



GLION
HUMAN RIGHTS
DIALOGUE
2017

HOW TO OPERATIONALIZE THE COUNCIL'S
'PREVENTION' MANDATE:
THE EFFECTIVE IMPLEMENTATION OF
PARAGRAPH 5F OF GA RES. 60/251



Permanent Mission of Norway
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UNIVERSAL RIGHTS GROUP



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Glion IV

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OPERATIONALIZING THE COUNCIL'S 'PREVENTION' MANDATE

The Human Rights Council's mandate to respond to human rights violations, including gross and systematic violations - as set down in operative paragraph 3 of GA resolution 60/251 - is well known. Less well known, but equally important, is the Council's mandate to prevent such violations from happening in the first place and to respond promptly to emerging crises. According to paragraph 5f of GA resolution 60/251, the Council shall 'contribute, through dialogue and cooperation, towards the prevention of human rights violations,' and shall 'respond promptly to human rights emergencies.'

Notwithstanding this clear and explicit mandate, and eleven years after the Council's establishment, member States are yet to put in place an explicit and coherent policy framework (e.g. a strategy, dedicated processes, tailored mechanisms) to fulfil the body's prevention mandate. It is true that some steps have been taken to build a stronger prevention capacity. For example, taking forward an idea developed at the second Glion Human Rights Dialogue (Glion II) in 2015, the President of the Council convened a first informal 'conversation' with the High Commissioner (where the latter was able to brief members on emerging situations of concern). As of today, three such informal briefings have been held. In another example, building on an idea generated during Glion III, in June 2016 a cross-regional group of 32 states delivered a statement proposing a series of 'objective criteria' (i.e. the 'Irish Principles') that should guide delegations when considering which emerging situations might

require/benefit from the Council's attention. However, each of these developments, important as they may be, has happened in isolation and in a rather ad hoc manner.

Against this background and building on initial discussions on the issue of prevention at Glion III, the fourth Glion Human Rights Dialogue (Glion IV, held from 18-19 May 2017) aimed to provide a platform for UN member States, the President of the Council, senior UN officials (including the Deputy High Commissioner and representatives of the Secretary-General), Special Procedures, NGOs, human rights defenders and others, to consider the precise meaning of paragraph 5f of GA resolution 60/251 and to generate ideas for its operationalization. Through inclusive dialogue, held under the Chatham House rule, the retreat sought to move the international human rights community towards a common understanding of the Council's prevention mandate, and a common vision as to how the Council might turn that understanding into a practical policy framework. Glion IV also aimed to place that mandate within - and as a key component part of - UN Secretary-General António Guterres' wider prevention agenda.

Glion IV adopted a bottom-up approach to the issue of prevention, focusing on understanding the situation and needs of domestic stakeholders, and using that understanding to develop practical policy solutions at international-level.

POLICY DIALOGUES AHEAD OF GLION IV

Ahead of the Glion IV, during April 2017, URG co-convened a series of informal policy dialogues (also under the Chatham House rule) with supportive State delegations in Geneva. These policy dialogues were designed to allow early consideration and exchange of views on certain key questions related to the operationalization of the Council's prevention mandate. Key conclusions, ideas and proposals were fed into Glion IV itself.

The three policy dialogues addressed the following issues:

- What does the prevention mandate of the Council, as set down in paragraph 5f, mean in practice? What does it mean from the perspective of people on the ground (e.g. building the capacity of domestic 'early warners'), and what does it mean for the member and observer States of the Council? *Hosted by the Permanent Mission of Thailand, Wednesday 17th February.*
- How should the Council coordinate and cooperate with other relevant parts of the UN in order to strengthen prevention? *Hosted by the Permanent Mission of Morocco, Thursday 27th April.*
- What are the precise means (i.e. common approach, strategy, mechanisms, tools) through which the Council might effectively fulfil its prevention mandate? *Hosted by the Permanent Mission of Mexico, Tuesday 2nd May.*

REPORT OF THE FOURTH GLION HUMAN RIGHTS DIALOGUE

The fourth Glion Human Rights Dialogue (Glion IV) was structured around an understanding, developed during the preparatory policy dialogues, that paragraph 5f of GA resolution 60/251 comprises three parts.

First, paragraph 5f begins by calling upon the Council to work, 'through dialogue and cooperation, towards the prevention of human rights violations.' In other words, the Council is mandated to prevent human rights violations before they ever occur, by building domestic human rights capacity and resilience and by focusing on root causes.

Second, under the latter part of paragraph 5f, the Council is mandated to 'respond promptly to human rights emergencies.' In other words, where primary prevention fails and where there are early warning signs of emerging patterns of human rights violations, the Council should act quickly to reach out to the State (and region) concerned to prevent a widening or deepening of the crisis.

Third, paragraph 5f is clear that the Council can and should 'contribute' to prevention. That means any new policy framework operationalizing paragraph 5f must not be seen in isolation, but as part of a coherent UN-wide prevention agenda.

This report reflects the three-part structure of the Glion IV retreat.

The first part of the report presents key ideas generated during the first breakout group at Glion IV and further considered during the closing plenary on the question of **how to build domestic capacity and resilience for prevention?**

Part two presents key ideas generated during the second breakout group at Glion IV and further considered during the closing plenary, which sought to answer the question: **what are the precise means through which the Council might effectively fulfil its prevention mandate?**

Part three presents key ideas generated during the third breakout group and further considered during the closing plenary on the question of **how the operationalization of paragraph 5f fits within the Secretary-General's wider 'prevention agenda' -**



how to avoid duplication and promote coherence?

All three parts also include key points, conclusions, ideas and proposals made during the opening (high-level) plenary session of Glion IV.

Each part of the report begins with a brief situation analysis, followed by a summary of the main issues discussed and ideas put forward during Glion IV.

The report is an informal document summarising (in a non-attributable manner) some of the key ideas developed during the Glion retreat and based on the three preparatory policy dialogues. The document does not represent the position of Norway or Switzerland, nor any of the participants, but is rather a non-exhaustive collection of ideas generated during those meetings. It is the hope of the organisers that these ideas and

proposals will encourage and contribute to wider consideration by all stakeholders from all regions, thus making the Glion Dialogue a starting point for a fruitful and inclusive process. It is also the hope of the organisers that, where appropriate, States and other stakeholders will take forward useful ideas generated in Glion and thus contribute to the effective operationalization of the Council's prevention mandate.

BUILDING DOMESTIC CAPACITY AND RESILIENCE FOR PREVENTION



WHERE ARE WE TODAY?

Through the three preparatory policy dialogues and Glion IV itself, important progress was made in understanding what the first part of paragraph 5f of GA resolution 60/251 means, in a practical sense, for the Human Rights Council. Key to that emergent common understanding is the concept of resilience.

As one participant at Glion IV succinctly put it: 'The best way for the Council to deal with human rights violations is to prevent them from happening in the first place, by working with governments and other national stakeholders to build domestic capacity and, thus, human rights resilience.' The aim of such an exercise should be to identify the typical root causes of serious human rights violations (e.g. absence of rule of law and good governance, restricted civil society space, the marginalisation of minority groups, a weak or cowed free press, low levels of education or awareness about human rights, politicised judiciaries, etc.) and to make targeted interventions to build domestic capacity and resilience across those areas. Borrowing terminology from the medical world, one participant called this 'primary prevention.'

Glion IV identified a number of potential barriers to a strengthened focus on resilience building at the Council.

The first is what some participants called 'the reactive mind-set of the Council.' It was argued that, at present, the Council is usually prepared to invest time, energy and financial resources in responding to situations of serious violations and crises (i.e. situations that are in the public eye), but far less ready to invest in lower visibility activities premised on working with States to build domestic capacity and resilience.

In this regard, the approach of the Council was juxtaposed with the UN's pioneering work in the area of disaster risk reduction. That work is based on the idea that it is best to invest in building domestic resilience (and thus in reducing risk) than it is to wait for a disaster to happen and then respond. The UN has estimated that only 4% of the estimated \$10 billion in annual humanitarian assistance is devoted to prevention, and yet every dollar spent on risk reduction saves between \$5 and \$10 in economic losses from disasters.¹

To illustrate this 'reactive mind-set,' a number of participants pointed out that the UN human rights pillar invests around US\$ 6.5 million each year to maintain a Commission of Inquiry (COI) on the situation in Syria (since the COI was first established in

2011, that investment has totalled nearly US\$ 37 million), and yet regularly turns away countries from Africa, Asia and Latin America, including a number of fragile or at-risk States, that ask for human rights capacity-building and technical support. Another speaker referenced an analysis by the Universal Rights Group (URG), which shows that, since 2006, the Council has invested around five times more financial resources setting up 'response mechanisms' (e.g. Commissions of Inquiry, country Special Procedures) than it has on mechanisms or programmes designed to help build domestic human rights capacity and resilience (e.g. under item 10).

Linked with this first point, it was further argued that there are, today, significant question marks over the degree to which the Council is fulfilling its mandate (like prevention, set down in paragraph 5 of GA resolution 60/251) to provide 'advisory services, technical assistance and capacity-building ... in consultation with and with the consent of Member States concerned.' Notwithstanding some achievements (e.g. the establishment of Council trust funds), it was suggested that the Council's work under item 10 has principally focused on a small number of developing countries, particularly States in post conflict situations. By extension, the vast majority of developing countries have been excluded from international support delivered under item 10. Yet these latter countries, seen through a prevention lens, are where UN capacity building / resilience building support might have the greatest long-term impact.

Indeed, a number of speakers expressed concern that, rather than rectifying this situation, for example by establishing new and inclusive platforms for the delivery of international support, member States appear determined to make it worse. In particular, some States are now using item 10 as a space to address / react to serious human rights violations or crises (situations that should be more correctly dealt with under item 4).

ISSUES FOR REFLECTION AND OPPORTUNITIES FOR CHANGE

- It was noted that the words '**through dialogue and cooperation**' are central to understanding and implementing the first part of paragraph 5f. This means that the Council must

work with concerned countries, in a relationship built on trust and cooperation, to identify 'resilience gaps' and to provide capacity building and technical support to address those gaps. It was noted that 'dialogue and cooperation' are important because the basis for delivering effective support must be awareness and understanding of a State's particular situation and the challenges faced.

- But what, precisely, is **resilience building**? Some said it means strengthening rule of law, domestic legal frameworks, robust law enforcement, and independent and impartial judiciaries. Others, while agreeing with this in broad terms, suggested that – from a practical perspective – resilience building means helping States fully implement their international human rights obligations and commitments. It was argued that 'if one takes all the recommendations generated by the UPR, the Treaty Bodies and the Special Procedures regarding a given State, they provide a 'resilience roadmap,' allowing the State and the international community to identify weak spots and cooperate to address them.'

- The Human Rights Council is the ideal body within the UN system for driving forward a 'resilience building' agenda. This is something that other parts of the UN, including the Security Council, are simply not equipped to do. Likewise, it was pointed out that working with States to strengthen domestic capacity and resilience plays to **the Council's strengths and prerogatives**.

- However, for the moment, the UN human rights pillar is not playing to these strengths. In fact, according to one speaker: 'as we seem to be borrowing terms from the medical world, an impartial observer might conclude that both the Council and OHCHR appear to systematically prefer a post mortem approach to human rights – **intervening only once it is too late to save the patient**.'

- So why is the Council not playing to its strengths vis-à-vis resilience building and prevention? Numerous participants, in answering this question, referred to the aforementioned 'reaction mind-set' at the Council and a related **lack of trust between States**. 'The Council's capacity building work is, unfortunately, less visible than the establishment of a Commission of Inquiry, and will generate fewer headlines,' noted one speaker, 'even if, in the long run, it will be cheaper, more effective and more sustainable.'

- Others argued that even if that mind-set could be changed, leading to a significant 'scaling up' of the Council's investments

in domestic resilience-building, the current means of delivering **effective capacity-building support at national-level** are 'not fit for purpose' and are in urgent need of reform.

- Building on this understanding of the problem, it was suggested that in order to effectively operationalize the first part of paragraph 5f, the Council needs to do two things: first, re-orientate the Council's 'default setting for first instance engagement with States' from one that gives precedence to late reaction and condemnation, to one that emphasises the delivery of resilience-building support (for all States and long before there is any evidence of a possible crisis), and that mobilises significant resources behind such support; and second, 'renew, reform and revitalise' the Council's work under item 10.

Reorientation towards, and investment in, resilience

- There was wide agreement that, in order to respond to the UN Secretary-General's call to 'address a situation in which **relevant bodies of the UN spend far more time and resources [...] responding to crises than to preventing them,**' the Council should reflect on where and how it is investing its limited resources. More importantly, States should also consider investing significant new financial resources in human rights capacity building and technical assistance (to support the implementation of States' international human rights obligations and commitments) and resilience building. This could be done either by rebalancing the UN's regular budget towards human rights (the human rights pillar currently receives only around 3% of the regular budget) or, perhaps, by establishing a new 'human rights resilience trust fund' to receive voluntary contributions (from States and the private sector).

- A number of speakers acknowledged that it would, of course, never be possible to prevent all human rights violations. However, by building domestic human rights capacity and resilience, it will be more likely that such violations remain **isolated incidents**, rather than evolving into patterns of more systematic abuse.

- While building societal resilience means making progress across all of a State's human rights obligations and commitments, it was pointed out that particular emphasis should be placed on **strengthening national 'human rights protection structures**.' Participants drew particular attention, in that regard, to the roles of NHRIs, domestic civil society

and the free press. These independent institutions or groups play a crucial role as 'watchdogs' – making sure human rights violations are properly dealt with by the State, and as 'domestic early warners' – raising the alarm should patterns of violations begin to emerge. On the latter point, one participant noted that 'whistle-blowers' inside government can also play a vital early warning role, and should be protected under domestic law.

- **Human rights education and training** were raised as a key part of any effort to build domestic human rights resilience. Individual representatives of the 'State,' including police officers, judges and parliamentarians, must know about and understand the State's human rights obligations if they are to respect, promote and protect those rights.

- It was repeatedly emphasised that 'building resilience does not only mean strengthening the enjoyment of civil and political rights, it also – and equally – means **strengthening economic, social and cultural rights**.' Indeed, according to one speaker, a common characteristic of all the major crises and conflicts of the past twenty years is that they have all featured, as a key root cause, the systematic violation of economic, social and cultural rights – especially through corruption, nepotism and the concentration of wealth in the hands of narrow elites.

- Linked with this point, it was suggested that **the 2030 Agenda and the Sustainable Development Goals** provide an excellent vehicle to strengthen domestic resilience.

- Glion IV heard from a number of countries, especially from Africa, about the importance of adopting '**long-term strategies for prevention**, strategies that emphasise building human rights capacity and resilience. For example, it was noted that in the 1990s, there was some concern in the UN Commission on Human Rights about 'resilience gaps' in Togo – possible structural weaknesses in the country's human rights system. Thus, a UN human rights presence was established, which worked with the authorities on legislative reform, on strengthening national institutions, on human rights education and training, and on public awareness campaigns. This office has had 'and enormous positive impact on human rights in Togo – and we have benefited from that decision ever since.'

Item 10 reform

- It was pointed out that the growing interest in reform of item 10 is closely linked not only with the 'prevention agenda' but also with the Council's emerging '**implementation agenda**.' In

that regard, the emergence of so-called national mechanisms for implementation, reporting and follow-up (NMIRFs) offers an important opportunity for the international community to better identify and understand the precise capacity-building / resilience-building needs of a given State, and to tailor and target international support to address particular 'implementation gaps' or 'resilience weak spots.'

- One speaker pointed out that before embarking on any reform of UN human rights technical assistance and capacity building, it is important to have clarity as to what we mean by technical assistance and capacity building, included in the context of prevention. In this regard, it was suggested that the aim of UN capacity building support should be to help States bring national laws, policies, practices and institutions into line with international human rights norms, especially through **improved implementation of the recommendations of UN human rights mechanisms**.

- It was also suggested that the delivery of international support must be a common effort involving the international system as a whole: OHCHR, UNDP and other UN agencies and programmes, together with international financial institutions and bilateral development partners: 'the key word here is coherence.' It was proposed that the Council could help promote such coherence by providing a space or platform for States to request international human rights support and for the international community to then 'match' that request against available technical expertise and capacity-building support. Such a platform could also provide a space for States to report on progress, and to exchange experience and good practice. This could, for example, take the form of a **voluntary annual platform for human rights dialogue, capacity building and resilience**.

- The Council could also make better use of existing mechanisms, for example, 'State requests for international support could be more systematically fed into the **Universal Periodic Review [UPR]** process.' Likewise, States, UN country teams, NHRIs and NGOs could be encouraged to include the identification of 'resilience weak spots' in their reporting under the UPR.



**WHAT ARE THE
PRECISE MEANS
THROUGH WHICH
THE COUNCIL MIGHT
OPERATIONALIZE
ITS MANDATE
TO RESPOND
PROMPTLY TO
HUMAN RIGHTS
EMERGENCIES?**

WHERE ARE WE TODAY?

Under the second part of paragraph 5f, the Council is mandated to 'respond promptly to human rights emergencies.' To again borrow from medical parlance, this is known as 'secondary prevention.'

A core mandate of the Council, as determined by UN Heads of State and government at the 2015 World Summit, and reaffirmed by the General Assembly in resolution 60/251, is to address situations of violations of human rights, including gross and systematic violations. GA resolution 60/251 states that in doing so, the Council 'shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation.'

However, after eleven years of operation, there are significant question marks over the degree to which the Council is fulfilling this core mandate. URG analysis shows that between 2006 and the end of 2016, only 7.5% of Council resolutions were considered and adopted under item 4 (situations requiring the Council's attention). What is more, the Council's resolutions (and relevant mechanisms) have addressed only around a dozen situations under item 4, nearly all of them in Africa, the Middle East and Asia. This suggests the Council's attention is directed more by (geo)-political considerations than by 'the principles of...impartiality, objectivity and non-selectivity.'

It is a similar story with Council mechanisms. Notwithstanding the emergence and development of new mechanisms such as Commissions of Inquiry, the Council has not been able to arrest a historic decline in the number of Special Procedures mandates focused on situations.

The reasons for this are manifold and complex. However, a central issue is one of politicisation. On the one hand, only a few States have the political will and strength to place situations on the Council's agenda, and even for these States it is no easy task to generate sufficient support to secure the adoption of a strong item 4 text. This means, by extension, that they have to expend their limited political capital on a few situations where they have a particular geopolitical interest. On the other hand, some countries vehemently reject what they see as the Council's 'default method' for dealing with situations – i.e. (in their view) 'naming and shaming' the State concerned (i.e. establishing monitoring and reporting mechanisms, reporting back on serious violations, publicly debating those violations and demanding accountability).

Developing an effective policy framework for prevention holds out the possibility of moving beyond these decades-old divisions, and thus improving the Council's capacity to impartially and objectively deal with human rights violations. By emphasising early response and early engagement, by seeking (at least at first instance) to reach out to the State and region concerned, and by developing tailored mechanisms designed to generate trust, identify common ground, and prevent escalation, such a framework could significantly strengthen the delivery of the Council's protection mandate. That is not to say prevention should replace 'traditional item 4 approaches' to violations – it should not. Such approaches remain vitally important, especially in situations where a State has committed serious human rights violations and has rejected meaningful cooperation and dialogue with the international community. Rather, it is to point out, as one participant noted at Glion IV: 'yes the Council possesses tools and mechanisms for addressing situations of concern; but the tool box is very limited and the tools are generally quite blunt [...] We should therefore complement them with new approaches and tools premised on engaging the country concerned at the early stages of a developing emergency.'

When considering such a recalibration, as well as the development of new procedures and mechanisms, participants at the three pre-Glion human rights dialogues and at the Glion retreat itself considered three stages of response to human rights emergencies, namely: early warning; early consideration and early action; and early engagement / tailored action.

ISSUES FOR REFLECTION AND OPPORTUNITIES FOR CHANGE

- According to a number of speakers, when faced with emerging situations of concern, the Council must shift from its current 'wait and see' or 'don't rock the boat' approach, 'to one premised on **early action**; and from an approach that emphasises confrontation to one that emphasises – at least in the first instance – **constructive engagement**.' Another speaker agreed, adding that the key principle guiding the Council's response should not be 'non interference' but rather 'non indifference.'



Early warning

- There was wide agreement at Glion IV that the international system now generates and has access to **a broad range of early warning information**. However, too often the UN's human rights pillar does not receive this information. For example, it was noted by one speaker that many national-level NGOs submit early warning information directly to the local UN presence (e.g. peacekeeping mission, UN country team) but 'because these are large bureaucracies, the information seems to get lost – certainly it does not seem to make it to the Human Rights Council in Geneva.' Other NGO representatives agreed: 'When we submit urgent information we usually have the impression that it has disappeared down a black hole – never to be seen again.' To many human rights defenders and victims, 'the UN [local presence] appears to be an organisation that is happy to receive information, but less happy to provide answers or updates.'
- Others noted that even when early warning information is 'passed on,' it is often transmitted to 'New York' and not 'Geneva.' This underscores the importance, according to some, of having a **'dedicated UN human rights presence'** in every UN country team and peacekeeping operation; and, secondly, of the UN human rights pillar (especially OHCHR) receiving early warning information directly from the field (i.e. not via colleagues in New York who may not see human rights as a priority). Others agreed, but pointed out that it should not, in principle, be an issue for human rights data to be sent initially to 'New York' – providing there are clear and well-established **channels of information exchange** with 'Geneva.'
- One speaker noted that 'receiving early warning information directly from the field' does not only refer to OHCHR. The Human Rights Council itself can also directly receive such information – via its **Confidential Complaints Procedure**, even though there are questions marks over how well this is working in practice.

- Similarly, there was widespread acknowledgment that **Special Procedures country missions and communications** generate a wealth of useful early warning information, but that information is often lost amongst the weight of reporting by mandate-holders. It was suggested that Special Procedures could develop their own system-wide early warning procedure and, where the system finds that information at its disposal points to a potential crisis, the Chair of the Coordination Committee could bring that information directly to the Council's attention.

- There was wide agreement that **OHCHR must be the central institution responsible for 'collating, sifting and processing' early warning information**. State representatives were clear that in order for them to rapidly consider and take action on early warning information from the field, that information first has to be assessed and 'packaged' by OHCHR so that it is 'easily digestible and actionable by member States of the Council.'

- Some participants questioned, however, whether OHCHR has the capacity to analyse or organise the large amount of early warning data generated each day by local civil society actors, the UN system, Special Procedures etc. To overcome this challenge, it was suggested that donors might fund the creation of a horizontal (so it can receive information from all divisions, branches and field offices of OHCHR) **'early warning / prevention unit in the Office.'**

- One civil society participant noted the significant challenges involved in collating and analysing early warning information. 'There will always be **different narratives** coming from different civil society actors and NGOs in a given State (as well as from civil society actors in the country's diaspora). Sometimes these accounts may even be contradictory. This means that whichever part of the international human rights system is charged with gathering, analysing and drawing conclusions from that information must have the capacity to sift large amounts of data and accurately identify patterns of violations.'

- Another speaker highlighted the importance, in order to promote the accuracy and objectivity of early warning information, of **'early screening'** of civil society information by A-status NHRIs. Some NHRIs (e.g. Colombia) have been able to develop highly sophisticated information gathering and early warning systems. 'In 2016, Colombia's NHRI produced over 30 detailed early warning reports, which were passed onto national and international partners.'

- Once early warning information has been processed and analysed, and where OHCHR believes there is cause for

concern, the High Commissioner should be mandated (e.g. through a Council resolution) to bring that situation to the attention of the Council – through **urgent oral briefings**. The High Commissioner could recommend to the President of the Council to hold the briefing in either a confidential (i.e. Council members only) or public setting.

- It was pointed out that the Council has already moved in the direction of convening such briefings. In follow-up to Glion II, the then President of the Council worked with OHCHR to arrange **'informal conversations with the High Commissioner.'** Three of these have been organised so far – too few and too infrequent to be the answer in of themselves, but, according to one participant: 'on the few occasions these have been organised, they have been very useful.'

- In addition to the participation of the High Commissioner / Deputy High Commissioner, urgent oral briefings could also involve the relevant **UN Resident Coordinator, representatives of the relevant regional organisation, the relevant NHRI**, etc.

- On the last point, a number of speakers at Glion IV emphasised the vital importance of securing **civil society space** at the Council so that national NGOs and other civil society representatives can bring 'on the ground' early warning information and perspectives directly the attention of member States, and so that – in turn – the Council has all the (latest) information it needs to take a decision. For the same reason, the pressing need to respond robustly to reprisals against human rights defenders was repeatedly raised.

Early consideration and early action

- Participants were reminded that 'early warning is not prevention – early warning is but one stage along the road to prevention.' Thus, based on early warning information relayed by the High Commissioner, States must be in a position to **collectively and rapidly consider what action – if any – the Council should take**. Unfortunately, 'there is little or no space on the Council's regular agenda to consider, in detail, early warning information about potential situations of concern.' 'Thus, a key question is, where could such deliberations take place, and what might a suitable space look like?' One speaker suggested that any consideration of necessary follow-up action (if any) could simply take place in the context of the urgent oral briefings (see above), especially if those are held in confidential (i.e. members only) setting.

- In considering information about a possible human rights emergency, the Council will also need to have procedures

in place to encourage member States to assess the situation based on its merit, rather than on political considerations. In order to help in that regard, the Council might further develop a set of objective criteria (e.g. the **'Irish Principles'**²) against which emerging crises can be assessed, to help delegations decide whether preventative action would be useful or not. Such criteria might also help determine the 'threshold of violations' (type and magnitude) that would warrant an international response (which otherwise would be a highly subjective determination). Notwithstanding the potential importance of the 'Irish Principles,' there was a view that signing-up to those Principles is not enough – States must have the political will to apply them and be guided by them in practice.

- A combination of the 'Irish Principles' and the creation of a confidential space for the consideration of early warning information may also help **widen the number of States** willing to call for a situation to be addressed. As one speaker noted: 'To-date, nearly all Council Special Sessions and country specific resolutions have been led by only a handful of States. When I ask other States why this is the case, they explain that they are too small and don't want to take the political risk.'

Early engagement / tailored mechanisms

- Council action must take place, wherever possible, through cooperation and dialogue with the concerned State, its neighbours and relevant regional actors. The Council does not currently possess a space for such **'early engagement.'** That space could be, at least at first instance, a confidential space – in order to build trust (outside the Council's main chamber). The format would aim to provide a space for dialogue – to better understand the situation and identify ways in which the Council and/or its mechanisms could usefully intervene to prevent a further deterioration.

- Another participant agreed: 'We need a **'safe space'** to have difficult but necessary conversations with the concerned country, with relevant regional actors, and with States with 'opposing' views to our own, on the best course of action.' Moreover, such a space should not be a one off, but rather a regular series of meetings. 'Prevention is a process, not a single moment in time.'

- Other participants, however, expressed doubts about the creation of such 'safe spaces' for engagement, arguing that some States lack the political will to engage and address

evolving situations ‘in a meaningful and non-tactical manner.’ In reply to this argument, it was noted that the Council should not start from the assumption that ‘States are bad.’ ‘The moment a concerned country perceives that the Council is adopting an adversarial approach, the door to cooperation will be closed shut.’ What is more, ‘even if the Council’s initial overtures are indeed rebuffed or are unsuccessful, it will still have the option of reverting to more ‘traditional item 4 approaches.’ Others supported this latter point: **‘for prevention to work, at some point you need to engage the country concerned in a long term process of cooperation.** If we begin from the position that a given State cannot be trusted and lacks the political will to cooperate, we create a self-fulfilling prophecy.’

- Another summed up the debate: ‘once we have the information before us and have decided to act, what then? I believe the answer must, at a first stage, be **quiet diplomacy** – a confidential effort to reach out to and understand the situation of, and to build trust and offer to work with, the State concerned [in order] to prevent further violations. The President and Bureau of the Council can and should play a central role in that regard.’

- On the question of whether the Council requires **new types of mechanisms** to respond promptly and effectively to human rights emergencies or could rely on existing tools, participants were somewhat divided, although most agreed with the argument that ‘we may have some blunt tools at our disposal but they need sharpening, and, moreover, they need to be supplemented by new tools specifically designed for the task at hand.’ Another speaker further elaborated on this point, saying: ‘for prevention to work, we need to recalibrate our toolkit to engage concerned countries at an early stage – before positions have hardened.’

- What might those ‘new tools’ look like? A range of proposals were put forward at Glion IV, including: ‘missions that are immediately operational and made up of relevant thematic Special Procedures,’ **‘Good Offices’** missions by the High Commissioner and/or President of the Council / Bureau, or preventative diplomacy missions led by special envoys of the President. There should be ‘no one size fits all – every situation will demand a specific response.’ In that regard, it was pointed out that a prevention mission would not necessarily need to address all human rights concerns across the whole country – it could be a ‘hybrid mission’ that would address particularly acute issues in certain parts of the country (for example, ‘there was talk at one point of a Council mission to look at sexual violence in the eastern Congo.’)

- A number of speakers underscored the point that establishing and dispatching such ‘Good Offices’ missions is something that could be done fairly easily – providing there is political will to do so. Others took a more forceful line, arguing that Council prevention or ‘Good Offices’ missions ‘are clearly a good idea and **should have happened a long time ago.**’ Indeed, the first President of the Council intended to conduct such missions in 2006-2007, ‘though in the end he ran out of time.’ In the case of the Security Council, it was pointed out, ‘urgent visiting missions by ambassadors, which have now become standard, were originally constituted by the Dutch President of the Council as a practical step to better respond to the emerging crisis in Timor Leste.’

- Some participants pointed to the Council’s intervention in Burundi as an example of what is possible when States are creative and determined to make a difference. According to a speaker familiar with the work of the **UN Independent Investigation on Burundi** (which, despite its somewhat misleading name, was focused on prevention and involved both UN and African Special Rapporteurs), ‘the mechanism did, I believe, succeed in preventing a deeper deterioration of the situation.’

- Inspired by the example of the Independent Investigation on Burundi, one participant suggested that States establish a small **‘early response fund’** that could be used to rapidly dispatch prevention missions made up of existing Special Procedures mandate-holders, or missions of the President / Bureau / High Commissioner.

- It was pointed out that when constituting such tools / mechanisms, it is important to bear in mind that a State is not only the government. To play an effective ‘prevention role’ any ‘Good Offices’ mission would need to also reach out to and work with **domestic civil society** (including lawyers, academics and religious leaders) and the country’s **NHRI**. ‘These can be important partners in helping to peacefully resolve an emerging crisis.’

- One speaker noted that Council prevention missions would also play an important role in **reassuring the victims of violations and domestic civil society** that ‘the international community cares about what’s going on, and is determined to help.’ ‘Merely by showing the ‘face’ of the Human Rights Council, such a mission would help victims. When you’re one your own in Goma or Kinshasa, Geneva can seem terribly far away.’

- When establishing and dispatching new ‘prevention’ mechanisms to the country concerned, it is vitally important to involve relevant **regional and sub-regional organisations**, at all stages. These organisations are far better placed than the UN to understand local contexts, local politics, and local cultural specificities. Their involvement can also help generate trust between the UN and the concerned government. Indeed, it was argued that in many cases it might be more appropriate for regional or sub-regional bodies to take the lead, and for the UN/Council to play a supportive role. For example, it was pointed out that ‘in the cases of both Burkina Faso and the Gambia, international efforts were led by ECOWAS.’

- In order to promote and strengthen such coordination, a number of speakers called for more systematic contacts between the Council and regional human rights organisations. For example, the President of the Council could conduct **official visits to the headquarters of relevant regional organisations.** A representative of a regional organisation welcomed these proposals, and suggested that more systematic contacts between the Council and regional bodies should be guided by ‘the 3 Cs of coordination, coherence and cooperation.’

- A further point was about **‘strategic communications.’** The Council and OHCHR must get better at ‘managing expectations of people on the ground, of explaining what the Council can and cannot do, and of explaining the limits of its powers.’ ‘They also need to get better at communicating progress, providing regular updates (including to victims), and highlighting success stories.’ More regularised (inside and outside of regular session time) ‘statements by the Council President (as opposed to presidential statements - PRSTs) could be one way of communicating information about the Council’s evolving response to emerging situations of public concern.’

Framework proposal

- According to a number of participants, **‘trust is an essential precondition for any effective preventative action.’** This echoes the comments made by the UN Secretary-General, who has stated that: ‘international cooperation for prevention, and particularly for translating early warning into early action, depends on trust between member States and in their relations with the United Nations.’ In order to build and maintain that trust, it was repeatedly noted that ‘States must have confidence that the operationalization of paragraph 5f really does represent a new way of doing things – and that the new approach runs like a vein through all the different stages of prevention [early



warning, early consideration and action, and early engagement / tailored action.]’

- With this in mind, several participants proposed that the Council should adopt a resolution establishing an independent group of eminent persons to consult with all States, in Geneva and New York, as well as with NGOs, OHCHR, the Secretary-General, regional organisations, and other relevant stakeholders, and prepare a **‘comprehensive framework proposal containing the principles, processes and mechanisms needed to effectively operationalize paragraph 5f,’** as well as ideas for how that operationalization should fit within a coherent UN-wide prevention agenda. The group of eminent persons could be made up of independent experts, former UN officials and senior diplomats. The Council would then consider and, hopefully, agree on that framework proposal ‘as a package.’

- It was proposed that, as a first step towards the operationalization of paragraph 5f, interested States could prepare and deliver a **joint statement** on the subject during the 35th or 36th sessions of the Council. Efforts should be made to ensure inclusive discussions on, and wide regional support for, such a statement.

- Another suggestion at Glion IV was to organise, as part of efforts to build a workable prevention policy framework, **‘simulations** where different policy scenarios are presented and we, representatives of the international community, work together to consider and develop effective policy responses.’

HOW SHOULD THE COUNCIL COORDINATE AND COOPERATE WITH OTHER PARTS OF THE UN IN ORDER TO BUILD A COHERENT PREVENTION AGENDA?



WHERE ARE WE TODAY?

Paragraph 5f of GA resolution 60/251 is clear that the Council can and should 'contribute' to prevention, meaning - in effect - that any new Council prevention framework must not be seen in isolation but rather as part of a coherent UN-wide prevention agenda.

UN Secretary-General, António Guterres, has identified the elaboration of such an agenda as a key policy priority. In May 2017, he circulated his 'Vision' on prevention - essentially his initial thoughts on what a UN wide prevention strategy should look like - which highlighted, inter alia, the importance of 'building trust with member States,' of overseeing a 'surge in preventative diplomacy,' and of overcoming fragmentation across the UN system and building a coherent approach across all three pillars of the Organisation.

The Secretary-General also focused on the issue of coherence during speeches to the Human Rights Council in February 2017 and to the Security Council in April 2017, calling on all parts of the UN system to 'support my reform proposals and strengthen them with their own.' In his speech to the former, he drew particular attention to the potential contribution of the UN's human rights pillar, reminding Council member States of their 'pivotal [role in] prevention - sounding early warnings of crises,' 'tackl[ing] root causes of conflict, and react[ing] earlier and more effectively to address human rights concerns.'

Both of the Secretary-General's key points - the need for a coherent UN-wide prevention agenda, and the central position of the Human Rights Council within that agenda - were repeated by States and NGOs during the pre-Glion policy dialogues and the Glion IV retreat. It was pointed out that the Council's mandate, prerogatives and strengths all point to it playing a leading role in prevention. Of the UN's three Councils, it is the Human Rights Council that is best placed to work with States to build domestic human rights capacity and resilience; it is the OHCHR and the Human Rights Council that are best placed to receive and make sense of early warning information about patterns of human rights violations; and it is the Human Rights Council that is best placed to 'respond promptly to human rights emergencies' by reaching out to and engaging with the concerned State.

However, today there is a real risk that the Council will never get to fulfil this central role and that, consequently, the Secretary-General's prevention agenda will lack coherence and

will ultimately fail. The reasons for this are two-fold. First, the Council itself is yet to put in place a comprehensive prevention policy framework, in line with its mandate under paragraph 5f of GA resolution 60/251. Second, in his 'Vision' on prevention, the new Secretary-General fails to mention the Human Rights Council or OHCHR once. Similarly, his speech during April's Security Council debate on prevention failed to mention the mandate or the role of the Human Rights Council.

This apparent ambivalence about the role of the human rights pillar as part of the UN's emerging prevention agenda can also be discerned at country-level (i.e. UN Resident Coordinators and Country Teams). Here, despite some progress following the launch of the 'Human Rights Up Front' (HRUF) initiative, it appears that human rights resilience-building is still not a priority concern for UN development assistance programmes, and early warning information is still not systematically collected and transmitted to the relevant organs and agencies of the UN (i.e. the Human Rights Council and OHCHR).

With the above mind, it is vital that as the Council develops its new policy framework on prevention (i.e. the operationalization of paragraph 5f), it does so in a manner that is consciously 'joined up' with other relevant parts of the UN (both 'upstream' parts such as UN country teams, and 'downstream' parts such as the Security Council and the Peace-building Commission); and that it proactively reaches out to and involves the Secretary-General in that regard. States will also need to be careful to ensure that as the Council seeks to 'contribute' to UN-wide prevention efforts, it does so in a manner that is complementary to other related initiatives such as the 13th June Appeal, launched (in 2016) by Switzerland and 69 other States. That Appeal calls, inter alia, on countries to use their membership of both the Human Rights Council and the Security Council to put human rights at the heart of prevention.

ISSUES FOR REFLECTION AND OPPORTUNITIES FOR CHANGE

- First, looking 'upstream' at the OHCHR's and the Council's relationship with UN field presences, including Resident Coordinators and Country Teams, one participant at Glion IV noted that efforts are underway, at UN headquarters, to



'synchronise HRUF with the Secretary-General's prevention agenda, which could help to promote system-wide coherence and to consolidate the role of the human rights pillar.'

- Related to the above point, **UN Regional Quarterly Reviews (RPR)** in New York represent an important opportunity to bring the whole UN system together to consider the full range of information on developments in a country, and to identify potential early warning signs of future instability.
- Turning to the Human Rights Council's 'downstream' prevention relationships, there was a strong view that the Council must build a more coherent relationship with the **Security Council**. There was agreement that such a relationship must be based on respect for the distinct mandates and prerogatives of the two bodies.
- It was noted that 'the Security Council has its own share of challenges, but it is, at heart, a pragmatic body. It will accept and use useful information / inputs.' Thus, what is important is for the Human Rights Council to provide **relevant and high quality human rights analysis and information**. 'For that to happen, the Human Rights Council needs to become a more

flexible body. Its agenda must be flexible enough to allow for the rapid consideration of emerging situations of concern, and for early engagement with States through cooperation and dialogue.'

- There must also be more thought given to **how the Human Rights Council then feeds such analyses** - in a predictable, reliable and systematic manner - into the deliberations of the Security Council. Indeed, according to one speaker, the transfer of such information is worse now than it was during the time of the Commission on Human Rights. Then, Commission reports were regularly submitted to, and country Special Rapporteurs would regularly brief, the Security Council. Even thematic Special Procedures would sometimes brief the Security Council following particularly important country missions. 'Now these good practices seem to have stopped.'
- Others agreed that in a number of respects, **the relationship between the Human Rights Council and the Security Council seems to be going backwards** - becoming more confused instead of more coherent. For example, it was noted that instead of the Human Rights Council, as per its mandate, taking the

lead on receiving and considering early warning information about human rights violations, taking initial preventative steps and then, if necessary, providing information to the Security Council, what often happens is the reverse. Oftentimes the Security Council will itself analyse information about human rights violations, and then, where necessary, try to intervene. Where that fails (e.g. when a Permanent Member of the Council uses its veto), the situation is 'passed' to the Human Rights Council - 'which is thus reduced to a kind of proxy.' One speaker argued that the only way to resolve such incoherence is for the Human Rights Council to effectively operationalize its prevention mandate, and thus respond promptly to emerging human rights emergencies, (meaning, in turn, that the Security Council would not need to).

- Notwithstanding, others **urged caution in drawing strong lines between the Human Rights Council and the Security Council**. This is, it was noted, an incredibly sensitive subject for many delegations. Indeed, many of the most difficult periods in the Human Rights Council's history have occurred in the context of seeking to engage the Security Council, or in the context of the latter 'passing on situations [to the Human Rights Council] that it should have been dealt with but was unable to do so [e.g. because of the use of a veto].'
- The view was expressed that, 'if the Human Rights Council moves forward carefully and consensually, the successful operationalization of paragraph 5f is a real possibility, and that could in turn completely change (for the better) political dynamics inside the Council.' However, 'when looking forward to such a prospect, there is no doubt that the **'darkest cloud on the horizon'** is division over the Council's relationship with the Security Council.

- The relationship between the Human Rights Council and the **Peace-building Commission (PBC)** needs to be 'fleshed out.' 'There is little understanding of the PBC in Geneva and little understanding for human rights in New York.' One participant considered that there are important opportunities to integrate a human rights perspective into the work of the PBC. For example, 'the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence was recently invited to speak to the PBC about the situations in Sri Lanka and Burundi, and all sides saw this as extremely useful.'
- The **'sustaining peace'** resolutions were also highlighted as important: 'early warning is a key part of the sustaining peace agenda, and the Council is ideally placed to contribute such elements.' Another participant agreed, arguing that

the 'sustaining peace' resolutions represent 'an enormous opportunity' for the human rights pillar to link its work on prevention into the wider UN prevention agenda. This opportunity is reflected in the 13th June Appeal which states: 'the Human Rights Council has a key role to play at every stage of the prevention continuum: building respect for human rights to sustain peace, supporting peaceful conflict resolution; monitoring human rights violations [...] as early warning to intensify prevention; [...] capacity building as well as monitoring to sustain peace.'

- The Human Rights Council's relationship with the wider UN includes not only the security pillar but also the **development pillar**. Violations of economic, social and cultural rights can be just as much a cause of crises as can violations of civil and political rights. In that regard, emerging Human Rights Council initiatives on human rights and the SDGs are important.
- Looking at next steps, there was wide agreement that member and observer States of the Human Rights Council should urgently **'reach out' to the Secretary-General** and his team, in order to organise initial 'scoping' meetings or consultations, in both Geneva and New York, about the operationalization of paragraph 5f of GA resolution 60/251 and about how that effort can be taken forward in a way that contributes to and 'fits in' with the Secretary-General's wider prevention agenda. It was also suggested that stakeholders should provide their views and ideas to the Secretary-General in writing - including by transmitting an early draft of the Glion IV report to his Office.



NOTES

1. 'A Needless Toll of Natural Disasters,' Op-Ed, Boston Globe, 23 March 2006, by Eric Schwartz, UN Secretary General's Deputy Special Envoy for Tsunami Recovery.

2. Proposed in a June 2016 joint statement to the Human Rights Council, delivered by Ireland on behalf of a cross-regional group of 32 States.

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