

RESEARCH BRIEF

DELIVERING THE RIGHT TO PEACE

TOWARDS A STRENGTHENED ROLE OF THE HUMAN RIGHTS COUNCIL IN THE UN'S PEACE AND SECURITY ARCHITECTURE

EXECUTIVE SUMMARY

The war in Ukraine has highlighted the shortcomings of the Security Council (SC) to respond to threats to international peace and security, and has triggered renewed interest in SC reform. However, the prospects for significant changes to the SC in today's geopolitical landscape are remote. In this joint policy brief, the Geneva Academy of International Humanitarian Law and Human Rights and UN University Centre for Policy Research explore the prospects of strengthening the role of the Human Rights Council (HRC) in the UN's peace and security functions. Drawing on several case studies (annexed), this brief: describes the main shortcomings of the SC and the prospects for reform; traces the evolution of the HRC as a peace and security actor; explores the challenges to positioning the HRC more centrally within the UN's conflict management architecture; and offers recommendations for more creatively and effectively drawing on the HRC to address today's and tomorrow's conflict risks.

The core recommendations of this brief are:

1. Broaden the understanding of human rights
2. Better 'link the dots' and strategize effective working methods
3. Reaffirm and creatively utilize the links between human rights and conflict
4. Strengthen transitional justice as part of the HRC's peace and security role
5. Use peace operations to connect the HRC and the SC
6. Better use of sanctions as part of the UN's conflict management work
7. Greater use of Article 99 to connect the HRC and the SC
8. Gradually position the HRC as a conflict prevention actor
9. Evaluate the utility of a more universal prevention agenda
10. More strategically consider the HRC within the SC reform discussions

The brief concludes that the HRC is unlikely to fill the void left by a dysfunctional SC, but the HRC's evolution as a more inclusive, legitimate, and at times effective actor in the peace and security space should generate a discussion about how to use the full UN architecture more creatively going forward.

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INTRODUCTION

The war in Ukraine is the most recent indication that the UN Security Council (SC) is failing in its core duty to act in the face of threats to international peace and security. While this has brought the need for SC reform back into focus, today's deeply fractured geopolitical landscape also means the prospect to make major changes to the UN's peace and security architecture are very slim. The permanent members of the SC are unlikely to reduce or abandon their veto powers at a time of heightened geopolitical tensions, while deep divisions over the specifics of any expansion of non-permanent seats is likely to lead to further stagnation. Recent initiatives such as Liechtenstein's successful push to hold P-5 members more accountable to the General Assembly (GA) in the case of a veto have been important, but also highlight the difficulties of achieving more transformative changes to the SC itself.¹ And calls for greater action by the GA – including recent rejuvenation of the “Uniting for Peace” resolution in the case of Ukraine – indicate that other UN bodies may need to step in when the SC falls short.²

In this context, the potential role of the Human Rights Council (HRC) to address a greater range of peace and security matters should be considered. Whether through its investigative capabilities, its special rapporteur system, its various reporting instruments, or indeed the forum itself, the HRC could evolve to become a more central and effective actor in conflict prevention. As it has shown on Ukraine, the HRC is at times able to take on peace and security issues that the SC is not. Rather than focus exclusively on reforming the SC membership, this paper asks whether part of the UN's shortcomings could be addressed by more effectively drawing on the HRC's tools and capacities, implementing the landmark 2016 GA declaration on the right to peace.³

Specifically, the paper aims to address the following questions:

- Where is the SC falling short in its mandate? How have efforts to reform and improve the SC worked and where are the most important gaps today?
- What role has the HRC played in addressing peace and security threats, especially in cases where the SC has been unable to act? How have the HRC and SC interacted and/or remained separate on issues of peace and security?

- How could the HRC's role be expanded as a complement or alternative to the SC in the future? Might a more formal or direct role for the HRC on peace and security help to address the problems that SC reform has thus far failed to resolve?

Drafts of this paper served as a basis for a series of expert and member state discussions in 2023, with a view to providing informed recommendations and potential action pathways. It contains four parts: (1) an overview of the main shortfalls in the SC's conflict prevention and management role, along with the efforts to improve and reform its work; (2) an analysis of the evolving role of the HRC as a peace and security actor; (3) obstacles and opportunities for the HRC to engage more concretely on peace and security; and (4) key lessons and recommendations for empowering the HRC to address the shortfalls of the SC today.

1. THE SHORTCOMINGS OF THE SECURITY COUNCIL

The UN Charter provides the SC with the “primary responsibility for the maintenance of international peace and security.” In this context, the SC has an escalating set of actions it can take in the case of growing conflict risks, including investigation, recommending actions to resolve disputes, determining a threat to the peace or act of aggression, application of economic sanctions or other non-forceful measures, or to take enforcement/military action.⁴ Other actions, such as referring a setting to the International Criminal Court, are also available to the SC via subsequent treaties.⁵

The powers of the SC – in particular its competency to deploy military force in a peacekeeping setting – exist in uncomfortable juxtaposition with the core principle of sovereignty at the heart of the UN system. Here, the SC's right to issue legally binding decisions on all members is balanced by the requirement of having nine affirmative votes, including those of the five permanent members, for any substantive decision. While ostensibly designed to avoid abuse and ensure consensus amongst major powers, these voting rules present one of the most important obstacles to effective conflict prevention and management within the SC, particularly where a P5 power is involved. In this context, the key criticisms of the SC tend to cluster around five main shortcomings:

1. Inability to act in geopolitical conflicts. The most visible shortcoming of the SC is that its action can be blocked

1 Donaldson, B. 'Liechtenstein's 'Veto Initiative' Wins Wide Approval at the UN. Will It Deter the Big Powers?' PassBlue (26 April 2022) <passblue.com/2022/04/26/liechtensteins-veto-initiative-wins-wide-approval-at-the-un-will-it-deter-the-major-powers/>.

2 'General Assembly adopts resolution on Russian reparations for Ukraine' UN News (14 November 2022) <<https://news.un.org/en/story/2022/11/1130587>>.

3 A/HRC/RES/41/4 Resolution adopted by the Human Rights Council 'Promotion of the Right to Peace' (17 July 2019).

4 UN Charter (1945), Chapters VI and VII.

5 Rome Statute of the International Criminal Court (1998).

by any one of its five permanent members.⁶ Though Article 27(3) of the UN Charter calls on SC members to abstain from voting in cases where they are parties to the dispute, this has largely been ignored in a wide range of conflicts. Indeed, the conflicts in Syria, Yemen, and Ukraine all offer high-profile examples of situations with direct P5 involvement where action was prevented by a P5 member's veto. The lack of SC action in such settings encourages unilateral action by regional players, often outside of SC mandates, for example in Kosovo, Iraq, Syria, and Yemen.

2. Unwillingness to act preventively. As laid out in Article 39 of the Charter, the SC shall determine a threat to the peace or act of aggression and shall take steps to restore international peace and security. This has been read by some Council members to mean that the body should not anticipate conflicts, undertake horizon scanning, or act in a preventive manner when conflict risks are escalating. As a result, the Council often becomes seized with an issue well after it has passed into active conflict, missing the best moment for de-escalation. These dynamics have led to some of the UNSCs most notable failures, including its inability to act in the lead up to the Rwandan genocide or to prevent the Srebrenica massacre.⁷

3. Lacking the right tools. While there is no direct limitation in Chapters VI and VII on the range of actions the SC can use to address threats to international peace and security, in practice it has taken forward a relatively narrow set of actions. Indeed, over the past 15 years, the SC has undertaken relatively little peacemaking, instead tending to impose UN sanctions in a limited set of circumstances, roll over existing peacekeeping operations, occasionally agree on humanitarian access, and pass some counter-terrorism measures.⁸ Some of its potentially most effective tools – for example the investigative functions of groups of experts – are considered by many experts to be underutilized.⁹

4. Missing the bigger picture. Focused almost exclusively on military threats to international peace and security, the SC often displays a blind-spot when it comes to the broader range of non-military drivers of instability. This means it misses or only superficially considers issues like

climate change, organized crime, non-state security actors, social and political unrest, financial shocks, growing risks of new technologies, and many other crucial issues.

5. Lacking legitimacy. The most potent and frequent criticism of the SC is that it has lost much of its legitimacy as a global security body. By failing to reform its membership, showing itself unable to act in cases where the P5 have a vested interest, and generally isolating itself from the huge number of voices that matter in conflict settings, the SC has fallen into a state of crisis. Calls for the SC to broaden its membership – particularly in the African continent where the overwhelming bulk of its peace enforcement takes place – have grown more acute.

As the following section illustrates, most of the SC reform efforts to date have focused on this latter problem of legitimacy, aiming to expand the membership of the Council to include more conflict-affected regions of the world. While absolutely fundamental to the overall purpose of the SC, such reform is unlikely to happen, and even less likely to help the body overcome the other problems related to its effectiveness.

A. BACKGROUND ON SECURITY COUNCIL REFORM

Reform of the SC typically encompasses three main issue areas: (1) expanding membership (permanent and non-permanent seats), (2) the question of the veto power of the P5 members, and (3) the relationship between the SC and the General Assembly. While significant efforts have also gone into improving the working methods of the SC, such changes are unlikely to address the five main criticisms above.¹⁰ Today, the term “Security Council reform” refers primarily to either changes in the composition and size of the Council, or changes to the rules surrounding the use of the veto, though more recently the role of the General Assembly has again come to the fore.

1. Membership and Representation

The history of efforts to reform the Council have focused almost entirely on expanding its membership. In the 1960s, there was a concerted attempt to expand the number

6 UN Charter (1945), Chapter VII art. 23 sets the composition of the Security Council as including five permanent members and six elected members. This was amended in 1963 by General Assembly Resolution 1991A (XVIII), which added four non-permanent members to the Council. It currently comprises five permanent and 10 non-permanent members.

7 Palmer, N. and Gill-Leslie, R. 'The UN Security Council and Transitional Justice: Rwanda How International and Domestic Dynamics Shape the Prosecution of Genocide and the Pursuit of Reconciliation' UNU Centre for Policy Research (2020), pp.104-105

8 Gowan, R. 'Minimum Order: The Role of the Security Council in an Era of Great Power Confrontation' (2020) UN University.

9 For a good analysis of the range and pathways for action, see Gowan, R. 'The Security Council and Prevention: Pathways for Diplomatic Action' (2020) UN University 2020 <<https://cpr.unu.edu/research/projects/the-security-council-and-conflict-prevention.html>>.

10 For a history of working methods efforts, see statement by Landgren, K. What's in Blue (28 June 2022) <<https://www.securitycouncilreport.org/whatsin-blue/2022/06/statement-by-karin-landgren-executive-director-security-council-report-at-the-security-council-open-debate-on-working-methods.php>>.

of non-permanent members, reflecting the increase in UN membership from the 51 founding member states to 113 by 1963. That year, the General Assembly added four non-permanent members to the Council, thus achieving its current number of 15.¹¹ Nearly 60 years later, there has been no further change in Council membership.

However, Council reform has been prominently on the UN's agenda since Secretary-General Boutros-Ghali's 1992 Agenda for Peace,¹² which coincided with the first ever summit of the SC and the 1993 creation of the Open Ended Working Group tasked with identifying options for reform.¹³ At the time, growing powers like Japan, Germany had become major contributors to the UN, while Brazil and India had become large in both economic and demographic terms. These four countries (the G4) formed an interest group to promote an expansion of the permanent seat arrangement in the SC, with themselves very much in mind for seats. Other regional configurations also pushed for an expansion of the non-permanent category of seats, including the so-called "Coffee Club" (later re-titled "Uniting for Consensus") group of Italy, Pakistan, Mexico and Egypt. Around the same time, the African Group began to demand two permanent seats for the African continent, arguing that the combination of colonial injustices and the strong African focus of the SC justified such an expansion.¹⁴

Over time, P5 members have divided their support across these initiatives, with the US initially supporting the permanent membership of Japan and India; the UK and France aligning with the G4 position and some expansion for African non-permanent members; China pushing for greater representation of developing countries; and Russia initially endorsing India's demand for a permanent seat. While these constellations have evolved over time (at times shifting with P5 changes in leadership), and new proposals have been occasionally put forward, the core issue of P5 division over potential reform has remained the main stumbling block of

any reform efforts.

There have been few moments where reform appeared close to success. In 2005, Secretary-General Kofi Annan proposed two models for SC reform ahead of a world summit, attempting to reconcile the positions of the competing groups. While world leaders adopted an outcome document by consensus in September 2005, they only agreed broadly to support "early reform" of the Council, without adopting either of Annan's models.¹⁵ In 2007 a group of 25 countries called the Group L69 tabled a draft resolution calling for expansion in both permanent and non-permanent categories of membership, but it was not adopted.¹⁶ In 2008 the General Assembly adopted Decision 62/557 to commence intergovernmental negotiations (IGN).¹⁷ The first round of the IGN was held in 2009 and continued until 2015 when Jamaica (as chair of the IGN) presented a "Framework Document" attempting to find compromise across the competing groups. This moment constituted perhaps the high-watermark of reform discussions, garnering 120 country submissions and widespread support among many (but not all) groups. However, since then, the issue has not moved forward.

In September 2022, President Biden's speech to the UN General Assembly referred to a shift in US position in favor of Council reform.¹⁸ Specifically, he referred to American support for an increase in permanent seats for Africa and Latin America, indicating that the US would take forward consultations over the coming year to assess the scope for agreement on a way forward. This speech coincided with public statements by Foreign Minister Lavrov that Russia too was open to further discussions on Council reform, and the other P5 members have since indicated their willingness to consider the matter serious. However, based on recent interviews with Council members, experts, and those directly involved in the IGN, it does not appear that the broader positions of Council members have changed significantly: deep divisions remain around how to distribute new seats,

11 See text of Resolution A/RES/1991 XVIII <https://www.securitycouncilreport.org/un-documents/document/wmp-a-res-1991a-xviii.php>.

12 There were, of course, earlier references, including the 1979 addition to the GA agenda of "the question of equitable representation on and increase in the membership of the Security Council."

13 Full name: Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters related to the Security Council.

14 For further discussion on SC reform efforts, see Weiss, T.G. 'The Illusion of Security Council Reform' *The Washington Quarterly* (2003); Blum, Y. 'Proposals for UN Security Council Reform' *American Journal of International Law* 99:3 (2005); Nadin, P. *Security Council Reform* Routledge (2016); Herd, I. 'Myths of Membership: The Politics of Legitimation in UN Security Council Reform' *Global Governance* 14 (2008); Tharoor, S. 'Security Council Reform: Past, Present, and Future' *Ethics and International Affairs* 25:4 (2011).

15 UNGA 'World Summit Outcome' A/RES/60/1 (24 October 2005).

16 UNGA 'Question of equitable representation on and increase in the membership of the Security Council and related matters' A/61/L.69/Rev.1 (14 September 2007).

17 UNGA Decision 62/557 'Question of equitable representation on and increase in the membership of the Security Council and related matters' (2008).

18 Remarks by President Biden before the 77th Session of the United Nations General Assembly, New York (21 September 2022) <<https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/09/21/remarks-by-president-biden-before-the-77th-session-of-the-united-nations-general-assembly/>>.

which countries and regions might be chosen, and whether the right to veto would be extended to any members beyond the P5.

2. Use of the Veto

Given the low likelihood of achieving reform of the membership of the SC, several initiatives have been attempted to limit the use of the veto. One such attempt was the development of a code of conduct by the Accountability, Coherence and Transparency (ACT) group in 2015. Designed to limit the veto in cases of genocide, crimes against humanity and war crimes, this code calls on permanent members to not utilize the veto in instances which involve mass atrocities in addition to urging current or aspiring non-permanent members of the Council from casting a negative vote in such instances. As of February 10, 2022, 121 member states had signed this code of conduct, inclusive of two permanent members of the Council (the UK and France), eight elected UNSC members as well as two observers.¹⁹

In April 2022, Liechtenstein successfully tabled an initiative in the General Assembly – again without vote – which would mandate the General Assembly to hold a debate whenever a P5 member exercised its veto. While putting in place a normative condition on the use of the veto and some public pressure to justify its use, this initiative has not shifted the legal requirements on the P5. Indeed, the heightened geopolitical tensions around Ukraine (but also between the US and China over Taiwan) means the likelihood of any P5 member weakening their respective veto rights is vanishingly small.

3. The Security Council and the General Assembly

One of the most far-reaching acts taken by the General Assembly was the “Uniting for Peace” resolution 377 of 1950.²⁰ The resolution was initiated by the US and put forward by a group of allies as a way to circumvent a Russian veto on draft resolutions regarding hostilities on the Korean peninsula. The core of the resolution:

Resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a

threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security.

This resolution created a mechanism of an “emergency special session” which could be triggered either by SC or General Assembly members in the case of SC inaction on a threat to international peace and security. Since its initial use in 1950, Uniting for Peace has been invoked 13 times, eight times by a SC member and five by the General Assembly. In March 2022, the General Assembly again referred to “Uniting for Peace” in a resolution when it called on Russian troops to withdraw from Ukraine.²¹ However, beyond the few instances where General Assembly action has resulted in an enforcement action (such as in 1950 Korea), the bulk of Uniting for Peace actions have taken the form of non-binding recommendations. Requiring a two-thirds majority vote for peace and security matters,²² it is extraordinarily difficult for the General Assembly to muster sufficient support to act more decisively in settings like Ukraine, making it easy for belligerents to largely ignore its calls.²³

Nonetheless, Uniting for Peace offers an important precedent for other potential reforms. It stands for the principle that the SC is only the “primary” actor in maintaining peace and security, not the exclusive one. Indeed, as the following sections argue, there may be scope for applying the logic of Uniting for Peace both more consistently to the General Assembly, but also to the HRC, which has shown itself capable of taking on some of the most important roles of conflict prevention, peacemaking, and peace enforcement.

4. Other Proposals

Beyond the mainstream reform ideas, other proposals have been offered to address the shortfalls of the SC. These are not considered in depth here, as they are very unlikely to materialize, but are offered to give a sense of the range of options discussed amongst civil society. The most far-reaching initiative was the 2001 report of the International Com-

19 ‘Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes’ Global Centre for the Responsibility to Protect (2015) <<https://www.globalr2p.org/resources/list-of-signatories-to-the-act-code-of-conduct/>>.

20 Tomuschat, C. ‘Uniting for Peace General Assembly resolution 377 (V)’ UN Audiovideo Library of International Law (1950) <<https://legal.un.org/avl/ha/ufp/ufp.html>>.

21 United Nations General Assembly Resolution ES-11/1 (18 March 2022).

22 UN Charter (1945) Article 18.

23 It is worth noting that GA resolutions are binding in general, but the Uniting for Peace resolution only referred to “recommendations,” rather than “decisions” or “resolutions”. As such, Uniting for Peace has not been used in recent decades to do more than indicate a broad consensus amongst membership.

mittee on Intervention and State Sovereignty, which put forward the doctrine of the Responsibility to Protect (R2P). Unanimously adopted at the UN World Summit in 2005, R2P is an international norm that would consolidate the responsibility of all states to prevent crimes against humanity and mass atrocities. It rests on three pillars: the responsibility of each State to protect its populations (pillar I); the responsibility of the international community to assist States in protecting their populations (pillar II); and the responsibility of the international community to protect when a State is manifestly failing to protect its populations (pillar III). The doctrine has been invoked in more than 80 UN SC resolutions, more than 50 HRC resolutions, and thematic resolutions on the prevention of genocide.²⁴ Since the high watermark of 2005, however, the R2P doctrine has foundered on geopolitical tensions and an unwillingness to progress from the broad principle into more binding action. As of today, most experts agree that the doctrine is unlikely to become a more formal aspect of the UN's peace and security architecture in the medium term.

Other initiatives have attempted to bolster the UN's peace and security toolkit with more effective bodies to supplement the SC. For example, one recent proposal would see the creation of a "Global Resilience Council," operating in parallel to the SC and addressing the broader range of non-military threats to human security.²⁵ This complementary body could manage conflict trends earlier, acting in cases of climate-driven risks, socio-economic shocks, and other crises. According to its proponents, such a body could act in a more preventive manner, reducing the number of issues that need to be taken up by the SC.

A 2015 high-level panel led by Madeleine Albright and Ibrahim Gambari proposed that the Peacebuilding Commission be transformed into a "council," offering it greater investigative powers and possibly even binding resolution authority.²⁶ Other ideas, such as the creation of a World Parliamentary Assembly,²⁷ or the repurposing of the Trusteeship Council to address global risks,²⁸ remain fairly long shots for any chance of implementation in the short term. They all, however, point to a deep problem within the UN

system: that the SC is not able to perform its core task of addressing threats to international peace and security. The following sections explore how the HRC could take on more of a conflict prevention role, thus addressing some of the shortcomings of the SC.

2. THE HUMAN RIGHTS COUNCIL AS A PEACE AND SECURITY ACTOR

The above analysis points to the legal, structural, and geopolitical limitations on the SC to act in the face of clear threats to international peace and security. It suggests that past and ongoing efforts to reform the SC and/or introduce new structures or doctrines are unlikely to overcome the fundamental challenges facing the body today (though some, like bolstering the PBC, could be very useful). This section describes how the HRC has evolved into a more central peace and security actor within the UN system, at times providing conflict prevention and management tools that are missing from the SC.

A. EVOLUTION OF THE HRC FROM COMMISSION TO COUNCIL

The origins and mandate of the HRC in fact suggest that it was designed around a concept of prevention and more effective responses to early warning of conflict. From 1946 to 2005, a Human Rights *Commission* operated as a subsidiary of the Economic and Social Council, with the primary role of addressing human rights concerns globally.²⁹ Despite difficulties operating during the Cold War period,³⁰ the Commission developed a range of tools for monitoring and reporting on human rights, including special procedures, the special rapporteur system, and treaty bodies mandated to investigate specific rights violations. The growth of thematic mechanisms — including on arbitrary detention, disappearances, torture, and extrajudicial executions — broadened the Commission's scope considerably during this period.

By the 1990s, however, criticism had grown that the Commission was deficient in its core task of responding to mass human rights violations in an effective and timely manner. Particularly observable was how rigid written rules allowed political divisions to play out on the Commission

24 'What is R2P? The Responsibility to Protect: A Background Briefing' Global Centre for the Responsibility to Protect (2021).

25 'Global Resilience Council: A 'Security Council for Non-Military Threats' FOGGS <<https://www.foggs.org/grc-global-resilience-council/>>.

26 Ponzio, R. 'Report of the Commission on Global Security, Justice & Governance' Stimson Centre (2015).). This proposal was noted in the more recent report of the High-Level Advisory Board on Effective Multilateralism, highleveladvisoryboard.org/breakthrough.

27 Lopez-Claros, A. and Bummel, A. 'A World Parliamentary Assembly as a Catalyst for Enhanced International Cooperation' *Global Governance Forum* (2021).

28 'UN Trusteeship Council Documentation' Dag Hammarskjöld Library <<https://research.un.org/en/docs/tc/reform>>.

29 General Assembly E/RES/9/2 Resolution: Commission on Human Rights (21 June 1946); see also UN Charter (1945), Article 68.

30 Tistoune, E. *The UN Human Rights Council: A Practical Anatomy* Edward Elgar Publishing (2020) p. 78, 100.

floor, delaying its responsiveness and diluting the substance of its decisions.³¹

Despite a clear need for change following the Rwandan genocide, the Commission continued to struggle, especially around Special Sessions which required the agreement of half of the membership. Portugal, for example, called for a

THE 1994 RWANDAN GENOCIDE

In the preceding years, two Special Rapporteur and the Working Group on Enforced or Involuntary Disappearances had each reported back to the Commission on the deteriorating human rights situation in the country. In 1993, the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions visited Rwanda and detailed massacres of civilians, a proliferation of weapons, injurious propaganda and an environment of impunity. He specifically questioned whether the murders might be categorized as genocide under art III of the Convention on the Prevention and Punishment of the Crime of Genocide. Despite these warnings, no Commission member called for a Special Session, and even at the next scheduled session in January 1994, neither the country situation nor the Special Rapporteur's report were discussed. This was in part due to inattention and passivity, but also a shortage of tools to resolve disagreements among political blocks. It took for the first UN High Commissioner on Human Rights – following his own country visit – to call on the members of the Commission to consider convening a special session and the appointment of a Special Rapporteur to investigate the human rights situation in Rwanda. Three weeks later, on 24–25 May 1994, the Commission acted accordingly, however by this stage the genocide had already commenced.

Special Session in response to the mass killings and forcible expulsions that occurred in the aftermath of the Popular Consultation held in East Timor on 30 August 1999.³² Even with the large body of detailed evidence available to the Commission, representatives from the Asian Group, the

Association of South East Asian Nations (ASEAN), and Indonesia protested the session on procedural grounds, arguing that the required assent had not been obtained prior to the deadline. This necessitated intervention from the OHCHR Legal Counsel to confirm that procedure rules had been followed.³³ The session (the fourth in 53 years³⁴) ultimately did take place on 23 September 1999, however the resistance underscored how rigid operating rules reduced the Commission's ability to overcome political divisions.

By the early 2000s demands for reform had reached a high water mark. In his landmark "In Larger Freedom: Towards development, security and human rights for all" (2005), Secretary-General Kofi Annan proposed the creation of a smaller, more nimble organization with independence from ECOSOC. A chief priority was a framework that would allow the body to deal with emerging political divides and thus prevent stagnation in the face of human rights violations, especially when these occurred on a large scale.³⁵

In response, UNGA Res 60/251 (15 March 2006) established a Human Rights Council as a subsidiary organ of the General Assembly, with members elected (directly and individually by secret ballot) by an absolute majority of member states. Procedural rules were the subject of tense negotiations as individual states and interest blocks negotiated tools that would allow them to continue or gain new influence.³⁶ As a subsidiary body of the General Assembly, voting was by simple majority and seat distribution needed to reflect UN regional groups.³⁷ These ratios meant that Western states quickly abandoned their preference for a smaller UNSC-like arrangement and conceded to a wider Council of 47 members (only slightly reduced from the size of the Commission).³⁸ Another compromise was that only one-third of the HRC would be required to call a Special Session, while removing Council Members could only take place with a two-thirds majority vote of the General Assembly.³⁹ Finally, to prevent a situation of de facto country permanence (and thus influence), members were limited to 3-year terms after

31 Tistounet, E. *The UN Human Rights Council: A Practical Anatomy* Edward Elgar Publishing (2020) p. 214, 289.

32 On 30 August 1999, the population of East Timor had participated in a popular consultation on the future of the territory which led to mass killings, forcible expulsions, initiated by different militia groups, but with the involvement of the Indonesian security forces.

33 HR/CN/99/67 'Commission on Human Rights Open Special Session on East Timor' (23 September 1999).

34 The other special sessions were held in 1992 and 1993 to consider the situation in the former Yugoslavia.

35 Tistounet, E. *The UN Human Rights Council: A Practical Anatomy* Edward Elgar Publishing (2020) p.73.

36 A/RES/60/251, Resolution adopted by the General Assembly: Human Rights Council (3 April 2006) pp.7-10. See further Tistounet, E. *The UN Human Rights Council: A Practical Anatomy* Edward Elgar Publishing (2020) p.56.

37 13 seats are reserved for the African states, 13 for the Asia-Pacific states, eight for the Latin American and Caribbean states (GRULAC), seven for the Western European and other states and six for the Eastern European states.

38 Tistounet, E. *The UN Human Rights Council: A Practical Anatomy* Edward Elgar Publishing (2020) p. 29-30, 61, 123-131, 254.

39 The GA can, by a two thirds of majority present and voting, can suspend rights of membership of a member that commits gross and systematic HR violations; see further Tistounet, E. *The UN Human Rights Council: A Practical Anatomy* Edward Elgar Publishing (2020) pp. 6, 56, 71, 109.

which they were ineligible for reelection for two consecutive terms.⁴⁰

Arguably, it is difficult to see how this fairly subtle shift in rules would have been enough to overcome the political polarization that hamstrung its predecessor. But the rules set out in General Assembly Res 60/251 are not a precise guide to the Council's working methods. In fact, the Council quietly but deliberately developed an array of pragmatic — generally unwritten — tools and procedures to get its work done.

The most important of these is the consensus-driven nature of the Council's resolutions. In practice, resolutions are informally negotiated, concessions made, frustrations diffused and texts redrafted until the point that they can be taken to a session with a high degree of confidence that they will be passed without controversy. Forging such consensus involves active engagement on the part of members, with non-regional groupings playing a particularly important role in aligning points of common interest, navigating around bottlenecks and brokering concessions.⁴¹

Other processes allow members to save face and remain consistent on certain issues — thus defusing politicization — while allowing the Council to act responsively.⁴² Examples include the inventive terminology used in naming fact finding and investigation missions, and the creation of thematic mandates to allow the Council to respond to country-specific line of inquiry.⁴³ Another norm is members using rules of procedure to communicate their views or position, but in ways that do not obstruct a broader process. Examples include calling for a vote (knowing that a resolution will irrespective be passed) or for amendments (knowing they will likely be rejected). Members might even 'opt out' of a group for the purposes of one vote, as opposed to derailing the process. Overall, these norms are typically respected — in-

deed, 'no action motions' are infrequently used and broadly frowned upon.⁴⁴

In sum, the rigidity and polarization that brought the Commission to a standstill seems to have been, if not overcome, at least managed. Critically, this is not because political divisions have been 'fixed'. Partisanship remains alive and well, but it has been corralled into fora where is less visible, and countered with tools that better enable polarization to be moderated.⁴⁵ The result is not without criticism, however. What allows the Council to do what its predecessor could not — consider any human rights matter and then, through an 'agree to disagree' manner, reach a minimum level of mutual understanding that allows it to respond — is a set of unorthodox, iterative and largely unwritten working methods. This renders the work of the Council opaque, lacking in accountability and difficult to evaluate in terms of impact.⁴⁶ Insofar as such flaws threaten the Council's legitimacy, its capacity to lead on human rights and/or strengthen the peace and security architecture may be limited.

B. THE HRC'S ROLE IN PEACE AND SECURITY

The HRC was established at a moment when the connections between human rights and security were increasingly acknowledged. In fact, Secretary-General Annan explicitly linked the proposal for a HRC to peace and security, stating that, "while poverty and denial of human rights may not be said to 'cause' civil war, terrorism or organized crime, they all greatly increase the risk of instability and violence."⁴⁷ This relationship was recognized by the General Assembly in 2006 where it noted the "mutually reinforcing" interlinkages between development, peace and security, and human rights.⁴⁸

This vision of human rights as crucial to peace and secu-

40 A/RES/60/251, Resolution adopted by the General Assembly: Human Rights Council (7) (3 April 2006). See also Res 19/26 (2012) creating a Voluntary Technical Assistance Trust Fund to Support the Participation of LCDs and SIDS in the work of the Council.

41 Tistoune, E. *The UN Human Rights Council: A Practical Anatomy* Edward Elgar Publishing (2020) pp.64, 135, 220.

42 Tistoune, E. *The UN Human Rights Council: A Practical Anatomy* Edward Elgar Publishing (2020) ppp. 221, 246-247.

43 A good example, albeit by the Human Rights Commission concerns Resolution 20 (XXXVI) on the establishment of the Working Group on Enforced Disappearances as a means of investigating this practice in Argentina. Tistoune, E. *The UN Human Rights Council: A Practical Anatomy* Edward Elgar Publishing (2020) pp.50-51.

44 Tistoune, E. *The UN Human Rights Council: A Practical Anatomy* Edward Elgar Publishing (2020) pp. 8, 44-45, 140-148, 202, 213-219, 224, 266-269. It is important to note that some link greater consensus within the Council to the transparency that comes from civil society participation and webcasting. Indeed, even though they cannot vote, non-government organizations are actively involved in the work of the Council and will dissect, review and publicize members' statements, explanations and voting patterns. While this is unique to the Council, it would be naive to conclude that the potential for media and civil society scrutiny results in member's behaving in a correct and non-politicized manner. These communications vehicles can equally be used for states to publicize their dissent, reaffirm domestic policies and build alliances.

45 Resolutions of council are fairly stable at 90-120 per year, as is the ratio of resolutions put to vote versus adopted by consensus. Tistoune, E. *The UN Human Rights Council: A Practical Anatomy* Edward Elgar Publishing (2020) pp.263-265.

46 Tistoune, E. *The UN Human Rights Council: A Practical Anatomy* Edward Elgar Publishing (2020) pp. 29-33, 66-77, 215- 218.

47 Annan, K. In Larger Freedom: "In Larger Freedom": Decision Time at the UN (25 April 2005) <<https://www.un.org/sg/en/content/sg/articles/2005-04-25/larger-freedom-decision-time-un>>.

48 "Acknowledging that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing". A/RES/60/251 Resolution adopted by the General Assembly: Human Rights Council (3 April 2006).

riety has further evolved since the formation of the HRC. In 2013, Ban Ki-moon launched the “Human Rights Up Front Initiative”, which called for a cultural change within the UN system towards greater coherency across the three pillars of peace and security, development and human rights.⁴⁹ Similarly, the 2016 Sustaining Peace resolutions by the General Assembly and the SC acknowledge that peace and security, development, and human rights are “mutually reinforcing,” and explicitly include human rights as part of the UN’s prevention priority.⁵⁰ Most recently, the current Secretary-General’s “Highest Aspiration: A Call to Action for Human Rights” (2020), emphasized that human rights underpin the work of the entire UN system, and are essential to building safe and peaceful societies.⁵¹

In fact, the HRC has developed a range of tools and processes aimed at addressing human rights issues in conflict settings. These generate important information, offering potentially actionable early warning analysis, and have contributed directly to conflict resolution. The brief description below of the core tools of the HRC underscores the crucial role it is already playing in conflict settings.

a. The Universal Periodic Review (UPR)

The UPR provides detailed reporting on human rights developments in every country in the world and has evolved to become an important tool in the HRC’s work. While the UPR is not directly focused on peace and security matters, there is evidence that it has enabled (a) greater advocacy by Member States and civil society around emerging conflict risks; (b) space for dialogue amongst key actors; (c) opportunities to build evidence around root causes of conflict (e.g. social and political rights violations); and (d) more direct links to peace and security issues such as the Women Peace and Security agenda and arms control.⁵² Additionally, it should be emphasized that the UPR being universal with almost no State evading its scrutiny, is providing the most accurate mapping

of the human rights situation worldwide over a four year and a half periodicity based on the concerned countries reports and more importantly the Secretariats documentation, the HC letters and the numerous recommendations offered during the reviews.

The UPR’s potential for engagement on peace and security matters must be balanced with the strong call by many Member States to preserve its more limited role within the HRC. But as a body of empirical and state-driven evidence around human rights concerns, the UPR is a valuable tool for peacebuilders as well. It is also commonly acknowledged that it provides entry points for the UN system, civil society, and States, which reviewed States can simply not reject.

b. Special Procedures

Of the 57 Special Procedures created by the HRC,⁵³ many mandates include peace and security dimensions.⁵⁴ Examples include the Special Rapporteur on Torture Inhumane and other forms of Degrading Treatment; on Truth, Justice, Reparation and Non-Recurrence;⁵⁵ on Freedom of Peaceful Assembly and of Association, and the Working Groups on Arbitrary Detention; Enforced or Involuntary Disappearances; and Extrajudicial Summary or Arbitrary Execution. Some of these bodies — for example the Working Group on the Use of Mercenaries — focus almost exclusively on conflict settings, and arguably with greater depth and more frequent in-country visits than the SC. Of crucial importance, even mandates with less direct connections to peace and security may take up the issue. The Special Rapporteur on the Right to Food, for example, dedicated his last report to food in conflict contexts,⁵⁶ and briefed the UNSC on conflict and hunger at an aria formula meeting on 21 April 2022. Increasingly, thematic special rapporteurs dealing with issues or rights considered by many to be falling within the economic, social and cultural rights category, are devoting attention to the extent that conflicts impact such rights and freedoms.

49 ‘Human Rights up Front: An Overview’ Interagency Standing Committee, https://interagencystandingcommittee.org/system/files/overview_of_human_rights_up_front_july_2015.pdf.

50 SC/12340 ‘Security Council Unanimously Adopts Resolution 2282’ (2016) on Review of United Nations Peacebuilding Architecture (27 April 2016) <<https://press.un.org/en/2016/sc12340.doc.htm>>.

51 These policy initiatives sit alongside numerous other attempts to connect the humanitarian response and development fields, including ‘linking relief rehabilitation and development’ (LRRD); the ‘resilience agenda’; ‘conflict sensitivity’ and the humanitarian-development-peace’ nexus.

52 For a comprehensive examination of the UPR’s role on sustaining peace, see ‘Integrating Human Rights and Sustaining Peace Project Report: Exploring the Universal Periodic Review’ Quaker UN Office (2018) <https://quono.org/sites/default/files/resources/QUONO%20Integrating%20Human%20Rights%20and%20Sustaining%20Peace_FOR%20WEB.pdf>.

53 Special Procedures are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. They are either an individual (“Special Rapporteur” or “Independent Expert”) or a working group.

54 Tistoune, E. *The UN Human Rights Council: A Practical Anatomy* Edward Elgar Publishing (2020) pp. 17, 118, 174-175.

55 See ‘Annual thematic reports of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence’, available at: <<https://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/AnnualReports.aspx>>.

56 A/HRC/52/40 ‘Conflict and the right to food Report of the Special Rapporteur on the right to food, Michael Fakhri’ para 62-70, (29 December 2022).

Even more relevant is the work of the 14 country mandates, two of which are involved in international armed conflicts (Syria⁵⁷ and Russia), four in non-international armed conflicts (CAR, Mali, Myanmar and Somalia) and one that is classified as an occupation (the Palestinian territories). Of the other seven country mandates, most have been involved in an armed conflict in the recent past (Afghanistan, Burundi, Cambodia and Eritrea) or are considered highly fragile (Belarus, North Korea, Iran). The work of these mandates often centres directly on the intersection between peace, security and human rights, and their activities — collecting information, feeding into HRC resolutions, advocacy and behind-the-scenes diplomacy — render them important and influential players.

Indeed, a 2021 study for the UN General Assembly recognized the important role that Special Procedures have played in preventing escalation into more widespread human rights violations.⁵⁸ While not explicitly referring to conflict prevention, the resolution does call for Special Procedures to become more oriented around early warning, and it recognizes that human rights violations are often a root cause of conflict.

c. Transitional Justice

The most direct way that the HRC operates in the peace and security space is through the creation of bespoke mechanisms to investigate grave violations of human rights and international humanitarian law.⁵⁹ The HRC has stepped more

into this role 37 times since 2006,⁶⁰ with 13 currently in operation, as well as several non-categorized mechanisms. The increase in the number of such mechanisms over the past decade and the inventiveness of the Council in adjusting their titles and terms of reference has transformed the Council's role in peace and security in a fundamental manner over a very brief period of time.

This investigative role of the HRC sits alongside the explicit mandate of the SC to take action to address threats to international peace, and its mandate to refer issues to the International Criminal Court.⁶¹ The UN General Assembly can likewise establish bodies to address peace and security risks, and has Charter-based powers to recommend “measures for the peaceful adjustment of any situation,” giving it a broad remit on peace and security.⁶² But while both of these organs have exercised this role — most recently creating UNITAD⁶³ and the IIIM⁶⁴ respectively — the high hurdles of achieving the necessary consensus within both bodies have led to very limited creation of investigative bodies over the past 20 years.⁶⁵ In contrast, the HRC's relatively lower voting threshold and more flexible working methods have enabled it to establish investigative bodies far more frequently than the SC and General Assembly combined.^{66,67}

While short of peace enforcement action, HRC investigations have played an important role in addressing conflict risks in a range of settings. Human rights investigations play a role in reducing the willingness of parties to resort to violence, to addressing underlying causes of conflict, and in

57 Technically an IAC, multiple NIAC and occupation.

58 A/HRC/48/21 'Study on the contribution of the special procedures in assisting States and other stakeholders in the prevention of human rights violations and abuses' (13 October 2021) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/286/27/PDF/G2128627.pdf?OpenElement>>.

59 Such mechanisms usually comprise three experts appointed by the HRC President or UN High Commissioner for Human Rights.

60 Note that the Fact Finding Mission on the Human Rights Situation in the Occupied Palestinian Territories since 1967 was not implemented.

61 Under UN Charter (1945) article 34: “The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security”.

62 Under UN Charter (1945) article 14 and 22. In 1963, the General Assembly established a fact-finding mission to South Vietnam; in 1973, a commission of inquiry was mandated to investigate massacres in Mozambique; in 1998, a group of experts was appointed for Cambodia to evaluate the existing evidence and propose further measures, as a means of bringing about national reconciliation, strengthening democracy, and addressing the issue of individual accountability; and in 1999, an investigative team for Afghanistan was established.

63 S/2017/710 'Letter dated 14 August 2017 from the Chargé d'affaires a.i. of the Permanent Mission of Iraq to the United Nations addressed to the President of the Security Council' (16 August 2017).

64 In December 2016, the UNGA adopted Res A/71/248 establishing the Impartial and Independent Mechanism to assist the investigation and prosecution of persons responsible for international crimes committed in Syria since March 2011, to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law.

65 At the UNGA, votes taken on designated important issues – such as recommendations on peace and security – require a two-thirds majority of Member States. At the HRC, however, decisions require only a simple majority of its 47 elected member states.

66 Examples include tailoring how mechanisms are titled, from 'high level mission', 'monitoring mission' to 'group of experts', as well as their terms of reference. See further Tistoune, E. *The UN Human Rights Council: A Practical Anatomy* Edward Elgar Publishing (2020) pp. 59, 62, 217.

67 'Building a coherent Human Rights Council-Security Council relationship: The prevention of human rights crises, violent conflict and atrocity crimes' Universal Rights Group (2021) p.12.

implementing fragile peace processes.⁶⁸ They can also play a role in broader justice processes; for example, evidence collected by the IIMM has been used by European national prosecutors and in the recent case brought by Gambia against Myanmar at the International Court of Justice.⁶⁹ As shown in the case studies below, in situations where the SC and General Assembly have failed to act, human rights investigations may be the best (and only) tool at the international community's disposal.

d. Sanctions

The imposition of multilateral sanctions by the SC frequently takes place in settings where both the SC and HRC are involved. In general, the two bodies have distinct approaches: The SC is primarily involved in issuing multilateral sanctions measures as a means to address ongoing conflicts, whereas the HRC has tended to focus on the negative impacts of unilateral sanctions measures.⁷⁰ However, in several settings where the UN has issued sanctions, both the SC and the HRC are involved in monitoring the actors involved. For example, the SC has issued an arms control set of sanctions on actors in South Sudan, aimed at many of the same actors that are the focus of the HRC's Commission on Human Rights in South Sudan. Similarly, the SC's sanctions regime regarding Libya has a significant overlap with the areas covered by the HRC's fact finding mission on Libya in 2020.⁷¹

e. Arms Control

Somewhat surprisingly, the HRC has a direct role in monitoring arms transfers and lethal force, often in conflict settings.⁷² In its most recent session, the HRC explicitly took up the issue of arms transfers in conflict settings, also covering issues of youth recruitment into armed groups, intercommunal conflict, and the use of heavy weaponry. While not a huge aspect of the HRC's work, it clearly indicates a willingness to take on hard security issues in settings cov-

ered by the SC.

Taken together, these developments suggest an emerging recognition of overlapping mandates in conflict settings. Rather than insisting on an exclusive or even primary role for the SC, today's practice suggests that the SC, GA, and HRC may all engage simultaneously on the same setting. Of course, this is not to suggest that Member States are uniformly comfortable with this trend (many push back, using strict interpretations of the UN Charter), but the reality today suggests a growing comfort with overlapping work and a certain degree of institutional messiness.

3. SHOULD THE HRC ENGAGE ON INTERNATIONAL PEACE AND SECURITY?

While the HRC engages in a range of conflict settings, there are longstanding and important objections to greater formal connectivity between the HRC and the SC, and/or a more direct role for the HRC on matters of international security. Critics of greater links between the pillars point to the distinct mandates of the HRC and SC, suggesting that greater cooperation would risk the politicization of the human rights agenda and encroach upon the SC's primary role on peace and security. These concerns are not without basis. The use of "responsibility to protect" language to justify the UN's intervention in Libya in 2011 was seen by some as a warning sign that a rights-based approach to peace and security could lead to unwarranted interventions beyond the SC's Article 39 basis.⁷³ Attempts to limit the SC's use of the veto in the case of mass human rights violations similarly raised concerns that the human rights agenda could impose on the prerogatives of the SC on peace and security.⁷⁴

However, it would be incorrect to conclude that the system is completely static and siloed, nor that this tension is specific to the HRC. Questions over the division of powers on peace and security applies to the other parts of the UN system, such as the General Assembly and the UN's devel-

68 'Evaluation of the effectiveness of human rights monitoring, reporting and follow-up in the United Nations multi-dimensional peacekeeping operations', UN Office of International Oversight Services (2019); see also, Day, A. 'Assessing the Effectiveness of the United Nations Mission in South Sudan (UNMISS)' Norwegian Institute of International Affairs (2019); Rowski, F. and Shawma, M. 'Human Rights Monitoring in Nepal' in *Nepal in Transition: From People's War to Fragile Peace*, Cambridge University Press (2018).

69 United Nations, General Assembly Resolution A/RES/71/248 International, Impartial and Independent Mechanism to assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (11 January 2017), Pues, A. The UN General Assembly as a Security Actor: Appraising the Investigative Mechanism for Syria (on file with authors) pp.572-573.

70 For more information on the Special Rapporteur on unilateral coercive measures visit <<https://www.ohchr.org/en/special-procedures/sr-unilateral-coercive-measures>>.

71 A/HRC/RES/24/35 Impact of arms transfers on human rights in armed conflicts (8 October 2013) <https://waps.ohchr.org/sites/default/files/2022-03/A_HRC_49_4_AUV.pdf>.

72 Some of the most important outcomes include: <https://www.right-docs.org/doc/a-hrc-res-24-35/>; <https://www.right-docs.org/doc/a-hrc-res-32-12/>.

73 The Responsibility to Protect (R2P) initiative of the early 2000s aimed to formalize a set of obligations across Member States to protect human rights, creating a right to intervene in those that failed in this duty.

74 'Political Declaration on Suspension of Veto Powers in Cases of Mass Atrocities' Global Centre for the Responsibility to Protect (2015) <<https://www.globalr2p.org/resources/political-declaration-on-suspension-of-veto-powers-in-cases-of-mass-atrocities/>>.

opment pillar.⁷⁵ Indeed, the “Uniting for Peace” resolution reflects an important reality: that the SC has primary, but not sole authority when it comes to peace and security.⁷⁶ Recent decisions by the General Assembly and HRC to establish investigatory mechanisms for conflicts both on and off the SC’s agenda indicate something more like overlapping or sequential responsibilities than exclusive ones. For example, the HRC mandated the International Commission on Libya (a conflict on the SC’s agenda) to:

“investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, to establish the facts and circumstances of such violations and of the crimes perpetrated and, where possible, to identify those responsible, to make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible are held accountable.”⁷⁷

Similar mandates were provided to the HRC’s Commission of Inquiry on Syria⁷⁸ and Commission on Human Rights in South Sudan.⁷⁹ These steps may point to a growing willingness of the HRC to take concerted action on conflicts where the SC’s approach is either lacking or insufficient.

A parallel dynamic is present in the General Assembly’s willingness to mandate judicial responses to conflict settings. In 2016, the General Assembly made reference to the use of “regional or international courts” in the mandate of the IIIM on Syria — a move that some argued could come into conflict with the SC’s authority to refer cases to the ICC. Other criticisms included that the General Assembly had exceeded its competencies by creating a judicial mechanism, and that it could not deal with a matter of which the SC was seized. While these arguments received little credence (the

IIIM has no prosecutorial powers and the issue of concurrency was dealt with in a 2003 ICJ advisory opinion)⁸⁰, it did signal the level of Member State willingness to use both bodies to address situations of serious violent conflict.⁸¹

Taken together, these developments suggest an emerging recognition of overlapping mandates in conflict settings. Rather than insisting on an exclusive or even primary role for the SC, today’s practice suggests that the SC, GA, and HRC may all engage simultaneously on the same setting. Of course, this is not to suggest that Member States are uniformly comfortable with this trend (many push back, using strict interpretations of the UN Charter), but the reality today suggests a growing comfort with overlapping work and a certain degree of institutional messiness.

Indeed, messiness is not necessarily a bad thing. In a highly fractured geopolitical climate, it can be useful to have different forums for a variety of activities. Where the SC becomes blocked, the ability to move to an informal setting, or to use HRC or General Assembly processes to advance greater accountability, can be vital. In fact, this paper argues that greater and more creative use of both the HRC and General Assembly could help address the more fundamental problems of legitimacy, representation, and effectiveness present in the SC today. Instead of focusing on SC reform as the panacea for addressing the UN’s peace and security shortcomings, we argue in favor of creative ways to operate within this institutional messiness, bringing human rights more directly and effectively into conflict prevention and resolution.

This is not to suggest that the HRC or General Assembly is wholly sufficient to the task. Although neither the HRC nor General Assembly faces the veto problem, they are not

75 The struggle over the division of powers on peace and security is long-standing, and applies to the other parts of the UN system, such as the General Assembly. Stepping back, what can be observed is a decades-long process of adjustment and adaptation, marked by periodic (often heavily contested) advances whereby the delineation of responsibility between the UNSC and other organs has become more dispersed.

76 Pues, A. The UN General Assembly as a Security Actor: Appraising the Investigative Mechanism for Syria (on file with authors) pp.265-266.

77 A/HRC/RES/S-15/1 Resolution adopted by the Human Rights Council on the Situation of human rights in the Libyan Arab Jamahiriya (3 March 2011).

78 A/HRC/S-17/2/Add.1 Report of the independent international commission of inquiry on the Syrian Arab Republic (23 November 2011).

79 A/HRC/RES/31/20 Resolution adopted by the Human Rights Council on Situation of human rights in South Sudan (27 April 2016).

80 In ‘Note Verbale dated 8 February 2017 from the Permanent Mission of the Russian Federation to the United Nations addressed to the Secretary- General’ (14 February 2017) UN Doc. A/ 71/ 793, Russia argued that in creating a judicial body outside of the concerned state’s consent, the UNGA had exceeded its powers. A. Whiting, ‘An Investigation Mechanism for Syria’ (2017) 15 *Journal of International Criminal Justice* p. 234; Pues, A. The UN General Assembly as a Security Actor: Appraising the Investigative Mechanism for Syria (on file with authors).

81 The GA, at its 10th Emergency Session, requested an International Court of Justice (ICJ) advisory opinion on the legal consequences of arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem. This ignited calls that it had exceeded its competencies by deliberating on a matter that the UNSC was actively seized. The ICJ rejected this: “[The Court] notes that, under Article 24 of the Charter, the Security Council has ‘primary responsibility for the maintenance of international peace and security’ and that both the Security Council and the General Assembly initially interpreted and applied Article 12 to the effect that the Assembly could not make a recommendation on a question concerning the maintenance of international peace and security while the matter remained on the Council’s agenda, but that this interpretation of Article 12 has evolved subsequently. The Court takes note of ... an increasing tendency over time for the General Assembly and the Security Council to deal in parallel with the same matter concerning the maintenance of international peace and security. The Court considers that the accepted practice of the Assembly, as it has evolved, is consistent with Article 12, paragraph 1; it is accordingly of the view that the General Assembly, seeking an advisory opinion from the Court, did not contravene the provisions of Article 12, paragraph 1, of the Charter. The Court concludes that by submitting that request the General Assembly did not exceed its competence”. See also Pues, A. The UN General Assembly as a Security Actor: Appraising the Investigative Mechanism for Syria (on file with authors) p.266.

immune from polarization. Particularly at the General Assembly, universal membership allows regional blocks to prevent decision-making on any issue that might be construed as encroaching on national sovereignty.⁸² It is also not to say that within this architecture all threats, violations and conflicts will be dealt with. Some will not win UNSC, General Assembly or HRC attention, either because they lack strategic importance, due to member state ‘fatigue’, or because the risks outweigh the perceived benefits.

Here, we suggest that the most constructive approach may be to identify pockets of opportunity to address some of the SC’s critical shortcomings and promote a more coherent UN-wide approach through greater use of the HRC’s tools and process. As noted, it is already playing a number of important peace and security roles. Moreover, the HRC may prove one of the most important venues for addressing the SC’s most visible flaw: its membership. With universal membership and no veto, the HRC is a far more democratic and inclusive institution than the SC. To this end, the following sections offers some recommendations that could build on current trends and initiatives, helping to position the HRC and SC in better alignment on key priorities.

4. RECOMMENDATIONS

Based on the above analysis, we here offer a set of recommendations that could enable the UN system to address some of the ongoing shortcomings in its peace and security architecture by strengthening the role of human rights. Importantly, we are not necessarily advocating for more formal linkages between the HRC and the SC. Indeed, our analysis above suggests that a gradual evolution of existing practices and greater informal connectivity between the two pillars of the UN may be the best short-term approach.

A. BROADEN THE UNDERSTANDING OF HUMAN RIGHTS

A starting point for more effective use of the HRC is to recognize the broad function of human rights across all pillars of the UN’s work. One cannot consider peace and security without linking all rights and freedoms together, considering the situation of all segments of the population, and focusing on the situation of all human rights in all countries. Early warning and prevention clearly show that a deterioration in the situation of economic, social, and cultural rights as well as transversal rights constitute potential triggers that eventually lead to conflicts. Accordingly, the discussion of

peace and security has to be considered against the background of the implementation of all rights and freedoms

B. ‘LINK THE DOTS’ AND STRATEGIZE EFFECTIVE WORKING METHODS

There is strong resistance to strengthening the role of the HRC in the peace and security domain. This is largely because proponents come principally from the Global North and other ‘friendly’ countries. Others might be brought closer if and when such proponents also open up to such areas as the struggle against racism, the right to development, economic and social rights etc. In order to increase the role played by the HRC in one area, it may be necessary to also increase its role in other areas. This mutually reinforcing dynamic is not well understood nor accepted. Providing space for discussing these matters in an informal and constructive manner outside the UN would be extremely helpful in strengthening the peace and security agenda and the role of the HRC.

C. REAFFIRM AND CREATIVELY UTILIZE THE LINKS BETWEEN HUMAN RIGHTS AND CONFLICT

While it may seem simplistic, an important starting point is the recognition that human rights violations are often a crucial driver of violent conflict. As the above analysis demonstrates, there is a broad recognition of this reality across many human rights forums, but often in an indirect or fairly superficial manner. Indeed, the language of “root causes” and “grievances” and “exclusion” are often employed as euphemisms for violations of a wide range of human rights. As the landmark 2018 Pathways for Peace report noted, addressing issues related to exclusion and a “sense of injustice” is the core goal of peacebuilding.⁸³

This suggests that a more rights-driven approach to peace and security could (a) benefit from the dynamic and empirically rich ecosystem of the HRC and OHCHR, (b) align the UN more directly to address the root causes of violent conflict, and (c) open the potential for more creative use of forums beyond the SC.

D. STRENGTHEN TRANSITIONAL JUSTICE AS PART OF THE HRC’S PEACE AND SECURITY ROLE

Transitional justice is often framed as falling predominantly within the mandate of the SC. Its ability to authorize investigatory mechanisms, establish courts, and refer cases to the ICC are the most visible actions the UN can take on

⁸² Indeed, most Uniting for Peace resolutions initiated by the UNGA have had political underpinnings. See ‘Building a coherent Human Rights Council-Security Council relationship: The prevention of human rights crises, violent conflict and atrocity crimes’ Universal Rights Group (2021) pp.16-17.

⁸³ Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict United Nations and World Bank (2018) <<https://www.pathwaysforpeace.org/>>.

transitional justice. However, like much of the other activities of the SC, the past 15 years have witnessed a decline in its willingness to generate new transitional justice processes. In the past 13 years the SC's only concrete measures have been referring the case of Libya to the ICC in 2011, creating an investigation in CAR in 2013 and establishing UNITAD at the request of the Iraq government in 2017.⁸⁴

This decline in SC action should be contrasted to the growing activity of the HRC which, since its creation in 2006, has mandated 49 [(38)] variously titled investigations. Particularly noteworthy is that the establishment of new mechanisms has stayed fairly consistent over time, suggesting that the HRC's more amenable voting structure has sheltered decision-making from political divisions. Certainly, the creation of investigations in the Ukraine, Myanmar and Iran to name a few, would not have been possible in any other forum.

There are also some indicators that the HRC is interested in moving more directly into the criminal justice space. Up until five years ago, the working methods employed by HRC investigations focused strictly on human rights violations, as opposed to the broader criminal accountability chain. Investigation findings were also reported openly and publicly which, although important for advocacy, limits how evidence collected can be used in future prosecutions. This might be contrasted to the General Assembly-mandated IIIM, which applies criminal law standards and methodologies, collects a far broader range of evidence and works with high levels of confidentiality with a view to safeguarding the integrity of investigations. The HRC-mandated investigations established most recently — such as the Ukraine CoI and Sri Lanka Accountability Project — seem to have followed this pathway to more closely resemble the IIIM both in terms of functioning and purpose. The Independent Investigatory Mechanism for Myanmar arguably pushes even further by referencing the International Criminal Court by name.

A more prominent role for the HRC in transitional jus-

tice would not address all of the shortcomings of the SC in this field. While the HRC is certainly less prone to politically-driven stalemates, its reliance on the General Assembly for budgetary approval means it also faces gridlock. For example, in March 2022 at the Fifth Committee's 76th session, Ethiopia called for a vote on approving the decisions made at the HRC's 33rd special session. The issue in play was that this set of decisions included funding for the Commission of Experts on Ethiopia whose mandate the government staunchly opposes.⁸⁵ But, given the strong track record of the HRC's establishment of new justice mechanisms, it seems less susceptible to the kind of intractable deadlock witnessed in the SC over the past 15 years.

E. USE PEACE OPERATIONS TO CONNECT HUMAN RIGHTS AND THE SC

Human rights have steadily become a more important aspect of UN peacekeeping, providing an important connective tissue that has gradually increased the role of human rights work in conflict settings.⁸⁶ In 1991, only the UN Observer Mission in El Salvador included a human rights element, whereas today every peacekeeping mission has a standalone human rights mandate and component.⁸⁷ This has led to greater incorporation of human rights-based analysis in the reporting on peace operations to the SC,⁸⁸ and a mainstreaming of human rights standards across peacekeeping missions.⁸⁹ Today, with protection of civilians as the highest priority of all major peacekeeping missions and SC mandates consistently including human rights as a standalone area, the contribution of human rights to mission mandates is widely recognized. This has required some complex arrangements — e.g. the human rights components of peace operations have a dual reporting line to the head of mission and to OHCHR — but has allowed for a clear point of contact between SC-mandated bodies and OHCHR.

This could be further developed, perhaps allowing for more frequent briefings by the High Commissioner for Hu-

84 S/RES/2379 (21 September 2017).

85 'Report of the 33rd Special Session of the Human Rights Council on the grave human rights situation in Ethiopia' Universal Rights Group (2021).

86 Weschler, J. 'Human Rights and the Security Council: A Relationship in Need of Thoughtful, Creative and Constant Cultivation' Jacob Blaustein Institute for the Advancement of Human Rights (2022) pp. 3, 10.

87 See, e.g., Office of the High Commissioner for Human Rights, 'United Nations Peace Operations Guidance Note: Integrating Human Rights in United Nations Military Components: Good Practices and Lessons Learned' (2013); Mamiya, R. 'Going Further Together: the contribution of human rights components to the implementation of mandates of United Nations field missions' New York: United Nations Department of Peace Operations and Office of the High Commissioner for Human Rights (2020).

88 Reports of the Secretary-General on peace operations contain direct inputs from OHCHR and rely on inputs by human rights officers in the field. See 'UN Policy on Human Rights in United Nations Peace Operations and Political Missions' Office of the High Commissioner for Human Rights, Department of Peacekeeping Operations, Department of Political Affairs and Department of Field Support Ref. 2011.20 (1 September 2011); 'Policy on Public Reporting by Human Rights Components of UN Peace Operations' UN Office of the High Commissioner for Human Rights, Department of Peacekeeping Operations, and Department of Political Affairs (July 2008); United Nations Policy Committee 'Decisions of the Secretary-General on Human Rights in Integrated Missions' United Nations (26 October 2005).

89 See, e.g., Office of the High Commissioner for Human Rights, 'United Nations Peace Operations Guidance Note: Integrating Human Rights in United Nations Military Components: Good Practices and Lessons Learned' (2013); Mamiya, R. 'Going Further Together: the contribution of human rights components to the implementation of mandates of United Nations field missions' New York: United Nations Department of Peace Operations and Office of the High Commissioner for Human Rights (2020).

man Rights to the SC on specific mission settings. Similarly, it would be appropriate for the HC to brief the HRC on emerging or neglected country and thematic issues inter-sessionally within the framework of the so-called informal conversations or briefings. This would serve as a way for the HRC to be informed about recent developments and potential areas of scrutiny.

F. BETTER USE OF SANCTIONS AS PART OF THE UN'S CONFLICT MANAGEMENT WORK

One area that has remained relatively cooperative within the SC has been the establishment of new sanctions regimes and the continuation of existing ones. Indeed, multilateral sanctions against the DPRK, Al Qaeda, and ISIS have been carried over by the SC even during the worst divisions amongst the P5.

Here, rather than replacing a dysfunctional aspect of the SC, the HRC could help to build on this area of relative cooperation amongst member states, and perhaps work to assuage some of the negative externalities of sanctions on human rights. Most UN sanctions regimes have human rights provisions, holding actors to account for serious violations of international human rights law. However, in general, sanctions monitoring focuses on the restrictions themselves: arms embargoes, travel bans, bank freezes, and related proscriptions. Less visible effort is put into monitoring the underlying behavior of the sanctioned actors. As a result, sanctions are often a fairly blunt instrument, focused on imposing restrictions on actors rather than a more sophisticated aspect of a strategy to change behavior. Moreover, monitoring seldom focuses on the possible negative humanitarian and human rights impacts of sanctions regimes, despite clear evidence that many regimes have unintended consequences. Here, greater connectivity between the HRC-mandated monitoring bodies and UN sanctions regimes could help address a broader range of risks in conflict settings.

G. GREATER USE OF ARTICLE 99 TO CONNECT THE HRC AND THE SC

One of the most underutilized conflict prevention tools in the UN system is Article 99, which provides the Secretary-General with the right to bring potential threats to

international peace and security to the attention of the SC. Examples of this include actions by the Secretary-General in respect to the Congo (1960), Iran (1979) and Lebanon (1989).⁹⁰ However, in the past 15 years, there are almost no instances of the Secretary-General's use of this article, despite a growing number of violent conflicts that fail to land squarely on the SC's agenda.

Here, the HRC could play a role in strengthening the Secretary-General's hand. In 2014 the HRC sent the findings of its Syria Commission of Inquiry to both the General Assembly and the Secretary-General for their action, the latter forwarding it to the SC rather than the General Assembly.⁹¹ While not directly a use of Article 99, it points to a possible role for the Secretary-General in connecting the work of the HRC to the SC. Could Article 99 be resuscitated as a conduit for a broader range of HRC-generated information, including findings of special rapporteurs, treaty bodies, and investigations, with the Secretary-General acting as a connector between the two bodies? While such a move would certainly be unpopular in some quarters, it would squarely align with Kofi Annan's "In larger Freedom" report (2005), Ban Ki-Moon's "Human Rights Up Front" initiative (2013) and Antonio Guterres' "Call to Action on Human Rights" (2020), all of which call for greater coherence between human rights and peace and security.

H. GRADUALLY UNDERSTAND THE HRC AS A PREVENTION ACTOR

One of the most visible shortcomings of the SC is its unwillingness to take preventive action, something largely attributable to its restrictive conception of peace. Indeed, when the UN was established in 1945, peace and security was defined in narrow terms as inter-state aggression and violations of territorial sovereignty. This has translated into a tendency on the part of some permanent members to regard the SC only being able to act after a conflict has broken out.⁹²

The HRC is well positioned to play an early warning-prevention role for the UN system as a whole. First, it has proven itself less bound to a narrow definition of peace and security, in part because it appears more open to a broader range of sources of information, and also because it tends to address a wider set of issues (e.g. human rights violations in the digital space, the right to a clean, healthy, sustainable environment,

90 Danesh, S. 'The Role of the United Nations Secretary-General in United Nations Peace-Keeping Operations' (1999) 20 *Australian Year Book of International Law* p.279. In 1999, the outcome of the Commission of Inquiry into human rights violations in Timor Leste were formally transmitted to the SC by the Secretary-General and used as the basis for its subsequent resolutions.

91 Resolution 28/20 (2015). See further 'Building a coherent Human Rights Council-Security Council relationship: The prevention of human rights crises, violent conflict and atrocity crimes' Universal Rights Group (2021) p. 10.

92 'Building a coherent Human Rights Council-Security Council relationship: The prevention of human rights crises, violent conflict and atrocity crimes' Universal Rights Group (2021) p.9.

and the right to development).⁹³ It also has a range of tools at its disposal for this purpose, including Special Rapporteurs, the Universal Periodic Review, and access to OHCHR's human rights offices in more than 160 countries worldwide.

Several steps could help the HRC better fulfill an early warning and prevention role for the UN system.⁹⁴ First, the empirical links between human rights violations and widespread violent conflict should be strengthened through a greater investment in interdisciplinary research. Specifically, it would be helpful to build an evidence base demonstrating the correlation between human rights violations and the risks of large-scale violence. Given the politicized dimensions of this kind of research, an independent analysis led by a grouping of scientists, academic institutions, and some UN actors might be needed.

Second, the information generated by HRC actors and procedures should be fed into an early warning and action process. This would require bolstering capacities to bring together and analyze information from the 57 Special Rapporteurs, 14 expert-led commissions, the UPR, and the 12 human rights mandates in UN peace operations. Existing structures, such as the UN Operations and Crisis Center, the UN Regional Monthly Review, could be strengthened to better draw on these sources of information. Such an effort would also build on existing human rights capacities, such as the Framework for Atrocity Prevention and Early Warning and Urgent Procedures developed by the Committee on the Elimination of Racial Discrimination.⁹⁵

Third, it is crucial that HRC-driven early warning is more closely linked to the peace and security architecture of the UN system. Recognizing that formal links to the SC may be impossible to establish, it may be worth considering: (1) formalization of the role of the HRC in briefing the PBC on a regular basis; (2) strengthening the roles for RCs to brief the HRC on country specific issues; (3) greater exchange between the special rapporteurs, SC, PBC, and maybe General Assembly (4) strengthening the presence of the HRC and its mechanisms in New York by multiplying briefings by the HRC President, Bureaus and bodies as well as participation in side-events or conferences to overcome the oft-cited Geneva – New York gap.

I. TOWARDS A MORE UNIVERSAL PREVENTION AGENDA?

A major impediment to the SC's prevention work is its relatively narrow focus on countries already in conflict. This follows from the SC's interpretation of its mandate to first identify threats to peace and security, and then act. Based on the Universal Declaration of Human Rights, the HRC has no such limitation. Indeed, the Universal Periodic Review creates a global obligation on all Member States to report on their efforts to uphold and protect human rights.

While it would be inherently challenging, could a similar universal framework be put in place for prevention? While the Responsibility to Protect doctrine may have gone too far for many Member States, it was largely the risk of intervention that caused opposition. But as the 2018 Pathways for Peace report notes, a broader definition of the risks to peace and security means that all countries have an obligation to take action towards better prevention. Indeed, Pathways for Peace specifically calls for the creation of national prevention strategies globally.

Here, the Sustaining Peace resolutions and the call in Pathways for Peace could be used to generate a global obligation on all States to report on their prevention actions. Like the UPR's universal requirement to report on human rights, a "UPR for prevention" could have the dual benefit of (a) ending the focus on fragile, conflict-affected settings, and (b) creating a global narrative around prevention that moves beyond the critique of the SC as a small group of major powers dictating global policy. We understand that such a proposal is being considered within the New Agenda for Peace process within the UN system.

J. CONSIDER THE HRC WITHIN THE SC REFORM DISCUSSIONS

The last reform of the SC that affected its membership was in 1963. Moreover, the fairly fixed positions of Member State groupings described in section 1 of this report do not seem to have changed much in the past 30 years and, despite recent announcements on the need for reform, these seems unlikely to move forward. This is in large part because the P5 sees no value in adding permanent members, and cannot agree on which non-permanent members it might add. The zero sum politics of today makes expansion very difficult.

93 Today, we recognize the threats to global stability as far broader and more diverse, including social, political, and economic factors; uneven progress on the SDGs; global health crises; the transformative effects of new technologies; and the global impacts of the triple planetary crisis. An excellent example of this broader definition of the role of multilateralism is discussed in 'Multilateralism Index: Pilot Report' International Peace Institute and Institute for Economics and Peace (2022) <<https://www.ipinst.org/wp-content/uploads/2022/09/Multilateralism-IndexFinal.pdf>>.

94 Limon, M. and Montoya, M. 'The Prevention Council: The business case for placing human rights at the heart of the UN's prevention agenda' Universal Rights Group (2020).

95 Tistoune, E. *The UN Human Rights Council: A Practical Anatomy* Edward Elgar Publishing (2020) pp. 37-43, 310, 316, 322-323.

Set alongside this quagmire of SC reform, the HRC is a relatively dynamic and more legitimate body. With universal membership, no veto powers, and majority voting, the HRC is everything the SC is not. While it might seem farfetched to link the two processes, one option could be for the SC to shift certain discussions and roles more directly to the HRC. For example, if the HRC had a formal set of joint meetings where peace and security issues were discussed directly with the SC, this could allay some of the harshest criticisms that the SC is isolated and fails to listen to other voices. Absent any likely traction on SC membership, the HRC could be an expedient way to address some of the legitimacy problems of the SC.

For example, a Uniting for Peace role for the HRC could eventually be articulated. Read together, Articles 27 and 52 of the UN Charter envisage that SC members abstain from using the veto in settings where they are directly involved. This is clearly not followed today: Russian vetoes on Syria and Ukraine – both with direct involvement of Russian forces on the ground – underscore the hollowness of this commitment. Indeed, the veto has been cited as one of the most important impediments to both the effectiveness and the legitimacy of the SC. It is also the least likely to change in the short term.

Here, the messiness of the UN's peace and security structures could be more usefully employed. Indeed, the HRC could identify conflicts where the veto was clearly obstructing (or likely to obstruct) SC action, and prioritize action on those. Like the Uniting for Peace resolution that allowed the General Assembly to take on a role when the SC failed to act, the HRC could adopt a similar posture: where the SC was unable to act, the HRC would identify a set of prevention-related steps it would take.

In conclusion, we are not of the view that the HRC can fill the void left by a dysfunctional SC, but the HRC's evolution as a more inclusive, legitimate, and at times effective actor in the peace and security space should generate a discussion about how to use the full UN architecture more creatively going forward.

ANNEX – CASE STUDIES

Case studies examining the actions of the UNSC, UNGA and HRC against recent conflicts

A. SYRIA 2011

The UNSC's inability to deescalate the conflict in Syria or limit civilian casualties has been held up as the UN's largest failing since the Rwandan genocide. In the wake of the uprisings, beyond deploying military observers in April 2012,⁹⁶ the Council remained deadlocked with Russia (sometimes supported by China) vetoing 16 draft resolutions, including one proposing to refer the situation to the International Criminal Court.⁹⁷ This was driven principally by the allied relationship between Russia and Syria, however contestation around the Council's invocation of the Responsibility to Protect doctrine to justify the use of force in Libya months earlier, also played a role.

This block continued until February 2014 when the Council passed its first resolution demanding an end to sieges and attacks on civilian populations, and calling for the uninterrupted flow of humanitarian goods and personnel. It would go on to pass 11 more resolutions on humanitarian aid and access, four resolutions calling for an end to hostilities/a political solution, and four resolutions on the terrorism dimensions of the conflict. It also issued five resolutions on the use of chemical weapons. Initially, this was held up as proof that even in highly polarized circumstances, there were still matters that the Council could come together on. However in 2017 Russia vetoed a renewal of the mandate of the Joint Investigative Mechanism, effectively ending the investigation into the Assad government and other combatant's actions.⁹⁸

In contrast to this slow-moving and contested progress, the HRC's early moves were pragmatic and instructive. On 29 April 2011 — only weeks after OHCHR first warned of the potential for conflict⁹⁹ — it convened a Special Session authorizing a fact finding mission “to investigate all alleged violations of international human rights law and to establish the facts and circumstances of such violations and of the

96 S/RES/2042 (14 April 2012).

97 Poes, A. The UN General Assembly as a Security Actor: Appraising the Investigative Mechanism for Syria (on file with authors) pp.565; Weschler, J. 'Human Rights and the Security Council A Relationship in Need of Thoughtful, Creative and Constant Cultivation' Jacob Blaustein Institute for the Advancement of Human Rights (2022) p.2; Against this deadlock, Christian Wenaweser, Liechtenstein's Representative to the UN, attested in the UN General Assembly that the 'disagreement between those members of the Security Council that have veto power has led time and again to inaction'.

98 'In Hindsight: The Demise of the JIM' Security Council Report (27 December 2017) < https://www.securitycouncilreport.org/monthly-forecast/2018-01/in_hindsight_the_demise_of_the_jim.php > Poes, A. The UN General Assembly as a Security Actor: Appraising the Investigative Mechanism for Syria (on file with authors) pp 264-265.

99 On 25 March 2011 the OHCHR spokesperson reported that the Syrian Government had used live ammunition on peaceful protestors: UN News Service, *Syria: UN human rights office voices concerns about situation*, 25 March 2011, available at <https://www.refworld.org/docid/4d92beb1e.html>.

crimes perpetrated...". The subsequent report was presented on 18 August 2011,¹⁰⁰ triggering a further special session where Resolution S-17/1 was passed establishing the Independent International Commission of Inquiry on the Syrian Arab Republic (CoI). The Commission, which enjoys a broader mandate than its predecessor with respect to pursuing accountability,¹⁰¹ has since issued 24 statements, 26 reports and 14 conference/policy reports.

Throughout this period, the geopolitical divisions stymieing the UNSC carried over to the UN General Assembly, which only dealt with the situation as a regular annual agenda item. This only changed in December 2016 with two additional resolutions — A/RES/71/130 and A/RES/71/248 — passed within a two week timeframe. The former 'On the Situation of the Syrian Arab Republic', urged the UNSC to exercise its responsibility for the maintenance of international peace and security.¹⁰² The latter established an 'International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011'(IIIM).¹⁰³ This was not an attempt to usurp the work of the CoI, nor to demote the prosecutorial value of its findings. Indeed, IIIM's mandate references the work of the CoI and requires the bodies to cooperate closely.¹⁰⁴ Today, despite issues around funding, the IIIM is managing two open case files and has assisted in 36 investigations led by competent domestic jurisdictions.¹⁰⁵

B. IRAQ 2014

Against its lackluster response in Syria, how the UNSC addressed the threat posed by ISIL in Iraq shows that it can act swiftly and decisively. Context however is critical. ISIL's violation of the territorial integrity of member states, coupled with the brutality exacted on civilian populations, ren-

dered it a shared threat to the international community absent of any vested member state involvement. Between June 2014 and December 2017, the UNSC passed 12 resolutions on the situation — three issuing sanctions, three on accountability for gross violations of human rights and international humanitarian law, and six concerning terrorism.

The HRC again played an important parallel role. On 1 September 2014, it convened a special session and requested the High Commissioner to dispatch an investigatory mission. The subsequent report — communicated to the HRC on 25 March 2015 — revealed credible evidence of genocide, war crimes and crimes against humanity, and urged the UNSC to refer the situation to the ICC. Two days later, then-High Commissioner Zeid Ra'ad Al Hussein briefed the UNSC in formal session. This was not a perfunctory act of cooperation; subsequent UNSC resolutions drew on the wording of the HRC report, and routinely referenced ongoing violations on human rights and international humanitarian law.

Then, on 9 August 2017, the Government of Iraq called upon the international community to assist in ensuring that ISIL members were held accountable for their crimes in Iraq. The SC unanimously adopted resolution 2379, requesting the Secretary-General to establish an investigative team to collect, preserve and store evidence of acts that might amount to war crimes, crimes against humanity and genocide committed in Iraq. Operative from 31 May 2018, the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) reports back to the SC every 180 days and has issued 9 reports to date.¹⁰⁶ Importantly, while UNITAD works according to international prosecutorial standards, its mandate requires full respect for Iraq's relevant laws as well as its right to exercise jurisdiction over crimes committed on its territory.¹⁰⁷

100 A/HRC/18/53 Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Syrian Arab Republic (2011).

101 The mandate of the Commission is to investigate all alleged violations of international human rights law since March 2011 in the Syrian Arab Republic and to present public reports on its findings. The Human Rights Council also tasked the Commission with establishing the facts and circumstances and to support efforts to ensure that all perpetrators of abuses and violations, which may include those responsible for crimes against humanity and war crimes, are identified and held accountable. The Human Rights Council has repeatedly extended the Commission's mandate since then, most recently until 31 March 2023.

102 Point 2 and 10 respectively.

103 A/RES/71/248 (21 December 2016)). The resolution was drafted by Liechtenstein and was passed with 105 votes in favour to 15 against with 52 abstentions, UNGA Pues, A. 'The UN General Assembly as a Security Actor: Appraising the Investigative Mechanism for Syria' (on file with authors) pp.267, 563. Similar to the CoI, the objective was to collect and store evidence in anticipation that a future court able to exercise jurisdiction over atrocity crimes taking place during this period.

104 As at January 2023 the IIIM had 59 cooperation frameworks in place, see <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/040/13/PDF/N2104013.pdf?OpenElement>.

105 It has also pioneered the use of digital and open source information, prioritized strategies on gender and crimes against children, strategy and the importance of a survivor-centred approach. Assistance includes providing supporting evidence and analytical products. As at its 7th report the IIIM had received 92 requests for assistance from 11 competent jurisdictions investigating and prosecuting offences in the Syrian context.

106 UNITAD's mandate was last extended on 15 December 2022.

107 It also engages with national governments, impacted communities and survivors in order to strengthen the global response to ensuring accountability for acts that may amount to atrocity crimes committed by Da'esh/ISIL.

C. UKRAINE 2022

Russia's war of aggression against the Ukraine epitomizes how geopolitics can render the UN's principal tools for deescalating conflict inoperable. Indeed, while the UNSC has met to discuss the Ukraine situation 26 times since January 2022 it has been unable to pass any non-procedural resolutions. Arguably, the inevitability of this stagnation did mean that alternate pathways were activated early in the conflict. Russia's veto of draft resolution S/2022/115 on 25 February 2022¹⁰⁸ and the subsequent Uniting for Peace Resolution (S/RES/2623)¹⁰⁹ all took place within roughly 72 hours of the initial invasion. This facilitated five General Assembly meetings under Emergency Special Session 11, however a carryover of geopolitical divisions meant that the resolutions passed did not go beyond condemning attacks and demanding Russia's withdrawal. The Assembly's strongest act — suspending the rights of membership of the Russian Federation in the HRC (Res ES-11/3, 7 Apr 2022) — was symbolic at best and even then the sponsors worked harder than expected to find the two-third majority votes required.¹¹⁰

The most effective action has undoubtedly been orchestrated by the HRC. Following a request by the Permanent Representative of Ukraine on 24 February, the Council convened an urgent debate which took place 3-4 March. Under resolution 49/1 it established an Independent International Commission of Inquiry, for an initial 12 month period, to complement, consolidate and build upon the work of the [UN Human Rights Monitoring Mission in Ukraine \(HRMMU\)](#).¹¹¹ In addition to oral updates to the HRC, the resolution required that a report be submitted to the 77th session of the General Assembly. This report — transmitted by the Secretary-General (A/77/533, 18 Oct 2022) — outlined evidence of war crimes, violations of human rights and international humanitarian law committed by both parties to the conflict, with Russian armed forces responsible for the vast majority of the violations identified.

108 United Nations. Security Council Resolution S/RES/2623 (27 February 2022).

109 On 25 February, the draft resolution submitted by Albania and the United States calling for an end to the Russian Federation's military offensive was vetoed by the Russian Federation. Two days later, UNSC RES/2623 (27 February 2022) a "Uniting for Peace" resolution calling for an "emergency special session" (ESS) of the General Assembly was adopted with 11 votes in favour, one against (Russia), and three abstentions (China, India, and the UAE).

110 This resolution was passed with 93 votes in favour, 24 against, and 58 abstentions.

111 United Nations Human Rights Council Resolution A/HRC/RES/49/1 (4 March 2022).

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