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The Human Rights Pillar of the United Nations: Challenges and the Way Ahead[1]

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Introduction

Last year the United Nations (UN) turned 70 years old, and this year marks the tenth anniversary of the Human Rights Council and the 50th anniversary of the two international human rights covenants. As the organisation is in the process of choosing its ninth Secretary-General, who will take office on 1st January 2017, it is timely to take stock of the UN human rights pillar and to identify areas that can be improved in order to make this pillar more suited for fulfilling its intended purpose and for dealing with contemporary challenges.

The UN human rights pillar refers to:
The Human Rights Council, which is an inter-governmental body consisting of 47 member states, elected by the General Assembly. It is responsible for the promotion and protection of human rights worldwide and for addressing situations of human rights violations and making recommendations for their solution. It meets in Geneva and has a mandate to discuss all thematic human rights issues and situations that require its attention. It was created in 2006 by the General Assembly, and replaced the Human Rights Commission.[2] In addition to its *Universal Periodic Review* mechanism, which assesses all UN member states with regard to human rights, it also encompasses the *Advisory Committee*, which provides expertise and advice, and the *Complaint Procedure* through which individuals and organisations can bring human rights violations to the Council's attention.

The Special Procedures consist of special rapporteurs, special representatives, independent experts and working groups whose responsibility is monitoring, examining, advising and reporting on thematic human rights issues and country-specific situations. Established originally by the Commission on Human Rights, it is now assumed by the Human Rights Council, to which they report annually. For most mandates they also report to the General Assembly.

The Treaty Bodies are committees consisting of independent experts whose task is to monitor the implementation of the core international human rights treaties. They examine reports from State parties on their compliance with their obligations, and issue recommendations. There are currently ten such committees.[3] The experts in these committees are nominated by state parties and elected for four years at a time (renewable). They meet in Geneva several times a year.

The Office of the High Commissioner for Human Rights (OHCHR), also located in Geneva, serves as a secretariat for the Treaty Bodies and the Human Rights Council and offers support to the Special Procedures. It is also responsible for mainstreaming human rights within the UN, and for assisting governments and other entities in fulfilling their obligations. Such assistance may include providing expertise and technical training in e.g. administration of justice, legislative reform, and electoral process, and helping in the implementation of international human rights standards on the ground. The OHCHR's field offices seek to identify human rights challenges and to develop appropriate responses, like monitoring situations and implementing projects dealing for example with legislative reform, human rights treaty ratification, and human rights education. This is done in close collaboration with the governments in question, other UN entities and actors, NGOs and civil society.

1 This policy brief is to a large extent based upon the seminar titled *Advocacy, Action and Obligations: the United Nations' Work to Promote Human Rights* held at NUPI on 18 February 2016. The meeting was convened by Njål Høstmælingen, International Law and Policy Institute and presentations were made by Gianni Magazzeni, Office of the High Commissioner for Human Rights; Kirsten Sandberg, UN Committee on the Rights of the Child; Rania Maktabi, University of Oslo; Petter F. Wille, Norwegian National Human Rights Institution; and Beate Ekeløve-Slydal, Amnesty International. This was the second seminar out of three in the UN70 seminar series, organised in connection to the to the UN70: A new Agenda project. http://www.nupi.no/en/About-NUPI/Projects-centres-and-programmes/UN-70 2A/Res/60/251, 15 March 2006.

3 See http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx.

Let us now take a look at the human rights pillar's relationship to the other two pillars of the UN – the peace and security pillar and the development pillar – before shedding light on some significant challenges that it is currently facing. This discussion will presage a list of suggestions focusing on what the next UN Secretary-General can do to consolidate and strengthen the human rights pillar.

The Human Rights Pillar's Relationship to the Two Other UN Pillars

Ever since the establishment of the organisation it has been commonplace to make a distinction between the human rights pillar, the development pillar and the peace and security pillar of the organisation.[4] However these pillars are increasingly intertwined. Indeed, human rights have become a central element in the work of the other two pillars.

With respect to the development pillar, last year was marked by the adoption of the 2030 Agenda for Sustainable Development. The Sustainable Development Goals, which took effect on 1 January 2016, integrate human rights to a greater extent than any other inter-governmental outcome document from the UN General Assembly on development issues.[5] Moreover, the Addis Ababa Agenda for Action adopted at the third international conference on financing for development in July 2015, equally stresses human rights and provides the basis for a 'revitalized global partnership'.[6] Similarly the Paris Agreement, adopted in December 2015 at the conference by the parties of the UN Framework Convention on Climate Change, explicitly addresses the human rights impact of climate change and the environment.[7]

Today, the human rights-based approach is a cross-cutting policy principle for development programming within the UN and its various Country Teams (UNCTs) worldwide. Human rights are thus seen as central to achieving development goals worldwide, for example through the development assistance frameworks agreed upon by the UN agencies and countries in which they operate, the engagement of the UN development group (UNDG) with the UN human rights mechanisms and the deployment of human rights advisors in many UN country teams and Resident Coordinators Offices. The alignment of development plans and human rights priority requirements contributes to participatory and inclusive processes of development, thus arguably strengthening the sense of national ownership and the national protection systems.

When it comes to the peace and security pillar, human rights components have been part of UN peace missions ever since the recommendations of the Brahimi Report were implemented.[8] The so-called integrated missions have also included a development component as well as political, rule of law and humanitarian elements. Increasingly specialized functions such as gender, children and protection have also been placed under the head of the human rights section of the missions. The inclusion of a human rights element in peace missions has allowed the UN to better monitor conditions on the ground and to seek accountability for violations and fight impunity. The human rights element has thus served the security side of the operations well by providing a more comprehensive picture of the situation, e.g. in connection to informing the reports of the Secretary-General to the Security Council, and by contributing to building conditions for a stable peace. The building of national human rights capacities and human rights infrastructure in the countries where the UN has operated has proved important in transitions from conflict situations to development.

Addressing human rights challenges and building national protection systems are crucial now that there is an increasing focus on prevention in the peace and security work of the UN. The primacy of prevention was a common theme in the outcomes from the three review processes last year, which looked at UN Peace Operations, the UN Peacebuilding Architecture and the implementation of Security Council Resolution 1325 respectively.[9] Prevention is also the guiding principle of the Human Rights Up Front (HRUF) policy of the UN Secretary-General. By learning from the failures in Rwanda, Srebrenica, Sri Lanka, among others, the HRUF Action Plan aims at ensuring that the UN system takes early and effective action to prevent or respond to serious violations of human rights or international humanitarian law.[10] At country level, HRUF has already been a useful entry point to engage on human rights with UN partners, and further mainstream human rights into UN responses to violations or to address possible human rights risks early on. In some cases, it has galvanized the attention of UN country teams/Humanitarian Country Teams to long-standing human rights concerns, and provided an additional tool for strengthening advocacy on human rights with national counterparts.

According to article 99 of the UN Charter, the Secretary-General may bring to the attention of the Security Council any matter that in his/her opinion may threaten the maintenance of peace and security. In a similar manner, the High Commissioner for Human Rights is increasingly also addressing human rights concerns with the Security Council in connection to complex crisis situations.

As we can see from this, the human rights pillar is not only intertwined with the other two pillars, but it is also reinforcing their work. In many ways, it can be claimed that human rights are fundamental to peace and security and development.

4 This distinction has also been kept in thinking around UN reform. See, for example, A/59/2005, 'In Larger Freedom: Towards Development, Security and Human Rights for all'. Report of the Secretary-General, 21 March 2005.

5 See, https://sustainabledevelopment.un.org/post2015/transformingourworld/publication.

6 See, http://www.un.org/esa/ffd/ffd3/press-release/countries-reach-historic-agreement.html.

7 See, http://unfccc.int/paris_agreement/items/9485.php

8 Report of the Panel on United Nations Peace Operations, A/55/305–S/2000/809, 21 August 2000.

9 See, Eli Stamnes and Kari M. Osland, 'Synthesis Report: Reviewing UN Peace Operations, the UN Peacebuilding Architecture and the Implementation of UNSCR 1325', NUPI Rapport No. 2, 2016.

10 See, https://undg.org/wp-content/uploads/2015/09/Overview-of-Human-Rights-up-Front-2015-07-24.pdf

Challenges Facing the Human Rights Pillar

The UN has many achievements to its name in the field of human rights since the Universal Declaration was adopted in 1948. It has adopted a comprehensive set of international instruments and standards. The main human rights instruments have been ratified by states in all regions, the UN has solid human rights institutions, a well-established system of monitoring as well as a High Commissioner with an office of approximately 1100 staff members and several country offices. However, there is still a long way to go when it comes to implementation. There are frequent breaches of international law in the national context. For example, in 2015 more than 98 states tortured or otherwise ill-treated people; 30 or more states illegally forced refugees to return to countries where they would be in danger; and in at least 18 countries war crimes or other violations of the laws of war were committed by governments or armed groups.[11]

Human rights have always been controversial in some quarters and the UN human rights pillar has been faced with many efforts to weaken the system and halt its development. One of these efforts is to politicize human right. This is a continuous effort amongst certain states. This could be observed during the Cold War, when human rights became a weapon in the East-West conflict, with Third World countries aligning themselves with one of the blocks, in order to avoid criticism or attention given to their shortcomings in the human rights area. After the Cold War the focus was turned towards creating a North-South divide – a divide that is still here. Some agents work to keep this divide active in all human rights work in the UN. In addition, there are efforts to water down the universality of human rights. This was evident in the so-called Asian values debate of the late 80s and beginning of the 90s. This ended with the strange compromise at the World Conference on Human Rights in Vienna in 1993, where the final document stated that 'All human rights are universal, indivisible and interdependent and interrelated…While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind'.[12] A more recent example is the Organisation of Islamic Cooperation's efforts to water down and weaken freedom of expression and freedom of religion. The Western and Other States (WEOG) group has traditionally worked hard to combat such efforts, but it has now got a weaker voice numerically – it has only 7 out of 47 seats in the Human Rights Council and its influence in the General Assembly has also decreased. There are also signs to suggest that some Western states themselves do not prioritise the promotion of human rights in the current situation. The increased numbers of refugees in Europe has been framed by some Western politicians as a security issue that requires exceptional measures including withdrawal from certain international human rights obligations.[13]

Another area in which the human rights pillar faces huge challenges is funding. Even though the human rights pillar is one of the three fundamental pillars of the UN, it receives less than 3% of the regular budget. As much as 60 % of the OHCHR's activities is dependent upon voluntary contributions. This is of course a source of concern. The heavy reliance on voluntary contributions has led to allegations that the High Commissioner's work is donor driven. In order to counter such allegations there is a need to ensure that a larger portion is allocated from the regular budget and to earmark voluntary contributions as far as possible.

The Special Procedures are a very important part of the human rights pillar, by gathering crucial information that serves as a basis for debate. However, the number of initiatives has proliferated. The number of automatic mandates is currently 41, in addition to 14 country mandates. Most of these mandates concern core human rights issues, but not all of the new initiatives have been justified from a strictly traditional human rights point of view. This shows that the Human Rights Council is a political body, reflecting a wide variety of interests. The danger with the proliferation of mandates is that it may weaken the role of the Special Procedures, especially in a situation, like now, when the mandates suffer from meagre budgets, thus risking that they cannot be carried out properly.

As for the Treaty Bodies, the quality of the work is of utmost importance to ensure their legitimacy. The current budget situation poses several challenges in this regard as well as the committees' limited meeting time and the secretarial resources they have at their disposal. Low compliance by states is another issue. There are currently not enough resources for a follow-up procedure. This means that when a state has been reviewed, the committees are dependent upon civil society and other UN actors for follow-up in that state. Some committees require the states to provide a report two years after the review, while others lack the resources to do so. There may therefore be as long as five or even ten years without any formal contact with the states. There is also proliferation in the Treaty Body system. It has doubled in size since 2004 and the total number of ratifications has almost doubled since 2000. This has lead to a digestion problem and a certain degree of overlapping mandates and overlapping bodies. There are also resource challenges confronting the individual complaints system, causing concern about the ability to deal with complaints appropriately.

Compliance and follow-up by states will also be the litmus test of the Universal Periodic Review of the Human Rights Council. Since there have only been two review cycles so far, it is too early for definitive conclusions with regard to the implementation of the recommendations. However, given the experience with the lack of compliance in the field of human rights in general, there are challenges with regard to communicating the importance of Universal Periodic

11 These statistics were presented by Beate Ekeløve-Slydal, citing Amnesty International's annual report for 2015, at the seminar referred to in note 1.

12 Vienna Declaration and Programme of Action, 25 June 1993, para. 5.

13 See, for example, https://www.theguardian.com/law/2016/mar/23/refugee-crisis-human-rights-uk-criticism-david-cameron-theresa-may; https://www.euractiv.com/section/justice-home-affairs/news/interior-minister-urges-britain-to-leave-human-rights-convention/.

13 See, for example, https://www.theguardian.com/law/2016/mar/23/refugee-crisis-human-rights-uk-criticism-david-cameron-theresa-may; https://www.euractiv.com/section/justice-home-affairs/news/interior-minister-urges-britain-to-leave-human-rights-convention/.

Review mechanism and getting states, together with civil society, to engage.

Advice for the Next UN Secretary-General

On the basis of the discussion above, the following suggestions can be made as to what the next UN Secretary-General can do to consolidate and strengthen the human rights pillar:

- Promote the understanding that the three pillars of the United Nations system are interlinked and mutually reinforcing, and that the human rights pillar is crucial for the success and sustainability of the other two. The development of a global compact that recognises this could be part of this work. Such a global compact would facilitate coherence and enable the international community to address more effectively today's challenges, build stronger and more resilient societies, and deliver the sustainable development goals of the 2030 agenda.
- Prioritise the work of mainstreaming human rights within the UN system, including strengthening the human rights element of UN peace missions and aligning all development work with human rights priorities. The concept of human rights as the foundation of peace and development efforts must be further institutionalised in order for the HRUF initiative to influence other international entities, e.g. the OECD[14] and the international financial institutions. The political support of member states is crucial in this regard.
- Make sure that more resources are allocated to the human rights pillar. Its importance should be reflected in the regular budget of the UN. The current allocation of only 3% cannot be justified, nor continued. The existing human rights entities and mechanisms cannot carry out their mandates and responsibilities adequately with the current resources, never mind tackling further proliferation of mandates and treaties or new priorities.
- Strengthen the human rights pillar in terms of political attention. The Secretary-General should take the lead in making sure that it is understood that human rights are not an optional extra but rather a priority of the international community. In the current international climate, with numerous violent conflicts and large numbers of refugees and internally displaced people, there are clear signs that the concern for human rights is side-lined in the implementation of security measures – also amongst states that have previously been strong vocal supporters of human rights. The Secretary-General cannot allow the gains in this field to be lost. She/he must be a strong voice internationally, and make sure that compromises are not made that would jeopardise the respect for human rights.
- Prioritise prevention and the role of human rights in this. Prevention cost less than dealing with problems further down the line, both in terms of lives, money and other resources. Nevertheless, prevention has traditionally been a controversial topic in the UN, due to concerns about undue interference in member states' internal matters. When the tide is now turning, the Secretary-General should make sure that the emphasis on prevention, recently articulated in the peace and security pillar and through the 2030 agenda, also encompasses the human rights dimension. If the aim of the UN is to deal with the root causes of conflicts and poverty, and help build resilient, just and inclusive societies, the development of human rights capacities and infrastructure must be an integral part of the solution.

14 Currently the OECD-DAC peer review of memberstates, where development cooperation entities gets advice on how to enhance the effectiveness of aid, does not include human rights, while poverty, environment, gender and humanitarian issues are included.

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