

Human Rights and the Security Council

*A Relationship in Need of Thoughtful,
Creative and Constant Cultivation*

Discussion Paper
By Joanna Weschler
October 2022

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By Joanna Weschler

I. Introduction

The day when, on 22 December, 2014, the Security Council voted to add “The situation in the Democratic People’s Republic of North Korea” to its agenda because the existence of large-scale human rights violations had been seen by most members as a destabilizing factor and a threat to international peace and security was, in retrospect, a high-water mark in the relationship of the Security Council with human rights.

It took the Security Council over four decades to acknowledge the relevance and usefulness of human rights to its efforts to maintain international peace and security. For years, human rights had been considered as internal matters of member states, a view held particularly strongly by the Communist bloc but shared by others as well. Accepting that human rights cannot be excluded from the reality the Council is striving to address was a slow and complicated process. This acceptance came largely out of the Security Council’s pragmatism and the realization that lasting peace is less likely to be achieved if certain aspects of the overall environment are off limits. Following the end of the Cold War, human rights entered the Security Council’s discussions and analysis and, crucially, the Council began including human rights components in peace operations it created or started using grave human rights violations as possible criteria for imposing targeted sanctions on the perpetrators of these human rights abuses.

After nearly a quarter of century of considerable increase in including human rights as a factor in its analysis and action with regards to the situations the Security Council has been dealing with, the last seven years or so have seen the opposite trend. The direct interaction of the Security Council with the UN human rights system, previously quite robust, has diminished quite visibly in the past several years.

A comparison of this interaction in the first month after the 2014 annexation by Russia of Crimea and the 2022 invasion of Ukraine is particularly telling. In 2014, the New York-based Assistant Secretary-General for Human Rights and head of the UN office of the High Commissioner in New York first briefed the Council just a few days after Crimea’s annexation and again less than a month later. In 2022, the Council held 12 meetings on Ukraine prior to and through the first month after the 24 February invasion, with briefers including the Secretary-General, the Under Secretary-General (USG) for Political and Peacebuilding Affairs, the USG for humanitarian affairs, the USG for disarmament affairs, the head of the UN Refugee Agency, the head of the World Health Organization, and the director of the UN Children’s Fund, among others, but with no briefing by the High Commissioner for Human Rights or a representative. The first time High Commissioner Michelle Bachelet was invited to brief the Council on Ukraine was on May 5, more than two months into the conflict.

In the first six months following Russia’s 2014 annexation of Crimea, a senior UN human rights official briefed the Council in a formal meeting or in consultations five times. In the first six months following the invasion of Ukraine by Russia in 2022, a senior human rights official briefed the Council, in a formal meeting, once.

Over the past several years, the Security Council has been largely impotent vis a vis the world’s acute crises involving massive human rights violations: Syria, Myanmar, Yemen, or Ethiopia. The recurrence of human rights crises followed by unfulfilled pledges on the part of the UN system that such failures would never happen again calls for a new concerted effort to salvage the UN human rights agenda, with the Security Council fully using its

potential in this context. This paper will provide an analysis of the situation as it stands by the end of September 2022, examine the reasons for the current decline in the UN Security Council's engagement with human rights and suggest ways to begin reversing this trend. The appointment of a new high commissioner for human rights combined with the gradual return from the COVID-19 lockdown to in-person gatherings may be a good moment to attempt this.

In the face of the Council's failure to address some conflicts with massive human rights violations, member states, including Security Council members, have started looking towards other options.

An important recent such example involves resorting to the "Uniting for Peace" formula that allows the General Assembly to take on a peace and security issue when the Security Council fails to exercise its primary responsibility due to the divisions among its permanent members. The formula, established in 1950 by the General Assembly resolution 377(V) has been used very infrequently and was last invoked by a Security Council member in 1982. Following the 25 February 2022 Russian veto of a resolution that would deplore the aggression against Ukraine, demand complete Russian withdrawal from Ukraine and condemn, among other things, human rights violations and abuses, Albania and the US put forward a procedural resolution referring the matter to the General Assembly.¹ (Procedural resolutions are not subject to a veto and resolution 2623 was adopted with 11 votes in favor, Russia's vote against and abstentions by China, India and the United Arab Emirates). The General Assembly, in turn, convened an emergency special session and following a debate, on 2 March overwhelmingly adopted resolution ES-11/1, containing the key points of the vetoed draft of the Security Council resolution.

An attempt by France and Mexico to have the Council adopt a resolution on humanitarian aspects of the war in Ukraine was met with Russia's drafting and eventually putting to a vote its own alternative text.² The Russian draft was not adopted, having received votes in favor from China and Russia only and 13 abstentions. France and Mexico, meanwhile, had decided to abandon their effort within the Council and took their draft to the General Assembly.³ Following a debate in the resumed special session, on March 24, the General Assembly overwhelmingly adopted resolution ES-11/2, condemning all violations of international humanitarian law and violations and abuses of human rights, demanding, among other things, an immediate cessation of hostilities, full protection of civilians, protection of key civilian infrastructure, safe and unhindered humanitarian access and protecting those fleeing the conflict, including foreign nationals.

Furthermore, on 26 April 2022, the General Assembly adopted a resolution requiring the Assembly to hold a plenary session within ten working days of a Security Council veto to discuss the situation on which the veto was cast and for those casting it, to explain why they did it.⁴ In cases of vetoes of resolutions with human rights content, these debates would offer an opportunity for members to raise human rights concerns and their concerns about the Council's failure to address them.

An earlier example of member states' turning to the General Assembly on issues that might have been dealt with by the Security Council had it not been paralyzed by the vetoes was the creation in December 2016 of the International, Impartial and Independent Mechanism for Syria (IIIM).⁵ Alarmed by increasing reports of gross human rights violations and the likelihood that some of them amounted to crimes against humanity and faced with the inability of the Security Council to refer the Syrian conflict to international justice bodies, member states turned to the General Assembly to create a body that would preserve evidence and do preparatory work for any future prosecutions.

1 Security Council resolution S/RES/2623 (2022)

2 A draft resolution contained in document S/2022/231

3 See videos of a Security Council media stakeout appearances by the Permanent Representatives of France and Mexico on March, 14, 2022

<https://media.un.org/en/asset/k1x/k1x1ft5h2t> and on March 23, 2022 <https://media.un.org/en/asset/k17/k1762ei1r5> (both accessed on April 6, 2022)

4 General Assembly resolution A/RES/76/262

5 General Assembly resolution A/71/248

New York-based representatives of some leading human rights NGOs have also described how the Council ceased to be their key advocacy target in New York. One person interviewed described how a few years ago most of their attention was on the Security Council, but now it is on how to make the most effective use of other bodies in New York to advance human rights goals. Another person echoed similar sentiments, describing looking for other fora where their organization's advocacy could have a stronger human rights impact. This included both New York-based UN bodies but also those previously not seen as promising in terms of human rights advocacy such as the Organisation for the Prohibition of Chemical Weapons based in The Hague.

While the measures undertaken by bodies other than the Security Council are important, they are no substitute for concerted attention and action by the Security Council to recognize and respond to large-scale human rights violations.

With all the above trends in mind, it is important not to lose track of the fact that the now somewhat distant years of the incremental engagement of the Security Council with human rights have left an important legacy.

II. Security Council Tools Used to Advance Human Rights

During the period following the end of the Cold War, the Security Council created or adapted several tools that have been used to promote and protect human rights. In addition to human rights components of peace operations and targeted sanctions, the Council has also creatively used visiting missions as well as different meeting formats to address conflict situations with severe human rights violations. This legacy needs to be preserved, regularly drawn upon and further developed. These tools—and how they evolved over recent years—deserve a closer look. Some are little known and appear very technical at first glance, but collectively they create opportunities and solid grounds for engaging with Council members on human rights. If the current trend suggesting the shrinking of the human rights space within the Security Council is to be remedied, particularly vital will be the appreciation for and the full use of the still existing devices.

A. Human Rights Components of Peace Operations

Peace operations (both peacekeeping and special political missions) continue to be the Council's most powerful tool, one with a potential for bringing about a meaningful change on the ground or serving as a mitigating factor in conflict situations. When a mission is equipped with a human rights mandate and has trained human rights officers among its civilian staff, its potential for protecting and promoting human rights on the ground is significant.

As of this writing, 12 peace operations—five of them peacekeeping missions and six special political missions—have human rights mandates and capacity (referred to as human rights components). They are, in chronological order of their deployment, the UN Missions in Kosovo (UNMIK), Iraq (UNAMI), the Democratic Republic of the Congo (MUNUSCO), Afghanistan (UNAMA), South Sudan (UNMISS), Libya (UNSMIL), Mali (MINUSMA), Somalia (UNSOM), Central African Republic (MINUSCA), Haiti (BINUH), and Sudan (UNITAMS). A human rights component of the UN Interim force for Abyei, or UNISFA, also in Sudan, became operational in 2022. Collectively, they deploy over 550 human rights personnel with the human rights components' sizes ranging from a few to as many as 100 staff members.

For the first four decades of peace operations' history, human rights components were non-existent, and these human rights capacities only gradually came into being in the wake of the Cold War. Initially, they were very rare and, critically, such mandates and personnel were absent from areas of deployment with massive human rights violations such as the former Yugoslavia in the 1990s or Rwanda. Gradually, the inclusion of human rights mandates in the resolutions and deployment of human rights components on the ground when new missions are created has become almost a rule.

For the Council, including human rights mandates means consistently receiving human rights information in the Secretary-General's periodic reports and in briefings by the heads of the missions and other invited briefers and a possibility of thorough briefings on short notice when serious incidents take place. The Council, thus, gets a much fuller picture of the reality on the ground than was the case when genocide occurred in Rwanda and the former Yugoslavia literally under the watch of Council-mandated operations. Receiving and discussing human rights information regularly also makes it possible for the Council to shape the mandates accordingly during mandates' renewals.

For the populations on the ground, including human rights mandates means that—at times—the presence of human rights officers has a mitigating effect on potential perpetrators, and that—in some cases—preventive intervention is possible after receiving or observing warning signs, or that there may be investigation into specific human rights violations that did occur and potentially, accountability for these violations.

All of the currently existing human rights components of the Security Council mandated peace operations were created between 1999 and 2014. Two missions, BINUH in Haiti, and UNITAMS in Sudan, launched in 2019 and 2020, respectively, have succeeded peacekeeping operations with human rights components. In both cases, the Council decided to maintain the respective human rights components, albeit with changes in their design.

The overall number of peace operations decreased since 2014. Five missions, all of them in Africa and each a source of up-to-date human rights information for the Council, completed their operations. The UN Integrated Peacebuilding Mission in Sierra Leone (UNIPSIL) shut down on 31 March, 2014. The United Nations Office in Burundi completed its mandate on 31 December 2014. The mandate of the UN Operation in Côte d'Ivoire (UNOCI) ended on 30 June, 2017. The UN Mission in Liberia (UNMIL) ended on 30 March, 2018. And most recently, on 31 December, 2020, the mandate of the UN Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS) expired.

Creating entirely new peace operations has in the last several years become very rare in the Council's practice. The last two missions it created have been the Verification Mission in Colombia launched in 2017 and the Mission to Support the Hodeidah Agreement in Yemen created in 2019. These two missions have mandates focusing on the implementation of specific agreements between different parties to the respective conflicts, without human rights tasks or components.

In Colombia, however, the Office of the High Commissioner for Human Rights had maintained a monitoring presence on the ground pre-dating the peace agreement by almost two decades. The regular Secretary-General's reports and the head of the mission's briefings, while largely focused on the implementation of the agreement, provide considerable human rights context. Staff of the monitoring mission and of the human rights office have been collaborating and have undertaken activities such as joint investigations or field visits.

In Yemen, the mission is mandated to support an agreement that concerns only the territory of the city of Hodeidah and the Ports of Hodeidah, Salif and Ras Issa. There is no ongoing UN human rights monitoring in the area of operation of the mission. Since the current hostilities in Yemen began in 2015, the Council received one briefing in December 2015 from the High Commissioner for Human Rights and one Arria-formula briefing from the Human Rights Council's Group of Eminent International and Regional Experts on the human rights situation in Yemen in December 2020 (the latter meeting had originally been planned as a formal briefing, but some Council members opposed its holding). Human rights concerns have occasionally been raised in the monthly briefings by and subsequent discussions with the Secretary-General's Special Envoy for Yemen and information specific to children's rights violations has been included in Secretary-General's reports on children in Yemen. The source of most substantive and regular human rights information regarding Yemen have been the reports of the panel of experts assisting the Yemen Sanctions Committee (see the section further below on human rights information in the context of Security Council sanctions).

One way to measure how effective the Council is in maintaining international peace and security is to look at countries from which peace operations had been withdrawn in recent years. It may be useful to compare the

conditions in the country when the Council mandated the operation to those prevalent when the mission was closed down and to assess to what extent the improvements achieved during the mission's lifespan have lasted following its termination. Three west African countries where peace operations were terminated between 2014 and 2018—Côte d'Ivoire, Liberia and Sierra Leone—each had experienced severe instability with high levels of violence and human rights violations at the time when the respective missions, UNOCI, UNMIL and UNIPSIL, were deployed. Each of these missions had a human rights mandate. Between eight and four years since the different missions' closure, each of the three countries has experienced a relative stability, without the resurgence of the internal conflicts and the accompanying endemic human rights violations.

B. Human Rights Due Diligence Policy

A tool relatively little-known outside the Council that can be used in protection and promotion of human rights is the human rights due diligence policy (HRDDP) which prohibits UN support “where there are substantial grounds for believing there is a real risk of the receiving entities committing grave violations of international humanitarian, human rights or refugee law and where the relevant authorities fail to take the necessary corrective or mitigating measures”.⁶ The policy had originally been developed in 2009 in the context of MONUC, the UN peacekeeping operation in the Democratic Republic of the Congo (DRC) preceding the current one, MONUSCO, and as a response to the possibility of MONUC's conducting joint operations with or rendering support to the national military forces.⁷ It was initially referred to as the human rights conditionality policy and was meant to apply to potential cooperation with security forces only.

In 2013, the Secretary-General sent a letter to the presidents of the General Assembly and the Security Council with a document outlining the policy, now called HRDDP. It said that HRDDP “applies to all United Nations entities providing support to non-United Nations security forces. It therefore applies not only to peacekeeping operations and special political missions, but also to all United Nations offices, agencies, funds and programmes that engage in such activities.”⁸ The policy obliges the head of the UN presence on the ground to inform potential recipients of most forms of support of the existence of the policy. The head of the presence is to prepare a risk assessment and develop a system for monitoring recipients' behavior “to detect grave violations of international humanitarian, human rights and refugee law and the recipient institution's responses to any violations.”⁹ Monitoring is to include information gathered from local protection of civilians' networks. It also outlines steps to be taken when violations of human rights are detected or suspected, ranging from a warning, through suspension to the withdrawal of support.

In essence, the policy includes both a carrot and a stick: it foresees joint projects with state entities contingent on the absence of specific human rights violations. A mission can issue warnings to those reported to have committed human rights violations and cut cooperation, but most of all having this policy places human rights squarely on the agenda of interactions between the mission and the host government. The provision in the policy of involving information gathered by local networks creates a potential opening for civil society to actively engage with the mission when human rights violations are committed by recipients of UN support.

After the policy was publicly circulated in 2013, the Security Council began including references to HRDDP in resolutions renewing the mandates of most of the existing peace operations as well as in the renewal of the authorization for the African Union mission in Somalia, AMISOM. In at least one case, the most recent two renewals of the UN mission in Lebanon (one of the peacekeeping missions without a human rights component) the Council also invoked the HRDDP.¹⁰

⁶ Document A/67/775-S/2013/110 contains a letter from the Secretary-General to the presidents of the General Assembly and the Security Council transmitting the text of HRDDP.

⁷ Document S/2009/623 was a periodic Secretary-General's report on the UN peacekeeping mission in the DRC in which a possibility of resorting to a human rights conditionality policy was raised.

⁸ A/67/775-S/2013/110

⁹ Ibid.

¹⁰ Security Council resolution S/RES/2591 (2021) and S/RES/2650(2022)

C. UN Sanctions as a Tool in Protecting Human Rights¹¹

Massive human rights violations have been among the impulses for imposing sanctions from the early years of the Security Council's use of this tool. Resolution 253 of 29 May 1968, on Southern Rhodesia, imposed comprehensive economic sanctions and condemned “all measures of political repression, including arrests, detentions, trials and executions which violate fundamental freedoms and rights of the people of Southern Rhodesia.” It also mentioned among the goals of imposing such measures, to “enable the people to secure the enjoyment of their rights as set forth in the Charter of the United Nations.” The 4 November 1977 resolution 418 imposing comprehensive economic sanctions on South Africa strongly condemned “the South African Government for its resort to massive violence against and killings of the African people, including schoolchildren and students and others opposing racial discrimination” as well as “for its acts of repression.”

The UN Charter in its Article 41 foresees a possibility for the Security Council to impose sanctions to achieve its goal of maintaining international peace and security. Article 41 proclaims that the “Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures.” The Charter provides a list of examples of sanctions saying that “these *may include* [emphasis added] complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”

Currently, UN sanctions are in place for 13 countries and one set of sanctions—terrorism related—applies worldwide. Their purposes differ and include cutting off sources of income for insurgencies through commodity sanctions; reducing the ability of warring parties to arm themselves through arms embargos, and, particularly relevant in human rights context, changing the behavior of decision-makers through measures such as travel bans and asset freezes. All UN sanctions currently in place are targeted and several have human rights violations among the reasons for sanctioning a person or an entity.

The Council has imposed sanctions 30 times, but only twice before the 1990s (the mentioned above sanctions against Rhodesia and South Africa), with most instances occurring in the 1990s and early 2000s. While initially sanctions were comprehensive and applied to an entire country affecting its population, over the years, the Council developed ways to target with sanctions particular sectors, commodities, entities or—most critically for human rights—individuals. In most cases of sanctions applied in specific countries, persons targeted with sanctions such as travel bans or asset freezes have been decision-makers or those responsible for particular activities. Security Council sanctions can be and have been an important tool to bring about a change in governments' and individuals' behavior that can, in turn, lead to significant human rights improvements.

The first time the Council foresaw a possibility of imposing targeted sanctions for committing human rights violations was most likely on 22 April 2004 when in its thematic resolution 1539 on children and armed conflict it expressed “its intention to consider imposing targeted and graduated measures, through country-specific resolutions” on parties violating children's rights, in particular through the recruitment and use of child soldiers. Later that year, in resolution 1572 on Côte d'Ivoire, the Council moved to targeting individuals in a specific conflict when it decided that travel bans will apply to any “person determined as responsible for serious violations of human rights.” Other similar decisions soon followed.

In its first thematic resolution on sexual violence in armed conflict, adopted on 19 June 2008, as resolution 1820, the Council expressed “its intention, when establishing and renewing state-specific sanctions regimes, to take into consideration the appropriateness of targeted and graduated measures against parties to situations of armed conflict who commit rape and other forms of sexual violence against women and girls in situations of armed conflict.”

¹¹ Information in the body of this document reflects the situation as of 30 September 2022. On 21 October, following months of violence and lawlessness in Haiti, the Security Council unanimously adopted resolution 2653, drafted by the US and Mexico, imposing targeted sanctions against gang leaders. For more details on the history of the Council's use of sanctions in the context of human rights violations, see *Human Rights and the Security Council—An Evolving Role*, Security Council Report, January 2016.

In most current cases, human rights violations are among the reasons for sanctions' imposition overall and among the criteria for targeting individuals with sanctions. Human rights violations are among the criteria for imposing targeted sanctions for parties to the conflicts in Central African Republic, the Democratic Republic of the Congo, Libya, Mali, Somalia, South Sudan, Sudan and Yemen.

Imposing sanctions on an individual or an entity is usually a two-step process. When adopting a sanctions resolution, the Council decides that specific actions may—in principle—be grounds for making an actor subject to the sanctions. A decision to, indeed, apply specific sanctions to specific targets is usually taken by a subsidiary body of the Security Council, the respective sanctions committee. Each committee is composed of all Council members and operates by consensus. Agreeing on specific sanctions' targets may take years and is sometimes very difficult. On some relatively rare occasions, the Council has included a list of targets as an annex to its resolution concerning the particular set of sanctions and in one case, that of Sudan in 2006, adopted a resolution whose sole purpose was publishing a list of four individuals to be sanctioned, all of whom were notorious human rights violators and abusers.¹²

Having human rights violations and abuses as possible reasons for sanctioning affords actors conducting advocacy on the specific situation—member states, human rights NGOs, women and children's rights defenders—opportunities for bringing human rights information to the attention of the specific sanctions committee.

Each of the eight sets of sanctions where human rights violations may constitute grounds for the imposition of targeted measures have among their targets individuals who have committed violations of international human rights law or, more specifically, violations of children's rights or acts of sexual and gender-based violence in conflict. In chronological order of the sanctions' imposition, they concern:

Somalia¹³—there are currently 21 individuals and one entity, Al-Shabab, targeted by the sanctions. Among the criteria for listing Al-Shabaab is the recruitment of children. All 21 individuals on the sanctions list are members of Al-Shabaab; two of them have recruitment of children and sexual and gender-based violence mentioned specifically among the reasons for their listing.

Democratic Republic of the Congo¹⁴—there are currently 36 individuals and nine entities on the DRC sanctions targets list. Numerous human rights violations, including sexual violence and child recruitment are among the criteria for listing of rebel groups Allied Democratic Forces, Forces Democratiques de Liberation du Rwanda and M23. Of the 36 individuals, 32 have human rights violations included in the narrative reasons for listing or belong to one of the above-mentioned listed entities.

Sudan¹⁵—there are currently three individuals targeted by the Sudan sanctions, all three were placed on the list via resolution 1672 (2006) and all are deemed responsible for severe human rights violations. (A fourth person on the original list has reportedly died in 2012.)

Libya¹⁶—of the 29 currently sanctioned individuals, 16 were included in the annex to resolution 1970, the first one on Libya sanctions and with strong human rights language. Two of the individuals in the annex were listed specifically for human rights violations. In 2018, seven more individuals were sanctioned for, among other things, planning, directing or committing human rights violations or abuses and in 2021 one more individual was added to the list for similar acts

Central African Republic¹⁷—of the 14 currently sanctioned individuals, 11 have human rights violations, atrocities, sexual violence in conflict or child recruitment included among the reasons for their sanctioning.

¹² Security Council Resolution S/1672 (2006)

¹³ <https://www.un.org/securitycouncil/sanctions/751/materials/summaries> accessed on 10 October 2022

¹⁴ <https://www.un.org/securitycouncil/sanctions/1533/materials/summaries> accessed on 10 October 2022

¹⁵ <https://www.un.org/securitycouncil/sanctions/1591/materials/summaries> accessed on 10 October 2022

¹⁶ <https://www.un.org/securitycouncil/sanctions/1970/materials/summaries> accessed on 10 October 2022

¹⁷ <https://www.un.org/securitycouncil/sanctions/2127/sanctions-list-materials/summaries> accessed on 10 October 2022

Yemen¹⁸—of the 12 individuals currently under targeted sanctions, two have been listed for human rights violations. One of the individuals was listed for acts including playing “a prominent role in a policy of intimidation and use of systematic arrest, detention, torture, sexual violence and rape against politically active women” as well as directly inflicting torture in some cases.¹⁹ The most recently added individual was sanctioned, among other acts, for orchestrating torture and detention.²⁰

South Sudan²¹—there are currently eight individuals under targeted sanctions, of whom seven have human rights violations, including sexual violence and child recruitment in some of these cases, among the reasons for being sanctioned.

Mali²²—of the eight individuals currently under targeted sanctions, one has human rights violations including sexual exploitation among the reasons for being sanctioned.

Even before any individual is targeted specifically for reasons including human rights violations or where very few listings are made due to the lack of consensus in the sanctions committee, the very fact that human rights violations are among the criteria that the resolutions set for sanctioning any person or entity means that the Council will be receiving thorough human rights information. The example of Sudan provides a useful illustration. Since 2006, the Sudan Sanctions Committee has not agreed on sanctioning any additional individuals or any entities. But because human rights violations are among the targeting criteria, the Council has received regularly detailed human rights information including the names of the alleged perpetrators of human rights violations and abuses from the Sudan Sanctions Committee’s panel of experts.

All but three currently existing sanctions committees are supported by panels of experts, teams of specialized investigators who monitor the implementation of sanctions and provide updated information about the overall situation in the area of sanctions’ application. The panels submit detailed reports to the Council and—in cases where human rights concerns are among the reasons for sanctions and regardless of whether anyone is sanctioned under human rights related criteria—they include human rights information. In situations which are under sanctions but where there is no peace operation with a human rights component, the panels of experts’ reports are the key conduit for the Council to receive human rights information. Currently, such is the case of Yemen.

All sanctions committees are currently chaired by elected Council members who during their terms develop impressive expertise with respect to the area of sanctions’ application. In the years prior to the outbreak of the COVID-19 pandemic, chairs of the sanctions committees conducted periodic visits to locations relevant to the sanctions whose committees they chaired and developed knowledge of the conditions on the ground and familiarity with key actors and key challenges. These visits have resumed in late 2021 and as of this writing, at least one was scheduled to take place before the end of the year. With the currently prevailing penholder system, this in-house expertise is not fully used in formulating Council’s decisions and some penholders do not consult with sanctions committee chairs even on drafts concerning the sanctions. However, for those engaged in lobbying or advocacy on a specific situation, the chair of the respective sanctions committee should be seen as a key interlocutor.

1. A Note on Counter-Terrorism

The counter-terrorism sanctions, officially referred to as the “1267 (1999) 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da’esh), Al-Qaida and associated individuals, groups, undertakings and entities” sanctions deserve a closer look in the context of human rights, albeit from a different angle. Human rights violations or abuses are not among the reasons for sanctioning the over 400 individuals on

18 <https://www.un.org/securitycouncil/sanctions/2140/materials/summaries> accessed on 10 October 2022

19 Security Council resolution S/RES/2564 of February 25, 2021

20 <https://www.un.org/securitycouncil/content/motlaq-amer-al-marrani>, accessed on 10 October 2022

21 <https://www.un.org/securitycouncil/sanctions/2206/materials/summaries> accessed on 10 October 2022

22 <https://www.un.org/securitycouncil/sanctions/2374/materials/summaries> accessed on 10 October 2022

these sanctions' target list. But gradually, cautionary human rights language has been introduced in counter-terrorism sanctions resolutions as well as in thematic resolutions on combating different aspects of terrorism, stressing that governments imposing counter-terrorism measures must do so in accordance with the applicable human rights law. Resolutions 2253 (2015) expanding sanctions' listing criteria; 2396 (2017) on foreign terrorist fighters; and 2462 (2019) on the financing of terrorism, all stress the need for actions to combat terrorism to be undertaken with respect for human rights and fundamental freedoms. Thus, there have been occasional human rights references in the reports the committee receives from its monitoring team.

The Council has incrementally included human rights language in its renewals of the mandate of the Counter-Terrorism Executive Directorate (CTED), a UN secretariat body that assists the Council's Counter-Terrorism Committee and provides capacity building advice to countries around the world related to their work in combating terrorism. The successive resolutions renewing CTED's mandate have stressed that effective counter-terrorism measures and respect for human rights are mutually reinforcing and complementary. The human rights language included in resolutions on combating terrorism also creates a platform for Council outsiders for bringing up human rights while engaging with Council members on specific cases or situations.

In 2005, when the predecessor of the Human Rights Council, the Commission on Human Rights, established the post of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, it asked the rapporteur "[T]o develop a regular dialogue and discuss possible areas of cooperation with all relevant actors ... in particular with the Counter-Terrorism Committee of the Security Council." This mandate has been renewed every three years by the Human Rights Council and since 2006, all successive mandate-holders have maintained regular contacts with the Security Council Counter-Terrorism Committee and with the sanctions committee focusing on world-wide terrorism (the "1267 (1999) 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities" committee).

D. Visiting Missions

Visiting missions have had an important place in the Council's toolbox. Since the end of the Cold War, some 70 missions have been undertaken by the Council, 21 of them since the beginning of 2015. The Council has embarked on visiting missions for a variety of purposes, including gathering first-hand information, supporting mediation or peace processes, conveying messages of support or concern, conducting preventive diplomacy or interacting with other institutions, such as regional or subregional organizations. Most missions have had a combination of goals, and most have included more than one country as its destination.

Nearly all missions to the field have had a human rights angle, whether or not specifically outlined in the terms of reference of the mission. Most visiting missions have had on their itineraries meetings with local UN personnel, political leaders, opposition leaders and NGOs. Frequently, these meetings have been held in different locations around the country. On numerous occasions, the Council has heard direct testimony from victims and witnesses about human rights violations and the dangers and challenges faced by human rights defenders. Virtually every field visiting mission has exposed Council members to the conditions prevailing on the ground and let them draw their own conclusions. Over the years, visiting missions have played an important role in making Council members appreciate the role human rights violations, their prevention and the protection of human rights play in the overall picture of the situation and how important including this angle is for shaping Council's decisions aimed at addressing each situation.

The visiting missions have evolved over the years both in terms of how they have been deployed and their impact. In the 1990s, visiting missions were seen as a tool that could be deployed in the face of a particular emergency, with an aim to inform the next Council decisions and steps concerning that situation. These early missions would consist of a subset of Council members, rather than all 15. Some visiting missions would follow

a particularly violent phase of a conflict and would signal to the parties involved that their behavior was being watched by the international community and that there could be accountability. Missions were organized quite quickly (one, to East Timor in 1999, left within 24 hours of the decision to deploy) and mission reports were sometimes literally written on the plane back. Briefings following the visiting missions would sometimes be delivered as part of an open debate providing any interested UN members with an opportunity to present their views on the particular situation, or as a debate, where states particularly affected by the conflict would be able to take part in the discussion. On several occasions—with respect to places such as Bosnia, Burundi, or the Democratic Republic of the Congo—human rights were an important theme in these debates influencing subsequent Council action and decisions.²³

Gradually, visiting missions have lost much of their dexterity. From 2001, most Council missions included all 15 members rather than smaller groups of Council members, making organizing them more complicated both in terms of agreeing on the timing in New York and the logistics on the ground for the delegation's visit. In the last decade, some visiting missions took months or even more than a year to organize. Unlike in the earlier history of Council visiting missions when different elected members organized the missions, more recently, in most cases, the initiative has come from the penholders, that is France, the United States and the United Kingdom, in the case of nearly all conflict situations. The reports from some of these missions have been published months or more after their return and some missions have not produced a written report. There have been briefings by the missions' leaders following the mission, but unlike in the past, they have tended not to spark a discussion and other mission participants usually made no comments.

The last few years before the onset of the COVID-19 pandemic saw the highest annual numbers of missions undertaken by the Council, five each year in 2016, 2017 and 2019 and three in 2018.²⁴ That activity came to a grinding standstill in 2020 due to the pandemic, and in 2021, the Council undertook just one mission, with no visiting missions in 2022 as of this writing. (Several of the chairs of the sanctions committees resumed their visits in the second half of 2021.)

This is perhaps a good moment for the Council to reflect about visiting missions and a possible restoring of their nimbleness. For human rights, time is everything. Missions that are deployed quickly offer the highest likelihood of having a human rights impact. Given that precedents from the not-too-distant past exist, thought could be given to returning to the practice of smaller visiting missions, and of elected members initiating visiting missions when the situation on the ground seems in their view ripe for a visit. Also, returning to holding open debates or debates on the occasion of post-mission briefings could be considered in some cases. Both moves would bring more engagement on the part of the broader membership and increase a sense of a shared, collective responsibility for addressing the multiple crises that the Council is currently coping with.

E. Interactions with UN Human Rights Figures

Since the post of the High Commissioner was created, the Security Council has had over 200 interactions, formal and informal, with the UN human rights system, broadly understood as including also the special procedures mandated by the Human Rights Council (HRC) and its predecessor, the Commission on Human Rights. Both permanent and elected members took the initiative to organize the different interactions.

Other than the total failure with respect to several active conflicts with massive human rights violations, one of the most visible signs of the current downward trend in the Security Council's willingness to include human rights in its analysis and in formulating decisions has been a significant decrease in the contacts by the Council as a whole (that is through public meetings or consultations of the whole) with the UN human rights machinery.

The appearances of the High Commissioner for Human Rights at the Security Council have become infrequent

²³ For details and examples, see *Human Rights and the Security Council—An Evolving Role*, Security Council Report, January 2016.

²⁴ See *Highlights of the Security Council* <https://www.un.org/securitycouncil/content/annual-highlight>

and those that did occur have almost always been steered toward discussing human rights in the context of a particular theme rather than specific conflict situations. For several years, the periodic open debates on the protection of civilians in armed conflict (PoC) used to be a vehicle for the High Commissioner to bring before the Council conflicts or crisis situations she or he deemed as most in need of the Council's attention. After several years when the High Commissioner was invited as a briefer at each PoC open debate, from 2015 on, the High Commissioner has not been included among the briefers.

These regular appearances of the High Commissioner in PoC open debates coincided with a period when the High Commissioner, the Deputy High Commissioner or the Assistant Secretary-General for Human Rights, were called to address the Council on a record number of other occasions. The first High Commissioner who took office in 1994, never addressed the Council. Between 1999 and 2009, his three different successors met with the Council either in public debates, in consultations or in private retreats 14 times. In the six years from 2010 through 2015, high-level UN human rights figures met with the Council as a whole 53 times. In the next six years, from 2016 through 2021, that number went down to 21 meetings.

High Commissioner Michelle Bachelet, who took office in September 2018 and served for four years, addressed the Council formally six times, in a debate on Haiti, and open debates on transitional justice; peacekeeping operations; human rights and women, peace and security; and accountability for serious violations of international law; as well as a public briefing on Ukraine in May 2022.

The Assistant Secretary-General for Human Rights (ASG) had been, for several years after the creation of the post in 2010, the chief Council interlocutor on human rights issues. The successive ASGs occasionally stood in as the High Commissioner's surrogates, but they also interacted with the Council on numerous other occasions in their own capacity, for example briefing the Council on their country-specific visits, either publicly or in consultations. Furthermore, without being formally asked to brief, the ASG was on several occasions invited to be present during Council consultations where the topic discussed suggested that there might be human rights-related questions. Examples include consultations on Ukraine in the aftermath of the 2014 annexation of Crimea by Russia, Central African Republic, South Sudan, Burundi, Myanmar, Iraq, the Democratic Republic of the Congo, and Sudan. The last such interaction took place in mid-2019.

The current ASG, who took office in January 2020, has briefed in some Arria-formula meetings and met with incoming presidencies of the Council or individual representatives. Her first meeting with the Council as a whole was on 29 June 2022 when she was asked by Kenya to brief in consultations, under "any other business" on the massacre of African migrants on the Spanish-Moroccan border in Melilla. The COVID-19 restrictions can surely be blamed for this abrupt drop. The post-pandemic period, therefore, may be a useful moment to make sure that previous practice is brought back to life. The invitation of the ASG to brief on 7 September during a public meeting on Ukraine may be a sign of a move in this direction.

For four years (2014–2017) the annual meeting on human rights in North Korea (DPRK) provided a regular opportunity for the High Commissioner or the ASG to publicly address the Council. But this practice has faded after 2017, with no attempt to hold such briefings as of this writing. Probably because the first briefing on human rights in DPRK was held in December, the next three briefings were also held in December. However, there is no reason to wait until December to schedule such a briefing and no reason to tie this annual briefing to December. Any member of the Council may decide to call for this briefing to be held during any presidency. What is key is the full understanding that the holding of this meeting will require a procedural vote and that the effort of gathering at least nine signatures on a letter requesting the meeting will be crucial for the procedural vote to be successful.

Following the emergence of the penholder system, the initiative to organize a meeting with the High Commissioner or the Assistant Secretary-General, with some exceptions, would usually come from the penholder on the situation to be discussed.

The penholder system is an informal arrangement whereby most conflict-related issues on the Council's active agenda have one of the Western permanent members, the "P-3" (France, the United Kingdom, and the United States) in the lead. The term "penholder" is somewhat misleading, as the function goes beyond drafting the outcome text and chairing the subsequent negotiations. With rare exceptions, penholders take the initiative on all Council activities concerning that situation, such as holding emergency meetings; organizing open debates; or undertaking and leading visiting missions. Which of the P3 holds the pen on which country situation has resulted from an informal agreement between the three states and usually coincides with the historical connections each of the P-3 has had with the areas in question.

In the last decade or so, elected members were given an opportunity to lead on only a handful of conflict-specific issues, notably Afghanistan and Guinea-Bissau. Successive teams of elected members have also been able, following a concerted diplomatic effort by Australia and Luxemburg in 2013–2014, to become the lead on the humanitarian aspects of the situation in Syria. But overall, the ability of elected members to play an active role in addressing specific conflicts on the Council agenda has been limited by the penholder system.

Representatives of several human rights NGOs interviewed for this paper commented how, historically, elected members had usually been the best delegations to work with on human rights issues. However, with the current prevalence of the penholder system, several human rights crises have been the purview of the penholders and the elected members have not felt they could take initiatives on some such concerns.

Recent examples such as Ireland's taking the initiative on Ethiopia, Albania co-penholding with the US on Ukraine, and Mexico co-initiating with France the drafting on the humanitarian aspects of the war in Ukraine, may be signs that the penholder system is beginning to evolve.

F. Members' Use of Council Presidency

The presidency of the Security Council changes monthly and rotates in alphabetical order of the member states' names in English. Most of the Council activities—such as holding specific meetings to receive reports and discuss them or adopt decisions—are dictated by previous Council resolutions or presidential statements. A few months ahead of the start of its presidency, the mission in question receives a preliminary calendar from the UN secretariat. Among the prerogatives of the president is a possibility of organizing additional meetings on topics of special interest to the president's country as well as inviting specific or additional briefers for the meetings already on the calendar. The president may also choose the format for some of the different meetings: whether to hold them in public or in private, as an open debate (in which all member states of the UN can speak), or a debate or a briefing (public meetings where only Council members or members at large with a demonstrated interest in the topic can speak). The monthly program of work needs to be adopted by consensus on the first working day of the month and most presidencies consult with the other members ahead of time to avoid last-minute controversies. The program is revised throughout the month depending on developments.

Elected members tend to organize more discretionary meetings—referred to as "signature events"—than permanent members. In the past, elected members were likely to choose for their "signature events" both situation-specific and thematic issues. More recently, with the development of the penholder system, such meetings are usually thematic.

Human rights can be—and have been—discussed under certain thematic issues, most notably children and armed conflict, protection of civilians in armed conflict, women, peace and security, and sexual violence in armed conflict. It is up to the presidency whether or not to invite to such thematic debates a human rights brifer who in turn can focus on specific conflicts or situations. But country-specific meetings with a human rights brifer provide an opportunity for a more dedicated and potentially more impactful focus on the human rights aspects of a given conflict situation.

Even with the currently prevalent penholder system whereby the penholder initiates most Council activities related to a particular situation, there is some space for an elected member to include human rights input in a discussion. An elected member can take advantage of a regularly scheduled briefing on a periodic Secretary-General's report on a particular situation that falls during that member's presidency. During such meetings the briefings are usually delivered by the head of the mission or a representative of the department overseeing the mission (the Department of Peace Operations or the Department of Political and Peacebuilding Affairs). But inviting an additional briefer is up to the presidency. Germany, during its April 2019 presidency, invited the High Commissioner Michelle Bachelet to be one of the briefers during the periodic discussion of Haiti. For Bachelet, it was the first opportunity to formally address the Council since taking office in 2018, and one of her six formal Security Council briefings during her tenure as the High Commissioner for Human Rights.

Permanent members the United States and France used their presidencies to invite Michelle Bachelet and Ilze Brands Kehris to brief during public meetings on Ukraine, in May and September, respectively.

Thematic debates organized by elected members provided four opportunities for the Council to receive briefings from Bachelet. In February 2020, Belgium chose "Transitional justice in conflict and post-conflict situations" as the topic of one of its signature events and asked Bachelet to brief.²⁵ Later that year, in July, Germany chose "UN peacekeeping operations: Peace operations and human rights" as one of its "signature events" and invited Bachelet to be the chief briefer.²⁶ (Because of the pandemic-related restrictions the meeting was held virtually, as an "open video teleconference".) Norway held the periodic open debate on women, peace and security during its January 2022 presidency and decided to focus it on the issue of addressing violence targeting women in peace and security processes. Bachelet was asked to brief, along with two civil society speakers and a representative of the European Union.²⁷ In June 2022, the High Commissioner was invited by Albania to be one of the three briefers during an open debate on "Strengthening accountability and justice for serious violations of international law" held during Albanian Council presidency.²⁸

G. Open Debates

An open debate is the one format of Council discussion where any member of the UN can participate without proving its reasons and without getting the Council's approval to be invited. (A request to be invited is enough, the rest is automatic.) Organizing open debates is an important tool for certain elected members to fulfill their electoral commitments to enhancing the Council's transparency. But it is also important to think in this context about impact.

Originally, open debates were mostly conflict-specific, held at the request of a member or group of member states, and usually organized with a sense of urgency, quite quickly following the request. Nowadays, most open debates are held at the initiative of the presidency of the Council, and some are planned a year or more in advance. Also, from around 2000 thematic open debates began to increasingly outnumber those focused on specific disputes.

Except for the quarterly open debates on the Middle East, held since 2006, conflict-specific open debates are currently very rare, and in recent years, when they have occurred, they have been held at the initiative of the presidency rather than at the request of the wider membership. But there are no impediments for the wider membership to ask the Council, via a letter to its president, to hold an urgent meeting on a crisis situation.

Over the past seven years or so, there has been a marked increase in the number of civil society representatives, in particular women, invited to brief the Council in open debates. National civil society representatives have

²⁵ The official record of the briefings and interventions by member states is contained in documents S/PV.8723 and S/PV.8723 (Resumption 1).

²⁶ Transcripts of the statements of briefers and Council members and written submissions of UN members at large are contained in document S/2020/674.

²⁷ The official record of the briefings and interventions by Council members is contained in document S/PV.8949. Due to the continuing COVID-19 conditions, some non-Council members submitted their statements in writing. Those are contained in document S/2022/38.

²⁸ The official record of the briefings and interventions by Council members is contained in document S/PV.9052.

tended to focus on developments in their own countries in briefings delivered on thematic issues. Those briefers have often included important human rights information in their statements. The elected members have been particularly interested in making the Council more accessible to national civil society actors. It is, however, important to ensure that the information civil society briefers provide is not seen as an acceptable substitute for human rights information and analysis gathered and endorsed by a UN entity such as the Office of the High Commissioner for Human Rights or mandate holders of the special procedures of the Human Rights Council.

H. Arria-formula Meetings

An important way for the Council to receive human rights information and discuss its implications for peace and security have been the Arria-formula meetings. It is one of the most versatile Council meeting formats. Generally, this format is used when some (usually several) members of the Council see the need to meet with specific actors or want to discuss a particular topic but there is no agreement of the full Council to hold the meeting in one of its formal formats.

The roots of this format are human rights-related: in March 1992, the Council president, Ambassador Diego Arria of Venezuela, was contacted by Fra Joko Zovko, a Croatian priest who was visiting New York and wanted to convey to the Security Council an eyewitness account of the atrocities occurring in war-torn Bosnia and Herzegovina. Not being able to find a formal way to hold a meeting, Arria decided to invite Council members to meet with Fra Joko in the UN delegates' lounge over coffee. Since, well over 300 Arria-formula meetings have been held (in different rooms and locations) with speakers including high-level delegations, representatives of non-state actors, Hollywood actors, heads of international organizations, high-level UN officials or representatives of NGOs and broader civil society.

On numerous occasions, Council members were briefed in Arria-formula meetings by mandate holders of investigative mechanisms of the HRC or its predecessor, the Commission on Human Rights. Since 2012, the Arria formula allowed for periodic briefings by the HRC's Commission of Inquiry on Syria as well as by the heads of human rights components of Council-mandated peace missions. But both types of formerly regular briefings had been discontinued before the COVID-related lockdown and have not resumed, though at press time, there appeared to be some talk among Council members about possibly reviving these practices.

Very occasionally, when there was no agreement to hold a formal meeting of the Council on a particular topic, top-level UN officials (including the Secretary-General Ban Ki-moon on climate change in February 2013) have briefed under this format.

Arria-formula briefings by the High Commissioner or Assistant Secretary-General for Human Rights were very rare when the Council was more inclined to interact with top human rights officials in formal meetings. There were only three such meetings between 2010 through 2015, whereas during the same period, there were 53 formal interactions. Most recently, this trend seems to have changed. As of this writing, since taking office just before the start of the Covid-19 pandemic, the ASG Ilze Brands Kehris briefed in an Arria formula meeting five times, but so far, she has addressed the Council in a formal public meeting only once, in September 2022. High Commissioner Bachelet, whose term was from September 2018 through August 2022, addressed the Council formally on six occasions and three times in an Arria-formula meeting.

Over the years, some Arria-formula meetings have paved the way for the Council to eventually accept an issue and discuss it formally. Such was the case with Darfur back in 2004 or with some of the Arria-formula meetings with the investigative mechanisms of the HRC.

In the last few years, however, it appears that Arria-formula meetings have to some extent replaced the previously robust formal interactions of the High Commissioner with the Security Council. In order not to relegate these contacts to being largely symbolic, the Arria format should be used as a means to advance a sensitive issue rather

than seeing holding the meeting as a goal in and of itself. And most of all, Council members need to ensure that the High Commissioner again becomes a regular participant in formal discussions on challenges facing the Council.

III. How Did We Get Here?

The current downward trend in the Security Council's engagement with human rights is a result of multiple factors. Chief among them is the growing polarization among the Security Council permanent members exemplified by considerable number of vetoes and, in particular, the 13 double vetoes by China and Russia on draft resolutions with human rights content. This phenomenon is not new—the first such double veto occurred in 2007 and concerned Myanmar, but it has become more pronounced since 2016, with seven such vetoes cast.

However, there have also been some distinct moments that appear to have set human rights back at the Council. It is useful to briefly examine three such occurrences because each has been caused by member states generally supportive of human rights. In each case, a miscalculation played a role and each of these examples provides some lessons to be learned.

A. January 2015: dropping the regular briefings by the High Commissioner for Human Rights during open debates on the protection of civilians

Having the High Commissioner for Human Rights address the Security Council has been seen as sensitive and over the years, at times was opposed by different Council members. After the post was established in 1993, it took until 1999 for the High Commissioner (Mary Robinson at the time) to be invited to brief the Security Council. The occasion was the Council's second-ever open debate on protection of civilians in armed conflict (PoC) in September 1999. During the next few years, the High Commissioner would occasionally brief during the open debates on the PoC as well as on some specific human rights situations and in meetings of different formats. The High Commissioner stopped being invited to the PoC debates in 2002 and gradually all other interactions became very infrequent.

In 2009, elected member Austria, ahead of its November presidency when a regular debate on the PoC was scheduled, made a concerted effort to invite the High Commissioner for Human Rights to be a briefer during the open debate. In the aftermath, feeling that the High Commissioner's voice provided an important contribution to the discussion, ahead of the next regular PoC debate, Austria informally consulted with the most reluctant members, notably China and Russia, and the High Commissioner was invited to brief again. From that point on, inviting the High Commissioner (or his or her deputy or the Assistant Secretary-General heading the High Commissioner's New York office) became an accepted practice. When in May 2012 the PoC debate was scheduled during the Chinese presidency of the Council, ahead of the debate China issued an official invitation for the High Commissioner to brief. This situation continued through 2014.

Chile held the presidency of the Security Council in January 2015 when that year's open debate on PoC was scheduled. Chile decided to focus the debate on the protection challenges of women and girls in conflict and post-conflict settings. Ahead of the debate, some non-governmental organizations conveyed to Chile their concern that the High Commissioner for Human Rights was not included among the invited briefers and that thus a practice that took a lot of effort to be established and accepted, would be interrupted. Those concerns have proven to be warranted: since then, the High Commissioner has never been invited to brief during PoC open debates.

Interrupting the practice of regular invitations for the PoC debates—which provided the High Commissioner with an opportunity to bring to the attention of the Security Council human rights crises in numerous places of the globe, whether or not these situations were already on the Council's radar screen—may have had an additional negative effect. From the first briefing, in 1999 until the 2009 debate, the High Commissioner or his

or her representative addressed the Council on 13 occasions. Following the 2009 briefing, through 2014, in clear recognition of the usefulness of the human rights input into the Council's work, the High Commissioner was invited to brief at a range of Council meetings on different situations and topics, over 50 times. Since then, the frequency of such invitations began to diminish.

B. April 2017: attempting to include human rights as a thematic issue on the Security Council agenda

During its first presidency under the Trump Administration, in April 2017, the US wanted to place human rights as a theme on the agenda of the Security Council. On the first working day of the month - which is when Council members approve their program of work for that month - the US circulated a concept note for a briefing that would be held under a new agenda item, "Human rights and international peace and security" and included the briefing under this title on the preliminary program of work that was to be adopted later that day.

The idea encountered considerable resistance from several Council members. The monthly program of work, published that day, did not include the human rights briefing. Those objecting to holding the thematic human rights briefing included China and Russia but also several Council members belonging to the Non-Aligned Movement (NAM). NAM has had a formal position against what it perceived as "encroachment" of the Security Council on the functions and powers of other UN bodies and specifically opposed the Security Council's dealing with human rights.

During the next several days, intense negotiations ensued. It soon became apparent that there would not be the needed nine votes for a procedural vote to adopt the agenda and hold the meeting because NAM members on the Security Council at the time, Bolivia, Egypt, Ethiopia and Senegal, as well as a NAM observer, Kazakhstan, had signaled their opposition to adding human rights as a thematic agenda item. On 14 April a compromise was reached: there would be a human rights briefing under the already existing agenda item "Maintenance of the international peace and security" with a subtitle "human rights and prevention of armed conflict." On 18 April the meeting was, indeed, held. Secretary-General António Guterres delivered a briefing and all Council members spoke. Several members used the opportunity to re-state their opposition to the Council's taking on human rights in tones evocative of discussions of the early post-Cold War era and not heard in Council public meetings for well over a decade.²⁹ Russia, in addition to its critical speech during the briefing, issued on 26 April a position paper elaborating further its opposition to the Security Council's inclusion of human rights in its work. The paper was subsequently circulated as a document of both the Security Council and the General Assembly (S/2017/381 and A/71/893).

The lesson that can be drawn from this episode is that choosing one's battles wisely is key to achieving meaningful progress on human rights in the Security Council. Human rights had for years been discussed by the Council on numerous occasions, but mainly on a case-by-case basis and not as a theme. The US wanted the Council to take a step further, that is to admit formally that human rights violations and abuses fall within the Security Council's primary responsibility for maintaining international peace and security by making it an agenda item. The period leading up to and the briefing itself provided an opportunity to revive controversies that seemed to have been settled.

C. March 2018: failing to prepare for a procedural vote prior to a briefing by the High Commissioner for Human Rights

In the first years of the Syrian conflict, High Commissioner (Navi Pillay at the time) or the Assistant Secretary General and head of the New York office of the High Commissioner, were invited to brief the Council, usually publicly or in consultations, on the human rights situation on the ground. Six such briefings occurred between August 2011 and April 2014. Syria was also regularly featured in the High Commissioner's briefings

²⁹ See document S/PV.7926 for the provisional verbatim record of the meeting.

during open debates on the protection of civilians in armed conflict, with six such open debates held during that period. Combined, this meant that during the first four years of the conflict, human rights in Syria were discussed in Security Council formal meetings on average three times a year. After the regular invitations to the High Commissioner to brief during the debate on protection of civilians were discontinued, the main source of information on Syria's human rights developments came from the Human Rights Council's Commission of Inquiry on Syria, whose members regularly briefed the Council in closed Arria-formula meetings.

In March 2018, during the Dutch presidency of the Council, France, with the support of Peru, Poland, Sweden, the UK and the US requested a briefing on Syria by the High Commissioner for Human Rights (Zeid Ra'ad Al Hussein at the time). The briefing was scheduled for 19 March but, because Bolivia, China and Russia had signaled their opposition to this briefing, a procedural vote was expected at the outset of the meeting.

Indeed, at the beginning of the meeting, Russia took the floor and declared its opposition to the meeting: "We see no justification for such a meeting, since human rights is not a subject on the Security Council's agenda. That is what the Human Rights Council deals with in its work in Geneva." The Russian representative also objected to the fact that a note on human rights in Syria prepared by the High Commissioner's office, had been circulated to members. The delegate continued: "The United Nations system is not organized so that any United Nations body can send the Security Council any information it feels like. We believe that the Secretariat blindly obeyed the delegations that decided to hold this briefing, in violation of the division of labour among the main organs of our Organization, as enshrined in the Charter of the United Nations." In his intervention, the Chinese delegate also brought up the division of labor among the main UN organs. "Pushing the Security Council into discussing human rights issues erodes the functions of other United Nations organs and will not help us to find an effective solution to the issue," he said.³⁰

A procedural vote was called on whether to hold the meeting and—to the considerable consternation of the proponents—only eight members voted in favor. The negative votes of Bolivia, China, Kazakhstan and Russia did not come as a surprise. But the abstention of all three African members—Cote d'Ivoire, Equatorial Guinea and Ethiopia—had not been expected. With the High Commissioner, who had traveled from Geneva for this occasion, already in the room, the supporters of the briefing announced holding of an Arria-formula briefing instead that same afternoon.

Starting with the December 2014 procedural vote on adding the situation in the DPRK to the Council agenda, such votes, previously rare in Council's practice (none were held in 2006 through 2013), began being resorted to and could be anticipated. Members developed a practice to avoid unexpected outcomes. Before each of the DPRK votes, for example, the proponents would write to the president of the Security Council requesting the meeting and had made sure that the letter had at least nine signatures before each planned meeting. For an unclear reason, this had not been done ahead of the planned Syria briefing.

One lesson that can be drawn from this experience is probably that when it comes to human rights in the Council, given the current dynamics, it is necessary to prepare for all contingencies.

IV. Observations and Recommendations

An uplifting picture of the Security Council's relationship with human rights is hard to come up with, especially against the backdrop of the ongoing human rights tragedies in Syria, Yemen, Myanmar, Ethiopia and most recently Ukraine. All of them are situations that the Council has been discussing repeatedly and all of them it has failed to meaningfully address. Yet, it is important to remember that, in the previous several decades, the Security Council had made important strides in acknowledging the relevance of human rights to fulfilling its main duty, that of maintaining international peace and security. The set of practices and tools that have been

³⁰ See document S/PV.8209 for the provisional verbatim record of the meeting.

deployed in interacting with human rights still exist and each Council member may resort to them. With this in mind, we want to offer to the different stakeholders some recommendations and present certain options.

Most of the below comments are directed to governments, both on the Council and not, and also including the permanent members of the Security Council. For human rights to properly function within the Security Council, its members, the governments, are key. Member states who serve as elected members should think of their responsibility before and beyond the two-year term.

Some of the below suggestions are aimed at the UN Secretariat and are meant to encourage its greater proactiveness with respect to the place of human rights in the Security Council analysis and action.

Non-governmental human rights organizations have for nearly three decades made the Security Council a target of their advocacy and several have been engaging regularly with different members of the Security Council, providing information, analysis and specific recommendations. Some of the comments at the end address the NGO community in the hope of being helpful in pointing out to some lesser used pathways.

A. To Member States:

One overarching comment, something to constantly keep in mind when dealing with human rights issues in the Security Council is that for some members human rights have always been a sensitive issue and that they would always be inclined to avoid touching upon human rights in the context of their Council work. This means that human rights practices, such as, for example, inviting human rights briefers to certain types of meetings, including previously agreed to human rights language in further decisions, or discussing human rights during and after visiting missions may fade, unless there is ongoing attention and thoughtful, creative cultivation. Otherwise, a practice that seems firmly rooted may disappear; a procedural move that seems useful may have serious negative consequences or a setback occurs because too much had been taken for granted.

In the post-Cold War period, when the acceptance of human rights as relevant to handling issues of international peace and security grew, the elected members took initiative and led the Council's work on several conflicts with important human rights aspects. When the penholder system became largely consolidated around 2010, a situation of default developed, with members generally deferring to the penholder to initiate steps in the Council. Thus, the Council lost some of its sense of shared responsibility to take action. This has been detrimental to the Council's overall effectiveness but is particularly problematic in situations where there are serious human rights violations and abuses given that acting quickly in such cases is key.

One way to enhance the effectiveness of the Council in the context of conflict situations it is dealing with—which would in turn have an impact on the Council's ability to promote and protect human rights—would be for elected members to become co-penholders on these situations. The obvious place where this could start would be for the chairs of the sanctions committees to become co-penholders on the respective countries. But “just taking the pen” when nobody else is doing much, as was done in 2021 by Ireland on Ethiopia, is also an option. In early 2022, Albania's becoming a co-penholder with the US on Ukraine in general and Mexico's with France on the humanitarian aspects of the war in Ukraine may also signal a change in this direction. It will be interesting in the upcoming months to see how the P-3 from their side would evaluate such collaborations and whether they would acknowledge such collaborations' value.

With the Council's workload very heavy, members should use all the meetings they organize—such as the “signature events” of the presidency but also Arria-formula briefings—strategically. Every meeting should be a step toward a goal and not a goal in and of itself.

Members who are simultaneously on the Security Council and the Human Rights Council could consider taking upon themselves, either collectively or individually, ensuring connectivity between the two bodies in order to maximize impact on the ground.

The best way to address human rights in the Council is to do it on a case-by-case by case basis. The Council as a whole is more likely to accept human rights input for pragmatic reasons in specific contexts rather than as a cross-cutting norm.

If a procedural vote may be expected regarding holding a human rights meeting, it is important to request this meeting through a letter to the president of the Security Council and secure at least nine signatories, to ensure the passage of a procedural vote that might be called to adopt the agenda or agree on a particular briefer.

There should be more open debates on country—or situation—specific issues. Such debates used to be a tool the Council resorted to in the face of crises and new conflicts (such situations more often than not have human rights angles). In such cases, the Council considered hearing broader membership's views as useful. In the last ten years, aside from the routine quarterly debate on Israel/OPTs, such debates have almost disappeared.

UN members not on the Security Council should bear in mind that they may ask the president of the Security Council to call an open debate or a private meeting to which all members are invited and can speak on a specific dispute.

Elected members should hold country- or situation-specific discussions in the Council as their “signature events” during their presidencies. To have an impact, the exact topic of such a discussion would need to be decided close to the date of the presidency, rather than as part of the overall plans for a member state's Council term, usually prepared well in advance. “Expect the unexpected” is a helpful approach to any state's Council membership of the Security Council. Being able to act quickly is particularly important in situations accompanied by grave human rights violations or abuses.

Visiting missions, once their pace picks up following the COVID-related near-standstill, should regain the nimbleness they displayed during the last decade of the previous century. Their deployment should not take months to organize, this tool should be used as one of the devices with which the Council addresses emergencies. In this context, it is useful to remember the numerous precedents whereby elected members came up with the initiative to undertake a mission and that some of the most impactful visiting missions were undertaken by delegations smaller than the 15 Council members.

In cases where the Council travels to areas with severe human rights violations, the visiting missions' terms of reference should include a human rights angle and meetings with human rights defenders (NGOs) should be on the delegation's program.

Thought should be given to holding some post-mission briefings as an open debate (to generate a public discussion among the membership at large) or a debate, in which the Council would discuss the situation in public and with the participation of countries directly affected by the situation.

Further specific actions to consider include:

- Restore the practice of inviting the High Commissioner for Human Rights as a briefer during the periodic open debates on the protection of civilians in armed conflict.
- Invite the High Commissioner to brief, in public meetings or in consultations, when relevant country situations are due to be discussed.
- Invite the Assistant Secretary General to be present during consultations when it is likely that human rights issues might be raised, and questions posed.
- When new peace missions are created, ensure that their mandates include a human rights component with sufficient staffing.
- Restore the practice of holding periodic briefings by members of the HRC's Commission of Inquiry on Syria.

- Restore the practice of holding annual briefings on human rights in DPRK. This can be done in any month and initiated by any Council member.
- Restore the practice of holding periodic meetings with the heads of human rights components of peace operations mandated by the Security Council.
- Insist on serving as a penholder or co-penholder on conflict situations with important human rights aspects.
- During periodic briefings on and discussions of mandates that include references to the Human Rights Due Diligence Policy, seek information from the briefers on the implementation and impact of HRDDP.
- Ahead of discussions and renewals of country-specific mandate, request informal expert-level briefings from the relevant expert staff members of the New York Office of the High Commissioner.
- Seek opportunities to promptly establish regular contacts between Council members and the new High Commissioner for Human Rights, Volker Türk
- When the Human Rights Council (HRC) special procedure mandate holders report on situations that are on the Security Council agenda, HRC members should ask the Secretary-General to regularly transmit these reports to the Security Council.
- When a thematic special procedure of HRC produces a report on a situation on the Security Council agenda, members of the HRC should request that the Secretary-General transmit such a report to the Security Council.
- Members of both the HRC and the Security Council should ensure that such transmittals occur as requested.

B. To the UN Secretariat:

Taking advantage of the transition period, there should be a concerted effort on the part of the Secretary-General and the High Commissioner for Human Rights to restore more frequent direct interactions of the UN human rights system with the Security Council. Particularly important is to work on restoring the role of the Assistant Secretary-General for Human Rights as the day-to-day human rights interlocutor for the Security Council.

In situations of a newly unfolding crisis, where the Council is likely to seek frequent briefings, ensure that a human rights briefer is invited to these meetings from the start and regularly thereafter.

Ensure the implementation of the Secretary-General's commitment in the Call to Action for Human Rights to "Regularly provide human rights analysis and information to the Security Council ... on current and potential human rights and humanitarian crises".

Proactively encourage Security Council member states with particular interest in and commitment to human rights to invite the High Commissioner or the Assistant Secretary-General for Human Rights to be a briefer during Council meetings addressing situations on its agenda with a strong human rights angle.

Encourage members of the Security Council to restore periodic meetings with the heads of the human rights components of peace operations.

Encourage members of the Security Council to restore the practice of holding periodic briefings by members of the HRC's Commission of Inquiry on Syria.

Following field visits to areas on Council's active agenda, the High Commissioner and/or the ASG should offer to brief the Council on their findings and observations.

The top UN leadership should help ensure that the High Commissioner has opportunities to brief the Security Council, particularly on country situations concerning which OHCHR is actively monitoring the commission of relevant large-scale human rights violations.

C. To Non-governmental Advocacy Organizations:

Conducting advocacy on specific conflict situations several weeks before the respective conflicts will be discussed by Council members may help ensure that human rights issues are adequately addressed. Resorting to the Security Council's "Reporting and mandate cycles" document may be helpful to ensure such coordination.³¹

With the human rights space in the Council on a shrinking trend, NGOs might want to look at areas of Council work previously seldom explored from a human rights angle, such as, for example, certain sanctions committees, and, in particular, their chairs, for their advocacy.

Similarly, it may be useful to target with analysis and advocacy counter-terrorism subsidiary organs given that several Council resolutions have urged respect of human rights while combating terrorism.

Monitoring the Council's visiting missions plans, providing members early with relevant human rights information and urging them to include human rights in the missions' terms of reference may help bring human rights focus for the delegation. Also useful would be to urge the member state/s leading the mission to have the subsequent briefing in an open debate or public debate format.

New York-based NGOs and networks with national partners in countries where UN support to local forces occurs may want to make their national counterparts aware of the human rights due diligence policy and its provision to involve local networks in compliance monitoring.

³¹ The "Security Council Reporting and mandate cycles" document is updated about once a month and can be found on the Security Council website https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/reporting_and_mandate_cycles.pdf (accessed on 28 August 2022).

About the Author

Joanna Weschler spent over two decades at Human Rights Watch, holding a variety of posts, including that of the organization's first UN representative, for both New York and Geneva, from 1994 to 2005. From 2005 until 2021, she was director of research and then deputy executive director of Security Council Report.

About JBI

Founded in 1971 under the aegis of American Jewish Committee, the Jacob Blaustein Institute for the Advancement of Human Rights (JBI) continues in that capacity to strengthen human rights through the United Nations and other intergovernmental bodies. JBI strives to narrow the gap between the promise of the Universal Declaration of Human Rights and other international human rights agreements and the realization of those rights in practice. Jerry H. Biederman is Chairman of the JBI Administrative Council, Felice D. Gaer is Director of the Institute, and Christen Broecker is Deputy Director.

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