

A stylized world map composed of a grid of grey dots, with several dots highlighted in red. The map is centered behind the title text.

UN Human Rights Council

Challenges for Its Next Presidency

THEODOR RATHGEBER

December 2014

- The UN Human Rights Council (HRC) is the main UN body for the promotion and protection of human rights. Compared to its predecessor, the Commission on Human Rights, the HRC has managed to shed light on human rights issues that previously went largely unnoticed. Nevertheless, the HRC is continually criticized for not living up to its normative principles and for insufficiently protecting victims of human rights violations.
- In 2015, Germany holds the Presidency of the HRC. While Germany cannot change the weak authority of the HRC simply by decree, its presidency can still make a difference. In order to ensure the success of its presidency, the German HRC President should: (a) be an honest broker to guarantee the functions as well as the reputation of the Council; (b) provide space and time for systematic follow-up procedures in relation to recommendations and outcomes by Special Procedures and the Universal Periodic Review; and (c) strengthen the linkages with other similar international institutions, such as the UN High Commissioner for Human Rights, and increase the interactivity with the UN Security Council.
- The HRC Presidency must oppose the intentions of states to obstruct and prevent the participation of civil society stakeholders in UN institutions. The more extensively such steps are embedded in and fostered by a coherent human rights policy by the respective government, the better are the prospects for a substantial outcome. Germany's exposed role at the international level is an asset in this regard in demonstrating that it is possible to make human rights into an interest of state.



Contents

1. Introduction	2
2. Background and Methodology	3
3. Strengthening the Role and Function of the Human Rights Council	5
3.1 Blocs and Cross-regional Initiatives	6
3.2 Civil Society Space	7
3.3 Institutions and Mechanisms	9
4. The Human Rights Council in its Relationship with the UN Security Council and the Responsibility to Protect Approach	10
5. Germany at the Human Rights Council Presidency – Challenges and Expectations	12
6. Conclusion	14
List of Acronyms	15
References	16



1. Introduction

The UN Human Rights Council (HRC) is the main UN body for the promotion and protection of human rights. The functionality attributed to the Council in accordance with its normative standards, instruments and mechanisms raised high expectations, which, to judge by the discussions in academia as well as among activists and diplomatic experts, remain high. Thus, since its inception in 2006, the key question has been how far the HRC can fulfil its task. How can the HRC be made more effective in setting and implementing its normative standards? How can the HRC improve cooperation between the member states of HRC in order to achieve greater efficiency?¹ The HRC has demonstrated its power to meet, to discuss and to launch studies and reports, while coercive measures are to the preserve of the UN Security Council (UNSC). The HRC – like its predecessor, the UN Commission on Human Rights – has therefore been active in terms of diplomacy, one of its main instruments for changing facts on the ground. But a historical overview would show that human rights have not generally been a top state priority anywhere.² So, how can this situation be changed? The literature as well as the discussions at a series of conferences and publications of the Friedrich-Ebert-Stiftung in collaboration with partner organisations³ have revealed a number of factors which have contributed to making governments more open to adopting such a priority.

We can identify two main approaches to explaining why making human rights into a state interest seems reasonable. One line of argument focuses on principles of governance in terms of realpolitik and may be summarised as follows:

- Genuine liberal democracies are concerned about their reputation when it comes to the rule of law and democratic procedures, and therefore pay serious attention to their human rights performance, among other things.

- States, whether liberal democracies or not, generally consider it as being in their interest to maintain a good reputation on law and legal procedures and institutions, which may include human rights. For instance, a country like Bolivia observes a different state rationality from a typical liberal democracy. Nevertheless, Bolivia is a prominent promoter of economic, social and cultural human rights as well as indigenous peoples' rights, including their collective dimensions.
- The challenge of coherence on human rights is driven by public criticism of selectivity, double standards and biased approaches.
- While a cross-regional understanding of human rights problems prevails, political history is considered by developing countries in terms of (neo-) colonialism and thus, follow-up on human rights is only done if linked to economic advantage, or domestic elite convenience, power, and wealth.
- Some states are opting to seek favour especially with the global West or North (for example, the European Union, the Council of Europe, the USA, Canada, and Australia), either as a means of promoting national security or in the expectation of emerging with a more normatively orientated human rights policy by meeting expectations – for instance, by establishing institutions such as an independent National Human Rights Institution (NHRIs).⁴

While these governance aspects reflect a broad range of policy making regarding human rights, a comprehensive understanding requires that additional elements be taken into consideration. In a number of recent cases, it has become apparent that so-called liberal democracies do not necessarily tend to accord priority to the protection of human rights in their policy making; key words such as Guantánamo (USA), waterboarding (USA and allies), rendition flights (United Kingdom, Poland, Italy, Romania, Germany), dismantling the independence of the judiciary (Hungary), or deportation of Roma people (France, Italy) may suffice by way of illus-

1. See Theodor Rathgeber (2013): *Performance and Challenges of the UN Human Rights Council. An NGOs' View*. International Policy Analysis, Friedrich-Ebert-Stiftung, Geneva, and further bibliography therein.

2. See Stephen Hopgood (2013): *The Endtimes of Human Rights*. Cornell University Press.

3. German Institute for Human Rights (Deutsches Institut für Menschenrechte; DIMR), and German Forum on Human Rights (Forum Menschenrechte).

4. See David P. Forsythe (2014): *The Continuing Struggle for Human Rights Protection*. International Studies Review. doi: 10.1111/misr.12164, Tucson: International Studies Association; Forsythe [ed.] (2000): *Human Rights and Comparative Foreign Policy: Foundations of Peace*. United Nations University.

tration.⁵ Going beyond *realpolitik* as a principal frame of reference for explaining the human rights performance of the HRC, the human rights discourse within this body has developed its own institutional dynamic which may be captured better by a different term than ›interest of state‹. In previous publications, the present author developed the term ›ambiguity‹ as a main feature of the HRC, encompassing rifts within the bloc mentality and, conversely, increasing diplomatic efforts for cross-regional initiatives by states (see below). Another element was the change in social and political parameters within certain countries, in particular African states, which affected their understanding of civil society and human rights as an indispensable factor in policy making also at the level of the HRC.⁶

Predominant expectations of the HRC from a victim's perspective are justice and, *inter alia*, support for the reconstruction of their life project, including restitution, compensation and satisfaction. In particular cases, the priorities may gradually diversify, but in relation to the United Nations there is an overwhelming expectation that this institution shall guarantee that there should not be a recurrence of human rights violations. Again, this is nothing especially new, and at nearly every session of the HRC there are calls to strengthen early warning mechanisms and follow-up procedures. Indeed, these are the instruments and main working elements that the HRC can provide. The UN Special Procedures, independent experts with a mandate from the HRC to investigate on thematic or country issues, are potentially in a position to perform such a systematic task. An aspect that has received little attention up to now is that of the expectations of the Presidency of the HRC, and how far the Presidency can make a difference. In the light of the phenomena of shrinking spaces for civil society actors and, in particular, of threats to human rights defenders while cooperating with UN institutions, the HRC Presidency has

been playing a relevant role in the protection of human rights defenders in particular, even within the UN premises in Geneva. The text will elaborate on some aspects of the role of the President beyond being a personalised symbol for human rights. Thus, the HRC President could promote a more systematic, institutionalised follow-up, for instance, of the work of the Special Procedures mandate holders. A recent empirical analysis of the Special Procedures revealed that around 40 percent of their time and efforts resulted in a positive effect in fostering human rights standards, including victims' concerns.⁷

The following text will explore in some detail the main aspects mentioned above drawing on the inputs from a conference held by the Friedrich-Ebert-Stiftung, FORUM MENSCHENRECHTE and the German Institute for Human Rights in Berlin in October 2014. This conference evaluated the effectiveness of the mechanisms and instruments employed by the UN Human Rights Council in combating severe problems in human rights protection, with a specific focus on the challenges facing the next HRC Presidency in 2015. The text will deal with the imbalance between normative standards and political aspects of the HRC performance, addressing in particular the issues of business and human rights, sexual orientation, country situations as well as minorities and indigenous peoples. Second, the text will elaborate on the question of the efficiency of the HRC and what kinds of instruments should be further developed. Third, the text will critically examine the relationship between the HRC, the UNSC and the concept of Responsibility to Protect. Considering some experiences accumulated during the previous sessions of the HRC and the management by the Presidents, the concluding remarks will elaborate on the challenges facing the next HRC Presidency. The hope is that these considerations may contribute to prompting a corresponding policy shift towards making human rights into a substantial state interest.

2. Background and Methodology

According to its mandate, the HRC is responsible for the promotion and protection of all human rights worldwide. Given this monumental task, the HRC encompasses a

5. ECCHR [European Center for Constitutional and Human Rights] (2009): *CIA-Extraordinary Rendition: Flights, Torture and Accountability. A European Approach*. Berlin, second edition; Dick Marty (2006): *Alleged secret detentions and unlawful inter-state-transfers involving Council of Europe member states*. Report AS/Jur (2006) 16 Part I and II, Strasbourg; ERRC [European Roma Rights Centre] (2013): *Parallel Report to the HRC/UPR 15th session*, Budapest; UN High Commissioner for Human Rights (2010): *Opening Statement to the 15th session of HRC in September 2010*, Geneva, accessible via <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10319&LangID=e>.

6. For further details see Theodor Rathgeber (2010): *Ambiguity as a main feature: the UN Human Rights Council in 2009*. In: Wolfgang Benedek et al. (eds): *European Yearbook on Human Rights 2010*, Vienna, pp. 183–193; Rathgeber (2013), op. cit. supra footnote 1.

7. See Ted Piccone (2014): *Human Rights Special Procedures: determinants of influence*. Washington: Brookings Institution; Piccone (2013): *The Future of the United Nations Special Procedures*. Routledge Handbook of International Human Rights Law. Oxford-New York: Routledge; Piccone (2012): *Catalysts for Change: How the UN's Independent Experts Promote Human Rights*. Washington: Brookings Institution.

broad range of human rights topics, which it addresses through its agenda setting, instruments and mechanisms, as well as informal deliberations. In pursuing this agenda, the HRC and its work are confronted with the challenges posed by human rights standards, on the one hand, and with the (in-)effectiveness of international as well as the domestic mechanisms for enforcing these standards, on the other. Inadequate compliance or non-compliance by states and non-state actors, general differences in the understanding and appraisal of human rights in foreign policy, and changing geo-political constellations, determine the scenario within which the HRC acts. Composed of governments, the HRC therefore always remains an ambiguous institution in the sense that decision-making within the HRC always takes normative standards as well as (real-)political aspects into consideration; sometimes close to, sometimes less close to human rights standards. While the role of the governments often remains in the background, the HRC as an institution is blamed for the failings and gaps in human rights protection.

Sometimes interests of state lead to double standards and selectivity in every region represented in the HRC and the United Nations, respectively.⁸ The regional groups remain in operation because there is an ongoing need for exchange of information and opinions based on equality, reciprocity and solidarity, and thus for coordinating action on issues of common concern. Over the years however, since the HRC began its work in 2006, there has been a discernible trend towards the regional bias within the HRC and towards increasing cross-regional initiatives even on country situations which for a long time had been the domain of the Western group. Without denying the challenges that exist, the performance of the HRC in general has increasingly exhibited a case- and victim-centred rationality. Compared to the previous Commission on Human Rights in particular, the HRC has managed to shed light on human rights issues that in former times went largely unnoticed; such as peasants' rights or and sexual orientation as examples of cases assessed specifically from the perspective of rights holders.

The somewhat higher profile of the HRC is also due to a new feature of the HRC, namely, the Universal Periodic

Review (UPR), which regularly reviews and evaluates the human rights situation in every UN member state. All states provide reports and in principle acknowledge the procedure as such, although the quality of their commitment varies drastically. Governments also report on how far they have implemented the recommendations they previously accepted, as well as on voluntary pledges made in the context of the Review. Some countries – currently about half of all UN member states – even provide voluntary midterm reports.⁹

The highest value in the context of the HRC is still attributed to the Special Procedures system.¹⁰ This remains nimble and deploys highly valuable expertise while increasingly coming under pressure not only to include the views of governments in their reports but also to make them a core element of the interpretation of facts. The official panel discussions¹¹ at the HRC provide an entry point for dealing with human rights issues which are still unlikely to be dealt with in the formal agenda deliberations.

The HRC has developed a number of informal instruments in its work, such as urgent debates, ad hoc fact-finding missions, Commissions of Inquiry with short-term reporting cycles, and reports of the High Commissioner for Human Rights (OHCHR) on the effectiveness of domestic procedural aspects in a specific country. In the case of Sri Lanka, the UN Secretary-General took the initiative of establishing an international expert group to pave the way for an accountability process in accordance with international standards and to establish a point of reference for further actions by the HRC, as well as for efforts at the domestic level. In general, the HRC statements and resolutions indicated that a majority of member states in the HRC consider a change in governance to be necessary in a number of states, this being the most the HRC can officially say.¹²

9. See UPR-Info (2014): *Beyond promises. The impact of the UPR on the ground*. Geneva, accessible via <http://www.upr-info.org/newsletter/lt.php?id=MRkDAQifVAYDH1QMAA>.

10. The UN Special Procedures of the HRC are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. They cover all human rights, i. e. civil, political, economic, social, and cultural. As of November 2014, there are 39 thematic and 14 country mandates; for details see <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>.

11. Panel discussions are an institutional feature of the HRC agenda for dealing with thematic issues in an informal environment in order to receive the insights and arguments of experts beyond the scope of the state.

12. See the country mandates of the Special Procedures at <http://www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx>.

8. According to the historical setting of the United Nations, five regional groups of states are identified: the African Group, the Asian Group, the Group of Eastern European states (EEG), the Group of Latin America and Caribbean states (GRULAC), and the Western European and Other states Group (WEOG).

Nevertheless, the HRC is continually criticised for not living up to its normative principles, for falling short in protecting the victims of human rights violations, even in dramatic situations. Scientists and human rights experts have already been discussing this subject for some time and the expectations regarding the performance of the HRC were mainly concerned:

- establishing an explicit follow-up procedure on recommendations by Special Procedures (at present, some of the mandate holders do this on a voluntary basis) in extending the existing communication format;¹³
- integrating recommendations from the UPR, Special Procedures and Treaty Bodies in order to foster more comprehensive deliberation on guidance for implementation at the national level;
- systematically including recommendations and appeals to the UN Security Council (UNSC) to refer cases to the International Criminal Court;
- expanding by informal means the involvement in the HRC mechanisms of countries which lack modern communication infrastructure, access to expertise, lobbying and advocacy.¹⁴

Beyond procedural improvements, the recommendations and proposals for improvements touch on the difficult question of how to measure success in terms of human rights, i.e. the question of methodology: How can any outcome be attributed to an activity of the HRC, the Special Procedures, the UN Treaty Bodies or other human rights mechanisms? The issue is further complicated by the fact that even in scientific research there is no single universally recognised general standard. The problem begins with the challenge of achieving a clear outcome and appraisal, while distinguishing the legal standards and their specific demands for implementation, the social pressure to achieve a certain normative setting, and, finally, of relating all of this to the impacts on the ground.¹⁵ The present text does not have much to say about methodology either. It may be sufficient for

its purpose to explain that it adopts an interdisciplinary approach to assessing the performance of the HRC in addition to its activities and impacts on situations on the ground.

3. Strengthening the Role and Function of the Human Rights Council

According to its mandate, the HRC is responsible for the promotion and protection of all human rights worldwide. As explained above, the HRC has continuously and informally extended its institutional procedures over the years, through Commissions of Inquiry, fact-finding missions, reports of the High Commissioner for Human Rights, or urgent debates. Each of these procedures provides an opportunity to cover urgent issues and place them on the HRC agenda, despite narrow majorities, and tentatively turn them into a topic of systematic assessment. In addition, the reports of these commissions, missions and assessments have provided solid information on human rights violations and sound recommendations concerning the duties of the states concerned, and in the meantime some are used to inform the UNSC.

The Universal Periodic Review (UPR) has extended participation to all UN member states, accompanied by high-level participation by state delegations and a number of norm-related comments, questions and recommendations posed to the country under review. The UPR is now formally accepted world-wide. An increasing number of countries report on the extent to which they have implemented the recommendations made during the previous review. Some even provide voluntary midterm reports and thus demonstrate that the mechanism can work. However, in order to progress further, more substance needs to be included in the recommendations as well as in the reports on the follow-up. Therefore, in many countries, governments and civil society stakeholders need financial or technical assistance in providing substantial information. This technical aspect is especially important for quite a number of developing countries. In addition, the commitment of civil society stakeholders and NHRIs also needs to be encouraged in order to provide normatively orientated assessments of the country's human rights situation, to be involved in the follow-up process, and to seek to ensure the mid-term compliance report by the government.

13. See Communications reports of special procedures via <http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx>.

14. See Theodor Rathgeber (2013), *op.cit.*, supra footnote 2.

15. See Fons Coomans, Fred Gruenfeld, Menno T. Kamminga [eds.] (2009): *Methods of Human Rights Research*. Antwerp-Oxford-Portland: Intersentia.

3.1 Blocs and Cross-regional Initiatives

A further element are the effects and dynamics of bloc politics, which are still relevant, though they no longer dominate the HRC's functioning as they did in its first four years. At that time, African and Asian countries used their numerical weight to push for a more state-centred approach. Nominally, the two regional groups together comprise 26 members out of 47 in total, though this numerical majority never translated straightforwardly into a majority in votes. In the meantime, when it comes to generating common policy positions the importance of those groups has been superseded in part by politically, religiously or geo-politically defined groups, such as the Non-Aligned Movement (NAM), the Organization of Islamic Cooperation (OIC), the European Union (EU), and a number of non-EU members of the Western European and Other states Group (WEOG) together with Japan, and known as JUSCANZ.¹⁶

Most significant for the new dynamics are rifts within the African States Group. Since 2010, we can observe that standards for good governance including human rights have become a legitimate reference point for countries such as Ghana, Sierra Leone, Botswana, Cameroon, or Senegal for domestic as well as for international policymaking. This may be due to the fact that they have experienced changes in domestic politics and society based on democratic principles and the rule of law. Within the HRC, South Africa defied the majority of the African Group in 2011 by launching a resolution on the rights of LGBTIQ people (A/HRC/RES/17/19).¹⁷ In 2011, Arab states began to support or introduce resolutions which addressed or condemned the human rights situation in neighbouring countries, such as Syria (country mandate) or Yemen (technical assistance in implementing human rights standards), even though this engagement may not have been driven exclusively by human rights concerns.

A certain bloc mentality prevails among the states of the European Union (EU), which, in order to achieve a common foreign and security policy, have created a rather ex-

clusive caucus and coordinate their actions regularly in an attempt to speak with one voice. The EU approach may have its merits but in the meantime it tends to hinder alliance- and trust-building. Even in cases in which the EU is divided and the votes are split – for instance, on issues such as the right to development, the right to peace, and the adverse effects of foreign debt – the exchange of arguments within the entire WEOG is minimal. Some bloc voting remains, for example when the USA and the EU voted as a bloc against the resolution on business and human rights establishing a new intergovernmental working group on elaborating an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights (26/9). This subject was a topic of controversy among NGOs and civil society actors too, even though they were united in the understanding that global corporations have become stronger and states weaker and that such an imbalance must be addressed in terms of systemic human rights monitoring that includes the structural aspects. Initiatives such as the Global Compact, the HRC resolution (27/30) on foreign debt and the specific role of ›vulture funds‹ (i.e. hedge funds),¹⁸ the UN Guiding Principles on Business and Human Rights,¹⁹ and the involvement of domestic courts in combating piracy, do not go far enough towards promoting efficiency. The disagreement among NGOs mainly relates to whether the implementation of the new working group was timely. Nevertheless, now that there are two working groups (one intergovernmental and one expert group under the Special Procedures system) dealing with business and human rights, it is important at least at the NGO level to accompany both processes, to keep the information flowing, and to prevent competition. NHRIs might be in a position to make use of their special formal status to mediate between states. NHRIs could begin by becoming engaged at the

18. The Foreign Minister of Argentina travelled to Geneva to present this resolution. He mainly referred to Argentina's problems in abiding by its agreements on its foreign debt and with plaintiffs against such agreements such as the Knighthood Master Fund LP, RGY International LLC (Perry Capital), the Hayman Capital Master Fund, and Quantum Partners LP (George Soros). The resolution requests the UN Advisory Committee to prepare a study on the impacts of vulture funds and to present a first outcome to the 31st session of HRC (March 2016). Unsurprisingly, the USA called for a vote and voted against the resolution together with Germany, the Czech Republic, the United Kingdom and Japan.

19. Framework for ›Protect, Respect and Remedy‹ developed by the then Special Representative of the Secretary-General, John Ruggie, on the issue of human rights and transnational corporations and other business enterprises. The Special Representative annexed the Guiding Principles to his final report to the Human Rights Council (A/HRC/17/31), which also includes an introduction to the Guiding Principles and an overview of the process that led to their development. The HRC endorsed the Guiding Principles in its resolution 17/4 in June 2011.

16. Predominantly Japan, United States, Canada, Australia, New Zealand, Switzerland, and Norway.

17. The resolution requested the Office of the High Commissioner to prepare a study by March 2012 and asked the HRC to organise a panel discussion during its March session 2012, which duly took place. See also the recent HRC resolution 27/33 on human rights, sexual orientation and gender identity.



national level and in national debates, by raising awareness among national governments, and by requesting national action plans on business and human rights.

In order to overcome the bloc mentality, a proposal was discussed to create *human rights* first platforms with open and flexible membership, which would be formed in an ad hoc way in support of specific issues. Until now this initiative has failed to win support. Instead, it turned the displeasure with blocs into the question whether the concept of platforms or blocs is still relevant at all, or at least whether its importance for the performance of the HRC is overestimated. Among human rights defenders, the argument is made that instead of continuing to build new platforms or like-minded blocs, it may be more effective (for NGOs) to support reform-orientated countries and their normative orientations, while contributing to the erosion of existing blocs which are detrimental to positive development by uniting all of their members around the lowest standards. Nevertheless, regional and like-minded states' groups will always tend to favour a certain confidential environment for their political considerations or power strategies in the HRC, irrespective of whether such a format is shown to be detrimental to the normative standards.

Taking the foregoing reflections into account, a number of states have taken the initiative and engaged in increasing cross-regional initiatives within the HRC. Most of these initiatives are thematic in nature, dealing in particular with economic, social and cultural rights (ESC rights), and are generally adopted by consensus. Nevertheless, as mentioned in the previous chapter, the WEOG governments will remain hesitant when it comes to addressing certain ESC rights in the near future. There are also cross-regional initiatives concerning country situations, such as the country resolutions on Iran, Eritrea, Mali, Central African Republic, or Côte d'Ivoire. However, there is no guarantee that this cooperation will have lasting effects. In particular, the election for HRC membership for 2014–2016 brought in countries which are outspoken and known for their bloc- and state-orientation,²⁰ and as such have taken a leading role in narrowing the majorities on country situations. In addition, India (re-elected for 2015–2017) turned into a rigorous defender of national sovereignty against international surveillance on human rights and further narrowed the leeway for a normative functioning of the HRC.

20. Such as Algeria, China, Cuba, Russia, Viet Nam, and Saudi Arabia.

3.2 Civil Society Space

Building civil society stakeholders, as well as creating a conducive environment in the relevant countries, remains a fundamental task. There are in the meantime a number of examples which show that civil society stakeholders play a pivotal role in making the HRC normative standards and procedures a reference for domestic politics. Conversely, the risks of such civil society engagement are widely known including within the premises of the United Nations. In March 2014, during the 25th regular session of the HRC, a panel discussion was devoted to situations in which civil protest and human rights defenders are at risk. In the course of this HRC session, Botswana led a group of 55 states in a cross-regional joint statement expressing their indignation concerning reprisals against civil society actors who attempt to engage with the UN human rights mechanisms. The statement also stressed the 'inadequate' response by the UN and member states in preventing and addressing reprisals. The Special Rapporteur on human rights defenders echoed these concerns by stating that defending human rights remains a dangerous activity. Some illustrations referred to Iran, where hundreds of individuals remain in some form of confinement for exercising their basic liberty rights, including journalists, bloggers, and human rights defenders. Protesters on the streets of Venezuela and Egypt risk arbitrary arrests and violence. A representative of Human Rights Watch was recently stopped at Cairo Airport and forbidden entry to Egypt. The government of Egypt has in addition prohibited any foreign funding of national civil society organisations. Those who peacefully challenge state authority in China, Bahrain, Belarus or Sri Lanka are detained. In September 2014, Russian authorities at the Moscow airport prevented indigenous representatives from flying to New York to participate in the World Summit. Infringements of women's rights and of the human rights of Lesbian, Gay and other persons with sexual orientations that differ from the mainstream are frequent.²¹

In September 2014, the debate and voting procedure on the space for civil society dominated the 27th session of

21. See, for instance, OHCHR report on the importance of the promotion and protection of civil society space (A/HRC/27/33); the report of the Special Rapporteur on Human Rights Defenders (A/HRC/25/55); the HRC resolution on civil society space (A/HRC/RES/27/31); Thomas Carothers/Saskia Brechenmacher (2014): *Closing Space. Democracy and Human Rights Support Under Fire*. Washington: Carnegie Endowment for International Peace; CIVICUS (2013): *CIVICUS' 2013: Enabling Environment Index*. Johannesburg-London-Geneva; International Service for Human Rights (2013): *Reprisals Handbook*. Geneva.



the HRC. A voting marathon had to be conducted on resolution 27/31 on civil society space. Cuba, China, India, the Russian Federation, and Venezuela presented a total of ten amendments each of which had to be voted on in a separate process, while the main sponsors of the resolution – Chile, Ireland, Japan, Sierra Leone, and Tunisia – had conducted six rounds of consultation in order to merge the different aspects into a single text. The resolution was presented on time because there had been a sharp increase in the harassment of human rights defenders and other citizens in a number of countries, with a corresponding deterioration of the public space. It was interesting to see the grouping of state interests. All of the amendments were rejected by a constant majority comprising Argentina, Austria, Benin, Botswana, Burkina Faso, Chile, Costa Rica, Côte d'Ivoire, Czech Republic, Estonia, France, Germany, Ireland, Italy, Japan, Mexico, Montenegro, Peru, Republic of Korea, Romania, Sierra Leone, The former Yugoslav Republic of Macedonia, United Kingdom, and the USA. The amendments were consistently supported by a group of countries comprising Algeria, China, Cuba, Ethiopia, India, Kenya, Kuwait, Morocco, Pakistan, Russian Federation, Saudi Arabia, United Arab Emirates, Venezuela, Viet Nam. The Maldives voted predominantly against the amendments, South Africa predominantly in favour. Gabon, Kazakhstan and the Philippines regularly abstained; Indonesia showed an alternating voting behaviour. Sierra Leone and Tunisia underlined their positive experiences with civil society participation during the reform process in their respective societies, which led them to vote in favour of the resolution.

The reprisals are directed even against NHRIs. While the HRC was conducting its 27th session, the Supreme Court in the Maldives charged all members of the Maldives Human Rights Commission with high treason for submitting a report to the UPR. The report contained the assessment that the rule of law and the independence of the judiciary in the country had been undermined. The Court ordered that the members be interviewed. Thus, Australia's resolution A/HRC/RES/27/18 on the role of NHRIs in combating reprisals was also timely. It condemns all reprisals and harassment of NHRIs and calls, instead, for prompt and thorough investigation of reprisals. While such a resolution will probably have little impact on the Supreme Court of the Maldives, it may remind governments such as that of the Maldives, a member state of the HRC, that the country's performance

should satisfy ›highest standards on human rights‹. However, since governments like that of the Maldives are required to build majorities in the HRC on a number of issues with slender majorities, the public and critical comments on the issue were moderate during the HRC session. Despite the successful resolutions, the presence of civil society stakeholders in general and human rights defenders in particular remains a challenge for the HRC because human rights hardliners among the governments have increased their efforts to obstruct critical statements in the plenary of the HRC. A strict ruling by the HRC Presidency allowing NGOs to speak to the substance of resolutions might be helpful in remedying this situation.

Some governments are in principle demonstrating a reluctance to support HRC mechanisms. Experience indicates that only the commitment of domestic civil society actors and stakeholders can create a more favourable environment. This has been demonstrated in particular by indigenous peoples and by Lesbian, Gay, Bisexual, Transgender, Intersex, and Questioning²² people (LGBTIQ). One of the most striking success stories – because of its direct response to input – relates to South Africa in 2011. The government of South Africa and its delegation in Geneva had defied the majority of the African Group by launching a resolution on the rights of LGBTIQ people (17/19) against the outspoken will of the group.²³ It was interesting to see the government's shift from a draft text which was presented at the previous session of the HRC in March 2011 and which was substantially precisely the opposite of the new one in July. Once they learned of the first version, LGBTIQ people together with the National Human Rights Commission engaged with the government, involved the judiciary, and mobilised in parallel domestic public attention. These efforts ultimately led to the government drafting the new version for resolution 17/19 in July 2011. The text expressed grave concern about acts of violence committed against all individuals, and thus against LGBTIQ people as well. Despite this favourable outcome, the conflict over sexual orientation and gender identity continued. In September 2014, resolution 27/32, sponsored mainly by Brazil, Chile, Colombia, and Uruguay,

22. ›Questioning‹: individual who is questioning his or her gender or sexual identity.

23. The resolution requested the Office of the High Commissioner to prepare a study for March 2012 and asked the HRC to organise a panel discussion during its March session 2012; what has happened too. See also the recent HRC resolution 27/33 on human rights, sexual orientation and gender identity.

requested the OHCHR to update its report of 2012 (A/HRC/19/41) dealing with discrimination based on sexual orientation and gender identity. The updated study should include ideas on how to combat discrimination and persecution and should be presented to the 29th session of the HRC (i. e. in June 2015).

The voting process on resolution 27/32 also led to a voting marathon on seven amendments to be voted on individually, all of which were presented by Egypt in the name of the countries Congo, Djibouti, Malaysia, Nigeria, South Sudan, Uganda, and the United Arab Emirates. All amendments were rejected, and the original resolution adopted by 25:14, with 7 abstentions. The amendments had sought to delete any reference to and notion of ›sexual orientation‹ and ›gender identity‹. Egypt argued that the HRC should not create a new ›category of persons‹ to be protected who would, among other things, ›question traditional values‹ in building a society. Correspondingly, the amendments further sought to delete any reference in the resolution to previous statements on sexual orientation and gender identity in terms of human rights. The amendments would have deleted any official reference to the subject of sexual orientation and gender identity and, thus, excluded an entire group of persons from protection. One amendment (A/HRC/27/L.49) aimed to highlight the sovereignty of the state in implementing universal human rights only in accordance with the religious and ethical values of the state concerned. It was interesting to note that Cuba, Benin and Venezuela did not participate in the voting process on any of the amendments, while Cuba and Venezuela ultimately voted in favour of the original resolution.

3.3 Institutions and Mechanisms

The instruments and mechanisms of the HRC have been designed in order to facilitate a case- and victim-centred rationality. Since the functioning of the HRC depends on state majorities, there has always been a quest for procedures which could develop this rationality further by making it independent of states' interests. The discussions therefore focus on additional modalities among the HRC mechanisms. The most promising proposal for improved and more effective functioning of the HRC from the perspective of rights holders and victims of violations would be the creation of a trigger system which more or less automatically establishes an urgent action proce-

dure within the HRC. This was already discussed during the review process of the HRC in 2010 and 2011 but was disregarded.²⁴ The trigger system was proposed in order to allow an assessment of a serious human rights situation exclusively in accordance with normative standards, without the politically motivated debate and necessary bargaining among member states to have the item placed on the agenda. Such a system would be based on objective reports by independent experts, such as the UN High Commissioner for Human Rights, the mandate holders of the UN Special Procedures or the UN Secretary-General. The current discussions among human rights stakeholders assign NGOs and NHRIs a dominant role in promoting, spotlighting and coordinating the efforts towards realising this trigger system. In recent times, some reform-minded states from GRULAC – for instance, Argentina, Chile, Mexico, and Uruguay – and from WEOG – such as Ireland, Norway, and Switzerland – had occasionally expressed their concern about a certain dysfunction of the HRC and appealed to other countries to cooperate in ensuring that the HRC works more closely in accordance with its normative standards. It may be worth encouraging those countries to experiment with informal agenda-setting towards improving the functioning of the HRC by establishing a mechanism to trigger an urgent action procedure.

Beyond the debates on the procedure, there is a further obstacle to the effective functioning of the HRC. The UN High Commissioner for Human Rights and the office of the High Commissioner (OHCHR) have been continually the targets of animosities, and even of fierce attacks by a number of states, because of the impartial assessment of human rights situations in countries. At the rhetorical level, there is unanimous backing for the independence of the OHCHR from the HRC, while at the same increasing efforts are being made by the leading state-oriented (sovereignist) countries to downgrade the OHCHR into a recipient of the Councils decisions. Furthermore, the OHCHR is regularly confronted with challenges on its budget, on the one hand, and with demands to perform new tasks within existing resources, on the other. Furthermore, the OIC and its member states categorically rejected the High Commissioner's (at that time, Navi Pillay) appeal to ensure that no individual faces discrimination on grounds of sexual orientation and gender identity. The OIC was of the opinion that no such responsibility exists

24. See resolution 16/21 on the review of the work and functioning of the HRC.

in international human rights law and, therefore, the High Commissioner had exceeded her mandate. The Government of Sri Lanka disqualified the High Commissioner's report on the human rights situation in that country²⁵ several times as biased and having allegedly misused her mandate in relation to Sri Lanka and the tasks assigned in the corresponding HRC resolutions since 2012.²⁶ Frequently, a majority of member states demands the OHCHR to present an overview of the composition of its staff.²⁷ In 2013, as a kind of retaliation to persistent non-fulfilment, the resolution even enjoined the UN Joint Inspection Unit (a kind of supervisory body) to review the management and administration of the OHCHR and to report to the Council at its 27th session (September 2014).²⁸

Similar problems are faced by a number of mandate holders of the Special Procedures who are too outspoken in relation to country situations or sensitive thematic issues. In contrast to the OHCHR, they constitute an integral part of the HRC. Thus, they are not only subject to disqualification but are also subject to restrictions via the Code of Conduct, which was established in 2006²⁹ precisely in order to limit the impact of the Special Procedures on the ground in a number of countries. Fortunately, the mandate holders are for the most part independent and most of them are still courageous enough to withstand such accusations. Moreover, in October 2014, there were 14 country mandates, 39 thematic mandates and approximately 80 independent experts as mandate holders, which together constitute a genuine set of mechanisms for the protection of human rights.³⁰ What may sound like a proliferation of mandates can be read as evolving the genuine attention to specific life conditions. Some of the Special Procedures' mandate holders submit reports and recommendations, in some cases also to the UN General Assembly or, rather seldomly, are invited by the UNSC to present their assessment. Some mandate holders voluntarily undertake follow-up visits, present follow-up reports or write follow-

up letters to governments. It may be worthwhile to take up such initiatives and to transform them, in cooperation with civil society stakeholders, into an informal follow-up process, and later into a more formalised format.

A further aspect of the institutionalisation of a follow-up system relates to resolutions and their outcome. Again, a conducive political environment is needed inside and outside the HRC. At state level this calls for trust building (see above) and, among other things, a self-critical approach by a number of governments. Civil society stakeholders are currently one of the main actors in promoting such a mechanism. Unfortunately, the above-mentioned trend of engaging in reprisals against civil society stakeholders in general and human rights defenders in particular undermines this role.

In general, the HRC has in the meantime evolved a number of additional formats for tackling urgent human rights problems, which are considered helpful for improving domestic situations and international investigation procedures. Nevertheless, the current instruments for protection need to be extended in particular in situations of crisis.

4. The Human Rights Council in its Relationship with the UN Security Council and the Responsibility to Protect Approach

The experience at the United Nations is showing that governments become more sensitive to accountability issues when red lines are touched or breached and the corresponding UN institution, the UNSC, is threatening to take action. In addition, the sensitivity also increases when the decision-making process is conducted in terms of concepts which indicate a serious crisis, such as those that form the Responsibility to Protect approach.

The relationship between the HRC and the UNSC has been discussed in numerous publications.³¹ According to

25. Report A/HRC/22/38.

26. Thus, the government's special envoy, Mahinda Samarasinghe, stated on 20 March 2013, inter alia, that the report on the situation in the country was based on unsubstantiated evidence founded on conjecture and counter to the detachment, objectivity, and impartiality expected from the holder of such an exalted office; see statement via HRC Extranet.

27. See, for instance, HRC resolution 22/2.

28. See the reports on the composition of staff (A/HRC/27/18) as well as the of the Joint Inspection Unit (A/HRC/27/19).

29. See HRC resolution 5/2 on the Institution Building.

30. See <http://www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx> and <http://www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx>, respectively.

31. For detailed insights and analysis see David P. Forsythe (2014): *The UN Security Council and Human Rights: Promising Developments, Persistent Problems*. In: *Journal of Human Rights*, 13:121–145; Forsythe (2012): *The UN Security Council and Human Rights. State Sovereignty and Human Dignity*. International Policy Analysis, FES Geneva; Wolfgang S. Heinz/Peter Litschke (2012): *Der UN-Sicherheitsrat und der Schutz der Menschenrechte. Chancen, Blockaden und Zielkonflikte*. Deutsches Institut fuer Menschenrechte, Berlin; Theodor Rathgeber (2012): *New Prospects for Human Rights? The Human Rights Council between the Review Process and the Arab Spring*. Friedrich-Ebert-Stiftung, Deutsches Institut fuer Menschenrechte, Berlin; Joanna Weschler (2004): *Human Rights*. in: David M. Malone (ed.): *The UN Security Council: From the Cold War to the 21st Century*. Boulder: Lynne Rienner Publishers, 55–68.



these observations, the UNSC has paid increasing attention to human rights violations as a threat to peace and security. The UNSC has begun to take a human rights approach in relation to peacemaking and peacekeeping and in relation to the use of sanctions under Chapter VII of the UN Charter. Meanwhile, the UNSC attributes a human rights component to every peacekeeping mission. Moreover, it takes human rights standards systematically into account when assessing the use of sanctions, such as arms embargoes, travel bans, listing of persons, freezing of assets, commodity and trade sanctions, financial restrictions, and limiting access to the Internet or satellite communications. In the last four years, the UNSC frequently requested the High Commissioner for Human Rights to report on human rights situations in a number of countries. In 2011 and 2012, the then High Commissioner for Human Rights, Navi Pillay, was invited nearly every six months to brief the UNSC on the situations in Syria, Libya, Yemen, and Côte d'Ivoire. In the cases of Libya and Yemen, the UNSC explicitly condemned the human rights violations in these countries. Furthermore, the HRC Commission of Inquiry on the Democratic People's Republic of Korea was invited to brief UNSC members under the 'Arria-formula'.³² The UNSC had also considered the Goldstone Report and its referral to the International Criminal Court, but did not take corresponding action.³³

We have already addressed the complementary relationship between the HRC and the UNSC and the roles of each institution in accordance with its mandates, instruments, and assets. The HRC seems to be suited to performing the groundwork on prevention, serving as an early warning instance and seeking conflict arbitration based on a normative structure including political dialogue. The HRC can therefore provide expertise and reliable evidence for an effective and rapid crisis response by the UNSC. Conversely, the UNSC has demonstrated its ability to incorporate human rights assessments into its deliberations on conflict situations with a view to

combating massive human rights violations, including robust measures. At the same time, the UNSC remains far from developing a systematic human rights monitoring system, even in peacekeeping operations, and from paying special attention to war crimes, crimes against humanity and gross violations of human rights.³⁴

There have been discussions of a kind of intermediation role for the UN Secretary-General, which would involve including a human rights analysis in his reports to the UNSC on country situations. This has already provided incentives for the UNSC to undertake missions to countries in which early signs of crisis indicate a need for its involvement.³⁵ This could develop into more systematic regular hearings and briefings with mandate holders of the Special Procedures and the High Commissioner for Human Rights, sometimes using the Arria formula, when the Permanent Five of the UNSC remain divided.

As regards the role of the HRC Presidency, regular meetings between the Presidents of the HRC and the UNSC should be considered as a first step, even though the UNSC President changes every month. Such an (informal) relationship may increase the pressure on some governments³⁶ even though the principal obstacle will remain. However, the increase in requests from the UNSC for information and advice on human rights issues are not a guarantee that this body will consistently and adequately act on human rights crises.

Therefore, additional incentives are needed. This raises the question of how human rights can become the centre of decision making at least at the HRC, but preferably also at the UNSC, in situations of crisis. A general examination shows that governments become more responsive when internationally recognised and proscribed red lines are touched or breached. The Responsibility to Protect (R2P) approach has attracted major attention in this context. The UN World Summit in 2005 promoted the concept of R2P for strengthening the role of 'international cooperation'. Such cooperation is already part to the human rights system. Even though state sovereignty is a central principle of international relations, a severe human rights crisis may call for international involve-

32. The *Arria Formula* is an informal arrangement existing since 1992 that allows other relevant stakeholders to brief the UNSC about issues of international peace and security. Formally, only high-ranking government officials of UNSC members or invited states and UN officials can speak at UNSC regular meetings and consultations.

33. Report of the United Nations Fact-Finding Mission on the Gaza Conflict, document A/HRC/12/48, September 2009. This has been one of the best reports in relation to our subject because it contains a detailed examination of human rights violations as well as violations of international humanitarian law; moreover, it had to be dealt with by the HRC and the UNSC together. The report and its recommendations were later blocked for political reasons, in particular by the USA.

34. See literature at footnote 31.

35. High Commissioner for Human Rights Navi Pillay (2014): *Prevention of human rights crises*. Lecture in June 2014, accessible via <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14745&LangID=E>.

36. David Forsythe (2014), op.cit., supra footnote 31.

ment. If the state is unwilling or objectively unable to protect its citizens from gross human rights violations, the international community is entitled to take measures to increase the state's ability to respect, protect and fulfil its human rights duties.

Furthermore, the concept of R2P understands ›intervention‹ primarily in terms of civil conflict prevention and its aim is to support and encourage the state concerned at the three successive levels of protecting, reacting and rebuilding. Accordingly, R2P involves three components: Responsibility to Prevent, Responsibility to React, and Responsibility to Rebuild. When it comes to prevention, the HRC could serve as an early warning system within the concept of R2P. The military component of R2P is an absolutely last-ditch recourse based on an in-depth analysis of the crisis and taking into consideration the proportionality of the measures to be taken.³⁷ Unfortunately, the military component predominates in the public perception and discussion for various reasons. Again, unfortunately, the Libyan crisis, which was addressed by the UNSC in terms of R2P, led Russia and China to oppose any further attempts along the lines of R2P.³⁸

However, particularities of the R2P approach must be considered. The R2P approach refers exclusively to genocide, war crimes, crimes against humanity and sub-crimes such as ethnic cleansing. In other words, it deals with severe human rights violations in high scale which in addition require consideration of the aspect of ›intention‹. These are subjects best dealt with in the context of the Rome Statute and international criminal law. Nevertheless, at the level of early warning, the HRC could play a role within the concept of R2P by establishing a procedure which aims to prevent a crisis situation becoming aggravated into crimes against humanity and war crimes. The World Summit 2005 accepted such an understanding of R2P which includes cases in which a state is unwilling to adequately deal with these kinds of crimes.

37. See Lou Pingeot/Wolfgang Obenland (2014): *In whose name? A critical view on the Responsibility to Protect*. Bonn-New York: Global Policy Forum and Rosa Luxemburg-Stiftung; Peter Rudolf (2013): *Schutzverantwortung und humanitäre Intervention. Eine ethische Bewertung der ›Responsibility to Protect‹ im Lichte des Libyen-Einsatzes*. SWP-Studie 3, Berlin.

38. See Lou Pingeot/Wolfgang Obenland (2014), op.cit. supra footnote 30; Peter Rudolf (2013), op.cit., supra footnote 30; also Oliver Stuenkel (2014): *The BRICS and the Future of R2P: Was Syria or Libya the Exception?* In: *Global Responsibility to Protect*, Vol.6, Issue 1:3–28.

Prevention is a question of process and conduct, not of results. A logical context for identifying those situations and hot spots within the structure of the HRC would be agenda Item 4 (on human rights situations in particular countries), a Special Session, and the UPR, although the latter lacks of a stringent follow-up structure for dealing with the preventive aspect in an efficient and systematic way. Current HRC Commissions of Inquiry, such as the ones on Syria, Libya, and the Democratic People's Republic of Korea (DPRK), actually mention the principles of R2P, the need for action, and the genuine responsibility of states to investigate in such cases. The Goldstone report already mentioned and later the reporting system on the DPRK situation are examples of potential formats that enable people to testify directly on what has been happening. Additional formats can include panels, side events, informal meetings and technical cooperation. Furthermore, the HRC could establish for this purpose a genuine reporting and investigation system and, for instance, the HRC President could send concluding observations to the chair of the UNSC and to the UN Secretary-General. The HRC Presidency could pro-actively promote such a role and thereby make the HRC into a symbol for the protection and prevention aspect.

5. Germany at the Human Rights Council Presidency – Challenges and Expectations

The challenges for any HRC Presidency are manifold: How can the HRC become more effective, and how can interregional cooperation for this purpose be increased? Basically, the HRC needs to begin by applying the rules of procedure in a clear and consistent manner. The HRC President must be an honest broker in order to guarantee the functions as well as the reputation of the HRC.

From a non-state perspective, the points of order and the no-action motions are relevant elements which are often misused to block the discussion and to prevent the flow of information. Therefore, the management of the HRC sessions needs to make the real purpose of such interventions the subject of decision: whether it is to avoid redundant discussion or to avoid discussion as such. Also, the overflowing agenda is a major obstacle for civil society stakeholders. Most of them have to struggle with economic constraints. Therefore, a reliable schedule is a precondition for the participation of

people from remote areas in particular. In this regard, a bi-annual rationalisation of resolutions would also open up more space for discussions on burning issues.

An increasingly severe obstacle to the participation of civil society stakeholders are the above-mentioned reprisals, which can occur during and following the participation of civil society stakeholders, that is, of human rights defenders. In such cases, an immediate response by the HRC Presidency should be expected and would be highly effective in mitigating or preventing reprisals. In general, reprisals must be made into a primary concern of the HRC and its Presidency.

Obviously, the HRC Presidency, by its very nature, lacks leverage, tools and the ability to change the facts on the ground. The Presidency cannot change the weak authority of the HRC by itself either. A President from the group of Western states even runs the risk that any push for reform might be identified as pursuing a ›Western agenda‹. Nevertheless, the President – together with the Bureau³⁹ – can schedule the interactive dialogues with Special Procedures and the OHCHR. In this context, for instance, it can reserve a time segment for a systematic follow-up to the findings of reports and the recommendations made. Similarly, a time slot could be made available within the framework of the General Debate on Item 6, consideration of UPR outcomes, in order to consider midterm reports and, thus, to provide comprehensive guidance for national implementation.

As outlined above, enhanced interaction between the Presidency of the HRC and the UN Secretary-General, the President of the UN General Assembly (UNGA) and, especially, the Chair of the UNSC would increase the effectiveness of the HRC. Beyond personal meetings, the interactions between these institutions involve exchanges of evidence, assessments and opinions, in which further organs are also involved. Plausible allegations on gross human rights violations and violations involving human rights defenders and persons informing UN institutions might as a result spread immediately throughout the UN system. This might also contribute to strengthening the early warning function of the HRC and constitute

a step towards a trigger system. Finally, in addition to addressing governments, the HRC President could also provide a format for meeting parliamentarians in order to establish an additional debate and follow-up procedure beyond the direct control of national governments.

Even though the HRC President acts in a personal capacity, new ideas, suggestions and reforms require a conducive environment. This raises the question of potential activities by the German government within the HRC. The tenure of a German President will increase public attention on topics which are being dealt with by Germany. At present, the right to water (with Spain), human trafficking (with Philippines), and the right to privacy (with Brazil) are subjects of cooperation with other states. Further topics open to cross-regional initiatives are armed drones, mediation on business and human rights, the implementation of the Ruggie Principles in a National Action Plan, ESC rights and, in particular, promoting the ratification of the Optional Protocol for the International Covenant on Economic, Social, and Cultural Rights. Such initiatives for cross-regional coalitions are also subjects for a broader EU involvement.

In addition, the German government may consider extending the debate on growing international responsibility under two aspects. On the one hand, the coherence of politics and governance can make a basic contribution to turning the project of the HRC Presidency into a credible, substantial and meaningful activity. For instance, debates on climate change in terms of human rights, on Sustainable Development Goals from a human rights perspective, or on development cooperation under human rights principles are on the international agenda and could be expanded and intensified. The initiatives on an equitable international order or the impact of hedge funds could be concentrated on its human rights substance while addressing the linkages to other fields of politics. Obviously, such initiatives would be designed as the beginning of a process to contribute to a longer debate.

On the other hand, Germany could increase its involvement in international policy making and conflict resolution in ways that stress the civil components. In particular, the civil scope of R2P is in need of further discussion and must be tailored into practical steps for humanitarian aid and conflict prevention. In relation to the military component, the concept of ›ultima ratio‹ is also in

39. The Bureau of the HRC is composed of the President and four Vice-Presidents elected from among the HRC member states, with each of the five members representing one of the five regional groups. The Bureau facilitates procedural and organisational matters of the Council while final decisions are left to the member states.



need of more debate: who defines the parameters and what kind of procedure is necessary in order to prevent abuse? In sum, there are a number of initiatives – and the examples mentioned are not meant to be exhaustive – through which Germany can play a constructive and creative role in enhancing the effectiveness of the HRC Presidency by opening more space for an effective human rights orientation and protection.

6. Conclusion

The discussion of how to improve the effectiveness of the HRC with particular reference to the HRC Presidency has revealed a number of aspects which enable us to answer the overall question in part: how can the HRC be made more effective, how can cooperation among countries who show a human rights friendly policy be increased, and how far can the Presidency make a difference? The HRC President can contribute to building bridges through constructive cross-regional dialogues and initiatives, by strengthening certain working methods and by introducing new formats designed to improve the work and functioning of the HRC. The more deeply such steps are embedded in and fostered by a co-

herent human rights policy by the German government, the better are the chances of achieving substantive results. Germany's exposed role at the international level is therefore an asset in demonstrating that it is possible to make human rights into a state interest.

From the perspectives of victims, their priorities are frequently expressed in terms of justice, reconstructing their life project, restitution, compensation, and preventing recurrence. While the ranking of these priorities may vary, they fundamentally expect from the UN a guarantee that human rights violations will not be repeated. Within the scope of the HRC, this means strengthening the prevention aspect, systematic follow-up procedures, reliable and independently investigated evidence, and the possibility of direct and active participation by the rights holders and victims. Moreover, it requires the political will to give priority to normative human rights standards over political considerations. The current work and function of the HRC still leaves room for improvement. While the HRC President cannot change the weak authority of the HRC simply by decree, he or she can certainly make this weak authority into a challenge to the politics of the HRC member states. There is hope for 2015.



List of Acronyms

EEG	Group of Eastern European States
ESC rights	Economic, Social and Cultural Rights
EU	European Union
GRULAC	Group of Latin America and Caribbean States
HRC	Human Rights Council
ILO	International Labour Organization
JUSCANZ	Japan, United States, Canada, Australia, New Zealand, Switzerland, Norway and others
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex, and Questioning people
LLRC	Lessons Learnt and Reconciliation Commission
NAM	Non-Aligned Movement
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
OHCHR	Office of the UN High Commissioner for Human Rights
OIC	Organisation of Islamic Cooperation
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UPR	Universal Periodic Review
WEOG	Western European and Other States Group



References

- Carothers, Thomas / Brechenmacher, Saskia** (2014): *Closing Space. Democracy and Human Rights Support Under Fire*. Washington: Carnegie Endowment for International Peace.
- CIVICUS** (2013): *CIVICUS' 2013: Enabling Environment Index*. Johannesburg-London-Geneva.
- Coomans, Fons / Gruenfeld, Fred / Kamminga, Menno T. (eds.)** (2009): *Methods of Human Rights Research*. Antwerp-Oxford-Portland: Intersentia.
- ECCHR [European Center for Constitutional and Human Rights]** (2009): *CIA – »Extraordinary Rendition: Flights, Torture and Accountability. A European Approach*. Berlin, second edition.
- ERRC [European Roma Rights Centre]** (2013): Parallel Report to the HRC/UPR 15th session. Budapest.
- Forsythe, David P. [ed.]** (2000): *Human Rights and Comparative Foreign Policy: Foundations of Peace*. United Nations University.
- (2012): *The UN Security Council and Human Rights. State Sovereignty and Human Dignity*. International Policy Analysis, FES Geneva
- (2014): *The UN Security Council and Human Rights: Promising Developments, Persistent Problems*. In: Journal of Human Rights, 13:121–145
- (2014): *The Continuing Struggle for Human Rights Protection*. *International Studies Review*. doi: 10.1111/misr.12164, Tucson: International Studies Association.
- Heinz, Wolfgang S. / Litschke, Peter** (2012): *Der UN-Sicherheitsrat und der Schutz der Menschenrechte. Chancen, Blockaden und Zielkonflikte*. Deutsches Institut fuer Menschenrechte, Berlin.
- High Commissioner for Human Rights** (2010): *Opening Statement to the 15th session of HRC in September 2010*. Geneva, accessible via <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10319&LangID=e>
- (2014): *Prevention of human rights crises*. Lecture in June 2014, accessible via <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14745&LangID=E>
- Hopgood, Stephen** (2013): *The Endtimes of Human Rights*. Cornell University Press.
- Human Rights Council / United Nations Fact-Finding Mission on the Gaza Conflict [Goldstone Report]** (2009): *Human Rights in Palestine and Other Occupied Arab Territories. Report of the United Nations Fact-Finding Mission on the Gaza Conflict*. Document A/HRC/12/48, September 2009, Geneva.
- International Service for Human Rights** (2013): *Reprisals Handbook*. Geneva.
- Marty, Dick** (2006): *Alleged secret detentions and unlawful inter-state-transfers involving Council of Europe member states*. Report AS/Jur (2006) 16 Part I and II, Strasbourg.
- OHCHR** (2011): *Guiding Principles on Business and Human Rights. Implementing the United Nations »Protect, Respect and Remedy« Framework*. New York-Geneva.
- (2014): *Report on the importance of the promotion and protection of civil society space*. Document A/HRC/27/33, Geneva.
- Piccione, Ted** (2012): *Catalysts for Change: How the UN's Independent Experts Promote Human Rights*. Washington: Brookings Institution.
- (2013): *The Future of the United Nations Special Procedures*. Routledge Handbook of International Human Rights Law. Oxford-New York: Routledge
- (2014): *Human Rights Special Procedures: determinants of influence*. Washington: Brookings Institution.
- Pingeot, Lou / Obenland, Wolfgang** (2014): *In whose name? A critical view on the Responsibility to Protect*. Bonn-New York: Global Policy Forum and Rosa Luxemburg-Stiftung.
- Rathgeber, Theodor** (2010): *Ambiguity as a main feature: the UN Human Rights Council in 2009*. In: Wolfgang Benedek et al. (eds): *European Yearbook on Human Rights 2010*, Vienna, pp. 183–193.
- (2012): *New Prospects for Human Rights? The Human Rights Council between the Review Process and the Arab Spring*. Friedrich-Ebert-Stiftung, Deutsches Institut fuer Menschenrechte, Berlin.
- (2013): *Performance and Challenges of the UN Human Rights Council. An NGOs' View*. International Policy Analysis, Friedrich-Ebert-Stiftung, Geneva.
- Rudolf, Peter** (2013): *Schutzverantwortung und humanitaere Intervention. Eine ethische Bewertung der »Responsibility to Protect« im Lichte des Libyen-Einsatzes*. SWP-Studie 3, Berlin.
- Special Rapporteur on Human Rights Defenders** (2014): *Report of the Special Rapporteur on Human Rights Defenders*. Document A/HRC/25/55, Geneva.
- Stuenkel, Oliver** (2014): *The BRICS and the Future of R2P: Was Syria or Libya the Exception?* In: *Global Responsibility to Protect*, Vol.6, Issue 1:3–28.
- UPR-Info** (2014): *Beyond promises. The impact of the UPR on the ground*. Geneva, accessible via <http://www.upr-info.org/newsletter/lt.php?id=MRkDAQifVAYDH1QMAA>
- Weschler, Joanna** (2004): *Human Rights*. In: David M. Malone (ed.): *The UN Security Council. From the Cold War to the 21st Century*. Boulder: Lynne Rienner Publishers, pp. 55–68



About the author

Theodor Rathgeber is a political scientist (PhD), a freelance consultant on human rights, international law, and development policies, and has been a lecturer at the University of Kassel (Germany), department of Social Sciences (FB 05), since 1987. He has been an official observer to the UN Commission on Human Rights since 2003, and an official observer to the UN Human Rights Council since 2006, assigned by the German NGO network Human Rights Forum (Forum Menschenrechte). He has written several publications on reforming the Human Rights Council.

Imprint

Friedrich-Ebert-Stiftung | Global Policy and Development
Hiroshimastr. 28 | 10785 Berlin | Germany

Responsible:
Felix Kirchmeier | Human Rights, FES Geneva
Katharina Meier | Dialogue on Globalization

Phone: +49-30-26935-7415 | Fax: +49-30-26935-9246
<http://www.fes.de/GPol/en>

To order publications:
Sandra.Richter@fes.de

Commercial use of all media published by the Friedrich-Ebert-Stiftung (FES) is not permitted without the written consent of the FES.

Global Policy and Development

The department Global Policy and Development of the Friedrich-Ebert-Stiftung fosters dialogue between North and South and promotes public and political debate on international issues in Germany and Europe. In providing a platform for discussion and consultation we aim at raising awareness of global interdependencies, developing scenarios for future trends and formulating policy recommendations. This publication is part of the working line »Human Rights«, in charge: Frederike Boll, Frederike.Boll@fes.de

Dialogue on Globalization

As part of the international work of the Friedrich-Ebert-Stiftung, *Dialogue on Globalization* contributes worldwide to the debate on globalization and global governance. It is based on the premise that – through an inclusive and responsive global policy approach – globalization can be shaped into a direction that promotes peace, democracy and social justice. The program draws intensely on the international network of the Friedrich-Ebert-Stiftung – a German non-profit institution committed to the principles of social democracy with offices, programs and partners in more than 100 countries. *Dialogue on Globalization* addresses »movers and shakers« both in developing countries and in the industrialized parts of the world. The program is coordinated by the head office of the Friedrich-Ebert-Stiftung in Berlin and by the FES offices in New York and Geneva.

The views expressed in this publication are not necessarily those of the Friedrich-Ebert-Stiftung.

This publication is printed on paper from sustainable forestry.



ISBN
978-3-95861-055-2