexual minorities, though its implementation of the protection is weak. It has been the only African state to accept recommendations on the issue. Whilst isolating itself from the statement made at the HRC regarding African values and same-sex marriage, South Africa has not made any recommendations to its allied African states on the matter.¹⁹ When African states make recommendations within the regional block to one another, it appears that they are more willing to accept them. Had South Africa made recommendations to its allied African states, this may have led to greater acceptance of recommendations and ultimately led to change. The UPR does not appear to be the best mechanism to deal with sensitive cultural issues, such as same sex marriage, especially when it is coupled with regionalism. This is because the UPR does not have the same influence it would have over another state, where culturalism and regionalism are not such large factors in the acceptance of recommendations.

South Africa also exercises a great deal of regionalism in its conduct with the HRC and other African states. Whilst there has been vocal commitment to the multilateralism and defense of abusive regimes, there is little physical evidence to cement South Africa as a firm party that will uphold human rights above regional alliances. In the case of six states (Sudan, DRC, Myanmar, North Korea, Sri Lanka, and Israel) who have been recognised for human rights abuses, in only one instance has South African supported the weight of the Council in condemnation (against Israel).

In the case of the DRC, the French scraped together enough signatories to call a special session after reports from Amnesty International put responsibility on the DRC government for failing to protect its citizens against human rights violations. Whilst South Africa vocally denounced the violations, it was not a signatory, nor was any other African state.²⁰ Whilst the

¹⁷ Etone 2018 supra note 10, p. 205.

¹⁸ Idem, p. 208.

¹⁹ E. Jordaan, 'South Africa and Abusive Regimes at the UN Human Rights Council' Global Governance 2014-20.

²⁰ Ibid.

French were preparing a draft resolution, the African Group put together their own. The African Group's resolution acknowledged the severity of the situation in the DRC but painted a rosy view of the abuses occurring. What is notable is the support given to 'African efforts'¹⁶ to achieve a sustainable solution, which South Africa reiterated in its statement. This shows a commitment to the concept of regionalism as discussed earlier. It may also demonstrate a will to have African solutions to an African problem, and somewhat of a push back against old colonial powers who once dominated the continent.²¹ It may be interesting to consider the relationship between a post-colonial Africa and the HRC, as this may offer an explanation as to why African states have been more receptive to recommendations from African allies as opposed to Western nations, who may be seen as a representation of the old colonial powers.

Furthermore, South Africa demonstrates the impact politics has on the effectiveness of the HRC. When developing countries are under review, South Africa has asked soft questions and often praised them for the work they have undertaken. However, the work undertaken by some of the states that receive praise from South Africa could be considered subpar, and to be doing the bare minimum. In contrast, when a state from the West is under review, South Africa has asked pressing questions about right-wing extreme ideology and claimed that there is no political will to address racism.²² South Africa is dissatisfied with the Western resistance to the World Conference against Racism (held in 2001), in which it felt it was the right state to lead internationally.

The World Conference against Racism, held in South Africa in 2001, was controversial due to its anti-Semitic and anti-Israeli sentiments.²³ As a result, western states, in particular the United States, did not celebrate the conference. Despite this, South Africa maintains that the conference should form the framework for an international effort against racism and interprets the Western dislike towards the conference as a lack of political will to address racism internationally.²¹ It may be said that South Africa has used the HRC as a way to publicly state its dissatisfaction with the West, bringing political stances into a mechanism that works to protect human rights, and diminishing the effectiveness of the HRC. The next part of this paper will discuss the UPR in Asia, and more specifically China.

III. China

III.1 State Sovereignty

In Asia, China poses a challenge to the effectiveness of the HRC. It places a high degree of importance on state sovereignty, which can work against the implementation of recommendations offered to the rising global power. Whilst it appears to be cooperative, the level of cooperation remains at a peripheral level and its willingness to accept change is largely

²¹ S. Phiri and E. Matambo, 'Foreign Intervention Predicament in Africa: Deploying Fanonian Psychoanalysis' *Journal of Pan African Studies* 2017-10.

²² Jordaan 2014, *supra* note 19, p. 247.

²³ *Ibid.*

not evident. There are changes that the HRC could implement to better deal with a state like China in order to increase its effectiveness.

It is harder to resist recommendations made by the only global intergovernmental human rights body, in comparison to allegations made by another government, that may have been made with political undertones.²⁴ However, China seems to be doing this, ignoring the recommendations made by the only global intergovernmental human rights body.²⁵ China allows countries to visit its territory and conduct research, but fails to make genuine changes that would improve its human rights situation. In the 2018 UPR, the Chinese government refused to accept 62 of the 364 recommendations made.²⁶ In fact, in several instances, the Chinese government made no response to the fact-finding reports released by the HRC.²⁷ This seems counterproductive, as China has supported and promotes dialogue instead of confrontational ‘naming and shaming’ when addressing allegations of human rights abuses.²⁸

It would be acceptable to assume that dialogue would constitute an appropriate response to a report from the HRC; something which China has by large not engaged in. The Chinese government’s insistence on state sovereignty is commonly offered as an explanation to counter criticism of China’s domestic human rights situation.²⁹ It is a belief in the Chinese system that the right of a nation (Mandarin: ‘guaquan’) was, and is, more important than human rights (Mandarin: ‘renquan’),³⁰ which means that a human rights violation cannot constitute the right to interfere with a state’s internal affairs. This is evident from a statement made by the previous Chinese Minister of Foreign Affairs who said that “sovereign equality and non-interference in the internal affairs of States are the two core principles guiding [China’s] international relations”.³¹ Although this statement was made in 2000, it is still a core belief in Chinese policy today. China has also co-sponsored amendments within international bodies, such as the Security Council, that strive to weaken international norms, protect civil society, and strengthen the principal of non-interference in sovereign affairs.³²

²⁴ M.P. Lagon and R. Kaminski, ‘Bolstering the UN Human Rights Council’s Effectiveness Council on Foreign Relations’ at: <https://www.cfr.org/report/bolstering-un-human-rights-councils-effectiveness> (accessed on 27 September 2021).

²⁵ S. Meng and L. Haina, ‘China and the Special Procedures of the UN Human Rights Council: Is China Cooperative and Can They Work Better With Each Other?’ *Human Rights Quarterly* 2020-42.

²⁶ Y. Chen, ‘China’s Challenge to the International Human Rights Regime’ *NYU Journal of International Law and Politics* 2019-51.

²⁷ Meng and Haina 2020, *supra* note 25, p. 368.

²⁸ K. Kinzelbach, ‘Will China’s Rise Lead to a New Normative Order: An Analysis of China’s Statements on Human Rights at the United Nations (2000-2010) Part A: Articles’ *Netherlands Quarterly of Human Rights* 2012-20.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ UNGA ‘12th plenary meeting’ (2000) UN Doc A/A/55/PV.12(2000), p.5.

³² Chen 2019, *supra* note 26.

China recommends that states should pursue human rights in line with their national conditions,³³ which seems to highlight their importance of state sovereignty. States have also argued that the international standards are arbitrary and counterproductive as they do not “serve the interests of the people of any country”³⁴ because of differences in the specific environment and reality. This seems to suggest that there is a breakdown in states’ cultural understanding of China, at an international level. In the 2018 UPR, where the Chinese government refused to accept 62 of the 364 recommendations, they cited inconsistencies with China’s national conditions, contradictions to Chinese laws and political biases or untruthful statements as their reason for rejection.³⁵ China has continued to accuse the West of being ‘anti-China’ and of using human rights as a means of intervening in their internal affairs, which both stigmatises and degrades human rights.³⁶

III.2 Understanding China’s National Circumstances

Meng and Haina argue that to improve the human rights situation in a country like China, the complex national circumstances must be understood.³⁷ More resources need to be devoted to understanding the regional disparity and diversity in the region for example and visits to remote places must be longer than 10 days or two weeks so as to come to more accurate conclusions on the human rights situation.³⁸ Mission reports demonstrate that the mandate holders have done considerable work to understand China’s history and social conditions, but due to the limited available resources, there are still omissions and misunderstandings.³⁹ This may contribute to a negative reaction from China, which could be avoided if there was better allocation of resources. That is not to say, however, that China is not at fault. It could contribute to the Special Procedures, as it has been recognised that the HRC has been experiencing budget challenges in executing the UPR. Both China and the HRC could also raise awareness of the Special Procedures during a visit, which could aid in the cooperation from local authorities providing information or opening areas to be visited by the mandate holder.⁴⁰

It may be argued that the effect of the position China takes, is to make intervention from the Council largely ineffective. When a state, at face value appears to engage, but when it comes to creating change, refuses to engage, the HRC is left with no option. When China refuses to engage in any genuine discussion, or accept recommendations, on the basis that they do not fit into China’s cultural landscape, what they do engage with may be considered merely window-dressing. China’s accusations of political biases or untruthful statements towards the findings made also damages the trust that is necessary for a mechanism like the UPR and the

³³ UNHRC ‘Sixteenth session: Agenda item 6’ (2011) UN Doc. A/HRC/16/5 (2011), para. 84(31).

³⁴ UNGA 2000, supra note 31, p.7.

³⁵ Chen 2019, supra note 26.

³⁶ Ibid.

³⁷ Meng and Haina 2020, supra note 25.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

HRC to function. As China becomes ever more powerful on the world stage, and the international world order shifts from being unipolar into a bipolar (or even multipolar) world order, China has the ability to set an example for states to follow, especially in Asia. This is worrying from a human rights point of view, as China has not set the example of being an open and cooperative partner to the HRC. If the HRC does not make changes in the way they engage with a state like China, it could lead to a division within the HRC in an anti-West fashion, led by the rhetoric that the West's human rights ideology is not suitable for the East.

IV. Politics

The Commission had been associated with politics, in a negative fashion, which is something the Council had intended on avoiding, though this is not always the case, as politics has found its way into the Council as well. The UPR was introduced as an attempt to create a supervision mechanism on equal footing⁴¹ between states,⁴² such that no one state had more power than another.⁴³ But, critically, the effectiveness of UPR mechanism relies on the buy in and cooperation of states themselves.⁴⁴ Therefore, one could accept the political nature of the UPR as it involves an interaction between state officials who represent their governments and by extension their economic, political, social, cultural, and religious ideology of that state.

IV.1 UPR Overshadows other Mechanisms

The UPR mechanism has also somewhat become the “face” of the HRC, and the UPR is the most publicly known body. Whilst this may be good for state interaction with the mechanism, it results in less interaction with other mechanisms such as Special Procedures, and often overshadows the work of it and treaty bodies.⁴⁵ The UPR mechanism overshadows in the most obvious sense through media and the general public who identify the UN Human Rights system with the UPR.⁴⁶ Consequently, the UPR becomes the main focus of a Member State and becomes more important than the concluding observations of an independent committee of experts. This is detrimental as the UPR can often paint a picture that is far from reality. For example, a UPR produced report for a pre-revolutionary Tunisia focused on praising the state for its achievements concerning human rights, which is in stark contrast to the committee of experts who pointed out areas of concern and made recommendations.⁴⁷ Moreover, spending valuable time praising a state unnecessarily does not contribute towards

⁴¹ M.C. Bassiouni and W. Schabas, *New Challenges for the UN Human Rights Machinery: What Future for the UN Treaty Body System and the Human Rights Council Procedures?* Intersentia 2011.

⁴² *Ibid.*

⁴³ Report of the UPR Working Group A/HRC/8/21 and Corr.1 (2008); Concluding observation of the Human Rights Committee on Tunisia, CCPR/C/TUN/CO/5.

⁴⁴ S. Joseph and E. Jenkin, ‘The United Nations Human Rights Council: Is the United States Right to Leave This Club?’ *American University International Law Review* 2019-35.

⁴⁵ Bassiouni and Schabas 2011, *supra* note 41.

⁴⁶ *Ibid.*

⁴⁷ Report of the UPR Working Group A/HRC/8/21 and Corr.1 (2008); Concluding observation of the Human Rights Committee on Tunisia, CCPR/C/TUN/CO/5.

the objectives of the UPR and wastes time that could be used on holding states accountable. However, the fact that states often begin their recommendations with a softer approach and by giving praise is a nod to the diplomacy and politicking that is inherent in a state-led review mechanism.

IV.2 Requirement of a Legal Framework

Furthermore, recommendations are to be rooted in a legal framework, holding states accountable under the Charter of the United Nations, the Universal Declaration of Human Rights, international treaties, or to voluntary commitments that states have made. However, states, when making recommendations, rarely make reference to the legal framework to which the recommendations belong.⁴⁸ In a rare example where the legal framework was referred to in the first twelve sessions of the first cycle review, China referred to the Charter in its recommendation requesting that the United States close down Guantanamo prison.⁴⁹ China does not go as far, however, as to state which specific provision or Security Council recommendation it is referring to in its recommendation. The trend that states seldom refer to the legal framework may reveal that states are overlooking the intended purpose of the UPR, which is to review existing and specific obligations under the Charter of the United Nations, the Universal Declaration of Human Rights, international treaties, or voluntary commitments that states have made.⁵⁰ In making a connection between recommendations and international treaties and law, it makes it harder for a state to simply reject the recommendations on the basis that they do not have to do it, or it does not fit their cultural landscape – a problem discussed in part one of this paper. It may also work to build the credibility and trustworthiness of the UPR. The HRC could thus work to impose this as a mandatory requirement when making recommendations.

IV.3 Political Recommendations

It has also been argued that the recommendations given to states are political by nature, in that the recommendations may be hard or soft depending on the political relationship between the states.⁵¹ This is evident in South Africa's record with the UPR and HRC as discussed above. Whilst recommendations should be rooted in a legal framework, they are not a legally binding tool, but carry influence in their public and political nature. It is also known that states have offered recommendations that fall below the legal requirements within the state, meaning that states offer recommendations that should already be executed within the state they are offering recommendations to; it should already be a reality; and yet it is not. States have also rejected recommendations that would ask the state in question to meet their

⁴⁸ UPR Info Database, 'Database of UPR Recommendations,' at: <http://www.uprinfo.org/database/> (accessed 27 September 2021).

⁴⁹ UNHRC, 'Universal Periodic Review: Report of the Working Group on the Universal Periodic Review: United States of America,' (4 January 2011) A/HRC/16/11, p. 24, para. 92.157.

⁵⁰ C. Szurlej, 'Universal Periodic Review: A Step in the Right Direction?' (PhD thesis, Middlesex University 2013).

⁵¹ Bassiouni and Schabas 2011, *supra* note 41.

own legal benchmark,⁵² that is to say that states have written in law, legal requirements (in legislation or constitution) that states are not able to meet and have rather refused the recommendation than change behaviors.

Finally, the United States, in 2018, under the Trump administration withdrew from the HRC.⁵³ Amongst other reasons, the global power cited Israel as a reason for its withdrawal. Its comments on Israel pose an interesting observation that adds to what has been discussed above on political alliances. At the time, Israel was listed on the permanent agenda; something the HRC faced backlash for. During the earlier years of the HRC, the Council had six special sessions discussing the human rights situation in Israel. Notably, however, since the United States joined the HRC, there have only been two sessions on Israel.⁵⁴ Speculatively, this could highlight the power of the United States in swaying the HRC away from or towards a certain state, to possibly appease the population of their own state where it is known that an alliance to Israel is good for domestic politics.⁵⁵ The United States has accused the HRC for giving disproportionate attention to Israel and of being biased against it.⁵⁶ Whether there is actually evidence to back up the sentiments of bias from the HRC is somewhat irrelevant for Israel. The United States has given Israel a ready-made argument to reject criticism, as they may now simply argue that a recommendation is founded in bias. Bias has therefore facilitated Israel's progressive disengagement with the HRC, culminating in minimal cooperation with the most recent UPR.⁵⁷ This sentiment, led by the United States, leaves open the possibility that the HRC will be associated with hypocrisy and selectivity, ultimately negatively impacting its credibility.⁵⁸ At the heart of all of this is the mandate the HRC is trying to live up to, and the protection of people who are victim to human rights abuses.

V. Conclusion and Recommendations

A recurring trend in assessing the effectiveness of the HRC and the UPR is that there is no formal follow up mechanism to the UPR. It appears that once the recommendations are given and accepted, this is where the UPR and HRC end their dialogue. Once this occurs, there seems to be little reporting done on the implementation of the recommendations in the following years. As a result, there is no way of knowing whether the implementation has been successful or not, and whether the protection and enjoyment of human rights have been bolstered within that Member State. There are most definitely informal working groups set

⁵² Ibid.

⁵³ J. Galbraith, 'United States Withdraws from the UN Human Rights Council, Shortly After Receiving Criticism About Its Border Policy' *American Journal of International Law* 2018-122.

⁵⁴ T. Piccone, 'Ten Years Later: The Status of the U.N. Human Rights Council' (at: <https://www.brookings.edu/testimonies/ten-years-later-the-status-of-the-u-n-human-rights-council/>) (accessed 16 January 2021).

⁵⁵ H. Mohamad, 'U.S. Policy and Israeli-Palestinian Relations' *Journal of South Asian and Middle Eastern Studies* 2019-43.

⁵⁶ Joseph and Jenkin 2019, supra note 43.

⁵⁷ Ibid.

⁵⁸ Ibid.

up within states that often partner with civil society organisations to monitor implementation, but this is often led by the state itself. As stated previously in this essay, more resources can be devoted to understanding the complexities of certain societies, like China, so as to ensure more effective use of mechanisms like the UPR, and to secure that more changes are made to guarantee human rights protections. In addition, requiring that recommendations be rooted in a legal framework can work to increase the credibility of the recommendations, and by extension the UPR mechanism and the HRC. In turn, where there is more credibility and trust, the HRC can work to achieve its mandate more effectively.

The aim of this essay is not to take away from the success the UPR and HRC have had since their conception in 2006. In accepting and implementing UPR recommendations, gender-based violence and domestic abuse reforms have been made, for example in South Korea in 2013 when the Supreme Court ruled that marital rape is a crime.⁵⁹ In Vietnam and Sri Lanka, the UPR was a key factor in driving the legality and legitimacy of LGBT activists. Canada had not adopted the Declaration on the Rights of Indigenous Peoples until 2016,⁶⁰ validating the rights of their indigenous communities. In Nepal, transgender people could not choose a third gender category on their citizen documents meaning that their gender was not recognised. This changed when the Nepalese government called for other categories be made available. The UPR has also led to the creation of new civil society coalitions in Australia, Singapore, and Ireland, for example.

The effectiveness of the HRC in achieving its mandate is dependent on the ability of its mechanisms to perform to their highest standard. The UPR is a key mechanism of the HRC and is designed to be a collaborative and state led. However, the UPR is only as effective as the Member States allow it to be in their engagement, trust, and cooperation with the mechanism. This essay has proposed reasons as to why the UPR may not work as effectively as it could, and by default, why the HRC is not working as effectively as it could either. The primary reasons are cultural and regional challenges that arise in dealing with states that embody vastly different beliefs and value systems, specifically in the African region and China. By being a state led mechanism, the UPR is inherently political, which can be seen in the way recommendations are offered, and in their (in)sensitivity. This is not to say that the UPR has not contributed to the HRC achieving its mandate. Although there have been considerable improvements made on basis of the review mechanism, several changes can be made to it so as to ensure that the HRC can achieve its mandate more effectively.

⁵⁹ Supreme Court en banc, Decision 2012, Do14788.

⁶⁰ House of Commons of Canada supra note 10.