

The London School of Economics and Political Science



*Human rights promotion, contestation, and politicisation
in international human rights institutions:
A study of the Universal Periodic Review 2008-2016*

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of the London School of Economics and Political Science
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Declaration

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Abstract

Operating under the auspices of the UN Human Rights Council, the Universal Periodic Review (UPR) is an unprecedented peer-review process in which states make recommendations to each other with regards to the human rights situation under their jurisdiction. In light of allegations of politicisation in the UPR, I develop a framework to provide some conceptual and methodological clarity around the concept of “politicisation” and how to observe it with the purpose of evaluating these claims which can be decisive for their effectiveness and survival of human rights institutions – it was that very same criticism that tainted the work of the now defunct UN Commission on Human Right and ultimately brought it down at the beginning of this century.

This thesis focuses on studying the behaviour of recommending states in the UPR during the first two cycles (2008-2016). Using quantitative text analysis, network analysis, and interviews, the thesis explores questions on promotion and contestation of human rights in international institutions, as well as to what extent recommending states’ behaviour constitute an instrumental or normative use of the UPR. In addition, this research advances and assess the relevance of an original measure of the human rights identity of states, and finds that it plays a significant role in the human rights promotion, contestation, and politicisation that takes place in the UPR interactive dialogue.

Table of contents

Introduction	11
Chapter 1: The UN human rights machinery and the question of politicisation	16
1.1 From the Commission to the Council: A reform marked by the winds of politicisation	18
1.2 The establishment and modalities of the Universal Periodic Review	24
1.3 The haunting spectre of politicisation	32
Conclusion	40
Chapter 2: Theory	42
2.1 Politicisation in international human rights institutions	43
2.1.1. Rationalist explanations of human rights diplomacy	45
2.1.2 Constructivist explanations of human rights diplomacy	47
2.1.3 The first dimension: Degree of consistency of behaviour	48
2.2 Human rights promotion and contestation	50
2.2.1 A brief history of human rights contestation	51
2.2.2 A brief review on theories of norm dynamics	53
2.2.3 The second dimension: “WILD-ness” of issue focus	55
2.3 UPR recommending states’ behaviour	56
2.3.1 Instrumental and normative activism in practice	57
2.3.2 Human rights promotion and contestation in practice	59
2.3.3 A typology of UPR recommending states	62
2.4 The hypothesis: Identity (similarity) matters	63
Conclusion	65
Chapter 3: Research design and methodology	67
3.1 Methods used, why, and how	67
3.1.1 A multi-methods approach	67
3.1.2 Text as data	68
3.1.3 Network analysis	68
3.1.4 Interviews	69

3.2	Data	70
3.2.1	The dependent variable/s	70
3.2.2	The main independent variable	71
3.2.3	Other variables: Node attributes	79
3.2.4	Other variables: Edge attributes	79
	Chapter 4: Human rights promotion and contestation in the UPR	81
4.1	The thematic agenda of the UPR	83
4.2	Promoters and contestants in their own words	87
4.3	Measuring the similarity of recommending states' behaviour on issues	95
4.4	Explaining the similarity of recommending states' behaviour on issues	99
	Conclusion	106
	Chapter 5: The instrumental and normative use of the UPR	108
5.1	The instrumental and normative use of silence and speaking up	109
5.2	The instrumental and normative use of quantity and quality of recommendations	116
5.3	Identity and politicisation	125
5.3.1	The network of "excessive number of harsh recommendations"	126
5.3.2	Severity and double standards	128
5.4	Additional notes on politicisation in the UPR	131
5.4.1	A note on reciprocity	131
5.4.2	A note on hypocrisy and responsibility	133
	Conclusion	137
	Conclusion	138
	Appendices	141
	References	148

List of Acronyms

ACHR	American Convention on Human Rights
AG	African Group (UN Regional Group)
AI	Amnesty International
ASEAN	Association of Southeast Asian Nations
Asia-Pacific	Asia-Pacific Group
CCPR	Human Rights Committee
CESCR	Committee on Economic, Social, and Cultural Rights
CHR	United Nations Commission on Human Rights
CPRs	Civil and political rights
DPRK	Democratic People's Republic of Korea
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	United Nations Economic and Social Council
EEG	Eastern European Group
ESCRs	Economic, social and cultural rights
EU	European Union
FDI	Foreign direct investment
GDP	Gross domestic product
GRULAC	Latin American and Caribbean Group
HRC	United Nations Human Rights Council
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGO	Inter-governmental organisation
ILO	International Labour Organisation
INGO	International non-governmental organisation
IOM	International Organisation for Migration
IR	International Relations
LGBT	Lesbian, gay, bisexual, and transgender
LMG	Like-Minded Group
MDGs	Millennium Development Goals
NAM	Non-aligned movement
NGO	Non-governmental organisation
NHRIs	National Human Rights Institutions

OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the UN High Commissioner for Human Rights
OIC	Organisation of Islamic Cooperation
RS	Recommending state (in the context of the UPR)
SDGs	Sustainable Development Goals
SERF	Social and Economic Rights Fulfilment index
SIDS	Small Island Developing State
SOGI	Sexual orientation and gender identity
SuR	State under review (in the context of the UPR)
UDHR	Universal Declaration of Human Rights
UK	The United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNGA	United Nations General Assembly
UNHCHR	United Nations High Commission for Human Rights
UNOG	United Nations Office at Geneva
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UPR	Universal Periodic Review
URG	Universal Rights Group
US	United States of America
VDPA	Vienna Declaration and Programme of Action
WEOG	Western European and Others Group
WG	Working Group (in the context of the UPR)
WILD	Western individualistic-liberal-democratic
WTO	World Trade Organisation

List of Figures

[Figure 2.1 - Two types of human rights diplomacy depending on the degree of consistency in the activism of states](#)

[Figure 2.2 - Two types of human rights diplomacy depending on whether the issue focus of the activism of states is associated with Western individualistic-liberal-democratic \(WILD\) values or not](#)

[Figure 2.3 - A typology of UPR recommending states](#)

[Figure 3.1 - Kernel density of word count of texts at the different stages of the cleaning process](#)

[Figure 3.2 – UN member states coloured by clusters of text similarity of the national reports they presented to the UPR first cycle \(2008-2011\)](#)

[Figure 4.1 - Hierarchical clustering of issues addressed in UPR recommendations \(2008-2016\)](#)

[Figure 4.2 - Percentage of recommendations made on thematic clusters on UPR cycle 1 and 2](#)

[Figure 4.3 – Proportion of UPR recommendations on physical integrity rights minus proportion of UPR recommendations on socio-economic rights \(2008-2016\)](#)

[Figure 4.4 - Percentage of recommendations made on physical integrity rights plotted against percentage of recommendations made on socio-economic rights on UPR cycle 1 and 2 combined](#)

[Figure 4.5 - Hierarchical clustering of similarity of states' behaviour on UPR issue clusters networks \(2008-2016\)](#)

[Figure 4.6 – Correlation matrix for the different variables to be considered in the statistical models](#)

[Figure 5.1 – China's UPR recommendations in the second cycle and Taiwan's diplomatic relations](#)

[Figure 5.2 – Network of excessive recommendations on Severity 3 \(UPR 2008-2016\)](#)

[Figure 5.3 – Total number of recommendations made and received in the UPR on selected issues plotted against the corresponding human rights protection record \(2008-2016\)](#)

List of Tables

[Table 3.1 - List of UN member states in each cluster of text similarity of national reports presented to the UPR first cycle \(2008-2011\)](#)

[Table 4.1 – Linear models for both measures of structural equivalence](#)

[Table 4.2 – Linear models for both measures of structural equivalence with country fixed effects](#)

[Table 5.1 - ERGMs separated by severity of recommendation and by clusters of text similarity of national reports presented for the first UPR cycle.](#)

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Introduction

In June 2018, the United States of America announced they were leaving the United Nations Human Rights Council (HRC), accusing it of being “a protector of human rights abusers and a cesspool of political bias”.¹ To those familiar with the history of international human rights institutions, this probably feels like *déjà vu*. The HRC was established in 2006² to replace the former Commission on Human Rights (CHR), which had been dismantled after six decades in operation due to a crisis of credibility and effectiveness of the UN human rights machinery. Commentators have concluded that allegations of politicisation, particularly spearheaded by the United States, were the principal charge that finally brought down the Commission (Boyle 2009, 26–27). In the context of international human rights institutions, the notion of “politicisation” has negative connotations and is usually associated to selectivity, partiality, bias, and double standards, and it is perceived as an illness that affects the health of the organs and does not let them perform at their best. After more than a decade in action, it looks like the HRC has not been able to escape the haunting spectre of politicisation (e.g. Seligman 2011; Lamarque 2013; Freedman 2014; Hug and Lukács 2014; Hug 2016; Splinter 2017). However, there seems to be a ray of light that still shines within the Council: the (relatively) newly established Universal Periodic Review (UPR).

The UPR is an innovative peer-review mechanism in which each and every UN member state presents a national report on the human rights situation under their jurisdiction and they are reviewed by other states in an interactive dialogue where they receive recommendations on how to improve their performance on human rights issues. The UPR was created during the reform of the UN human rights machinery and it has operated under the auspices of the Human Rights Council since 2008. The sessions take place at Room XX of the Palais des Nations (the UN Office at Geneva) and each state is reviewed every four and a half years, in a cyclic manner. The involvement of states is completely voluntary and, so far, the UPR has successfully completed two cycles with universal participation (2008-2011 and 2012-2016).

¹ See US State Department. “Remarks on the UN Human Rights Council”, 19 June 2018. <https://www.state.gov/remarks-on-the-un-human-rights-council/>

² A/RES/60/251, “Human Rights Council”, adopted on 15 March 2006. Available at: https://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf

The establishment of the UPR in the framework of the UN Human Rights Council raised high hopes that it could “help avoid (...) the politicization” that was so prevalent in the former Commission.³ The main reason for such optimism were the principles that guided the creation of this distinctive mechanism, namely the universality and equality of treatment, and the emphasis on peer-review, cooperation and dialogue.⁴ These core elements turned the UPR into an original state-centric monitoring process that would encourage constructive engagement rather than confrontational naming and shaming.

Despite the positive expectations, the Universal Periodic Review has not been immune to the crisis in the HRC nor to those ready to make quick judgements mainly based on anecdotal evidence. In the last decade, non-governmental organisations, think tanks, and researchers alike have found some evidence of selectivity, partiality, bias, and double standards in the UPR (e.g. UN Watch 2009; Human Rights Watch 2010; Gujadhur and Limon 2016; Carraro 2017; Terman and Voeten 2018). Nevertheless, the concept of “politicisation” remains obscure and ambiguous –leaving it vulnerable to manipulation—, and what are taken as signs of it are mainly anecdotal evidence, reported perceptions, or the result of systematic analysis that has not been tested against other ways of using the UPR. This thesis will argue against these misconceptions that have unfoundedly treated the UPR as a “naming and shaming” mechanism. To what extent states’ behaviour in the Universal Periodic Review is politicised remains an open question that motivates the present research.

This thesis is particularly interested in the behaviour of the recommending states and it advances a conceptual and theoretical framework to assess allegations of politicisation in the UPR concerning states’ choices on whether to make recommendations, how many to make, how harshly to phrase them, and what human rights issues to address when they are not under review. In this context, the research questions that guide this work are the following: How are recommending states using the UPR? What drives their activism in the interactive dialogue?

³ A/59/2005/Add.1, “In Larger Freedom: Towards Development, Security, and Human Rights for All. Report of the Secretary-General, Addendum”, 23 May 2005, para. 8. Available at:

https://www2.ohchr.org/english/bodies/hrcouncil/docs/gaA.59.2005.Add.1_En.pdf

⁴ For an analysis on how these principles were put in practice in the UPR over the years, see Elizalde (2019).

In an effort to break down preconceptions and misconceptions of politicisation in international human rights institutions, this thesis suggests that issue bias does not constitute politicisation in itself but a representation of states' political agenda which entails human rights promotion and contestation instead. This is not to say that human rights promotion and contestation are never examples of politicisation; actually, norm contestants are often perceived as such. However, both types of political agendas can be politicised when they are treated in an instrumental –as opposed to normative—, manner. The distinction between instrumental and normative activism is fundamental for identifying politicised behaviour.

In the context of the UPR, the two dimensions introduced above are operationalised as follows. On the one hand, recommending states' human rights promotion is considered as the focus on issues usually associated to Western individualistic-liberal-democratic (WILD) values, whereas human rights contestation is understood as an emphasis on issues usually associated to non-WILD norms. On the other hand, the extent to which recommending states' activism is instrumental or normative is revealed by the degree of consistency in their behaviour in human rights diplomacy. While instrumental activism tends to be inconsistent and reveal double standards where recommending states have a preferential treatment towards their friends and are ready to inflict harm on their enemies, normative activism is more consistent and, in line with upheld principled beliefs, does not distinguish between allies and rivals. It is worth noting that *only* instrumental activism constitutes what is usually referred to as “politicisation” in the UN human rights machinery.

The combination of the “WILD-ness” of the discursive issue focus and the degree of consistency of activism allows for the identification of a typology of recommending states' practice in the UPR. This thesis claims that states' human rights identity is crucial for understanding their behaviour as recommending states in the Universal Periodic Review interactive dialogue. The main hypothesis is that the more similar the human rights identity of states is, the more similarly they will behave in the UPR interactive dialogue with regard to the “WILD-ness” of the discursive issue focus and the degree of consistency of activism in human rights diplomacy.

To test the central hypothesis of this project, a novel measure of states' human rights identity is offered. The indicator is based on the quantitative text analysis of the national reports presented by all UN member states for their review in the first UPR cycle. It is assumed that these reports contain states' narrative on their self-image with regard to human rights. The text of the reports for the first cycle are the purest in terms of self-perceptions, because from the second cycle onwards states are requested to report on the implementation of the recommendations received, which somehow constrains the language used.

The theoretical proposition of this thesis is tested using a multi-method approach, combining both quantitative and qualitative methods in a balanced way. Quantitative evidence is presented using social network analysis, and qualitative evidence is provided through testimonies from semi-structured interviews conducted over two months of fieldwork. The empirical chapters study the proposed dimensions (promotion/contestation and normative/instrumental activism) in practice while exploring the role of human rights states' identity similarity in explaining the similarity of UPR recommending states' behaviour.

A first empirical chapter explores human rights promotion and contestation in the UPR, develops two measures of the structural equivalence of states in the UPR network regarding their issue focus (overall and also considering targets), and analyses the relationship between these measures and states' human rights identity similarity. A second empirical chapter delves into the instrumental and normative use of the UPR, in terms of states' decisions on whether to make recommendations, how many to make and how to phrase them. Furthermore, the chapter analyses the role of states' human rights identity similarity in making an excessive number of harsh recommendations (an example of naming and shaming) and in having double standards with regard to the severity of the recommendations made to friends and rivals.

Although the findings are mixed, it can be concluded that the text similarity of national reports presented by states for their first UPR cycle is a strong indicator of the similarity of recommending states' behaviour in the UPR. This thesis contributes to the relevant bodies of literature by showing the complexity of the political dynamics in the UPR, advancing a conceptualisation of politicisation that can serve beyond studies on international human rights institutions, and providing evidence on the role of identity in human rights diplomacy

through a global comparison. Moreover, this research introduces an original indicator to quantify identity and after using it in empirical tests, the measure proves to be relevant. This is certainly very promising and can be an inspiration for similar endeavours. Finally, the present work engages with the latest developments of the IR literature on norm dynamics, argues and demonstrates that there is both human rights contestation and promotion in the UPR, while also breaking the stereotypes that tend to see promoters as the “good guys” and contestants as the “bad ones”. Not only does this contribute to debates on norm circulation but also, it reveals the potential of this peer-review forum for further and related analysis.

The structure of the thesis unfolds as follows: The first chapter provides a general background to understand how the UPR operates and introduces the research question of this project in a framework that justifies its relevance. While reviewing the most relevant literature, the second chapter develops the conceptual and theoretical framework that guides the analysis and the main hypothesis testing. The third chapter discusses the methods choices and the data used in the empirical chapters. It also provides a detailed description of how the original and main independent variable is built.

The fourth and fifth chapters contain the empirical analysis, combining qualitative and quantitative evidence. Chapter 4 focuses on testing the dimension that distinguishes human rights promotion and contestation, and Chapter 5 delves into the instrumental and normative use of the UPR. In the end, the conclusion discusses the implications of the results and leaves some final thoughts evaluating what has been done and some ideas on how to move forward.

Chapter 1

The UN human rights machinery and the question of politicisation

“You cannot turn the wind, so turn the sails.”

Swahili proverb, cited in Kofi Annan’s memoirs⁵

On 23 September 2003, UN Secretary-General (UNSG) Kofi Annan addressed the UN General Assembly (UNGA) to reflect upon the threats and challenges that the world and the organization were facing at the time. The past year had been marked by the US-led invasion of Iraq without the support of the United Nations (UN). Amidst the escalation of violence, the strengthening of nuclear proliferation and weapons of mass destruction programmes, and the increase in the number of terrorist attacks –of which the UN itself had been victim⁶–, the UNSG was deeply concerned about appeals to the pre-emptive use of force against perceived threats and the precedent these set for the use of unilateral and illegal measures. In his speech, Annan (2003b) notified UN member states of his intention to establish a High-Level Panel of eminent personalities to: “examine the current challenges to peace and security; (...) to consider the contribution which collective action can make in addressing these challenges; (...) to review the functioning of the major organs of the United Nations and the relationship between them; and (...) *to recommend ways of strengthening the United Nations, through reform of its institutions and processes.*”⁷

Reforming the UN to adapt the organization to the twenty-first century and the new millennium had been at the top of Annan’s agenda since he took office as UN Secretary-General in 1997 (Annan 1997, 2003a). Being the seventh person to hold the position, he had

⁵ Annan and Mousavizadeh (2012, 367).

⁶ On 19 August 2003, a truck bomb exploded in front of the Canal Hotel in Baghdad, the UN headquarters in Iraq, killing 15 UN officials, 7 civilians, and wounding over 150 people. Amongst the fatal victims was the top UN envoy Sérgio Vieira de Mello, a friend of Kofi Annan and regarded by many as his probable successor. Annan had asked him to take a temporary leave of absence from his position as UN High Commissioner for Human Rights to serve as Special Representative of the Secretary-General of the United Nations in Iraq. A day before Annan’s speech to the UNGA, another suicide bomber attacked the UN headquarters in Iraq, killing a UN security guard, 2 Iraqi policemen, and injuring 19 people (Power 2008). In the cited statement, Kofi Annan referred to both episodes.

⁷ Emphasis added.

a relative advantage over his predecessors; as he points out in his memoirs, “[n]ever before had a career UN staff member been elected to lead the organization” (Annan and Mousavizadeh 2012, 137). With thirty-four years of experience working for the UN –four of which he was the Under-Secretary-General for Peacekeeping Operations– he mastered the bureaucracy, was familiar with the personnel, and well aware of the strengths and weaknesses of the organisation. He was a strong believer that “[t]he United Nations exists, not as a static memorial to the aspirations of an earlier age, but as a work in progress –imperfect, as all human endeavours must be, but capable of adaptation and improvement” (Annan 2003a, 9–10). In this context, when “the inexorable march to war in Iraq was dividing the member states and calling into question the relevance of the organization (...), [o]ut of crisis [he] saw an opportunity –and the urgent necessity– for reform” (Annan and Mousavizadeh 2012, 140).

One of the most significant changes brought about as a result of the conversations around the UN reform process was the dismantlement of the UN Commission on Human Rights (CHR) and the creation of the UN Human Rights Council (HRC) to replace it. The new institution established in 2006 carried the heavy burden of being built on the rubble of the Commission, which had been brought down in a context of widespread allegations of politicisation. In the realm of the UN human rights machinery, “politicisation” is usually associated with bias, partiality, selectivity, and double standards.⁸ Nevertheless, as it will become evident throughout this chapter, because the concept of politicisation remains vague and ambiguous, it is often used, abused, and misused in different ways and by multiple actors. These circumstances have often led to the idea of “politicisation” being, ironically, “politicised” or, at least, manipulated. The lack of conceptual clarity is an issue I will try to overcome in this research. However, before providing a clearer definition of the notion, the next sections will address and consider allegations of politicisation in its broadest sense and the implications these have had for the UN human rights organs.

The human rights machinery is one of the many boats sailing the ocean of global governance. When the winds of politicisation blew so hard that there was a high risk the boat

⁸ For definitions on politicisation in international organizations and a review of the relevant literature see Chapter 2.

of the UN human rights institutions would topple, Kofi Annan's programme recommended to turn the sails and make some changes as a way to keep the boat afloat. Apart from encouraging UN member states to change the status of the main human rights organ from Commission to Council, in an effort to prevent criticisms of politicisation, Annan introduced an innovative mechanism in his reform package and proposed that the Council included a "new key peer review function (...) to evaluate the fulfilment by all States of all their human rights obligations" (A/59/2005/Add.1, para. 6). In his programme, the UNSG emphasised that "[c]rucial to peer review is the notion of universal scrutiny, that is, that the performance of all Member States in regard to all human rights commitments should be subject to assessment by other States." This project developed into what we now know as the Universal Periodic Review (UPR), an unprecedented mechanism that remains underexplored by those who study politicisation in human rights international institutions.

This chapter introduces the research question of this thesis in a framework that justifies its relevance. First, it outlines the institutional history of the UPR as part of the reform in the UN human rights machinery. Second, it provides details on how the mechanism operates on paper and in practice. Third, it explores the question on politicisation in the HRC and the UPR, reviews the relevant literature, and argues for the importance of finding an answer to the research question that motivates the present thesis.

1.1 From the Commission to the Council: A reform marked by the winds of politicisation

The High-Level Panel on Threats, Challenges and Change established by Kofi Annan issued a report entitled *"A more secure world: Our shared responsibility"* (A/59/565), commended by the UNSG to the UNGA in early December 2004. The document advanced a broad perspective of the concept of collective security –one that addresses the security concerns of all states, not only in terms of peace and conflict but also considering issues of human rights and development. As such, it did not focus exclusively on making changes to the UN Security Council (UNSC) –an item usually present in the UN reform agenda– but it offered a more comprehensive reform package that proposed the creation of a Peacebuilding Commission,

put forward a new doctrine of the Responsibility to Protect, and suggested the creation of a Human Rights Council as a Charter body, upgrading and replacing the Commission on Human Rights that functioned under the UN Economic and Social Council (ECOSOC).

Building on this report, on 21 March 2005 Kofi Annan introduced the UNGA to his most ambitious reform plan “*In Larger Freedom: Towards Development, Security, and Human Rights for All*” (A/59/2005), stressing the importance of the three founding pillars of the UN system, as emphasised in the title. With regards to the first two UN pillars, the Economic and Social Council deals with development issues, and the Security Council with peace and security matters. As established in the UN Charter, both the UNSC and the ECOSOC are main organs of the United Nations along with the General Assembly, the Secretariat, the International Court of Justice, and the defunct Trusteeship Council. In this framework, the UNSG proposed that member states demonstrated their commitment to human rights –the third pillar– by elevating the status of the Commission to a Council, which would be a principal organ of the organization or a subsidiary body of the General Assembly. He further argued that this change would be in line with the priority accorded to human rights principles in the Charter of the United Nations (A/59/2005, para. 183, A/59/2005/Add.1, para. 1).⁹

The recommendation to replace the Commission on Human Rights with a Human Rights Council was also an opportunity in times of a more specific crisis of the UN human rights machinery. The former Commission, established by E/RES/5(I) of 16 February 1946, was an organ that functioned within the ECOSOC. It dedicated its first two decades to standard-setting, developing the instruments that constitute the Bill of Rights – the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of 1966. The mandate of the CHR was formally expanded through ECOSOC Resolution 1235 (XLII) of 6 June 1967, which authorised it to “examine information relevant to gross violations of human rights and fundamental freedoms”, and Resolution 1503 (XLVIII) of 27 May 1970 which allowed a confidential procedure “for dealing with communications relating to violations of human rights and fundamental freedoms”. In a comprehensive

⁹ The High-Level Panel also sustained this point in A/59/565, para. 291.

historical essay tracing the journey from the CHR to the HRC, Paul Gordon Lauren (2007) duly accounts for how, despite limitations of power resulting from political decisions at the time of its conception, the Commission managed to play a pivotal role in the evolution of international human rights and become a “protector of victims”, in line with what many human rights sympathizers have envisioned for it. However, throughout its almost sixty years in operation, it was also used as a “shield for violators” (Lauren 2007, 325).

Lauren (2007, 325–26) points out that “the many efforts of the Commission could not and did not solve all difficulties or protect all victims and, in some cases, created new problems in the process.” What were the problems with the Commission on Human Rights? The answer is not straightforward since, as Schrijver (2007, 822) correctly reveals, “[i]n no way have the critics been unanimous in their appraisal of where things went wrong with the Commission.” In general, diagnoses of the different pathologies of the CHR typically refer to its loose membership criteria and electoral process that required the support of only twenty-eight ECOSOC members, its infrequent and short meeting times, its lack of transparency, its large size and regional imbalance in terms of representation, its non-standing and non-main-UN-body status, and issues related to its aims and procedures.¹⁰

Accusations of politicisation were linked to selectivity, double standards, and the work of the Commission being held hostage to serious polarization and confrontation which had little to do with human rights issues. For example, Flood (1998, 101) suggests that the establishment of the Special Rapporteur on Chile in 1979 and the Special Representative of the Commission on Iran in 1984 were cases to which human rights situation the international community dedicated a strong and forthright approach because of “their relative disentanglement from global geopolitical contests”, as opposed to the USSR, East Germany or Cuba. On the last one, although the US started sponsoring resolutions expressing concern about human rights violations in Cuba during the late 1980s, country-specific mechanisms for the island were only created after the end of the Cold War.¹¹ The issue became an obsession for the Americans, who were accused by Human Rights Watch (HRW) in a letter to the editor

¹⁰ For a concise overview of these aspects see Ghanea (2006).

¹¹ For a complete account of the history of the UN Special Procedures, see Limon and Power (2014).

of *The New York Times* of being “fixated on rights abuses in Cuba, to the virtual exclusion of other equally deserving candidates for scrutiny [...and...] expending little or no energy on ‘friendly’ governments which records of serious abuses such as El Salvador, Guatemala, Chile and Haiti” (Roth 1989). On the same letter, the then deputy director of HRW emphasized that “[t]he United States has even worked to weaken United Nations scrutiny of such allies by opposing or watering down critical resolutions.”

In any case, the US was not alone in its selectivity and double standards. This type of behaviour became progressively prevalent, and regional and political blocs gained increasing importance over the years (Brody, Parker, and Weissbrodt 1990). As Forsythe (2018, 102–3) reminds us, in the Commission, “African and other developing countries were reluctant to address the rights violations of their compatriots in places like Zimbabwe, preferring to focus on Israeli policies in the occupied territories.” Similarly, a report on China’s involvement in the international human rights system describes the “immense diplomatic and economic resources” that the state mobilized to defeat resolutions that were critical of its domestic human rights record in the CHR (Sceats and Breslin 2012, 4).

In the beginning of the twenty-first century these issues combined with some political manoeuvres that caught a lot of attention from civil society organizations and the media, bringing about a critical situation that would lead to the downfall and dissolution of the Commission. In an expert account of the origins, antecedents, and prospects of the HRC, the late lawyer, activist and professor Kevin Boyle (2009, 26–27) sustains that “the principal charge that finally brought the Commission down” was the complaint of it being “politicized” or “over politicized” –an accusation that, albeit not being new, “the United States spearheaded (...) in the final years of the Commission.”¹² Notably, in 2001 the US lost its seat on the CHR for the first time since 1947. In the ECOSOC secret ballot, the US came fourth against European states that were disputing the three seats reserved for members of the Western European and Others Group (WEOG).¹³ It was reported that Washington was angry

¹² It is worth noting that in 2001–2002 Boyle was based in Geneva as a special adviser to Mary Robinson, the UN High Commissioner for Human Rights at the time (Rodley 2011).

¹³ *BBC News*. 2001. “US Thrown off UN Rights Body,” May 3, 2001. <http://news.bbc.co.uk/1/hi/world/americas/1311468.stm>

and disappointed in the result of the vote, especially because “it is absurd that rogue states and chronic human rights abusers such as Libya, Sudan and Cuba remain on the [C]ommission and sit in judgment on the human rights practices of others while the United States now stands on the sidelines.”¹⁴ After returning to the CHR, in 2003 the US unsuccessfully opposed the African Group’s (AG) nomination of Libya for the Chairmanship of the body.¹⁵ Later that year, the Commission failed to condemn grave human rights abuses in China, Chechnya, Bosnia-Herzegovina, Serbia, Iran, Equatorial Guinea, Zimbabwe, and Sudan because resolutions were blocked, rejected, or not tabled. In addition, no new country mechanisms were created for emerging human rights violations. Amnesty International (AI) and Human Rights Watch, the most prominent international non-governmental organisations (INGOs), expressed their concern and discontent.¹⁶ The situation rose to crescendo in the year 2004, when Sudan was re-elected to the CHR despite the growing humanitarian disaster and the conflict in Darfur.

By the years 2005-2006 the Commission on Human Rights was being heavily castigated by frequent critics and usual supporters alike (Lauren 2007). The High-Level Panel and the UNSG shared and echoed these concerns in their proposed reform package claiming that “in recent years [s]tates have sought membership to the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others” (A/59/565, para. 283; also A/59/2005, para. 182). The then-UN High Commissioner for Human Rights (UNHCHR) Louise Arbour also joined the chorus of critics and noted with “overriding concern” that:

“(…) Simply put, the Commission’s ability to address issues of human rights concern at the national level is demonstrably deficient. There is something fundamentally wrong, and obscure, with a system in which the decision as to whether or not a country situation is addressed under Item 9, Item 19 or Item 3, or not at all, is viewed either as a political triumph

¹⁴ Marquis, Christopher. 2001. “Washington Angry Over Losing Rights Seat.” *The New York Times*, May 4, 2001. <http://www.nytimes.com/2001/05/04/world/washington-angry-over-losing-rights-seat.html>

¹⁵ *Human Rights Watch*. 2003. “Libya’s Human Rights Record in Spotlight. UN Commission Needs Membership Criteria,” January 16, 2003. <https://www.hrw.org/news/2003/01/16/libyas-human-rights-record-spotlight> and *BBC News*. 2003. “Libya Takes Human Rights Role,” January 20, 2003. <http://news.bbc.co.uk/1/hi/world/africa/2672029.stm>

¹⁶ *Human Rights Watch*. 2003. “UN: Setback on Human Rights. Defeat of Key Resolutions at Geneva Commission,” April 16, 2003. <https://www.hrw.org/news/2003/04/16/un-setback-human-rights-votes> and *Amnesty International*. 2003. “Statements and Press Releases Issued by Amnesty International during the 59th Session of the UN Commission on Human Rights,” July 31, 2003 (particularly pages 23-26). <https://www.amnesty.org/en/documents/IOR41/016/2003/en/>

or a political defeat. (...) I put it to you that it is a discredit to this Commission to view these decisions as political victories or losses. I say this in the full knowledge, and with all due respect for the fact that yours is an inter-governmental body. To suggest it should be apolitical is somewhat akin to criticizing spring for coming after winter. But political considerations should not be allowed to by-pass entirely the substance of the work entrusted to the Commission.” (Arbour 2005b)¹⁷

Criticism to the UN human rights machinery and discussions on how to improve it were longstanding (van Boven 1977; Sohn 1979; Alston 1992), but potential reforms were usually part of the Commission’s own agenda. Commentators have argued that “changes that were agreed by the CHR were piecemeal and procedural rather than revolutionary” (Ghanea 2006, 695).¹⁸ Considered the central pillar of the UN human rights system and after almost six decades since its creation, the CHR was suffering from a legitimacy and credibility deficit that cast a shadow on the overall reputation of the United Nations (A/59/565, page 64; A/59/2005, para. 182). Kofi Annan’s depiction of the situation was sharp and conclusive: “the Commission’s ability to perform its tasks has been overtaken by new needs, and undermined by the politicization of its sessions and the selectivity of its work” (Annan 2005; also A/59/2005/Add.1, para. 2). He further sentenced: “We have reached a point at which (...) piecemeal reforms will not be enough” (Annan 2005).

In September 2005, on occasion of the sixtieth anniversary of the United Nations, the World Summit was convened in New York City to discuss the reform plan proposed by the Secretary-General and review the progress made on the 2000 Millennium Declaration of the

¹⁷ The “items” refer to the different topics on the Commission’s agenda and the consequent attention they received. For instance, states would “devise ingenious methods of evading censure[,] (...) ensuring that they were condemned under agenda items other than the infamous agenda item 9 (‘Question of the violation of human rights and fundamental freedoms in any part of the world’)” (Ghanea 2006, 697). In this line, a media briefing by Amnesty International highlighted that the organisation “noted a growing trend towards moving country reviews from agenda item 9 (...) to item 19, ‘Advisory services and technical cooperation in the field of human rights’. This was the case with both Burundi and DRC, thereby giving the erroneous impression that addressing these situations is principally a matter of capacity building.” See *Amnesty International*. 2004. “Statements and Press Releases Issued by Amnesty International during the 60th Session of the UN Commission on Human Rights,” July 31, 2003 (page 40).

<https://www.amnesty.org/download/Documents/96000/ior410092004en.pdf>

¹⁸ For instance, Ghanea refers to Alston’s example on the gradual expansion of the membership of the CHR to guarantee a more representative regional balance changing “from 18 [members] in 1946, to 21 in 1962, 32 in 1967, 43 in 1980, and 53 in 1992” (Alston 1992, 194).

Millennium Development Goals (MDGs). Although changes in the composition of the UN Security Council were not agreed, the Summit approved the creation of the HRC to replace the dysfunctional and decaying Commission. On 15 March 2006, the UNGA adopted Resolution 60/251 establishing the new organ and, a week later, ECOSOC Resolution 2006/2 dissolved the CHR, which concluded its final session on 27 March 2006 (Boyle 2009).¹⁹ On 9 May 2006 the General Assembly elected the first forty-seven members of the Human Rights Council, marking a historic moment and what the then UNGA President Jan Eliasson called “a new beginning for the promotion and protection of human rights.”²⁰

1.2 The establishment and modalities of the Universal Periodic Review

General Assembly Resolution 60/251²¹ created the UN Human Rights Council to replace the dysfunctional UN Commission on Human Rights. In light of the abovementioned criticism directed at the former CHR (see e.g. Ghanea 2006; Lauren 2007; Boyle 2009), the UNGA burdened the HRC with “ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization” (A/RES/60/251, preamble). The most innovative element to address these problems was the establishment of the Universal Periodic Review, a cooperative mechanism that periodically subjects each UN member state to scrutiny regarding its human rights situation. In this line, UNGA resolution 60/251 resolved that the Council shall:

(...) (e) Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full

¹⁹ In A/RES/60/251 UN member states decided “to establish the Human Rights Council, based in Geneva, in replacement of the Commission on Human Rights, as a subsidiary organ of the General Assembly” and that “the Assembly [would] review the status of the Council within five years”. The outcome of the review in 2011 decided to keep the HRC as a subsidiary organ of the UNGA.

²⁰ “Concluding remarks by General Assembly President Jan Eliasson. Human Rights Council Elections”, 9 May 2006. Available at: <https://www.un.org/ga/president/60/speeches/060509b.pdf>

²¹ A/RES/60/251 “Human Rights Council”, 15 March 2006. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf

involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies (...)²²

The Council convened for its first session on 19 June 2006. Acting in compliance with its mandate, member states promptly took care of its institution-building. After a period of consultation with different actors,²³ the Institution-Building package (also known as “the IB package”) was finally adopted a year later in resolution 5/1.²⁴ The first session of the UPR took place in April 2008.

The IB package is the main document that regulates the functioning of the Universal Periodic Review and other procedures of the Council. As for the UPR, resolution 5/1 declares the principles and objectives of the mechanism, and specifies the basis, periodicity, order, process, modalities, outcome, and follow-up of the review. These matters were further refined in a number of decisions and resolutions of the Human Rights Council as well as statements of the President of the Council during its first years in operation.²⁵ In addition, in 2011, the outcome of the review of the HRC²⁶ introduced a number of changes in the UPR

²² A/RES/60/251, “Human Rights Council”, 15 March 2006, operative paragraph 5.e (also known as “OP5e”).

²³ For a summary of this process, see “Compilation of Proposals and Relevant Information on the Universal Periodic Review”, prepared by the Secretariat of the Human Rights Council of the OHCHR, 5 April 2007.

Available at: <http://www.humanrightsvoices.org/site/documents/?d=4922>

²⁴ A/HRC/RES/5/1 “Institution-building of the United Nations Human Rights Council”, 18 June 2007. Available at: <http://hrlibrary.umn.edu/iwraw/Inst-building-UN.pdf>

²⁵ On 27 September 2007, the HRC adopted Decision 6/102 “Follow-up to Human Rights Council resolution 5/1” containing, amongst others, “General Guidelines for the preparation of information under the Universal Periodic Review” (section I). A day later, it adopted Resolution 6/17 “Establishment of funds for the universal periodic review mechanism of the Human Rights Council”. While the UPR was holding its first session, on 9 April 2008, the President of the HRC issued the statement PRST/8/1 on the “Modalities and practices for the universal periodic review process”. On 24 September 2008 the President of the HRC issued the statement PRST/9/2 “Follow-up to President’s statement 8/1” with more details on the content of the reports which constitute the outcome of the review. All these documents are available at the OHCHR’s website:

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/BackgroundDocuments.aspx>

²⁶ Annan and the High-Level Panel advocated for a Human Rights Council with the status of principal UN organ, such as the UNSC and the ECOSOC. Although human rights issues gained a higher status with the transition from the Commission (operating within ECOSOC) to the Council (as a subsidiary organ of the General Assembly), the new body remained a secondary one. In this context, states expressed their consent in A/RES/60/251, OP1 that “the Assembly shall review the status of the Council within five years”. More details of the review process can be found at the OHCHR’s website:

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCReview.aspx>

procedure.²⁷ In the framework of all these documents, next I describe how the UPR functions nowadays, while highlighting the adjustments it has gone through in the last decade.

Under the UPR, all UN member states are subject to a review of the human rights situation under their jurisdiction in a cyclic manner. The periodicity of the review for the first cycle was of four years, reviewing forty-eight states per year in three sessions, equivalent to sixteen states per session.²⁸ The first cycle was conducted in 2008-2011. For the second and subsequent cycles, it was decided that the periodicity would be of four and a half years, reviewing forty-two states per year during three sessions (with the exception of the first year of each cycle, when only two sessions are held), considering fourteen states per session.²⁹ The second cycle took place in 2012-2016, and the third one started in May 2017 and will be completed by November 2021. Each UN member state is reviewed once per cycle. The order of the reviews was established in the first cycle and maintained for the subsequent ones. The IB package determined that the initial members of the Human Rights Council, especially those selected for one or two-year terms, would be the first to be reviewed. Also, member states of the Council should be reviewed during their term of membership.

The basis of the review is the UN Charter, the UDHR, human rights instruments ratified by the state under review, voluntary pledges and commitments undertaken by the state under review (including those made during their candidacies to be elected members of the HRC), and applicable international humanitarian law. In this framework, the review is based on three documents:

- 1) *National Report*: a report prepared by the state under review (SuR), which should be submitted in an official UN language approximately twelve weeks before the review and shall not exceed twenty pages or 10,700 words;

²⁷ In particular, see HRC Resolution 16/21, "Review of the work and functioning of the Human Rights Council," 25 March 2011; and HRC Decision 17/119, "Follow-up to the Human Rights Council resolution 16/21 with regard to the universal periodic review," 17 June 2011. These documents added modifications to the review methods for the second and subsequent cycles. Available at the OHCHR's website: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BackgroundDocuments.aspx>

²⁸ For the first cycle, there were 192 UN member states. After the independence of South Sudan in 2011, the second cycle had to accommodate the UPR calendar to 193 states.

²⁹ For the second and subsequent cycles, only eleven states are reviewed at the last session. See the calendars of each cycle in Appendices 1 and 2 for more details.

- 2) *UN Compilation*: a compilation of UN observations and recommendations issued by treaty bodies, special rapporteurs and other UN agencies concerning the SuR, which should be prepared by the OHCHR and not exceed ten pages or 5,350 words; and
- 3) *Stakeholders Report*: A summary of “credible and reliable information provided by relevant stakeholders”,³⁰ which should be prepared by the OHCHR and not exceed ten pages or 5,350 words. This report is based on individual or joint submissions by different stakeholders. In the realm of the UPR, “stakeholders” refers to, *inter alia*, non-governmental organisations (NGOs), national human rights institutions (NHRIs), human rights defenders, academic institutions and research institutes, regional mechanisms, and civil society representatives. For the written submissions, stakeholders are not required to have consultative status with ECOSOC³¹, but they should follow the technical guidelines published online³² and present their information in one of the UN official languages and about five months prior to the review. Individual written submissions must not exceed 2,815 words and joint ones have a limit of 5,630 words. Since the second cycle, contributions by NHRIs of the SuR that are accredited by the Global Alliance of NHRIs and in full compliance with the Paris Principles³³ (meaning that they hold status “A”) are given a separate section in the stakeholders report.

The three main documents should be ready six weeks before the scheduled review to ensure their simultaneous distribution in the six UN official languages. As for their focus, the general guidelines for the preparation of information under the UPR adopted by the Council

³⁰ A/HRC/RES/5/1, Annex, para. 15.c.

³¹ See E/RES/1996/31 “Consultative relationship between the United Nations and non-governmental organizations,” 2 July 1996. Available at: http://esango.un.org/civilsociety/documents/E_1996_31.pdf

³² See information on the OHCHR’s website <https://www.ohchr.org/en/hrbodies/upr/pages/NgosNhris.aspx>, and particularly “A Practical Guide for Civil Society: Universal Periodic Review” (edition revised in July 2014), available at: <https://www.ohchr.org/EN/HRBodies/UPR/Documents/PracticalGuideCivilSociety.pdf>

³³ The United Nations “*Paris Principles*” for “National Institutions for the promotion and protections of human rights” were defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights on 7-9 October 1991 in Paris, France. They were adopted by the UN Commission on Human Rights in Resolution 1992/54 (E/1992/22(SUPP), Chapter II, section A, pages 125-127), 3 March 1992 and by the UN General Assembly in Resolution 48/134, 20 December 1993. (A/RES/48/134)

in 2007 and revised in 2011³⁴ establish that the reports should account for the: a) methodology and consultation process followed when producing the document; b) background of the SuR and its normative and institutional framework; c) situation of human rights protection and promotion on the ground, including constitution, legislation, and policy measures undertaken for the implementation of the international human rights obligations of the SuR; d) identification of achievements, best practices, challenges and obstacles; e) national priorities, initiatives and commitments of the SuR; and f) expectations and requests of the SuR regarding technical assistance and capacity-building. Not to be repetitive, and aiming attention at the UPR mechanism, reports from the second and subsequent cycles shall be framed around the implementation of accepted UPR recommendations and the developments of the human rights situation in the SuR since its last review. The former Deputy and Acting UN High Commissioner for Human Rights Bertrand Ramcharan (2011, 64) sustains that this trio of reports is a distinctive value of the UPR because “[m]any countries put a positive spin on their reports but this is balanced by the two other documents”. Together, all these documents provide a useful snapshot of the situation inside a country and collectively they amount to a world report on human rights.

As for the modalities, one of the principles of the UPR is that it is an intergovernmental process and that it fully involves the state under scrutiny. The review in itself is conducted at the famous Room XX of the Palais des Nations at the United Nations Office in Geneva (UNOG). The process consists of a Working Group (WG) during which an interactive dialogue between the SuR and other states takes place. The peer-review element is at the core of the UPR. The subject of the interactive dialogue is the human rights protection and promotion under the jurisdiction of the state under review.

The review of each state is informed by the abovementioned three main documents, lasts three-and-a-half hours,³⁵ and is chaired by the President of the Council. The SuR is given up to seventy minutes³⁶ to use at its discretion for its initial presentation, replies, and

³⁴ See A/HRC/DEC/6/102, section I; A/HRC/RES/16/21, Annex, section I.C.1; and A/HRC/DEC/17/119, section II.

³⁵ This was extended from the original three hours that were allocated for the reviews of the first cycle. See A/HRC/RES/5/1, Annex, para. 22, and A/HRC/DEC/17/119, section III, para. 3.

³⁶ This was extended from the original sixty minutes allocated for the states under review at the first cycle. See HRC/PRST/8/1, section II, para. 7, and A/HRC/DEC/17/119, section III, para. 3.

concluding observations. The remaining time is distributed amongst those states that register on a list of speakers to ask questions and make recommendations to the SuR on how to improve their human rights situation. The forty-seven members of the HRC have to be present in Room XX. Other UN member and observer states may also join and register to speak and take part in the interactive dialogue. Relevant stakeholders may attend the review but are not allowed to make statements or recommendations.³⁷

The list of speakers is something that developed organically during the first cycle of the UPR, and it was further regulated for the second and subsequent cycles. At the beginning, the only official rule was that members of the HRC had three minutes speaking time and other UN member and observer states had two. The problem is that, with no further instructions, this meant that “only a limited number of [s]tates (usually between 40-60) were able to secure speaking slots during Working Group meetings” (Gujadhur and Limon 2016, 13). States entered into a competition for the scarce time to make recommendations, especially for reviews of popular states like China, Iran, Cuba, or the United States. Those states that wanted to secure a place to participate in the interactive dialogue developed an *ad hoc* system; they started creating lists (sometimes pre-lists and pre-pre-lists) of speakers and even queuing through the night at the Palais des Nations. The whole scheme went out of control, but the Secretariat did not want to intervene in the middle of a cycle (except to prevent states from being represented by interns in the queue). Therefore, modifications were only implemented after the review of the HRC in 2011 and, currently, the list of speakers is drawn up in a transparent manner.³⁸ When the number of states interested in participating fit in the available time, the original distribution of speaking time will be maintained. Should it be impossible to accommodate all speakers, the speaking time will be reduced to two minutes for all states. Finally, to guarantee participation on an equal basis, if all speakers still cannot be accommodated, the speaking time will be divided among all delegations registered. In any case, there are tight speaking limits of a maximum of three minutes per delegation, which can reach fifty seconds if many states register to speak.

³⁷ It should be noted that only stakeholders with consultative status with ECOSOC are allowed to be accredited and present in Room XX as Observers. For more information, see the OHCHR’s website:

<https://www.ohchr.org/en/hrbodies/upr/pages/NgosNhris.aspx>

³⁸ See A/HRC/RES/16/21, Appendix, and A/HRC/DEC/17/119, section IV.

Once the interactive dialogue finishes, the Working Group has around two business days³⁹ to prepare and distribute “a factual report of its proceedings, consisting of a summary of the interactive dialogue, which will reflect recommendations and/or conclusions made by delegations (...)”.⁴⁰ Only those recommendations made on the microphone go on the record, so states are encouraged “to deliver the essential part at the beginning of their statements”.⁴¹ For each review, a group of three states, known as the “troika”, serves as rapporteurs to facilitate the WG process with the assistance of the Secretariat. The troikas are selected by the drawing of lots among members of the HRC and from different UN regional groups. The rapporteurs manage the questions states send in advance and aid with the preparation of the Working Group report (also known as “the outcome report”), which should fully involve the SuR.⁴² The outcome report is finally adopted two days after its distribution and consideration. Each country under review is allocated half an hour for the adoption of its report and they are expected to make preliminary comments on the recommendations received.

After the session of the Working Group ends, states under review have between three and four months to study the recommendations made by their peers and decide whether they accept or note them. At the next session of the HRC, each country under review is allocated one hour for the consideration of its report,⁴³ when the state concerned is “offered the opportunity to present replies to questions or issues that were not sufficiently addressed during the interactive dialogue”,⁴⁴ and other states and relevant stakeholders can express their views on the outcome and make general comments. The outcome report, including the SuR’s responses and voluntary pledges, is finally adopted by the HRC during its plenary session under agenda item 6.

As for the follow-up to the review, the UPR was not created as an enforcement mechanism, so it completely relies on the will of the states. The IB package established that “[t]he outcome [of the UPR], as a cooperative mechanism, should be implemented primarily

³⁹ For the standard timetable, see A/HRC/DEC/17/119, Annex II (A/HRC/17/L.29).

⁴⁰ HRC/PRST/8/1, section III, para. 8.

⁴¹ A/HRC/DEC/17/119, section IV, para. 8.c.

⁴² See HRC/PRST/8/1, section I.

⁴³ A/HRC/RES/5/1, Annex, para. 22.

⁴⁴ A/HRC/RES/5/1, Annex, para. 29.

by the [s]tate concerned and, as appropriate, by other stakeholders. (...) 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.”⁴⁵ States under review are expected to report on the measures and policies undertaken to implement the accepted recommendations in two ways. First, they should outline their efforts in their national reports for the second and subsequent cycles. Second, they can submit a mid-term implementation report to the OHCHR. Both self-reporting mechanisms are done on a voluntary basis.

So far, the UPR has been in operation for ten years. Having completed two cycles, all UN member states have subjected themselves to the peer-review twice and most of them have intervened in the interactive dialogue to ask questions, raise comments, or make recommendations. According to data collected by the Geneva-based organization UPR Info, over nine years a total of 57,686 recommendations were made, and only 22 states did not make any recommendation.⁴⁶ Commentators consider the UPR “incontestably an overwhelming and unprecedented success in terms of state engagement with a human rights review process” (Domínguez-Redondo 2012, 694).

At this point, with the UPR running smoothly, the OHCHR, which serves as the Secretariat for the HRC, is mainly concerned about the effectiveness and impact of the mechanism. For the third cycle, the UN High Commissioner for Human Rights has introduced a new measure to promote and support the implementation of the recommendations: Once the outcome report is adopted by the plenary session of the HRC, the High Commissioner sends a copy of the document to the SuR along with a letter to the corresponding Foreign Minister in which they “follow up on a number of areas raised (...) which [they] consider in need of particular attention over the next four and a half years until the next cycle of the UPR.”⁴⁷ In the same letter, the High Commissioner encourages states to present mid-term reports on the implementation of the recommendations and congratulates those that have already committed to do so.

⁴⁵ A/HRC/RES/5/1, Annex, paras. 33 and 36.

⁴⁶ For more basic statistics see <https://www.upr-info.org/database/statistics/>

⁴⁷ See the letters available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/CyclesUPR.aspx>

Given the historical context in which the UPR was created, if we are interested in learning about the effectiveness and impact of the mechanism, it is essential that we go back to the question of politicisation because, as it becomes clear in the next section, all these issues are intertwined.

1.3 The haunting spectre of politicisation

There were high hopes that “[a] Human Rights Council would offer a fresh start” (Annan 2005) and that it “would help serve to overcome some growing problems –of perception and in substance– associated with the Commission, allowing a thorough reassessment of the effectiveness of United Nations intergovernmental machinery in addressing human rights concerns” (A/59/2005/Add.1, para. 2). The Universal Periodic Review raised even higher expectations. The UNSG expressed his confidence in that “[t]he peer review would help avoid, to the extent possible, the politicization and selectivity that are hallmarks of the Commission’s existing system” (A/59/2005/Add.1, para. 8). The optimism on this new mechanism relied on the fact that it was built on the principles of universality, equality of treatment, international cooperation and dialogue, and a peer review element at the core.⁴⁸ Have the Council and the UPR lived up to their promise?

The history of the demise of the Commission on Human Rights, the emergence of the Human Rights Council, the institutional design of the new body, and its prospects have been widely and aptly studied (Alston 2006; Ghanea 2006; Schrijver 2007; Lauren 2007; Gaer 2007; Nader 2007; P. Flood 2009; Boyle 2009; Cox 2010). The effectiveness of the Council –with its changes and new features– and the extent to which it has managed to overcome the problems of the Commission have been the subject of numerous early appraisals (Scannella and Splinter 2007; Domínguez-Redondo 2008; Sweeney and Saito 2009; Matiya 2010; Davies 2010; Freedman 2011, 2013; Ramcharan 2011; McMahon 2012). These studies were inconclusive about the question of politicisation, presenting anecdotal evidence and making judgments based more on the potential of the new institution than on its actual practice. After some

⁴⁸ On how these principles and elements developed over the first decade of the UPR, see Elizalde (2019) – available online at: http://eprints.lse.ac.uk/100395/1/Elizalde_Horizontal_pathway_to_impact_2019.pdf.

years in operation, an answer to the question of politicisation started to emerge and it was not an optimistic one.

First, with the years it became clear that issues with the membership of the Council and how its members are elected have persisted. On the one hand, UNGA Resolution 60/251 declares the conditions and criteria for the election of the members of the Human Rights Council.⁴⁹ Membership is open to all UN member states and is based on an equitable geographical distribution, reserving a certain number of seats for every UN regional group. HRC members are elected for three-year periods and are not eligible for immediate re-election. Every year, approximately one third of the Council members are elected directly and individually by secret ballot by two-thirds majority of the UN General Assembly. When electing HRC members, the UNGA should consider the contribution of the candidates to human rights promotion and protection, as well as their voluntary pledges and commitments.

The problem is that all the UN regional groups have gotten into the habit of presenting what are known as “clean slates” or “closed slates”, where the number of candidates exactly equals the number of available seats, turning the elections into non-competitive ones and leaving no choice to the General Assembly.⁵⁰ This practice “[that] introduces regional politics and alliances into a process that is supposed to be international and meritocratic” has been criticised by human rights organisations for undermining HRC membership standards and diversity, as well as the whole “credibility and (...) effectiveness [of the Council, which] are entirely dependent on the character of its membership” (Lamarque 2013).⁵¹ In this context, human rights NGOs and think tanks monitor the candidatures to be HRC members, campaign against the candidacies of states with poor human rights record, and advocate for states to hold competitive elections.⁵²

⁴⁹ A/RES/60/251, OP7-OP9.

⁵⁰ Actually, as a protest for clean slates or candidacies of states with poor human rights record, states could abstain to vote. However, it is almost unlikely that this happens when this is a common practice in every region.

⁵¹ See also Splinter (2017) and *Human Rights Watch*. 2012. “UN: Noncompetitive Elections Weakens Rights Council,” November 12, 2012. <https://www.hrw.org/news/2012/11/12/un-noncompetitive-elections-weaken-rights-council>

⁵² See *Human Rights Watch*. 2009. “UN: Hold Competitive Voting for Rights Body,” March 25, 2009. <https://www.hrw.org/news/2012/11/12/un-noncompetitive-elections-weaken-rights-council>, *Human Rights Watch*. 2012. “UN: Noncompetitive Elections Weakens Rights Council,” November 12, 2012.

On the other hand, HRC members are expected to uphold the highest human rights standards. However, and partly as a result of clean slates, some Council members did not meet this benchmark. Resolution 60/251 decrees that the UNGA may suspend the membership rights of states that commit gross and systematic human rights violations, a provision that has been used only once, when Libya was suspended in 2011. Nevertheless, more recently, NGOs unsuccessfully engaged in campaigns to remove Saudi Arabia and Burundi.⁵³ In this context, Philippe Boloignon, deputy director for global advocacy at Human Rights Watch, claimed that “Saudi Arabia has amassed an appalling record of violations in Yemen while a Human Rights Council member, and has damaged the body’s credibility by its bullying tactics to avoid accountability.”⁵⁴

Second, the Council’s excessive focus on Israel is an issue that has captivated the attention of the media, particularly because of the reactions of some states in this regard. Early on, the HRC created a permanent item in its agenda (item 7) for the consideration of the “Human rights situation in Palestine and other occupied Arab territories.” No other country specific situation has a standing agenda item. As a diplomatic protest for their alleged bias and unfair treatment against it, in March 2012 Israel suspended relations with the OHCHR and the HRC.⁵⁵ It only resumed cooperation when, after a year and seven months of boycott, in October 2013 Israel appeared for its rescheduled UPR.⁵⁶ The Israel affair caught even more international attention when the United States mentioned it as one of reasons why it decided to leave the UN Human Rights Council in June 2018. When announcing its departure,

<https://www.hrw.org/news/2012/11/12/un-noncompetitive-elections-weaken-rights-council>. See also the portal “Your Human Rights Council” associated to Universal Rights Group: <http://yourhrc.org/2018-elections/>

⁵³ See for example: *Amnesty International*. 2016. “Suspend Saudi Arabia from UN Human Rights Council,” 29 June 2016. <https://www.amnesty.org/en/latest/news/2016/06/suspend-saudi-arabia-from-un-human-rights-council/>. *Human Rights Watch*. 2016. “Joint NGO Letter: Suspension of Burundi from Human Rights Council,” October 26, 2016. <https://www.hrw.org/news/2016/10/26/joint-ngo-letter-suspension-burundi-human-rights-council>

⁵⁴ *Human Rights Watch*. 2016. “UN: Suspend Saudi Arabia from Human Rights Council,” June 29, 2009. <https://www.hrw.org/news/2016/06/29/un-suspend-saudi-arabia-human-rights-council>.

⁵⁵ Khadder, Kareem. “Israel suspends ties with U.N. Human Rights Council”, *CNN World*, 26 March 2012. Available at: <http://edition.cnn.com/2012/03/26/world/meast/israel-human-rights/index.html>. See also “Israel ends contact with UN Human Rights Council”, *BBC Middle East*, 26 March 2012. Available at: <http://www.bbc.co.uk/news/world-middle-east-17510668>

⁵⁶ Lazaroff, Tovah. “Israel agrees to return to UN Human Rights Council”, *The Jerusalem Post*, 27 October 2013. <https://www.jpost.com/Diplomacy-and-Politics/Israel-agrees-to-return-to-UN-Human-Rights-Council-329888>. Ravid, Barak. “Israel Resuming Cooperation with UN Human Rights Council”, *Haaretz*, 27 October 2013. <https://www.haaretz.com/israel-backs-off-un-council-boycott-1.5280580>

Ambassador Nikki Haley, US Permanent Representative to the UN, accused the HRC of being “a cesspool of political bias” and stressed that the “disproportionate focus and unending hostility towards Israel is clear proof that the council is motivated by political bias, not by human rights.”⁵⁷

Finally, scholars conducted comparative studies of polarization and blocs with regards to states’ voting record in the Commission and the Council, concluding that, despite the efforts to become a better version of its predecessor, politicisation in the UN Human Rights Council has remained the same as in the times of the Commission, or has even increased (Hug 2016; Hug and Lukács 2014; Seligman 2011). These findings and the abovementioned examples show that, such as with the former Commission, the orientation of the work of the Human Rights Council seems to be controlled by the winds of politicisation. Commentators have argued that the UN is failing to protect human rights because of their politicisation Freedman (2014). But what do we know about politicisation in the Universal Periodic Review?

Being an intergovernmental process and with the peer review element at its centre, the UPR certainly offers plenty of opportunities for polarization, selectivity, and double standards, both from states under review and recommending states. In the last decade, there have been a number of incidents and practices that attracted media and NGOs attention. For example, early on, UN Watch (2009) issued a report concluding that the UPR is a “mutual praise society.” A report by Universal Rights Group points out that, during the chaos with the speakers list in the UPR first cycle, the scarce time and its rules for allocation “led some States under review to ‘encourage’ friendly-States to arrive early and thus fill up the list of speakers – which in turn led others (...) to try to arrive even earlier” (Gujadhur and Limon 2016, 13). This situation ended up with states queueing overnight to secure some speaking time. Human Rights Watch (2010, 14) expressed “concerns that some recommendations formulated by governments during the reviews have been inconsistent or contrary to international human rights norms.” But not all challenges came from recommending states. In its second review, Russia managed to remove two recommendations made by Georgia concerning human rights

⁵⁷ See US State Department. “Remarks on the UN Human Rights Council”, 19 June 2018. <https://www.state.gov/secretary/remarks/2018/06/283341.htm>

in the regions of Abkhazia and the Tskhinvali to a footnote in its report of the Working Group.⁵⁸ Finally, probably the matter that shook the UPR the most was when, in the aforementioned context of boycotting the HRC, Israel did not attend its scheduled review for the second cycle and only showed up three sessions later, after a year of pressure and dialogue at the highest level. This case also set a precedent for the Council on how to deal with a state that is not cooperating with the UPR.⁵⁹ Overall, there were not any major scandals in the context of the mechanism.

The question of politicisation remains underexplored by the still incipient literature on the UPR. Similarly to how the HRC scholarship developed, in the first years of the UPR, there were a number of preliminary and early assessments of the mechanism (Gaer 2007; Domínguez-Redondo 2008; Vengoechea-Barrios 2008; Carey 2009; Rathgeber 2008; Bernaz 2009; Matiya 2010). These works describe the negotiations during the establishment of the UPR and illustrate some practices of the first sessions. Nevertheless, it is worth noting that they aim their attention at issues relating to institutional design and that most of them are written from a legal perspective. For instance, Gaer (2007) explored the concerns over the UPR duplicating the work of the UN treaty bodies. Domínguez-Redondo (2008) evaluated the achievements and risks she observed in the first UPR session and the potential of the mechanism for providing substantive output on the improvement of human rights at a domestic level. Carey (2009) argued that the variety of documentation presented in the UPR facilitates comparative studies of domestic human rights laws and procedures.

The completion of the UPR first cycle in 2011 triggered a wave of more substantive scholarly analysis (McMahon 2012). Still heavily focused on the legal aspects, some work started to modestly look at questions around implementation (UPR Info 2012; Frazier 2011) while others centred on the peer review aspect. Through the prism of the UPR, Domínguez-

⁵⁸ A/HRC/24/14, "Report of the Working Group on the Universal Periodic Review: Russian Federation," 8 July 2013, page 27. Available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/24/14&Lang=E>. For reports from NGOs see *International Service for Human Rights*, "Unprecedented challenge to the Universal Periodic Review," 31 May 2013. <http://www.ishr.ch/news/unprecedented-challenge-universal-periodic-review>

⁵⁹ See Human Rights Council decision A/HRC/OM/7/101 on "Non-cooperation of a State under review with the universal periodic review mechanism", 29 January 2013. Available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/OM/7/1&Lang=E>. For more details about the episode, see also Elizalde (2019).

Redondo (2012) explored the effectiveness of non-confrontational approaches to human rights implementation and suggested that some of the commitments made by states during the UPR process could be interpreted as potential sources of obligations under international law. Cowell & Milon (2012) analysed how the consensual and dialogical nature of the UPR as a peer review mechanism can impact on the decriminalization of sexual orientation. McMahon, Busia, and Ascherio (2013) compared the UPR with the African peer review mechanism. Domínguez-Redondo and McMahon (2013) optimistically considered that peer review mechanisms “offer a theoretical and pragmatic framework conciliating between universalist and relativist conceptual approaches to human rights, while accommodating views of international law and integrating respect for sovereignty.” Finally, other studies used anthropological and sociological perspectives to explore the dynamics of power, authority, and meaning in the UPR (Cowan 2013; Charlesworth and Larking 2014; Cowan and Billaud 2015).

Among the research on the politics of the HRC and the UPR, we find a number of case studies, such as the ones of Canada (Andreychuk and Fraser 2007), China (R. Smith 2011), Egypt (Landolt 2013), the United Kingdom (Cochrane and McNeilly 2013), South Africa (Jordaan 2014), Malaysia (Khoo 2014), and more recently North Korea (Chow 2017). Some authors extended their scope either to a few cases or a region. For example, Blackburn (2011) investigated what he identifies as a cultural relativist group of countries, Abebe (2009) focused on African states, and Rhona Smith (2013) explored the reviews of the five permanent members of the UN Security Council. More general work includes an examination of state interests in the creation and functioning of the Council and the UPR (Cox 2010), an investigation of different types of compliance pressure exercised by the Council, particularly through the UPR (Davies 2010), and a study of the peer-review mechanism as an example of deliberative capacity building through international organisations (Milewicz and Goodin 2018).

The most relevant research on politicisation in the UPR from IR scholars are the articles by Valentina Carraro (2017) and Rochelle Terman and Erik Voeten (2018). Carraro (2017) studies perceptions of politicisation in the UPR and the UN Treaty Bodies. She shows that politicisation is perceived to be largely present within the UPR, whether expressed as country

bias (“when certain countries receive differential treatment than others with a virtually comparable human rights performance”), issue bias (“when issues are systematically given more attention than others (...) in pursuit of political objectives”), or an instrumental use of cultural relativism (when “cultural differences are employed instrumentally in the review process”). She reaches this conclusion based on the empirical observation of recommendation trends, and on data gathered from 39 interviews with relevant actors and a survey distributed to 148 treaty body committee members and 157 state delegates from countries with a mission in Geneva. For their part, Terman and Voeten (2018) go beyond perceptions to investigate the evidence on the relational politics of the UPR. They analyse how the relationship between sender and target states influences their decision on whether to make recommendations, what issues to comment on, and how strongly to phrase their comments. They also include an analysis of the response to the recommendations. Using quantitative methods, Terman and Voeten (2018) reach a similar conclusion about the presence of politicisation. They find that, overall, states tend to be more lenient towards their strategic partners when making recommendations but, when strategic partners offer criticism to each other, those recommendations are more likely to be accepted.

While both these articles explore the issue of politicisation in the UPR, they do it in different manners and with some constraints. Carraro’s analysis refers to general perceptions of politicisation, without enquiring on whether they concern the behaviour of states under review, recommending states, and/or the role of intergovernmental and non-state actors involved. Terman and Voeten focus on the behaviour of recommending states and on the response to recommendations from those under review, but they do not test their assumption that the strategic element of the relational aspect matters against other arguments that can be derived from IR theories. Moreover, they seem to treat the UPR exclusively as a shaming mechanism and to overlook its potential as a forum where normative activism can occur and where we can observe states publicly discussing the present and future understanding of human rights. Additionally, both articles have some methodological limitations that I will further discuss in Chapter 3. In general, although these studies provide relevant insights on politicisation in the UPR, the concept remains obscure, the evidence is still insufficient and, most importantly, current findings have not been analysed in the context of alternative ways of using the mechanism. The present thesis aims at investigating the allegations of

politicisation in the UPR and filling that gap in the relevant literature while proposing an analytical framework that can be applied to, or at least inspire, studies of the behaviour of states' diplomacy in other human rights bodies and peer review mechanisms.

The focus of this thesis is on the behaviour of recommending states for two main reasons. The first one is methodological. Apart from the fact that the scholarship on the UPR is missing more global comparisons, I am interested in learning about politicisation in the UPR beyond anecdotal evidence. In this line, the behaviour of recommending states is the most suitable for a systematic analysis. While states under review can display double standards when responding to the recommendations received, accepting or noting the suggestions of peers is closely related to the implementation dimension and, hence, it is difficult to isolate the effects of the relational aspect. Even if coming from a friend or ally, accepting a recommendation in the UPR can be costly, either in terms of reputation if they end up not implementing it or resources if they do, because it is the equivalent to committing to undertake a certain action at the domestic level. When making such a pledge, not only should states assess their will but also their effective capacity to fulfil their promises if they intend to undertake any action. In this appraisal, they should consider the available human and economic resources, as well as the strength and interests of the different national and international actors that may influence their public policies. These issues are difficult to capture and measure in a global comparison. On top of that, if we were to study the politicisation of the behaviour of states under review, we would need to compare their response to identical recommendations made by different states. If we did not control for the exact same content of the recommendations, we would not be able to conclude that the relationship between sender and target plays a role in the response. Although many times recommending states bring up the same issues, they do not always phrase their comments in the same way. What happens in the interactive dialogue is that there are not many identical recommendations, which is problematic for large-N study.

The second reason concerns the implications of the behaviour of recommending states for the whole UN human rights machinery. Recommending states have a substantial role not only in keeping the UPR process alive but also in setting a human rights agenda for the state under review. In each review, it is the international community of states that tells the SuR

what is expected from it in terms of human rights, somehow providing a “moral compass” in this matter. Moreover, given the context in which the UPR was created and the high hopes vested in it as a new feature in the UN human rights machinery, the behaviour of recommending states plays a significant role on the effectiveness of the mechanism measured as recommendations being accepted and, ultimately, implemented by the SuR. If recommendations are politicised, then the peer review process is at risk of suffering from the same lack of legitimacy, credibility, and professionalism as the former Commission and the Human Rights Council, which can also have an impact on the response and the implementation of the recommendations. For example, as noted in the outcome report of its review at the first UPR cycle, in 2009 China “(...) thanked all countries who spoke positively of its efforts in human rights promotion and protection and for many important and interesting questions and recommendations. It noted with regret, and reject[ed] categorically, however, the politicised statements by certain countries.”⁶⁰ Is this a fair accusation?

Allegations of politicisation from recommending states in the UPR should be taken seriously because they may have the power of reawakening the ghosts that haunted the Commission on Human Rights and from which the Human Rights Council has not been able to escape. In this context, the research question that motivates the present thesis is: How are recommending states using the UPR? What drives their activism in the interactive dialogue? With the purpose of assessing claims of politicisation, the next chapter outlines a conceptual and theoretical framework to analyse recommending states behaviour in the UPR.

Conclusion

At the time of the transition between the CHR and the HRC, the UNHCHR claimed that “[w]e are arguably in the midst of the greatest reform initiative ever undertaken by our Organization” (Arbour 2005a). As Schrijver (2007, 822) points out, “[i]nstitutionally it [was] the first time that a UN body has been dismantled and replaced in order to achieve greater effectiveness.” Therefore, the question on whether the Human Rights Council has been able

⁶⁰ A/HRC/11/25, “Report of the Working Group on the Universal Periodic Review: China,” 5 October 2009, para. 60. Available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/11/25&Lang=E> Cited in Cox (2010).

to avoid politicisation remains a matter of great importance, not only because these charges brought down the Commission but also because there were high stakes in the creation of the Council in terms of its perceived effectiveness.

In the realm of the UN human rights machinery, legitimacy, credibility, and professionalism are usually associated with effectiveness and impact, which translate into better protection of human rights over the world. Closely connected, polarization, selectivity and double standards are synonyms of politicisation, which is associated with a lack of legitimacy, credibility, and professionalism. Questions on effectiveness and impact are important not only for improving human rights situation but also for the survival of international institutions. These discussions should not ignore the significance of the question on politicisation.

Accusations of politicisation brought down the UN Commission on Human Rights and triggered the creation of the Human Rights Council and its innovative feature, the Universal Periodic Review. It is now clear that, such as the Commission in its last years, the HRC is still moved by the winds of politicisation. Nevertheless, the question on politicisation in the UPR remains underexplored. The peer review was designed as an innovative mechanism to contribute with overcoming the problems of the former Commission. After a decade in operation, has the UPR fulfil the expectations? Is there politicisation in the behaviour of recommending states? If this is the case, is that the exception or the rule? What are the politics at play in the interactive dialogue of the UPR? Not only are these questions relevant for the survival and effectiveness of the UPR but also of human rights international institutions. Regardless the answers, because Kofi Annan introduced the project of the UPR as an aid to navigate the ocean of global governance when the menacing winds of politicisation were blowing strongly, a broader and latent question to keep in mind is: To what extent does the UPR help in keeping the boat of the UN human rights machinery afloat?

Chapter 2

Theory

“Let me be frank: Most of the people in this room work for governments or seek to affect the actions of governments. That is politics. For some to accuse others of being political is a bit like fish criticizing one another for being wet.”

*Sérgio Vieira de Mello,
former UN High Commissioner for Human Rights
addressing the UN Commission on Human Rights*⁶¹

In June 2007, the UN Human Rights Council (HRC) Resolution 5/1 on the institution-building of the newly created organ established as a principle and objective that the Universal Periodic Review (UPR) mechanism was going to operate under its auspices. It further established that the reviews should be “conducted in an objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner.”⁶² What “non-politicised” means in this context is not entirely clear. The resolution does not develop the concept further and, as it has been mentioned, the term “politicisation” is often used to denote different phenomena.

At least in the realm of international human rights institutions, the notion has negative connotations.⁶³ Much has been said in the previous chapter about how accusations of politicisation within the UN Commission of Human Rights (CHR) led to its demise and why it is important that we care about this issue in the context of the HRC and the UPR. This chapter develops an analytical framework to assess allegations of politicisation in the UPR and argues

⁶¹ Statement by the UN High Commissioner for Human Rights Sérgio Vieira de Mello on occasion of the conclusion of the 59th Session of the UN Commission on Human Rights, 25 April 2003. Available at <http://www.usp.br/svm/textos/t-dh-07.php> (accessed: 13 October 2017).

⁶² Human Rights Council (HRC), Res. 5/1 *Institution-Building of the United Nations Human Rights Council* (18 June 2007), § 3(g).

⁶³ See Freedman (2013, Chapter 6) and Carraro (2017) for a comprehensive review on the issue of politicisation in international organizations, particularly in UN human rights institutions.

that states' human rights identity is a key factor to explain the behaviour of recommending states.

The chapter unfolds as follows: The first section provides a definition of politicisation and suggests that it only corresponds to instrumental –as opposed to normative— activism. This introduces the degree of consistency in the behaviour of states as the first dimension towards a typology of recommending states in the UPR. The second section highlights the difference between norm promotion and contestation, with an emphasis on the case of human rights diplomacy. This introduces the “WILD-ness” of issue focus as a second dimension of the proposed conceptualisation. The third section outlines concrete examples of what has been theoretically depicted throughout the chapter and introduces four ideal types of UPR recommending states' behaviour, which is the result of the combination of the dimensions introduced. The final part argues that the expected behaviour of recommending states in the UPR interactive dialogue depends on the similarity of states' human rights identity.

2.1 Politicisation in international human rights institutions

In probably one of the first academic articles in the fields of Political Science and International Relations (IR) that examine early accusations of politicisation in UN specialized agencies, Lyons, Baldwin, and McNemar (1977, 81) considered that these bodies become “‘politicized’ [when] highly controversial issues not always relevant to the agencies' work are introduced by nations to further their political interests.” Years later, for the case of the new mechanisms of the UN Human Rights Council, Freedman (2011, 289) sustained that politicisation is the “pursuit of States' national agendas or regional groups' common objectives, [which takes] the form of selectivity, partiality and bias.” Building on these interpretations, Carraro (2017, 950) claimed that “politicization [in the UPR and treaty bodies] refers to the pursuit of political objectives unrelated to human rights”. While noting three important points about these different definitions, and keeping in mind the history and references to the concept developed in the previous chapter, next I offer what I believe is an enhanced understanding of what politicisation in international human rights institutions, and particularly in the UPR, entails.

First, politicisation is a relative concept. Selectivity, partiality, bias, and double standards are recurrent elements, not only in the definitions provided by scholars but also, as it became evident in Chapter 1, in the views expressed by states, NGOs, and UN staff. With the elements of selectivity, partiality, bias, and double standards usually appearing associated with the concept, the extent to which a certain action is considered to be “politicised” can only be measured in relation to another action and a broader context. The relative aspect of this notion has two important implications. On the one hand, ironically, the whole idea of “politicisation” seems to have been “politicised” over the years, in multiple settings, and by different actors. On the other hand, as I will argue in Chapter 3, this circumstance invites for a methodological approach that transcends dyadic analysis. In the case of the UPR, an assessment on whether a given recommendation is “politicised” should usually consider the behaviour of the recommending state beyond the single recommendation in question.

Second, I will argue that not all kinds of selectivity, partiality and bias are inherently in contradiction with a genuine commitment to advancing human rights. In the previous chapter, I mentioned that Carraro (2017) suggests there exist three types of politicisation in the UPR, namely country bias, issue bias, and the instrumental use of cultural relativism. As it will become clear in the following paragraphs, I agree that the differential treatment of states can uncover double standards that are examples of what tends to be associated with “the dangers of politicisation”, and I also concur with treating the instrumental contestation of human rights as such. I disagree, however, with including “issue bias” in this category. Whereas there is no doubt that deliberately advancing a certain human rights perspective or agenda unveils the pursuit of a political goal, I do not see how this necessarily constitutes a threat for the protection of human rights or the well-functioning of specialised bodies.

It is possible that the systematic attention to certain issues more than others is merely the result of an honest commitment to human rights norms and values with limited resources. Most states engage in some kind of selectivity when deciding how to use their foreign policy instruments and resources. This is especially true in the case of the UPR interactive dialogue, where recommending states have tight time limits of between fifty seconds and three minutes to make recommendations on the overall-human-rights situation on states under review. Therefore, I sustain issue-focus is not an expression of what is usually perceived as

politicisation. Although issue-focus *per se* does not inform our understanding of politicisation, it is an important matter that should not be disregarded. As it will be developed later in this chapter, this aspect of recommending states' behaviour feeds another dimension of the analytical framework I propose.

Third, and finally, it is crucial to distinguish between politics and politicisation. Whereas seeking to advance "political interests", "national agendas", and "regional goals" are examples of political actions, they are not in themselves signs of "the dangers of politicisation", since human rights can –and do– constitute a political interest, agenda and goal. I do not find anything inherently controversial or problematic in using the UPR to forward a certain human rights agenda. As the epigraph of this chapter correctly suggests, it would not be reasonable to expect the UN human rights machinery to be free from the politics essential to the discussions, debates, and decisions that take place within international organisations. In the effort of dissecting the concept and understanding the underlying meaning of allegations of "politicisation" in the UPR, I argue that activism in this forum is *always* politics, and that *only* what I call "instrumental activism" –as opposed to the normative one– is an expression of what is usually understood as politicisation as a threat to the health of human rights organs which does not let them perform at their best. Before exploring this distinction in more detail, I will briefly refer to the literature on human rights foreign policy, particularly through diplomacy. The phenomenon of recommending states' activism in the UPR does not fit comfortably with any theoretical perspective.⁶⁴ Therefore, different possible explanations need to be outlined.

2.1.1 Rationalist explanations of human rights diplomacy

Rationalist IR theories see states as egoistic actors seeking to survive in an anarchical and conflictual international system. From a utilitarian perspective, they stress that foreign policy is the result of cost-benefit calculations, where the national interest of states is always defined in terms of accumulation and maintenance of wealth, power, and pursuit of security. Because

⁶⁴ For a general review on issues related to human rights and foreign policy, see Donnelly (2013), especially chapter 12.

human rights are considered a moral issue, states' diplomacy in this area is expected to be instrumentally used for power politics and to reflect strategic interactions that pursue ulterior motives unrelated to a genuine concern for either the normative idea or the effective protection of human rights. What are some of the costs and benefits of participating in the UPR for recommending states from a rationalist perspective? On the one hand, activism requires states to use economic and human resources –sending representatives to the Palais des Nations when the Working Group is in session, using their personnel's time to read the reports under consideration, perhaps meeting with NGOs, and elaborating coherent and pertinent statements. However, these efforts might translate into material rewards since, as recent research has shown, states more strongly committed to human rights regimes seem to hold a "reputational umbrella" that increases their foreign direct investment (FDI) flows, even when holding poor human rights record (Garriga 2016).⁶⁵

On the other hand, in their cost-benefit calculations recommending states should be aware that activism in the UPR may lead to negative outcomes for the state under review. As Baehr and Castermans-Holleman (2004, 45) correctly point out, "a human rights policy may conflict with the maintenance of friendly relations with foreign governments. (...) these relations will be perceived as even further endangered, if the questions are followed up by criticism, the more so if such criticism is publicly expressed." Although realist scholars are sceptical of the role that norms and institutions can play in altering the behaviour of states (Mearsheimer 1994/5), empirical research on naming and shaming has shown that states being publicly criticised for human rights violations face material costs, such as economic sanctions (A. Murdie and Peksen 2013), lost investment (Barry, Clay, and Flynn 2013), and a reduction in multilateral foreign aid (Lebovic and Voeten 2009).

Although I have argued elsewhere (Elizalde 2019) that the institutional design of the UPR encourages cooperation and dialogue while discouraging naming and shaming, as it will become clear through qualitative evidence introduced in Chapter 5, this is certainly a forum that can be used for this latter purpose. Given the potential costs of the public peer-review,

⁶⁵ Although Garriga's analysis measures states' commitment to the human rights regime as the ratification of core international human rights instruments, the active participation in the UPR interactive dialogue can potentially be considered as another dimension of what she is trying to capture.

states can instrumentally use their recommending role in the UPR interactive dialogue with the intention of harming rivals and benefiting friends.⁶⁶ Apart from considering that with their activism they risk undermining the bilateral relations with states under review, in their cost-benefit calculations states should also take into account that, because of the cyclic nature of the UPR, both criticism and praise might be reciprocated at a later stage.

2.1.2 Constructivist explanations of human rights diplomacy

For their part, constructivists do not see the national interest of states as given but as “constructed through social interaction (...) [and] defined in the context of internationally held norms and understandings about what is good and appropriate” (Finnemore 1996, 2). In this framework, the material gains that rationalists emphasise as desirable outcomes when making cost-benefit calculations are perceived as means instead of ends, and they are provided with meaning by the ideas, values, and norms that comprise the social context in which international politics take place.

At the individual or state level, the “normative ideas that specify criteria for distinguishing right from wrong and just from unjust” are usually referred to as “principled beliefs” (Goldstein and Keohane 1993, 9). Human rights can easily be recognised as an example of principled beliefs. Historical research has revealed the power of principled ideas in the emergence and evolution of human rights as an international issue area (Sikkink 1993, 2014). As Ruggie (1998, 19) indicates, constructivists “make the case that principled beliefs are not simply ‘theoretical fillers’, to use Blyth’s term (1997), invoked to round out or shore up instrumentalist accounts, but that in certain circumstances they lead states to redefine their interests or even their sense of self.” For instance, for the case of human rights, Risse, Ropp, and Sikkink (1999) developed a “spiral model”⁶⁷ identifying the different phases of a

⁶⁶ As I will develop further in the next chapter, there are a number of ways to define and measure the friendship and rivalry relations between states.

⁶⁷ Despite the criticism received and with all its limitations, “[t]o date, the spiral model remains the reference for most studies on multi-level human rights politics and compliance with human rights norms” (Jetschke and Liese 2013, 41). The different stages of the socialization process have been widely discussed and theorized in IR and Political Science (Finnemore and Sikkink 1998; Johnston 2001; J. Checkel 2005; Dobbin, Simmons, and Garrett 2007; Johnston 2008; Simmons, Dobbin, and Garrett 2008; Gilardi 2012; Graham, Shipan, and Volden 2013;

socialization process through which principled ideas and international norms are internalized in identities and interests, ultimately having an impact on the domestic practices of states. A key element in this process is the transnational advocacy networks that include civil societies, states, and international organisations connected in their activism on shared principled ideas or values (Keck and Sikkink 1998).

In this context, constructivist studies stress the importance of ideational and cultural factors and make room for normative, as opposed to instrumental, behaviour of states. This is not to say that constructivism would argue that human rights foreign policy is *exclusively* the result of principled beliefs and normative commitments. However, this approach would at least consider these explanations as a possibility, something unimaginable for rationalist accounts. This means that from a constructivist perspective, it is possible for states to use the UPR interactive dialogue as a diplomatic forum to express genuine concerns about human rights.

2.1.3 The first dimension: Degree of consistency of behaviour

The explanations offered by rationalism and constructivism allow us to identify an ideal continuum of an active human rights diplomacy marked by the degree of consistency of the behaviour of states. On one end, states make foreign policy choices based on a concern to build and/or preserve economic and military power, with a special interest in using human rights for benefiting and not wronging their allies and/or not favouring and causing harm to their rivals. On the other end, states make decisions guided by a genuine concern with human rights –whether their meaning or their effective implementation. I call the first type ***instrumental activism*** and the latter ***normative activism***.

Whereas, as stated earlier on this section, it seems inevitable that public diplomacy in international human rights institutions entails some degree of selectivity, partiality and bias, instrumental activists behave in an erratic way and their double standards become more

Gilardi 2016). Specifically on the international diffusion of human rights norms and practices see Goodman and Jinks (2013) and Greenhill (2010, 2015).

evident. This is usually associated with a hypocritical practice. Extreme cases of instrumental activism from recommending states in the UPR are those that adjust their behaviour in every review, tailoring their performance based on their relationship to the SuR in the pursuit of accumulation and maintenance of economic and military power, as well as the preservation and creation of alliances.

For their part, the commitment to principled beliefs held by normative activists leads them to behave consistently. This creates the perception of them not having different yardsticks and being sincere in their actions. In the context of the UPR, the only selectivity, partiality, or bias that normative activist recommending states would show is related to the content of the norm in question and an expected consequence of the limitations of resources and/or time that every state faces in this forum.⁶⁸

The first dimension presented in this section and illustrated in Figure 2.1 below allows us to distinguish between instrumental and normative activism in the UPR, a context in which I argue *only* instrumental activism is equivalent to what is usually referred to as “*politicisation*” (see the emphasis in red in the figure). Next, I propose a second dimension that engages with the question of selectivity, partiality and bias based on the human rights issues addressed in the recommendations.

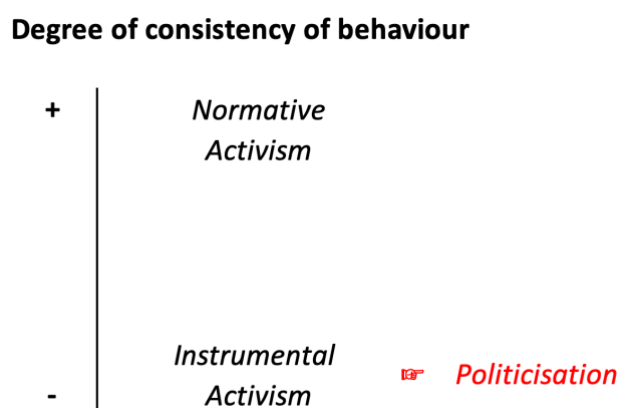


Figure 2.1 - Two types of human rights diplomacy
depending on the degree of consistency in the activism of states

⁶⁸ Chapter 5 will provide more details on how to account for the degree of consistency and how to observe double standards. For now, it is important to note that in the case of the UPR, these issues become evident in the choices made by RS when selecting whether to make recommendations, how many to make, and how to phrase them.

2.2 Human rights promotion and contestation

The Preamble of the Universal Declaration of Human Rights (UDHR) announces that “Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms (...)” What is human rights promotion? The United Nations (UN) and other multilateral organizations usually mention the protection and promotion of human rights together, whether in resolutions, mandates, press releases or reports. Nevertheless, the conceptualisation of what “promotion” involves seems vague.

The Oxford English Dictionary defines “promotion” as: “The action of helping forward; the fact or state of being helped forward; furtherance, advancement, encouragement. (...) The publicizing of a product, organization, or venture so as to increase sales or public awareness.” In this context, promotion appears to entail a number of elements. First, it requires some action. One cannot promote something while remaining still or silent. Second, the action needs to foster a cause. In this case, human rights norms are the “product” being publicized, and their protection or adherence is the consumption that promoters are looking to increase. Finally, to make sense, the promotion should be directed to an audience.

Human rights promotion occurs at the domestic level through training, propaganda, campaigns, etc. This thesis, however, is exclusively interested in the human rights promotion that takes place at the international level, particularly through diplomacy in international human rights institutions. In this framework, this study holds that *human rights promotion* is an active human rights foreign policy which fosters the advancement of human rights standards as well as their respect, protection, and fulfilment. However, it is worth mentioning that diplomacy –whether public or private– is only one of the many foreign policy instruments states have and use to promote human rights. Amongst other available means, there are positive measures such as foreign aid, technical cooperation, education and training, the use of conditionality, or the deployment of civilian and military missions, and negative ones such as economic sanctions or the use of military force (Vogelgesang 1979; Luard 1980, 1981, 26–

27; Merlingen, Mudde, and Sedelmeier 2001; Baehr and Castermans-Holleman 2004, 69–88; Sedelmeier 2006; Donnelly 2013, 201–4; Smith 2014, 109–17; Forsythe 2018, 215–23).

States that promote human rights are often seen in a positive light. For example, Alison Brysk (2009) refers to them as “global good Samaritans” and Emilie Hafner-Burton (2013) as “stewards”. Likewise, states that are seen as contesting human rights are usually perceived as villains. This thesis claims that these are narrow, when not inadequate, stereotypes because both promoters and contestants of human rights can be instrumental and normative activists. It is important to note that positive and negative regards on promoters and contestants are not shared by those who consider an assertive promotion of human rights norms and values as a form of cultural imperialism. With the endeavour of framing the importance of issue-focus in the UPR, the next sections delve into to the politics of contestation and relevant literature.

2.2.1 A brief history of human rights contestation

Human rights are “political norms dealing mainly with how people should be treated by their governments and institutions” (Nickel 2013). The abovementioned UDHR of 1948, the foundation of international human rights law, closely relates human rights to inherent human dignity. The rights established in the Declaration are described as universal, equal, and inalienable; meaning that all members of the human family have them, they hold them on the same basis merely by their equal and categorical human condition, which is a status they cannot renounce. Still, human rights are contested in a number of ways.

There are longstanding debates involving philosophers, political theorists, anthropologists, and legal scholars on the social origins of human rights, their ethical justifications, and their relations with other values. A central issue in these discussions relates to the universality of human rights and how representative they actually are. Often times, human rights as they stand in the UN human rights regime are accused of being too “Western”, meaning that they are a reflect of individualistic, liberal, and democratic values that represent only a selective part of the population of the world. On the one hand, this

association is embedded in the fact that the modern idea of human rights derives from the Lockean moral and political philosophy of natural rights. On the other hand, this identification is informed by the perceived salient role of Western powers in the creation and development of the international liberal order after World War II, including the legalization and institutionalization of human rights. While the first aspect is less disputed (Freeman 2011), the second one is more challenged.

As for the architects of the international human rights regime, recent historiography has moved from highlighting traditional and unquestionable protagonist figures like American diplomat Eleanor Roosevelt⁶⁹ (Glendon 2001) (the first Chair of the UN Human Rights Commission), French jurist René Cassin, and Canadian legal scholar John Humphrey in advancing human rights ideas and drafting the Declaration, to consider the significant activism and influence of a number of non-Western personalities (Burgers 1992; Morsink 1999; Waltz 2001, 2002, 2004; Glendon 2003; Lauren 2011; McFarland 2017; Sikkink 2017). In the same vein, a “new history” of human rights has emerged in the last decade, exploring the conception, revival, and decline of human rights as part of different social, political, and power struggles (Afshari 2007; Hunt 2007; Lauren 2011; Hopgood 2013; Moyn 2014). Again, the role and relevance of Western and non-Western forces is disputed in this literature. For instance, in *The Last Utopia* Samuel Moyn (2012) argues that the breakthrough of human rights only occurred in the 1970s, after the human rights foreign policy of American President Jimmy Carter and the embracement of these principles by transnational NGOs with their headquarters in the West. However, recent scholarship looks at the more neglected 1960s and argues that the post-colonial movements of those years laid the foundations for the human rights revolution of the following decade (Burke 2016; Jensen 2016).

In any case, beyond the still-disputed social origins of the international human rights regime, the universality of these norms has been questioned since the introduction of the concept in international law. For instance, concerned with the importance of respecting the cultures of differing human groups, during the preparation of the UDHR, the Executive Board

⁶⁹ As an illustration of her leadership, it is common in textbooks to see a picture of Mrs. Roosevelt holding the Declaration in different versions in different languages.

of the American Anthropological Association issued a public statement reminding the UN Commission on Human Rights about the damage caused by colonialism and claiming that:

“Standards and values are relative to the culture from which they derive so that any attempt to formulate postulates that grow out of the beliefs or moral codes of one culture must to that extent detract from the applicability of any Declaration of Human Rights to mankind as a whole.” (American Anthropological Association 1947, 542)

This kind of remarks pertain to cultural relativist stances, which are not only held by scholars from different disciplines but also by states themselves. Probably fuelled by the end of the Cold War, the triumph of the capitalist-liberal-democratic Western bloc, and the World Conference on Human Rights of 1993 in Vienna, the debate on the universality of human rights and cultural relativism had a notorious revival in the 1990s and 2000s (Cobbah 1987; An-Na'im 1992; Howard-Hassmann 1995; Sen 1997; Wilson 1997; Brown 1997; Freeman 1998; Parekh 1999; Bielefeldt 2000; Goodhart 2003; Donnelly 2007; Goodhart 2008; Donnelly 2008, 2013). In this context, the human rights diplomacy of some states started to foster non-Western normative frameworks, such as conceptions of “Asian values”, Islamic, and African human rights. These discourses are still present in the United Nations and they are examples of human rights contestation. But what does contestation entail?

2.2.2 A brief review on theories of norm dynamics

In recent years, IR scholars have pointed out that the first wave of constructivist literature on the importance, emergence, and diffusion of norms (e.g. Kratochwil 1989; Katzenstein 1996; Finnemore and Sikkink 1998; Risse, Ropp, and Sikkink 1999) suffered from treating norms under consideration as relatively static, “freezing” their content.⁷⁰ While acknowledging the contribution of these early studies, scholars have criticised them for assuming the norm dynamic process to be linear and for focusing mainly, if not exclusively, on the socialization of actors into the dominant normative structure of world politics, which “has entailed the principles of the rule of law, democracy, fundamental freedoms and human rights to which

⁷⁰ For extensive literature reviews, see Hoffman (2017); and Bloomfield and Scott (2017).

members of the liberal community of democratic states (...) have adhered in an albeit varying, yet steady promotion of compliance” (Wiener 2004, 190–91). In this context, new directions in norm research has moved towards a focus on the agency of the actors usually considered as “norm-takers”, in Checkel's (1999) terms.⁷¹

On the one hand, the literature started paying more attention to the agency of local and regional actors in processes of localization (Acharya 2004), vernacularization (Merry 2006b, 2006a; Levitt and Merry 2009; Merry and Levitt 2017), and translation (Berger 2017; Zimmermann 2016, 2017) of international norms and ideas into domestic practices. As Acharya (2011, 97) would claim, all these are *inward-looking* processes because they involve “making foreign ideas and norms consistent with a *local* cognitive prior”. Moreover, they are not exclusive to “small and/or weak” actors but generic to all those who deal with adapting global norms to local ideas and identities.

On the other hand, researchers also started theorizing and empirically studying the agency of “small and/or weak” actors in the process of norm diffusion from an *outward-looking* perspective. Recent work explores different ways in which actors resist, defy, contest, and feed into the dominant normative structures (Wiener 2014; Cardenas 2007; Kurki 2010, 2011; Richmond 2010; Richmond and Mitchell 2011; Deitelhoff and Zimmermann 2013; Bloomfield 2016; Bloomfield and Scott 2017a; Dixon 2017; Terman 2017; Wiener 2004). It is argued that their input generates a process of norm circulation where active contestation (both *within* and *between* different normative communities) plays a role in the constitution and change of global norms as well as in the construction of the global order (Sandholtz 2008; Acharya 2013, 2018; Wiener 2018).

Specifically on the concept of contestation, commentators usually refer to it as “a social practice of objecting or critically engaging with norms” (Wiener 2018). It has been argued that contestatory discourses on norms take two different forms: *applicatory contestation* questions the application of norms and whether agents want to implement them,

⁷¹ For reviews on this new wave in norm research, see Wolff and Zimmermann (2016), Niemann and Schillinger (2017)

whereas *justificatory contestation* questions the validity of a norm as such and reveals deliberations about its substantive aspects (Deitelhoff and Zimmermann 2013; Wiener 2018). In addition, in the process of contestation, the presence of dialogue –or “multilogue”⁷²– seems to be fundamental (Wolff and Zimmermann 2016).

Human rights are amongst the ideas at the core of the dominant normative structure of world politics and it is clear that their validity as the universal moral to aspire to is still disputed. This resonates with the justificatory contestation of norms. In this context, being a universal peer-review mechanism, operating on a periodic and cyclical basis, and with the dialogical aspect at its centre, the UPR mechanism lends itself as a good setting to promote and contest human rights through public diplomacy in international institutions.

2.2.3 The second dimension: “WILD-ness” of issue focus

Within human rights as a whole, we find different human rights agendas, more or less closely associated with Western individualistic-liberal-democratic (WILD) values.⁷³ For the case of public diplomacy in international human rights institutions, I understand **human rights promotion** as focusing on a set of rights usually associated with WILD values, and **human rights contestation** as actively advocating for issues not directly linked to WILD values.⁷⁴ Here, promotion and contestation are two sides of the same coin; they both entail advancing political agendas with a selectivity, partiality and/or bias that reveals the priorities of recommending states. As a matter of fact, they are both examples of promoting human rights, but the difference lies in that, given the current dominant normative structure in world politics, those who actively focus on WILD norms are considered **promoters** while those who actively focus on non-WILD norms are considered **contestants**. Figure 2.2 below illustrates this distinction of issue focus as an ideal continuum. The “WILD-ness” of issue focus constitutes the

⁷² Wiener (2018, 40) borrows the concept of ‘multilogue’ as an inclusive dialogue from Owen and Tully (2007).

⁷³ In Chapter 4 I will introduce and justify the selection of some examples which illustrate these values for the purpose of empirical analysis.

⁷⁴ Although this thesis focuses on the activism of recommending states in the UPR, it is important to note that human rights can also be contested through silence. For example, states that want to challenge the current dominant normative structure could protest it by not engaging with the UPR or other bodies in the UN human rights machinery.

second dimension that will allow us to identify and explain recommending states' behaviour in the UPR.

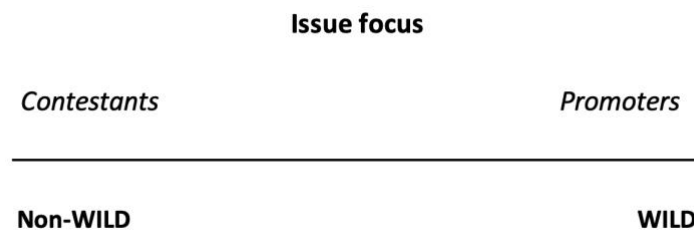


Figure 2.2 - Two types of human rights diplomacy depending on whether the issue focus of the activism of states is associated with Western individualistic-liberal-democratic (WILD) values or not

In this framework, it should be noted that this does not necessarily corresponds with promoters being Western individualistic liberal democracies and contestants not being part of this group of states. Being part of a normative community is more informed by the behaviour of states in international human rights institutions and the values they advance than by their attributes. Moreover, I insist in that both promotion and contestation can constitute normative or instrumental activism. In the next section, I propose a typology of recommending states' behaviour in the UPR that results from the combination of the two dimensions introduced so far and I describe into more detail what each type entails in practice.

2.3 UPR recommending states' behaviour

The previous sections have introduced two dimensions that allow us to identify different types of recommending states' behaviour. In addition, this proposed theoretical framework enables to assess allegations of politicisation in the UPR. Before introducing the typology that results from combining these dimensions, the first two subsections will discuss more concrete examples of normative and instrumental activism, and human rights promotion and contestation.

2.3.1 Instrumental and normative activism in practice

The fact that states make normative claims does not necessarily mean that they are behaving in a normative way. It is possible that states use discussions about human rights and the normative framework around it in an instrumental manner. For example, as Michael Freeman (2011, 128) points out, “[c]ultural relativism may protect vulnerable cultures from ‘imperialistic’ invasion, but it can also protect oppressive elites.” In this line, commentators have observed that “[c]ertain states (...) may give [the ICESCR] some prominence in order to deflect attention away from violations of civil and political rights” (Forsythe 2018, 113). Similarly, it has been argued that Russia’s campaign on “traditional values”, as an assault on universal human rights values, is “bound up with the collapse of Russian democracy” (Horvath 2016, 868).

Not only contestation can be hypocritical. Human rights promotion can also be instrumentalized. For example, Youngs (2004) shows how, in many cases, the EU’s efforts to promote human rights outside Europe –whether through cooperation programmes, conditionality, or foreign aid– have been shaped by a prioritization of security concerns. In a similar vein, Erickson (2011) studies what happens when normative power meets market imperatives. Based on a statistical analysis of EU members’ arms trade exports and drawing on the case of the EU arms embargo to China, she finds that, in spite of the existence of the 1998 EU Code of Conduct on Arms Exports which establishes regional standards for the “responsible” arms transfers by member states, “[c]ountries with poor human rights are still frequently on the receiving end of arms deals, and material interests have often trumped human rights in the China embargo debate” (Erickson 2011, 227).

Human rights matters often clash with other interests in foreign policy decision making. In September/October 2015, it was revealed that diplomatic cables from Wikileaks exposed that the United Kingdom and Saudi Arabia had made a deal in November 2013 to support each other in their candidacies to the Human Rights Council (Markson 2015; McDermott 2015). The UK was heavily criticised and, when enquired about this “horrid deal” by journalist Jon Snow in a one-to-one interview in Channel 4 News, Prime Minister David Cameron admitted that:

We completely disagree with [Saudi Arabia] about their punishment routines, about the death penalty (...) We totally oppose their record in that area. (...) But we have a relationship with [them] (...) because we receive from them important intelligence and security information that keep us safe. (...) The reason we have the relationship is our own national security.⁷⁵

This type of deal does not come as a surprise to rationalist IR theorists who argue that human rights diplomacy is subject to material interests like the accumulation and maintenance of economic and military power. This context leads to states having double standards towards their peers. In an early essay on human rights and foreign policy, Morgenthau (1979, 6–7) justified the United States' discriminating treatment of states claiming that "[w]e dare to criticize and affront the Soviet Union because our relations, in spite of being called *détente*, are not particularly friendly. We have a great interest in continuing the normalization of our relations with mainland China, and for this reason we are not going to hurt her feelings."

Apart from security issues and diplomatic relations being at stake, economic trade and foreign aid also play a role when states make cost-benefit calculations on how to behave. A good example is the well-documented case of an unsuccessful attempt to pass a resolution on China's human rights situation at the UN Commission on Human Rights in 1997 (Sceats and Breslin 2012). There were public threats made by Chinese diplomats (Lewis 1997), the support to the resolution by Denmark and the Netherlands was punished (Chu and Turner 1997), and it is believed that France, Germany, Spain and Italy "refused to support this initiative [because] these countries were on the verge of concluding with China a lucrative contract for the aircraft industry" (Baehr and Castermans-Holleman 2004, 52). Power moves like this are still made in public, especially from powerful actors. Recently, the US President warned states in the UN General Assembly that "[m]oving forward, we are only going to give foreign aid to those who respect us and, frankly, are our friends" (Trump 2018). The statement was received with concern by human rights NGOs (Falk 2018; Amnesty International 2018).

⁷⁵ Interview with Prime Minister David Cameron, Channel 4 News, 6 October 2015. Available at: <https://www.youtube.com/watch?v=khGa49rM6iM>

Overall, UPR recommending states behaving instrumentally will be inconsistent across reviews and exhibit double standards that reveal an underlying purpose of benefiting (and/or not wronging) their friends and harming (and/or not favouring) their enemies.⁷⁶ These double standards will become evident in a differential treatment towards their peers when deciding whether to make recommendations, how many to make, and how to phrase them. For their part, recommending states behaving in a normative manner will have a consistent performance in the UPR interactive dialogues, and their friendship/rivalry relations with the state under review will not inform nor reveal any kind of special treatment (whether positive or negative) in their decisions on whether to make recommendations, how many to make, and how to phrase them.

2.3.2 Human rights promotion and contestation in practice

Human rights promotion in the UPR entails making recommendations on rights usually associated with mainstream WILD values, such as civil and political rights (CPRs), physical integrity rights, and the abolition of death penalty. Human rights contestation advances less-mainstream rights, such as economic, social and cultural rights (ESCRs). Whereas both sets of rights are the subject of the main International Covenants adopted in 1966 which, along with the UDHR, constitute the famous International Bill of Human Rights, it is well-known that they do not stand on an equal footing at the UN. As David Forsythe (2018, 113–14) points out, the International Covenant on Economic, Social and Cultural Rights (ICESCR) “has always been the stepchild of the international human rights movement” and, since the 1940s, “there were more noteworthy developments concerning civil-political rights”. For example, the Human Rights Committee (CCPR), which is the treaty body in charge of monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR), has been able to receive private communications on violations to the rights recognised in the convention since 1976, when the Optional Protocol to the ICCPR entered into force. The neglect for ESCRs becomes evident when this speedy development is contrasted with the fact that it took UN member states forty-two years (between 1966 and 2008) to implement a

⁷⁶ As it will be further developed in Chapter 3, friendship and rivalry, or closeness and distance, will be defined in terms of material (economic and military) interests, and geopolitical and ideological affinity.

similar system through the approval of the Optional Protocol to the ICESCR, an instrument that allows the Committee on Economic, Social, and Cultural Rights (CESCR) to receive individual complaints and has only entered into force in May 2013.

The same favouritism for CPRs over ESCRs is also present in the regional systems of human rights protection. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) adopted in 1950 and into force since 1953, deals mostly with civil and political rights. The European Court of Human Rights has jurisdiction on “all matters concerning the interpretation and application of the Convention” (ECHR, article 32). The European Social Charter, the counterpart to the Convention, covers fundamental economic and social rights but it is not subject to judicial enforcement (Donnelly 2013, 173). Similarly, in the Inter-American System, the American Convention on Human Rights (ACHR) adopted in 1969 and in force since 1978, focuses almost-exclusively on civil and political rights, with the sole exception of article 26 on the progressive development of ESCRs. As in Europe, the Inter-American Court of Human Rights has jurisdiction “on all matters relating to the interpretation and application of [the] Convention” (ACHR, article 61), although state parties are required to explicitly recognise this competence. Again, there is a separate document, the Protocol of San Salvador (adopted in 1988 and in force since 1999), that deals with economic, social, and cultural rights. In this case, only articles 8.a (right of workers to organise trade unions) and 13 (right to education) of the Protocol are justiciable, meaning that they can be brought to the Inter-American Commission and Court through the system of individual petitions to claim justice for human rights violations.

After the UDHR of 1948, the UN Commission on Human Rights was tasked with issuing an international treaty on human rights with more legally-binding power than a declaration. The resulting separation of CPRs and ESCRs into two different covenants is usually associated with the ideological struggle between the two blocs in conflict during the Cold War. Although CPRs and ESCRs represent the values and priorities of the Western liberal-democratic-capitalist and the Eastern communist blocs respectively, the lack of support from the West towards ESCRs and the enthusiasm of communist states for the ICESCR are disputed (Cole 2005; Whelan and Donnelly 2007; Kirkup and Evans 2009; Whelan and Donnelly 2009b; Kang 2009; Whelan and Donnelly 2009a; Reiding 2012).

The division between CPRs and ESCRs seems to still remain in the discourse of states, sometimes coupled with a West/East, West/Rest, or Global North/South divide. However, the division is not categorical. On the contrary, WILD and non-WILD norms do not always correspond with the attributes of the promoters or contestants. For instance, commentators have observed that, although the European Union (EU) sustains that human rights are universal, indivisible, and interdependent, in practice “there is more emphasis on civil and (to a much lesser extent) political rights” (K. E. Smith 2014, 106). The United States (US) takes this position a step further, “refus[ing] to accept cultural, economic, and social rights as real human rights” (Forsythe 2018, 235). Because they are Western individualistic liberal democracies, one could expect these actors to advance the same human rights agenda in their diplomacy. Nevertheless, their position is not coherent and there are differences *within* the normative community that lead to contestation.

An area in which the EU is normatively invested as a human rights promoter is the abolition of the death penalty, an issue where it “often finds itself at odds with other developed OECD states, such as the US and Japan” (Manners 2002, 253). The death penalty is not the only matter of disagreement or resistance. In the aftermath of 9/11 and during the “War on Terror”, the actions of the Bush administration and the interpretation of international law, as revealed in the leaked and so-called “torture memos”, showed the contestation of the US to one of the most widely accepted norms in the international human rights system, namely the prohibition of torture (Birdsall 2016). Other examples of contestation and lack of consistency *within* the normative community of WILD states is the case of Ireland’s restrictive laws on abortion and women’s reproductive rights (Freedman 2014, 122–26) and the fact that, despite being a leader on lesbian, gay, bisexual, and transgender (LGBT) rights and the only region with internationally binding protections based on sexual orientation, Europe “exhibits great variety in the degree to which its states adopt international norms governing [these] rights” (Ayoub 2016, 6).

Contestation from a cultural relativist perspective in the UPR and the Human Rights Council has received some scholarly attention (Blackburn 2011; Patel 2017; Voss 2018). The most popular case of contestation *between* normative communities these days is that on sexual orientation and gender identity (SOGI) rights. The introduction of these norms

(associated with WILD values) to international human rights law has generated resistance and polarization. States like the Russian Federation, Egypt, and other members of the Organisation of Islamic Cooperation (OIC) have advanced a parallel human rights agenda promoting “traditional values” and the “protection of the family” with relative success (Freedman 2014, 47–55, 93; Symons and Altman 2015; Chaney 2018; Voss 2018). Promotion and contestation can certainly be genuine concerns, but they can also be instrumental to serve ulterior motives that have little to do with human rights. The next subsection brings these elements together and advances a typology of recommending states in the UPR.

2.3.3 A typology of UPR recommending states

The first research question introduced in Chapter 1 referred to how recommending states are using the UPR. The theoretical and conceptual framework developed above allows us to identify four ideal types of UPR recommending states’ behaviour by combining the two dimensions previously presented. Figure 2.3 below distinguishes between normative contestants, normative promoters, instrumental contestants, and instrumental promoters.

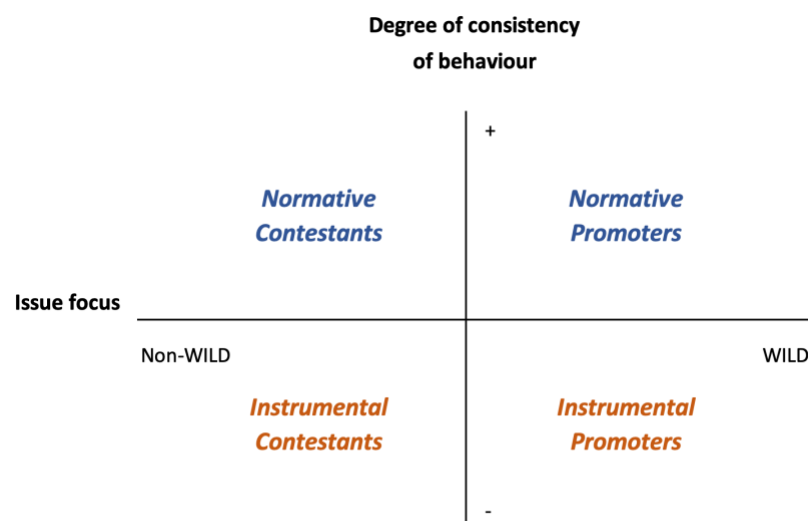


Figure 2.3 - A typology of UPR recommending states

The proposed theoretical and conceptual framework of this thesis suggests that normative and instrumental promoters focus their UPR recommendations on issues usually associated with WILD values, whereas normative and instrumental contestants emphasise

issues related to non-WILD values. Regardless of their issue focus, the main difference between recommending states using the UPR in a normative or instrumental manner is the degree of consistency of their behaviour and, hence, their more or less evident double standards which do ultimately reveal the dangers of what is usually known as “politicisation”. Now that we have a typology of UPR recommending states we can move to the question on what drives these states’ activism in the interactive dialogue. As the next section will sketch, the main argument of this thesis is that states’ human rights identity explains their behaviour in the UPR interactive dialogue.

2.4 The hypothesis: Identity (similarity) matters

The concept of *identity* originally comes from social psychology and refers to “the images of individuality and distinctiveness (‘selfhood’) held and projected by an actor and formed (and modified over time) through relations with significant ‘others’” (Jepperson, Wendt, and Katzenstein 1996, 59). From a constructivist perspective, scholars have highlighted the relevance of national identity as a key factor in explaining the behaviour of states in human rights practices, both at the domestic level and in their foreign policy (Risse, Ropp, and Sikkink 1999; Donnelly 2000; Brysk 2009).

In the concluding chapter of *Human Rights and Comparative Foreign Policy*, a book edited by David Forsythe (2000) which compiles a broad selection of case studies,⁷⁷ Jack Donnelly offers an overview of the cases considered and argues that “[t]he international human rights policies of most states are in significant measure identity based; that is, they reflect the extent to which (national and international) human rights values have shaped or re-shaped understandings of who they are and what they value” (Donnelly 2000, 311). Donnelly is not alone in arguing on the importance of identity in human rights foreign policy. For a selected group of humanitarian internationalist states that Allison Brysk (2009) calls ‘Global Good Samaritans’, she argues that human rights foreign policy is a pattern of persistent principled politics and further claims that this group of states have reconstructed their

⁷⁷ For other compilations of case studies on human rights foreign policy see Brysk (2009) and Saltalamacchia Ziccardi and Covarrubias Velasco (2011).

national interests and identity in accordance with universalist norms, roles, and expectations, “learn[ing] to see themselves as interconnected members of a global community that works best for everyone when human rights are respected” (Brysk 2009, 31).

The problem is that, to this day, there are no indicators to measure and compare to what extent this statement holds true in large-N studies. It has been difficult to prove (and probably even test) the argument on the importance of identity in global comparisons because defining and measuring national identity across time and nations is not an easy task. Ted Hopf and Bentley Allan (2016, 3), have undertaken a project on *Making Identity Count* in which they introduce “examples of transparent, replicable reports on national identity that can be used as the basis for quantitative operationalizations of identity (...).” With the goal of building a constructivist, intersubjective database of national identity held by both elites and masses, in their book they conduct discourse analysis on a broad range of relevant texts for eight different countries.⁷⁸

A main limitation of their project is that it is labour intensive –there are at least fifteen coders working with materials in a number of different languages– and that it requires consistent training and close supervision to secure inter-coder reliability. Furthermore, a project of such dimensions depends on large grants and financial support for funding. Because of these constraints, the project only aims to cover “all great powers from 1810 to 2010,” ending up with a database that will have information on ten selected states across the mentioned period of time.

This research proposes a way of “counting identity” in a more efficient way. As Hopf and Allan’s project shows, building a database of national identity that is respected by IR scholars from different theoretical and methodological strands, is an onerous endeavour. Building indicators that help capture states’ identity on one issue at a time, focusing on human rights in this case, seems more manageable. Here I argue that as part of national identities, we can observe a **human rights identity** of states, which entails their own narrative on how they see themselves and others in terms of human rights as these norms stand in the

⁷⁸ See more on the project at <https://www.makingidentitycount.org>

international human rights regime. To my knowledge, there are no other conceptualisations of states' human rights identity, let alone indicators to measure and compare them.

Conducting discourse analysis, defining different states' identities, and developing a standard measure of human rights identity to conduct comparative studies seems implausible for one researcher alone. Gladly, these days we have computational methods that can aid us in creating proxies for the ideal measures we would like to have. As it will be described in more detail in the next chapter, this thesis uses quantitative text analysis to develop an indicator of ***human rights identity similarity***, which is the closest we can get to measuring identity in a systematic manner.

In this line, this thesis argues that identity matters and the main hypothesis to test is:

H: The more similar the human rights identity of states is, the more similarly they will behave in the UPR interactive dialogue.

The source used in this research to identify the human rights identity of states is the national reports that states present for their Universal Periodic Review. This makes sense for a number of reasons. Not only does this presentation take place in the same setting under study, but also, it provides evidence for all UN member states on how they see themselves and want others to see them when they report on the human rights situation under their jurisdiction. The next chapter will explore these choices in more detail.

Conclusion

After having stressed the importance of the question on politicisation in Chapter 1, this chapter started with an epigraph highlighting the ubiquity of politics in international human rights institutions. Throughout these pages I have tried to differentiate politics from politicisation by developing a theoretical and conceptual framework to evaluate allegations of the latter in the UPR mechanism.

The chapter has distinguished between human rights promotion and contestation, and between instrumental and normative activism, both in theory and practice. It has also emphasised that only instrumental activism, whether promotion or contestation, constitutes what is usually referred to as “politicisation” and perceived as an illness that negatively affects the performance, credibility and legitimacy of human rights bodies. After introducing a typology of UPR recommending states’ behaviour, it was argued that the similarity of human rights identity results in similarity of behaviour.

Although this thesis considers and will test for both rationalist and constructivist explanations of states’ behaviour, it is worth noting that the focus on identity as a main explanatory factor sides with a constructivist perspective of International Relations. This argument has been relatively neglected from the still-limited number of studies on the UPR and, in this sense, it makes an important contribution to this specific literature. Moreover, identifying the factors that explain human rights promotion, contestation and politicisation in the UPR not only enriches our theoretical understanding of norm dynamics and the politics of human rights in international institutions, but also yields lessons for those involved in human rights advocacy, activism, and policy making. Before moving to the empirical analysis, the next chapter will discuss the research design and methodology of this thesis.

Chapter 3

Research design and methodology

This chapter justifies the methodological choices made in this thesis and provides details on the measures used throughout this study.

3.1 Methods used, why, and how

3.1.1 A multi-methods approach

In a volume dedicated to multi-method research, Seawright (2016, 2) defines it as the research that “involves combining data-gathering and -analysing techniques from two or more methodological traditions.” This thesis follows the stream of methodological approaches that combines quantitative and qualitative methods for collecting data, developing indicators, and testing hypothesis.

The reason behind the choice for a multi-method approach is that, as (Robson 2011, 167) emphasises “[u]sing these designs can neutralize the limitations of each approach while building on their strengths, leading to stronger inferences.” The methods used in this thesis have limitations on their own. For example, quantitative text analysis might not provide us with much insight on meaning, but it has the advantage of allowing to process a large corpus of text in a fast manner. Interviews can bring to the surface issues that we could have not considered unless we heard about them from relevant actors themselves. However, interviewees can be biased in their accounts and our sample of subjects will probably tell a partial story. These limitations can be complemented with evidence from inferential statistics, which had their own problems. For instance, it is well known that quantitative indicators can have issues of reliability and validity.⁷⁹ Moreover, recent literature has explored the use,

⁷⁹ For the case of human rights measures, see Landman and Carvalho (2010).

misuse and abuse of rankings and scorecards (Cooley and Snyder 2015; Kelley 2017). In this context, a multi-methods approach enables to shed light where some methods have shade.

3.1.2 Text as data

The diplomacy that takes place within the UPR, as in other human rights international institutions, is politics. In a study on text as data in the field of Political Science, Grimmer and Steward (2013, 267) remind us that “[l]anguage is the medium for politics and political conflict [and that] (...) to understand what politics is about we need to know what political actors are saying and writing.” Understanding what states are reporting about themselves in the UPR is an important starting point for capturing the human rights identity of states and their like-mindedness in this matter.

The decision to use automation to analyse the similarity of texts relies on the fact that the data comprises around 400 national reports (one per UN member state per UPR cycle) of around 10,700 words each. Moreover, one of the main advantages of automated methods of content analysis of text is that, because it is less labour intensive, it allows for “the systematic analysis of large-text collections without massive funding support” (Grimmer and Steward 2013, 268).

3.1.3 Network analysis

The UPR is a network, where states are the nodes and the recommendations they make to each other are the edges that bind dyads. It seems appropriate to study UPR interactions with a network approach because we have network data and the method allows us to account for network measures, such as reciprocity.

Inferential network models, like ERGM, have the advantage of not assuming that the dyadic observations are independent from each other, such as other statistical models used in social science do. This is particularly important in International Relations, a field with a growing literature in network analysis (see Hafner-Burton, Kahler, and Montgomery 2009;

Ward, Stovel, and Sacks 2011; Victor, Montgomery, and Lubell 2018). ERGMs rightly assume that “network ties not only self-organize (i.e., there are dependencies between ties), but they are also influenced by actor attributes and other exogenous factors” (Lusher, Koskinen, and Robins 2012, 10). In this sense, this model allows to account for nodal attributes, edge attributes, and network measures, such as reciprocity, centrality, popularity (high indegree), triads (e.g. the relationship with “the friend of your enemy”), etcetera.

3.1.4 Interviews

If we are going to study how states are using the UPR with reference to their identity, it is imperative that we consult with state representatives. For this research, I visited the UN Office in Geneva three times and I spend a total of two months on the ground. The first trip was exploratory. I attended the UPR 22nd session (second cycle) during two weeks in May 2015. During this visit, I was able to make contacts in Geneva and observe the dynamics of the UPR in Room XX watching from the gallery as well as at the Serpentine cafeteria, where a lot of the informal exchanges occur.

On the second trip, I attended the UPR pre-sessions organised by UPR Info in April 2018. The purpose of this visit was to familiarise myself with the pre-sessions and to use this opportunity to approach the delegations in attendance. Although I also sent emails to most state missions, my final sample of interviewees is heavily impacted by the snowball effect that spread from the contacts I made at the pre-sessions.

On the third and final trip, I attended the 30th session of the UPR (third cycle) during May 2018 and I spent a month in Geneva, making myself available for interviews. I conducted thirty five semi-structured interviews with state representatives, two with civil society, and one with Mr. Gianni Magazzeni, the Chief of the UPR Branch working for the Secretariat at the OHCHR. I also conducted one interview with a civil society organisation staff member over Skype, and one interview at the headquarters of a Foreign Ministry, of which I cannot reveal date or place for confidentiality reasons. I also interviewed a person that is a former state representative, who worked for human rights NGOs in Geneva, and is currently a consultant

at the OHCHR. Finally, I had many informal and off-the-record conversations which have informed my research and enriched my knowledge on the politics at the UPR.

Interviews were conducted in three languages, namely English, Spanish, and French. All participants were given an information sheet and consent form to sign. When the person allowed it, interviews were recorded. I have transcriptions from all conversations on the record. The translations from the original language of the quotes used in the empirical chapters of the thesis have been made by the author. A list of interviews is included in Appendix 3 and more details on the interviewees (such as their official position) can be shared upon request, under certain circumstances.

3.2 Data

As it was mentioned in the previous chapter, the central hypothesis of this research is that “the more similar the human rights identity of states, the more similar they will behave in the UPR interactive dialogue.” To test it, we need to define and measure both recommending states’ behaviour in the UPR interactive dialogue (the dependent variable) and states’ human rights identity (the main independent variable). Here, recommending states’ behaviour and their human rights identity are the key factors in this study. However, at times, we will focus on the similarity of behaviour and identity as a way of learning about the main variables of interest.

3.2.1 The dependent variable/s

Throughout this thesis, the dependent variable will be measured in different ways. For example, in Chapter 4, which explore human rights promotion and contestation in the UPR, we develop two measures of structural equivalence of recommending states’ behaviour based on the thematic agenda they advance. These measures are described in more detail in the corresponding chapter. However, here it is important to note the sources on which they are built.

The definition and measurement of the dependent variable relies on the database designed and maintained by UPR Info, a Geneva-based NGO that aims both at raising awareness and providing capacity-building tools to the different actors involved in the UPR process. UPR Info compiles and systematises all the recommendations and voluntary pledges made by states during the UPR Working Group.⁸⁰ The same information can be obtained from the Working Group Reports and the related webcast archives available on the OHCHR's website⁸¹ and, as such, it is clear and undisputable.

In addition to the data collection, UPR Info also classifies recommendations by thematic issue and level of action. The issues will be discussed in Chapter 4. The level of action is a category that measures how specific the recommendation is, based on the first word of the text of the recommendation.⁸² This variable is hand-coded by the staff of the organisation in collaboration with Professor Edward R. McMahon of the University of Vermont. UPR Info level of action is a categorical variable that ranges from 1 to 5, ranking recommendations that require minimal action with a 1 and those that refer to a specific action with a 5. Recommendations on the lower side of the scale are considered "soft" or relatively "easy", whereas those on the higher side (level 5) are seen as "harsh" and relatively "difficult". In order to have a scholarly conversation with the relevant literature, I will follow Terman and Voeten (2018) and transform the five levels of action into three levels of severity. As shown in the Appendix of the article in question, Terman and Voeten combine UPR Info action code 1 and 2 into Severity 1, action code 3 and 5 into Severity 3, and they leave action code 4 as Severity 2.

3.2.2 The main independent variable

The main independent variable of this thesis is the human rights identity of states. As it was mentioned in the previous chapter, measuring identity for a large number of states would be too onerous for one researcher alone. Therefore, I propose a measure of *human rights*

⁸⁰ See <https://www.upr-info.org/database/>

⁸¹ See <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

⁸² See more details on the coding at: https://www.upr-info.org/sites/default/files/general-document/pdf/database_action_category.pdf

identity similarity. I argue that we can capture the essence of the human rights identity of states in the national reports they present for their UPR. In the last five years, there has been a proliferation of studies using human rights text as data (e.g. Fariss et al. 2015; Bagozzi and Berliner 2018; Greene, Park, and Colaresi 2018; Park, Colaresi, and Greene 2018; Park, Murdie, and Davis 2019). However, to my knowledge, none of these studies focuses on self-reports from states to measure identity.

Here, I focus on the national report states presented for the first cycle, because from the second cycle onwards states are required to report on the implementation of the recommendations received. Therefore, their freedom to report becomes limited. In their first national reports, states could choose how to present themselves to the world when discussing the human rights situation under their jurisdiction. These choices on what to say (and not to say) can be used as a proxy of the states' identity – with the limitation that the text of the national reports only represents the position of elites. The discursive narrative found in this text goes beyond the mere reporting on human rights issues. For instance, as a reflection of identity, some states use the national reports to show how they position themselves in global politics and sometimes even challenge the international human rights system and express their disagreement with certain norms and policies. Only for illustrative purposes, the following are two examples of how transparent states can get in their UPR national reports:

“Iran, like other Islamic countries, has faced certain problems in practicing some international standards of human rights. This matter needs to be duly understood by the international community that due to its legal structures which are based on principles of Islam, commitment of its authorities to these principles, and true demands by the people, Islamic Republic of Iran considers itself obliged to adhere to laws of Islamic Sharia. Accordingly, it is necessary that by relying on the principle of cultural diversity, while respecting and avoiding political and cultural pressures, to pay attention to this point that any change or adjustments in these laws must come about as a result of dynamic national dialogue among our own authorities and civil society in the context of Islamic principles. Pressure or demands by other countries to accept

and adopt certain Western standards of human rights will practically have negative impact on promotion of human rights.”⁸³

“Internationally, Venezuela has asserted its position as an autonomous, sovereign and independent State, and has asserted the principles of non-intervention and self-determination of peoples in the face of the hegemonic, colonialist and neocolonialist positions still found in some countries. These positions have resulted in a freeze on Venezuela’s international holdings, media attacks on Venezuela in certain countries, and reports and decisions by regional bodies such as the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights Court that consistently fail to reflect the true human rights situation in Venezuela.”⁸⁴

The 20-page national report presented by states under review is a reliable source for observing how states see themselves in terms of human rights, and the similarity between each pair of reports allows us to extract a dyadic measure of the similarity of states’ human rights identity. What were the steps undertaken to build the main independent variable of this thesis?

The **first step** was gathering the data. It was not difficult to obtain the national reports each UN member state has submitted to the UPR. The documents are available in Portable Document Format (pdf) at the website of the UN Office of the High Commissioner for Human Rights (OHCHR).⁸⁵ Originally, states are required to submit their reports in one of the six UN official languages (Arabic, Chinese, English, French, Russian, and Spanish). Later, they are translated into all the UN official languages. Therefore, I was able to download all the national reports in English.

The corpus comprises a total of 380 national reports for the two completed UPR cycles. There are 193 UN member states so there should be 386 national reports. However, South Sudan became independent in 2011, which means they only entered the review cycle on the

⁸³ A/HRC/WG.6/7/IRN/1, “National report submitted in accordance with paragraph 15(a) of the Annex to the Human Rights Council Resolution 5/1: Islamic Republic of Iran”, 18 November 2009, para. 130.

⁸⁴ A/HRC/WG.6/12/VEN/1, “National report submitted in accordance with paragraph 15(a) of the Annex to the Human Rights Council Resolution 5/1: Venezuela (Bolivarian Republic of)”, 19 July 2011, para. 141.

⁸⁵ <https://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

second round. In addition, there are five other reports missing from the website: 1. Cape Verde for the first cycle; 2. Comoros for the first cycle –although there is a document available only in French–; 3. Dominica for the second cycle; 4. The available documents of Pakistan and Vanuatu for the second cycle are empty. Leaving these six missing reports aside, the files of the 380 national reports available and downloaded were saved in the same folder and labelled individually as the following example:

NR_AFG_01_05.pdf, meaning:
Type of document (NR = National report)
Underscore
State (ISO Alpha-3 country code)⁸⁶
Underscore
Cycle (two-digits number)
Underscore
Session (two-digits number)

The **second step** was reading all the 380 pdf files into R and to transform them into text, for which I used the *readtext* package developed by Benoit and Obeng (2018). Informed by the abovementioned labelling, I also created some variables (type, state, cycle, session) to use as metadata by subtracting characters from the file names.

The **third step** was discarding text that is not relevant for the primary interest of this research, so as to improve the performance of the analysis to be conducted at a later stage. It is important to note that there is variation amongst the length of the texts. Because reports do not have a fixed structure, each state chooses what to report on and how. Likewise, although the UN asks them not to exceed the 10,700-word limit, states do not always comply with that request.

I began by discarding the text from the first page of every report, which is a standard cover of UN documents usually containing the organisation logo, report name and code, date, a footnote with clarifications, etcetera. Next, I discarded the last pages in order to cut down the endnotes and appendices (both of which are usually still in the original language they were submitted). Finally, I made some extra cleaning of the last pages of those reports that were

⁸⁶ See more at <https://www.iso.org/iso-3166-country-codes.html>

still too long (with a wordcount of over 15,000, those on the right tail of the distribution). In the end, as shown in Figure 3.1 below, eliminating the text after “Notes” and the extra cleaning made a significant difference:

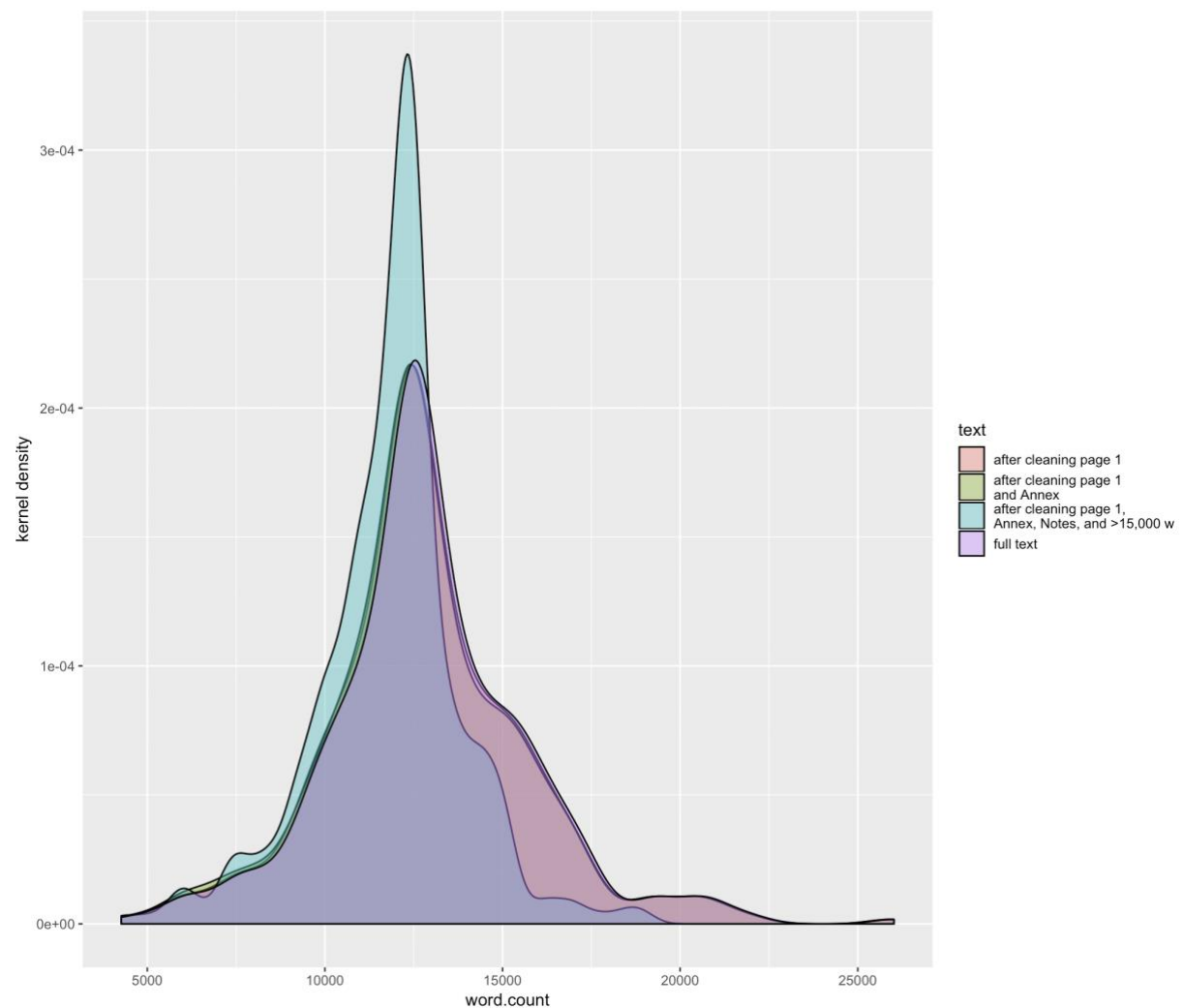


Figure 3.1 - Kernel density of word count of texts at the different stages of the cleaning process

The **fourth step** was tokenizing the corpus. The `tokens()` function in *quanteda* offers the possibility of doing some further cleaning of the text, removing numbers, punctuation, symbols, separators, hyphens, URLs, and more. When tokenizing, I removed all these and treated words individually as unigrams. In addition, I removed “stop” words of the English language while padding to maintain the distance between words.

The **fifth step** was to create a document-feature matrix (dfm) while transforming all letter cases to low. The number of features for the first UPR cycle is 54,831 unigrams and for the second UPR cycle is 38,611 unigrams. This difference can mean a number of things (which are not exclusive): 1. Something changed in the UN style of making the pdfs over the years and there is less noise in the second cycle because there are less “strange” words (cut words or joint words that actually don't exist); 2. After a first cycle of learning, states started writing the reports in a more similar language; and 3. In the second cycle states rhetoric became more homogeneous because they are reporting on the recommendations received on the first cycle, which somehow limits the breadth of their language. In any case, this difference reinforces the decision to focus on the reports for the first cycle as purer a measure of identity.

Next, I trimmed the dfm keeping only those features that appear at least five times – those that do not reach that minimum do not have much informative power for the research purpose of this study. After trimming, the number of features for the first UPR cycle is 9,886 unigrams (82% of the features was deleted) and for the second UPR cycle is 9,998 unigrams (74.1% of the features was deleted).

The **sixth step** was running the analysis of the similarity of the texts after being cleaned, tokenized, and trimmed. For that purpose, I rely on the `textstat_simil()` function from the *quanteda* package. This is a vector-space model that not only considers the frequency of words but also their order and weights how rare the features in common are. The resulting cosine (based on the chosen method) similarity of each dyad for each UPR cycle can be saved as a matrix and, consequently, network analysis and visualisation can be conducted.

Next, I used the Louvain algorithm from the *igraph* R package on the matrix of the text similarity of national reports presented for the UPR first cycle for community detection. The algorithm identified four clusters, which I introduce in Table 3.1 and in the map in Figure 3.2 below. The same colours of the clusters will be used consistently in the empirical chapters of this thesis.

As it can be observed in the table and map, the clusters do not correspond with any UN regional group. Cluster 1 is mostly populated by states in Latin America, Africa and Asia.

Cluster 2 is also mixed and includes countries with an Anglo background and the South of Africa. Cluster 3 is mainly composed by Western and Eastern Europe. Finally, cluster 4 is mostly populated by countries in the Global South.

Cluster 1	Cluster 2	Cluster 3	Cluster 4
AFG Afghanistan	ATG Antigua and Barbuda	ALB Albania	AGO Angola
ARE United Arab Emirates	AUS Australia	AND Andorra	BLR Belarus
ARG Argentina	BGD Bangladesh	ARM Armenia	BOL Bolivia
AZE Azerbaijan	BLZ Belize	AUT Austria	CHL Chile
BDI Burundi	BRB Barbados	BEL Belgium	CHN China
BEN Benin	BRN Brunei	BGR Bulgaria	COL Colombia
BFA Burkina Faso	BTN Bhutan	BIH Bosnia and Herzegovina	CRI Costa Rica
BHR Bahrain	BWA Botswana	CHE Switzerland	CUB Cuba
BHS Bahamas	CAN Canada	CYP Cyprus	DOM Dominican Republic
BRA Brazil	DMA Dominica	CZE Czechia	DZA Algeria
CAF Central African Republic	DNK Denmark	DEU Germany	GAB Gabon
CIV Côte d'Ivoire	ERI Eritrea	EST Estonia	GIN Guinea
CMR Cameroon	FJI Fiji	FIN Finland	GNQ Equatorial Guinea
COD Congo - Kinshasa	FSM Micronesia	FRA France	HND Honduras
COG Congo - Brazzaville	GMB Gambia	GEO Georgia	HTI Haiti
DJI Djibouti	GRD Grenada	GRC Greece	KAZ Kazakhstan
ECU Ecuador	GUY Guyana	HRV Croatia	LAO Laos
EGY Egypt	IRL Ireland	HUN Hungary	MDG Madagascar
ESP Spain	JAM Jamaica	IDN Indonesia	MEX Mexico
ETH Ethiopia	KHM Cambodia	ISL Iceland	NER Niger
GBR United Kingdom	KIR Kiribati	ISR Israel	NIC Nicaragua
GHA Ghana	KNA St. Kitts and Nevis	ITA Italy	PAN Panama
GNB Guinea-Bissau	LCA St. Lucia	KGZ Kyrgyzstan	PRY Paraguay
GTM Guatemala	LSO Lesotho	LIE Liechtenstein	RWA Rwanda
IND India	MDV Maldives	LTU Lithuania	SLV El Salvador
IRN Iran	MHL Marshall Islands	LUX Luxembourg	STP São Tomé and Príncipe
IRQ Iraq	MYS Malaysia	LVA Latvia	SYR Syria
JOR Jordan	NAM Namibia	MCO Monaco	TGO Togo
JPN Japan	NRU Nauru	MDA Moldova	TJK Tajikistan
KEN Kenya	NZL New Zealand	MKD Macedonia	TKM Turkmenistan
KOR South Korea	PAK Pakistan	MLT Malta	URY Uruguay
KWT Kuwait	PHL Philippines	MNE Montenegro	VEN Venezuela
LBN Lebanon	PLW Palau	MNG Mongolia	VNM Vietnam
LBR Liberia	PNG Papua New Guinea	NLD Netherlands	YEM Yemen
LBY Libya	SGP Singapore	NOR Norway	
LKA Sri Lanka	SLB Solomon Islands	OMN Oman	
MAR Morocco	SLE Sierra Leone	POL Poland	
MLI Mali	SUR Suriname	PRT Portugal	
MMR Myanmar (Burma)	SWZ Swaziland	ROU Romania	
MOZ Mozambique	SYC Seychelles	SMR San Marino	
MRT Mauritania	THA Thailand	SRB Serbia	
MUS Mauritius	TLS Timor-Leste	SVK Slovakia	
MWI Malawi	TON Tonga	SVN Slovenia	
NGA Nigeria	TTO Trinidad and Tobago	SWE Sweden	
NPL Nepal	TUV Tuvalu	TUR Turkey	
PER Peru	TZA Tanzania	UKR Ukraine	
PRK North Korea	USA United States		
QAT Qatar	VCT St. Vincent and Grenadines		
RUS Russia	VUT Vanuatu		
SAU Saudi Arabia	WSM Samoa		
SDN Sudan	ZAF South Africa		
SEN Senegal	ZMB Zambia		
SOM Somalia	ZWE Zimbabwe		
TCD Chad			
TUN Tunisia			
UGA Uganda			
UZB Uzbekistan			

Table 3.1 - List of UN member states in each cluster of text similarity of national reports presented to the UPR first cycle (2008-2011)

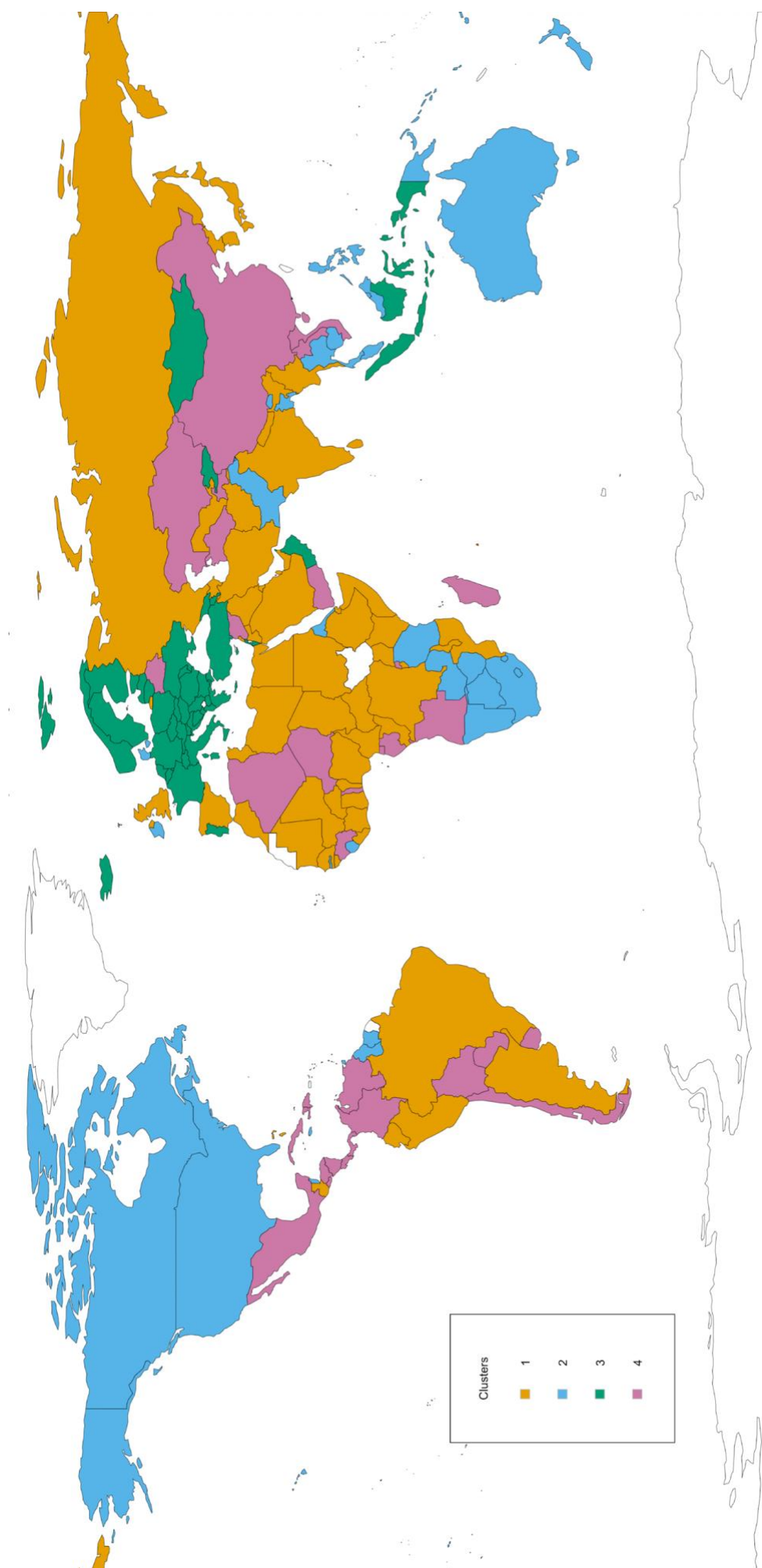


Figure 3.2 – UN member states coloured by clusters of text similarity of the national reports they presented to the UPR first cycle (2008-2011)

3.2.3 Other variables: Node attributes

The inferential and descriptive statistical used in the empirical chapters of this thesis refer to some nodal attributes which is data collected from different sources. The UN regional groups were coded as per the official website of the UN.⁸⁷

The date, session and year of the reviews were collected from the OHCHR's website on the UPR. Similarly, the Human Rights Council membership status of states over the years was also retrieved from the OHCHR'S website.⁸⁸

The GDPpc was collected from the World Development Indicators of the World Bank. The liberal democracy index comes from the V-Dem database (Lindberg et al. 2014; Coppedge et al. 2019), the measure on physical integrity rights protection was developed by Fariss (2014, 2019), and the core Social and Economic Rights Fulfilment (SERF) index was created by Fukuda-Parr, Lawson-Remer, and Randolph (2015). For all these measures, the mean per UPR cycle was calculated, and the mean of means was calculated for the whole time period. Finally, states also have the attribute of the clusters extracted from the text similarity of the national reports presented for the first UPR cycle. The name of this variables is cl_sim_C1 (for "clusters of similarity, cycle 1").

3.2.4 Other variables: Edge attributes

Edge attributes are dyadic values. Because each UPR cycle occurs over a period of four and a half years, the way to control for the time variation is to calculate the value of each dyad at the time when the state receiving the recommendations was under review. This is what was done, so the adjacency matrices of edge attributes for the UPR are not symmetrical and they are directed networks, meaning that the order in which states appear in the dyad matters.

⁸⁷ See <https://www.un.org/depts/DGACM/RegionalGroups.shtml>

⁸⁸ See <https://www.ohchr.org/EN/HRBodies/HRC/Pages/MembersByYear.aspx>

The edge attributes that were collected for this research are the following. Geopolitical affinity uses the dyadic data from Bailey, Strezhnev, and Voeten (2017). Arms net exports were calculated as per the databases of the Stockholm International Peace Research Institute (SIPRI).⁸⁹ Joint human rights treaties (joint HRT) and joint/same openness to international scrutiny (joint/same OIS) sum the number of instruments that both states have ratified in common. The first one considers fourteen human rights treaties of the universal system. For joint OIS, I took a different approach and considered commitments that reveal an intention to be scrutinised beyond the adherence to the legal instrument. In this context, joint OIS considers issuing a standing invitation to special procedures, the ratification of the Rome Statute, the acceptance of nine individual complaints, acceptance of six inquiry procedures.

Finally, there are a number of variables retrieved from the Correlates of War (COW) databases. Joint IGO membership is measured using the International Governmental Organizations Data Set v3.0 developed by Pevehouse, Nordstrom, and Warnke (2004).⁹⁰ Military alliance was collected from the Formal Alliances dataset v4.1 (Gibler 2009). Trade net exports were extracted from the COW Trade dyadic data v4.0 (Barbieri, Keshk, and Pollins 2009; Barbieri and Keshk 2016).

⁸⁹ See <https://www.sipri.org/databases/armstransfers>

⁹⁰ The original IGO data set is described in Wallace and Singer (1970).

Chapter 4

Human rights promotion and contestation in the UPR

“All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and/or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.”

Standard paragraph included in all UPR Working Group Reports

In April 2008, over the course of the very first session of the Universal Periodic Review, the modalities of the mechanism were still being adjusted, sometimes on the spot and based on issues that were only coming up as the new process started to operate. During the first week, Ecuador received a recommendation from Slovenia that referred to sexual orientation and gender identity (SOGI) rights.⁹¹ When the report of Ecuador was considered by the Working Group (WG), this recommendation and its language –not so mainstreamed in international human rights law at the time– raised a red flag amongst conservative states. The problem was that they could not allow their mere presence in Room XX or participation in the interactive dialogue to be an excuse to associate them with the term “sexual orientation and gender identity”. Giving in to this type of discourse could be dangerous and they did not want to look like validating it.

A diplomat from Western Europe remembered that “Egypt was very much against having the word ‘sexual orientation’ in any UPR report, even having it referenced. (...) because once you have the word ‘sexual orientation’ on the report it might reappear. (...) Then we ended up with this footnote to say that recommendations don’t reflect [the opinion of] all

⁹¹ See A/HRC/8/20 “Report of the Working Group on the Universal Periodic Review: Ecuador”, 13 May 2008, para. 32.

states or the WG as a whole (is a recommendation by an individual state) to sort of appease the Egyptian ridiculous obsession” (ST.030).⁹² The note mentioned by the officer is the epigraph of this chapter, which explores human rights promotion and contestation in the UPR looking at the thematic agenda advanced by recommending states based on their issue focus. That quote is now a standard paragraph included in all the reports of the Working Group. However, the first round of final reports added this paragraph as a corrigendum,⁹³ which was agreed after long discussions and lobbying.

A similar position to that of Egypt with regards to SOGI rights was expressed by an officer from an Asian country that is also a member of the OIC when they said that: “[w]e don’t use the LGBT word, we say ‘avoid discrimination against all people’” (ST.016). SOGI rights are a highly contested issue in the Council, with conservative states pushing for an alternative agenda on “traditional values and the protection of the family” (Freedman 2014; Voss 2018). It seems like conservative states were right to be concerned about what was happening in the UPR. It has been pointed out that “Western states are using the UPR to promote sexual orientation and gender identity (SOGI) rights by regularly making corresponding recommendations” (Kälin 2014, 34). In this sense, the abovementioned diplomat from the WEOG considers that “one of the great successes of UPR is that it puts sexual orientation into the bloodstreams (...) [With] states mak[ing] points around sexual orientation and gender identity (...) in the UPR, everyone became just much more comfortable with the idea, and that laid the ground for the SOGI resolutions [in the Human Rights Council] of 2011 and 2014” (ST.030).⁹⁴

⁹² For more evidence on the complaints of Egypt on “sexual orientation (...) not fall[ing] under the basis of the review [of the UPR]”, see the overview of the first session prepared by the International Service for Human Rights (ISHR) “UPR monitor: Human Rights Monitor Series”, 7-8 April 2008. Available at: https://www.ishr.ch/sites/default/files/article/files/upr_1st_session_overview.pdf. A similar episode is accounted by O’Flaherty and Fisher (2008, 240), who cite a statement of Egypt at the sixth session of the Human Rights Council where they claimed, with regards to sexual orientation and the Yogyakarta Principles: “we understand that these values are acceptable in many societies, and we have no objection to this. What we have objection to is the persistent attempts to streamline those values at the UN while they are objectionable by the majority of the countries”.

⁹³ See, for example, A/HRC/8/20/Corr.1 “Report of the Working Group on the Universal Periodic Review: Ecuador, Corrigendum”, 11 June 2008. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/142/13/PDF/G0814213.pdf>

⁹⁴ A/HRC/RES/17/19 “Human rights, sexual orientation and gender identity”, 14 July 2011. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf> and A/HRC/RES/27/32 “Human rights, sexual orientation and gender identity”, 2 October 2014. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/177/32/PDF/G1417732.pdf>

As it will be shown throughout this chapter, SOGI rights are not the only issue where states' views on human rights clash. Given that the UPR is probably the only mechanism in the international human rights regime that allows for a broad range of issues to be considered (Elizalde 2019), the topic choices recommending states make reveal their human rights agenda and the type of norms they are interested in spreading. In line with the main hypothesis of this research, developed in the final section of Chapter 2, I argue that the similarity of recommending states' behavior with regards to the thematic agenda they focus on is closely connected to the text similarity of national reports they presented for the UPR first cycle, which can be considered a proxy of states' human rights identity similarity. In this framework, the chapter unfolds as follows: The first section briefly introduces the range of topics referred to by recommending states in their UPR recommendations and illustrates seven groups of issues resulting from unsupervised clustering analysis. After presenting some descriptive statistics, the second section focuses on the case of civil and political rights, physical integrity rights, and socio-economic rights to frame the issue-agenda of recommending states as human rights promotion and contestation. This part of the study brings original testimony from the protagonists retrieved from official statements and interviews conducted by the author with states' representatives. The third section moves beyond the selected cases to develop two measures of similarity of the behaviour of recommending states in the UPR related to their thematic agenda. The indicators introduced rely on social network analysis. Finally, a fourth section presents inferential statistical analysis testing to what extent the human rights identity of states, as defined and measured in this thesis, explains recommending states' behaviour in the Universal Periodic Review.

4.1 The thematic agenda of the UPR

Before delving into questions of human rights promotion and contestation in the UPR, it is important to identify what recommending states are talking about. Knowing the subject of the recommendations informs us about the human rights agenda that recommending states are advancing. This information can help us learn more about the role, if any, that the text similarity of UPR national reports (as a proxy measure of human rights identity) plays in driving the behaviour of recommending states in the Universal Periodic Review.

UPR Info is a Geneva-based non-profit, non-governmental organisation that works to support different actors involved in the UPR throughout the whole process. Amongst other things, UPR Info maintains an online database with all the recommendations made in the UPR, where they identify the recommending state, state under review, UPR session and cycle, and response. In addition, UPR Info has developed two original categorisations. The first one is the level of action, which will be discussed in more depth in the next chapter. The second one, and the most relevant here, is the issue/s contained in each recommendation.⁹⁵

Over the first two cycles of the UPR, UPR Info has identified fifty-six different issues that recommending states have addressed. Some recommendations refer to more than one issue. Out of the 57,077 recommendations that were made on the first and second cycle of the UPR, 52.6% mentioned at least two issues, 19.9% at least three, 5.5% at least four, 1.8% at least five, 0.5% at least six, and only one recommendation (less than 0.01%) mentioned seven issues.⁹⁶

In order to make the data more manageable, this thesis follows the approach of Terman and Voeten (2018) of clustering and recategorizing the issues, as described in their appendix and replication materials. It is worth noting that their data has fifty-four issues, as identified by UPR Info for the time period considered by their research at the time of writing. Since then, there have been some changes. The current data has three new issues, namely "Business and human rights", "Privacy", and "Statelessness and the right to nationality". "National plan of action" appeared in Terman and Voeten's list of issues but it is not included in the UPR Info database anymore. Finally, there have been some small changes in two labels: "NHRI" is now "National Human Rights Institution", and "Right to water" is now "Right to water and sanitation".

Unsupervised clustering analysis allows us to combine the issues of recommendations into broader thematic categories. First, I created fifty-six dummy variables for each

⁹⁵ All details on the methodology of the coding can be found on the UPR Info website: https://www.upr-info.org/database/files/Database_Issues_explanation.pdf

⁹⁶ The values do not add up to 100% because those recommendations addressing less issues are contained in those with more. For example, the recommendation that refers to seven issues is counted in all the other groups.

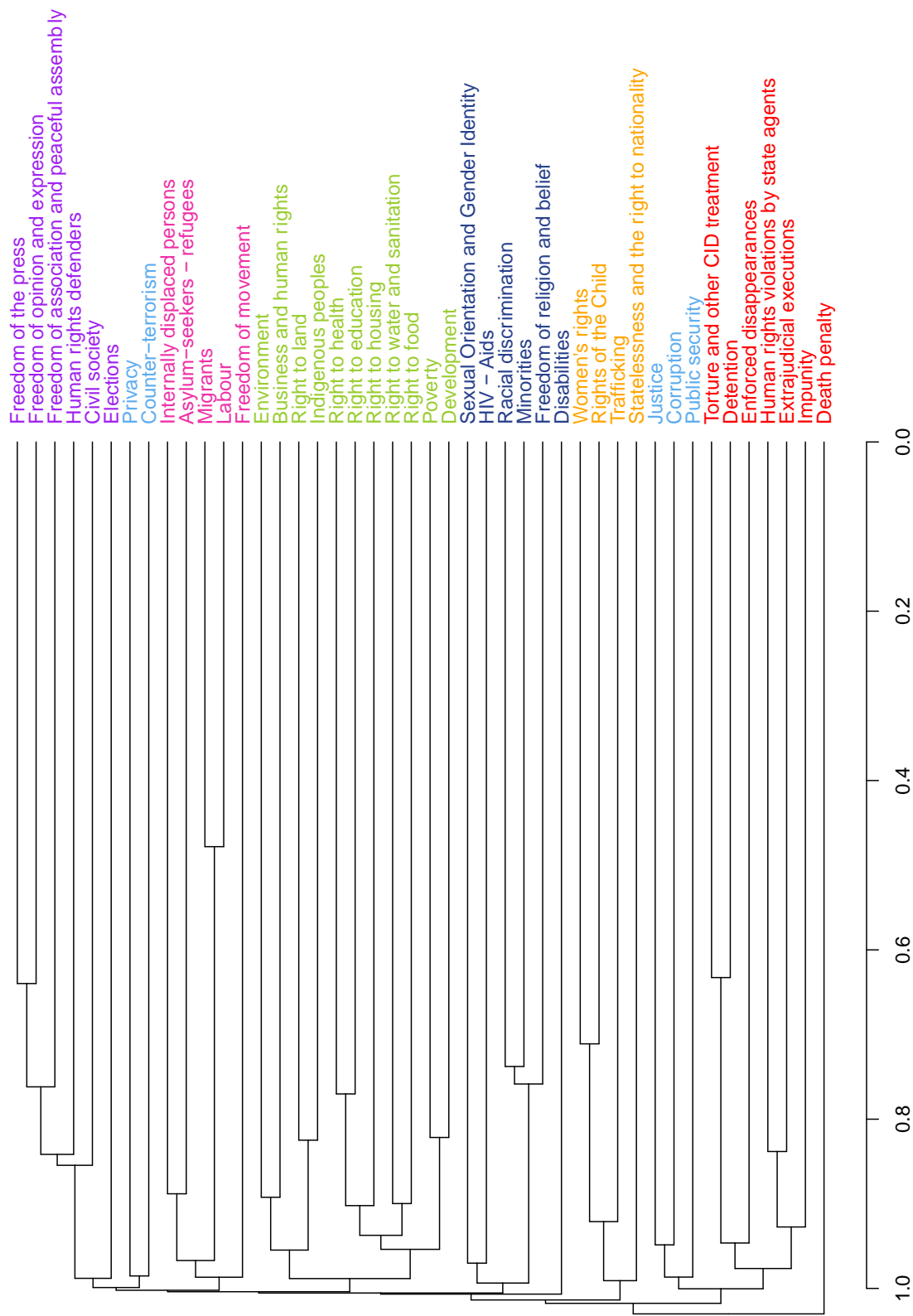


Figure 4.1 - Hierarchical clustering of issues addressed in UPR recommendations (2008-2016).

The x-axis indicates the distance between the clusters, measured by 1 minus the correlation between categories.

recommendation, one column per issue containing ones and zeros depending on whether the recommendation in question addressed that topic or not. Second, I removed twelve topics that refer to general categories, procedural and institutional aspects, and technical assistance and cooperation⁹⁷ – these are the same themes deleted by Terman and Voeten. Third, I used the resulting matrix of 57,077 observations (recommendations in the UPR first and second cycle) and forty-four variables (remaining issues) to calculate pair-wise correlations between issues. This gives us a similarity measure that, when deducted from 1, can be transformed into a dissimilarity or distance metric that can be used for hierarchical clustering.⁹⁸

The dendrogram in Figure 4.1 above shows the forty-four substantive issues identified by UPR Info grouped into a tree-like structure according to their co-occurrence. Based on these results, I aggregated similar issues into seven groups. In the figure, each cluster is painted in a different colour. All of them are ordered, but it seemed appropriate to make an exception and combine “Privacy” and “Counter-terrorism” with “Justice”, “Corruption”, and “Public security” into the *justice* group (coloured in light blue). The remaining six thematic clusters are (from top to bottom of the dendrogram): *civil and political rights* in purple, *migration and movement* in pink, *socio-economic rights* in green, *discrimination* in dark blue, *populations in a situation of vulnerability* in orange, and *physical integrity rights* in red.⁹⁹

The bar plots in Figure 4.2 below illustrate the percentage of recommendations on each of the clusters for the UPR first and second cycle. The clusters are painted following the colouring of the issues on the dendrogram. The first insight is that there is not much variation across cycles – the proportions are quite stable. We also observe a high percentage of recommendations referring to populations in a situation of vulnerability (*sitvul* in orange) – more than doubling the cluster on *discrimination*, which comes on the third place. Finally, we see that, despite the fact that the cluster on socio-economic rights (*socio.econ* in green)

⁹⁷ The full list includes: "General", "Human rights education and training", "International humanitarian law", "International instruments", "National Human Rights Institution", "Other", "Special procedures", "Technical assistance and cooperation", "Treaty bodies", "UPR process", "CP rights - general", and "ESC rights - general".

⁹⁸ Estimations were done with the *hclust()* function from the *stats* package in R, using the McQuitty's method for hierarchical clustering (McQuitty 1967).

⁹⁹ My "discrimination" category combines the "discrimination" and "voln.populations" of Terman and Voeten. Also, I have changed the name of their "traffchildwomen" to "populations in a situation of vulnerability" because, compared to their grouping, my category adds the new issue of "statelessness and the right to nationality".

includes eleven separate issues, it constitutes less than three quarters of the recommendations made on physical integrity rights (*physint* in red), which accounts for seven issues. However, it is worth mentioning that the difference between the proportion of recommendations made on physical integrity rights and socio-economic rights was reduced from 7.92% to 4.78% from the totals for the first to the second cycle.

This chapter will explore human rights promotion and contestation in the UPR by focusing on recommendations on two clusters: physical integrity rights; and socio-economic rights. The decision to look at this set of rights is based on the fact that, as it was described in Chapter 2, the first cluster, along with civil and political rights, tend to be associated with mainstream Western, individualistic-liberal-democratic (WILD) values, whereas the second one is usually linked to non-WILD values. It is expected that this historic “great divide” allows us to observe promotion and contestation of human rights in more detail.

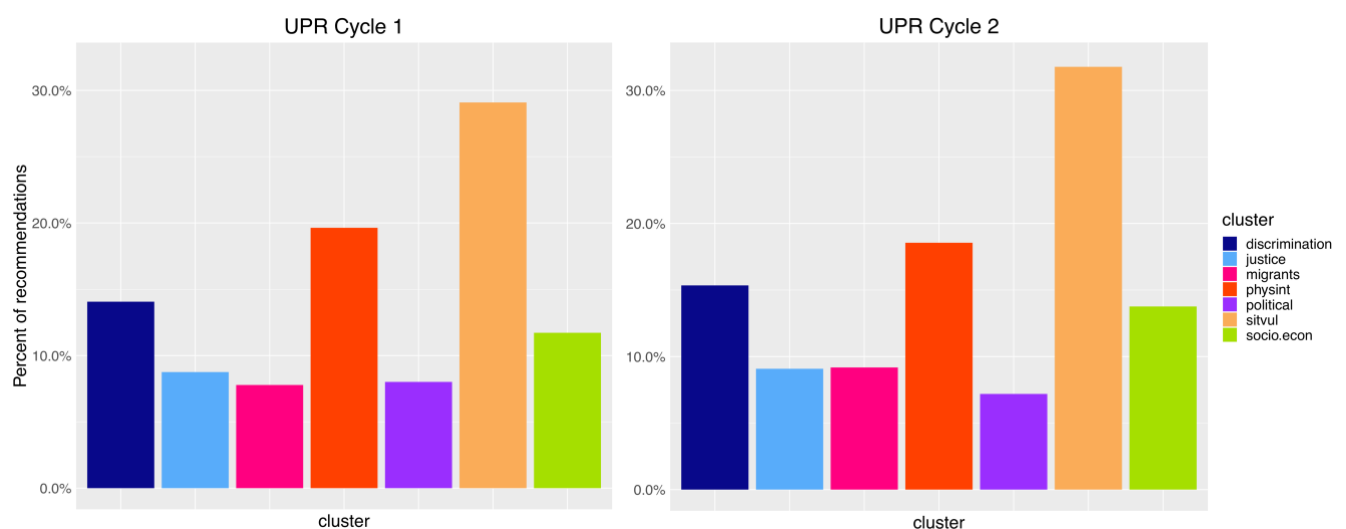


Figure 4.2 - Percentage of recommendations made on thematic clusters on UPR cycle 1 and 2

4.2 Promoters and contestants in their own words

As it has been argued above and in Chapter 2, the case of civil and political rights and physical integrity rights vs. socio-economic rights appears as a good case for illustrating the division between states that promote and those that contest human rights. The map in Figure 4.3 below shows all the sovereign states in the world, coloured by the difference between the

proportion of recommendations made on physical integrity rights from the total of recommendations made over the first two UPR cycles and the proportion of recommendations made on socio-economic rights during the same period of time.

On the right end (in blue and light blue), the scale reveals countries with a human rights agenda disproportionately focused on physical integrity rights. On the left end of the scale (in red and orange), we find states with a human rights agenda disproportionately focused on socio-economic rights. In the middle (in yellow) there are states with a relatively balanced agenda. With this visual aid in mind, in this section, I refer to the testimony of the protagonists on how they perceive promotion and contestation in the UPR.

When asked about examples of human rights contestation, many states' representatives mentioned the discussions around the **right to development**, which usually take place at the Human Rights Council but also travel to the UPR. The right to development is not a new topic in the UN sphere.¹⁰⁰ Already at the time of drafting the UDHR, Eleanor Roosevelt reported in her newspaper column "we will have to bear in mind that we are writing a bill of rights for the world, and that one of the most important rights is the opportunity for development"¹⁰¹ (Johnson 1987, 36). Almost four decades later, on 4 December 1986, the UNGA adopted the final text of the Declaration on the Right to Development as an annex to resolution 41/128.¹⁰² More recently, the UN adopted the Millennium Development Goals (MDGs)¹⁰³ and the Sustainable Development Goals (SDGs).¹⁰⁴ Despite the longstanding presence of the issue in the universal human rights system, there seems to be a lot of disagreement and prejudices around this topic.

¹⁰⁰ See more information on the official website of the OHCHR:

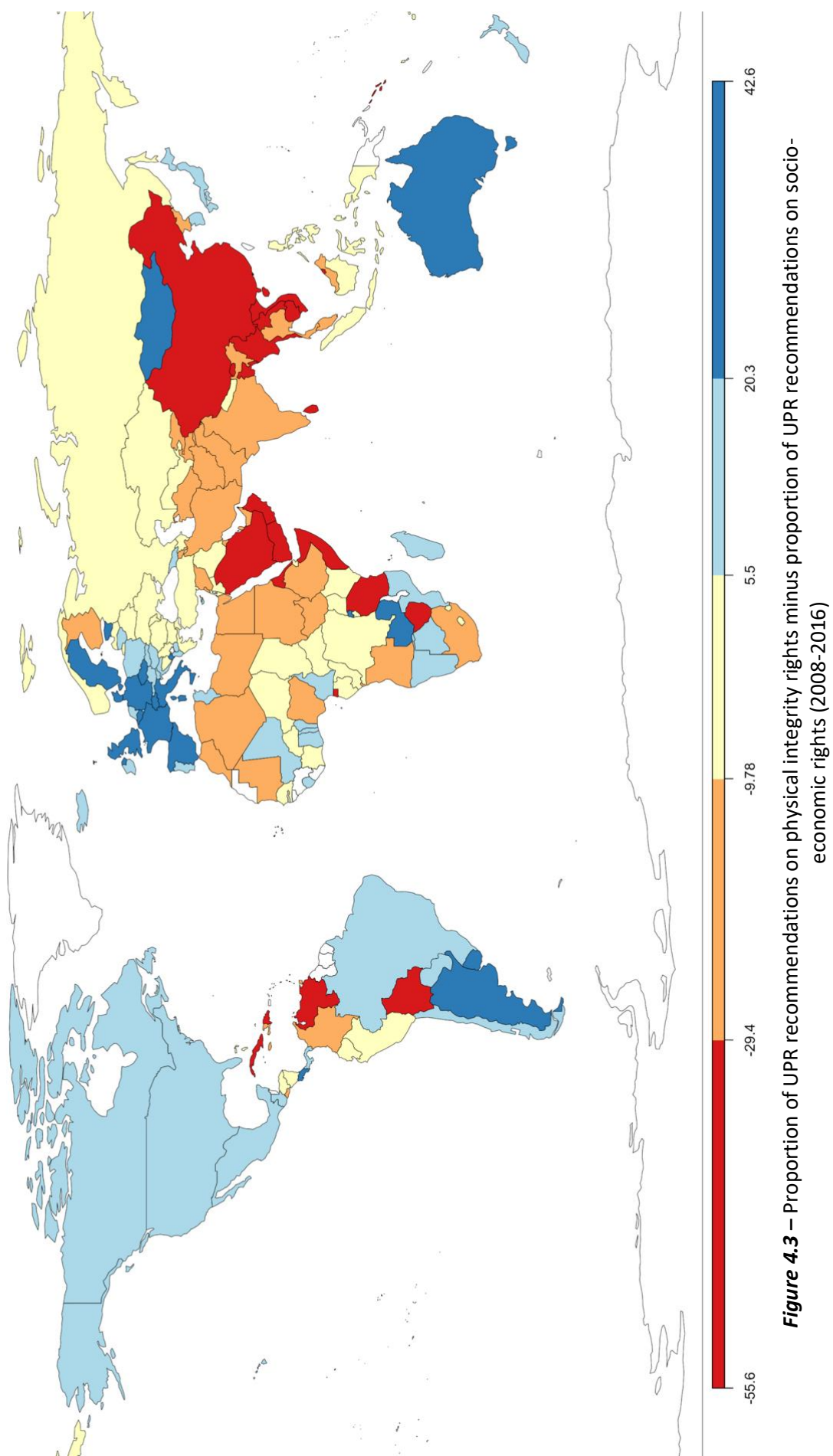
<https://www.ohchr.org/EN/Issues/Development/Pages/DevelopmentIndex.aspx> and, in particular, the most relevant documents on the matter: <https://www.ohchr.org/EN/Issues/Development/Pages/Documents.aspx>

¹⁰¹ Eleanor Roosevelt, "My Day, February 6, 1947," *The Eleanor Roosevelt Papers Digital Edition* (2017), accessed 9/13/2019, https://www2.gwu.edu/~erpapers/myday/displaydoc.cfm?_y=1947&_f=md000567.

¹⁰² A/RES/41/128 is available at <https://undocs.org/en/A/RES/41/128> from <http://research.un.org/en/docs/ga/quick/regular/41>

¹⁰³ More information at: <https://www.un.org/millenniumgoals/>

¹⁰⁴ More information at: <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>. With regards to the UPR, the Danish Institute for Human Rights developed a database linking UPR recommendations to SDGs: <https://sdgdata.humanrights.dk/explorer?mechanism=UPR>



On the one hand, there are states advancing a human rights agenda closely linked to development. According to Fukuda-Parr (2016), debates on the right to development can be traced to the Cold War. In the framework of the dependency theory that emerged in the 1960s (see e.g Cardoso and Faletto, 1969), developing countries started claiming for an international economic system that generates more favourable conditions for development. These claims emphasised the legacy of colonialism, the importance of self-determination, and international cooperation.

These days, the state representatives that were interviewed identified China, Venezuela, Cuba and Egypt as the leading countries in the crusade for the right to development. In general, they see the agenda on the right to development as something spearheaded by the so-called “Like-Minded Group” (LMG)¹⁰⁵ but mainly “from the South as a whole” (MIX.001) and “specially from the non-aligned movement (NAM)¹⁰⁶ as a group” (ST.023).

The delegate from Venezuela did not shy away from this association. When asked about contestation, he claimed that “yes, there is a lot of that. Nowadays, there are topics that are vital for some and others, such as the right to development. The NAM, which brings together the will of one-hundred and twenty states, furthers three fundamental issues: the right to development, the negative impact of unilateral coercive measures on the enjoyment of human rights, and the international cooperation in the field of human rights. On these three topics, we try to find a way to give them relevance when making recommendations [in the UPR]. There are many countries on the other side of the fence that feel uncomfortable with these three issues.”

A great achievement for this group of states was when on 22 June 2017 the Human Rights Council adopted resolution 35/21 on “The contribution of development to the enjoyment of

¹⁰⁵ The LMG is a group of states that work together on different issues. It claims to have around fifty-two member states, but the membership is not clearly defined and it varies across time and initiatives. As a former coordinator stated: “[the] composition [of the LMG] breaks the traditional boundaries of East, West, North and South, as well as developed and developing. The coordination of the group was undertaken by Russia, China and (since July 2013) Egypt” (Essam 2016). An LMG member state representative told me that China was taking the coordination again in 2018 (interview ST.025).

¹⁰⁶ At the time of writing, the NAM was chaired by Nicolás Maduro Moros, President of the Bolivarian Republic of Venezuela. More information at: <https://mnoal.org>

all human rights”¹⁰⁷, of which China was the main sponsor. But there are states that strongly resist the idea of a right to development. These states tend to explain their position in two ways.

First, we find those who believe development issues do not belong in human rights fora. For example, a Nordic diplomat claimed that: “[those on development are] of course recommendations that we don’t push in our agenda because the way for us to address the right to development is through giving development assistance and working through development channels for that, and not solve it through a human rights paradigm because in our view it’s not a human rights problem that you don’t have development.” At the same time, this person admitted that “the main emphasis in [their] list of priorities [was] on civil and political rights.” (ST.023)

Second, some states from the global North have expressed in interviews that they see the agenda on the right to development as a strategy to justify human rights violations and/or to deflect attention from them. For instance, a Western European state representative argued that “many states with no good record focus on the right to development... They think their own views of human rights or of development as a human right is a pre-condition for other human rights being realised” (ST.002, also ST.015). Similarly, the official explanation of the US on its position on HRC resolution 35/21¹⁰⁸ reveals a strong opposition and makes allegations against the sponsors. In their statement, they claimed: “we regret that the resolution draws from [the Vienna Declaration and Programme of Action (VDPA)] in a selective and imbalanced way that often omits key language that fully explains the relationship between human rights and development, or changes consensus language to materially alter its meaning. (...) [O]perative paragraph 1 is a selective extraction from VDPA paragraph 10, omitting the key

¹⁰⁷ A/HRC/RES/35/21 was adopted by a recorded vote of 30 to 13, with 3 abstentions. *In favour*: Bangladesh, Bolivia, Botswana, Brazil, Burundi, China, Congo, Côte d’Ivoire, Cuba, Ecuador, Egypt, El Salvador, Ethiopia, Ghana, India, Indonesia, Iraq, Kenya, Kyrgyzstan, Mongolia, Nigeria, Philippines, Qatar, Rwanda, Saudi Arabia, South Africa, Togo, Tunisia, United Arab Emirates, Venezuela. *Against*: Albania, Belgium, Croatia, Germany, Hungary, Japan, Latvia, Netherlands, Portugal, Slovenia, Switzerland, United Kingdom, United States of America. *Abstaining*: Georgia, Panama, Republic of Korea. And the delegation of Paraguay did not cast a vote. It can be accessed at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/184/81/PDF/G1718481.pdf>

¹⁰⁸ Available at: <https://geneva.usmission.gov/2017/06/23/explanation-of-position-on-resolution-on-the-contribution-of-development-to-the-enjoyment-of-all-human-rights-ahrc35l-33/>

portion of the source sentence – lack of development may not be invoked to justify the abridgement of human rights.”

The latter is the view that raises more controversy between the blocs. A diplomat from an ASEAN member state accused “those that see China as treating the right to development as a pre-requisite for the enjoyment of human rights” of being “paranoid” (ST.019). However, it seems that those pushing for the right to development use an ambiguous language that leaves room for misinterpretation and justifies the “paranoia” of Western states.

When presenting the draft of the resolution, China emphasised that “[o]nly through development can we better guarantee the basics rights of the people.”¹⁰⁹ In a similar vein, despite claiming that “there shouldn’t be hierarchy among rights and they shouldn’t divide into sub-rights”, an African state representative stressed that “you can’t ask someone who is uneducated, who is hungry, who doesn’t have a shelter to vote to choose a representative in Parliament” (ST.025). These appear as contradictory statements.

An officer from a developed country member of the Commonwealth considered discussions around the right to development as “a [global] North/South divide” (ST.004). A representative of a leading country from the WEOG regional group believes that “[t]he universality of human rights is still being contested. Countries like China don’t openly challenge the universality of human rights, but they talk about ‘shared, mutual, and beneficial cooperation’ (...) The resolution proposed by China and recently passed by the Human Rights Council is a direct confrontation with the international human rights system because this ‘mutually beneficial cooperation’ implies a deal where ‘I won’t bother you with your human rights situation and you won’t bother me, so we won’t bother each other’” (ST.036). The interviewee was referring to A/HRC/RES/37/23 on “Promoting mutually beneficial

¹⁰⁹ A 20-minute video on the consideration of the draft resolution at the HRC is available at: <http://webtv.un.org/search/ahrc35l.33rev.1-vote-item3-36th-meeting-35th-regular-session-human-rights-council/5479881939001/?term=&lan=english&cat=Human%20Rights%20Council&sort=date&page=131>. See other official statements by China on the website of their permanent mission in Geneva. For example, “Join Hands to Reduce Poverty, Promote and Protect Human Rights”, 14 June 2017 (<http://www.china-un.ch/eng/hom/t1470108.htm>) and “Realizing Development for the Promotion and Protection of Human Rights”, 17 September 2016 (http://www.china-un.ch/eng/dbtyw/rqrd_1/thsm/t1398077.htm).

cooperation in the field of human rights”, adopted by the HRC on 23 March 2018.¹¹⁰ This resolution has also been criticised by Human Rights Watch (Fisher 2018) and a former UN Special Rapporteur on adequate housing (Kothari 2018).

When discussing different understandings of human rights, a high US officer pointed out: “Russia [(and the Soviet Union in the past)] and others share the view that the state holds rights on behalf of the citizens and then the state grants them; but the US and others have the view that individuals hold the rights and the state has obligations towards them.” Such as other WEOG states, they said that they make recommendations on socio-economic rights but mainly when they are related to discrimination against minorities. The officer admitted: “we probably spend much less energy on economic and social rights [than on fundamental freedoms – as they put it –], but we never have.”

On “the other side of the fence”, as the Venezuelan officer put it, an Asian Counsellor claimed that “[d]eveloping countries are trying to put this right to development in the same wavelength as civil and political rights” (ST.016). In this line, a diplomat from Egypt stated that the main criteria for selecting on which issues they make recommendations is about “put[ting] more emphasis on social, economic and cultural rights as a balance, because many states are talking about civil and political rights.” When asked about the reasons behind expressions of contestation in the UPR, they said that “it’s about not leaving the field to be led by one point of view only. Your point of view would be there; I won’t kick you out of the field. You’ll be there and I’ll be there.” This last statement reveals a perception of human rights discourse as a competing field, where different states want to make their presence felt. In this case, with its institutional legitimacy, clear rules, and a wide audience, the UPR lends itself as a perfect setting to play the game.

After having exposed a number of testimonies from the protagonists themselves, it is worth considering the role of the clusters identified in Chapter 3 as an explanation of the behaviour of recommending states in the UPR. Figure 4.4 below shows the percentage of recommendations made on physical integrity rights plotted against the percentage of

¹¹⁰ Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/085/27/PDF/G1808527.pdf>

recommendations made on socio-economic rights on UPR cycle 1 and 2 combined. The states are divided and coloured by clusters of text similarity of national reports presented for the UPR first cycle, as introduced in Chapter 3.

We know from Chapter 3 that the global North is mostly in clusters three, then two, and one. We observe that states in cluster three (in green, mostly populated by Western and Eastern Europe) tend to focus more on WILD norms, whereas in both clusters one and two, we see that the behaviour of countries in the global North (like the United Kingdom, Spain, Japan, Denmark, Canada, Australia, Ireland, New Zealand, and the US) moves the slope higher in the y-axis (recommendations on physical integrity rights). Cluster four (in dark pink) contains most of the states identified with the agenda on the right to development (China, Cuba, Venezuela, and Bolivia), except from Egypt, which is in cluster one (in orange). At first sight, it looks like the text similarity of national reports could be treated as a proxy of states' human rights identity that can inform on their behaviour in the UPR. However, this visual diagnosis is not enough. Now it is time to move to statistical testing in order to reach to more robust conclusions.

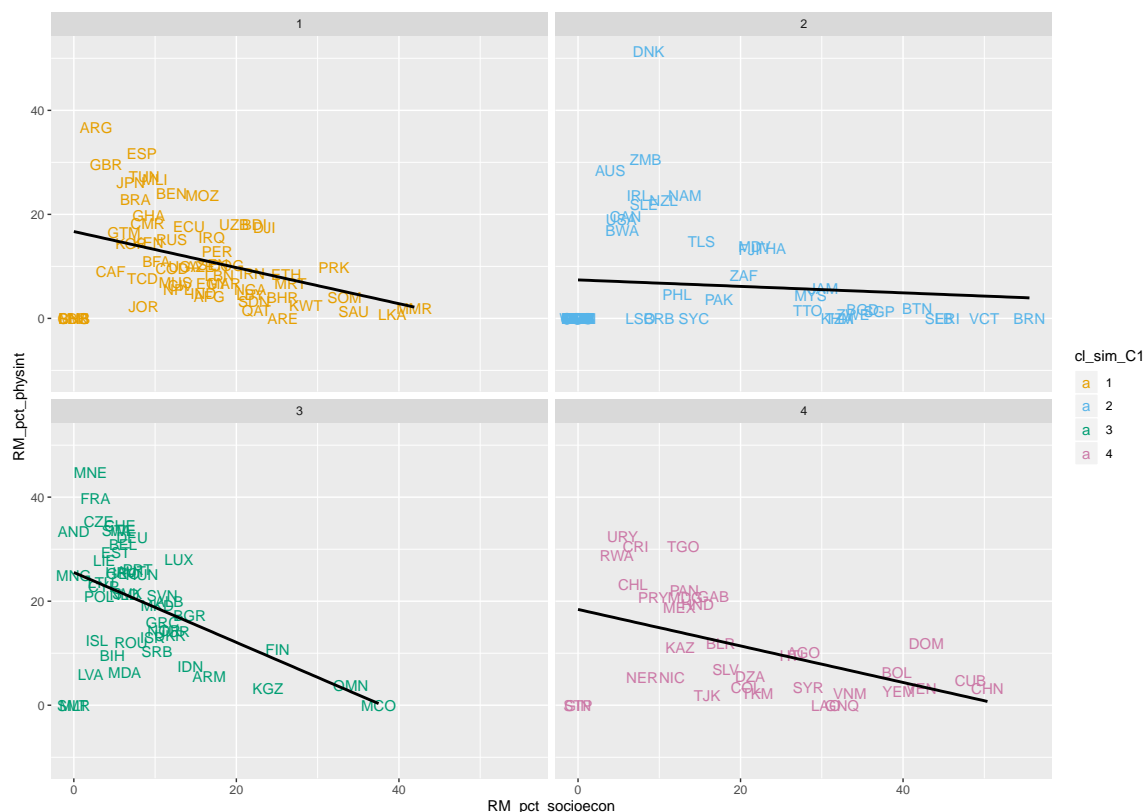


Figure 4.4 - Percentage of recommendations made on physical integrity rights plotted against percentage of recommendations made on socio-economic rights on UPR cycle 1 and 2 combined.

4.3 Measuring the similarity of recommending states' behaviour on issues

Beyond the case of selected issues analysed above, it is worth exploring the similarity of recommending states' thematic agenda in general. Using network analysis to measure the structural equivalence of nodes allows us to obtain dyadic values that can be compared and modelled along other variables. What is structural equivalence in social network analysis and how can it be applied to the UPR context?

The Universal Periodic Review can be seen as a network, where states are the nodes (also called vertices) sending recommendations to each other. Recommendations represent ties or edges in network terms, which connect recommending states with states under review. Each cycle of the UPR can be seen as a complete network, where all states have received recommendations because they have been under review and some states, those who chose to participate in the interactive dialogues, have sent recommendations to others. We can also add the ties that connect nodes in the first and second UPR cycles, which have been completed by 2016. Because we assume it took states some time to get used to this innovative peer-review mechanism,¹¹¹ in this thesis we will consider the first UPR cycles together, as a way of controlling for the atypical behaviour of recommending states during the first couple of sessions.

The UPR as a network of relations between states is considered a one-mode network, where all nodes are of the same type – in this case, sovereign UN member states. However, for the purpose of this chapter, we could also see the UPR as two-mode network, where we have two types of nodes; on the one hand, there are recommending states which send ties in the form of recommendations, and on the other hand, there are thematic issues, which can be addressed by recommending states in their recommendations. The resulting two-mode network links recommending states and issues. This is called an incidence matrix, and we can extract one-mode projections from it, either linking issues amongst each other given their association with states, or vice versa. In this case, we are more interested in measuring how

¹¹¹ It is worth noting that this assumption is grounded in the literature on the UPR, as well as on the experience of the author interacting with and interviewing actors involved in the process.

closely connected recommending states are to each other given their choices to address different thematic issues in the recommendations they make.

In social network analysis, structural equivalence is a measure of similarity of the nodes in the network which helps us identify to what extent two nodes are playing the same role in the network. Two actors (or nodes) are structurally equivalent “if they have identical ties to and from all other actors in the network” (Wasserman and Faust 1994, 356). It is not only about being connected to the same exact actors, but to nodes which are themselves playing similar roles in the network. Perfect structural equivalence means that we could exchange (or substitute) two nodes without changing the network structure, which rarely happens in social networks. However, measuring structural equivalence is helpful for “determining similarity between the nodes of a network using the information contained in the network structure” (Newman 2018, 194).

The concept and potential of structural equivalence has been used in International Relations as a latent measure of affinity with regards to military alliances, trade, and membership of international governmental organisations. Maoz et al. (2006) developed measures of structural affinity using social network analysis and tested their effect on international conflict. They find that “[an] integrated measure of structural equivalence that incorporates trade, alliances, and IGO-based relations seems to have a consistently negative effect on the probability of conflict” (Maoz et al. 2006, 686).

For this research, structural equivalence in the UPR network is measured in two ways. First, using a one-mode projection of a bipartite matrix with the fifty-six issues identified by UPR Info individually, and the 171 states that made at least one recommendation (qualifying as recommending states) in the UPR between 2008 and 2016 (the first two cycles combined). The cells of the bipartite matrix contain the number of recommendations made by each state on the different topics. Here we are interested in the one-mode projection that presents the relationship amongst states. The pair-wise Pearson’s correlation showing the similarity of states’ behaviour with regards to their activism on human rights issues in the UPR (an indicator on how similar their human rights agendas are) can be extracted as a dyadic measure of similarity, which we will call ***str_eq_issue_agenda*** and use it later as a dependent variable.

Second, we use seven adjacency matrices –one for each issue cluster— connecting all states with all states (being 193 UN member states, the dimension of the matrix is 193x193). The cells of the matrix contain the number of recommendations made by-to each state on any of the issues belonging to the thematic cluster, as presented in section one of this chapter. The time period is, again, the first two cycles of the UPR combined (2008-2016). Because these are directed networks (meaning that the matrices are not symmetric, and that the direction of edges matters), we need to bind each of the seven matrices with their transpose to account for making and receiving recommendations. Therefore, we end up with a matrix of dimension 2702x193 (with the 2702 being 193 states x 7 clusters x 2 – the cluster matrix and its transpose). After calculating the pair-wise correlation for this matrix, we will call the resulting measure *str_eq_issue_cluster*.

Our first measure focuses on the similarity between recommending states on their activism on all the human rights issues that have been brought up in the UPR, independently from the target. This is an indicator of how similar the activism on different issues is between two states. Our second measure focuses on the similarity between all states on how they relate to others (sending and receiving recommendations) when we subset the whole UPR network by issue clusters. This second measure considers the target per issue cluster and it is an indicator of how similar two states are with regards to who they make recommendations to and receive recommendations from on the seven different networks of issue clusters combined. Given that the second measure is more sophisticated and captures more refined information on the similarity of states, it is a better reference for the politics of the UPR.

Both these measures can be illustrated with hierarchical clustering and dendrograms, like we did with the issues above. However, not to complicate the readers with too much information, I present Figure 4.5 below showing the dendrogram of *str_eq_issue_cluster*. Instead of cutting the tree to reveal the groups identified by a clustering algorithm, I decided to colour the states' label by the clusters of text similarity of national reports presented for the first cycle of the UPR.¹¹²

¹¹² Remember the map in Figure 3.2 and the list of states in each cluster in Table 3.1.

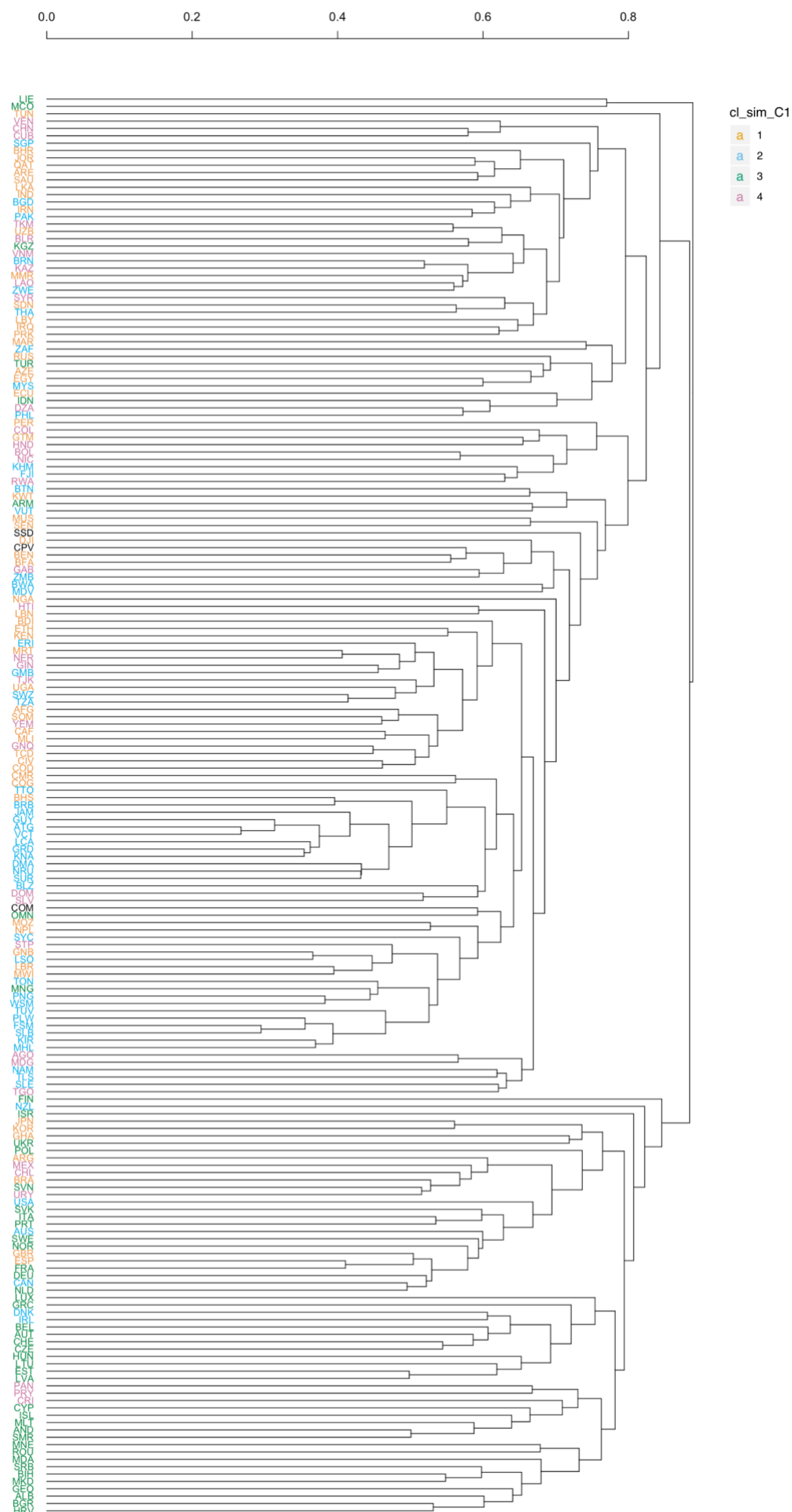


Figure 4.5 - Hierarchical clustering of similarity of states' behaviour on UPR issue clusters networks (2008-2016).
 Note: The x-axis on top indicates the distance between the states, measured by 1 minus the correlation between all networks.

The purpose of including this hierarchical clustering is to have a reference of where states are located beyond the abstraction of the measurement created. Seeing the labels of the state names and how they are grouped depending on how similar their activism on human rights issues (organised in the thematic clusters identified above) is. At first sight, we observe some relationship with the measure we use as a proxy of states' human rights identity. There are lots of green states in the bottom, blue ones in the middle, oranges are spread but mainly concentrated on the first half of the dendrogram, and dark pinks are spread too, but we can see Venezuela, China and Cuba together close to the top. We should not rush to conclusions yet, but this is a visual aid to consider while moving to the next section, where we will analyse the following question in more detail: To what extent does the text similarity of national reports explain the behaviour of recommending states in the UPR with regards to their issue agenda?

4.4 Explaining the similarity of recommending states' behaviour on issues

So far, this chapter has explored the issues addressed by recommending states in the UPR interactive dialogue and grouped them into seven different clusters. Then, it has introduced qualitative evidence to illustrate the politics of human rights promotion and contestation in the UPR, particularly concerning civil and political rights, physical integrity rights and economic and social rights. The issue on the right to development appeared as a salient case of contestation from the global South. In this context, we considered the role that the clusters resulting from the text similarity of national reports presented at the UPR first cycle could play in the similarity of recommending states' behaviour when coming to their thematic agenda.

In the previous section, we developed two measures of structural equivalence for the UPR issue networks; one focused on the similarity of the activism and thematic agenda states advance, and a second one focused on the seven clustered issue-networks considering the sender and target of recommendations. In this section we conduct inferential statistical analysis to test to what extent the text similarity of UPR national reports explains the structural equivalence of states. Given the theory developed in Chapter 2, we expect that:

H1: The more similar the text of national reports presented for the UPR first cycle, the more structurally equivalent recommending states will be in their activism on different issues.

H2: The more similar the text of national reports presented for the UPR first cycle, the more structurally equivalent states will be in the clustered issue-networks.

These hypotheses are tested with linear models along with other control variables which have been associated by the relevant literature as measures of similarity or closeness between states (see e.g. Maoz et al. 2006; Greenhill 2010, 2015; Terman and Voeten 2018). We include shared membership in international governmental organisations (joint_IGOs), shared ratification of human rights treaties (joint_HRT), shared openness to international scrutiny (joint_OIS), geopolitical affinity, military alliance, arms net exports, trade net exports, and the absolute difference between the following measures: liberal democracy index (ldi), physical integrity rights protection record (pif), the core Social and Economic Rights Fulfilment (SERF) index, and gross domestic product per capita (GDPpc).¹¹³

We would expect the control variables to behave in the same way as the independent ones. For instance, shared IGOs membership and ratification of human rights treaties has been identified as contributing to norm diffusion and the socialisation of states. Additionally, the less different states' human rights record (whether on civil and political, physical integrity or socio-economic rights), the more similar behaviour we can expect from them. Finally, in a more material sense, it can also be anticipated that states that hold military alliances, are close trade partners or have a high geopolitical affinity, will have similar practices in the UPR with regards to their issue focus. To sum up, the closer, more similar and friendlier states are to each other, the more similar their expected behaviour will be.

The correlation matrices in Figure 4.6 below show there is no risk of multicollinearity since there are no two variables that are highly correlated in a problematic way. It would be concerning if the main independent variable shows strong correlations (lower than -0.7 or higher than 0.7) with any of the other explanatory variables. We observe a perfect correlation between arms net exports and net exports concerning all trade, which makes sense. Because

¹¹³ See Chapter 3 for more details on the coding of these variables and Appendix 4 for their summary statistics.

of that, we will not consider these two variables together and in our models we will use trade net exports. Shared ratification of human rights treaties and Shared openness to international scrutiny in international human rights instruments are also strongly correlated at 0.66, but this is not problematic for testing our main hypotheses.

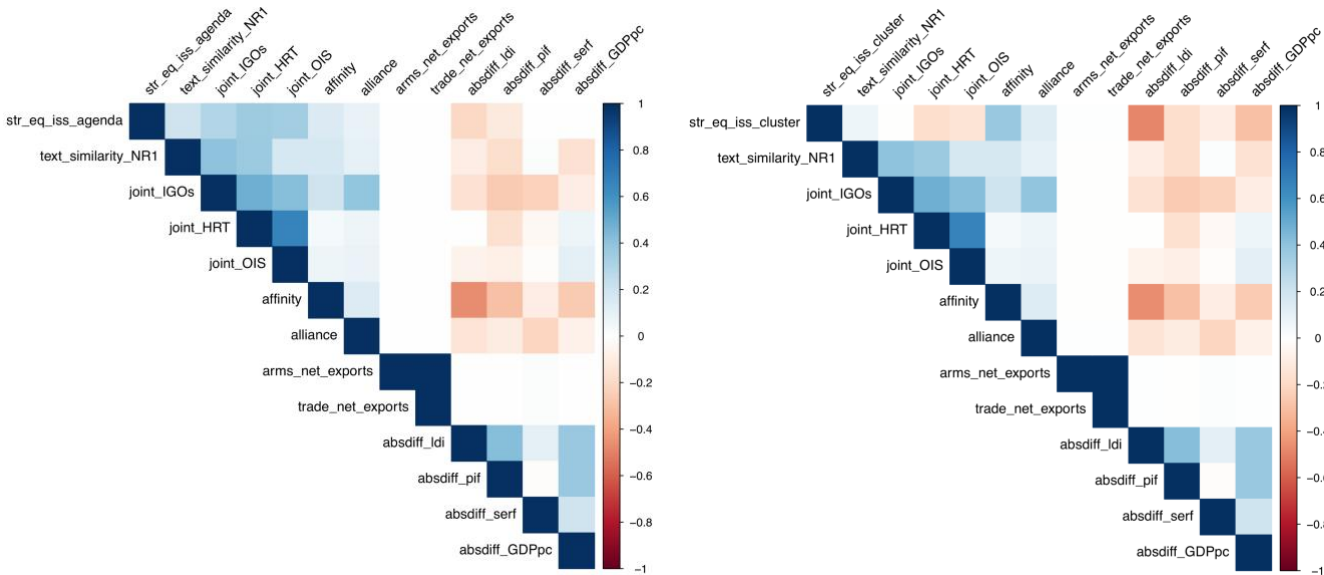


Figure 4.6 – Correlation matrix for the different variables to be considered in the statistical models

Table 4.1 below shows the results of two linear models with *str_eq_iss_agenda* as the dependent variable and two linear models with *str_eq_issu_cluster* as the dependent variable. In both sets of models, there is one that includes and one that excludes the absolute difference of the states’ record on economic and social rights. As it becomes evident from the number of observations in the models that include it, the SERF index is a measure with a lot of missing data. Therefore, it is removed in some cases to test our hypothesis over a larger number of dyads. It is important to note that, because the independent variables have different scales, the coefficients have been standardised using the *QuantPsyc* R package (Fletcher 2012) to facilitate the comparison of their effects.

The models provide evidence that the text similarity of national reports presented for the UPR first cycle for each dyad of countries has a consistently positive and highly significant effect on the similarity of recommending states’ behaviour in the UPR, measured by two different indicators of structural equivalence. Therefore, we cannot reject our main null hypotheses and we can conclude that the more similar the identity of states (measured as

	DV str_eq_iss_agenda		DV str_eq_iss_cluster	
	Model 1	Model 2	Model 3	Model 4
(Intercept)	−0.01 (0.02)	−0.08*** (0.01)	−0.13*** (0.01)	−0.14*** (0.01)
Text similarity of UPR national report (cycle 1)	0.06*** (0.01)	0.07*** (0.01)	0.09*** (0.01)	0.10*** (0.01)
Shared IGOs membership	0.13*** (0.02)	0.11*** (0.01)	0.09*** (0.01)	0.04*** (0.01)
Shared ratification of HR treaties	0.24*** (0.02)	0.22*** (0.01)	−0.06*** (0.02)	−0.09*** (0.01)
Shared openness to international scrutiny	0.14*** (0.01)	0.13*** (0.01)	−0.13*** (0.01)	−0.07*** (0.01)
Geopolitical affinity	0.11*** (0.01)	0.09*** (0.01)	0.08*** (0.01)	0.21*** (0.01)
Military alliance	−0.06*** (0.01)	−0.01 (0.01)	0.01 (0.01)	0.07*** (0.01)
Trade (net exports)	0.00 (0.02)	−0.00 (0.01)	0.00 (0.01)	0.00 (0.00)
Liberal democracy index (absolute difference)	−0.07*** (0.01)	−0.12*** (0.01)	−0.22*** (0.01)	−0.29*** (0.01)
Physical integrity rights (absolute difference)	−0.08*** (0.02)	−0.03*** (0.01)	−0.12*** (0.01)	−0.00 (0.01)
SERF index (absolute difference)	−0.00 (0.01)		−0.06*** (0.01)	
GDPpc (absolute difference)	0.20*** (0.03)	0.06*** (0.01)	−0.24*** (0.03)	−0.15*** (0.01)
Adj. R ²	0.17	0.20	0.21	0.35
Num. obs.	6280	21918	7168	24162

*** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$

Table 4.1 – Linear models for both measures of structural equivalence.
Standard errors in parentheses.

how they report on their own human rights situation), the more similarly they will behave with regards to the human rights agenda they advance in general and also considering the target effects.

In Table 4.1 we also observe the same consistently positive and highly significant effect for geopolitical affinity, which makes sense because the measure is based on how states vote

in the UN General Assembly. Similarly, the higher the shared membership in IGOs for the pair of states, the more likely it is that they will be more structurally equivalent in the UPR concerning their issue focus. This is somehow consistent with the findings of Greenhill (2015) with regards to states' human rights practices.

The absolute difference in the V-Dem liberal democracy index has a consistently negative and highly significant effect on both measures of structural equivalence. This means that the higher the difference of how liberal democratic states are, the less structurally equivalent they will be. This is expected because higher absolute differences represent more distance between states. We would expect liberal democracies to have a human rights agenda focused on WILD norms, while more autocratic states will probably make recommendations that are more associated with non-WILD values. Likewise, the higher the difference of the physical integrity rights protection record between the states, the less likely it is that they will be more structurally equivalent concerning the UPR thematic agenda and clustered issue-networks. However, this variable is not significant in the models for the structural equivalence of issue clusters where the absolute difference of the SERF index is not included.

The effect of military alliance is uncertain – in some models it is positive, in others negative, in some is significant and in others it is not. Trade net exports does not show any effect on the dependent variables in any of the models presented. The case of the absolute difference on the SERF index shows inconclusive results in terms of their significance, but its impact appears as negative, such as with other distance measures of human rights protection record.

There are two variables which are highly significant in all the models, but which have a positive effect on the structural equivalence of issue agenda and a negative effect on the structural equivalence of issue cluster: shared ratification of human rights treaties and shared openness to international scrutiny. Their positive effect on the models that explain the structural similarity of human rights agenda make sense because *joint_HRT* and *joint_OIS* are indicators of states' adherence to the same human rights instruments and capture a similar attitude towards being scrutinised and judged on their human rights situation. However, when the targets are considered, different dynamics and politics play out. These models are not just

about the issue focus but they also account for the dynamics of sending and receiving recommendations to the same or different states. In this context, the higher their *joint_HRT* and *joint_OIS*, the less structurally equivalent the role they play in the clustered issue-networks will be. This is an interesting finding suggesting that the text similarity of UPR national reports is a better proxy indicator of human rights identity than the adherence to the same human rights' legal instruments.

Finally, the coefficients and significance of the absolute difference of GDP per capita suggest that states with different levels of economic development have more similar human rights agenda in the UPR. This is not completely surprising. Although some examples of human rights promotion and contestation have been related to the economic development of states, that is not necessarily the case for all the issues that states foster in the UPR. Some thematic focus can be associated with ideological factors (e.g. religion) unrelated to the material capabilities of states. Nevertheless, when we consider the effects of targets in the clustered issue-networks, states with more similar levels of economic development appear to be more structurally equivalent to each other.

The new measure of states' human rights identity I proposed and developed performs consistently well across four models explaining two different measures of structurally equivalent behaviour in the UPR network. This is remarkable because we are controlling for a number of variables that have already been analysed in the relevant literature and which still have an effect and significance in these models.

These results show that the text similarity of the national reports presented to the first cycle of the UPR, when states had complete freedom to report on the human rights situation under their jurisdiction, is not an empty indicator. The text contained in those reports seems to be capturing aspects that are a reflect of the identity of the reporter state. The decisions on what to report and how to report about it reveal the essence of the reporter. In the end, the words used (and not used) in those documents, their order and frequency soak the text with the human rights identity of the reporting state.

Moreover, not only is this a relevant indicator of states' human rights identity, but also it appears as an important explanation of recommending states' behaviour in the UPR. The findings on the main independent variable of this thesis for the first set of models persist in a second set of linear models, this time including fixed effects for both countries in the dyads. These models follow the same logic as the previous ones and the results are shown in Table 4.2 below (coefficients have been standardised and individual country fixed effects are not reported).

	DV str_eq_iss_agenda		DV str_eq_iss_cluster	
	Model 1	Model 2	Model 3	Model 4
(Intercept)	0.93*** (0.11)	0.95*** (0.07)	0.26* (0.11)	1.59*** (0.08)
Text similarity of UPR national report (cycle 1)	0.02 (0.02)	0.01 (0.01)	0.04* (0.02)	0.02* (0.01)
Shared IGOs membership	0.04* (0.02)	−0.01 (0.01)	0.41*** (0.02)	0.48*** (0.01)
Shared ratification of HR treaties	0.20*** (0.03)	0.26*** (0.02)	0.04 (0.03)	0.12*** (0.02)
Shared openness to international scrutiny	0.21*** (0.02)	0.23*** (0.01)	0.12*** (0.02)	0.19*** (0.01)
Geopolitical affinity	0.12*** (0.01)	0.13*** (0.01)	0.01 (0.01)	0.01 (0.01)
Military alliance	−0.02* (0.01)	0.01 (0.00)	−0.10*** (0.01)	−0.07*** (0.00)
Trade (net exports)	0.00 (0.01)	0.00 (0.00)	0.00 (0.01)	0.00 (0.00)
Liberal democracy index (absolute difference)	−0.07*** (0.01)	−0.12*** (0.00)	−0.15*** (0.01)	−0.20*** (0.01)
Physical integrity rights (absolute difference)	−0.11*** (0.01)	−0.02** (0.01)	−0.09*** (0.01)	−0.02* (0.01)
SERF index (absolute difference)	−0.00 (0.01)		−0.04*** (0.01)	
GDPpc (absolute difference)	−0.03 (0.06)	0.03*** (0.01)	−0.68*** (0.06)	−0.24*** (0.01)
Adj. R ²	0.67	0.72	0.60	0.61
Num. obs.	6280	21918	7168	24162

*** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$

Table 4.2 – Linear models for both measures of structural equivalence with country fixed effects. Standard errors in parentheses.

In the more conservative models in Table 4.2, where the fixed effects capture country-specific factors and there is little variation left for other variables to account for, the proposed measure of identity similarity has a positive effect on the structural equivalence of states' behaviour in the UPR and it is even significant when considering the target/sender in clustered issue-networks.

It is impressive how the text similarity of national reports presented in the UPR first cycle proves to be a measure that behaves consistently while other variables behave different than before in this new set of models. As I will show in next chapter, the targeting dynamics vary across states and groups of states, and probably that is why the role of geopolitical affinity (so high and significant in the simple linear models) loses significance in the models that are fit to explain the structural equivalence of clustered issue-networks with country fixed effects.

Conclusion

Since its introduction, this chapter has shown that UN member states care about and pay a lot of attention to the content of the recommendations made in the UPR, not only when they are recommending states deciding on what issues to address and how to phrase their recommendations, but also when their peers use their voice in the interactive dialogue. States' perceptions and experience with the mechanism after a decade seem to be in line with the findings of Milewicz and Goodin (2018, 514), whose "evidence suggests that the UPR effectively sets in motion a deliberative process to promote human rights around the world". With this in mind, the UPR is seen and used by some recommending states as a field where multiple understandings and discourses of human rights appear to be in competition for dominating the narrative. In this context, the constant presence and reminders of the different views seem to be enough.

The UPR provides numerous examples of human rights promotion and contestation, where some states advocate for values usually associated with Western individualist liberal democracies while others foster other set of values, not usually coupled with the WILD normative community. This chapter has analysed qualitative and quantitative evidence on

human rights promotion and contestation in the UPR. An important and interesting finding supports the main hypothesis of this thesis. Not only does the text similarity of the national reports presented for the UPR first cycle appear as a respectable measure of the human rights identity similarity of states but it also proves to be a relevant explanatory variable for the structural similarity of recommending states in the UPR issue networks. This is an indication of identity being relevant for human rights promotion and contestation. The next chapter will explore the instrumental and normative use of the UPR while considering the role of the clusters of identity similarity.

Chapter 5

The instrumental and normative use of the UPR

"[I] asked them whether the drawing frightened them.

But they answered:

"Frighten? Why should anyone be frightened by a hat?"

*My drawing was not a picture of a hat. It was a picture
of a boa constrictor digesting an elephant."*

The Little Prince, by Antoine de Saint-Exupéry (1943)

In the first pages of the famous novel *The Little Prince*, a child shows a drawing to a group of adults and they hold the short dialogue that is the epigraph of this chapter. What looks like an innocent hat to the group of adults is actually, according to what the drawer himself affirms, a scary boa constrictor digesting an elephant. Although this passage fits in the novel as an early episode in the life of the narrator which shows that adults lack imagination, it reminds me to the accusations of politicisation in the UPR for a number of reasons.

First, the fact that something can be seen by different people both as a still object and a living dangerous creature resonates with the debates on whether the winds of politicisation that are affecting the Human Rights Council have reached the Universal Periodic Review. Is the UPR politicised and, therefore, a threat to the credibility of the UN human rights system? Or has it managed to survive the hurricane? There are different views, but here there is no drawer that holds "the truth", so more research is needed, and this thesis aims to shed a light on the darkness around this issue.

Second, the fact that the boa has eaten an elephant reminds me of the metaphor of "the elephant in the room" – according to the Oxford dictionary: "a problem or question that everyone knows about but does not mention because it is easier not to discuss it."

Politicisation in the UPR is this big elephant in Room XX of the Palais des Nations, on whose presence you hear rumours, but no-one discusses or studies seriously. Definitely, it is not an easy topic. On the one hand, for those involved in the UN human rights system, the UPR mechanism raised high hopes and confronting an unwanted reality can be daunting – like admitting that you are watching a scary boa digesting an elephant instead of an inoffensive hat. On the other hand, as we will see throughout this chapter, disentangling to what extent behaviour in the UPR can be considered instrumental or normative is a challenging endeavour. Moreover, the UPR raises multiple research interests that go beyond studying politicisation from recommending states, such as how states under review engage with the mechanism, the role of civil society and NHRIs in the process, the response to the recommendations, their implementation and follow-up, the evolution of human rights discourse over the years, etcetera.

This chapter explores and analyses the instrumental and normative use of the UPR building on both qualitative and quantitative evidence. The first two sections look at recommending states' instrumental and normative use of silence and speaking up, and on deciding on the quantity and quality of recommendations. The chapter introduces innovative concepts to categorise certain events that take place in the UPR interactive dialogue while engaging with discussions on naming and shaming and perceptions of politicisation in human rights institutions. The third part offers some illustrative and statistical evidence to observe viciousness and assess the presence of double standards. Finally, after the empirical analysis and before the conclusion, the chapter includes two final notes (one on reciprocity and another one on hypocrisy and responsibility) that can advance our current (and future) understanding of the overall performance of the UPR and its prospects.

5.1 The instrumental and normative use of silence and speaking up

There is an anonymous proverb that says: “Silence can speak volumes”. In the Universal Periodic Review, the language of silence can be interpreted in many different ways, some of which may involve some degree of inconsistency and double standards. Before considering

the content, number and phrasing of recommendations, states have to start by deciding whether or not they will join the list of speakers to participate in an interactive dialogue.

If we define “consistent participation” as not intervening in any interactive dialogue or making recommendations in over 95% of the reviews¹¹⁴ over a whole UPR cycle, data shows that there were 41 consistent participant states (two active and thirty-nine silent) in the first cycle and 38 in the second one (fourteen active and twenty-four silent). These numbers amount to around 20% of states being consistent participants in the UPR.

To what extent sustained silence and participation constitutes normative behaviour is uncertain with this evidence alone. For instance, one could argue that those states that are consistently not active could be using their silence as a way of speaking against human rights institution and monitoring in general. This would be like protesting the UPR, claiming that they do not participate in this forum because they believe human rights are a sovereign matter that no-one should scrutinise. However, if we look at the behaviour of what have probably been considered the most pariah states in the international human rights system in the last decade, they have also made recommendations and even accepted some of the ones they received when they were under review. Just as an example, the Democratic People’s Republic of Korea (DPRK) made recommendations in 21 reviews in the first cycle and in 40 during the second one. Similarly, Syria was a recommending state in 36 reviews in the first cycle and in 21 for the second one (after the Syrian civil war that began in 2011 and the subsequent humanitarian crisis).

The normative element of the consistency of silence is not self-evident, but neither is it for the case of consistent participation. We do observe that the number of consistent active participants has raised from 2 in the first cycle to 14 in the second one. This is a 700% increase of active participants (states that made recommendations in more than 183 reviews). Nevertheless, although states can be committed in principle to participating in all (or most) reviews, there is still room for inconsistency and double standards in their activism when

¹¹⁴ This is an arbitrary cut of 183 reviews. Although this does not amount to 100%, I think states can have a policy of universal participation in the UPR and still miss some reviews in the period of four and a half years due to unforeseen circumstances that should not put their commitment under doubt.

choosing how many recommendations to make and how to phrase them. This will be discussed further in the next section; but for now, I want to go back to the volumes of silence and what it can tell us about instrumental and normative uses of the UPR.

The evidence shows that complete silence seems to be more associated to a lack of capacity than to a political statement in itself. I have argued elsewhere that being silent in the UPR appears to be related to a combination of three factors: not having a Permanent Mission before the UNOG, being a Small Island Developing State (SIDS), and/or having a population of under 500,000 inhabitants (Elizalde 2019). However, this conclusion applies exclusively to those states that remained consistently silent in interactive dialogues, without making any recommendation to any state under review. The number of states in this category for both the first and second cycles of the UPR amounts to twenty-two.

Apart from these extreme cases, the argument of *silence as incapacity* also appears to be relevant for the justification of selectivity of targets, which strengthens my claims that selectivity, partiality and bias should not be directly understood as politicisation, at least in the context of the UPR. The way this reasoning manifests is twofold. First, many state representatives have expressed in interviews with the author that, although they have an office in Geneva, they are a “small mission” – meaning that they have a short number of staff members to cover the many issues that take place in the city on a daily basis. It is worth noting that the agenda in “International Geneva”¹¹⁵ goes beyond human rights, with the International Labour Organisation (ILO), the International Organisation for Migration (IOM) and World Trade Organisation (WTO) amongst the many international organisations hosted there.

Second, a number of state representatives mentioned some involvement of their local embassies in the process of drafting UPR recommendations, especially for gathering information. Those states that heavily rely on their embassies on the ground said that, when

¹¹⁵ See the official website of the city: <https://www.eda.admin.ch/missions/mission-onu-geneve/en/home/geneve-international/faits-et-chiffres.html>

choosing states to make recommendations, a main criterion was whether they had diplomatic representation or, at least, a neighbouring embassy to help them in the process.

For some interviewees, the size of their mission and the lack of support from local embassies is a good justification for selectivity in the UPR. However, selectivity in itself is a political decision and states that would want to avoid the risk of being perceived as instrumentalising the UPR with their choices can learn from the experience of others that encounter their same limitations. For example, non-selectivity is an important issue on which some states, independently from the size of their mission, are not willing to compromise. Missions from small countries like Uruguay and Norway consider the universal approach in the UPR (making recommendations to every state under review) a priority and they live up to this commitment despite their relatively scarce human resources.

Similarly, there are cases when the limitation of information from the ground does not prevent states' activism. For instance, as "a way for upscaling [their] engagement [in the UPR]", and aware of their scant diplomatic representation in the world, Denmark has recently moved to a system of making two types of recommendations, namely substantive and standardised. *Substantive recommendations* take time, energy, and lots of work; and they are directed mainly to those states where Denmark has a local Embassy. *Standardised recommendations* refer to more technical aspects, such as ratifying a treaty (in the case of Denmark, they start by checking instruments on torture), withdrawing reservations, or engagement with UN treaty bodies and special procedures. The representative from Denmark that was interviewed declared that, since having these separate categories, the state has been able to participate more actively. However, it is worth noting that this is a recent practice. Such as Denmark seems to have found a way of reconciling their limitations with their principled beliefs, other states could make similar efforts to turn their practices more consistent and perform as normative activists.

Some could argue that in the context of the UPR, silence means protection, solidarity, or support. Those people would hear that the volumes that silence speaks mean that there is nothing a potential recommending state can tell the state under review on how to improve the human rights situation under their jurisdiction. However, based on my experience on the

ground, silence in the UPR is perceived as lack of interest and being ignored by the international community.

For example, a diplomat from an ASEAN member state revealed that “some states ask [them] to speak and make recommendations, although they don’t give them the content.” The officer believes this is “because there [are] not enough people participating in the review, and there is a value in receiving recommendations and having other states interested in you” (ST.019). Something similar was expressed by a Swiss diplomat when talking about their experience as a state under review. The officer said: “[W]e had a lot of recommendations in November [2017] in our own review. Sometimes is also interpreted wrongly by some people in the capital. They said ‘what have we done? we have such a bad reputation’... We explained some states were participating in the reviews out of courtesy... Because we are in Switzerland, perhaps they follow things more closely and have a greater interest and they feel since the host state is under review they need to participate.” This last testimony clearly illustrates the different perceptions of those engaging with the UPR from the inside and the outside.

Selectivity and non-selectivity are ultimately political decisions, but what defines whether there is inconsistency and instrumentalisation is the role that friendship/rivalry plays when recommending states decide their targets. Of course, the logic of selectivity can be completely random, but sometimes states opt for sending a political message with their silence. In this sense, there are states that deliberately make use of *silence as disregard* to “punish” their rivals.

From the evidence I have gathered in interviews in Geneva, there are two interesting cases where silence is instrumentalised and arguably constitutes politicisation. The first one is that of Lebanon at the reviews of Israel. As it has been mentioned in Chapter 1, Israel awakens lots of controversy in the Human Rights Council. Moreover, it is the only UN member state that failed to sit on its scheduled review of the UPR as a diplomatic protest.¹¹⁶ Its UPR raises an additional dichotomy for Arab states, which have a historic rivalry with Israel over the Palestinian cause.

¹¹⁶ For more details on this episode, see Elizalde (2019).

A Lebanese diplomat expressed that Lebanon had decided not to sit at the UPR of Israel and not to make any recommendations because that could be perceived as a way of legitimising its existence as a state. The interviewee claimed: “our point of view is that we don’t recognise it as a state, so how can I sit in the UPR of Israel and they are sitting on the podium?” The diplomat also mentioned having some discussions within the Arab League on which position to take and remembered that other member states considered that the best political statement was to attend Israel’s UPR and participate actively and make harsh recommendations. In this case, the muteness of Lebanon and their absence from Room XX was purely a political statement, instrumentalising silence to send a message to the SuR.

A second case of silence as politicisation is that of China, which expressed in the interviews that they make recommendations to every state under review, except for those with whom “[they] do not have diplomatic relations.” Although the Chinese diplomat in Geneva did not reveal the name of those states in particular, they said that “there are 18 states we do not have diplomatic relations” and mentioned that “for example, on this session [the 30th, in May 2018] we didn’t make any recommendation to Tuvalu.” Such a precise number coincidentally amounts to those states that did have diplomatic relations with Taiwan at the time of the conversation, amongst which Tuvalu was one of the closest allies. The issue of Taiwan is a controversial topic for China since it is a disputed territory.

On the first two cycles of the UPR, China has made a total of 383 recommendations: 78 on the first cycle and 305 on the second one. As illustrative evidence, Figure 5.1 below combines two ego networks. The first network is that of China (also known as the People’s Democratic Republic of China, in dark red) and the states to which it made recommendations in the UPR second cycle (light red). The second network is that of Taiwan (also known as the Republic of China, in dark blue) and the states with which it has diplomatic relations (light blue).¹¹⁷

¹¹⁷ It is important to note that, as of September 2019, Taiwan has diplomatic relations with fourteen UN member states and the Holy See. The network also includes Sao Tome and Principe, Dominican Republic, Burkina Faso, El Salvador, Solomon Islands and Kiribati as diplomatic allies because they did have diplomatic relations with Taiwan at the time of their review in the second cycle of the UPR. These relations were officially terminated on 21 December 2016, 1 May 2018, 26 May 2018, 21 August 2018, 16 September 2019 and 20 September 2019 respectively. Information retrieved from the official website of the Ministry of Foreign Affairs of Taiwan, under the title “Diplomatic Allies” and “Instances of Mainland China’s Interference with Taiwan’s International

In the figure, we can observe how China is connected to the 173 states it made recommendations to, Taiwan is linked to 20 UN member states, and there are five isolated states (India, Israel, Monaco, Philippines, and San Marino, in green) that did not receive recommendations from China and do not have diplomatic relations with Taiwan. The light red nodes are positioned more or less close to China depending on the higher or lower number of recommendations received (for example, while USA is the closest node because China made them eight recommendations, the peripheral circle of states received only one recommendation).

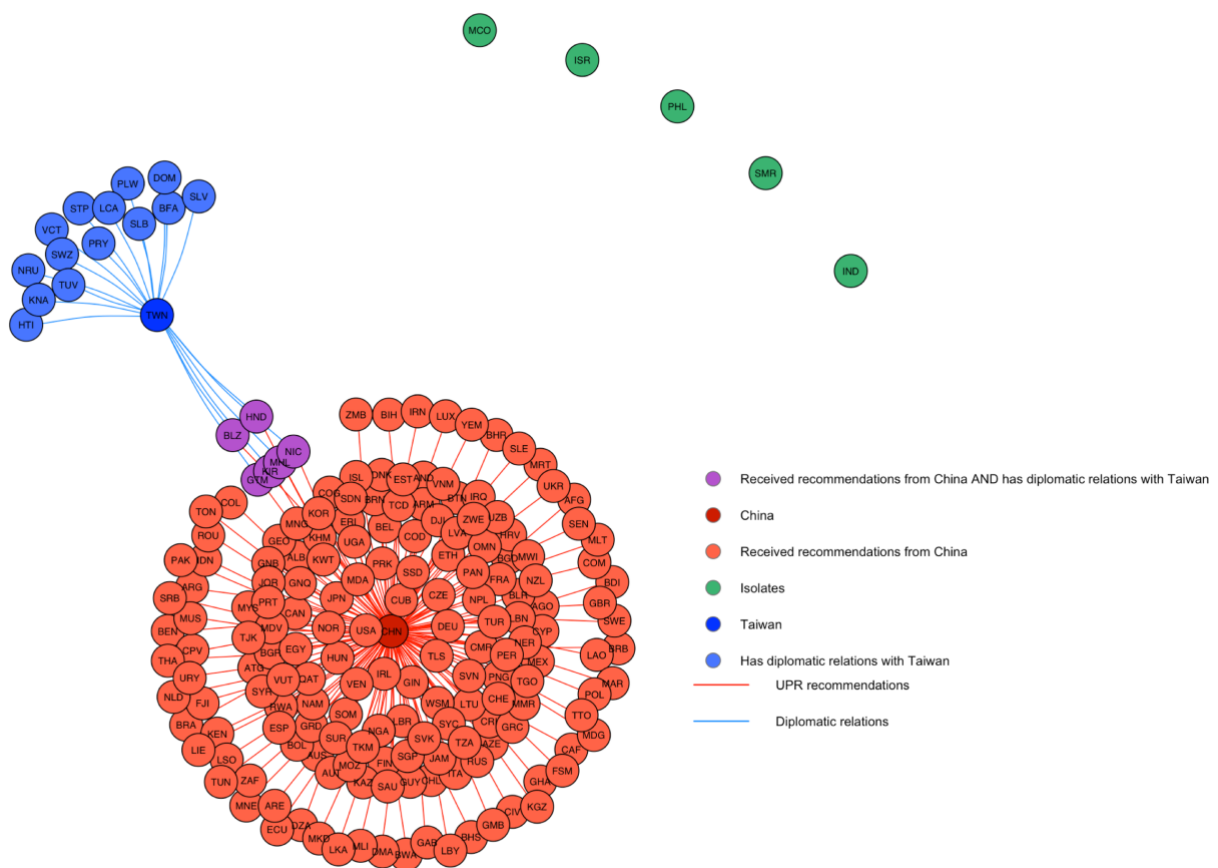


Figure 5.1 – China’s UPR recommendations in the second cycle and Taiwan’s diplomatic relations

Presence”: <https://www.mofa.gov.tw/en/AlliesIndex.aspx?n=DF6F8F246049F8D6&sms=A76B7230ADF29736> and https://www.mofa.gov.tw/en/Content_List.aspx?n=218D65026C0F1D37.

Along with the testimony of a Chinese diplomat in Geneva, this figure reveals that, except from the five isolated cases and six states that were recommended by China and have a diplomatic relation with Taiwan (Belize, Guatemala, Honduras, Kiribati, Marshall Islands, and Nicaragua, in purple), China is not talking to approximately two thirds (14 out of 20) of those states that are Taiwan's diplomatic allies. Also, more than two thirds (14 out of 19) of the states to which China did not make recommendations have diplomatic relations with Taiwan. Overall, there seems to be a deliberative decision from China as a recommending state to use silence as politicisation.

A final example of differential treatment when deciding whether to make recommendations comes from a Latin American small country which tends to be selective. The representative in Geneva claimed that "one exception is that [they] always make an intervention in all Latin American countries because they are close neighbours and close regional economic partners" (ST.007). Although I do not present more evidence along this case, the testimony of the officer is a clear example of how the state is using the UPR inconsistently and to benefit friends.

5.2 The instrumental and normative use of quantity and quality of recommendations

After having decided whether they would participate in a UPR interactive dialogue or remain silent, those states that have opted to sign up for the list of speakers are confronted with three important questions that leave plenty of room for politicisation. First (but not necessarily in this order), they have to decide which human rights issues to focus on. As it has been sufficiently explored in Chapter 4, this is an aspect that allows us to observe human rights promotion and contestation. Second, states have to choose how many recommendations to make in the time they have available. Third, they need to carefully consider the words they use to phrase them. These last two decisions refer to the quantity and quality of the recommendations and they leave a lot a room for inconsistencies and instrumentalization.

Because the UPR is a diplomatic forum, when it is their turn to take floor in the interactive dialogue, recommending states tend to welcome the delegation under review, congratulate them on some progress, and then make a couple of recommendations. In this framework of diplomatic courtesy, the average number of recommendations made is 2.01 for the first cycle and 2.16 for the second one.

The number of recommendations made by states varies for many reasons. As it was mentioned in Chapter 1, there are tight speaking limits of between fifty seconds to three minutes per delegation. This is certainly a factor to consider when assessing what counts as an excessive number of recommendations. To make it more complicated, in the first cycle members of the HRC had three minutes speaking time while other UN member and observer states had two. This became more flexible in the second cycle, but it is still the main guiding principle of speaking time distribution if the number of interested speakers allows for it.

Apart from the complexities added by speaking times, interviewees have mentioned that extreme activism is usually an indicator of friendship/rivalry issues playing out (e.g. ST.014, ST.015, ST.016), but they mostly believe that this is more the exception than the rule. A representative from an African state said: “You’ll see in the statements that friends would have an introduction, lots of praise, and one recommendation. Others would just welcome the delegation and go straight to the recommendations” (ST.025). This gives the impression that some states do not want to “waste” time with the introductory paragraphs so typical of a diplomatic statement because they are urged to use as much time as possible to give recommendations to the state under review. This goes in line with what a Venezuelan officer is not afraid to admit when they said that “this is an opportunity. You don’t have the powerful sitting there every day. [The United States] is the dictator of Latin America, and not because I say so, history speaks for itself. You have them there sitting, and you have little time to say it all.” The statistics back this testimony: Venezuela made 19 recommendations to the US in the first UPR cycle, and 10 in the second one. Compared to the average of around 2 recommendations made per intervention by Venezuela in each cycle (1.61 for the first, and 2.23 for the second), their activism in the reviews of the US is clearly extreme.

This example goes in line with the perception of a British diplomat on how some states behave when the United Kingdom is under review. The officer claimed that “[some] want to pay us back in the UPR for our position in the HRC or in wider politics. (...) They cross a line. It’s very clear that they say ‘we’re going to be selective and have a go with the UK because this is the only chance we get every four and a half years.’”

Despite the illustrative cases presented here, and as it will be discussed and analysed later in this chapter, the severity of the recommendations matters and only an excessive number of *harsh* recommendations constitute naming and shaming. In this sense, out of the 29 recommendations made by Venezuela to the US in both UPR cycles, 7 (a quarter) were of a medium severity and 22 (three quarters) were of the highest level of severity.

Regardless the severity of the recommendations made, an excessive number of them seems to be an overall irresponsible use of the UPR – which does not necessarily mean it is equivalent to using the UPR in an instrumental manner because states can be consistently behaving as extreme (and normative) activists. Universal Rights Group (URG) identified a “recommendation proliferation” in the UPR early years, which “raised concerns about whether [s]tates could be reasonably expected to process and implement so many recommendations” (Gujadhur and Limon 2016, 12). In this context, some delegations suggested putting a cap to the number of recommendations they make. Although this has not turned into an official direction, some states claim to have adopted a policy in this regard (e.g. ST.005, ST.014).

However, a *Guide for Recommending States at the UPR* issued by UPR Info emphasises that states should be free to make as many recommendations as they want and that, instead of working on the quantity of recommendations, it is important that they improve their quality. UPR Info suggests states to use “the SMART method [and make recommendations that are] specific, measurable, achievable, relevant, and time-bound” (UPR Info 2015, 27–29). Some interviewees claimed to be trying to make “SMART recommendations” in the third cycle, as a way of using the mechanism in a more responsible and efficient manner. However, this is still a learning process and this practice was not so widespread in the first and second cycle, which are the subject of this thesis.

The quality of the recommendations does not only refer to the aspiration of “SMART-ness” but also to the phrasing and the severity of the wording. This is a sensitive aspect that enables the observation of what is usually known as “naming and shaming” and how it can be instrumentalised to harm rivals in the UPR. The motivations for naming and shaming and its impact have been widely studied in Political Science and International Relations, particularly for the case of human rights (Lebovic and Voeten 2006; Franklin 2008; Hafner-Burton 2008; Lebovic and Voeten 2009; Cole 2012; DeMeritt 2012; Hendrix and Wong 2013; Ausderan 2014; Bell, Clay, and Murdie 2019). Some findings of this vast literature have been briefly addressed in Chapter 2.

There may be strong reasons to treat criticism of human rights abuses from the media and civil society organisations as examples of “naming and shaming” (Meernik et al. 2012; Murdie and Davis 2012; Barry, Clay, and Flynn 2013; Murdie and Peksen 2013, 2015; Peterson, Murdie, and Asal 2018). However, in diplomacy, not all public declarations on a state’s human rights situation should be equated to “naming and shaming” and, despite what many scholars studying the mechanism assume, the UPR is the living proof that such a generalisation is inaccurate.

As for the overall performance of states in the UPR and the perception of the actors involved, many interviewees have expressed how the UPR is different from other mechanisms. For instance, they have claimed that “the UPR is an instrument that allows delegations real dialogue away from naming and shaming” (ST.025), and that “countries like the dialogue [of the UPR]” (ST.005). A Turkish diplomat stated:

“We deem the UPR as an X-ray, the human rights record of a country is really scanned, and this is the one and only universal agreed one, as a process. (...) The main reason why I think so many countries are engaging in it is because everyone is on the same footing. It's not like you have, you know, the UN report that slams on you. It's a peer review, which also gives an opportunity for a genuine dialogue if you have that intention and if you see the UPR as such mechanism. It depends, it differs from country to country... but if states really see that mechanism as a genuine one, a universal one, as a good platform to address human rights issues, I think, that's the best we have.”

The interviews conducted in Geneva allow to identify two main ways of using the UPR for naming and shaming in an instrumental manner, all of which are closely linked to the quality of the recommendations. First, state representatives mentioned what they call “**red line recommendations**”, as a reference to crossing “the red lines of politics” (ST.024). These are recommendations which the recommending state can anticipate that are probably not going to be accepted by the state under review, but they are made anyways and with the purpose of exposing the lack of commitment of the target. Red line recommendations include, for example, in some cases, those related to death penalty and SOGI rights. An officer from an African country said: “Some delegations want to have you reject them. [They] want to expose you for not committing” (ST.025). This type of episodes seems to upset the state under review and those who make red line recommendations are perceived as “us[ing] the UPR to teach lessons to others, to give instructions, they come and tell you what to do” (ST.025). Red line recommendations seem to be deal breakers. One would expect that only rivals close red lines which can inflict some kind of harm (whether material or reputational). And if the states involved were close friends before the event, the amount of shame and bitterness that those on the receiving end express appears to be able to develop the relationship into a strained one.

This resonates with testimonies analysed in an anthropological study of the UPR conducted by Cowan and Billaud (2015: 1187-1188), in which the authors conclude that the mechanism “is haunted by an older model of tutelage in which an enlightened West guides a backward non-West in its efforts to ‘catch up’ with the norms that the West has set.” Nevertheless, it is worth mentioning that we would be getting the wrong impression if we thought that the Global South is only on the receiving end of red line recommendations.

Many states mentioned that, when drafting their recommendations, they keep in mind the potential response of the state under review. They claim “[they] want to see the other state is accepting it” (ST.021). An OIC member state said they “[u]sually take into account the country under review... if they can implement it or not. [They] usually offer recommendations that are implementable for the country under review – not just as a recommendation for other countries to see that [they] are shaming this country” (ST.033).

In this sense, some consider having a recommendation accepted as a success. For example, a representative from an Asian country claimed: “We try to go for the quick win. Accepting a recommendation is a quick win, because if they accept and don't implement it we can always remind them” (ST.016). Likewise, others believe making red line recommendations is a missed opportunity. The abovementioned diplomat from an OIC state pointed out “Northern European countries usually bring these issues on LGBTI and only in relation to those countries who will not accept because of family values. And, eventually they reject and as they reject I cannot understand... what was the purpose of giving these recommendations if they know that [they] will be rejected? It means that you lose [an] opportunity [you have] every five years” (ST.033).

In line with the previous subsection, those who feel “schooled” can and do reciprocate. A representative from a Latin American country explains that their delegation deliberately decided to make red line recommendations in two cases: to Israel on the “occupied Arab territories of Palestine” and to the US on “ending the criminal embargo against Cuba”, which is “an act of solidarity” (ST.024). The same officer concedes that they could choose to make recommendations to “improve the situation of women in their social and political life” or “develop a plan to eradicate racial discrimination” and both Israel and the US would probably accept them. However, they opt for making “hostile recommendations” as a political statement. This case is an excellent example of politicisation in the UPR because the recommending state admits they use red line recommendations inconsistently, showing double standards, and with the instrumental intention of harming their rivals.

Although it should be noted that the Latin American diplomat maintains this behaviour “is similar to naming and shaming but it’s not because we are talking about human rights violations”, the naming and shaming element of these red lines recommendations does not necessarily have to do with the substance of the recommendations but with the intentionality behind it. It is naming and shaming because the recommending state anticipates a negative response from the target state and proceeds with making it for the sole purpose of having the state under review publicly expressing their lack of commitment with the issue.

This leads us to the second way of using the UPR for naming and shaming which does involve the substance of the recommendations. Sometimes, recommending states raise bilateral issues that are either very specifically related to individual cases where the reviewer is somehow invested, or make recommendations not directly related to human rights issues, such as when they refer to historical conflicts or territorial disputes. Even if accepted and implemented, these recommendations would not make much of a difference, if any, on the human rights situation under the jurisdiction of the state under review. As a diplomat from an Eastern European state claimed: “Some countries will speak for their political reasons and are not concerned at all with human rights situation in the country [under review] and might shift the conversation completely” (ST.003).

For the purpose of this research, I will refer to this type of recommendations that might be empty of relevant substance but are clearly full of instrumentalisation as “**confrontational recommendations**”. These recommendations are mostly a reflect of inconsistent behaviour, because it would be quite unrealistic to expect a recommending state to be consistently making confrontational recommendations in every review. It is needless to say that this type of conduct is not in line with the spirit and purpose of the UPR mechanism. The following are some examples of such recommendations made in the UPR second cycle:¹¹⁹

- “Face up to and reflect on its past and present a responsible interface to the international community by making apologies on the issue of comfort women and giving compensation to its victims” (China to Japan);¹²⁰
- “Make all efforts to accelerate an inclusive political process that returns Mali to a constitutional State” (United States of America to Mali);¹²¹
- “Carry out an investigation into the possible involvement by officials of the Calgary prison in the brutal beating of August 2012 in the pre-trial detention facility cell of the Russian student, Telyakov by family name, arrested on trumped up charges, which were subsequently withdrawn” (Russian Federation to Canada);¹²²

¹¹⁹ It is worth noting that all these examples are what are considered “harsh recommendations”, according to the categorisation developed by UPR Info.

¹²⁰ A/HRC/22/14 “Report of the Working Group on the Universal Periodic Review: Japan”, 14 December 2012. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/187/52/PDF/G1218752.pdf>

¹²¹ A/HRC/23/6 “Report of the Working Group on the Universal Periodic Review: Mali”, 12 March 2013. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/118/15/PDF/G1311815.pdf>

¹²² A/HRC/24/11 “Report of the Working Group on the Universal Periodic Review: Canada”, 28 June 2013. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/152/42/PDF/G1315242.pdf>

- “Resume the two-way dialogue in Tibet” (New Zealand to China);¹²³
- “Engage in a structural human rights dialogue with the European Union at the political and technical level” (Netherlands to Saudi Arabia);¹²⁴
- “Establish a moratorium on the application of the death penalty aimed at its abolition and also condone the death penalty for an Argentinian citizen, Victor Saldaño, who has been on death row since 1996” (Argentina to United States of America);¹²⁵

It has been stated that both ways of naming and shaming in the UPR (red line and confrontational recommendations) are probably used inconsistently and deliberately to harm rivals. But what about using the quality of the recommendations as a way of benefiting friends? Because double standards mean treating states differently, this research associates them with an instrumental use of the UPR. As it was mentioned in Chapter 1, UNGA Resolution 60/251¹²⁶ burdened the Council with “ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization” (A/RES/60/251, preamble). However, it is important to remember that the same UNGA resolution 60/251, the document in which the UPR was established, determined that the reviews should be conducted “with consideration given to [the SuR’s] capacity-building needs (...).”¹²⁷ With this statement, foundational operative paragraph 5.e gave recommending states some discretion to have double-standards which could still count as a normative use of the mechanism. Nevertheless, double standards with good intentions can also be taken too far. For example, a GRULAC member state representative asserted that, “[t]o developing countries, we provide support [through our UPR recommendations] because they make a big sacrifice to come here, it’s very onerous. (...) We are respectful in the way we make recommendations; we are very careful. Our message is that when [our country] speaks, it has to be encouraging” (ST.024). When states speak about encouraging and being supportive they mean giving relatively soft recommendations.

¹²³ A/HRC/25/5 “Report of the Working Group on the Universal Periodic Review: China (including Hong Kong, China and Macao, China)”, 4 December 2013. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/188/55/PDF/G1318855.pdf>

¹²⁴ A/HRC/25/3 “Report of the Working Group on the Universal Periodic Review: Saudi Arabia”, 26 December 2013. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/191/62/PDF/G1319162.pdf>

¹²⁵ A/HRC/30/12 “Report of the Working Group on the Universal Periodic Review: United States of America”, 20 July 2015. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/159/71/PDF/G1515971.pdf>

¹²⁶ A/RES/60/251 “Human Rights Council”, 15 March 2006. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf

¹²⁷ *Ibid*, operative paragraph 5.e (also known as “OP5e”).

This is a fine grey area. Understanding the limitations of states to implement recommendations and to protect human rights because of a low level of economic development does not mean that these states should not receive any harsh recommendations. Actually, one could argue that the highly-endorsed “SMART recommendations” would rank as severe ones because of their specificity in directions. Using the discretion “allowed” or “accepted” within the framework that created the UPR to turn the mechanism into one to exclusively give praise for the progress made and encourage states to “continue with the efforts” certainly goes against the spirit of the peer-review exercise.

From what interviewees have expressed, it looks like problematic double-standards become more evident in the harshness of the recommendations. Chapter 3 has discussed measures on the level of action required by the recommendations (as per the coding of UPR Info) and how we can transform them into measures of severity (as per the article by Terman and Voeten (2018)). Some states admit that “when it is our regional neighbours that are under review we have a ‘warmer’ treatment” (ST.014). Similarly, when we combine the extreme activism previously explored with an instrumentalisation that leads to the “coldest” treatment, we have an explosive cocktail. Viciousness in quantity and severity results in an excessive number of harsh recommendations which is arguably one of the best examples of politicisation in the UPR.

Warm treatment is not necessarily an instrumentalisation of the UPR, as long as it is consistent and does not reveal double standards. Many state representatives claimed to deliberately make what can be called “soft recommendations”. They understand this as having “a constructive approach” to the mechanism, which does not contradict completely its spirit. Again, if we go to the foundational documents, it should be noted that the Human Rights Council Resolution 5/1 on the institution-building of the UPR decreed that the reviews should be “conducted in an objective, transparent, non-selective, *constructive*, non-confrontational and non-politicized manner.”¹²⁸ Some would still maintain that this behaviour is problematic for the healthy functioning of the UPR. A diplomat from an EEG member state shared their

¹²⁸ Human Rights Council (HRC), Res. 5/1 *Institution-Building of the United Nations Human Rights Council* (18 June 2007), § 3(g). Emphasis added.

experience on how they perceive some countries use the mechanism saying: “you are going to hear recommendations that are empty, that are basically ‘you are great’, with pure praise... I think I once heard a recommendation that was something like ‘keep doing what you are doing and don’t let anyone (those other liars) tell you...’ – it’s quite bizarre” (ST.003). Nevertheless, I will hold that if the recommending state is consistent about its warm approach, its activism still counts as a normative one and is not a display of politicisation. Sometimes, lowering the tone of a recommendation can be a strategy to have it accepted, implemented, and ultimately help improve the human rights situation under the jurisdiction of the state under review.

5.3 Identity and politicisation

The theoretical framework developed in Chapter 2 suggested the consistency of the practices of UPR recommending states is an indicator of normative behaviour. Further, instrumental behaviour entails having double standards that aim to benefit friends and harm rivals. The first section of this chapter discussed the normative and instrumental use of silence and speaking up, while providing some illustrative evidence from a number of cases. The second section explored the instrumental and normative use of the quantity and quality of recommendations. But how can we unveil and observe in a more systematic manner whether recommending states have preferential treatment towards their friends (as opposed to their rivals) when deciding on the number and tone of their recommendations?

The previous section has mostly supported its arguments with qualitative data. In this section, I introduce some additional evidence relying on network visualisation and analysis, while connecting it to the identity similarity clusters introduced in Chapter 3. The goal of this endeavour is to shed a light on our understanding of the role that these clusters play in the instrumental and normative use of the UPR, at least for making an excessive number of harsh recommendations and for issuing soft and harsh recommendations to friends and rivals.

5.3.1 The network of “excessive number of harsh recommendations”

With the purpose of observing the instrumental use of the UPR, Figure 5.2 below shows the network of excessive number of recommendations of severity 3 (harsh recommendations)¹²⁹ made during the first and second UPR cycle combined (as a way of controlling for the effects of learning during the first couple of sessions). The nodes are coloured by the clusters of text similarity of national reports presented for the UPR first cycle and introduced in Chapter 2.

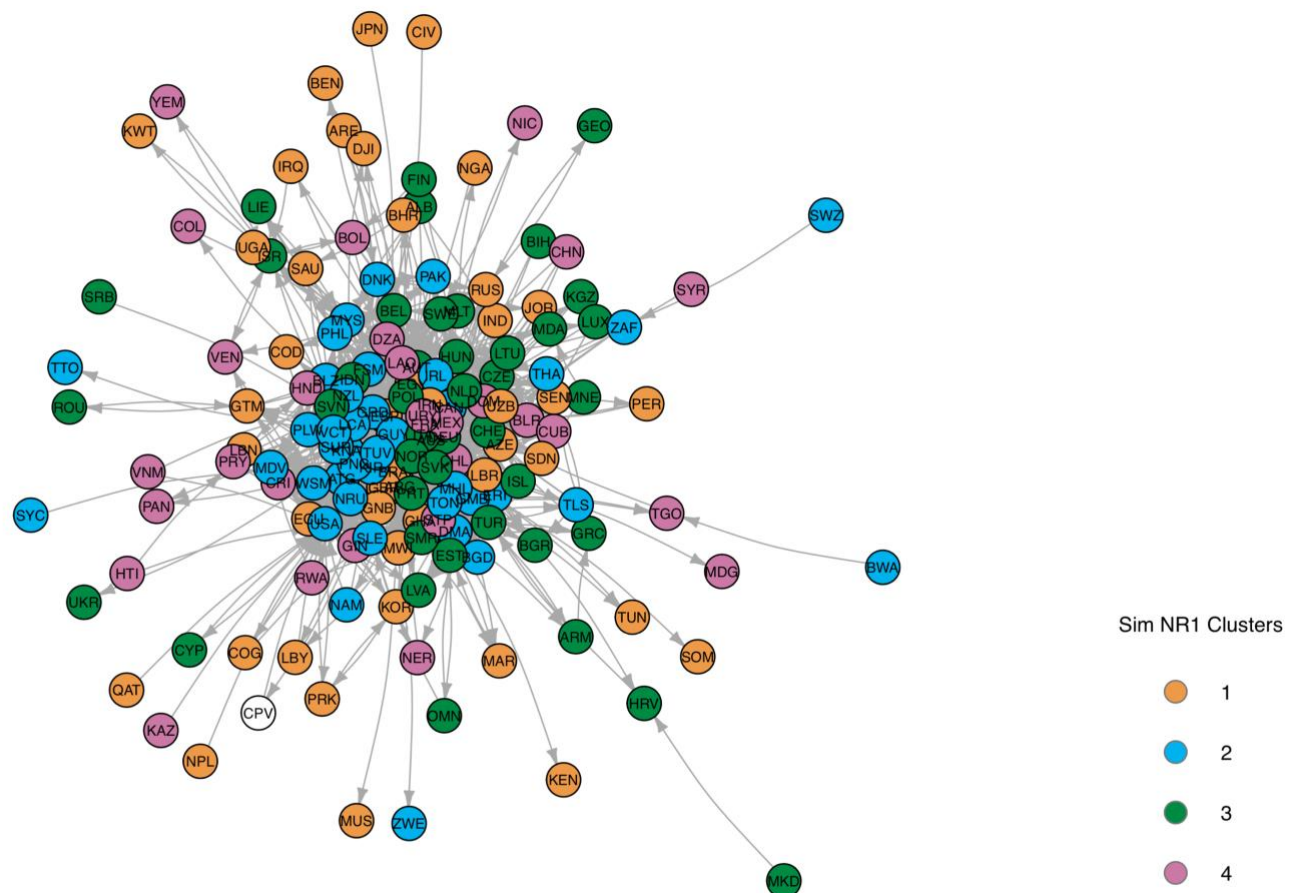


Figure 5.2 – Network of excessive recommendations on Severity 3 (UPR 2008-2016)

As it was mentioned above, there are some complexities for distinguishing what counts as “excessive” in the context of varying time limits across reviews and states. A good way of controlling for this is to define an excessive number of recommendations as “those interactions where the RS made to the SuR a number of recommendations above its own

¹²⁹ For details on the definition and measurements of the severity of UPR recommendations, see Chapter 3.

mean AND the SuR received from the RS a number of recommendations above the mean of all the recommendations the SuR received". The right way to calculate the means is over the number of states that were recommended to or from which the SuR received recommendations from. The adjacency matrix to visualise this network is built in this framework that defines what counts as an edge. This network has 193 nodes (all UN member states), 36 of which are isolated and not included in the graph. There are 1,001 edges in total.

The sole presence of nodes in the network does not mean they are states using the UPR in an instrumental manner because some states appear only on the receiving end. In fact, forty-six states are in the network, but they have not sent excessive number of harsh recommendations. It is important to highlight that this is a selection of unusual behaviour amongst the many interactions that take place in the UPR and that, with all the limitations of this visual aid, it is undisputed that states included in the figure are part of a network of viciousness – whether as senders (the active states are one hundred and forty-seven) or receivers.

What information do the clusters of identity similarity provide? There is quite a variation across the mean of targets of excessive number of harsh recommendations per cluster. Identity clusters 1 (in orange), 3 (in green) and 4 (in dark pink) have an average of around 5 states to which they make an excessive number of most severe recommendations. For its part, those states in cluster 2 (in light blue) hold an average of above 11 targets. This gives the impression that, compared to the other groups, cluster 2 is the one using the UPR more as naming and shaming, at least in this respect. Nevertheless, before concluding to what extent this is inconsistent and reveals double standards, it is imperative that we consider recommendations of the lowest degree of severity and include different measures of friendship and rivalry previously used in relevant research to test for hypocritical behaviour. This will be analysed with network analysis in the next subsection.

5.3.2 Severity and double standards

I have argued that not showing a differential treatment with friends and rivals with regards to the severity of the recommendations was an indicator of normative behaviour of recommending states in the UPR interactive dialogue. The question I explore here with inferential network analysis is: Which clusters of identity similarity are more consistent?

I have subset the whole UPR network (2008-2016) by the three levels of severity of the recommendations. Because we are interested in double standards sending “soft” and “harsh” recommendations, we will focus on the networks of severity 1 and severity 3. Then, I subset each of the networks in four, selecting only the recommending states that belong in each of the similarity identity clusters identified in Chapter 3. I then ran Exponential Random Graphs Models (ERGMs) on each of the eight networks. ERG models “are tie-based models for understanding how and why social network ties arise” (Lusher, Koskinen, and Robins 2012, 9). These models estimate the probability of a tie—in this case, of a state making a recommendation—and they allow to include nodal covariates, edge covariates, and structural terms, such as *mutual* which accounts for reciprocity.

A limitation of the approach of cutting the whole network by severity and again by clusters is that we end up missing a lot of information (such as on reciprocity or transitivity). This means that structural terms such as *mutual*, *gwesp* and *gwdsp* would not help fitting a good model. This approach has clear limitations, but we are interested in testing for double standards while controlling for the non-independence of the information on each dyad. Although we certainly miss information, we can still fit network models including some network terms for control (the “*mutual*” covariate tests for reciprocity and helps improve the model despite its limitations), as long as the model still fits. However, the results for those terms will not be informative because they are limited to the subgraph that is being modelled.

Having clarified this, next I present the results in Table 5.1 below. The term *edges* is the constant and the term *mutual* is difficult to interpret in the context of the abovementioned shortcomings. In order to test for double standards and preferential treatment to allies, the models consider eight independent variables that represent different measures of

friendship/rivalry or closeness/distance. Although the models are organised firstly by the severity of the recommendations made and secondly by the clusters of identity similarity, it is important to compare the sign of the coefficients within each cluster for the two levels of severity studied here.

For example, when looking at the role that geopolitical affinity plays (the term in the ERGM considers the probability of a tie given the closeness of geopolitical ideology of the dyad of states) when states make more or less harsh recommendations, we observe that states in clusters 1 and 2 have positive coefficients for severity 1 and negative coefficients for severity 3, meaning that they tend to send their friends more of the soft recommendations and less of the harsh ones. This is a type of behaviour that reveals double standards because it entails a preferential treatment to SuRs with whom the RS holds a higher geopolitical affinity.

In the same line, if we compare the behaviour of states in clusters 3 and 4 for severity 1 and 3, we see that despite the fact that coefficients for each cluster show different signs, the sign does not change across severity. This leads to the conclusion that they behave in the same way with friends and rivals (measured in terms of geopolitical affinity), regardless the severity of the recommendations. States in cluster 3 make fewer soft and fewer harsh recommendations to those with whom they have a higher geopolitical affinity. States in cluster 4 make more of both the soft and harsh recommendations to their geopolitical allies.

This is certainly an important finding because it reveals which clusters of identity similarity seem to be using the UPR interactive dialogue in an inconsistent and instrumental manner, feeding into perceptions of politicisation. For all the other measures of friendship/rivalry and closeness/distance states in every cluster seem to be behaving consistently –there is one exception with cluster 2 behaving differently with those that have more similar record in physical integrity rights, but the coefficients are very small. In a previous study of the relational politics of the UPR, Terman and Voeten (2018, 14) found that “while geopolitical affinity makes UPR participation more likely, a one-point (one standard deviation) increase in Geopolitical Affinity reduces the mean level of Severity by .13 (on a 3-point scale)”. This measure also showed to be relevant for the structural equivalence of human rights agenda analysed in Chapter 4.

	Models for Severity 1				Models for Severity 3			
	Cluster1_S1	Cluster2_S1	Cluster3_S1	Cluster4_S1	Cluster1_S3	Cluster2_S3	Cluster3_S3	Cluster4_S3
edges	-4.24*** (0.10)	-3.59*** (0.13)	-6.63*** (0.17)	-4.32*** (0.13)	-4.73*** (0.11)	-4.46*** (0.11)	-5.62*** (0.10)	-4.26*** (0.13)
Geopolitical affinity	0.30*** (0.04)	0.32*** (0.05)	-0.32*** (0.04)	0.31*** (0.04)	-0.21*** (0.03)	-0.60*** (0.03)	-0.66*** (0.03)	0.23*** (0.04)
Same identity cluster	0.33*** (0.05)	0.17** (0.06)	0.23** (0.07)	-0.30*** (0.07)	0.04 (0.05)	0.41*** (0.06)	0.09 (0.05)	-0.71*** (0.07)
Difference in physical integrity rights	-0.17*** (0.01)	-0.06*** (0.01)	0.10*** (0.02)	-0.15*** (0.01)	-0.16*** (0.01)	0.04*** (0.01)	0.31*** (0.01)	-0.06*** (0.01)
Same UN Region	0.37*** (0.05)	0.52*** (0.07)	-0.07 (0.09)	0.22** (0.07)	0.19** (0.06)	0.18** (0.07)	-0.46*** (0.06)	0.00 (0.08)
Shared IGOs membership	0.03*** (0.00)	0.04*** (0.00)	0.04*** (0.00)	0.01* (0.00)	0.04*** (0.00)	0.04*** (0.00)	0.04*** (0.00)	-0.00 (0.00)
Shared ratification of HR treaties	0.14*** (0.01)	-0.09*** (0.01)	0.12*** (0.02)	0.22*** (0.01)	0.10*** (0.01)	-0.09*** (0.01)	0.08*** (0.01)	0.21*** (0.01)
Shared openness to international scrutiny	-0.20*** (0.01)	-0.16*** (0.02)	0.08*** (0.02)	-0.20*** (0.01)	-0.07*** (0.01)	0.01 (0.01)	0.15*** (0.01)	-0.03* (0.01)
Same status at HRC	-0.43*** (0.05)	-0.28*** (0.06)	-0.15* (0.07)	-0.70*** (0.06)	-0.57*** (0.05)	-0.15** (0.05)	-0.11** (0.04)	-0.45*** (0.06)
Military alliance	0.28*** (0.07)	-1.00*** (0.14)	-0.71*** (0.13)	0.88*** (0.09)	0.10 (0.08)	-0.46*** (0.10)	-0.57*** (0.09)	1.20*** (0.10)
mutual (<i>reciprocity</i>)	0.76*** (0.10)	0.86*** (0.15)	0.15 (0.18)	0.86*** (0.13)	-0.35** (0.12)	0.14 (0.13)	-0.29*** (0.09)	-0.13 (0.17)
AIC	15524.76	9856.92	9007.38	11330.48	17313.91	14310.39	19730.65	12153.62
BIC	15618.49	9950.64	9101.10	11424.20	17407.63	14404.11	19824.37	12247.34
Log Likelihood	-7751.38	-4917.46	-4492.69	-5654.24	-8645.96	-7144.20	-9854.32	-6065.81

*** $p < 0.001$, ** $p < 0.01$, * $p < 0.05$

Table 5.1 - ERGMs separated by severity of recommendation and by clusters of text similarity of national reports presented for the first UPR cycle. Standard errors in parentheses.

Although the coefficients are not easy to interpret in ERGMs (we would need to calculate the odd ratios, but given the limitations in fitting the models it would not be conclusive), the most important finding is that geopolitical affinity plays a very different role for the probability of ties across models –meaning across clusters, and across levels of severity. That is probably the reason why in the second set of models with fixed effects in Chapter 4, geopolitical affinity lost significance. Because each cluster behaves differently, the results on the role of geopolitical affinity for the whole network would be inconclusive.

5.4 Additional notes on politicisation in the UPR

After having explored, illustrated and tested the normative and instrumental behaviour of recommending states in the UPR, this section introduces two final notes that can aid our understanding of perceptions of the overall performance of the mechanism.

5.4.1 A note on reciprocity

The principle of reciprocity is common in international relations and international law. In a mechanism that operates in a cyclic manner like the UPR, there is plenty of room for such conduct and it might be an important element in cost-benefit calculations made by recommending states when deciding how to behave. Reciprocity can be a mere coincidence based on consistent policies of recommending states. For instance, two states can have pledged and committed to participating in every UPR review and making two recommendations. However, in my experience on the ground I have gathered that, in some cases, reciprocity is a tit-for-tat strategy and it becomes an example of instrumental behaviour when it is either retaliation or protection.

Reciprocity as retaliation entails making recommendations (in number or tone) that mirror the recommendations received as a way of punishing the original sender. A diplomat from a GRULAC member state accused some countries of “politicising the UPR” and claimed that “if you criticise me, on the basis of reciprocity I will criticise you too (...) If a state was hostile [in our review]... you thumped me... I am not going to kiss you.” The same officer

admitted that “we also evaluate the language used by that state in our UPR with the purpose of aiming our guns in the right direction” (ST.024). This type of behaviour goes in line with the proverb of “an eye for an eye” and arguably feeds into inconsistency and double standards.

Reciprocity as protection can be an act of solidarity or self-preservation, anticipating the behaviour of other states when one is under review. A diplomat from a Caribbean state explains this rationale well when they say: “Everybody gets reviewed. if you make a really strong recommendation, it's only a matter of time until you get a recommendation too. All states know they would be under the spotlight, they would receive reciprocity... so they try to temper their enthusiasm” (ST.007). A similar example of going soft is given by an Asian officer who asserts that “[they] don't add salt to the wound if [they] know a certain country would be attacked on an issue” (ST.016). One may wonder, is this a mere act of altruism or does the state expect to receive the same treatment by their peers? The UPR certainly allows to observe whether this behaviour persists despite not being reciprocated.

Given that silence can speak the volume of indifference, as it was shown above, a diplomat from an EEG member state affirmed that “[they] think you should always speak at UPR when your partners are under review” (ST.003). This participation also counts as an act of solidarity if the philosophy (and a consequent policy) is shared by the states favoured by this practice, which can clearly entail double standards for reciprocity since the focus is on the friendship with the state under review. In this line, an early assessment of the UPR by the NGO UN Watch (2009) conducted a study that concluded the then-new mechanism was turning into a “mutual praise society.” This type of diagnosis has fed into the idea that the UPR is politicised. However, this type of claims are misleading, when not unfounded. The case of reciprocity begs for the use of methods like network analysis. However, it is worth noting that a complication for the analysis is that reciprocity for some states can be a response to the behaviour of the other state on the same UPR cycle, whereas for others it is linked to what took place in the previous one. In this context, observing reciprocity in the first cycle certainly has limitations because states had no information on past behaviour of those SuRs sitting on the first sessions. Information for reciprocity is built over time and in order to test for consistency and go beyond anecdotal evidence we will have to wait for more cycles to be completed.

5.4.2 A note on hypocrisy and responsibility

So far, this thesis has not engaged with the human rights record of states as an indicator of RS expressing genuine concerns in the interactive dialogue. Nevertheless, this aspect has some informative power that can help us understand the overall performance of states in the UPR in terms of credibility, legitimacy, and coherence, all of which are issues closely related to allegations of politicisation.

The association between the human rights record of RS and their activism is a good indicator of the extent to which states are behaving in a **hypocritical** manner, in a spirit of telling others to “do as I say, not as I do”. Similarly, the association between the human rights record of the state under review and the number of recommendations they receive is a good indicator of the extent to which recommending states are behaving in a **responsible** manner, in a spirit of telling others “you get what you deserve”.

Because non-hypocrisy and advancing the improvement of human rights that are needed under the jurisdiction of the state under review go in line with the purpose of the Universal Periodic Review mechanism, the less hypocritically and more responsibly a recommending state behaves, the more we can argue in favour of consistency and, therefore, their normative use of the UPR. Figure 5.3 below displays six plots showing the associations between the total number of recommendations made (on the left) and received (on the right) and indicators of human rights records. The first row focuses on recommendations on civil and political rights plotted against the V-Dem liberal democracy index (Lindberg et al. 2014; Coppedge et al. 2019). The second row shows recommendations on physical integrity rights plotted against the measure on physical integrity rights protection developed by Fariss (2014, 2019). Finally, the third row depicts recommendations made on socio-economic rights plotted against the core Social and Economic Rights Fulfilment (SERF) index developed by Fukuda-Parr, Lawson-Remer, and Randolph (2015). The states’ labels are coloured by the identity clusters presented in Chapter 3 and the three sets of recommendations are grouped as per the thematic clusters introduced in Chapter 4. In addition, all the plots show a fitted line for the linear regression for each of the variables involved.

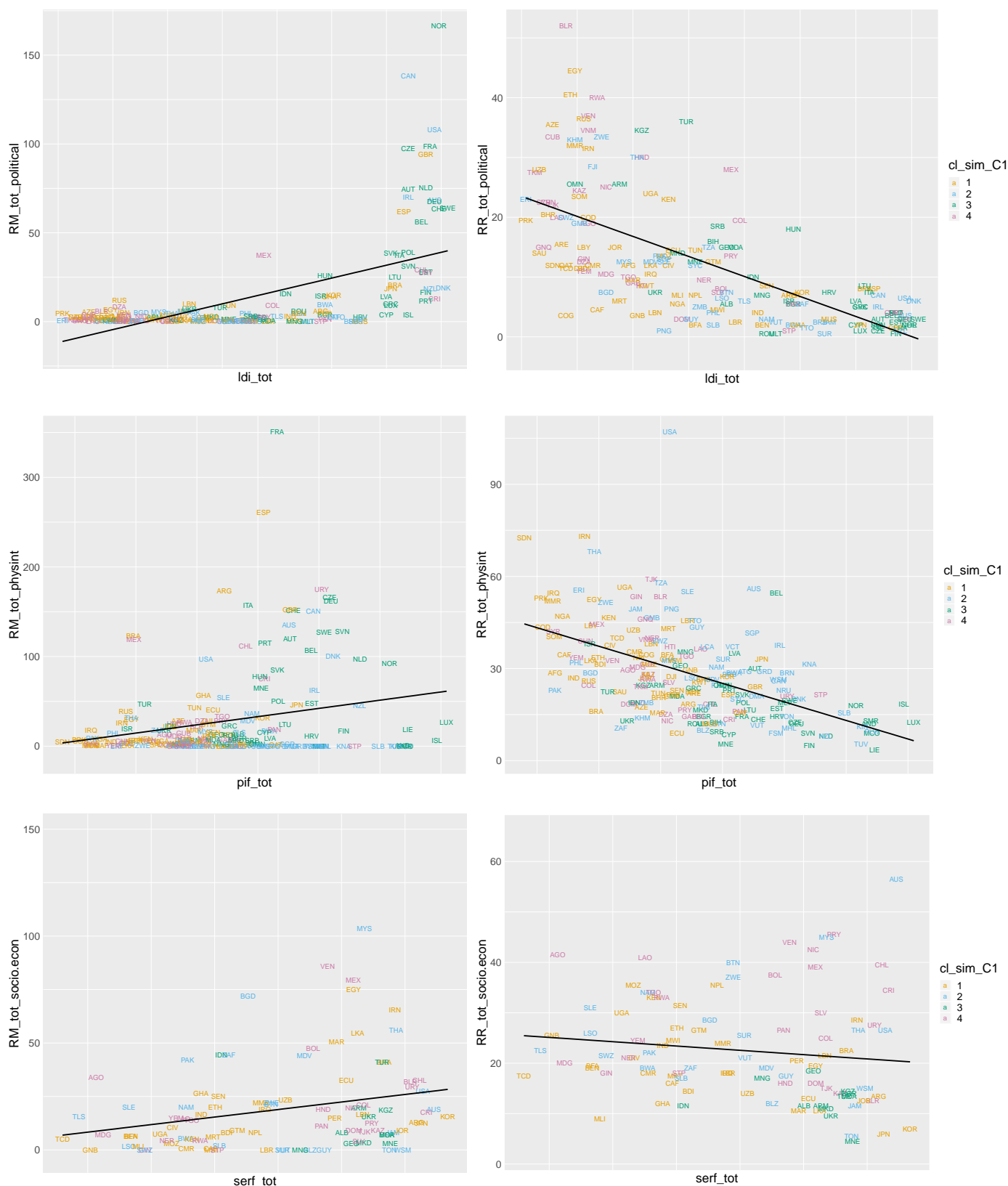


Figure 5.3 – Total number of recommendations made and received in the UPR on selected issues plotted against the corresponding human rights protection record (2008-2016).

Note: For the same data in facet plots subset by clusters, see Appendix 5.

Although the scales are different, it is evident from what we observe in Figure 5.3 that, in all the plots on the left the slope of the regression line is positive, whereas in the plots on the right it is negative. This means that, in general, the better the human rights record of the state on a certain issue, the more recommendations they make and the less recommendations they receive. It should be noted that the direction of the lines (determined by the slope) is stronger for civil and political rights, and physical integrity rights. In the case of economic and social rights, the direction is the same but weaker.

The insights provided by the plots go in line with the testimony of some interviewees who claimed to be making a responsible use of the UPR or having the best intentions when making recommendations. On the one hand, some have expressed that they feel there is a certain “responsibility to promote” those rights on which they are “champions” (e.g. ST.015). Nordic countries are known for having the best record on the protection of women’s human rights. The four Nordic states interviewed mentioned gender equality and reproductive rights amongst their top national priorities for making UPR recommendations. For instance, a diplomat from Denmark said: “Of course the [thematic] priorities are carried from our values and we take them to UPR –we are one of the strongest countries promoting women’s rights, so it would be odd if [we] stopped promoting that in the UPR.” On the other hand, a representative of a GRULAC state said that: “If you have a particular human rights area in which you are facing challenges, you may prefer not to make recommendations in that area when you know you still have work to do” (ST.001).

When asked about how they select the topic of their recommendations, many state representatives mentioned focusing on the needs of the state under review, based on what they read in the trio of documents on which each review is based (e.g. ST.014). Some claimed that they do not have a “black list of topics” and that they are willing to recommend what they believe the SuR needs, even at the expense of being seen as hypocritical (ST.007). There is certainly room for this type of approach to be perceived as nonsensical by the receiving states. A diplomat from a WEOG member state was bewildered by the attitude of some recommending states when they were under review. The officer claimed: “it’s (...) hypocrisy... their own national record... How can they recommend on torture in [our country]? Take a look at the situation in Iran or Russia... (laughs) it's blatantly worse” (ST.030).

These “hypocritical recommendations” can still be the reflect of genuine concerns of the recommending state. Sometimes states are working on an issue and their record does not show the most current efforts. It is known that it can take years for some well-intentioned and well-designed policies to have an impact on indicators. In any case, this type of recommendations does not seem to be the common practice. Most states say they do not tend to be active on issues they are not familiar or have no experience with (e.g. Croatia and Italy mentioned indigenous rights), or that they do not make recommendations on what they are not doing or willing to do (e.g. ST.030), such as the ratification of a certain human rights instrument. A good example of the latter mentioned by representatives of states in the WEOG group is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

It is important to raise one final point on the consistency between recommendations and the human rights record of the RS. Some states expressed their perception that “if you have good record on something and you make recommendations on that, that’s teaching lessons” (ST.025). This brings us back to the abovementioned “red line recommendations” which are sometimes instrumentalised in the UPR. How can we differentiate between a normative and an instrumental use of a recommendation on an issue on which the RS has a strong record? The testimony of a Nordic diplomat might be of guidance in our search for an answer. When asked on whether they consider the cultural context in the state under review, the officer declared:

“I would say we would never compromise in terms of that because we don't think culture or religion can ever justify violations of human rights (...), but I would say [we have] an aim to understand the current context and the situation on the ground, and build within that context to promote rights that we strongly believe in. Of course, we can ignore the local context and line up all our ideals in recommendations but that's never going to help. [For example, i]f you want to advance LGBTI persons’ rights, it might not always be the best thing to put ‘LGBTI’ in the recommendations. But if we know that these people are struggling in accessing housing for example, then we can put a recommendation where we say ‘to amend the legislation or programmes on access to housing to strengthen paragraphs on discrimination based on sexual orientation’ (...) We can start in one corner” (ST.018)

It looks like sometimes states can be consistent with their own record, make recommendations on issues that can be sensitive for the state under review, and do it in a

strategic way in which they can adjust the language they use and lower down the tone of the recommendation without compromising their values. This approach might even have more of an impact towards acceptance and implementation than making a harsh recommendation that is going to be rejected by all means. These issues also have implications to the development of normative discussions about human rights promotion and contestation.

Apart from the efforts we can do as social scientists to study politicisation in the UPR in an objective manner, the experience of states that sit in Room XX of Palais des Nations demonstrates that their perceptions of instrumental and normative uses of this forum are not only informed by the subject matter but also, and maybe mostly, by the severity and phrasing of the recommendation. This shows how convoluted the issue is and makes evident the need of more research on the question on politicisation in international human rights institutions.

Conclusion

This chapter has provided clarifications and examples from the ground on what can be considered instrumental and normative use of the Universal Periodic Review. Furthermore, it has introduced some empirical evidence that allowed for the assessment of the degree of consistency of recommending states activism. There are many complexities for analysing instrumental and normative in a systematic manner. Even with the limitations of the inferential models presented, this chapter has revealed important insights that advance towards the identification of those states that are exhibiting double standards in terms of the treating their friends and enemies differently with what looks as an effort to benefit allies and harm rivals. Overall, the chapter forwards our comprehension of politicisation in the UPR and, along with the conceptual clarifications around this notion made in Chapter 2, it makes a significant contribution to the relevant literature.

The proposed measure of identity similarity has proven to be somehow relevant across different tests and models. From this chapter, we can conclude that cluster 1 and 2 seem to be more associated with an instrumental use of the UPR whereas clusters 3 and 4 (which were identified as the heavy promoters and contestants in Chapter 4) appear to have less double-standards, which favours an association with more normative behaviour.

Conclusion

This thesis has explored the behaviour of recommending states in the Universal Periodic Review and has advanced an original conceptual and theoretical framework while proposing an innovative measure of states' human rights identity. Furthermore, through a combination of qualitative and quantitative methods, this research has shown that the proposed indicator of identity similarity and its related clusters play a significant role in explaining the similarity of behaviour of recommending states in the interactive dialogue.

As shown in Chapter 4, the similarity of states' human rights identity has a positive and significant effect in the structural equivalence of the role states play in the UPR network focused on both the human rights agenda advanced by states and even when considering who they target when making recommendations on different issues. Moreover, the original measure introduced in this thesis is the one that performs better and more consistently across different models (even the most conservative ones). For its part, Chapter 5 suggests that the clusters of human rights identity (as presented in Chapter 3) help identify differences in recommending states' behaviour and expose which groups seem to be instrumentalising the UPR by having double standards for friends and rivals (measured in terms of geopolitical affinity) with regard to the number and severity of recommendations made.

Although this thesis considers rationalist and constructivist explanations for states' human rights diplomacy, it argues, tests, and shows in an innovative way that the identity of states is a key element without which we would not be able to understand recommending states' behaviour in the UPR. This is a clear contribution for constructivist studies. Moreover, this research has delved into the question of human rights contestation as a neglected dimension of what is typically understood as politicisation.

To what extent is the UPR politicised? This thesis concludes that the answer is not crystal clear. The question on politicisation is complex and throughout these pages it became evident that the UPR cannot and should not be treated simply as a shaming mechanism because there is so much more going on at the Palais des Nations. Whereas there are definitely

instances of naming and shaming in the UPR, it appears these are more the exception than the rule.

This research contributes to the literature on the UPR, peer review mechanisms, and international human rights institutions in general. The findings suggest there is no systematic presence of politicisation in the UPR interactive dialogue, which has important implications in the debates on its survival and that of the Human Rights Council. This thesis has equally engaged with and contributes to IR literature on naming and shaming, norm dynamics (particularly on promotion and contestation), and human rights diplomacy in a broader sense.

As for how to move forward, conducting discourse analysis on exploring the UPR national reports would allow us to provide the identities revealed in the text with more substance. Quantitative text analysis has advantages for processing a large corpus of text in a quick manner, but it lacks the power of discourse analysis in finding meaning. Undertaking discourse analysis on a large-enough sample to be able to undertake supervised learning text analysis could be a middle ground.

Human rights identity similarity is relevant, but a reader interested in normative theories may want to learn more about what these identities represent. For example, recent developments in this literature can shed light on some of the findings from the empirical chapters. Studies on contestation would argue that the goal of their activism is not so much to promote alternative normative standards (normative contestation) but to strategically counter-stigmatize the stigmatizers (Goffman 1963; Adler-Nissen 2014).¹³¹ Exploring if and how those that could qualify as instrumental contestants in this thesis include those outside or in the margins of the international society – the so-called “pariah”,¹³² “failed”, “rogue”, or “transgressive” states – would contribute to debates on normative theories.

¹³¹ When discussing national identity and stigma theory, based on Goffman’s work, Zarakol (2011, 4) distinguishes that stigma is “as much the internalization of a particular normative standard that defines one’s own attributes as discreditable, as it is a label of difference imposed from outside.”

¹³² See Betts (1977) for a typology and Harkavy (1981) on the origins of the concept in International Relations. Usually found in security studies, the term has also been used to refer to major violators of human rights (Kinley and Wilson 2007; Sikkink 2008, 2011).

All these identities are socially constructed, they do not happen in isolation and they are not fixed across time. Furthermore, their construction is not reduced to the UPR or the UN human rights machinery. The UPR is a setting with potential of deliberative capacity and the dialogue that takes place in there (before, during, and after the Working Group)¹³³ lends itself as a perfect setting for norm diffusion. Moreover, the peer-to-peer element and the principle of universality at the core of the UPR present it as a unique forum for shaping the values of the international society. The politics of the UPR and the human rights identities of states expressed in this forum are influenced by a wider context of practices and ideas that transcends the mechanism in time and space. The normative and instrumental human rights promotion and contestation that takes place within the UPR is informed by this context.

For instance, anthropological research has found that states refer to the Universal Periodic Review using a schooling discourse, where there is learning, exams, good students, bad kids, and struggling ones (Cowan and Billaud 2015). This goes in line with our findings of some states feeling upset when they perceive others make recommendations as a way of “teaching lessons”. Beyond the UPR, states promoting human rights often play a paternalistic role and infantilise the state they want to socialise into their normative structure (Epstein 2012). Objects of paternalism perceive “a patronizing and hypocritical attitude on the part of the subject which fuels the latter’s performance of double standards” (Hobson 2017, 123). Potential norm-takers (on the receiving end of human rights promotion) might feel stigmatised, ashamed, or offended by the lecturing behaviour of the promoters. This situation can certainly inform the human rights contestation in the UPR. This is just one example of how much further we could take this study. But, as one of the interviewees said with regards to making recommendations aiming for less than the ideal, “we have to start in a corner.”

¹³³ See Milewicz and Goodin (2018) and Elizalde (2019).

Appendix 1: Calendar of the UPR first cycle

Human Rights Council Universal Periodic Review												
	1st Session (2008)	2nd Session (2008)	3rd Session (2008)	4th Session (2009)	5th Session (2009)	6th Session (2009)	7th Session (2010)	8th Session (2010)	9th Session (2010)	10th Session (2011)	11th Session (2011)	12th Session (2011)
1	Morocco	Gabon	Botswana	Cameroon	Central African Republic	Côte d'Ivoire	Angola	Guinea	Liberia	Mozambique	Seychelles	Swaziland
2	South Africa	Ghana	Burkina Faso	Djibouti	Chad	Democratic Republic of the Congo	Egypt	Guinea-Bissau	Libyan Arab Jamahiriya	Namibia	Sierra Leone	Togo
3	Tunisia	Mali	Burundi	Mauritius	Comoros	Equatorial Guinea	Madagascar	Kenya	Malawi	Niger	Somalia	Uganda
4	Algeria	Zambia	Cape Verde	Nigeria	Congo	Eritrea	Gambia	Lesotho	Mauritania	Rwanda	Sudan	United Republic of Tanzania
5	Bahrain	Benin	Turkmenistan	Senegal	Vanuatu	Ethiopia	Qatar	Kiribati	Lebanon	Sao Tome and Principe	Palau	Zimbabwe
6	India	Japan	Tuvalu	Bangladesh	Viet Nam	Bhutan	Fiji	Kuwait	Maldives	Myanmar	Papua New Guinea	Syrian Arab Republic
7	Indonesia	Pakistan	United Arab Emirates	China	Yemen	Brunei Darussalam	Iran (Islamic Republic of)	Kyrgyzstan	Marshall Islands	Nauru	Samoa	Tajikistan
8	Philippines	Republic of Korea	Uzbekistan	Jordan	Afghanistan	Cambodia	Iraq	Lao People's Democratic Republic	Micronesia (Federated States of)	Nepal	Singapore	Thailand
9	Argentina	Sri Lanka	Colombia	Malaysia	Uruguay	Cyprus	Kazakhstan	Grenada	Mongolia	Oman	Solomon Islands	Timor Leste
10	Ecuador	Tonga	Bahamas	Saudi Arabia	Belize	Democratic People's Republic of Korea	Bolivia	Guyana	Honduras	Paraguay	Saint Vincent and the Grenadines	Trinidad and Tobago
11	Brazil	Guatemala	Barbados	Cuba	Chile	Costa Rica	Nicaragua	Haiti	Jamaica	Saint Kitts and Nevis	Suriname	Venezuela (Bolivarian Republic of)
12	Netherlands	Peru	Israel	Mexico	Malta	Dominica	El Salvador	Spain	Panama	Saint Lucia	Belgium	Antigua and Barbuda
13	Finland	France	Liechtenstein	Canada	Monaco	Dominican Republic	Italy	Sweden	United States	Australia	Denmark	Iceland
14	United Kingdom	Switzerland	Luxembourg	Germany	New Zealand	Norway	San Marino	Turkey	Andorra	Austria	Greece	Ireland
15	Poland	Romania	Montenegro	Russian Federation	Slovakia	Portugal	Slovenia	Armenia	Bulgaria	Estonia	Hungary	Lithuania
16	Czech Republic	Ukraine	Serbia	Azerbaijan	The Former Yugoslav Republic of Macedonia	Albania	Bosnia and Herzegovina	Belarus	Croatia	Georgia	Latvia	Moldova

Appendix 2: Calendar of the UPR second cycle

Human Rights Council Universal Periodic Review (Second Cycle)														
	13th Session (2012)	14th Session (2012)	15th Session (2013)	16th Session (2013)	17th Session (2013)	18th Session (2014)	19th Session (2014)	20th Session (2014)	21st Session (2015)	22nd Session (2015)	23rd Session (2015)	24th Session (2016)	25th Session (2016)	26th Session (2016)
1	Bahrain	Czech Republic	France	Turkmenistan	Saudi Arabia	New Zealand	Norway	Italy	Kyrgyzstan	Belarus	Micronesia	Namibia	Suriname	Togo
2	Ecuador	Argentina	Tonga	Burkina Faso	Senegal	Afghanistan	Albania	El Salvador	Kiribati	Liberia	Lebanon	Niger	Greece	Syrian Arab Republic
3	Tunisia	Gabon	Romania	Cape Verde	China	Chile	Democratic Republic of the Congo	Gambia	Guinea	Malawi	Mauritania	Mozambique	Samoa	Venezuela (Bolivarian Republic of)
4	Morocco	Ghana	Mali	Colombia	Nigeria	Viet Nam	Côte d'Ivoire	Bolivia	Lao People's Democratic Republic	Mongolia	Nauru	Estonia	Saint Vincent and the Grenadines	Iceland
5	Indonesia	Peru	Botswana	Uzbekistan	Mexico	Uruguay	Portugal	Fiji	Spain	Panama	Rwanda	Paraguay	Sudan	Zimbabwe
6	Finland	Guatemala	Bahamas	Tuvalu	Mauritius	Yemen	Bhutan	San Marino	Lesotho	Maldives	Nepal	Belgium	Hungary	Lithuania
7	United Kingdom	Benin	Burundi	Germany	Jordan	Vanuatu	Dominica	Kazakhstan	Kenya	Andorra	Saint Lucia	Denmark	Papua New Guinea	Uganda
8	India	Republic of Korea	Luxembourg	Djibouti	Malaysia	The Former Yugoslav Republic of Macedonia	Democratic People's Republic of Korea	Angola	Armenia	Bulgaria	Oman	Palau	Tajikistan	Timor Leste
9	Brazil	Switzerland	Barbados	Canada	Central African Republic	Comoros	Brunei Darussalam	Iran (Islamic Republic of)	Guinea-Bissau	Honduras	Austria	Somalia	United Republic of Tanzania	Republic of Moldova
10	Philippines	Pakistan	Montenegro	Bangladesh	Monaco	Slovakia	Costa Rica	Madagascar	Sweden	United States of America	Myanmar	Seychelles	Antigua and Barbuda	Haiti
11	Algeria	Zambia	United Arab Emirates	Russian Federation	Belize	Eritrea	Equatorial Guinea	Iraq	Grenada	Marshall Islands	Australia	Solomon Islands	Swaziland	South Sudan
12	Poland	Japan	Israel	Azerbaijan	Chad	Cyprus	Ethiopia	Slovenia	Turkey	Croatia	Georgia	Latvia	Trinidad and Tobago	
13	Netherlands	Ukraine	Liechtenstein	Cameroon	Congo	Dominican Republic	Qatar	Egypt	Guyana	Jamaica	Saint Kitts and Nevis	Sierra Leone	Thailand	
14	South Africa	Sri Lanka	Serbia	Cuba	Malta	Cambodia	Nicaragua	Bosnia and Herzegovina	Kuwait	Libya	Sao Tome and Principe	Singapore	Ireland	

Appendix 3: List of interviews

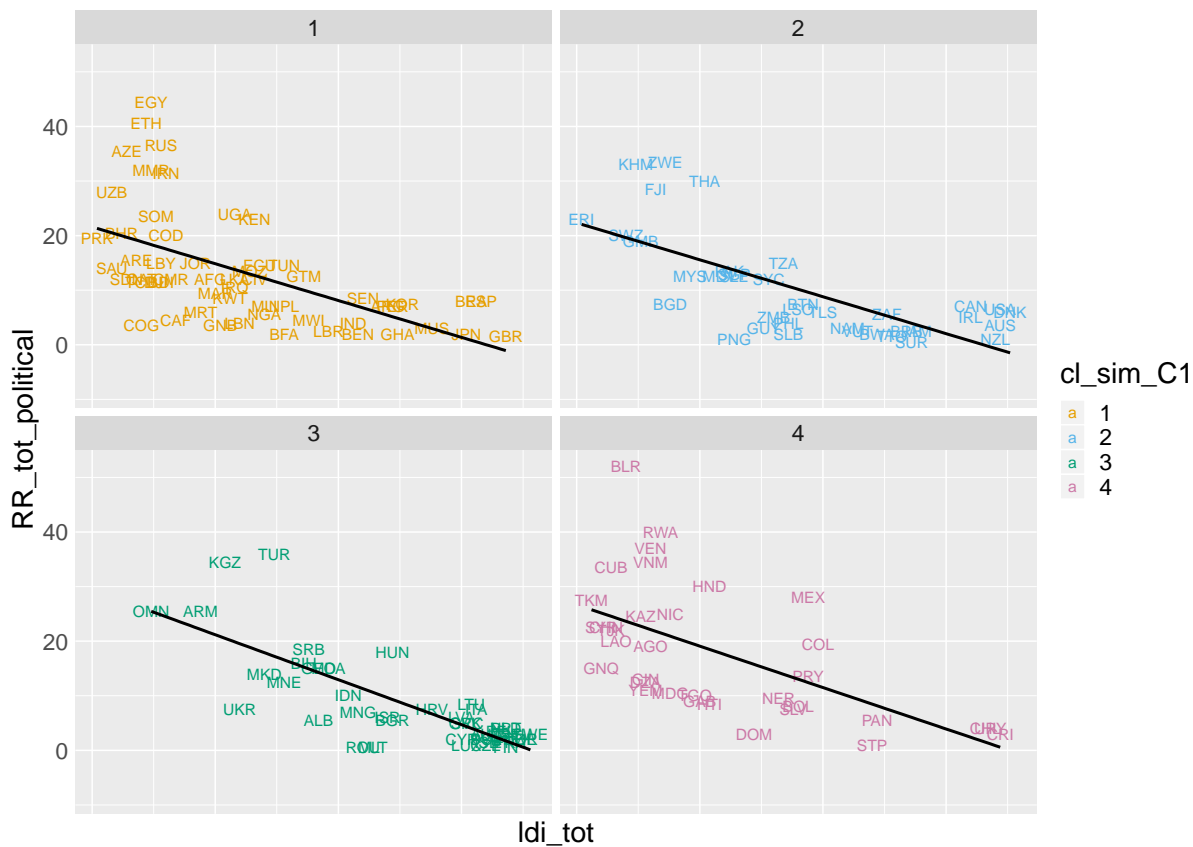
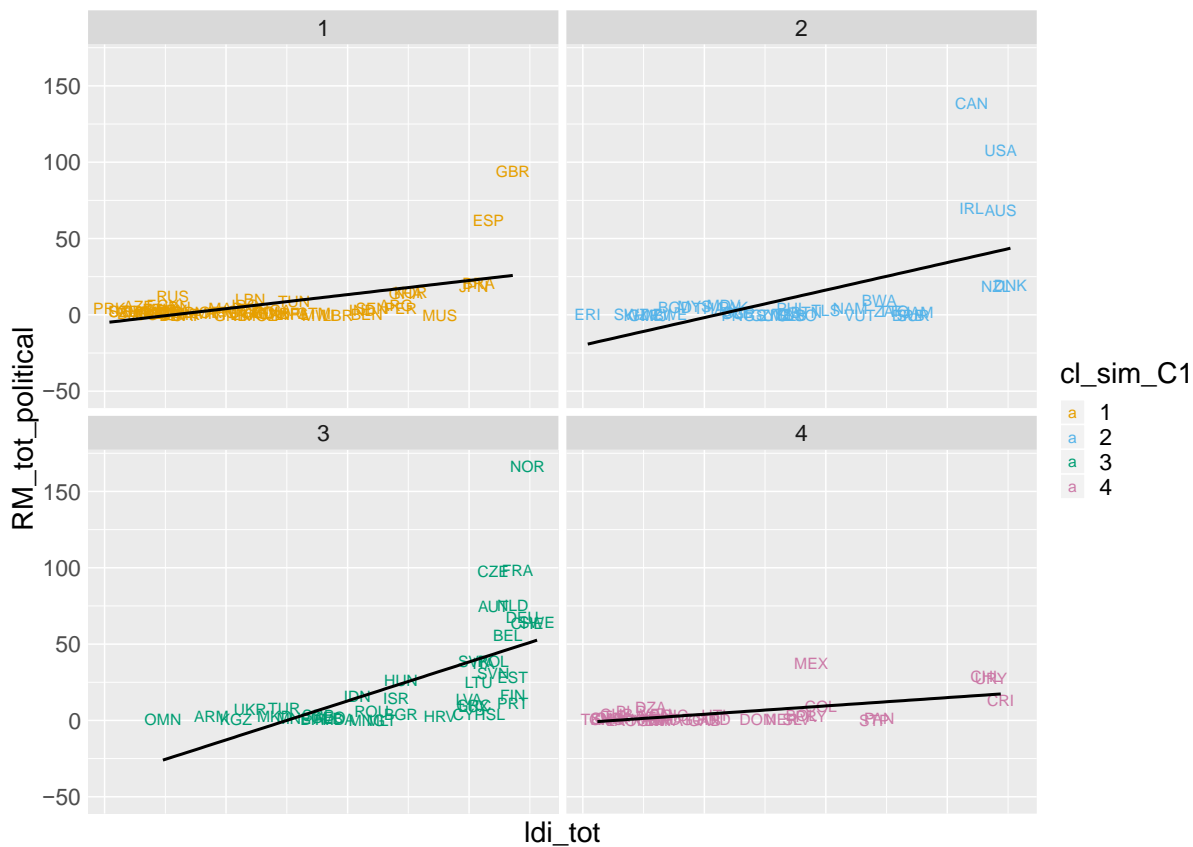
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ST.001	07.05.18	GRULAC	
ST.002	07.05.18	WEOG	
ST.003	07.05.18	EEG	
ST.004	08.05.18	WEOG	
ST.005	08.05.18	WEOG	
ST.006	09.05.18	WEOG	
ST.007	10.05.18	GRULAC	
ST.008	11.05.18	WEOG	
ST.009	14.05.18	EEG	
ST.010	14.05.18	WEOG	
ST.011	14.05.18	AFRICAN	
ST.012	15.05.18	WEOG	
ST.013	16.05.18	EEG	
ST.014	16.05.18	GRULAC	
ST.015	17.05.18	WEOG	
ST.016	17.05.18	ASIA/PACIFIC	
ST.017	17.05.18	WEOG	
ST.018	17.05.18	WEOG	
ST.019	18.05.18	ASIA/PACIFIC	
ST.020	22.05.18	WEOG	
ST.021	22.05.18	ASIA/PACIFIC	
ST.022	22.05.18	EEG	
ST.023	22.05.18	WEOG	
ST.024	22.05.18	GRULAC	
ST.025	23.05.18	AFRICAN	
ST.026	23.05.18	GRULAC	
ST.027	24.05.18	AFRICAN	
ST.028	24.05.18	WEOG	
ST.029	24.05.18	ASIA/PACIFIC	
ST.030	24.05.18	WEOG	
ST.031	24.05.18	ASIA/PACIFIC	<i>Off the record</i>
ST.032	25.05.18	WEOG	
ST.033	25.05.18	EEG	
ST.034	25.05.18	ASIA/PACIFIC	
ST.035	25.05.18	ASIA/PACIFIC	<i>Off the record</i>
ST.036	NA*	WEOG	
CS.001	24.05.18		
CS.002	25.05.18		
CS.003	22.06.18		
MIX.001	16.05.18	GRULAC	

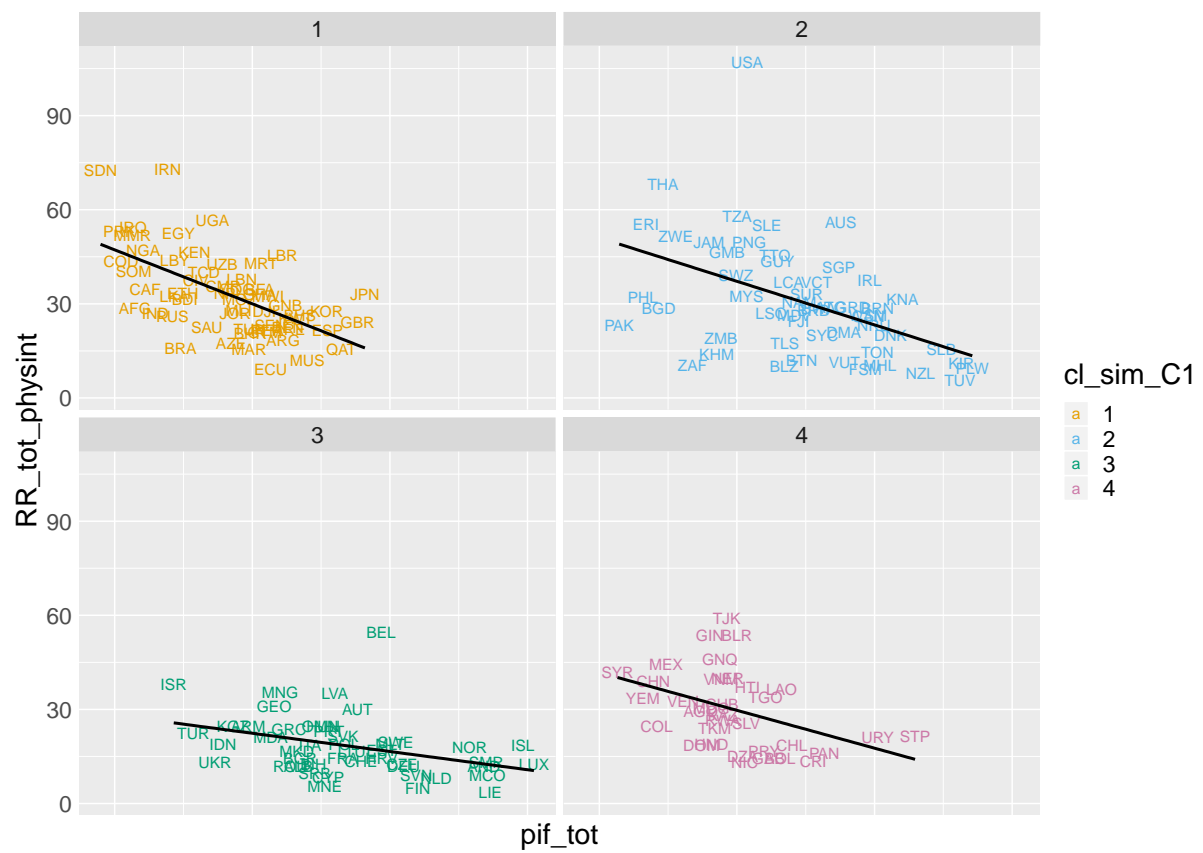
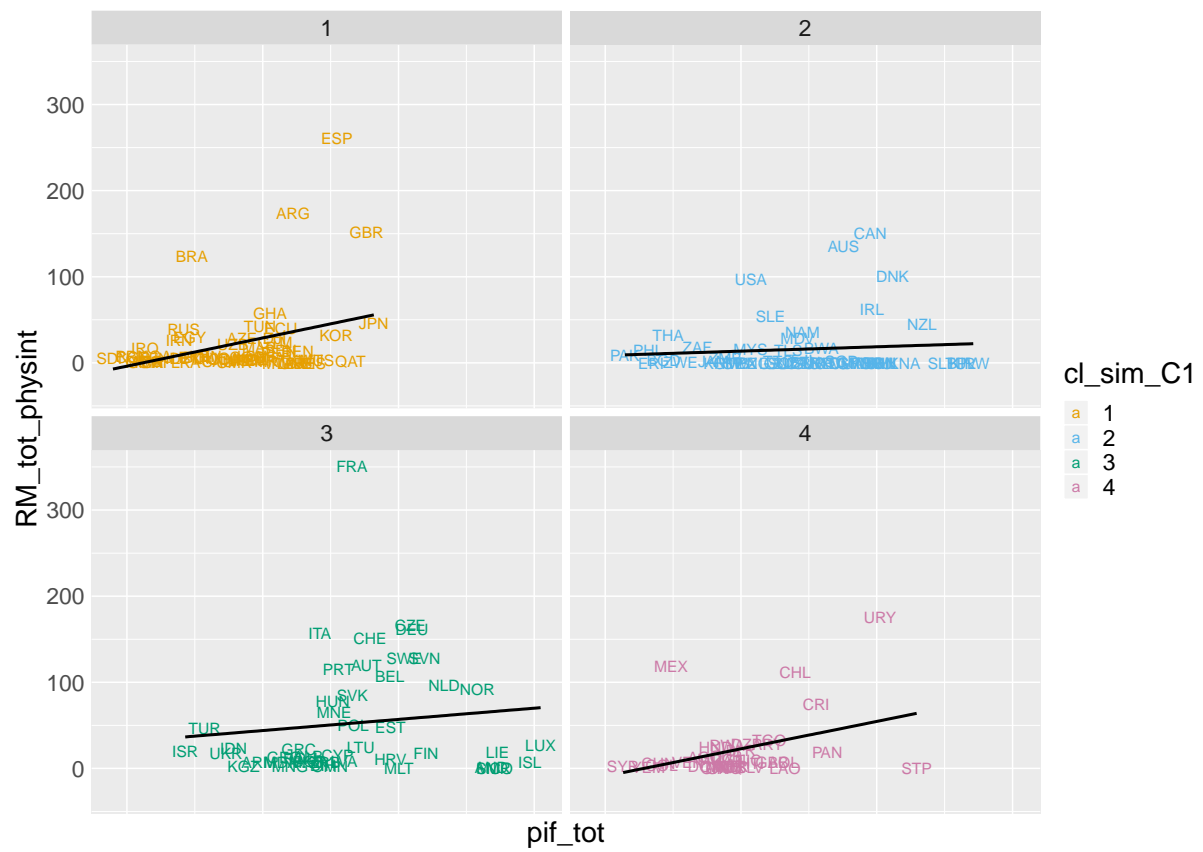
* Information not revealed for confidentiality reasons.

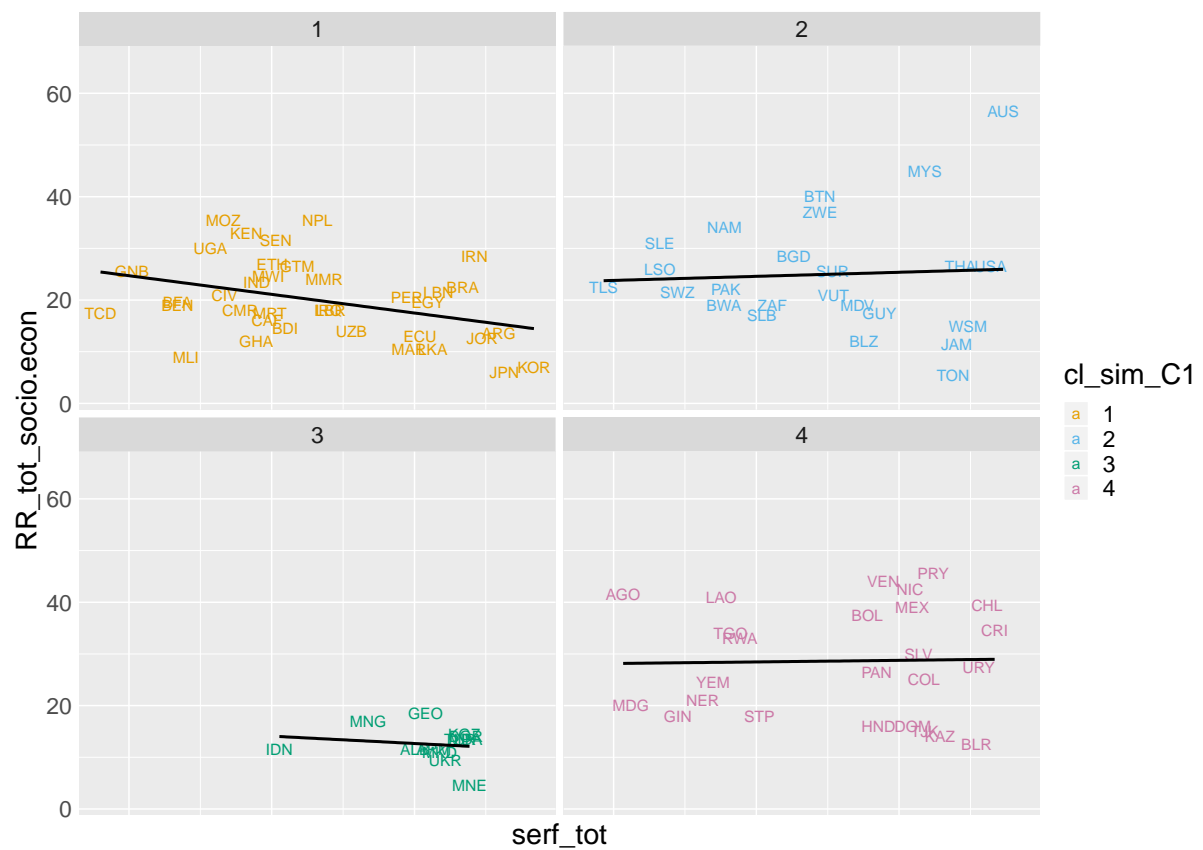
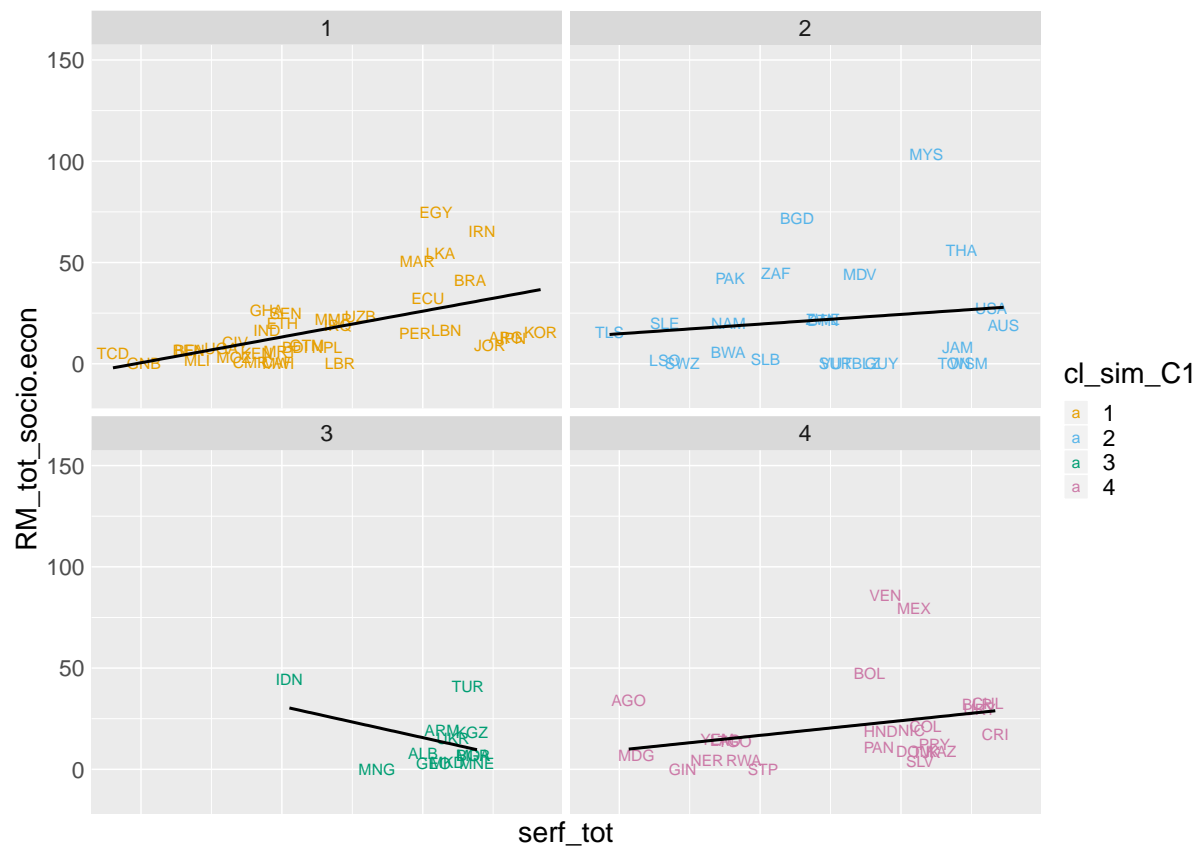
Appendix 4: Summary statistics of variables used in inferential models in Chapter 4

Statistic	N	Mean	St. Dev.	Min	Pctl(25)	Pctl(75)	Max
str_eq_iss_agenda	29,070	0.556	0.233	−0.128	0.398	0.740	0.977
str_eq_iss_cluster	37,056	0.231	0.117	−0.082	0.146	0.308	0.733
text_similarity_NR1	35,910	0.586	0.079	0.226	0.535	0.642	0.878
joint_IGOs	37,056	34.125	11.667	4	27	40	102
joint_HRT	37,056	7.082	2.811	0	5	10	14
joint_OIS	37,056	2.388	2.512	0	0	4	13
affinity	37,056	−0.966	0.759	−4.418	−1.495	−0.305	−0.0005
alliance	37,056	0.067	0.251	0	0	0	1
arms_net_exports	37,056	−0.008	8.964	−522	0	0	610
trade_net_exports	28,195	5.018	3,221.630	−253,396.600	−2.677	2.616	275,605.800
absdiff_ldi	29,412	0.305	0.219	0.000	0.120	0.460	0.880
absdiff_pif	37,056	1.862	1.394	0.0002	0.750	2.692	7.873
absdiff_serf	9,506	18.246	13.114	0.000	6.780	27.860	60.720
absdiff_GDPpc	36,290	19,828.520	27,690.320	0.062	2,751.616	28,795.400	168,632.600

Appendix 5: Facet plots from data presented in Figure 5.2 in Chapter 5







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