

BY INVITATION

POLICY PAPER

THE HUMAN RIGHTS COUNCIL AS A SUBSIDIARY ORGAN:

**Evaluating its relationships with the
UN General Assembly and UN Security
Council**



UNIVERSAL RIGHTS GROUP

October 2016

The URG aims to provide an informal space for the sharing of ideas on international human rights policy. To help contribute to that goal, the URG regularly invites, or provides a platform for, experienced officials and thought-leaders to share their perspectives on important issues of the day. Here, in the first URG Policy Paper, Emmanuel Bichet and Stephanie Rutz (former members of Switzerland's delegation to the Human Rights Council) offer their reflections on the interaction between the Human Rights Council and the General Assembly (its parent body) and the Security Council. The views expressed in this paper are those of the authors, and do not necessarily reflect those of the Swiss Federal Department for Foreign Affairs or the Universal Rights Group.

ABOUT THE AUTHORS



Emmanuel Bichet

Emmanuel Bichet is a Swiss diplomat. From 2010 to 2014, he served as the head of the human rights section of the Permanent Mission of Switzerland to the United Nations Office and to the other International Organizations in Geneva. He was particularly focused on Syria, Bahrain, Iran, transitional justice, and business and human rights. He was also in charge of the relations with the Office of the High Commissioner for Human Rights. In 2014, he was transferred to the Swiss Mission to the European Union (EU) in Brussels as Second Deputy Head of Mission.



Stephanie Rutz

Stephanie Rutz worked under Emmanuel Bichet for the Permanent Mission of Switzerland to the United Nations Office and to the other International Organizations in Geneva, as a delegate to the Human Rights Council. Since leaving the Swiss Mission in Geneva, she has completed a peacekeeping mission with the Swiss Armed Forces in the Balkans (2016), where she worked as an observer in a Liaison and Monitoring Team. She has held research positions with The Democratic Progress Institute, and the Next Century Foundation.

PREFACE

As the United Nations (UN) Human Rights Council ('the Council') celebrates its tenth anniversary in 2016, this policy paper aims to provide an overview of the institutional issues relating to its status as a subsidiary body within the UN system. In light of its subsidiary status, the paper explores the Council's synergies and interactions with its parent body – the General Assembly (GA) – and the UN Security Council (UNSC).

The paper addresses important questions regarding the structural positioning of the Council, its impact, and its potential for future growth within the UN system, including: What is the institutional architecture in which the Council finds itself, and how does it exert its influence to mainstream human rights within the UN system? To what extent is there overlap between the Council and other UN organs? What can be done to reduce bureaucratic overlap, and strengthen synergies, in regards to human rights work within the UN system?



BACKGROUND ON THE UNITED NATIONS HUMAN RIGHTS COUNCIL

The Human Rights Council ('the Council') is the main intergovernmental body within the United Nations (UN) system responsible for 'promoting universal respect for the protection of all human rights and fundamental freedoms for all,' and for addressing human rights violations, including gross and systematic violations. The Council was created on 15 March 2006 by UN General Assembly (GA) Resolution 60/251, which decided 'to establish the Council, based in Geneva, to replace the Commission on Human Rights' ('the Commission').¹

The Council, which comprises 47 members apportioned by geographic region, meets for three regular sessions per year (March, June and September) for a minimum of 10 weeks. It can also hold special sessions at the request of any Council member, with the support of one third of the Council's membership.

The Council's first session took place from 19th - 30th June 2006. One year later, the Council adopted its 'Institution-building package' (resolution 5/1), which details the procedures, mechanisms, and structures that form the basis of its work. Among those mechanisms are the new Universal Periodic Review (UPR), the Advisory Committee, and the Complaints Procedure. The Council also assumed the former Commission's oversight of the Special Procedures.

Despite the formal recognition of human rights as one of the three main pillars of the UN, alongside peace and security

and development,² the Council was not granted the status of a principal UN organ. Rather, resolution 60/251 established the Council as a subsidiary organ of the GA (while the former Commission had been overseen by the UN Economic and Social Council (ECOSOC)).

Despite its subsidiary status, the Council enjoys a considerable degree of procedural and substantive autonomy.

The Council enjoyed considerable freedom in developing its own procedures and methods of work, negotiating and adopting its own rules of procedure, with resolution 5/1, which also determined the functioning of the UPR, Special Procedures, the Advisory Committee and the Complaints Procedure. Similarly, during the review process of the Council in 2010/11, the Council itself established an intergovernmental working group on the review of its work and functioning, and adopted the outcome of the review with resolution 16/21. The GA merely approved the outcome resolution with resolution 65/281 of June 2011.

The Council also maintains considerable autonomy in the substance of its work, derived from its broad and flexible mandate (laid out in GA resolution 60/251) to promote 'universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind in a fair and equal manner.'³

Importantly, the Council is also mandated to encourage 'the effective coordination and the mainstreaming of human rights within the United Nations system.'⁴

This paper will explore the relationships the Council enjoys with GA and the Security Council (UNSC), and the seemingly increasing prominence of human rights in the work of those two principal organs of the UN.



RELATIONSHIP WITH THE GENERAL ASSEMBLY (GA)

Due to its subsidiary status, important institutional links exist between the Council and its parent body, the GA. As well as the GA plenary, the Council also directly interacts with the GA's Third and the Fifth Committees.

GA Plenary

Elections

The GA retains the important function of electing Council members. The 47 members of the Council are elected directly by secret ballot by UNGA member States. Council membership is based on equitable geographical distribution, and lasts for a period of three years with no possibility for immediate re-election after serving two consecutive terms. GA resolution 60/251 clearly stipulates that 'when electing members of the Council, Member States shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto.'⁵

The GA also has the authority to 'suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights,' with a two-thirds majority.⁶ To date, this authority has been exercised just once – in the case of Libya (suspended between 1 March 2011 and 19 November 2011).⁷ Interestingly, in this one case, the initiative came from the Council itself, rather than from the GA. With resolution S-15/1, the Council 'recommend[ed] that the General Assembly, in view of the gross and systematic violations of human rights by the Libyan authorities, the application of the measures foreseen in paragraph 8 of General Assembly Resolution 60/251.'⁸

Libya's suspension was temporary and ended, as it began, following a request of the Council 'that the General Assembly lift the suspension of the rights of membership of Libya in the Human Rights Council at its current session.'⁹ The Council argued that in light of Libya's commitments to cooperate with relevant international human rights mechanisms established by the Council in resolution S-15/1, it should be reinstated as a member of the Council.

Reporting

The Council is required to report to the GA on an annual basis, covering the period from 1 October to 30 September. The Council's report to the GA contains a compilation of all the resolutions that have been adopted during the relevant period.¹⁰

The Council's report initially covered a period of one year, from 1 August to 30 June. This, however, created problems as the President of the Council (elected at the end of June) had to present the report to the Assembly later in the year without having presided over any of the three Council sessions the report covers, as the sessions are held in September, March and June. During the review process for the Council in 2010/11, it was decided to adjust the Council year to the calendar year (1 January to 31 December)¹¹ so as to allow the President of the Council to report to the Assembly on the period from 1 October to 30 September. The President therefore presents information to the GA covering all three Council sessions that he or she chaired. Formally, the Assembly validates the report via a short resolution prepared in the Third Committee, which reads as follow: 'takes note of the report of the Human Rights Council including the addendum thereto, and its recommendations.'¹²

The report is presented by the President of the Council him/herself to both the plenary of the GA and its Third Committee. The Third Committee also holds an interactive dialogue with him/her (see below).¹³ This process has been altered in recent years. For example, while originally the Council President would present the report from the desk of his/her delegation, the 2011 review decided that, as President of the Council, he/she should address the GA from the podium. This direct reporting is deemed by some to be a step forward from the days of the Commission when the latter's reports would have to be sent to the GA via ECOSOC (the latter having been the Commission's parent body).

Recommendations

The Council was also mandated, by resolution 60/251, to 'make recommendations to the General Assembly for the further development of international law in the field of human rights.'¹⁴ Its predecessor, the Commission, made significant progress in this regard, instigating the development of the key international human rights instruments, including the 1948 Universal Declaration on Human Rights and the 1966 Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights.

The Council has made important progress in this area of its mandate in its first ten years. It has adopted and submitted a range of important instruments to the GA (all of which have been adopted): the International Convention for the Protection of all Persons from Enforced Disappearances; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on a communication procedure; and the Optional Protocol to the Convention on the Rights of the Child on a communication procedure. The Council has also submitted a number of important soft law instruments to the GA for adoption, such as the United Nations Declaration on Human Rights Education and Training and The Guiding Principles on Business and Human Rights.



Third Committee

Overlap and synergies

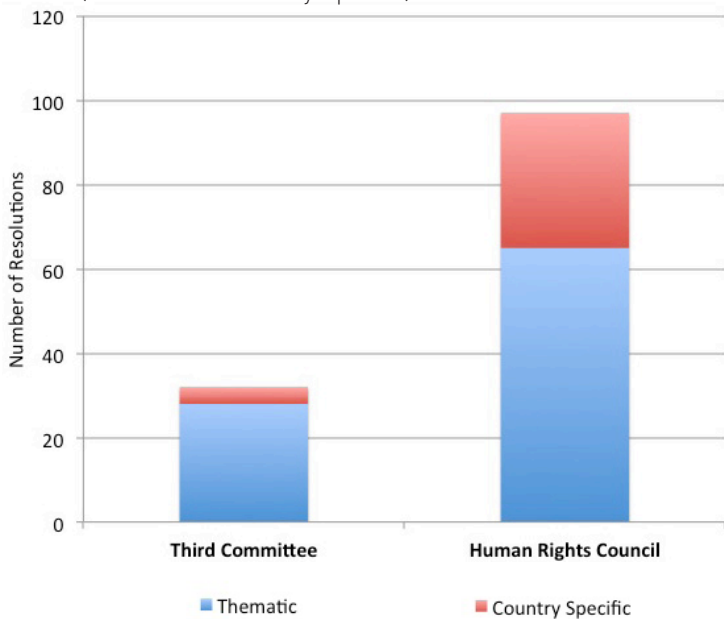
In 2005, then UN Secretary-General Kofi Annan argued that the Council and the Third Committee should play distinct roles when it comes to addressing human rights issues. Annan felt that the Council should deal with analytical reflections and in-depth analysis of the substance of the different human rights issues, while the Third Committee should mainstream the conclusions and recommendations of the Council throughout the entirety of the UN system, allowing for the '[rationalisation] of the agenda of the Third Committee.'¹⁵ Council resolution 5/1 underlined the importance of avoiding 'unnecessary duplication' between the two bodies.¹⁶

In reality, however, there is a considerable degree of substantive overlap between the work of the two organs. The Third Committee deals with many of the same human rights issues as the Council, though its mandate is far broader than the Council, encompassing a broader range of social, humanitarian, and cultural issues.

Like the Council, the Third Committee adopts thematic and country-specific resolutions, which are then formally approved by the GA. These are, however, more limited in number and tend to focus more on thematic – rather than country-specific – issues. In 2015, for example, the Third Committee tabled 32 resolutions under its Item 72, 'promotion and protection of human rights.' Just 4 of those resolutions related to country situations (13%).¹⁷ The Council, meanwhile, adopted 97 resolutions, decisions and Presidential Statements (PRSTs) in 2015, 32 of which addressed specific countries (33%).¹⁸

Human Rights Council and Third Committee resolutions 2015

(Thematic v.s. Country-specific)



Council resolution 5/1 urged States, as authors of Council resolutions, to '[minimize] unnecessary duplication of initiatives with the General Assembly/Third Committee.'¹⁹ Unfortunately, to date, this call for rationalisation remains largely ignored. According to a 2015 study by the Universal Rights Group, in 2012/2013, 40% of all Third Committee resolutions overlap to some extent with their Council counterparts.²⁰ Examples include resolutions on Iran, Myanmar, DPRK, Syria, Torture, Enforced Disappearances, Right to Food, Violence against Women, Migrants and Older Persons.

Many States are conscious of the overlap that occurs across these institutions and are trying to address them appropriately. For example, Turkey and Norway prepared a common statement in the March 2014 session of the Council in order to, inter alia, encourage States to avoid overlapping resolutions on the same subject at the Council and the Third Committee or at least to ensure that their content is complementary and of added-value. In some cases states are working to ensure some level of division of labour. For example, a resolution adopted in the Third Committee might encompass all facets of a topic, while the corresponding Council resolution would look at a specific aspect or context of that topic.

Third Committee Reporting

The Third Committee receives annual reports from, and holds interactive dialogues with, some of the Council's Special Procedures, when their mandates provide relevant information pertaining to reports that will be presented to the Assembly.²¹ It does not, however, have the competence (as the Council does) to create such Special Procedures, though it can create specific mandates of 'Special Advisors to the Secretary General' (SASGs) or 'Special Representatives of the Secretary General' (SRSGs).

One crucial institutional linkage between the Council and the

Third Committee pertains to the interactive dialogue with the Council President, held in the Third Committee following the presentation of the annual report of the Council. The underlying rationale for this dialogue stems from the difference between the Council and the Third Committee with regard to relative composition. As the Council is a subsidiary organ of the Assembly, it should in principle only report to the Assembly. A number of countries advocated, however, that the Council should also report to the Third Committee (itself also a subsidiary organ of the Assembly).

The Council's dual-reporting requirement was institutionalized with the passage of resolution 65/281. With this resolution, the GA decided to 'continue its practice of allocating the agenda item entitled 'Report of the Human Rights Council' to the plenary of the General Assembly and to the Third Committee, in accordance with its decision 65/503.' The terms of the resolution enabled the additional expectation that the President of the Council would 'present the report in her or his capacity as President to the plenary of the General Assembly and the Third Committee,' and that the Third Committee would 'hold an interactive dialogue with the President of the Council at the time of her or his presentation of the report of the Council to the Third Committee.'²² Another change, mentioned above, is that since the review of the Council in 2011, the President of the Council can address the GA from the podium (before he had to do the presentation of his report from the seat of the delegation of her/his State of origin, again to limit the importance of the Council).



It is in fact the Third Committee – and not the GA plenary – that has responsibility for validating the Council's report.

This direct reporting by the Council to the GA is deemed by some to be a step forward from the days of the Commission when the latter's reports would have to be sent to the GA via ECOSOC (as its parent body). In practice, however, it is the Third Committee rather than the GA plenary that validates the report of the Council, via a short resolution (traditionally tabled by the African Group). The GA thereafter 'take[s] note of the report of the Human Rights Council, including the addendum thereto, and its recommendations.'²³ Some express concern that this process diminishes the status of the Council, placing it, effectively, as a subsidiary to the Third Committee, rather than the broader GA. Furthermore, this reporting procedure has resulted in a number of difficulties and tensions in recent years, as the

full UN membership (represented at the GA and its Third Committee) has considered the adoption of the work of 47 member states at the Council.

In 2011, the initial draft resolution, tabled by the African Group in the Third Committee, '[took] note of the report,' but 'noted with concern some of the recommendations contained therein.' The concern related, specifically, to the recommendations of resolution 17/19 on 'human rights, sexual orientation and gender identity,' which was strongly opposed by a number of countries, in particular African and OIC countries. Eventually, the resolution was amended to remove reference to such concerns, but as a result was adopted by vote rather than by consensus.²⁴ In fact, it seems that the report of the Council is more often adopted by vote than by consensus.

In 2013, such tensions resulted in a worrying precedent, whereby the GA upheld a Third Committee decision to defer consideration of a Council resolution. In Autumn 2013, the initial draft resolution (accepting the Council's report) proposed to defer consideration of Council Resolution 24/24 on 'Cooperation with the United Nations, its representatives and mechanisms in the field of human rights.' With resolution 24/24, the Council had asked the UN Secretary-General 'to designate [...] a UN-wide senior focal point to engage with all stakeholders, in particular Member States, to promote the prevention of, protection against and accountability for reprisals and intimidation related to cooperation with the United Nations, its representatives and mechanisms.'²⁵

The African Group argued that the Council cannot intervene at wider UN system level without a prior discussion in the Third Committee, which has universal membership. Those who disagreed highlighted the fact that resolution 60/251 specifically mandated the Council to 'promote the effective coordination and the mainstreaming of human rights within the United Nations system.' In practice, it was also noted, the Council intervenes regularly at the wider UN system level (for example, requesting SRSGs to participate in discussions or funds and programs to engage on specific topics) and requests actions from the Secretary General (for example, the report on death penalty or on reprisals related to cooperation with the United Nations). A number of countries, led by the EU and the USA, put forward an amendment to the proposed resolution in an attempt to avoid setting such a precedent, but lost the vote.²⁶

This concerning, and legally dubious, precedent was confirmed by the GA in December 2013, with resolution 68/144.²⁷ The question on how to proceed in this situation remains unresolved to date. There are fears that this precedent could lead in the coming years to a reopening of the Council's report by the Third Committee on all contested or sensitive issues. For example, in Autumn 2016, with Council resolution 32/2 which decided to appoint an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.

Adoption of Human Rights Council Report

2015	Third Committee	Vote: 111-2-59
	General Assembly	Vote: 121-2-60
2014	Third Committee	Vote: 115-3-56
	General Assembly	Vote: 125-2-56
2013	Third Committee	Vote: 87-66-22
	General Assembly	Vote: 94-71-23
2012	Third Committee	Consensus
	General Assembly	Consensus
2011	Third Committee	Vote: 95-4-60
	General Assembly	Vote: 122-3-59
2010	Third Committee	Vote: 119-2-55
	General Assembly	Vote: 123-1-55
2009	Third Committee	Consensus
	General Assembly	Consensus
2008	Third Committee	Vote: 117-5-55
	General Assembly	Vote: 121-7-58
2007	Third Committee	Vote: 165-7-3
	General Assembly	Vote: 150-7-1

Fifth Committee

Budgetary Inefficiencies

The Fifth Committee of the GA is in charge of administrative and budgetary questions, and is therefore responsible for allocating the necessary funds to the OHCHR in order to allow the Council to function properly and to implement the decisions that are taken by it. This includes costs related to the support offered to Special Procedures and Commissions of Inquiry (COIs); the elaboration of reports; as well as the organisation of meetings, seminars and other events.

During the review process of the Council in 2010/11, the Fifth Committee was asked to treat funding demands by the Council more swiftly.²⁸ Until that point, decisions with financial implications that the Council took during the regular September sessions tended not to be addressed by the Fifth Committee until late the following year. This was because the Council's annual report submitted to the GA included the period from September to June the following year.²⁹ Furthermore, the funds allocated were often lower than what the OHCHR had already spent to implement Council decisions. The GA decided to alter the timeline of the review process to the time period covered by the annual report and 'to consider through its Fifth Committee all financial implications emanating from the resolutions and decisions contained in the annual report of the Human Rights Council, including those emanating from its September session.'³⁰ This change allowed for the swifter allocation of the necessary funds to the OHCHR in order to implement the decisions taken by the Council, and helped to strengthen the relationship between the Council and the Fifth Committee via the OHCHR.

The review process also sought to enhance the swift allocation of the necessary additional funds following special sessions, which very often put in place costly mechanisms to follow up on progress in certain human rights situations. A paragraph was added to GA resolution 65/281 recognising 'the need to provide adequate financing to fund unforeseen and extraordinary expenses [UEE] arising from resolutions and decisions of the Human Rights Council.'³¹

Despite these improvements, there remain some serious structural problems.

Between 2011 and 2015, the Council created sixteen new Special Procedures mandates (7 country-specific and 9 thematic) and a range of additional assignments (including requests for reports, organisation of panels on new topics, etc.). Because the Fifth Committee did not fully account for the costs of these new tasks, the OHCHR was required to cover some expenses under its own budget (provided by voluntary contributions of States). As a result, the OHCHR had to terminate certain useful activities

pertaining to its general mandate (the promotion and protection of human rights) in order to fulfil its tasks as Secretariat of the Council. Clearly, this is a highly problematic situation, one that could severely impair the work of the OHCHR in the long-term.

Despite repeated calls by Presidents of the Council (especially during their annual visits to the Assembly), the High Commissioner for Human Rights and a group of concerned States,³² trying to ensure that all the mandates decided by States in the framework of the Council are fully financed by the regular budget of the UN, the difficulties remain. Interestingly, a number of States advocating in favour of the creation of costly new mandates – such as the COIs on Syria, the DPRK and Eritrea – are precisely those showing reticence when it comes to the financing of those mandates in the Fifth Committee.



RELATIONSHIP WITH THE SECURITY COUNCIL

Though no mandated institutional links exist between the Council and the Security Council (UNSC), they have been enhancing their synergies and interaction – both substantively and procedurally – over the past ten years.

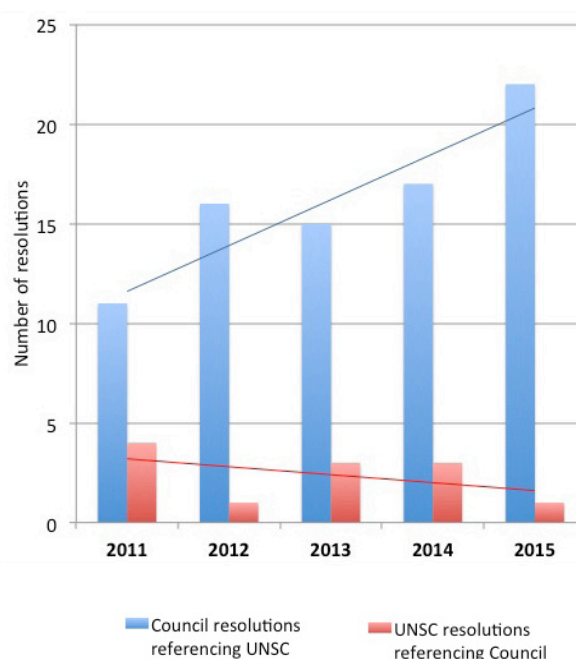
Synergies

The UNSC has, in recent years, increasingly referenced the work of the Council and its mechanisms.³³ This phenomenon perhaps points both to the increased regard for the Council as it matures, and effective mainstreaming of human rights issues into the work of the UNSC (the ‘security pillar’). The UNSC has referred in several cases to either Council resolutions or activities of its Special Procedures and Commissions of Inquiries (COIs). For example, Security Council resolutions: 2162 (2014) on Côte d’Ivoire, which refers to the Independent Expert established under the Human Rights Council³⁴; 2040 (2012) on Libya, which takes note of the report of the COI on Libya established by the Council; and 2099 on the Western Sahara (2013), which refers to discussions between Morocco and certain Special Procedures of the Council all make reference to the Human Rights Council.³⁵

Likewise, the Council has increasingly referenced the UNSC in its own resolutions. For example, Council resolution 25/28 on the Occupied Palestinian Territory ‘calls [...] for the full imple-

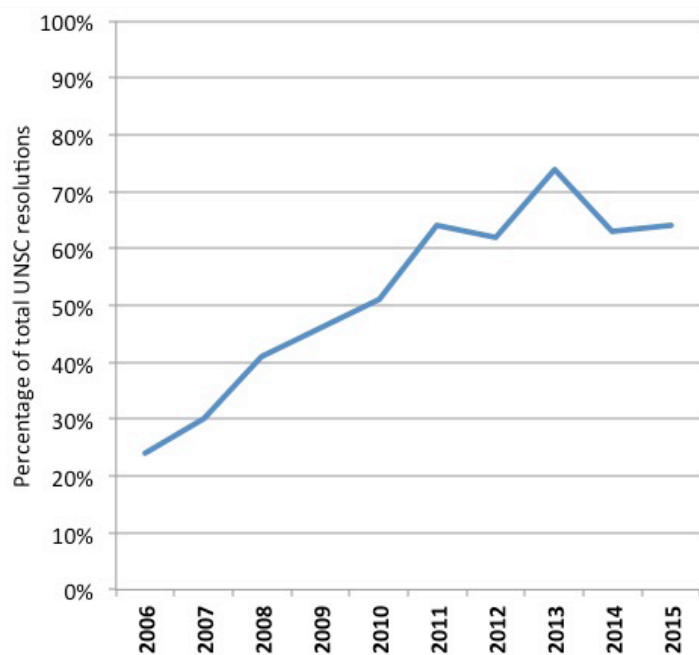
mentation of all relevant resolutions of the Security Council.’³⁶ Likewise, resolution 25/23 on Syria makes reference to the time frames established in Security Council resolution 2118 (2013), as well as “the full participation of women in political talks as envisaged” in UNSC resolutions 1325 (2000) and 2122 (2013).³⁷ UNSC Permanent Member, the US, voted against resolution 25/28. Likewise, Permanent Members Russia and China voted against resolution 25/23.

Human Rights Council and Security Council resolution references to each other (2011-2015)



These references reflect the increased interest of the UNSC in human rights issues in recent years, through both its country and thematic resolutions. In 2006, the year in which the Council was created, just 27% of the UNSC's resolutions made reference to human rights and/or human rights law. Reaching a peak in 2013, however, 74% of UNSC resolutions did so.³⁸ Despite a slight decrease in 2014 (to 62%), the trend appears, at present, stable.

Percentage of Security Council resolutions that mention human rights and/or international human rights law (2006-2015)



Many attribute the increasing overlap between the work of the two bodies to the fact that both 'played prominent roles [...] in discussing and taking action on the so-called Arab spring and the complex developments that have followed to this day.'³⁹ Examples include resolutions on Yemen (UNSC resolution 1820 and Council resolution 1816), on Libya (UNSC resolution 1973 and Council resolution S-1973/1 and 1816), and on Syria (UNSC resolution 2042 and Council resolution S-1973/1 and S-1816).

In certain country situations, the Council paved the way for the UNSC. Andrew Clapham has noted that, with the Libyan case for example, 'the Human Rights Council dealt with it first, and within hours the Security Council was saying the same thing.'⁴⁰ He notes that this 'was not a coincidence,' but that the Council had actually '[generated] the activity within the Security Council,' adding that 'similarly, if the Security Council now acts on Mali, it acts on the basis of the information coming from the Office of the High Commissioner for Human Rights and from the Human Rights Council.'⁴¹



Interaction

Bertrand G. Ramcharan, former Deputy High Commissioner for Human Rights, stressed that 'where there are violations of human rights that might threaten international peace and security, the Human Rights Council should communicate with the Security Council.' He underlined the importance of 'habits of cooperation' to be 'developed between the UN's main human rights body and the lead peace and security organ.'⁴²

A number of the Council's Special Procedures have had the opportunity to informally brief the UNSC under the so-called 'Arria formula.' These briefings accommodate the considerable reluctance within the UNSC to interact formally with human rights investigators. Such briefings are generally considered to be very informative, and allow for substantive interaction within a flexible procedural framework. However, not all UNSC members attend the briefings, and there is no official record, nor (usually) official outcome.⁴³

More formal interactions have taken place between the Special Procedures and certain UNSC subsidiary bodies. The Security Council Counter-Terrorism Committee (CTC), established pursuant to resolution 1373 (2001), and the Al-Qaida Sanctions Committee, established pursuant to resolution 1267 (1999) and 1989 (2011), have held consultations with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Established by the Commission on Human Rights ('the Commission') in April 2005, the Special Rapporteur was specifically mandated to 'develop a regular dialogue and discuss possible areas of cooperation with [...] relevant United Nations bodies [...] in particular with the Counter-Terrorism Committee of the Security Council.'⁴⁴ The Special Rapporteur met with the Al-Qaida Sanctions Committee once each year from 2008 through 2012 and with the CTC in 2006 and 2008.⁴⁵

While some question the ability of the Council to communicate directly with the UNSC (as a subsidiary organ of another UN primary organ), the Council has an explicit mandate to 'promote the

effective coordination and the mainstreaming of human rights within the United Nations system'⁴⁶ (emphasis added), which, of course, includes the UNSC. Moreover, though the Council is not a 'principal organ' of the UN, it is the principal UN organ dealing with human rights, and it is therefore logical for it to engage with other UN organs working on human rights issues.

Limitations

While the UNSC increasingly takes into account human rights issues in its country resolutions, it has been unable to act on certain human rights situations in recent years – situations on which the Council has been rather active. In 2007, for example, China and Russia prevented the adoption of a UNSC resolution on Myanmar, arguing that the human rights violations taking place were not a threat to international peace and security and that the UNSC was therefore not the right body to address the situation.⁴⁷ As a consequence, no resolution on Myanmar was adopted. Indonesia and Russia, both members of the UNSC and the Council at the time, expressed a preference that the Council should deal with the situation in Myanmar.⁴⁸

The same arguments were used to prevent the adoption of a resolution on Sri Lanka by the UNSC in 2009, meaning that the only UN resolutions on the situation in Sri Lanka were those adopted by the Council.⁴⁹ As a consequence of the inadequacy of the UN response during the heavy fighting taking place in Sri Lanka in 2009, the UN Secretary General convened, on 22 of June 2010, a panel of experts tasked with establishing responsibilities for the violence. One of the main recommendations of the expert panel, submitted on 12th April 2011, was for the Secretary General to examine the actions taken by the UN 'regarding the implementation of its humanitarian and protection mandates.'⁵⁰ The Secretary General decided to appoint a second panel of experts led by the Deputy Secretary General Charles Petrie with the aim of 'identifying institutional and structural strengths and weaknesses [...] and making recommendations on strengthening [...] the capacity of the UN as a whole to respond effectively to similar situations of escalated conflict.' The report of this second panel, published on 12th November 2012, places human rights at the heart of its recommendations.⁵¹ According to this report, a rapid and coordinated reaction by the UN bodies, including the UNSC, in cases of human rights violations could prevent the emergence of more serious crises.

It is clear that the UNSC could make much more use of the work of the Special Procedures and the COIs, inviting them to participate in its meetings. Indeed, the rare briefings that are held with these Council's mechanisms are informal ('Arria formula'). When the UNSC wishes to benefit from human rights expertise during its formal meetings, it tends to invite the High Commissioner for Human Rights.

The knowledge and experience of the COIs and the Special Pro-

cedures constitute an important source of information on which the UNSC should rely during its official meetings. They could play an invaluable early warning function, as the 'eyes and ears' not just of the Council but of the broader UN system.

The way the UN dealt with the situation in Rwanda in the mid-1990s provides a powerful example of why it is critically important for the UNSC to take advantage of the available human rights information about situations on its agenda.⁵² A year before the full eruption of genocide, on 11 August 1993, the Special Rapporteur on extrajudicial, summary or arbitrary executions published a report on his investigation of the violence between the Hutu government forces and the Tutsi-led Rwandese Patriotic Front. In it, he described an alarming situation with genocide looming and, referencing the Arusha accord signed on 4th August 1993, stressed that 'human rights must be the prime concern of any system for monitoring or implementing of the agreements.'⁵³ A few months later, in October 1993, the UNSC established the UN Assistance Mission for Rwanda (UNAMIR), with resolution 872, to monitor the implementation of the Arusha accord and support transitional authorities.⁵⁴ The resolution did not mention or contain any human rights components. Not until two months after the onset of genocide in April 1994 did the UNSC make reference to human rights. In resolution 925 of June 1994, the UNSC welcomed the High Commissioner for Human Rights' visit to Rwanda and requested the Secretary-General to 'ensure that UNAMIR extend the close cooperation it has with [...] the Special Rapporteur for Rwanda appointed by the United Nations Commission on Human Rights'⁵⁵ at a CHR emergency session in May 1994.⁵⁶ Thus, in 1994 and 1995, the reports of the Special Rapporteur on Human Rights in Rwanda were regularly transmitted to the UNSC by the Secretary-General and were issued as UNSC documents.⁵⁷

There is no rule preventing the UNSC from doing this. On the contrary, Rule 39 of the provisional rules of procedure states that the UNSC 'may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence.' It is imperative that the UNSC makes use of all the information, knowledge and experience that is available in order to ensure that human rights remains a part of every response to peace and security issues. Member States of the Council who are also members of the UNSC have an important role to play in encouraging better cooperation and interaction in this regard.



CONCLUSION

It is clear that synergies and interaction between the Council and the GA, and the Council and the UNSC, have increased over the Council's first decade. It is also clear, however, that such synergies and interactions need to be strengthened in order to improve effectiveness and avoid gaps and duplication.

If the divide between Geneva and New York is less palpable than some years ago, one may still note that the work of the Council is not always well known or understood in New York. Regular briefings after each Council session in New York, as suggested by the OHCHR, could help alleviate this problem.⁵⁸ But even if cooperation is enhanced and the human rights pillar is further strengthened, it will not be able to completely fulfil its role as long as it is not properly integrated into the two other UN pillars, namely peace and security and development. The three pillars are closely interlinked and can be seen as mutually reinforcing.⁵⁹ In practice, much more needs to be done to break the silos between the different pillars and address certain limits to which the Council is subjected, both substantial and institutional.

From the institutional point of view, unlike for the other pillars, there is no primary UN organ dealing directly with human rights issues. The dynamism and reactivity of the Council, even if it is further developed and enhanced, cannot fully compensate the limitations inherent to it being a subsidiary organ. It is therefore necessary to consider once again at the next review what can be

done to improve the effectiveness of the Council. Once again, a discussion should occur regarding whether the Council should be elevated to the status of a main UN organ in order to give to the human rights pillar the institutional means to fulfil its purpose.

Two timely opportunities could help to create synergies across the UN's three pillars and its organs; the implementation of the post-2015 agenda and the increasing interest of the UNSC in human rights.

The post-2015 agenda is a chance to ensure a better integration of human rights in development activities. The efforts of the OHCHR and of the Council in this regard have to bear fruit in comparison to the Millennium Development Goals (MDGs). The report of the High-Level Panel to advise on the global development framework beyond 2015 integrated the human rights dimension, stating that: 'new goals and targets need to be grounded in respect for universal human rights, and finish the job that the MDGs started.'⁶⁰ The final document, adopted by the GA in September 2015, still contains this idea: 'They [the 17 Sustainable Development Goals and 169 targets] seek to build on the Millennium Development Goals and complete what they did not achieve. They seek to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls.'⁶¹ If all the MDGs contain, in one way or another, a human rights aspect, goal 16 can be seen as the Human Rights and Rule of Law goal. It aims to 'Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.'

The UNSC as well as the divisions of the UN Secretariat dealing with peace and security are devoting more time to human rights in their analyses. As explained above, the significance of human rights from a peace and security perspective is at the heart of the recommendations of the Secretary General's internal review panel lead by the ASG Charles Petrie published in November 2012. According to the report of the Panel: 'The Secretary-General should include international human rights, humanitarian and criminal law perspectives in overall UN analysis and strategy.'⁶² This idea has been confirmed by the Rights Up Front initiative,⁶³ launched by the Secretary General in 2013. More specifically, there is a need to ensure that the excellent work done by the OHCHR in Geneva together with the activities of the Council and its special procedures are better mainstreamed throughout the work done in New York.

Enhanced attention and a better integration of human rights in the two other pillars would not only prevent and limit the escalation of crises, but would also allow for a more efficient and long-term impact of development programs on the ground. To be able to reach those goals, the human rights pillar needs to benefit from a significant increase of UN funding. Less than 3% of the UN budget is currently devoted to human rights, which is clearly not enough.

The 10th anniversary of the Council in 2016 offers a good opportunity to reflect upon the role that States want the human rights pillar to play in the years to come and decide on the means they are willing to provide by establishing a defined target, such as, for example, 10% of the UN budget devoted to human rights by 2030. This does not mean that there is a need to increase the UN budget. Member States could instead modify the priorities of the UN. By engaging more means into the human rights pillar in order to react more swiftly and appropriately to specific human rights situations, it might be able to prevent the deterioration into major crises, which are far more costly for the UN.

NOTES

- 1 GA resolution 60/251, 'Human Rights Council,' 15 March 2006, o.p. 1.
- 2 Ibid, p.p. 6.
- 3 Ibid, o.p. 2; GA resolution 65/281, 'Review of the Human Rights Council,' 17th June 2011, p.p. 4.
- 4 GA resolution 60/251, op.cit., o.p. 3.
- 5 GA resolution 60/251, op.cit., o.p. 8.
- 6 Ibid, o.p. 8.
- 7 GA resolution 65/265, 'Suspension of the rights of membership of the Libyan Arab Jamahiriya in the Human Rights Council,' 1st March 2011; GA resolution 66/11, 'Restoration of the rights of membership of Libya in the Human Rights Council,' 18th November 2011.
- 8 HRC resolution S-15/1, 'Situation of Human Rights in the Libyan Arab Jamahiriya,' adopted without a vote on 25th February 2011, o.p. 14.
- 9 HRC resolution 18/9, 'Resumption of the rights of membership of Libya in the Human Rights Council,' adopted by consensus on the 29th September 2011.
- 10 For example, see the HRC 2015 annual report (UN doc. A/70/53).
- 11 GA resolution 65/281, op. cit., o.p. 4: 'Decides further that from 2013, the Human Rights Council will start its yearly membership cycle on 1 January.'
- 12 Example taken from resolution GA resolution 67/151, 'Report of the Human Rights Council, 20th December 2012, p.p. 4. In UN resolution terminology, 'takes note' is an obvious step short of endorsement, which is better represented through 'welcomes,' 'adopts' or 'endorses.'
- 13 GA resolution 65/281, op. cit., o.p. 6.
- 14 GA resolution 60/251, op.cit., o.p. 5 [c].
- 15 Addendum 1, Human Rights Council, Explanatory note by the Secretary-General, The Secretary-General's proposal, para 17: 'For example, the Human Rights Council would provide an opportunity to rationalize the agenda of the Third Committee of the General Assembly with the work of the Human Rights Council, as well as to strengthen the General Assembly's ability to analyse and draw attention to continuing gaps in the implementation and mainstreaming of human rights throughout the United Nations system.' Available at: <http://www3.nd.edu/~sobrien2/In%20Larger%20Freedom%20-%20Addendum%201.htm>.
- 16 Council resolution 5/1, 'Institution-building of the United Nations Human Rights Council,' 18th June 2007, o.p. 117 (e) (i).
- 17 <http://www.un.org/en/ga/third/70/proposalstatus.shtml>.
- 18 <http://www.universal-rights.org/human-rights/human-rights-resolutions-portal/>.
- 19 Council resolution 5/1, op. cit., para 117 (e) (i).
- 20 URG, Policy Report, 'Ensuring Relevance, Driving Impact: The evolution and future direction of the UN Human Rights Council's resolution system,' January 2015, available at: www.universal-rights.org/wp-content/uploads/2015/02/URG_Report_ERDI-Jan2015-print_layout.pdf.
- 21 At the 70th session of the Assembly (autumn 2015), the Third Committee held interactive dialogues with 41 special procedure mandate holders of the Council.
- 22 GA resolution 65/281, op.cit., o.p. 6.
- 23 E.g. GA resolution 67/151, op. cit., p.p. 4.
- 24 It was adopted by 94 in favour, 3 against and 62 abstentions (see GA resolution 66/136, 'Report of the Human Rights Council,' 19th December 2011.).
- 25 Council resolution 24/24, 'Cooperation with the United Nations, its representatives and mechanisms in the field of human rights,' adopted by vote on 27th September 2013, o.p. 7.
- 26 74 in favour, 76 not in favour and 18 abstentions. Subsequently the resolution was adopted with 87 in favour, 66 against and 22 abstentions.
- 27 The amendment proposed once again by USA and EU was rejected: 83 no, 80 yes and 18 abstentions. Subsequently the resolution was adopted with 94 in favour, 71 against and 23 abstentions.
- 28 Report of the open-ended intergovernmental working group on the review of the work and functioning of the Human Rights Council, 4th May 2011, [UN Doc. A/HRC/WG.8/2/1].
- 29 Report of the Human Rights Council, Twelfth session (14 September - 2 October 2009); Thirteenth session (1-26 March 2010); Fourteenth

session (31 May - 18 June 2010); Thirteenth special session (27-28 January 2010), (UN Doc. A/65/53).

30 GA resolution 65/281, op. cit., o.p. 8.

31 Ibid, o.p. 9.

32 Norway, Morocco, Mexico and Turkey, supported by around thirty other states from all around the globe, in particular Switzerland, have requested several times to the Council and the Third Committee in 2012 and 2013 that the mandates of the Council be completely funded by the UN budget. These states consider that the OHCHR should not have to use its own funds to insure the functioning of the Council. For those states it is especially unacceptable that the voluntary contributions received by the OHCHR, which are aimed at supporting its own activities of promoting human rights, are used to implement the decisions made by the Council (according to the OHCHR, 11% of the Council mandates and 40% of the tasks related to the treaty bodies are at present financed by voluntary contributions).

33 M. Cherif Bassiouni and William A. Schabas, (eds), *New Challenges for the UN Human Rights Machinery: What Future for the UN Treaty Body System and the Human Rights Council Procedures?*, p. 280.

34 UNSC resolution 2162 (2014), o.p. 19G.

35 UNSC resolution 2099, p.p. 14.

36 Council resolution 25/28, 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan,' 28th March 2014, o.p. 3.

37 Council resolution 25/23, 'The continuing grave deterioration of the human rights and humanitarian situation in the Syrian Arab Republic,' adopted by a vote (32 in favour, 4 against, 11 abstentions), 28th March 2014, p.p. 7, o.p. 14 & 16.

38 Based on the authors review of UNSC resolutions available at <http://www.un.org/en/sc/documents/resolutions/>.

39 Theodor Rathgeber, 'New Prospects for Human Rights? The Human Rights Council between the Review Process and the Arab Spring,' Friedrich Ebert Stiftung, March 2012 (available at <http://library.fes.de/pdf-files/iez/global/08961.pdf>), p. 9.

40 'The Human Rights Council according to Andrew Clapham, Director of the Geneva Academy of International Humanitarian Law and Human Rights,' 13 March 2012, available at www.geneve-int.ch/en/human-rights-council-according-andrew-clapham-director-geneva-academy-international-humanitarian-law (accessed 1 September 2015).

41 Ibid.

42 Bertrand G. Ramcharan, *The UN Human Rights Council*, (Routledge, New York, 2011), p.17.

43 Security Council Report, 'Human Rights and the Security Council – An Evolving Role,' Research Report, (2016, No. 1), 25 January 2016, p.6, 8.

44 Commission resolution 2005/80, 'Protection of human rights and fundamental freedoms while countering terrorism,' 21 April 2005, o.p. 14[a].

45 Security Council Report, 'Human Rights and the Security Council – An Evolving Role,' op. cit., p. 7.

46 GA resolution 60/251 op.cit., o.p. 3.

47 According to a UNSC press release of 12 January 2007, the Chinese delegate explained before the vote that 'the Myanmar issue was mainly an internal affair of sovereign State [...] None of Myanmar's immediate neighbours [...] believed that the current situation in Myanmar posed a threat to regional peace and security.' The Russian stated that 'the problems in Myanmar mentioned in the draft resolution were being considered within the framework of other bodies of the United Nations system. [...] Attempts aimed at using the Security Council to discuss issues outside its purview are unacceptable.' For full text see: <http://www.un.org/press/en/2007/sc8939.doc.htm> (accessed 29 July 2015).

48 Ibid.

49 The resolution adopted by the Council in its extraordinary session in May 2009 consolidated the principle of non-interference, which led NGOs to call it a failure of the Council. The two resolutions adopted in March 2012 and 2013 are on the contrary more credible because they insist on the necessity to investigate the crimes committed in the past and highlight human rights violations committed.

50 Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011 (available at http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf), recommendation 4.B.

51 Report of the Internal Review Panel on UN actions in Sri Lanka, 12 November 2012, pp. 31-32.

52 Security Council Report, Human Rights and the Security Council – An Evolving Role, op. cit., p. 5.

53 Report by Mr. B.W. Ndaye, Special Rapporteur, on his mission to Rwanda from 8 to 17 April 1993, (UN Doc. E/CN.4/1994/7/Add.1).

54 UNSC resolution 872 (1993).

55 UNSC resolution 925 (1994).

56 Commission resolution S-3/1, 25 May 1994.

57 Security Council Report, Human Rights and the Security Council – An Evolving Role, op. cit., p. 5.

58 Simple briefings after each Council session held in New York under the auspices of the ASG Ivan Simonović as suggested by the OHCHR during the briefing for Member States on OHCHR's Thematic Strategies for 2014-2017 that took place on 17 of October 2013 would certainly help in that regard.

59 As the World Summit Document of 2005 (General Assembly resolution 60/1) and the Assembly resolution creating the Council (General Assembly resolution 60/251) put it.

60 Report of the High-level Panel of Eminent Persons on the Post-2015 Development Agenda, A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development, United Nations Publications, 30 May 2013 (available at <http://www.post2015hlp.org/wp-content/uploads/2013/05/UN-Report.pdf>).

61 Draft outcome document of the United Nations summit for the adoption of the post-2015 development agenda (UN Doc. A/69/L.85), 12 August 2015, Annex, p. 2.

62 Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011 (available at http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf), p.32.

63 See <http://www.refworld.org/pdfid/549141f84.pdf>.

Image credits: United States Mission Geneva, 'Ceiling of the Human Rights Council,' 18 March 2014, licensed under CC BY-ND 2.0; United Nations Photo, 'Assembly Elects Eighteen New Members of Human Rights Council,' 28 October 2015, licensed under CC BY-NC-ND 2.0; UN Geneva, 'Laura Dupuy Lasserre, Permanent Representative of Uruguay to the United Nations Office at Geneva (UNOG) and President of the Human Rights Council address during the Signing Ceremony of the Optional Protocol to the Convention on the Rights of the Child,' 28 February 2012, licensed under CC BY-NC-ND 2.0; Maina Kiai, 'The Special Rapporteur prepares to present his report on sectoral equity to the General Assembly (at right: Ms. Margaret Jungk, Chair of the Working Group on the issue of human rights and transnational corporations and other business enterprises),' 27 October 2015, licensed under CC BY 2.0; United Nations Photo, 'Security Council Votes Unanimously to Increase Humanitarian Aid in Syria,' 22 February 2014, licensed under CC BY-NC-ND 2.0; United Nations Photo, 'Scene from Mopti, Mali,' 2 February 2014, licensed under CC BY-NC-ND 2.0; United States Mission Geneva, 'Human Rights Council 31st Session,' 29 February 2016, licensed under CC BY-ND 2.0.



working together to protect universal human rights



Universal Rights Group
Ch. du Grand-Montfleury 48
CH-1290 Versoix
Switzerland



T +41 22 755 14 56
info@universal-rights.org
www.universal-rights.org
[@URGThinkTank](https://twitter.com/URGThinkTank)