

A double-edged sword

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Summary of the Dissertation

A Double-Edged Sword focuses on two human rights reviewing mechanisms set within the framework of the United Nations (UN): the state reporting process of the Treaty Bodies and the Universal Periodic Review (UPR). The Treaty Bodies were established between 1966 and 2006 and consist of committees of independent experts in charge of monitoring and supervising states' implementation of the major UN human rights treaties. One of their main functions is to undertake periodic examinations of states' fulfillment of treaty provisions on the basis of state reports and additional information provided by UN bodies and third parties. The output of these reviews consists of a series of recommendations for improvement, which are legally nonbinding. Of more recent establishment, the UPR was instituted in 2007 as a peer review mechanism where states review each other's performance on the basis of all their human rights obligations, including: the Charter of the United Nations, the Universal Declaration of Human Rights, and all other human rights instruments, treaties and voluntary commitments to which the state has acceded. In the UPR, states under review are requested to submit a report that reflects upon their internal human rights situation, to be complemented by a compilation of information by the UN Secretariat. On the basis of these reports, reviewed countries receive recommendations for improvement by other states. As in the case of the Treaty Bodies, these recommendations do not pose any legal obligations on states.

A Double-Edged Sword starts from the assumption that, in the absence of any judicial body or enforcement tool capable of obliging states to comply with recommendations, a necessary, although not sufficient condition for these mechanisms to ensure compliance is to possess authority. Authority is defined as "a product of the shared beliefs about the appropriateness of the organization's proceduralism, mission, and capabilities" (Cronin & Hurd, 2008, p. 12), which "exists when actors believe that the structures embody legitimated power and they act in ways that reinforces [*sic*] it" (Hurd, 2008, p. 26). While the factors that may facilitate or hinder the emergence of such authority are several, this study focuses on the politicization of the Treaty Bodies and the UPR as a factor that is widely considered highly detrimental for the credibility of human rights mechanisms, and thus likely to affect their authority. Particularly, the UPR was established with the precise aim of avoiding the emergence of politicization. It would thus seem fair to assume that politicization is a factor that strongly damages the authority of a reviewing procedure. However, prior to this study, no research had been conducted in order to empirically assess whether, and under what circumstances, this is actually the case. *A Double-Edged Sword* thus sets out to investigate the extent to which politicization exists in the UPR and the state reporting process of the Treaty Bodies, and how its presence affects their authority.

In sum, the current study answers the following research question: How does politicization affect the authority of the UPR and the state reporting process of the Treaty Bodies, and what explains possible differences in the way politicization affects the authority of these mechanisms? In order to address this complex question, four steps are taken: first, the level of politicization of these reviews is assessed; second, their level of authority is measured; third, the study investigates how politicization affects the authority of these mechanisms; fourth, differences in the way politicization affects the authority of these instruments are explained. The paragraphs below briefly present the content and main findings of the seven chapters of which this book is composed.

The aim of *Chapter 1* is to provide the reader with an overview of the main issues touched upon in the book, introducing the cases and the main research questions, as well as the study's contribution to the existing literature. It starts with introducing the UPR, the Treaty Bodies, and the two main concepts studied: politicization and authority. It then spells out the main research question and the four sub-questions into which the research question is divided, and briefly presents the research design. The chapter then moves on to presenting the state of the art and the project's contribution to advancing existing knowledge from a theoretical, methodological, and empirical perspective. It subsequently provides background information on the two cases and briefly discusses the extent to which they are comparable. Finally, it provides an outline of the remaining chapters.

Chapter 2 develops a theoretical and analytical framework to assess and explain the way politicization affects the authority of the UPR and the state reporting process of the Treaty Bodies. After positioning the thesis within broader debates on the reasons for state compliance with international obligations in general, and with international human rights in particular, the concept of authority is discussed and defined, explaining how this abstract notion is operationalized and empirically measured. Following the above-mentioned definitions, authority is operationalized as the presence of certain beliefs, and of behavior in accordance with such beliefs. First, authority beliefs are conceptualized along the lines of three dimensions: the appropriateness of a review's mission, namely, its overall rationale and purpose; of its proceduralism, that is, a review's design and functioning; and of its capabilities, which refers to the reviews' ability to deliver valuable outcomes. Second, authority behavior corresponds to state compliance with the formal requirements of the reviews, namely, timely and complete reporting, as well as states' attendance to their own review sessions. Next, the chapter deals with the concept of politicization. Politicization is defined as the pursuit of political objectives unrelated to human rights, and it is operationalized along the lines of three indicators: country bias, wherein some states receive a preferential treatment as compared to others due to political reasons; issue bias, namely, the fact that certain issues are systematically more often addressed than others for political reasons; and instrumental use of cultural relativism, where claims of different cultural values are instrumentally

employed to justify noncompliance. Additionally, on the basis of existing human rights literature, the chapter develops a set of expectations concerning the effects of politicization on authority, which are assumed to be detrimental in all cases. Finally, it sets a framework to explain possible differences in the way politicization affects the authority of the two mechanisms by focusing on their main structural difference, namely, the type of actors undertaking the reviews.

The aim of *Chapter 3* is to outline how the analytical framework developed in the previous chapter is applied methodologically to the two cases. In order to answer the research question, both cross-case and within-case analysis are employed. Data were collected by means of an online survey, forty semi-structured interviews, document analysis and nonparticipant observation. Whereas the two latter data sources were employed to collect information on state behavior within the mechanisms and to provide background information and contextualization, survey and interviews were used as tools to assess participants' perceptions. Combining the survey and the interviews provided the advantage of allowing the researcher to collect views from a relatively large number of involved actors in a standardized, highly comparable manner, while at the same time probing into respondents' perceptions in a more in-depth and detailed fashion, providing examples and additional contextualization.

The first empirical chapter, *Chapter 4*, comparatively assesses the extent to which the UPR and the state reporting process of the Treaty Bodies are deemed to be politicized by involved actors. The chapter reveals that, even though politicization is apparent in both mechanisms to some extent, the UPR is remarkably more politicized than the state reporting process of the Treaty Bodies. UPR recommendations are reported to be politically motivated much more extensively and frequently than Treaty Bodies' Concluding Observations. Furthermore, country bias takes place to a much larger extent in the UPR than in the Treaty Bodies. The analysis additionally revealed that in both reviews certain issues are perceived to be systematically more often addressed than others. Yet, whereas in the UPR this is largely due to political reasons – for example, when only noncontroversial issues are raised by a state in order to avoid creating tensions with the reviewed country – in the Treaty Bodies this is believed to mostly occur due to the lack of expertise of some committee members. Finally, recommendations are perceived to clash with reviewed countries' values much more often in the UPR than in the Treaty Bodies. When this occurs, state delegations reportedly often justify their nonconformity by means of cultural relativist arguments, which are considered to be employed instrumentally by a large majority of respondents in the case of both mechanisms.

Chapter 5 proceeds with a comparative assessment of the level of authority of the two reviews. First, as concerns the mechanisms' mission, the chapter shows that expert and peer review are considered to be equally appropriate methods to evaluate states' human rights performances. Similarly, the international organization hosting the reviews

and the standards employed in the assessment of country situations are overwhelmingly considered to be appropriate. Second, with relation to the reviews' proceduralism, remarkable differences appear regarding the extent to which standards of assessment are applied uniformly across reviews: respondents are strongly unsatisfied with the UPR's performance in this respect, while they are quite positive in the case of the Treaty Bodies. More broadly, the section shows that even though involved actors appreciate the general design of both Treaty Bodies and the UPR, they believe that in the latter case these rules leave excessive room for states to steer and take control of the review, and as a result the assessment provided by the mechanism is not always considered to be fair. Third, additional variation between the two cases can be observed with relation to the capabilities dimension. While the major perceived strength of the Treaty Bodies lies in their ability to provide an accurate overview of countries' performances and trigger learning – on which the UPR fared somewhat lower – the UPR scores remarkably better than the Treaty Bodies when it comes to generating pressure. Participants in this study consider pressure to be the most valuable outcome when it comes to improving the human rights situation on the ground. Thus, the UPR is deemed to be remarkably more successful in pushing states toward the implementation of recommendations, largely by virtue of its ability to generate pressure. Finally, strong variation is observed with relation to state compliance with the formal requirements of the mechanisms, the behavioral dimension of authority. The chapter reveals that states are very often late in their reporting to the Treaty Bodies, and in many cases, they submit no report at all. Additionally, the chapter accounts for instances in which states did not even attend their own review, which took place in their absence. In contrast, the UPR displays an almost complete success rate, as the only case in which a state did not submit a report and did not attend its own review was solved after a relatively short time.

Bringing the results from the two previous empirical chapters together, *Chapter 6* studies the way politicization affects the authority of the UPR and the state reporting process of the Treaty Bodies. Chapter 6 argues that politicization has both negative and positive consequences on authority, depending on the mechanism at hand. The state reporting process of the Treaty Bodies is deemed to be highly successful in producing an accurate overview of countries' performance, providing states with learning opportunities, and ensuring fair treatment. This falls well in line with the review being only limitedly politicized: the fact that no political objectives unrelated to human rights are generally pursued in its framework contributes to an objective assessment and fair treatment of states. While the UPR scores very poorly in this regard, it is seen as very successful in pushing states to comply with formal requirements and in producing relevant outcomes such as triggering pressure and contributing to policy change. As this study showed, this is largely due to its highly politicized nature. Thus, politicization has negative consequences for beliefs in the proceduralism of both the UPR and the state reporting process of the Treaty Bodies. As politicization is present to a much larger

extent in the UPR, its negative consequences are felt more strongly there; however, when politicization is present in the state reporting process of the Treaty Bodies, its negative consequences can be clearly noticed as well. Surprisingly though, politicization has remarkably positive consequences on the capabilities and behavioral dimensions of authority in the case of the UPR, while it does not have these consequences – not even to a smaller extent – when it is present in the case of the Treaty Bodies. In other words, politicization appears to be a double-edged sword when it comes to the authority of human rights reviewing mechanisms: its presence leads to both positive and negative consequences in the case of the UPR, although it only has negative consequences when it appears in the state reporting process of the Treaty Bodies. How can we account for the different impact of politicization on the authority of the two mechanisms? The chapter argues that this has to do with the composition of the reviewing body. The supposedly technical nature of committees leads to higher expectations as to the non-political and expertise-based nature of the review. However, the selection and election process of Treaty Bodies does not always guarantee this outcome, and, when committees do not live up to expectations of expertise and independence, participants in the reviews are highly disappointed. In addition, even when committee members act in a politicized manner, their recommendations do not carry the political weight they have in the UPR, as they are delivered by individuals acting in their personal capacity. The output of committees thus does not carry substantial political weight in the eyes of reviewed states. Conversely, even though the UPR was set up with the goal of avoiding politicization, no one really expected it to achieve this aim. Participants are, therefore, not particularly surprised when politicization arises, and the politicized nature of the mechanism applies additional pressure on states to comply with both the substantial and the formal requirements embedded in the review.

Chapter 7 concludes the study by summarizing research findings and discussing their broader implications for studies on soft governance mechanisms at the global level in general, and on the UPR and the state reporting process of the Treaty Bodies in particular. It specifically shows how the research conducted in *A Double-Edged Sword* contributes to the advancement of existing knowledge from a theoretical, methodological, and empirical perspective. From a theoretical standpoint, this study contributes to a better understanding of the concept of politicization and of its uses in different disciplines, and it shows that the general validity of assumptions on the negative consequences of politicization in human rights reviewing mechanisms cannot be taken for granted; additionally, it advances the existing debate on the authority of soft governance instruments, and of the factors conducive to authority; finally, it feeds into academic discussions on the use of expertise in international organizations. Methodologically, *A Double-Edged Sword* makes a substantial contribution to the study of authority and politicization by developing an operationalization of these concepts, spelling out in great detail how they can be empirically measured. Additionally, from an empirical perspective, this book

sheds light on the way the UPR and the Treaty Bodies instruments function and are perceived by involved actors, providing insight into their strengths and weaknesses. The chapter then spells out a number of recommendations for further improvement of the two mechanisms and, finally, it identifies possible avenues for further research.