

THE UNIVERSAL PERIODIC REVIEW AND THE SPECIAL PROCEDURES: WEIRD PICASSO ABSTRACTION OR A THOUGHT-OUT DRAWING?

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Summary: The international human rights system became massive and often difficult to understand even for lawyers themselves. Do we really need different human rights organisations operating both worldwide and locally, dozens of human rights treaties and monitoring bodies? The present paper focuses on the relation between the UN Universal Periodic Review (UPR) and the Special Procedures of the Human Rights Council (SP), two mechanisms that may, at the first sight seem largely overlapping in their purpose and, yet, pulling in opposite directions, causing more confusion than bringing benefits. I assert that despite the thematic and jurisdictional overlap of the mechanisms, the UPR and the SP are largely complementary and the existence of both necessary..

Keywords: United Nations, Human rights, Universal Periodic Review, Special Procedures of the Human Rights Council, Human rights bodies.

1 Introduction

In the past decades, international human rights law became a predominant area of international law. The human rights instruments multiplied and a great number of mechanisms for ensuring their observance appeared. The international human rights system became massive and often difficult to understand even for lawyers themselves. Do we really need different human rights organisations operating both worldwide and locally, dozens of human rights treaties and monitoring bodies? Is it really necessary and even beneficial to create multiple different mechanisms for the promotion and protection of human rights even within a specific organisation? Does it even serve its purpose or is it in fact detrimental to the idea of intersectionality? Is there a place for a complicated and intertwined system of human rights bodies within the United Nations? Those are difficult questions with no easy answer.

Dag Hammarskjöld, the second Secretary-General of the United Nations (UN) at the time, stated in an interview for *Time* magazine: ‘Everything will

be all right – you know when? When people, just people stop thinking of the United Nations as a weird Picasso abstraction and see it as a drawing they made themselves.¹ The complicated structure of different UN bodies, mechanisms, procedures etc. may seem, indeed, as an abstract and confusing configuration which makes no sense altogether, where different bodies pull in the opposite direction and double or overshadow each other. That is why it is often criticised as overcomplicated and ineffective. But is it really the case? I believe that having a closer look, we may see – in Hammarskjöld's words – the 'drawing we made ourselves'. The drawing may be complex and perhaps sometimes difficult to understand, yet when studied closely, well-thought-out. We made the drawing for a reason. The complicated structure reflects the complicated task to accommodate often divergent national interests of all 193 Member States, as well as international interests and aspirations. Each pencil stroke on the drawing has, thus, its unique place and purpose.

The present paper focuses on the relation between the UN Universal Periodic Review (UPR) and the Special Procedures of the Human Rights Council (SP), two mechanisms that may, at the first sight seem largely overlapping in their purpose and, yet, pulling in opposite directions, causing more confusion than bringing benefits. I assert that – just as Rodley alleges in respect of the respective position of the treaty bodies and the special procedures² – despite the thematic and jurisdictional overlap of the mechanisms, the UPR and the SP are largely complementary and both necessary. In this paper, I first explain the different purposes for which the two mechanisms were established and the difference between the objectives they follow. I then claim that UPR and SP fulfil different key functions, operate in a different manner and use different working matters, thus, being two unique and complementary mechanisms which both have their place on the international scene. I concentrate on differences in sources of legitimacy, key functions, the scope of the review, working methods and outcomes, to show that these differences make the non-treaty mechanisms at issue suitable for complementarity and cooperation. I finally compare the respective positions of the two non-treaty UN mechanisms showing that they neither double nor overshadow each other, nor do they pull in opposite directions.

2 The universal periodic review and the special procedures were established for different purposes, to follow different objectives

The UN, in general, plays an important role in the promotion and protection of human rights. According to Article 1 of the Charter of the United Nations

- 1 *Interview with Dag Hammarskjöld*. Time magazine, 27 June 1955. Cited from HANHIMÄKI, Jussi M. *The United Nations: A Very Short Introduction*. Oxford-New York: Oxford University Press, 2015, p. 26.
- 2 RODLEY, Nigel. United Nations Treaty Bodies and Special Procedures of the Commission on Human Rights – Complementarity or Competition. *Human Rights Quarterly*, 2003, Vol. 25, No. 4, p. 886.

(UN Charter), it is one of the principal purposes of the UN. The first step taken was the adoption of the Universal Declaration of Human Rights (UDHR) in 1948.³ Since then, the UN never ceased to improve the system of the protection of human rights, including new mechanisms serving the purpose. A number of human rights treaties were adopted and many human rights bodies were created within the UN, all of them coordinated and supported by the Office of the High Commissioner for Human Rights (OHCHR). Treaty-based and non-treaty-based (Charter-based) bodies may be distinguished. While treaty bodies were set up under international treaties, the non-treaty-based bodies are established by a UN body. The two clusters differ in their purpose and working methods.⁴ Both of the discussed mechanisms (the UPR and the SP) are non-treaty mechanisms established under the UN Human Rights Council (HRC), a UN Charter-based body itself, composed of 47 Member States.⁵

The SP – described as the crown jewel by Kofi Annan⁶ – had been created by the Commission of Human Rights (CHR), the HRC's predecessor, and it is viewed as one of its major achievements. The first SP was established in 1980 (Working Group on Enforced and Involuntary Disappearances)⁷ without an intention to create a new category of human rights mechanisms. The human rights bodies that are known today as the SP were then seen as fact-finding missions.⁸ The system then evolved rapidly; now consisting of 44 thematic and 11 country mandates.⁹ The mandates are established and defined by the HRC resolutions.¹⁰ It consists of independent experts working *pro bono*, either individually or in five-member working groups. The mandate holders are experts in their

3 CONNORS, Jane. The United Nations. In MOECKLI, Daniel et al (eds). *International Human Rights Law*. Oxford: Oxford University Press, 2017, 3rd edn, p.369.

4 RODLEY, Nigel. United Nations Treaty Bodies and Special Procedures of the Commission on Human Rights – Complementarity or Competition. *Human Rights Quarterly*, 2003, no. 1, pp. 883–884. For a complete list of UN Charter-based and treaty-based bodies see OHCHR, *Human Rights Bodies*. [online]. Available at: <https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx> [accessed 26 August 2022].

5 CONNORS, Jane. The United Nations. In MOECKLI, Daniel et al (eds). *International Human Rights Law*. Oxford: Oxford University Press, 2017, 3rd edn, p. 370.

6 UN, *Secretary General, in Message to Human Rights Council, Cautions against Focusing on Middle East at Expense of Darfur, Other Grave Crises*, 29 November 2006. [online]. Available at: www.un.org/press/en/2006/sgsm10769.doc.htm [accessed 26 August 2022].

7 CONNORS, Jane. The United Nations. In MOECKLI, Daniel et al (eds). *International Human Rights Law*. Oxford: Oxford University Press, 2017, 3rd edn, p. 377

8 DOMÍNGUEZ-REDONDO, Elvira. The History of the Special Procedures: A 'Learning-by-Doing' Approach to Human Rights Implementation. In NOLAN, Aoife; FREEDMAN, Rosa and MURPHY, Therese (eds). *The United Nations Special Procedures System*. Brill/Martinus Nijhoff, 2017, p. 18.

9 OHCHR, *Special Procedures of the Human Rights Council*. [online]. Available at: <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcompage.aspx> [accessed 26 August 2022].

10 BREEN, Claire. Revitalising the United Nations Human Rights Special Procedures Mechanisms as a Mean of Achieving and Maintaining International Peace and Security. *Max Planck Yearbook of United Nations Law*, 2008, no. 12, p. 181.

fields and are selected by the Consultative Group according to technical criteria that were developed by the HRC.¹¹ The UPR is the SP's younger brother. It is a monitoring system created by the HRC Resolution of 18 June 2007, no 5/1 as the flagship of the new UN HRC, as means of 'restoring credibility, professionalism, universality and fair scrutiny of state performance'.¹² It was created as a reaction to the criticism of the HRC's predecessor the CHR based on allegations of lack of universal scrutiny.¹³ The aim of the UPR is to 'improve the human rights situation in all countries and address human rights violations wherever they occur'.¹⁴

3 The universal periodic review and the special procedures fulfil different key functions, operate in a different manner and use different working methods

The following section aims to demonstrate that the two non-treaty mechanisms established under the HRC, in spite of having a common general objective of promotion and protection of human rights, differ in most defining traits. Five criteria characterising the discussed mechanisms are analysed below – the sources of legitimacy, key functions, the scope of review, working methods and outcomes.

3.1 Legitimacy

First, I claim that each of the mechanisms derives its legitimacy from a different source. The SP are mandate-holders who work individually (experts, special rapporteurs) or in groups (working groups); their work is unremunerated.¹⁵ The mandate-holders do not have any powers to enforce their recommendations or compliance of Member States with their opinions. Therefore, the perceived legitimacy of a specific special procedure depends largely on the personality and background of the experts involved, the persuasiveness of their writing style and their ability to communicate and promote their ideas. The legitimacy is, thus, based on trust in an expert, his expertise and impartiality.

On the other hand, the UPR is a structured procedure which leaves little space for the accommodation of work and communication styles, having regard to a large number of actors involved and an extensive scope reviewed. The whole

11 CONNORS, Jane. The United Nations. In MOECKLI, Daniel et al (eds). *International Human Rights Law*. Oxford: Oxford University Press, 2017, 3rd edn, p. 377.

12 GAER, Felice D. A voice not an echo: Universal Periodic Review and the UN Treaty Body System. *Human Rights Law Review*, 2007, Vol. 7, Issue 1, p. 109.

13 MCNEILLY, Kathryn. The Temporal Ontology of the Human Rights Council's Universal Periodic Review. *Human Rights Law Review*, Vol. 21, Issue 1, p. 2.

14 OHCHR, *Universal Periodic Review*. [online]. Available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> [accessed 26 August 2022].

15 *A Practical Guide to the UN Special Procedures*. International Service for Human Rights, 2019, p. 5. [online]. Available at: https://ishr.ch/sites/default/files/documents/a_practical_guide_to_the_un_special_procedures_final.pdf [accessed 26 August 2022].

procedure is based on the voluntary participation of the State under review.¹⁶ The legitimacy is based on the involvement of all Member States and a strong position of the State under review. A high degree of trust is, however, also necessary.¹⁷

3.2 Key functions

Secondly, I allege that even though both types of machinery serve to prevent, identify and rectify human rights violations, the specific function of each of the mechanisms in the pursuit of such a goal, differs. The SP had been established to fulfil in particular the following two functions:

- *to provide for an early warning mechanism:*¹⁸ The SP are not bound by a structured procedure, as explained below, the mandate-holders have a number of instruments to use and their working methods are flexible enough to enable swift reactions to potential human rights violations noticed, hence, preventing their larger impact. The SP may bring to the attention of the Security Council urgent matters. The warning function of the SP has been emphasised by the OHCHR as one of their key functions.¹⁹ It is something that the UPR, a mechanism bound by a rigid procedure to be followed which, moreover, depends on inputs of a number of actors involved, is not able to ensure, and
- *to convey a better understanding of phenomena on the comparative and global level:*²⁰ Besides their role as a 'watchdog' for potential human rights violations which may occur, the SP further conduct an in-depth analysis of specific issue within the scope of their thematic or country-specific mandate. That is, again, something that a cumbersome procedure of the UPR involving a number of actors and issues to be reviewed and tied down by price rules may not provide for.

However, the UPR serve their own functions in contributing to the common goal.²¹

16 GAER, Felice D. Scrutinizing Countries: The Challenge of Universal Review. (2006) *Human Rights Briefs*, Vol. 12, No. 3, p. 128.

17 GAER, Felice D. Scrutinizing Countries: The Challenge of Universal Review. (2006) *Human Rights Briefs*, Vol. 12, No. 3, p. 112.

18 BREEN, Claire. Revitalising the United Nations Human Rights Special Procedures Mechanisms as a Mean of Achieving and Maintaining International Peace and Security. *Max Planck Yearbook of United Nations Law*, 2008, no. 12, p. 183

19 BREEN, Claire. Revitalising the United Nations Human Rights Special Procedures Mechanisms as a Mean of Achieving and Maintaining International Peace and Security. *Max Planck Yearbook of United Nations Law*, 2008, no. 12, p. 184.

20 RODLEY, Nigel. United Nations Treaty Bodies and Special Procedures of the Commission on Human Rights – Complementarity or Competition. *Human Rights Quarterly*, 2003, Vol. 25, No. 4, p. 889

21 The UPR should be based on the following principles: (1) is based on objective and reliable principles, (2) ensures universality of coverage and equal treatment, (3) it is a cooperative

- *to ensure that every state would need to account to the Council*²² and *to improve the human rights situation of all Member States*:²³ Unlike the unstructured SP designed to cherry-pick issues that come to their attention,²⁴ the rules followed by the UPR ensure that every human rights obligation of every single Member State will be reviewed periodically. It is, consequently, well suited to ensure that all of the Member States will be accountable to a single body, and
- *to promote interdependence, indivisibility and interrelatedness of human rights*:²⁵ The UPR reviews all possible human rights issues in respect of the specific Member State, thus, allowing for more intersectional approach and promotion of interdependence, indivisibility and interrelatedness of human rights; that's a task the SP, focused on narrowly defined issues within their mandate, may not fulfil.

3.3 Scope of the review

Thirdly, I argue that despite both dealing with human rights violations, the scope of the review conducted differs. The SP mandate-holders conduct a fragmental but in-depth review, they address specific issues within their mandate and, as most of the mandates are thematic, their work is mostly multilateral (address the same issue in respect of several Member States) and issue-focused rather than country-focused. Unlike the UPR, the SP, having a limited thematic or country-specific mandate, never address all countries or all human rights. The SP mandates-holders may, furthermore, review individual complaints and allegations of violations. In fact, the scope of the review conducted by the SP mandate-holders is largely influenced by information communicated to them and allegations made, nonetheless, they may act on their own accord as well.

On the other hand, the scope of the review under the UPR procedure is broad and general with an emphasis on interdependence, indivisibility and interrelatedness of human rights. Being based on the principle of universal coverage and equal treatment of all Member States, during every UPR cycle, all countries and all human rights are addressed. The review is always bilateral and country-

mechanism based on dialogue and (4) full involvement of the State under review is desired. See GAER, Felice D. A voice not an echo: Universal Periodic Review and the UN Treaty Body System. *Human Rights Law Review*, 2007, Vol. 7, Issue 1, p. 121. or BREEN, Claire. Revitalising the United Nations Human Rights Special Procedures Mechanisms as a Mean of Achieving and Maintaining International Peace and Security. *Max Planck Yearbook of United Nations Law*, 2008, no. 12, p. 182.

22 ALSTON, Philip and GOODMAN, Ryan. *International Human Rights*. Oxford: Oxford University Press, 2012, p. 737

23 MCNEILLY, Kathryn. The Temporal Ontology of the Human Rights Council's Universal Periodic Review. *Human Rights Law Review*, Vol. 21, Issue 1, p. 3.

24 For critical reflection see GAER, Felice D. A voice not an echo: Universal Periodic Review and the UN Treaty Body System. *Human Rights Law Review*, 2007, Vol. 7, Issue 1.

25 HRC Resolution of 18 June 2007, no 5/1.

focused. Having regard to the enormous number of Member States' obligations under different UN conventions, the possibility of every single Member State of the Council to comment and the relative shortness of the review dialogue (3 hours) which is in the centre of the procedure, the review is broad, yet quite vague.

3.4 Working methods

Fourthly, I assert that the addressed non-treaty mechanisms work in a substantially different way, using different methods which leads in turn to a substantially different outcome. The SP mandate-holders have a number of instruments to use to perform their function.²⁶ Unlike the UPR, they are not bound by one specific procedure to follow but may engage in a number of different actions:²⁷

1. country visits;²⁸
 - a. examination of individual complaints (communications)
 - b. letters of allegation
 - c. urgent letters
 - d. other letters
 - e. reasoned opinions (two special procedures only);
2. authoritative opinions and standards (guiding principles, general comments);
3. annual reports to the HRC (and in majority to GA as well);
4. joint or individual press statements;
5. thematic studies.²⁹

The UPR mechanism is a set procedure defined in the HRC Resolution of 18 June 2007, no A/HRC/RES/5/1,³⁰ and further refined in HRC Resolution no

26 According to the OHCHR (see OHCHR, *Manual of Operations of the Special Procedures of the Human Rights Council*, 2008, p. 5. [online]. Available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/SP/Manual_Operations2008.pdf [accessed 26 August 2022]) the SP mandate-holders analyze the relevant thematic issue or country situation, advise on the measures to be taken, alert UN organs to the need to address specific problems, advocate for human rights violation victims, activate international and national communities and follow-up to recommendations.

27 CONNORS, Jane. The United Nations. In MOECKLI, Daniel et al (eds). *International Human Rights Law*. Oxford: Oxford University Press, 2017, 3rd edn, pp. 378–380. For further details see OHCHR, *Manual of Operations of the Special Procedures of the Human Rights Council*, 2008, p. 5. [online]. Available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/SP/Manual_Operations2008.pdf [accessed 26 August 2022].

28 Country visits may only be conducted with the consent of the visited country. Despite the so-called 'standing invitation' (a blank invitation to visit the country), explicit consent has to be requested for every visit. See CONNORS, Jane. The United Nations. In MOECKLI, Daniel et al (eds). *International Human Rights Law*. Oxford: Oxford University Press, 2017, 3rd edn, p. 378.

29 ALSTON, Philip and GOODMAN, Ryan. *International Human Rights*. Oxford: Oxford University Press, 2012, p. 728.

30 HRC Resolution of 18 June 2007, A/HRC/RES/5/1: Institution-building of the UN HRC.

16/21³¹ and HRC Decision no 17/119.³² Peer reviews in general consist of 3 stages: preparatory, consultation and reporting/assessment stage.³³ The stages of the UPR may be summed up as follows:³⁴

1. drafting of three reports:
 - a. national report;
 - b. compilation of information contained in reports of SP, human rights treaty bodies and other UN entities;
 - c. summary of the information provided by stakeholders;
2. meeting of the Working Group on UPR (WGUPR) and its interactive dialogue with the State under review;
3. drafting of the outcome report from the WGUPR meeting by a Troika accompanied by the 'Addendum' containing the recommendations made and the State position in their respect (supported or noted);
4. adoption of the outcome report at the plenary session of the HRC;
5. follow up on the supported recommendations.³⁵

3.5 Outcomes

Fifthly, I argue that likewise, the final outcomes issued within the two mechanisms differ significantly. The final result of the UPR is the 'Report of the Working Group on the UPR' accompanied by an 'Addendum' – a document which sums up the recommendations made and the reviewed State's position towards them. Under the UPR, only recommendations aimed at a particular State may be made as it is always a bilateral and country-focused procedure. As already explained above, the review always covers a vast number of issues, this makes the procedure intersectional, though, it is at the expense of the detail of the outcome. Though recommendations are often vague and formalistic, bland language is used,³⁶ making most of the outcomes very similar despite the actual differences between the States under review.

31 HRC Resolution of 12 April 2011, no 16/21: Review of the work and functioning of the HRC.

32 HRC Decision of 19 July 2011, no 17/119: Follow-up to the Human Rights Council resolution 16/21 with regard to the universal periodic review.

33 GAER, Felice D. A voice not an echo: Universal Periodic Review and the UN Treaty Body System. *Human Rights Law Review*, 2007, Vol. 7, Issue 1, p. 112.

34 MCNEILLY, Kathryn. The Temporal Ontology of the Human Rights Council's Universal Periodic Review. *Human Rights Law Review*, Vol. 21, Issue 1, p. 3.

35 The States are responsible to implement the recommendations; the UPR should hold accountable all countries for progress or failure to implement the recommendations. See HRC Decision of 29 January 2013, OM/7/101: Non-cooperation of a State under review with the universal periodic review mechanism.

36 SMITH, Rhona. To see Themselves as Others see Them: The Five Permanent Members of the Security Council and the Human Rights Council's Periodic Review. *Human Rights Quarterly*, 2013, Vol. 35, No. 1, p. 10.

As to the SP, the outcome differs largely in response to the method used. The SP may issue recommendations aimed at a specific country, but it may also aim them at the Member States in general. Unlike recommendations made in the final outcome of the UPR procedure, the recommendations made by SP usually go into great detail as to desirable measures.³⁷ Those give a much clearer idea of what should be done in order to comply with the human rights obligation. The language used is lapidary³⁸ and the lack of prescribed form leaves space for the experts to be more creative; the outcomes may, thus, reflect their personal style and the particular style may affect persuasiveness. There is no common method – formal or customary – for the drafting of the recommendations. Those may, thus, largely vary in structure and detail.

As to the effectiveness of the two systems, the methods used and the outcomes produced, it is difficult to measure them. A direct connection between a recommendation and government action is hard to prove because the States are often reserved to give credit to a UN mechanism.³⁹ Effectiveness of SP depends on a number of factors. For example, according to Piccone,⁴⁰ the impact of country visits of special procedures' mandate-holders depends on the following: the credibility of the UN as perceived in the visited country; the timing of the visit (political situation); the quality and specificity of the SP's research, analysis and recommendations; the willingness of the government to cooperate; the level of freedom of media and many other. The effectiveness of UPR depends largely on the goodwill of States.⁴¹ However, the lack of powers to enforce recommendations or decisions issued by international bodies is a common problem within most international human rights mechanisms. Thus, it is no exception if the effectiveness of the procedure and the outcome depends on the goodwill of the States and the trust in the mechanism.

37 RODLEY, Nigel. United Nations Treaty Bodies and Special Procedures of the Commission on Human Rights – Complementarity or Competition. *Human Rights Quarterly*, 2003, Vol. 25, No. 4, p. 889

38 RODLEY, Nigel. United Nations Treaty Bodies and Special Procedures of the Commission on Human Rights – Complementarity or Competition. *Human Rights Quarterly*, 2003, Vol. 25, No. 4, p. 889

39 ALSTON, Philip and GOODMAN, Ryan. *International Human Rights*. Oxford: Oxford University Press, 2012, p. 736

40 PICCONE, Ted. *Catalysts for Rights: The Unique Contribution of the UN's Independent Experts on Human Rights*, 2010. [online]. Available at: https://www.brookings.edu/wp-content/uploads/2016/06/10_human_rights_piccone.pdf [accessed 26 August 2022].

41 See, critically, DE FROUVILLE, Olivier. Building a Universal System for the Protection of Human Rights: The Way Forward. In BASSIOUNI, Cherif M. and SCHABAS, William A. (eds). *New Challenges for the UN Human Rights Machinery. What Future for the UN Treaty Body System and the Human Rights Council Procedures?* Intersentia, 2011, pp. 253–254.

4 Respective position of the two non-treaty united nations mechanisms

The differences (as described above) of the two analysed non-treaty mechanisms which show, as explained below, that the two mechanisms do not double, overshadow or pull in opposite directions but are complementary and contribute to meeting the same objectives may be summarised as follows:

SPECIAL PROCEDURES	UNIVERSAL PERIODIC REVIEW
<i>Key functions</i>	
Early warning mechanism ⁴²	To ensure that every state would need to account to the Council ⁴³
Understanding of phenomena on comparative and global level ⁴⁴	Improvement of HR situation of all countries; ⁴⁵ promotion of interdependence, indivisibility and interrelatedness
<i>Legitimacy</i>	
Based on respect for independent expert	Based on voluntary participation
Perceived legitimacy largely depends on the personality and background of experts and their drafting style	Legitimacy based on involvement of all Member States and strong position of the States under review.
<i>Scope</i>	
Fragmental but in-depth review	Interdependence, indivisibility and interrelatedness of HR; overall but vague review
Possibility to review individual cases ⁴⁶	Impossibility to review individual cases
Multilateral focus	Bilateral focus
Issue focused (mostly)	Country focused
Addresses either a specific Member State or a specific human right(s)	Addresses all countries and all human rights
Scope of review influenced by information communicated and allegations made (even though it may act of their own accord)	Universal coverage and equal treatment of States
<i>Working methods</i>	
Impartial expert	Intergovernmental process, UN Member-driven; largely political ⁴⁷

42 BREEN, Claire. Revitalising the United Nations Human Rights Special Procedures Mechanisms as a Mean of Achieving and Maintaining International Peace and Security. *Max Planck Yearbook of United Nations Law*, 2008, no. 12, p. 183.

43 ALSTON, Philip and GOODMAN, Ryan. *International Human Rights*. Oxford: Oxford University Press, 2012, p. 737.

44 RODLEY, Nigel. United Nations Treaty Bodies and Special Procedures of the Commission on Human Rights – Complementarity or Competition. *Human Rights Quarterly*, 2003, Vol. 25, No. 4, p. 889

45 MCNEILLY, Kathryn. The Temporal Ontology of the Human Rights Council's Universal Periodic Review. *Human Rights Law Review*, Vol. 21, Issue 1, p. 3.

46 RODLEY, Nigel. United Nations Treaty Bodies and Special Procedures of the Commission on Human Rights – Complementarity or Competition. *Human Rights Quarterly*, 2003, Vol. 25, No. 4, p. 896.

47 Despite the fact the contrary is stated in the HRC Resolution no 5/1, supra note 25 at para

Flexible reaction to urgent situations (urgent appeals)	Inflexible, bound by specific lengthy procedure
Working methods: 1. country visits; 2. examination of individual complaints; 3. authoritative opinions and standards; 4. annual reports; 5. press statements; 6. thematic studies	Working method: a set procedure to be followed
Primarily based on own research and review	Primarily based on analysis of pre-existing or conveyed information
Possible country visits	No country visits conducted
Possibility to uncover what governments prefer to conceal	Largely based on information provided by governments ⁴⁸
Annual reporting 1–3 years terms; maximum of 6 years in function	4–5 years' cycles
Direct access to civil society	Mediated access to civil society through stakeholders' reports only; cooperative approach, dialogue, full involvement of country under review
Outcome	
Make recommendations aimed at particular State or States generally	Make recommendations aimed at particular State
Should go into great detail as to desirable measures ⁴⁹	Bland and vague recommendations
Use of lapidary language ⁵⁰	Use of formulistic, bland language ⁵¹
Effectiveness of SP depends on a number of factors such as the credibility of the U.N. as perceived in the visited country; the timing of the visit (political situation); the quality and specificity of the SP's research, analysis and recommendations; the willingness of the government to cooperate; the level of freedom of media and many other.	Effectiveness of UPR depends largely on the good will of States. ⁵²

3 (g), which describes the procedure as non-political. For a critical review of the politicization of the UPR see SAMEER, Rana. Review or Rhetoric? An Analysis of the United Nations Human Rights Council's Universal Periodic Review. *Independent Study Project (ISP) Collection*, 2015, pp. 29–34.

48 GAER, Felice D. Scrutinizing Countries: The Challenge of Universal Review. (2006) *Human Rights Briefs*, Vol. 12, No. 3, p. 136.

49 RODLEY, Nigel. United Nations Treaty Bodies and Special Procedures of the Commission on Human Rights – Complementarity or Competition. *Human Rights Quarterly*, 2003, Vol. 25, No. 4, p. 889.

50 Ibid.

51 SMITH, Rhona. To see Themselves as Others see Them: The Five Permanent Members of the Security Council and the Human Rights Council's Periodic Review. *Human Rights Quarterly*, 2013, Vol. 35, No. 1, p. 10.

52 DE FROUVILLE, Olivier. Building a Universal System for the Protection of Human Rights: The Way Forward. In BASSIOUNI, Cherif M. and SCHABAS, William A. (eds). *New Challenges for the Un Human Rights Machinery. What Future for the UN Treaty Body System and the Human Rights Council Procedures?* Intersentia, 2011, p. 250.

As follow from the above, the SP are constructed as an involvement of and external impartial actors – the experts, special rapporteurs, working groups – in the review of the human rights situation in specified domains. The whole mechanism is based on an independent, impartial and unpaid work of the experts, hence, making the process much less political than the other non-treaty mechanism analysed. Unlike the UPR, which is designed to a specified task – a periodic wholesome review of the human rights situation in Member States – the SP mandate-holders may engage in different actions, alone or together with other mandate-holders, they may react to a current pressing issues, analyse issues within the scope of their mandate from a more global point of view, conduct country visit and be in direct contact with the civil society but also issue press releases or studies and communicate with media. Their function is thus much less political, structured, rigid and formalised.

The UPR, on the other hand, may be described as a continuous dialogue between all Member States regarding the human rights situation therein. It operates in cycles in which the situation in the Member States is repeatedly reviewed; each cycle being a follow-up to the previous. It represents a structured method of periodical review of the compliance of all the Member States with all of their human rights obligations based on an equal approach to all States. It should act as a general reliable method to continually review all the obligations, thus, detecting possible human rights violations that were not necessarily complained about before any other UN mechanism. The focus on *all* human rights and their joint assessment should help to promote their interdependence, indivisibility and interrelatedness, hence, *de facto*, using the intersectional approach.⁵³

I believe that despite some flaws⁵⁴ (which is inevitable having regard to the number and size of the UN authorities and conventions), all UN mechanisms for the protection of human rights have their specific place within the system. As Hanhimäki claims, the U.N. has sometimes a tendency to rather generate new mechanisms to overcome the shortcoming of the existing ones, rather than reform them. The extensive number of the mechanisms in place then leads to a lack of operational coherence.⁵⁵ However, even though it may take some effort

53 ATREY, Shreya. Beyond Universality: An Intersectional Justification of Human Rights. In ATREY, Shreya and DUNNE, Peter (eds). *Intersectionality and Human Rights Law*. London: Bloomsbury Publishing, 2020, pp. 20–27.

54 For example, it would be advisable to define structured benchmarks/ clear cut of indicators of compliance for the purposes of UPR review to make it more equal and foreseeable [see GAER, Felice D. Scrutinizing Countries: The Challenge of Universal Review. (2006) *Human Rights Briefs*, Vol. 12, No. 3, p. 127] or to improve the work of the UPR with the summarised information to avoid inaccuracies and oversimplification (see, e.g., DE FROUVILLE, Olivier. Building a Universal System for the Protection of Human Rights: The Way Forward. In BASSIOUNI, Cherif M. and SCHABAS, William A. (eds). *New Challenges for the Un Human Rights Machinery. What Future for the UN Treaty Body System and the Human Rights Council Procedures?* Intersentia, 2011, p. 250).

55 HANHIMÄKI, Jussi M. *The United Nations: A Very Short Introduction*. Oxford-New York: Oxford University Press, 2015, p. 147.

to make sense of the 'Picasso's abstract painting' of bodies, agencies and mechanisms. They are interrelated and work best if they remain in the process of constant dialogue and information sharing.

5 The universal periodic review and the special procedures neither double nor overshadow one another, nor do they pull in the opposite direction

The UPR and the SP are just two examples in the sea of international human rights, therefore, the paper does not speak for the necessity of every single mechanism out there. However, it shows that even two bodies serving a very similar purpose within the same international organisation may both have their important place in the system of the protection of human rights. As to the respective position of the two non-treaty mechanisms established under the HRC, I assert that both UPR and SP have an important role in achieving the goal of the protection of human rights. Despite their common general goal of protection of human rights, the two mechanisms differ largely in key function, legitimacy, scope, working methods and outcomes. Those are important differences that justify the co-existence of both systems along each other. The two mechanisms do not overshadow or duplicate each other,⁵⁶ to the contrary, they create a complementary system leading to the possibility of enhanced results. I, furthermore, assert that they do neither 'pull in the opposite direction.' The SP reports are a valuable source of information for the first phase of the UPR procedure. The recommendations made by experts may be discussed and supported on a more formal and political ground of a mechanism which has a lot stronger follow-up power. The UPR review, on the other hand, may point the SP mandate-holders to pressing human rights issues that might be worthy of further in-depth analysis. If there are certain issues within the scope of the mandate of an expert raised in respect of a large number of Member States, it might be a good clue that such issue deserves a more in-depth global and comparative approach.

Indubitably, any human rights mechanism established is designed with the belief that it is the most powerful and effective manner to promote and protect human rights. However, such a task is complex; it is political and legal at the same time and what may work in one context may be unsuitable in a different one and that is why I believe that it is always beneficial to have available different human rights mechanisms to turn to. Turning back to the example of the SP and UPR, I believe that in some situations a less formalised dialogue with SP and country visits in person may demonstrate better results and political pressure would be rather detrimental. Nonetheless, in a different situation the contrary

56 Similarly, and for a more empiric analysis of the relationships of the two mechanisms, see LIMON, Marc and MONTOYA, Mariana. *Clustering and the Integrated Implementation of Recommendations: The Key to Unlocking the Complementary Power of the UN's Compliance Mechanisms*. 2017, pp. 24–26. [online]. Available at: https://www.universal-rights.org/download.php?file=https://www.universal-rights.org/wp-content/uploads/2019/06/Clustering_and_the_integrate.pdf [accessed 26 August 2022].

might be true. In some cases, putting a Member State on the spot creates resistance and may thwart the desired outcome while in other cases it creates the necessary political pressure which is the only mean suitable to motivate the Member State to make a change. Sometimes it is necessary to react in a flexible and non-rigid way to a visible human rights violation, yet other times a more formalised routine mechanism is necessary to uncover shortcomings.

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