

The Universal Periodic Review: Between the Ideal and the Reality

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Abstract

The Universal Periodic Review (UPR) is a United Nations review mechanism of the overall human rights situation of all member states by all UN member states. The UPR is a mechanism of the UN Human Rights Council established in 2006. Since its inception in 2008, all UN member states have participated in the UPR. This article focuses on the reviews on Asian states, selected from among those that: (1) are considered to have significant difficulties in respecting human rights, (2) are not party to many of the human rights treaties adopted by the United Nations, and (3) have many problems in the opinion of human rights treaty bodies during the first cycle. By analyzing the reviews on these states, the author sheds light on the significance and problems of the UPR.

It is true that the UPR has succeeded in involving all member states of the United Nations in human rights dialogue, and this makes this mechanism deserving of special attention. The UPR is a cooperative mechanism designed to promote capacity-building on human rights for all the member states, and, as such, requires persistent and continuous efforts. It is also noteworthy that 192 member states of the United Nations are proactively cooperating with the implementation of the UPR by submitting their national reports without delay, which is in sharp contrast to the fact that the national reports required under human rights treaties are rarely submitted on schedule.

On the other hand, it is also true that certain problems have been identified. While some states are ready to have their domestic human rights situations examined, some states are hesitant to do so. The latter states tend to turn to their “friendly states” and request them to make comments and recommendations favorable to them, and not a few states agree to meet such request. The result is the emergence of a so-called “interest community” in which members mutually cover up each other’s problems. The process of peer review is often affected by the intervention of group politics, and the states in the Asian groups are more likely to join hands to cover up each other’s problems.

In this light, no one can simply deny the criticism by the Human Rights Watch that “the UPR process relies on the goodwill of states. As a result, the HRC’s credibility is severely challenged by those who do not have such will and undermine the process.” It will be also necessary to explore ways to increase the involvement of NGOs in the UPR process, a mechanism for mutual evaluation among states.

The author expects that the UPR, as a mechanism to contribute to improving human rights situations in all states concerned, will be firmly established in a manner that embodies its ideal.

Introduction

Following the establishment of the Human Rights Council in March 2006, a decision was made to conduct the Universal Periodic Review (UPR) on all 192 United Nations member states (currently 193) in Resolution 5/1 on Institution-building of the United Nations Human Rights Council, dated June 18, 2007.¹ The idea of the UPR was stated in a report titled, “A more secure world: our shared responsibility,” published in December 2004 by the High-level Panel on Threats, Challenges and Change, consisting of 16 internationally renowned experts appointed by then-United Nations Secretary General Kofi Annan.² Another report, “In larger freedom: Towards development, security and human rights for all,” published in March 2005, also referred to the idea of the UPR, while offering proposals, mainly for establishing the Human Rights Council.³ This idea was accepted by the World Summit held in September 2005.

Against this backdrop, Resolution 60/251, titled the “Human Rights Council,” was adopted by the 60th United Nations General Assembly on March 15, 2006. This resolution stipulates that the General Assembly has 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” (paragraph 1), and refers to the UPR as one of the functions of the Human Rights Council, stating that the Council shall “undertake a universal periodic review, based on objective and reliable information, of the fulfillment 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 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; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session” (paragraph 5 (e)). Thus, the general principles of the UPR were adopted.

The Human Rights Council is comprised of 47 member states, whereas the former Human Rights Commission had 53 members. The breakdown of the 47 members is: 13 in Asia, 13 in Africa, eight in Latin America, six in East Europe, and seven in West Europe. As these figures show, the members from Asia and Africa amount to 26 and occupy the

majority of the Council membership. This enables the interests of developing countries to be better reflected in the decision-making process.⁴ Through the efforts of the Human Rights Council, the UPR, a peer review system for the United Nations member states, was established by the above-mentioned Resolution 5/1.⁵ It is simply obvious that the reform initiated by the Human Rights Council centered on the introduction of the UPR, a unique, unprecedented system that enables inter-governmental dialogue on human rights involving all United Nations member states. The Human Rights Commission, the predecessor of the Human Rights Council, often used political considerations in adopting resolutions condemning certain countries for human rights matters, or, to the contrary, they opted to do nothing in the face of serious human rights violations for political reasons. Such “politicization” of the Commission and their “use of double standards,” or the application of different criteria from country to country, was often criticized. Especially, developing countries blamed developed countries for singling out certain countries to condemn their human rights situations for political, not humanitarian reasons. At the same time, certain developing countries that overtly engaged in human rights violations sought to be selected as members of the Commission to defuse accusations directed at them, which, in the opinions of some developed countries, was the source of serious problems.

As such, the Human Rights Commission casted “a shadow on the reputation of the United Nations system as a whole,”⁶ to borrow the words of Annan, as some states sought the membership of the Commission, not to strengthen and enhance human rights, but to protect themselves against criticism for violating human rights.⁷ In addition, the Commission was overwhelmed by “the culture of confrontation and distrust” between Western developed countries and developing countries. Annan, in his address to the first meeting of the Human Rights Council, said “In place of the culture of confrontation and distrust, which pervaded the Commission in its final years, we must see a culture of cooperation and commitment.”⁸ The principle of “cooperation and commitment” is at the core of the UPR. In this sense, the outcome of the UPR is expected to serve as a litmus test to determine whether or not any change has occurred in the attitude or approach to human rights issues among the member states. It is also worth noting that United Nations General Assembly Resolution 60/251 states that the Human Rights Council is established as a subsidiary organ of the General Assembly, which indicates great expectations placed on the role of the Human Rights Council, considering that its

predecessor, the Human Rights Commission, was just a subsidiary organ of the United Nations Economic and Social Council.⁹

Needless to say, to effect a shift to what Annan called the “culture of cooperation and commitment,” it is essential that the 47 members of the Human Rights Council or the 192 United Nations member states including observers (the number is as of the establishment of the Human Rights Council) develop a shared recognition that protecting human rights will eventually contribute to their respective national interests, and in this light, a relationship of trust must be established that is free from criticism and coercion, thereby fostering deeper understanding and conviction. Then, has the UPR, as a mutual assessment system among member states, contributed to the establishment of such a relationship? Annan stated, “Crucial 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. The peer review would help avoid, to the extent possible, the politicization and selectivity that are the hallmarks of the Commission’s existing system.”¹⁰ The question is, then, to what extent the UPR has succeeded in avoiding the politicization and selectivity and contributed to mutual respect and understanding among the member states.¹¹

To define the principles of the UPR, Resolution 5/1 on Institution-building of the Human Rights Council stipulates in paragraph 3 that the universal periodic review should “be conducted in an objective, transparent, non-selective, constructive, nonconfrontational and nonpoliticized manner” (g), “promote the universality, interdependence, indivisibility and interrelatedness of all human rights” (a), “ensure universal coverage and equal treatment of all states” (c), and “complement and not duplicate other human rights mechanisms, thus representing an added value” (f). The basis of the UPR consists of: (a) the Charter of the United Nations; (b) the Universal Declaration of Human Rights; (c) human rights instruments to which a state is party, and (d) voluntary pledges and commitments made by the states (paragraph 1). By designating the Universal Declaration of Human Rights as the basis of the UPR, the resolution makes it possible for even the non-party states of particular human rights treaties to be subjected to a review of their human rights situation in the area covered by the treaties. For example, China, which is not a party to the International Covenant on Civil and Political Rights (“ICCPR”), can be reviewed for its civil and political rights situation, and the same thing applies to the United States, which is not a party to the

International Covenant on Economic, Social and Cultural Rights (“ICESCR”). In paragraph 15, the resolution further stipulates that the review would be based on the following documents: a national report prepared by the state under review, not exceeding 20 pages; a compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR) of the information on the human rights situation in the state under review, not exceeding 10 pages; and a summary of reliable information provided by an NGO on the human rights situation in the state under review, not exceeding 10 pages, which is called a “summary of human rights situations.”

The UPR was conducted in a four-year cycle, with the first session starting in 2008 with Morocco, and the last, the 12th session, held with Moldova in 2011. During these years, all the 192 United Nations member states were subjected to the review.¹² Then, let us examine how the UPR complied with the principles stated in Resolution 5/1 on Institution-building of the Human Rights Council during the first cycle, focusing on the reviews on Asian states, selected from among those that: (1) are considered to have significant difficulties in respecting human rights, (2) are not party to many of the human rights treaties adopted by the United Nations, and (3) have many problems in the opinion of human rights treaty bodies. By analyzing the reviews on these states, we will try to shed light on the significance and problems of the UPR.

2 Reality of UPR

(1) China

The UPR on China was held on February 9, 2009 during the 4th session. Canada, India, and Nigeria constituted a troika, a group of three rapporteurs selected by lot from among the members of the Human Rights Council in different regional groups to facilitate the review process. All of the 11 states that submitted advance questions were Western developed countries.¹³ In fact, it was obviously seen in the first cycle of the UPR that EU member states and other Western developed countries willingly submitted advance questions, but few developing countries did the same.

China submitted their national report on the designated date and thus showed a cooperative attitude toward the UPR. However, the national report stated nothing about the Chinese government’s treatment of ethnic minorities in the Tibet Autonomous Region and the Xinjiang Uygur Autonomous Region, which was a major human rights

issue of global concern at the time when the UPR was held. The report was also silent about the detention of Liu Xiaobo, who later won the Nobel Peace Prize in 2010 but was not allowed to attend his award ceremony. Instead, the report states that Chinese laws such as the Criminal Law and Criminal Procedure Law explicitly prohibit the extortion of confessions by torture or the illegal collection of evidence.¹⁴ In the section of “Freedom of religious belief,” the report says that China is a country with a great diversity of religious beliefs and that the Constitution expressly guarantees the freedom to believe or not believe in any religion. It also states that there are over 3,000 religious organizations established independently by various religions and that these organizations select their leaders in accordance with their own regulations. In reality, however, these religious organizations are under the control of the Chinese Communist Party, and there is a significant gap between the actual situation and the information contained in the national report.¹⁵ In addition, the report notes that the Chinese Constitution explicitly provides for ensuring freedom of expression and the press.¹⁶ It mentions that China is a multiethnic nation consisting of 55 different ethnic groups in addition to the Han people, and thus ethnic equality constitutes the cornerstone of China's policy regarding ethnic minorities.¹⁷

On the other hand, the compilation prepared by OHCHR states in the section of “Right to life, liberty and security of the person,” that, in 2008, the High Commissioner for Human Rights voiced concern over the excessive use of force by Chinese security forces to suppress protesters in the Tibet Autonomous Region and also that the Committee against Torture was greatly concerned with allegations of torture, ill-treatment, and disappearances directed against ethnic and religious minorities and other vulnerable groups in China, among them: Tibetans, Uighurs, and Falun Gong practitioners.¹⁸ In addition, the compilation states that the Special Rapporteur on freedom of religion or belief has transmitted to the Chinese government a number of allegations concerning human rights violations against persons of the Christian faith and Falun Gong practitioners, including arrests, retention, and torture.¹⁹ According to the compilation, furthermore, the Special Rapporteur on torture recommended that all persons who have been sentenced for the peaceful exercise of freedom of expression, assembly, and association should be released and that “political crimes” leaving large discretion to law enforcement and prosecution authorities such as “endangering national security,” should be abolished.²⁰ Against this backdrop, substantial attention was paid to

the questions to be raised at the UPR session about the significant gap between China's national report and the report prepared by OHCHR.

At the UPR session, 60 states gave their remarks, while 55 states were unable to speak, though they wanted to, due to limited time. Importantly, developing countries in Asia, Africa, and the Islamic world that were given opportunities to speak said nothing about the human rights situation of ethnic minorities in China. Instead, they criticized the Western developed countries for politicizing human rights issues. For example, Sri Lanka rejected criticism regarding Tibet, saying that they consider it an inalienable province of China,²¹ while Pakistan criticized comments made by Western countries about the Tibet Autonomous Region for having the tendency to politicize the UPR.²² Most of the 11 Asian countries making remarks at the UPR session praised the human rights policy of China. To be specific, India praised China for making tremendous strides in reducing poverty and attaining some of the United Nations Millennium Development Goals ahead of schedule.²³ Similar remarks were made by Singapore,²⁴ the Philippines,²⁵ Bhutan,²⁶ Vietnam,²⁷ Indonesia,²⁸ Thailand²⁹ and Malaysia.³⁰ The only exception was Japan, which, with moderate words, requested that the Chinese Government expand its economic and social assistance to minorities in the Tibet Autonomous Region and the Xinjiang Uygur Autonomous Region.³¹ To borrow the words of Human Rights Watch, these comments made by developing countries including Asian countries are commonly marked by "excessive praise and timid criticisms" toward China.³² Meanwhile, Western countries eagerly addressed human rights problems facing ethnic minorities in China. For example, the United Kingdom expressed concern about the human rights situation in the Tibet Autonomous Region,³³ and Canada also expressed deep concern about reports of the arbitrary detention of ethnic minority members, including Tibetans, Uighurs and Mongols.³⁴ While UPR should be conducted in a manner that contributes to fostering mutual respect and understanding, it is designed to examine the human rights situations of the states under review. In this sense, we may say that the UPR on China was problematic in some degree.

During the UPR on China, 95 recommendations were made, of which 42 were enjoyed the support of China. However, China did not enjoy the support for 50 recommendations, which concern: freedom of expression; freedom of association; independence of judiciary and lawyers; protection of human rights defenders; rights of ethnic minorities; abolishment of the death penalty and the system of re-education

through labor; prohibition of torture; freedom of press; and an effective remedy for discrimination.³⁵ With regard to the remaining three recommendations, China indicated that they have already been implementing measures to address the relevant issues.³⁶ States under review are held responsible to implement the recommendations they have accepted and report on the progress in implementing them at the second cycle of the UPR. On the other hand, Resolution 5/1 on Institution-building of the Human Rights Council does not clearly stipulate how the Council should deal with recommendations not accepted by states under review. This issue remains to be settled for the second cycle of the UPR.

(2) DPRK

Resolution 62/167 adopted by the 62nd United Nations General Assembly on December 18, 2007 expressed deep concern over the reports of systematic, widespread, and grave violations of civil, political, economic, social, and cultural rights in the Democratic People's Republic of Korea (DPRK).³⁷ The Secretary-General was also seriously concerned at the lack of tangible progress made by the government of DPRK to improve its domestic human rights situation and urged the government to show visible signs of domestic legal reform so as to fulfill its treaty obligations and to comply with international standards.³⁸

Against this backdrop, the UPR on DPRK was conducted on December 7, 2009 and attracted a great deal of attention in the international community. In this UPR, Mexico, Norway, and South Africa constituted a troika. While advance questions have been raised by EU member states almost exclusively in preceding UPR sessions, in this particular session, advance questions were submitted by 15 states including Japan and South Korea, as well as EU member states.³⁹ Advance questions submitted by Japan and South Korea concern abductions, along with torture and public executions of citizens returned from abroad. In addition, Japan asked about the plan of DPRK to abolish detention facilities in the future and the malnutrition of children, while South Korea raised the question about the reunification of families separated across the border in the wake of the Korean War.

As shown by the compilation prepared by OHCHR, DPRK is a party to ICESCR, ICCPR, the Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW"), and the Convention on the Rights of the Child ("CRC"), but it does

not accede to the core human rights treaties, namely, the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), the Convention Relating to the Status of Refugees, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (“ICRMW”), the Convention on the Rights of Persons with Disabilities (“CRPD”), and the International Convention for the Protection of all Persons from Enforced Disappearance (“CPED”).⁴⁰ The compilation also indicates that DPRK does not have a national human rights institution accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. According to the compilation, Mr. Vitit Muntarbhorn, the then-Special Rapporteur on the situation of human rights in DPRK, stated that the protection of human rights would require, *inter alia*, laws, policies, and programs based on international standards, and recommended that DPRK shift military expenditure to the human development sector and allocate national resources to protect human rights and human security. The compilation further states that offers of technical assistance made by OHCHR have been rejected by the DPRK government, and that the Committee on the Elimination on Discrimination against Women noted with concern the persistence of stereotypical discrimination against women, while the Committee on the Rights of the Child noted that the principle of non-discrimination was not fully respected in practice, *vis-à-vis* children with disabilities. The Special Rapporteur also referred to reports of public executions and secret executions in political detention camps and indicated that DPRK has not addressed the issue of abductions/enforced disappearances effectively and failed to provide redress to victims and their families. The compilation thus raises many human rights problems,⁴¹ but the national report submitted by DPRK is completely silent about these problems.

The national report submitted by DPRK states that, in preparing the report, they held consultations on 24 occasions with NGOs working in the field of human rights listed in Annex 2, but it is doubtful whether these NGOs have a truly “non-governmental” status or not.⁴² Special attention should be paid to the unique understanding of human rights held by DPRK, which champions the *Juche* (self-reliance) idea. According to this idea, human rights can be truly genuine rights of a human being when they become independent rights that enable him/her to be the master of nature, society, and himself/

herself, and human rights are realized only under the guarantee of the state. For this reason, DPRK is of the view that any attempt to change the regime on the pretext of human rights issues constitutes violations of human rights, and that human rights immediately mean national sovereignty.⁴³ It is simply obvious that there is a huge gap in the understanding of human rights between DPRK and other states.

Another factor that contributes to the peculiarity of DPRK's national report is that it emphasizes the hostile policy of the United States toward DPRK in Chapter V "Obstacles and Challenges to the Protection and Promotion of Human Rights," instead of discussing domestic problems with regard to human rights. The report blames the United States for making an undisguised attempt to interfere in the internal affairs of DPRK under the pretext of "human rights protection" and imposing numerous sanctions and gravely hindering the enjoyment of human rights by the Korean people. The report also mentions that the anti-DPRK campaigns, including the "human rights resolutions" proposed by the EU and adopted at the United Nations since 2003, are the impediments for DPRK to join in international cooperation in the field of human rights.⁴⁴ The report even states that DPRK will further intensify its self-defensive measures in order to safeguard sovereignty and dignity and the human rights of its citizens. With this statement, DPRK's national report may well be labeled as a significant deviation from the purpose of the UPR, which is to facilitate the capacity-building of states to meet the human rights standards.

Against this backdrop, the UPR on DPRK was conducted, joined by 23 Council member states and 29 observer States. Some Asian countries sharply criticized the human rights situation in DPRK. To be specific, Japan expressed regret to DPRK for not having fully responded to the various concerns of the international community including public executions, abductions, and detention facilities.⁴⁵ South Korea was concerned about detentions in political prison camps and violations of the freedom of movement, expression, thought, and religion, a huge gap between the recognition of human rights in legal codes and their actual implementation, along with the situations of separated families, prisoners of war, and abductees.⁴⁶ Other states in Asia and Oceania that expressed concern about the human rights situation in DPRK are New Zealand, Indonesia, and Australia.⁴⁷

On the other hand, other Asian states praised DPRK for its treatment of human rights issues. For example, China appreciated that the constitution and laws of DPRK

provide for respect for human rights, and Pakistan also appreciated DPRK's system of ensuring full access to health and education services.⁴⁸ Similarly, Myanmar and Vietnam spoke positively of DPRK.⁴⁹ It is true that the purpose of the UPR is not to criticize the human rights situations of individual states, but to improve situations through constructive dialogue. However, the above views about DPRK are far from the reality, and it is obvious that the purpose of the states in presenting such biased views was simply to prevent criticism from being directed toward their own domestic human rights situations. These states should be blamed for their politicized attitude. In a sharp contrast to them, Western states participating in this UPR process expressed grave concerns over the human right issues in DPRK. The problems of DPRK raised by the Western states include: extrajudicial execution; torture; inhuman or degrading treatment; restrictions on freedom of expression and movement; disappearances of political dissidents; abductions; situation of camps of political prisoners, forced labor; discrimination based on social origin; lack of opportunities of reunification with families separated by the Korean War; absence of due process; imposition of the death penalty for political and religious reasons; violence against women and children; and human trafficking.⁵⁰

In response to these views, however, DPRK rebutted that these were simply the product of prejudice against DPRK and denied the allegations of human rights violations themselves. Eventually, as many as 167 recommendations were adopted in the UPR on DPRK. The sheer number of recommendations itself is astounding, but international community was more stunned at the persistent refusal of DPRK to accept these recommendations. DPRK refused to accept 50 recommendations, and did not make its intention clear about how they would deal with the remaining 117 recommendations.⁵¹

However, the report of the working group adopted on March 18, 2010 lists 29 recommendations that DPRK agreed to consider and respond to. If DPRK had turned down all of the recommendations, then the implementation of the second cycle of the UPR would have met extreme difficulties, and paragraph 38 of Resolution 5/1 on Institution-building could have been exercised, which stipulates that "After exhausting all efforts to encourage a state to cooperate with the universal periodic review mechanism, the Council will address, as appropriate, cases of persistent non-cooperation with the mechanism." In this sense, DPRK's agreement to consider the recommendations was appropriate for ensuring the continuity of the UPR mechanism. Probably, the

Secretariat worked behind the scenes to persuade DPRK to change its attitude. However, if DPRK remains uncooperative with the UPR process in the second cycle and after, then action is likely to be taken pursuant to paragraph 38 of Resolution 5/1 on Institution-building. For this reason, the review on DPRK in the second cycle of the UPR deserves particular attention.

The case of DPRK indicates the difficulty of overcoming the excessive politicization that was deeply rooted in the Human Rights Commission. While we do need some more time to determine to what extent the states can overcome the negative effects of politicization in the UPR, we are sure of one thing at present: while DPRK criticizes the United Nations human rights resolutions on it for being politicized and selective, such an attitude itself amounts to the politicization of human rights issues.⁵²

(3) Iran

Iran is a state where religion and politics are closely intertwined and its supreme leader is elected by an Assembly of Experts consisting of eighty-six clerics. As an Islamic fundamentalist state, Iran makes it clear that they guarantee human rights only to the extent consistent with the teachings and basic principles of Islam. When ratifying CRC, for example, they filed a declaration that “The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic laws.”⁵³ The national report submitted by Iran for the UPR emphasizes cultural diversity in Islamic countries and states that “Pressure or demands by other countries to accept and adopt certain Western standards of human rights will practically have a negative impact on promotion of human rights.” In this report, Iran even openly claims that they guarantee freedom of press, provided only that Islamic teachings and the best interests of the nation are observed, and also that freedom for political parties, associations and assemblies is granted only if it does not violate the teachings of Islam and the basis of the Islamic Republic.

The UPR on Iran was held on February 19, 2010, while Mexico, Pakistan and Senegal constituted a troika. In this review, 53 states made remarks, expressing concern over human rights situations in the aftermath of the 2009 presidential election; an increase in death penalties, especially those imposed on juvenile offenders; violence against citizens by security forces; torture of prisoners; compatibility between the Islamic Shariah and human rights instruments; and public executions. The number of

recommendations made during the UPR process totaled 188. Of these recommendations, Iran accepted 123, while promising to consider 20 and let their intentions known by June 2010. However, the remaining 45 recommendations did not enjoy the support of Iran.

The recommendations that did not enjoy the support of Iran include the following: (a) sign and ratify CEDAW; (b) repeal or amend all discriminatory provisions against women and girls in national legislation; (c) allow the Special Rapporteur on torture to visit the country and provide him with access to detention facilities; (d) put an end to discrimination and incitement to hatred vis-à-vis the adherents of the Baha'i faith; (e) decriminalize consensual same-sex activity between adults; (f) abolish the death penalty, introduce a moratorium on the death penalty with a view to abolishing it, and ban public executions; (g) release all political prisoners and ensure the immediate release of illegally detained persons; (h) provide guarantees for a fair trial; (i) put an end to repression against ethnic or religious minorities; (j) remove severe restrictions on the rights to expression, assemblies and association, and end the persecution of journalists; and (k) prosecute security officials involved in torturing, raping or killing. All these recommendations concern grave problems that require urgent action, which should be addressed in the second cycle of the review.

Apart from the Asian states, the UPR on the United States revealed the reality that the establishment of the Human Rights Council to replace the Human Rights Commission did not instantly result in the elimination of the antagonism between developed and developing countries that had prevailed in the Human Rights Commission. Though the human rights situations of the United States are largely different from the situations of the other Asian states we have considered, the number of recommendations made to the United States during the first cycle of the review amounted to a record high of 228. In the UPR on the United States, the antagonism between developed and developing countries is obviously apparent, and this has remained unchanged since the days of the Human Rights Commission.

The UPR on the United States was held on November 5, 2010 during the 9th session of the Human Rights Council, in which Cameroon, France, and Japan constituted a troika. Advance questions were submitted by 14 states including Japan.⁵⁴ During the UPR process, 56 states made comments, while 27 states that did not have opportunities to make comments during the process issued separate statements, with the number of recommendations totaling a record high of 228. It is undeniable that the United States

has some serious human rights problems, including the treatment of illegal combatants such as al-Qaeda terrorists in detention. Aside from these problems, however, it seems simply absurd to claim that the human rights situations in the United States are worse than those of DPRK and Iran. In this light, we may say that the sheer number of recommendations made to the United States indicates that the problem of the politicization of the UPR has remained essentially unchanged since the days of the Human Rights Commission.

The United States classified the recommendations made to them into: (1) enjoy the support (96 recommendations); (2) enjoy the support in part (75 recommendations); and (3) not enjoy the support (57 recommendations). Referring to the recommendations that the United States classified as “enjoy the support in part,” they wrote that “we support the proposed action or objective but reject the often provocative assumption or assertion embedded in the recommendation” (paragraph 4), which amounts to a “*de-facto* rejection.” While the United States did not enjoy the support for all recommendations to abolish the death penalty, they generally responded to the rest of the recommendations in good faith.

The United States also grouped the recommendations made to them into the following themes: (1) civil rights and discrimination (22 recommendations made, 12 enjoyed the support); (2) criminal justice issues (13 out of 40 enjoyed the support); (3) indigenous issues (7 out of 10 enjoyed the support); (4) national security (13 out of 33 enjoyed the support); (5) immigration (16 out of 24 enjoyed the support); (6) economic, social, and cultural rights and measures, and the environment (6 out of 10 enjoyed the support); (7) labor and trafficking (5 out of 7 enjoyed the support); (8) domestic implementation of human rights (4 out of 10 enjoyed the support); (9) treaties and international human rights mechanisms (20 out of 58 enjoyed the support); and (10) other recommendations (all 14 recommendations not enjoyed the support). Such thematic classification of recommendations is useful in identifying problems particular to the state under review, especially when recommendations made to the state cover a wide range of themes.

The outcome of the first cycle of the UPR on the United States prompted the Human Rights Council to review the work and functioning of the UPR itself.

3 Review by a working group

On March 15, 2006, the Human Rights Council Resolution was adopted in the 72nd Plenary Meeting of the United Nations General Assembly (Resolution 60/251), which states in paragraph 16 that “[the General Assembly] decides further that the Council shall review its work and functioning five years after its establishment and report to the General Assembly.”⁵⁵ In response to this resolution, the Human Rights Council adopted a resolution titled “Open-ended Intergovernmental Working Group on the Review of the Work and Functioning of the Human Rights Council” on September 25, 2009, based on the proposals submitted by Bolivia, Bangladesh, Cuba, Nigeria (on behalf of the African group), Pakistan, the Philippines, Russia, Serbia, and Singapore. This resolution stipulates as follows: The Council decides to establish an open-ended working group (paragraph 1) and also that the working group shall hold two sessions for five working days each, in Geneva, after its 14th session (paragraph 2). The Council requests that the president of the Council chair the working group (paragraph 3) and that the president is to undertake transparent and all-inclusive consultation prior to working group sessions on the modalities of the review, and to keep the Council informed thereof (paragraph 4). The Council also requests that the United Nations High Commissioner for Human Rights present a report to the Council at its 15th session on how to improve conference and secretariat services for the Council (paragraph 5) and that the working group report to the Council at its 17th session on the progress achieved in the implementation of the present resolution (paragraph 6).⁵⁶

The working group held the first session from October 25 to 29, 2010, and, at the end of the session, the president circulated a compilation of state proposals and a list of proposals made by NGOs. Part one of the compilation of state proposals contained “concrete proposals” concerning the UPR. On October 29, 2010, the president of the Council appointed facilitators to carry forward the discussion on the review, including H.E. Mr. Omar Hilale, the permanent representative of Morocco.⁵⁷

The second session of the working group was held on January 7, 17, 18, 23, and 24, 2011. At its 9th meeting held on February 24, 2011, the working group adopted a draft outcome of the review, in which the Council reaffirmed the basis, principles, and objectives of the UPR as set forth in the Annex to Human Rights Council resolution 5/1 on the Institution-building of the Human Rights Council, and decided that: the second

cycle of the review would begin in June 2012, the periodicity of the review for the second and subsequent cycles would be of four years and half, 42 states would be considered per year instead of 48, and the order of review established for the first cycle of the review should be maintained for the second and subsequent cycles⁵⁸. The duration for a review was extended accordingly. In addition, the Council decided that: the second and subsequent cycles of the review should focus on the implementation of the supported recommendations and the developments of the human rights situation in the state under review,⁵⁹ the role of troika should be maintained, and the recommendations contained in the outcome of the review should preferably be clustered thematically, instead of being recorded separately, with the full involvement and consent of the state under review and the states that made the recommendations.⁶⁰ It is also stated that, while the outcome of the review, as a cooperative mechanism, should be implemented primarily by the state concerned, states are encouraged to conduct broad consultations with all relevant stakeholders in this regard and that states are encouraged to provide the Council, on a voluntary basis, with a mid-term update on the follow-up of the accepted recommendations.⁶¹ In March 2011, Japan voluntarily submitted a mid-term report on the implementation of the recommendations made through the UPR held in May 2008. As it turned out, however, only 27 states, including Japan, submitted a mid-term implementation report.⁶² In order to ensure more efficient follow-up of the implementation of the supported recommendations, the voluntary submission of a mid-term update by more states is required.

In the first cycle of the UPR, the states under review that had grave concerns over their domestic human rights situations were likely to turn to group politics. As a result, it was often the case that “friendly states” of the state under review queued in front of the United Nations Office at Geneva early in the morning in order to secure speaking time and just made flattering comments about the state at the UPR process, while other states were given no chance to speak. This issue was raised by the developed countries during a general discussion on the UPR held in September 2009 as an obstacle to equal participation in the process. To provide all states an equal opportunity to speak, therefore, it was resolved that the established procedures of allowing speaking time of three minutes for the Council member states and two minutes for observer states would continue to apply in the second cycle, on condition that all speakers could be accommodated, while priority should always be placed on ensuring an equal opportunity

to speak for all. To prevent those “friendly states” from going to the extreme of standing in a queue at midnight or early in the morning to be allowed to speak at the UPR process, a new system was introduced. Under this system, delegations of the states wishing to speak at the UPR process write the country name on a list of speakers placed on a registration desk set up at the United Nations Office at Geneva. The list of speakers is open for four days, from 10 a.m. on the Monday of the week preceding the beginning of the UPR to 6:00 p.m. on the Thursday. The country names written on the list are then arranged in alphabetical order, and the president of the Council decides the first speaker by lot. The list of speakers continues from the state drawn onward. On the Friday afternoon, all delegations are informed of the speaking order and of the speaking time assigned to them. The review time was extended to 3 hours and 30 minutes, with 70 minutes given to the state under review and the rest to the speakers. Speaking time is strictly controlled, and if a speaker exceeds the speaking time, the microphone is cut off.⁶³

In addition, the Human Rights Council’s Decision 17/119 titled “Follow-up to the Human Rights Council Resolution 16/21 with Regard to the Universal Periodic Review” provided general guidelines for the second cycle of the UPR, which cover: (1) developments since the first cycle in the background of the state under review (especially in the normative and institutional framework); (2) the implementation of international human rights obligations identified in Section I A in the Annex to Resolution 5/1; (3) presentations by the state concerned of the follow-up to the review in the first cycle; (4) the identification of achievements, best practices, challenges, and constraints; and (5) key national priorities, initiatives, and commitments undertaken by the state concerned.⁶⁴

Conclusion

Without doubt, it is still too early to draw any definite conclusion about the UPR, as it is an unprecedented attempt to examine the human rights situations of all the member states of the United Nations by means of peer review. It is at least true that the UPR has succeeded in involving all member states of the United Nations in human rights dialogue, and this makes this mechanism deserving of special mention. The UPR is a cooperative mechanism designed to promote capacity-building on human rights for all the member states, and, as such, requires persistent and continuous efforts. It is also

noteworthy that 192 member states of the United Nations are proactively cooperating with the implementation of the UPR by submitting their national reports without delay, which is in sharp contrast to the fact that the national reports required under human rights treaties are rarely submitted on schedule.

In the UPR on non-parties to core international human rights treaties adopted by the United Nations, it is common that many states make recommendations to ratify and accede to such treaties in the first cycle. Without doubt, therefore, the UPR has played a role in making core human rights treaties universally embraced. In this case, states under review are likely to accept recommendations to ratify human rights treaties, especially new ones such as CPED. For example, Indonesia, which underwent the first cycle of the UPR on April 9, 2008, stated during the second cycle held on May 21, 2012 that, in response to the recommendations made to them, it had ratified CRPD in November 2011 and ICRMW in May 2012, and also that the bills on the ratification of two Optional Protocols to CRC had been submitted to Parliament.⁶⁵ In addition, Indonesia stated that it was in the process of ratifying CPED, which it signed in 2010.⁶⁶

On the other hand, it is also true that certain problems have been identified. While some states are ready to have their domestic human rights situations examined, some states are hesitant to do so. The latter states tend to turn to their “friendly states” and request them to make comments and recommendations favorable to them, and not a few states agree to meet such request. The result is the emergence of a so-called “interest community” in which members mutually cover up each other’s problems. To borrow the words of Professor Obata, “the evil of group politics is still there.”⁶⁷ For example, in the first cycle of the UPR on Brunei held on December 8, 2009, 54 states made comments, and as many as eight out of the 10 first speakers were the ASEAN member states (Laos, Cambodia, Vietnam, Myanmar, the Philippines, Thailand, Malaysia, and Singapore). These states voiced in union their admirations for Brunei’s focus on the improvement of domestic human rights situations and the advancement in the democratization process. In reality, however, Brunei is a party to only three core international human rights treaties of the United Nations—CEDAW, CRC, and the Optional Protocol to CRC on the sale of children, child prostitution, and child pornography (“OP-CRC-SC”)—and rejected the recommendations made during the UPR process to sign and ratify the following: ICCPR; the Optional Protocols to ICCPR; ICESCR; CAT; ICERD; CPED; the Rome Statute of the International Criminal Court; and ICRMW.⁶⁸ This is despite the fact that

Brunei has 300,000 foreign workers within its borders, imposes flogging penalty on illegal immigrants, bans the import of the Bible, and sets the minimum age for marriage and that for criminal responsibility at fourteen and seven respectively, while setting no clear minimum age for employment. Furthermore, the principle of non-discrimination is not included in Brunei's legislation.⁶⁹

In this light, no one can simply deny the criticism of the Human Rights Watch that "the UPR process relies on the goodwill of states. As a result, the HRC's credibility is severely challenged by those who do not have such will and undermine the process."⁷⁰ The validity of this criticism is also implied by the fact that Sudan, a state notorious for human rights abuses, declared their support for the UPR in place of other human rights mechanisms, as mentioned earlier. Going back to the UPR on Brunei, Brunei accepted the recommendation of Iran to "carry on relentlessly with more effective measures in further bolstering the implementation of sharia law in the country."⁷¹ In this connection, let me quote the declaration made by Brunei upon the ratification of CEDAW, which goes "the Government of Brunei Darussalam expresses its reservations regarding those provisions of the said convention that may be contrary to the Constitution of Brunei Darussalam and to the beliefs and principles of Islam, the official religion of Brunei Darussalam." This remark raised objections from 22 states, many of which were EU member states. It is simply obvious that Brunei attached greater importance to sharia law than human rights treaties, and this attitude has remained unchanged. In saying so, the author does not mean to imply that Brunei deserves the criticism of the Human Rights Watch mentioned above. It is still undeniable that the UPR process entails many problems.

During the first cycle of the UPR, there also emerged a problem regarding the lack of equal opportunity to participate in the review process. To ensure that all the states wishing to participate in the process have a chance to speak, a new system was introduced, under which speakers are selected by lot in the second and subsequent cycles. Also noteworthy is the fact that, in the first cycle, advance questions were submitted mostly by EU member states and other developed countries. Considering that any state, even without a chance to speak, can participate in the review process by posing advance questions to the state under review, developing countries should be encouraged to submit advance questions like EU member states and other developed countries.⁷²

Another problem that should be addressed concerns the mechanism for follow-up on UPR outcomes. The resolution 5/1 on the Institution-building of the Human Rights Council stipulates that “the subsequent review should focus, *inter alia*, on the implementation of the preceding outcome” (paragraph 34)⁷³ and also that recommendations that are accepted or that enjoy the support of the state concerned will be included in the outcome report. For example, in the UPR on Japan held on May 9, 2008, 42 states made comments, while only 26 recommendations were made, which is partly because the UPR on Japan was held at an earlier stage of the first cycle. Of the 26 recommendations, Japan accepted 13,⁷⁴ which allowed a substantial discussion to take place to follow up on the implementation of the recommendations by Japan during the second cycle held in October 2012.⁷⁵

In the later stage of the first cycle, however, more recommendations were made to states under review. For example, in the UPR on Egypt held in February 2010, 53 states participated in the review process, and 44 states that were not given a chance to speak made additional recommendations. As a result, the number of recommendations totaled 165, out of which Egypt accepted 119. In the case of Iran, 188 recommendations were made and 123 were enjoyed the support of Iran. While Egypt and Iran should be commended for accepting most of the recommendations made to them, it is questionable whether effective follow-up can be conducted on the implementation of so many recommendations in the next review. There is a tendency that the more human rights problems a state has, the more recommendations are made to that state, and this can lead to a paradoxical situation where the more recommendations such a state accepts, the less substantial the UPR process becomes. In addition, the mechanism for follow-up on rejected recommendations has not been clearly defined. In light of these problems, along with other difficulties, we cannot be optimistic about the future of the UPR system, which was launched to ensure the universality and objectivity of human rights. In the second cycle, therefore, it is necessary to establish an effective and comprehensive approach to follow-up on the implementation of the recommendations made in the previous UPR process.

Professor Nisuke Ando maintains that “the politicization of human rights issues” is about rejecting the application of human rights, which should be universally respected, for the sake of some interests or ideology.”⁷⁶ As mentioned earlier, the process of peer review is often affected by the intervention of group politics, and according to Professor

Obata, the states in the Asian and African groups are more likely to join hands to cover up each other's problems."⁷⁷ In this light, Professor Tadashi Imai argues that, "Indeed, the UPR appears to be fair in that it is designed to conduct a review on all the states periodically, but this does not mean that fairness is guaranteed for individual reviews. As long as reviews are conducted by states, it is all too obvious that the review process is affected by the political and diplomatic interests that the reviewing states have in the states under review as well as the political and diplomatic relations between them. In introducing the peer review mechanism, Mr. Annan, former Secretary-General of the United Nations, aimed to 'avoid, to the extent possible, the politicization and selectivity,' but there is only a limited likelihood of attaining this aim in the first place without the involvement of independent expert institutions or NGOs in the review process."⁷⁸ This view shares some essential points with the harsh criticism made by Professor Joanna Harrington that "A UPR review could also simply serve as a mask for accountability, giving the appearance that a state is taking action to ensure the implementation of its obligations. Clearly, for the UPR process to become truly innovative, there needs to be greater opportunities for the use of truly independent appraisals of a state's human rights performance."⁷⁹ It will be also necessary to explore ways to increase the involvement of NGOs in the UPR process, a mechanism for mutual evaluation among states. Specifically, each state is required to have consultations with NGOs for the preparation of a national report at an earlier stage, as well as for the implementation of the recommendations.⁸⁰

The second cycle of the UPR started from Bahrain, followed by Ecuador, Tunisia, Morocco, Indonesia, Finland, the United Kingdom, India, Brazil, the Philippines, Algeria, Poland, the Netherlands, and South Africa. These 14 states were subjected to the first review in the 13th session convened in 2012, while the Czech Republic and Argentina, which underwent the first review in the first cycle, will be reviewed in the 14th session—this is because the number of states to be reviewed during each session was reduced by two. Also, South Sudan was added to the end of the list of states to be reviewed in the second cycle. The review on South Sudan will be held during the 26th session scheduled for July 25, 2016.

In its closing remarks at the end of the second cycle of the UPR, Indonesia "expressed thanks for the active participation and valuable contributions of all. It was pleased to note the recognition of Indonesia's endeavors in the field of human rights. At

the same time, from the perspectives contributed and questions raised, Indonesia is fully aware that its progress is not without challenges and constraints. Indonesia will continue to cultivate a culture of respect for human rights for all in its multicultural, multi-religious, and multiethnic society. The advancement of universal human rights remains one of the government's highest priorities."⁸¹ Let us hope that this remark will not amount to mere lip service and that the determination mentioned in this remark will be shared by all states subjected to the UPR, which was introduced with a view toward enhancing the universality and objectivity of human rights and contributing to capacity-building for each state to comply with the human rights standard. The author expects that the UPR, as a mechanism to contribute to improving human rights situations in all states concerned, will be firmly established in a manner that embodies its ideal.

NOTE

- 1 Human Rights Council, Res.5/1, Institution-building of the United Nations Human Rights Council, Report on the Fifth Session of the Council, U.N. Doc. A/HRC/5/21 (2007).
- 2 Report of the Secretary-General's High-Level Panel on Threat, Challenges and Changes, A more secure world: our shared responsibility, A/59/565 (1 December 2004), para.283 at p.74. For more details, see Yoza Yokota, "Jinken Shoiinkai oyobi ILO senmon iinkai deno keiken wo fumaete" *Kokusai Jinken*, No. 19, 2008, pp.139-140.
- 3 "In larger freedom: Towards development, security and human rights for all," A/59/2005 (21 March 2005), para.183 at p.45.
- 4 See Human Rights and Humanitarian Affairs Division, Foreign Policy Bureau, Ministry of Foreign Affairs of Japan, "Jinken rijikai hossoku irai no ugoki" *Kokusai Jinken*, No. 19, 2008, p.131. Among Special Rapporteurs assigned to countries condemned in the United Nations resolutions by the Human Rights Council, the mandates of the Special Rapporteurs on DPRK and Myanmar were extended, while those on Cuba and Belarus were not renewed. On the other hand, all mandates of the Special Rapporteurs appointed under the advisory services and technical assistance on human rights matters were extended (Burundi, Cambodia, Congo, Haiti, Liberia, Somalia, Sudan and Palestine). *Ibid* p.132.
- 5 It was indicated that some developing countries attempted to make the UPR a mere formality as much as possible. Tetsuya Kimura "Jinken Rijikai no hossoku no keii to genjo" *Kokusai Jinken*, No.18, 2007, pp.104-105. It is generally accepted that the idea of peer review was conceived by Professor Walter Kälin of the University of Bern and others. For more details, see Walter Kälin and Cecillia Jimenez, "Reform of the UN Commission on Human Rights", pp.1-35. http://www.humanrights.ch/home/upload/pdf/041201_kaelin_HRC_study.pdf.
- 6 A/59/2005, *supra* note 3, para.182 at p.45.
- 7 A/59/565, *supra* note 2, para.283 at p.74.
- 8 The Secretary-General Address to the Human Rights Council, Geneva, 19 June 2006, p.5.
- 9 Nico Schrijver, "The UN Human Rights Council: A New 'Society of the Committed' or Just Old Wine in New Bottles?" *Leiden Journal of International Law*, Vol.20 No.4, December 2007, p.822.
- 10 A/59/2005/Add.1, para.8.
- 11 Felice D. Gaer, "Scrutinizing Countries: The Challenge of Universal Review," *Human Rights Brief*, vol.13, 2005-2006, p.10.

- 12 For more details, see 8/PRST/1. Modalities and Practices for Universal Periodic Review Process.
- 13 These are Czech Republic, Latvia, Liechtenstein, Sweden, Canada, Denmark, Germany, Lithuania, the Netherlands, Norway, and the United Kingdom. Many of the advance questions concerning civil and political rights issues, such as when China intends to ratify ICCPR (Denmark) and whether the Chinese government has the intention to accede to OP-CAT or not (Czech Republic). Other questions include arbitrary detention of Chinese citizens under “re-education through labor” system (Sweden) and the number of death sentences carried out in 2008 (Canada).
Cf. <http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/CHINA.pdf> and <http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/CHINAAdd1.pdf>.
- 14 A/HRC/WG.6/4/CHN/1, p.13, para.49.
- 15 *Ibid.*, p.14, paras.55-58.
- 16 *Ibid.*, p.15, para.59.
- 17 *Ibid.*, p.17, para.73.
- 18 A/HRC/WG.6/4/CHN/2, p.6, paras.17-18.
- 19 *Ibid.*, p.6, para.26.
- 20 *Ibid.*, p.8, para.29.
- 21 A/HRC/11/25, p.10, para.39.
- 22 *Ibid.*, p.22, para.88. We may include Myanmar in the group of these developing countries, in light of its remark that Myanmar strongly opposes politicizing human right issues. *Ibid.*, p.23, para. 94.
- 23 *Ibid.*, p.14, para.55.
- 24 *Ibid.*, p.7, para.29.
- 25 *Ibid.*, p.8, para.32.
- 26 *Ibid.*, p.9, para.35.
- 27 *Ibid.*, p.13, para.50.
- 28 *Ibid.*, p.18, para.74.
- 29 *Ibid.*, p.23, para.93.
- 30 *Ibid.*, p.24, para.98.
- 31 *Ibid.*, p.18, para.75.
- 32 Developing countries that praised the human rights situations in China at the UPR session are Libya, South Africa, Saudi Arabia, Mozambique, Uzbekistan, Sudan, Cuba, Ghana, Angola, Morocco, Oman, UAE, Nicaragua, Yemen, Jordan, Iran, Bahrain, Zimbabwe, Benin, Mali, Gabon, Palestine, Qatar, and Senegal.
- 33 *Ibid.*, p.11, para.42. Switzerland also showed a similar concern. *Ibid.*, pp.7-8, para.31.
- 34 *Ibid.*, p.7, para.28.
- 35 *Ibid.*, pp.27-31, para.114 and p.31, para.117.
- 36 *Ibid.*, p.31, para.115.
- 37 A/RES/62/167, para.1.
- 38 Situation of Human Rights in the People’s Republic of Korea, Report of the Secretary-General, A/63/332, para.57.
- 39 These 15 states are Germany, Japan, Argentine, Czech Republic, Denmark, Latvia, South Korea, Sweden, Switzerland, the United Kingdom, Norway, the Netherlands, Hungary, Ireland, and Canada. The advance questions covered a wide range of issues, including abductions, the separation of families, children, food, and torture.
- 40 A/HRC/WG.6/6/PRK/2, p.2, para.1.
- 41 *Ibid.*, pp.3-5, paras.6-21.
- 42 A/HRC/WG.6/6/PRK/1, p.3, para.5.
- 43 *Ibid.*, p.4, paras.14-15.
- 44 *Ibid.*, pp.15-16, paras.79-86.
- 45 A/HRC/13/13, para.19.

- 46 *Ibid.*, para.20.
- 47 *Ibid.*, paras.71, 55 and 33.
- 48 *Ibid.*, paras.52 and 26.
- 49 *Ibid.*, paras.35 and 51.
- 50 Western states that expressed concern include: the United States (*ibid.*, para.22), Belgium (*ibid.*, para.23), France (*ibid.*, para.32), the United Kingdom (*ibid.*, para.37), Mexico (*ibid.*, para.39), Norway (*ibid.*, para.56), Austria (*ibid.*, para.60), Germany (*ibid.*, para.61), the Netherlands (*ibid.*, para.63), Chile (*ibid.*, para.64), Sweden (*ibid.*, para.66), Spain (*ibid.*, para.75), Greece (*ibid.*, para.77), Switzerland (*ibid.*, para.78), and Hungary (*ibid.*, para.79).
- 51 *Ibid.*, pp.13-23, paras.90-91.
- 52 A/HRC/WG.6/6/PRK/1, p.16, para.86.
- 53 When signing the Convention, Iran also declared that "The Islamic Republic of Iran is making reservation to the articles and provisions which may be contrary to the Islamic Shariah, and preserves the right to make such particular declaration, upon its ratification."
- 54 The 14 states are Czech Republic, Denmark, Germany, Latvia, Slovenia, Bolivia, the Netherlands, Russia, Sweden, Switzerland, the United Kingdom, Japan, Norway, and Mexico. Especially noteworthy are the questions raised by Russia about the ratification of only three human rights treaties by the United States and the treatment of detainees at the naval base in Guantanamo Bay.
Cf. http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/UnitedStatesAmerica_Add1.pdf
- 55 A/RES/60/251, para. 16
- 56 A/HRC/12/L.28, paras. 1–6
- 57 A.HRC/WG.8/1, pp. 3–4, paras. 7–9
- 58 *Ibid.*, p. 5, paras. 1–4
- 59 *Ibid.*, p. 5, para. 6
- 60 *Ibid.*, p. 6, paras. 10–15
- 61 *Ibid.*, p. 6, paras. 17–18
- 62 They are: Argentina, Azerbaijan, Bahrain, Belarus, Benin, Chile, Columbia, Costa Rica, Ecuador, Finland, Macedonia, France, Japan, Kazakhstan, Mauritius, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Switzerland, Ukraine, the United Kingdom, and Uruguay.
<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx>.
- 63 A/HRC/WG.8/2/1, p. 11, Appendix, Modalities for establishing the list of speakers for the Working Group on the Universal Periodic Review and the steps for drawing up the list of speakers, paras. 1–2
- 64 A/HRC/DEC/17/119
- 65 A/HRC/21/7, p. 4, paras. 9–10
- 66 *Ibid.*, para. 11
- 67 Professor Obata points out that states that belong to a certain regional group, such as African, Asian, and Latin American groups, are willing to take part in interactive dialogue in the UPR on the states of their own group but not in the UPR on other states. Kaoru Obata, "The Universal Periodic Review in the Human Rights Council," Kentaro Serita, Koji Tonami, Toshiyuki Munesue, Kimio Yakusiji and Shigeki Sakamoto eds., *International Implementation of International Human Rights Law*, Shinzansha, 2011, p.124.
- 68 A/HRC/13/14, p. 17, para. 90-1
- 69 A/HRC/WG.6/6/BRN/2, paras. 13, 21, 24, 28, and 35, and information provided by NGOs Cf. A/HRC/WG.6/6/BRN/3
- 70 Human Rights Watch Statement on the UPR Outcome Report of China, June 11, 2009
- 71 A/HRC/13/14, p. 14, para. 5
- 72 In the UPR processes held in the first session, advance questions were posed to Tunisia by Djibouti, and to the Czech Republic by Cuba and Russia. Generally speaking, however, developing nations submitted advance questions mostly when Western developed nations were under review. Cf. Elvira

- Dominguez Redondo, "the Universal Periodic Review of the UN Human Rights Council: An Assessment of the First Session," *Chinese Journal of International Law*, Vol. 7, No. 3, 2008, p. 733, n. 34
- 73 A/HRC/11/25, p. 31, para. 115
- 74 Of the 26 recommendations, Japan accepted 13, promised to consider four, and either rejected or didn't promise to consider nine. Some of the accepted recommendations address highly important issues, such as: the establishment of a human rights institution in accordance with the Paris Principles; the elimination of discrimination against women; and the elimination of violence against women and children. Recommendations that Japan promised to consider include the long-pending issues—ratification of ICCPR-OP1 and OP-ICERD. Japan did not accept the recommendations to abolish the death penalty and the police detention system, and to respond sincerely to the recommendations of the United Nations on the issue of comfort women. In March 2011, Japan submitted a mid-term report on the implementation of the accepted recommendations to the Human Rights Council.
- 75 The second cycle of the UPR on Japan was held on October 31, 2012, and attended by 79 states, in which as many as 174 recommendations were made.
- 76 Nisuke Ando, "Establishment of the Human Rights Council: Human Rights Council seen from the perspective of the Human Rights Committee" *Kokusai Jinken* No. 18, 2007, p. 113
- 77 Obata, *supra* note 67, pp. 124–125
- 78 Tadashi Imai, "Consideration on the establishment of the United Nations Human Rights Council and its activities," Yukio Shimada and Shuichi Furuya ed., *New Development and Challenges of International Law*, Shinzansha, 2009, p. 227
- 79 Joanna Harrington, "Canada, the United Nations Human Rights Council, and Universal Periodic Review," *Constitutional Forum/ constitutionnel*, Vol. 18, No. 2, 2009, p. 88
- 80 The "Training Module UPR (July 2008)" prepared by the OHCHR names Ecuador, the United Kingdom, Bahrain, India, and the Philippines as nations demonstrating the "best practice" with this regard. According to the "Provision of information in writing for the summary report on human rights situations in Japan to be prepared by the OHCHR," dated February 8, 2008, which the Japan Federation of Bar Associations submitted to the OHCHR, the Japanese government did not have consultations with NGOs and other stakeholders concerning the preparation of a national report as of February 8, 2008.
- 81 A/HRC/21/7, p. 13, paras. 103–104