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January 2015

Recommendations, Rhetoric, and Reporting: State and NGO Behavior in the Universal Periodic Review of Human Rights

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Abstract

This dissertation takes a detailed look at the role of non-state "stakeholders," overwhelmingly civil society non-governmental organizations (CSOs or NGOs), in human rights promotion within the process of the United Nations Human Rights Council's Universal Periodic Review of Human Rights. Utilizing a mixed-method, text-heavy approach, I conduct analyses of both state behavior and NGO activity within the first cycle of the Universal Periodic Review of Human Rights and examine the monitoring and follow-up practices between review rounds through paired cases in the second round of reviews. In these analyses, first I show that NGO activity, after controlling for the amount of state activity, human rights record, region, and issue area, is related to higher rates of states rejecting recommended changes and thus the exhibition of resistance to international pressure. Second, state rejection of recommendations increases with the level of demands in the recommendation, worsening human rights records, and when the recommendation covers specific international obligations or political rights such as basic freedoms and the rule of law. Moreover, recommendations covering women's rights or the rights of the child are more likely to be accepted. Third, I establish that states express their resistance to international human rights norms in one of two fashions: with culturally-, religiously-, or nationally-particularistic claims or with appeals to state sovereignty. Finally, I highlight the centrality of NGOs in the monitoring process between cycles of the UPR process, tying NGO engagement and participation over the duration to reporting on compliance with recommended changes from the preceding cycle of review.

Recommendations, Rhetoric, and Reporting:
State and NGO Behavior in the Universal Periodic Review of Human Rights

by

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DISSERTATION

Submitted in partial fulfillment of the requirements for the degree of
Doctor of Philosophy in Political Science
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August 2015

Acknowledgements

There are many people to thank:

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Introduction – Reviewing Human Rights

Modern Human Rights

The human rights situation in Myanmar has been deplorable since the 1962 coup initiated the military junta and continued ethnic conflict in the country—thousands are political prisoners, human trafficking and sexual violence are rife, and hundreds of thousands live stateless in UNHCR camps in Thailand. Even after the ostensibly democratic transition and end to the military regime in 2011, religious and ethnic minorities remain repressed, hundreds of thousands continue to be displaced and political opponents are still likely to be imprisoned. Has the international community remained silent, however? On the contrary, when the small country does make international news, Myanmar's poor human rights record is the only topic of discussion. Civil society organizations that advocate for human rights and democracy promotion, Amnesty International, Human Rights Watch, Freedom House for instance, have repeatedly and consistently named and shamed the behavior of the Burmese regime and the paramilitary organizations within the country's borders. These human rights groups highlight the thousands of political prisoners the regime continues to hold, the use of sexual violence and sexual servitude by the military, and the facilitation of forced labor and human trafficking by the state. At its recent periodic review before the United Nations Human Rights Council, Myanmar received 197 recommendations from other United Nations (UN) member states. Also during the process, two dozen non-governmental organizations submitted their own reviews and comments on Myanmar's human rights practices. Ongoing monitoring of the human rights situation by the UN, separate from the Universal Periodic Review (UPR), includes a Special Rapporteur who in March of 2015 noted a "shrinking of the democratic space in Myanmar" and that "backtracking [on human rights commitments] has gained momentum."

This level of international scrutiny toward a country's human rights record, particularly toward a non-democratic state in the global South, is not particularly new, novel, or unique. Neither is the looming question of what, if anything, could cause the state of Myanmar—or any state—to improve upon its human rights record. The growing widespread nature of knowledge about human rights abuses can be attributed in part to the current media market of 24-hour news and continuous, yet fleeting, flares of outrage on social issues across the social media landscape. It also is largely due to the well-developed international human rights regime, growing out of the Universal Declaration of Human Rights, codified by international treaty and convention, monitored and advocated upon by an ever-growing network of international non-governmental organizations (NGOs), and implemented by an array of international and intergovernmental institutions. This rights regime, with its vestiges of international law, social movement networks, and as international relations constructivists would argue, foundational norms, is predicated upon the universal applicability of the conceptualization of human rights it contains.

Still, from the advent of the modern human rights regime, there have been questions about the application of these rights' universality (Donnelly 1984, 2007, 2013; Otto 1997; Tomuschat 2014). States have debated whether these are Western ideals being forced upon the rest of the world or if they are truly universal (Goodhart 2003; Renteln 2013). Similarly, contestation continues surrounding how these international obligations relate to the sovereignty of the Westphalian nation-state (Hafner-Burton 2012; Hafner-Burton, Mansfield, and Pevehouse 2015). States all tacitly claim to support the idea of human rights, but that has not stopped the emergence of new questions about the tradeoffs between human rights and national security or finding the "right" set of human rights acceptable in a particular context (Adami 2012; Domingo 2012; Goodhart 2003; Gordon 2014; Rathore and Cistelecan 2012). Further, do transnational,

non-state, civil society associations enhance the universal resonance of rights within a state-based international human rights regime that is built upon treaties and intergovernmental agreements?

The breadth of documented activity within the United Nations Human Rights Council's Universal Periodic Review of Human Rights (UPR) provides ample ground to explore the diffusion of human rights norms, differentials in the resonance of certain rights frames, and the activity of different actors. The UPR mechanism reviews the status of human rights in each of the UN's 193 member states every four and one-half years; each year, three sessions of 14 states are reviewed, totaling 42 states per year. Established by General Assembly Resolution 60/251 on April 3, 2006, with its functions and procedures elaborated in Human Rights Council Resolution 5/1 on June 18, 2007, the UPR was created to work in a complementary fashion alongside other UN human rights instruments such as the bodies surrounding various rights treaties and conventions. The foundational principles of the UPR, laid out in the Annex to the HRC's resolution, revolve around promoting the universality, interdependence, indivisibility, and interrelatedness of human rights, while functioning as a cooperative mechanism that ensures the equal treatment of all member states. Its objectives, also established in the Annex to the resolution, include the improvement of states' human right situations, an increase in compliance with international obligations, the providing of technical assistance to increase state capacity, the sharing of best practices, and cooperation and engagement in the promotion of human rights and with the HRC.

While the process is peer-based and largely revolves around an interactive session wherein the state under review receives and responds to peer recommendations from other states, it also involves stakeholder reports and testimony from non-governmental organizations (NGOs).

The UPR, as a voluntary mechanism is somewhat constrained in that states accept and move forward only on rights issues to which they have agreed to consider for review. By covering all member states, the UPR diverges from the prior solely political targeting in human rights monitoring procedures at the UN. The first round of UPR reviews spanned 2008-2011; the second round of reviews from 2012-2016 is now in progress.

The UPR review process has been described as a largely positive continuation of the UN's reformist efforts to promote human rights while avoiding naming and shaming behavior. As a capacity building and technical support mechanism, the UPR process was explicitly intended to avoid politicization and confrontation in an effort to promote dialog and cooperation as part of a global push to improve human rights (Ramcharan 2011). As I will describe, this has resulted in high rates of acceptance when states under review respond to the recommendations they are given. The earlier sessions during the first cycle of the review experienced high levels of "friendly recommendations", suggestions for receiving technical assistance, for the global community to support "capacity building", or simply for a state to continue its current practice. This "praise bargaining" was particularly utilized by states with troubling human rights records (Abebe 2009). During Oman's review in 2011, for instance, Qatar, Saudi Arabia, Bahrain, the United Arab Emirates, Algeria, Kuwait, Turkey, Morocco, Egypt, Iraq, Azerbaijan, all spent considerable portions of the interactive dialogue thanking Oman for its participation and highlighting the strength of the Omani constitution and its human rights protections. Both Syria and Egypt offered recommendations for Oman to "Continue to adopt a positive perspective" and to "Maintain its positive approach."[1] Still, however, certain states have come under harsher criticism and others, while not necessarily facing harsh criticism, have drawn high levels of

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[1] United Nations Human Rights Council, *Report of the Working Group on UPR of* Oman, A/HRC/17/7 (24 March 2011), available from undocs.org/A/HRC/17/7

attention in the process; as a result states exhibit different rates of recommendation rejection. The first puzzle that emerges, therefore, is where, when, and why are countries rejecting recommendations for changes in human rights behavior within this allegedly constructive UPR process? And, when they give an explanation for their actions, how do they explain their resistance?

Despite ambitions for a constructive, capacity building mechanism, the process and political history of human rights has always been politicized and rife with contention (Normand 2008; Simmons 2009). Further, the UPR allows NGO interaction, both in reports written for consideration in the final meeting and limited testimony at the state's formal review session. While state recommendations may be billed as more productive and constructive, or even take the form of "praise bargaining," NGO reporting during the process retains the tone of traditional "naming and shaming" (Domínguez-Redondo 2012; Sweeney and Saito 2009), calling out countries for human rights abuses in front of their peer nations and reporting on the human rights conditions therein. The second puzzle I address arises from this divergence in behavior by state and NGO actors. How do these NGO interactions with states function in this intergovernmental context and what impact can we see on state behavior in this UPR process?

A significant body of scholarship has developed (e.g. Finnemore and Sikkink 1998; Klotz 1999; Risse, Ropp, and Sikkink 1999, 2013), working from the 'boomerang' through to the more fully realized, if still largely unidirectional, 'spiral' model, in which scholars have long highlighted the role of civil society organizations, both transnational and domestic, in promoting human rights change and particularly in pushing for compliance. These scholars debate the role of civil society actors, regime type, and domestic institutions in promoting rights compliance rather than simple rhetorical commitment (Simmons 2009). In the spiral model of human rights

change, the state undergoes five distinct stages (Risse, Ropp, and Sikkink 1999, 2013). First, the state actively commits human rights abuses against its population, and represses domestic society. At this time, transnational society becomes active in calling the state out for its behavior. The state moves to stage two, denial, where they contest the validity of the international critique. During the second stage, domestic society begins to exhibit weak opposition to the status quo. As transnational society increases pressure, the offending states begin to make tactical concessions in the model's third stage, while domestic society incorporates human rights discourse and broadens its coordination with transnational society. The fourth stage involves prescriptive commitment to the international rights norm, and the spiral ends in its final stage with full compliance and rule-consistent behavior. Thus, the spiral model isolates different roles for international and domestic society at different stages in the process. The UPR, however, provides a relatively equal platform for interactions with both domestic and transnational NGOs combined with states at various stages of commitment (or lack of commitment) with international rights norms. This dissertation questions whether these groups behave differently or have divergent effects at the UPR as the spiral model assumes? Does their presence at the review and the submission of written testimony exert mounting normative pressure on country as seen in the model, and is that pressure enough at that time to promote acceptance of the recommendations given to a state under review? Or, like the scholars of backlash and resistance to the universality of human rights norms (e.g. Acharya 2004; Boockmann and Dreher 2011; Cardenas 2004; Helfer 2002; Wright and Escribà-Folch 2009), and as is shown in the earlier stages of the spiral model, does this added attention result in push-back, denial and increased levels of rejection?

To explore these puzzles, this dissertation takes a detailed look at the role of "stakeholders", overwhelmingly civil society non-governmental organizations (CSOs or NGOs),

within the process of the United Nations Human Rights Council's Universal Periodic Review of Human Rights. In the following chapters, I conduct analyses of both state behavior and NGO activity within the first cycle of the Universal Periodic Review of Human Rights and examine the monitoring and follow-up practices between review rounds through paired cases in the second round of reviews. In these analyses, first I show that NGO activity, after controlling for the amount of state activity, human rights record, region, and issue area, is related to higher levels of states rejecting recommendations and thus exhibiting resistance to international pressure. Second, state rejection of recommendations increases with the level of demands in the recommendation, worsening human rights records, or when the recommendation covers specific international obligations or political rights such as basic freedoms and the rule of law. Moreover, recommendations covering women's rights or the rights of the child are more likely to be accepted. Third, I establish that states express their resistance to international human rights norms in one of two fashions: with culturally-, religiously-, or nationally-particularistic claims or with appeals to state sovereignty. Finally, I highlight the centrality of NGOs in the monitoring process between cycles of the UPR process, tying NGO engagement and participation over the duration to reporting on compliance with recommended changes from the preceding cycle of review.

In the remainder of this chapter, I outline the theoretical underpinnings of change in countries' human rights practice and norm adoption, spending particular time on the definition and role of civil society actors in the process. Next, I outline the UPR process and the origins of the review within the Human Rights Council. Finally, the chapter closes with an outline for the rest of the dissertation.

Naming and Shaming, Boomerangs, and Changes in Human Rights Practice

Most contemporary international relations theorization on human rights comes from and within the constructivist tradition. Flowing largely from work began in the late-1990s (e.g. Finnemore and Sikkink 1998; Keck 1998; Klotz 1999; Risse 1999; Risse, Ropp, and Sikkink 1999; J. Smith, Chatfield, and Pagnucco 1997; J. Smith, Pagnucco, and Lopez 1998) and drawing from the formulation of the "boomerang" and later "spiral" models, this body of scholarship focuses on the diffusion of international norms by what are variably referred to as social movements, transnational activist networks, civil society, or NGOs. The boomerang model placed primacy on domestic actors seeking assistance transnationally from other (international) NGOs, who in turn lobby their state governments as well as intergovernmental organizations on the behalf of the aggrieved domestic populace. The spiral model, as discussed above, complicates this by seeing dual and varied roles and timings for the participation and influence of domestic and transnational actors. Numerous modifications and addenda to these models have arisen over the years, isolating specific NGO behaviors (naming and shaming), examining their connectedness and embeddedness with one another (network analysis), and further discussing the exponential proliferation of new NGOs onto the global scene.

Human rights norms are diffused by means normative pressure exerted by networked, transnational actors, which use the technique of naming and shaming to identify and scold targeted, rights-abusing states. Via this practice, and amplified by other networked organizations and the media, NGOs seek to exert pressure upon non-targeted states and institutions who then, in turn, pressure the targeted state to change their practice and adhere to the championed international norm. The practice of peer, state-to-state shaming is so routenized and ritualized, in fact, that non-rights conforming states use the shaming method in an effort to bolster their own

"good standing" and reputation on the international stage (Erickson 2014; Hong 2015; Wendt 1999). States commit to treaties but do not always comply with their contents, sometimes anticipating a willingness to comply and simply falling short over time, and other times "expressively" committing with little intention of implementing the provisions (Simmons 2009). Bridging this gap between rhetorical commitment, be it to an international legal instrument or more abstractly to some normative idea, and compliance, moving beyond ceremonialism and reputation-seeking is a central focus of current human rights and international organization scholarship with which this project engages (e.g. Risse, Ropp, and Sikkink 2013; Simmons 2009).

The broad and wide ranging critique to this literature on NGO norm promotion, pressure, and human rights change comes from both within and without the body of constructivist scholarship and argues that evidence that these normative structures are efficacious is scarce (Hopgood 2013; Posner 2014). Both Posner and Hopgood's books are provocatively and apocalyptically titled (*The End Times of Human Rights* and *The Twilight of Human Rights Law,* respectively) but point to the larger and more salient question of whether there is evidence that this conglomeration of treaties, conventions, monitoring bodies, and vast transnational network of NGOs has been effective at improving the protections of people's human rights across the globe. Concordantly, if they have not been effective, why not? Responses to these questions largely begin by complicating the process portrayed by the spiral model as largely unidirectional and permanent. The rise of government-organized NGOs, or GONGOs, similarly is used to challenge the standard expectation of a unidirectional progression of rights championed by largely Northern transnational actors (Landolt & Woo 2015). Beyond government-friendly NGOs, Bob identifies a pattern of counter-movements and counter-networks rising against

liberal and Northern norms (Bob 2012). The ability for durable, coup-proofed authoritarian regimes to simultaneously participate in human rights monitoring and mobilize these GONGOs and similar counter-movements to diffuse pressure is a growing field (c.f. Hong, 2015).

The analysis presented in this dissertation interacts with the assumptions and observations of the spiral model at various stages. Particularly, I explore the articulation of counter-normative ideals on behalf of states and identify commonalities to the manner in which states frame their resistance to external normative pressure; these interactions at the second stage in the spiral model both legitimatize the international critique and illustrate locations where norm propagation have not been completely internalized. Despite the high level of norm acceptance observed in the UPR, one quarter of state responses within the process exhibit some sort of denial and contestation of international rights norms. Thus, one central contribution of this work is identifying which types of states, and which types of rights, remain contested at the second stage of the spiral model, rather than moving toward commitment, not to mention compliance. A second contribution is an examination of a specific intergovernmental forum in which both domestic and transnational NGOs mobilize for human rights. The observations here identify high numbers of domestic, Southern, civil society organizations, frequently in concert with one another and only at times networked transnationally, take part in the UPR process by submitting briefs on states' human rights practices. Their participation in the process, particularly in taking a leading role in follow-up monitoring, does not fit the standard assumptions of the role and timing of transnational and domestic actors in the spiral model. The open questions this project then pursues is what impact do non-state, civil society, actors have within the specific UPR process of normative contestation, and subsequently, what norms are the most and least consolidated within the debates between civil society actors and states and among states themselves.

What Role for Civil Society?

Before approaching these questions, I begin by establishing the theoretic foundations for understanding the role of civil society non-state actors in international and particularly intergovernmental affairs. Just what constitutes civil society, and in turn civil society actors or organizations, is continually debated among scholars (Kohler-Koch & Quittkat 2008). Helmut Anheier and his colleagues define civil society vaguely as "the arena, outside of the family, the state, and the market where people associate to advance common interests," and in another instance as a "sphere of ideas, values, institutions, organizations, networks and individuals" (Anheier 2004; 2007). Michael Edwards (2009) identifies three schools of thought throughout the literature surrounding civil society: civil society as associational life, comprising the 'third sector' outside the state and market; civil society as 'good' society, based on positive norms, civility, and the common good; and civil society as the Habermasian public sphere, where deliberation takes place.

Drawing from Edwards' synthesis, civil society is inherently laden with positive norms, though the civility and good intentions are not most central to a conceptual definition. Rather, particularly when attempting to discuss a *global* civil society and civil society actors who act transnationally, civil society must be understood as a Habermasean deliberative space occupied primarily by 'third sector' associations who are beholden neither to the state nor the market. In this way, I use civil society similarly to the arena or sphere that Anheier and his associates discuss (Anheier 2004; 2007). The critical distinction from much of the theorizing about civil society as deliberative space or public sphere is that at the global level it is characterized primarily by the associations—and networks of associations—that constitute it, rather than individuals.

With civil society defined, I clarify the relevant actors for study within this sphere. Some have argued that civil society organizations (CSOs) should be restricted to public-interest, citizen and/or diffuse interest groups, thus clearly excluding organized industry, professional and business associations. Others have a much broader conception of CSOs, including these latter groups as well as voluntary groups, cultural groups, think tanks, youth organizations, cultural-exchange groups and countless others. Conversely, the United Nations discusses CSOs and NGOs in the same breath, thus invoking Article 71 and the groups' assigned role in consultation (Willetts 2000; 2002). Given the project's focus on the UN's UPR process, I utilize this somewhat narrower view that CSOs are synonymous with what the literature discusses as NGOs; they "are formal (professionalized) independent societal organizations whose primary aim is to promote common goals at the national or the international level" (Martens, 2002). Crucially, in the UN's UPR documentation of "stakeholder" participation in the UPR process, it distinguishes between "civil society" actors—NGOs primarily, but churches and charitable trusts as well—and other types of actors, including regional and other intergovernmental organizations (e.g. the Council of Europe or Organization of American States), national human rights institutions, and academic organizations. When dealing with the Universal Periodic Review, civil society organizations will be the NGOs choosing to consult with the HRC on various states' reviews. The UPR attracted over 3,000 stakeholder submissions, many submitted by groups of organizations, including human rights giants such as Amnesty International and Human Rights Watch, as well as very specific domestically based narrowly focused advocacy groups such as Egyptian Association for Community Participation Enhancement and the Solidarity of Migrant Workers of Singapore. These NGOs, as agents of this associational and deliberative sphere, are CSOs and the terms are synonymous throughout the project.

Drawing from the conceptualization of civil society as the public discursive sphere and expanding that conceptualization supranationally, the intergovernmental organizations such as the European Union have actively sought to use CSOs for political socialization and participation (Wessels, 2000; Warleigh, 2001). In doing so, the EU has consistently viewed the social sphere and civil society actors as the necessary fix for the "democratic deficit" (Rumford, 2001). Drawing from this inference then, interest groups, rather than the political parties of the domestic level, can be viewed as the institutions to empower the masses and create a transnational demos or polity from which to advance an agenda (Wessels, 2000; Bouget and Proteau, 2002) or progress a civic dialogue on a particular issue (Anheier and Kendall, 1999). This logic then frames civil society actors generally, and NGOs specifically, as agents of input legitimacy and participation (Nanz and Steffek 2004; McKeon 2009; Friedman, Hochstetler and Clark 2005). The United Nations' own utilization of NGO consultations, beginning from granting special consultative status with the Economic and Social Council (ECOSOC) up through the solicitation of stakeholder testimony in the Universal Periodic Review, is its primary forum for citizen participation. In turn, the UN, particularly within the confines of ECOSOC, has made claims about the legitimacy of policy and votes following consultative procedures.

Writ more broadly then, my argument intersects with key contemporary discussions aimed at specifying knowledge about NGO activism and isolating the overall effectiveness of NGO activism on emerging patterns of global governance. Beginning with study of the UN ECOSOC review, analyses have been couched in the inadequacy of the realist/liberal paradigms' explanation for the continued and growing involvement of NGOs with the UN and the subsequent need for IGO actors, such as the UN, to re-evaluate and re-contextualize relations with non-state actors to most productively utilize and interact with the emerging global civil

society (Otto, 1996; Willets, 2000; Alger, 2002). These works chronicle the development of additional points of access, consultation, and interaction for non-state actors in the UN system and point to unclear futures as actual decision-making power and policy-level influence continued to be withheld from civil society actors.

Other work has established a set of key variables for understanding NGO activity within the UN system. When comparing among different inter-governmental organizations (IGOs), the institutional context, culture, and "vulnerability" are central to understanding interactions with civil society (O'Brien et al., 2000). The level of "vulnerability" of a given institution is derived from the level of transparency under which it operates, and the degree to which it is held accountable to a given constituency. The concept of vulnerability could also be applied to states as targets of NGO lobbying. Political opportunity structure, defined by the level of access provided to non-state actors and the current political environment governs the scope within which the NGOs can act (Tilly, 1978; Joachim, 2007). In this dissertation, issue-specific and country-specific considerations will need to be modeled to account for differences in political context depending on the country or issue addressed in UPR recommendations. Additionally, McKeon (2009) notes the need to account for the differences in what actors can be accredited and thus given access and then the form of interactions in which they are allowed to participate. In both instances, the isolation of the UPR case and the actors within its framework allows for these variables to be controlled.

As outlined clearly in Lecy and colleagues' structured literature review of organizational effectiveness (2012), much of the work trying to isolate measures of NGO effectiveness remains theoretical and model-building, and largely lacks empirical testing of these models particularly outside the cases in which they were developed. This pattern can be seen throughout the

literature, from Richardson's (2000) theorization of information and knowledge as central to policy networks, which were then central to change, to Betsill and Corell's (2001) citation of a myriad of studies covering 'influence' as well as their own framework for identifying and measuring NGO influence on international negotiations. Still, empirical studies attempting to measure NGO influence or effectiveness are emerging. For instance, in comparing Bretton Woods Institutions, Kelly (2005) finds the World Bank to be more impacted by CSO activity than the IMF due to institutional and organizational differences, as well as differences in the use of NGO consultation. Kelly indicates the World Bank utilizes NGOs to improve efficacy and perform the vital task of interest aggregation and representation; they provide input legitimacy. Beth Simmons' work on the ratification and proliferation of international human rights treaties is also illustrative (2009). In her work, Simmons identifies the important role NGOs and IGOs played in the development of the international human rights regime and its institutionalization via numerous human rights treaties. Similar to her reliance on state acceptance—treaty ratification—as a dependent variable, this project will analyze the state acceptance of human rights recommendations. In the UPR case, however, this study will not be testing the ratification of treaties that outline rights that may already be held in a state, nor will it examine institutional change over time. Instead, I examine patterns in accepting and rejecting recommendations for *changes* in human rights behavior mediated by testimony from human rights NGOs.

The literature on NGO influence in the realm of human rights is comprised of largely optimistic case studies and quantitative analyses presenting mixed evidence for NGO influence via "naming and shaming" and other advocacy techniques (Hafner-Burton 2008; Hafner-Burton and Ron 2009; Risse, Ropp, and Sikkink 1999; Simmons 2009; Stroup and Murdie 2012). This disjuncture between the qualitative and quantitative studies has often been attributed to

challenges in large-N measurement of rights practices. In terms of measurement, while attention to human rights has increased in states over time and human rights laws and protections have continued to grow, most empirical measures of human rights performance have remained largely stagnant (Hafner-Burton and Rom 2009). Practically, both NGOs and IGOs are faced with the inability to enforce changes in human rights behavior after successfully highlighting issues. Analogously, the UPR review mechanism includes state responses to peer recommendations with iterated cycles every four-and-a-half years. The UN HRC lacks an enforcement mechanism, of course, but states are asked to reflect upon commitments made via accepted recommendations in the prior cycle's review. Thus, I consider and examine human rights outcomes from the 'ratification' and implementation of these recommendations. With a focus on the UPR, as described below, I will be able to test some of the commitment claims Simmons makes regarding the importance of perceived costs and strategic considerations while simultaneously directly measuring the level of input NGOs have, all within a context that eliminates the 'false positives' of already in place practices.

The work most supportive of NGO's role and effectiveness in instigating human rights changes, particularly via naming and shaming behavior, comes largely from Amanda Murdie and her collaborators (Murdie 2009; Murdie & Davis, 2012; et cetera). In these studies, they utilize "Big Data" analysis to outline INGO effectiveness. The measurement of NGO activity is equal to the number of news mentions in a given year and state behavior is measured by a developmental or human rights index measured in the following year. In some ways this dissertation owes much to this field of work—the reliance on textual data and to a certain extent the level of abstraction of NGO activity—but it diverges in important and meaningful ways by clarifying and specifying the observations used in the inferences. First, it limits the study of NGO activity to human rights

advocacy rather than trying to simultaneously analyze NGO behavior in developmental service provision. More importantly, however, the UPR mechanism provides a more proximate measure of state behavior and thus potential change and effectiveness. The states actively respond to the peer recommendations in their final report at the session and in turn will report back on the implementation of any accepted recommendations in the next cycle of reviews. Measured NGO activity is confined within the UPR process and thus is directly tied to those recommendations and the state response. NGO activity can also be examined in their own words and framing, rather than through second-hand media coverage. Further, the project encompasses the entire population of active NGOs, as opposed to many that rely upon a non-random sampling based on media exposure which is subject to largely Western media preferences. In this way, it also addresses the possible validity issues in isolating NGO input rather than conflating it with broader, more global rhetoric (Hafner-Burton and Ron 2009). While less comparative and generalizable in scope than Murdie and colleagues' projects, the context of the UPR should be able to add more targeted empirical evidence to test the claims as to where, when and how human rights advocacy NGOs 'matter.'

The Universal Periodic Review of Human Rights

Turning now to address the Universal Periodic Review directly, I take a moment to outline the process upon which the remainder of this dissertation is based. As a new instrument of the new Human Rights Council (HRC), the UPR was established to provide a peer-review mechanism by which each of the UN member states have their human rights performance reviewed by other states every four years. Normative and policy prescriptive work in international law and human rights largely emphasizes the necessity for the HRC and the UPR to

be 'new' and radically different from the over-politicized and ineffective Commission on Human Rights (CHR) (Gaer 2007; Harrington 2009; R. K. M. Smith 2011; Upton 2007). Thus, the UPR mechanism's expressed purpose is to provide UN-facilitation of institutional learning, transfer of best-practices, and state capacity building through technical assistance. This is an intentional divergence from acting as a continuation of the highly politicized naming and shaming that occurred within the Commission on Human Rights.[2] Notably, however, the HRC's practice has fallen short of the de-politicized ideal and break from the CHR (Bossuyt 2006; Cameron and Limon 2012; Cox 2010; Hug and Lukács 2014; Piccone 2011; Piccone and Piccone 2012). Separating the primary review function from the political showmanship of CHR/HRC resolution-crafting and votes (focused still overwhelmingly on the condemnation of Israel) was a key progression nevertheless. Making this separate review universal—encompassing all member states—and periodic—scheduled so states can prepare for the next review and make successive adjustments—does make the UPR a novel addition to the UN's human rights organs and the general international human rights regime. Marc Bossuyt (2006) may have expressed this attempt at balance well, saying:

> "The principal UN human rights organ is not a tribunal or impartial judges, not an academy of specialists in human rights, nor a club of human rights activists. It is a political organ composed of states represented by governments that as such reflect the political forces of the world as it is."

Through the UPR, states were initially reviewed once every four-years, but during the first cycle the review period was extended to every four and a half years. A state's review cycle begins with at 20-page report from the state under review. Two complementary compilation reports are also filed by the Office of the High Commissioner of Human Rights. The first reflects the state

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[2] United Nations Human Rights Council, *Institution-Building of the United Nations Human Rights Council*, A/HRC/Res/5/1 (18 June 2007), available from undocs.org/A/HRC/Res/5/1

under review's standing with international human rights instruments and treaty bodies, including their compliance with these international mechanisms. The other comes from 'relevant stakeholders', primarily consisting of NGOs who have submitted reports, and is distilled by the OHCHR to a report of approximately 10-pages. From these three reports, a council of three randomly-selected states for the review round (the "troika") prepares a final review of the state under review along side the HRC Secretariat.

These three documents provide the written basis for review and are accompanied by an oral presentation by the state under review. The primary portion of the review is a three-hour interactive dialogue, during which all HRC members can submit 'recommendations' for modified behavior by the state under review (SuR), and the state under review can later choose to 'accept' or 'reject' these recommendations. After the interactive dialogue, an adoption

Figure Introduction.1. Review Cycle of the UPR

STEP 1 –YEAR 1

Reports on **Country** prepared

STEP 2 - YEAR 1

Government appears before UPR Working Group

UPR Four Year Cycle

STEP 5 – YEAR 2-4

Follow-up Processes

STEP 3 - YEAR 1

Report of the UPR Working Group is prepared

STEP 4 - YEAR 2

Report is adopted at the Human Rights Council
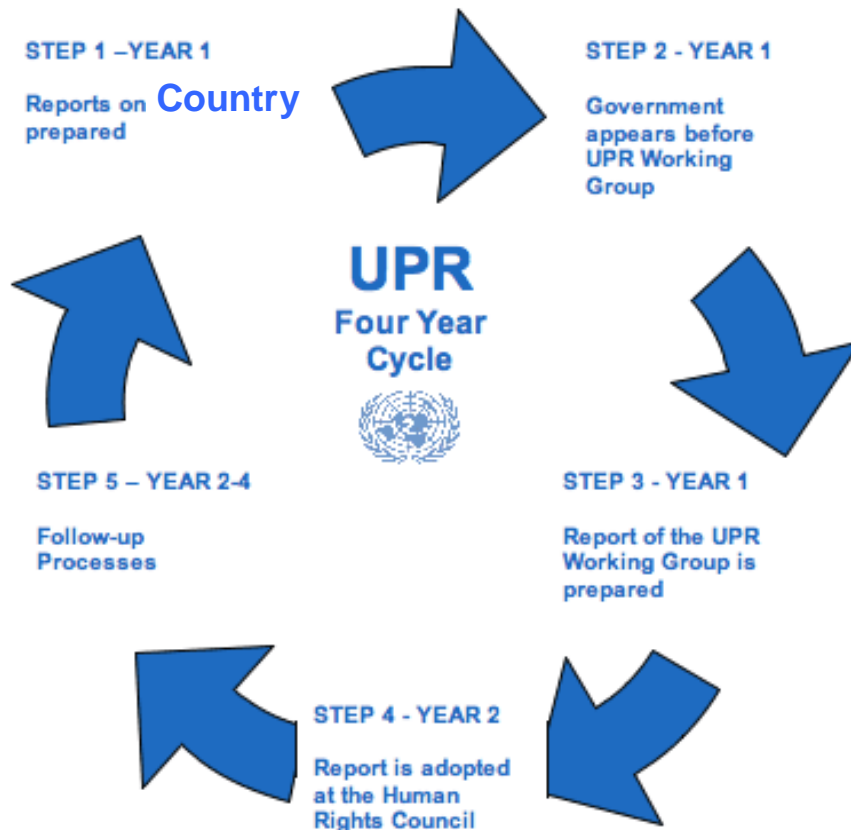
meeting convenes where a final report, including state responses to recommendations, is

submitted and limited testimony from NGO stakeholders is made. The stages for a single

country's Universal Periodic Review, illustrated in Figure 1 above, are as follows:

1a. Preparation of National Report. The SuR performs a self-diagnostic of its human rights record, according to basic guidelines established by the HRC. While states may consult with NGOs at this stage, this happens infrequently at this point.

1b. "Stakeholder" (primarily a summary of NGO testimony, but also regional IGOs and NHRIs also submit in some cases) and UN treaty body reports are prepared.

2a. Preliminary assessment. The members of the HRC (the Working Group) examine the prepared reports and receive a preliminary report by the SuR. The SuR also responds to any questions that were submitted by members of the working group in advance of the review.

2b. Review and Interactive Dialogue. The SuR undergoes a three-and-a-half hour long dialogue wherein other states ask further questions and make recommendations about the documented human rights behavior and the generally known situation in the SuR. HRC members are allotted three minutes of speaking time while observer states only receive two. NGOs may attend, but are not invited to directly testify at this time. The SuR gives a closing statement.

3. Final Report is written. The HRC Secretariat and 'troika' prepare a final report, summarizing the interactive dialogue including the specific recommendations made by specific states and the response to each by the SuR. It also encapsulates any voluntary commitments the SuR may have made during the review. The SuR then reviews the document and responds (accept, reject, a "general" response, or no reply at all) to any recommendations it did not reply to during its closing statement.

4a. Preliminary adoption. Once the SuR has reviewed the Final Report and provided its responses to all recommendations, other states have up to two weeks to amend the document.

4b. Report adopted. The HRC adopts the report in a plenary session during a meeting that allocates up to twenty minutes of further questioning of the SuR followed by two twenty minute reflections—the first for non-HRC states, and the second for NGOs and stakeholders to give their view of the outcome of the review.

5. In the interim, before its next review, the SuR is requested to complete the voluntary commitments and accepted recommendations from its review.

The UPR began its first cycle of reviews in 2008, reviewed 28 UN member states' human rights performance each year, and completed the cycle in 2012. The second cycle is scheduled to complete in 2016, coinciding with the tenth anniversary of the Human Rights Council. Some human rights scholars have argued that the UPR is an ideal accountability mechanism; it is a peer-based, universal review, with public commitments and direct, scheduled follow up (Abebe, 2009; Sleap, 2009). While voluntary, in practice all UN member states have participated in the first cycle of reviews and have agreed to continue to participate and have their rights practices reviewed. Conversely, the peer-complaints mechanisms associated with the core UN human rights treaties—CAT, CMW, CED, ICESCR, CRC, CERD, and ICCPR[3]—still remain completely unused (Smith-Cannoy, 2012). Similarly, while treaty-body complaint mechanisms sit unused, so too do their reporting procedures get shorter shrift than the UPR, as "states take the UPR process more seriously than the states reporting procedure before treaty bodies" (Dominguez-Redondo 2012). Further, ninety-eight percent of states fulfilled their obligation to the process of submitting a lengthy country report, while eighty percent sent full ministerial-rank representatives to take part in the interactive dialog and formal review process (Ibid). In so far as states are considering reputation costs throughout the process, both the recommendations they make toward other states as well as their responses to recommendations given to them become part of the final official UN documents released by the OHCHR (in addition to the national report, stakeholder report, and treaty body status report).

Overall, the initial examinations of the UPR process has presented mixed reviews of prior HRC accountability mechanisms and the ability of shaming to be an effective tool to promote

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[3] CAT – Committee against Torture; CMW – Committee on Migrant Workers; CED – Committee on Enforced Disappearances; ICESCR – International Covenant on Economic, Social and Cultural Rights; CRC – Committee on the Rights of the Child; CERD – Committee on the Elimination of Racial Discrimination; and ICCPR – International Covenant on Civil and Political Rights

changes in state human rights behavior. Studies focus on the "promise" a new format like the

UPR holds and reiterate its nascent stage (Charlesworth and Larking 2015; Hickey n.d.; Landolt

2013; E. McMahon 2010; E. R. McMahon 2012; Sen 2011).

Argument and Plan of the Chapters

Effective and universal human rights promotion remains elusive. The Universal Periodic

Review of the United Nations Human Rights Council is the latest intergovernmental institution

tasked with improving compliance with the core international treaties and conventions of the

human rights regime. Utilizing a text-heavy approach in which I draw both quantifiable and

qualitative data from hundreds of documents related to the Universal Periodic Review released

by the United Nations, this dissertation will tackle two central puzzles and thus make two

primary contributions to the literature discussed in this chapter. Both puzzles are best situated in

the context of Risse, Ropp, and Sikkink's spiral model. The first puzzle emerges from the super-

majority of state recommendations for rights change that are accepted in the UPR process.

Despite this extensive norm acceptance, states that may otherwise be in the mid-to-later stages of

the spiral—making tactical concessions, committing to certain norms, or even in complete

compliance with many rights norms—contest the validity of certain norms and their

encapsulating recommendations. Why and where then do states choose to offer resistance to

international pressure for rights change? Importantly, how do they express this resistance? Do

they present counter-normative arguments or simply deny the violations are happening? I argue

that, while the UPR shows large scale commitment to many human rights norms, there is still

substantial resistance to minority and physical integrity rights, often couched in the language of

sovereignty and national security, as well as resistance to comply with international

commitments. These findings largely dovetail on the patterns of denial and contestation identified in the spiral model and serve to highlight areas in the international human rights regime where change has been the most gradual.

The second puzzle focuses more directly on the impact of civil society actors, both domestic and transnational, on the Universal Periodic Review Process. The UPR is a state-focused process, but thousands of NGOs participated in the first cycle of reviews and more are participating in the ongoing second cycle. While the UPR was established as a capacity building institution and many state recommendations adhere to this principle, most stakeholder NGO testimony takes the form of naming and shaming. Does this divergence in tone and content matter? Aare NGOs effective in promoting commitment or compliance? How do states respond when faced with NGO criticism and testimony? I argue that, in the context of the UPR, NGOs appear to be counter-productive in promoting commitment to human rights changes. Their participation in submitting oral and written testimony increases rejection rates in states under review, and thus contributes to the limited "bottlenecking" of the UPR process at the early stages of the spiral model. Further, in this forum, the presence of domestic civil society actors is widespread and critical in monitoring follow up between sessions. With limited follow up on the commitments made in one cycle of the UPR to the other, domestic NGOs have, albeit unevenly, filled the role in following and reporting on state compliance with accepted recommendations. In the movement from commitment to compliance, from tactical concessions to rule-consistent behavior, monitoring is vital for accountability. The reluctance or inability of large transnational rights organizations to add the UPR as another site for monitoring and reporting, while smaller niche domestic organizations closely follow developments in their issue areas is a key contribution to the understanding of NGOs' varied capacity for consistent monitoring.

This dissertation is divided into three large empirical chapters. Chapter 1 provides the foundation for the analysis by exploring broad patterns of behavior within the first cycle of the Universal Periodic Review. The chapter focuses on when and where states reject recommended changes to their human rights practices, why paying special attention to the role of NGOs in the process. Relying primarily on the quantitative analysis of state acceptance and rejection of peer recommendations within the UPR process, I bring data aggregated from NGO testimony into the analysis of state behavior. I both demonstrate the high rate of states' acceptance of peer recommendations as well as the differing rate of resonance across rights issue areas. While I hypothesize that added NGO attention would promote commitment to recommended changes, I find the opposite, that NGO participation is associated with increased levels of rejection. Further, as expected, states with worse human rights records and of whom more is asked reject recommendations at a higher rate. Those recommendations directly dealing with international instruments and obligations are among the most likely to be faced with contention in the UPR process.

In Chapter 2, I explore the findings of the preceding chapter by analyzing the rhetorical devices states use when expressing their resistance to recommended changes to human rights. While Chapter 1 identifies when and where states stall at the second stage, denial, in the normative change spiral, the second chapter isolates when and where states use counter-normative arguments in their contestation. This chapter focuses on the question of how states frame their rejection and whether those frames are patterned to the attention they received in the UPR or their domestic contexts. Employing a deductive, grounded theory approach to the reading of states' explanations for rejecting peer recommendations, I develop a typology of resistance to the "universality" of the international human rights regime. This typology is

characterized by resistance to particular rights and resistance to the UN mechanism being studied. Four prevalent forms of resistance claims emerge: sovereignty-based, particularistic (nation, religion, culture), procedural, and outright denial. I demonstrate that states utilizing the most counter-normative frames, resisting both the legitimacy of an international critique and the normative content of that critique, are likely to be states with poor human rights records and who have received the most critical naming and shaming reports from NGO stakeholders.

With the preceding chapters outlining resistance and contestation during the first cycle of the UPR, Chapter 3 examines the time between the first and second cycles as states move from commitments made during the first cycle to compliance. This chapter returns the focus to the puzzle of NGO participation in this largely state-centric process. After establishing the inadequate nature of the primary state-self reporting of compliance, I address third-party NGO monitoring of state behavior. Which NGOs are most active in monitoring UPR follow-up? What states are most observed? Using a mixture of large-N analysis and paired, focused comparisons of states that have completed both cycles of review, and while I expected large transnational NGOs to have the most capacity for a coordinated monitoring effort, I find that it is *domestic* NGOs that are most engaged in serving as monitors and reporters throughout the inter-cycle years. The continued and growing involvement of particularly domestic civil society actors from the first to the second cycles of the UPR ties directly to the quality and productivity of states' second cycle reviews and the quality of information other states have on compliance. However, the limited resources and issue-specific nature of many domestic groups makes the de facto reliance on their participation less than ideal in the context of the process.

Finally, the Conclusion chapter offers a synthesis and an extension through a consideration of the implications of the Universal Periodic Review going forward. Here, I

conclude that despite the voluntary nature of the UPR and, both states and NGO stakeholders have at times pushed states to consider (and reject) changes to core physical integrity rights. Additionally, while the UPR has capacity-building and technical-assistance foundations, NGO testimony along with some state recommendations, strongly rely upon naming-and-shaming style rhetoric. The developments from these divergences from the charter of the review will be interesting to monitor. I also conclude that the surprising level of domestic NGO activity in the first cycle, and their increasingly networked participation during the second cycle serves in juxtaposition to our expectations of the role of domestic civil society in the international rights regime.

The existence of this periodic international forum, the Universal Periodic Review—not to mention new social media venues—provides relatively low costs of entry and participation to civil society organizations. These lowered costs make the jump from domestic civil society directly to intergovernmental agencies and particular target nation-states possible, bypassing the typical international NGOs. Further, traditional "naming and shaming" finds hard ground at these formalized, primarily inter-state proceedings whereas "monitoring and reporting" behavior sees more up-take by other states in the process and works to promote oversight and compliance to prior commitments. Finally, the prevalence of procedurally-based rejections to particular instruments of the international human rights regime and the particularistic challenges to certain rights norms serves to highlight the need for continued development and strengthening of the informal, rather than formal, normative mechanisms of human rights promotion with special concern given to framing in non-Western contexts.

Chapter 1 – CSOs and States in the UPR

The United Nations, particularly in the United States, is often written off as a distant, inconsequential and largely ineffectual forum of political theater and cheap talk. Pundits and scholars alike are skeptical of the significance of its deliberative functions when substantive decisions face the high *realpolitik* of the Security Council and its veto threats. The Commission on Human Rights was routinely derided as a sham for the human rights-abusing states it counted among its membership and for its preternatural fixation upon Israel at the expense of all other considerations. Nevertheless, the UPR process was adopted in the new Human Rights Council and all states have voluntarily completed their individual peer previews, submitting lengthy reports and answering directed queries from their peer states both verbally and in a final written agreement that is adopted by the HRC. Through the first cycle of this process, states take advantage of the opportunity to demonstrate their adherence to certain human rights norms as they question and recommend states undergoing the review process. Perhaps seeking reputation and ideational gains, or perhaps seeing the signaling game as relatively costless, states within the first cycle of the UPR process generated nearly 25,000 individual recommendations for changes to their peers' human rights practices. Over two-thirds of these recommendations were ultimately accepted by the target states; however, over 8,000 recommendations made to states in this process were rejected. If states are positioning themselves as compliant with international human rights norms and actively engage in this intergovernmental process through making recommendations and accepting a high share of those they receive, when and why do states reject recommendations at all? Are certain types of states more or less likely to accept peer recommendations via an intergovernmental institution?

Despite the long-standing critiques of the UN and its human rights promotion efforts (Edwards et al. 2008; Freedman 2014; Seligman 2011), an increasing number of civil society organizations especially from the global South, continue to apply for status with ECOSOC and routinely participate in consultative efforts with the General Assembly and other UN bodies. It is less surprising then that movements of NGOs and networks of organizations engaged with the UPR during its first cycle, submitting nearly 3,500 statements about countries' human rights records. Among these countries and their CSOs, a few had widespread, civil society-organized campaigns for visibility and interest around their particular reviews; for instance, both Ireland and Iran had framing movements. "Your Rights, Right Now", a coalition of about 20 CSOs in Ireland, tracked and publicized the review process extensively, garnering a total of 60 stakeholder statements from approximately 225 individual NGOs or peak organizations in NGO networks. Contrary to the typical prominence of transnational NGOs dealing with the United Nations, all but five of the organizations testifying during Ireland's review were domestic Irish CSOs. Similarly, the NGO "UPR Iran" took part in a coordinated campaign to carefully and extensively document the entirety of Iran's UPR process; it maintains a website wherein all of the recommendations made to Iran and voluntary commitments made by Iran during its first review are extensively tracked for follow up and compliance. It submitted one of 67 statements during Iran's review and was one of the 75 CSOs active in the submission process. Here, too, the makeup of reporting organizations was largely domestic, though Iran attracted a higher number of transnational organizations than did Ireland with 24 transnational organizations reporting.

Not all countries had widespread UPR-centered campaigns promoting additional attention and rigor at the state's first periodic review. On average, states under review (SuR) only received 17 reports from stakeholders on their human rights practices. Given this wide

divergence in civil society activity toward SuRs and the diversity of 'target' SuRs it is puzzling where and how CSOs have chosen to engage in the UPR process and how SuR have responded under heightened, or lessened, non-state attention. Does the participation of civil society actors impact the rate at which states accept or reject the recommendations they receive? Do recommending states utilize the statements and pseudo-recommendations provided by CSOs?

In this chapter, I conduct analyses of both state behavior and NGO activity within the first cycle of the Universal Periodic Review of Human Rights to examine the two puzzles outlined above: when and why do states reject peer-recommendations for human rights change and how is heightened civil society scrutiny received within the UPR process. In these analyses, I find mixed support for the hypotheses I derive and test here. First, I show that NGO activity, after controlling for the amount of state activity, human rights record, region, and issue area, is related to higher levels of states rejecting recommendations and resistance to international pressure. Further, state rejection of recommendations increases with the level of demands in the recommendation, worsening human rights records, or when the recommendation covers specific international obligations or political rights such as basic freedoms and the rule of law; conversely, rejection rates are lower for recommendations covering women's rights or the rights of the child.

In what follows, I begin with a descriptive analysis of both state and NGO behavior within the first cycle of reviews. Next, drawing from the current literatures on naming and shaming and NGO effectiveness, as well as from scholarship on state voting behavior within the UN HRC, I develop specific hypotheses for testing. In this chapter, I utilize regression analysis to test these hypotheses across all states, recommendations, and NGO testimony recorded during the UPR's first cycle from 2008-2012.

State Behavior at the UPR

During the early sessions of the first cycle of the UPR, states were still beginning to understand the system, from how to submit a complete national report to the detail and comprehensive nature of the comments given during the interactive session. National report submissions from states under review are stipulated to take a certain format, including an explanation of the report's preparation, the institutions in place for the promotion and protection of human rights, the status of promotion and rights protection efforts across a range of issue areas, and areas where technical assistance may be required. States may also offer voluntary pledges for changes to rights practices in these reports. The reports are introduced in a much abridged version when the state under review speaks at the start of the interactive session, during which it receives recommendations.

This beginning period as states were growing accustomed to the process resulted in relatively low numbers of recommendations given to states under review. The average state under review during the first session only received 27 peer recommendations, while on average a state in the final session of the first cycle, Session 12, received 143 recommendations. This discrepancy scaled quickly as by Session 4 over 100 recommendations per state was average. Individual recommendations made to a state under review are identified and numbered in the final report submitted on each sate to the Human Rights Council. Further, the state's provisional response, later confirmed, is also included in this final report to the working group. Among the recommendations in the first cycle that "enjoy the support of Ireland", or which Ireland had accepted, were a number relating to the treatment of a minority ethnic group, the Travellers. Chile, for instance suggested Ireland "strengthen the measures to improve the representation,

education and protection of Travellers."[1] Ireland rejected a set of recommendations (they did not

enjoy the support of Ireland in the parlance of the official document) relating to an international

convention on migrant workers. This set of recommendations was reported in the working group

summary as:

> Consider becoming a party to (Turkey); the possibility of (Argentina, Ecuador, Peru) signing and ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Algeria, Egypt), incorporate it into law (Iran), and accede to its principles (Mexico).

> Among the recommendations given, a large number were quite "soft" and are thus

rightfully characterized as praise-bargaining behavior between states. For instance, the first

recommendation received by Iran came from Kuwait and stated simply "Continue to respect

international humanitarian law and humanitarian law in general."[2] Tajikistan, too offered Iran a

weak recommendation to "Continue its international efforts to create an international order based

on cooperation and inclusion." As the first cycle progressed, while states became more

accustomed to the procedure, the statements reviewing states made to the target SuR during the

interactive sessions of the reviews became more densely packed with recommended changes to

rights behavior. In 2011, for instance, Panama received the following very specific

recommendation:

> Effectively investigate and prosecute those responsible for excessive use of force during the national strike in Changuinola in the Province of Bocas del Toro in July 2010, and take steps to ensure total respect for freedom of assembly in the country (Norway).[3]

Over the course of the first cycle, 2008-2012, over 20,000 distinct peer recommendations were

logged by the UN.

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[1] United Nations Human Rights Council, *Report of the Working Group on UPR of Ireland*, A/HRC/19/9 (21 December 2011), available from undocs.org/A/HRC/19/9
[2] United Nations Human Rights Council, *Report of the Working Group on UPR of Islamic Republic of Iran*, A/HRC/14/12 (15 March 2010), available from undocs.org/A/HRC/14/12
[3] United Nations Human Rights Council, *Report of the Working Group on UPR of Panama*, A/HRC/16/6 (4 January 2011), available from undocs.org/A/HRC/16/6

Figure 1.1. Distribution of Responses to Recommendations

Distribution of Responses

14.9%

5.5%

6.5%

73.1%

Rejected   No Response
General Response   Accepted
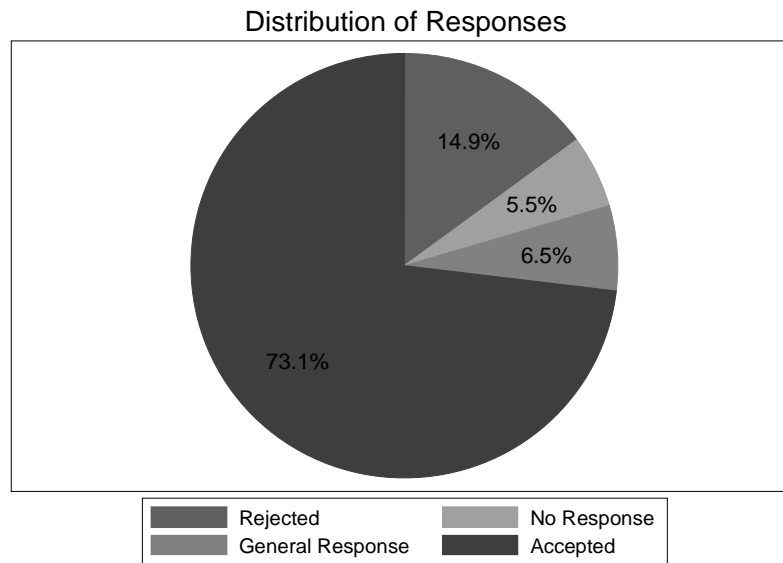
In Figure 1.1 above, I present the distribution of responses given by states to the

recommendations they received. Notably, 73% of recommendations were accepted by states

under review. This can be partly attributed to the relatively low cost in implementing these

changes, as will be discussed later, but this does not completely account for the high level of

acceptance. Further, only 14.9% were rejected, while the remaining 12% received a delayed

response. These delayed replies were either "general" in the sense that the state indicated it

"noted" the recommendation or was "taking it under consideration" or the state simply did not

indicate its position during the initial interactive session. States later clarified these delayed

responses prior to the submission of the final report; each response is recorded in the report

adopted by the Human Rights Council.

Figure 1.2. Frequency Distribution of Recommendations Received
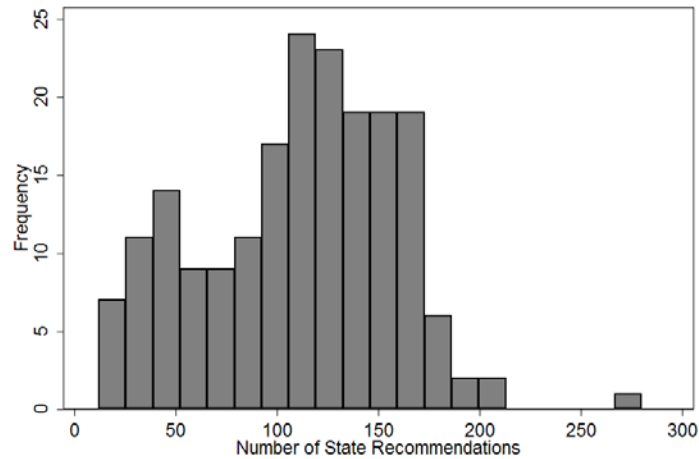
In Figure 1.2, above, observe that across all 12 sessions of the first cycle, on average states received about 120 recommendations from their peers, while relatively few states received a low number of peer-recommendations. The recommendations states provided targeted particular areas of human rights behavior, international treaty obligations, and outright human rights abuses. These issue areas I categorize into 9 broad issue groups, condensed from a 50-issue area fine grained coding presented by Ned McMahon (McMahon 2010). The classification of these 50 issue areas into the nine categories I use throughout this dissertation is shown below in Table 1.1.

Table 1.1
Classification of Human Rights Issue Areas

Civil and Political Rights	International Obligations
Electoral rights	Treaty compliance
Corruption	Compliance with international instruments
Treatment of Civil Society	International humanitarian law
General Civil & Political Rights	Compliance with UN special procedures
Law and Order	Cooperation at the UPR
Impunity	**Women's Rights**
Justice	**Rights of the Child**
Unlawful death	**Economic, Social and Cultural Rights**
Unlawful detention	Poverty
Arbitrary detention	Development
Disappearances	Labor
Executions	Education
Torture	Right to food
Security	Right to health
Freedoms	Right to housing
Freedom of association	Right to land
Freedom of movement	Right to water
Freedom of expression	General Economic, Social & Cultural Rights
Freedom of religion	**Other**
Freedom of the press	LGBT rights
Minority Rights	AIDS
Displaced/Refugees	Environment
Disability	Protection of HR defenders
Race	Other or general recommendations
Minorities	
Migrants	
Asylum-seekers	
Indigenous	

Recommendations in the UPR process can cover multiple issue areas, for instance a recommendation to accede to the Convention Against Torture would be coded both as an treaty compliance – international obligation and a torture – law and order recommendation. During the first cycle, 58% of recommendations addressed a single issue area, while another third cover only two issues like the example above. Just over 2% of recommendations were truly "omnibus," touching on four to six issue areas. See Table 1.2 for a breakdown of this distribution.

Table 1.2
Number of Issues In A
Recommendation

	Freq.	Percent
1	12,342	57.8
2	6,875	32.2
3	1,665	7.8
4	385	1.8
5	77	0.36
6	9	0.04
Total	21,353	100

Recommendations pertaining to international obligations, treaty provisions, humanitarian law, or procedural matters make up the plurality of recommendations states receive, see Figure 1.3. Disaggregating the international obligation-based recommendations into the content of those obligations and distributing them among the other issue areas of human rights results in the distribution shown in Figure 1.4. The issues of rule of law, justice, torture, disappearance and executions are the primary concerns addressed with nearly half of the states. This overwhelming focus on physical integrity rights largely reflects the international human rights regime in general. While covenants and conventions on the rights of women, on rights of the child, and on

Figure 1.3. Distribution of the Primary Focus in State Recommendations
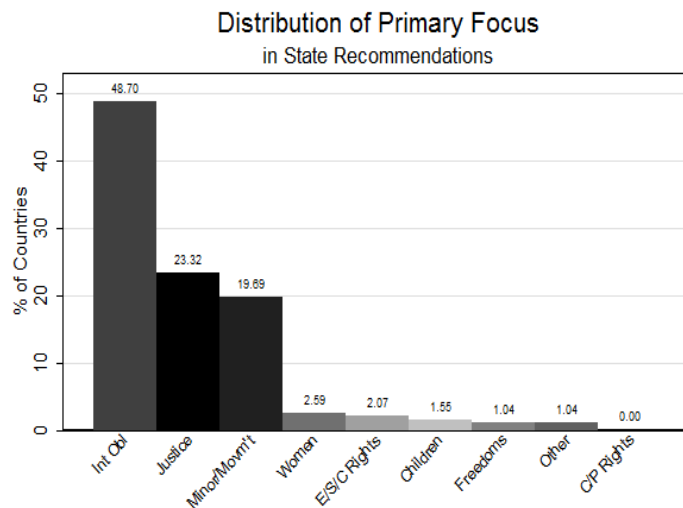
Figure 1.4. Distribution of Issue Areas in State Recommendations, With International Obligations Classified by Issue Area
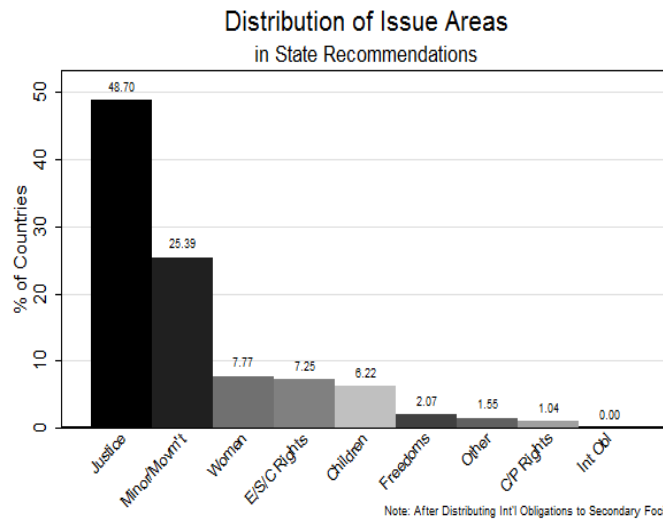
economic, social, and cultural rights are in effect in many countries, inter-state human rights promotion has predominantly concerned itself with conduct in war and direct impunity on the part of state actors in the international system. Scholars attribute this focus partly to the state-centric nature of the treaties and treaty bodies that constitute the international human rights regime, but also to the early predominance of physical integrity rights promotion INGOs such as Amnesty International, mentioned above, in shaping and setting the agenda for human rights discourses focused primarily on the states' physical treatment of human beings (Apodaca 2001; Poe and Tate 1994; Poe, Tate, and Keith 1999; Ramos, Ron, and Thoms 2007). Others note the impact of the Cold War and the relegation of economic, social, and cultural rights to an aspirational rather than essential status in the body of international human rights (Roth 2004).

Notably, states place relatively little importance on directly advocating for freedom of religion, freedom of the press, and other essential freedoms; when these areas of human rights are addressed, largely they are more directly couched in the language of minority rights or in the

judicial process surrounding the rights. See, for example, this recommendation from Romania to Iran:

> Assure a fair and transparent trial for members of the Baha'i faith, in full compliance with the commitments undertaken as a State party to the implementation ICCPR and other human rights instruments.[4]

Here, Romania's concern is centered on respect for freedom of religion in Iran. However, the language used in the recommendation is directed at the judicial process and international human rights law, *not* the principled or more abstract belief in the freedom of religion or minority rights. This type of justice-framing and judicialization of rights discourse is seen throughout the recommendations made by states in the UPR process. It is also visible in the preponderance of recommendations related directly to international treaty obligations, and when disaggregated, the heavy focus on physical integrity and impunity.

This distinction—the regularity in which recommending states refer to the formality of law, whether that is in-state law and order or it is in the form of international obligations, rather than idealized principles of human rights—is meaningful. The primarily realist critique of the international rights regime, human rights promotion, or international law in general, would expect states to engage in "cheap talk" in this type of international forum. From this perspective, one would expect the language used in recommendations to states under review to be far more aspirational and abstract. If talk is cheap, states can make consistent references to idealized rights regardless of their compliance as, without meaning and power attributed to the referenced ideals or international organs, there is no cost for being particularly demanding or fanciful in interactions of this nature. Further, states in this view would have incentives to make their recommendations abstract and in reference to an ideal point, rather than tied to specific

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[4] RecID #8415, United Nations Human Rights Council, *Report of the Working Group on UPR of Islamic Republic of Iran*, A/HRC/14/12 (15 March 2010), available from undocs.org/A/HRC/14/12

international organs or treaties, to minimize costs in the preparation for the review and in monitoring and follow up for a process that is without enforcement powers.

Peer recommendations within the UPR do not take this "high ideal" and abstract form. Instead, states present measured, reasoned recommendations that make direct references to justice, law and order, and specific international obligations drawn from the body of international human rights law. For example, both the Czech Republic and Estonia recommended that Iran accede to both the Convention against Torture and its Optional Protocol, while Iran recommended that Belgium "stop the detention of minors in adult prisons." Recommendations of these types are actionable, measurable, and discrete, demonstrating important principles that I will draw upon in later chapters. First, this shows actual use and reliance on the legal and treaty-based tools within this sphere of UN human rights promotion. It also identifies an interesting distinction between the resonance of formal (treaties) and informal (norms) institutions of international human rights. While the reliance on formal institutions within an intergovernmental forum like a UN HRC review may not be directly surprising, it could have an impact on NGO lobbying strategy and framing within that context. Second, states are, counter-intuitively, opening themselves up to *further* monitoring, auditing, and critique by making and responding to direct and empirical (as opposed to abstract and aspirational) recommendations. As shown in Chapter 3, this monitoring is largely facilitated by civil society organizations, but the iterative review process opens states up to continued scrutiny from their peers within the UPR as well. Both of these implications are at odds with the expectations of pure political theater and "cheap talk" derived from most modern realist critiques of rights and norm promotion. They also serve to present an addendum to constructivist understandings of norm diffusion and argumentation, as will be discussed in Chapter 2.

Table 1.3
Distribution of Recommending States

	Freq.	Percent
Africa	2,496	11.69
Asia	3,338	15.64
EEG	3,069	14.38
GRULAC	3,578	16.76
Observer	189	0.89
WEOG	8,674	40.64
Total	21,344	100

Now that I have addressed how states under review respond to recommendations and how other states tend to make those recommendations, I turn to *which* states are active in the process. The states making recommendations to others in the UPR were on average from Europe and the remainder of the developed world; over 50% of the recommendations came from states in the UN's "Western Europe and Others Group" (WEOG) and the "Eastern European Group" (EEG), as shown in Table 1.3 above. Conversely, only a quarter of recommendations came from African and Asian states while the "Group of Latin American and the Caribbean" states comprised the remaining sixth of recommending states. This disproportionate share held by European states largely mirrors state behavior in other UN organs, from the Security Council to General Assembly proceedings, and continues despite the attempted balance maintained within Human Rights Council membership[5] that preferences the representation of the populous African and Asian continental groupings.

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[5] Membership in the Human Rights Council, 47 member states, is divided regionally by the UNs regional groupings. Africa is allocated 13 seats, as is Asia. The EEG has 6 seats; GRULAC has 8 and WEOG is allocated 7 seats. Voting within the HRC is done by two-thirds majority. Members can be suspended for human rights abuses and are to "uphold the highest standards in the promotion and protection of human rights."

Table 1.4
Mean Recommendation
'Action' Level, by Region

Africa	3.87
Asia	3.84
EEG	3.93
GRULAC	3.89
WEOG	4.04

Congruently, while European states and the rest of the global North make the

preponderance of recommendations within the process, more is being asked of them (Table 1.4).

Judging the costliness or difficulty of the action required by a given recommendation is coded on

a 5-point scale representing the difficulty of implementing the recommendation, with the highest

value representing the most detailed and demanding recommendations. For instance, an action of

value one would call on a state to seek technical assistance for improving rights in a certain area,

or ask the state to share information about their policy in that area. An action of level five, on the

other hand, would ask a state to enforce or ratify a certain treaty or establish a human rights

office in their government. A middling action, at level three, simply asks a state to consider a

change, review a policy, or study a given issue area. Utilizing this scale of implementation

difficulty, both the WEOG and EEG groups ranked slightly higher[6] than the other regional

groupings at the UN. On average, recommending states are more likely to request that Northern

states under review ratify treaties or make changes to domestic law. Conversely, states of the

global South are more likely to receive recommendations to "consider" or "explore" changes or

to "continue" certain current practices. Some of this follows with the "praise bargaining"

argument raised earlier. Particularly in the earliest sessions of the first cycle the mean 'action'

level of recommendations was quite low. But, as with the number of recommendations, the

severity of what was asked of states under review quickly escalated along with the volume of

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[6] Differences in mean between WEOG/EEG and GRULAC/Africa/Asia are statistically meaningful, largely as an artefact of the 21,000 observations.

recommendations. By the fourth or fifth sessions, action levels approached their overall mean

levels and remained fairly constant over the final three quarters of sessions.

Civil Society at the UPR

      I turn now from direct state interactions within the UPR process to the behavior of the

stakeholders in the UPR process, primarily non-governmental, civil society organizations. NGOs

are invited to participate in multiple points within the UPR process. Before the formal review

session, they file statements which are compiled by the Office of the High Commissioner for

Human Rights (OHCHR) into the stakeholder report; some also lobby HRC members to use their

recommendations for the state under review. Additionally, NGOs serve as monitors for the

progress on completing accepted recommendations, reporting to one another and to the HRC

(Sleap 2009). In the lead up to a state's periodic review, civil society actors frequently worked to

promote grassroots attention to the review itself. These actors also garnered contributions from

their networked organizations, and submitted testimony on human rights practices in their

countries. Campaigns of this nature include the Irish and Iranian movements discussed at the

start of the chapter. The degree to which these organizations networked and submitted combined

documents for the stakeholder report varied greatly across states under review. These were filed

with the HRC as "Joint Submissions" in which multiple organizations, sometimes *ad hoc*

partners for the UPR process (filed under "NGO Coalition" or something similar), other times a

joint contribution between an umbrella organization and its domestic organs (The International

Federation of Action by Christians for the Abolition of Torture – FIACAT – and its subsidiaries

followed this model), and other groupings of strategic and lasting networks and partners (LGBT

Denmark and Trans Denmark), submitted single comprehensive reports. Later in the process,

NGOs serve as part of the accountability mechanism to hold SuRs to commitments made during their review, as will be discussed in Chapter 3.

On average, states under review received approximately 17 reports submitted from stakeholder organizations (Table 1.5). The distribution (see below) around this point however, is

Figure 1.5. Frequency Distribution of NGO Activity

Note: 3 states not shown—U.S.A 103; Cuba 326; Venezuela 579
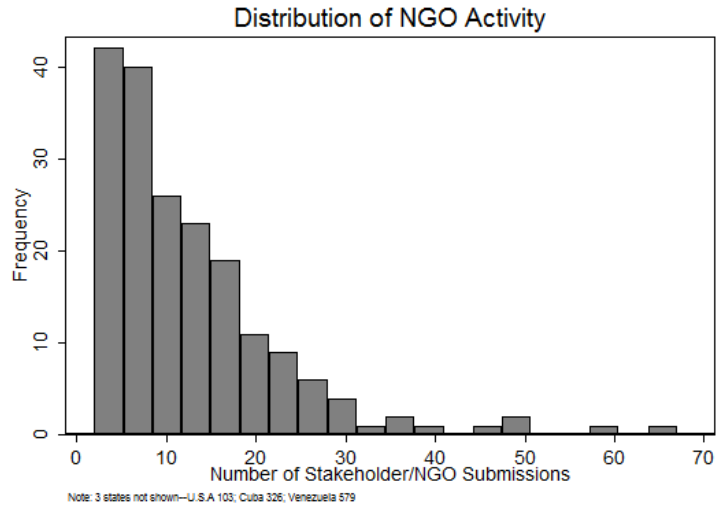
Table 1.5 Mean Number of NGO Testimonies, by Region	
Africa	11.11
Asia	15.67
EEG	11.65
GRULAC[7]	37.06
WEOG[8]	17.10

highly skewed, with the large share of states receiving a relatively small number of reports while a few exceptional states received many more. These include Ireland (60), Iran (67), the USA (103), Cuba (326), and Venezuela (579).[9] Many states had low levels of NGO involvement, as the plurality of states had fewer than ten stakeholder reports submitted during their review. The

[7] GRULAC is the Group of Latin American and Caribbean states
[8] WEOG is Western Europe and Others Group, including former British colonies: Canada, US, New Zealand, and Australia
[9] The USA, Cuba, and Venezuela establish themselves as outliers here with over 100 NGO stakeholder reports. They will be consistently omitted from figures displaying relationships between NGO activity and other variables.

Venezuelan case is interesting as over 300 civic village associations wrote independent

contributions and submitted them to the HRC for the state's periodic review. In both the Cuban

and Venezuelan cases, the high number of recommendations arose from a combination of state-

sponsored and grassroots organizing that incorporated hyper-local civic and social organizations

at the village and neighborhood level. This deep engagement by civil society is not seen in any

other states. All of the outliers, as with the vast majority of states, had a high level of domestic

engagement with the process.

The level of NGO attention is correlated with state attention—or the number of

recommendations from other states the state under review receives. This correlation is relatively

weak, though statistically significant and is shown below in Figure 1.6.

Figure 1.6. NGO Activity by Number of Recommendations
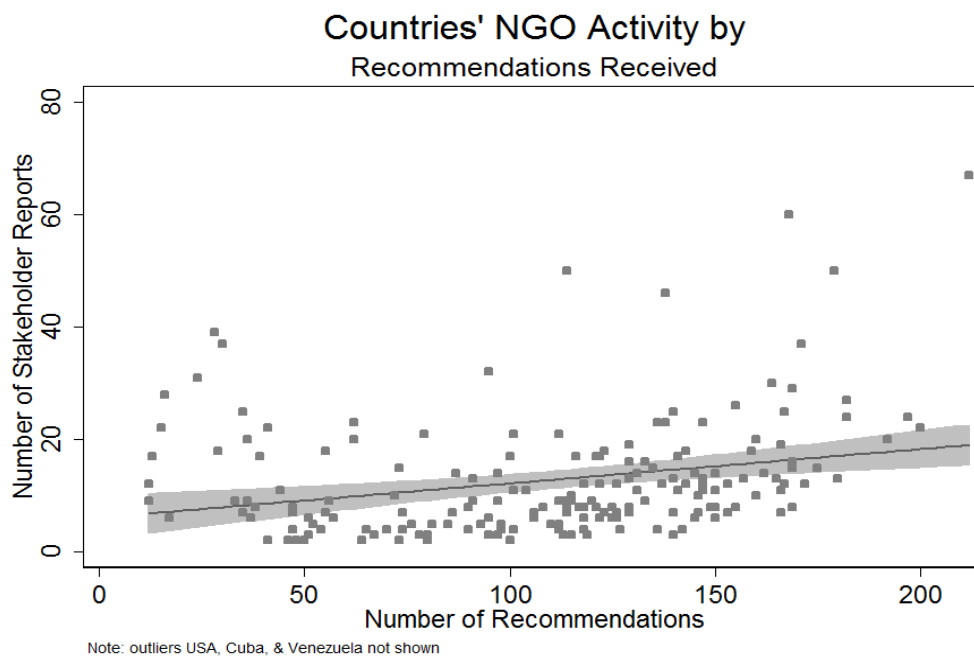
Figure 1.7. Distribution of the Primary Focus in NGO/Stakeholder Reports
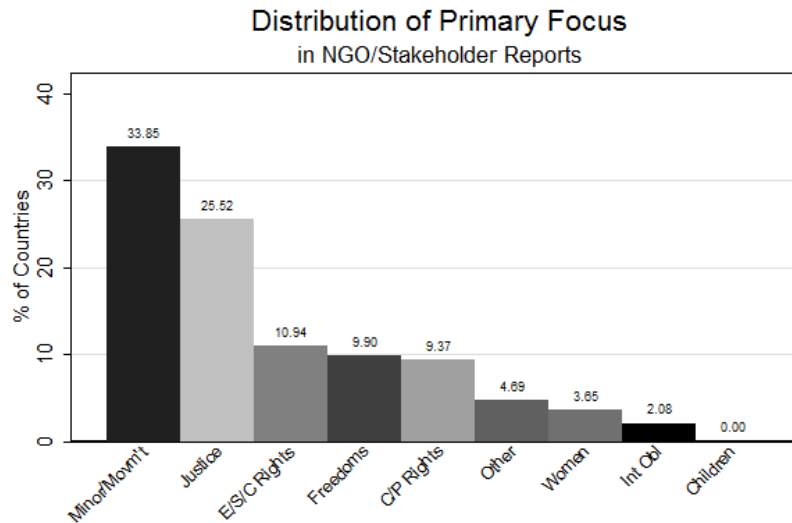
I turn now to the attention NGOs have given these issues through an examination of the

official compilations of stakeholder testimony. In examining the most prominent topic covered in

each state's report (Figure 1.7), the plurality of NGO state reporting (37%) primarily exhibited

concerns in dealing with minorities, refugees, immigrants and issues surrounding minority rights

and the freedom of movement. Additionally, NGO reports frequently take note of the difficulty

of international travel into conflict regions or oppressed regions in states, citing their inability to

easily move about and monitor human rights situations. This was followed by issues of justice,

extrajudicial killings, imprisonment, and torture (28% of states). NGO testimony takes on

patterns distinct from those of state recommendations. First, the primary focus of NGO

submissions was not on international obligations and formal institutions of human rights. Rather,

NGOs operated in a more informal normative space. Physical integrity rights fell in prominence

while minority rights and protections for migrants were the most frequently addressed issues.

Some of this can be attributed to the large number of ethnic and minority-rights advocacy

organizations submitting reports, but it also demonstrates a difference in kind of state and NGO

interest in human rights promotion. While both directly relate to state oppression, the concern

expressed in NGO statements refers more frequently to the ideals of minority rights protection

and the dignity of migrants, rather than referencing specific judicial and legal instruments or

state practices on imprisonment and law and order. The overall approach is less legalistic and

less concerned with upholding intergovernmental instruments for rights protection and more

focused on current and uncovered rights violations. Contemporaneously, this does not appear to

be dictating the agenda for states at the UPR, though whether or not CSO foci will lead states in

future cycles is as of yet unknown.

Table 1.6
Top NGO Issues By Region

	Justice	Minority	Total
Africa	42.86	9.23	23.68
Asia	30.61	20.00	24.56
EEG	10.20	18.46	14.91
GRULAC	14.29	20.00	17.54
WEOG	2.04	32.31	19.30
Total	100%	100%	100%

N=114 (of 192), values in percentage

Of that majority of states for which justice and law and order or minority rights and

freedom of movement were pre-eminent in the NGO stakeholder report, the regional breakdown

is interesting (Table 1.6). NGOs focus on imprisonment and wrongful death in Africa and Asia,

while Western Europe and Latin America's primary concerns were in respecting minority and

immigrant rights. Whether these country-level tendencies are also present at the more specific

and finer grained recommendation or country-issue levels has not yet been tested, but they do

indicate a divergence between state and NGO-foci at the country level, in turn questioning some

of the received wisdom about the primacy of the agenda-setting role of NGOs within the human

rights regime.

Finally, as with the discussion above about recommending states, I examine which NGOs

are active in the UPR process. There were a total of 6,224 organizational "signatories", on 3,268

either self-submitted or jointly submitted statements. Of those 3,200 statements, 973, or just under one-third, were made by NGOs with consultative status at ECOSOC. Approximately 91% were submitted by civil society organizations. It included 64 national human rights institutions, of which 45 classified as "A-status."[10]

Over half of reviewed states received joint submissions from CSO coalitions and networks and nearly thirty percent of stakeholder submissions came from organizations that submitted to more than five states under review.[11] Also, intriguingly, a full forty percent of submissions came from domestic civil society organizations. My assumption, as well as the focus of many who study civil society at the United Nations (e.g. McKeon 2009) was that few domestic NGOs, particularly from the global South would submit reports to the UPR or be present in Geneva for any of the reviews. Rather, they would reach out to Northern umbrella organizations and other trans-national organizations to circumvent their domestic regimes and apply pressure from above and from without. This pattern is not completely upheld in the context of the UPR. Across regions, there was an unexpected and strong level of domestic civil society engagement with an abstract process held in Switzerland.

Table 1.7
NGO Characteristics By Region

	Domestic	ECOSOC	Joint Sub.
Africa	38	41	23
Asia	35	40	20
EEG	34	26	14
GRULAC	39	16	11
WEOG	56	27	16
Total	40	30	17

N=3268, values in percentage

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[10] NHRIs were more likely in states falling the middle or middle/high end of GDP, CIRI physical integrity, and PolityIV scores. The Council of Europe was prolific in its participation and submission to European states as well.
[11] See Appendix Table. The top contributing NGOs were the Global Initiative to End All Corporal Punishment of Children (GIEACPC), submitting to 138 states; Amnesty International (AI), submitting to 124 states; and Human Rights Watch (HRW), submitting to 83 states. A total of 40 organizations made more than 5 solo submissions, not including their participation in jointly submitted testimony.

In Table 1.7, above, the mean share of stakeholder contributions in each region made by individual domestic NGOs or coalitions including at least one domestic partner[12] is displayed. Apart from the higher level seen in the WEOG group,[13] there is a remarkable level of continuity across regions. Conversely, African and Asian states on average received a higher share of stakeholder reports coming from ECOSOC-credentialed NGOs. Organizations maintaining a consultancy status with the UN ECOSOC are more likely to be habitually involved in UN processes, familiar with the politics of the intergovernmental system, and thus may be better placed to impact change than non-consulting organizations. African and Asian states also had a higher share of networked organizations, coalitions, filing joint submissions to the UPR process. While this share still only accounts for a quarter of submissions in these regions, it may indicate some economies of scale calculations being used by resource-poor organizations and regions.

Table 1.8
NGO Characteristics By GDP/capita

	Domestic	ECOSOC	Joint Sub.
Low	34	39	25
Middle	39	22	10
High	51	30	17
Total	40	30	17

N=3259, values in percentage

In Table 1.8, I break states and their stakeholder submissions into GDP groupings, based on the World Bank's characterization of states' GDP per capita. Here again I observe a resource and social capital bias toward more developed states in the higher levels of civil society engagement. Concordantly, lower income states were targeted more frequently by coalitions of

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[12] The vast majority of coalitions submitting joint stakeholder reports were domestic and comprised entirely of domestically-based organizations.

[13] "Flagship" transnational NGOs, such as Amnesty International, Human Rights Watch, FrontLine Defenders, were *not* coded as 'domestic' for their countries of origin (UK, US, and Ireland) and thus do not contribute to the relatively higher share of domestic NGOs participating in the global North.

actors, rather than independent organizations. This both matches what was seen in the regional

distribution, but also clarifies the economic component to this organizing preference. Finally,

note that ECOSOC-accredited organizations are more likely to submit reports to poor states

under review than they are to middle or high GDP states.

Further NGO targeting and state targeting diverges with regard to the human rights

record[14] in the state under review. I demonstrate the differing levels of engagement in the UPR

process by human rights record below in Table 1.9. While states offer more recommendations to

states under review with the lowest human rights record, NGOs do not strictly follow this

pattern, having high levels of engagement with states with moderate levels of human rights

respect. In this way, NGOs appear to be targeting those states with the potential to change the

most; states largely already respecting rights do not need the attention and those with the least

respect for human rights are most effective at suppressing or dissuading mobilization.

Table 1.9
Average Engagement, by Human Rights Record – CIRI Physical Integrity Scale

	# NGO Reports	# State Recomm.	# Recomm. Rejections	% Domestic	% ECOSOC	Freq.
No Gov't Respect	26	148.9	38.1	36.7	37.1	9
1	28.8	123.5	26.9	36.9	44.9	8
2	17.5	147.3	21.2	34.2	40.7	13
3	49.1	122.1	15.9	38.4	24.0	17
4	26	111.1	15.5	34.2	23.0	25
5	11.2	108.6	10.4	41.5	34.1	30
6	15.4	105.6	16.7	56.9	29.6	28
7	8.2	98.3	15.7	40.4	29.4	40
Full Gov't Respect	6	91.3	13.5	35.8	24.3	21

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[14] Throughout the project, I use the Cingranelli and Richards Physical Integrity scale to measure a state's respect of human rights. This scale is discussed in further detail below.

Hypotheses

Having established the patterns in which states make and reject recommendations within the UPR process as well as the type and sources of NGO stakeholder participation, I outline my expectations drawn from theory and from the prior descriptive analysis. This is in no small part an effort at isolating emerging patterns of global governance and the overall effectiveness of NGO activism (see Lecy, Schmitz, and Swedlund 2012). Beginning with study of the UN ECOSOC review, analyses have been couched in the inadequacy of the realist/liberal paradigms' explanation for the continued and growing involvement of NGOs with the UN. Their policy prescriptions frequently include the subsequent need for intergovernmental organization (IGO) actors, such as the UN, to re-evaluate and re-contextualize relations with non-state actors to most productively utilize their interactions with the emerging global civil society (Alger 2002; Coate, Alger, and Lipschutz 1996; Otto 1996; Willetts 2000). These largely historical works chronicle the development of additional points of access, consultation, and interaction for non-state actors in the UN system and point to unclear futures as actual decision-making power and policy-level influence continued to be withheld from civil society actors. Given the literature's stance that the presence of a transnational civil society in the form of NGOs grants a degree of legitimacy to IGO behavior (Betsill and Corell 2001; Joachim 2007; Kelly 2005; McKeon 2009; O'Brien 2000; Richardson 2000; Tilly 1978), the theoretical implication would be that an NGO highlighting the issue area of a recommendation would be seen as more legitimate than a recommendation coming solely from another state in the system. Jointly, NGO engagement also represents pressure on the state under review, enough of which over time should prompt tactical concessions and normative commitment by the state (Risse, Ropp, and Sikkink 2013). This leads to hypothesis 1:

Hypothesis 1: The higher the level of NGO engagement, the lower the rate of state rejection of recommendations.

International relations theory, both from the neorealist and neoliberal schools, provides

alternative explanations for how states will respond to specific recommendations through the

UPR process. Neoliberal institutionalism emphasizes the cost-benefit calculations of maintaining

efficiency and mutually beneficial interactions on the world system (Moravcsik 1997, 1999). As

such, one would expect states under review to respond to recommendations in terms of their cost

of application and change. Among the types of recommendations received, those suggesting a

state join or fulfill international treaty obligations serve as the most costly, while those

rhetorically addressing concerns by suggesting a state "affirm [their] commitment" to various

human rights principles are examples of the least costly possible recommendations to which a

state must respond.

This leads to hypothesis 2:

Hypothesis 2: The higher the cost of implementing a recommendation, the less likely it will be accepted by the state under review.

And, this analysis deals with inter-state relations as well as transnational relations of civil actors

with states and to test neo-realist assumptions, geopolitical power concerns also clearly weigh on

states' decision-making (Waltz 2010). Also, from previous studies of the first rounds of the UPR,

scholars have shown that African and Asian states were much easier on themselves in the first

few sessions, while they were more harsh in their critique of 'Northern' powers (McMahon

2010). One could then expect the recommendations made by the most powerful states to be those

most likely to receive attention from states under review, while lesser states' recommendations

would be easier to ignore, as stated in hypothesis 3:

Hypothesis 3: The more powerful the recommender states are, the more likely a positive response from the state under review.

Turning more directly to studies of NGO influence in the realm of human rights, quantitative analysis seems to find less evidence for NGO influence via "naming and shaming" and other advocacy techniques (Hafner-Burton, 2008; Hafner-Burton & Ron, 2009). Practically, both NGOs and IGOs are faced with the inability to enforce changes in human rights behavior after successfully highlighting issues. Frequently, human rights NGOs are relegated to information gathering roles or at best pressuring states to adjust their tactics (Bell, Clay, and Murdie 2012; Davis, Murdie, and Steinmetz 2012; Hafner-Burton 2008; Hafner-Burton and Ron 2009; A. Murdie 2009a, 2009b; A. M. Murdie and Davis 2012). These methods do not frequently translate directly into measured improvements in human rights protections. Still, NGOs' ability to provide information to third parties, such as intergovernmental organizations or other states, and in so doing naming, shaming, and blaming human rights offenders, has been shown to be effective with mixed results (Hafner-Burton 2008; Risse, Ropp, and Sikkink 2013; Simmons 2009; Stroup and Murdie 2012). Given these mixed results, the need for NGOs to efficiently use their time and power to shame and blame vulnerable or otherwise key targets is crucial. Thus, literature on NGO naming and shaming suggests that certain types of human rights offenders may be 'immune' to the normative pressure of outside groups (Wright and Escribà-Folch 2009), as stated in Hypothesis 4:

> *Hypothesis 4: The worse the human rights record of the state under review, the more likely they will reject the recommendations they receive.*

Research Design

The analysis in the next sections attempts to address the following questions: when do states reject recommended changes and does the level of NGO participation during a review of a state make that state more or less likely to reject the peer recommendations it receives? I address these questions and the preceding four hypotheses at two levels of analysis, both at the country-level and at the level of the individual recommended changes, both for state peer recommendations and for NGO statements and testimony. Testing these hypotheses at multiple levels and looking at different sets of data serve to triangulate the observable implications of the hypothesized relationships and provides a level of robustness to the findings I lay out in the remainder of the chapter.

The data I utilize in this chapter is drawn from the body of official documentation made available online by the UN HRC. I gathered and analyzed full documentation of NGO plenary statements (both written and oral) as well as the formal written state, UN agency, and stakeholder reports. The first measure of NGO activity in the review process is a count of the stakeholder submissions, as reported in the UNHCHR stakeholder reports. These stakeholders are, by vast majority, national and transnational NGOs, but a small minority include National Human Rights Institutes and, in a few cases, submissions by IGOs such as the Council of Europe. Utilizing the number of organizations and their submissions is an admittedly rough proxy for international attention and societal pressure a state is experiencing. If a state is under scrutiny from the international community, from its own populace or from transnational activists, it is plausible that additional NGOs become involved with its review, and by extension, that a state with less than five NGO submissions compared to a state with over fifty likely face different levels of pressure on their rights practices. Additionally, by utilizing basic text mining

and computer-assisted text analysis techniques, I code the primary human rights area addressed

for each state in their stakeholder's report. This coding was completed by assembling the thirty

most frequently used words[15] in a text-document matrix and then hand-coding the topic

addressed from my collapsed set of recommendation issue areas.[16]

I also utilize the data generated by UPR Info,[17] an NGO with Special Consultative Status

with ECOSOC that provides centralized access to an abundance of documentation on the UPR

process, including reports from NGOs, the reviewing states, the reports of states under review,

and follow-up documentation of the responses of states under review to the recommendations.

The UPR Info data are at the recommendation level and code the 20,000 recommendations made

by one state to another in the first cycle. In the analysis that follows, I use their coding of issue-

area (which I have collapsed to the nine issue categories as shown earlier in Table 1.1) as well as

the official state response to the recommendations.

Secondly, I attempt to triangulate both NGO behavior and subsequent state responses to

recommended human rights changes in a second set of regressions. In these, I analyze a subset of

specific stakeholder "recommendations"—statements made in stakeholder testimony that

roughly take the form of the direct recommendations given by states—pulled from the

compilation of stakeholder reports included in the formal review by the HRC. Here, I rely on the

UN HRC's extensive documentation and data conservation of documents related to the UPR. As

indicated above, I draw both from the thousands of individual submissions as well as the

country-specific UNHCHR compilations of the stakeholder reports. From these compilations, I

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[15] The thirty most frequent words were assembled after the words in the texts were stemmed (conjugations and suffixes removed), parts of speech removed, and any word stem present in more than 90% or fewer than 10% of documents were removed.

[16] For instance, if the most common word stems were "prison" "kill" and "corpori" the document was coded "justice/killing" for extrajudicial killings and law-and-order concerns, while frequent stems of "media", "journali", and "religi" would be coded "freedom" for concerns about basic freedoms of religion, the press, et cetera.

[17] McMahon, Edward and Chauville, Roland. 2014. "UPR Recommendations Database." *UPR-Info*. http://www.upr-info.org/database/

draw 3,500 directed sentence pseudo-recommendations from CSOs in the UPR process for this analysis.

As controls, I draw from a set of standardly used measures both in quantitative human rights studies as well as in studies of the UN HRC. I include the UN regional classifications of both the state under review and the recommending state. I utilize the CIRI physical integrity index[18] as a measure of a state's human rights practices. The CIRI Physical Integrity scale is a 9-point scale covering torture, extrajudicial killing, imprisonment, and disappearance, where a government with a score of zero has no respect for these rights while a government with a rating of eight has full respect for these rights. Given the focus on physical integrity rights seen in both state recommendations and in NGO stakeholder submissions, this particular measure of human rights should match closely with the conception of human rights abuse most prevalent in the UPR process; in so doing, it effectively will test whether states and NGOs are targeting the states under review perceived to be most rights abusing. I use PolityIV to measure regime type. Gross domestic product, per capita, data are taken from the World Bank. PolityIV, CIRI, and GDP per capita are used for the year in which a state's review took place, from 2008-2012.[19]

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[18] Cingranelli, David L., David L. Richards, and K. Chad Clay. 2014. "The CIRI Human Rights Dataset." http://www.humanrightsdata.com. Version 2014.04.14.

[19] Lags of one, two, and five years had no impact on the results, so I here include the most straightforward non-lagged data.

Recommendation Rejection

In my first set of models, I test the relationship between NGO activity and state rejection of recommendations, using logistic regression on the likelihood of rejection at the recommendation-level and ordinary least squares and zero-inflated Poisson regression[20] on the aggregate number of recommendations at the state level. To begin, I conduct logistic regressions at the recommendation-level, with the full 21,344 observations of recommendations given to states in the first cycle of the UPR process. The results of the regressions can be seen in Table 1.10. In the table, the dependent dummy variable is the rejection or acceptance of the recommendation (1 is rejection, 0 acceptance) and the key independent variables is the number of stakeholders who submitted reports to the OHCHR (NGO Reports). Controls include dummy variables for the nine issue categories (both for the recommendation itself and whether the NGO testimony for the state under review largely focused on this issue) as well as dummy variables for the state under review's region and the recommending state's region. I also use the "action" measure of costliness or difficulty of implementation and the CIRI Physical Integrity scale as a proxy for respect for human rights.

Also included are a series of interaction variables that indicate "matching" between the content of a recommendation and international NGO focus on the target state as well as regional matching between the target state and recommending state. North-to-South is a dummy variable that indicates a country in the UN's West Europe and Others (e.g. US, Australia) Group or the Eastern European Group made the recommendation to a state in the Asia, Africa, or Latin America and the Caribbean Groups. Similarly, South-to-North indicates if the recommending country was part of these three global South groups, while the state under review was a member

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[20] The Zero-Inflated Poisson regression both accounts for the count nature of the dependent variable (number of rejected recommendations), but also for the large number of zeros that amount to 19% of the cases (Cameron and Trivedi 2013; Long 1997).

of the European groups. South-to-South is one when both recommending state and state under review come from the Southern groups and finally North-to-North, the omitted reference dummy category, identifies that both states fell within the Northern groups. The issue area dummies proceeded by an "x" denote these are interactions of the recommendation's issue area(s) and the predominant NGO focus in the stakeholder reports. These have a value of one if both the recommendation contains the issue area and the focus of NGO stakeholder testimony was on that issue area.

I present the results in Tables 1.10 below. Important coefficients from the full model, number 4, are illustrated above the table in the whisker plot in Figure 1.8.

Figure 1.8. Recommendation-Level Odds Ratios
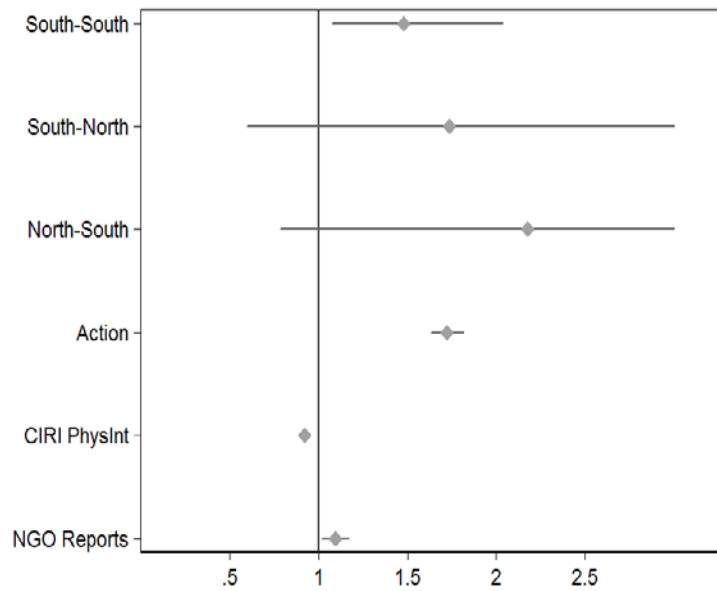
Table 1.10. Logistic Regression on Likelihood of Rejection

	(1)	(2)	(3)	(4)
NGO Reports			1.003***	1.003***
			(0.000)	(0.000)
CIRI PhysInt			0.932***	0.922***
			(0.009)	(0.010)
Action	1.757***	1.756***	1.894***	1.722***
	(0.046)	(0.046)	(0.049)	(0.046)
North to South		1.191**	1.048	2.178
		(0.076)	(0.070)	(1.131)
South to North		1.377***	1.320***	1.736
		(0.107)	(0.101)	(0.947)
South to South		0.633***	0.527***	1.480*
		(0.046)	(0.039)	(0.240)
x CP Rights			0.834	0.943
			(0.177)	(0.225)
x Justice			1.078	0.867
			(0.077)	(0.089)
x Freedoms			1.981***	1.377
			(0.284)	(0.240)
x Movmt			1.339***	1.519***
			(0.091)	(0.163)
x Int Obl			1.043	0.595*
			(0.204)	(0.148)
x E/S/C Rights			0.805	1.124
			(0.136)	(0.223)
x Women			0.974	1.157
			(0.225)	(0.311)
x Other			2.589***	1.629*
			(0.505)	(0.369)
CP Rights	0.912	0.912		0.928
	(0.068)	(0.068)		(0.074)
Justice	1.464***	1.490***		1.478***
	(0.074)	(0.075)		(0.085)
Freedoms	1.827***	1.844***		1.619***
	(0.130)	(0.130)		(0.128)
Movmt	1.185**	1.215***		1.006
	(0.069)	(0.070)		(0.080)
Int Obl	1.213***	1.285***		1.244***
	(0.055)	(0.057)		(0.058)
E/S/C Rights	0.611***	0.605***		0.603***
	(0.049)	(0.048)		(0.054)
Child	0.551***	0.555***		0.577***
	(0.040)	(0.040)		(0.042)

Table 1.10 Continued				
	(1)	(2)	(3)	(4)
Women	0.484***	0.491***		0.493***
	(0.036)	(0.036)		(0.039)
Other	1.150*	1.105		1.113
	(0.078)	(0.074)		(0.079)
Region Dummies	Yes	No	No	Yes
Rec. Region Dummies	Yes	No	No	Yes
NGO Dummies	No	No	No	Yes
N	21344	21344	21156	21156
Pseudo-R^2	0.116	0.105	0.083	0.140

Exponentiated coefficients-Odds Ratios; Standard errors in parentheses;
North-to-North is ref. category.
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Notably, in both models in which it is included, NGO reports are positively and statistically

significantly (at the 0.01 level) associated with rejection of a recommendation. All else equal,

states that received greater NGO attention were more likely to reject the recommendations

presented to them, regardless of the issue area of the recommendation, difficulty of its

implementation, or state-level characteristics such as its human rights record and region. This not

only does not substantiate Hypothesis 1—that increased international pressure, measured by

NGO engagement, would increase state commitment—but the opposite relationship was

demonstrated. Where more NGOs participate, states reject the recommendations made to them.

Considering the full model, Model 4, it is also worth noting that recommendations with

higher demands, indicated by a higher action score, were more likely to be rejected, as expected.

This shows support for neo-liberal and utilitarian Hypothesis 2, that states calculate the cost

before committing to human rights change, and thus are more likely to commit to "consider" a

change than they are to ratify a treaty. Turning to the regional interaction effects as proxies for

dyadic differences in state power, only recommendations made by Southern states to other

Southern states (South-to-South) have a rejection rate statistically different from those made North-to-North. The neo-realist Hypothesis 3 then does not see a good deal of support. Recommendations from Southern states to those in the North are no more or less likely to be rejected than those recommendations that remain among states in the North, while Southern states are no more likely to accept a recommendation from the North than a recipient Northern state would be. The notion that the sending state matters does see some support in that states not of the global North are more likely to reject recommendations made from their fellow non-Northern than they are to reject a recommendation coming from a state of the North.

Demonstrating support for Hypothesis 4, that states with worse human rights records are more likely to reject and not commit to recommendations, the models show that recommendations made to states with better human rights records are less likely to be rejected. In other words, human rights offending states are more likely to reject recommendations for improving their human rights performance.

Though not directly covered by one of the four hypotheses, the issue covered in the recommendation was meaningful. Recommendations that covered fundamental freedoms, torture, law and order, or directly referenced meeting an international obligation, also are associated with higher rates of rejection. Also of note is that NGO focus matching the issue a given recommendation covers is significant for certain issue areas. That is, if the plurality of stakeholder reports for a state focused largely on freedom of movement and the recommendation covered improving the freedom of movement in the state, all else equal, that recommendation was much more likely to be rejected. This synergy between NGO issue-specific attention and rejection is not found in other issue areas, perhaps because freedom of movement was the primary area of NGO concern, accounting for over a third of NGO issue foci.

Next, I present a second set of models on recommendation rejection aggregated to the state level. The dependent variable here is the aggregate number of rejections a state made during the UPR's first cycle. This level aids in testing regional and regime differences in overall levels of resistance to the UPR process and international rights norms. The results are presented in Table 1.11 with critical coefficients in the whisker plot of Figure 1.9.

Figure 1.9. Country-Level Coefficients

x
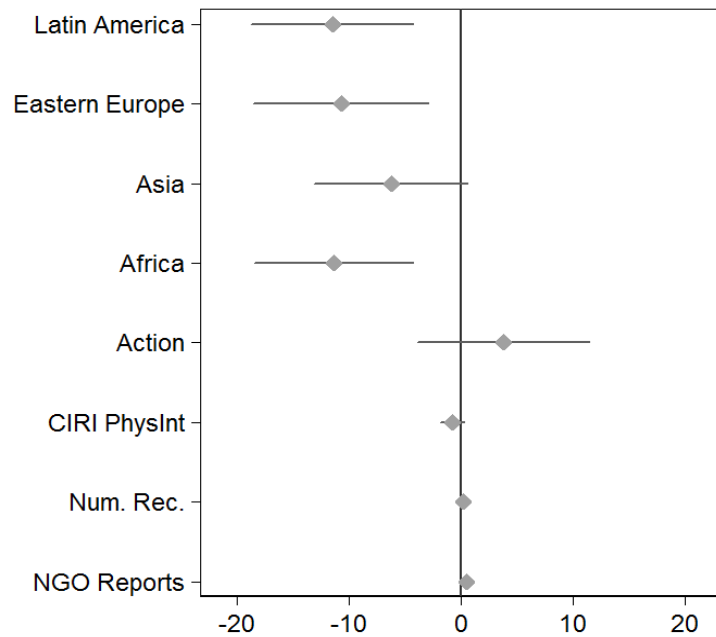
Table 1.11. Regressions on Number of Rejections

	(5) OLS	(6) ZIP	(7) ZIP
NGO Reports	0.0470[*]	0.00124[***]	0.000994[**]
	(0.023)	(0.000)	(0.000)
# Recomm.	0.199[***]	0.00913[***]	0.0150[***]
	(0.024)	(0.000)	(0.002)
CIRI PhysInt	-0.780	-0.0395[***]	-0.00825
	(0.539)	(0.009)	(0.011)
Action	3.784	0.232[**]	0.181
	(3.893)	(0.079)	(0.094)
Africa	-11.33[**]	-0.475[***]	-0.456[***]
	(3.595)	(0.063)	(0.098)
Asia	-6.213	-0.182[**]	-0.315[***]
	(3.468)	(0.058)	(0.083)
E. Europe	-10.68[**]	-0.532[***]	-0.409[***]
	(3.949)	(0.072)	(0.081)
Lat. America	-11.46[**]	-0.425[***]	-0.437[***]
	(3.672)	(0.070)	(0.094)
CP Rights			-0.00972[**]
			(0.003)
Justice			-0.0109[***]
			(0.002)
Freedoms			0.00620
			(0.003)
Movmt			-0.00951[***]
			(0.002)
	OLS	ZIP	ZIP
Int Obl			0.0120[***]
			(0.002)
E/S/C Rights			-0.000907
			(0.003)
Child			-0.00238
			(0.003)
Women			-0.0182[***]
			(0.003)
Other			-0.00641
			(0.004)
Constant	-8.930	1.372[***]	1.407[***]
	(15.761)	(0.322)	(0.386)
Zero-inflated Poisson			
# Recomm.		-0.0227[***]	-0.0227[***]
		(0.005)	(0.005)
Constant		0.647	0.648
		(0.451)	(0.451)

Table 1.11 Continued			
	(5)	(6)	(7)
N	191	191	191
R^2	0.418	0.308†	0.369†

Standard errors in parentheses. Western Europe and Others is the
omitted regional category.
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$
† R^2 MF, McFadden's R^2

Returning to the four hypotheses made above, the country-level models show mixed

results as well. NGO engagement is again here related to higher levels of resistance, measured by

a higher rate of rejected recommendations. The substantive size of the aggregate effect at the

state level is diminished compared to what was seen in the previous sets of models at the

recommendation level, but the relationship remained positive and significant in all models.

Beyond failing to support Hypothesis 1, this raises a number of interesting questions for further

inquiry. It may corroborate some expectations from the spiral model and its additions. Earlier in

the chapter and above in Table 1.9, NGOs were shown to be most active in relation to states with

middling levels of rights protections. If, after controlling for physical integrity rights, regime

type, region, and the rest of the battery of controls in these models NGOs still are related to

increased rejection, it may indicate that on average we are seeing states behaving in the

beginning stages of the spiral model. The first stages, repression and denial, are pre-commitment

and are those characterized by resistance to international pressure. So, where NGOs are most

engaged, all else equal, the states are still in early stages of normative change; where there is less

engagement, the rate of commitment increases (rejections decrease) as these states have moved

beyond repression and denial toward concessions, prescription, and adherence. Alternatively, this

pattern also may suggest support for the growing scholarship on backlash to international

normative pressure.

The neoliberal and neorealist-derived hypotheses did not find support at the state level. Hypothesis 2, tying increased difficulty of implementation (represented by the action scale) to increased rejection, was not consistently supported at the state-level. Similarly, Hypothesis 3, that inter-regional recommendations may be more frequently rejected on the basis of power or other geopolitical concerns, did not find support at the aggregated state level. The state-level models did show, however, that states of the Western Europe and Others Group had higher levels of rejection, on average, than states in other UN regional groupings.

Human rights record, measured by the CIRI physical integrity index, had the correct sign throughout the models and higher levels of respect for human rights were associated with lower levels of rejection, offering support for Hypothesis 4. Its statistical significance, however, fluctuated depending on the model specifications at the state level. At the aggregated state level, neither the physical integrity index nor the average action level is consistently statistically significant across the models.

Also of note is that states of the reference group of Western Europe and Others are more likely than states in all other regions to reject recommendations. Also, as at the recommendation-level, peer-appeals to states to fulfill international obligations, here measured by the number of recommendations a state received with such appeals, are strongly and positively associated with the number of rejections a state makes. The strength of this association is shown below in Figure 1.10. The figure includes a scatterplot of actual observations of rejections and international obligation recommendations as well as the predicted relationship drawn from Model 7 in the form of a line of best fit with the confidence interval shaded behind it.

Figure 1.10. Number of Rejections and Number of International Obligation Recommendations
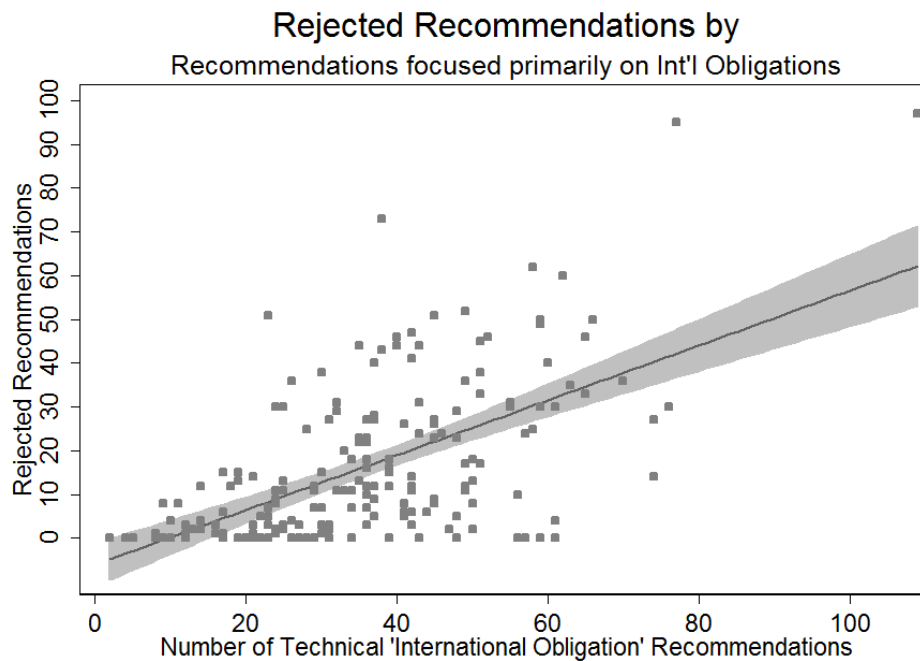
The above models focused solely on state responses to peer-recommendations and how factors such as regime, region, rights issue area, and international pressure via NGO stakeholder mobilization played a role in state response. The theoretically-derived hypotheses did not fare very well in the tests. This may partly be due to the overall high rate of acceptance; with nearly 75% of recommendations accepted, there is a smaller range of variation on commitment or resistance. The tests did identify a number of interesting patterns, however, including the high rate of rejection for any recommendation directly tied to an international obligation and the slight negative association between NGO participation and commitment to recommendations. In the next section, I examine the role of NGOs more directly by looking at specific pseudo-recommendations made in their stakeholder reports, whether these roughly pair with state peer-recommendations, and the resulting state responses toward these matched recommendations.

Stakeholder "Recommendations"

Moving to the second broad set of analyses, some of the relationships between NGO recommendations, the domestic or transnational character of stakeholders in states under review, and both state adoption of NGO arguments and the response of SuRs become clear. The following models are based upon 3,500 directed statements from NGO stakeholders that take the form of "pseudo-recommendations" in the first cycle of the UPR. While much of the text and testimony in the 3,200 stakeholder submission documents is either normative or provides a report on the rights situation, certain statements within these documents look more similar to directed recommendations for improvement as are made by states in the process. The target state and issue area of this sample of stakeholder "recommendations" are coded on the same set of nine categories used to analyze state-peer recommendations. Additionally, the "action" phrase used in the statement (e.g. recommend, urge, call, must) is coded and scaled to a 5-point severity range parallel to the action coding in the peer recommendation models above.[21] I coded the reporting NGO along with its ECOSOC consultative status, whether it is domestically-based, and if it is part of a joint collaborative submission; each are indicator variables. Finally, I look for match between these selected NGO statements and peer recommendations made during the interactive session of the UPR review; if there is a match, I follow the state response to the peer recommendation. The results of the logistic regressions predicting match between stakeholder and state-peer recommendations are presented in Table 1.12.

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[21] NGO call for Action is coded on a five-point scale based on the verb and urgency expressed in the stakeholder's report. A score of 1 reflects a low level, with phrasing where a stakeholder "asks" or "requests"; 2 stakeholders "propose" or "encourage"; 3 they "recommend"; 4 stakeholders indicate an action should be taken; at the highest level 5, they demand action must be taken.

Table 1.12. OLS Regression on Level of Match (Stakeholder-Peer Matching)				
	(8)	(9)	(10)	(11)
Action	-0.031	-0.033	-0.032	-0.028
	(0.033)	(0.032)	(0.031)	(0.029)
Domestic	0.0068	0.013	0.036	0.073
	(0.044)	(0.044)	(0.041)	(0.040)
ECOSOC	0.205[***]	0.188[***]	0.219[***]	0.199[***]
	(0.041)	(0.040)	(0.038)	(0.037)
Joint Sub	-0.057	-0.059	-0.038	-0.050
	(0.045)	(0.044)	(0.041)	(0.040)
NGO Reports	-0.001[**]	-0.001[*]	-0.001[*]	-0.000
	(0.000)	(0.000)	(0.000)	(0.000)
CIRI PhysInt	-0.001	-0.001	0.006	0.012
	(0.012)	(0.012)	(0.011)	(0.011)
PolityIV	-0.014[***]	-0.013[**]	-0.016[***]	-0.010[**]
	(0.004)	(0.004)	(0.004)	(0.004)
GDP	-0.000	-0.000	-0.000	-0.000
	(0.000)	(0.000)	(0.000)	(0.000)
Session	0.0251[***]	0.0289[***]	0.0204[**]	0.0219[***]
	(0.007)	(0.007)	(0.006)	(0.006)
CP Rights		-0.028		-0.047
		(0.078)		(0.071)
Justice		0.037		0.032
		(0.048)		(0.043)
Freedoms		0.182[**]		0.383[***]
		(0.059)		(0.055)
Movmt		0.165[***]		0.203[***]
		(0.049)		(0.045)
Int Obl		0.363[***]		0.278[***]
		(0.054)		(0.050)
E/S/C Rights		-0.159[**]		-0.194[***]
		(0.056)		(0.051)
Child		0.071		-0.025
		(0.063)		(0.057)
Women		0.128		-0.111
		(0.075)		(0.069)
Other		0.104[*]		0.108[*]
		(0.050)		(0.045)
Africa			0.287[***]	0.384[***]
			(0.066)	(0.064)
Asia			0.220[***]	0.280[***]
			(0.059)	(0.058)
EEG			0.386[***]	0.458[***]
			(0.050)	(0.049)
GRULAC			0.438[***]	0.432[***]
			(0.050)	(0.049)

Table 1.12 Continued				
	(8)	(9)	(10)	(11)
Constant	0.862***	0.689***	0.694***	0.439***
	(0.124)	(0.131)	(0.115)	(0.120)
N	1763	1763	1763	1763
R^2	0.040	0.082	0.182	0.244

Standard errors in parentheses. WEOG is omitted category.
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

In the models above, there is a weak association between a higher level of NGO engagement and a *lack* of state incorporation of specific NGO-backed recommendations into the peer review process. By region, civil society recommendations made about states in the WEOG were less likely to be utilized by states in the peer-recommendation process than reports for states of any other region. Also, states making recommendations to less democratic states draw from NGO stakeholder testimony at a lower rate.

The content of the recommendations is also illustrative. Stakeholder suggestions pertaining to fundamental freedoms, minorities and migration, and international obligations are more likely to be incorporated into peer-recommendations than recommendations that do not posses those characteristics. Over time, as measured by the number of the Session within which a state was reviewed, individual stakeholder recommendations were more likely to match with the peer recommendations presented in the interactive session. This suggests an increased learning curve with the new UPR process, as seen in the number and severity of recommendations states used. As states became more acquainted with the process and with the reports and files submitted throughout a UPR cycle, more stakeholder comments were incorporated.

Table 1.13. Logistic Regression on Likelihood of Rejection (Stakeholder-Peer Matching)

	(12)	(13)	(14)	(15)
Action	0.783	0.805	0.749[*]	0.798
	(0.110)	(0.117)	(0.108)	(0.120)
Domestic	1.043	1.148	1.141	1.332
	(0.203)	(0.230)	(0.229)	(0.279)
ECOSOC	1.797[***]	1.691[**]	1.895[***]	1.840[***]
	(0.307)	(0.297)	(0.332)	(0.337)
Joint Sub	0.858	0.889	0.878	0.874
	(0.177)	(0.187)	(0.186)	(0.190)
NGO Reports	1.003[**]	1.003[**]	1.003[**]	1.003[**]
	(0.001)	(0.001)	(0.001)	(0.001)
CIRI PhysInt	1.023	1.021	1.015	1.006
	(0.048)	(0.049)	(0.049)	(0.050)
PolityIV	0.946[***]	0.961[**]	0.935[***]	0.952[***]
	(0.013)	(0.013)	(0.013)	(0.014)
GDP	1.000[*]	1.000[*]	1.000[**]	1.000[**]
	(0.000)	(0.000)	(0.000)	(0.000)
Session	0.977	0.994	0.979	0.996
	(0.027)	(0.028)	(0.028)	(0.030)
CP Rights		1.082		0.984
		(0.371)		(0.348)
Justice		1.051		0.913
		(0.219)		(0.200)
Freedoms		3.482[***]		4.848[***]
		(0.818)		(1.208)
Movmt		1.233		1.207
		(0.293)		(0.300)
Int Obl		2.172[***]		1.836[**]
		(0.446)		(0.394)
E/S/C Rights		0.526[*]		0.434[*]
		(0.169)		(0.145)
Child		0.967		0.718
		(0.315)		(0.248)
Women		0.864		0.498
		(0.328)		(0.204)
Other		1.655[*]		1.573[*]
		(0.343)		(0.339)
Africa			1.276	1.753
			(0.373)	(0.532)
Asia			0.969	1.154
			(0.274)	(0.343)
EEG			2.170[***]	3.152[***]
			(0.475)	(0.732)

Table 1.13 Continued	(12)	(13)	(14)	(15)
GRULAC			3.209***	3.543***
			(0.689)	(0.810)
			(0.689)	(0.810)
N	2427	2427	2427	2427
Pseudo-R^2	0.042	0.087	0.089	0.154

Exponentiated coefficients-Odds Ratios; Standard errors in parentheses;
WEOG is ref. category.
$^* p < 0.05$, $^{**} p < 0.01$, $^{***} p < 0.001$

Having established where stakeholder recommendations tend to match those given by state actors, I turn to an analysis of state commitment to or rejection of these matched recommendations, the results of which are presented above in Table 1.13. Holding with the finding in the first two sets of models for state recommendations, the level of NGO activity, measured by the number of NGO submissions, is consistently and statically significantly related to an increased likelihood for the rejection of recommendations even among this specific sub-set of peer recommendations where state's and NGO's interests align. The association between the level of civil society activity and rejection is robust across a wide range of control variables (see models 12 through 15) and holds its statistical significance for three of the four matching models, as well. Matched recommendations to richer and less democratic states both have higher rates of rejection. Examining the full stakeholder rejection Model 15, there is no relationship between the urgency of the action language used by the NGO and state's rejection rate. Interestingly, ECOSOC-status is related to both higher rates of recommendation rejection and a higher level of up-take by states during the review process.

Further, matched stakeholder and state peer-recommendations covering the issue area of freedoms and international obligations were more likely to be rejected than recommendations in other issue areas. This follows the larger pattern seen in the prior set of analyses where

international obligation recommendations, even when controlling for the level of action required, were more likely to be rejected without NGO interaction considered.

This second set of models also provides are mixed results for the four hypotheses discussed above. Once again, the relationships contrary to those expected in Hypothesis 1 are present in the data. Higher levels of NGO engagement or international pressure, measured by the numbers of organizations and submissions in the UPR process, the *less likely* recommending states are to mimic CSO-created recommendations. Further, where those recommendations are matched with state recommendations, the state recommendations are still more likely to be rejected by the state under review where it has recieved higher levels of NGO engagement. This is contrary to the expectation that these groups provide legitimizing, third-party pressure to the intergovernmental proceedings. Surprisingly, the domestic organizations saw no significant difference from non-domestic organizations in their reception. While the high level of domestic involvement in the process seems contrary to our basic expectations for the make-up of intergovernmental and transnational interactions, the lack of differentiation between domestic and non-domestic organizations makes it hard to make any argument based on their ubiquitousness at the UPR. Organizational accreditation with ECOSOC, indicative of a more transnationalized, professionalized, and bureaucratized organization (Beckstrand & Mahoney 2011), is contradictorily tied to rejection and 'match' with state recommendations. The theoretical expectation is that organizations with consultative status would have a larger legitimizing impact that those that do not. Perhaps, rather than legitimizing, this transnational accreditation works in the opposite way by tying the organizations more closely to state interests and UN processes.

Hypothesis 2, that recommendations with higher costs would face more resistance is unsupported when measured by the "urgency" language used by the stakeholders. There is no evidence that the phrasing of the stakeholder demands has an impact on their uptake by state actors or their eventual acceptance or rejection. Here, I use both ECOSOC and the domestic dummies as proxies akin to the cross-regional dummies in the first set of analyses to approach Hypothesis 3. North-South tensions may have been manifest by a resistance to non-domestic or transnational organizations. However, this relationship is not seen in the data concerning domestic organizations, even after controlling for region or in robustness checks with region-based interaction effects. With ECOSOC consultative status as a proxy for a bureaucratized transnational organization, the pattern discussed above whereby states making recommendations are more likely to use these organization's reports, but the resulting recommendations are more likely to be rejected by the state under review is demonstrated. I argue that this is due to the deeper embedding of the organization in the international community and transnational human rights regime. This has the simultaneous effect of giving their reports legitimacy to be drawn on by recommending, reviewing states, and it serves as a signal to states under review of the transnational rights regime making claims against their behavior. Through the first cycle of the UPR, the application of rights norms by a class of transnational rights activists results in resistance to both the norms and the instrument by which they are promoted.

Concerning Hypothesis 4, I find mixed results. The CIRI Physical Integrity Index ranking of the state under review is, after controlling, not related to either to the level of match between a stakeholder demand and peer recommendations nor is it tied to the eventual acceptance or rejection of the resulting peer recommendation. Economic development, measured by GPD per capita, is not consistently related either. However, the level of democracy does have a consistent

effect whereby less democratic states are more likely to reject recommendations and NGO

statements about less democratic states are more likely to be matched to recommendations made

in the review process. The specificity to physical integrity rights alone is not limiting the result.

After robustness checks, other measures of human rights similarly do not consistently follow in

the hypothesized manner. The PolityIV regime type measure, however, does robustly support

Hypothesis 4.

Civil Society and States in the UPR

In this chapter, I have outlined that states undergoing the review process accept the

majority of recommendations made to them during the process. These recommendations largely

concern the international human rights regime and the obligations states have to the international

covenants and conventions of that body of treaty law. States throughout the process made the

majority of recommendations concerning these types of rights and similar focused strongly on

issues of justice, law and order, and impunity. Conversely, civil society organizations largely

made recommendations concerning minority rights and the freedom of movement. Their

statements drew on ideal points and norms as opposed to the specific, measured

recommendations made by state actors in the formal interactive process. While states of the

global North made more recommendations than other regions, there was a high level of domestic

civil society involvement across regions and states.

Though there was a high level of acceptance of recommendations, part of the project of

this chapter was to establish where and why rejection and resistance to human rights change was

most likely to occur. States tend to reject recommendations that are either more costly or directly

call to uphold international obligations. Further, states under review reject recommendations

concerning certain areas of rights at a higher rate than others; recommendations dealing with fundamental freedoms, minority rights, and physical integrity rights are more frequently met with rejection. Critically, I have identified that higher levels of NGO involvement in the process were related to slightly higher levels of rejection. Also, individual stakeholder recommendations drawn from their testimony and submission to the UPR process were less likely to be used by states in a peer recommendation when there was a higher level of NGO engagement in a state's review process.

This chapter's analysis has established a set of regularities and patterns observed from the complex and highly documented interactions between non-state and state actors in the first cycle of the Universal Periodic Review. While the study of the UPR is still quite new, the findings reflect upon and question portions of our broader understanding of human rights promotion. Primarily, I argue that the patterns seen at the UPR demonstrate alternative paths for NGO access and influence that span beyond the basic understanding of blocked or repressed domestic organizations relying upon transnational NGOs at the international stage. In this open forum, domestic access is encouraged, and where NGOs mass their voices against a state, regardless of its rights record, the state resists the changes recommended at a higher level. As of yet unclear in this analysis is the mechanism and reasoning by which states express their resistance to the human rights changes advocated within the review process. Thus, to enhance our understanding of norm resonance, diffusion, and backlash I turn to the expressed resistance to the mixed best practice modeling and naming and shaming that took place during the UPR's first cycle.

Appendix

Appendix 1. CSO Stakeholders with More than
Five solo SuR Submissions

	No. Submissions
GIEACPC	138
AI	124
HRW	83
IRPP	40
STP	40
RSF	36
ICJ	29
ECLJ	27
CPTI	22
UNPO	22
IHRC	19
CSW	17
SRI	17
FIDH	16
Becket Fund	15
ILGA	15
COHRE	14
FL	14
ICTJ	14
CHRI	13
FI	13
FIACAT	11
Article 19	10
CLADEM	10
IDMC	10
Alkarama	9
ALRC	9
FMDVP	9
IACHR	9
CS	8
HRF	7
ODVV	7
OMCT	7
OSJI	7
CIVICUS	6
EAJCW	6
EJ	6
ITUC	6
JW	6
MRG	6
PEN	6

Chapter 2 – Explained Norm Resistance

Resistance to the Human Rights Regime

In the previous chapter, I established that NGO activity, after controlling for the amount of state activity, human rights record, regime type, region, and issue area, is related to higher levels of states rejecting recommendations. Further, state rejection of recommendations increases with the level of demands in the recommendation, worsening human rights records, or when the recommendation covers specific international obligations or political rights such as basic freedoms and the rule of law. In this chapter, I argue that this pattern of recommendation rejection is a manifestation of state resistance to international pressure and backlash to certain forms of human rights pressure, particularly the "naming and shaming" utilized by NGO stakeholders throughout the UPR process. I also establish that states express their resistance to international human rights norms in one of two fashions: with culturally-, religiously-, or nationally-particularistic claims or with appeals to state sovereignty. States also exhibit resistance to the international rights regime and the mechanism of the UN and the UPR through sovereignty claims or through more benign procedural explanations.

But what can be learned of state behavior by looking at the rhetorical devices they use to defend actions that may already be in their state's interest? Could not one argue that such expressions are epiphenomenal and constitute "cheap talk"? A set of international relations scholars, primarily from rationalist and utilitarian paradigms, who would argue this (Cooper, DeJong, Forsythe, & Ross, 1992; J. Farrell & Rabin, 1996; Hathaway, 2003; Smith-Cannoy, 2012). Given their assumption of the relatively static nature of state interests and the guiding force of anarchy and the quests for power and security, any justifications of this self-interested behavior does little to enhance our understanding of the core of state behavior at an international

setting (e.g. Waltz 1979). If, however, the assumption is not a rigid fixed nature of the

international system but instead that "anarchy is what states make of it" (Wendt, 1992), the

discourse, rhetoric, and dialog between states, and particularly at international fora retains

meaning in the social construction of the international human rights regime and its governing

norms (Mitchell, 2008).

This "rhetorical turn" in the study of international relations provides a conceptual

foundation for an understanding of the communicative nature of international politics that

transcends "cheap talk." Beyond serving as a noisy signaling device, frequently dismissed as less

meaningful than material signals of intent, discourse and political communication contains vital

information on state's interests and identities (Hariman & Beer, 1996). In so doing, Hariman and

Beer (1996: 11) argue that:

> One takes words seriously but not for their own sake alone. The emphasis is on
> discourse—with a corresponding wariness of the conventional distinction between speech
> and action, language and reality—yet the interest is in the effect the discourse has on
> conduct.

Thus mainstream scholarship drawn from this rhetorical turn focuses not only on what states say

and how they say it, but how these discursive behaviors relate to actions on the transnational

stage. Discourse and rhetoric shapes states conceptions of themselves and others in martial

contexts (Carpenter, 2004), their framing and understanding of allies and their capabilities

(Rittinger, 2015), and makes apparent the foundations of power-derived interests and behavior

(Hariman & Beer, 1996). In each instance, the words taken seriously demonstrate an effect upon

the behavior of the state vis-à-vis other states or its own citizens. Thus, it is no surprise that this

style of analysis has been extended beyond the realm of solely interstate relations and concerns

of war and peace to transnational justice, human rights, and international law (e.g. Keck, 1998;

Khagram, Riker, & Sikkink, 2002; Klotz, 1999). In taking words seriously and tying those words to demonstrable effects in the behavior of states in international affairs, international relations scholarship drawing on rhetoric has to some degree bridged the relativism/objectivism divide and usefully contributed both to strains of materialist realism and fully ideational constructivism (Mitchell, 2008).

Even more directly, scholars following Jurgen Habermas' understanding of the creation and purpose of a "public sphere"[1] joined with this rhetorical turn to examine the way in which global governance structures operate and the degree to which these intergovernmental and transnational processes begin to resemble and operate like a Habermasian public sphere on a grand scale (Doxtader, 1991; T. B. Farrell, 1995; Haacke, 1996; Habermas, 2000; Payne, 2000). In identifying state interests, power, threat, and even security as objects of social construction, the conceptualization of the public sphere has emerged as the locus and site of contestation and discursive action. Rather than being imputed, state interests emerge from debate and exchange within public spheres (Lynch, 1999, 2000). The deliberation within public spheres acts to constitute the foundational components of foreign policy, from ideations of state identity to the enacting of that identity as a state interest. Further these identities and interests are utilized in outlining which policy prescriptions are possible (and not possible) in a given situation. These public debates then not only serve as shapers of discourse but the fundamentals of policy and state behavior.

As Rodger Payne establishes with his coauthors, broadening the idea of a public sphere to a global scale allows the translation of Habermasian ideals surrounding public discourse, dialogue, and contestation to be applied to the study of international regimes (Payne, 2001;

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[1] Public sphere, here used and defined as the space of communication of ideas and projects that emerge from society and are addressed to the decision makers in the institutions of society (Castells, 2008)

Payne & Samhat, 2012; N. H. Samhat, 1997; N. Samhat & Payne, 2003). International regimes in this light are viewed as an international community, and like other political communities, are both subject to the constraints of legitimacy and potentially create space for discourse and dialogue to affect change. Payne is particularly concerned with the transformational potential of public spheres for the advancement of global democracy, liberalizing norms, and the democratization of global governance structures. While much constructivist scholarship focuses upon the agenda-setting and norm entrepreneurship that undergirds the framing and promotion of individual norms in different regimes, Payne argues that too little focuses on the resonance and legitimacy of the frames that result from materially-backed or manipulated norm frames (Payne, 2001). Payne observes states exhibiting resistance to various regimes and their constitutive norms when the perceived legitimacy of the originating political community, the international regime, is in question and when the normative frame fails to retain its own legitimacy as the result of consensus from the discourse of the public sphere.

Thomas Risse's work further informs this locus of understanding of rhetorical action within a Habermasian public sphere and the construction of norms and regimes via agenda setting, framing, and argumentation (Risse, 1999, 2000, 2004). As with Payne and Samhat, Risse establishes the utility of non-state actors as purveyors of communicative action within the public sphere of global governance regimes. The reliance on a "reasoned consensus" via mutual understanding parallels Payne's argument for the centrality of consensus and legitimacy surrounding normative frames. Thus, in the promotion of human rights and the application of international norms on individual states to enact domestic change, the use of argumentation and communicative behavior (in Risse's terms), the manipulation of normative frames by norm entrepreneurs and agenda setters (in Payne & Samhat's work), and the use of discourse and

dialogue in the contestation of ideas (following other Habermasian scholarship)—in other words, rhetorical action—is predicated on the legitimacy, mutual intelligibility, and consensus of the idea being propagated. Too frequently in the work on naming and shaming and other modes of human rights promotion, this core theoretical tenant that rhetorical action and change induced by argumentation or communicative behavior relies on the shared belief in the norm under discussion is lost in the analysis. The underlying differences in states' and other actors' identities and thus the degree to which they subscribe to the international regime or international normative structure is lost in the effort to better measure normative pressure and more closely capture the empirical human rights situation on the ground. This chapter's analysis of state rejection rhetoric directly engages with locations and issues where norms are revealed to be *not* shared by participant states and re-centers the analysis of rights promotion and state response on legitimacy and consensus. Where states resist recommendations, I expect to observe rhetoric referring to deficiencies in either international regime legitimacy or in the resonance of the norm in the particular context.

The manner in which states express their resistance to rights change also has resonance for their progress through the path of the spiral model (Risse, Ropp, & Sikkink, 2013). A state's movement from "Repression" to "Denial" is entirely predicated upon its response to societal pressure, from either domestic or international society. The "how" in the way a state expresses this denial directly impacts the state's credibility in maintaining their practices and determines the length of time the state will remain at this second stage. If the expression of resistance is effective, and particularly when it resonates with the domestic society, progress toward human rights change halts as societal pressure wanes or otherwise the state is bolstered by the

population. If not, pressure mounts against the offending state and it moves toward making tactical concessions, the first stage in committing to the human rights norm.

Understanding where, when and *how* states express resistance to promoted human rights will help to both establish where the alleged universality of universal human rights falls short and which argumentative and rhetorical frames are used in this contestation. Without touching too directly on normative theory, the chapter sets out to identify and create a typology of the rhetorical and communicative frames used by states in expressing their resistance to changes in human rights practice. In so doing, it will touch on the weakly assumed universalism of the Western/liberal/Northern conceptualization of human rights, and highlight how this weak universality relates to deficits in consensus-based legitimacy. So too, it questions the conception of human rights, whether they are moral and individual vis-à-vis other persons; moral and individual but vis-à-vis governments; whether human rights are basic, constitutional, and legalistic from the state; or finally whether they are moral claims imposed by an institution or regime (Greiff & Cronin, 2002). This final, strong universalism replete with commitments and obligations to an assumed morality and international regime for enforcement and compliance is exhibited within proceedings of the first cycle of the UPR. Even so, strong resistance to this assumption and its claims of legitimacy is also exhibited in the UPR. It is this contestation upon which this chapter will focus.

Turning now from the role of rhetoric in understanding not only state interest but also power and concordance within an international regime, I begin with an outline of the pattern of resistance to recommendations and level of NGO activity in the first cycle of the Universal Periodic Review. Next, I describe the case selection of four extreme cases from which I develop a deductive typology for further study. Using the typology along with the current literature on

naming and shaming and backlash, I develop specific observable expectations for states'

resistance to changing their human rights behavior. The chapter continues with some basic tests

of these observable implications from discourse and content analysis of the state's final reports

from their review.

Cases of Explained Resistance

Figure 2.1. Country Resistance to Recommendations and NGO Activity
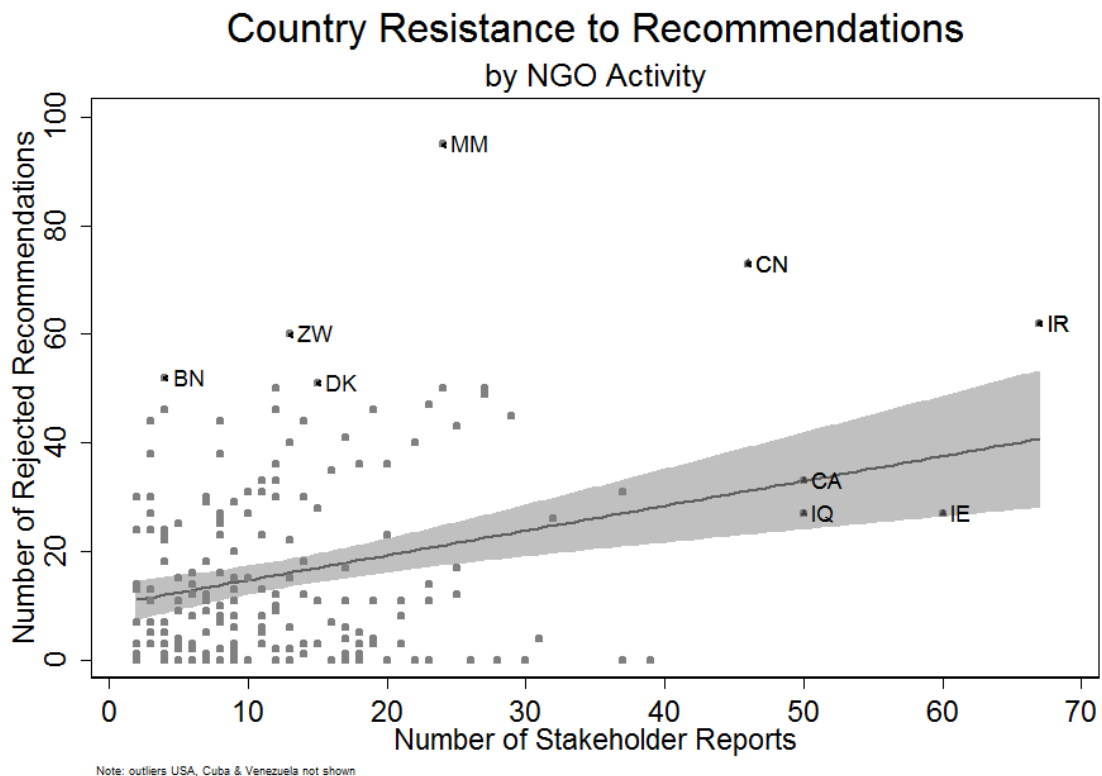
To examine the relationship between NGO activity and rejection that is established in the

regression analysis in the preceding chapter, I here explore in greater detail the reports and

exchanges between NGOs, recommending states, and states under review, among a selection of

states under review with high levels of NGO reporting, recommendation rejections, or both.

As can been seen in Figure 2.1 above, where states with over 50 NGO recommendations or over 50 rejections are labeled, the plurality of states received both a relatively small number of stakeholder reports (under 20) and rejected a similarly small number of recommendations (also, under 20 or so). However, many stray from this cluster as well. The outliers, the United States, Cuba, and Venezuela each had well over 100 stakeholder reports during their reviews and a varying number of rejected recommendations. Leaving these outliers aside, I have indicated those states with either greater than 50 stakeholder reports or 50 rejected recommendations, or both. Canada, Iraq, Ireland, and Iran each received between 50 and 70 stakeholder reports. Zimbabwe, Denmark, Brunei, Myanmar, China, and Iran, conversely, each rejected over 50 of the peer recommendations they received.

From these states, I utilize Seawright and Gerring's (2008) classification of an "extreme" case to choose cases for further exploratory analysis. Using an extreme case selection strategy, I identify the possible effects of high NGO activity and, concomitantly, the explanations behind high rates of rejection. This will allow me to isolate patterns in these cases that may explain the strength of the trend line between rejection and NGO activity, and subsequently develop a typology and hypotheses for testing with the remainder of the reviewed states. Specifically, I seek to uncover the discourse with which states reject the recommendations addressed to them and thereby express their justification for resistance to the human rights regime. With this purpose in mind, I examine the peer recommendations, NGO reports, and subsequent state responses in four cases of state reviews: Iran, Ireland, China, and Myanmar. This case selection is geographically diverse and includes countries at various levels of economic development and geopolitical power.

Iran, during the first review, was high in both the amount of NGO attention it received, with 67 stakeholder reports, but also high in the number of rejected state recommendations, at 62; it rejected nearly a third of the 212 recommendations it received. Ireland, too received a high number of NGO stakeholder reports, at 60, but only rejected 27 of its 168 recommendations; this is approximately 16 percent, much lower than the average rejection rate of 27 percent. While China's level of NGO involvement was somewhat lower, at 46, it rejected over half of the recommendations it received, 73 of 138. Myanmar had a much lower NGO activity level, at 24 organizations submitting reports; particularly notable given its CIRI physical integrity rating of zero. However, it did have a high rejection rate, rejecting 95 of 197 recommendations, nearly half of those it received. Taking these as extreme cases, I explore their behavior to get a better sense of both the NGO involvement therein and the logics expressed by the states in their resistance to the received recommendations.

High Stakeholder Involvement – Iran and Ireland

Beginning first with the pair of countries with high NGO reporting, Iran and Ireland, their notable similarities begin and end with high NGO involvement. Iran, with the lowest physical integrity score of zero, had its February 2010 UPR review center on issues of justice: torture, procedural law and order, and detentions. The plurality of both state recommendations and NGO stakeholder reports submitted concerning Iran covered these issues of justice, an example of state and civil society convergence within the UPR process. International NGOs, like Amnesty International, as well as domestic civil society actors, including Muslim Women Justice Assembly and the Iran Modern Civil Defence Society, cited the lack of an independent judiciary, religious arrests, informal and hidden detention centers, and the lack of prosecution of honor

crimes.[2] State recommendations for Iran followed closely to NGO testimony, with many taking similar naming and shaming approaches to highlighting Iranian human rights deficiencies, but not asking for high levels of change. While dealing with similar issues, many state recommendations called for "continued improvement" or to "continue capacity-building efforts", rather than treaty ratification or domestic law overhauls.[3] Iran's average "action" score fell in roughly the twenty-fifth percentile of countries at 3.77; two thirds of countries had more pressing demands made against them. Iran still rejected many of these recommendations.

When Iran offered positions for recommendations it did not support, its replies were mixed. In reference to acceding to international conventions, the government cited its inability to predict the outcome of legislative processes.[4] When referencing recommendations concerning religious freedom, torture, and racial minority rights, it explained the state's compliance with the international rights norm, sometimes at great length. Conversely, regarding issues such as sexual orientation Iran stated that its "principled position" is "crystal clear" in that "Iran does not consider it neither as legal issue nor as an issue of human rights."[5] It issued similar resistance to freedom of expression, though it attempted to couch this in the International Covenant on Civil and Political Rights' indication that it is "not an absolute right." Iran referenced religion and its comparability to neighboring Islamic states in its responses to recommendations concerning minority religious expression and gender-based violence. Finally, Iran made a lengthy appeal to the UN Charter's "emphasis on the sovereign equality of all Member States"[6] in response to

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[2] United Nations Human Rights Council, *Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 – Islamic Republic of Iran*, A/HRC/WG.6/7/IRN/3 (30 November 2009), available from undocs.org/A/HRC/WG.6/7/IRN/3

[3] United Nations Human Rights Council, *Report of the Working Group on UPR of Islamic Republic of Iran*, A/HRC/14/12 (15 March 2010), available from undocs.org/A/HRC/14/12

[4] United Nations Human Rights Council, *Report of the Working Group on UPR of Islamic Republic of Iran - Addendum*, A/HRC/14/12/Add.1 (3 June 2010), available from undocs.org/A/HRC/14/12/Add.1

[5] Ibid.

[6] Ibid.

Chile's recommendation to "adopt measures to guarantee women's equality under the law."[7] In

the Iranian case, rights norms met resistance both via legalistic claims to state sovereignty and

also culturalist and regionalist claims of exceptionality and non-universality. Still, many of Iran's

replies were procedural and rhetorically accepted the rights norms.

Ireland, a state that broadly respects human rights, scoring a six on the eight-point CIRI

physical integrity index, had its October 2011 review focus primarily on meeting international

obligations toward the treatment of vulnerable populations, minority rights, and freedom of

movement. NGOs directly addressed these rights, while state recommendations were more likely

to stress the international agreements and treaties than directly discuss the rights situation in the

country. Ireland's mean action score, 4.04, places it in the seventy-fifth percentile of states,

reflecting the large number of states seeking Irish ratification of the Convention on the Rights of

Persons with Disabilities, the Optional Protocol to the Convention against Torture, and the

Convention on the Rights of Migrant Workers, among others. NGOs, conversely, highlighted the

rights of minorities in Ireland. For example, the European Network Against Racism-Ireland

noted that racism and police racial profiling was on the rise, the Migrant Rights Centre Ireland

called for greater protections for the large European migrant population, and a joint submission

by a coalition of fifteen Irish rights agencies called "Your Rights, Right Now" made a number of

recommendations on behalf of minority populations, including Irish Travellers, non-Catholics,

and homosexuals, advocating for their freedom of expression and secular education.[8] Ireland's

typical response to the recommendations it received was overwhelmingly acceptance, as

mentioned above. When Ireland did register more than a simple "accepted," it outlined plans for

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[7] United Nations Human Rights Council, *Report of the Working Group on UPR of Islamic Republic of Iran*, A/HRC/14/12 (15 March 2010), available from undocs.org/A/HRC/14/12

[8] United Nations Human Rights Council, *Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 – Ireland*, A/HRC/WG.6/12/IRL/3 (22 July 2011), available from undocs.org/A/HRC/WG.6/12/IRL/3

implementing various changes. Where they did register explanation of their rejection, Ireland offered that current practices and policies were either adequately addressing the critique or sufficient reform of those policies were already in place.[9] In response to a recommendation from Egypt to "eliminate religious discrimination in access to education,"[10] Ireland indicated that the recommendation was not accepted, stating:

> There is a growing non-denominational school sector in Ireland, particularly at primary level. These schools cater for all pupils and there is no denominational involvement in their governance. The existing system of school admissions is currently under review, and issues of access are being considered as part of that review process. Religious groups are free to establish their own schools to cater for members of their particular faith. This religious freedom is a core element in our system at primary and secondary level.[11]

Nowhere in Ireland's responses was there resistance to the right or treaty mechanism designed to enshrine that right in the international system. Ireland's rejections were completely procedural.

High Rejection Rates – China and Myanmar

As opposed to the divergence observed between Ireland and Iran, the two countries with high levels of rejection have more in common. China and Myanmar are both Asian non-democracies with poor human rights records. Myanmar's first cycle review took place in January 2011 and it has not yet undergone a review in the second cycle. Myanmar, scoring a zero on the physical integrity scale, had a UPR review that focused, like Iran, on justice, by means of torture, imprisonment, and law and order concerns. Both NGO stakeholder reporting and state recommendations clustered around issues in this area. Other states demanded much of Myanmar,

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[9] United Nations Human Rights Council, *Report of the Working Group on UPR of Ireland - Addendum*, A/HRC/19/9/Add.1 (6 March 2012), available from undocs.org/A/HRC/19/9/Add.1

[10] United Nations Human Rights Council, *Report of the Working Group on UPR of Ireland*, A/HRC/19/9 (21 December 2011), available from undocs.org/A/HRC/19/9

[11] United Nations Human Rights Council, *Report of the Working Group on UPR of Ireland - Addendum*, A/HRC/19/9/Add.1 (6 March 2012), available from undocs.org/A/HRC/19/9/Add.1

too, with a mean action score of 4.09, placing it above the seventy-fifth percentile; they

particularly pushed for the ratification and implementation of the core human rights treaties and

conventions as Myanmar is not a signatory. Weakness in the rule of law and lack of human rights

legal provisions featured prominently in human rights reporting by NGOs at every level of

association: international groups like Human Rights Watch; regional associations like the

Assistance Association for Political Prisoners; and national rights groups including Burma

Action Group, Burma Lawyers' Council, and the Karen Human Rights Group.[12]

      Myanmar responded to the naming and shaming it received with the highest number of

rejections among states in the first round. When explaining their rejection of state

recommendations, Myanmar was quite consistent. In regard to the myriad of recommendations to

accede to international human rights treaties, Myanmar claimed it was already observing the

tenants of the human rights instruments and cited legislative procedure as to why they were not

formal signatories.[13] When confronting more direct critiques of behavior on the ground

Myanmar assured the international community that no such abuses take place. One such instance

was Jordan's recommendation to more fully protect the rights of Muslims,[14] where Myanmar

stated "Religious intolerance or discrimination is non-existent in Myanmar."[15] The Muslim

population of Myanmar primarily consists of the ethnically distinct Rohingya peoples from India

and Bangladesh who have faced continued persecution for their ethno-religious differences in the

majority Buddhist state. The most egregious incidents of anti-Muslim riots and killings have

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[12] United Nations Human Rights Council, *Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 – Myanmar*, A/HRC/WG.6/10/MMR/3 (18 October 2010), available from undocs.org/A/HRC/WG.6/10/MMR/3
[13] United Nations Human Rights Council, *Report of the Working Group on UPR of Myanmar - Addendum*, A/HRC/17/9/Add.1 (27 May 2011), available from undocs.org/A/HRC/17/9/Add.1
[14] United Nations Human Rights Council, *Report of the Working Group on UPR of Myanmar*, A/HRC/17/9 (24 March 2011), available from undocs.org/A/HRC/17/9
[15] United Nations Human Rights Council, *Report of the Working Group on UPR of Myanmar - Addendum*, A/HRC/17/9/Add.1 (27 May 2011), available from undocs.org/A/HRC/17/9/Add.1

taken place after Myanmar's first cycle review, though immediately preceding the first cycle review the military conducted a number of attacks where they targeted Muslim civilians in the eastern portion of the country.

The most critical recommendations received by Myanmar, exemplified by France's recommendation to "urgently take all necessary measure to end impunity, if need be with the assistance of the United Nations,"[16] were dismissed and rejected without comment. Rather than engage in resistance to certain international norms of human rights, as was seen in Iran, Myanmar tacitly accepted the norms and claimed compliance with them, regardless of the reports to the contrary.

Though comparable to both Myanmar and Iran in the number of rejections issued, China's review was markedly different. This is perhaps a reflection of its more powerful position in the international system. China's first cycle review took place in February of 2009, the earliest of the four states discussed here. Despite its low physical integrity score of one, states asked less of China than Myanmar, with an average action score of 3.69 placing it below the twenty-fifth percentile of states. State and NGO attentions here were divided, unlike the congruence seen in both Myanmar and Iran, with the plurality of NGO stakeholders focusing on economic, social, and cultural rights, while state recommendations centered on issues of justice, torture, and imprisonment. China's NGO stakeholders included numerous national associations commenting directly on the state of rights protections on the ground. The All China Federation of Trade Unions, joined by the China Labor Bulletin and Beijing Legal Aid Office for Migrant Workers, cited deficiencies in labor laws and worker's rights, including forced overtime, skipped wage

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[16] United Nations Human Rights Council, *Report of the Working Group on UPR of Myanmar*, A/HRC/17/9 (24 March 2011), available from undocs.org/A/HRC/17/9

payments and exploitation of migrant workers.[17] Suppression of literary expression of

Mongolians and other groups was criticized by the Unrepresented Nations and Peoples

Organization and multiple groups, such as the China Family Planning Association, cited the

forced family planning policies as violations of cultural and social rights.[18]

     In rejection, China had two modal approaches. The first was to reference its sovereignty

and the lack of necessity to comply with international recommendations. Alternatively, its

rejections were complex and winding enough to sound as though China was ultimately accepting

the content of the recommendation, despite refusing to be held accountable by accepting it.

China did, at times, deny claims made against it, particularly in regard to justice and law and

order issues, such as arbitrary and extrajudicial detentions, excessive use of the death penalty,

political prisoners, and missing women and children. But it rejected many recommendations for

signing to treaties such as the Convention on Civil and Political Rights or those regarding torture

and enforced disappearances, while stating it was "prudently carrying out its judicial and

administrative reform to actively prepare for ratification…[but] no specific timetable for

ratification could be set out."[19] While directly appealing to its sovereignty, such as a

recommendation from Germany to utilize the individual complaint procedure or a

recommendation to accede to the ICC,[20] it argued:

> China is of the view that such a procedure in the international human rights treaty system
> is optional. Governments bear the primary responsibility for the implementation of

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[17] United Nations Human Rights Council, *Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 – People's Republic of China*, A/HRC/WG.6/4/CHN/3 (5 January 2009), available from undocs.org/A/HRC/WG.6/4/CHN/3
[18] Ibid.
[19] United Nations Human Rights Council, *Report of the Working Group on UPR of China*, A/HRC/11/25/Add.1 (10 December 2009), available from undocs.org/A/HRC/11/25/Add.1
[20] United Nations Human Rights Council, *Report of the Working Group on UPR of China*, A/HRC/11/25 (5 October 2009), available from undocs.org/A/HRC/11/25

international human rights treaties. If a specific right is violated, citizens should first exhaust domestic remedies.[21]

In regard to establishing a national human rights institution, China stated that the issue "falls into China's sovereignty, and should be considered in a holistic manner in accordance with its national conditions." It continued with similar logic in regard to recommendations to adjust special legal procedures of arrest, saying its decision is "based on its national conditions."[22] China's rhetoric then in resisting state recommendations was a mix of the other three states. When dealing with international obligations, it argued procedurally that it was striving to follow the international norm. In regard to specific critiques of human rights concerning justice and law and order, it, like Myanmar, denied the existence of such abuses. And, when directly resisting the universality of certain human rights norms or best practices, it cited national conditions and sovereignty, much like Iran's model of culture, religion, and sovereignty.

A Typology of Resistance

Expressions of resistance to recommended change in human rights practices fell into four general categories in these cases of exceptional NGO activity and rejection. These four nodes correspond to two dimensions of resistance. The primary dimension of resistance that was exhibited is in reference to the specific "norm" of international human rights that is contained within the rejected recommendation; did the state under review reject the relevance and *universality* of the human right that was discussed in the recommendation. Where states question the applicability of an international human right, they express resistance to the notion that the right is inherently universal and thus that the norm has any meaning in their national context.

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[21] United Nations Human Rights Council, *Report of the Working Group on UPR of China*, A/HRC/11/25/Add.1 (10 December 2009), available from undocs.org/A/HRC/11/25/Add.1
[22] Ibid.

Rejections that exhibited resistance to the underlying human right norm either made culturally, religiously, or nationally particularistic exception to the norm or rights practice or they made direct reference to state sovereignty and the autonomy of the state to deviate from the recommended behavior. In either case, the rejecting state expresses at least reservations about the validity of the expressed human right in their context, and at most outright hostility toward the ideal, as is seen in some replies to recommendations concerning gay rights. Compare these framings of resistance to outright denial or bureaucratic, procedural explanations. Where states, such as Myanmar, extol the virtue of an international human right and then ardently make assurances that their government would never commit such acts, they are indirectly or directly affirming the relevance of the international human right regardless of their compliance with it. Similarly, when explaining why a treaty or legislative process will make implementing a recommendation costly or time intensive, states are not directly challenging the applicability of the right in question, just the mechanism by which they can achieve norm compliance.

Thus, the second dimension on which states vary in their expression of resistance to peer recommendations was not to the norm in question but to the international instrument being used. This is most obviously seen in rejections calling on state sovereignty. By invoking the autonomy of the nation-state, the rejecters intrinsically question the jurisdiction and relevance of an international review process, the United Nations, and/or peer-state recommendations. States either place the nation-state above the obligations held to international treaties or otherwise cite their autonomy in governing their internal affairs; many even refer to the UN Charter when expressing the primacy of sovereignty in the international order. Additionally, rejection explanations based largely on the procedural concerns for bringing the state's domestic law into compliance with international treaty instruments, protocols, conventions, or with other

obligations exhibit this resistance to the mechanism. Rather than objecting to the norm itself by questioning its applicability and relevance in a particular domestic context, these rejections express resistance to the direct obligations of international instruments. Frequently these are expressed in a fashion similar to a constitutional law lesson, explaining the vagaries of the domestic ratification process or the entrenched domestic political opposition. These two modalities, procedural and sovereignty-based, embody rejections exhibiting resistance to the UPR as an instrument of the international rights regime. Conversely, outright denial and particularistic explanations make little reference to the applicability of an international instrument. When making denials, states implicitly or explicitly extol the virtue of both the norm in question and the UN or the recommending peer state. Particularistic explanations similarly ignore the context of the instrument, focusing the attention on the non-universally applicable nature of the norm or right being addressed.

These two dimensions intersect to create a standard two-by-two matrix, as seen in Figure 2.2, below. Sovereignty rejections exhibit dual resistances to both the normative component of the human rights issue area in the recommendation and to the relevance of an international institution or other state making recommendations about domestic behavior. Conversely, denial exhibits neither of these resistances; by denying the contents of the recommendation outright, the state, either implicitly or explicitly, reaffirms the existence of the rights norm and accepts the UN or other states' role in commenting on their human rights practices. Procedural rejections show resistance to the international instrument and the international treaty provisions, while still affirming the normative component on the right. Particularistic explanations then demonstrate a resistance to the universal applicability of the rights norm but do not demonstrate a direct resistance to the international instruments used in the UPR process.

Figure 2.2. Typology of Rejection Rhetoric

Rejection Rhetoric

Resistance to Rights Norm

Resistance to Instrument		Yes	No
	Yes	*Sovereignty*	*Procedural*
	No	*Particularistic* (Cultural, Religious, National)	*Denial*

With the most essentializing interpretation of state rejection explanations, these are all forms of denial. The most basic level is simple factual denial that there are no violations. The scale increases to denials that simultaneously present a competing normative frame of exception or national primacy. Both particularistic and sovereignty-based explanations include this expression of a competing norm that I argue constitutes a contention or resistance of the rights norm posited in the recommendations. In sovereignty-based rejections, the competing norm is that of non-intervention or the ultimate primacy of the national government. For particularistic explanations, the competing norm is national, regional, cultural, or religious exceptionalism and the argument that rights are contextually constrained. Procedural and factual denial, however, do not express a competing norm. Further, there is a different relationship to the international institution exhibited in these varied forms of denial. Neither factual denial nor a particularistic rejection questions the authority or legitimacy of the external actors as both deflect external influence by engaging with the subject of the recommendation, not the source. As such, these two axes are central to disentangling what could otherwise be grouped as simple "denial" and

thus lose the nuance of how states choose to frame their resistance, and thus what critiques of the rights regime they view as most legitimate.

The cases discussed above fit throughout the typology. First, Ireland exhibited solely procedural or bureaucratic rejections that did not demonstrate resistance to the underlying international norms. Second, Myanmar similarly did not demonstrate resistance to international norms of human rights as its rejection explanations were to outright deny the existence of the rights abuses and thus reject the need for change. The other two states, however, did demonstrate resistance to the universality of human rights norms. Claims to national sovereignty, including non-interference and a tacit subsidiarity principle that rights complaints are best handled domestically, were used by both Iran and China. Further, both of these states also employed particularistic resistance. In China's case, this was a repeated appeal to "national conditions", while in Iran the appeal was regional, as well as culture- and religion-specific. These incidents of attempts by states to challenge and curtail the universal claims of specific rights, whether general or particularistic, are crucial sites of contestation that will develop over the UPR process and, as the cycles continue, will need to be managed for the review's capacity-building goals to be met.

Implications of Resistance Frames

Drawing from international relations theory on rhetoric, speech acts, and communicative action in international affairs and the promotion of human rights, the emergent typology of rejection rhetoric fits with previously established theoretical expectations. This theoretical fit is particularly visible in the frames that express a direct resistance to a specific rights norm— sovereignty-based and particularistic claims. In both views, the basis of a state under review's rejection is the lack of perceived legitimacy of the expressed right. Particularistic rejections

challenge the legitimacy of rights claims based on the identities of the claimants. In contesting the assumption of a collective, universalist identity wherein both the targets of the rights claims and the recommending states share community ties, the rejecting state delegitimizes the rights claim and undermines the possible rhetorical power of the recommendation. Similarly, in sovereignty-based rejections, states delegitimize the international institution and contest the assumption that all members of the community maintain a similar commitment to the obligations membership entails. Compliance has perennially been problematic for the UN and conventions derived from UN action and treaty; communicative action is one lens through which these challenges of compliance can be most keenly observed.

While the aforementioned literature provided a foundational set of expectations for both patterns of rhetorical action and the coincidence of resistance to community norms and the contestation of legitimacy, rhetorically-focused international relations scholarship provides relatively little guidance for what one could expect to observe as the effects of rhetorical action and resistance. Here, critical scholarship surrounding human rights promotion efforts, particularly scholarship on norm propagation and backlash, provides useful insight into expectations for the implications of the instance of human rights resistance in the UPR. Critically scholars of backlash counter the largely unidirectional and progressive argument of the evolution of international human rights, often by examining the behavior of non-European states (cf. Kabeer & Khan, 2014; Lewis, 2012; Lloret Blackburn, 2011; Thomsen, Gulløv, Jensen Casco, Pedersen, & Obasi, 2014; Zwingel, 2012). While frequently this backlash is embodied by the withdrawal from treaties and voluntary removal from tribunals, broader understandings of state resistance include refraining from signing or ratifying a treaty, stalling or reversing domestic compliance procedures, and denunciations and rhetorical resistance at the United

Nations. The origins of backlash to international human rights are diverse, but often have been tied to the "overlegalization" of the human rights regime (Helfer, 2002). Backlash to overlegalization[23] tends to restrict the possibility for supra- and transnational review of human rights violations as states remove themselves from oversight bodies and it can restrict domestic channels of jurisprudence and human rights protections (Ibid.).

Backlash and resistance to norm adoption stems largely from domestic blocking factors, including both elite manipulation and cultural counter-norm ideations used by local civil society. When these domestic mechanisms become involved in the process, a concurrent, "twin spiral" develops contesting the norm being advanced in the first Sikkink-style rights promotion effort (Symons & Altman, 2015). Factors leading to this norm collision include national security threats, a powerful pro-violation domestic constituency, and domestic rules allowing for exceptional behavior by the state (Cardenas, 2004). Domestic legal arrangements also are associated closely with state's commitment levels via domestic mechanisms for enforcing adopted treaties (Hathaway, 2007). This norm polarization, or combative response to attempted normative change, results in a period of disputation where the candidate norm is accepted by some but resisted by others in the society. Critically missing from Sikkink's normative life cycle—emergence, tipping point, cascade and internalization—is this pushback and potential for the "twin spiral" of resistance and backlash to emerge. Civil society actors play a critical role in both of these spiral models and their activity within the public sphere is the core of the period of polarization and contestation (cf. Gaer, 1995; Rafi & Chowdhury, 2000; Shelton, 2015; Tsutsui, Whitlinger, & Lim, 2012). Such backlash spirals are more likely when the promoted right can be

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[23] Overlegalization here refers to a treaty or procedure developing higher obligations, compliance and observation mechanisms, and review practices over time.

characterized (and securitized) as an existential treat to state identity.[24] Often this is accomplished with rhetoric associating the norm with the West and drawing on implications of Western cultural imperialism.

From a normative perspective, much of the discussion surrounding resistance to normative change with human rights is tied to the claims of rights' universal nature, that "all human rights are universal, indivisible, and interdependent and interrelated."[25] Contention on the principle of universality is based on the premise that "human rights" are part of a project of western imperialism, and are thus culturally-bound or are otherwise regionally specified. Studies questioning the equality, indivisibility and universality of all human rights are decades old and arose contemporaneously with modern normative and ideational understandings of human rights promotion (cf. Cerna, 1994; Donnelly, 1984; Otto, 1997). Some even identified specific countries as particularly culturally relativist[26] as well as those that often exhibited resistance but were not as strongly relativist.[27] These "backlash states"[28] were described as recalcitrant, outlaw, and outside the 'family', an assailant of its basic values. They exhibit a characteristic "siege mentality" (Lake, 1994). In these groupings of states, the states' responses to human rights treaties, conventions, and protocols, were based upon the argument that context matters in human rights application, and thus argue what constitutes a human right differs by culture. Particularist challenges take two forms: first, that the regime is ineffective, unable to realize its ambition of promoting a set of universal human rights; secondly, that the very ambition of universalism is illegitimate and overstepping boundaries. More recent treatments of universalism and

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[24] Symons and Altman trace the example of gender identity and sexual orientation norms.
[25] United Nations Secretary-General *Report of the World Conference on Human Rights*, A/CONF.157/24, (13 October 1993), section 1, paragraph 5
[26] China, Vietnam, Myanmar, Iran, Pakistan, Yemen, Syria, Malaysia and Cuba
[27] Indonesia, Iraq, Colombia and Mexico
[28] Cuba, North Korea, Iran, Iraq, Libya

particularism (e.g. Donnelly, 2013; Holder & Reidy, 2013; Lloret Blackburn, 2011) have focused on the resonance of the particularist claims. This popular resonance is tied to the legitimacy of the associate international regime, especially in instances of regional rights organizations; this legitimacy is in turn drawn from public trust and knowledge of the institution. Where this knowledge and trust is low, counter-claims and contestation of universality emerge.

Still, this contestation and skepticism toward human rights as universal does not present an existential crisis to the entire project (Schaffer, Follesdal, & Ulfstein, 2013). Rather, the type and scope of the particularist objections to norm adoption should serve to inform the rhetorical behavior of those promoting the rights. Skepticism surrounding the greater universalist project should lead NGOs and other actors to couch their treatment of particular rights in a more contextualized and locally-relevant manner. Questions of the legitimacy of the international institution can direct action to inform the public debate, broaden civil society engagement, and channel rights promotion in more broadly visible paths. Indeed, the adoption of stronger commitments, typically realized by the ratification of optional protocols and voluntary enforcement mechanisms, is associated with improved rights practices (Cole, 2012). While treaty ratification may be cheap talk or a "window dressing" concession to either international or domestic audiences, optional protocols and compliance mechanisms serve to move beyond the "myth and ceremony" of standard rights promotion instruments. While much of the UPR process is the height of the criticized ceremonialism surrounding the international rights regime, the focus of a plurality of UPR peer-recommendations related to the ratification and implementation of these optional protocols is well-targeted; such recommendations have the highest potential to bear the most fruit in improved rights practices on the ground. In parallel, however, the higher

level of state rejection when facing these more costly and international obligation-tied

recommendations and the resulting rate of compliance could serve to test Cole's assertion:

> "If human rights violations are effectively monitored or enforced, the legitimacy that
> accrues to disingenuous treaty ratification evaporates. An even stronger prediction—one
> that has yet to be analyzed in the empirical literature—is that "*de*ceremonialized"
> monitoring and enforcement will render human rights treaties more efficacious, resulting
> in improved country-level practices." (2012, p. 1133)

Another UPR behavior, the "praise bargaining" discussed in the Introduction, follows the

rhetorical and applied behavior observed elsewhere as states seek to "promote human rights

policies and behaviors similar to their own" (Hawkins & Goodliffe, 2012). This behavior and the

rhetoric surrounding it diminished as the sessions of the first cycle progressed and states became

more accustomed to the process, though both this bargaining and the related rate of compliance

will be examined in more detail in the following chapter.

The contention expressed and resistance toward certain rights promotion within the UPR

then has the potential to inform scholarship on the universal claim of human rights, scholarship

of backlash and counter-pressure, and understandings of the role of rhetorical choices and

framing throughout. The extensive use of naming and shaming by NGOs in the UPR process,

calls into question the most effective mechanism to influence states toward norm adoption. Of

the three mechanisms by which states are influenced and socialized into international law—

coercion, persuasion, acculturation—acculturation's gradualism contains the lowest risks of

resistance and backlash (Goodman & Jinks, 2004, 2013). Acculturation serves to provide an

incomplete internalization via the methods of social sanctions and rewards. Binding decisions

and sanctions create incentives to not openly and truthfully reveal information, and thus are

potentially-counterproductive and can work to undermine institutionalization of rights and

norms. The design of the UPR process mirrors this principle; by focusing on "best practices" and

technical assistance, rather than naming-and-shaming and external reporting, as the core of the

mechanism, the HRC established the UPR as a gradual process of socialization. However, any

perceived inequitability in turn undercuts any gained social influence (Ibid.). Strategic actors,

NGO stakeholders and state recommenders alike, would do well to be cognizant of perceived

inequitability in targeting certain states, regions, or cultural groupings.

Shaming practices are not without unintended consequences as the additional

international attention can serve to increase domestic activity, and that activity can in turn lead to

repression. Similarly, terrorists thrive on media attention, and additional coverage can counteract

any added scrutiny from security forces. At times, shaming behavior leads states to ramp up

certain violations, either as an adjustment to improvements in other areas or because their

capacity to improve is not sufficient to the demands. This pattern of increasing violations

following shaming is particularly evident with physical integrity rights, while public shaming is

associated with improvement for political rights (Hafner-Burton, 2008). Effective use of naming

and shaming is tied directly to lessening regime resistance via targeting accessible domestic

institutions and utilizing domestic HROs and pressure by other third parties (Murdie & Davis,

2012). Critiques of the current literature indicating positive associations between naming and

shaming and human rights practices focus on deconstructing the relationship between the norm-

makers and norm-takers and further explicating the process of norm importation. Strategies

seeking to export norms must take into account the cultural filters through which these norms

will be viewed; this includes the perception of the institution or organization doing the norm

promotion. Further, the question of legitimacy of the promoting actor is governed by the

dynamic between the norm-maker and norm-taker (Björkdahl, Chaban, Leslie, & Masselot,

2015). The dynamic is defined by the degree of interdependence, asymmetry and power between

the involved actors. Failing to consider the relative fit of the new norm to the recipient's context, the target state's predisposition for socialization, and cultural filters directed toward the state attempting influence, results in failed attempts at shaming and expressions of not only resistance and rejection but recalcitrance.

Rejection Frames in the First Cycle

Having established this typology, its identifying characteristics and theorized implications, I proceed with a close reading and manual coding of the finalized version[29] of the "Report of the Working Group on the Universal Periodic Review" for states in the first cycle of the UPR. These data were taken directly from the UN UPR online database and I utilized the English versions of the text. The combined data included the final reports from 135 of the 192 states that participated in the first cycle of the review.[30] Final reports of the working group on the UPR are lengthy documents that combine brief notes about the state's session,[31] statements of the state's position on sets of recommendations it received, brief but direct comments to recommendations, and a final statement by the state under review. My reading and analysis focused on the state's explanations of their position vis-à-vis the peer recommendations. Thus, I code each explicit response by a state to a recommendation as acceptance, sovereignty, procedural, particularistic, or denial, and then aggregate up to the modal non-acceptance response by the state under review.

Following the typology above, I looked for specific themes and phrases while coding the state responses. Sovereignty-based claims tended to make references to territoriality, to domestic

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[29] Including addenda and corregia.

[30] The reports for the remaining 57 states were unavailable, even after direct contact with the UNHCR's office.

[31] The number of recommendations received, the count of those that received responses immediately and those within this report, for instance.

factors, to the resistance of outside influence, and the exercise of their own discretion. In

response to recommendations regarding its justice system, a sovereignty-based claim from

Canada expressed constrained resistance to both the universality of certain rights and the

applicability of international treaties:

> Canada agrees that all human rights are universal…and strives to give the same
> importance to all rights. However, Canada does not accept that all aspects of economic,
> social and cultural rights are amenable to judicial review or that its international human
> rights treaty obligations require it to protect rights through legislation.[32]

Note that in this particular rejection, while it does not make direct ties to the sovereign integrity

of Canada (as others do particularly with regard to external observers) it demonstrates both of the

qualities of a sovereignty-based claim: resistance to a norm—economic, social and cultural

rights—and resistance to the instrument of implementation, or international oversight and

additional domestic judicial review.

Particularistic rejection frames included references to principles, state or regional

identity, cultural and religious conditions, or an express rejection of absolutist arguments

concerning human rights. In its rejection of recommendations from Canada and Bangladesh to

remove the prohibition on wearing the hijab in schools, France responded with the following:

> The Constitutional principle of secularism recognizes the right of every person to worship
> and to join others in worship.… The Act [of 15 March 2004] was adopted after wide-
> scale public debate, led by an independent commission. Only conspicuous religious
> symbols, namely symbols and clothing the wearing of which amounts to excessive
> religious proselytizing, are prohibited….The main provisions of the act have now met
> with broad consensus.[33]

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[32] United Nations Human Rights Council, *Report of the Working Group on UPR of Canada - Addendum*,
A/HRC/11/17/Add.1 (8 June 2009), available from undocs.org/A/HRC/11/17/Add.1; For full text, see Appendix A.
[33] United Nations Human Rights Council, *Report of the Working Group on UPR of France - Addendum*,
A/HRC/8/47/Add.1 (25 August 2008), available from undocs.org/A/HRC/8/47/Add.1; For full text, see Appendix B.

This is a representative example of a particularistic explanation, with a pattern also seen frequently in Middle Eastern states' responses. The argument isolates a domestic principle or cultural trait, in this case secularism, and argues that the particularity of the national context negates the universalizing recommendation, expressing direct resistance to the promoted norm.

Procedural rejections made explicit references to the process of ratification or to the moving of appropriate changes through the courts or legislative systems. Such rejections also frequently hedged the commitment being made by the states by indicating that they were reviewing or otherwise taking the recommendation under further consideration. The United States was notably brief in it responses, rarely offering explanations for its decisions, and when offering explanations, they tended to be no more than a sentence. In response to a recommendation from Ecuador to address racially discriminatory laws, specifically citing the "stop and identify" law in Arizona, the USA responded:

> As the Federal Executive Branch lacks the authority to repeal or refuse to enforce laws enacted at the State level.[34]

Following a pattern seen in many of the US's responses this brief explanation indentifies a domestic procedure or processes that would prevent the recommendation from being carried out. Rather than address the promoted norm, the response in this way only indicates there is a resistance to an international process dictating domestic behavior.

And finally rejections that were explicit denials were not difficult to identify. These, albeit a rather small set of all rejections, quite uniformly utilized constructions such as the state claiming they "already comply" and contestation that the recommendations and comments made

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[34] United Nations Human Rights Council, *Report of the Working Group on UPR of United States of America - Addendum*, A/HRC/16/11/Add.1 (8 March 2011), available from undocs.org/A/HRC/16/11/Add.1; For full text, see Appendix C.

against the state were without factual basis. When rejecting a recommendation from Belgium to

improve freedom of journalists, Afghanistan's response was characteristic of denial:

> There is no provision in the penal laws to prevent journalists from doing their mission in
> full security and independence, except in cases where their performances cause public
> agitation and disorder in the country.[35]

This demonstrates the core of a denial rejection. Afghanistan does not express resistance to the

idea that journalists be protected, nor does the response indicate that they are in some way

opposed to an external suggestion on this matter; the state simply argues that the

recommendation is misplaced and unfounded.

In only extremely rare instances did states offer a more complete explanation when they

accepted a specific recommendation, so all responses to accepted recommendations have the

same code. Of the 135 states coded, 14 primarily and overwhelmingly noted acceptance in their

final report and response to peer recommendations. Half of these states were from the WEOG

grouping, while the other half came dispersed across the remainder of the UN's regions. For

most of this chapter, these 14 states are grouped by their most common *rejection* response frame,

even if this constituted only a small portion of the argumentation used in their final report.

As seen below in Figure 2.3, the relative share of states' primary explanation to rejected

recommendations is shown in the norm-resistance – institution-resistance matrix. The majority of

states, most of the time, did not exhibit direct resistance to the promoted norm in the peer and

stakeholder recommendations. This is shown by the greater than 0.5 proportion in the right

column. The most common response was a procedural explanation, with the argument that some

domestic process would prevent the implementation of the recommendation. States exhibiting

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[35] United Nations Human Rights Council, *Report of the Working Group on UPR of Afghanistan - Addendum*,
A/HRC/12/9/Add.1 (18 September 2009), available from undocs.org/A/HRC/12/9/Add.1; For full text, see
Appendix D.

mostly particularistic responses, and therein expressing a primacy of context over universality, were the second most common resistance frame utilized in the first cycle of the UPR.

Figure 2.3. Distribution of Primary Rejection Frame

Note: N=136 of 192; states who primarily accepted shown with secondary response.
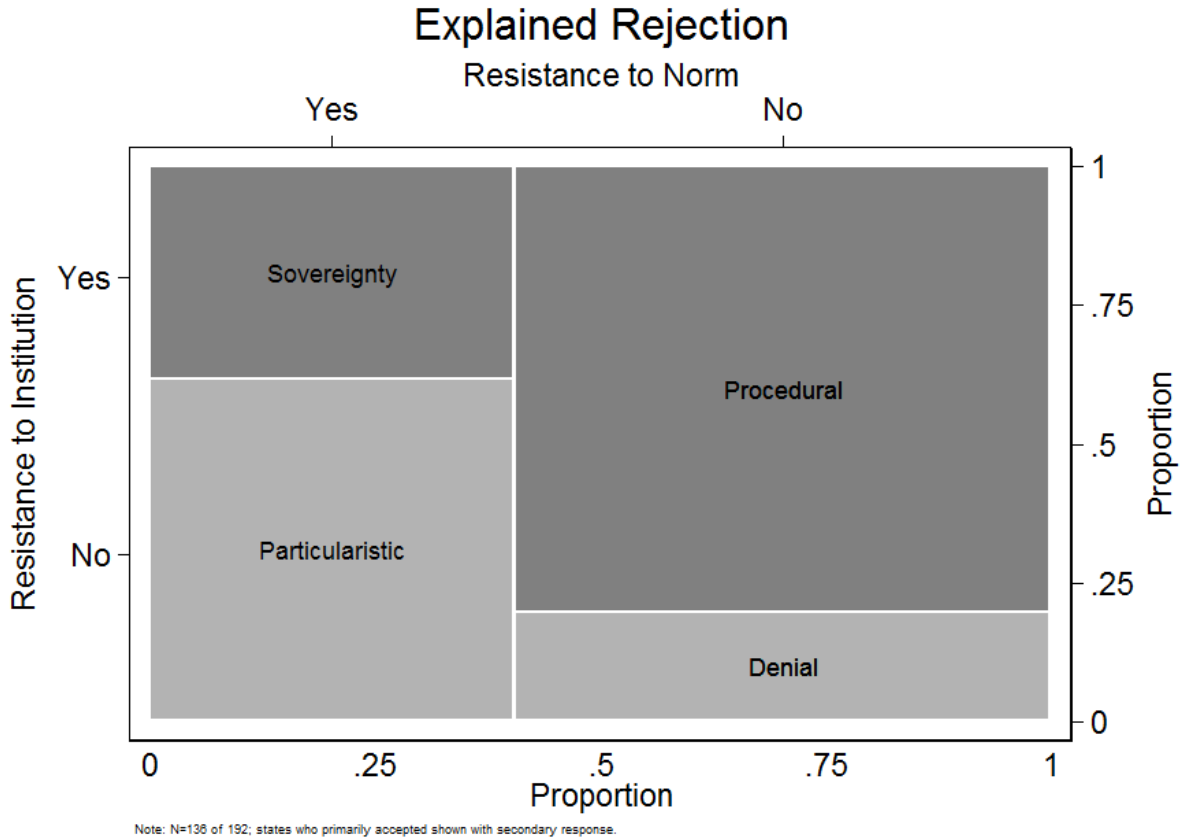
Across the 135 states, states varied in the number of recommendations to which they provided detailed explanations. Certain states, particularly those with a relative high number of rejections, only directly explained their position on a small handful of cases. Others provided detailed, tabular listings of each recommendation, their acceptance or rejection of that recommendation, and at least a few sentences describing the reasoning behind that position. Some sense of the variation in the content and structure of these final reports is visible in Appendices A-D at the end of the chapter, where I reproduce a page from the illustrative reports mentioned above. The varying quality and quantity of targeted state rhetoric in these rejection

recommendations complicated the detailed reading and aggregation as states had unequal numbers of coded segments. As a coding robustness and validity check, I also abstracted from my close reading and manual coding of these statements with computer automated tools.

In parallel, I machine coded these documents using key terms that fit the themes and frames discussed above. I utilized natural language processing tools to ease this process and most effectively capture both the content and the tone of the state explanations of their responses. First, sentences are isolated and then tokenized, by which individual words were stemmed and processed to ensure matching across variations of the word or phrase, e.g. territory and territories or religion and religious. Next, I collected word counts for phrases tied to each rejection frame identified in the close reading and hand coding discussed above. For instance, 'sovereign', 'territory', 'discretion', 'optional', and 'domestic' were used as words keyed to a sovereignty based rejection, while 'review', 'consider', 'parliament', and 'judicial' were associated with procedural rejections. Key words indicating a particularistic rejection include 'absolute', 'religion', and 'culture', while for denial rejections 'already comply', 'factual', and 'exist' tied to a negative word were among the word phrases counted. These counts were aggregated by state and scaled by the number of sentences and words coded in each state's final report. While generating these counts to check the close reading, I also utilized natural language processing tools to code the polarity, subjectivity, and modality of the states' response statements. Polarity refers to the use of positive and negative adjectives, subjectivity to the utilization of non-objective adjectives, and modality to the degree of "certainty" or conditionality in the sentence. These measures give an objective sense of the tone states use in their rejection explanations and thus a proxy for the forcefulness of their position. Additionally, I extended this tonal analysis to

the NGO stakeholder testimony that states received, cleaning the stakeholder report text and using the segmenting, tokenizing, and tonal coding procedures.

The machine classifications of states responses followed closely with those completed manually. This mixed and complimentary method provides some check on the strength of the link between my conceptual typology and states' actual explanation of recommendation rejection. In so far as my conceptualization of state responses is coherent, the measurement utilized, either via word counts or hand coding, matches my intended conceptualization well. With the coding of state explanations completed, I turn now to the analysis of patterns and relationships drawn from these rejection frames.

Patterns of Resistance in the Universal Periodic Review

In a previous section, the four resistance frames developed above were applied across the full set of states. Here, I extend this analysis to utilize the data collected and gathered from the final reports of the Working Group for each state under review in an exploration of the above theoretical claims and previous findings on naming and shaming and broader conceptions of rhetorical action in human rights promotion. By identifying where and when certain types of states exhibit particular forms of resistance to rights promotion, I indentify how the types of rights most contested in the UPR are resisted and locate where that resistance originates. Primarily, I argue that the choice and use of a particular frame to express resistance to an international human rights norm is indicative of the potential flaws in the UPR system. The share of rights claims that were met with resistance truly challenging the universality of the espoused human rights was relatively small. Instead states most frequently made procedural excuses that serve as an expression of resistance toward the international instrument rather than direct

contestation of the content of the norm. Further, those states expressing particularistic resistance

are of a common sort—counter intuitively, European states are frequently found in this category.

The resistance expressed in these rejected recommendations may also be indicative of the states

general disposition toward the UPR process and the stakeholder reporting and peer-

recommendations they received within it. This is something to be tested in the following chapter

in the analysis of the follow up, compliance, monitoring and enforcement between the first and

second cycles.

Table 2.1
Modal Rejection Frame, by Region[36]

	Africa	Asia	EEG	GRULAC	WEOG	Total
Denial	5	6	2	1	1	15
Procedural	17	17	11	10	10	65
Particularistic	5	11	7	1	9	33
Sovereignty	4	6	1	7	3	21
Total	28	39	22	19	26	134

There are clear patterns in the regional affinities for certain arguments explaining rights

resistance, shown in Table 2.1 above. While just under half of the states framed a preponderance

of their responses using procedural claims and thus came from across all regions, the incidence

of the other responses was more locally specific. Denial responses primarily emerged from

Africa and Asia with over half of the states largely expressing denial coming from those regions.

Similarly, sovereignty-based claims were unlikely to emerge from European and North

American states (WEOG and EEG), with these states accounting for a very small share of the

overall use of sovereignty-based claims. Particularistic explanations, conversely and surprisingly,

were used by countries in the UN's WEOG and EEG classifications; they accounted for exactly

half of the uses of this type of argumentation. This use across Europe mirrors the example

explanation from France shown above. Most frequently, European states used particularistic

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[36] $Chi^2 = 37.68$; p = 0.004

claims to respond to recommendations targeted at immigration or the treatment of minority

groups. Another notable regional pattern flows from the Latin American and Caribbean group.

The replies by states of Latin America and the Caribbean very infrequently drew on either denial

or particularistic claims; only two of the nineteen states in this group used those frames

frequently. That is to say that largely, states in GRULAC expressed their rejection in terms of

resistance to the international process, the legitimacy of the UPR, or the bearing of international

obligations on domestic law by using the procedural or sovereignty-based frames. When Latin

American states contested the peer-recommendations and stakeholder testimony at the UPR, they

largely did so by questioning the validity of this UN-based process.

Table 2.2
Modal Rejection Frame, by Rejection Rate[37]

	Low	High	Total
Denial	3	12	15
Procedural	36	29	65
Particularistic	14	19	33
Sovereignty	5	16	21
Total	59	75	134

These rejection frames also map well to the findings discussed in Chapter 1—the rate of

recommendation rejection overall, and the issue-area-based focus of both state and stakeholder

participants. This relationship is shown in Table 2.2, where states in the top half of the rejection

distribution are coded as "High" and those in the lower half are coded as "Low." The more

common frames, procedural and particularistic, are used without distinction by states that

rejected a high and low share of the recommendations made against them. However, both denial

and sovereignty-based claims were used predominantly by states that made a high number of

rejections. Over three-quarters of the uses of both denial and sovereignty-based explanations

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[37] $Chi^2 = 8.75$; $p = 0.033$

came from states in the upper half of the rejection rate distribution. Given the even usage of

procedural and particularistic claims, this deviation is stark and signifies that those states most

likely to reject recommendations are also those most likely to either reject the project fully—

resist both the universality of the norm and the legitimacy of the method of promotion—or the

states that are likely to claim that they are upholding both their institutional obligations as well as

their normative commitments in the face of recommendations and observations to the contrary.

In the first cycle, rejection explanations also follow the focus of the peer-

recommendations a state received and the most common issue-areas covered in the NGO

testimony they received, shown in Table 2.3. This follows expectations that certain types of

rights are more contentious and the universality and legitimacy of different rights varies. Recall

that primarily, states received peer-recommendations surrounding law and order, minority rights,

and the rights of women.

Table 2.3
Modal Rejection Frame, by Recommendation Issue Area[38]

	E/S/C	Freedoms	Int'l Obl.	Order	Minority	Women	Total
Denial	0	0	5	3	7	0	15
Procedural	0	0	36	9	16	4	65
Particularistic	0	1	13	7	12	0	33
Sovereignty	2	0	11	6	2	0	21
Total	2	1	65	25	37	4	134

Denial and sovereignty frames exhibit the clearest pattern. Denial was the most common

response for states who received recommendations primarily covering law and order or minority

rights (or recommendations concerning international obligations surrounding these rights). While

other states faced peer-recommendations covering minority rights and impunity and utilized

other responses, denial was only used by states whose peer-recommendations focused on these

rights. State utilizing sovereignty-based explanations primarily received recommendations

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[38] Chi^2 = 27.67; p = 0.024

surrounding the law and order concerns of justice, imprisonment, and torture. Here, it follows

that a defense of the restraint of persons by the state would largely be couched in the defense of

the state's sovereign, territorial or security interests. Further, states whose plurality of

recommendations covered the rights of women responded with procedural explanations.

Similarly, the majority of states receiving a preponderance of recommendations concerning their

international obligations responded with procedural explanations. As with the sovereignty case

above, this flows in a more common sense rational manner, rather than touching on expectations

of responses to norm promotion; when faced with recommendations about the implementation of

international treaties, states who do not wish to implement the recommendation explain the

procedure by which it would difficult to acquiesce. Surprisingly, states who most often

responded with particularistic explanations were not differentiated. The vast majority also

received the most common sets of recommendations surrounding law and order or minority

rights.

Considering the focus of NGO stakeholders in their testimony and reporting on states

under review, patterns in state reply are only visible within the procedural and particularistic

responses. For both denial-based and sovereignty-based explanations, states received criticism

from across the range of issue areas. However, the majority of states responding with procedural

rejection explanations did so when they received the large share of NGO stakeholder reports

covering law and order and minority rights. Similarly, the majority of states responding with

particularistic explanations did so when they largely were responding to NGO testimony on the

rights of minorities, immigrants, and other vulnerable populations.

These response frames also follow expectations about regime type and level of human

rights practices. A one-way ANOVA was conducted to compare the level of respect for physical

integrity rights based on the four resistance frames and the predominant frame in the state's responses. With this test, I indentified a marginally statistically significant and substantively interesting relationship between predominant response frame and physical integrity protection in the state, statistically significant at the p<.10 level. Pairwise tests for post hoc comparisons[39] indicated that the mean respect for physical integrity rights for states primarily using particularistic claims was significantly lower than the average respect for physical integrity rights among states whose response frames were sovereignty-based. The average score on the CIRI physical integrity scale (0, no government respect-8, full government respect) of the 34 states with the plurality response of particularistic was 3.69. Conversely, the average for states with sovereignty based claims, the highest category, was 6.10. States classified as particularistic and procedural fell between, but were not statistically different from the other groups.

Similarly, I conducted a one-way ANOVA to compare the regime type based on the four resistance frames and the predominant frame in the state's responses. There was a significant relationship between predominant response frame and Polity IV score in the state, statistically significant at the p<.05 level. Post hoc comparisons[40] indicated that the mean Polity score for states primarily using particularistic claims was significantly lower than the average Polity score for states in the other three resistance frames. The average Polity IV score (-10, completely autocratic, 10 completely democratic) of the 34 states with the plurality response of particularistic was 1.01. The average in the remaining categories was 5.05-5.28; the other three response frames were not significantly different from one another.

Taken together, these results suggest that states making particularistic claims in their rejection rhetoric are systematically different from other states in the first cycle of the UPR.

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[39] Tukey HSD, Tukey-Kramer and Fisher-Hayter pairwise comparisons and Bartlett's tests for equal variances.
[40] The same battery of robustness checks were used.

Specifically, these states tend to be less democratic and possess worse human rights records. However, it should be noted that on other measures, states in the particularistic category tend to be largely similar to states making procedural claims. As the two most common rejection responses, states predominantly using both procedural and particularistic frames did not drastically differ by region, or human rights issue area by either state or stakeholder focus.

Additionally, the rhetorical timbre used in both stakeholder testimony and records of state recommendations in the first cycle of the review is related to the rejection frames predominantly used in the state. Coding stakeholder reports on their polarity, subjectivity and modality identified the mood and tone of the NGO reporting, specifically whether it relied on factual assertions or was laden with subjective judgements on state rights practices. States that received NGO testimony that were more highly polarized and/or more highly subjective[41] were more likely to predominantly use rejection explanations that exhibit resistance to the international institution—either procedural or sovereignty. States utilizing the sovereignty-based claims are also received significantly more highly polarized stakeholder testimony than states that mostly utilized other resistance frames. This corroborates findings in Chapter 1 associating higher stakeholder involvement with not only slightly higher rates of rejection, but also ties more highly polarized and subjective stakeholder testimony to rhetoric that exhibits resistance to the international institution and, in the most extreme cases, to sovereignty-based rhetoric that adds backlash against the rights norm.

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[41] Modality was insignificant throughout.

Conclusion

In this Chapter, I have demonstrated the manner in which states express their resistance to peer-recommendations in the first cycle of the review. In developing a typology, I identify that "denial" of rights universality breaks into two axes of resistance: resistance to the international rights norm itself, and resistance to the international institution or instrument being used to propagate the norm. These axes intersect to create a fourfold typology of explanations for rejecting recommended changes to human rights practices. While inductive, this typology also conforms to theoretical expectations in human rights and international relations scholarship that resistance to normative change largely concerns itself with either the alleged universality of the rights norm or the legitimacy of the community or body attempting to diffuse the norm. It is partially reflected in the most recent conceptualizations of the spiral model, in which resistance is held as denial and includes alterative normative contestation; these largely fit into the factual denial and sovereignty types in my model.

This chapter establishes the main rhetorical devices by which countries expressed their resistance to the norms' universality. First, states make appeals to the norm of state sovereignty, limiting the scope or reach of the international human rights norm. Alternatively, states make particularistic claims, based on cultural, nationalist, or religious appeals. With these claims, states deny its universal applicability entirely. Secondly, states express resistance to the international instrument of the Universal Periodic Review and the peer-state recommendations that it generates. They do this primarily through a set of arguments I label as "procedural", which neglect to challenge the promoted rights norm but instead explain (sometimes at length) the domestic legislative, judicial or otherwise procedural constraints that makes application of the recommended change impossible. Sovereignty based-claims also exhibit this resistance to the

international institution by denying its legitimacy in promoting change in the domestic sphere. A small subset of rejection explanations exhibit no direct resistance to norm universality or institutional legitimacy because they deny outright the contents of the recommendation. While relatively few, these states, like those with a preponderance of sovereignty claims, are distinct from those that do not use these frames.

Following from the rhetorical turn in international relations, this chapter begins to tie rhetorical action to consequence, both in rights practices and expectations for compliance. Compliance monitoring, to be discussed in the following chapter, has perennially been problematic for the UN and conventions derived from UN action and treaty; communicative action is one lens through which these challenges of compliance can be most keenly observed. Tying the results from the recommendation-level analysis in Chapter 1, this chapter observed some congruence between state and NGO pressure on certain rights areas, those directly calling for the upholding of international obligations or dealing with minority rights and the freedom of movement, which resulted in an increased likelihood of rejection, and are tied to specific rejection frames as well. Denial and sovereignty frames are utilized by states that rejected a higher than average of the recommendations they received; these states also tended to receive more recommendations concerning law and order or minority rights.

Further, this analysis speaks to a body of literature on the "backlash" to norm promotion and challenges an overtly progressive reading of the spiral model. In Chapter 1, I identified a slight increase in rejection rate where more NGOs and stakeholders testified and submitted materials to a state's review. Those states with a preponderance of NGO activity and stakeholder testimony on minority rights tended to respond with a higher incidence of particularistic explanations. Additionally, states utilizing particularistic frames tended to have lower respect for

physical integrity rights and were less democratic than states that used other rejection

explanations. States receiving the most polarized and subjective NGO statements were more

likely to demonstrate some resistance to the international institution as well as the propogated

norm, by using sovereignty-based claims.

Yet to be determined from Chapters 1 and 2 is the overall outcome of NGO testimony

and stakeholder engagements and the resulting state responses over the course of time and into

the second round. Thus, to enhance our understanding of norm resonance, diffusion, and

backlash in the next chapter I turn to the selected cases of the UPR's second cycle and analysis

of compliance monitoring in the first inter cycle period of the UPR.

Appendix A

Example of a sovereignty-based rejection explanation made by the Canada.

lands, territories and resources, and free, prior and informed consent. Canada remains strongly committed to the rights of indigenous peoples. The rights of Aboriginal people in Canada are protected by the Canadian Constitution and other domestic laws, and Canada is committed to making progress on issues of particular concern to Aboriginal people in Canada.

Effective implementation of international human rights treaties

12.   Canada accepts recommendation 11 and continues to promote and protect human rights through policies, programs and legislation that reflect Canadian values and evolving international human rights standards.

13.   Canada accepts recommendation 12. Federalism is not a barrier to the effective implementation of international human rights obligations in Canada. To the contrary, each government designs and delivers programs and services to best address regional and local priorities and circumstances. Ongoing intergovernmental discussions contribute to the advancement of human rights protections throughout Canada.

14.   Canada accepts in part recommendations 14, 15, 62 and 64, recognizing that there may be opportunities for improving established processes, including with respect to follow-up to treaty body and UPR recommendations. Canada commits to considering options for enhancing existing mechanisms and procedures related to the implementation of international human rights obligations. Canada welcomes the views of civil society and Aboriginal organizations in identifying practical means to fulfil this commitment.

15.   Canada commits to enhancing information sharing with Canadians about its international human rights treaty-adherence process and the status of the review of treaties under consideration for possible signature/ratification.

16.   The Government of Canada commits to enhancing mechanisms to promote awareness and understanding of international obligations within the federal public service.

17.   Canada does not accept recommendations 10, 13 and 41. Canada agrees that all human rights are universal, indivisible, interdependent and interrelated and strives to give the same importance to all rights. However, Canada does not accept that all aspects of economic, social and cultural rights are amenable to judicial review or that its international human rights treaty obligations require it to protect rights only through legislation. Some ESC rights are addressed by legislation in Canada. Various administrative and judicial bodies provide domestic remedies for violations of certain ESC rights and strong equality rights protection ensure their non-

Appendix B

Example of a particularistic-based rejection explanation, made by France.

A/HRC/8/47/Add.1
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live as part of the community while pursuing training leading to qualifications. For its part, the National Gendarmerie has created juvenile delinquency prevention squads (BPDJ) in all departments of France in order to prevent offences committed by and against minors.

26.   **To remove the prohibition on wearing the hijab in public schools (Canada); review the law which prohibits the wearing of clothing denoting religious affiliation in schools (Bangladesh)**

72.   The Government does not at this stage plan to review Act No. 2004-228 of 15 March 2004 concerning the wearing of symbols or clothing indicating religious affiliation in State primary, middle and secondary schools, in application of the principle of secularism. However, it continues to monitor implementation of the Act closely.

73.   *Comments*: The Constitutional principle of secularism recognizes the right of every person to worship and to join with others to worship. The French Republic guarantees freedom of worship but does not recognize any religion in particular. It guarantees and ensures compliance with freedom to believe or not to believe, which is one aspect of that right, and ensures that the State is neutral.

74.   The Act of 15 March 2004 aims to reaffirm the principle of secularism, which guarantees freedom of religion or belief, by ensuring the freedom of all to express and peacefully live their faith and to practise their religion. It also aims to avoid any discrimination, in particular against girls, in all school activities. The Act was adopted after wide-scale public debate, led by an independent commission. Only conspicuous religious symbols, namely, symbols and clothing the wearing of which amounts to excessive religious proselytizing, are prohibited. Discreet symbols of religious affiliation are, however, permitted. Priority is given to dialogue and a pedagogical approach. In extreme cases, exclusion from school does not deprive those concerned of the right to education, as they still have the option of studying at home or enrolling in private religious or non-religious establishments.

75.   The main provisions of the Act have now met with broad consensus, leading to the conclusion that they have not resulted in an increase in Islamophobia or stigmatization of the headscarf. Since the entry into force of the Act, administrative tribunals have issued 31 rulings, all of which have rejected appeals for the revocation of final decisions to exclude pupils pursuant to the Act. There are no other rulings currently pending before the administrative tribunals. The application of the Act was accompanied by a wide-scale information, discussion and mediation campaign, which explains the small number of court cases.

Appendix C

Example of a procedurally-based rejection explanation, made by the United States.

A/HRC/16/11/Add.1

15. The following do not enjoy our support:

 • 141, 158, and 170.

Immigration

16. The following enjoy our support:

 • 80, 104, 108, 165, 183, 212, and 220.

 • 106, insofar as it involves enforcing our laws, e.g., hate crimes legislation, ar taking appropriate administrative actions.

 • 144, insofar as it allows for the exercise of prosecutorial discretion.

 • 164, 184, and 210, insofar as they recommend compliance with our obligatio: under international human rights law.

 • 185, insofar as "entitled" to counsel means that a migrant in removal proceedings immigration court enjoys the right to counsel at his/her own expense, and "ful understand their rights" means to have been provided information in a language th understand.

 • 213, understanding "consular assistance" to mean access consistent with Article : of the Vienna Convention on Consular Relations and similar provisions in bilater consular agreements.

 • 214, understanding that "basic services" refers to services such as primary educatic and emergency health services that are provided to migrants regardless of status.

 • 223, because this recommendation comports with the United States' general practi of widely disseminating information on its consular notification and access outrea and training efforts, including to foreign missions in the United States.

18. The following do not enjoy our support:

 • 110, as the Federal Executive Branch lacks the authority to repeal or refuse t enforce laws enacted at the State level.

Appendix D

Example of a denial rejection explanation, made by Afghanistan.

A/HRC/12/9/Add.1
Page 2

RESPONSE OF THE ISLAMIC REPUBLIC OF AFGHANISTAN TO THE RECOMMENDATIONS MADE BY PARTICIPATING COUNTRIES AT AFGHANISTAN'S UPR REPORT SESSION

No.	Recommendations	Response
1	Sign (France) and ratify the Optional Protocol to the Convention against Torture (France, Argentina, Czech Republic) and establish its national preventive mechanism accordingly (Czech Republic)	Inter-Ministerial consultation on signing the Optional Protocol to the CAT is planned to start soon.
2	Ratify the Optional Protocol to the International Covenant on Civil and Political Rights; the Optional Protocol to the Convention on the Elimination of Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance and accept the competence of the Committee on Enforced Disappearances (Argentina); sign and ratify all the Optional Protocols to United Nations international covenants and conventions to guarantee the effective implementation of the rights protected in the agreements (Spain)	The Convention on the Rights of Persons with Disabilities has already gone through inter-ministerial procedure and is currently under review in the Parliament. Given the growing reporting and implementing capacity on international human rights treaties in the Afghan Government, inter-ministerial consultations will soon start to study the possibility of accession to other optional protocols and conventions mentioned in this recommendation.
3	Amend the Shia Personal Status Law consistent with its international human rights obligations to ensure equal respect for the human rights of all Afghans, including women (Canada)	The Shia Personal Status Law has been reviewed in the light of the Afghan Constitution and in the view of the international community's concern and has been adjusted in accordance with Afghanistan's obligations towards international human rights conventions. However, if it is found during the implementation that there are some inconsistencies with our national and international commitments, we can use the tool of amendment.
4	Review and amend the various penal laws that prevent journalists from carrying out their essential mission in full security and independence (Belgium)	There is no provision in the penal laws to prevent journalists from doing their mission in full security and independence except in cases where their performances cause public agitation and disorder in the country.

Chapter 3 – Implementation Monitoring at the UPR

Throughout human rights scholarship, a central and recurring challenge is understanding the variation in levels of state compliance with international rights regimes. The problem of disentangling where and why states comply with international organizations with little power to compel such compliance is present in both the central paradigmatic debates of international relations theory and more parochial scholarly concerns about power, ideas and their diffusion, and state preferences (Cole, 2012; Simmons, 2009). These questions are also important to human rights practitioners who have limited time, money and other resources to be expended on attempts to improve rights situations around the world. Critically important to questions of compliance is the problem of measurement and thus of human rights monitoring. Scholarship has focused on ways to measure the human rights practices in a state—I utilize the CIRI physical integrity index in this study, for instance—and while these measurements tend to do an adequate job capturing the comparative level of practices across states, they do a poor job of measuring human rights *change* (Clark & Sikkink, 2013). So, despite the growing literature using large-N data on human rights practices, and new "big data" projects which provide the promise of gleaning hundreds of thousands of observations of NGO "naming and shaming" statements, scholars and practitioners still struggle to identify the incremental changes in rights practices across the world.

The United Nations' Human Rights Council Universal Periodic Review mechanism provides a unique opportunity for scholars of monitoring, compliance and implementation. The periodic and cyclical nature of the review lends itself to studies of the process' multiple iterations. Its first cycle ran from 2008-2012 and encompassed 192 member states. The second cycle will go through 2016. Each state is reviewed once in this four-and-a-half year period and

has agreed to implement the recommendations from peer-states that it accepted during one cycle before the next cycle comes. This structure is promising for continued scholarship on UN human rights promotion, but the lack of a complete second cycle and the newness of the mechanism do present challenges for current analysis. Even with some deficiencies in data completeness or optimal behavior by the actors in the UPR, the structure of the UPR can serve to focus the scope of monitoring efforts as states move (or do not move) from commitment to recommended rights changes to compliance and the implementation of these recommendations. In this chapter, I make use of this direct relationship between stakeholder testimony, peer recommendations and the state responses to them in order to highlight both stakeholder and voluntary state monitoring and reporting in the interim period prior to the second cycle's review.

In the preceding chapters, I outline the type and quality of the interactions among states, as well as between states and NGOs, at the Universal Periodic Review. I show that all else equal, increased international societal pressure is associated with higher rates of states rejecting the peer recommendations they receive in the process. Similarly, states reject peer recommendations more frequently when they are more demanding, when their rights record is worse, and for certain issue areas of rights. In the second chapter, I posited that part of this relationship between civil society engagement and higher rejection rates, as well as the relationships between the rejections, issue areas, rights practices, and regime type can be best understood by unpacking the rhetoric used by states when they voluntarily explain their stances on the recommendations they received. Specifically, sovereignty-based rejections, where states demonstrate a resistance to both the specific rights norm and the international instrument, are associated with the issue areas of international obligations, law and order, and minority rights. States that reject a high number of recommendations also tend to use sovereignty-based explanations. Additionally, where there

was increased international pressure, as well as in states with lower levels of democracy and human rights practices, particularistic explanations were more common. What is as of yet unanswered is how the activity already discussed, NGO testimony, state rejection and the explanation of norm resistance is reflected in state's follow-up to these recommendations between their cycles of review.

In this chapter, I address follow-up and implementation, arguing that there is remarkably little comprehensive monitoring and reporting between UPR cycles. Most importantly, domestic society organizations are most likely to engage in direct monitoring and reporting on state implementation of UPR recommendations, while transnational NGOs largely did not engage in systematic follow-up on state commitments. Monitoring was also more frequent in states that received a greater number of recommendations. Surprisingly, I note that the level of NGO involvement during the review process was *inversely* related to the amount of monitoring and follow-up reporting completed by stakeholders. Further, while the monitoring of implementation was spotty and incomplete, in this chapter I also examine what data is available on state compliance with their first cycle commitments. Where NGOs report on implementation, less democratic states are observed to have lower rates of implementation, as are states using the sovereignty rejection frame in their explanations of resistance. Despite the intention of the UPR to be a medium for incremental change over successive cycles, both the interim time and the second cycle drew only weakly upon the commitments states made during their first review.

Compliance with the non-coercive international human rights regime is an ongoing puzzle and target of inquiry (Checkel, 1997; Cole, 2012; Risse, Ropp, & Sikkink, 2013; Simmons, 2009). The UPR is not unique in its "toothlessness" and lack of enforcement mechanisms or even procedures for monitoring and compliance assurance. The voluntary

compliance of states with international rights norms is often explained as successful norm

diffusion following a period of contestation ending in socialization to the norm compliant

community (Lewis, 2012; Warkotsch, 2007). At times, "incentives" provided by other states are

enough to promote compliance, particularly following naming and shaming campaigns (Hafner-

Burton, 2008; Lebovic & Voeten, 2009). In other instances, change is rooted in domestic

structures rather than transnational action with the rule of law, effectiveness of the judiciary, and

strength of domestic civil society playing a more prominent role in enforcing change in rights

practices (Hafner-Burton & Tsutsui, 2007; Hathaway, 2007; Simmons, 2009). Varying rates of

compliance and norm implementation are also tied to the international procedure and mechanism

used to promote that implementation, such as the use of independent experts via the UN's special

procedures (Piccone, 2011). The role of domestic civil society operating at the trans- and

international-level is particularly promising as an instrument of increased compliance (Friedman,

Hochstetler, & Clark, 2005). As time has passed, civil society organizations have become more

engaged with international processes and the UN has actively sought out their collaboration.

These ties between domestic actors, transnational organizations, and intergovernmental

instruments provide additional leverage, monitoring, and oversight in promoting implementation

and adoption of international norms (Ibid).

Monitoring and comprehensive reporting is the core of promoting compliance to

international legal and normative obligations. Both despite and due to monitoring's centrality to

the project of compliance, states are resistant to establishing extensive monitoring instruments

and non-state actors' resource and access limitations provide barriers for effective and accurate

observations. As technology continues to develop, organizations are even trying new monitoring

techniques such as unmanned aircraft and satellite surveillance (Marx & Goward, 2013). Other

recent patterns, such as the preponderance of alternative media, social media outlets, and cycles of "outrage," suggest that bottlenecks in global attention are emerging, decreasing the effectiveness of naming and shaming but increasing the role of coordination and monitoring for NGOs (Thrall, Stecula, & Sweet, 2014). The role of NGOs in providing auxiliary monitoring to international institution has been highlighted as central to the perseverance of the human rights regime (Alston & Gillespie, 2012; Hafner-Burton & Tsutsui, 2007; Invernizzi & Williams, 2013; Keck, 1998; Pallas & Urpelainen, 2011; Smith, Pagnucco, & Lopez, 1998; Stamatopoulou, 2012; Sundstrom, 2012). Civil society participation is particularly relied upon because the enforcement structures of international institutions and treaties have long been seen to be "woefully inadequate" (Hathaway, 2007) which has allowed states with poor human rights support to commit to treaties and other instruments to which they do not intend to comply. While Simmons (2009) contends that there is little non-genuine accession to treaties, there is much less at stake, considering both legal and reputational ramifications, in accepting a UPR recommendation as compared to signing a human rights treaty. The utility of human rights treaties has also been linked to the establishment of additional monitoring procedures (Cole, 2012). In so far as the UPR can be effective at promoting incremental change and the adoption of best practices, its ability to monitor state compliance and accurately determine if states follow through on commitments will be foundational to this potential efficacy.

In this chapter, I conduct analyses of NGO monitoring and perceived recommendation implementation using both large-N and small-N techniques. As will be explained below, these methodologies complement each other to offer a more robust understanding of the relationship between stakeholder submissions, monitoring and reporting as well as the resonance of both international human rights norms and the international process of the UPR and state's ultimate

compliance with the mechanism. In what follows, I begin with a descriptive analysis of both

state and NGO behavior between the first cycles of the UPR in regard to monitoring and follow-

up. Second, I draw from the current literature on compliance to international bodies, NGO

human rights monitoring, and NGO-IGO cooperation to generate a set of hypotheses for testing.

Through a statistical analysis, I show that domestically-based stakeholders were more likely to

participate in the monitoring and follow-up between the cycles of the UPR. Additionally,

implementation rates are related to the regime type of the state under review, whereby more

democratic states have higher implementation rates; they are also related to the choice of

rejection explanations with sovereignty-based argumentation being tied to significantly lower

levels of implementation. In case comparisons of Italy and Poland, Panama and Eritrea, Egypt

and Ethiopia, I demonstrate that these patterns hold in specific paired cases. Further, I note the

spotty nature of monitoring and reporting on implementation, despite the express purpose of the

iterated review cycles being to monitor and assess follow-through of the previous cycles'

reviews.

State Reporting and NGO Monitoring at the UPR

The UN HRC resolution establishing the UPR process[1] was very specific about the

content of the documents submitted in a state's review, even delineating the target length of the

multiple submissions. It explicitly mentioned the need to involve stakeholders and NGOs in the

process. Further, the process explained clearly the interactive session in which state would

receive recommendations from members of the HRC and other states. Lacking from the framing

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[1] United Nations Human Rights Council, *Institution-Building of the United Nations Human Rights Council,* A/HRC/Res/5/1 (18 June 2007), available from undocs.org/A/HRC/Res/5/1

document, however, was any mention of inter-cyclical monitoring, compliance, or

implementation standards. The section on follow-up is brief and reads as follows:

> 33.   The outcome of the universal periodic review, as a cooperative mechanism, should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders.
> 34.   The subsequent review should focus, inter alia, on the implementation of the preceding outcome.
> 35.   The Council should have a standing item on its agenda devoted to the universal periodic review.
> 36.   The international community will assist in implementing the recommendations and conclusions regarding capacity-building and technical assistance, in consultation with, and with the consent of, the country concerned.
> 37.   In considering the outcome of the universal periodic review, the Council will decide if and when any specific follow-up is necessary.
> 38.   After exhausting all efforts to encourage a State to cooperate with the universal periodic review mechanism, the Council will address, as appropriate, cases of persistent non-cooperation with the mechanism.

The documentation notes that implementation is primarily the responsibility of the state, the

international community should "assist," and further cycles' reviews should draw upon prior

recommendations. As a result, most states in their second cycle national reports framed the report

in such a way as to explain and display the state of progress on a selection of the

recommendations they accepted in the first cycle. However, only rarely do recommendations in

the second cycle refer directly to the first cycle. Peer-state submissions of "advance questions"

other states wished the state under review to respond to and cover in their national report also did

not draw on the outcomes of the preceding cycle's review. While stakeholder reports and

testimony in the second cycle frequently began with an overview of progress since the first

review, the official OHCHR compilation of stakeholder reports looked nearly identical to those

in the first cycle; the formal aggregated stakeholder support filed as part of the review only

included those portions reporting on the current status of human rights practices and highlighting

the worst behaviors in a state (naming and shaming).

     This disconnect of the majority of activity in the second cycle from that which transpired

in the first round of UPR reviews creates a heavy reliance on state self-reporting in the national

report submission to judge the compliance with the mechanism. Since, at least in the first half of

the second cycle, state recommendations and the officially adopted stakeholder contributions to

the state under review did not routinely draw upon what occurred in the first cycle, the adopted

outcomes of the two cycles are very distinct. Such a disjuncture in the iterative nature of the

process compounds the difficulty in monitoring and compliance set up by the lack of clear

follow-up requirements in the HRC resolution. In practice then, inter-cyclical follow-up has been

an entirely voluntary and haphazard proposition and follow-through reporting considered during

the subsequent cycle's proceedings is entirely self-reported by the state under review.

Despite the lack of formalization of the follow-up and implementation review, NGOs did

a significant amount of monitoring and reporting both in the time leading up to the state's second

review as well as in their submissions in the second review. This continued interaction is

particularly notable as the inter-session reports civil society organizations generated were shared

among NGO networks, but were not submitted to the HRC and were thus largely independent of

the formalized UPR process. Maintained coordination throughout a policy cycle between the

IGO and NGOs tends to enhance the accountability and legitimacy of the human rights policy

being made (Scholte, 2002, 2004; Steffek, 2013). The lack of a formalized relationship between

the HRC and the stakeholders in this inter-cycle period was a notable drop in the potential

coordination that could have been maintained throughout. With higher levels of coordination,

clearer principal-agent relationships would have been developed, and independent monitoring

and measurement procedures could have been established to more effectively judge compliance

during the second cycle's set of reviews.

In approximately half of the cases where a follow-up report was filed, these stakeholder

interim reports became integrated into the NGO's submissions for the second cycle review and

were thus often published near to the second review's date. The NGOs that chose to participate in this voluntary monitoring and follow-up reporting also appear to differ in interesting ways from the full set of NGOs that participated in the first cycle of reviews. While the full set of NGOs participating in the first cycle were just over one-third domestically-based, approximately one-half of those submitting interim implementation reports were domestic organizations. These domestic organizations are also more likely to "bring politics back in" and avoid the Eurocentrism often associated with northern-based transnational civil society (Munck, 2006). IN other words, the monitoring of domestic organizations focused on the commitments states made during the first cycle and attempted to tie their behavior to the accepted recommendations. Such monitoring reports did not make use of external comparisons or ideal points, but rather centered on the observable actions taken by the government that related directly to recommendations accepted in the first cycle of review. Transnational organizations were more likely to judge compliance based upon an ideal point and where the state fell in relation to that point, rather than on progress made from the time of the first cycle and the accepted recommendation. I observe a similar dynamic in Chapter 2, where states with higher levels of domestic participation were less likely to exhibit particularistic rejection explanations. Taking state practices in more refined context as domestic organizations operating in the UPR appear to be doing, removes the possibility for states to resist change based on argumentation that the norms do not apply in their particular context.

Subsequently, this primacy of domestic actors in monitoring meant that of the over 300 groups that submitted interim implementation reports, only fifteen of them (or about 5%) did so to five or more countries, shown in Table 3.1 below.

Table 3.1. CSO Stakeholders with Five or More
solo Implementation Reports

	No. Submissions
GIEACPC	90
RSF	35
Tandem Project	19
EarthJustice	11
UNPO	10
WCADP	10
CSW	9
Forum 18	9
ILGA	7
Alkarama	5
ANND	5
CHRI	5
Jubilee Campaign	5
SRI	5
World Vision	5

Unlike the rise in domestic organization participation share, this share of broad participation is similar to the share of highly active groups in the first cycle of review (about 7% of groups submitted independently to five or more state's reviews). As in the submissions of the first cycle, the Global Initiative to End All Corporal Punishment of Children (GIEACPC) was the most active organization, participating in filing a follow-up report with 90 of the 138 countries it had testified about in the first cycle. While Amnesty International and Human Rights Watch were by far the next most prevalent organizations during the first cycle, neither submitted a single implementation report prior to the second cycle. Reporters without Borders (RSF) was the second most active organization at this stage submitting implementation coverage for 35 of the 36 states for which it had observed in the formal review.

A much higher share of implementation reports also came from NGO networks, coalitions, or other joint-submissions than did the individual reports. While only about 15% of stakeholder testimony during the first cycle came from coalitions and partnerships between

organizations, over 25% that submitted voluntary implementation updates came from these networks of more than one NGO. This suggests that the pooled resources and coordination was beneficial to these groups, particularly smaller organizations that are located within the state. Further, the participation of these coalitions and joint submissions also increased during the second cycle of the UPR in a sharp rise from what was seen in the first round of reviews.

Regionally, there is also divergence between NGO participation in implementation and follow up and participation levels in the submission of first cycle reports. While Latin America had a high level of NGO activity during the first cycle, particularly given the breadth of civic organizations that participated in the reviews of Cuba and Venezuela, it had the lowest rate of follow-up participation of any region. Further, though Africa as a region had a lower level of participation in the initial review, it had the highest rate of follow-up reporting among NGOs.

National Human Rights Institutions, while very active in the review process, were not as transparently active and engaged in the time between reviews. Sixty-six countries had an NHRI that submitted testimony as stakeholders in the first cycle of review. Of those NHRIs, only fourteen published any time of follow-up or implementation report prior to submitting to the second cycle of reviews. Given the impetus placed on states themselves to provide most of the follow-through observation, the lack of transparency and engagement here by NHRIs is notable. The burden of monitoring and observation prior to the second cycle was primarily borne by domestic NGOs who do not have standing relationships with the UN (they are largely not registered with ECOSOC) and who are only observing their home state.

While NGO stakeholders, and at times UN agencies, submitted assessments of state progress on their accepted recommendations, there is no common standard established by the UPR, the OHCHR, the HRC, or any NGO conceptualizing and operationalizing what is meant by

"implementation." Within these voluntarily submitted follow-up and implementation documents,

NGOs reported varyingly on official state actions, legislation, military and bureaucratic behavior,

and other state-sanctioned activity related to recommendations the state received in the first cycle

of the UPR. These organizations then judged whether and to what extent the government actions

complied with the commitments made by accepting certain recommendations. Also worth noting

is that in rare instances, states voluntarily submitted their own assessment of their

implementation of these recommendations, as well, though I do not rely upon these self-

assessments in the statistical portion of this chapter's analysis. As a result, aside from state self-

reporting in which compliance with commitments was allegedly robust, the measure of follow-

up available is this civil society-perceived implementation. I thus utilize the perceived

implementation from these voluntary stakeholder NGO interim reports as a proxy for rate of

implementation of the first cycle's recommendations prior to the completion of the second cycle.

Across the 161 states in which NGO monitoring occurred, the average NGO-perceived

implementation rate was approximately 40%.[2] In the following section, I outline the expectations

for variation in this implementation rate across states that will be tested this chapter.

Hypotheses

  With the patterns of monitoring and follow-up assessments submitted primarily by civil

society organizations, I move now to setting up the hypothesized relationships and observable

implications of the theoretical expectations for monitoring and compliance at the UPR. As in

Chapter 1, the primary relationship under study is the amount of NGO activity and the resultant

behavior of states in the UPR process. With this in mind, I expect to observe higher rates of

implementation and compliance where civil society organizations were more active in

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[2] Standard deviation 25%.

monitoring, both as measured by the submission of follow-up reports as well as by the level of

engagement during the formal review. This is stated in Hypothesis 1.

> Hypothesis 1: States under Review are more likely, all else equal, to have a higher
> perceived implementation rate where NGO engagement is higher.

As a corollary to Hypothesis 1, I expect that higher levels of engagement in the formal review

will be associated with higher rates of monitoring during the interim period.

Disaggregating NGO activity, I expect the participation of domestic civil society

organizations to have a larger impact than transnational organizations in promoting a state's

implementation of reforms (Friedman et al., 2005; Simmons, 2009). Further, organizations with

connections and familiarity with the UN system may have advantages that those outside of the

access structure do not have in monitoring and promoting implementation (O'Brien, 2000;

Vabulas, 2011). In other words, transnational organizations that are not formally accredited with

the United Nations are expected to be less important in influencing implementation. This

expectation is formalized in Hypothesis 2.

> Hypothesis 2: States under Review are more likely, all else equal, to have higher rates of
> perceived implementation with higher levels of domestic and ECOSOC-accredited NGO
> participation.

Active norm diffusion and compliance with international commitments are both mitigated by

domestic factors beyond civil society. The openness of the government to change as well as the

capacity of national institutions, including the judiciary and legislative systems, directly

constrains both state commitment to and compliance with international obligations (Simmons,

2009). In previous studies, autocracies were found to be more sensitive to naming and shaming

than democracies or hybrid regimes, and conversely, democracies have been identified as more

likely to implement human rights treaties or other internationally promoted compliance

mechanisms (Cole, 2012; Hendrix & Wong, 2013). As this analysis will focus on the perceived

and self-reported implementation of recommendations from an international process, rather than the measurement of human rights outcomes, I would expect implementation to be higher in democracies, which is Hypothesis 3.

> Hypothesis 3: States under Review that are democracies are more likely, all else equal, to have a higher perceived implementation rate than more autocratic states.

As in the hypotheses posed in Chapter 1, I seek to test more directly rational explanations for implementation or the lack thereof. Drawing from more utilitarian understandings of international relations, one would expect the relative cost of the recommendations given to a state to have an impact on the state's ability to comply with the requests. This cost is both seen in the amount of change or improvement in rights practices a state could potentially make, and in the burdensomeness of the action requested in their recommendations. Higher costs are expected to result in lower rates of implementation, or as more directly stated:

> Hypothesis 4: States under Review with better human rights practices will have higher rates of implementation; similarly, states receiving recommendations requiring less change will have higher rates of implementation.

Drawing from the second chapter and the rejection rhetoric observed in the state's final reports in the process, one would expect that the manner in which state express their resistance or the amount to which they are not acculturated to the international rights norms (Goodman & Jinks, 2004, 2013) would also be related to their rate of implementation. Those states that demonstrate the least amount of acculturation, or in other words, those that express resistance to both the international norms being promoted as well as to the international institution and system through which the recommendation is made would be less likely to implement the recommendations it is resisting so completely. Thus, I expect states with a plurality of sovereignty-based rejection explanations to have low levels of implementation. Further, states that are not willing to

acknowledge the merit of recommendations made to them and often outright deny the underlying

situation would also be unlikely to implement a large share of even their accepted

recommendations. This is presented formally in Hypothesis 5.

>Hypothesis 5: States under Review that used the sovereignty or denial rejection frames
>are more likely, all else equal, to have a lower perceived implementation rate than states
>that used the procedural or particularistic expressions.

The UPR provides fertile ground for the testing of these five hypotheses and gaining some better

understanding of the adoption and implementation stages of the norm life cycle. The effects of

internal and external dynamism in norm diffusion are observed through domestic and

transnational testimony, monitoring, and expressions of norm resistance (Krook & True, 2012).

The universal nature of the UPR exposes states to externalized pressure from both peer states and

civil society, something that state actors typically try to avoid and insulate themselves against

(Landolt, 2013; Sen, 2011). Examining monitoring and implementation at the UPR will also

serve to advance scholarship on effectiveness of the new HRC and the UPR itself as the HRC

moves toward its first ten years and the UPR finalizes its second cycle of review (Domínguez-

Redondo, 2012).

Research Design and Measurement

The analysis I present in this chapter focuses upon the questions: which NGOs are most

likely to monitor and report on state progress vis-à-vis UPR recommendations and does the level

of NGO participation at the UPR affect the perceived implementation rate of states? I address

these questions and the aforementioned hypotheses via large-N regression analysis and a small

set of paired case comparisons. The regression analyses take place at two different levels:

stakeholder-state level and country-level. Pairing these regression-based analyses with case

comparisons aids in clarifying the observed relationships. This is particularly helpful in dealing with measurement of the perceived implementation rate of peer recommended changes to human rights behavior.

The data used in this chapter are based on the data used in the various sets of regressions in Chapter 1. I draw primarily from documents collected and published by the UN HRC website, with full documentation of the formal state-submitted and UN-created reports, as well as stakeholder NGO submissions. Here, I utilize the number of NGO participants during the review, the issue-area break-down of the peer-recommendations received,[3] the central foci of both states and NGOs during the process,[4] and the aggregate action level or difficulty to implement the recommendations a state receives.[5] From the stakeholder dataset, I include counts of domestically-based NGOs as well as those with consultative status given by ECOSOC. Finally, I carry over the standard control variables in quantitative human rights literature and scholarship on the UN HRC: regional classifications, PolityIV, GDP per capita, and the CIRI physical integrity index.

Also, to test hypotheses generated through the analysis presented in Chapter 2, I include the coding of the four groupings of rejection explanations. These are based on the plurality explanations states provided for rejected recommendations during the first cycle of review. When the written explanations states give are categorized broadly into expressions of resistance toward the specific human rights norm covered in the peer recommendation or resistance to the international institution and outside influence on domestic affairs, a four-category typology emerges: particularistic objections that resist the norm, but make no specific reference to the

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[3] Drawn from the 20,000 state-peer recommendation database.

[4] Through computer-assisted text analysis, identifying the most commonly used terms, clustering and coding them to the collapsed set of issue areas.

[5] A 5-point scale representing the difficulty of implementing the recommendation, with the highest value representing the most detailed and demanding recommendations, drawn from the UPR-Info dataset.

international system; procedural explanations that deal with the incompatibility between domestic institutions and international demands; sovereignty-based explanations that contain both forms of resistance; and outright denial that demonstrates neither.

To these data analyzed in the previous chapters, I add submissions from NGO stakeholders, and where present UN agencies, regarding the implementation of first cycle recommendations. These are collected and made available via UPR Info, an NGO with Special Consultative Status with ECOSOC and a central player in the study of the UPR with ties to the academic community. Within these voluntarily submitted follow-up and implementation documents, NGOs reported on official state actions, legislation, and other activity related to recommendations the state received in the first cycle of the UPR. From this collection of reports, I aggregate the follow-up reporting on implementation for each state. Using the number of recommendations a state received that were not implemented, partially implemented, or fully implemented I calculate a perceived implementation rate for each state.

The resulting data are admittedly limited. These voluntary reports were not ubiquitous; only 117 of the 192 states that underwent the first cycle of review had any observations on their implementation of the recommendations. Further, for the 117 states where observations were available, many did not have follow-up observations on the full set of peer-recommendations they received.[6] Certain issue-specific NGOs, for instance, only reported on and monitored recommendations directly related to their area of expertise. The Global Initiative to End All Corporal Punishment of Children, an international NGO among the most frequent participants in submitting stakeholder reports both during the review and follow-up reports after the review to a

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[6] As a robustness check, the regressions for implementation rate were also run with a more limited set of cases, where at least half of a state's received recommendations were rated for implementation. With this more stringent standard, only 69 states were utilized in the analysis. There was no significant change to the R-squared nor did the statistical significance or direction of the relationships between the variables differ between this set and those with more limited observations on implementation.

broad swath of countries, only made observations on recommendations directly related to rights

of the child. And, in certain instances, GIEACPC was the only NGO to report on the

implementation status of a country's recommendations. Due to this limitation, the conclusions I

draw from the large-N analysis of implementation data are tentative and suggestive at best, and

are explored further in the case comparisons.

To further explore both the patterns identified in the statistical analysis as well as the core

hypotheses of this project concerning the efficacy of civil society involvement at the UPR, I set

up a set of structured comparisons. In each case, I observe civil society participation in the state's

review and follow-up, the regime type of the state, and the rejection frame utilized in their

explanations. To control for these various factors, I use three sets of paired cases, one pair for

each variable of interest. The cases in each paring are selected so they are similar on the other

two variables of interest and only differ on the one variable. First, I discuss the differential

monitoring each state received from civil society actors. I then examine the detailed perceived

implementation data from the NGO interim follow-up assessments and the state self-reported

implementation documentation of the second cycle.

Regression Analysis

As described above, I begin my analysis and hypothesis testing concerning the

relationship between NGO behavior and the follow through of UPR recommendations with three

sets of regressions, beginning with monitoring. First, I use a logistic regression at the

stakeholder-state level of analysis[7] to determine the likelihood of a particular NGO submitting a

follow-up report on a given state's compliance and implementation of peer recommendations.

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[7] A stakeholder's individual or joint report for a given state is the unit of analysis; this means some stakeholders
appear multiple times, and other measurements are aggregated by the state to which they have reported.

The second set of models utilized OLS and zero-inflated Poisson estimators[8] and further explores the relationships behind the number of NGOs that participated in implementation reporting for a given state, at the state level of analysis. Finally, the third group uses the data on perceived compliance and implementation drawn from stakeholder and UN reporting to analyze patterns in the compliance rate between states. As discussed above, the data on implementation is spotty and the number of cases with a good amount of implementation observations is lower, so this portion of the analysis also continues in the following section using comparative cases.

NGO Participation in Monitoring

To begin, I examine patterns in civil society participation in follow-up monitoring from the first to second cycle of the UPR. As established above, the informal nature of third-party monitoring in the UPR fell almost solely to civil society stakeholders and thus it is important to determine which types of organizations, operating in which types of states, are likely to participate in this oversight. To do so, I regress a dummy variable for whether or not a given stakeholder submitted an implementation and follow-up report for a given state on stakeholder characteristics (domestic/international, ECOSOC consultative status), state characteristics (GDP per capita, physical integrity index, Polity score, number of stakeholder reports and recommendations received), as well as rights issue area and regional dummies. The results of these logistic models are shown, below, in Table 3.2.

In this stakeholder-level model, the full set of over 3,000 unique stakeholders that participated in the UPR are included. The fit is best with the full set of controls, in regression 4, and most key relationships are stable across the different models. Critically, in all models,

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[8] The Zero-Inflated Poisson regression both accounts for the count nature of the dependent variable (number of rejected recommendations), but also for the large number of zeros that amount to 19% of the cases (Cameron & Trivedi, 2013; Long, 1997).

domestic NGOs are significantly more likely to submit monitoring reports to the states in which

they are based. Domestic NGOs were nearly 70% more likely to monitor compliance with

recommendation commitments than transnational organizations were. There was no difference

between stakeholders with ECOSOC consultative status and those who were not accredited at the

UN, however, providing no support for the hypothesis that UN affiliation would promote

ongoing engagement with the UPR process. There was also no regional, regime, or rights

practice variation in NGO monitoring practices. Stakeholders submitting to states with reviews

in the latter cycles were more likely to file a follow-up report than stakeholders dealing with

states from earlier cycles. Interestingly, in each model it was considered, the higher aggregate

number of NGOs that participated in the review process was associated with a reduced likelihood

of a stakeholder submitting a follow-up report; perhaps organizations that had submitted amongst

a mass of other civil society actors sought to "free ride" on the high level of activity and not

actively monitor the process. Regionally, there were no significant differences in stakeholder

monitoring. And, finally, NGOs were more likely to file a follow-up assessment for states that

received a greater number of peer-recommendations. Their likelihood to monitor states that

rejected a higher share of the recommendations received decreased, comparatively however.

Table 3.2. Logistic Regression on Likelihood of Stakeholder
Implement Reporting at Stakeholder Level, Odds-Ratios

	(1)	(2)	(3)	(4)
Domestic	1.689***	1.627***	1.626***	1.696***
	(0.169)	(0.170)	(0.171)	(0.181)
ECOSOC	1.219	0.923	0.911	0.913
	(0.134)	(0.103)	(0.102)	(0.103)
NHRI A Status	0.651	0.562	0.565	0.558
	(0.250)	(0.219)	(0.220)	(0.218)
Session	1.128***	1.116***	1.117***	1.114***
	(0.015)	(0.023)	(0.023)	(0.028)
GDP	1.000***	1.000	1.000	1.000
	(0.000)	(0.000)	(0.000)	(0.000)
PolityIV	1.060***	1.000	1.004	0.988
	(0.009)	(0.010)	(0.012)	(0.014)
CIRI PhysInt	1.037	1.031	1.051	1.070
	(0.029)	(0.032)	(0.035)	(0.039)
NGO Reports		0.992***	0.992***	0.993***
		(0.001)	(0.001)	(0.001)
# Recomm.		1.008***	1.008***	1.022**
		(0.002)	(0.002)	(0.007)
# Rejection		0.989**	0.989***	0.990**
		(0.003)	(0.003)	(0.004)
Action Level		1.084	1.052	1.108
		(0.250)	(0.243)	(0.303)
CP Rights				0.986
				(0.011)
Justice				0.989
				(0.006)
Freedoms				0.981
				(0.010)
Movmt				0.993
				(0.007)
Int Obl				0.990
				(0.006)
E/S/C Rights				0.978**
				(0.008)
Child				1.001
				(0.008)
Women				0.995
				(0.009)
Other				1.001
				(0.010)
Africa			0.965	0.801
			(0.271)	(0.297)

Table 3.2 Continued	(1)	(2)	(3)	(4)
Asia			1.037	0.927
			(0.259)	(0.285)
East Europe			0.761	0.603
			(0.205)	(0.176)
Lat America			0.819	0.701
			(0.229)	(0.240)
N	3138	3138	3138	3138
Pseudo-R^2	0.056	0.136	0.137	0.142

Exponentiated coefficients; Standard errors in parentheses.
West Europe/Others is the omitted dummy category for region.
$^*p < 0.05$, $^{**}p < 0.01$, $^{***}p < 0.001$

Aggregating from the stakeholder-level to the state level, I present a similar analysis in Table 3.3 below. Moving from a binary dependent variable to a count dependent variable, I present results for the OLS and zero-inflated Poisson regression models on the number of stakeholder implementation reports for a given country. Relationships between the variables of interest are more or less robust across the models and the zero-inflated Poisson-specification of the full model in Model 8 will be discussed. When aggregated, states with higher numbers of domestic NGOs participating in their review also received a higher level of implementation monitoring and follow up, which follows from the stakeholder level analysis. Again higher NGO activity is related to a lower number of follow-up reports, though this is substantively an effect quite close to zero. The number of recommendations is also still significantly related to an increase in monitoring by NGOs at this level of analysis. Domestic civil society participation in a state's review is here, too, associated with a higher level of monitoring. Lower scores on the CIRI physical integrity index are strongly associated with an increase in NGO monitoring. States with poor records of human rights receive the most oversight on follow-up, after controlling for region, regime, rights issue areas, and NGO participation in the review itself.

Table 3.3. Regressions on Number of Implementation Reports at State Level

	(5) OLS	(6) ZIP	(7) ZIP	(8) ZIP
NGO Reports	0.006	0.001	0.001	-0.004[**]
	(0.004)	(0.001)	(0.001)	(0.001)
# Recomm	0.043[***]	0.008[***]	-0.005	0.002
	(0.004)	(0.001)	(0.005)	(0.002)
CIRI PhysInt	-0.239[*]	-0.073[***]	-0.087[***]	-0.101[***]
	(0.098)	(0.021)	(0.026)	(0.028)
Action Level	1.195	0.398[*]	0.465[*]	0.218
	(0.702)	(0.182)	(0.211)	(0.215)
Domestic				0.025[***]
				(0.006)
ECOSOC				0.001
				(0.012)
GDP				-0.000
				(0.000)
Polity				0.012
				(0.010)
CP Rights			-0.002	
			(0.008)	
Justice			0.013[*]	
			(0.005)	
Freedoms			0.005	
			(0.007)	
Movmt			0.015[**]	
			(0.005)	
Int Obl			-0.003	
			(0.005)	
E/S/C Rights			0.010	
			(0.006)	
Child			0.007	
			(0.006)	
Women			0.003	
			(0.006)	
Other			0.015	
			(0.008)	
Africa	-2.160[**]	-0.506[***]	-0.334	-0.364
	(0.649)	(0.134)	(0.219)	(0.232)
Asia	-1.920[**]	-0.406[**]	-0.158	-0.021
	(0.630)	(0.128)	(0.183)	(0.221)
East Europe	-1.610[*]	-0.265	-0.247	-0.104
	(0.712)	(0.147)	(0.164)	(0.223)
Lat America	-2.272[***]	-0.553[***]	-0.461[*]	-0.274
	(0.663)	(0.150)	(0.206)	(0.226)

Table 3.3 Continued

	(5)	(6)	(7)	(9)
Constant	-3.023	-0.456	-0.582	0.855
	(2.847)	(0.728)	(0.858)	(0.881)
Zero-inflated Poisson				
# Recomm.		-0.144^{*}	-0.146^{**}	-0.057^{***}
		(0.071)	(0.052)	(0.010)
Constant		7.255^{*}	7.396^{**}	3.586^{***}
		(3.394)	(2.562)	(0.786)
		(3.394)	(2.562)	(0.786)
N	190	190	190	157
R^2	0.499	0.251†	0.271†	0.287†

Standard errors in parentheses
West Europe/Others is the omitted dummy category for region.
$^{*}\,p < 0.05,\ ^{**}\,p < 0.01,\ ^{***}\,p < 0.001$
$\dagger\ R^2$ MF, McFadden's R^2

Examining the five hypotheses presented earlier in the chapter, these models on monitoring and reporting present a rather mixed set of results. Beginning with Hypothesis 1, that higher levels of NGO participation in the formal review would result in higher levels of NGO engagement throughout, this is clearly not the case. As discussed earlier in the chapter, the majority of follow-up assessments were submitted by domestically-based NGOs, and while many participated by submitting testimony during the review, a larger number of transnational and international groups participated during that stage. Removing these transnational actors may account for some of the variation seen here. A collective action and coordination problem might also be what this suggests. As the number of NGOs participating in the process increase, the degree to which each individual NGO views it necessary to do this voluntary monitoring of state behavior prior to the next review could very well decrease as the assumption could be that others will bear the burden. Additional coordination between stakeholders, including national human rights institutions (who participated in monitoring implementation at surprisingly low rates) may ameliorate this relationship during future cycles. Considering Hypothesis 2, this found partial

support in the data. Domestically-based NGOs were more likely to submit implementation

assessments, as expected, but groups with ECOSOC status were indistinguishable from those

without. Ties to the greater UN system do not appear to be meaningful in promoting monitoring.

Turning to the state-centric hypotheses, the data present mixed support. Regime type,

measured by Polity score, is not a consistent predictor of NGO monitoring, unlike the

expectation from Hypothesis 3. Action level, or difficulty for implementation of

recommendations was not significant in all the models, and where it was significant the

relationship with fairly weak, though in the correct direction for Hypothesis 4. The remainder of

Hypothesis 4 was supported, however, and while those states of which were asked more were not

more closely observed, states with worse human rights records did receive additional monitoring

by civil society organizations. From this first set of eight models, the models show that domestic

organizations monitor the follow-through of UPR reviews at a higher rate and that states that had

more active review processes with many recommendations and maintain worse human rights

records are monitored by a larger number of organizations.

NGO-Perceived Implementation Rate

In the following set of models, I examine the NGO-reported implementation rate of the

accepted state-peer recommendations at the state level. Using OLS, I regress the aggregated state

UPR participation (number of recommendations, NGO reports, and follow up reports), state

characteristics (GDP per capita, Polity and physical integrity score) as well as dummy variables

representing the rejection explanation frames, with regional and issue-area control dummies on

the state implementation rate. The proxy measure I used for compliance and implementation rate

is the number of partially and fully implemented recommendations as reported by voluntary

NGO monitoring, divided by the total number of recommendations a state received. The results of this analysis are found below in Table 3.4.

In these models, the small number of cases from the incomplete implementation data contributes to the weaker observed relationships. Still, two important relationships emerge from this analysis. First, states that are more democratic, represented by a higher PolityIV score, have higher rates of observed implementation than states that are less democratic. Regime type is significantly related to implementation, after controlling for region, human rights practices, difficulty of recommendations, and NGO behavior in the UPR. The size of the effect is not negligible, either. For each point on the Polity scale (ranging from -10 to 10), implementation rate moves between one and two percent; across the full range, a hypothetical -10 autocracy would implement approximately one-third fewer recommendations than a perfect +10 democracy. Second, states utilizing the sovereignty rejection frame and thus exhibiting a higher level of resistance to both international norms and international institution, have a much lower rate of implementation than states the predominantly exhibit one of the other rejection frames. The difference between implementation rates in states utilizing the sovereignty frame and those simply using factual denial is over twenty-five percent.

NGO characteristics, either the aggregate level of civil society participation or the domestic or ECOSOC-accredited status of the organizations, are not significantly related to the observed implementation rates, though they have the expected sign. Thus, I fail to find support for either of the core Hypotheses numbers 1 and 2.

Table 3.4. Regression on Rate of Implementation				
	(9)	(10)	(11)	(12)
NGO Reports	-0.000	-0.000	0.000	-0.000
	(0.000)	(0.000)	(0.001)	(0.001)
# Recomm.	-0.000	0.001	0.000	0.000
	(0.001)	(0.004)	(0.001)	(0.001)
Impl. Reports	0.017	0.017	0.014	0.012
	(0.010)	(0.010)	(0.012)	(0.012)
CIRI PhysInt	0.011	-0.016	0.020	0.017
	(0.016)	(0.019)	(0.022)	(0.022)
Action Level	-0.088	0.063	-0.161	-0.068
	(0.111)	(0.129)	(0.132)	(0.127)
Procedural	-0.088	-0.105	-0.114	-0.137
	(0.080)	(0.079)	(0.088)	(0.086)
Particularistic	-0.059	0.005	0.014	0.007
	(0.085)	(0.092)	(0.096)	(0.098)
Sovereignty	-0.190*	-0.130	-0.254*	-0.298**
	(0.095)	(0.095)	(0.113)	(0.111)
Domestic			-0.001	0.001
			(0.004)	(0.004)
ECOSOC			-0.005	-0.003
			(0.010)	(0.010)
GDP			-0.000	-0.000
			(0.000)	(0.000)
PolityIV			0.013*	0.018**
			(0.006)	(0.005)
CP Rights		0.001		
		(0.005)		
Justice		-0.002		
		(0.004)		
Freedoms		-0.007		
		(0.005)		
Movmt		0.004		
		(0.003)		
Int Obl		-0.006		
		(0.003)		
E/S/C Rights		0.006		
		(0.004)		
Child		0.002		
		(0.004)		
Women		-0.003		
		(0.004)		
Other		-0.007		
		(0.006)		
Africa	-0.032	0.138	-0.131	
	(0.093)	(0.127)	(0.146)	

Table 3.4 Continued

	(9)	(10)	(11)	(12)
Asia	-0.202*	-0.070	-0.275*	
	(0.083)	(0.106)	(0.138)	
East Europe	0.033	0.059	-0.123	
	(0.087)	(0.094)	(0.125)	
Lat America	-0.173	-0.128	-0.263	
	(0.096)	(0.120)	(0.143)	
Constant	0.691	0.238	1.048	0.533
	(0.458)	(0.522)	(0.549)	(0.502)
N	117	117	94	94
R^2	0.232	0.351	0.348	0.278

Standard errors in parentheses
West Europe/Others is the omitted dummy category for region. Denial is the
baseline rejection response.
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Further, Hypothesis 4, that the amount of effort required to change human rights practices, either

because the recommendations faced were particularly onerous or because of a poor pre-existing

status of human rights protections, is not supported by these tests. However, both Hypotheses 3

and 5 find support in the data presented above. Both regime type and the sovereignty rejection

frame are significantly and substantively related to the implementation rate for UPR

recommendations made within the first cycle. More democratic states implement more of the

recommended changes, and states that express their resistance by demonstrating a resistance to

both the promoted norm and the international mechanism are less likely to implement their UPR

recommendations.

The mixed findings of this analysis may be partly an effect of the perceived

implementation measurement being a less than ideal proxy for actual compliance with

recommendations accepted during the first cycle of the UPR. As a measurement derived from

patchy NGO monitoring of selected recommendations it may not provide a robust picture of

compliance. However, the pattern of findings from this analysis on observed implementation

does fit alternative theoretical expectations. As Simmons (2009) argues, domestic institutional

constraints and capacity as well as the willingness to comply with international norms, loosely

proxied in my analysis by the Polity regime type measure and the choice of resistance

explanation frames, play the most significant role in impacting implementation of international

obligations. This analysis thus supports Simmons' conclusions that civil society involvement has

relatively little impact on moving states from commitment to compliance, while domestic

institutional constraints remain important.

Patterns this analysis does identify among the limited monitoring and implementation

data indicate a coherent set of monitoring behaviors. Domestically-based NGOs, as well as

stakeholders participating in less-targeted state reviews, are more likely to monitor the follow-up

to the UPR process. Additionally, states with higher numbers of recommendations and worse

human rights records tend to be monitored more closely. In lieu of a more complete set of large-

scale implementation data, I turn to small-N case comparison to further test examine these

patterns of implementation.

Case Comparisons

Utilizing paired case comparisons, I further explore the tentative relationships between

recommendation implementation rate and NGO activity, regime type, and rejection frame

established in the regression analysis models above. The independent variables of interest in this

portion are level of NGO engagement, Polity score, and rejection frame classification. Cases

were selected to match on two of the three variables, but differ on one key variable. I used a

simple criterion of dividing the continuous variables of interest (the number of NGO

submissions, the number of NGO implementation reports, and Polity score) in half at the

median.[9] Matching cases were selected from those that had completed the second review cycle

and the documents of the state's second cycle session had been released. While not variables of

interest, I also attempted to select states that were similar in size and region. This section will

proceed by variable of interest and discuss the following pairs of states: Italy and Poland;

Panama and Eritrea; Egypt and Ethiopia.

There are a few differences between the first and second, as of yet incomplete, cycles of

the UPR that are worth noting. States under review in the second cycle, on average, are receiving

a substantially higher number of increasingly specific recommendations from other states. As I

discuss the selected cases, this increase is quite noticeable and it applies to the entire set of

reviews in the second cycle, not just the six states discussed in some detail here. On average,

NGO participation increased as well. More strikingly, the content and quality of stakeholder

NGO participation developed from the typical state of the first cycle. Stakeholder reports became

more detailed and focused, and frequently recommended specific changes in human rights

practices. In the first cycle, most stakeholder testimony took the format of reporting on the

human rights situation on the ground or direct naming and shaming of a state's worst practices.

While this type of submission is still common, a majority of reviewed pieces of testimony used

targeted recommendation language for at least a portion of their contribution. These

recommendations appear much more similar to those given by other states, unlike the more

abstract/ideational treatment viewed in the first cycle of reviews.

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[9] The median number of NGO submissions was 10; the median number of NGO-submitted follow-up reports was 4; the median Polity score was 4; the modal rejection explanation was 'procedural'.

NGO Involvement

To get some more detail on differences in monitoring and self-reporting that may be attributable to NGO involvement, I examine the comparative progress of Italy and Poland. Italy and Poland are both open, democratic states with Polity scores of 10. In both countries' explanations of the recommendations they rejected during the first cycle, the modal rejection explanation followed the procedural framework. However, the states differ in the level of engagement from civil society they received both during the first cycle and in the interim period between the cycles. Poland did not have any NGOs file implementation follow-up assessments before the second cycle and received only nine stakeholder submissions during their first review.[10] Conversely, Italy received 15 stakeholder submissions and five NGOs monitored its progress between cycles.

During the first cycle in February 2010, Italy received 90 recommendations with the most prominent issues addressed falling under minority rights and the rights of migrants; it accepted over 85% of the recommendations it received, above the average acceptance rate of 73%. Its second cycle was similar, though states made 186 recommendations during the second cycle in October 2014. In its national report submitted to the UPR,[11] Italy was very specific in highlighting what it perceived of as its progress in human rights and in complying with the commitments made at the UPR. It indicated that it allocated 17.3 billion euro for human rights in the interim period and implemented 74 of the 78 recommendations accepted in cycle one. All four recommendations not implemented referred to the establishment of an NHRI, which the Italian government chose not to pursue. Twelve recommendations were not accepted during the

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[10] Without any follow up reports, Poland does not have a measurement for the implementation rate and so is excluded from the statistical models in Table 3.3.

[11] United Nations Human Rights Council, *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21 – Italy,* A/HRC/WG.6/20/ITA/1 (21 July 2014), available from undocs.org/A/HRC/WG.6/20/ITA/1

first cycle, and of those, two regarding illegal immigration were adopted and one in reference to

torture reforms was in process at the time of the second review. Italy went on to outline how it

specifically implemented recommendations for given issue areas, for instance:

> Italy has enacted five European directives pertaining to the protection of human rights
> and signed or ratified three international conventions, implementing recommendations 4,
> 5 and 7 of cycle I.

Italy received a moderately high level of NGO activity both during its first cycle and during the

interim follow-up period. It received 15 stakeholder reports during the first cycle and five NGOs

submitted monitoring reports prior to the second cycle of the review; the median level of

stakeholder activity was 10 stakeholder reports and four follow-up assessments. The interim

implementation reports indicated Italy had implemented over one-third of the recommendations,

among the highest rates in that measure.

During the second cycle, 28 stakeholder testimony reports were submitted to Italy.[12] This

included ten coalitions and eighteen individual NGO submissions. All of the coalitions were

either domestic civil society groups or included domestic organizations as members, while half

of the individually submitting organizations were domestic. Transnational organizations

participating in Italy's review included Amnesty International and Human Rights Watch. Unlike

many of the other cases discussed, NGO monitors did not extensively dispute the state's self-

reporting. Seven of the twenty-eight submissions expressed concern, however, that Italy had

accepted recommendations to create a National Human Rights Institution but made no efforts to

implement the institution. Stakeholders were also less generous in their interpretation of some of

the adjustments Italy claimed qualified as following-through with accepted recommendations.

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[12] United Nations Human Rights Council, *Summary prepared by the Office of the United Nations High
Commissioner for Human Rights in Accordance with Paragraph 15(c) of the Annex to Human Rights Council
Resolutions 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21 - Italy,* A/HRC/WG.6/20/ITA/3 (4
August 2014), available from undocs.org A/HRC/WG.6/20/ITA/3

Considering minority and migrant rights, for instance, Italy self-reported that the National Office Against Racial Discrimination was a location where it had made strides, while a number of NGOs including AI, ASSO21 a coalition of domestic organizations, and the Council of Europe, all commented that budget cuts, downsizing and other shrinking of this institution hampered efforts to improve minority rights, particularly those of the Roma. Chiefly, however, the stakeholder reports indicated that Italy largely fulfilled the implementation of recommendations from the first cycle, as reflected in Italy's self-reporting, and pressed the country to continue moving forward.

Conversely, Poland experienced low levels of stakeholder involvement throughout its review process and not a single stakeholder submitted an interim follow-up assessment. In April 2008, it received 29 recommendations from other states and during the second cycle, May 2012, it received a total of 124 recommendations. In both cases, it accepted nearly all of the recommendations it received. Poland's review largely focused on the accession to international treaties and conventions that were notably missing from the list of international human rights laws most states had signed. Secondarily, states were concerned about minority and detainee rights. In Poland's national report[13] it self reported that since the prior review it ratified four additional conventions/optional protocols (Human Trafficking, Geneva Conventions Protocols II & V, Protection of Children) a significant set of those it had been recommended to implement. It also makes comments and reference to all 29 recommendations it had received in reporting a varied level of progress on implementing these suggested changes. Unlike Italy, Poland's national report makes no direct claims or statements about the share or number of prior cycle recommendations it has implemented. Rather, it formats its discussion of human rights-related

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[13] United Nations Human Rights Council, *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21 – Poland,* A/HRC/WG.6/13/POL/11 (8 March 2012), available from undocs.org/A/HRC/WG.6/13/POL/1

activities vis-à-vis the major issue area headings and, beneath them, any recommendation from the first cycle that is related. Overall, the national report suggests that while it did accede to additional international instruments, in regard to the other recommendations, progress was much more partial or implied from current rights practices.

As mentioned, Poland's NGO involvement was markedly lower with no groups transparently monitoring implementation through the inter cycle period. It received a below-average number of statements during the first cycle, with 9, and that only increased to 14 stakeholder reports during the second cycle. Despite only received 14 submissions, half came from domestic coalitions in Poland as well. Amnesty International and the World Coalition against the Death Penalty were among the transnational associations that participated. In sharp contrast to the submissions given to Italy, those stakeholders interacting with Poland were far more likely to identify the discussed changes in human rights policy as being insufficient to warrant qualifying as fulfilling the recommendations.[14] For instance, the Helsinki Foundation for Human Rights in Warsaw as well as a coalition of Polish social NGOs including KARAT and the Association for Legal Intervention targeted the Act on the Implementation of Some regulations of the European Union Concerning Equal Treatment, held up by the Polish state as demonstrable evidence of comprehensive anti-discrimination reform. These organizations argue that the actual Act creates a closed list of forms of discrimination that are protected, rather than providing a comprehensive statement and that its major function was European Union compliance, and did not address equal opportunity or fully cover minority rights as had been recommended to the Polish state in their UPR review.

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[14] United Nations Human Rights Council, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21 – Poland,* A/HRC/WG.6/13/POL/3 (12 March 2012), available from undocs.org/A/HRC/WG.6/13/POL/3

In the individual stakeholder submissions, NGOs such as AI focused exclusively on the incomplete nature of Poland's implementation; while in most cases, positive steps were taken, NGO stakeholders judged them to fall short of fully implementing the recommended changes. Domestic organizations were very prevalent in both Italy and Poland's second cycle review, but Polish NGOs were far less likely to draw on the first cycle's recommendations and comment on implementation than the domestic Italian NGOs were. While both country's organizations include discussions of rights practices across either a range of issue areas or the organization's area of interest, and they are more likely than in the first cycle to formalize these observations into actionable recommendations, the majority of Polish reports were notably lacking an introductory section wherein the NGOs outlined monitoring or follow-up. Certain submissions were drawn from those submitted to the Council of Europe or UNESCO, and thus did not reference UPR recommendations at all.

The Campaign against Homophobia and Polish Society of Anti-Discrimination Law, one of the few domestic stakeholders to note UPR implementation, found sharp deficiencies in the claimed progress of five of the seven recommendations it discussed. They too critiqued Poland's handling of anti-discrimination law, targeting a trio of recommendations from Slovenia, the United Kingdom, and Sweden suggesting Poland adopt anti-discrimination law ensuring equal treatment on all grounds, including sexual orientation and gender identity. These groups identify the following populations as unprotected by Poland's December 2010 act discussed above: women (particularly their health care and private and family life); LGBT rights in health care and access to services; and older and disabled people's access to health care. They also highlighted the closed list accepted as grounds of discrimination: gender, race ethnicity, religion, nationality, disability, and age.

The engagement of civil society in Italy and Poland's process diverged drastically. While both had relatively high shares of domestic involvement, Italy's civil society organizations monitored the country's compliance and maintained higher levels of participation in each formal review session. The perception of the two state's recommendation implementation diverged, as well. Though this single comparison does not make the difference in implementation directly attributable to the level of NGO activity in this analysis, it provides another piece of evidence in support of the relationship identified in the statistical portion. Particularly noticeable with Poland, where NGO participation was low, is the difficulty in assessing the rate of compliance with recommendations. State reporting is completely voluntary in its form, detail, and approach. While both Poland and Italy addressed either all or the vast majority of their recommendations in their final report, the self-reporting was done in a very positive manner, highlight compliance and framing all developments (even if unrelated) as tied to the fulfillment of UPR recommendations. Where present, a crucial caveat, stakeholders routinely challenged some of these state's assertions of progress. This is seen more frequently in the case of Poland's second review, but identifies the necessity of an external non-state monitor for a depiction of compliance.

Regime Type

Turning to regime type, here I compare Panama and Eritrea. Both are small coastal states that used the modal resistance frame of procedural explanations in response to recommendations received in the first cycle. They also received similar levels of attention from civil society stakeholders. Panama received fourteen stakeholder submissions and seven implementation reports, while Eritrea received seventeen stakeholder reports and six follow-up assessments.

These states differ greatly, however, in the structure and type of their ruling regime. Panama is a presidential, representative democracy with a Polity score of 9, while Eritrea is single-party state receiving a Polity score of -7. Correspondingly, the two countries' on the ground human rights practices are drastically different as well with Eritrea receiving the lowest score on the CIRI Physical Integrity scale while Panama scores one point below the top. Drawing from their midterm NGO-observed implementation assessments, Panama had implemented 40% of the recommendations it received, while Eritrea had implemented only 8%.

During the first cycle, Panama received 95 recommendations and rejected only one of them. Its second cycle review brought a total of 125 recommendations, wherein it rejected 14. The focus of the changes recommended to Panama largely dealt with its handling of its indigenous population, migrants, and other vulnerable populations. Many of these, as with most UPR recommendations, were tied to the accession and implementation of international instruments protecting minorities, migrants, and indigenous peoples. In Panama's second cycle national report,[15] Panama highlighted that it had completed the recommended establishment of a National Human Rights Commission. Throughout the remainder of the report, the state directly discussed 28 of the recommendations it had received. The other two-thirds of its first cycle recommendations went completely unmentioned in its report. However, Panama's delegation was a bit broader than the average national report in that it also discussed recommendations it had received from other international institutions, like CEDAW.

Approximately the same number of NGOs participated again in Panama's review during the second cycle as it received 13 submissions from stakeholders. A large coalition of domestic rights organizations—representing various groups such as workers, women, students and justice

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[15] United Nations Human Rights Council, *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21 - Panama,* A/HRC/WG.6/22/PAN/1 (11 February 2015), undocs.org/A/HRC/WG.6/22/PAN/1

movements—focused on the lack of ratification of international treaties and instruments.[16] This was in sharp contrast to the state's self-reporting which did not mention the recommendations related to additional treating and protocol ratification. Narrowly focused CSOs, both transnational and domestic, such as a handful of local indigenous rights groups and GIEACPC[17] provided targeted follow up on the state of implementation. The indigenous groups reported on recommendations covering minority rights, while GIEACPC focused its comments on the rights of the child. Among the problems these groups targeted was the lack of protections for persons of indigenous and African descent by the human rights Ombudsman's office; they also indicated that the position of Ombudsman was a political appointee without human rights experience. Given the modest number of CSO reports Panama garnered, like the state's constrained self-reporting, the aggregate NGO stakeholder reports did not present a comprehensive picture of the implementation in Panama, though what was covered suggested moderate levels of follow through by the Panamanian state.

Eritrea had its first cycle review in November 2009. During that session, it received 136 peer recommendations, of which it accepted 62, well below the average acceptance rate. The recommendations it received were overwhelmingly concerned with the status of law and order in the state. Many dealt with the lack of elections and implementation of the alleged constitution, while others targeted disappearances, torture, and detention, both unlawful and the conditions thereof. Its second cycle review in Feb 2014 garnered 200 recommendations with Eritrea only accepting 92 of them, again under half and the mean rate of acceptance in the UPR. Its national

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[16] United Nations Human Rights Council, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolutions 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21 – Panama,* A/HRC/WG.6/22/PAN/3 (5 February 2015), available from undocs.org/A/HRC/WG.6/22/PAN/3
[17] Global Initiative to End All Corporal Punishment of Children

report[18] started off immediately by indicating the relative lack of progress in implementing even the small share of recommendations it had received from the first cycle, by stating:

> All human rights treaties require time for implementation and progress is generally incremental.

The Eritrean government indicated that it had begun limited discussions on the implementation of some international treaties, naming the Convention Against Torture primarily, but did not provide detail as to the status or direction of those discussions. In total, 56 of the 62 accepted recommendations were mentioned directly in the national report. While the coverage Eritrea provided was broad in this regard, it was also quite shallow and failed to provide accounts of new measures taken by the state to move toward implementation. Further, despite its most frequent use of procedural rejection explanations during the first round, the national report of the second round included a substantial expressions of factual denial rhetoric for which I present two illustrative examples. First, in reference to four recommendations to improve protections of women from domestic and sexual violence, Eritrea's explanation of progress was as follows:

> Rape, especially involving underage children, carries a strong social stigma and is very rare in Eritrea. There has never been, however, a reported case of rape that has gone unpunished.

Additionally, Eritrea closed its review of the previous cycle's recommendations with a heading entitled "political [sic] motivated resolutions":

> To add insult to injury, Eritrea has been subjected to a litany of accusations of gross violations of human rights in the areas of civic, political, economic, social and cultural domains. The facts on the ground illustrate that these accusations are not valid and are mainly motivated by sinister political agendas. The steady progress the country has and is making on the different facets of fundamental human rights that this report has tried to highlight and the GOE's principled commitment to these rights accentuate, in our view, the variance between the reality on the ground and the concerned campaigns that Eritrea's detractors have unleased for other ulterior motives.

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[18] United Nations Human Rights Council, *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21 - Eritrea,* A/HRC/WG.6/18/ERI/1 (8 November 2013), available from undocs.org/A/HRC/WG.6/18/ERI/1

Eritrea, like Panama, received an above average level of stakeholder involvement with 17 stakeholder submissions[19] during both the first and second cycle. Unlike Panama's stakeholder participation that highlighted the limitations in the advances claimed by the government, all of the submissions on Eritrea were harshly skeptical and critical of the complete lack of progress by Eritrea. Amnesty International, for instance, stated that the organization was

> Gravely concerned by the persistence of serious human rights violations in Eritrea. Having failed to implement any of the major recommendations received at its first review in 2009, the government must now ensure progress on essential reforms.

Christian Solidarity Worldwide and Human Rights Concern Eritrea noted that even less demanding accepted recommendations were not implemented, not to mention treaties which were not ratified, and the constitution remaining unenforced due to the continuing state of emergency. Eritrea accepted seven recommendations from different countries to ratify Convention Against Torture but had not done so with multiple organizations challenging the state's position that it had made progress here. Other international obligation recommendations were also accepted, such as cooperating with UN special procedures and rapporteurs, something that has not begun to take place as the state continually refused access to UN human rights monitors and observers. Notably, there was no domestic NGO involvement in Eritrea. This is a direct artifact of the restrictive regime ruling in Eritrea as the country has little open civil society. The only 'domestic', Eritrean-focused organizations that participated in its review were expat groups based in the UK, such as Human Rights Concern Eritrea, Eritreans for Human and Democratic Rights, and Release Eritrea.

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[19] United Nations Human Rights Council, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolutions 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21 – Eritrea,* A/HRC/WG.6/18/ERI/3 (4 November 2013), available from undocs.org/A/HRC/WG.6/18/ERI/3

Following their interim follow-up assessments, the Eritrean and Panamanian implementation records remained sharply different in their second cycle review. While differences between the states abound, they received stakeholder submissions placing them among the top half of states in the process and used a common, procedural frame when expressing resistance to the project during the first cycle. However the openness of their regimes is extremely different. As a result, regional and transnational NGOs from outside of Eritrea produced its "stakeholder" testimony, while a large presence of domestic organizations interacted with Panama during the process. The degree to which each country made progress in enacting recommended and accepted reforms was also correspondingly split. Neither state addressed all of the accepted recommendations in its self-reporting and, despite their above average levels of both NGO testimony and monitoring, neither received a comprehensive set of marks from external groups.

Differences remain in the perception of their compliance with commitments made in the first cycle's review. Primarily, domestic stakeholders monitoring the progress in Panama noted the partial nature of progress made by the Panamanian state and potential challenges to good faith compliance, such as the clientelistic appointment of officials to oversee human rights. This is starkly different than the transnational monitoring in Eritrea where no domestic groups engaged with the UPR and in turn cited an utter lack of progress on the substantive recommendations by the Eritrean government. Also of interest is the switch in the Eritrean state's rhetoric and framing entering the second cycle. Moving away from procedural explanations of the difficulty in possibly implementing their high rate of rejected applications, the state moved to straight factual denial of certain rights abuses in order to explain away the absence of demonstrable progress. Regime type—the state's openness, willingness, and

capacity—impacts both the ability of domestic organizations to monitor compliance and the perceived implementation rate of recommendations.

Resistance Frame

Egypt and Ethiopia both are northeastern African states with low polity scores (-3) and above the median levels of civil society participation. Ethiopia received 20 NGO submissions and seven follow-up assessments during the first cycle and the interim period. Egypt, in turn, received 37 different NGO stakeholder testimonies and also had seven organizations file implementation reports. The two states differ on the resistance frame utilized. While Ethiopia used the modal procedural explanations most frequently, Egypt's plurality reply was sovereignty-based. Egypt in fact was the only state that had completed its second cycle review that had the requisite low Polity score, high NGO participation rate in the review and in monitoring to act as controls while simultaneously having utilized the sovereignty-based frame of interest. In their stakeholder coded interim follow-up assessments, Egypt was found to have implemented only 8% of its recommendations, while Ethiopia had implemented 20%. Both rates were among the lower half of states' perceived implementation levels.

In Egypt's first cycle review in February 2010, it received 165 recommendations and accepted 119 of them. During the second cycle in November 2014, it received a sizable 300 peer recommendations. Egypt's use of sovereignty-based argumentation was high even among those states with that as their modal rejection explanation. This carried through to their second cycle report,[20] despite the change of regimes, as in its discussions of international obligations, the new Egyptian regime doubled-down on the rejection rhetoric utilized in the previous review,

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[20] United Nations Human Rights Council, *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21 – Egypt,* A/HRC/WG.6/20/EGY/1 (22 July 2014), available from undocs.org/A/HRC/WG.6/20/EGY/1

explaining that Egypt has the right to maintain its reservations to international treaties as a state

and that it reserves its right to use this principle "as set down in general international law". The

report also states that of the 119 recommendations received, 112 had been implemented by the

state and the remainder were under examination or had been at least partially implemented.

Egypt discussed all 119 recommendations it had accepted during the first cycle review and went

into detail on these recommendations by issue area. However, and notably different from the

other examined states, in its further reporting, Egypt most often explained its compliance vis-à-

vis the constitutional guarantees in the new regime, without specifying where or how these

guarantees were implemented in practice. For instance, the Egyptian report states

> "The demands of Egyptian society have exceeded the bounds of the recommendations
> contained in the UPR, far outstripping the minimal reforms occasionally implemented by
> the previous regime and extending directly to the very core of human rights principles
> such as freedom, justice, equality and human dignity."

But the state's report does comparatively little to suggest any more than the new regime has a

new constitution which checks off a number of human rights-related boxes. Other states, such as

Italy or even Poland, pointed to specific progress in money or other resources allocated and

success of programs. Despite its broad coverage of issue areas and recommendations, the

Egyptian report provides relatively little evidence of compliance with accepted

recommendations, particularly those referring to law and order and constitutional guarantees.

Thus the entire framing of their national report is in accord with the sovereignty-based rhetoric

seen in the first cycle, despite the regime change in the interim years. Egypt did not indirectly

legitimize the process by seeking to explain its behavior or present the strongest possible case for

progress, and proceeded to report on the state of the country rather than directly reference the

recommendations of the preceding cycle.

Civil society was very active in both cycles of Egypt's UPR. During the first cycle, the

state received 37 statements and during the second cycle 43 NGOs participated.[21] A sizable share

of the high level of domestic stakeholder participation in Egypt's first cycle UPR review, in a

pattern repeated in other counties in the region, came from GONGOs, or government-organized

NGOs. These tended to be more favorable to the regime and engage in less critical behavior

throughout the process (Landolt, 2013). The national human rights institution, the National

Council for Human Rights, for instance touted that it had completed 73 fact-finding missions

since June 2010, and presented mixed praise for constitutional reforms and progress on

recommendations to ratify outstanding treaties. Heavy stakeholder emphasis went into the lack

of ratification and accession to international rights treaties, optional protocols, or excessive

reservations. Over a quarter of the stakeholder statements specifically addressed international

obligations and lack of progress on ratification. Multiple NGOs noted the new constitution and

its additional rights guarantees, but aside from the NCHR, these organizations simultaneously

noted the ongoing endemic human rights problems and the lack of enforcement of the

constitutional provisions. Al-Karama, an Arabic rights organization headquartered in Geneva,

specifically examined numerous constitutional revisions made in Egypt and the degree to which

they satisfied the accepted recommendations from the first cycle. It placed particular emphasis

on those surrounding justice, law and order: provisions concerning torture, fair trials, detention,

freedom of expression and assembly, and extra-judicial killings. For instance, Al-Karama noted

that Egypt accepted a recommendation to align Article 126 of the Egyptian Penal Code, which

defines torture, with Article 1 of the Convention Against Torture, but the new regime has left

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[21] United Nations Human Rights Council, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolutions 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21 – Egypt,* A/HRC/WG.6/20/EGY/3 (8 August 2014), available from undocs.org/A/HRC/WG.6/20/EGY/3

Article 126 unchanged. It also noted that Egypt allows civilians to be tried in military courts, in

continued violation of international obligations. In short, Al-Karama finds little evidence for

changes in human rights practices beyond the text incorporated in the new regime's constitution,

and is joined by other NGOs in questioning the degree to which the constitutional provisions

match the commitments made in the first review.

Ethiopia's December 2009 review process included 142 recommendations, of which it

accepted 99. During the second cycle review in May 2014, it accepted 188 of 252 total

recommendations. These focused on fulfilling international obligations and addressing deficits in

civil and political rights. Ethiopia's self-reporting[22] included nearly all recommendations that it

accepted during the first cycle. The report outlined changes, many noted to be small or

incremental, in approaching implementation of the accepted recommendations. In contrast to

Egypt, nowhere in the report did Ethiopia back away from previously made commitments or

otherwise challenge the process. Rather, the format its report took was an explanation of

attempted cooperation, technical assistance, or individual efforts to follow-through the

recommendations. Ethiopia highlighted the National Human Rights Action Plan which was

adopted by its House of Peoples' Representatives as an encompassing approach to enacting the

UPR-recommended changes. Further, it cited specific laws and proclamations made since 2009

that touched on issue areas covered in the review. The most extensive section of its national

report covered civil and political rights, where the state attempted to demonstrate changes in

electoral law and practices as well as improvement in freedoms of participation.

Like the other discussed states, Ethiopia had an above average level of NGO

involvement. During the first cycle, it received 20 stakeholder reports and the second cycle

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[22] United Nations Human Rights Council, *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21 – Ethiopia,* A/HRC/WG.6/19/ETH/1 (30 January 2014), available from undocs.org/ A/HRC/WG.6/19/ETH/1

brought 22 submissions.[23] These groups did note some of the state's achievements, such as National Human Rights Action plan. Most stakeholders, after mentioning the NHRAP, went on to argue that while it largely covers the areas seen in UPR recommendations, the plan itself appeared inadequate to address the widespread nature of current abuses and lacked ties to current problematic institutions. Civil society stakeholders also expressed sharp criticism of the state's lack of progress on impunity and minority rights. The Ethiopian Women's Human Rights Alliance, for instance, tied civil and political rights to the protection of minority rights criticizing a politicized judiciary which had been used to persecute via prosecution. Amnesty International challenged the state's claims surrounding opening the political and electoral processes, state that no progress in critical areas of freedom of expression, arbitrary arrest, torture and killings could be demonstrated. Multiple groups noted the relatively high number of rejected recommendations and that of those accepted, substantive action while present, was slow. Domestic organizations, like the Oromia Support Group which detailed progress on minority rights recommendations, were more likely to discuss progress on specific, enumerated recommendations. The international submissions from Amnesty, Human Rights Watch, and other transnational organizations were routinely less detailed in their assessment of specific recommendation implementation and erred on the side of reporting on the current rights situation.

In both Egypt and Ethiopia, continued abuses of physical integrity rights and limitations of civil and political rights overwhelm the comparison of perceived and self-reported compliance to states that utilized different resistance frames. Both in Egypt and Ethiopia, stakeholder monitoring during the interim and testimony during the second cycle revealed society deeply

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[23] United Nations Human Rights Council, *Summary prepared by the Office of the United Nations High Commissioner for Human Rights in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolutions 5/1 and Paragraph 5 of the Annex to Council Resolution 16/21 – Ethiopia,* A/HRC/WG.6/19/ETH/3 (27 January 2014), available from undocs.org/A/HRC/WG.6/19/ETH/3

critical of the lack of progress on implementing recommended changes to human rights. Even more so, the organizations focused on outlining continued abuses and poor practices on the ground.

Despite this similarity and lack of compliance with commitments made during the first cycle, distinct differences were observed in the language and rhetoric utilized by Egypt and Ethiopia. Egypt, continuing to use the sovereignty-based resistance exhibited in the first cycle, made little effort to directly present progress on specific recommendations, and where possible, asserted its independence in choosing how to govern its people. Conversely, Ethiopia, despite its relatively poorer human rights record, made efforts to demonstrate what little progress it could, addressing each recommendation it received individually with specific comments and all together striving to appear in compliance. This also was reflected in the slightly higher rating NGOs provided for its follow-through, as the stakeholders frequently noted partial and attempted progress by Ethiopia, while they did not note such incremental efforts by the Egyptian state. The rhetoric used in expressing resistance to recommendations, then seems to be somewhat pervasive in extending into other portions of the review and framing in general how states view the process and their place within it. Egypt, focusing on contestation with both norms they were recommended to adopt, but also that international review has a role, was less interested in appearing cooperative with the process.

Each of the paired case comparisons serves to illustrate differences in monitoring patterns and thus the perceived implementation rates of recommended changes to human rights, but also differences in how states frame and present their own self-reported compliance with the commitments made during the first cycle. First, in the comparison between Italy and Poland, the different levels of NGO engagement resulted in differing civil society views on state progress.

Where society was much more involved in both monitoring and review, Italy is perceived to have higher rates of follow-through on recommendations. Domestic organizations were present in both states, but in Poland where NGO participation was low it was difficult to assess Polish compliance outside of the positive self-reporting by the Polish state. With Italy, the more circumscribed critiques of the state's report gave credibility to the state's reporting on matters that did not receive civil society's objections. The level of NGO involvement appears in this comparison to be critical in establishing consistent monitoring and check on state's progress.

In the second set of cases, Eritrea and Panama, the differences in regime openness and willingness to make progress colored NGO monitoring, state self-reporting, and perceptions of compliance with recommendation-based commitments. While Panamanian stakeholders primarily commented on the partial nature of progress, transnational organizations were sharply critical with the Eritrean government for failing to make any progress on their relatively small share of accepted recommendations. Additionally, while Panama addressed individual recommendations in its national report, Eritrea moved away from its procedural first cycle and shifted to more straightforward denial of problematic rights practices. Also of interest is the switch in the Eritrean state's rhetoric and framing entering the second cycle. Regime type and its related openness and capacity shows divergence in both state self-reporting and NGO monitoring accessibly.

Finally, the third pairing of Egypt and Ethiopia demonstrated the manner in which the resistance frames used in first cycle rejections embody the state's orientation toward the international human rights regime. Egypt's sovereignty-based resistance, contesting both the authority of the regime and the applicability of the included norms, resulted in self-reporting and follow-through behavior that did not demonstrate a desire to show compliance with the UPR

process. At times its national report was openly contentious, and at others it simply did not strive to lay out a detailed account of progress on the recommendations it received. Admittedly, some of this may be due to the regime change between the two cycles of the review. Nevertheless, Ethiopia's review and thus stakeholders' perception of it, was quite different. By deliberately delineating each accepted recommendation and outlining whatever actions the Ethiopian state thought demonstrated progress on that front, Ethiopia demonstrated a desire to be viewed as in compliance. NGO stakeholders, too, were able to observe and comment on partial steps and incremental progress made, even if the overall rights situation in Ethiopia remained abysmal. Resistance frames, from procedural denial based on capacity and process to outright contestation on the normative and institutional foundation of the rights regime, in this way impact both the monitoring of and perceived compliance with the UPR process.

Monitoring as the Road to Implementation

Throughout this chapter I have presented both a descriptive summary of current practices surrounding the monitoring and follow up of the Universal Periodic Review's first cycle as well as an initial analysis into the patterns of perceived implementation of recommendations. Monitoring in the UPR is voluntary and follow-up reporting largely falls to self-reporting by the state. As discussed, this presents two large challenges for an effective assessment of implementation. First, the voluntary and decentralized nature of monitoring and reporting results in incomplete and partial coverage of recommendations states receive. Not all states self-report on all recommendations they received or even all recommendations they accepted. Stakeholders in the process are even more likely to be selective in their coverage for monitoring, as issue-specific organizations only monitor recommendations concerning their advocacy issue area.

Even flagship transnational rights organizations whose primary purpose is monitoring and reporting on human rights practices did not seek to directly monitor the breadth of recommendations any given state received; groups like Amnesty International and Human Rights Watch's second cycle contributions looked quite similar to those in their first cycle, primarily focused on explaining the rights situation on the ground. Domestic organizations were more likely than transnational groups to provide detailed coverage of specific recommendations, but were even more likely to be issue-specific and thus limited in the scope of their detailed monitoring.

Secondly, the reliance on self-reporting allows states to greatly over-state their compliance with recommendations and to present the previous four years in the best light possible. Across virtually all states, states presented either numbers or claims of high levels of implementation that were disputed to some degree by civil society stakeholders in their own reports. States were similarly free to operationalize "implementation" and compliance however they wished. Egypt, for instance, repeatedly claimed that the new regime's constitution fully met numerous of its recommendations, without detailing the translation of the constitutional provisions into law or institutions, not to mention rights practices on the ground. Conversely, states like Italy and even Ethiopia, named specific laws, governmental actions, or proclamations that covered certain recommended provisions.

Both the lack of comprehensive coverage and the varying quality of the existing coverage of implementation data complicated analysis at either large- or small-N scales. The data and documents discussed in this chapter do identify a series of three empirical patterns that appear to be robust, however. The rate and depth of implementation varied according to regime type and rejection resistance frame. More democratic states on average had higher levels of NGO-

perceived implementation than less democratic states. This holds in the comparison between

Panama and Eritrea as well. Further, states utilizing sovereignty-based explanations and thus

expressing direct resistance to both rights norms and the international instruments had lower

levels of implementation than states that primarily used other forms of rhetoric. States ardently

denying the rights situations that led to recommendations, too, had lower levels of

implementation. This pattern is also seen with Egypt and Ethiopia.

Levels of stakeholder monitoring, in turn, vary by the amount of domestic civil society

involvement in the UPR. In the statistical analysis, domestic organizations are more likely to

submit interim follow-up assessments and, correspondingly, states with higher shares of

domestic involvement had higher numbers of implementation assessments submitted. In the

cases, it became clear that domestic organizations provided much more robust and detailed

monitoring of specific recommendations and particular state actions relating to those areas of

interest than transnational organizations did. Despite the larger share of transnational and

international NGOs in the UPR process, the breadth of these organizations' activity seems to

have precluded them from providing detailed assessments to all of the states to which they

submitted.

I argue that the status of monitoring and implementation presents a missed opportunity

both for stakeholder engagement in the UPR process and for the process as a whole. It also raises

important questions for further scholarship and research. With the UN bodies not providing

external monitoring for UPR recommendations, stakeholders had the opportunity to become

vitally important to the process in monitoring the behavior of states between sessions. The

piecemeal, overlapping, and in general uncoordinated monitoring efforts by NGOs left certain

states and issue areas completely unmonitored and allowed states to present an uncontested

version of events. Further, the iterative nature of the UPR fails to live up to its potential if there

isn't a consistent, universal application of implementation assessment. While effective at

periodically identifying and describing the human rights situation across all states and, in turn,

gathering criticism from other states regarding those rights practices, the UPR mechanism has

not yet demonstrated the ability to universally hold states accountable to the commitments made

within the process, largely due to the lack of reliable information on what states have done in

regard to their commitments.

Future analysis should target this divergence in NGO behavior from the manifest need of

the process. I argue that this divergence is due to two features of international human rights

NGOs and one external constraint on their behavior. Human rights NGOs which are not involved

in service provision are largely advocacy organizations. The model for human rights practice and

norm entrepreneurship has long been advocacy-based: set the agenda, rally states to a cause and

normative frame, and name and shame non-compliers to the community normative environment.

Consultative relations at the UN, similarly have either been observatory or advocacy and agenda-

setting focused. Thus, many NGOs tie their identity, mission, or purpose to this advocacy-based

strategy. This model, however, does not appear to be the best fit for the state-centric

intergovernmental process that is the UPR. An alternative consultative model of expertise, more

commonly discussed in reference to insider lobbyist organizations, may be more appropriate in

this UPR setting. It would, however, possibly require a reimagining and identity reconstruction

particularly for domestic advocacy organizations. The second organizational feature of

international rights groups that is problematic is their funding and resource structure. Outspoken

advocacy tends to attract more stable funding for these non-profit groups, while providing

expertise and technical assistance requires a significant amount of money and people-power to

gain access, conduct research, and do the monitoring. It also is not as visible and is less likely to attract and keep donors. Thus, moving toward more extensive and coordinated monitoring would require either a pooling of resources and delegation of monitoring tasks to a coalition partner organization. Finally, these civil society organizations are constrained by the amount of access they have—or do not have—to the regimes they are attempting to monitor. Restrictions on the freedom of movement of human rights workers was one of the most common topics discussed in stakeholder testimony during the first cycle. Even were NGOs to coordinate, pool resources, and commit to providing technical expertise to the UPR, these organizations could still be hampered in their ability to gather information in certain states and regarding particular rights. Future study can test the resource-based limitations of doing more extensive monitoring, the requisite access required to gather appropriate information on state actions related to rights practices, and the identity- and mission-based constraints organizations face in considering a more formalized expert-style contribution.

Conclusion – NGOs and State Behavior at the UPR

This dissertation shows the importance and prevalence of domestic civil society participation in the Universal Periodic Review of Human Rights. It also serves to highlight patterns of state behavior at the UPR, particularly in states' discursive resistance to the recommendations received in the process. Namely, I identify when and where state actors exhibit the most resistance to recommended changes in human rights practices and the rhetorical frames they used to justify their rejection. Further, I show that follow-up monitoring is lacking despite the UPR's iterative process, and focus on the central role NGOs lay in what compliance monitoring does exist into the second cycle.

The Universal Periodic Review, while established as a technical assistance instrument for the promotion of best practices and capacity building in order for states to fulfill their international treaty obligations, emerged quite quickly in the first cycle as a much broader and more extensive review of rights practices. States made recommendations for changes outside the purview of treaties the target state under review had signed, sometimes suggesting that states accede to new treaties or new optional protocols to current treaties, and in other instances making recommendations for the protection of rights and groups that have not yet been codified into international law. For example, states under review were recommended to accede to the Convention Against Torture, and many others were criticized for their treatment of sexual minorities and recommended to extend full anti-discrimination protections. While states voluntarily entered the process and the entire review began with the understanding that each state would be held to their own set of international law-defined standards, reviews did not solely address economic, social, and cultural rights that may be aided by improving state capacity and importing best practices. Instead, more core rights, deployed and withheld strategically by the

state, such as civil and political rights, as well as those dealing with physical integrity, torture, and imprisonment, became the most commonly recommended rights in the first cycle of the review. Civil society stakeholder participants similarly did not constrain their review and testimony to a circumscribed set of agreed upon rights. Nor did the stakeholder testimony conform to the model of technical assistance and capacity building; much of their submissions in the first cycle consisted primarily of naming-and-shaming style reporting on violations of human rights. As can be expected, this broadening of that which was covered, and the manner in which it was discussed, led to a certain amount of resistance from states that wanted a more focused process.

The patterns observed in the first cycle of the UPR conform to a large degree with the spiral model of Risse, Ropp, and Sikkink (1999, 2013), with some minor caveats and refinements for the more focused application. Stakeholder testimony fits well with the role of both domestic and transnational society in their model, though in the consultative setting of the UPR, domestic actors can play a more prominent role earlier in a state's movement toward rights change than the model suggests. The pattern of state response to international pressure follows closely as well. As this chapter progresses, I outline the central findings of this dissertation situating them with the expectations of the model. I then engage with the project's limitations and its implications for both human rights scholarship and the practice of rights promotion at the UN Human Rights Council's Universal Periodic Review.

State Behavior at the UPR

In the first cycle of the UPR, states under review accepted nearly three-quarters of the recommendations given to them. The recommendations given in the first cycle made frequent

reference to international obligations and the treaty and convention instruments of the international human rights regime. Recommending states also focused primarily on issues of law and order, concerning the practices of torture, judicial process, imprisonment, and the rule of law across the world. This suggests a congruency between the international, intergovernmental mechanism housed within the UN system and a reliance on the formal institutions of international law. Further it demonstrates the continued primacy of physical integrity rights in the normative structure of the international system. Economic, social and cultural rights were far less emphasized than either physical integrity rights or political rights and freedoms within the UPR process. This also followed the regional make-up of recommending states, as states of the global North made recommendations at a higher rate than states in the global South, particularly in targeting states outside of their regional neighborhoods.

Given the high rate of recommendation acceptance, the puzzles that emerged were where and why states chose to reject the recommendations received, and further, how states explained the reasoning behind the resistance. States tended to reject more costly recommendations. Recommendations were more costly either by requiring a higher level of action such as acceding to a treaty or adjusting constitutional provisions, or tied directly to the implementation of pre-existing international commitments. The least costly recommendations, more likely to be accepted, included suggestions to "examine" an issue or "consider" changing a practice. Particular rights issue areas were similarly prone to rejection. The most prevalent issue areas of law and order and physical integrity were also met with higher rates of rejection. Minority rights and political rights and freedoms, too, saw higher levels of resistance. Rights concerning physical integrity, imprisonment, torture, political freedoms, and the treatment of minority groups and immigrants are frequently tied directly to the sovereignty and autonomous

competencies of states. Suggestions for changing these practices most directly tied to the

maintenance of state security or the stability of the regime were met with more resistance than

human rights practices ore at the periphery of state behavior and thus more directly tied to

cultural or economic practices. Conversely, women's rights, the rights of the child, and economic

social and cultural rights had higher rates of acceptance.

States with worse human rights practices were similarly more likely to reject

recommendations. Patterns diverged regionally as well. While there was little difference among

states of the global North making recommendations to those in either the North or the South or

states of the South commenting on the practices of the North, recommendations made from

Southern states to other states of the global South were more likely to be rejected. The pattern

holds despite the fact that intra-South recommendations tended to ask less of the state under

review than other recommendations. This seems to hint that some of states' responses were due

to the origin of the recommendation being made. What remains unclear from this analysis,

however, is whether the calculations being made were in reference to geopolitical position and

power, or normative force and the situation of state vis-à-vis international rights norms.

States in the UPR demonstrated different stages across the spiral model of change, from

repression to denial to tactical concessions, finally to prescriptive status and rule-consistent

behavior. The process itself assumes states to be at least at the third stage, willing to make

tactical concessions and move toward prescriptive status. As seen in the high rate of acceptance,

this assumption largely holds. However, in one-quarter of recommendations, states are stuck at

an earlier stage in the spiral model: denial. Faced with criticism for rights practices, states simply

deny the validity of the criticism, delay addressing it, or directly begin to contest the

international norm and offer a counter-normative argument. This dissertation spends much of its

time engaging with these states still at the second, denial, stage of the spiral. While doing so, I unpack the discursive and rhetorical justification and counter-normative ideations states use while resisting rights change in the face of both peer and society-based challenges. The findings of this focus are discussed in more detail in the following section.

Rhetoric and Resistance

In the final report for each state undergoing the review, states provided a response to each recommendation received and voluntarily explained the reasoning used on selected rejected recommendations. Through a close reading of these rejection explanations, I found four rejection frames—sovereignty, particularistic, procedural, and denial. The high rate at which states used a procedural rejection frame, high on resistance to the institution but low on resistance to the normative content, is suggestive for the status of both the UPR and the broader international human rights project. In not expressing a direct contestation of the rights norm promoted in the rejection, over half of states' most common explanations of their stance even while rejecting the recommendation, did not serve to challenge the prevailing norm. Thus, the majority of the time, even when states rejected or otherwise did not wish to implement the change suggested to them, the rhetorical choice was to accept the international norm but dispute the process or feasibility by which it was disseminated. This gives further credence to the high degree of congruence within the international rights regime and evidence to the broad acceptance of many rights.

States receiving a higher number of recommendations concerning minority rights or law and order procedures, as well as those states receiving a number of recommendations touching on their compliance with international institutions were more likely to frame their resistance in terms of sovereignty and offer distinct opposition to both norm and process. State appeals to

sovereignty, demonstrating a resistance both to the applicability of external suggestions as well as to the universality of the discussed norm, were most strongly associated with lower levels of NGO-perceived compliance with the UPR process.

Behavior varied greatly in terms of state self-reporting of implementation between the first and second cycles. At the second cycle reviews, as states gave and received more recommendations than during the first cycle of the UPR, states were tasked with self-reporting on their compliance with the preceding review's recommendations. While clearly presenting themselves in as much compliance as possible, the breadth and comprehensiveness of their reporting was not equal. Further, states using the less common rejection frames of sovereignty or denial were much more likely to again challenge either the alleged rights practice or the applicability of the recommendation in their second cycle national reports. The lack of complete monitoring data prevents rigorous testing of implementation on a recommendation-by-recommendation level, though two key patterns emerge in the state-level compliance data. The first, already discussed, is that those states expressing the strongest resistance to the rights regime and its institutions have lower rates of implementation. Secondly, implementation rates co-vary with Polity scores such that less democratic states implement their accepted recommendations at a lower rate than more democratic states. This may tie into the openness of democratic regimes and their relative susceptibility to pressure from society and international organs. Compliance did not appear to be related to human rights practices, after controlling for regime type, however.

As indicated above, the rejection rhetoric analyzed in this dissertation deepens the conceptualization of the denial stage of the spiral model. Certain resistance frames resonate more with the domestic population and thus are more effective at blocking domestic mobilization for a government unwilling to change. For resistance frames that are not compatible or legitimate in

the eyes of the public, the spiral model suggests society gets involved. Weak opposition emerges among the domestic population while transnational actors continue to mount pressure against the resistant state. I would argue that the state may also slide back from denial (which at least entails engagement with the international rights regime) to direct repression and disengagement from the processes. This is visible in states like Russia that began the first cycle with more than its fair share of rejections and categorical denial of alleged violations, but was fully engaged in the process. By the second cycle, the Russian state did the minimum and sought to avoid legitimizing critiques by mounting a defense of its behavior.

NGO Activity Throughout the UPR

Having addressed what this analysis revealed about state behavior in the first cycle of the Universal Periodic Review, I turn now to the other core of the study, which is the activity of civil society stakeholders at the UPR. Central to this study's purpose and framing was the question of if and where NGO advocacy and consultation at a state-centric intergovernmental institution had an impact on the proceedings and thus on state behavior. The UPR is, by design, a state-centric process wherein the states under review respond only to the specific recommendations of other state actors. Still, civil society stakeholders participated in the first cycle in large numbers with over 3,000 separate statements filed by individual organizations and their coalitions. Activity has increased through the first half of the second round with states receiving additional stakeholder reports, and the number of NGO coalitions participating in the process rising dramatically. A central and surprising finding of this dissertation was the degree to which domestic organizations participated in the UPR process in addition to those organizations with ECOSOC accreditation or that are otherwise UN-affiliated. Over one-third of all NGO participants in the first cycle's

formal review were domestically based. During the inter-cycle monitoring of progress on compliance with commitments made, domestic stakeholders provided substantially more detailed and targeted observations about compliance. As the second cycle began and domestic stakeholder groups began making specific recommendations for changes in human rights practices and referred directly to the preceding cycle's recommendations, transnational organizations largely continued to present their standard reports on violations.

NGO testimony during the first cycle drew largely on ideal points and norms as opposed to the specific, measured recommendations made by state actors in the formal interactive process. However, NGO stakeholders have also apparently learned from their first cycle experience and during the second round formatted their reports with more direct, actionable recommendations that diverge from the more aspirational proclamations seen in the first cycle's testimony. Also in contrast to state-peer recommendations and their focus on law and order and physical integrity rights, stakeholder submissions focused more directly on minority rights and the protection of freedom of movement. Unlike participation at most UN consultations, particularly as represented by those civil society organizations with ECOSOC consultative status, within the context of the UPR there was a relatively consistent high level of domestic civil society involvement that did not vary greatly by region or state type.

Despite the wide-ranging civil society engagement during the formal review process, this study finds only a minimal linkage between stakeholder testimony and peer-recommendations in the first cycle of review. Compounding the tension between the expectation that NGO mobilization would result in increased state attention to the civil society actors and in turn shift state behavior, these data show that individual stakeholder recommendations drawn from their

testimony and submission to the UPR process were less likely to be used by states in a peer recommendation when there was a higher level of NGO engagement in a state's review process.

Further, analysis of the levels of NGO engagement during the formal process of the first cycle suggest that states receiving heightened NGO scrutiny were more likely to reject the recommendations given to them, regardless of the recommendation's content, difficulty of implementation, or characteristics of the state under review. Interestingly, states under review with a high level of NGO engagement during the formal process not only had an increased likelihood of rejected recommendations, but additionally were more likely to use particularistic rhetoric when explaining their resistance to recommendations. States using this particularistic frame also were on average worse with respect for physical integrity rights and were less democratic than states with the more common procedural frame.

The connection of high levels of civil society engagement with this particular expression of rejection rhetoric, framed as direct resistance to the rights norm rather than objection to the international instrument or external pressure in general, reveals some of the possible mechanism behind the connection between NGO activity and rejection. Given that, on a whole, NGO testimony in the first cycle of the UPR was fairly normative and aspirational, drawing from international frames and tropes surrounding given rights and their protection, the testimony directly and deliberately presented the assumed universality of norm. When a state found themselves outside of this normative community, the state "lashed back" against this civil society-led "Western"/"Northern" universal set of ideals and went to lengths to explain the ways in which the universal norm did not apply in the particular cultural, national, ethnic, religious in which the state was situated. It is then this clash of context—the clash of thick and thin conceptualizations of what it means for a human right to be truly universal—that is at the heart

of contestation between most civil society actors and the resisting states. NGO stakeholder testimony largely comes without a specific context. The universality of the rights is taken for granted, the normative frames borrowed from their incarnations across the international system and applied to the state actor failing to observe them closely enough. This is the basis of all "naming and shaming" efforts. It is also the basis of state resistance and opens the possibility for state actors to reason away challenges to their practice by reference to history, culture and religion. Whether this approach by NGOs is the most efficacious, I argue the UPR demonstrates, is up for debate.

After the cycle's completion, domestic civil society organizations remained involved in the process by monitoring the implementation of recommendations accepted by their home state. Aside from a small set of prolific and heavily involved international NGOs, most follow-up and implementation reporting was completed by organizations within the state being covered. Domestic organizations were more likely to follow the implementation patterns of a set of specific recommendations than international organizations that submitted to multiple states did. This domestic civil society monitoring of international commitments resulted in some coordination and centralized reporting on in-progress implementation, but their work was inconsistently utilized during the second cycle of reviews. The formal process of the UPR relies solely on state self-reporting on the progress made inter-cycles. As mentioned and entirely expected, this resulted in most states portraying themselves in a high state of compliance with the recommendations they had received. Where NGO stakeholders chose to submit their own observations of state's compliance, they invariably cast doubt on state claims and progress. However, without a formal role for civil society follow-up observation or another form of

external monitoring instituted by the OHCHR, the degree to which these largely domestic stakeholders' efforts will be utilized remains to be seen.

It is with the behavior and role of NGOs that the UPR process most deviates form the standard formulation of the spiral model. In the standard formulation, during the first two stages where states are repressing their population and, if pressured, engaging in denial of their practices, domestic society is either completely suppressed or quite weak. This type of situation was observed in the UPR, in the case of Eritrea, for instance, however it was not universal. Secondly, transnational society is seen as the first mover in accusing, naming shaming, and otherwise pressuring the state to change while developing a broader network. However, in the context of the UPR, large numbers of domestic NGOs participate, even while states are repressing the population or denying their rights violations. The spiral model does not expect domestic society to be frequently engaged in pressuring a state while the state is still actively repressing the population. The UPR's structure, allowing for written and oral testimony, as well as the formation of ad-hoc coalitions for the purpose of the review may serve to offer more open access and a lower barrier to entry for domestic organizations. As the UPR progresses, it will be interesting to note if the process remains effective at incorporating domestic societal actors or whether these groups become disaffected or transnational organizations take their theorized initial role.

Contesting the unidirectional nature of the spiral model, the heightened rate of resistance coinciding with greater civil society involvement suggests the negative interactions Goodman and Jinks discuss in Risse, Ropp and Sikkink (2013) are worth further study. As they argue, monitoring is presumably most vital to improve conditions where political change is most difficult, while it may have a destabilizing effect in complaint or marginal countries where norm

compliance is either fragile or unsecured. NGOs in the UPR do tend to monitor the states with

the worst rights records at a higher rate. However, the continued reliance on naming and shaming

formulations by stakeholders, the subjective and polarized rhetoric found in their testimony,

complicates NGOs' possible role in monitoring and providing technical expertise. In the face of

massed societal shaming at the UPR, states were more likely to deny and resist, failing to commit

or even approach compliance.

Directions Forward

The interactive sessions of the UPR and iterated cycles make it an ideal context for

continued testing of the international consensus and reach of human rights norms across regions,

regimes, and religions. As a largely intergovernmental forum, the UPR presents a very specific

context within which states and civil society actors engage to discuss human rights norms and

work toward progressing human rights protections around the world. The specificity of this

context both aided my analysis and presents limitations for the broader applicability of the

findings. While the insight that domestic society organizations not only can play a role in an

international rights forum, but produce more detailed, specified and contextualized testimony

and monitoring information than many transnational organizations should be a finding that

translates to other regimes and settings, other observations are likely to be UPR-specific. For

instance, the relationship between NGO intensity and resistance to change is likely an artifact of

the state- and peer-centric nature of the UPR. Tying more polarized language, in the vein of

naming and shaming, to norm resistance, too is seemingly UPR-specific as many scholars have

found evidence that shaming behavior does not lead to recalcitrance by the state. The UPR's

foundation on technical assistance and best practices sets it apart from most cites for NGO

engagement, such as with the media, where naming and shaming tactics are much more appropriate.

Methodologically, the reliance on available text is a primary limitation. While I can impute meaning and infer patterns comparative across countries, this project is without the ability to definitely indicate the intentionality behind a state or stakeholder's phrasing. Participant observation and interviews with both NGO actors in Geneva as well as with state representatives in the process would have strengthened the contribution of this dissertation and are the logical next step for continuing this line of research. Direct observation and interviews would allow for a more complete picture of the mechanisms underlying the relationships drawn from the large-N and otherwise aggregated analysis presented in the preceding chapters. Questions of precisely how state participants view NGO oral and written testimony in the process and the degree to which either the state under review or recommending states actively seek to incorporate civil society recommendations an statements in either their national report or their own peer-recommendations are yet to be answered. Such interviews would also help to identify the mechanism behind the negative relationship between the level of NGO activity and rejection and more accurately capture the degree to which backlash serves as a foundation to state recalcitrance in the face of mounted civil society and third-party state pressure.

As the second cycle comes to a close and the last few years of documentation is released, future studies can utilize more complete data on implementation, address questions of institutional learning as behavior patterns of actors shift between cycles, and gain a better understanding of the utilization of NGO testimony over time. Even without these additional data, this dissertation moves the study of society-state interactions in international rights regimes forward in important ways. First, this dissertation suggests that domestic actors can participate in

international regimes with an appropriate structure and low costs for participation. Without

needing to maintain an office in Geneva, stakeholder organizations can attend their country's

review once every four and a half years along with whichever strategic and planning meetings

they choose to attend in the interim period. This suggests that the primacy the spiral model

places on transnational associations is not fixed and theoretical space needs to be created to

examine the initiative and international engagement power of single-state civil society

organizations. Additionally, it informs organizational design literature on possible ways to

structure the solicitation of CSO consultation and lowering barriers to participation.

Second, in response to Simmons (2009), I offer further support for the importance of

considering domestic factors in predicting states' commitment and compliance. The findings in

this project also suggest more can be done to examine the role of civil society as rights monitors.

As Simmons argues, the willingness and capacity of a state to carry out a treaty's provisions is

central to understanding its commitment. In the UPR, the same regime factors play into the

willingness and capacity for a state to accept recommendations made to them. Moving from

commitment toward compliance, Simmons highlights the role of treaty monitoring instruments.

Domestic society here, too, is an important complement particularly when the international

instruments are weak. Effective and comprehensive monitoring is the absolute baseline for

socializing states to comply with their commitments.

My dissertation also provides descriptive and discursive foundations for continued work

on the UPR and understanding rhetorical exchanges that constitute contestation around

international rights norms. The manner in which denial frames resonate (or do not resonate) with

domestic society could be more fully developed from Risse et al. The four-fold typology

developed here is a step in that direction and this projects findings suggest that these frames are

both meaningful and somewhat sticky leading into the second cycle. The UPR's structure which

makes the perseverance of these frames into succeeding cycles evident, serves as an ideal locale

for focused study of the rhetorical exchanges among states and between states and civil society

stakeholders. These discursive events define normative contestation and illustrate not only which

frames are more effective and persuasive, but which resistance frames are most durable.

Stakeholders and the Promise of the UPR

Finally, I argue this dissertation identifies a crucial gap in NGO behavior where increased

civil society coordination and energy could be directed: monitoring and implementation. The

mixed results of Chapter 1 suggest that civil society participation in providing general shaming

statements and recommendations that do not require a response during the state-centric formal

review process may not be an effective use of these organizations' limited resources. Secondly,

the difficulty in establishing solid, non-biased measures of implementation in Chapter 3 highlight

the weakness of the structure of the UPR in equipping state participants to hold the state under

review accountable for the recommendations received and accepted during preceding cycles.

This disconnect with NGO activity largely going toward providing testimony and statements

that, en masse, appear to be generating resentment on the part of the states under review

combined with the lack of comprehensive monitoring of the follow-through of states suggests a

missed opportunity. As the UN itself is not providing monitoring of state compliance,

stakeholders have the opportunity of providing vital expertise by formatting their contributions in

a way that matches their monitoring of a state's rights practices with recommendations made in

the UPR. Such testimony would likely prove more useful to third party states as they make

recommendations than general statements on the country's human rights status or the

stakeholder's own recommendations for change. The current fragmented and uncoordinated monitoring done by domestic NGOs leaves substantive areas uncovered and follow-up of state changes incomplete.

The state of monitoring and implementation does not present a missed opportunity only for civil society participants, however, but suggests an institutional design flaw with the UPR itself. The UN system has had a long confused relationship with non-state actors consulting and otherwise interacting with the body. Drawing stakeholders into the process to have them make static quasi-consultative statements in what is ultimately an interactive recommendation-response format relegates civil society to a token, ineffectual position. By relying on self-reporting, the iterative nature of the UPR fails to live up to its potential without a universal application of implementation assessment. Utilizing civil society more directly to provide external monitoring of compliance with accepted recommendations would both utilize the expertise of domestic and transnational actors and would provide them with a substantial role to fill in making the UPR process a success. Further, I would argue, this would usefully redirect NGOs away from staid naming and shaming in their reports to more productive and objective monitoring for state actors to utilize in this state-centric process. This should in turn reduce the backlash against the institution and process experienced in state rejections.

The Universal Periodic Review remains, like the new Human Rights Council, a less-than-ideal human rights institution. But, like the HRC, it presents promise as a positive next step in guaranteeing the advancement of human rights via the United Nations. Whether it continues to develop and meet that promise depends upon its use of civil society expertise and increased inter-cycle monitoring to promote compliance.

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