

## **THE UNIVERSAL PERIODIC REVIEW (UPR): IS IT AN OVERRATED PROCESS?**

### *EVRENSEL PERİYODİK GÖZDEN GEÇİRME: ABARTILMIŞ BİR SÜREÇMİDİR?*

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### **ABSTRACT**

The Commission on Human Rights was replaced with the Human Rights Council due to being the centre of politicization, double standards and selective among states. These are the problems which bring political disagreements into the forefront within the UN Human Rights mechanism rather than its actual duty which is to promote and to protect human rights in national and international levels. Thus the Human Rights Council with the Universal Periodic Review (UPR) has emerged with the notions such as accountability, transparency, non-selectivity, inclusiveness, de-politicisation, impartiality, periodicity and complementary, to prevent these accusations. Specifically the UPR is now in its third cycle (2008 to 2011, 2012 to 2016, 2017 to 2021) to review member states' human rights records. In this paper, after such time, it is justifiably asked as to whether the UPR is an overrated process or not within the Human Rights Council in terms of overcoming the problems that the Commission faced.

**Key words:** International Human Rights Law, the Universal Periodic Review, De-politicisation, Non-selectivity

### **ÖZ**

İnsan Hakları Komisyonu siyasallaşmanın, çifte standardın ve devletler arasında seçici olmanın merkezi olması nedeniyle İnsan Hakları Konseyi ile değiştirilmiştir. Bu problemler BM İnsan Hakları mekanizmasının asli görevi olan insan haklarını korumak ve teşvik etmenin yerine siyasi anlaşmazlıkları ön plana çıkarmasına sebep olmuştur. İnsan Hakları Konseyi 'Evrensel Periyodik Gözden-Geçirme' süreci ile hesap verebilirlik, şeffaflık, seçici olmamak, kapsayıcılık, politik olmamak, tamamlayıcılık, tarafsızlık, bütünlüçülük, ve periyodiklik gibi kavramları uygulayarak bahsedilen suçlamaları engellemeye çalışmaktadır. 'Evrensel Periyodik Gözden-Geçirme' üçüncü Gözden-Geçirmeyi yapmakta olup (2008-2011, 2012-2016, ve 2017-2021) üye devletlerin insan hakları sicillerini gözden geçirmektedir. Bu nedenle, bu makale, geçen bu süre zarfında haklı olarak şu sorunun cevabını aramaktadır, 'Evrensel Periyodik Gözden-Geçirme' İnsan Hakları Komisyonun karşılaştığı problemlerin üstesinden gelinmesi anlamında İnsan Hakları Komisyonu içinde fazla abartılmış bir süreç midir.

**Anahtar kelimeler:** Uluslararası İnsan Hakları Hukuku, Evrensel Periyodik Gözden-Geçirme, Apolitikleşme, Seçici Olmamak

## **1. INTRODUCTION**

United Nation Human Rights Council (henceforth "HRC" or "the Council") was replaced with Commission on Human Rights (henceforth "the Commission") in 2006 and Universal Periodic Review (henceforth "UPR") mechanism was created as a subsidiary organ of the General Assembly within the Council. The Commission was dismissed because it became an area of politicization, double standards and being selective among states. The Commission lost its reputation in terms of protecting human rights. Thus, it was called as "the foxes to guard the henhouse".<sup>1</sup> The Human Rights Council has been adopted as a new preventative tool against these problems and Universal Periodic Review (UPR) has been created as the fundamental innovation against these accusations. The UPR has emerged in the new system which works with the notions such as accountability, transparency, non-selectivity, inclusiveness, de-politicisation, impartiality, periodicity and complementary. After a decade of the Human Rights Council system, there is highly valuable question about to what extend the UPR has applied these notions into its system, or whether the UPR is an overrated process or not in terms

<sup>1</sup> Harrington Joanna, (2009) "Canada, the United Nations Human Rights Council, and Universal Periodic Review" Constitutional Forum, (8/3), pp.79-93, p.79

of overcoming politicization, double standards and being selective among states. This paper will examine whether the UPR has been successful or not in terms of solving these problems and applying these notions into the process. And there will be an evaluation on the potential and capacity of the UPR system.

## 2. COMMISSION ON HUMAN RIGHTS v. HRC UNIVERSAL PERIODIC REVIEW: WHAT IS NEW?

When Sudan became a member of the Commission in 2001, and Libya was elected as chairman in 2003, the Commission on Human Rights was intensely criticized. Membership of the Commission had "become a source of heated international tension, with no positive impact on human rights and a negative impact on the work of the Commission."<sup>2</sup> Nongovernmental organizations (NGOs) certainly viewed the questionable human rights records of some members of the Commission as a central handicap. Also the like-minded states led the regional groups and block voting appeared not only within states frequently accused of human rights violation, but also within the European Union.<sup>3</sup> The Commission lost its reputation due to applying double standards related to the treatment of particular country situations, and failing to address severe human rights violations. The Commission was regarded as "slow and inflexible" in dealing with urgent human rights situations.<sup>4</sup> When the Commission was in operation, there were political blocs, who put pressure on the Commission for their side. Yet there are also different blocks such as European Union, the African Group, the Organisation of Islamic States, the non-Aligned movement and other political partnership. In particular, during the review of Tunisia, 65 statements were made but 50 of them were 'favourable' statements made by African and Muslim countries.<sup>5</sup> Furthermore, some western countries and NGOs regularly discuss that the Council put 'disproportionate attacks' on Israel.<sup>6</sup> These examples address that it is highly difficult for the UPR to be away from politicisation, exclusiveness, partiality and selectivity as this was the issue of the experience of the Commission. And these are few examples which caused dismissal of the Commission. The UPR has appeared as a consequence of political pressure rather than evaluating the weakness-failures and strengths-successes of the Commission.<sup>7</sup>

The Human Rights Council re-focuses on its energy to promote and protect human rights through "the principles of universality, impartiality, objectivity, non-selectivity, constructive international dialogue and cooperation ..."<sup>8</sup> The UPR plays a significant role in completing these principles in the international human rights system. The General Assembly Resolution 60/251 listed the principles of the UPR, and defines it as a process based on objective and reliable information.<sup>9</sup> As specified under the Human Rights Council's "institution-building package", the UPR Working Group holds two-week sessions per year to review 16 countries during each session and therefore 48 countries per year and the entire UN membership over the course of the first UPR cycle (2008-2011). The four-year cycles are scheduled to review the 192 UN Member States. This even includes those states which have not ratified any human rights instruments yet. It is to say that the UN Secretary-General Mr Ban Ki-moon identified the techniques of the UPR "strong and meaningful" and capable of sending a "clear message that all countries will have their human rights record and performance examined at regular intervals".<sup>10</sup> It consists of reviewing all states' human rights obligations and commitments through cooperation in an interactive dialogue.<sup>11</sup> For instance, all the states of the first cycle participated to the UPR process and all human rights issues were concerned in the first cycle.<sup>12</sup> Unlike the Commission, the UPR in the first cycle achieved all 192 state participation, 98% of them presenting a written national report, and 80% of them being represented at ministerial level.<sup>13</sup>

During review of 'State under Review' (SuR), human rights obligations and commitments particularly, the UN Charter, the Universal Declaration on Human Rights, human rights instruments to which the State under

<sup>2</sup> Report of the High-Level Panel on 'Threats, Challenges and Change, A more secure world: Our Shared Responsibility', General Assembly Resolution 59/565, UN Doc. A/59/565 of 2 December 2004, para. 285.

<sup>3</sup> Dürsteiner Antonia, (2009) "The Debate on the New Human Rights Council", Human Security Journal, (8), pp.33-41, p.35

<sup>4</sup> Dürsteiner, Ibid

<sup>5</sup> Abebe A. Mulugete, (2009) "Of Shaming and Bargaining: African states and the Universal Periodic Review of the United Nations Human Rights Council" Human Rights Law Review, (9), pp.1-35

<sup>6</sup> Abebe, Ibid, Even though Philip Alston in 2006 noted that the UPR "need to learn from the dismal failure of a very similar exercise undertaken by the Commission between 1956 and 1981." see in Alston Philip, (2006) "Reconceiving the UN Human Rights Regime: Challenges Confronting the New UN Human Rights Council" Melbourne Journal of International Law, (7), pp.1-39, p.1

<sup>7</sup> Dürsteiner, Supra n.3, Emphasis added

<sup>8</sup> General Assembly Resolution 60/251, Human Rights Council, UN Doc. A/RES/60/251 of 3 April 2006, para. 4. see also, 5/1. Institution-building of the United Nations Human Rights Council

<sup>9</sup> General Assembly Resolution 60/251, para. 4.

<sup>10</sup> The Universal Periodic Review Mechanism: Joint Statement to the First Session of the Human Rights Council, 27 June 2006, available at: <http://hrw.org/en/news/2006/06/27/universal-periodic-review-mechanism> [last accessed 25 December 2010].

<sup>11</sup> General Assembly Resolution 60/251, para. 4.

<sup>12</sup> Manieva Saida and Chauville Roland, (2010) "Analytical Assessment of the UPR, 2008-2010" (UPR-info.org) available at: <[http://www.upr-info.org/IMG/pdf/UPR-Info\\_Analytical\\_assessment\\_of\\_the\\_UPR\\_2008-2010\\_05-10-2010.pdf](http://www.upr-info.org/IMG/pdf/UPR-Info_Analytical_assessment_of_the_UPR_2008-2010_05-10-2010.pdf)> (last accessed on 25 October 2017) p.11

<sup>13</sup> Redondo E. Dominguez, (2012) "The Universal Periodic Review - Is There Life Beyond Naming and Shaming in Human Rights Implementation?" New Zealand Law Review (4) p.1-42, p.28

Review ratified, voluntary pledges and commitments made by States, and applicable International Humanitarian Law, are taken into account.<sup>14</sup> This review relies on the documents (reports/information) consisting of "national report" provided by the "state under review (henceforth, SuR)", states' observation - comments, and other relevant UN official documents as well as information provided by human rights treaty bodies and Special Procedures.<sup>15</sup> Additionally, relevant stakeholders including national human rights institutions and non-governmental organizations may provide information (if it is reliable) for OHCHR to prepares a report. Having different sources helps the UPR to achieve these principles through having reliable information. The information might not, otherwise, be objective. Especially, the reports produced by SuR focus on their optimistic parts of human rights record while NGOs urges upon problematic sides of human rights of SuR. Thus, different sources may guide the UPR to establish balance between two sides then reliable information may appear.

During the deliberation process of disposition of the UPR in 2005, peer review and periodic review were addressed but General Assembly decided to have periodic review in the end of its deliberation.<sup>16</sup> All states will be reviewed periodically by a Working Group which consists of the 47 members of the HRC. And all Observer States have opportunity to contribute to the review. Each review is enabled by groups of three States of the Council called "troikas" who act as reporters. 'Troika' is selected from different regional groups by the lots of the Council. The Troika enables the UPR to establish the interactive dialogue and it is responsible to create a draft of the outcome report together with the State under Review.<sup>17</sup> Other Stakeholders (NGOs and National Human Rights Institutions) can be part of the interactive dialogue but they have no right to explain their views in the Working Group. In the light of above information, periodic review, interactive dialogue, cooperation and non-selectivity create less political atmosphere among states. By doing this, UPR may avoid critiques of being political. Even though, the UPR is an international level which includes the merest chance for political discussion on human rights field.

The HRC is not a tribunal of impartial judges, an academic expert in human rights field, or a club of human rights movement. The Council is a political body due to the fact that states are represented by their governments which are the centre of politics in itself and in the international area.<sup>18</sup> Moreover, the UPR is not like the treaty bodies which monitor the detailed application of specific human rights obligations by a state party, yet the UPR only draws a general picture of the human rights situation in a country.<sup>19</sup> In other words, the UPR is not a rigorous technical review of the human rights situation in a country.<sup>20</sup> The Universal Periodic Review aims to be reinforcement of the monitoring mechanism.<sup>21</sup> Unlike Peer review cannot substitute for the expertise that treaty bodies and special procedures bring to bear upon a human rights situation, and states should bear in mind that the UPR should be a tool to help enforce existing recommendations by special procedures and treaty bodies, rather than compete with them. Thus the HRC and in particular the UPR aim to persuade governments to modify laws and policies, rather than to impose human rights law primarily through courts, economic sanctions, or military campaigns.<sup>22</sup>

The UPR has brought a lot instrumental tools within the HRC system to overcome challenges that the Commission encountered. It is very early to claim that the UPR provides an absolute solution to overcome politicisation and selectivity among states. And there has been no serious political challenge within the Council yet to test whether the UPR works with its intended notions (especially de-politization) or not. Thus, the existence of the UPR relies on its success in the long run.

### 3. REVIEW UNDERTAKEN BY THE UPR 'WORKING GROUP'

48 states are reviewed in each year by a Working Group which consists of all 48 Council members and non-members states.<sup>23</sup> They have the opportunity of taking floor in the review. During the working group session, other stakeholders can attend to the working group and have no right to express their critics but at the end of the review, taking floor might be given to stakeholders.<sup>24</sup> Moreover, a working group is formed in three steps; the first step, the working group assesses a SuR during three hours session, next step is, the SuR has to adopt

<sup>14</sup> HRC Res 5/1, para. 1.

<sup>15</sup> Dürnsteiner, *Supra* n.3, p.36

<sup>16</sup> Redondo E. Dominguez, (2008) "The Universal Periodic Review of the UN Human Rights Council: An Assessment of the First Session", *Chinese Journal of International Law*, (7), pp.721-734, p.726

<sup>17</sup> Redondo, *Ibid*

<sup>18</sup> see also in, Marc Bossuyt, (2006) "The New Human Rights Council: A First Appraisal", *Netherlands Quarterly of Human Rights*, 2006 (24), pp.551-556

<sup>19</sup> "Curing the Selectivity Syndrome The 2011 Review of the Human Rights Council", *Human Rights Watch*, June 2010, p.13

<sup>20</sup> *Ibid*

<sup>21</sup> Boyle, K. (2009) *New Institutions for Human Rights Protection*, OUP, Oxford

<sup>22</sup> Hurst Hannum, Review of Posner, Eric, (2015) "The Twilight of Human Rights Law", *Human Rights Quarterly*, (37), pp. 1105-1109, p.1105-6.

<sup>23</sup> In accordance with Institution Building of the Human Rights Council, HRC Res. 5/1, UN HRC OR, 5th session, Annex [18(a & b)], UN Doc. A/HRC/RES/5/1.

<sup>24</sup> *Ibid*

its report in a time of over thirty minutes within the first two weeks, after at least 48 hours, of the review. The final part of this process includes, at plenary level of the HRC, the adoption of the report lasts over an hour during the session.<sup>25</sup> The SuR has the opportunity to make preliminary comments on the recommendations and to decide accept or note them. In the plenary session, SuR can reply to questions and issues that were not sufficiently addressed during the Working Group and respond to recommendations that were raised by States during the review. Within this time, member and observer States express their opinion about the outcome of the review and NHRIs, NGOs and other stakeholders make general comments. Such implementation of these steps makes the UPR to adopt non-selectivity, periodicity and accountability into its process. It is highly difficult to claim that there is a double standard and selectivity among states while periodically applying UPR process to all UN members.<sup>26</sup>

According to the new route, the UPR is a process of monitoring the states' human rights records by the reliable and objective information. The sources of information is - twenty pages report - submitted by the state under review (SuR) and - two reports of equal to ten pages - submitted by OHCHR. And also, national reports from the all UN members, and reports from NGOs and National Human Rights Institutions are submitted to OHCHR. Information from human rights treaty bodies and special procedure are received by OHCHR. All this information is collected equally for/from each state. Collecting information from different sources is a fundamental part of cooperation between SuR, NGOs - National Human Rights Institutions, OHCHR and human rights treaty bodies. Such cooperation can be regarded as a strong argument against critiques of politicization, double standards and being selective among states. Additionally, gathering reliable information from altered sources can increase the transparency of human rights records of any SuR. There is also a public web-cast providing records and views for individuals in any time. As a source of information a public web-cast is regarded as an important tool to makes the process more transparent and accessible.<sup>27</sup>

#### 4. TROIKA

Troika was empowered by the HRC Resolution 5/1 to obtain written questions provided by states for the UPR before its review. It facilitates the review and also assists in the preparation of final report of the Working Group.<sup>28</sup> Troika transmits these questions and/or issues to the SuR. The President of the Council crystallizes the questions because the questions might be deformed by Troika. Moreover, the Troika is selected from different regional groups by the majority of HRC. Thus, the selection for members of Troika might be a vital part in terms of preventing politicization. During the election, if the members of the Council are de-politicised, then Troika will be politically neutral. This election is based on an equal geographic distribution for a period of three years with secret ballot and majority members of the General Assembly.<sup>29</sup> The election process is adequate to argue that the Council is elected in a democratic way. In addition to this, the Council has introduced new membership standards when a state becomes a member of the Council. These criteria even comprise pledges and commitment, suspension of membership, as well as, a state to be member of the Council; it needs to have an extortionately unpolluted human rights records.<sup>30</sup> It should be noted that in May 2008 election of the Council, pledges were submitted by all candidate-states.<sup>31</sup> Therefore, the '*election for members of Troika from the Council*' obstructs exudation of violator states to the Troika. This seems, non-selectivity and de-politicisation are the easiest applicable principles of the UPR in the Troika due to its procedure for being a member of the Council.

On the other hand, the question of who has unpolluted human rights records is highly political. Claiming, US, Russia, France or China has acted as human rights friendly countries, will be another political discussion because these countries are politically strong to prevent their human rights violations to be discussed, unlike weak states with polluted human rights records. There is a good intention here to exclude human rights unfriendly states from the Troika but Troika, in fact, has a feeble role in UPR system because; Troika does not truly guide the review and interactive dialogue. And, states are reluctant actors to submit written question about human rights circumstances or programme of SuR to the Troika.<sup>32</sup> Besides, the Troika has no impartial expert of human rights in the review; hence recommendation given by states has the possibility to oppose the

<sup>25</sup> Ibid

<sup>26</sup> Abebe, Supra n.5

<sup>27</sup> "Curing the Selectivity Syndrome The 2011 Review of the Human Rights Council", Human Rights Watch, June 2010, p.12

<sup>28</sup> HRC Res.5/1. para. 18, see also General Assembly Res. 8/PRST/1: [President Statement on modalities and practices for the Universal Periodic Review Process].

<sup>29</sup> General Assembly, Res. 60/251, paragraph 8. see also in, Duran C. Villan, (2006) "Lights and Shadows of the new United Nations Human Rights Council" SUR-International Journal on Human Rights, (3), pp.7-18. p.8

<sup>30</sup> UN: Governments Must Act Promptly and Effectively on Important Human Rights Commitments in the 2005 World Summit Document, Amnesty International Press Release, 26 September 2005

<sup>31</sup> Office of the High Commissioner for Human Rights, Making a Difference where it matters Most: OHCHR's Support to Implementation at Country Level, available at <[www.ohchr.org/en/countries/pages/mapofficesindex.aspx](http://www.ohchr.org/en/countries/pages/mapofficesindex.aspx)> accessed 24 November 2010

<sup>32</sup> HRC Res.5/1. para.18, see also General Assembly Res. 8/PRST/1: (President Statement on modalities and practices for the Universal Periodic Review Process).

international human rights law and that weakness of the Troika will negatively affect the UPR's potential. As a result of this, achievement of the UPR's principles is likely to underweight the influence owing to the weakness of the Troika.

## 5. INTERACTIVE DIALOGUE

During the Working Group session, the UPR mechanism provides a forum to discuss human rights violations-issues with consideration of the information from altered sources. As noted, the UPR has proven that it is possible for governments to discuss all varieties of human rights situations in a cooperative and collaborative environment during the interactive dialogue. Each state has maximum of three hours to be reviewed by the working group. In the first session of the Working Group of the UPR, it was adopted that each state will be given 60 minutes for presentation of national report and responding the transmitted written questions compiled by the Troika. During that time, the Working Group also contains responding to verbal questions through the interactive dialogue as well as including comments for the conclusion of the Working Group.<sup>33</sup> The SuR needs to use the time advisedly for the reason that the time is restricted to address the human rights situation in the country of SuR. During the interactive dialogue, all states have a chance to take floor but there is a distinction between members and non-members of the Council. The members are eligible to present their comments in three minutes but observers' states also have two minutes to express their statements.<sup>34</sup> According to this, maximum 60 states among all UN members may take a floor in the review. Involvement of these states in the session helps the UPR to be successful in terms of validation of the undergoing review.

The aim of the interactive dialogue is that SuR has a chance to receive statements about their human rights records from treaty bodies, NGOs and other states. This cooperation provides transparency for UPR and SuR because actors of the working group can review the human rights records of SuR. The transparent process of the working group is the most helpful tool of the UPR in order to provide non-selectivity, de-politicisation and objectivity for all actors of human rights system. Likewise, interactive dialogue establishes cooperation between states and other actors of the working group to promote and encourage respect for human rights.

However, allocated time for the interactive dialogue is not adequate to constitute highly beneficial outcome for the working group. It results reducing the number of questions that are directed to the SuR, and it further causes time constraints on the given recommendations by states.<sup>35</sup> Furthermore, "limiting the visibility of NGOs' information" is a way to cut criticism against violation of human rights by states.<sup>36</sup> As a result of this drawback, Mylene Bidault - the officer of the OHCHR indicates that it is the best choice to free the act of stakeholders as open as possible without clarifying the written exact role of them.<sup>37</sup> Hence, it seems to be that limited stakeholders' participation causes further restrictions on the cooperation between actors of the working group. It might be also argued that the transparency of the UPR is deteriorated as a result of limited time and restricted role of NGOs. Therefore, the UPR should make sure that civil society is able to bring restrained information and questions to any UPR review.<sup>38</sup>

It is argued that there is a negative form of cooperation between 'friendly states'. These states take great deal of time applauding the SuR's achievements rather than providing any beneficial criticism.<sup>39</sup> Thus, it interestingly comes out that regional group of the SuR has a tendency to be more active than other states.<sup>40</sup> By doing so, the objectivity of the UPR is weakened by 'friendly states' and also cooperation for the protection and promotion of human rights can be damaged by that form of political behaviour. Furthermore, some countries can take particular cases more seriously and pay less attention to other interventions in the working group. Particularly, Slovenia made statements regarding gender perspective in its all interferences rather than other subjects in the first and second Reviews.<sup>41</sup> In addition, some states tend to have positive views to particular states' human rights records rather than any other states. For instance, Russia made an optimistic comment on Bahrain, Algeria and Pakistan human rights record in their review. In contrast, Russia made a negative comment on colonialism, torture and the occupation of Iraq as current issues in England's Review.<sup>42</sup>

<sup>33</sup> Redondo, Supra no.16, p.726

<sup>34</sup> Ibid

<sup>35</sup> Henderson Tiffany, "Towards Implementation: an Analysis of the Universal Periodic Review Mechanism of the Human Rights Council" available at: <<http://www.upr-info.org/-Articles-and-analyses-.html>> [last assessed 15 December 2010]

<sup>36</sup> Ibid

<sup>37</sup> Interview with Mylene Bidault, Officer of the Office of the High Commissioner for Human Rights (Palais des Nations, Geneva, 20 May 2008). See more in, Stoyanova Mariya, (2008) "Civil Society Involvement in the UPR – the example of Indonesia" FES Conference Report, Friedrich-Ebert-Stiftung, pp.1-6, p.3-4

<sup>38</sup> Gear D. Felice, (2007) "A Voice not an Echo: Universal Periodic Review and the UN Treaty Body System" Human Rights Law Review, (7), pp.109-139, p.124

<sup>39</sup> Supra n.21, p.13

<sup>40</sup> Manieva and Chauville, Supra n.12, p.8, see also in, Edward McMahon and Marta Ascherio, (2012) "A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council", Global Governance 18 pp.231-248, p.245-6

<sup>41</sup> Redondo, Supra n.16

<sup>42</sup> Redondo, Supra n.16

Ultimately, these state's behaviours might prevent maintaining the implementation of de-politicisation, transparency and objectivity.

## 6. OUTCOME OF the UPR

The report of the working group is a vital step of the UPR which includes assessment of both positive and negative human rights records of SuR. Thus, the recommendations are the main outcome of the UPR. Troika and the SuR prepare this report to be adopted by the working group and this is also closely monitored by the Council. The report is based on realistic recommendations and/or conclusion suggested by the observer states during the interactive dialogue. The SuR may not agree and support all recommendations. They may decide which recommendations are acceptable or not. The UPR creates a frame mechanism for whole UN human rights system because it creates a common platform bringing all recommendations together from different sources of the UN human rights protection system.<sup>43</sup> By doing so, all actors of human rights protection system and the SuR can conceptualise the overall picture of human right situation in the country of SuR. States carry great responsibility through ensuring recommendations and building a bridge between the reviews.<sup>44</sup> For instance, the recommendations appeared in the 1st cycle have links with the recommendations appeared during the 2nd cycle.<sup>45</sup> This is an opportunity for SuR to be accountable for what has or has not been achieved until its next review. Such accountability is achieved through the acceptance and implementation of recommendations, and through positive actions to promote human rights.<sup>46</sup> For that reason, the notion of transparency has been performed for all states in accordance with UPR's guidelines.

Moreover, the recommendations and conclusions of the working group, constructive critiques in the report might ensure the effectiveness of the UPR.<sup>47</sup> The reports clarify the human rights situation in all countries. NGOs, treaty bodies and other states make recommendations and conclusions in the reports in accordance with SuR's human rights weakness or strengths. Those mentioned actors co-operate to promote and to encourage respect for human rights. They also collaborate with UPR to check whether the treaty bodies' obligations are complied or not. The UPR and the treaty bodies are both form a complementary system in international human rights law by examining each other. For the success of complementary system and implementation of cooperation between those actors, international society should encourage the 'state under review' to deploy the recommendations and conclusions.<sup>48</sup> In this regard, 'UPR Info' provided through the first cycle data, there are four types of SuR responses to recommendations: "accepted (including the ones already implemented or in the process of implementation), rejected, not clear/general response and pending/no response".<sup>49</sup> For instance, over the first seven sessions, 6962 out of 10262 recommendations were accepted.<sup>50</sup> Such data and SuR responses mean that SuRs are willing to participate into the UPR process. Moreover, the reasons/explanations why the SuR reject the recommendation may address the SuR's cooperation within UPR.<sup>51</sup> For instance, Barbados, Bosnia and Herzegovina provided a comprehensive explanation that why they rejected or accepted recommendations.<sup>52</sup> Such explanation promotes the accountability of SuR and UPR process with having more reliable and valuable information.

However, in the first session of the UPR, some states explained that the resolution for the UPR had a lack of explanation of recommendations and comments.<sup>53</sup> It was like in one of the treaty bodies in Canada session made recommendations about eliminating discrimination against the establishment of religious schools in Ontario. Yet, there was no any attempt to provide a valuable suggestion how and in what ways Canada should eliminate this.<sup>54</sup> Lack of such explanations in the recommendations is the most operational deficiency of the UPR.

<sup>43</sup> Henderson, Supra n.35, p.12

<sup>44</sup> "Starting all over again? An analysis of the links between 1st and 2nd cycle UPR recommendations" (2/2/2015, UPRInfo) <<https://www.upr-info.org/en/news/starting-all-over-again-analysis-of-the-links-between-the-1st-and-2nd-upr-cycles>> last accessed on 04.11.2017, p.19

<sup>45</sup> Ibid

<sup>46</sup> Ibid

<sup>47</sup> Durnsteiner, Supra n.3, Indonesia thanked all those who provided this kind of criticism, quoting particularly Amnesty International as reflected in the Report of the Working Group on the Universal Periodic Review: Indonesia, UN doc. A/HRC/8/23 (2008) para. 14

<sup>48</sup> The Universal Periodic Review Mechanism: Joint Statement to the First Session of the Human Rights Council, 27 June 2006, available at: <http://hrw.org/en/news/2006/06/27/universal-periodic-review-mechanism> [last accessed 25 December 2010].

<sup>49</sup> Supra n.21, p.15

<sup>50</sup> Ibid

<sup>51</sup> Henderson, Supra, n.35

<sup>52</sup> Report of the Working Group on the Universal Periodic Review, available at: <[http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/BB/A\\_HRC\\_10\\_73\\_Add1\\_Barbados\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/BB/A_HRC_10_73_Add1_Barbados_E.pdf); [http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/BA/A\\_HRC\\_14\\_16\\_Add.1\\_Bosnia%20and%20Herzegovina.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/BA/A_HRC_14_16_Add.1_Bosnia%20and%20Herzegovina.pdf)> [last assessed 20 December 2010]

<sup>53</sup> Redondo, Supra n.16

<sup>54</sup> Harrington, Supra, n.1

The UPR should be aware that its recommendations and conclusions might be copied from the work of treaty bodies and special procedures.<sup>55</sup> Treaty bodies consider the detailed application of specific human rights obligations by a state party; however, the UPR only provides a conceptual framework of the human rights situation in some countries.<sup>56</sup> There might be a conflict between the UPR and treaty bodies in terms of monitoring human rights obligations in a country. This might happen when the UPR duplicate the work of the treaty bodies which the SuR has the possibility to reject the recommendations in such work. This might weaken the authority of treaty bodies. If any SuR rejects the recommendations related to treaty bodies' obligations, SuR may suppose that treaty bodies' obligation has been already monitored and eluded. In this sense, such cooperation between treaty bodies and the UPR may significantly damage promoting and encouraging respect for human rights. In this case, a SuR might avoid from being deeply reviewed by the treaty bodies in terms of its obligations. There seem an incomplete task sharing between treaty bodies, special procedures and the UPR in terms of giving recommendations.

## 7. CONCLUSION

General Assembly established the HRC with new values by consensus in the international human rights law area to solve the critiques and weakness of the Commission.<sup>57</sup> The Council has monitored human rights in both national and international levels within its new organisation. The UPR was created as a phenomenal tool for the Council to apply the notions of accountability, transparency, non-selectivity, inclusiveness, depoliticisation, impartiality, periodicity and complementary. The Commission failed in adopting these notions and became a source political tension with a negative impact on the work of the Commission. Also the regional groups and block voting appeared not only within states frequently accused of human rights violation, but also within the European Union.

Unlike the Commission, the UPR has brought new instrumental tools to implement these notions. The UPR has been in charge of a heavy responsibility of protecting and promoting human rights. These notions have been successfully applied within the new system. It is claimed that the reputation of the United Nations system is maintained by the HRC with the UPR within broad concept that the Commission had been abandoned. Each parts of the UPR process is a ground for these nations to be implemented. For instance, the UPR Working Group prevents the accusation of being selective due to giving equal and right for states to participate in working group. And periodicity is achieved by the UPR through reviewing all UN members in the first and second cycles. Interactive dialog is an process to apply accountability, transparency, non-selectivity, inclusiveness.

Moreover, the Council is a political body due to the fact that states are represented by their governments which are the centre of politics in itself and in the international area. The UPR is a human rights monitoring mechanism led by States rather than expert bodies. This is its distinctive trait and attempts to evaluate its results without understanding its political nature. The cooperative dimension is important, and it was a practice of equal treatment often lacking in the workings the former Commission. This nature of the UPR through recommendations leads states to encourage each others in terms of promoting human rights in their countries. Yet, it is argued that there is a negative form of cooperation between 'friendly states'. These states applaud the SuR's achievements rather than providing any beneficial criticism. Thus, it interestingly comes out that regional group of the SuR has a tendency to be more active than other states. By doing so, the objectivity of the UPR is weakened by 'friendly states' and also cooperation for the protection and promotion of human. This is also an example that politicisation still keeps itself in the HRC system, and await to appear in a time of political crises.

Also, the UPR involves with the political question of who has unpolluted human rights records, for its Troika/HRC membership criteria. Such issues might open a political discussion within the Council affecting the work of UPR negatively. The UPR has brought a lot instrumental tools within the HRC system to overcome challenges that the Commission encountered. It is very early to claim that the UPR provides an absolute solution to overcome politicisation and selectivity among states. And there has been no serious political challenge within the Council yet to test whether the UPR works with its intended notions (especially depoliticization) or not. Thus, the existence of the UPR relies on its success in the long run.

<sup>55</sup> Redondo, Supra no.16, p.727

<sup>56</sup> "Curing the Selectivity Syndrome The 2011 Review of the Human Rights Council", Human Rights Watch, June 2010 available at: <<http://www.hrw.org/en/node/91074/section/5>> (last assessed 26 December 2010) p.12-3

<sup>57</sup> General Assembly, Resolution 60/251, approved on March 15, 2006 by 170 votes in favour, 4 against (United States, Israel, Marshall Islands and Palau Island) and 3 abstentions (Byelorussia, Iran and Venezuela). The budget implications of this resolution were an additional appropriation of 4,328,700 dollars (doc. A/60/721, 15 March 2006, paragraph 4)

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