

POLICY REPORT

ENSURING
RELEVANCE, DRIVING
IMPACT:

**The evolution and future direction
of the UN Human Rights Council's
resolution system**

by Subhas Gujadhur and Toby Lamarque



UNIVERSAL RIGHTS GROUP

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PREFACE

This report on resolutions adopted by the UN Human Rights Council is the result of a twelve month-long project led by Subhas Gujadhur and Toby Lamarque of the Universal Rights Group. It reflects primary and secondary research, a policy dialogue held in Geneva, and nearly forty interviews with key stakeholders, including diplomats in Geneva and New York involved in the founding of the Council and the drafting of its key resolutions, staff of the Office of the High Commissioner for Human Rights, academics and human rights NGO workers.

The conclusions reached in the report are entirely the authors’ responsibility and do not necessarily reflect the views of their respective institutions, donors or partners.

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EXECUTIVE SUMMARY

The United Nations Human Rights Council ('the Council') was created through a decision taken by heads of states and governments during the 2005 World Summit, and codified in the outcome document thereof, General Assembly (GA) resolution 60/1. This decision was put into effect through the adoption of GA resolution 60/251 later that year, which formally established the Council's mandate. Both documents envision the Council principally as a body that would 'address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon' (paragraph 159 of resolution 60/1 and paragraph 3 of resolution 60/251).

Following its establishment, the Council adopted two key resolutions governing its methods of work. The first was the 'Institution Building Package' (IBP), Council resolution 5/1 of June 2007, which, *inter alia*, called for 'restraint in resorting to resolutions, in order to avoid proliferation of resolutions without prejudice to the right of States to decide on the periodicity of presenting their draft proposals' (paragraph 117(e)). The second was Council resolution 16/21, at the conclusion of the body's five-year review process, which, *inter alia*, stated that 'in principle and on a voluntary basis, omnibus thematic resolutions should be tabled on a biennial or triennial basis.'

Over the eight years and twenty-seven regular sessions since its creation, the Council has adopted a total of 762 texts, the vast majority of which have been resolutions (although it also adopts a small number of largely procedural decisions and president's statements each year). These were not distributed evenly over time: for example, in 2006 the Council adopted 43 texts, while in 2013 it adopted 112, an increase of 160%.

The research conducted for this report has revealed that this quantitative expansion of the Council's resolution system since 2006 has occurred in a manner inconsistent with the tenets of the body's founding and basic documents. The key findings are as follows:

THE COUNCIL'S MANDATE

- Over 55% of resolutions adopted by the Council since its creation have been on general thematic issues under its agenda item 3, ('Promotion and protection of all human rights, civil, political, economic, social and cultural rights'). By contrast, country-specific resolutions under its agenda item 4, ('Human rights situations that require the Council's attention'), have comprised a mere 7% of its total output, and their range has been limited to only 12 situations.

- The imbalance is also reflected in the amount of time devoted to these two items during Council sessions: between 2010-2014, a total of 646 hours (26.9 days) was devoted to discussion and activities under item 3, compared to 153 hours devoted to item 4.

These trends are clearly contrary to the Council's principal mandate of 'address[ing] situations of violations of human rights,' as envisioned by heads of states and governments in GA resolution 60/1.

THE COUNCIL'S METHODS OF WORK

- While on average around 60% of Council resolutions adopted each year call on all states or the international community to take some kind of action, it is often difficult to assess how far these resolutions are being implemented because there is no systemic process of follow-up.

- The budget implications of Council resolutions have been increasing along with their number. 2014 was a record-breaking year in this regard, with the new resource requirements arising from resolutions – \$19,018,800 – being only fractionally less than the totals for 2012 and 2013 combined.

- There is a general lack of cross-fertilisation between issues dealt with by human rights resolutions and issues dealt with by the mechanisms of the Council, such as Special Procedures and the Universal Periodic Review.

- On average, somewhere between 45-50% of resolutions adopted in a given year had 'sister' resolutions on the same topic (and with exactly the same title) adopted the previous year, demonstrating a high degree of repetition in the Council's output.

- While the number of resolutions submitted by 'core groups' of states has risen since the Council's creation (making up just under 30% of the total in 2014), the proportion of resolutions adopted by consensus has decreased, dropping from 80% in 2007 to 69% in 2014.

- 56% of all human rights resolutions adopted by the GA's Third Committee between 2012-2013 had a *prima facie* Council equivalent, and 40% of them had some degree of substantive overlap in their content, with a significant number repeating whole sections of Council resolutions word for word.

These trends contradict, *inter alia*, the IBP's call for 'restraint in resorting to resolutions' (paragraph 117(e)) and 'minimizing unnecessary duplication of initiatives with the General Assembly/Third Committee' (paragraph 117(e)(i)). They also reveal a failure to 'take into account the constraints faced by delegations, particularly smaller ones' (paragraph 113).

RECOMMENDATIONS

In light of the above, the authors of this report propose a series of recommendations aimed at making the UN's human rights resolution system more effective, efficient, relevant and sustainable by reorienting state behaviour in line with the parameters set by GA resolutions 60/1 and 60/251, the 2007 IBP, and the 2011 review outcome. These include the following:

- Member states should consider establishing an informal, open-ended and cross-regional 'group of friends of the system' to promote the implementation of resolutions 5/1 and 16/21, in cooperation with the Council President and Bureau, and the secretariat.

- In order for the Council to be relevant to victims of human rights violations, member states should devote more time to addressing violations of human rights, including gross and systematic violations, rather than general thematic debates.

- States should not feel obliged to draw a strict demarcation between thematic and country-specific resolutions, and instead consider the possibility of submitting hybrid resolutions addressing thematic issues within the context of a particular state or region.

- Every resolution should respond to a specific and clearly stated need or gap, and states should resist the urge to introduce new initiatives as a profile-raising exercise, especially following their election to the Council.

- Sponsoring states should carefully consider the necessity of automatically tabling the same resolutions each and every year, and where possible consider the bi- or triennialisation of initiatives, as per paragraph 48 of Council resolution 16/21. The state or group of states that submit a resolution should take responsibility for implementation and follow-up after its adoption by, *inter alia*, conducting post-adoption assessments of their initiatives, raising them in bilateral discussions such as human rights joint commissions, bringing them to the attention of regional or sub-regional organisations to which they belong, and leveraging other mechanisms such as the Universal Periodic Review.

- All states should consider the benefits of setting up national coordination structures for the prompt dissemination and implementation of Council resolutions at the national level.

- State should avoid duplication between the work of the Council and the GA's Third Committee, in line with paragraph 117(e)(i) of the IBP.

INTRODUCTION

Resolutions – documents reflecting the resolve or common will of the international community on a particular issue – are the principal output of the United Nations (UN) Human Rights Council ('the Council'). During the eight years and twenty-seven regular sessions of the Council's existence, it has adopted a total of 762 texts, the vast majority of which were resolutions.¹ These were not distributed evenly over time: for example, in 2006 the Council adopted 43 texts, while in 2013 it adopted 112, an increase of 160%.

This policy report examines the current state of the Council's resolution system in the context of the four documents most integral to its creation, role and operation: General Assembly resolution 60/1 on the 2005 World Summit Outcome, which created the Council; General Assembly resolution 60/251, which established its mandate; the 2007 'Institution Building Package' (IBP), which set-down its methods of work and developed its mechanisms; and the outcome document from the 2011 review of the Council's work and functioning. These documents provide a lens through which to view the dramatic growth in the Council's output, and the consequences and corollaries that have accompanied this growth. They also serve as a basis for judging whether the resolution system has evolved in the way it was originally intended.

PART I

THE EMERGENCE OF UN HUMAN RIGHTS RESOLUTIONS

HUMAN RIGHTS IN THE UN CHARTER

The 1944 Dumbarton Oaks Conference was the first major step towards implementing paragraph 4 of the Moscow Declaration of 1943, which recognised the need for a post-war international organisation to succeed the League of Nations. At the conference, delegations from the Republic of China, the Soviet Union, the UK, and the US deliberated over various proposals for the establishment of an organisation that would maintain peace and security in the world. The US submitted a document entitled 'Tentative Proposals for a General International Organisation'² calling for the establishment of the United Nations that would, *inter alia*, be empowered to 'initiate studies and make recommendations for the promotion of the observance of basic human rights in accordance with the principles or undertakings agreed upon by States members of the international organisation.'³ However, opposition from the UK and the USSR led the US to water down this proposal, and the final provisions on human rights agreed by the four powers (US, UK, USSR and China) at the conclusion of the Conference were rather weak.⁴

During discussions on human rights at the San Francisco Conference of 1945, three major alignments emerged. The first was a group comprised of key Latin American states including Brazil, Colombia, Chile, Cuba, Dominican Republic, Ecuador, Mexico, Panama and Uruguay, together with Australia, New Zealand, Norway and India. This grouping attempted to strengthen the proposals of the four powers on human rights so that the UN Charter (in what would become articles 55 and 56) would oblige states not only to cooperate with the Organisation in the promotion of human rights but also to take separate and joint action to achieve respect for human rights.⁵ A second group of states led by the US and including France, the UK and other colonial powers, while in favour of including human rights promotion in the Organisation's mandate, was concerned about the idea of deepening the role of the UN in this field, and thus inserted a 'safeguard clause' that would prevent interference in matters that were within the domestic jurisdiction of states. This became article 2(7) of the Charter.⁶ A third group made up of socialist states led by the USSR, while supportive of the 'safeguard clause,' emphasised the importance of the right to self-determination (a right opposed, at that time, by colonial powers such as Belgium). The result of the lengthy discussions among these three groups was a compromise consisting of the following: (a) the provisions under article 56 were restricted (b) the right of self-determination of people was proclaimed under articles 1 and 55 of the UN Charter but only as guiding principles (c) the mandate of the UN General Assembly in the field of human rights was limited by the safeguard proviso of article 2(7) of the Charter.

THE UN COMMISSION ON HUMAN RIGHTS AND THE HUMAN RIGHTS COUNCIL

The next major step for international human rights came in 1946, when the UN Economic and Social Council (ECOSOC), following-up on its mandate to create bodies for the promotion of human rights as per article 68 of the Charter,⁷ established the United Nations Commission on Human Rights ('the Commission').

The Commission immediately began adopting resolutions on human rights issues. For the first twenty years these resolutions were focused almost exclusively on the promotion of human rights through the development of standards and norms and the drafting of international treaties. They did not deal with the protection of human rights by directly condemning violations and/or proposing remedies. This focus shifted in the 1960s with the expansion of the UN's membership to include newly independent states more willing to adopt resolutions directly addressing human rights violations. This trend towards a stronger focus on human rights protection was reflected in, and facilitated by, ECOSOC's resolution 1235 (XLII) of 1967, which authorised the Commission to 'conduct thorough studies of situations revealing a consistent pattern of violations of human rights,'⁸ and through resolution 1503 (XLVIII) of 1970, which introduced a confidential communications procedure for the victims of human rights violations.⁹ As a consequence of these developments, the annual output of the Commission rose substantially, from 18 resolutions adopted in 1967 to a high of 98 in 1993.

During the later years of its existence, the Commission became subject to increasingly intense criticism. NGOs challenged it for failing to address situations where there was clear evidence of gross human rights violations, while various states condemned it for disproportionately focusing on a few, mostly developing, countries and shielding others from any form of criticism. At the same time, many stakeholders complained about the Commission's membership, which seemed increasingly open to countries with poor human rights records. An article from Newsweek described the Commission as a body 'which spends 10 million US dollars per year and which at its very best produces resolutions with no effect at all.'¹⁰ This negative attention came to a head in 2003 when the Ambassador of Libya was elected as Chairperson of the Commission, and in 2004 when Sudan was re-elected to the Commission despite the on-going crisis in Darfur.

These and other developments called into question the Commission's credibility as the world's apex human rights body. This credibility gap was acknowledged in the 2004 report of the

Secretary General's 'High-Level Panel on Threats, Challenges and Change'¹¹ and in his 2005 report entitled 'In Larger Freedom: development, security and human rights for all.'¹² In this second document, the Secretary-General recommended replacing the Commission with a smaller standing body - a Human Rights Council - whose members would be elected by the General Assembly by a two-thirds majority vote. He also suggested that the new Council be mandated to undertake a periodic 'peer review' of every state's fulfilment of their human rights obligations, in order to avoid the accusations of selectivity and double standards that were plaguing the Commission.

During the 2005 World Summit, heads of states and governments embraced the Secretary-General's recommendation to create a new Council in place of the Commission. This decision was codified in General Assembly (GA) resolution 60/1 on the World Summit Outcome.¹³ Subsequently, the GA adopted resolution 60/251, which formally established the Council's mandate to 'promot[e] universal respect for the protection of all human rights and fundamental freedoms for all' (paragraph 2) and to 'address situations of violations of human rights... and make recommendations thereon' (paragraph 3).¹⁴ As with the Commission before it, the Council's primary method for achieving this mandate would be through the adoption of texts - either substantial *resolutions* or more procedural *decisions* and *president's statements* - during its three annual sessions.

LEGAL STATUS OF RESOLUTIONS

The Council was created as a subsidiary organ of the GA, and as such its resolutions have the same status as those of its parent body (which also endorses them through a resolution of its own). The GA's functions and powers are laid out in Chapter 4 of the UN Charter, and include the following (article 10):

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and... may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

The precise meaning of the term 'recommendation' was not defined during the negotiation of the Charter at the San Francisco Conference. However, participants at the Conference did unequivocally decide that recommendations made by the GA would not have the function of international legislation.¹⁵ This suggests that the word 'recommendation' was intended to be interpreted according to its ordinary meaning: i.e. a non-legally binding suggestion. Such a reading finds support in the early opinions of judges at the International Court of Justice. For example, in his separate opinion on the Voting Procedure on *Questions relating to Reports and Petitions concerning the Territory of South-West Africa* case (1955), Judge Lauterpacht wrote that GA resolutions are '...in the nature of recommendations and it is in the nature of recommendations that, although on proper occasions they provide a legal authorization for Members determined to act upon them individually or collectively, they do not create a legal obligation to comply with them.'¹⁶

It is beyond the scope of this report to review the substantial literature that exists on the character of GA resolutions. However, there is broad agreement that the resolutions are not, *sensu strictu*, legally binding on states, although they may have an indirect legal force if their provisions overlap with those of other documents that are binding, such as Security Council resolutions, the UN Charter, or bilateral/multilateral treaties. Nevertheless, GA resolutions – of which Council resolutions form a subset – still have considerable *political* force. States are expected to comply with resolutions, and failure to do so can have a major impact of their international standing and legitimacy. Brazen non-compliance almost always carries political costs, which may include public condemnation ('naming and shaming'), damage to bi-lateral relationships with a resolution's sponsors or supporters, loss of international prestige, or the mobilisation of domestic and international civil society in protest.

As such, while GA (and, by extension, Council) resolutions may not be 'hard law' in the sense of being legally binding, they are generally regarded as being 'soft law' instruments. Despite not imposing strict legal obligations on states, soft law nevertheless retains legal significance due to its ability to help shape hard law in the future. This can occur when soft law instruments such as resolutions or declarations are used as a foundation for binding documents such as treaties or covenants. Alternately, if states routinely comply with a soft law document's provisions (based on the political expectation for them to do so) then these provisions may eventually become incorporated into customary international law, even without being codified into a binding legal document.



PART II

RESOLUTIONS IN THE COUNCIL'S METHODS OF WORK

THE COUNCIL'S INSTITUTION BUILDING PACKAGE (IBP)

As discussed above, the Council was created through a decision taken by heads of states and governments as per GA resolution 60/1, and its broad mandate was set-down by GA resolution 60/251. While the second of these resolutions provided general principles and parameters for the new Council, it left many of the specifics of its operation to be determined later by Council delegates. For example, operative paragraph 6 of the resolution stated that '...the Council shall assume, review and, where necessary, improve and rationalize all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights... within one year after the holding of its first session.'¹⁷

To this end, when the new Council met for the first time in late 2006, it initiated an institution building process involving a number of open-ended, intergovernmental, inter-sessional working groups to hold consultations and make recommendations on the Council's various functions and mechanisms. This included a working group on the Council's agenda, annual program of work, methods of work, and rules of procedure, which was mandated, *inter alia*, to consider the Council's resolution system. During this working group's first session, there was broad agreement that the Council's methods of work should enable genuine dialogue and promote cooperation and understanding with a view to enhancing transparency, predictability, inclusiveness

and efficiency. Delegates also stressed that the Council's methods of work should be geared towards implementation and follow-up,¹⁸ with one delegate stating that 'the Human Rights Council should be able to discuss implementation issues with stronger focus and in a more systematic manner.'¹⁹

On 15th March 2007, Ambassador Enrique Manalo of the Philippines, one of the two facilitators of the working group, presented a non-paper (unofficial document) to the Council on working methods and rules of procedure, summarising 'elements of convergence' and 'elements for further discussion.'²⁰ On the subject of the Council's working culture, the facilitator identified convergence on a number of points, which were incorporated almost word for word into the final outcome document of the institution building package, Council resolution 5/1,²¹ as operative paragraph 117:

117. *There is a need for:*

- (a) *Early notification of proposals;*
- (b) *Early submission of draft resolutions and decisions, preferably by the end of the penultimate week of a session;*
- (c) *Early distribution of all reports, particularly those of special procedures, to be transmitted to delegations in a timely fashion, at least 15 days in advance of their consideration by the Council, and in all official United Nations languages;*
- (d) *Proposers of a country resolution to have the responsibility to secure the broadest possible support for their initiatives*

(preferably 15 members), before action is taken;

(e) Restraint in resorting to resolutions, in order to avoid proliferation of resolutions without prejudice to the right of States to decide on the periodicity of presenting their draft proposals by:

Minimizing unnecessary duplication of initiatives with the General Assembly/Third Committee;

Clustering of agenda items;

Staggering the tabling of decisions and/or resolutions and consideration of action on agenda items/issues.

The 'Methods of Work' section of the IBP (Part VI) also contains a number of provisions relating to resolutions, which, *inter alia*, allow for purely informative briefings (ie. not involving negotiation) to be organised by delegations (paragraph 111) or by the Council President (paragraph 112). Paragraph 113 mandates that 'informal consultations shall be the primary means for the negotiation of draft resolutions and/or decisions, and their convening shall be the responsibility of the sponsor(s)', and also states that 'consultations should, as much as possible, be scheduled in a timely, transparent and inclusive manner that takes into account the constraints faced by delegations, particularly smaller ones.'²²

The negotiations on the IBP make it clear that, from the earliest days of the Council's existence, states were concerned about the proliferation of resolutions, a term that they themselves explicitly use in paragraph 117(e) of resolution 5/1. They were also clearly aware of the potential capacity limitations of delegations in dealing with large numbers of resolutions. The 47 members of the Council adopted resolution 5/1 by consensus, and it was subsequently endorsed by the GA through resolution 62/219.²³ In effect, all members of the UN agreed from the outset on the importance of adopting working methods and rules of procedure that were *efficient* as well as *effective*.

THE 2010-11 REVIEW OF THE COUNCIL

The final paragraph of GA resolution 60/251 decided that the Council would 'review its work and functioning five years after its establishment and report to the General Assembly.'²⁴ This process began in October 2010 with the first session of the 'open-ended intergovernmental working group on the review of the work and functioning of the Human Rights Council,' and continued through a series of informal consultations and further sessions until March 2011.

As with the institution building process in 2006-2007, the review of the Council was broken down into various sub-parts, which again included its agenda, programme of work and methods of work. During discussions, the issues of improving predictably and manageability of the Council's workload and avoiding the proliferation of resolutions were discussed extensively (as indicated in Figure 1).

The various conclusions of the review process were compiled into resolution 16/21 on the 'Review of the work and functioning of the Human Rights Council', adopted by consensus during the Council's 16th session in March 2011.²⁵ This outcome document was then endorsed by the GA through resolution 65/281.²⁶

The 'methods of work and rules of procedure' section of resolution 16/21 (Part V) contains a number of provisions relating to the Council's resolution system. These include a mandate for the Council's Bureau to 'establish a tentative yearly calendar for the thematic resolutions of the Human Rights Council in consultation with the main sponsors... on a voluntary basis and without prejudice to the right of States as provided for by paragraph 117 of the annex to Council resolution 5/1' (paragraph 45). The section also includes a call for consultations on resolutions and decisions to 'observe the principles of transparency and inclusiveness' (paragraph 50) and again emphasises the 'need for early submission of Draft resolutions and decisions by the end of the penultimate week of the Council session' (paragraph 52).

Another particularly notable element of Part V is Section C, which reads as follows:

C. Bi- and triennial thematic resolutions

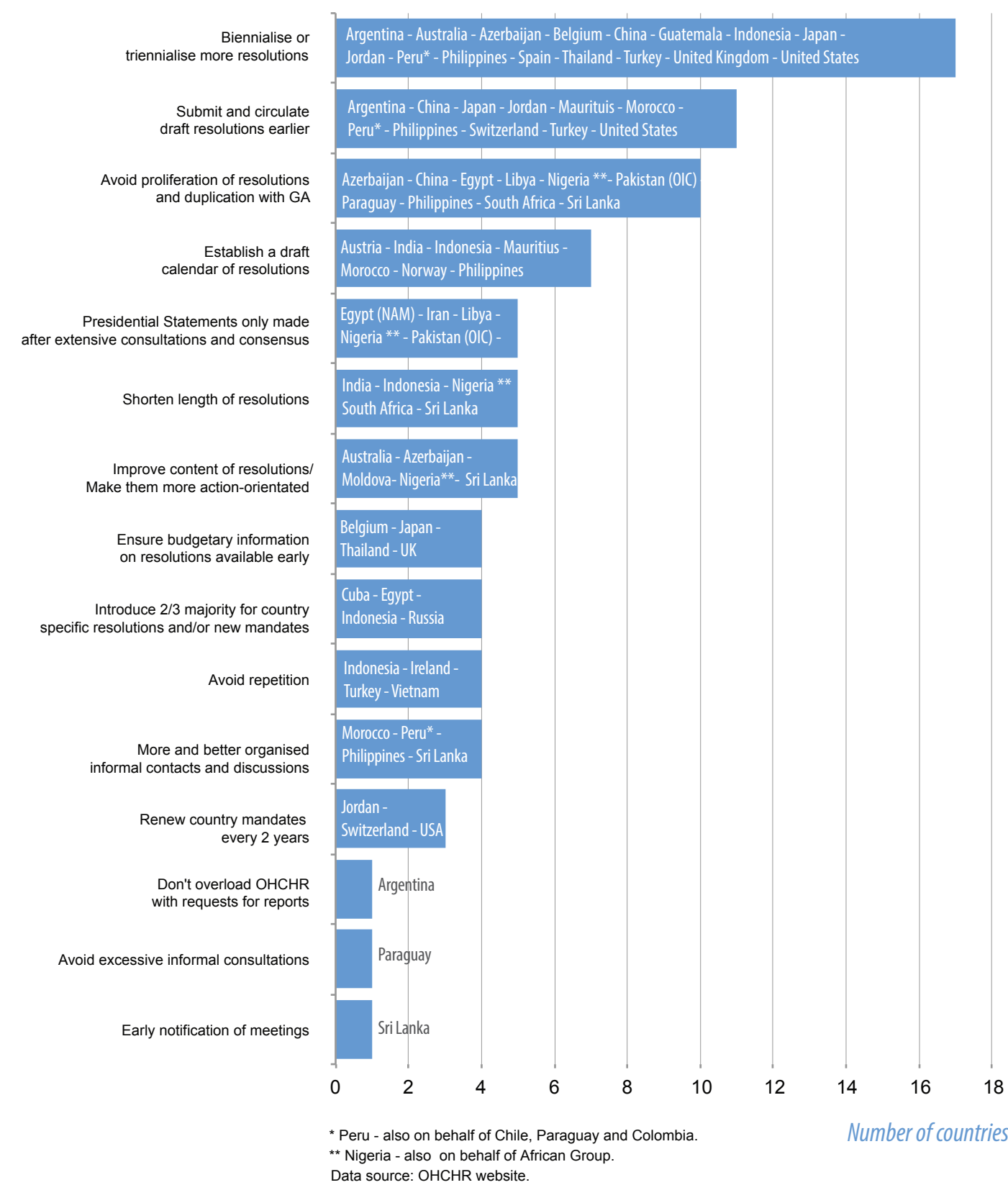
48. In principle and on a voluntary basis, omnibus thematic resolutions should be tabled on a biennial or triennial basis.

49. Thematic resolutions on the same issue to be presented in between the above-mentioned intervals are expected to be shorter and focused on addressing the specific question or standard gap that justified their presentation.

While the language is somewhat weak ('in principle and on a voluntary basis'), these two paragraphs nevertheless demonstrate states' continued concern for managing the number of resolutions considered by the Council each year. The call for greater bi- and triennialisation can be seen as another measure for avoiding the proliferation of resolutions, alongside those already proposed in resolution 5/1.

Thus, both the Council's IBP and the outcome of its five-year review contain measures aimed at keeping the resolution system operating at a manageable level, measures that members of the UN agreed to by consensus. However, in 2013, a mere two years

FIGURE 1: COUNTRY SUGGESTIONS FOR IMPROVING THE HUMAN RIGHTS COUNCIL RESOLUTION SYSTEM DURING THE 2011 REVIEW



after the end of the review, the Council adopted its highest ever number of texts in a single year. It then went on to beat this record again in 2014. This suggests that, either through accident or design, the measures for managing the system are not being fully implemented.

PART III

THE QUANTITATIVE EXPANSION OF COUNCIL RESOLUTIONS

EXPANSION OF THE RESOLUTION SYSTEM

During the eight years of its existence, the Council's output has become increasingly prodigious. The total number of adopted texts increased by 160% between its creation in 2006, when it adopted 43, and 2014, when it adopted 112. The Commission, the Council's predecessor, hit the peak of its output in 1993, when it adopted a total of 98 resolutions (see Figure 2). It took the Commission 47 years to reach that peak - the Council overtook it in 5.

Not only are Council resolutions becoming more plentiful, they are also becoming longer. Resolutions adopted in 2014 were on average 25% longer than those adopted in 2011 (in terms of their average word count). The total word count of all resolutions adopted in 2014 was 129,849, the length of a sizeable novel (for comparison, Jane Austen's *Pride and Prejudice* is 122,685 words long).

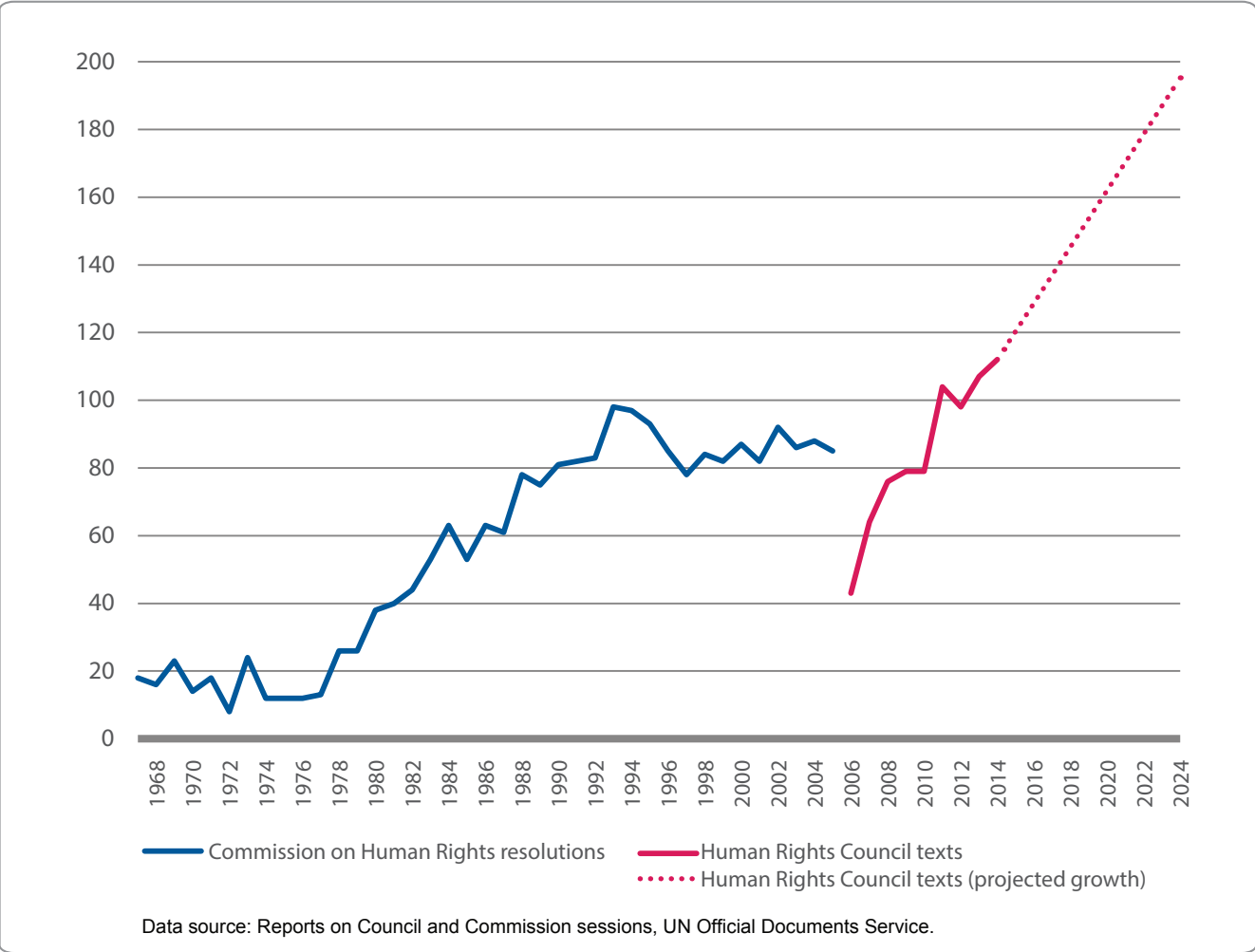
One direct consequence of this increase in the number and length of texts is the corresponding increase in their associated processing costs, such as editing and translation into the official UN languages.²⁷ The standard price for processing a single page of documentation into all six of these languages is \$1,225 (\$245 for each language after the document's original);²⁸ this means that the total processing costs for the 363 pages of resolutions adopted in 2014 amounted to \$444,675. If the Council adopts an additional 13 resolutions in 2015 at the same average page length as those of 2014, the total processing costs will exceed half a million dollars, before even beginning to implement the resolutions' content.

The Council's resolution system has clearly undergone profound changes since the body's establishment in 2006. In general, concerns raised in 2006 and 2011 about the quantitative expansion of the system have been realised, while measures adopted to manage that expansion have failed.

Like the expansion of other parts of the international human rights system (e.g. Special Procedures mandates), stakeholders

FIGURE 2: ANNUAL OUTPUT OF THE UN COMMISSION ON HUMAN RIGHTS AND THE HUMAN RIGHTS COUNCIL

1967-2014 and projected growth 2014-2024



have differing views as to whether this expansion is a good or a bad thing.

On the one hand, some states and NGOs emphasise the positive side of the growth in output, arguing that it reflects political support and enthusiasm for the Council, shows the body is ‘working’, and means that human rights protection gaps around the world (whether thematic or country-specific) are being closed. On the other hand, many delegations, especially smaller ones, complain that neither they nor the Council more broadly has the capacity to deal with so many texts, and the complex negotiations they entail. These delegates note that while the annual number of adopted texts has increased by over 160%, there has been no corresponding change in the capacity of state delegations to manage such an output, nor in the length of Council sessions to allow them to do so. When one considers the amount of time needed to scrutinise, negotiate, adopt and follow-up on a single resolution, it is clear – so they argue – that at some point the quality and impact of the Council’s work must suffer.

In the end, the key question is this: is the rapid horizontal expansion of the resolution system being matched by a corresponding strengthening of the system’s qualitative impact on the ground? A few state delegates and NGO representatives believe there must always be some kind of ‘trade-off’ between quantitative and qualitative considerations. For example, one NGO representative has noted that ‘you have to accept having ten useless resolutions in order to get the important ones through.’²⁹ However, by and large UN policymakers concede that the balance in the Council between quantity and quality/impact is badly out of kilter. The growth in the number and complexity of Council resolutions is in no way being matched by their real world impact in terms of promoting and protecting human rights on the ground. Indeed, because states no longer have the capacity to scrutinise and negotiate any but a handful of the texts tabled each session, quantitative growth is inherently linked with qualitative decline. There is, in other words, a breakdown in the checks and balances of multilateral diplomacy, meaning more texts are becoming longer, less focused, less coherent and less actionable, and are not being implemented or followed-up on. In other words, the Council is becoming a ‘resolution machine.’

BOX 1: TOP 10 MOST PROLIFIC MAIN SPONSORS OF COUNCIL TEXTS 1ST-27TH SESSIONS

RANK	SPONSOR	NUMBER OF TEXTS SPONSORED
1	AFRICAN GROUP	101
2	CUBA	85
3	MEXICO	55
4	ORGANISATION OF ISLAMIC COOPERATION	50
5	HUMAN RIGHTS COUNCIL PRESIDENT	49
6	MOROCCO	49
7	EUROPEAN UNION	46
8	BRAZIL	43
9	GERMANY	33
10	SWITZERLAND	33



PART IV

THE QUALITATIVE CONTENT OF COUNCIL RESOLUTIONS

WHAT DO RESOLUTIONS DO?

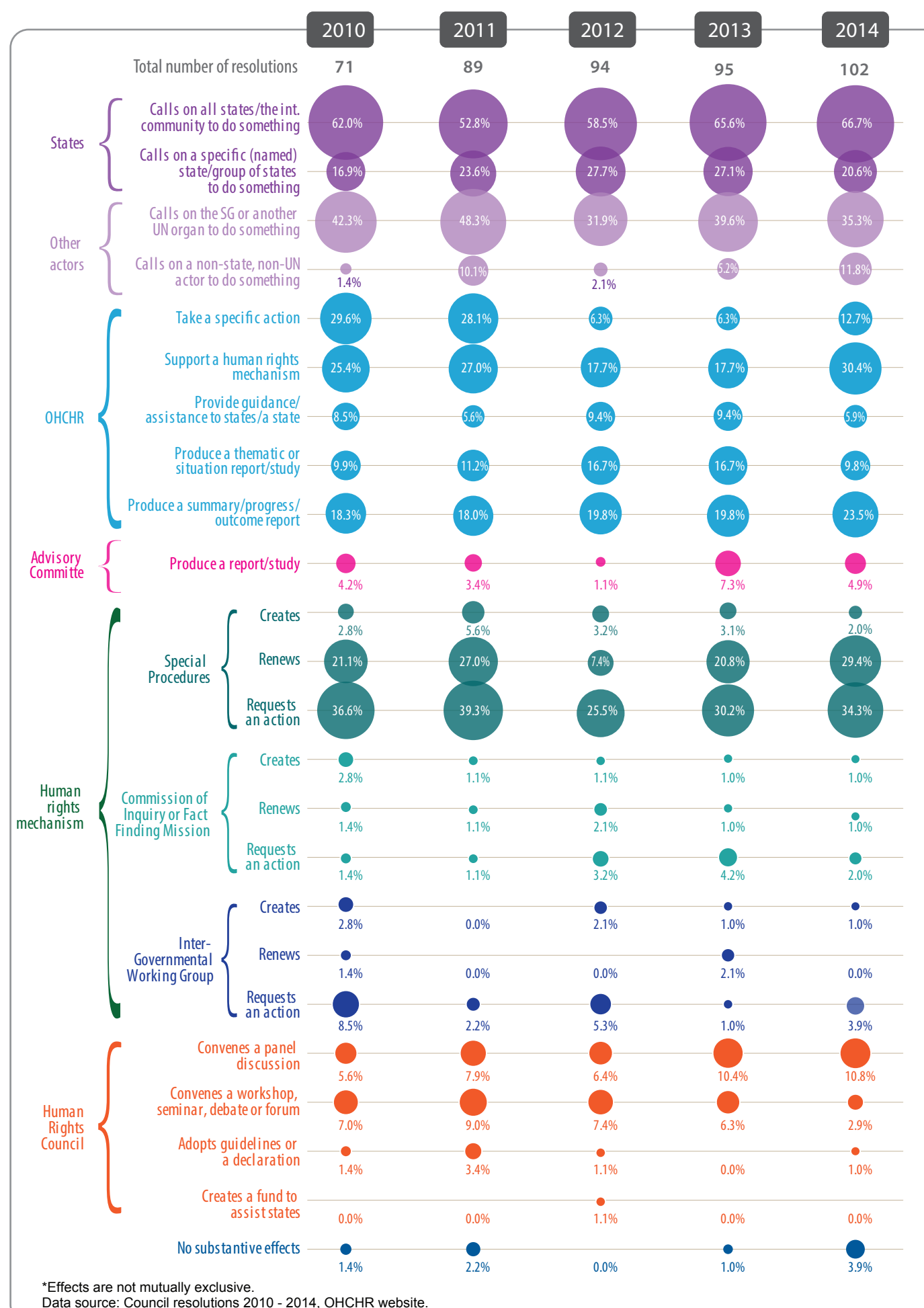
Figure 3 shows a breakdown of the various substantive (i.e. not purely rhetorical) effects that resolutions can have; in other words, the things that resolutions do. It also highlights who is responsible for implementing those effects, and the percentage of resolutions that have had each of them during the last three years.

The data clearly show that the majority of resolutions adopted by the Council each year (well over 60% in 2013 and 2014) call for all states, or the 'international community,' to take a particular action. These actions are often very general, for example calling on all states 'to promote and ensure the full realisation of human rights and fundamental freedoms for older people...'³⁰ However, requested actions tend to be much more specific when addressed towards specific (named) states or groups of states, for example calling on the government of Somalia 'to

finalize and adopt a federal Constitution by December 2015.'³¹ In either case, compliance is expected, if not legally required (as discussed in Part I). Furthermore, a significant proportion of resolutions also call on the Secretary-General, or another UN organ, to do something. As such, a plethora of international and domestic actions should in theory follow each Council session, in response to the calls, urges or requests of its resolutions.

Calling for action from all states, a specific state or group of states, or a non-human rights related UN organ could be termed as 'external' effects of Council resolutions. 'Internal' effects, on the other hand, are those that relate to human rights specific bodies and mechanisms, such as the Council itself, its Advisory Committee and Special Procedures, and the Office of the High Commissioner for Human Rights (OHCHR). As can be seen from Figure 3, while the external effects of resolutions are almost entirely limited to requests or calls for action, the internal effects are considerably more varied, and include convening of panel discussions and workshops, commissioning of reports, and the creation or renewal of mechanisms such as Special Procedures, Commissions of Inquiry and Intergovernmental Working Groups.

FIGURE 3: RESOLUTION EFFECTS*
2010-2014



BOX 2: PANEL DEBATES - THE NEW SENSATION

Paragraph 115 of the Council’s IBP introduced new working methods that had not been available to the Commission on Human Rights, including panel debates, seminars and roundtables. Of these, panel debates have proved to be the most popular. The number of panel debates held each year has risen from 2 in 2007 to 23 in 2014, with 10 held in the September session alone. Their popularity stems from the fact that they are very visible (they are held during Council sessions as part of its formal agenda) yet do not constitute a new, permanent (and costly) human rights mechanism (such as a new Special Procedures mandate). In theory, they thus help to move an agenda forward and bring visibility to the sponsoring states, but do not entail the expenditure of the political and financial capital necessary to establish a new instrument or mechanism. The downside of their popularity, however, is that panel debates are placing an increasingly heavy burden on the Council’s programme of work. The Council only meets in regular session for ten weeks per year, and the secretariat is finding it difficult to find space for all the panels requested by states. What is more, due to the large

number of panels (including an increasing number of – often quite repetitive – annual panels), the level of participation (both quantitative and qualitative) in panel debates is increasingly of concern. For example, during the early years of the Council’s existence, ambassadors and other senior diplomats would regularly participate in important panel debates, while today states are usually represented at junior, and even intern, level.

The IBP’s two other proposed working methods – seminars and roundtables – have seen considerably less use than panels. Since 2010, only 4 resolutions have convened seminars (none in 2014), and not a single one has convened a roundtable. However, while not specifically mentioned as a work format in the IBP, several resolutions have convened ‘workshops’ on various issues (8 since 2010), and the practical distinction between these and seminars is not clear. The advantage of these methods is that they are inter-sessional, and thus less of a burden on the Council’s programme of work in comparison with panel discussions.

The more common of these internal effects often fit together in a sequence of actions some diplomats refer to as the ‘well worn path.’³² When a given state (sometimes pushed by an NGO) wishes to introduce or draw attention to a new issue, it will often table a resolution requesting OHCHR to prepare a report or study on the subject. Since the founding of the Council, member states have requested the High Commissioner or the Secretary-General to produce over 450 such reports on a wide-range of issues including, *inter alia*, birth registration,³³ the safety of journalists,³⁴ and the situation of human rights in the Central African Republic.³⁵ After the report in question has been presented to the Council for its (usually nominal) consideration, the state will table a further resolution (usually a year after the first resolution) ‘taking note’ of the report (the sponsoring state would prefer the Council to ‘welcome’ the report but this wording is often blocked by other states not entirely happy with the report’s content) and calling for a panel debate on the subject. After the panel debate, the sponsoring state has a choice: do nothing (and risk the issue ‘dying’) or look for a more permanent means to keep the issue on the Council’s agenda. In the latter case, this usually means tabling a resolution establishing a new Special Procedure mandate, which would thereafter report to the Council on an annual basis (thereby ‘keeping the issue alive’).

This last point – the desire of states and NGOs to keep their issues alive, often irrespective of whether or not events in the real world justify such loyalty – goes some way towards

explaining the dramatic growth of Council resolutions since 2006. States and NGOs with existing issues on the Council’s agenda will generally (if not always) work to ensure that they remain there. For example, since 1967, 41 thematic Special Procedures have been established³⁶ yet only once have mandates been discontinued, and even then the two mandates were not abolished but merged with one another. As more mandates are created, more resolutions are needed to renew them: an unprecedented 30 resolutions, approximately 30% of all those adopted in 2014, had this effect. And all the time, more states (and NGOs) are advocating the creation of new mandates of which they are equally protective.

COST OF RESOLUTIONS

The financial implications of a resolution depend on its substantive effects. For example, calling for states to take a certain action does not necessarily cost the UN anything, as it is assumed that the state(s) in question will pay for whatever is being asked of them.³⁷ Panel discussions, OHCHR reports and Special Procedure mandates, on the other hand, all cost money. While the exact amount depends on the precise nature of what the Council is requesting, Box 3 provides examples of typical costs associated with certain types of activities.

BOX 3: COST OF RESOLUTION PROVISIONS

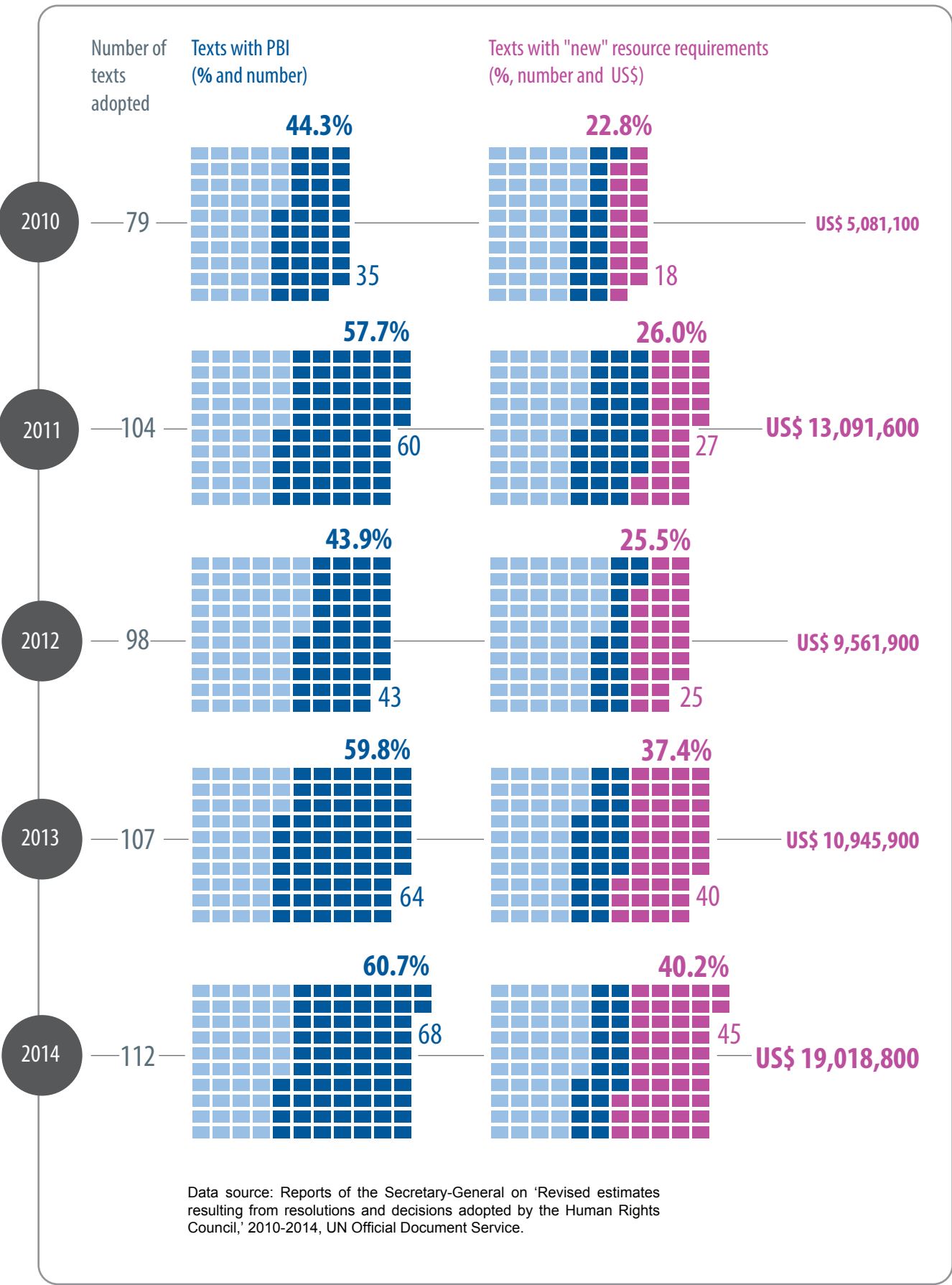
TYPE OF ACTIVITY	APPROXIMATE COST	EXAMPLES
Panel discussion	Minimum \$18,000, or \$48,000 if a summary report is requested.	‘Panel on the human rights of children of parents sentenced to the death penalty or executed,’ pursuant to resolution 22/11 (March 2013) - \$43,000. ‘Panel on the negative impact of corruption on the enjoyment of Human Rights,’ pursuant to resolution 21/13 (September 2012) - \$56,200.
Report	Minimum of \$30,400 for production of the document, plus an additional \$15,000- \$50,000 depending on the complexity of the topic and the time taken to complete the report.	‘Study on factors that impede equal political participation, and on steps to overcome these challenges,’ pursuant to resolution 24/08 (September 2013) - \$54,000. ‘Interim report on the human rights situation, and report evaluating the needs for technical assistance and capacity-building in the Central African Republic,’ pursuant to resolution 23/18 (June 2013) - \$171,200.
New Special Procedure mandate	Significant variation, depending on amount of travel, level of staff support, and reports produced.	Independent Expert on the enjoyment of all human rights by older persons, established by resolution 24/20 (Sept 2013) - \$656,400 per year. Independent Expert on the situation of human rights in Mali, established by resolution 22/18 (March 2013) - \$279,500 per year.

In some instances, the costs arising from a resolution are already covered as perennial activities under the UN’s programme budget. In these cases, while the resolution still has Programme Budget Implications (PBIs), its provisions do not require any additional resources beyond what has already been allotted to activities of that type, and it effectively entails no ‘new’ costs. This is the case, for example, for resolutions that renew the mandate of an existing Special Procedures mechanism: after the mandate is first created, the associated costs become incorporated into the UN’s bi-annual programme budget,

and are then available if and when the mandate is renewed (assuming the renewal does not entail any new activities).

Most of the time, however, the costs of a Council resolution are not already covered by the programme budget, or at least not without drawing on the budget’s contingency fund. This is normally the case for resolutions that create panel discussions, call for reports, or establish new Special Procedure mandates. In these cases, the additional resources required to implement the resolution must be approved by the GA’s Fifth Committee, which

FIGURE 4: FINANCIAL IMPLICATIONS OF RESOLUTIONS
2010-2014



deals with budgetary matters. To that end, after the conclusion of the Council's third session each year, the Secretary-General compiles all adopted texts, with associated PBIs, into a single report, and then determines how many require additional resources, to what extent these resources can be subsumed under the current regular budget, and how many resolutions require drawing on the UN's contingency fund.

Figure 4 shows the number of texts with PBIs, and the (smaller) number requiring 'new' resources not already covered by (or subsumable into) the regular budget, as well as the total costs of the new requirements.

2014 was a record-breaking year in terms of the costs of the Council's output, with the highest ever number of texts with PBIs, the highest ever number of texts requiring new resources not already covered by the budget, and the highest total cost of the new resource requirements (only fractionally less than the previous two years combined). The year also saw the adoption of the most expensive text in the Council's history (excluding the 2006 IBP): resolution 25/23,³⁸ which extended the mandate of the Commission of Inquiry on the Syrian Arab Republic, requiring \$5,691,900 in new resources.

Figure 4 also shows that, apart from a notable dip between 2011 and 2012 (possibly attributable to the 2011 review), the number and proportion of texts with financial implications adopted by the Council has steadily increased over the last five years. Under 45% of all texts adopted in 2010 had PBIs, while in 2014 it was over 60%; similarly, only 23% of texts adopted in 2010 required 'new' resources, while in 2014 this proportion had risen to 40%.

Clearly, as the Council has become increasingly prolific at adopting texts, it has also become increasingly willing to spend money on them. As with the growth in number and length of texts, however, there are serious doubts as to whether such trends are sustainable in the long-term.

WHAT ARE RESOLUTIONS ABOUT?

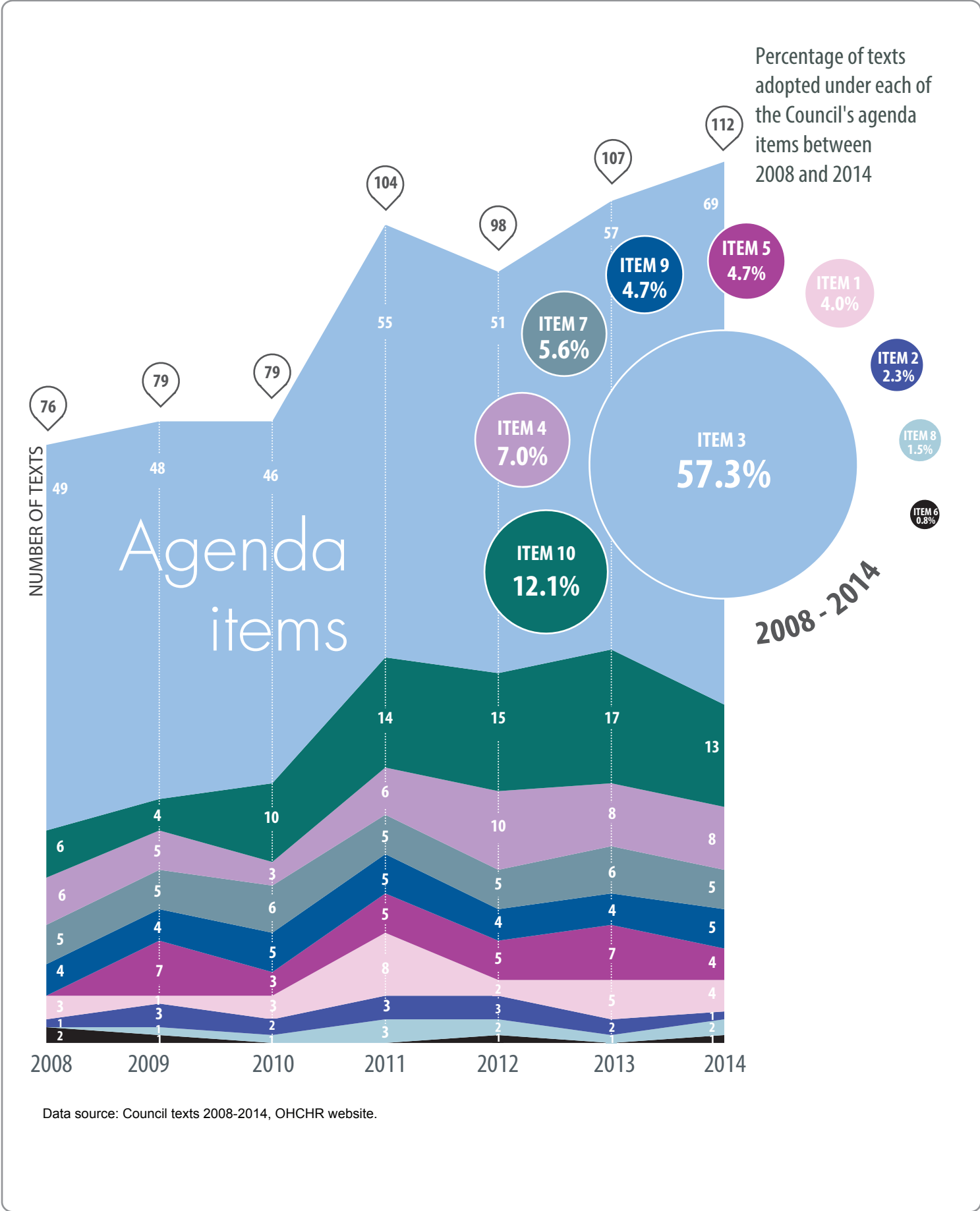
One of the Council's first acts after its establishment was to formulate its agenda. This was finalised in June 2007 as part of the IBP. The agenda sets the overall framework under which each regular session of the Council is organised. All Council activities, such as the consideration of reports, interactive dialogues with the High Commissioner and Special Procedures, and general debates, take place under one of the Council's 10 agenda items (see Box 4). Each draft resolution is likewise tabled and acted upon under the relevant agenda item.

THEMATIC AND COUNTRY-SPECIFIC RESOLUTIONS

Figure 5 shows the breakdown of the texts adopted by the Council in regular session under each of its agenda items from the start of 2008 (the first full year of sessions after the agenda was finalised) to the end of 2013. The predominance of item 3 resolutions is immediately striking. These are thematic resolutions focused on general human rights standards and norms without singling out specific countries or situations (e.g. resolution 24/5 on 'the right to freedom of peaceful assembly and association').³⁹ Between the Council's 7th session in March 2008 and its 27th session in September 2014, nearly 60% of all resolutions produced by the Council were adopted under item 3 (i.e. addressed general thematic issues). In contrast, only 7% were adopted under item 4 (urgent human rights situations requiring the Council's attention). Even if one were to add



FIGURE 5: TEXTS ADOPTED UNDER EACH OF THE COUNCIL'S AGENDA ITEMS
2008 - 2014



BOX 4: THE COUNCIL'S AGENDA

Item 1: Organisational and procedural matters

Item 2: Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General.

Item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.

Item 4: Human rights situations that require the Council's attention.

Item 5: Human rights bodies and mechanisms.

Item 6: Universal Periodic Review.

Item 7: Human rights situation in Palestine and other occupied Arab territories.

Item 8: Follow-up and implementation of the Vienna Declaration and Programme of Action.

Item 9: Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Programme of Action.

Item 10: Technical assistance and capacity building.

together the total number of country-specific texts adopted under agenda items 1, 2, 4, 7 and 10,⁴⁰ and all country-specific resolutions adopted by the Council in special session, the total is still less than half of the number of texts the Council has adopted addressing thematic human rights issues under agenda item 3.

This imbalance in the Council's output is mirrored by (and linked to) systemic imbalances in its programme of work. Over its fifteen regular sessions between 2010 and 2014, the Council devoted a total of approximately 646 hours (26.9 days) to discussions and activities under agenda item 3. This stands in stark contrast to the mere 153 hours (6.4 days) devoted to activities under item 4 and 130 hours (5.4 days) devoted to activities under item 10, the two general country-specific agenda items. Equally strikingly, the Council devoted only 110 hours (4.6 days) to agenda item 5, the agenda item dealing with the Council's various bodies and mechanisms – i.e. the operational parts of the human rights system.

Why does this matter?

It matters because it is contrary to the Council's mandate and responsibilities.

When heads of states and governments resolved to create the Council at the 2005 World Summit (as codified in GA resolution 60/1), they decided that the mandate of the new body would be to 'promote universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner'.⁴¹ Importantly, they then went on to place particular emphasis on the important role the Council should play in addressing 'situations of violations of human rights, including gross and systematic violations'.⁴² The final paragraph of resolution 60/1 under the subheading

'Human Rights Council' then requested the President of the GA to conduct negotiations to set the precise 'mandate, modalities, functions, size, composition, membership, working methods and procedures of the Council'.⁴³

As discussed in Part I, the outcome of those negotiations was GA resolution 60/251. After deciding to establish the Council in operative paragraph 1, state representatives gave the new body the same overall mandate as set down in paragraph 158 of resolution 60/1. They also, again taking their lead from the outcome of the World Summit, drew particular attention to the Council's responsibility to 'address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon' (operative paragraph 3). A number of states emphasised the importance of the Council's role in this regard during their statements in explanation of vote when resolution 60/251 was adopted by the GA, including Austria, Norway, Chile and Argentina.⁴⁴

By contrast, the role of the Council in serving 'as a forum for dialogue on thematic issues on all human rights' does not appear at all in resolution 60/1 and only appears as the second of ten subparagraphs under the fifth operative paragraph of resolution 60/251.

When one compares the wording of these key resolutions to the reality of the Council's work and output, in particular the predominance of thematic resolutions under agenda item 3 (almost 60% of all adopted texts), and the relative dearth of resolutions focused on 'situations of violations of human rights, including gross and systematic violations' under item 4 (7% of all adopted texts), the discrepancy could not be more striking. It is thus difficult to avoid the conclusion that the Council is not fulfilling the mandate handed down to it by heads of states and governments, and by the GA.

The reason behind this failure is straightforward: thematic item 3 resolutions are (generally speaking) far less contentious than country-specific item 4 resolutions. Only two actors have consistently shown the political will, and have been able to project the necessary political power, to secure the passage of item 4 texts: the US and the EU. Of the forty-six item 4 resolutions adopted between 2008 and 2014, 56% (covering five different situations) were pushed by the EU or by leading EU member states (for example, the UK's resolutions on the situation in Libya) and 20% (covering two situations) by the US. While actors such as the African Group (16%, covering three situations) and Japan (16%, covering one situation) have led on the adoption of some item 4 texts, they have been considerably less active than the US and the EU and have confined themselves to a limited set of situations (in Japan's case to North Korea, and in the African Group's case to situations in Africa).

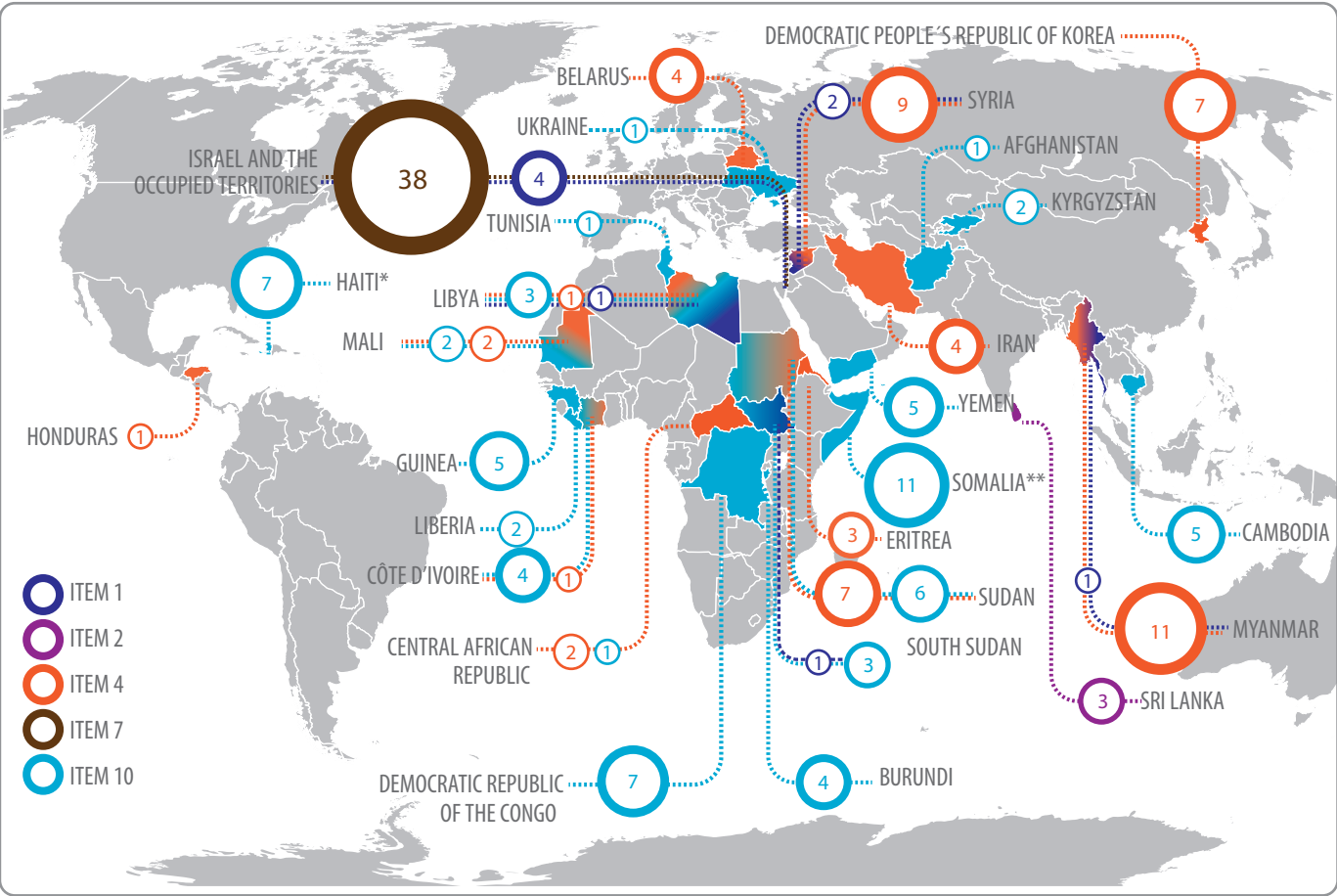
The Council's willingness to address country-specific human rights violations is therefore heavily dependent on just two Western powers: the EU and the US. The predominant influence of these two on the Council's output was evident in 2011, when the number of item 4 resolutions adopted by the Council

doubled from 3 to 6, and in 2012, when the number increased to 10. The growth in 2011 was down to new resolutions on Iran (led by the US), Libya (led by the UK), Belarus (led by the EU) and Cote d'Ivoire (sponsored by the African Group with European support); in 2012 it was down to three new resolutions on Syria (the first led by the EU and the next two by the US, Turkey and certain Arab states), and 2 new resolutions on Mali (sponsored by the African Group with European backing).

One important consequence of the Council's reliance on Europe and the US to drive country-specific resolutions (albeit sometimes in concert with the African Group, which insists on taking the *de jure* lead on situations in Africa), along with its unprecedented decision in 2006 to dedicate an entire agenda item to just one human rights situation – the situation in the Occupied Palestinian Territories (Item 7) – is that the body has been highly selective in which human rights crises to address.

Figure 6 shows that, since the finalisation of the Council's agenda in 2007, only 12 country situations have been deemed to 'require the Council's attention' as defined by item 4. Two further situations were considered under other items – Sri

FIGURE 6: COUNTRY-SPECIFIC HUMAN RIGHTS COUNCIL TEXTS ADOPTED DURING REGULAR SESSIONS BETWEEN JUNE 2007 AND MARCH 2014



NOTES:
* ADOPTED AS PRESIDENTIAL STATEMENTS.
** 9 RESOLUTIONS AND 2 DECISIONS.

Data source: Council texts June 2007-September 2014, OHCHR Website.

Lanka under item 2, and Israel and the Occupied Palestinian under item 7 – while an additional 12 were addressed through technical assistance and capacity building under item 10.

When one considers the scale of human rights violations that have taken place (and continue to take place) around the world since 2007, it is clear that, by only addressing fourteen situations, the Council is guilty of a serious dereliction of its responsibilities. For example, an objective observer might find it questionable that of the 10 lowest ranked countries in the Economist Intelligence Unit's 2013 'Democracy Index'⁴⁵ (i.e. the 10 most authoritarian regimes),⁴⁶ 8 have never once featured on the Council's item 4 agenda.⁴⁷

RELATIONSHIP WITH SPECIAL PROCEDURES

Since the Council's creation in 2006, it has adopted a total of 19 resolutions establishing new Special Procedures mandates (12 thematic and 7 country-specific), and 140 resolutions extending existing ones.⁴⁸ Special Procedures are one of the international human rights system's most important mechanisms for the promotion and protection of human rights.⁴⁹ Once established, mandate-holders, *inter alia*, receive petitions from the victims of alleged violations, conduct country missions, and prepare and present regular reports to the Council for its consideration. The annual reports of thematic Special Procedures serve to advance international understanding about the enjoyment of the right(s) in question and to make recommendations to states on how to strengthen that enjoyment. Thematic Special Procedures also present, in addendum to their annual report, reports on any country visits (called 'missions') they have undertaken during the year. Country-specific Special Procedures (e.g. the Special Rapporteur on the human rights situation in Myanmar) present annual reports to the Council analysing the human rights situation in, and making recommendations to, the country in question.

An important part of the Council's work is to consider the reports of Special Procedures (the human rights system's 'eyes and ears'), to respond to them and to take follow-up action. In theory, the main means of doing so is through further Council resolutions acknowledging a report, responding to its conclusions and resolving to promote the implementation of its recommendations, as appropriate. In the case of annual reports by thematic Special Procedures, this exercise has an important norm-setting function. In the case of country mission reports by thematic Special Procedures and annual reports by country-specific Special Procedures, it has an important human rights promotion and protection function.

Unfortunately, however, Council resolutions responding to the work of Special Procedures often represent a missed opportunity. A URG analysis of the 34 resolutions adopted by the Council in 2013 which were associated with specific Special Procedures mandates (25 thematic, 9 country-specific) found that:

- 5 resolutions make no reference whatsoever to the Special Procedure's annual report (20% of the time for thematic mandates, 0% for country mandates);
- 0 resolutions explicitly acknowledge country mission reports by thematic Special Procedures (presented as addendums to normal annual reports), or even acknowledge that the missions occurred;
- 12 resolutions 'welcome' the Special Procedure's annual report; 7 'take note with appreciation'/'interest'; and a further 7 merely 'take note';
- 9 resolutions call for steps to be taken to implement annual report recommendations (16% of the time for thematic mandates, 56% for country mandates). Among the strongest of these was resolution 23/08 on the 'Mandate of the Special Rapporteur on the human rights of internally displaced persons,' which urged 'governments and the relevant bodies of the United Nations system, also at the country level, to follow up effectively, where appropriate, on the recommendations of the mandate holder and to make available information on the measures taken in this regard.'⁵⁰

In short, whereas the Council is very good at using resolutions to establish/renew Special Procedures mandates, to call on states to cooperate with them and to request OHCHR to support them, it has a notably poor record in actually responding, reacting to, and building upon the substantive work of mandate-holders. A powerful example of this is the practice of using resolutions to call on states to accept country visits by thematic Special Procedures, but then routinely failing to acknowledge when states have done so, or expressing the international community's support for the implementation of resultant recommendations.

RESOLUTIONS AND THE UNIVERSAL PERIODIC REVIEW

Another UN human rights mechanism with the potential for a strong supporting relationship with the Council's resolutions is the Universal Periodic Review (UPR), wherein states review one another's human rights records and make recommendations thereon.

As discussed above, the majority of Council resolutions call on all states to take certain actions, usually related to a particular theme or issue. While states have no strict legal obligation to undertake these actions, there is nevertheless a strong expectation that they will do so, especially when the resolution in question was adopted by consensus. The UPR offers the original sponsors of a resolution an excellent opportunity to follow up on whether the calls to action within that resolution have been implemented by the state under review, and to make recommendations to assist in that process.

Once again, however, this opportunity is frequently missed by states, which tend to overlook the Council's substantial back-catalogue of thematic resolutions (including those they have themselves sponsored) when making UPR recommendations. This is unfortunate, as referencing a specific resolution can confer substantive weight to a recommendation. The omission is particularly surprising in the case of states that have been the subject of country-specific resolutions at the Council. For example, during Myanmar's review in 2011, not a single recommendation issued to the state under review made reference to any of the 7 resolutions the Council had previously adopted on the situation there.⁵¹ Similarly, during the 2014 review of the Democratic People's Republic of Korea, only 3 of the 268 recommendations issued made any reference to Council resolutions on the country situation, which have been adopted annually since 2008.⁵²

Considering that these resolutions contain a significant number of calls for action from the target state, failing to use the UPR as a means of reiterating and following up on them shows a clear lack of cohesion among the Council's mechanisms.

It is worth noting that some states do engage in this good practice. For example, Brazil frequently follows-up on resolution 9/12 on 'human rights voluntary goals' in UPR recommendations (e.g. to Colombia during its first cycle review),⁵³ while a large number of states referred to Council resolutions under item 7 during Israel's review in 2013.⁵⁴



PART V

COUNCIL RESOLUTIONS: DO THEY REALLY MATTER?

It is clear from the preceding sections that the UN's human rights resolution system is expanding rapidly and that expansion has been heavily focused on strengthening 'dialogue on thematic issues on all human rights,'⁵⁵ contrary to the Council's inter-governmental mandate. As already mentioned, there is disagreement between stakeholders about whether these trends are a cause for concern, or are part and parcel of a new UN body 'finding its feet' and asserting itself on the world stage. In either case, what is clear is that for the Council to remain efficient, relevant and credible, any quantitative increase in its output must be matched by a qualitative strengthening of its impact on the ground. This in turn raises the question: what is the actual real-world impact of Council resolutions? Or, put another way, do Council resolutions really matter?

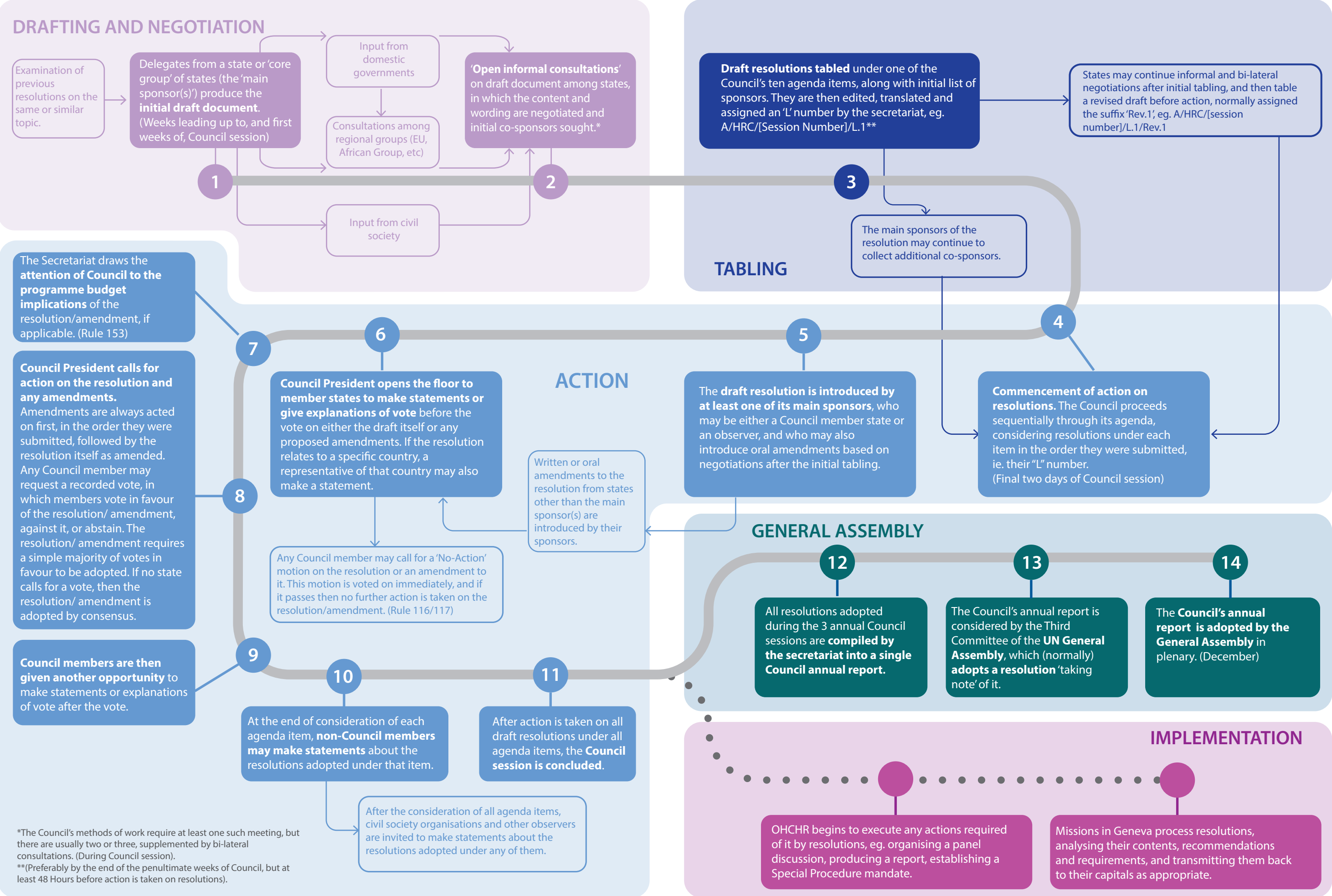
To states and NGOs at the UN in Geneva they clearly do matter. Diplomats expend considerable time and resources conceiving, drafting and negotiating texts, while NGOs expend significant levels of energy lobbying for or against their adoption. One need only attend voting at the end of a given Council session - with its associated tension and drama - to understand the importance that stakeholders attach to securing the passage of resolutions.

But do they matter beyond the walls of the UN? Do they matter for the politicians and civil servants in state capitals who determine domestic human rights policy, and do they matter for people whose rights have been violated and who look to the international community for help?

This is an extremely difficult question to answer with any degree of precision, for a number of reasons.

First, the relevance and impact of a given text is dependent on a range of complex variables including the type of resolution in question (i.e. under which Council agenda item it was tabled and adopted), what action it seeks to bring about (e.g. urging changes in domestic laws or establishing a new international human rights mechanism), and to whom its recommendations are directed (e.g. states or the OHCHR). For example, it is relatively easy to identify and quantify the impact of an item 3 resolution that calls on the OHCHR to prepare a report on, say, the right to water; once the report has been drafted and presented to the Council, the resolution can be said to have been implemented (the impact of the report itself is another matter). On the other hand, the recommendations set down in an item 4

FIGURE 7: LIFE OF A RESOLUTION



resolution directed at an autocratic state are highly unlikely to be implemented at all, but to some extent that misses the point: a key purpose of such resolutions is to focus international attention on a given situation, to express the concern of the international community about the welfare of victims, and to apply external political pressure on the relevant government. For the purposes of this Policy Report, URG’s analysis will focus (mainly) on item 3 resolutions setting down recommendations to states – by far the most numerous type of text adopted by the Council.

Second, as discussed in Part I of this report, Council resolutions do not set down binding obligations, but rather express the ‘will’ of the international community and (usually) offer a series of recommendations. Together with the large number of texts generated each year, this ‘soft law’ character of Council resolutions means it is difficult to identify clear and objective benchmarks against which on-the-ground progress can be measured.

Third, while states have the primary responsibility for promoting and protecting human rights and thus for implementing Council resolutions, states themselves are not unitary actors (contrary to neorealist theories of international relations). Rather, state decisions and actions depend on a multiplicity of actors including bureaucracies, judiciaries, parliaments, the police, assorted interest groups, and the private sector. Even if one were to look purely at bureaucracies, it is clear that implementation of a given resolution requires coordinated action by a range of different ministries and departments at national and local levels. This makes precise measurement of implementation difficult.

Finally, when looking at the impact of Council resolutions it is difficult to ascertain the degree to which they have a determinative influence on domestic policy, or are merely reflective of global trends. Resolutions (in particular thematic resolutions) normally reflect the consensus or majority position of the international community. This means, by extension, that they reflect what states are already doing in a given area (or, at least, what they are willing to do). In other words, member states (especially democratic states) on the Council will only join consensus on or vote in favour of a resolution if they are confident it is consistent with their existing policy and practice. A good example of this dynamic is resolution 16/18 on combatting religious intolerance.⁵⁶ Western states agreed to join consensus on this text not because they agreed, in an aspirational sense, with the resolution’s plan of action and wished to bring their laws and practices into line with it, but rather because they were confident that they ‘were already doing the various things called for in the text.’⁵⁷ This clearly creates difficulties in terms of understanding the impact of Council resolutions: does a given resolution cause or merely reflect domestic policy shifts?

Considering these difficulties, and in the absence of a detailed survey of what each of the 194 countries of the UN have done

to implement each of the 762 resolutions, decisions and presidential statements adopted by the Council since 2006, the most useful framework for understanding the influence and impact of Council texts is to identify the factors or characteristics that make it possible, in principle, for a given resolution to have a useful, practical impact. Dividing resolutions into ‘good’ (i.e. likely to have some kind of impact) and ‘bad’ (unlikely to have any impact) is overly simplistic. However, by breaking the ‘life-cycle’ of the resolution down into its constituent parts (conception, negotiation, adoption and implementation), it is possible to make a reasoned judgement about which resolutions have the potential to promote and protect the on-the-ground enjoyment of human rights, and those that are nothing more than ‘pieces of paper.’⁵⁸

CONCEPTION

Why do states decide to present resolutions to the Council? To an impartial observer, the answer to this question may seem obvious: states do so in response to an evident and demonstrable need. However, in reality, substantive necessity (what states and NGOs often refer to as ‘normative gaps’ or ‘protection gaps’) is only one of a number of state motivations.

Another important factor is the desire on the part of many states ‘to be seen to be active.’ For example, countries that have ambitions for Council membership, that are standing for election, or that have recently become members, will often feel the need to ‘own’ an issue and to take it forward. This impulse can be driven by a genuine desire to contribute to (and be seen to contribute to) the Council’s work and to the enjoyment of human rights, or by a more basic wish to demonstrate a state’s importance and relevance. Usually, it is a combination of the two. Taken to its extreme, this ‘profiling’ impulse can even see states approach the Council’s secretariat to ask their advice on what issues they might ‘take-up.’⁵⁹

When one considers that there are 176 permanent missions in Geneva (and countless more NGOs lobbying them), that there is an almost limitless number of issues that can potentially have a ‘human rights dimension,’ and that, for each issue, a wide range of vulnerable groups may be in need of particular attention (women, children, the disabled, indigenous persons, ethnic and religious minorities, older persons, gay, lesbian, bisexual and transsexual persons, human rights defenders, journalists, etc.), the risks inherent in the unchecked state impulse to be ‘seen to be active’ becomes clear.

According to some Western states and NGOs, a further (more Machiavellian) motivation for certain delegations to table resolutions is to ‘clog up the system with meaningless texts, thereby distracting the Council’s attention from its core

mandate.’⁶⁰ This accusation is, of course, almost impossible to prove. However, it is clear that the number and length of texts tabled by some countries places an exceptionally heavy burden on the Council’s programme of work that may be difficult to justify on the basis of their necessity and content.

It is clear that, to be effective, Council resolutions should be conceived in response to a demonstrable need, and not in response to artificial calendars set by national political considerations. It is also important for the text to be drafted in a way that makes a practical contribution to responding to that need or objective. For example, if a normative gap has been identified, the resolution should clarify the relevant norms and set down a clear, implementable and measurable series of recommendations and actions for states. Good examples of such texts include Council resolution 16/18 on combatting religious intolerance,⁶¹ Council resolution 17/18 on the Optional Protocol to the Convention on the Rights of the Child,⁶² and Council resolution 16/1 on the UN Declaration on Human Rights Education.⁶³

REPETITION

Whatever a state’s motivation for taking ownership of an issue and presenting a resolution thereon, after the first submission political forces can come into play that make it difficult to avoid tabling further texts on the same subject, often on an annual basis. Prominent among these forces are bureaucratic reminders to Geneva delegations from capital-based colleagues, and the application of civil society pressure to ‘keep the issue alive.’ Furthermore, the introduction of the Council President’s annual calendar of initiatives, which was meant to improve the resolution system by offering greater transparency and predictability of forthcoming initiatives, may have actually made matters worse by making states feel obliged to table resolutions each year as per the agreed schedule. This leads to recurrence, with similar texts on similar issues being re-tabled year after year. Although efforts are usually made to update the text each time, or to focus on a different ‘angle’, the result is nevertheless a significant amount of repetition in the Council’s output.

As noted in Part II, states have long been aware of the problems of repetition and duplication of initiatives. One of the most common suggestions for improving working methods put forward by states during the 2011 review was to biennialise or triennialise thematic resolutions (see Figure 1). This led to paragraphs 48 and 49 of the review’s outcome document, discussed in Part I.

Looking at Figure 8, it appears that states did take steps to reduce repetition immediately following the 2011 review. While in 2010, 55% of all resolutions adopted had a ‘sister’ resolution

(i.e. a resolution with the same name)⁶⁴ adopted in 2009, by 2011 the percentage of such (annual) ‘repeat’ resolutions had dropped to 38%. Unfortunately, state self-restraint did not last long. By 2012, the percentage of resolutions ‘repeated’ from the previous year had risen to 45%, and by 2013 it was back to over 50% (though it subsequently dropped back to 45% in 2014).

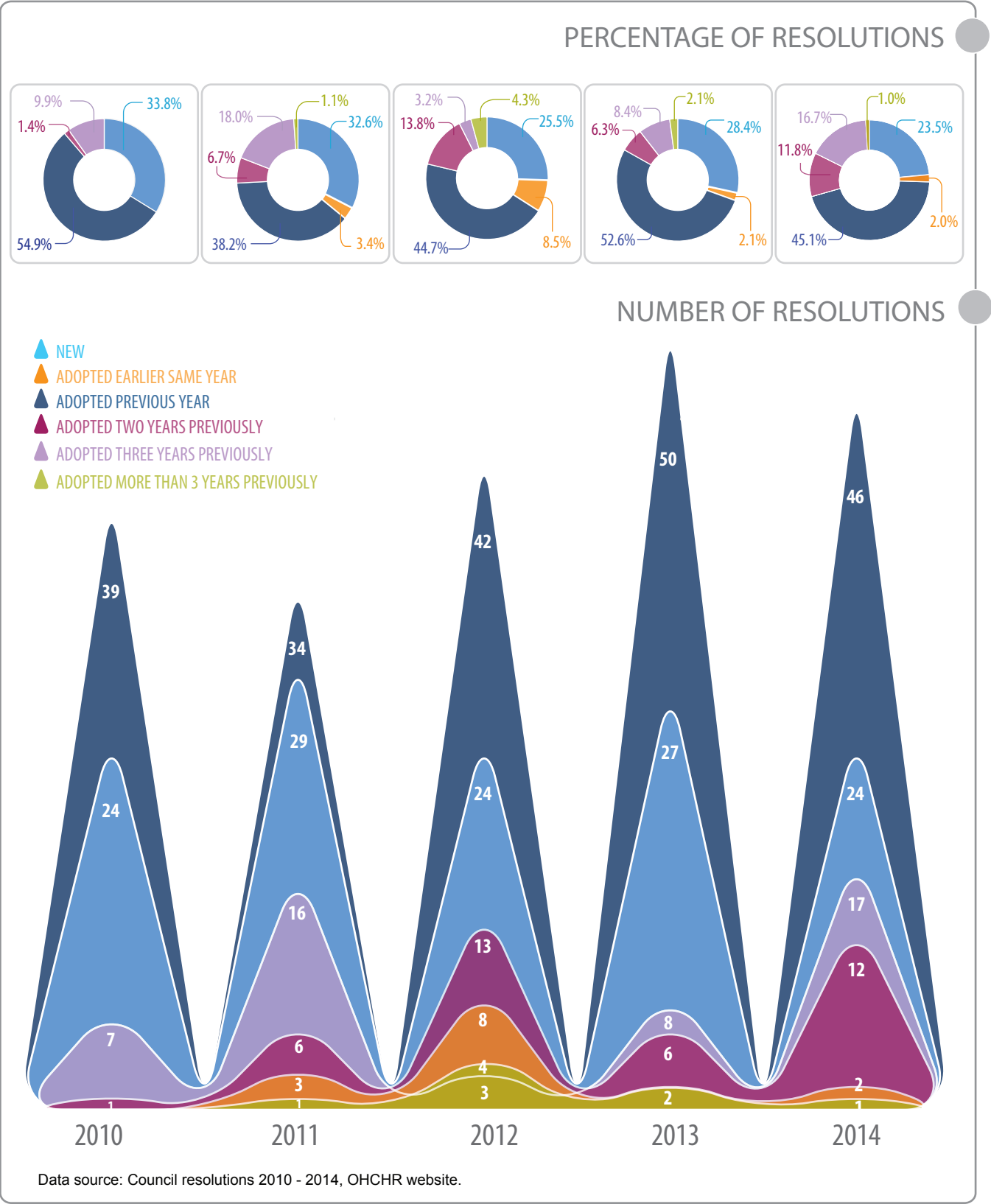
NEGOTIATION

The nature of the negotiation process leading to the adoption of a Council resolution has a significant impact on that resolution’s quality and impact. If a Council resolution is to reflect the will of the international community, then a broad cross-section of that community should be involved in its formulation. If not – if a resolution is drafted and agreed by a small number of like-minded states – it is clear that the quality of the text will be reduced and its legitimacy among the wider UN membership questioned. It will not, in short, be reflective of the common stance of the international community, and thus key constituencies within that community will not feel any impulse to bring domestic laws and practices into line with its provisions.

In keeping with these considerations, resolution 16/21 on the outcome of the 2011 review of the Council specifically states that ‘the consultation process on, *inter alia*, resolutions and decisions of the Council shall observe the principles of transparency and inclusiveness.’⁶⁵ This is also reflected in section VI of the IBP, which encourages informative briefings on prospective resolutions by their sponsors (paragraph 111) and information meetings on the status of negotiations organised by the President (paragraph 112), to accompany the informal consultations on the resolution’s content.⁶⁶ As discussed in Part II, the IBP also stresses that ‘consultations should, as much as possible, be scheduled in a timely, transparent and inclusive manner that takes into account the constraints faced by delegations, particularly smaller ones.’⁶⁷

Here again, recent trends in the Council give cause for concern. At present, each of its sessions sees the tabling of somewhere between thirty and forty resolutions. In order to be properly considered, discussed and negotiated, the main sponsors of those resolutions will normally organise two to four open informal consultations (see Figure 7). That means that a busy session of the Council can easily feature over seventy ‘informals’ over a three to four week period. When one considers that smaller Council delegations are usually composed of just one or two diplomats, and that even larger delegations will have no more than five or six, it is clearly impossible for members of the Council (which, after all, must vote on and adopt the texts) to cover and participate in all the negotiations. In effect, the quantitative expansion in the resolution system means that the ‘constraints faced by delegations, particularly smaller ones’⁶⁸ are no longer being taken into account, contrary to the provisions of the IBP.

FIGURE 8: RESOLUTION RECURRENCE
2010-2014



As a consequence, delegations are forced to prioritise among resolutions, usually based on instructions from their capitals. For example, one Western delegation has established a 'traffic light' system whereby draft resolutions are colour coded as red ('requiring full participation in the negotiations'), amber ('contribute to the negotiations where possible') or green ('either

don't follow at all or send an intern').⁶⁹ The difficulties inherent in effectively participating in so many negotiations on such a daunting array of issues is further compounded by the need (especially among delegations representing democratic states) to coordinate negotiating

positions with foreign ministries and relevant 'line ministries.'

ADOPTION

Once negotiations on a given draft resolution have been completed (or are close to being completed), the main sponsors will officially table the draft (under the relevant agenda item) by submitting it to the Council secretariat. At the time of tabling, the secretariat will assign each draft text an 'L number' based on the order of submission (e.g. L1 for the first draft text to be tabled). Then, during the last two days of the session, Council member states will move to 'take action' on each tabled text. Possible 'actions' are: adoption without a vote (consensus), adoption with a vote (by a simple majority) or rejection by vote.

The most desirable outcome for the sponsors of a resolution is adoption without a vote. In addition to the diplomatic risks inherent in taking an initiative to a vote, sponsors understand that for a (non-binding) resolution to stand a reasonable chance of being implemented, it should enjoy the support of the entire international community.

There are exceptions to this general rule. For example, Western states will often table item 4 resolutions on the situation in a given country even though they know consensus is unlikely, and even though they also know there is little chance of the concerned country implementing the resolution's provisions. They do so because they believe the resolution will be useful

anyway (for example, by drawing attention to the situation or by putting pressure on the relevant government). However, by and large, states understand that in order for a resolution, especially a thematic resolution, to have impact, it is important for it to be adopted by consensus, thereby presenting the single, unified voice of the international community.

Since 2006, the majority of Council texts have been adopted by consensus, although the proportion has been steadily declining over that time (from 80% in 2007 to just under 70% in 2014 – see Figure 9). No draft text has ever been rejected by a vote, though several have been withdrawn by their sponsors in anticipation of likely defeat.

IMPLEMENTATION

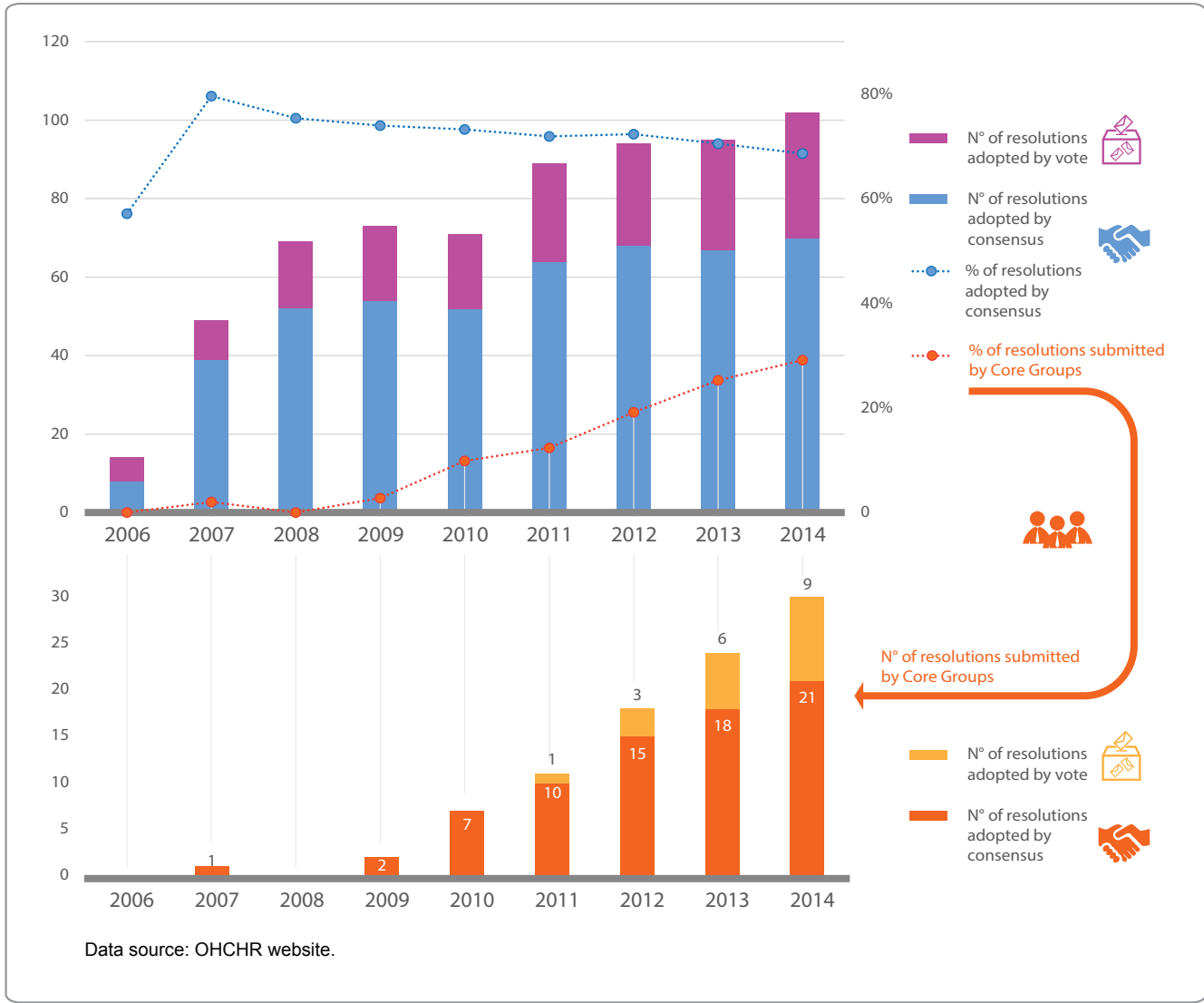
If one wants to understand the impact of Council resolutions, it is clearly important to know what happens following their adoption.

For resolution effects directed towards organs of the UN, next steps are generally quite straightforward. For example, if the Council requests OHCHR to produce a report to be considered at one of its future sessions, OHCHR is expected to do so (and will certainly be held accountable if it does not).

However, things are not so simple in the case of resolution effects directed towards states. In such cases, for a resolution to have any impact at national or local level, it is clear that a



FIGURE 9: IMPACT OF CORE GROUPS ON RESOLUTION ADOPTION
2006-2014



number of intermediary steps must be taken.

First, the content of adopted resolutions (including recommended actions) must be effectively communicated by delegations in Geneva to the relevant policymaking structures in the home country. Unfortunately, interviews conducted for this report show that even this basic first step, necessary for domestic implementation to be possible at all, often remains unfulfilled. Relatively few delegations have the capacity or the inclination to analyse all adopted texts and to send that analysis, with recommended actions, to their capital. Moreover, Geneva-based delegates tend to be conscious of the futility of ‘bombarding our one or two capital-based colleagues responsible for human rights with over a hundred resolutions each year, particularly when the recommendations contained therein are often repetitive and lacking in clear actions.’⁷⁰

Most permanent missions in Geneva therefore restrict any analysis to what they consider to be ‘the most important

resolutions’ and then ‘include that analysis in a general report’⁷¹ of the relevant Council session, which they send to their foreign ministry. By extension, a majority of resolutions adopted by the Council, some of them containing wording that diplomats have spent many hours negotiating, fail ever to leave Geneva. Indeed, capital-based human rights experts are often completely unaware of their existence, save through short mentions in general Council session reports.

Second, for resolutions that do make it this far and that are actively considered by foreign ministry experts, it is clear that in order to be implemented, recommended actions will need to be effectively disseminated to relevant line ministries (and thereafter to other legislative, judicial and executive organs of government). Indeed, research for this Policy Report has uncovered impressive examples of states establishing such ‘national implementing structures’ designed to follow-up on Council resolutions. For example, some states have established inter-ministerial human rights committees, some have created

BOX 5: THE RISE OF CORE GROUPS

An important trend in the submission of resolutions since the establishment of the Council is the relative decline in resolutions presented by a single state sponsor, and a corresponding increase in the prominence of so-called ‘core groups’ of main sponsors (see Figure 9).

These are groups of three or more states (often with an attempt made to have representation from different UN regions) that work together to draft, negotiate and table resolutions. The original impetus behind the emergence of core groups in 2007 was a genuine wish to strengthen consensus around, and the quality of, negotiating texts by engaging different countries and regions (and thus reflecting different perspectives) at an early stage.

However, as Figure 9 shows, while 100% of resolutions tabled by core groups were adopted without a vote in the first few years of their use, their capacity to secure consensus support has declined since 2010. Indeed, some diplomats now see them as having a negative influence on the quality of Council resolutions, noting that many core groups are becoming so large (sometimes numbering ten or more states) that members spend more time arguing amongst themselves than they do negotiating with the wider UN membership. When open informal consultations do happen, it is not unusual for them to feature more states on the podium presenting the draft text (i.e. members of the core

group) than are in the rest of the room offering comments and proposed amendments. Moreover, states complain that it is politically difficult for them to scrutinise draft texts rigorously when members of their own regional groups are now always amongst the main sponsors.

Joining core groups reflects a given state’s commitment to the human rights issue in question and to the work of the Council. However, it can also be a relatively easy way for delegations to boost their profile and influence. (being part of a core group is less onerous than being the individual lead sponsor of a resolution, but nevertheless offers an opportunity to help drive and shape the relevant agenda). Indeed, some delegations have become adept at positioning themselves to be in the core groups of a wide range of different Council initiatives. The top ten most prolific states in this regard are as follows:

1. Morocco – member of 41 core groups;
2. Switzerland – member of 25 core groups;
3. Brazil – member of 23 core groups;
4. Costa Rica – member of 19 core groups;
4. Turkey – member of 19 core groups;
6. Italy – member of 18 core groups;
6. USA – member of 18 core groups;
8. Maldives – member of 17 core groups;
9. France – member of 16 core groups;
9. Qatar – member of 16 core groups.

online platforms to share resolution recommendations amongst relevant government departments (and to receive feedback thereon), and some have put in place elaborate domestic processes to include key resolution recommendations in national human rights action plans. While a detailed assessment of national implementation is beyond the scope of this Policy Report, it is clear that the nature of steps taken by governments to translate the words contained in Council resolutions into improved national policy have a determinative effect on whether those resolutions are likely to have a positive impact on the on-the-ground enjoyment of human rights.

PART VI

RELATIONSHIP WITH THE GENERAL ASSEMBLY

When UN Secretary-General Kofi Annan first proposed replacing the Commission with the Council in his report 'In Larger Freedom', he wrote that 'Member States would need to decide if they want the Human Rights Council to be a principal organ of the United Nations or a subsidiary body of the General Assembly.'⁷² In either case, taking human rights out of the sphere of ECOSOC would accord them 'a more authoritative position, corresponding to the primacy of human rights in the Charter of the United Nations.'⁷³

UN member states opted against the more radical policy option when they created the Council through GA resolution 60/251, making it a subsidiary organ of the GA rather than a main UN body in its own right. As such, paragraph 5(j) of resolution 60/251 required the Council to 'submit an annual report to the General Assembly', or more specifically to its Third Committee, which is devoted to the consideration of social, humanitarian and cultural affairs. Unfortunately, beyond this basic reporting requirement, the resolution provided no clear indication on how the Council and the Third Committee should interact.

At first, the Third Committee simply adopted a short resolution each year taking note of the Council's report and its recommendations.⁷⁴ In 2013, however, it took the controversial decision to 'defer consideration' of one specific resolution contained in the Council's report, namely resolution 24/24 on 'Cooperation with the United Nations, its representatives and mechanisms in the field of human rights.'⁷⁵ This unprecedented step threw the status of the resolution into legal limbo: without being endorsed by the GA it was left 'adopted but not implementable.'⁷⁶ The situation (which, to-date, remains unresolved) revealed an underlying tension between human rights policymaking in Geneva and in New York, arising from the Council's subsidiary status and from the lack of a clear

and detailed delineation between the prerogatives of the Council and the GA.⁷⁷

This lack of institutional demarcation also manifests itself in the fact that both bodies undertake many of the same tasks relating to human rights. For example, both consider human rights issues and situations, both hold interactive dialogues with (some) Special Procedures mandate holders, and both adopt a significant number of human rights resolutions each year. This last shared activity is particularly notable, as it leaves open the possibility that the resolutions adopted by one body may either duplicate or conflict with those adopted by the other.

To explore whether this happens in practice, the Universal Rights Group conducted an analysis of the degree of overlap between human rights resolutions adopted by the Council and those adopted by the Third Committee for the 2012-2013 biennium. The analysis began at a *prima facie* level by comparing the titles of the resolutions adopted by each body. Resolutions adopted under the following items of the Third Committee's agenda were considered to be human rights related:

- Item 28(a): Advancement of women
- Item 64: Report of the Human Rights Council
- Item 65: Promotion and protection of the rights of children
- Item 66: Rights of indigenous people
- Item 67: Elimination of racism, racial discrimination, xenophobia and related intolerance
- Item 68: Right of peoples to self-determination
- Item 69: Promotion and protection of human rights

The Third Committee adopted a total of 86 resolutions under

these agenda items in the years 2012-2013. The titles of these resolutions were then compared with the titles of the 189 resolutions adopted by the Council during the same period, in order to gauge surface similarities. The analysis found that 48 Third Committee human rights resolutions (55.8% of the total) were found to have at least one *prima facie* Council equivalent.⁷⁹

The Universal Rights Group then went beyond the titles of these *prima facie* equivalent resolutions to analyse the degree of overlap in their content.⁸⁰ That analysis allowed them to be divided into five categories:

- **Functionally identical:** all substantive operative paragraphs in the two resolutions were identical or synonymous.
- **Elaboration:** one resolution contained all of the same substantive operative paragraphs as the other, either verbatim or synonymously, plus some further substantive operative paragraphs not appearing in the other.
- **Significant overlap:** of the total number of substantive operative paragraphs between the two resolutions, more than 60% had verbatim or synonymous equivalents in the 'sister' document.
- **Some overlap:** of the total number of substantive operative paragraphs between the two resolutions, less than 60% but more than 10% had a verbatim or synonymous equivalent in the opposing document.
- **No overlap:** of the total number of substantive operative paragraphs between the two resolutions, less than 10% had a verbatim or synonymous equivalent in the opposing

The results of the comparison are shown in Box 6.

These results show that, while it is relatively rare for exactly identical resolutions to be adopted in both New York and Geneva, it is common for human rights resolutions in both bodies to contain some, or even many, identical paragraphs. As the total number of shared paragraphs increases, redundancy becomes more of an issue in terms of wasted time and resources. In this respect, the fact that over a quarter of Third Committee resolutions repeat – almost verbatim – significant amounts of material from the Council is cause for concern. It also consumes time and resources that might be better spent elsewhere.

It is important to point out that while duplication (and contradiction) should be avoided, addressing human rights concerns in both Geneva and New York can, if dealt with carefully, be a positive exercise, allowing for greater visibility and promoting mainstreaming with other UN policies. For example, in 2013, both the Council and the Third Committee adopted *prima facie* similar resolutions on human rights defenders.⁸¹ However, the two resolutions addressed different issues, with the Council text looking at domestic legislation and the GA text focusing on the protection of women human rights defenders (thus leveraging the presence in New York of organisations like UN Women). Similarly, the sponsors of UN resolutions on the situation of human rights in Iran use Council texts to renew the mandate of the Special Rapporteur and Third Committee resolutions to address substantive concerns. These are both examples of resolutions adopted by each body complimenting one another without repetition, and thereby doing different but mutually reinforcing things towards the same end.

BOX 6: OVERLAP BETWEEN THE HUMAN RIGHTS COUNCIL AND THE GENERAL ASSEMBLY'S THIRD COMMITTEE

Of the 48 2012-2013 Third Committee resolutions that had a *prima facie* 2012-2013 Human Rights Council equivalent (judging by their titles):

- 6 were functionally identical to their closest Council counterpart (7% of 2012-2013 Third Committee human rights resolutions);
- 5 either elaborated upon, or were elaborated upon by, their closest Council counterpart (5.8% of 2012-2013 Third Committee human rights resolutions);
- 12 contained significant overlap with their closest Council counterpart (14% of 2012-2013 Third Committee human rights resolutions);

- 12 contained some overlap with their closest Council counterpart (14% of 2012-2013 Third Committee human rights resolutions);

- 13 contained no overlap with their closest Council counterpart (i.e. the equivalence was only in the title).

In total, 23 Third Committee resolutions in 2012-2013 were functionally identical, elaborative or significantly overlapping with resolutions adopted by the Council. This represents nearly 27% of all human rights resolutions adopted by the Third Committee during the period.

Including resolutions with some lesser degree of overlap, this number becomes 35, which is over 40% of all human rights resolutions passed by the Third Committee during the period.

CONCLUSION AND RECOMMENDATIONS

The research conducted for this report has revealed that the evolution of the Council's resolution system since 2006 has occurred in a manner inconsistent with key tenets of the body's founding and basic documents, namely GA resolutions 60/1 and 60/251, the 2007 IBP and the 2011 review outcome.

The original vision of heads of states and governments when they resolved to create the Council was that a principal focus and goal would be to address violations of human rights. However, despite the dramatic rise in the Council's annual output since its creation, the vast majority of its time and attention has been focused on general thematic issues. Moreover, where the Council has responded to violations of human rights, it has been notably selective in terms of the limited range of situations addressed.

Furthermore, the growth in the quantity of Council resolutions has often run counter to ensuring their quality and impact. Rather than offering action-oriented responses to specific and clearly defined gaps in the international human rights framework, many resolutions have become bloated and repetitive, tabled more with a view to 'keeping an issue alive' than any clear-sighted understanding of objectives and desired impact. This is in clear contradiction with the IBP's call for states to show 'restraint in resorting to resolutions'⁸² and a failure to 'take into account the constraints faced by delegations, particularly smaller ones.'⁸³ Meanwhile, the actual on-the-ground impact of resolutions is often negligible. This is perhaps not surprising when one considers that delegations in Geneva often opt against transmitting them to relevant domestic authorities.

Over recent years, states have begun to acknowledge and grapple with some of these issues. For example, at the 25th session of the Council (March 2014) Turkey delivered a cross-regional statement on behalf of 58 states raising many of the points contained in this report. The statement noted, *inter alia*, that 'the Council's programme of work has reached its limits in terms of its available time,' and that 'the increase in numbers and length of resolutions may reduce their quality and effectiveness, especially in the absence of better implementation.'⁸⁴ The signatories of the statement emphasised the importance of 'all delegations' working together 'in a spirit of compromise and consensus, to respond to these challenges, bearing in mind Council resolution 5/1... and resolution 16/21.'⁸⁵

The 2015 Council President, Ambassador Joachim Ruecker of Germany, also raised similar concerns in his inaugural statement upon assuming office, commenting that 'what we could term 'the inflation of our agenda' is ongoing and the exponential growth of resolutions and other initiatives is sobering.'⁸⁶ He stressed the need for the Council to 'increase [its] efficiency, given the scarcity of time and resources,' and stated that 'catchwords in this regard are 'less is more', multi-annualization of initiatives, clustering and merging of initiatives, sunset clauses etc.'⁸⁷

With the above in mind, the URG proposes the following set of recommendations for consideration by all stakeholders. The recommendations are premised on making the UN's human rights resolutions system more effective, efficient, relevant and sustainable by reorienting state behaviour in line with the

parameters set by GA resolutions 60/1 and 60/251, the 2007 IBP, and the 2011 review outcome. The recommended actions do not require a further intergovernmental review or reform process, but rather can be implemented immediately, provided that states have the political will to do so. The recommendations are offered without prejudice to the right of states 'to decide on the periodicity of presenting their draft proposals,' as provided for by paragraph 117 of the annex to Council resolution 5/1.

CAPACITY OF THE SYSTEM

Whether or not one believes that the dramatic growth in the number of resolutions adopted by the Council constitutes a 'proliferation' (as warned against in the IBP), research conducted for this report clearly indicates that states need to recommit to the steps agreed in 2007 and 2011 in order to keep the output of the Council at a manageable level.

RECOMMENDATION 1 (STATES)

States should revisit and recommit to paragraph 117(e) of the Council's IBP, which called for 'restraint in resorting to resolutions in order to avoid the proliferation of texts.' This paragraph also made several interesting and innovative suggestions such as 'clustering of agenda items' and 'staggering the tabling of decisions and/or resolutions, and [the] consideration of action on agenda items/issues,' which may merit further consideration.⁸⁸

In this context, member states should consider establishing an informal, open-ended and cross-regional 'group of friends of the system' to meet and promote the implementation of Council resolutions 5/1 and 16/21, in cooperation with the Council President and Bureau, and the secretariat.

RECOMMENDATION 2 (STATES)

Every resolution should respond to a specific and clearly stated need or gap in the international human rights framework. States should resist the urge to introduce new initiatives as a profile-raising exercise, especially following their election to the Council.

RECOMMENDATION 3 (STATES)

Linked with the above point, sponsoring states should carefully consider the necessity of automatically tabling the same resolutions each and every year. Resolutions and decisions

should be tabled on the basis of need rather than routine. Therefore, where possible, states should consider the bi- or triennialisation of initiatives (as per paragraph 48 of resolution 16/21).

RECOMMENDATION 4 (COUNCIL BUREAU, SECRETARIAT)

The Bureau, supported by the secretariat, should ensure that the decisions of states regarding the bi- and triennialisation of initiatives are properly reflected in the voluntary yearly calendar of resolutions.

RECOMMENDATION 5 (COUNCIL BUREAU)

The Council President and Bureau should consult with relevant delegations on the feasibility of merging or staggering the tabling of substantively similar resolutions (without prejudice to the right of states 'to decide on the periodicity of presenting their draft proposals' as provided for by paragraph 117(e) of the annex to Council resolution 5/1). Again, any understandings reached should be reflected in the voluntary yearly calendar of resolutions.

RECOMMENDATION 6 (STATES)

To keep the length of resolutions to manageable levels, states should, as far as possible, avoid repeating content (agreed language) from previous resolutions. Sponsors should strive to table concise, focused and action-orientated texts.

RECOMMENDATION 7 (COUNCIL BUREAU)

The number of panel discussions convened by resolutions has grown dramatically over the history of the Council, in a trend that is placing an increasingly heavy financial and time burden on the system. The Council President and Bureau should consult with relevant delegations on the possibility of discontinuing the practice of convening annual panels, or placing sunset clauses thereon. The President should also consult on the possibility of applying a voluntary cap on the number of panels per regular session. The Bureau should also consider reflecting any understandings reached in an expanded voluntary yearly calendar.

RECOMMENDATION 8 (STATES)

As per paragraph 115 of the IBP, states should consider other work formats such as seminars and roundtables. Unlike panel debates, these work formats have the advantage of being inter-sessional.

RECOMMENDATION 9 (STATE DELEGATIONS IN GENEVA AND NEW YORK)

As per paragraph 117(e)(i) of the IBP, states should minimise the duplication of Council initiatives with the Third Committee of the GA. Research conducted for this report has uncovered a considerable degree of substantive overlap (and sometimes verbatim duplication) between Council and Third Committee texts. This clearly serves no useful purpose and represents an unnecessary drain on resources.

SUBSTANTIVE CONTENT

States should not lose sight of the original motives and aspirations behind the creation of the Council in place of the Commission. In particular, they should recall paragraph 159 of the World Outcome Document adopted by heads of states and governments, and paragraph 3 of GA resolution 60/251, both of which gave the Council the principle mandate to ‘address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon.’

RECOMMENDATION 10 (STATES)

State delegations to the Council should give greater attention to a wider range of situations of human rights violations (i.e. by tabling and adopting more resolutions under agenda items 4 and 10 and less under agenda item 3), in order to comply better with the vision and purpose of heads of states and governments when they decided to establish the Council.

RECOMMENDATION 11 (STATES)

States should not feel obliged to draw a strict demarcation between thematic and country-specific resolutions. Instead, they should consider the possibility of submitting hybrid resolutions addressing thematic issues within the context of a particular state or region. Examples might include: a resolution on the situation of religious minorities in Iraq and Syria, or a resolution on the rights of migrants in the Mediterranean basin. This hybrid approach has a precedent in Council resolution 14/15 on ‘addressing attacks on school children in Afghanistan,’⁸⁹ and Commission resolution 2001/74 on ‘abduction of Children from Northern Uganda.’⁹⁰

Hybrid resolutions could also be used to follow-up on relevant Special Procedure country missions and thereby reinforce key recommendations made by mandate-holders.

RECOMMENDATION 12 (STATES)

States should use resolutions responding to the annual reports of Special Procedures to make reference to completed country missions and relevant recommendations. Such measures would help to bridge the gap between the work of Special Procedures and the Council’s resolution system, and provide valuable follow-up to mandate holders’ recommendations.

IMPLEMENTATION AND FOLLOW-UP

Human Rights Council resolutions are ultimately only as effective as their implementation and follow-up. Improving both areas should thus be a priority.

RECOMMENDATION 13 (STATES)

As Council resolutions are not legally binding, their sponsors need to maximise the political incentives for compliance and the political costs of non-compliance. The state or group of states that submit a resolution should take responsibility for implementation and follow-up after its adoption by, *inter alia*, conducting post-adoption assessments of their initiatives, raising them in bilateral discussions such as human rights joint commissions, and bringing them to the attention of regional or sub-regional organisations to which they belong. When regional or sub-regional organisations have adopted similar initiatives to those adopted by the Council, states should look into linking and coordinating their implementation measures at the international and regional level in order to streamline follow-up and avoid duplication.

RECOMMENDATION 14 (STATES)

All states should consider the benefits of setting up national coordination/implementation structures, for the prompt dissemination and implementation of Council resolutions (and other Council outputs/recommendations) at the national level. This could be facilitated through the sharing of good practice and the use of new technologies, for example the creation of an e-platform for interaction between a state’s mission in Geneva, the ministry of foreign affairs, and other relevant ministries/stakeholders. States should also take advantage of existing national human rights coordination committees and national human rights institutions to assist with dissemination, follow-up and implementation.

RECOMMENDATION 15 (STATES)

The sponsors of a resolution should make better use of the UPR process to ask questions of, and make recommendations to, the reporting state on the follow-up and implementation of the measures called for in that resolution (whether thematic or country-specific).

GENERAL WORKING METHODS AND CULTURE

Polarisation of positions among Council member states has become more and more visible in recent years. Although this is to some extent unavoidable given the Council’s intergovernmental nature, delegates should not to lose sight of the Council’s overall objective: to promote universal respect for the protection of all human rights and fundamental freedoms for all, and to work according to the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation.

RECOMMENDATION 16 (STATES)

As much as possible, states should avoid passing resolutions through the ‘tyranny of numbers’ or by adopting strategies based on estimated vote counts. Such approaches may well be successful in the short-term, but often lead to greater divisions in the long-term, and may also reduce the likelihood of recommendations being implemented.

NOTES

- 1 The Human Rights Council adopts three different types of texts: resolutions, decisions and president's statements. The latter two are almost always procedural, and far fewer in number than resolutions. For the purposes of this report, the term "texts" is used to encompass resolutions, decisions and presidential statements.
- 2 Russell and Muther, A History of the United Nations Charter: The Role of the United States, 1940-1945 , (Brookings Institution: 1958), p. 329.
- 3 Ibid p.423.
- 4 Ibid pp.1019-21.
- 5 United Nations Conference on International Organisation 3, UNCIO (1945).
- 6 Article 2(7) reads as follows : 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.'
- 7 Article 68 states that 'The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.'
- 8 ECOSOC resolution 1235 (XLIII), 'Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, with particular reference to colonial and other dependent countries and territories', 6th June 1967, in UN Doc. E/4393, p.17.
- 9 ECOSOC resolution 1503 (XLVIII), 'Procedure for dealing with communications relating to violations of human rights and fundamental freedoms', 27th May 1970, in UN Doc. E/4832/Add.1, p.8.
- 10 Newsweek, 28th February 1983, p22.
- 11 'A More Secure World: Our shared Responsibility', UN Doc. A/59/565, 17th November 2004, p.74.
- 12 UN Doc. A/59/2005, 21st March 2005, p.45.
- 13 UNGA resolution 60/01, '2005 World Summit Outcome', UN Doc. A/Res/60/1, 24th October 2005, operative paras 157-160.
- 14 UNGA resolution 60/251, 'Human Rights Council', UN Doc. A/Res/60/251, 6th April 2005.
- 15 At the 10th meeting of the 2nd Committee of Commission II during the Conference, this proposal was rejected by 26 votes to 1. See F Blaine Sloan, 'The Binding Force of a 'Recommendation' of the General Assembly of the United Nations', 25 Brit. Y.B. of International Law 1, 1948.
- 16 See Obed Asamoah, 'The Legal Effect of Resolutions of the General Assembly', Columbia Journal of Transnational Law 210, 1963-1964, pp218-220.
- 17 UNGA resolution 60/251, op. cit.
- 18 Summary of discussions of inter-sessional working group, UN Doc. A/HRC/4/CRP.2.
- 19 Delegate of the Republic of Korea, ibid.
- 20 UN Doc. A/HRC/4/122, 20th March 2007.
- 21 Council resolution 5/1, 'Institution Building of the United Nations Human Rights Council', UN Doc. A/HRC/RES/5/1, 18th June 2007.
- 22 Ibid.
- 23 UNGA resolution 62/219, 'Report of the Human Rights Council', UN Doc. A/RES/62/219, 22nd December 2007.
- 24 UNGA resolution 60/251, op. cit., operative para 16.
- 25 Council resolution 16/21, 'Review of the work and functioning of the Human Rights Council', UN Doc. A/HRC/RES/16/21, 12th April 2011.
- 26 UNGA resolution 65/81, 'Review of the Human Rights Council', UN Doc. A/RES/65/281, 20th July 2011.
- 27 English, French, Spanish, Russian, Arabic and Mandarin.
- 28 Data provided by the Office of the High Commissioner for Human Rights.
- 29 Interview with Geneva based NGO representative.
- 30 Council Resolution 24/20, 'The human rights of older persons', UN Doc. A/HRC/Res/24/20, 27th Sept 2013, operative para 3.
- 31 Council Resolution 24/30, 'Assistance to Somalia in the Field of Human Rights', UN Doc. A/HRC/RES/24/30, 27th Sept 2013, operative para 10[b].
- 32 Interviews with Asian and WEOG diplomats.
- 33 Council resolution 22/07, 'Birth registration and the right of everyone to recognition everywhere as a person before the law', UN Doc A/

- HRC/22/07, 9th April 2013.
- 34 Council resolution 21/12, 'Safety of Journalists', UN Doc. A/HRC/RES/21/12, 9th October 2012.
- 35 Council resolution 23/18, 'Technical assistance to the Central African Republic in the field of human rights', UN Doc. A/HRC/RES/23/18, 13th June 2013.
- 36 As at 5th December 2014.
- 37 Although technical assistance resolutions adopted under agenda item 10 will often offer some financial support to the target state in doing what is asked of it.
- 38 'The continuing grave deterioration of the human rights and humanitarian situation in the Syrian Arab Republic', UN Doc. A/HRC/RES/25/23, 21st March 2014.
- 39 UN Doc. A/HRC/RES/24/5, 26th September 2013.
- 40 Of the 84 total item 10 resolutions adopted between 2008 and 2014, 12 were thematic and 72 were focused on country situations.
- 41 UNGA resolution 60/01, op cit., para 158.
- 42 Ibid, para 159.
- 43 Ibid, para 160.
- 44 Official records of the 72nd plenary meeting of the General Assembly's Sixtieth Session, UN Doc. A/60/PV.72.
- 45 Online at: http://www.eiu.com/public/topical_report.aspx?campaignid=Democracy0814.
- 46 In ascending order from lowest ranked: North Korea, Guinea-Bissau, Central African Republic, Chad, Turkmenistan, Uzbekistan, Equatorial Guinea, Saudi Arabia, Democratic Republic of Congo, Syria.
- 47 The only exceptions are North Korea and Syria, although the Democratic Republic of Congo has been provided technical-assistance and capacity building through item 10 texts.
- 48 As of December 5th 2014.
- 49 As discussed in the Universal Rights Group's Policy Report 'Human Rights Special Procedures: Determinants of Influence' by Marc Limon & Ted Piccone, online at: <http://www.universal-rights.org/component/k2/special-procedures-determinants-of-influence>.
- 50 Council resolution 23/08, 'Mandate of the Special Rapporteur on the human rights of internally displaced persons', UN Doc. A/HRC/RES/23/8, 13th June 2013, operative para 18.
- 51 'Report of the Working Group on the Universal Periodic Review – Myanmar', UN Doc. A/HRC/17/9, 24th March 2011.
- 52 'Report of the Working Group on the Universal Periodic Review – Democratic People's Republic of Korea', UN Doc. A/HRC/27/10, 2nd July 2014.
- 53 'Report of the Working Group on the Universal Periodic Review – Colombia', UN Doc. A/HRC/10/82, 9th January 2009, recommendation 7.
- 54 'Report of the Working Group on the Universal Periodic Review – Israel', UN Doc. A/HRC/25/15, 19th December 2013.
- 55 UNGA resolution 60/251, op. cit., operative para 5[b].
- 56 Council resolution 16/18, 'Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief', UN Doc. A/HRC/RES/16/18, 12th April 2011.
- 57 Interview with WEOG diplomat.
- 58 Interview with WEOG diplomat.
- 59 Interview with Eastern European diplomat.
- 60 Interviews with Western diplomats and NGO workers.
- 61 'Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief', UN Doc. A/HRC/RES/16/18, 12th April 2011.
- 62 'Optional Protocol to the Convention on the Rights of the Child on a communications procedure', UN Doc. A/HRC/RES/17/18, 14th July 2011.
- 63 'United Nations declaration on human rights education and training', UN Doc. A/HRC/RES/16/1, 8th April 2011.
- 64 A resolution was marked as having been previously adopted only if a prior resolution had exactly the same title, including subtitles. For example, the resolution 'Rights of the Child: the right of the child to the highest attainable standard of health' (22/32, March 2013) was marked as being a new resolution, even though resolutions entitled simply 'Rights of the Child' had been adopted by the Council in previous years (eg. 19/37, March 2012).
- 65 Council resolution 16/21, op. cit., operative paragraph 50.

66 Council resolution 5/1, op. cit.
67 Ibid, paragraph 113.
68 Ibid.
69 Interview with WEOG diplomat.
70 Interview with OIC diplomat.
71 Interview with WEOG diplomat.
72 'In larger freedom: towards development, security and human rights for all - Report of the Secretary-General', UN Doc. A/59/2005, para 183.
73 Ibid.
74 Although the wording regarding the recommendations varied somewhat from year to year: in 2008 the Third Committee resolution 'endorsed' the Council's recommendations, in 2009 and 2010 it 'acknowledged' them, in 2011 it 'noted some' of them, and in 2012 it 'took note'.
75 UN Doc A/HRC/RES/24/24, 27th September 2013.
76 Interview with European diplomat.
77 In 2014, the report of the Human Rights Council was voted on in the Third Committee though adopted by consensus in the General Assembly.
78 The comparison between Human Rights Council and Third Committee resolution titles was less strict than the analysis recurrent resolutions within the HRC itself in Figure 8. Resolutions with similar, but not identical, names were counted as being superficially equivalent, hence the prima facie moniker.
79 Resolutions adopted by the Third Committee which had no obvious Human Rights Council equivalent included those under agenda item 69(a), "Implementation of Human Rights Instruments", and several under items 28 and 65 relating to specific and idiosyncratic aspects of women's and children's rights.
80 The analysis focused exclusively on the substantive operative paragraphs of resolutions, ie: operative paragraphs beginning with or containing the terms 'Urges...', 'Calls for...', 'Calls upon...', 'Requests...', 'Demands...', 'Decides...', 'Creates...', 'Renews...' or 'Adopts...', or derivatives of those terms. The analysis thus did not compare the preambles of resolutions, operative paragraphs that were purely rhetorical, operative paragraphs in which the adopting body decided to 'remain seized' or 'continue its consideration' of a particular issue, or operative paragraphs that called for follow-up within the adopting body. In effect, the comparison looked at what the resolutions in the Third Committee and Human Rights Council actually do, above and beyond those bodies.
81 Council Resolution 22/06, 'Protecting Human Rights Defenders', UN Doc. A/HRC/RES/22/6, 12th April 2013; and UNGA Third Committee Resolution 'Protecting Women Human Rights Defenders', UN Doc. A/C.3/68/L.64/Rev. 1, 21st November 2013.
82 Council resolution 5/1, op. cit., operative paragraph 117(e).
83 Council resolution 5/1, op. cit., operative paragraph 113.
84 Statement delivered by Turkey on behalf of 58 states, Item 2 and 3: General debate, 25th session of the Council, 14th March 2014.
85 Ibid.
86 Statement by Ambassador Joachim Ruecker at the Council, 8th December 2014.
87 Ibid.
88 Council resolution 5/1, op. cit.
89 UN Doc. A/HRC/RES/14/15, 23rd June 2010.
90 UN Doc. E/CN.4/RES/2001/74, 25th April 2001.



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