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BUILDING A COHERENT HUMAN RIGHTS COUNCIL-SECURITY COUNCIL RELATIONSHIP

THE PREVENTION OF HUMAN RIGHTS CRISES, VIOLENT CONFLICT AND ATROCITY CRIMES



UNIVERSAL RIGHTS GROUP



Federal Foreign Office

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ACRONYMS

- ASG** Assistant Secretary-General
- AU** African Union
- BINUB** UN Integrated Office in Burundi
- CEDAW** The Convention on the Elimination of All Forms of Discrimination against Women
- CNIDH** Burundi's National Independent Human Rights Commission
- CoI** Commission of Inquiry
- COP UNFCCC** Conference of the Parties to the United Nations Framework Convention on Climate Change
- DDR** Disarmament, demobilisation and reintegration
- DPRK** Democratic People's Republic of Korea
- ECOSOC** UN Economic and Social Council
- ECOWAS** Economic Community of West African States
- FAO** Food and Agricultural Organization
- FFM** Fact-Finding Mission
- HRUF** Human Rights Up Front
- ICC** International Criminal Court
- IEC** Côte d'Ivoire's Independent Electoral Commission
- IIIM** International, Impartial and Independent Mechanism on Syria
- IIMM** Independent Investigative Mechanism for Myanmar
- LMG** Like-Minded Group
- NMIRF** National Mechanism for Implementation, Reporting and Follow-up
- OHCHR** Office of the High Commissioner for Human Rights
- OSRSG-SVC** The Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict
- P5** Permanent members of the UNSC
- PBC** The Peacebuilding Commission
- R2P** Responsibility to Protect
- REDD** Reducing emissions from deforestation and forest degradation
- RMR** Regional monthly review
- SAB** Situational Awareness Briefing
- SDG** Sustainable Development Goal
- UNEP** UN Environment Programme
- UNGA** General Assembly
- UNHRC** Human Rights Council
- UNOB** Burundi peacekeeping mission
- UNOCI** United Nations Operation in Côte d'Ivoire
- UNSC** Security Council
- UNSDCF** UN Sustainable Development Cooperation Framework
- UNSMIL** United Nations Support Mission in Libya
- UPR** Universal Periodic Review
- URG** Universal Rights Group
- WPS** Women, peace, and security



INTRODUCTION

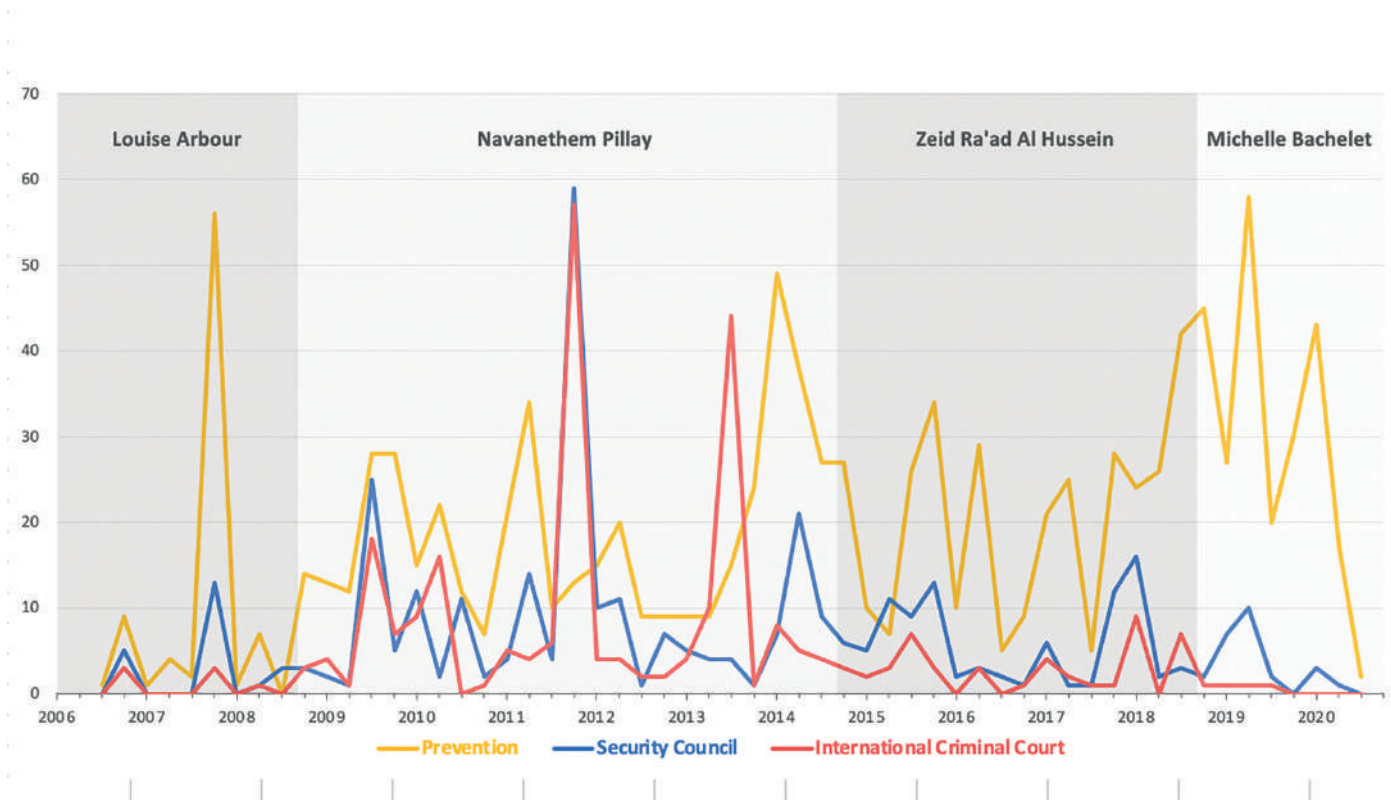
In her first address to the United Nations General Assembly's (UNGA) Third Committee as High Commissioner for Human Rights in 2018, Michelle Bachelet urged States to remember that ‘the human rights system is not a Cassandra, correctly predicting crises yet unable to prevent them. It is a force for prevention. When it is backed by the political will of key actors, effective, sustained human rights work prevents, mitigates and helps to resolve conflict: this is the essence of what we do.’¹ She thus recognised that the most effective way for the UN to prevent crises and conflicts is to prevent human rights violations – especially serious patterns of human rights violations – from occurring in the first place, and to respond promptly (through early warning and early engagement) to emerging human rights crises.

While strengthening the UN's capacity to prevent human rights violations, and ultimately the emergence of crises and conflicts, is an international policy priority on both sides of the Atlantic, relevant debates and developments have largely taken place in parallel, with separate lexicons and biases developing across the UN's human rights and peace and security pillars. Furthermore, and compounding this ‘siloesation,’ lines of communication and coordination between the Human Rights Council (UNHRC) and the Security Council (UNSC) have been the source of considerable mistrust and tension between States, especially where some States believe that UNHRC recognition (through a resolution) of gross and systematic human rights violations, or a risk thereof, might be used as a justification for so-called ‘humanitarian intervention’ by members of the UNSC (i.e., under the ‘responsibility to protect’ doctrine).

Linked with this last point, and also contributing to a general incoherence in the relationship between the UNHRC and UNSC, is the historic misconceptualisation of ‘prevention.’ For decades, UN Secretaries-General and member States have tended to ‘securitise’ the notion of prevention, essentially understanding and presenting it as being synonymous with conflict prevention and conflict mediation, and thus the prerogative (mainly or even wholly) of the UNSC and the wider UN security pillar. The prevention prerogatives and mandates of the UNHRC and the Economic and Social Council (ECOSOC), and

FIGURE 1.

Number of mentions of prevention, Security Council, and International Criminal Court, by High Commissioner for Human Rights, per quarter



– more broadly – of the UN’s human rights and development pillars, have been largely ignored.

Against this rather unpromising background, the past few years have seen an important shift in the international community’s understanding of and approach to prevention. In Geneva, 2018 and 2020 saw the adoption of two landmark resolutions (resolutions 38/18 and 45/31) on the ‘Contribution of the UNHRC to the prevention of human rights violations.’ These texts served to ‘make the case’ for a greater involvement of the UNHRC and the wider human rights pillar in the UN’s broader prevention agenda, to practically operationalise the UNHRC’s prevention mandate (as per paragraph 5f of UNGA resolution 60/251 establishing the UNHRC), and to connect the body’s work in this area with the other two pillars of the UN. As can be seen from Figure 1, which shows the number of references to ‘prevention’, the ‘UNSC’ and the ‘ICC’ made by successive High Commissioners in their speeches and statements, these developments coincide with a growing level of interest in prevention from the human rights community and notably from High Commissioners. In particular, the increase relative to references to the UNSC and the ICC may be a sign of a shifting mentality on the part of the human rights pillar towards a more preventative approach.

Around the same period in New York, the (then) new Secretary-General, António Guterres, not only repeatedly made clear that prevention ‘would not only be a priority, but the priority,’¹² but also acknowledged the importance of a holistic approach, one that would ‘cut across all three pillars of the UN’s work’ and would ‘mean doing everything we can to help countries to avert the outbreak of crises,’ (i.e., not only the outbreak of violent conflicts). This more comprehensive understanding of prevention was set out most clearly in the Secretary-General’s recent reports on ‘sustaining peace’ such as report 2019/448, in which he makes the case that the UN’s approach to prevention, whether through the ‘sustaining peace’ initiative or any other policy, should not only focus on preventing the outbreak or escalation of violent conflict, on keeping or building peace, or on preventing recurrence, but should rather go ‘upstream’ and seek to build the resilience of all States (in order to prevent human rights violations and shocks), and prevent the emergence and escalation of crises. Importantly, the Secretary-General has also increasingly acknowledged that for prevention to work, ‘all three pillars [of] the UN system’ must come together ‘to ensure that [...] support is timely and focused on building national and regional resilience,’ and that where there is early warning evidence of an emerging crisis, ‘improved risk [...] methodologies [shall] inform regular regional prevention discussions.’ This enhanced

conceptualisation of prevention, and a related determination to build a more coherent – and less politicised – relationship between the UN’s three pillars is also evident in Guterres’ 2020 ‘Call to Action for Human Rights,’ and especially its chapters on ‘Rights at the core of sustainable development’ and ‘Rights in times of crisis.’¹³ Thanks to these and related contributions (including a seminal report of the group of three experts on the contribution of the UNHRC to the prevention of human rights violations, as requested under resolution 38/18), over the past few years the UN as a whole has begun to put in place the building blocks of a workable prevention policy framework – a framework that, moreover, could help construct a more coherent and less troubled relationship between the UNHRC and UNSC. This new framework envisions both upstream (or primary) prevention interventions, and downstream (or secondary) prevention interventions.

Regarding the former, the new prevention paradigm envisions human rights to be more centrally integrated into country-level development planning and programming, in order to help build national resilience. The basic premise here is that countries that respect, promote and protect human rights (civil, political, economic, social, and cultural) are more resilient to shocks and less likely to fall into crisis and conflict. This approach, often labelled as one focused on addressing the ‘root causes’ of crisis and conflict, presupposes close cooperation and coordination between the UN’s human rights and development pillars, and the integrated implementation of States’ human rights obligations and 2030 Agenda commitments.

Regarding the latter, the new paradigm recognises that serious patterns of human rights violations (e.g., the persecution of minorities or the silencing of opposition) are the ‘smoke’ that warns of a coming conflagration (i.e., crisis or conflict), and that the UNHRC (together with the Office of the High Commissioner for Human Rights, OHCHR), as the UN’s preeminent human rights body, is the only part of the UN with both the capabilities and the mandate to gather and rapidly analyse such early warning information, and – where appropriate – to raise the alarm. Moreover, and reflecting Michelle Bachelet’s assertion that ‘the human rights system is not a Cassandra,’¹⁴ the UNHRC’s secondary prevention mandate also includes the power to decide to interject at an early stage with the State concerned, through ‘good offices’ or preventative diplomacy, to prevent a deepening or widening of the crisis. This more downstream aspect of the UNHRC’s prevention mandate requires and presupposes (if it is to work effectively) close cooperation and coordination between the UN’s human rights and security pillars. In this regard, the early warning information collated and processed by OHCHR is not only useful for the UNHRC – it is also potentially of great value to the Secretary-General’s horizon scanning procedures (e.g., the regional monthly reviews, RMRs) and, of course to the UNSC (even where the UNSC may subsequently decide that an

evolving situation does not yet merit its attention). This information could, for example, feed into Situational Awareness Briefings (SAB): informal and holistic briefings for UNSC members of integrated analysis from across the UN’s peace and security, human rights and development pillars.¹⁵ It is also clear that UNHRC good offices engagement with the State and region concerned will not in all cases succeed in averting a crisis. In such instances, where there is a clear risk that the conditions on the ground may lead to conflict or worse (i.e., atrocity crimes), then the UNHRC has a moral and legal (under the UN Charter and under UNGA resolution 60/251) duty to bring that situation to the attention of the UNSC so that it might consider what action, if any, to take (e.g., ‘tertiary prevention’ measures aimed at preventing the imminent outbreak of violent conflict, making peace, or preventing recurrence).

At least, this is what an effective all-of-UN approach to prevention should look like – if there was a coherent relationship between the three pillars and, especially, if there was a coherent relationship between the UNHRC and UNSC.

This report, the outcome of a nine-month project supported by the Permanent Missions of Germany to the UN in New York and Geneva, aims to help build a more coherent relationship between the UNHRC and UNSC, in particular by using the concept of prevention as a lens to understand what such a coherent relationship could look like in practice, and as a framework to guide its construction. As an essential step towards achieving this goal, the report will also seek to contribute to a growing body of work, inside and outside of the UN, which strives to reconceptualise prevention, in particular by confronting the historic securitisation of the subject, and to shift mindsets at the UN from a default reactive approach to a default preventative approach to addressing situations of concern.

The report is based on extensive desk research, complemented by a two-day transatlantic virtual dialogue with stakeholders and representatives of member States, civil society, and UN agencies based in New York and Geneva, to allow an exchange of views and contribute to defining practical solutions for greater inter-pillar coherence.

Part I of this report will look at prevention as a framework for understanding the relationship between the UNSC and the UNHRC, as well as the working parts of the UN’s current prevention policy architecture. This Chapter will also include key findings from the transatlantic policy dialogue and highlight the role of the UNGA. Part II presents a series of case studies showing how the UNHRC–UNSC relationship has operated in the past, especially seen through the lens of prevention. The report concludes with overall conclusions and recommendations.

PART

01

PREVENTION: A LENS FOR UNDERSTANDING AND A FRAMEWORK FOR ANALYSING THE UNHRC—UNSC RELATIONSHIP

The UNHRC is the primary inter-governmental body within the UN system responsible for promoting universal respect for human rights and for addressing human rights violations. The Geneva-based Council was created on 15 March 2006 by UNGA resolution 60/251 in replacement of the Commission on Human Rights (the Commission).⁶ The UNHRC comprises 47 representatives of UN member States elected annually by the UNGA for staggered three-year terms. Membership is equitably distributed between five geographic groups. The procedures, mechanisms and structures that shape the activity of the UNHRC include the Universal Periodic Review (UPR),⁷ and the Special Procedures mechanism.⁸ The Special Procedures mandate holders are appointed by the UNHRC to investigate important thematic or country-specific human rights concerns. The

experts undertake country visits, organise expert consultations, conduct studies, and engage in awareness-raising campaigns. The UNHRC serves as a forum for the discussion of pressing human rights concerns and its regular sessions (in March, June, and September and lasting a minimum of 10 weeks) typically conclude with the drafting, negotiation, and either adoption or rejection of country-specific or thematic resolutions. The UNHRC also has the option of convening special sessions at the request of any member and with the support of one third of the membership. These one-day sessions address pressing human rights violations or emergencies with either a country-specific or thematic focus and typically conclude with the adoption of a resolution.

The UNSC is one of the six principal organs of the United Nations system as defined by the UN Charter. The UNSC's primary task is the maintenance of international peace and security, by working to assess potential threats, calling upon parties to settle disputes peacefully, and authorising collective action through sanctions or the use of force if necessary.⁹ The structure and procedural elements of the UNSC are primarily defined by Chapter V of the UN Charter, which states that of the 15 member States on the UNSC, the five permanent members (P5) are: the Republic of China, France, the Russian Federation, the United Kingdom, and the United States of America.¹⁰ The remaining members shall be elected to a two-year period as representatives on the UNSC. In accordance with Article 27 of Chapter V of the UN Charter, the passing of resolutions or decisions at the UNSC can only come into effect following a positive vote of at least nine members of the UNSC and with no negative votes from the P5.¹¹ A negative vote from a P5 member acts as a veto, and results in the non-passing of a resolution regardless of how the overall vote turns out. Since the establishment of the UNSC, permanent members have made 252 usages of the veto. The UNSC has the characteristic of being the only body of the United Nations that has the ability to issue binding resolutions on member States.

PREVENTION AS A FRAMEWORK FOR ANALYSIS AND OPPORTUNITY FOR STRONGER INTER-PILLAR COHERENCE

In principle, the UNHRC and the wider human rights pillar are perfectly well placed to undertake and deliver on primary and secondary prevention, whereas the UNSC is perfectly well placed to deliver on secondary and tertiary prevention. While this does not entail that the UNHRC plays no role in supporting the UNSC in tertiary prevention efforts (e.g., through accountability mechanisms) or that the UNSC has no role in supporting the UNHRC in primary prevention efforts (e.g., by integrating human rights into its peacebuilding initiatives), it does provide a helpful framework to conceptualise a coherent inter-pillar approach to prevention.

On the one hand, the UNHRC, has the mandate and the capacity to work with all States through cooperation and dialogue, to build national resilience and human rights capacity with a view to preventing human rights violations. Its mandate to 'promote the full implementation of human rights obligations undertaken by States'¹² is crucial in this regard. Unfortunately, as a general rule, very little space has been provided for States and other national stakeholders to provide and exchange information on levels of implementation of human rights obligations and commitments or to seek international technical and capacity-building support to improve compliance in the future. Moreover, there has, generally speaking, been a lack of systematic follow-up by the human rights mechanisms to ensure implementation of their valuable recommendations, leading to what has come to be known as the UNHRC's 'implementation gap'.¹³

Furthermore, OHCHR and the UNHRC are also, in principle, perfectly placed to play a leading role, within the UN system, in receiving and rapidly analysing early warning information from the field, in order to identify persistent patterns of human rights violations that may point to an emerging crisis, and then to act upon that information in order to engage, through cooperation and dialogue, with the concerned country and broader region. The UNHRC's Special Procedures mandate holders have the expertise to determine that a situation warrants attention and have the responsibility to inform the UNHRC of their concerns. Similarly, the UPR offers a good insight into the main areas of human rights deficiencies plaguing a State. However, while its mechanisms are relatively successful at raising the alarm bells, to date the UNHRC has demonstrated limited ability to constructively engage with a State with a view to improving its domestic situation. Instead, the tendency at the UNHRC is to wait until a situation has become

a serious crisis, at which point, a group of (generally Western) States secure the adoption of a resolution establishing a fact-finding mission (FFM) or an accountability mechanism.

In recent years, however, a growing number of member States have begun recognising, through UNHRC resolutions, that operationalising the UN's prevention agenda requires meaningful contributions by the international human rights system. Indeed, by focusing on tertiary prevention tools (preventing the imminent outbreak of violent conflict, peace-making, and preventing recurrence) rather than on primary prevention (national resilience building) and secondary prevention (early warning and response capabilities), the UN's approach has been 'doomed to fail'.¹⁴ This was the impetus behind the recent two-year process to operationalise the UNHRC's prevention mandate and place it squarely within wider UN efforts to prevent human rights violations, crises and conflicts. These efforts resulted in resolution 45/31, which recognises the importance of and need for improved delivery of technical assistance and capacity-building; requests the High Commissioner to strengthen the capability of her office to 'identify, verify, manage and analyse data and early warning signs emanating from all sources' and to 'bring that information to the attention of the members and observers of the UNHRC in a manner that reflects the urgency of the situation and that maintains space for dialogue and cooperation with the State and region concerned, including through briefings'; acknowledges the UNHRC's capacity to engage in preventative diplomacy; and ensures greater flow of information between the UNHRC and UNSC by requesting the Secretary-General to bring relevant reports of the UNHRC to the attention of the UNSC and by inviting the Chair of the Peacebuilding Commission to brief the UNHRC.¹⁵ This should allow the UNHRC to improve its primary prevention capacity and ensure better cooperation between the UNHRC and UNSC for purposes of secondary prevention.

On the other hand, the UN Charter gives the UNSC primary responsibility for the maintenance of international peace and security, and provides it with a number of tools in pursuit of that mandate. Part of that mandate includes a clear preventative component in its responsibility to determine 'the existence of any threat to the peace, breach of the peace, or act of aggression' and to make recommendations for collective military or non-military action to 'maintain or restore international peace and security'.¹⁶ However, a reluctance on the part of certain member States to consider patterns of systematic human rights violations as a threat to international peace and security, a geopolitical reality compounded by the veto power of the five permanent members, has led the UNSC to generally only address a situation when it is an inter-State conflict, a full blown civil war, or in some cases a domestic crisis with security ramifications for the broader region. Also, the agenda of the UNSC is already heavy just



High-level Segment of Human Rights Council, Palais des Nations. Geneva, 2017.

dealing with existing crises, limiting the time and resources available to manage potential crises.

While, theoretically, the UNSC is equipped to ensure States' preventative engagement, in practice, there is a stigma of being discussed in the UNSC, which is what can make its discussions effective tools, but can also make members more cautious about bringing situations to the UNSC before they reach a stage of crisis and especially when they involve a powerful UNSC member or an ally. The UNSC has ample tools however to respond to unfolding crises: the UNSC can call on their good offices and appoint groups of member States to negotiate or assist with negotiations and it can also request the Secretary-General to get involved. A UNSC investigation, under Chapter VI of the UN Charter, or visiting mission may also have a preventative effect by bringing unwanted international attention to a situation. However, in practice, the majority of UNSC prevention activities fall under the category of tertiary prevention through accountability deterrence or the dispatching of peacekeeping operations through Chapter VI of the UN Charter 'Pacific Settlement of Disputes' and Chapter VII on 'Action with Respect to the Peace, Breaches of the Peace and Acts of Aggression'.¹⁷ Over the years, the range of tasks assigned to UN peace operations has expanded significantly in response to shifting patterns of conflict.

While successive Secretaries-General have made seminal contributions to understanding what prevention means for the UN and the principal barriers to its realisation, most of those efforts have focused on 'conflict prevention' and therefore understand prevention

as something to be carried out, principally, by the UNSC. Though this has gradually led the UNSC to take a more comprehensive view of conflict prevention including early warning mechanisms (e.g., horizon scanning exercises), mediation efforts, and a focus on disarmament, transitional justice and post-conflict peacebuilding, these reform efforts have largely overlooked the contribution that a more 'upstream' approach to the UN prevention agenda could make. Instead, they have tended to emphasise the importance of root cause analysis by the UNSC in conflict and post-conflict situations, rather than taking earlier action on early warning information (i.e., of systematic human rights violation), and supporting other relevant UN institutions in their efforts to building national resilience through sustainable development and human rights progress. Indeed, relevant representatives of the human rights system (e.g., Special Procedure mandate holders, the High Commissioner, etc.) have rarely been invited to brief the UNSC on a situation that is not already in conflict and when they do, it is often through informal channels (e.g., Arria-formula meetings).

While no mandated institutional links exist between the UNHRC and the UNSC, the synergies and interactions between the two have enhanced over time. Human rights information has been trickled to the UNSC directly from the UNHRC through the sharing of findings from Commissions of Inquiry (Col) and reports by Special Procedure mandate holders as well as formal and informal briefings by Special Rapporteurs and members of Col. Information from UNHRC mechanisms has primarily been transmitted to the UNSC through the Secretary-General's periodic country reports.¹⁸ Col and Special Procedure reports have also been shared at the request of Council



Town Hall With Civil Society and UN Secretary General. United Nations, 2018.

members. The UNSC has demonstrated more resistance to receiving human rights information through briefings than through reports, though this has been seen by some as the more effective route to transmit information.¹⁹

Fortunately, over recent years – and in parallel to reforms to operationalise the UNHRC's prevention mandate – member States have endorsed resolutions that have expanded conceptions of peacebuilding, introducing the concept of sustaining peace as laid out in the dual resolutions passed by the UNGA and UNSC in April 2016. These resolutions have ushered in a shift to the UN's peacebuilding paradigm, affirming the view that peacebuilding is not a top-down, time-bound activity limited to post-conflict situations, but rather a multifaceted, endogenous effort that extends throughout the peace continuum – from primary prevention based on human rights resilience building, to secondary and tertiary prevention focused on early warning and early action, all the way up to peacekeeping, mediation and reconciliation efforts. While the sustaining peace framework has been criticised for linking prevention to conflict,²⁰ hence securitising prevention, there is a growing consensus among member States in New York that sustaining peace, as with the 2030 Agenda, is a policy objective for all States, regardless of whether they are affected by violent conflict.²¹

This conceptual shift has, in part, been captured by Secretary-General António Guterres' UN reforms. While the reforms have been criticised for neglecting the UN's human rights pillar,²² many have pointed to the positive ways in which the reforms have resulted in improvements

to the UN's human rights and prevention work in the field. Indeed, alterations to the UN's development system have contributed to greater human rights integration on the ground. Resident Coordinators and UN Country Teams, for example, are now required to integrate human rights into common country analyses and to ensure that recommendations of UNHRC mechanisms are adequately fed into UN development cooperation frameworks.²³ Furthermore, concerning changes to the UN's peace and security pillar, the newly established Department of Political and Peacebuilding Affairs is said to promote a more cross-pillar approach to conflict prevention analysis.

According to the Secretary-General's report on 'Peacebuilding and Sustaining Peace,' sustaining peace entails building the resilience of societies to withstand shocks associated with conflict.²⁴ Given the centrality of improved human rights capacity to efforts at strengthening national resilience, peacebuilding missions have been a rare opportunity for the UNSC to mandate human rights activities and indeed several such missions have had a dedicated human rights section to ensure on the ground delivery of human rights technical assistance and capacity-building, while monitoring the human rights situation and reporting back to the UNSC (e.g., Libya, Burundi and Côte d'Ivoire).

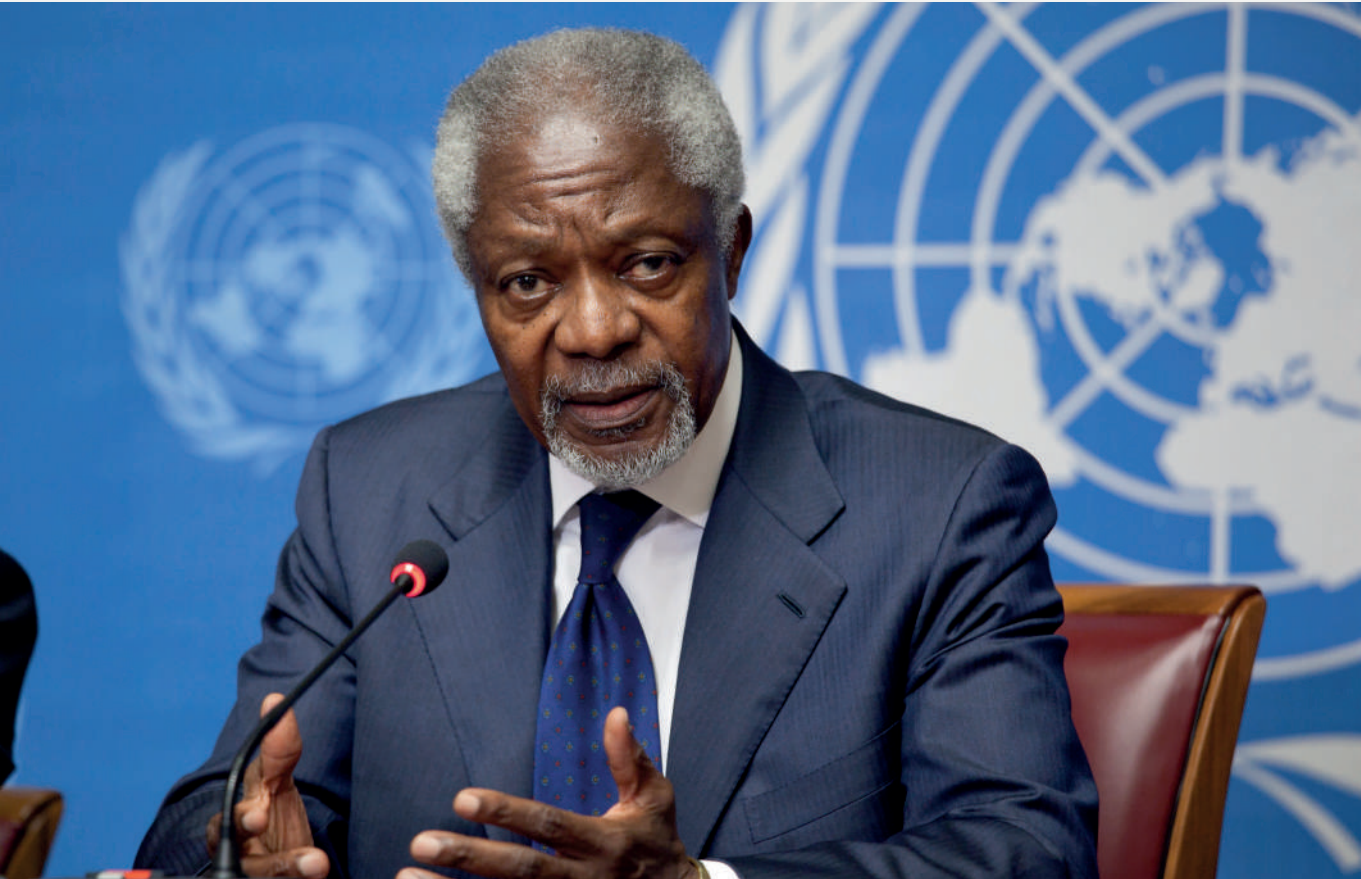
However, as noted by then-Secretary-General Kofi Annan, to fully harness the preventative potential of peacebuilding operations, a change in mindset is necessary to shift the conceptualisation of peacebuilding from something primarily taking place in post-conflict settings to a long term preventative instrument.²⁵ This is the

direction of Guterres’ address to the UNSC in December 2017, when he commented on the need to ‘enhance the [Security] Council’s focus on emerging situations, expand [its] toolbox, increase resources for prevention, and be more systematic in avoiding conflict and sustaining peace.’²⁶

Investigative mechanisms are one of the primary manners employed by the UN system to respond to human rights crises.²⁷ Investigative instruments, such as fact-finding missions and Commissions of Inquiry, enhance protection of human rights by better informing responses from the international community to particular situations of concern. These mechanisms, therefore, also contribute to the preventative function of the UN by making recommendations for improved compliance with human rights norms and detecting root causes of crises and priority areas to build national resilience (primary prevention), and by determining domestic conditions that inform decisions on possible early engagement strategies. Despite the UNSC being arguably the most authoritative UN body for establishing investigative mechanisms, as its decisions are legally binding and it has express vested powers to do so under Article 34,²⁸ the requirement of a non-procedural voting majority makes this a restrictive route. In practice, the UNHRC has been the main body responsible for the increased establishment of investigative mechanisms.

Referral to the International Criminal Court (ICC) is another (contentious) tool available to the UNSC, in cases concerning genocide, crimes against humanity and war crimes. The Rome Statute establishing the ICC gives the UNSC the power to refer alleged crimes committed to the ICC, though it has only referred two cases to date: the situation in Darfur in March 2005 and in Libya in February 2011.²⁹ The UNSC can also use sanctions (including targeted individual sanctions) or the threat of sanctions to try to deter human rights violations and prevent the deepening of a crisis. Once imposed by the UNSC, all UN member States are required to enforce them, creating a powerful tool for purposes of accountability and deterrence. Although human rights language has often been invoked in this context, in the event of actual imposition of the sanctions, it is rarely the human rights criteria which is used as justification.³⁰

The Secretary-General’s Call to Action for Human Rights (2020) can be used as a framework for this type of action. It commits the UN to ‘make fuller use of its human rights tools and entry points’; for example, for UN actors to take UPR recommendations into account in engagement with member States, for peacekeeping/peacebuilding missions that do not have a human rights component to ensure they have the necessary information pertaining to human rights, and for the provision of ‘human rights analysis and information to the Security



Joint Special Envoy Kofi Annan Speaks with Press After Meeting of Action Group for Syria. Geneva, 2012.

Council and the General Assembly on current and potential human rights and humanitarian crises.’³¹ Peacekeeping and country teams can better engage with governments on human rights issues in an effort to build resilience and remain informed of human rights risks.

The Special Advisor of the Secretary-General on the Prevention of Genocide also provides a unique opportunity for greater coherence by facilitating the flow of information between the human rights pillar and security pillar and thus contributing to early warning efforts. Since the Special Advisor is mandated to collect information on serious violations of human rights and international humanitarian law, and to transfer such information as well as recommendations to the UNSC,³² the Advisor provides an important intermediary link for early warning. The Special Advisor on the Responsibility to Protect (R2P)³³ similarly – though more contentiously given the sensitive nature of R2P – presents a useful connective link.

Other paths to cooperation between the UNHRC and the UNSC have been attempted over the years. For example, in 2019, while serving as UNSC president, Germany hosted an informal meeting between UNSC members and the UNHRC President, Coly Seck (Senegal). While seen by some as an innovative effort to enhance cooperation between the two Councils, the meeting was condemned by Russia and China, who submitted a co-signed letter to the UNSC President objecting to the interaction and arguing that they considered the

meeting ‘the establishment of an informal channel of dialogue between the Security Council and the Human Rights Council.’³⁴ This type of channel was suggested by Coly Seck in a *note verbale* to the Permanent Mission of Germany to the UN.³⁵

For closer cooperation to succeed, it will be important to overcome a ‘trust deficit’ that has served as a staunch obstacle to closer coordination between the two bodies. Bringing human rights related information to the UNSC has been met with ever-increasing resistance by some States who push for an isolated consideration of country-specific human rights situations within the dedicated forum of the UNHRC. In particular, given the UNSC’s mandate to approve collective action, fears that a stronger link between the two Councils could facilitate UN interventions to prevent atrocity crimes under the framework of R2P have been voiced. For example, when, referencing the R2P argument, Assistant Secretary-General for Political Affairs Miroslav Jenča argued that ‘the international community has a collective responsibility to protect the population of the DPRK [Democratic People’s Republic of Korea] if the State does not protect its own citizens’,³⁶ the representatives of China, Russia and Bolivia cautioned against such interventions, suggesting that the UNSC refrain from politicising human rights issues. Many member States contend that intervention is only justified in the presence of a direct ‘threat to the peace, breach of the peace, or act of aggression,’ as expressed in Article 39 of the UN Charter.³⁷



UN Poster for Peace Contest, Plais des Nations, Geneva, 2016

In 2017, Russia submitted a letter to the Secretary-General which claimed that the UNSC was not designed to offer substantive analysis on human rights issues.³⁸ Russia also argued that the ‘expansion of the human rights component’ of the UNSC will lead to criticism and politicisation, and the UN should maintain its division of labour.³⁹ Similarly, during the only thematic UNSC debate on human rights, Egypt expressed concern over ‘attempts to expand the Council’s mandate by introducing issues that, according to the Charter, come under the core prerogatives of other bodies’, arguing that ‘the Human Rights Council [remains] the best forum for States to engage in such constructive dialogue.’⁴⁰

WOMEN, PEACE AND SECURITY — AN OPPORTUNITY FOR CLOSER COOPERATION

One opportunity for greater cooperation between the UN human rights and security pillars for the purposes of prevention is the women, peace, and security (WPS) agenda. As the empowerment and protection of women is an area of shared focus by both the UNHRC and UNSC, it can in turn be utilised to provide a common UN prevention strategy and to leverage a more upstream approach, with myriad benefits for the work of both bodies in this area.

In 2000, the UNSC passed the landmark resolution 1325, which focused on the differentiated experiences of women and girls in situations of conflict and the important role of women in the peace processes, including in the prevention of conflicts. Significantly, the WPS agenda underlined that the promotion and protection of women’s rights as well as the support for gender equality and non-discrimination are important parts of building societal resilience (i.e., primary prevention). In the context of secondary prevention (i.e., early warning and preventative diplomacy), the WPS agenda acknowledges that women (including women human rights defenders) are often key interlocutors for good offices missions designed to reduce tensions and begin national dialogue. Similarly, research has shown that a gender-sensitive analysis of conflict can reveal conflict drivers and triggers.⁴¹

Various mechanisms and bodies of the human rights pillar have contributed to the WPS agenda through work on women’s rights and women’s empowerment, as well as inclusion in social, political, economic, civil and cultural processes, including through Special Procedures mandate holders. In this regard, the Special Rapporteur on violence against women, its causes and consequences, as well as the Working Group on discrimination against women and girls, are

particularly noteworthy. The Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (OSRSG-SVC), mandated to ‘tackle conflict-related sexual violence as a peace and security issue, while also bearing in mind other serious violations of human rights that occur during armed conflict’ provides a unique opportunity for coordination.⁴² A study on the implementation of resolution 1325 (2000), commissioned by the Secretary-General and authored by the Independent Expert Radhika Coomaraswamy with the support of a high-level advisory group, found that while the breadth and quantity of women, peace and security language used by the UNSC has greatly increased, the actual implementation of these mandates has been uneven.⁴³ The study also suggested that the effective use of human rights mechanisms and increased information-sharing with the UNSC could build the capacity of the international community and civil society to hold member States accountable for the implementation of their global commitments on women, peace and security.⁴⁴

Seizing on the opportunity to improve coordination with the UNSC to ensure accelerated implementation of the WPS agenda, at its 45th session, the UNHRC adopted a resolution on ‘Promoting and protecting the human rights of women and girls in conflict and post-conflict situations on the occasion of the twentieth anniversary of Security Council resolution 1325 (2000).’ The resolution ‘recognizes the crucial role of women in the prevention and resolution of conflicts and in peacebuilding and confidence building’ and encourages States to better implement UNSC resolution 1325, as well as relevant human rights recommendations (e.g., from the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW) ‘through dedicated commitment to women’s human rights, empowerment and participation, and through concerted leadership, consistent information and action, and support to build women’s engagement at all levels of decision-making.’⁴⁵

TRANSATLANTIC DIALOGUE

On 23–24 November 2020, the Universal Rights Group (URG), in cooperation with the Permanent Missions of Germany to the UN in Geneva as well as in New York, held a two-day transatlantic digital dialogue with stakeholders and representatives of member States, civil society, and UN agencies based in New York and Geneva, to allow an exchange of views and contribute to defining practical solutions for greater inter-pillar coherence. The digital dialogue was entitled ‘The Human Rights Council–Security Council relationship: strengthening coherence as a key contribution to the UN prevention agenda,’ and included discussions on the UNHRC–UNSC relationship as it relates to: upstream or primary prevention (this discussion also considered links

with the development pillar); downstream or secondary prevention; and the oft-overlooked role of the UNGA. Held under Chatham House rules, the dialogue offered up a number of honest and deeply helpful insights. This is not intended to be an exhaustive report of the meetings, but rather an effort to identify key points relevant to this report. Furthermore, these are the work of URG alone – they do not represent the views or recollections of all hosts.

ROLE OF THE UNSC

- While speakers acknowledged the importance of bringing critical information to the UNSC, several cautioned that facts are not always sufficient to mobilise action; the gravest problem is often a lack of political will. Another speaker suggested creativity and persistence in transmitting human rights information to the UNSC for example with Arria-formula meetings.
- One participant reminded the group of the ‘Political Declaration on Suspension of Veto Powers in Cases of Mass Atrocities’ to regulate and restrict the use of the veto, which has been used historically to freeze action at the UNSC. Under this restriction, the P5 would voluntarily undertake not to use the veto when mass atrocities have been ascertained.⁴⁶

ROLE OF THE UNHRC AND ITS MECHANISMS

- Participants highlighted the value for prevention not only of Special Rapporteurs with a country-specific focus, but those with thematic mandates, noting that the first special session of the UNHRC on a thematic issue (i.e., on a food crisis) was at the request of a Special Rapporteur and that there are many other examples of recent early warning messages from Special Rapporteurs on thematic issues (e.g., migration, racism) which must be tackled in a preventative way to avoid deterioration. Special Procedures already engage with a variety of UN entities across the three pillars, including different UN agencies (e.g., the UN Environment Programme, UNEP, and Food and Agricultural Organization, FAO), humanitarian actors, UN Resident Coordinators and Country Teams, and peacebuilding actors. They are, it was suggested, good ambassadors of human rights across the UN system. Participants recommended that the Special Procedures could better tailor their recommendations, make their communication more accessible and systematise informal briefings. One speaker encouraged the creation of more country-specific mandates.
- Others highlighted the role of the UPR process as an effective tool for prevention at the national level, for instance if preventative

efforts were better linked to UPR recommendations approved by States and if recommendations encouraged States to accept capacity-building and technical assistance.

- It was also suggested that investigative mechanisms could be used to identify avenues to build national resilience and ensure non-recurrence, not only through accountability but also by identifying root causes.

LINKS BETWEEN THE UNSC AND UNHRC

- Several speakers stated that the concept of prevention must be expanded. The UNSC must embrace a broader range of issues with an impact on peace and security, such as climate change, extreme poverty, and infectious diseases. At the UNHRC, prevention must be broadened too, and not contained to items 4, 7, 10. It was noted that only one of the six urgent debates at the UNHRC has been on a thematic issue (i.e., racism in 2020).
- One participant suggested that accountability mechanisms have value for primary prevention, shaping the behaviour of political and military leaders, and as atrocity prevention tools. As an example, faced with an escalation in human rights violations in Côte d’Ivoire, the High Commissioner introduced the new practice of issuing individualised letters to political and military leaders reminding them of their obligations under international humanitarian law.

- Concerns were expressed by participants as to: the retention of the division of labour between the UNSC and the UNHRC; the potential for human rights concerns to be politicised in order to invite interference in the internal affairs of states; the UNHRC overstepping its mandate, which could undermine trust in the UNHRC; attempts to enhance cooperation between the two Councils changing the hierarchy of the UN system. It was noted that States have expressed concerns about sovereignty, a lack of transparency in the decision-making process of these bodies, and a lack of representation (especially in the UNSC).

PEACEBUILDING AND RESILIENCE BUILDING

- Several participants raised the value of peacebuilding as offering a window for cooperation on prevention. The Peacebuilding Commission (PBC) offers opportunities for member States to obtain information and ensure more open interactions with human rights actors (e.g., UNHRC, OHCHR, civil society). It was suggested that the PBC receive input from the UNHRC on country situations, even beyond those under the PBC mandate.

The PBC briefing the UNHRC (as requested in UNHRC resolution 45/31) was recognised as an opportunity for it to interact not only with the UNHRC but with the human rights and peacebuilding communities in Geneva.

- Concrete recommendations to implement prevention included setting up National Mechanisms for Implementation, Reporting and Follow-up (NMIRFs) and assigning more peacebuilding funds to implement human rights obligations that would assist the State in building resilience. It was also suggested that peacebuilding funds be used for activities related to fostering the national resilience of States, capacity-building and implementing human rights recommendations.
- Some expressed support for increased resilience-building, and it was noted that 12 of the existing UN peace operations have a human rights component capable of capacity-building work. However, some argued that such efforts need to be more mainstreamed in peacekeeping and that States must accept capacity-building assistance more quickly and comprehensively.

ROLE OF MEMBER STATES

- Participants stressed that while better communication is needed to show that human rights can be truly transformative; for their part, member States have to express willingness to receive information about human rights risks, emerging crises and broad patterns of concern.
- One speaker stressed the need to manage expectations as to the extent to which improved coordination can help: ‘Early warning is not the issue, the gravest problem is lack of political will.’ Member States must be willing to prioritise human rights in their own assessments.

THE UNGA

The UNGA is a largely overlooked link to ensure greater inter-pillar coherence in the UN’s prevention agenda. Yet, multiple speakers during the transatlantic dialogue stated that under the UN Charter, the UNGA has the mandate and tools to play a role in prevention.

As the UN body responsible for financial and administrative regulation, the UNGA plays an important role in ensuring greater coherence and effectiveness across the UN’s activities. The combined role of the UNGA, UNSC and (to a lesser extent) the UNHRC is a key

focus of the UN’s ‘Sustaining Peace’ initiative, in particular its focus on building national resilience through driving integrated progress with the implementation of human rights recommendations and the Sustainable Development Goals (SDGs) ‘leaving no one behind.’ Indeed, it is noteworthy that Sustaining Peace is founded on twin UN resolutions – at the UNGA and the UNSC. Furthermore, as the main organ of the UN which has full membership of the international community, the moral authority of the UNGA puts it in a unique place to provide the political support to activities of the UNHRC and ‘upstream’ the UN prevention agenda. In particular, it can help shift the narrative around prevention, allocate resources to strengthen the human rights system, formulate recommendations for improved compliance with human rights obligations and commitments, better link the three pillars of the UN, as well as more generally promote the work of the UNHRC and mainstream human rights considerations throughout the work of the UN.

On the other hand, universal membership also renders action, particularly regarding human rights, more difficult in the UNGA, as geographic blocks tend to split and there is a particular weariness that topics relating to human rights may infringe upon national sovereignty. This demonstrates the particular importance of reorienting the prevailing narrative around human rights, particularly in New York, in a more positive direction to associate human rights more with sustainable development.

As the parent body of the UNHRC, with many overlapping work processes, the UNGA has a crucial role in facilitating the work of the UNHRC. Indeed, the UNHRC’s founding resolution (60/251) established the UNHRC as a subsidiary organ of the UNGA.⁴⁷ At times, this has negatively impacted its relationships with other UN bodies,⁴⁸ as well as its mandate to encourage ‘the effective coordination and the mainstreaming of human rights within the United Nations system.’⁴⁹ The UNGA Third Committee receives the Council’s annual report and engages the Council President in interactive dialogue; the UNHRC can also recommend that Special Procedures mandate holders present reports to the Third Committee, as part of their mandate. The UNGA is responsible for electing members of the UNHRC and has the authority to ‘by a two-thirds majority [...] suspend the rights of membership in the Council of a member of the Council that commits gross and systematic violations of human rights.’⁵⁰ The UNGA is ultimately the body responsible for overseeing the functioning and working methods of the UNHRC, and is set to review, between 2021 and 2026, the status and work of the UNHRC. Any strengthened role of the UNHRC in the wider UN prevention agenda is therefore in the hands of the UNGA.

There also exist institutional ties between the UNGA and the UNSC, with for example, the former electing the non-permanent members of the latter. As stipulated in UNGA resolution 377A(V), known as

‘Uniting for Peace,’ the UN Charter, particularly Article 11, grants the UNGA powers to address threats to the maintenance of international peace and security if the UNSC fails to act.⁵¹ However, in practice, Uniting for Peace, a resolution from the 1950s, has been politicised, as the majority of the 12 emergency sessions convened under the aegis of this resolution have been used to address the contentious issue of the Occupied Palestinian Territories. Conversely, the UNSC may recommend that the UNGA address a particular issue. Unlike the UNSC, the UNGA does not have express investigatory powers.⁵² However, Article 22 functions similarly to Article 29 by allowing the UNGA to establish ‘subsidiary organs as it deems necessary for the performance of its functions.’⁵³ The UNGA can also authorise investigative mechanisms under Article 14 which recommends ‘measures for the peaceful adjustment of any situation.’⁵⁴ Since States cannot veto initiatives of the UNGA, the UNGA continues to serve as a viable mechanism for authorisation of such mechanisms.⁵⁵

With regards to prevention, the UNGA is therefore also a potentially significant actor in secondary and tertiary prevention through

its ability to disseminate and respond to early warning signals of crises and conflicts by, *inter alia*, ensuring improved circulation of information regarding systematic human rights violations, applying political pressure on the UNSC, formulating non-binding recommendations for measures to be undertaken by member States (e.g., sanctions), participating in efforts at preventative democracy, mandating fact-finding and accountability mechanisms (e.g., the International, Impartial and Independent Mechanism for Syria), and requesting an advisory opinion from the International Court of Justice. Indeed, though under the UN Charter, the UNSC has the primary responsibility for international peace and security, in recent years the UNGA has taken upon itself to address human rights and humanitarian crises in cases where the UNSC fails to do so as a result of political allegiances between countries of concern and permanent members (e.g., Syria). Finally, as an intergovernmental body that advises both the UNGA and the UNSC on peacebuilding with the aim of improving coherence and cutting through silos, the Peacebuilding Commission offers an example of how the two bodies can interact on matters related to prevention.



UN General Assembly, United Nations, 2006

PART

02

CASE STUDIES

To understand the degree to which the historic UNHRC–UNSC relationship has been characterised by either coherence or incoherence, especially as seen through a prevention lens, URG has analysed seven case studies (six country-focused and one thematic), namely the cases of: Burundi, Côte d'Ivoire, DPRK, Libya, Myanmar, Syria and (at a thematic level) climate change. URG's analysis is based on a thorough assessment of all relevant documents produced by and for the UNSC, the UNHRC and the UNGA, including resolutions, reports, and press statements, along with meeting records.⁵⁶

Despite some laudable efforts to strengthen inter-pillar cooperation, especially in the context of the integration of human rights into the UNSC-mandated UN Integrated Office in Burundi (BINUB), Burundi remains one of the UN's greatest failures in the area of prevention. Although there was a long history of UN engagement and a notable degree of information sharing across the UN system (particularly pertaining to early warning signs of systematic human rights violations), the situation in Burundi has been marked by a repeated failure of the UNSC to take firm action and of the human rights pillar to effectively implement primary and secondary prevention strategies. Indeed, it could be argued that, for its part, the human rights pillar has gone backwards in terms of its prevention-oriented engagement with Burundi (though this is not only the fault of the UNHRC – the

shift was heavily influenced by the 2005 change in government in Burundi). As noted by Dominique Fraser of the Global Centre for the Responsibility to Protect: 'Despite the Secretary-General's focus on crisis prevention, the case of Burundi shows how difficult it is to implement prevention measures in specific cases. The UNHRC has no way of enforcing decisions and relies on the cooperation of UN member States, including Burundi; whereas the Security Council is unlikely to act until a situation has already spiralled out of control and threatens international peace and security.'⁵⁷

As early as 1995, while Burundi was in the midst of a civil war, OHCHR signed a memorandum of understanding with the Government providing for the establishment of a country office with a mandate covering 'the full range of human rights activities.'⁵⁸ In principle, this meant that OHCHR was well placed to play an important role in Burundi, both in the context of upstream or primary prevention activities (e.g., capacity-building activities to support human rights implementation) and downstream or secondary prevention actions (e.g., monitoring the on-the-ground situation of human rights, identifying patterns of violations that might point to a coming crisis, and transmitting that information to the wider international human rights system). Indeed, when the Arusha Peace and Reconciliation Agreement was signed in 2000, OHCHR was able to secure 'the incorporation of a human rights dimension into the implementation of the Arusha Agreement, which was the bedrock of the country's stability for many years.'⁵⁹ This positive development led, *inter alia*, to the establishment of an Independent Commission on Human Rights, a Truth and Reconciliation Commission, important legislative reforms, and the emergence of strong civil society sector.

BURUNDI

However, the wider human rights pillar was largely ineffective in building on this early success – even though the election in 2005 of Pierre Nkurunziza, who began to systematically undermine the human rights principles of the Arusha Agreement, admittedly made matters more difficult. Regarding primary prevention activities, for example, the UNHRC proved unable to act as a catalyst for the mobilisation of international human rights technical assistance and capacity-building support, with the result that, notwithstanding the progress achieved in the early 2000s, the human rights and rule of law situation in Burundi remained fragile. There are numerous signs that the UNHRC, and its predecessor, the Commission on Human Rights, were well aware of the importance of engaging with the Burundian authorities to support the implementation of the State's human rights obligations and commitments, and thereby to build national resilience. For example, between 1995 and 2011, the Commission and then the UNHRC established or renewed four Independent Expert mandates on Burundi (Independent Experts are a type of Special Procedures mandate focused on delivering technical assistance and capacity-building support). Unfortunately, the Independent Expert mechanism has a critical flaw (then and now), namely that the mandate-holders are only expected to visit the country concerned, assess its capacity needs, and then report back to the Commission/Council. They are not expected (or mandated) to either deliver themselves on those

capacity-building needs, or to mobilise other providers (e.g., relevant UN agencies, bilateral donors).

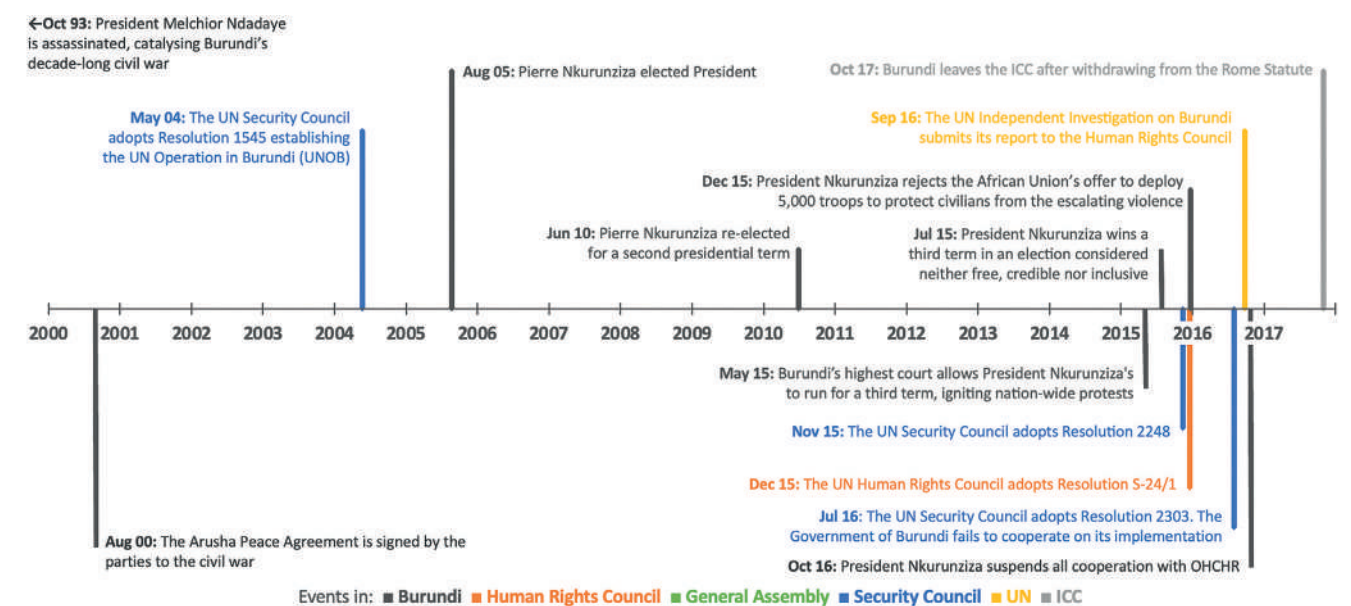
Eventually, in 2011, the Independent Expert mandate was terminated.⁶⁰ This happened after one of the few specific recommendations made by the Independent Expert, and subsequently endorsed by the UNHRC in resolution 9/19, namely the creation of a national human rights institution in Burundi (what would become the National Independent Human Rights Commission, CNIDH), was realised.⁶¹ As an aside, it is not even clear that the eventual establishment of the CNIDH was thanks to the work of the Independent Expert or was due to the receipt of various first cycle UPR recommendations calling on Burundi to do so – calls that were later endorsed by the UNSC.⁶²

In any case, an important window of opportunity had been missed (especially in the period between 1995 and 2005 when the State had been keen to make human rights progress), to work in cooperation with Burundi to build national resilience and thus prevent the violation of human rights.

As the human rights situation deteriorated in the aftermath of the 2015 elections and in an implicit acknowledgement of the UN's failure to prevent the emergence of the crisis, on 17 December 2015, the UNHRC convened a Special Session on 'preventing the further deterioration of the human rights situation in Burundi.' At the session, Michael Addo, Chairperson of the Coordination Committee of Special Procedures, underlined that in the eight months prior to the session, 'numerous calls had been made to alert the Human Rights Council and the

FIGURE 2.

Timeline of key events in Burundi and responses at the UN, 2000–2017



Security Council to the spiral of violence that started in late April 2015 [and] more calls for immediate attention were made in June/July of that year.⁶³ Notably, several months before the session and following his visit to the country, the UN Special Rapporteur on Truth, Justice, Reparations, and Non-Recurrence, Pablo de Greiff, raised a very explicit, early warning alarm: ‘The international community,’ he said, ‘cannot afford to simply stand by and wait for new mass atrocities to recur. [...] The highly volatile situation in Burundi requires a resolute and immediate response by the international community and the Human Rights Council in particular. [...] In the face of the stalemate on Burundi in the Security Council, the Human Rights Council as the main UN human rights entity has to give a concrete and clear sign so as to prevent the recurrence of the worst imaginable violations.’⁶⁴

Ultimately, the Special Session, which culminated in the adoption of resolution S-24/1, took a rare – though tardy – preventative approach. Resolution S-24/1 pointed to the need for preventative diplomacy by emphasising that ‘mediation, the peaceful settlement of disputes, and conflict prevention and resolution can, among other tools, play an important role in preventing disputes from escalating into conflicts and conflicts from escalating further.’ The Council therefore ‘requested the UN High Commissioner for Human Rights to urgently organize and dispatch on the most expeditious basis possible a mission by independent existing experts,’ not only to investigate violations, but also to make recommendations on technical assistance to support reconciliation and the implementation of the Arusha Agreement, to engage with all relevant stakeholders to help the State fulfil its

human rights obligations, and to ensure complementarity and coordination with other regional and international actors.⁶⁵ This was the result of a compromise between African States intent on avoiding the establishment of a Col and Western States pushing for a strong accountability mechanism.

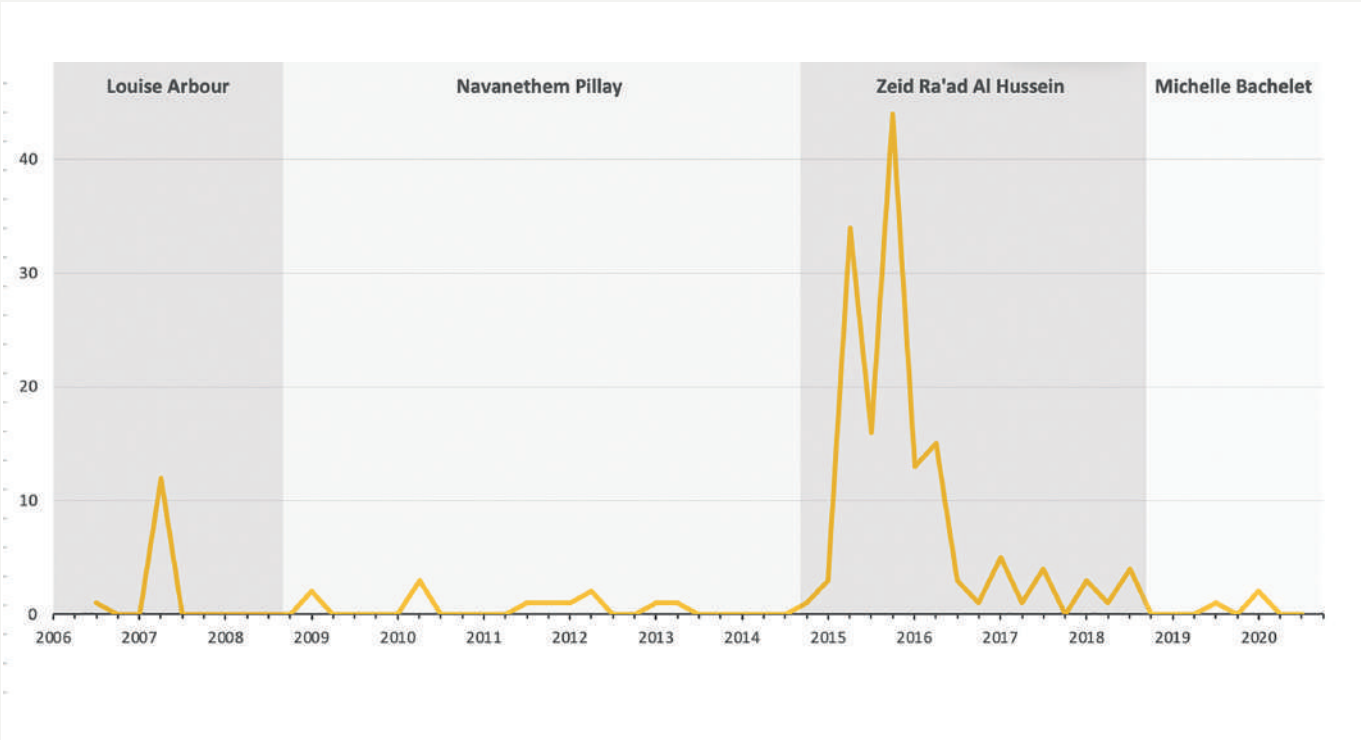
This approach was highly innovative and sets a significant precedent for early preventative engagement by the UNHRC. Notably, the UN Independent Investigation in Burundi was composed of two Special Rapporteurs from the UN (Mr. Christof Heyns, UN Special Rapporteur on extrajudicial, summary or arbitrary executions and Mr. Pablo de Greiff, UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence) and one from the African Union (AU) system (Ms. Maya Sahli-Fadel, African Commission on Human and Peoples’ Rights, Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa) and in that sense was a joint UN/AU undertaking. The mission was also given important resources including a secretariat composed of five human rights officers. While it was able to secure a limited amount of cooperation with the Government in order to undertake two of its four scheduled country visits, ultimately, the reluctance on the part of the authorities to constructively engage with the experts severely undermined the mission’s ability to assist Burundi with a view to preventing further deterioration. Their final report, which contains extensive recommendations to all stakeholders, therefore concludes that stronger tertiary prevention measures (e.g., accountability mechanisms and UNSC engagement) were required.⁶⁶



United Nations Operation in Burundi (ONUB), Cibitoke, Burundi, 2019

FIGURE 3.

Number of mentions of Burundi by High Commissioner, per quarter



Based on this recommendation of the group of experts, in September 2016, the UNHRC adopted a further resolution (led by the European Union, with the support of Botswana) through which the UNHRC decided to establish a Col to investigate human rights violations in Burundi.⁶⁷ Although, as noted by the current High Commissioner for Human Rights, Michelle Bachelet, Cols do have an important ‘preventative potential’⁶⁸ (because accountability helps deter future violations), in practice they are purely an accountability mechanism, and therefore the decision to create one marked the effective end of the human rights pillar’s attempts to adopt a preventative approach to human rights violations and the overall crisis in Burundi. For its part, Burundi recognised the truth of this shift and, in response to the presentation of the mechanism’s first report in August 2017, announced that it would no longer cooperate with the UNHRC and its mechanisms, and OHCHR would be expelled from the country, on the grounds that it ‘had made sufficient progress in putting in place national mechanisms for the protection of human rights, so the existence of the Office was no longer justified.’⁶⁹

Interestingly, Burundi also unfavourably compared the ‘politicised’ work of the UNHRC and the Col with its ‘very positive’ cooperation with the UNSC.⁷⁰

The UNSC has integrated human rights and prevention in its work in Burundi since 2004, when it sent a peacekeeping mission (UNOB) whose human rights section was integrated with the OHCHR country

office.⁷¹ In 2006, UNSC resolution 1719, terminated UNOB and created BINUB, which was mandated to support the Government in, *inter alia*, the ‘promotion and protection of human rights, including by building national institutional capacity in that area [...] by assisting with the design and implementation of a national human rights action plan including the establishment of an independent human rights commission.’⁷² OHCHR also worked in collaboration with BINUB in monitoring and reporting on human rights violations⁷³ and UNSC resolutions adopted at this time repeatedly underlined the importance of integrating human rights in UN efforts on the ground.⁷⁴ The converse, however, does not hold true, as UNHRC resolutions make very limited reference to the UNSC or any of its operations or offices in Burundi.⁷⁵

As previously mentioned, the exchange of information between the human rights and security pillars of the UN was properly assured, with consistent UNSC briefings by human rights experts and senior UN officials, including the High Commissioner for Human Rights, regarding the deterioration of the human rights situation. In a good practice of preventative diplomacy, from 25 to 27 June 2014 the United Nations Assistant Secretary-General (ASG) for Human Rights, Ivan Šimonović, visited Burundi and appealed to the authorities to ensure that human rights were fully protected ahead of the 2015 presidential elections.⁷⁶ Following his visit, the ASG briefed the UNSC on 10 July 2014 regarding various human rights concerns, including in the context of the 2015 presidential elections.⁷⁷ Since the ASG has a



UN Facilities in Bujumbura, Bujumbura Marie Province, Burundi, 2007

unique opportunity to facilitate cooperation between the two pillars, these efforts in early warning and early action represent a noteworthy attempt at coordinated secondary prevention.

While UN engagement with Burundi offers a good practice example of integrating human rights into security operations in post-conflict settings, it is also marked by the relative inaction of the UNSC in the face of a rapidly deteriorating crisis. On 16 April, 2015 – three months prior to the election – UNSC members were briefed about increased political tension, ethnic violence and human rights violations.⁷⁸ The UNSC then met on 3 June 2015 but had difficulties coming to a consensus on a clear message, and instead of adopting a resolution only issued a watered-down presidential statement. Given the lack of action, days before the July 2015 presidential election, a group of UN human rights experts urged the UNSC ‘to take immediate action to prevent Burundi from sliding back into violent conflict ahead of presidential elections.’ The experts further stressed that the ‘Security Council has a unique role for peace and security and for preventing conflicts worldwide’ and stressed that, while the crisis is ‘eminently preventable [...] what is lacking is action.’⁷⁹

Given the increasingly dire human rights and security situation, on 9 November 2015, High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, briefed the UNSC, urging it to ‘intervene effectively to prevent the repetition of past horrors [...] and to explore all possible options to prevent further violence, including steps to freeze the assets of those who incite or engage in violence, and possible travel

bans.’⁸⁰ While the UNSC did adopt a resolution on 12 November 2015, urging the Government ‘to respect, protect and guarantee all human rights and fundamental freedoms for all, in line with the country’s international obligations, and to adhere to the rule of law and undertake transparent accountability for acts of violence, and to cooperate fully with the Office of the High Commissioner in the fulfilment of its mandate’, it stopped short of enforcing any concrete measures or sanctions against the Government of Burundi or individual perpetrators.⁸¹ Explicit reference to the threat of targeted sanctions by the Council, included in the original draft, was omitted from the text, due to objections from some States that this would overstep the UNSC’s mandate by addressing a domestic human rights situation. On 29 July 2016, the UNSC adopted another resolution urging the Government to cooperate with OHCHR and requesting the Secretary-General and the High Commissioner to reinforce human rights monitoring capacity, notably by dispatching a UN police component.⁸² Ultimately, the Government refused to allow this operation to enter the territory, as relations between the UN and local authorities had gravely deteriorated.

In this case study, a lack of cooperation between the pillars is therefore not at fault. The problem is the negative narrative around human rights – which is solely associated with the monitoring of egregious violations – and the lack of coherence between the pillars, as the UNSC refuses to address human rights crises and the UNHRC is too reactive (and arguably institutionally ill-equipped) to properly do so in a preventative manner.

SUMMARY OF UN ACTIVITY ON BURUNDI

FIGURE 4.

UNHRC activity on Burundi

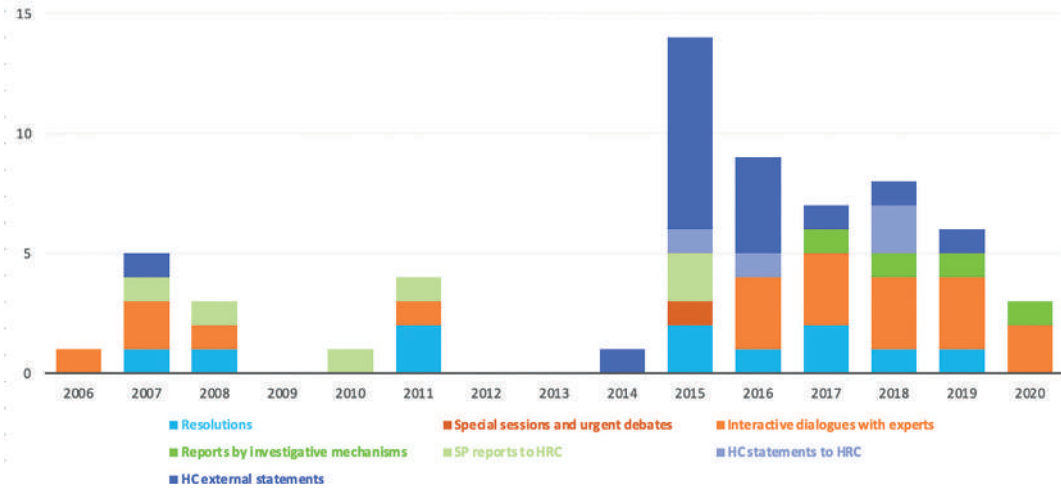


FIGURE 5.

UNSC activity on Burundi

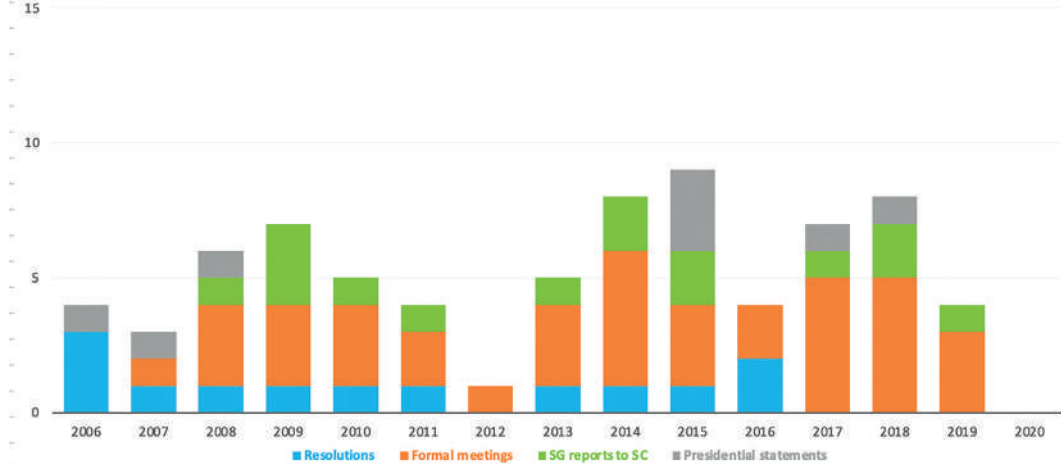
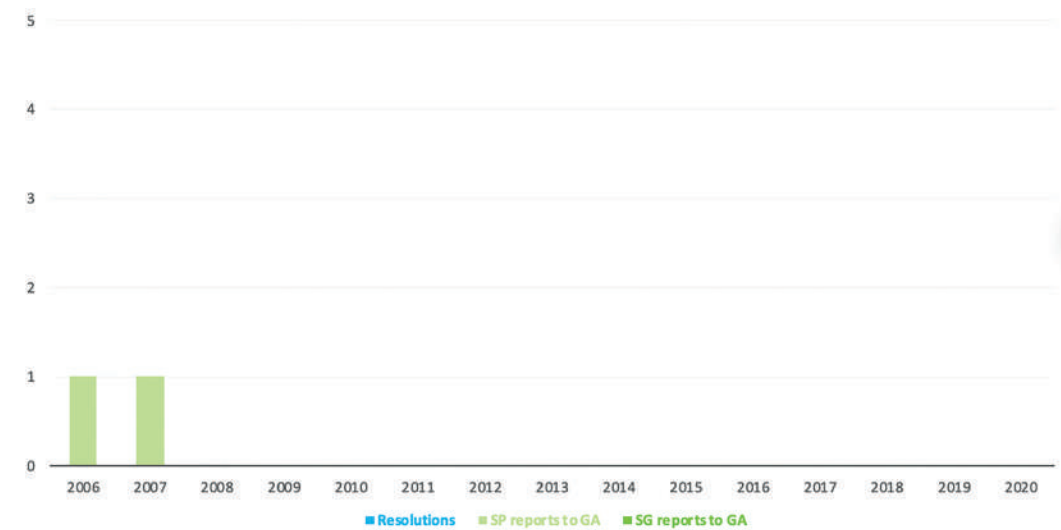


FIGURE 6

UNGA activity on Burundi



CÔTE D'IVOIRE

The UNHRC played a largely reactive role in response to the escalation of the crisis in Côte d'Ivoire following the 2010 Presidential elections. After four years of relative silence and inactivity, in late 2010, after contestation about the polls had led to conflict and violence, the body held a Special Session (a largely reactive tool) and adopted a resolution that primarily devoted itself to expressing concern about the situation and urging both sides in the conflict to refrain from further human rights violations.⁸³ The UNHRC did not use institutional levers like resolutions, to call upon or encourage preventative action by the UNSC. That said, some UNHRC mechanisms (e.g., the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance) did, in the years leading up to the 2010 crisis, repeatedly call upon the UN human rights pillar to work with Côte d'Ivoire to help address the root causes of potential conflict,⁸⁴ and also collected and shared important early warning information about emerging patterns of human rights violations.⁸⁵ Unfortunately, such advice and warnings were largely ignored by the UNHRC. They were not ignored, however, by the UNSC. Indeed, the information provided by these human rights actors helped shape the UNSC's response, including in the context of the strong tertiary

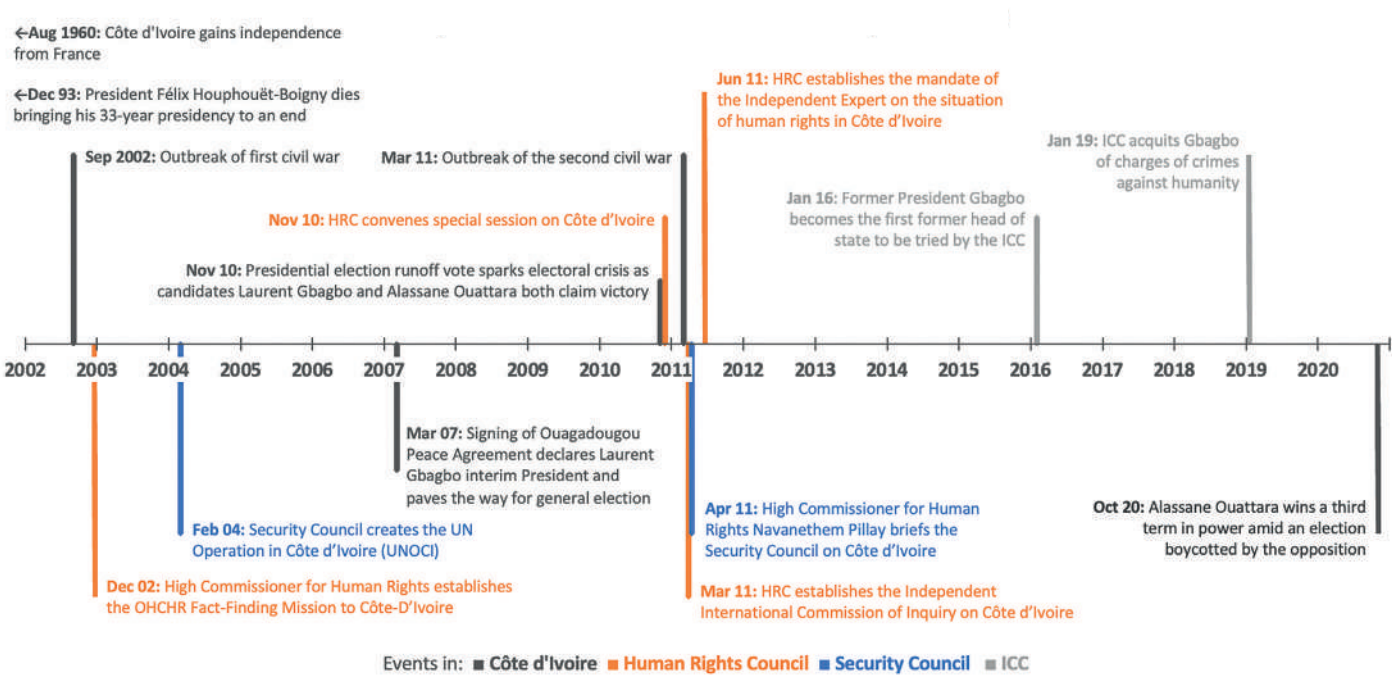
prevention mechanisms it eventually put in place to help build peace and avoid a recurrence of the conflict.⁸⁶

In 2010, Côte d'Ivoire entered a renewed period of acute political instability, accompanied by significant political violence, following a contested presidential election designed to cap a forestalled peace process. The election was held under the terms of the 2007 Ouagadougou Political Agreement, the latest in a series of partially-implemented peace accords aimed at reunifying Côte d'Ivoire, which had remained largely divided between a government-controlled southern region and a rebel-controlled zone in the north since the outbreak of a civil war in 2002.

On 28 November 2010, a presidential election runoff vote was held between the incumbent president, Laurent Gbagbo, and former Prime Minister Alassane Ouattara, the two candidates who had won the most votes in a first-round of the poll. Both candidates claim to have won the runoff vote, and separately inaugurated themselves as president and formed rival governments. Ouattara based his victory claim on the UN-certified runoff results announced by Côte d'Ivoire's Independent Electoral Commission (IEC). This claim was supported by the international community. Gbagbo, however, appealed the IEC decision to the Ivoirian Constitutional Council, which reviewed and annulled it, proclaiming Gbagbo president.

FIGURE 7.

Key events in Côte d'Ivoire and at the UN, 2002–2020



This electoral standoff caused a sharp rise in political tension and violence, resulting in a large number of deaths and human rights abuses.

For its part, the UNHRC was relatively disengaged from the situation in Côte d'Ivoire in the crucial period before the 2010 polls. As this report seeks to demonstrate, the implementation, by States, of their international human rights obligations and commitments, including with the support of the international community, is crucial to building national resilience and thus ensuring a State is able to withstand shocks. Contested elections are an important cause of such shocks, especially in countries in transition or in fragile States. Yet in the years before the 2010 election, the human rights pillar's focus was primarily centred not on supporting the implementation of the State's civil and political rights obligations, but rather on responding to earlier human rights violations in the country (e.g., through OHCHR-led fact-finding missions in 2002 and 2004).

The exception to this broadly reactive pattern of engagement were the UN Special Procedures and notably the constructive approach of Doudou Diène, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Following a visit to the country in 2004,⁸⁷ the Special Rapporteur issued a report calling, *inter alia*, for Côte d'Ivoire and the international community to work together to address what he saw as a potential root cause of future conflict – ethnic and religious discrimination and division.⁸⁸ In particular, Diène called for the State and the UN

to work together to establish a permanent national mechanism for interreligious dialogue.⁸⁹ The Special Rapporteur's report also played an important early warning function. It sought to warn UN member States that human rights violations associated with an ethnic-based conception of citizenship (and thus voting rights based on ethnicity), together with growing instances of incitement to ethnic and religious hatred in the media, if unaddressed, could lead to a serious human rights crisis and, ultimately, to conflict.⁹⁰

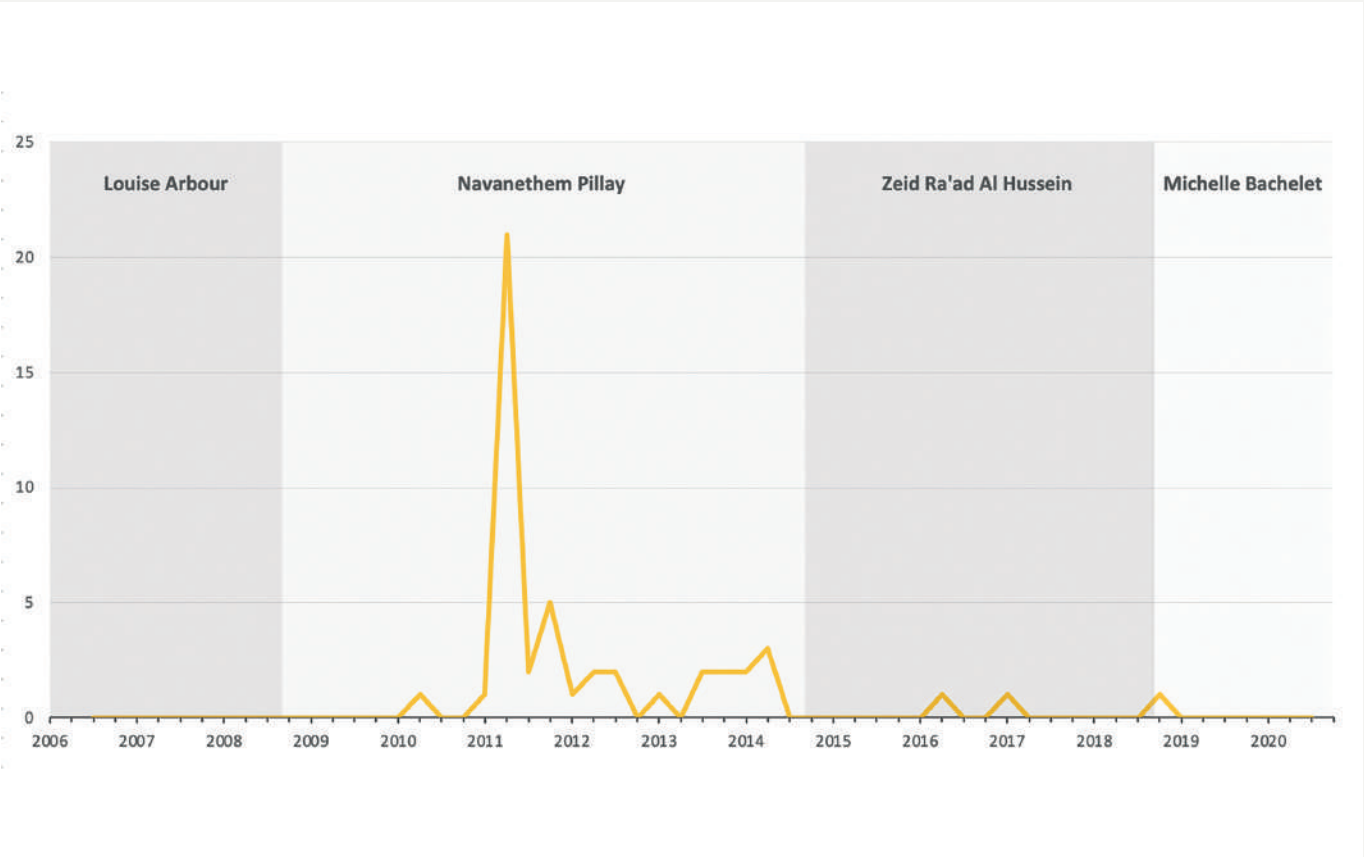
While there is little to suggest that these recommendations and warnings were taken up by the Commission on Human Rights, there is evidence that they informed decision-making in the UNSC. For example, in 2004, several months after the Special Rapporteur's visit (and following the distribution of a strongly worded press statement drawing attention to the risks posed by ethnic discrimination and incitement to violence⁹¹), the UNSC passed resolution 1572, which demanded 'that the Ivoirian authorities stop all radio and television broadcasting inciting hatred, intolerance and violence,' and decided to impose travel bans on 'any other person who incites publicly hatred and violence.'⁹² Similarly, URG found anecdotal evidence that the Special Rapporteur's warnings led the Secretary-General's newly appointed Special Adviser on the Prevention of Genocide, Juan Méndez, to also visit the country in late 2005. He later reported back to the UNSC about his concerns regarding the risk of 'massive and serious human rights violations based on [...] ethnicity, national origin or religion.'⁹³



Ivorian youngsters torch a UN car on a crossing, Riviera II, Abidjan, Côte d'Ivoire, 2011

FIGURE 8.

Number of mentions of Côte d'Ivoire by High Commissioner, per quarter



Notwithstanding the important prevention work of its Special Procedures mechanism, between 2006 and late 2010, the UNHRC itself essentially ignored the situation in Côte d'Ivoire. Certainly, there were no steps taken to either engage with the country and relevant regional organisations (the Economic Community of West African States, ECOWAS, and the AU) to build national resilience and address the root causes of conflict, or to take note of and respond to early warning signs of a coming crisis.

That only began to change in December 2010, when international alarm at growing evidence of serious human rights violations following the contested presidential elections led the UNHRC to convene a Special Session on the situation in Côte d'Ivoire and to adopt resolution S-14/1.

It is clear from the foregoing that the UNHRC adopted an essentially reactive approach to the crisis in Côte d'Ivoire – waiting for evidence of widespread violence and human rights violations before taking action. This truth is evident in the preamble and first operative paragraph of resolution S-14/1, which expressed deep concern ‘about the atrocities and violations of human rights committed in Côte d'Ivoire in relation to the conclusion of the 2010 presidential election,’ and ‘strongly condemned’ such violations.⁹⁴

That said, because by this time Alassane Ouattara was in nominal control of the country, and because the Permanent Mission of Côte d'Ivoire in Geneva was determined to work with the UNHRC and its mechanisms to secure long-term improvements in the enjoyment of human rights in the country, resolution S-14/1 did include some language (though without any commensurate actions) designed to avert a deepening of the crisis. For example, with operative paragraphs 3 and 4, the Council urged ‘all actors, particularly defence and security forces, to refrain from violence and to respect all human rights and fundamental freedoms, as well as to assume their responsibilities for the protection of the civilian population,’ and urged ‘all media outlets to refrain from inciting violence, hostility and the propaganda of hate speech.’⁹⁵ The resolution also contained an important nod towards tertiary prevention (i.e., non-recurrence). For example, with operative paragraph 6, the Council called upon ‘members of the UN, relevant UN agencies and international financial institutions, to provide technical assistance and capacity-building to Côte d'Ivoire, upon its request; while in paragraph 11 the Council called upon the State to spare no effort ‘towards the preservation of peace, security and promotion and protection of human rights in Côte d'Ivoire and for the strengthening of democratic institutions in the country, which are necessary to the entrenchment of national reconciliation, lasting peace, rule of law, good governance and respect for human rights.’⁹⁶

Interestingly, while resolution S-14/1 did not contain explicit language recommending that other relevant bodies of the UN, such as the UNSC, should take up the situation in Côte d'Ivoire, there is language in the text that clearly suggests that the UNHRC (and the Permanent Mission of Côte d'Ivoire, which played an important role in drafting and negotiating the resolution) was keenly aware of the links between human rights and security, and between the UNHRC and UNSC. For example, the aforementioned paragraph 11 clearly positions the ‘preservation of peace [and] security’ as being dependent upon securing progress with the ‘promotion and protection of human rights;’ while paragraphs 3 and 8 make clear reference to the State’s (though not the international community’s) responsibility to protect the civilian population. The importance of these links was also acknowledged by then High Commissioner for Human Rights, Navanethem Pillay, during a speech to the UNSC in April 2011, and in which she noted that ‘Côte d'Ivoire is another striking example of the inextricable link between peace, justice and human rights.’⁹⁷

In the years following the Presidential elections, the UNHRC adopted a series of annual capacity-building resolutions on Côte d'Ivoire. It also established an Independent Expert mandate, held by Doudou Diène, tasked with ‘assisting the Government of Côte d'Ivoire and relevant actors in the follow-up to the implementation of the recommendations of the commission of inquiry and of the resolutions of the Human Rights Council’.⁹⁸ These steps were designed to support peacebuilding

(the Independent Expert worked closely with the United Nations Operation in Côte d'Ivoire) and prevent recurrence, though they do raise the question of why these resources were only deployed *after* the 2010 crisis and not *before*.

Turning to the UNSC and the wider security pillar, as with the UNHRC, their main focus has been on tertiary prevention – i.e., preventing a further deterioration of an already grave situation and preventing recurrence (peacebuilding).

In April 2004, in response to the violent conflict in the country, the UNSC, through resolution 1528 (2004), established the United Nations Operation in Côte d'Ivoire (UNOCI) under Chapter VII of the UN Charter.⁹⁹ UNOCI’s mandate included supporting implementation of the peace process, protecting civilians, supporting the Ivoirian Government in the disarmament, demobilisation and reintegration (DDR) of former combatants, security sector reform, and monitoring and promoting human rights.¹⁰⁰

As this mandate suggests, the UNOCI enjoyed a broad human rights mandate and was given significant leeway to engage in human rights (tertiary) prevention activities through the work of its dedicated human rights section. It undertook important efforts to strengthen the country’s human rights resilience and effectively replaced OHCHR (which only had a regional West Africa office) as a fully-fledged



UN Peacekeepers disarm militia groups, Guiglo, Côte d'Ivoire, 2007

member of the UN Country Team, with particular responsibility for the promotion and protection of human rights, including by mainstreaming human rights throughout the work of the Country Team.¹⁰¹ Its strong local presence and high-level political backing also meant that it became an important channel for official development assistance, as well as for funding from the UN Peacebuilding Fund.

Examples of UNOCI actions designed to help strengthen resilience in Côte d'Ivoire are plentiful. The Operation provided human rights training programmes to government officials, military personnel and members of law enforcement agencies;¹⁰² assisted the Government in the formulation and implementation of a national human rights action plan,¹⁰³ a national strategy to combat gender-based violence,¹⁰⁴ and a child protection strategy;¹⁰⁵ and supported the State in the preparation and submission of outstanding reports to the UN human rights mechanisms.¹⁰⁶ UNOCI also supported the establishment and strengthening of the country's National Human Rights Commission,¹⁰⁷ its Truth, Dialogue and Reconciliation Commission,¹⁰⁸ and its National Commission for Reconciliation and Victim Reparations; and participated in the joint mechanism set-up to review allegations of human rights violations.¹⁰⁹ Its human rights division also trained civil society organisations on human rights monitoring and reporting,¹¹⁰ established a hotline for victims of sexual violence;¹¹¹ and provided technical assistance for legislative reforms, notably of the security sector.¹¹² In response to the UNSC's call to better address incitement to hatred and violence, UNOCI launched several public information and awareness-raising campaigns to counter 'disinformation, jingoistic propaganda, hate media and other media-managed action' that might incite violence and derail the peace and reconciliation process.¹¹³ It also established the 'UNOCI FM' radio station to provide 'neutral and impartial information, regular news bulletins, information from humanitarian agencies and messages of peace, including from Ivorian civil society and religious leaders.'¹¹⁴

Beyond capacity- and resilience-building, UNOCI also enjoyed an important fact-finding and human rights monitoring function,

meaning it could collate human rights early warning information and share these throughout the UN system – thereby helping to prevent recurrence. Indeed, the regular reporting of UNOCI's human rights section, which fed into the Secretary-General's updates to the UNSC, provided an important avenue for human rights information to reach the UNSC. As a result, each one of the 47 reports presented by the Secretary-General to the UNSC between 2004 and 2018 had a dedicated section on human rights. In a notable development for purposes of accountability, UNOCI reports also informed decisions by a group of experts established by the UNSC to designate individuals responsible for human rights violations and therefore subject to targeted sanctions (which must legally be enforced by all UN member States), including asset freezes and travel bans.¹¹⁵

Notwithstanding this important and far-sighted (for the time) human rights mandate, a study of UNOCI's and the Secretary-General's reports reveal an important problem with how the UN understood and looked to take forward its prevention activities in Côte d'Ivoire. The overwhelming focus of those reports is on civil and political rights, and rights in a time of conflict (e.g., extrajudicial killings, arbitrary detention). Largely missing from the human rights sections of these reports was any focus on economic, social and cultural rights, such as the right to health and the right to education. Such issues were dealt with separately as development issues. Not only did this approach undermine the UN's efforts to help build resilience in Côte d'Ivoire, it also fed into a situation in which human rights became closely associated with conflict rather than seen as a comprehensive framework to help rebuild in a peaceful, inclusive and sustainable manner.

As a consequence, and as noted by the Secretary-General, following the transition from UNOCI to a 'normal' UN Country Team, when the UN recommended the creation of a stand-alone human rights office in the country team, the Government refused, as it 'considered that it was not necessary.'¹¹⁶

SUMMARY OF UN ACTIVITY ON CÔTE D'IVOIRE

FIGURE 9.

UNHRC activity on Côte d'Ivoire

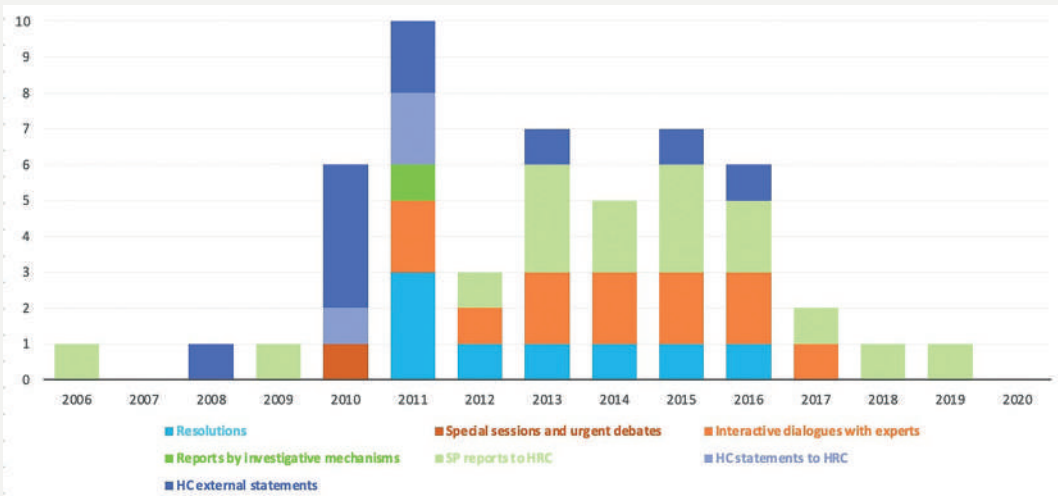


FIGURE 10.

UNSC activity on Côte d'Ivoire

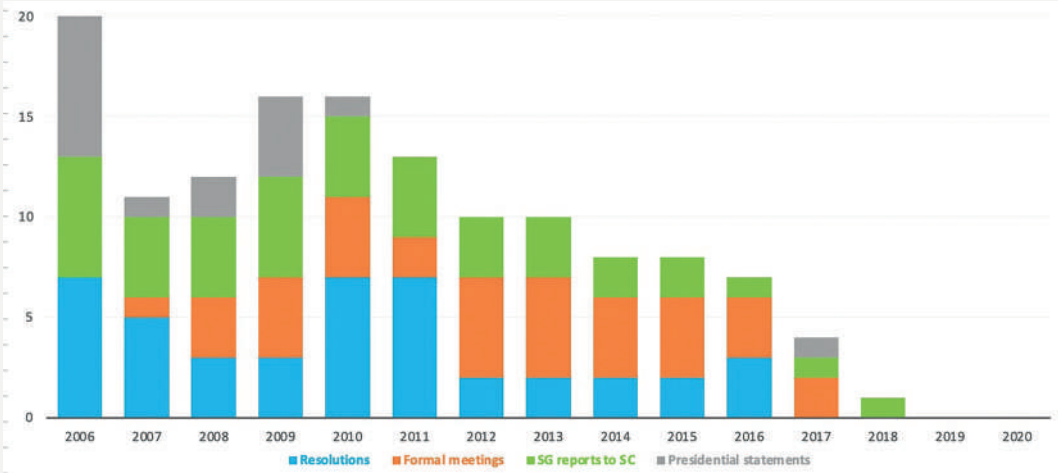
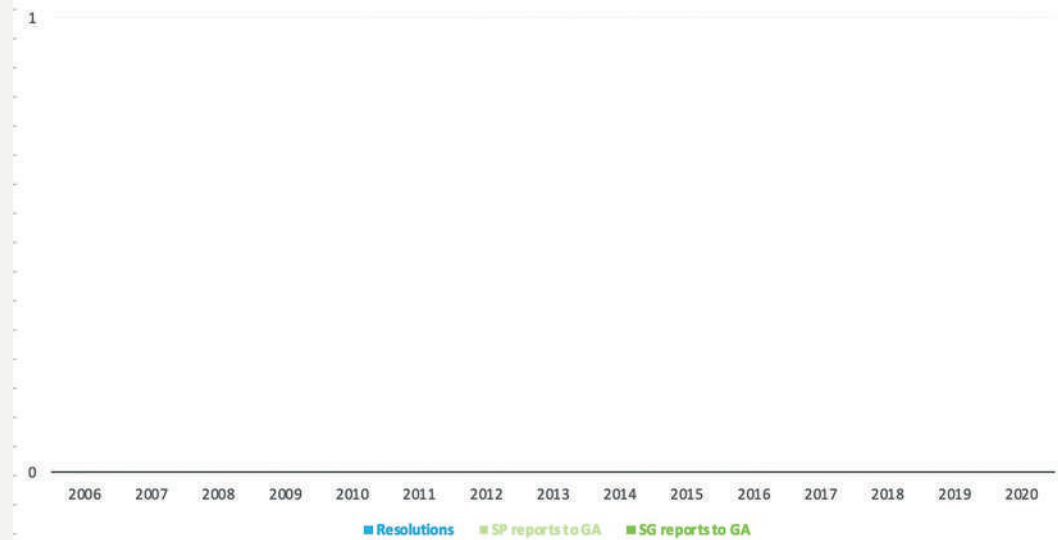


FIGURE 11.

UNGA activity on Côte d'Ivoire



DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (DPRK)

The case of the DPRK is somewhat unusual in the context of this report because UN action was not initiated in response to a particular crisis – the human rights situation in the country has been a consistent concern for decades. Nonetheless, it is an interesting and instructive case study insofar as it underscores the importance of connecting the UNHRC and the UNSC, and as it suggests that this does not have to be a direct linear relationship, but can, and indeed perhaps should, also involve the UNGA and UNSC member States, who can bring UNHRC reports to the attention of the UNSC.

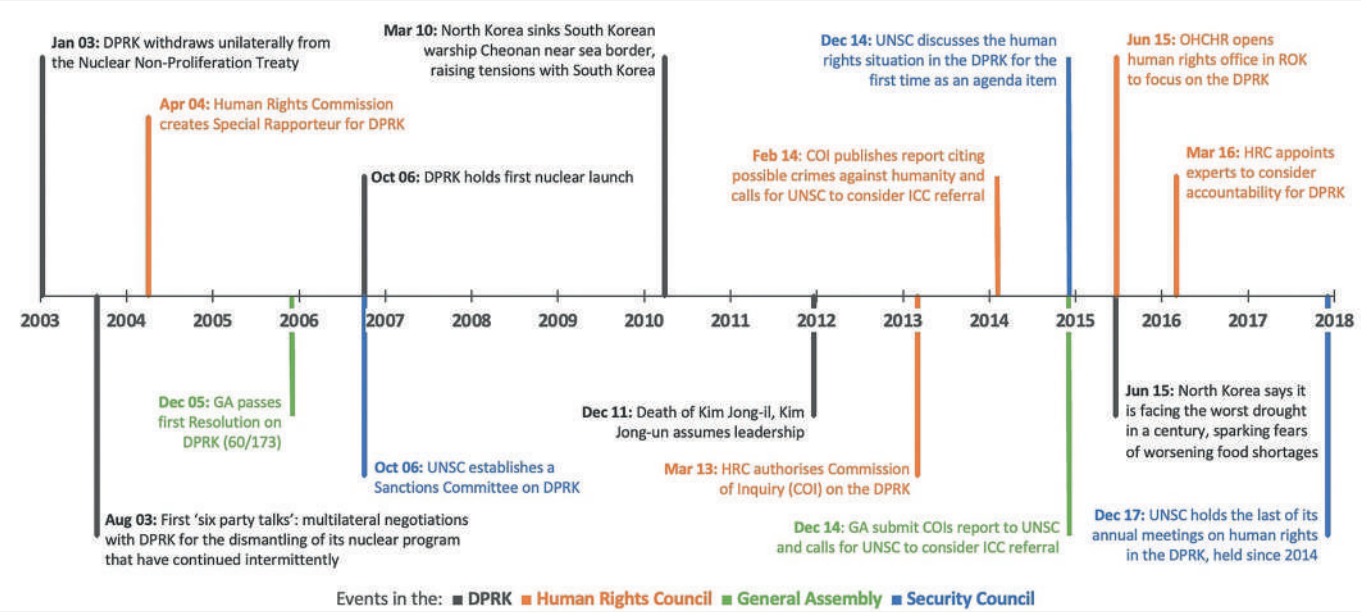
Over recent decades, the UN human rights pillar’s engagement with the DPRK has been strictly limited due to the country’s policy of non-cooperation. From a prevention perspective, this has clearly made working with the State to build its human rights capacity and resilience almost impossible. Moreover, because the human rights crisis has been an everyday reality for people living in the DPRK for decades, the gathering of early warning information or the use of good offices missions is clearly not relevant. Instead, almost all of the UNHRC’s work, in the context of the human rights situation in the DPRK, has focused on monitoring the situation, fact-finding, and recording evidence of the serious human rights violations that have taken place.

The UNHRC passed its first resolution on the situation of human rights in the DPRK in 2006, shortly after its establishment. Since then, it has adopted 13 resolutions on the subject.¹¹⁷ The mandate of the UN Special Rapporteur on the situation in the DPRK goes back even further to 2004, when the former Commission on Human Rights established the new Special Procedures mandate through resolution 2004/13. Those resolutions, together with the various reports of the Special Rapporteur have painted a truly shocking picture of the abuses taking place and the suffering of people living in the country.

Those resolutions and reports have also repeatedly argued that the dire human rights situation in the DPRK is closely related to international peace and security (i.e., the mandate of the UNSC). For example, in a 2009 report, the Special Rapporteur on the situation in the DPRK explicitly stated that ‘the violations compromise and threaten not only human rights, but also international peace and security.’¹¹⁸ In a 2013 report to the UNGA, the mandate holder argued that human rights have been undermined because, faced with crippling sanctions, the Government has prioritised building bombs over ensuring the population has access to food.¹¹⁹ Drawing on such links between human rights and peace and security, in 2007 the Special Rapporteur cited a UNSC resolution (resolution 1674),¹²⁰ to argue that the situation in the country and the level of human rights violations warranted international intervention under the ‘responsibility to protect’ doctrine, and that the entirety of the UN system should be mobilised.¹²¹

FIGURE 12.

Key events in the DPRK and at the UN, 2003–2018



In 2012, the UNHRC’s resolution on the situation in the DPRK was adopted by consensus for the first time (previously a vote had always been called).¹²² Capitalising on the momentum created by this unified voice, the High Commissioner for Human Rights and the Special Rapporteur called for the establishment of an international inquiry mechanism¹²³ – a stronger accountability mechanism than a Special Rapporteur and one that would thus reflect the severity of the situation in the country.¹²⁴ On the basis of these calls (which were also supported by international NGOs such as Human Rights Watch), one year later the UNHRC passed resolution 22/13 establishing a Col.¹²⁵ Michael Kirby, a well-known jurist from Australia, was appointed Chair, while Marzuki Darusman, then Special Rapporteur on the DPRK, served as a Commissioner.¹²⁶

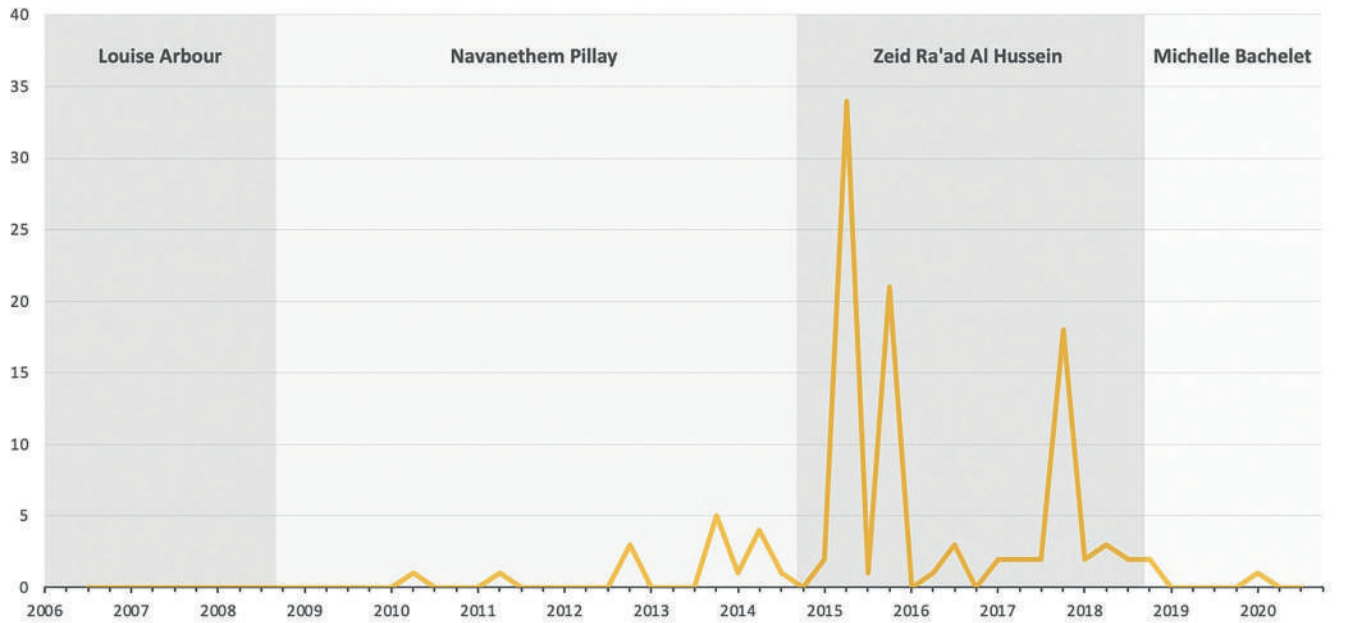
In February 2014, the Col published a landmark report on the situation in the DPRK, garnering significant international attention due to the detailed and shocking picture it painted of the human rights situation inside the country. The report concluded that ‘the gravity, scale and nature of these violations reveal a State that does not have any parallel in the contemporary world,’¹²⁷ and may well constitute crimes against humanity. The Col recommended that the UNSC refer the situation in the DPRK to the ICC and adopt targeted sanctions against those responsible.¹²⁸ In response to the report, in March 2014 the UNHRC passed resolution 25/25 recommending ‘that the General Assembly

submit the report of the commission of inquiry to the Security Council for its consideration and appropriate action.’¹²⁹ According to diplomats present during the negotiation of resolution 25/25, the decision to transmit the Col’s report to the UNGA, even though the above-mentioned recommendation was addressed to the UNSC, was taken based on an understanding that if it had been addressed directly to the UNSC, one of the permanent members of the latter would have been likely to use their veto. In any case, nine months later, the UNGA decided (with resolution 69/188) to officially transmit the Col’s report to the UNSC, with a recommendation encouraging the latter to consider referring the case to the ICC.¹³⁰

Transmitting recommendations through the UNGA proved highly effective as a means of using the moral and legal power of human rights to press the UNGA and then the UNSC to take action. As the Special Rapporteur on the DPRK noted in a 2013 report, since 2003–2004 the UNGA and its subsidiary organs (including the UNHRC) had adopted 16 resolutions on the situation in the DPRK, while a total of 22 reports had been drafted by the Secretary-General and Special Rapporteur and presented to UN member States.¹³¹ Yet despite this high level of UN focus on the situation in the country, and over many years, it was the Col’s powerful report, he contended, combined with the democratic legitimacy of the UNGA (where all UN member States are present), that succeeded in raising the human rights situation in the DPRK to the top of the political agenda (previously the focus had

FIGURE 13.

Number of mentions of DPRK by High Commissioner, per quarter



been on the country’s nuclear programme), and put it ‘decisively on the track of international law.’¹³² One consequence of this was that relevant UN bodies (UNHRC, UNGA and UNSC) began to regularly use the term ‘crimes against humanity’ in their resolutions, to describe the abuses being committed in the DPRK.¹³³

Ultimately, the report came to the UNSC on two tracks: firstly (and formally), as we have seen, in March and December 2014 via the UNHRC and UNGA; and secondly (and more informally), via a letter sent on 14 April 2014 from Australia, France and the US (the latter two were serving concurrently as members of both the UNHRC and UNSC) to other members of the UNSC, in which they shared the report.¹³⁴ Three days later, these same three States convened an informal Arria-formula meeting on the human rights situation in the DPRK and ‘its impact on the maintenance of international peace and security.’¹³⁵ During the meeting, Col members strove to place human rights in a security context, highlighting that ‘history show[s] that States that committed such heinous crimes against their own people were a perpetual source of instability and insecurity.’¹³⁶ Some UNSC members called for targeted sanctions, others for regular briefings from the High Commissioner for Human Rights, (China and Russia did not participate in the meeting).

Regarding the former track, upon official receipt of the Col report in December 2014, the UNSC held the first-ever meeting on the situation in the DPRK that was not convened under the (usual) agenda item on non-proliferation.¹³⁷ At the start of the meeting, China announced that it was ‘opposed to exploiting the existence of large-scale violations of human rights in the DPRK to include the situation of the DPRK on the UNSC Agenda.’¹³⁸

A handful of other States similarly did not deny the report’s horrific findings but argued that the UNSC was ill-suited for a discussion on such matters, and that such a sensitive subject would risk hampering denuclearisation negotiations. Others strongly disagreed, arguing that just as respect for human rights is the foundational basis of long-term security, widespread violations of human rights, especially where they may amount to crimes against humanity, pose an important risk to international peace. Australia’s representative, for example, pointed out that the DPRK regime’s repression ‘enables its proliferation policies’ and that human rights violations of this scale ‘reverberate beyond its source.’¹³⁹ In response to claims about human rights being a ‘destabilising’ agenda item, the Republic of Korea, a cosponsor of the DPRK resolution at the UNGA, argued that ‘non-proliferation, political, human rights, economic and security challenges are interrelated and mutually reinforcing.’¹⁴⁰

The result of this effort proved to be four annual UNSC meetings on human rights in the DPRK (in 2014, 2015, 2016 and 2017) and the use of the term ‘crimes against humanity’ by some of its members to describe the gross and systematic violations perpetrated in the country. Fears of China wielding its veto or withdrawing its support for the ongoing denuclearisation negotiations have meant that member States remain wary of pushing for action. China objected to every meeting (vetoes cannot be used for procedural votes, but, it has also been the practice of the UNSC to adopt an agenda without a procedural vote unless an objection is raised). No UNSC meetings on the subject have occurred since 2017, due to the inability of UNSC members to meet the minimum of nine procedural votes required for the meeting to take place, despite no observable improvement in the human rights situation in the DPRK.



Secretary General meets Foreign Minister of DPRK, United Nations, 2017

SUMMARY OF UN ACTIVITY ON THE DPRK

FIGURE 14.

UNHRC activity on DPRK

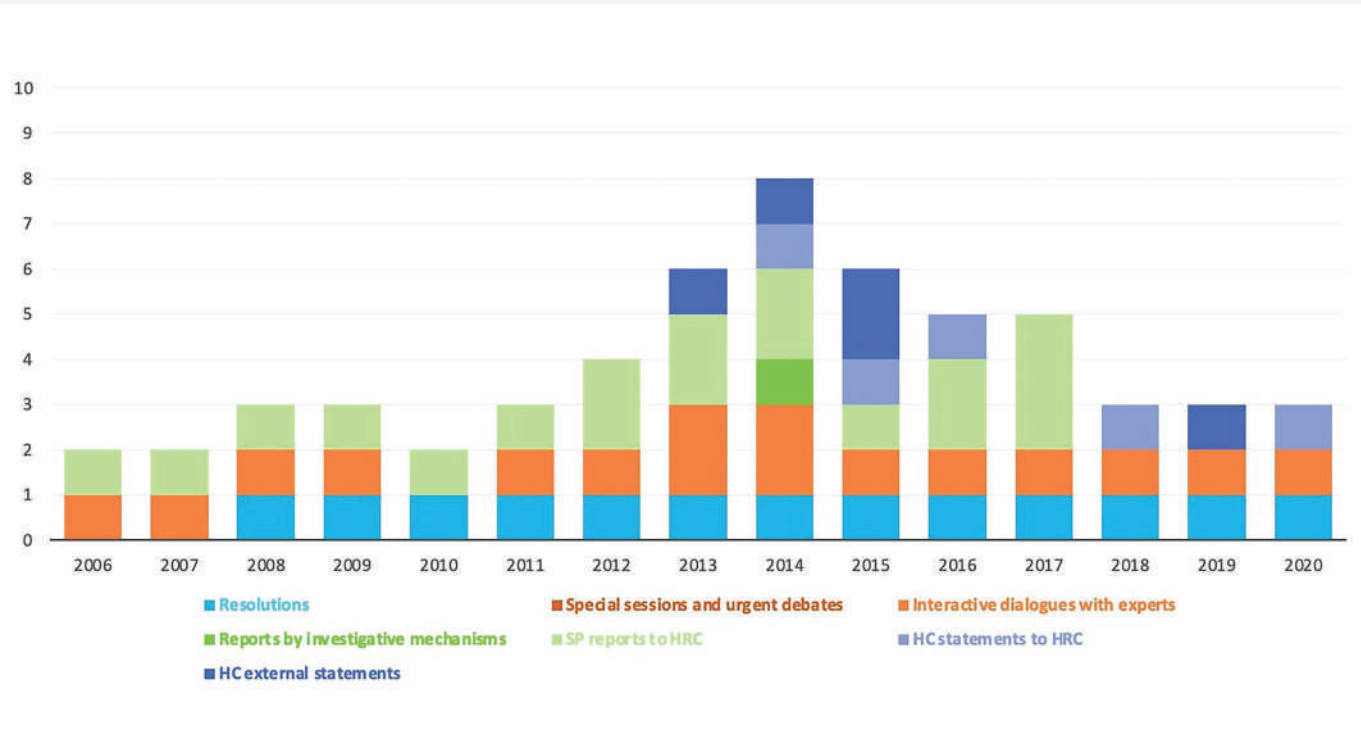


FIGURE 15.

UNSC activity on ‘The situation in the Democratic People’s Republic of Korea’

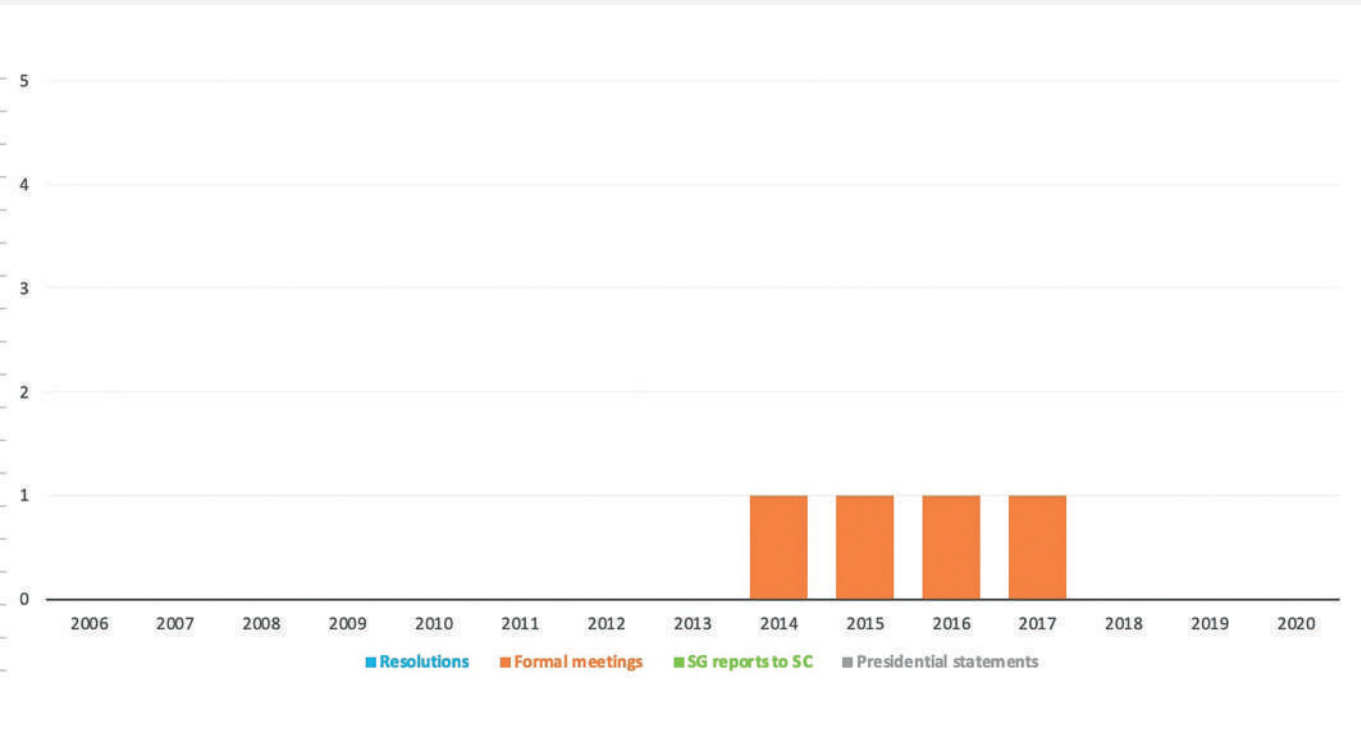


FIGURE 16.
UNSC activity on ‘Non-proliferation/Democratic People’s Republic of Korea’

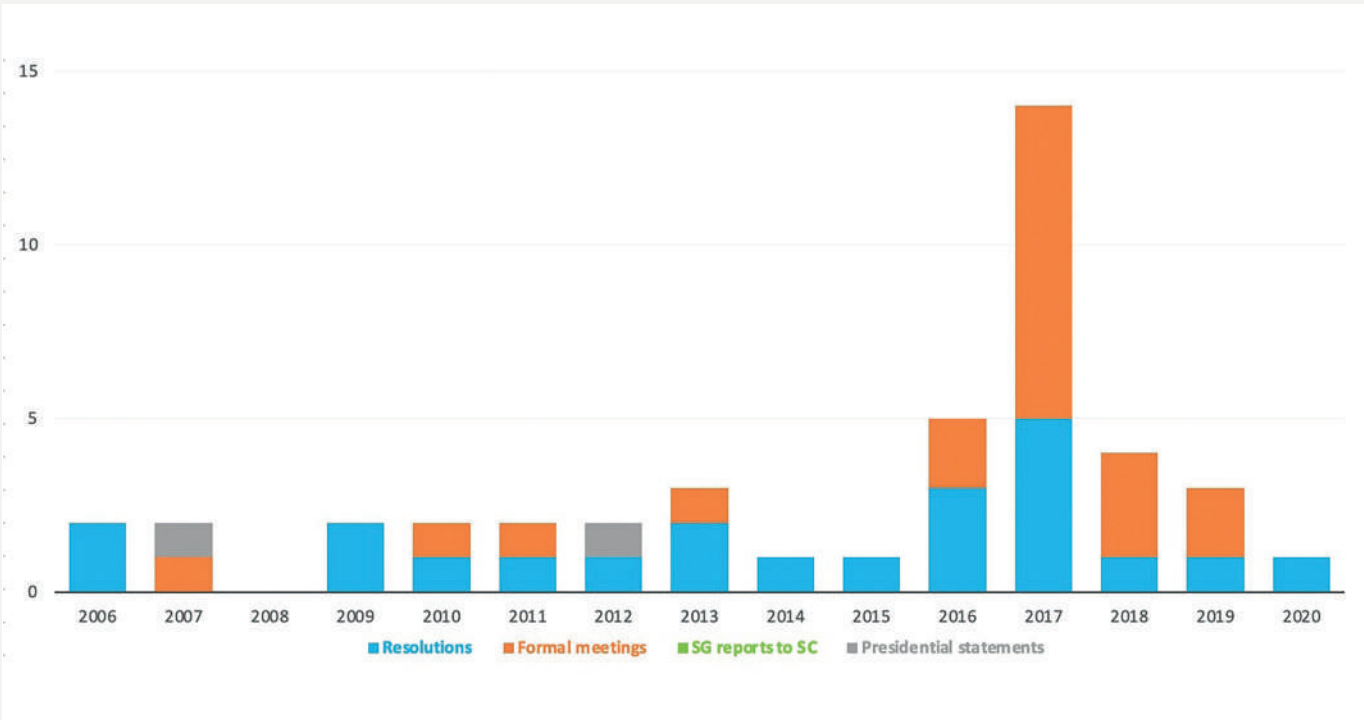
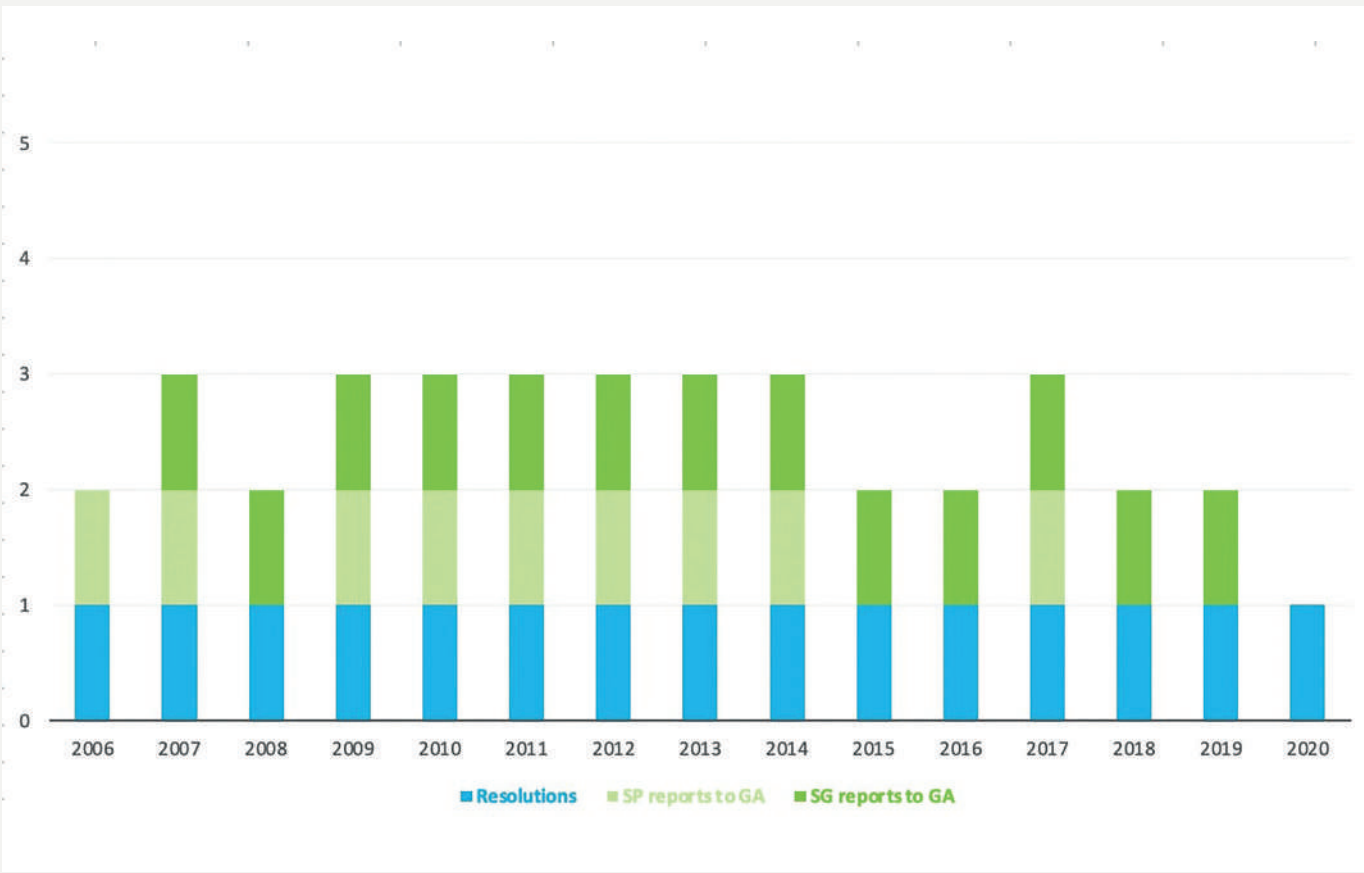


FIGURE 17.
UNGA activity on DPRK



LIBYA

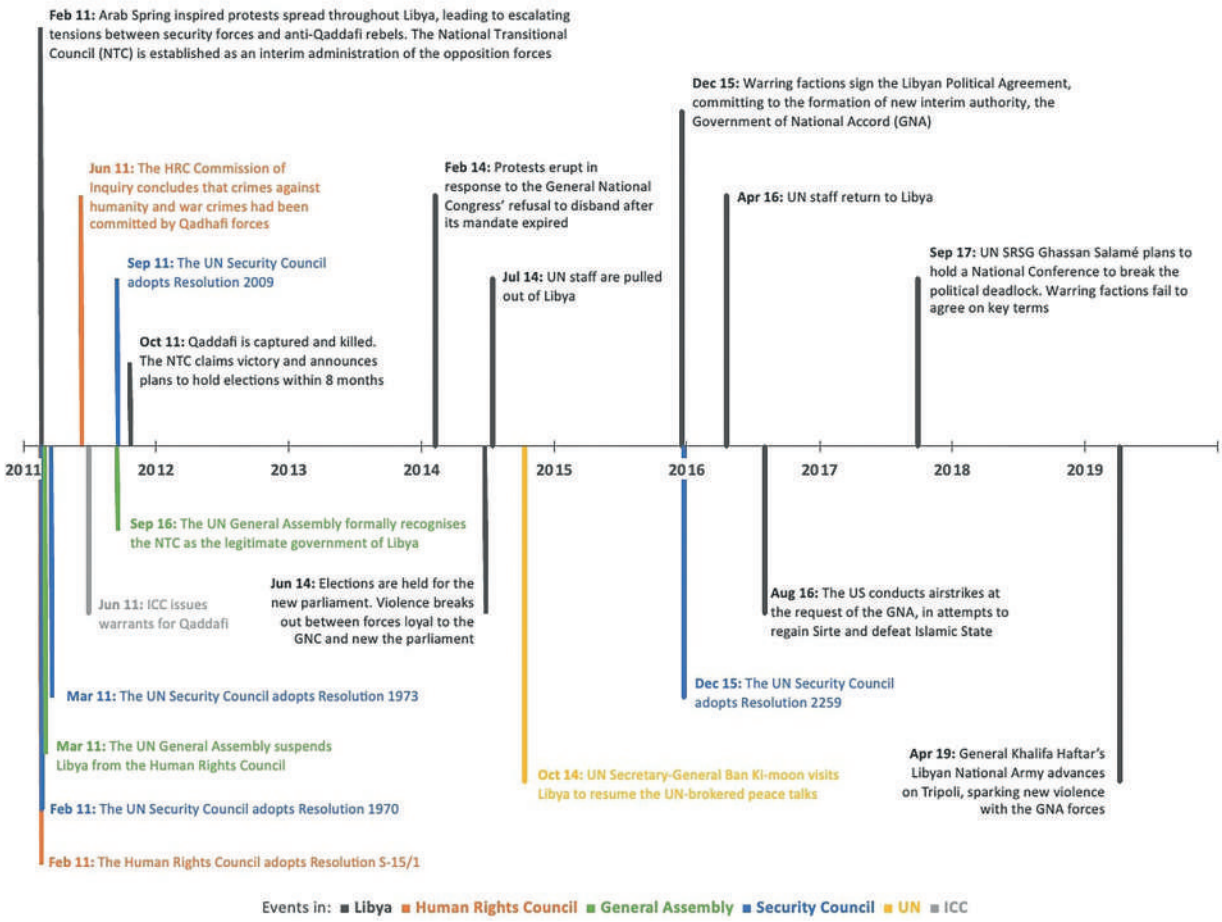
The case of Libya offers an important example of a broadly coherent approach, in the context of the working relationship between the UNHRC and UNSC, to an emerging crisis and conflict. As explained below, not only did the two bodies play their correct (as per their mandates) roles in preventing a widening and deepening of the crisis/ conflict, they did so in a ‘joined-up’ manner, with the former providing important human rights information and signals to the latter. In the final analysis, and notwithstanding the important geopolitical tensions thrown up by the UNHRC–UNSC’s coordinated intervention in Libya, it is fair to conclude that actions taken by the UNHRC and UNSC during the first quarter of 2011, both individually and jointly, saved thousands of lives and successfully ‘averted a large-scale humanitarian crisis.’¹⁴¹

There were multiple warning signs, well before the 2011 Arab Spring catalysed unrest, that universal human rights were being routinely

violated in Libya. Although the UNHRC itself had been relatively silent on the situation in the country, human rights Treaty Bodies and Special Procedures had spent much of the previous five years regularly raising the alarm. For example, in 2007, the Human Rights Committee expressed grave concern about the ‘large number of forced disappearances and cases of extrajudicial, summary, or arbitrary executions’ in the country,¹⁴² while in 2009, the Committee against Torture spoke of an overall climate of impunity in Libya, including for serious violations such as torture.¹⁴³ Indeed, as would be recognised by the International Commission of Inquiry on Libya in 2011, the entire system of government and law in Libya was extremely fragile, built around the patronage of Libyan dictator Muammar al-Qaddafi.¹⁴⁴ However, between 2006–2011, there does not appear to have been any coordinated attempt by different parts of the UN human rights system to collate these disparate warning signs, analyse them holistically, and build a comprehensive risk assessment.

In mid-February 2011, Libyans began demonstrating in Benghazi against the Qaddafi regime.¹⁴⁵ Clashes between civilians and security forces quickly escalated into widespread violence and eventually into

FIGURE 18.
Key events in Libya and at the UN, 2011–2019



civil war. The UN’s response – both in Geneva and New York – was swift. On 22 February, High Commissioner for Human Rights Navi Pillay, having described the situation as one based on ‘decades of neglect of people’s aspirations to realise not only civil and political rights, but also economic, social and cultural rights,’¹⁴⁶ called for an end to the grave human rights violations committed by Libyan authorities, and proposed the establishment of an independent international investigation. At the same time, in New York, UNSC President Maria Luiza Ribeiro Viotti (Brazil) condemned the violence against protesters and called upon the authorities to respect people’s human rights.¹⁴⁷

On 25 February, the UNHRC held a Special Session on the situation in Libya (at the request of Hungary, on the behalf of the European Union).¹⁴⁸ The meeting concluded with the adoption of resolution S-15/1, by consensus. As well as recommending the suspension of Libya’s membership of the UNHRC, resolution S-15/1 expressed ‘deep concern at the situation in the Libyan Arab Jamahiriya,’ and strongly condemned ‘the recent gross and systematic human rights violations committed in that country.’¹⁴⁹ Resolution S-15/1 also raised the spectre of further action under the UN’s R2P framework by calling ‘upon the Libyan Government to meet its responsibility to protect its population.’¹⁵⁰

The very next day in New York, the United Kingdom (which was also present at the UNHRC in February and supported the convening of the Special Session) secured the adoption of a follow-up resolution at the UNSC, resolution 1970 (2011), which ‘welcomed Human Rights Council resolution S-15/1;’ ‘deplored the gross and systematic violation of human rights’ in Libya; expressed ‘grave concern’ about the level of violence and the ‘use of force against civilians;’ expressed alarm at the prospect that the escalating levels of violence ‘may amount to

crimes against humanity;’ and (like the UNHRC’s resolution) recalled ‘the Libyan authorities’ responsibility to protect its population.’¹⁵¹ The UNSC then demanded ‘an immediate end to the violence.’¹⁵²

When that demand was ignored by the Libyan authorities, the UNSC proceeded to adopt resolution 1973 (2011) on 17 March – just three weeks after the adoption of resolution S-15/1. This expressed ‘grave concern at the deteriorating situation, the escalation of violence, and the heavy civilian casualties;’ condemned the continued ‘gross and systematic violation of human rights’ in Libya; reiterated ‘the responsibility of the Libyan authorities to protect the Libyan population;’ raised the prospect that ‘the widespread and systematic attacks currently taking place [...] against the civilian population may amount to crimes against humanity;’ and expressed the international community’s ‘determination to ensure the protection of civilians and civilian populated areas and the rapid and unimpeded passage of humanitarian assistance and the safety of humanitarian personnel.’¹⁵³ Crucially, the operative parts of the resolution then authorised member States ‘to take all necessary measures [short of armed occupation of Libyan land] to protect civilians and civilian populated areas under threat of attack [...] including Benghazi,’ and decided to establish a ‘no-fly zone’ in the ‘airspace of the Libyan Arab Jamahiriya in order to help protect civilians.’¹⁵⁴

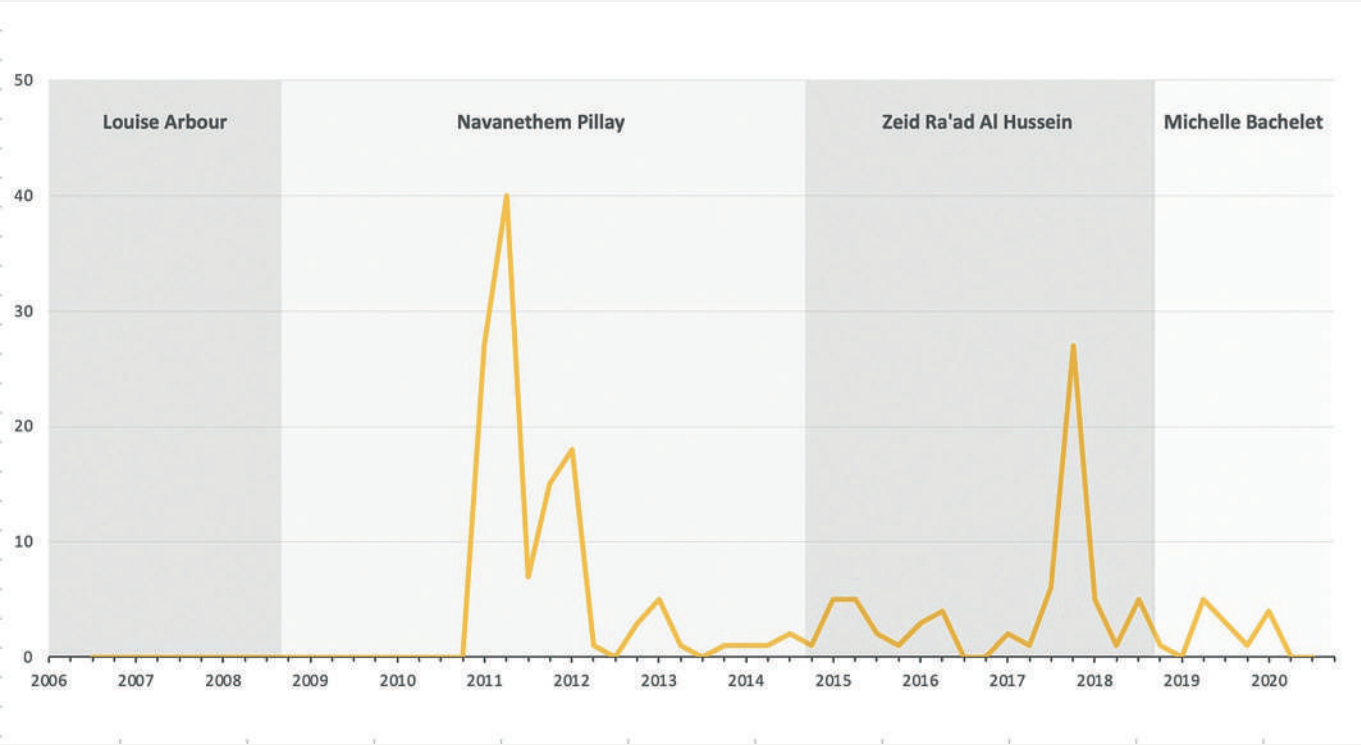
Two days after the adoption of resolution 1973 (2011), the UK, US, France and other NATO members established a no-fly zone throughout Libya and began bombing Libyan armed forces.¹⁵⁵ Seven months later, in October 2011, after an extended military campaign with sustained NATO support, rebel forces seized control of the country and killed Libyan dictator Muammar al-Qaddafi.



Libyans celebrates one-year anniversary of anti-Qadhafi uprising, Zawiya, Libya, 2012

FIGURE 19.

Number of mentions of Libya by High Commissioner, per quarter



Looking at this case study from a prevention perspective, in particular a secondary and tertiary prevention perspective, it is clear from the foregoing that the UN’s response to the crisis and conflict in Libya was relatively strong. As part of that, there was clearly a coherent and remarkably efficient relationship between the UNHRC and the UNSC. Long before the outbreak of hostilities, human rights mechanisms such as Special Procedures and Treaty Bodies had identified consistent patterns of serious human rights violations. While criticism can be legitimately levelled at OHCHR and the UNHRC for not picking up on those warning signs at an earlier stage (largely because necessary early warning systems were not yet in place), soon after the violent suppression of protests by the Libyan authorities, the UNHRC was able to convene an emergency session that culminated in a remarkably robust and clear-sighted resolution, which, *inter alia*, called for the prevention of any ‘further deterioration of the crisis’ and for a ‘peaceful solution’ that would ensure the ‘safety for all civilians and stability for the country.’¹⁵⁶ That resolution did not explicitly call upon the UNSC nor the UNGA to take the necessary steps to contribute to such a prevention effort, yet the inclusion of language expressing the international community’s ‘deep concern at the situation,’ condemning ‘the recent gross and systematic human rights violations,’ and reminding the Libyan Government of its ‘responsibility to protect its population, to immediately put an end to all human rights violations [and] to stop any attacks against civilians’ (thereby implicitly raising the spectre of R2P/humanitarian intervention), sent a strong and unambiguous message to the UN’s security pillar that it

should quickly intervene to prevent the possible commission of war crimes and crimes against humanity.

24 hours later, in New York, the UNSC proceeded to adopt the first of two resolutions clearly and explicitly responding to the warnings transmitted by the UNHRC. Given the flow of refugees and reports of mercenaries being employed by the Libyan regime, there was consensus among UNSC members that the Libyan situation was a threat to international peace and security. With those resolutions, the UNSC recognised that, if left unaddressed, ‘the widespread and systematic attacks currently taking place [...] against the civilian population’ may lead to the commission of ‘crimes against humanity,’ and thus decided ‘to take all necessary measures [short of armed occupation of Libyan land] to protect civilians and civilian populated areas under threat of attack.’¹⁵⁷ While the subsequent actions of NATO in policing the UNSC-authorised no-fly zone in Libya became the source of considerable acrimony between States (the consequent breakdown in trust remains a major block on the construction of a more coherent UNHRC–UNSC relationship), there can be little doubt that, in the case of Libya, the coordinated, prevention-focused response of the two bodies did succeed in preventing crimes against humanity from being committed in the country.

UN-led efforts to help build a more resilient post-conflict Libya were far less successful. For its part, immediately after the fall of Qaddafi, the UNHRC began passing resolutions aimed at delivering human rights

technical assistance to Libya (to date, nine annual texts have been adopted).¹⁵⁸ Those resolutions served a number of broad functions, principally to: welcome positive human rights developments in Libya; express concern about persistent areas of concern; call upon Libya to undertake a wide array of human rights reforms and improvements; and request OHCHR to assess the capacity-building needs of Libya, and work with the wider UN system, especially the United Nations Support Mission in Libya, to help Libya fulfil those needs. From the start there was a clear recognition that the extension of such assistance should aim to support a successful transition in Libya and prevent a return to violence. For example, Council resolution 22/19, adopted in March 2013, clearly stated the UN human rights pillar’s overarching goal, namely ‘to strengthen[...] the promotion and protection of, and respect for, human rights and fundamental freedoms and explor[e] ways of cooperation to overcome the challenges in the areas of security, respect for the rule of law, transitional justice and human rights.’¹⁵⁹

For its part, the UNSC was equally swift to shift to peace- and resilience-building, in order to support a successful transition and prevent any recurrence of the serious human rights violations that had blighted Libya’s recent history. In September 2011, with resolution 2009 (2011), the UNSC established the United Nations Support Mission in Libya

(UNSMIL).¹⁶⁰ This was followed, in March 2013, by a further resolution (resolution 2095 (2013)), through which it decided that the mandate of UNSMIL, in full accordance with the principles of national ownership, should be to support Libyan efforts in a number of areas, including to ‘promote the rule of law and monitor and protect human rights, in accordance with Libya’s international legal obligations.’¹⁶¹ In fulfilment of this human rights mandate, a Human Rights, Transitional Justice and Rule of Law Division was established. The OHCHR presence in Libya, primarily through the UNSMIL human rights component, enabled the gathering of important information on the human rights situation in Libya. In total, ten reports were published jointly by UNSMIL and OHCHR.¹⁶² This collaboration ensured that information on human rights developments was effectively communicated to the UNSC through UNSMIL briefings that included human rights analysis in security assessments.¹⁶³

Unfortunately, for reasons too numerous and complex to be presented in this short policy report, UNSMIL, including its human rights component, was unable to help secure a peaceful transition in Libya and by 2014, violent conflict had once again broken out – this time with the added destabilising factor of Islamic State involvement.

SUMMARY OF UN ACTIVITY ON LIBYA

FIGURE 20.

UNHRC activity on Libya

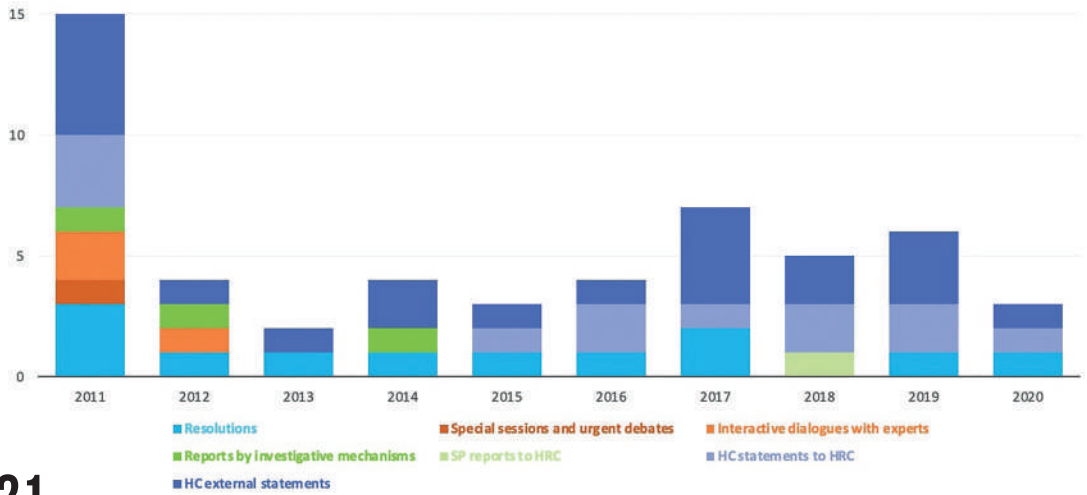


FIGURE 21.

UNSC activity on Libya

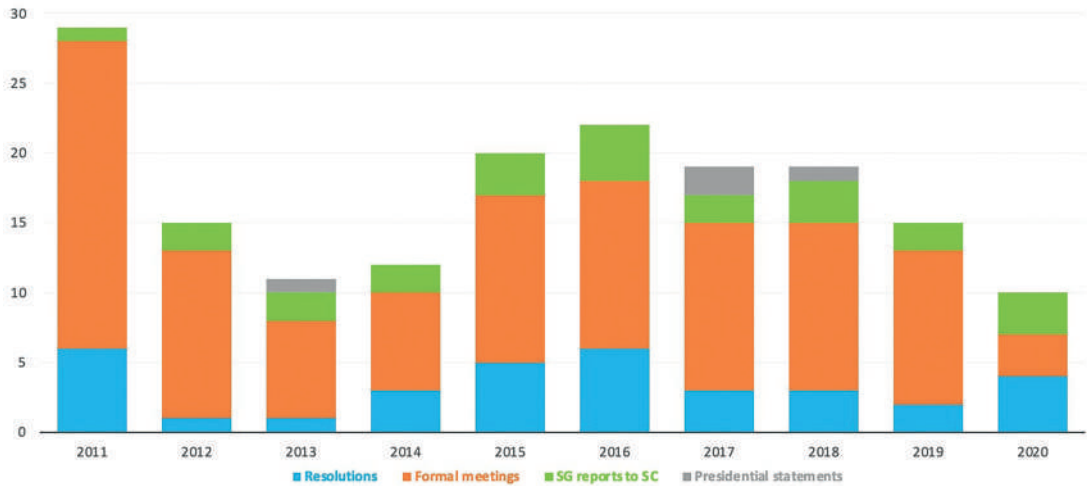
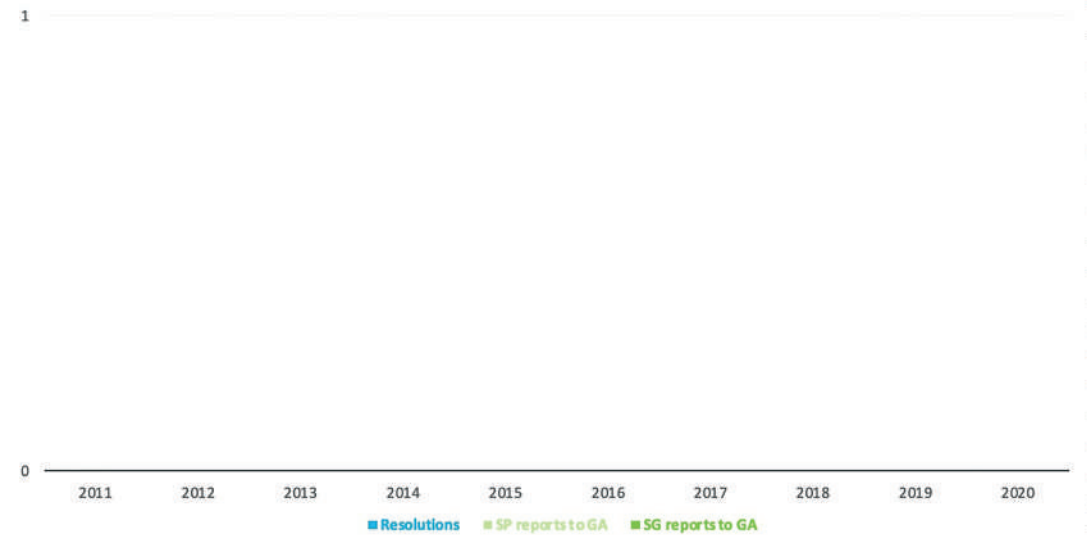


FIGURE 22.

UNGA activity on Libya



MYANMAR

While the human rights situation in Myanmar has been on the agenda of the UN for nearly 30 years, the international community's response to the situation (as with many other situations) has typically been characterised by a critical disconnect between the work of its three pillars – human rights, peace and security, and development. Recognition of this disconnect, which undermined the effectiveness of the UN's response to crises in places like Rwanda and Sri Lanka, with devastating consequences, led former Secretary-General Ban Ki-moon to launch his Human Rights Up Front (HRUF) policy, which called for human rights to be more systematically integrated into UN efforts to prevent conflicts and atrocities, sustain peace, and promote sustainable development. Unfortunately, the UN's failure to prevent the gross and systematic violation of the rights of the Rohingya minority in Myanmar in 2016–2017, demonstrated that the HRUF policy had failed to correct the siloisation of the UN – with terrible consequences.

After winning Myanmar's first competitive national election in more than twenty-five years and taking office in March 2016, the National League for Democracy party (unofficially headed by State Counsellor Aung San Suu Kyi) embarked on a series of constitutional and human rights reforms. Those reforms were designed to strengthen democracy,

promote decentralisation as a means of reducing conflict between Myanmar's different ethnic groups and regions, and strengthen the enjoyment of human rights for all people and communities in the country. Unfortunately, one ethnic group, the Rohingya (a highly persecuted Muslim group numbering over one million, who are not considered citizens by the Government) were deliberately and systematically excluded from this process of democratic transition. For example, in August 2016, the Government convened a national peace conference aimed at ending decades of fighting between the military and a number of armed ethnic groups, but Rohingya representatives were not invited to attend.

Systematic discrimination against minorities in Myanmar has long been a serious human rights concern in the country. Successive Myanmar governments have, since 1962, progressively stripped the Rohingya population of their political and civil rights, including citizenship rights. After two waves of violence, reprisals, and riots in June and October of 2012 intensified a century-old conflict in what is a predominantly Buddhist country, more than one hundred thousand Rohingyas were internally-displaced and hundreds killed.

In October 2016, six months after the election victory of the National League for Democracy, long-simmering tensions once again burst into the open when Rohingya militants attacked a security post along the Bangladeshi border, killing nine police officers. The army responded with a month-long crackdown on unarmed Muslim civilians,

causing more than one thousand civilian deaths and driving tens of thousands more to flee their homes in search of safety. August 2017 saw a further intensification of the conflict, after militants launched deadly attacks on more than 30 police posts. The army, backed by local Buddhist mobs, responded by burning villages and attacking and killing civilians. *Médecins Sans Frontières* estimated that at least 6,700 Rohingya, including some 730 children under the age of five, were killed in the violence. Amnesty International says the military raped and abused Rohingya women and girls. According to UNHCR, the systematic human rights abuses also caused over 270,000 people to flee over the border into Bangladesh, three times more than the 87,000 who fled the previous operation. The High Commissioner for Human Rights called the situation 'a textbook example of ethnic cleansing.'¹⁶⁴ Moreover, the violence led to a growing humanitarian crisis in neighbouring Bangladesh, where nearly one million Rohingya now reside in refugee camps along the border.

Each pillar of the UN contributed to the Organisation's overall failure to prevent these atrocities. The UN development system, in particular the UN Resident Coordinator at the time in Myanmar, has perhaps come in for the most stringent criticism. However, the failure of the human rights pillar (especially the then High Commissioner Zeid Ra'ad Al Hussein) to seize the opportunity presented by the return to civilian government in 2016, to initiate a massive programme of 'upstream' resilience-building human rights support, to collate and synthesise early warning information about the coming crisis, and to feed information into the UNSC in a timely manner, also greatly contributed to the gross and systematic violations that ensued.

Turning first to primary or upstream prevention, already in 2007, during a UNHRC Special Session on Myanmar, the then High Commissioner for Human Rights, Louise Arbour, warned that the international community's responsibility to protect civilians against serious international crimes 'requires that preventive, reactive and rebuilding measures be put in place to avert and confront crises.'¹⁶⁵ The primary role of the UNHRC in building national resilience in Myanmar, and addressing the root causes of conflict, including discrimination against minorities, was also recognised by the UNSC. According to Arbour, during the UNSC's first formal meeting on Myanmar on 29 September 2006, a number of UNSC members made clear that the UNHRC is the appropriate forum to prevent human rights violations (and crises) at an early stage, and should thus 'use means commensurate to the occasion to impress upon the Government of Myanmar the urgent need to implement its international human rights obligations and to account publicly for past and on-going violations.'¹⁶⁶

There was therefore a clear understanding, from at least 2007 onwards, that the risk of intercommunal violence and conflict in Myanmar would be best addressed through the long-term and 'upstream' engagement of OHCHR and the UNHRC – engagement designed to

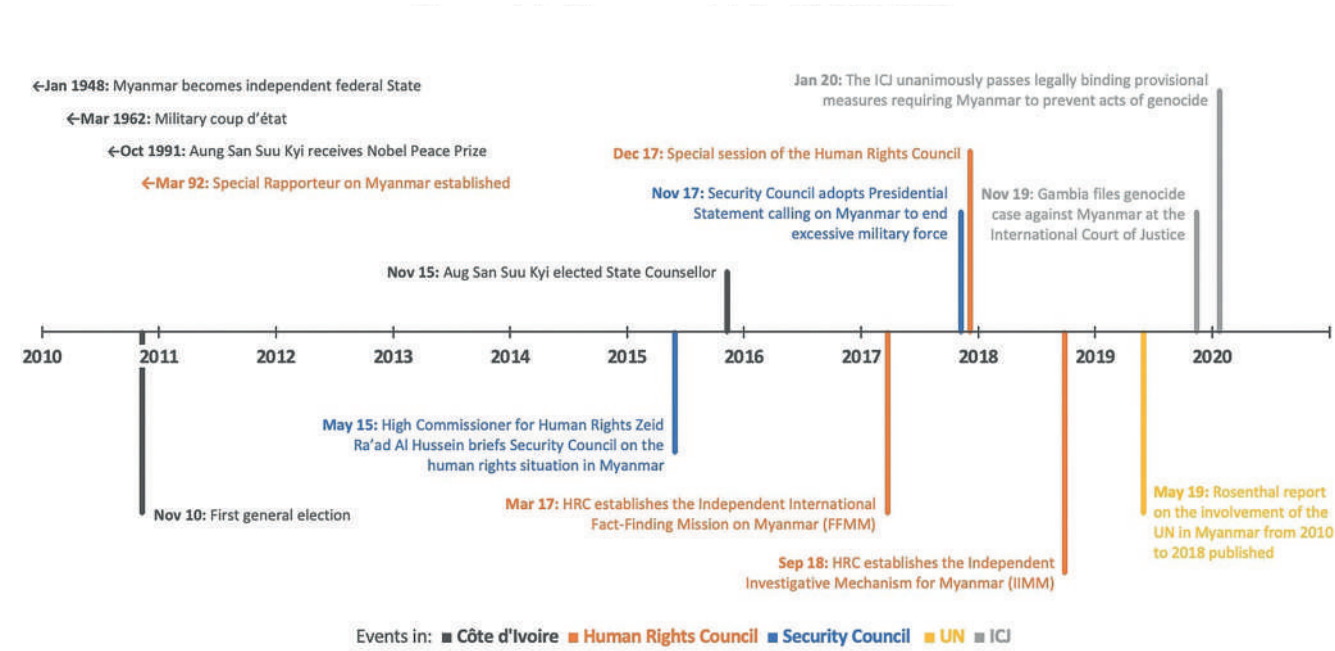
address grievances, strengthen democracy and the rule of law, and protect human rights – including the rights of minorities. However, although different parts of the human rights pillar (including the UNHRC, OHCHR and Special Procedures) did identify key 'resilience weak spots' in Myanmar (areas of acute human rights challenge that could potentially become a spark for future unrest), the stark truth is that, following the election victory of the National League for Democracy in 2016, and the opening of an important window for cooperation with the Government, the UN human rights system failed to seize the moment.

Regarding the identification of 'resilience weak spots,' every single report by the Special Rapporteur on the situation of human rights in Myanmar, between 2008 and 2018 (i.e., 20 reports), and to both the UNGA and the UNHRC, raised the issue of minority rights as a critical human rights concern in the country, and as a key potential 'flashpoint' that could lead to crisis and conflict.¹⁶⁷ Likewise, an analysis of UPR recommendations extended to Myanmar in 2011 and 2015, shows that 137 of 487 combined recommendations focused on the treatment and rights of minorities.

The situation of minorities in general and the Rohingya in particular, was repeatedly recognised by members of the UNHRC as an area of concern and risk. Successive UNHRC resolutions, from 2006 onwards, highlight the issue and call upon Myanmar to address it as a matter of priority, and for relevant parts of the UN to assist them in that regard. Regarding this technical assistance to help Myanmar address long-term human rights challenges, the UNHRC (as well as UNGA) resolutions have drawn particular (and repeated) attention to the importance of establishing a permanent OHCHR presence in Myanmar.

FIGURE 23.

Key events in Myanmar and at the UN, 2010–2020



28th Special Session of the UN Human Rights Council, Geneva, Switzerland, 2018

Unfortunately, in 2016 a crucial opportunity to take this step was missed. According to diplomats who followed the process, following the election of the new civilian Government, in March 2016, negotiations began with the authorities, via Myanmar’s Permanent Mission in Geneva, and the then High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, to establish a strong OHCHR presence in the country. Unfortunately, after positive initial progress, negotiations broke down due to the two sides’ conflicting visions of the mandate and objectives of the proposed OHCHR presence. For its part, the Government wanted the office to focus on long-term capacity- and resilience-building measures, such as assistance with the country’s constitutional reform process, legislative review, human rights education, and training for the country’s police and security forces. OHCHR, for its part, wanted a far stronger focus on monitoring (i.e., the monitoring of human rights violations), including through sub-offices in different parts of Myanmar (something the Government would not accept).

Whatever the truth of this (records of the negotiations do not appear to be publicly available), the inability of OHCHR to open an office in Myanmar was to have significant negative implications for human rights in Myanmar. Without a strong human rights influence, the UN Resident Coordinator and Country Team in Myanmar focused their cooperation with the Government on development programming. They were later accused of turning a blind eye to growing evidence of atrocities committed against the Rohingya, as well as of a failure to speak out (for fear of offending the authorities).

Thus, having failed (alongside OHCHR) in its primary prevention mandate, i.e., to work with Myanmar to build long-term human rights resilience and address the root causes of conflict such as discrimination against minorities, the UNHRC (again with OHCHR) also failed in its secondary prevention responsibilities, i.e., to rapidly process and act upon early warning information, and avert the coming crisis (including atrocity crimes).

In the absence of a ‘UN Human Rights’ presence on the ground in Myanmar, and in the absence of clear secondary prevention procedures at the UNHRC (e.g., early warning systems, good offices capabilities), international human rights engagement with the Government was driven by the Independent Advisory Commission on Rakhine State, established through a collaboration between Aung San Suu Kyi’s office (the Ministry of the Office of the State Counsellor of Myanmar), and the Kofi Annan Foundation, with UN support.

The UNHRC moved to undertake its traditional responsive role to violations, by taking steps to secure accountability for the atrocities committed. In March 2017, it dispatched a fact-finding mission to Myanmar ‘to establish the facts and circumstances of the alleged

human rights violations by military and security forces, and abuses.’¹⁶⁸ Later, at the UNHRC’s 39th session, the Organisation of Islamic Cooperation and the European Union tabled a resolution establishing an Independent Investigative Mechanism for Myanmar (IIMM). The IIMM is mandated to collect evidence of the most serious international crimes and violations of international law committed in Myanmar and to prepare files for future criminal proceedings.¹⁶⁹ Notably, evidence collated by the IIMM was used in the recent International Court of Justice case against Myanmar brought by Gambia, (an important point when one considers that accountability has a significant preventative value).

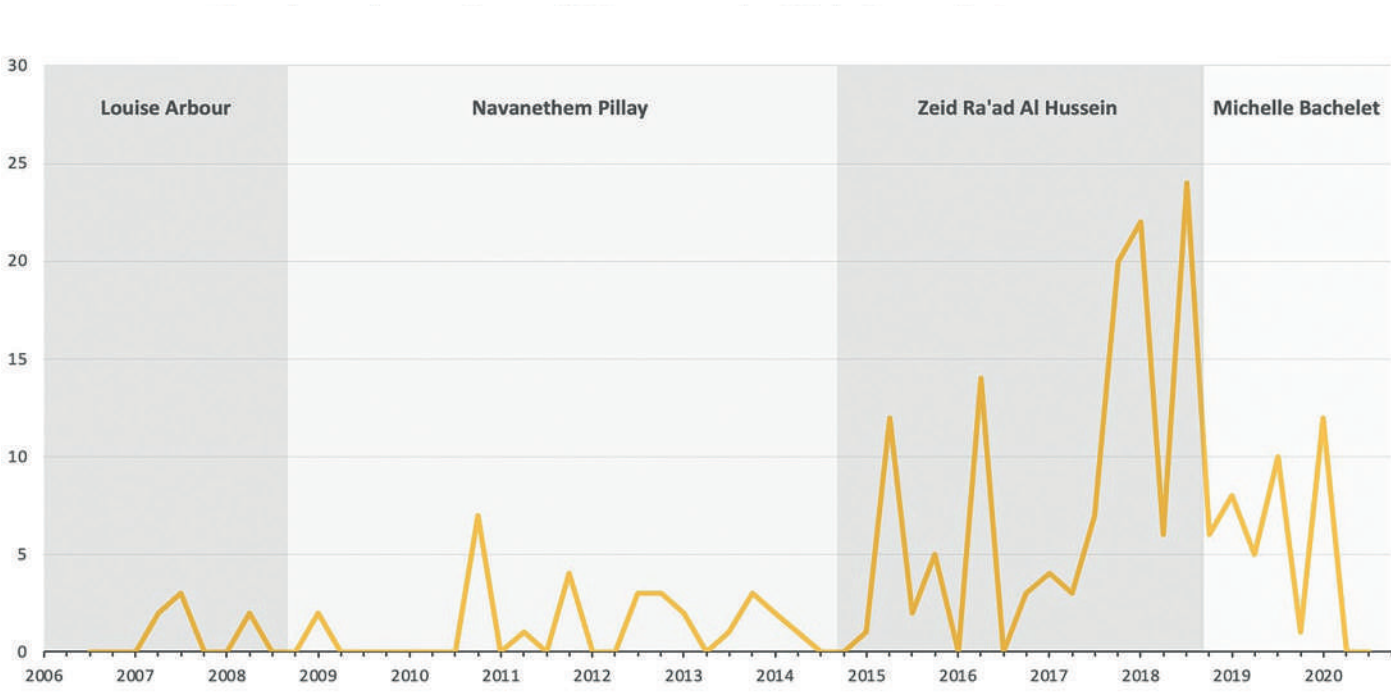
Compounding its own failure to prevent gross and systematic human rights violations in Myanmar, the UNHRC was also unable to feed information on the evolving situation into the UNSC. Some efforts were made. For example, some UNSC members tried to arrange briefings by the High Commissioner for Human Rights, the Assistant Secretary-General for Human Rights, and the Special Advisor on the Prevention of Genocide. However, at a formal level, these efforts were rebuffed by veto-wielding members, and thus representatives of the human rights pillar were in the end limited to providing their briefings in more informal settings.

In truth, even if these experts had been allowed to formally brief the UNSC, it seems doubtful that members would have taken any robust action to prevent further atrocities. In 2013, the Special Advisor of the Secretary-General on the Prevention of Genocide had been able to brief the UNSC on the human rights situation in Myanmar, and had warned members that ‘there is a considerable risk of further violence if measures are not put in place to prevent this escalation. These measures must address not only the immediate consequences of the current violence but also the root causes of the problem. Failing to do so can have serious future consequences which the international community has solemnly promised to prevent.’¹⁷⁰ Yet despite such warnings, the UNSC did not take any action.

Although attempts to provide information on human rights violations in Myanmar to the UNSC were blocked (at least in formal settings), the body nonetheless met to consider the situation in late 2017. However, continued sensitivities on the part of China and Russia about efforts to link human rights and security (especially in the aftermath of the UN-authorized military intervention in Libya), meant that even following weeks of negotiations, members were only able to agree a presidential statement on the situation in Myanmar, rather than a (stronger) resolution. With it, the UNSC expressed ‘grave concern over reports of human rights violations and abuses in Rakhine State, including by the Myanmar security forces, in particular against persons belonging to the Rohingya community,’ but did not decide to take any preventative action.¹⁷¹

FIGURE 24.

Number of mentions of Myanmar by High Commissioner, per quarter



In October 2020, in a display of its preventative potential, the UNGA adopted a substantive resolution on the ‘Situation of human rights of Rohingya Muslims and other minorities in Myanmar’. The resolution requests, *inter alia*, the Secretary-General to ‘continue to provide his good offices and pursue discussions relating to Myanmar, involving all relevant stakeholders, and to offer assistance to the Government of Myanmar; ‘To extend the appointment of the Special Envoy on Myanmar and submit the report of the Special Envoy covering all relevant issues addressed in the present resolution to the General Assembly at its seventy-sixth session’; ‘To ensure that all in-country programmes incorporate a human rights-based approach and undergo due diligence processes’; and ‘To call the continued attention of the Security Council to the situation in Myanmar with concrete recommendations for action towards resolving the humanitarian crisis, promoting the safe, dignified, voluntary and sustainable return of Rohingya refugees and forcibly displaced persons and ensuring accountability for those responsible for mass atrocities and human rights violations and abuses.’¹⁷²

However, the ultimate failure of the UN’s preventative engagement in Myanmar came to the fore on 1 February 2021, when democratically elected officials of Myanmar’s ruling party, including Aung San Suu Kyi, were deposed and imprisoned in a military *coup d’état*. In response, on 2, 3 and 4 February 2021, the UNSC met in an emergency meeting, which culminated in a press statement that ‘stressed the need to uphold democratic institutions and processes, refrain from violence, and fully respect human rights, fundamental freedoms and the rule of law.’ Following the Security Council statement, the Human Rights Council held a special session on Myanmar on 12 February – the third special session on the country since the Council was established in 2006. While several States pointed to the opportunity for the Council to contribute to the prevention of human rights violations and at least one NGO intervention argued that the session should culminate in a resolution requesting the High Commissioner to fully exercise her prevention mandate, ultimately, the resolution (adopted by consensus) merely requested continued reporting by the High Commissioner and Special Rapporteur.

SUMMARY OF UN ACTIVITY ON MYANMAR

FIGURE 25.
UNHRC activity on Myanmar

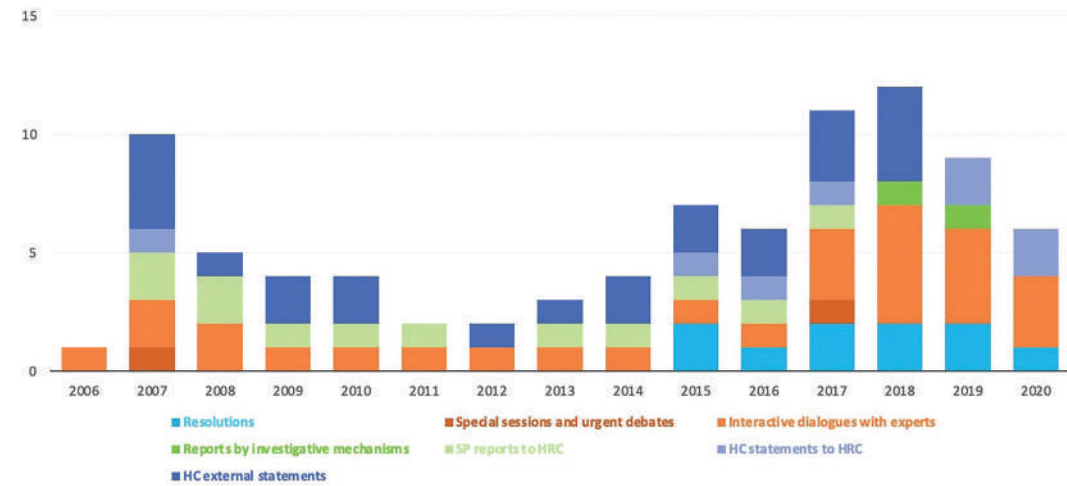


FIGURE 26.
UNSC activity on Myanmar

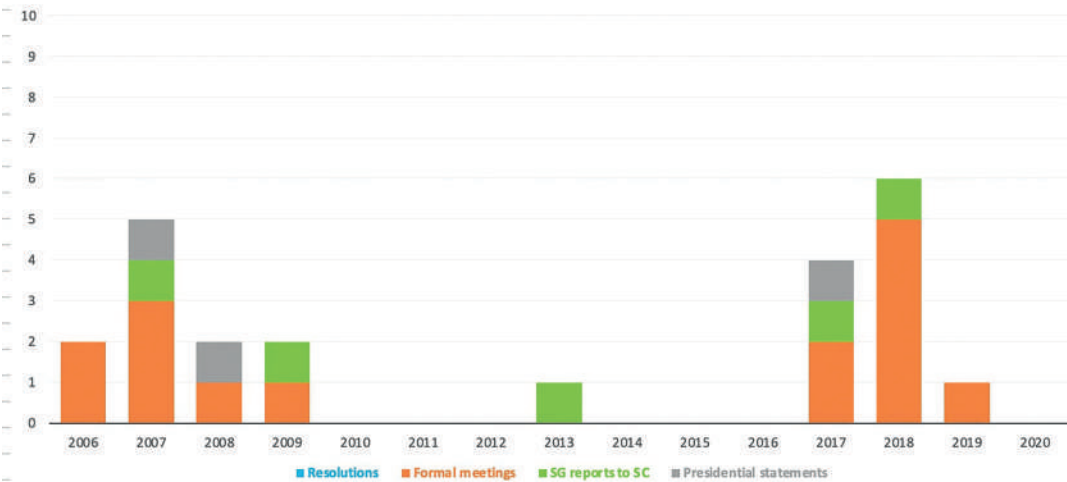
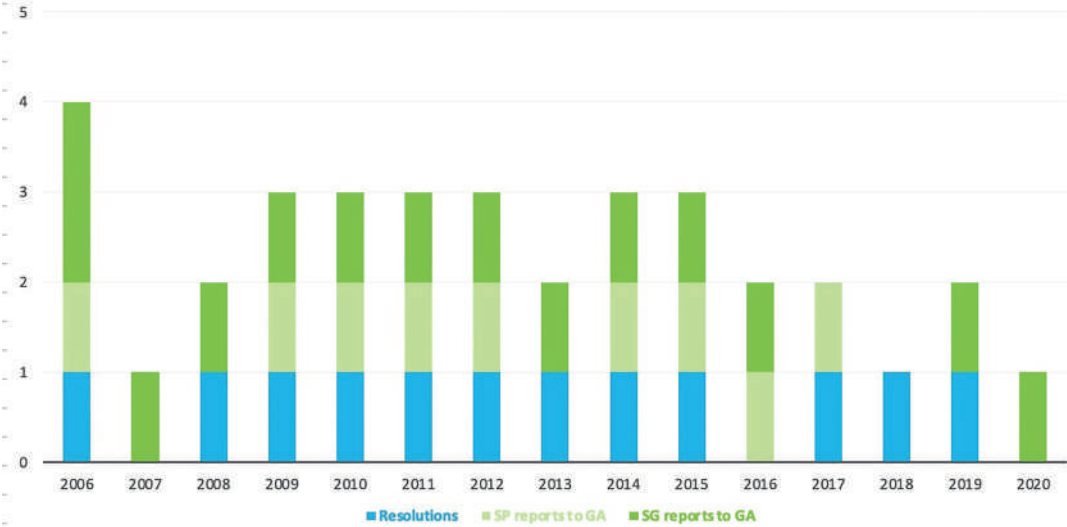


FIGURE 27.
UNGA activity on Myanmar



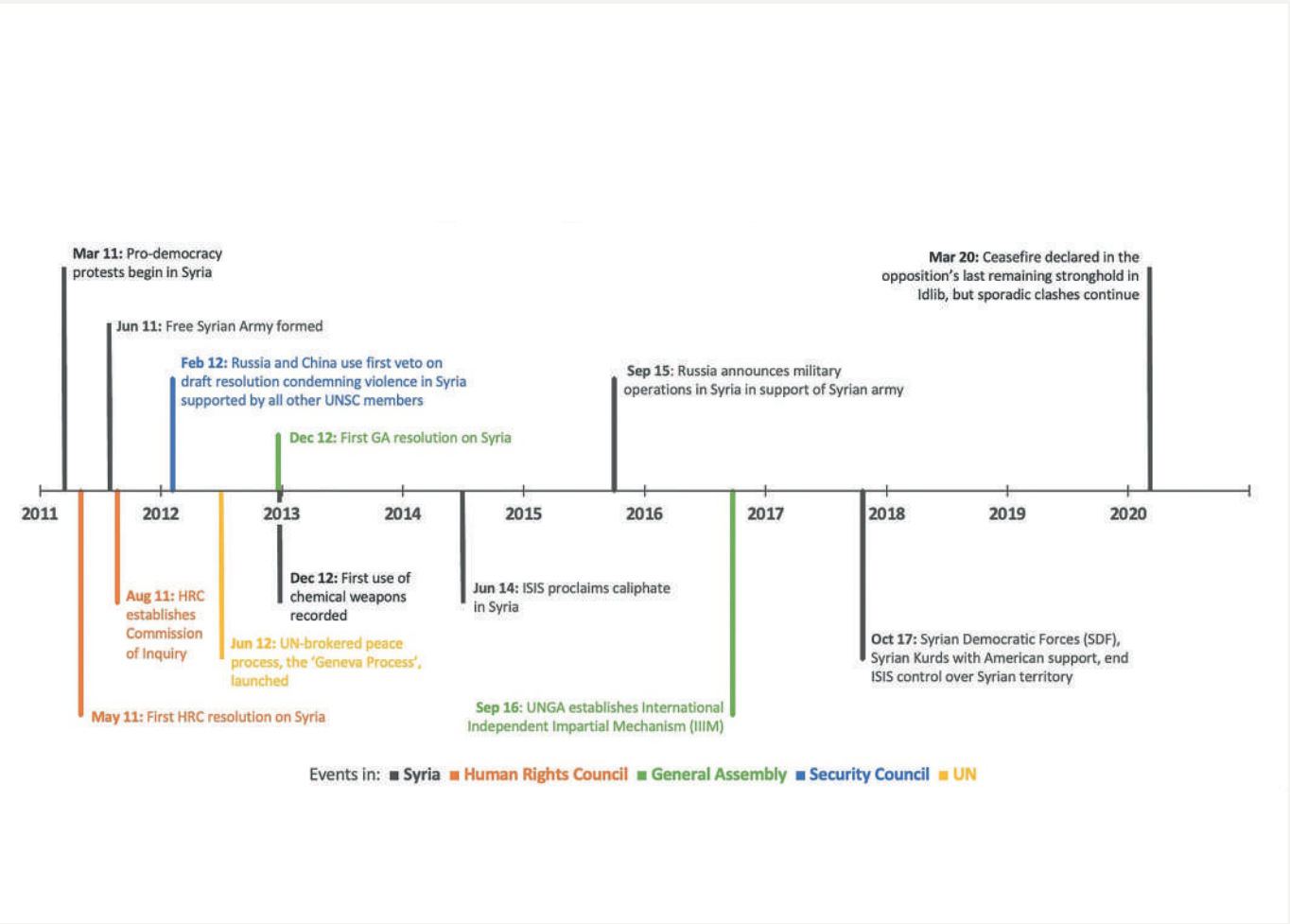
SYRIAN ARAB REPUBLIC

The UN’s response to the Syrian conflict, and in particular its inability to prevent the serious human rights violations and, ultimately, crimes against humanity that have taken place, is closely linked to, and has been heavily influenced by, its response to the (almost concurrent) Libyan crisis. As was the case with Libya, in broad terms the UN’s prevention machinery worked as it should, with both the human rights pillar and the security pillar acting expeditiously and according to their respective mandates, and engaging with one another in a coherent and coordinated manner. Although it was somewhat late in doing so, the human rights pillar did identify early warning signs of the coming crisis, did try to understand the underlying grievances and human rights violations that were the root causes of that crisis, did (especially in the case of the High Commissioner for Human Rights) try to leverage preventative diplomacy to convince

the Syrian Government to change course, and did share its human rights findings, analyses and recommendations with the UNSC (via the UNGA). However, unlike the case of Libya (and, indeed, in large part *because* of the case of Libya and, in particular, the use of the R2P principle to justify armed intervention), China and Russia ultimately blocked action by the UNSC that may have prevented Syria’s slide into civil conflict and the commission of crimes against humanity by the Syrian regime.

In late March 2011, after an OHCHR spokesperson reported that the Syrian Government had used live ammunition on peaceful protestors,¹⁷³ High Commissioner for Human Rights, Navi Pillay, was quick to raise the alarm about the possibility of escalation and conflict.¹⁷⁴ But could (and should) the international human rights system have picked up on warning signs of the coming crisis at an earlier stage, and perhaps taken preventative action? That question takes on enormous importance considering subsequent events, including the commission of crimes against humanity, in Syria.

FIGURE 28.
Key events in Syria and at the UN, 2011–2020



Like many countries rocked by the Arab Spring, Syria, under the autocratic government of Bashir Al-Assad projected an outward image of stability and security. Prior to the Arab Spring, Syria had been an active member of the UNHRC, promoting a vision of human rights based on the prioritisation of economic and social rights over and above civil and political rights. The unspoken subtext to this was that strict political control, and the consequent suppression of some civil and political rights, was necessary to promote socio-economic development and safeguard national security, including in the face of extremism. Large parts of the international community appeared to accept this narrative. A review of UN human rights documents in the period before the outbreak of protests in Syria reveals very little criticism levelled at the Government – and a good deal of praise. For example, in the ten years before March 2011, only two Special Procedures visits to Syria were recorded – by the Special Rapporteurs on the right to food and the right to health.¹⁷⁵ Allowing visits by just two mandates in ten years, and specifically choosing two social rights mandates, is in keeping with the narrative mentioned above. A review of the reports of those mandates following the visits, reveals nothing of the underlying tensions that would break out into the open within months.¹⁷⁶ (It should be noted that the lack of visits to Syria by other mandate-holders was the responsibility of the Government, which, in the decade before 2011, blocked mission requests by, *inter alia*, the Special Rapporteur on human rights defenders in 2008 and 2010, and the Special Rapporteur on torture in 2005 and 2007).¹⁷⁷

Yet behind the scenes, serious and systematic human rights violations were taking place – part and parcel of the Government’s attempts to suppress dissent, neuter criticism and maintain control. Evidence of this can be found in another area of the work of Special Procedures – namely, the receipt of individual complaints from rights-holders. For example, in the years and months leading up to the crisis in Syria, the same two mandate-holders mentioned above (on human rights defenders, and on torture), together with others (e.g., the Special Rapporteur on the protection of human rights while countering terrorism),¹⁷⁸ received a large number of petitions from the victims of serious human rights abuses in Syria, or their representatives.¹⁷⁹ These tell of enforced disappearances of lawyers, academics and students critical of the Government; the incommunicado imprisonment of civil society leaders, held in secret detention centres without access to lawyers or family; night time raids of family homes; and the torture of students, including female students, thought insufficiently loyal to the regime. In their responses to such complaints, the Government of Syria either denied the existence of the individuals named, or claimed they were part of illegal political groups or, even, terrorist organisations.

Civil society was likewise raising the alarm long before police began firing at protesters in early 2011. For example, in a written statement to the UNHRC in August 2010, the Cairo Institute for Human Rights Studies

sought to bring to the Council’s attention ‘the further entrenchment of the system of policies and practices that ensure the continued suppression of all domestic and international appeals for democratic reform and systematically punish political activists, journalists, and human rights defenders in Syria over the last decade...Complaints of “disappearances” are routine, torture remains rampant in detention facilities, and the numbers of victims grow despite international condemnation.’¹⁸⁰

It is therefore clear that the warning signs were there. The problem, in the years leading up to March 2011, was that there was no central repository for this disparate early warning information at the UN. Specifically, there was no ‘early warning unit,’ staffed by experienced analysts, in OHCHR. By extension, the High Commissioner for Human Rights was not in a position to bring a synthesis of this early warning information to the attention of UNHRC members, so that they might take remedial actions (i.e., through preventative diplomacy).

Once the international human rights system did become aware of the seriousness of the human rights situation in Syria (after the shooting of peaceful protesters), and of the potential for a widening and deepening of the crisis, it was relatively quick to act. For her part, the High Commissioner for Human Rights held a number of meetings with Syrian officials in the weeks after the killings, and was able to secure promises that the authorities would instigate reforms. Yet the Government response remained ‘erratic.’¹⁸¹ As Pillay later observed: ‘To announce a package of long-overdue and very welcome reforms, and then to open fire at protestors in the streets the very next day sends diametrically opposite signals,’ warning that such repression risked a ‘downward spiral’ into violence and chaos.¹⁸² Likewise, in April, all Special Procedures mandate holders delivered a joint statement in which they: pointed to the root causes of the current crisis – ‘the underlying grievances are rooted in lack of respect for basic civil, cultural, economic, political and social rights; this includes discrimination; lack of participation of all parts of society, including women, in political and public life, and a lack of accountability;’ drew belated attention to the early warning signs mentioned above – the suppression of peaceful protests, ‘the arbitrary arrest of human rights defenders, journalists and bloggers,’ and arbitrary detentions; and urged the Government to step back from the escalating violence and enact promised reforms.¹⁸³

There is a clear sense, in these interventions by the High Commissioner and by Special Procedures, of a determination to use preventative diplomacy to avoid further violence and wider human rights violations, and even (though they do not say it explicitly) to avoid civil conflict. Moreover, there is also a clear sense that these human rights actors had a strong understanding that the root causes of a potential wider conflict were all in place – i.e., long-standing patterns of serious human rights violations. It is also important to note that

the High Commissioner did undertake some preventative or good offices diplomacy at the very beginning of the crisis, even if it did not ultimately succeed.

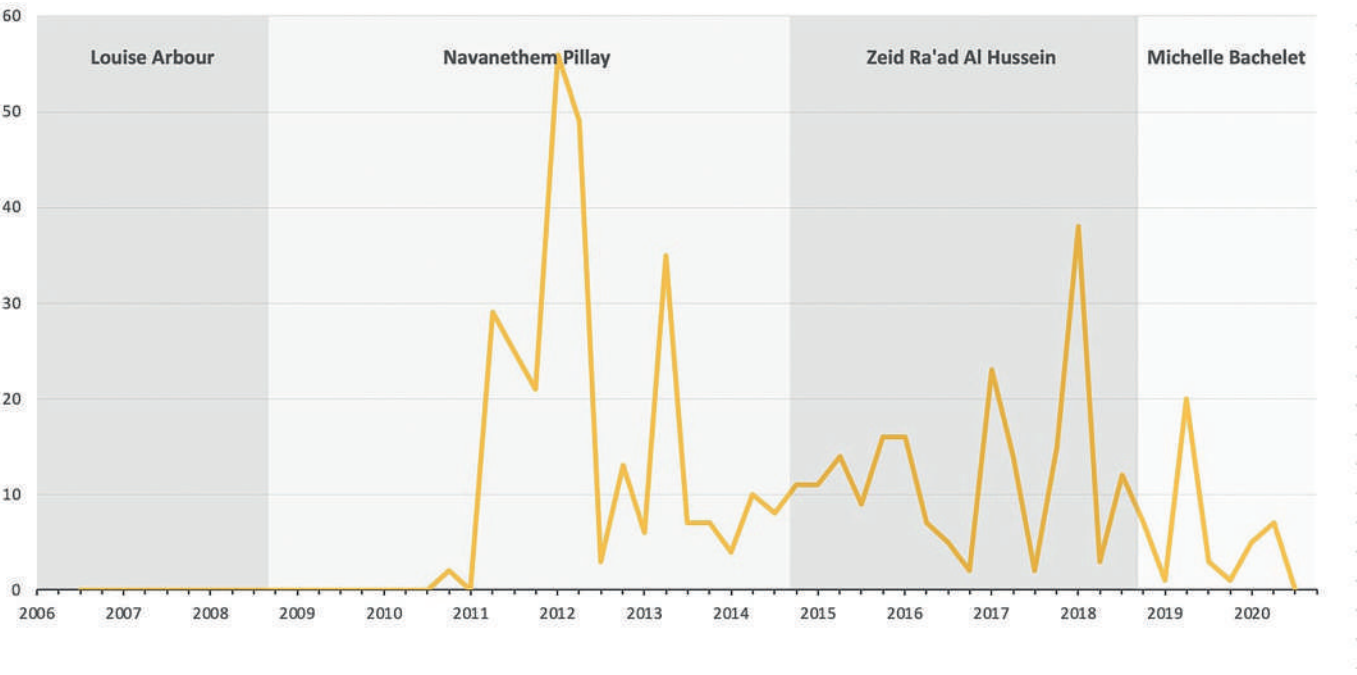
Similar impulses, i.e., to encourage the Government to step back, and to prevent a more serious crisis and, ultimately, conflict, were also evident in the UNHRC’s first response to the unfolding events in Syria (resolution S-16/1, adopted on 29 April 2011). For example, the Council called upon the Government to ‘release immediately all prisoners of conscience and arbitrarily detained persons [and] to cease any intimidation, persecution and arbitrary arrests of individuals, including lawyers, human rights defenders and journalists,’ and took note of the ‘stated intention of the Syrian Arab Republic to take steps for reform, [...] including by enlarging the scope of political participation and dialogue, following through on the abolition of the High State Security Court and lifting measures restricting the exercise of fundamental freedoms.’¹⁸⁴

However, more so than the High Commissioner or the Special Procedures, the UNHRC also quickly and decisively tilted towards its more traditional response to human rights crises – namely to condemn the violations, demand accountability, and establish international fact-finding mechanisms. With resolution S-16/1, the Council ‘unequivocally condemn[ed] the use of lethal violence against peaceful protesters;’ stressed ‘the need for the Syrian authorities to launch a credible and impartial investigation [...] and to prosecute those responsible for attacks on peaceful protesters;’ and requested OHCHR ‘to dispatch urgently a mission to the Syrian Arab Republic to investigate all alleged violations of international human rights law.’¹⁸⁵

It is, of course, impossible to say for sure whether a less condemnatory, more prevention-oriented approach to the crisis on the part of the UNHRC, could have helped avert the terrible conflict to come. That said, in retrospect it seems fair to conclude that the UNHRC should at least have tried. For two main reasons. First, although the High Commissioner’s attempt to use good offices diplomacy to prevent a worsening of the crisis was not ultimately successful, that does not mean a similar attempt by the UNHRC could not have succeeded. The UNHRC is an intergovernmental body, and States (especially neighbouring countries and allies) have far more political influence and leverage with other States than do, say, the High Commissioner or the Secretary-General. Second, by moving immediately towards public condemnation and international accountability mechanisms, the Council immediately lost the support of China and Russia – two permanent members of the UNSC.

It is, of course, perfectly possible that China and Russia would have opposed any UNHRC resolution on Syria, especially one stemming from a public Special Session. The key role the UNHRC had played, both in its own right and in concert with the UNSC, in paving the way towards military intervention in Libya (the relevant UNHRC and UNSC resolutions on Libya having been adopted just one month before), was still very much fresh in Chinese and Russian minds in April 2011. That they feared a repeat of events in Libya is evident in two of the paragraphs in resolution S-16/1. The first, pushed by the West, was a reminder to Syria that it had the primary responsibility to ‘protect its population and respect fully all human rights and fundamental freedoms’ (i.e., R2P language); and the second, in reaction to this, was a paragraph, demanded by China and Russia, reaffirming ‘that

FIGURE 29.
Number of mentions of Syria by High Commissioner, per quarter



all States Members of the United Nations should refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations.¹⁸⁶

In the end (unlike UNHRC resolution S-15/1 on Libya, which had been adopted by consensus), resolution S-16/1 was adopted by a recorded vote, with 26 in favour (including France, the UK and the US), 9 against (including China and Russia), and 7 abstentions.

In August, as the situation continued to deteriorate on the ground, the UNHRC convened a second Special Session on Syria (between April 2011 and June 2012, it held a total of four),¹⁸⁷ where member States received the report of the Fact-Finding Mission to Syria and adopted a further resolution (resolution S-17/1).¹⁸⁸ Despite not being allowed to visit the country, the fact-finding mission found evidence of widespread human rights violations, so serious that they ‘may amount to crimes against humanity.’¹⁸⁹ The mission therefore recommended that the situation be taken up by the UNSC and referred to the ICC. Moreover, during the Special Session, the High Commissioner noted she had recently briefed members of the UNSC, in closed session, on the findings of the mission’s report, and had also recommended that they refer the case of Syria to the ICC.¹⁹⁰

Building on these interventions, the UNHRC, through resolution S-17/1: ‘expresse[d] profound concern about [the fact-finding mission’s] findings, including that there were patterns of human rights violations that may amount to crimes against humanity; called upon ‘the Syrian authorities to [...] protect the population and to fully comply with their obligations under international human rights law’ and bring about an ‘immediate end to all violence’ (i.e., again raising the spectre of R2P

and humanitarian intervention); and decided to urgently dispatch ‘an independent international commission of inquiry’ to investigate ‘all alleged violations of international human rights law since March 2011,’ to establish the facts and, where possible, ‘identify those responsible with a view to ensuring that perpetrators of violations, including those that may constitute crimes against humanity, are held accountable.’¹⁹¹

Finally, with operative paragraph 15, the Council decided ‘to transmit the [eventual] report of the commission of inquiry [as well as future] updates thereto to the General Assembly, and recommends that the Assembly transmit the reports to all relevant bodies of the United Nations [meaning, in particular, the UNSC].’¹⁹² This was important as it represented an explicit effort by the UNHRC to communicate and coordinate with the UNGA and the UNSC (the UNHRC had not taken this step in the case of Libya earlier that year).

In October, the High Commissioner issued a statement in which she ‘drew attention to credible allegations of crimes against humanity in Syria.’ ‘The Government of Syria has manifestly failed to protect its population,’ she continued, and ‘has ignored the international community’s calls to cooperate with international investigations.’ Implicitly referring to the R2P doctrine, she therefore ‘urged the international community to take immediate measures to protect the Syrian people.’ ‘The onus is on all members of the international community to take protective action in a collective and decisive manner, before the continual ruthless repression and killings drive the country into a full-blown civil war.’¹⁹³

A few months later, in November, the Col published its first report, which concluded that the gross and systematic human rights violations committed by the Syrian State, may well indeed constitute



UNICEF member carries child, Homs, Syria, 2014

crimes against humanity.¹⁹⁴ As per resolution S-17/1, this finding was transmitted to the UNGA and, from there, to the UNSC.

From September 2014 onwards, the UNHRC began routinely transmitting all of the Col’s reports to the UNGA and to the Secretary-General;¹⁹⁵ and the UNGA began to routinely transmit those reports to the UNSC.^{196,197} The UNGA also requested that the Col Chair be allowed to brief both the UNGA and the UNSC.^{198,199} Despite this stream of formal requests, consideration of the reports of the Col at the UNSC has remained scant.

Turning to developments in the UNSC, when the High Commissioner first raised the alarm in March 2011, UNSC members (meeting in April) initially expressed a belief that the Syrian Government could still pivot away from disaster, through national dialogue and cooperation with the UN system.²⁰⁰ Unfortunately, the Syrian representative at the April meeting staunchly denied even the existence of peaceful protestors and labelled recommendations by international actors as intrusive and interventionist.²⁰¹

As the situation deteriorated on the ground, and as the information transmitted to the UNSC from the UNHRC and its investigative mechanisms (via the UNGA) became increasingly stark, and began to point towards the commission of crimes against humanity in Syria and the utter failure of the State to protect its own people, the Council quickly split between those advocating humanitarian intervention and those (like China and Russia) determined to avoid a repeat of the UN’s intervention in Libya.²⁰²

In October 2011, France, Germany, Portugal and the United Kingdom submitted a draft resolution²⁰³ before the UNSC that directly referenced UNHRC resolution S-17/1 and also drew on a UNSC presidential statement from August condemning human rights violations and calling upon the Syrian authorities to cooperate with OHCHR.²⁰⁴ The resolution was vetoed by China and Russia. During the subsequent debate, several members expressed frustration over the UNSC’s inability to act.²⁰⁵

In February 2012, a further UNSC resolution condemning the violence in Syria was again vetoed by China and Russia, even though all other UNSC members voted in favour.²⁰⁶ Shortly afterwards, the UNGA took action and adopted a similar resolution which further requested the Secretary-General to appoint a Special Envoy for Syria.²⁰⁷ This would not be the first or the last occasion when the UNGA would take action on Syria in the face of UNSC stalemate.

Throughout this period (2011–2012) and beyond, the UNSC did continue to receive information on human rights violations in Syria, though inconsistently. As mentioned above, the High Commissioner briefed the UNSC in August 2012,²⁰⁸ though such briefings remained relatively uncommon, while the UNGA continued to approve the transmission of Col reports to the UNSC. Those reports recommended

that Commissioners be allowed to provide ‘periodic briefings’ to the UNSC. However, due to pushback by some members of the UNSC, the Commissioners were only able to participate in informal Arria-formula briefings.²⁰⁹ As a consequence, while the UNSC has regularly received briefings from representatives of the UN’s peace and security pillar (in a formal setting), it received very few from representatives of the human rights pillar.

One consistent lesson learnt from the different case studies presented in this report is the often untapped prerogative of individual members of the UNSC to themselves feed information and conclusions from the human rights pillar into the body’s deliberations, even where some permanent members are strongly opposed to the formal transfer of information between the UNHRC and UNSC. The exercise of this prerogative was clearly evident in the case of Syria, for example when the UK and US delegations used statements in the chamber to relay and repeat the conclusion of the human rights fact-finding mission and Col, as well of the UNHRC itself, that the serious human rights violations in the country may amount to crimes against humanity.²¹⁰ Likewise, in January 2012 the German delegation referenced some of the conclusions contained in the Col report in one of its statements in the UNSC.²¹¹ This more ‘organic’ flow of information, ideas and conclusions from one body to the other, using the agency of individual States, appears to have had a positive impact. For example, from 2014 onwards, and starting with resolution S/RES/2165, a handful of UNSC resolutions confirmed that ‘some of these violations may amount to war crimes and crimes against humanity.’²¹²

Finally, and using this same individual member State-led mechanism, in May 2014, France raised a key Col recommendation – that the UNSC refer the case of Syria to the ICC – in the UNSC chamber, and sought to implement the recommendation through a UNSC resolution.²¹³ Unfortunately, although all other members of the Council voted in favour of the resolution, China and Russia again cast their (fourth) veto.²¹⁴ Towards the end of 2015, Russia entered the conflict on the side of the Syrian Government (with the stated aim of fighting terrorism) making the likelihood of any further progress at the UN vanishingly remote – at least in the short- to medium-term.²¹⁵ In the longer-term, however, the UN has not given up hope of securing accountability for the terrible human rights violations that have taken place in Syria since 2011. In that regard, in December 2016, the UNGA established the International, Impartial and Independent Mechanism (IIIM) to collect and preserve evidence of international crimes in Syria in cooperation with the Col. As noted in this report, in addition to raising the prospect of accountability and justice, such steps also have an important preventative effect, by deterring similar violations in the future. Indeed, this point was recognised by the UNGA which said that impunity creates a ‘fertile ground for further violations and abuses.’²¹⁶ Numerous European national prosecutors have already made use of the IIIM’s evidence.²¹⁷

SUMMARY OF UN ACTIVITY ON SYRIAN ARAB REPUBLIC

FIGURE 30.
UNHRC activity on Syria

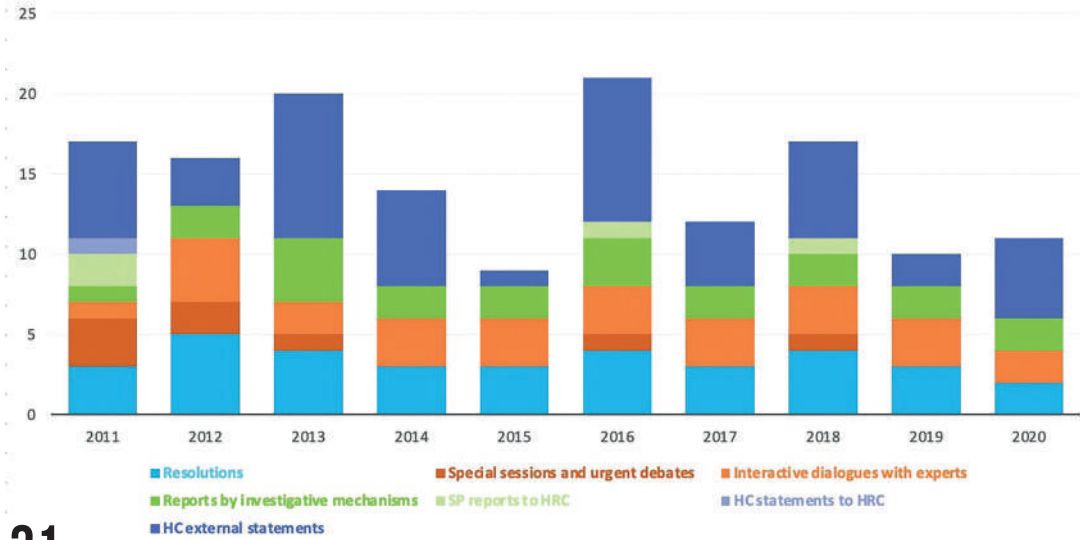


FIGURE 31.
UNSC activity on Syria

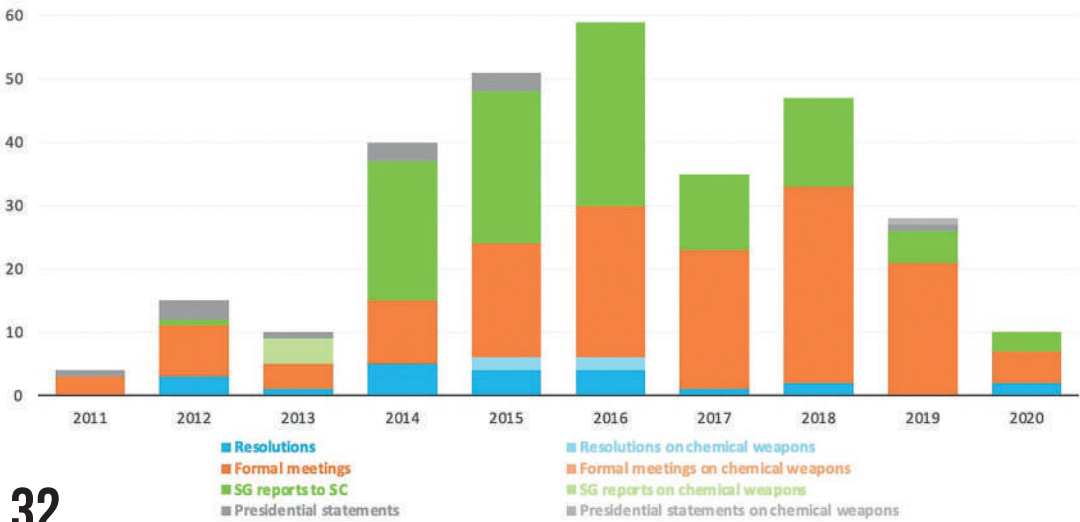
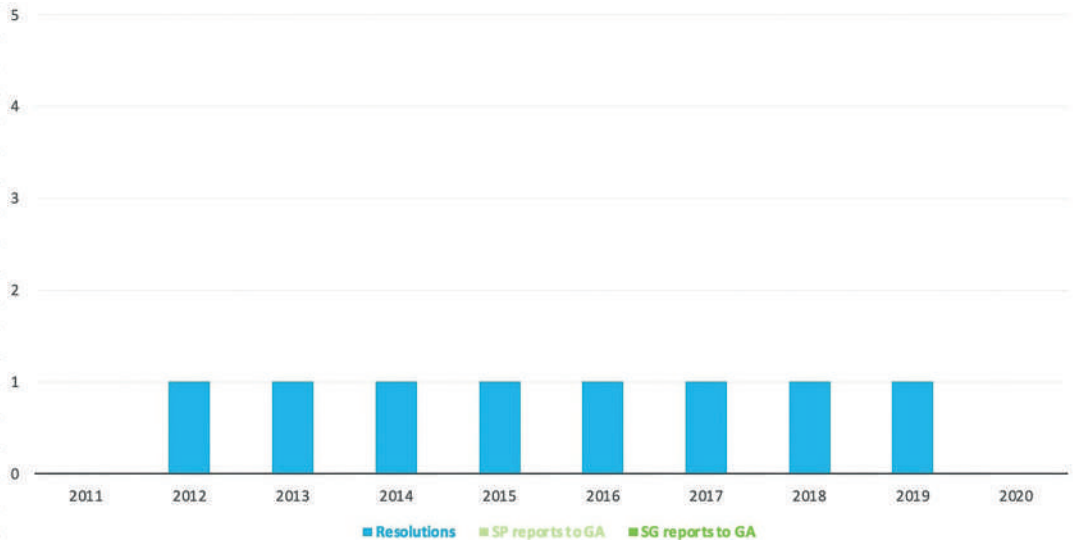


FIGURE 32.
UNGA activity on Syria



A THEMATIC CASE STUDY:
CLIMATE CHANGE

On 6 December 1988, the UNGA adopted resolution 43/53, declaring climate change ‘a common concern of mankind’ and establishing the Intergovernmental Panel on Climate Change (IPCC) as the primary UN body for assessing the science related to climate change.²¹⁸ The IPCC has since confirmed that climate change will result in an increasing frequency of extreme weather events and natural disasters, including droughts, floods, desertification, heat waves, water shortages, rising sea levels, and the spread of diseases.²¹⁹

The adverse impacts of climate change extend well beyond the environmental realm. These natural phenomena directly and indirectly threaten the enjoyment of a range of human rights.²²⁰ According to a 2009 OHCHR report on the relationship between human rights and climate change, ‘the effects of climate change interacting with economic, social and political problems will create a high risk of violent conflict in 46 countries – home to 2.7 billion people.’²²¹ The report also references a 2008 report by the UN Special Rapporteur on the right to food, in which it is argued that ‘land degradation also causes migration and intensifies conflict over resources’ and that ‘many conflicts in Africa,

including the one in the Darfur region, are linked to worsening droughts, desertification and related fights over resources.’²²²

Indeed, climate change impacts not only the realisation of human rights, but also the fulfilment of sustainable development and the maintenance of international peace and security. An adequate response to climate change must be, therefore, inherently preventative in nature. Each UN body with a prevention mandate – including the UNSC and the UNHRC – has a unique role to play in tackling climate change.

While most of this report examines the preventative relationship between the UNHRC and the UNSC in country-specific situations, this relationship also applies to thematic concerns such as climate change.

The causality between climate change and conflict remains a matter of debate. However, climate change has been repeatedly shown to exacerbate existing vulnerabilities and multiply underlying grievances,²²³ acting as a ‘risk multiplier’²²⁴ that makes conflict ‘more likely, more intense and longer-lasting.’²²⁵ Through the worsening of severe poverty and the mass displacement of populations, climate change has the potential to overwhelm institutions at all levels and upset the foundations of social, political, and economic order. Societies lacking strong institutional capacity to absorb such shocks will find it harder to protect human rights and will be faced with an increased risk of violent conflict.



Secretary-General chairs High-Level Meeting on climate change, United Nations, 2007

Grievances related to social, political, and economic disenfranchisement, coupled with weak institutional capacity for prevention, are often the root causes of violent conflict. Addressing the security risks associated with climate change requires early preventative action focused on building national resilience and institutional capacity. Given its focus on primary prevention, the UNHRC and its mechanisms are well placed to raise alarms about the human rights impacts of climate change, in both a general and country-specific sense, and conduct early preventative action focused on building national resilience and institutional capacity to address the risks associated with climate change.

It has been argued that climate change is upending the security landscape.²²⁶ The adverse effects of climate change not only erode countries’ capacity to withstand shocks and sustain peace and security; they also affect the dynamics of ongoing conflicts, inhibiting the ability of national governments and the UN to prevent, mediate, and ensure the non-recurrence of violence. This is an important concern for the UNSC, given that eight out of the ten countries currently hosting multilateral peace operations can be found in regions highly susceptible to climate change. An increasing number of experts and practitioners have, therefore, called on the UNSC to more systematically address the issue of climate change, despite it being a non-traditional threat.

Both the UNHRC and the UNSC have a unique role to play when it comes to preventing the adverse impacts of climate change on human rights and on peace and security.²²⁷ While the UNHRC can contribute to prevention through resilience building and early warning capacity, the UNSC can ensure that sufficient steps are taken to prevent conflicts from escalating into violence by addressing those root causes of conflict exacerbated by global warming. Despite the urgent need to act as early as possible, however, neither of the two Councils have yet to systematically pursue the issue of climate change through a prevention lens.

Currently, as noted by the Special Rapporteur on extreme poverty and human rights in a 2019 report, climate change remains merely ‘a marginal concern’ of the international community.²²⁸ While a robust multilateral framework for preventing climate change exists within the environment and development realms – through the Paris Accord and the 2030 Agenda, respectively – its equivalent in the security and human rights realms has yet to be established.²²⁹ This has led to calls for the adoption of a ‘responsibility to prepare’ doctrine, arguing that States have the responsibility to ‘climate-proof’ security institutions at all levels.²³⁰ Others have called on the UNSC to ‘keep the matter under continuous review so as to ensure that all countries contribute to solving the climate change problem.’²³¹

CLIMATE CHANGE AND HUMAN RIGHTS

In October 2014, in his first press conference after being appointed High Commissioner for Human rights, Zeid Ra’ad al Hussein spoke of the ‘stark and vital’ implications of climate change for the full enjoyment of human rights, and drew attention to the ‘multiple implications’ of climate change ‘for displacement, statelessness, land-rights, resources, security and development.’²³²

Some may find it strange that the UN’s most senior human rights official would use his first press conference to highlight an issue seemingly far beyond his official remit: climate change. However, as the former High Commissioner made clear, climate change is not only one of the greatest environmental challenges of our time, it is also one of the greatest human challenges, with immediate and acute implications for the enjoyment of human rights.



People around the globe challenge world leaders at the UN to fight climate poverty, Bangladesh, 2007

The consequences of climate change for the enjoyment of human rights have been considered and recognised by the UN on many occasions. Both the UNHRC²³³ and the Conference of the Parties to the UNFCCC (COP UNFCCC)²³⁴ have recognised that climate change impacts, such as rising sea levels and more frequent and severe extreme weather events, undermine a range of internationally-protected human rights – from the rights to water and sanitation, to food, to health, to adequate housing, and even to life. What is more, the UNHRC and the COP UNFCCC have acknowledged that these consequences are felt most acutely by individuals in already vulnerable situations, such as young children, the elderly, persons with disabilities, and indigenous groups. This, in turn, raises concerns about equality and non-discrimination, and highlights the issue of ‘climate injustice’ – that those suffering most due to climate change have contributed least to the problem.

The international community has also repeatedly called for human rights principles to be integrated into global climate change policy responses, in order to strengthen those responses and make them more reflective of, and accountable to, the needs of vulnerable people. For example, in resolution 10/4, the UNHRC stated that ‘human rights obligations and commitments have the potential to inform and strengthen international and national policymaking in the area of climate change.’²³⁵ The UNFCCC Cancún Agreements, meanwhile, emphasise that States should, ‘in all climate change related actions,

fully respect human rights.’²³⁶ A human rights framework, or a ‘rights-informed approach,’ thus offers climate policymakers a tool to help devise, develop and implement better, fairer, more effective and more sustainable policy responses.

Procedural rights are particularly important in this regard. Protecting rights such as access to information, decision-making and justice, means that consultation with affected communities must be a key part of interventions that will have an environmental impact, including policies responding to climate change. This is important both in terms of adaptation policies and mitigation actions (such as reducing emissions from deforestation and forest degradation, REDD).

The human rights implications of climate change are particularly striking in the case of displacement. Climate change is anticipated to lead to more frequent and severe natural disasters, and in some cases its impacts may render certain parts of the world uninhabitable. Some people will seek to migrate before conditions deteriorate, while others will be displaced by sudden-onset disasters (e.g., cyclones) or slower- onset processes (e.g., drought). In other cases, governments may relocate people out of hazardous areas for their own safety (i.e., planned relocation).

All of this, in turn, has major implications for peace and security. Even if one focuses on just one of the above scenarios – displacement in



MINUSTAH military personnel assists hurricane victims, Port-au-Prince, Haiti, 2008

the event of sudden-onset disasters – the scale of the (actual and potential) human rights and security challenges are enormous. Major extreme weather events have already resulted in significant displacement, and the increased frequency and magnitude of such events in the context of climate change will amplify the challenges and risks associated with it. Between 2008 and 2012, sudden-onset disasters displaced an estimated 144 million people.²³⁷ In 2013, almost three times as many people were newly displaced by disasters than by conflict.²³⁸ Some 22 million people were displaced in at least 119 countries, mostly by rapid-onset weather-related disasters.²³⁹ The vast majority of such displacement, 97% between 2008 and 2013, occurred within developing countries (almost 81% in Asia).²⁴⁰

While the vast majority of people displaced in the context of disasters will remain within their own country,²⁴¹ some may seek protection elsewhere. Like internal displacement, this cross-border displacement will be linked both to slow-onset processes (e.g., drought) and sudden-onset events (e.g., a higher frequency and intensity of extreme hydro-meteorological events). As an example of the former, during the 2011–2012 drought in the Horn of Africa, over 290,000 people crossed an international border in search of assistance.²⁴² They moved for a range of intersecting reasons, including famine, conflict, food insecurity and environmental degradation.

CLIMATE CHANGE, PEACE AND SECURITY

The UNSC first considered climate-related security risks in 2007 during an open debate on ‘energy, security and climate’ organised by the UK.²⁴³ At the debate, several member States acknowledged the relationship between conflict and climate change, underscoring the need for an integrated approach to addressing the issue. Following a 2011 open debate on ‘the impact of climate change’ organised by Germany, the UNSC adopted its first and only outcome to date on the subject. In a statement by the President of the UNSC, members expressed concern that ‘possible adverse effects of climate change may, in the long run, aggravate certain existing threats to international peace and security,’ and that the ‘loss of territory of some States caused by sea-level-rise’ could have security implications.²⁴⁴

The destabilising effects of climate change were made clear to the UNSC during a visiting mission to the Lake Chad region in March 2017. It was evident that the shrinking of Lake Chad contributed to the rise of Boko Haram. In turn, the UNSC adopted resolution 2349 (2017) recognising ‘the adverse effects of climate change [...] on the stability of [the Lake Chad] Region, including through water scarcity, drought, desertification, land degradation, and food insecurity.’²⁴⁵ The following year, the UNSC adopted three country-specific resolutions, on Somalia,²⁴⁶ Mali,²⁴⁷ and Darfur,²⁴⁸ and one presidential statement, on West Africa and the Sahel,²⁴⁹ recognising the adverse effects of

climate change on stability and expressing the need for improved climate-informed risk analysis.

While these resolutions called for a response ‘requiring an adequate risk assessment and risk management strategy,’²⁵⁰ they failed to call for human rights impacts to be explicitly included in such analyses. Moreover, while expressing concern ‘over the overall humanitarian situation in the region,’ the presidential statement on West Africa and the Sahel called for humanitarian and development action, neglecting the role of human rights in resilience-building and in addressing the instability in the region.²⁵¹

Later, in 2018, Sweden hosted an open debate on ‘understanding and addressing climate-related security risks,’ during which participants underscored ‘the need to take the security challenges related to the adverse impacts of climate change seriously and to intensify international cooperation.’²⁵² The following year, the Dominican Republic organised an open debate on ‘the impact of climate-related disasters on international peace and security.’²⁵³ Participants acknowledged the UNSC’s role in addressing the security impacts of climate change, and called for improved early warning systems and more integrated climate risk assessments.²⁵⁴

Most recently, in spring 2020, Germany led a coalition of friendly States to formulate a draft resolution on climate change, peace and security. Interestingly, the draft, which was not in the end tabled for action due to opposition from some Council members (though it could be reintroduced in the future), takes a prevention-focused approach to the risks posed by climate change to international peace and security. Indeed, the second preambular paragraph reiterates that because the UNSC has the ‘primary responsibility for the maintenance of international peace and security’ including through ‘the prevention of conflict and addressing its root causes at all stages of conflict,’ it is imperative that it ‘address climate-related risks to [...] peace and security, and their long-term consequences on durable peace, security and development.’ To support the conclusion that ‘the effects of climate change may exacerbate, prolong or contribute to the risk of future conflict, instability and humanitarian emergencies [...] or contribute to relapse into conflicts,’ and thus that climate change is a legitimate matter of concern for the UNSC, the draft resolution cites instances where security situations dealt with by the UNSC had had a clear climate dimension, namely ‘the Lake Chad Basin, Somalia, Darfur, Mali, Democratic Republic of Congo and Western and Central Africa.’

Much of the rest of the resolution sets out the steps the UNSC should take to help prevent the climate change-related causes of conflict, including at the levels of primary, secondary and tertiary prevention. In that regard, while it does recognise that ‘there is a strong nexus between peace and security, humanitarian assistance, human rights



United States Secretary of State signs the Paris Agreement on Climate Change, United Nations, 2016

and development,’ the draft text is relatively (though not completely) silent on the role that human rights promotion can play in building national resilience and the centrality of human rights violations as an early warning sign of potential conflict. Certainly, the text does not refer to the UNHRC’s prevention mandate, nor to any of its various resolutions on human rights and climate change. Notwithstanding this last point, some of the paragraphs in the draft resolution, such as those that assert that certain climate vulnerable States, and certain population groups such as women and children, are most at risk of climate-related security impacts, do echo similar assertions in UNHRC resolutions 7/23 and 10/4.

Regarding primary prevention, the draft recognises ‘the centrality of adaptation and resilience in national and global responses to climate change and the conflict-preventative contributions of early mitigation action,’ and ‘in this regard, emphasises the need for stronger and sustained international cooperation and capacity building,’ as well as the importance of the implementation, by States, of ‘their obligations under human rights law, refugee law and international environmental law, as applicable.’

Regarding secondary prevention, the draft recognises ‘the importance of conflict prevention, early awareness and consideration of situations which may deteriorate into armed conflicts’ and emphasises that the UN, including the UNSC, ‘should heed early warning indications of potential conflict and ensure prompt and effective action to prevent, contain or end conflicts, in accordance with the Charter.’ Such action might include conflict mediation missions, which are ‘an important means for the peaceful settlement of disputes, especially in climate-related

conflict situations and including wherever possible preventively.’

In terms of tertiary prevention (avoiding recurrence), the draft resolution encourages the Peacebuilding Commission to consider ‘the adverse effects of climate change for peacebuilding and sustaining peace, [and] to give priority consideration to the issues of national capacities and resilience building.’

Finally, to help take forward this preventative approach to the security risks posed by climate change, the draft proposes that the Secretary-General ‘appoint a Special Representative for climate-related security risks to strengthen the coordination between relevant UN entities in addressing climate-related security risks, and to engage in advocacy efforts and information exchange both within and outside the UN system, *inter alia* with governments, military representatives, and civil society organisations.’

As climate change becomes a matter of increasing concern for members of the UNSC, there is a risk that the issue may become ‘securitised.’ The UNHRC is well placed not only to contribute to early preventative efforts aimed at building States’ resilience to withstand climate change-related shocks, but also to identify early warning signs of instability, potentially exacerbated by the adverse effects of climate change. In New York, there remains a tendency to frame the issue as a matter of human security rather than one of human rights. Indeed, while the climate-security nexus is frequently acknowledged in UNSC resolutions, as are the synergies between security and development, the links between human rights and climate change and human rights and security are ignored.²⁵⁵

PART

03

CONCLUSIONS

Historically, the UN has been largely ineffective at preventing human rights violations from occurring and from descending into crises and potentially violent conflict. This comes as a result of a critical disconnect between the work of its three pillars – human rights, peace and security, and development – which has undermined the Organisation's ability to respond sufficiently early to situations of emerging concern, with devastating consequences for the 'peoples of the UN' (e.g., in Rwanda, Sri Lanka, Myanmar), as well as for the credibility of the institution. In the past, the UN's failure to ensure inter-pillar coherence to improve delivery of its prevention agenda, has resulted from deficiencies in its institutional and procedural arrangements, which over decades, have reinforced the tendency towards siloisation. In recent years, however, successive reforms and initiatives have sought to remedy this shortcoming by better linking up the mutually reinforcing areas of the UN's work. Critical to these efforts are an ongoing attempt at the reconceptualisation of 'prevention', away from its traditional association with conflict prevention and thus as something to be carried out principally by the UNSC and the wider security pillar, and towards a more holistic paradigm that acknowledges the different but complementary roles of the different pillars of the UN. Ultimately, this will require a shift in the narrative around human rights and in how member States perceive and prioritise human rights to leverage their potential to

both strengthen national resilience and to warn of an impending crisis (which does not have to be limited to the narrow understanding associated with R2P).

Indeed, while successive Secretaries-General have given considerable attention to improving the UN's prevention agenda, their efforts have mainly focused on improving the UN's ability to prevent violent conflict (rather than more generally human rights violations and crises) and have therefore largely ignored the important role that the UN human rights system can play. When human rights were considered at all, they were mainly associated with tertiary prevention (i.e., using accountability mechanisms for purposes of deterrence) or with the prevention of atrocity crimes under the contentious framework of R2P. This severely undermined the ability of the human rights pillar to serve its important preventative function, by on the one hand overlooking the need for upstream reforms that integrate human rights more centrally into country-level programming, while on the other hand, hindering efforts at downstream reforms to ensure human rights early warning signs are more effectively acted-upon (e.g., through preventative diplomacy), given the association of such early engagement with the politically sensitive notion of R2P and humanitarian intervention.

Fortunately, over the past two years, Secretary-General Guterres appears to have woken up to this critical weakness and recognised the need for both improved inter-pillar cooperation to support States in building their national resilience (primary prevention) and improved risk assessment methodologies to inform early preventative engagement (secondary prevention). Notably, through his 'Call to Action for Human Rights', the Secretary-General acknowledges the central role that human rights have to play in both regards. These

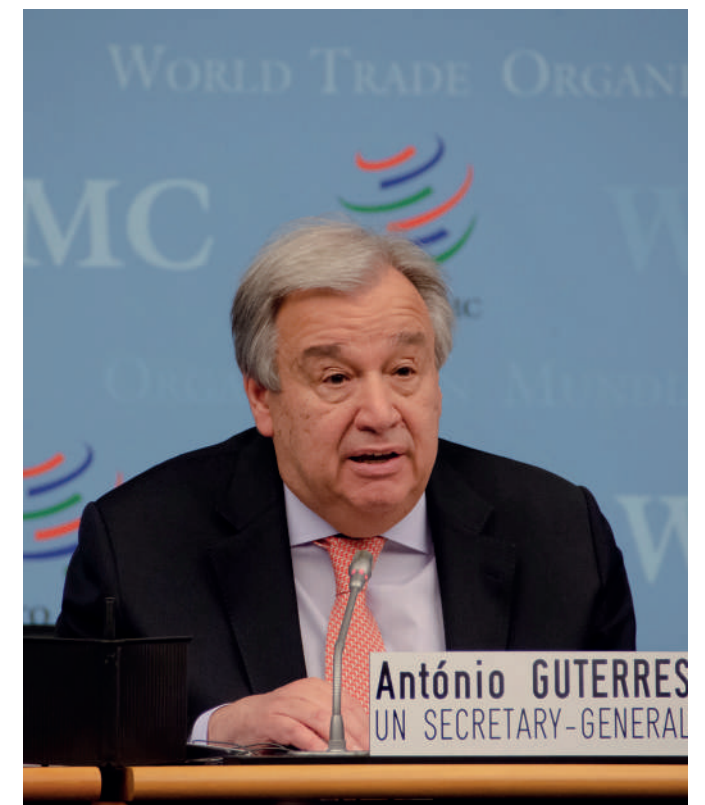
broad changes in institutional prioritisation have also been met with a growing willingness, amongst a majority of member States, to better integrate human rights in the wider UN's prevention agenda. Notably, such high-level support from the UN Secretariat provided a space for the UNHRC to undergo a two year process to discuss and bring forward (through resolution 45/31) proposals to operationalise its prevention mandate, by *inter alia*, improving its delivery of technical assistance and capacity building, recognising its (and OHCHR's) need to better analyse early warning signs and engage the State preventatively through cooperation and dialogue, and by better linking it up with other organs of the UN through improved dissemination of relevant human rights information. These changes have already gone a long way in remedying some of the UN's institutional deficiencies as found in many of the case studies. However, now, member States and the UN system must use the tools at their disposal to work together, in a spirit of mutual trust and cooperation, to deliver the best possible outcomes.

Firstly, as was demonstrated across all case studies, for the UN to strengthen its prevention agenda, there is a need to prioritise efforts to improve States' domestic human rights resilience. This means that absolute prioritisation should be given to ensuring that OHCHR has a country presence to mainstream human rights considerations through UN Country Team activities, and to better assist the State by delivering capacity building and technical assistance to improve compliance with international human rights obligations and commitments. As demonstrated in the cases of Burundi and Myanmar, this requires a principled but constructive dialogue with the State to ensure it understands the value of such an OHCHR country office. It also requires reframing human rights work to change the narrative of human rights as being purely an instrument of monitoring and redress or discipline, which undermines the ability of human rights experts to work with States that are no longer in situations of crisis and fuels concern that closer collaboration with human rights mechanisms will only be retributive, as opposed to constructive.

Various case studies have also demonstrated that the UN human rights system is often the first to raise the alarm bells to patterns of systematic human rights violations (e.g., ethnic discrimination in Myanmar or Côte d'Ivoire). Indeed, Special Procedures are ideally placed to collect information from the field and to identify areas of concern. In particular, thematic mandate holders (e.g., the Special Rapporteur on contemporary forms of racism) benefit from a less politically sensitive mandate than country-specific Special Rapporteurs and are thus ideally placed to raise early warning signs of concern within their domain of expertise. In some cases, the UPR mechanism can also serve to highlight a particular area of concern. However, while the UNHRC is often first to raise the alarm, the case studies point to the need for earlier and more systematic avenues for the dissemination of early warning signs. In particular, this could be

achieved by improving the capacity of OHCHR to bring to the UNHRC information collected from its field offices. Such information could in parallel feed into the Secretary-General's new Regional Monthly Review initiative so that human rights information is continuously informing horizon scanning efforts by the UN Secretariat.

However, though the UN human rights pillar is relatively effective at picking up on early warning signs of an impending crisis, it has to date been critically ill-equipped to respond to a situation in order to prevent a widening or deepening of the crisis. As most case studies demonstrate, it does not respond, waiting instead for a situation to descend into a full-blown crisis before using the limited (tertiary prevention) tools at its disposal, namely fact-finding and accountability mechanisms. At this point, however, the international community has often lost the opportunity to engage with the State constructively, which further worsens the negative narrative that is associated with human rights. The UNHRC therefore needs to develop its early engagement and good offices capacity. This could be done by the mandating of preventative diplomacy expert missions (e.g., a group of thematic Special Rapporteurs) like in the case of Burundi or by mandating the High Commissioner to make use of her good offices (like High Commissioner Pillay in the case of Syria). In cases where a crisis reaches the level of severity that merits the attention of the UNSC, it could similarly mandate such preventative diplomacy missions from the Secretary-General or an Assistant Secretary-General.



Visit of the UN Secretary-General Antonio Guterres to the World Trade Organisation (WTO), Geneva, Switzerland, 2019

In some cases, however, when UNHRC mechanisms and the wider human rights pillar raised the alarm over patterns of human rights violations that point to a potential future outbreak of conflict, this failed to trigger a wider response from the UN system and notably from the UNSC. Existing formal pathways for dialogue and cooperation do not appear to be used consistently, in both directions, and are easily blocked and politicised. Notably, while information (i.e., reports and resolutions) from the UNHRC does at times reach the UNSC it is generally because of the severity of the situation. While there is evidence that the UNSC can be influenced by such human rights language, especially when pertaining to atrocity crimes, this has fuelled the fears of some States that a better flow of information between the UNHRC and UNSC only entails greater cooperation under the framework of the responsibility to protect and has thus become associated with humanitarian intervention. Overall, there therefore needs to be a more systematic and fluid flow of information between the two bodies to demonstrate that human rights information is always informative and that the protection of human rights is not incompatible with national sovereignty.

This, of course, is no simple task as the UNSC is a highly political forum and over the years, human rights have unfortunately become a highly politicised topic. States sitting on the UNSC, do however, have at their disposal several options to engage with human rights issues of concern, including through initiatives that do not need to be voted on. This includes bringing a UNHRC report to the attention of the UNSC (notably through ‘any other business’ sessions); organising Arria-formula meetings with High Commissioners and Special Procedure holders; creating informal horizon scanning meeting; or organising informal meetings of like-minded States. Additionally, given that vetoes have no power in procedural votes, States willing to take the initiative to bring human rights information into the UNSC can mobilise support (i.e., from two-thirds of UNSC member States and not just the P5) for briefings by human rights experts and civil society representatives under relevant UNSC formal agenda items.

As demonstrated by the climate change case study, one promising area for better cooperation between the human rights and security pillars is with regards to thematic issues. These are very often human rights issues that are being extensively addressed by the human rights pillar, while also, in many cases, posing serious threats to international peace and security (e.g., climate change, unilateral sanctions, migration, cybersecurity). Greater cooperation on these less politically sensitive topics could help mend the broken relationship between the pillars and disassociate the notion of protecting human rights from the notion of armed intervention.

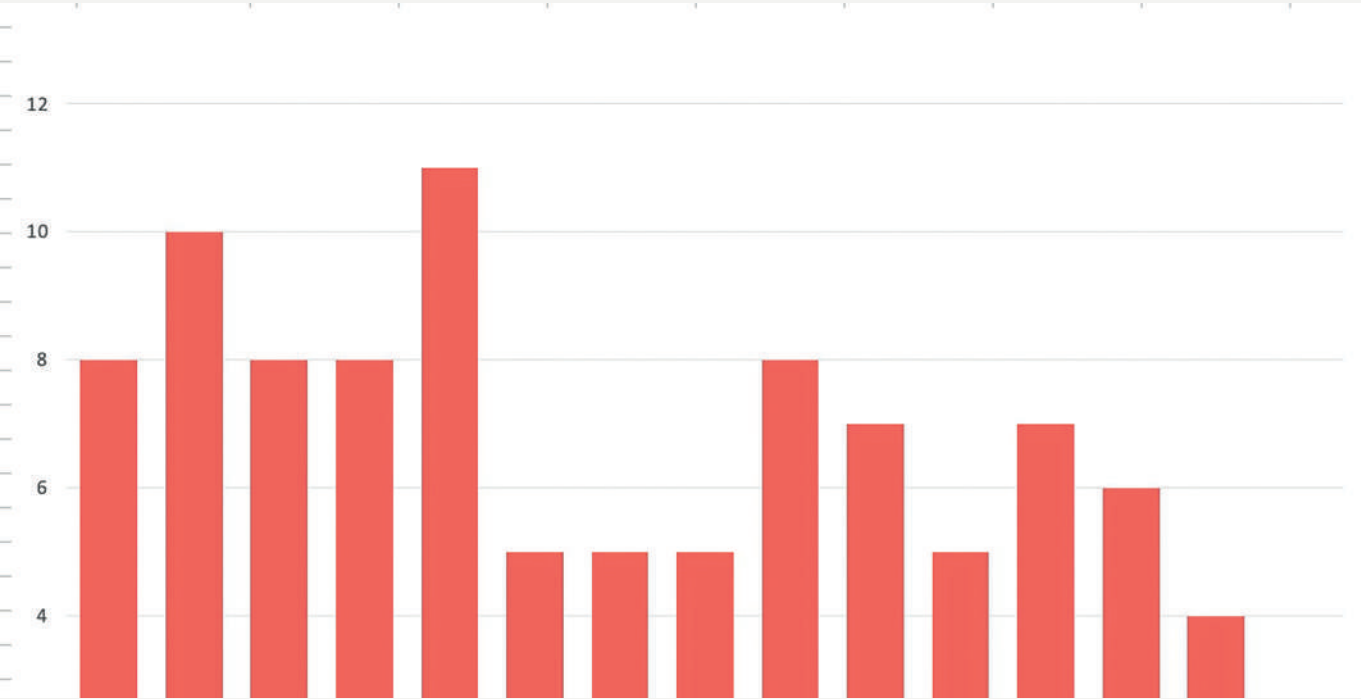
As several case studies have shown (e.g., Syria, DPRK) one underused avenue to improve the flow of information between the human rights pillar and security pillar is the UNGA. Indeed, as a main organ of the

UN, the UNGA is on an equal footing with the UNSC and therefore has the legal authority to transmit information to it, and even to formulate recommendations. Furthermore, as the only organ of the UN with universal membership, its moral authority gives it more credence than any other body, rendering obstruction from some UNSC members more difficult. In practice, however, obstruction has sometimes continued unabated, which poses a serious legal challenge to the proper functioning of the UN and should be addressed as such (i.e., as a concern to the rule of law). As was recalled during the policy dialogues, in cases where the UNSC nevertheless refuses to act on a situation that threatens international peace or security due to political paralysis (e.g., a member of the P5 threatens the use of or uses the veto), the UNGA has the mandate to formulate recommendations to member States for collective action (including by authorising the use of force). This could have the additional benefit of stirring the UNSC into better taking up its responsibilities in the future.

Ultimately, however, even when there is coherence in the institutional and procedural preventative apparatus of the UN (as is increasingly becoming the case), its proper functioning still depends on political will. This requires both building more trust between States to bring human rights sceptics to the table and ensuring greater foreign policy coherence within States to ensure pro human rights States champion human rights consistently. As previously mentioned, there remains considerable mistrust around human rights due, in part, to the different lexicons and conceptualisations of prevention in Geneva and New York. More transparency surrounding the decision-making and standard-setting processes in both bodies, as well as more transatlantic dialogues (such as the policy dialogue organised by the German Missions of New York and Geneva) would be helpful to build trust. Greater transparency around the use of vetoes by the P5, and perhaps even around procedural votes could be an important avenue to ensure greater political accountability for decisions to exclude (by rejection or by omission) human rights considerations in the UNSC, thus facilitating understanding.

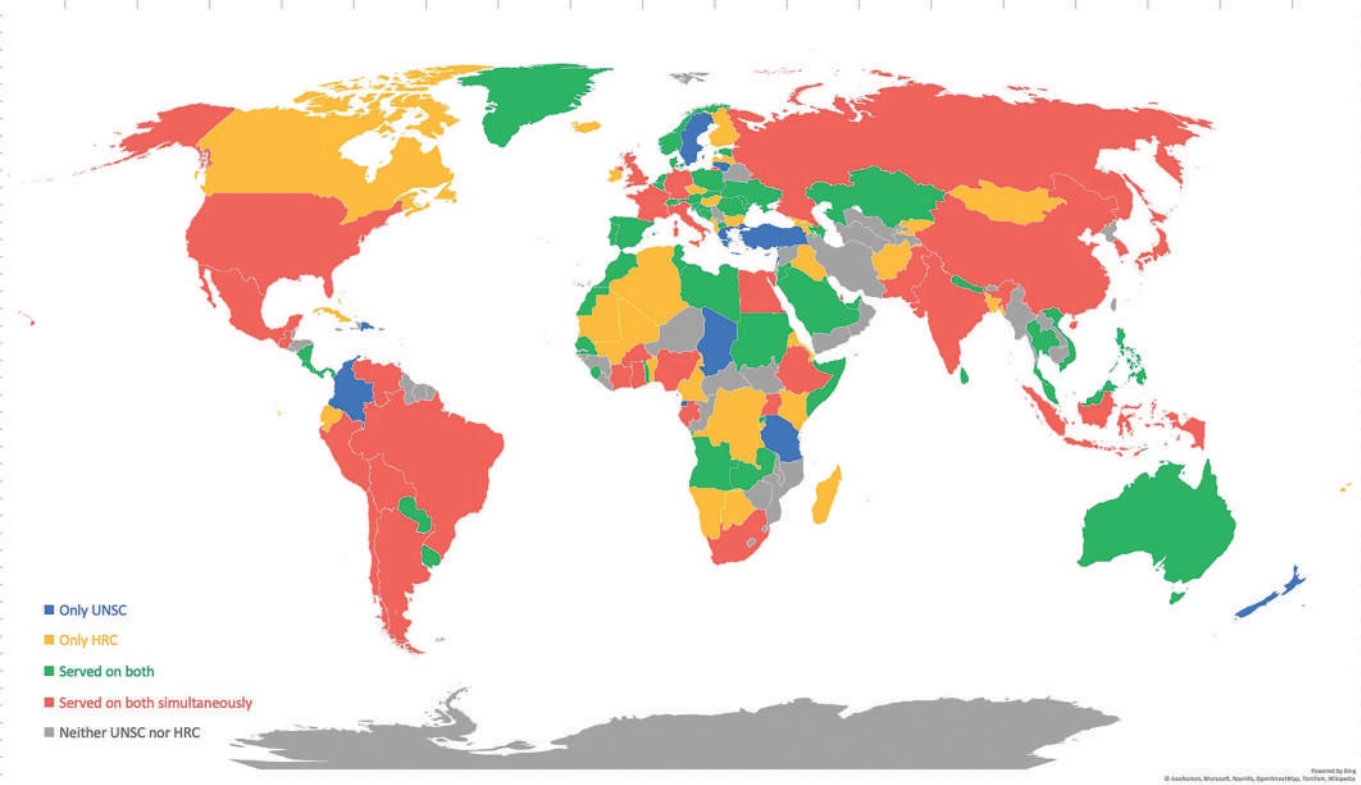
The fact that strong action by a member State at the UNHRC does not automatically ensure an equally strong response by that same member State at the UNSC is a clear missed opportunity for coordination, especially since there is significant overlap between the membership of the UNSC and UNHRC. Between 2006 and 2020, an average of seven States held seats on the UNSC and the UNHRC concurrently every year. While Figure 33 shows the number of States serving on both the UNSC and UNHRC each year, Figure 34 shows that almost half of UN member States have served on both the UNSC and UNHRC, either simultaneously or at different times. All permanent members of the UNSC have been on both in multiple years. Given this overlap, better coordination between Permanent Missions in New York and Geneva could go a significant way to building a more coherent relationship between the two bodies.

FIGURE 33.
Number of States serving simultaneously on both the UNSC and UNHRC each year



Note: where membership terms spanned more than one calendar year (UNHRC terms were initially June-June), the starting year of the term is used.

FIGURE 34.
Membership of the UNSC and UNHRC, 2006–2020



PART

04

RECOMMENDATIONS

From the research conducted for this report, especially interviews with experts in Geneva and New York, as well as from the two-day transatlantic policy dialogue conducted at the end of November, a number of possible concrete, practicable steps forward emerged. Some of these are presented below.

UPSTREAM OR PRIMARY PREVENTION

1. The key to building long-term resilience in all UN member States, in order to prevent human rights violations from happening in the first place and, ultimately, to prevent the emergence of crises and conflicts, is to more squarely integrate UN human rights recommendations (i.e., from Special Procedures, Treaty Bodies and the UPR) into national development programming, including, in the case of developing countries, with international support (via UN Country Teams, bilateral donors, and the World Bank). Important steps in this direction have already been made over recent years. The Secretary-General's development system reforms and management reforms, the Sustaining Peace initiative and Human Rights Up Front policy, and the changes instigated by the Secretary-General's 'Call to Action for Human Rights' all have, as a primary purpose, to strengthen links between

the three pillars of the UN, including by integrating human rights recommendations into UN Sustainable Development Cooperation Frameworks (UNSDCFs). Moreover, that approach is being mirrored among bilateral donors through the 'Oslo+' process led by Norway and Sweden. It is vital in the coming years, as a key contribution to prevention, that the **Secretary-General**, supported by the **High Commissioner**, continue and complete these reforms, and that in the future **every** UN Country Team contains at least one human rights officer. In parallel, **bilateral donors** should continue their current efforts, under the Oslo+ process of meetings, to base their national programming in recipient countries on those States' international human rights obligations and commitments.

2. Building on this positive recent momentum, it is equally important that the **Secretary-General** and **High Commissioner** make full use of the opportunity for a system-wide review of UN human rights capacity-building and technical assistance provided by UNHRC resolution 45/31, especially operative paragraph 4. The preamble of resolution 45/31 recognises that 'the bulk of preventive work, including when technical assistance is provided by the international community, takes place at the national level, on the initiative and under the direction of national authorities, through the implementation of the State's international human



Michelle Bachelet, UN High Commissioner for Human Rights, addresses the High Level Segment of the 43rd Regular Session of the UN Human Rights Council, Geneva, Switzerland, 2020

rights obligations and commitments, inter alia through the work of national mechanisms for implementation, reporting and follow-up; that 'prevention, to be effective, requires long-term engagement and a forward-looking approach in identifying and addressing the risk factors and root causes of crises, which, if not tackled, may lead to human rights emergencies or conflicts; the importance of building 'more systematic links between the Council's prevention work and 'efforts to sustain peace and to implement the Sustainable Development Goals; and 'that the promotion and protection of human rights and the implementation of the 2030 Agenda for Sustainable Development are interrelated and mutually reinforcing, and that both serve to build national resilience.' Operative paragraph 4 then 'requests the Secretary-General to prepare a report analysing the current system-wide delivery and financing of, and existing gaps in, technical assistance and capacity-building that support the implementation by States of their international human rights obligations and commitments, and provided upon the request, in consultation with and with the consent of the State concerned, and to make recommendations in order to improve and scale-up the system-wide delivery and financing of technical assistance and capacity-building in the field of human rights with a view to building national resilience, and to submit that report to the Human Rights Council for its consideration at its forty-ninth session.' With this resolution, the UNHRC provides,

for the first time, the Secretary-General and High Commissioner with a clear and robust mandate to analyse the existing provision of capacity-building support, including financing therefore, and to set out plans to significantly upscale that support in the future – thereby contributing to national resilience.

EARLY WARNING (AS PART OF SECONDARY PREVENTION)

3. The human rights pillar is, in principle, ideally placed to play the central role in UN system-wide early warning. Just as patterns of human rights violations are the smoke that forewarns of a coming conflagration, so by extension is the human rights system, especially OHCHR with its primary experience and expertise in the field of human rights, perfectly placed to act as the UN's 'fire alarm.' Again, this truth is foreseen and recognised in UNHRC resolution 45/31, which requests the High Commissioner for Human Rights to strengthen the capability of her Office 'to identify, verify, manage and analyse data and early warning signs emanating from all sources, including from States, human rights mechanisms, national human rights institutions, civil society organizations, human rights defenders, UN country teams and the Office's field presences, and to address them in accordance

with her mandate;’ and, where the High Commissioner ‘identifies patterns of human rights violations that point to a heightened risk of a human rights emergency,’ that she ‘bring that information to the attention of the members and observers of the Human Rights Council in a manner that reflects the urgency of the situation and that maintains space for dialogue and cooperation with the State and region concerned, including through briefings.’ It is crucial, in the months and years ahead, that the **High Commissioner** effectively fulfils this mandate without fear nor favour, so that, for the first time in the UN’s history, emerging crises might be systematically brought to the attention of UN member States at an early stage – i.e., at a stage where the UNHRC and other relevant parts of the UN can still meaningfully take preventative action.

- 4. At the same time as bringing early warning information to the attention of the UNHRC, that same information must also be brought to the attention of other senior representatives of the UN Secretariat, including the **Secretary-General**, so that it can provide a key substantive foundation of the UN’s internal risk assessment mechanisms, such as the Regional Monthly Reviews. The Secretary-General, as the recipient of integrated analysis from across the UN system through these reviews, enjoys an important holistic perspective and may, where appropriate, inform the UNSC of any relevant and pressing information on situations of emerging concern.

EARLY ENGAGEMENT (PART OF SECONDARY PREVENTION)

- 5. UNHRC resolution 45/31 furthermore ‘Recognises that the Human Rights Council may resort, on a case-by-case basis and where appropriate, to work formats that enhance dialogue and cooperation with the State and region concerned, with the aim of addressing the root causes of and preventing further human rights violations and responding promptly to human rights emergencies.’ This paragraph provides **members of the UNHRC**, for the first time, with an explicit mandate to initiate preventative diplomacy actions (e.g., dialogues in Geneva, good offices missions to the country and region concerned). The UNHRC should seize this opportunity but should do so in full coordination with the UNSC – in particular, by keeping the latter regularly informed (via resolutions or presidential statements) of plans and actions, as well as of the effectiveness of those actions. As well as helping improve system-wide coherence, this step could have the added advantage of depoliticising human rights in the eyes of China, Russia and other members of the Like-Minded Group (LMG) which, especially following the Syria crisis, have grown averse to the transmission of human rights

information from Geneva to New York partly because the only time such a transmission occurs is in the context of warning of the threat of the commission of war crimes and crimes against humanity. In other words, by regularising the flow of information from the UNHRC to the UNSC at different phases of an emerging crisis (including at an early phase), it may be possible to decouple the idea of ‘protecting human rights’ from the concepts of R2P and humanitarian intervention.

COMMUNICATION AND COORDINATION BETWEEN THE UNHRC AND UNSC

- 6. As noted above, it is crucial, at multiple stages in an evolving crisis, but especially where that crisis risks spilling over into violent conflict and where there is an identified risk of atrocity crimes, that **the two Councils ‘talk to one another’** – and in a far more systematic and coherent manner than has hitherto been the case.
- 7. As also noted above, at one level this can happen indirectly – via the new early warning mandate of the **High Commissioner**, where, in addition to feeding information into the UNHRC, she can communicate directly with the **Secretary-General** and other senior UN officials during weekly Executive Committee meetings. The Secretary-General can then transmit critical information to the members of the UNSC.
- 8. As the case studies presented in this report show, the **High Commissioner** can also – and often has, with great effect – present early warning information directly into the deliberations of the **UNSC**, either through formal presentations to UNSC members in regular sitting, or informally via Arria-formula briefings. Unfortunately, in recent years, the former option has become more difficult, as China and Russia have reacted against – and tried to block – efforts, as they see it, to use the delivery of such information to initiate UNSC action under the R2P paradigm.
- 9. One possible way to alleviate this blockage, is through the **‘decoupling’** approach mentioned above – i.e., that the High Commissioner should not only brief the UNSC when there is an imminent risk of atrocity crimes being committed, but rather at different (and earlier) phases of the evolving crisis. She could also brief members on important emerging thematic concerns (e.g., the impacts of climate change on human rights and security).
- 10. Such briefings can, and should, also continue to occur through **Arria-formula** (i.e., information) briefings. In that regard, the High Commissioner should explore delivering such briefings in

combination with the Assistant Secretary-General for Human Rights, relevant Special Procedures mandate-holders, and – perhaps – the President of the UNHRC (or a Bureau member).

- 11. Even in the absence of formal transmission of information from the UNHRC to the UNSC, for example via a resolution or a formal briefing by a representative of the human rights pillar, this report has also shown the largely untapped power of **individual UNSC members**, at their own initiative, to informally share important early warning information or information on patterns of human rights violations (e.g., Special Procedures or Col reports, UNHRC resolutions, reports by the High Commissioner) with their fellow members, and to formally share it via statements in the UNSC chamber. This is relatively easy to do and simply requires improved coherence between State missions in Geneva and New York, as well as requisite political will.
- 12. A further option, proposed by members of the UNSC which took part in the November transatlantic policy dialogue convened in preparation of this report, is for **individual members of the UNSC** (perhaps in rotation) to convene informal (perhaps monthly) ‘horizon scanning’ briefings at their Missions in New York. Again, these horizon-scanning exercises could cover thematic as well as geographic concerns. During these regular briefings, to which all members of the UNSC should be invited at ambassador-level (it is of course unlikely that all would attend), members of the UNSC would be briefed by the High Commissioner, the Assistant Secretary-General for human rights, relevant Special Procedures mandate-holders, and UNHRC Bureau members.
- 13. As discussed during the transatlantic policy dialogue, and as shown in a number of the case studies contained in this report (e.g., Syria, DPRK), the **UNGA** can act as an incredibly important ‘go-between’ when transmitting early warning and other information from the UNHRC to the UNSC. As many participants noted during the policy dialogue, it is both more institutionally-procedurally correct for the UNHRC to report first to the UNGA, and for the latter to then decide on whether or not to transmit that information to the UNSC; and, in many cases, more effective – reducing the risk (though not removing it entirely) of obstructionism by certain UNSC members, partly because of the aforementioned procedural point, and partly because of the democratic power of the UNGA (which represents the entire international community), and the consequent peer pressure this can bring to bear. In this regard, the language used in the first UNHRC resolutions on Syria – transmitting human rights information to the UNGA and requesting the latter to consider it and, where appropriate, transmit the information (with recommendations for action) to the UNSC – should be used as a matter of course in relevant UNHRC resolutions.

‘UNITING FOR PEACE’ AND THE WIDER ROLE OF THE UNGA

- 14. Finally, this report reminds States that, where progress proves impossible in the UNSC (e.g., because a veto has been wielded), the **UNGA** has the mandate and the established prerogative (under the ‘Uniting for Peace’ resolutions) to both consider and to act upon situations that may undermine international peace and security. Those **UN member States that wish to strengthen peace and security**, and build a more coherent relationship between the UN’s human rights and security pillars, should make far greater use of this option. Again, in principle, all that is required to do so is political will. One further advantage of such a step would be to encourage the UNSC to accept its own responsibilities. UNSC members would likely be less inclined to refuse to consider or act upon a given situation of concern, if those members knew that, were they to do so, the UNGA would likely step into the breach.
- 15. One final recommendation, to further assert and leverage the **UNGA’s** mandate and prerogatives for both human rights protection and the maintenance of international peace and security, is that the UNGA itself could convene more regular debates on either emerging situations or thematic issues of concern, and receive briefings and reports from both the human rights pillar and the security pillar about the situation or issue, and about what steps the UNHRC and UNSC, as well as other relevant parts of the UN (e.g., the Peacebuilding Commission), are taking to address them.



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