

ROOM FOR MANOEUVRE?

**PROMOTING INTERNATIONAL HUMANITARIAN LAW
AND ACCOUNTABILITY WHILE AT THE UNITED NATIONS SECURITY COUNCIL:
A REFLECTION ON THE ROLE OF ELECTED MEMBERS**

**ÉMILIE MAX
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‘The [Security] Council’s duty to act in accordance with international law has an obverse effect, for Council action influences our perception of what the law is.’

1. INTRODUCTION

Noted from as early as the 1990s,² the United Nations Security Council’s increasingly intense involvement with international humanitarian law (IHL) culminated in 2019 with the successive symbolic celebrations of the twentieth anniversary of the agenda item on the Protection of Civilians in Armed Conflict (the so-called ‘PoC agenda’) and the seventieth anniversary of the Geneva Conventions of 1949.

However, humanitarian considerations and references to existing rules of international law are not immune to the inherently political dynamics prevailing within the organ³ – as exemplified by the difficulties faced in tackling the Covid-19 pandemic.⁴ While the influence of such dynamics has often been examined in relation

1 R. Wedgwood, ‘Unilateral Action in the UN System’, 11 *European Journal of International Law* 2 (2000) 356.

2 T. van Baarda, ‘The Involvement of the Security Council in Maintaining International Humanitarian Law’, 12 *Netherlands Quarterly of Human Rights* 2 (1994) 137–143, provides a historical overview of the Security Council’s dealing with international humanitarian law (IHL) from 1945 until 1994, and identifies the period starting in January 1990 as one of ‘active involvement’. This conclusion is shared by H.-P. Gasser, ‘The United Nations and International Humanitarian Law: The International Committee of the Red Cross and the United Nations’ Involvement in the Implementation of International Humanitarian Law’, paper presented at the International Symposium on the occasion of the fiftieth anniversary of the United Nations, Geneva, 19–21 October 1995, <https://www.icrc.org/en/doc/resources/documents/misc/57jmuk.htm> (last accessed 24 September 2020). Although his analysis only extends to 2006, G. Nolte, ‘The Different Functions of the Security Council With Respect to Humanitarian Law’, in V. Lowe, A. Roberts, J. Welsh and D. Zaum (eds), *The United Nations Security Council and War: The Evolution of Thought and Practice Since 1945*, Oxford University Press, pp 519–534, demonstrates that the abovementioned tendency has continued unabated.

3 A. Lupell and L. Mälskoo, *A Necessary Voice: Small States, International Law, and the UN Security Council*, International Peace Institute (IPI), April 2019, p 4, https://www.ipinst.org/wp-content/uploads/2019/04/1904_A-Necessary-Voice_Final.pdf (last accessed 24 September 2020).

4 As reported by *Le Temps* and *The Guardian* in early May 2020 (i.e. about two months after the World Health Organization declared a pandemic), the Security Council’s members remained unable to agree on a text and even less on measures addressing the humanitarian consequences of Covid-19, and have moved towards negotiating a new draft resolution presented by Estonia and Germany. For detailed insights, see ‘Un nouveau projet de résolution au Conseil de sécurité de l’ONU’, *Le Temps*, 13 May 2020, <https://www.letemps.ch/monde/un-nouveau-projet-resolution-conseil-securite-lonu> (last accessed 24 September 2020); J. Borger, ‘US Blocks Vote on UN’s Bid for Global Ceasefire Over Reference to WHO’, *The Guardian*, 8 May 2020, <https://www.theguardian.com/world/2020/may/08/un-ceasefire-resolution-us-blocks-who> (last accessed 24 September 2020). UNSC Res 2532 was eventually unanimously adopted on 1 July 2020, see ‘Stalled Security Council Resolution Adopted, Backing UN’s Global Humanitarian Ceasefire Call’, *UN News*, 1 July 2020, <https://news.un.org/en/story/2020/07/1067552> (last accessed 24 September 2020).

to *jus ad bellum*, the rule of law or human rights in the era of counterterrorism,⁵ the same does not necessarily hold true with regard to IHL⁶ and accountability.⁷ With the intent of contributing to filling a gap, this Briefing thus aims to assess the Security Council’s recent engagement with these frameworks. Resulting from traditional research and informal interviews with experts,⁸ it also spotlights the role of elected members in the hope of encouraging future meaningful and principled involvement in favour of humanitarian concerns and international law.

After some preliminary remarks, the Briefing lays out the institutional framework relevant to the functioning of the Security Council, and the specificities associated with non-permanent membership. Moving from the abstract to the concrete, it then assesses, in turn, recent Security Council practice in relation to the situation in the Syrian Arab Republic, the PoC agenda, other relevant thematic agenda items (Children and Armed Conflict and Women, Peace and Security, respectively), as well as counterterrorism measures and sanctions regimes. The issue of accountability is examined transversally. Finally, it formulates general guiding questions addressed to future and prospective elected members.

5 See for instance, D. A. Lewis, N. K. Mordizadeh and G. Blum, *Quantum of Silence: Inaction and Jus ad Bellum*, Harvard Law School Program on International Law and Armed Conflict (PILAC), 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3420959 (last accessed 24 September 2020); Security Council Report (SCR), *Cross-Cutting Report no 3: Rule of Law*, 28 October 2011, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/XCutting%20Rule%20of%20Law%202011.pdf> (last accessed 24 September 2020); SCR, *The Rule of Law: The Security Council and Accountability*, Cross-Cutting Report no 1, 18 January 2013, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/cross_cutting_report_1_rule_of_law_2013.pdf (last accessed 24 September 2020); SCR, *The Rule of Law: The Institutional Framework: International Criminal Courts and Tribunals*, Cross-Cutting Report no 3, 20 August 2015, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/cross_cutting_report_3_rule_of_law_2015.pdf (last accessed 24 September 2020); SCR, *The Rule of Law: Can the Security Council Make Better Use of the International Court of Justice?*, Research Report no 5, 20 December 2016, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research_report_5_rule_of_law_2016.pdf (last accessed 24 September 2020); SCR, *The Rule of Law: Retreat From Accountability*, Research Report no 3, 23 December 2019, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research_report_3_rule_of_law_2019.pdf (last accessed 24 September 2020); B. Saul, ‘United Nations Backslides on Human Rights in Counterterrorism’, *Lawfare*, 16 October 2019, <https://www.lawfareblog.com/united-nations-backslides-human-rights-counterterrorism> (last accessed 24 September 2020).

6 With few exceptions, other than the articles by van Baarda and Nolte referred to in supra fn 2, much of the available (policy and legal) literature deals with these issues incidentally and/or through other prisms – as demonstrated by the absence of the terms ‘international humanitarian law’ from their titles.

7 For the purpose of the present Briefing, the notion of ‘accountability’ (in French *reddition de comptes*) refers to Security Council endeavours aimed at not only determining individual or collective responsibility for violations of IHL and human rights, but also prescribing consequences for such violations. Broader than criminal responsibility, it thus encompasses the creation of commissions of inquiry, fact-finding missions and other investigative mechanisms, as well as the establishment of ad hoc or hybrid tribunals, referrals to the International Criminal Court (ICC) and the enactment of targeted sanctions.

8 In this regard, the author wishes to thank the 30-plus experts (scholars, diplomats, as well as representatives from UN, other relevant international organizations and non-governmental organizations) who kindly agreed to share, off-the-record, their enlightening perspectives.

2. PRELIMINARY REMARKS

Before delving into the heart of the matter, let us make three necessary clarifications on objective, temporal scope and findings, respectively.

- Because of the topic at hand and the dual method of research, this Briefing lies at the crossroads of law and policy, and does not intend to be read (or judged) as a full product of either field.
- In apprehending the Security Council's recent practice, a decision was made to limit the research's scope back to 2013 at the earliest. Thus, as this paper does not aim to provide an exhaustive overview of relevant Security Council actions, historical background will be provided for the sake of clarity when the need arises.
- It goes without saying that the findings of this Briefing rest on past and present political dynamics within the Security Council – themselves depending on both the organ's composition and the priorities of its (permanent and elected) members. Although the aim is to provide useful guidance to prospective elected members, one cannot predict changes that could influence states' future political positioning on the issues at hand⁹ and, consequently, the feasibility of related initiatives.

⁹ For instance, the results of the upcoming presidential elections in the United States (2020) and in France (2022), respectively.

3. THE INSTITUTIONAL FRAMEWORK

It would be naïve to think that the inner workings of the Security Council are straightforward. Because failure or success of even the smallest endeavour depends on both mastery of its working methods and understanding of its mandate, it is imperative to begin with an overview of the complex institutional framework that regulates the organ.

A. WORKING METHODS: AN UNEVEN PLAYING FIELD?

1. COMPOSITION AND THE VETO POWER

Pursuant to Article 23(1 and 2) of the Charter of the United Nations (the Charter), the Security Council is composed of 15 members: 5 permanent and 10 elected by the General Assembly to represent the global UN membership/constituency for a period of 2 years.¹⁰ Election requires the qualified majority of the General Assembly,¹¹ and should take equitable geographical representation into account.¹² In order to balance regular turnover with seamless continuation of the Security Council's work, five elected members are outgoing and five others incoming each calendar year. The election of five new members thus takes place once a year (in June since 2016),¹³ with tenure beginning the following January.¹⁴ Since 2010, some voices have regularly called for a further extension of Security Council membership through the augmentation of the number of permanent seats.¹⁵

¹⁰ It is worth noting that the Security Council originally consisted of only 11 members, including the 5 permanent ones that are the US, the United Kingdom, France, China and Russia. Membership was extended to its current number through an amendment of the Charter (UN doc A/RES/1991 (XVIII), 17 December 1963) that entered into force on 31 August 1965. For more information on this amendment, see E. Schwelb, 'Amendments to Articles 23, 27 and 61 of the Charter of the United Nations', 59 *American Journal of International Law* 4 (October 1965).

¹¹ Meaning that, as per Art 18(2) of the Charter, it requires a two-thirds majority of the members present and voting.

¹² Art 23(1), UN Charter. In practice, this means that the 10 available seats are currently distributed among the 5 UN official regional groups as follows: 5 seats for the African and Asia-Pacific Groups, 1 seat for the Eastern European Group, 2 seats for the Latin American and Caribbean Group and 2 seats for the Western European and Others Group (WEOG). The full composition of each group is available at <https://www.un.org/dgacm/content/regional-groups> (last accessed 24 September 2020).

¹³ For very detailed information about the elections' challenges and processes each year, see SCR's dedicated research reports dating back to 2006, <https://www.securitycouncilreport.org/elections-to-the-security-council/> (last accessed 24 September 2020).

¹⁴ Conversely, the outgoing members' term ends on 31 December.

¹⁵ Brazil, Germany, India, Japan and South Africa all aspire to become permanent members. See P. Romita, N. Chowdhury Fink and T. Papenfuss, *What Impact? The E10 and the 2011 Security Council*, Issue Brief, IPI, March 2011, pp 8–9, https://www.jstor.org/stable/resrep09506?seq=1#metadata_info_tab_contents (last accessed 24 September 2020).

Besides immutability of membership, the distinction between the permanent and elected members – nicknamed the ‘P5’ and ‘Ero’, respectively – undoubtedly mainly lies in the (in)famous veto power. Granted by Article 27(3) of the Charter, such power concerns all substantive decisions of the Security Council.¹⁶ In this regard, it is worth noting that the determination of the (procedural or substantive) nature of a decision constitutes a substantive matter,¹⁷ thus granting the P5 a definite advantage in the management of the organ’s work by empowering them to prevent draft resolutions from even being considered.¹⁸ The use – if not abuse – of the veto power has long been the object of criticism, especially when it concerns situations involving large-scale violations of IHL and human rights.¹⁹ Although several diplomatic initiatives aimed at reforming such power have been launched in recent years, change has yet to occur.²⁰

Finally, it is important to underline that permanent membership affords significant advantages other than the obvious veto power. Over 70 years of practice have allowed the P5 to not only build a rich institutional memory but also invest in cooperative relationships with partners both within and outside the UN. Combined with large staffing capacity and a wide network of representation worldwide – compared to the ‘small’ elected members – these elements simplify navigating the form *and* substance of the Security Council’s work.²¹

2. OTHER (SELECTED) WORKING METHODS

Equality of arms between permanent and elected members of the Security Council is further challenged by the current distribution of work. Despite their more modest capacities (in terms of mere human resources), the Ero traditionally chair

16 The provision reads as follows: ‘Decisions of the Security Council on all other matters [than procedural matters concerned by para 2] shall be made by an affirmative vote of nine members *including the concurring votes of the permanent members*’ (emphasis added).

17 For an overview of the debate regarding the definition of ‘procedural matters’ and its historical evolution, see SCR, ‘Procedural Vote’, updated 7 March 2020, <https://www.securitycouncilreport.org/un-security-council-working-methods/procedural-vote.php> (last accessed 24 September 2020).

18 Romita et al, *What Impact?*, supra fn 15, p 2. J. Boulden and A. Charron, *The Role of Nonpermanent Members of the UN Security [Council]: A Lessons Learned Workshop, Summary of Findings*, October 2018, p 6, refer to the manoeuvre as a ‘pocket veto’.

19 See for instance, G. Melling and A. Dennett, ‘The Security Council Veto and Syria: Responding to Mass Atrocities Through the “United for Peace” Resolution’, *57 Indian Journal of International Law* 3–4 (2017).

20 Having advocated voluntary restraint on the veto power in the case of mass atrocities since the mid-2000s, France notably officially proposed regulation in 2013 and was joined by Mexico in 2014. For more information, including links to the relevant political statements, see Permanent Mission of France to the United Nations in New York, ‘The UN Reform’, <https://onu.delegfrance.org/The-UN-Reform> (last accessed 24 September 2020). For a detailed presentation of all initiatives for veto reform, as well as useful historical background and charts on the use of veto by permanent members, see SCR, *The Veto*, Research Report no 3, 19 October 2015, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research_report_3_the_veto_2015.pdf (last accessed 24 September 2020).

21 Romita et al, *What Impact?*, supra fn 15, pp 2–4; Lupell and Mälskoo, *A Necessary Voice*, supra fn 3, pp 6–7. These considerations (institutional memory, rapport with partners and staffing of permanent missions) were also mentioned during many of our research interviews as tipping the scale in favour of permanent members.

the Security Council’s subsidiary organs for a full year.²² This very technical task, based on designation decided by the permanent members, considerably adds to the already important workload composed of negotiations, (public or private) formal and informal meetings, as well as visiting missions.²³ If the permanent members do not chair subsidiary organs, the P3 (the United States, United Kingdom and France) hold the pen on many – if not most – of the Security Council’s recurring items linked to specific situations of armed conflict. And this is even the case for situations covered by the work of a subsidiary organ.²⁴ Importantly, such an informal system, referred to as ‘penholdership’, entails not only the negotiation and drafting of outcomes²⁵ but also the authority to call meetings and to organise field visits. In other words, holding the pen amounts to controlling the substantive input necessary to the formation of Security Council decisions.²⁶

The inadequacy of burden sharing with the P5 has long been denounced by elected members.²⁷ As the extent of the contention around the Security Council’s working methods, and initiatives for their modification, lie well beyond the scope of this research, suffice it to state that calls for reform culminated in a 2017 comprehensive document negotiated under Japan’s leadership.²⁸ This so-called ‘Note 507’ notably deals with the selection of chairs of subsidiary bodies *and* the elaboration of outcome documents,²⁹ but is yet to result in effective change.

22 Combined with rule 28 of its provisional rules of procedure, Article 29 of the Charter grants the Security Council power to establish the subsidiary organs it deems necessary to the performance of its functions. The Security Council currently has 23 subsidiary bodies, a list of which (including their respective chairs) is available at <https://www.undocs.org/S/2020/2> (last accessed 24 September 2020).

23 See notably, Boulden and Charron, *The Role of Nonpermanent Members of the UN Security [Council]*, supra fn 18, p 5. It is worth noting that informal meetings do not appear on the Security Council’s official programme of work, published monthly and available at <https://www.un.org/securitycouncil/events/programme-work> (last accessed 24 September 2020).

24 For example, although Belgium chairs the sanctions committee on Somalia in 2020, the UK remains the penholder for resolutions on this country situation.

25 Outcomes are the following formal products of the Security Council, which require the agreement/consensus of its 15 members: resolutions, presidential statements and press statements.

26 For more information about the implications of and controversies related to penholdership, see SCR, *The Penholder System*, Research Report no 3, 21 December 2018, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Penholders.pdf> (last accessed 24 September 2020).

27 This is usually the case during the Security Council’s regular open debates on working methods. An example of recent E10 dissatisfaction can be found in the 2019 joint statement delivered by Germany on behalf of all elected members, Permanent Mission of the Federal Republic of Germany to the United Nations, E10 Statement in the Open Debate on the Working Methods of the Security Council, 6 June 2019, <https://new-york-un.diplo.de/un-en/news-corner/190606-e10-workingmethods/2224768> (last accessed 24 September 2020).

28 Note by the President of the Security Council, UN doc S/2017/507, 30 August 2017.

29 Ibid, paras 111–118 and 78–88, respectively.

B. UNDERSTANDING THE SECURITY COUNCIL'S MANDATE

1. A REMINDER OF THE (VERY) BASICS

As per Article 24(1) of the Charter, the Security Council is the UN's primary organ responsible for the maintenance of international peace and security. It can carry out its duties through measures mainly set out in either Chapter VI (peaceful settlements of disputes) or Chapter VII (threats to and breaches of peace, and acts of aggression) of the Charter.³⁰ By way of example, the deployment of peacekeeping missions, the creation of ad hoc international tribunals, the imposition of targeted sanctions and the creation of a Working Group on Children and Armed Conflict are amongst the diverse means devised by the Security Council to fulfil its mandate.

Although Article 25 foresees that all member states shall comply with the Security Council's decisions, it goes without saying that only those adopted under Chapter VII are enforceable *and* take precedence over states' other obligations under international law in case of a conflict of norms.³¹

2. WHAT OF IHL?

The words 'international humanitarian law' do not appear in the Charter, and the International Law Commission even refused in 1949 to pursue codification of that legal regime within the ambit of the UN.³² So, can the Security Council deal with IHL (in the sense of engaging in its monitoring, promotion, implementation and enforcement)? And how has it gone about it?

Following a broad interpretation – i.e. taking into account the social, political and legal circumstances that have shaped the work of the UN since the 1968 Teheran International Conference on Human Rights³³ – it is accepted that the notion of 'human rights and fundamental freedoms' used throughout the Charter³⁴ has come to encompass IHL through subsequent practice. The main organs of the UN, including the Security Council, can thus routinely deal with the legal regime.³⁵

³⁰ Arts 33–38 and 39–51, UN Charter, respectively.

³¹ Art 103, UN Charter.

³² See notably, Gasser, 'The United Nations and International Humanitarian Law', supra fn 2; M. Roscini, 'The United Nations Security Council and the Enforcement of International Humanitarian Law', 43 *Israel Law Review* 2 (2012) 332, who explains that, from the International Law Commission's perspective, the drafting of the Geneva Conventions was antithetical to the emergence of *jus contra bellum*.

³³ Preamble and operational para 2, Human Rights in Armed Conflicts. Resolution XXIII adopted by the International Conference on Human Rights, Teheran, 12 May 1968, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=378384ED19FOCFEAC12563CD0051D2B4> (last accessed 24 September 2020).

³⁴ The notion is notably used in Arts 1(3) (purposes), 13 (functions and powers of the General Assembly) and 55 (international economic and social cooperation), UN Charter.

³⁵ See notably, Gasser, 'The United Nations and International Humanitarian Law', supra fn 2; G. Gaggioli, *L'influence mutuelle entre les droits de l'homme et le droit international humanitaire à la lumière du droit à la vie*, A. Pedone, 2013, pp 162–164; Roscini, 'The United Nations Security Council and the Enforcement of International Humanitarian Law', supra fn 32, pp 332–333.

Furthermore, the Security Council has long acknowledged that non-international armed conflicts *and/or* violations of IHL have constituted threats to international peace and security.³⁶

Leaving aside the issue of formal competence, the Security Council itself has – since its very first invocation in 1967³⁷ – regularly affirmed that its mandate for maintenance of international peace and security includes 'the need to promote respect for the rules and principles of international humanitarian law'.³⁸ As pointed out by D. A. Lewis, N. K. Mordizadeh and J. S. Burniske, its practice has thus often intersected with IHL by, for instance, establishing ad hoc tribunals; forming and expressing views on the existence of an armed conflict; expressing views on violations committed by belligerents and/or on particular thematic areas.³⁹ Interestingly, in doing so, the Security Council's chosen language testifies to its caution in not wanting to appear to legislate, to the extent that '[its] policy & seems to be restricted to propelling new factors, such as sexual violence, into the discussion of humanitarian law'.⁴⁰ Despite its reluctance to engage in law-making, it is nonetheless worth recalling that the Security Council is theoretically empowered by Article 103 of the Charter to override conventional IHL. While Nolte deems it unlikely that such a move would affect the substance of IHL (because of the customary or *jus cogens* of many of its rules),⁴¹ others have very recently expressed concern about the Security Council undertaking not only to generally legislate on IHL through the peculiar lens of counterterrorism but also to transfer 'ownership' of that legal regime to one of its subsidiary organs.⁴²

³⁶ See notably, M. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Edward Elgar, 2019, p 457.

³⁷ UNSC Res 237, 14 June 1967.

³⁸ Typical of relevant Security Council outcomes, this formulation was, for instance, used in the presidential statement celebrating the seventieth anniversary of the Geneva Conventions of 1949, UN doc S/PRST/2019/8, 20 August 2019.

³⁹ D. A. Lewis, N. K. Mordizadeh and J. S. Burniske, *The Counter-Terrorism Committee Executive Directorate and International Humanitarian Law: Preliminary Considerations for States*, Legal Briefing, HLS PILAC, March 2020, pp 16–17 and fns 62–66, <http://blogs.harvard.edu/pilac/files/2020/03/CTED-and-IHL.pdf> (last accessed 24 September 2020). Engaging in further analysis and categorization of the Security Council's practice, Nolte, 'The Different Functions of the Security Council With Respect to Humanitarian Law', supra fn 2, pp 521–531, distinguishes between the performance of executive and adjudicative/clarifying functions.

⁴⁰ Nolte, 'The Different Functions of the Security Council With Respect to Humanitarian Law', supra fn 2, pp 532–533.

⁴¹ *Ibid*, p 533. Sassòli, *International Humanitarian Law*, supra fn 36, pp 463–464, provides a more nuanced reasoning, questioning the *jus cogens* nature of an IHL rule from which the Security Council would derogate. He also specifies that any such derogation must be explicit.

⁴² Lewis et al., *The Counter-Terrorism Committee Executive Directorate and International Humanitarian Law*, supra fn 39, pp 1–5, define 'ownership' as the development, interpretation, application and enforcement of relevant rules.

3. ACCOUNTABILITY

Measures decided by the Security Council with regards to accountability (as understood for our present purpose) amount to the enforcement of primary rules, including those of IHL, and thus often rest on Chapter VII. The specific competence of the Security Council, which requires the determination of a breach of or threat to international peace and security, is based on its own broad interpretation of Article 39 of the Charter.⁴³

43 See notably, Roscini, 'The United Nations Security Council and the Enforcement of International Humanitarian Law', *supra* fn 32, pp 333–337. Roscini also offers an alternative legal foundation for the Security Council's competence in enforcing IHL: Art 94(2), UN Charter (pp 337–338) and common Art 1 to the Geneva Conventions of 1949 (pp 339–342).

4. ELECTED MEMBERS: CHALLENGES OF A TEMPORARILY LIMITED TENURE

A. GETTING THERE: SUCCESSFULLY CAMPAIGNING AND PREPARING FOR TENURE

Member states of the UN decide to run for a seat on the Security Council for international prestige, the defence of their national interests and the pursuit of broader objectives such as the promotion of international law.⁴⁴

Without delving into the specifics of campaigning, let us simply note that the competitiveness of the process varies from one geographic group to the other and is especially acute within the Western European and Others Group.⁴⁵ Although election can never be guaranteed, successful running notably depends on a state's financial resources and diplomatic reach, its permanent representative's clout, vote-trading and planning for a second ballot at the General Assembly.⁴⁶ During interviews conducted in New York City in January 2020, many of our interlocutors also emphasized the importance of a campaign being focused on a few carefully selected issues corresponding to the state's 'political DNA'. In other words, a prospective elected member should run on topics that it has already regularly and successfully engaged with in order to capitalize on its reputation, and it thus eventually finds its natural place within the Security Council. This, in turn, contributes to avoiding *not* delivering on promises made during the campaign and losing precious political capital.

Once states have been elected to the Security Council – usually as the culmination of a year (or years) of diplomatic efforts and related investments, including at the

44 See notably, D. M. Malone, 'Eyes on the Prize: The Quest for Nonpermanent Seats on the UN Security Council', 6 *Global Governance* 3 (2000) 5–7; Boulden and Charron, *The Role of Nonpermanent Members of the UN Security [Council]*, *supra* fn 18, p 8. It is worth noting that Lupell and Mälskoo, *A Necessary Voice*, *supra* fn 3, p 3, argue that engagement in favour of international law can constitute a (small) state's national interest.

45 As already explained in fn 12, the WEOG gets two non-permanent seats at the Security Council, which come up for election every other year. Still, three states usually run, as was the case in 2020, 2016, 2014, 2012 and 2010. 2018 constituted an exception with only Belgium and Germany running. For very detailed information about the elections' challenges and processes each year, see SCR's dedicated research reports dating back to 2006, *supra* fn 13.

46 Malone, 'Eyes on the Prize', *supra* fn 44, pp 10–18, provides a detailed overview of the implications of and strategies for running for a non-permanent seat.

highest level of government⁴⁷ – official preparation for tenure needs to start as early as possible in order help incoming members tackle the organ’s abovementioned important workload.⁴⁸ By way of example, since 2016 the Security Council has adopted more than 50 resolutions on a yearly basis, with each requiring weeks (if not months) of negotiations.⁴⁹ Consequently, opportunities such as observing Security Council proceedings as of October *and* participating in the now-traditional workshop on ‘hitting the ground running’ organized by Finland each November are proving essential to E10 preparedness.⁵⁰ Furthermore, one cannot overstate the crucial character of ensuring appropriate staffing of the permanent mission of the state concerned (in terms of both quantity and quality).⁵¹ Some of our interlocutors even referred to this latter element as ‘perhaps the most important aspect’ of planning for a seat at the Security Council.⁵²

B. OPPORTUNITIES FOR INFLUENCE

It would be misleading to conclude that the combination of unequal burden sharing, a frantic work pace and the disadvantages inherent to non-permanence irrevocably prevent elected members from engaging in meaningful and (politically) critical work.⁵³ Although they might need time – even a few months – to find their bearings, opportunities do exist for the E10 to not only contribute to but also in-

47 For instance, Boulden and Charron, *The Role of Nonpermanent Members of the UN Security Council*, supra fn 18, p 9, explain that, during Sweden’s campaign before its election in 2016 (for tenure in 2017–2018), its prime minister visited the African continent three times to solicit support. Malone, ‘Eyes on the Prize’, supra fn 44, p 11, refers to comparable efforts made by Canada in the late 1990s.

48 Boulden and Charron, *The Role of Nonpermanent Members of the UN Security Council*, supra fn 18, p 7, note that the shift of election date from October to June since 2016 has been essential in this regard. Our interviewees also explained that, even with some preparation, elected members often describe their arrival at the Security Council as a shock because of both opaque working methods and intense workload. They thus often devote up to their whole first year on the Security Council to merely familiarizing themselves with its (formal and substantive) work.

49 The exact numbers are 77 resolutions in 2016, 61 in 2017, 53 in 2018 and 52 in 2019. The yearly list of resolutions adopted by the Security Council is available at <https://www.un.org/securitycouncil/content/resolutions-0> (last accessed 24 September 2020).

50 Reports of the annual workshop, compiled by Finland in accordance with Chatham House rules, are circulated with a letter to the President of the Security Council and constitute an invaluable resource. See for instance, UN docs S/2019/144, 15 February 2019; S/2018/404, 3 May 2018; S/2017/468, 1 June 2017; S/2016/506, 2 June 2016; S/2015/292, 27 April 2015; S/2014/213, 24 March 2014.

51 See notably, Romita et al, *What Impact?*, supra fn 15, pp 9–10; J. Farall, M.-E. Loïselle, C. Michaelsen, J. Pratl and J. Whalan, *Elected Member Influence in the United Nations Security Council*, Research Paper no 19.29, Australian National University College of Law, p 29, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3488824 (last accessed 24 September 2020).

52 Interestingly, a senior diplomat from a former E10 member explained that his government also increased the number of staff in its diplomatic representations in countries featured on the Security Council’s agenda. This later proved instrumental in securing their support for resolutions they were concerned about (notably with regards to the renewal of peacekeeping missions and the imposition of targeted sanctions).

53 Some of our most cynical interlocutors even claimed that this constitutes a way for the P5 to ‘bury’ incoming elected members and thus distract them from the real issues.

fluence the work of the Security Council on their topics of choice.⁵⁴ These result from both the rules on voting and the recent exacerbated fragmentation of the P5.

As per Article 27 of the Charter, each member of the Security Council has one vote (para 1), and nine affirmative votes are necessary for the adoption of decisions (paras 2 and 3).⁵⁵ Through the simple power of mathematics, it follows that elected members hold a collective veto power: i.e. their support is indispensable to any endeavour by the P5 and their common objection can thus constitute a powerful bargaining chip. This illustrates the ‘legitimacy dynamics [...] centrally important to [Security] Council practice’.⁵⁶ Beyond voting, permanent members indeed need the support of the E10 to ensure that the organ is acting – or at least perceived to be acting – on behalf of the global membership of the UN as envisaged by Article 24 (1) of the Charter.⁵⁷

More recently, opportunities for the E10 to make their mark on the work of Security Council have arisen from the increased polarization of permanent members over the handling of the armed conflicts in Libya and Syria.⁵⁸ Conditions favourable to a strong elected membership (adequate preparedness before tenure, good coordination between outgoing and incoming members as well as within the elected membership,⁵⁹ presence of natural allies within the group, etc.) have allowed the E10 to become more creative in approaching existing issues and/or bringing new ones to the attention of the Security Council.

Besides the abovementioned efforts aimed at reforming the Security Council’s working methods, it is interesting to note that many recent examples of elected members’ constructive influence and incremental achievements concern the organ’s work with regards to IHL and accountability.

54 Farall et al, *Elected Member Influence in the United Nations Security Council*, supra fn 51, pp 1–12, have chosen this very line of argumentation and present the following three illustrative cases: Brazil on the responsibility while protecting (pp 12–16), Australia on the human rights situation in the Democratic People’s Republic of Korea (pp 16–20) and a succession of elected members responsible for the establishment of the 1267 Ombudsperson (pp 20–25). For more recent examples of the E10’s areas of interest and successful endeavours, see Romita et al, *What Impact?*, supra fn 15, pp 4–8; Lupell and Mälskoo, *A Necessary Voice*, supra fn 3, pp 7–8; SCR, ‘In Hindsight: Emergence of the E10’, 28 September 2018, https://www.securitycouncilreport.org/monthly-forecast/2018-10/in_hindsight_emergence_of_the_e10.php (last accessed 24 September 2020).

55 As explained in section 3A1 above, for substantive decisions of the Security Council, affirmative votes must also include those of the five permanent members. It is worth underlining that abstention does not count as a veto but could nonetheless lead to a resolution failing to be adopted based on insufficient affirmative support.

56 Farall et al, *Elected Member Influence in the United Nations Security Council*, supra fn 51, p 27 and fn 79.

57 Ibid, pp 27–28. It is worth recalling that Art 24(1) of the Charter explicitly foresees that ‘Members States agree that in carrying out its duties ... the Security Council acts on their behalf’.

58 See notably, SCR, ‘In Hindsight: Emergence of the E10’, supra fn 54. The overwhelming majority of experts interviewed for this paper equally traced the P5’s current divisions back to these situations, sometimes noting that, following the 2018 chemical attack on Douma (Syria), they reached an all-time high since the end of the Cold War.

59 On coordination, it is worth noting that elected members now meet monthly at both permanent representative and political coordinator levels. See SCR, ‘In Hindsight: Emergence of the E10’, supra fn 54.

5. ELECTED MEMBERS PROMOTING IHL AND ACCOUNTABILITY: LESSONS LEARNED FROM PRACTICE

Let us now turn to the in-depth analysis of the negotiation of selected relevant resolutions of the Security Council with a view to determining the role (potentially) played by elected members.⁶⁰

Because the organ does not devote a specific single agenda item to the issues at hand, this section of the paper is structured around some existing geographic and thematic issues⁶¹ – with the notable exception of counterterrorism measures and sanctions regimes, which are addressed last. Before that, resolutions adopted in relation to the Syrian Arab Republic, the PoC agenda, as well as Children and Armed Conflict and Women, Peace and Security are examined.

A. THE SYRIAN ARAB REPUBLIC

While many countries on the Security Council's agenda are struggling with armed conflict, it has been decided that the focus here should be exclusively on Syria. This decision rests on the fact that this protracted crisis crystallizes both the potential influence of elected members (who have exceptionally managed to become penholders of the resolution concerning a country-specific situation, even if it is limited to its humanitarian dimension) and the P5 political stalemate that has contaminated the Security Council's entire humanitarian agenda.⁶²

Although the Security Council has regularly dealt with the situation in the Syrian Arab Republic since March 2011, the focus here is on developments pertaining to so-called 'humanitarian resolutions' and chemical weapons, as well as on the Security Council's failure to pursue meaningful avenues for criminal accountability. Let us also clarify that outcomes related to the fight against the Islamic State in Syria (ISIS) – such as Resolution 2178 on foreign terrorist fighters – lie beyond the scope of this section, and have already been much commented on.⁶³

60 For the sake of transparency, it should be noted that we did not have the resources necessary for the examination of all resolutions adopted by the Security Council since 2013. The selection was thus based on a combination of references found in literature and recommendations made by experts interviewed for this research.

61 For the full list of current agenda items (also referred to as 'topics under consideration by the Security Council', see <https://www.un.org/securitycouncil/content/repertoire/agenda-items-2018-part-i-repertoire> (last accessed 24 September 2020).

62 Romita et al, *What Impact?*, supra fn 15, pp 7–9; SCR, 'In Hindsight: Emergence of the E10', supra fn 54. This diagnosis was shared by the overwhelming majority of our interviewees.

63 See, for instance, Geneva Academy of International Humanitarian Law and Human Rights, *Foreign Fighters Under International Law*, Academy Briefing no 7, October 2014, https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/Foreign%20Fighters_2015_WEB.pdf (last accessed 24 September 2020).

1. CROSS-BORDER HUMANITARIAN ACCESS

a. A Reminder of the Security Council's Limited Action Before October 2013

Having begun with peaceful protests in March 2011, the situation in Syria steadily deteriorated – with a surge in both armed violence and humanitarian needs – to qualify as a non-international armed conflict by the first semester of 2012.⁶⁴ The first instances of the Security Council using language borrowed from IHL indeed date from April 2012, and already express concern at the challenges related to the adequate provision of humanitarian assistance to those in need.⁶⁵ Despite these (relatively) early calls for relief, the impossibility of humanitarian agencies accessing areas that had fallen out of government control contributed to the further worsening of conditions on the ground. And the Security Council stayed silent on the issue until the autumn of 2013.

b. Resolutions 2139 and 2165

Building on the background work towards and the adoption of Presidential Statement 15 of 2 October 2013 initiated by Luxembourg,⁶⁶ three elected members of the Security Council (Australia, Jordan and Luxembourg) began discussions with the P3 on a potential draft resolution on humanitarian access in Syria. As the official penholder on other aspects of the situation in Syria, involving the UK as early as possible in the negotiations was particularly important. Illustrative of the core group's efforts towards transparency and desire for wide buy-in, negotiations lasted the whole of January and February; first with the P3, then involving Russia and China in early February, and finally circulating the text to all members of the Security Council.⁶⁷ With regards to substance, elements related to accountability – i.e. references to Article 41 of the Charter and the threat of sanctions, as well as mention of the International Criminal Court (ICC) – notably proved problematic from Russia's perspective, and thus ultimately had to be dropped. Although the issue was originally at the heart of the core group's endeavour, the same went for cross-border humanitarian access, specifically references to neighbouring coun-

64 The Commission of Inquiry established by the Human Rights Council proceeded to such classification in mid-February 2012 (see UN doc A/HRC/21/50, 16 August 2012, Annex II, p 45, paras 2–3), while the International Committee of the Red Cross and the RULAC database waited until July 2012. See RULAC, 'Non-International Armed Conflicts in Syria', <http://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-syria#collapse3accord> (last accessed 24 September 2020); 'Interview with Peter Maurer', 99 *International Review of the Red Cross* 906 (2019) 876.

65 Statement by the President of the Security Council, UN doc S/PRST/2012/10, 5 April 2012 and UNSC Res 2042, 14 April 2012 (operational para 10) both use the following language: 'The Security Council reiterates its call for the Syrian authorities to allow immediate, full and unimpeded access of humanitarian personnel to all population in need of assistance, in accordance with international law and guiding principles of humanitarian assistance' (emphasis added).

66 Statement by the President of the Security Council, UN doc S/PRST/2015/13, 26 June 2015. It is worth noting the groundbreaking character of the document, in that it constitutes the first Security Council outcome on Syria to generally address violations of IHL and human rights.

67 What's in Blue, 'Draft Humanitarian Resolution on Syria and Briefing by Humanitarian Chief', 11 February 2014, <https://www.whatsinblue.org/2014/02/draft-humanitarian-resolution-on-syria-and-briefing-by-humanitarian-chief.php> (last accessed 24 September 2020). The website What's in Blue provides exhaustive hindsight on the dynamics of negotiations at the Security Council, noteworthy elements of the draft resolutions and the main points of contention.

tries and the lifting of restrictions. Only general language remains in operational paragraphs 6 and 7.⁶⁸ Besides significant concessions on wording, tactical choices on the timing of tabling (or threats thereof) allegedly proved instrumental in ensuring the unanimous adoption of Resolution 2139 on 22 February 2014. Diplomatic observers point out that, after exercising its veto power three times between October 2011 and July 2012,⁶⁹ Russia was reluctant to use it again – on principle, but especially during the Sochi Winter Olympics.⁷⁰

After three years of relative silence concerning the severity of the situation in the Syrian Arab Republic, and despite its abovementioned shortcomings, Resolution 2139 finally provides an exhaustive Security Council catalogue of violations of IHL perpetrated by belligerents. The following elements are particularly worth noting: a call for ‘rapid, safe and unhindered humanitarian access [...] including across conflict lines and across borders’ in operational paragraph 6; the prohibition of starvation of civilians as a method of warfare in operational paragraph 5; the protection of healthcare, and for the sick and wounded, in operational paragraph 8; and the need to end impunity in operational paragraph 13. As trivial as these references may seem to the reader unaccustomed to the political realities of multilateral negotiations, several interlocutors interviewed for this research testified that the mere restatement of existing law required tough negotiations. For instance, the inclusion of the word ‘rapid’, which did not feature in the presidential statement of October 2013 but notably stems from rule 55 of the International Committee of the Red Cross (ICRC) customary law study, amounted to a concession by Russia.

Although sceptics criticized Resolution 2139 for its lack of added value compared to the presidential statement of 2 October 2013 – some even saying that, without the threat of targeted sanctions, it ‘lacked both teeth and gums’⁷¹ – the text proved to be an ingenious springboard for Australia, Luxembourg and Jordan to continue working on cross-border humanitarian access in Syria. Taking advantage of the momentum and having consulted the P5 as well with the Office for the Coordination of Humanitarian Affairs (OCHA) since May, they circulated a new draft resolution to the whole Security Council membership in July 2014. Shorter and more operational than its predecessor, the text focused on allowing cross-border humanitarian access into Syria through four access points in Turkey and Jordan, for a period of six months, in order to meet the catastrophic needs of the civilian population affected by the armed conflict. Again, major concessions to Russia’s and China’s demands concerned issues of accountability. Other noteworthy compromises concerned both the substance of rules invoked (for instance, qualifying arbitrary denial of access as a ‘possible’ violation of IHL) and operational details (the addition

68 What’s in Blue, ‘Possible Vote on Syria Draft Humanitarian Resolution’, 20 February 2014, <https://www.whatsinblue.org/2014/02/possible-vote-on-syria-draft-humanitarian-resolution-tomorrow.php> (last accessed 24 September 2020).

69 For a detailed analysis of Russia’s and China’s respective use of the veto in relation to the situation in the Syrian Arab Republic, see Melling and Dennett, ‘The Security Council Veto and Syria’, supra fn 19, 292–294.

70 Confidential documents tracking the negotiations, provided by one of our interlocutors.

71 The expression stems from a confidential document.

of a mechanism for notifying the Syrian authorities of cross-border operations).⁷² The unanimous adoption of Resolution 2165 nonetheless constituted a significant achievement for the three elected members in charge of its negotiation, and one with immediate positive consequences on the ground. Diplomatic commentators only regretted the absence in the text of effective means for ensuring its enforcement, i.e. of a reference to Article 41 of the Charter.⁷³

c. Increasingly Challenging the Renewal of the Authorization of Cross-Border Humanitarian Access

Adopted a few days before Australia and Luxembourg left the Security Council, Resolution 2191 of 17 December 2014 renewed the authorization for humanitarian access across the borders of Jordan and Turkey for an extended period of 12 months. While negotiations were relatively straightforward with regards to its overarching goal, divisions notably surfaced over the wording used to refer to belligerents, resulting in a subtle but important modification. Throughout the resolution, the words ‘parties to the conflict’ have been replaced by ‘parties to the Syrian domestic conflict’, thus excluding states participating in the anti-ISIS coalition from the scope of the resolution. Testifying to the Security Council’s propensity to rely on previously agreed language, such formulation stems from Security Council resolutions renewing the UN’s observer mission in the Golan Heights (i.e. Syrian territory annexed by Israel in 1967).⁷⁴

With a small group of elected members systematically holding the pen,⁷⁵ the authorization of cross-border humanitarian access was regularly extended (on a yearly basis) without any problem until December 2017.⁷⁶ Although they did not oppose the adoption of Resolution 2393, Russia and China used to the opportunity to publicly voice, for the first time, their understanding of cross-border humanitarian access as an exceptional and temporary measure.⁷⁷ By December 2018 diverging narratives on the evolution of the situation in Syria had become entrenched among permanent members, and political polarization had reached a peak following the Security Council’s inability to react to the chemical weapons

72 What’s in Blue, ‘Syria, Monday Vote on Draft Resolution on Cross-Border and Cross-Line Humanitarian Access’, 13 July 2014, <https://www.whatsinblue.org/2014/07/syria-monday-vote-on-draft-resolution-on-cross-border-and-cross-line-humanitarian-access.php> (last accessed 24 September 2020).

73 Confidential documents, tracking the negotiations, provided by one of our interlocutors.

74 What’s in Blue, ‘Syria: Adoption of Resolution Reauthorising Cross-Border Humanitarian Access’, 15 December 2014, <https://www.whatsinblue.org/2014/12/syria-adoption-of-resolution-reauthorising-cross-border-humanitarian-access.php> (last accessed 24 September 2020).

75 Jordan, New Zealand and Spain in 2015; Egypt, Spain and New Zealand in 2016; Egypt, Japan and Sweden in 2017.

76 To the point that What’s in Blue does not even report on the negotiation of Resolution 2258 of December 2015 and Resolution 2332 of 21 December 2016.

77 What’s in Blue, ‘Syria: Resolution on Cross-Border Humanitarian Access and Political and Humanitarian Briefings’, 18 December 2017, <https://www.whatsinblue.org/2017/12/syria-resolution-on-cross-border-humanitarian-access-and-political-and-humanitarian-briefings.php> (last accessed 24 September 2020).

attack on Douma in April of that year.⁷⁸ In order to secure unanimous adoption of Resolution 2449, Sweden and Kuwait (the penholders on the ‘humanitarian track’ at the time) were required to actively act as bridge-builders between the P3 on the one hand and Russia and China on the other.⁷⁹

Following the failure of two competing draft texts in December 2019,⁸⁰ the penultimate resolution on cross-border humanitarian access proved extremely difficult to achieve even though it minimally renewed the previous authorization: for a period of six months and through two border-crossings only.⁸¹ While many of our interlocutors attributed the adoption of Resolution 2504 in mid-January 2020 – i.e. days before the expiration of the previous authorization – to the tenacity of the penholders, and especially of Belgium, others mentioned the Security Council’s 2020 composition, which is less favourable to Russia, as a contributing factor. In any event, the abstention of four of five permanent members spoke volumes on the members’ extreme dissatisfaction with the result.

Negotiating a renewal of cross-border humanitarian access to Syria ended up being even more contentious in July 2020, when five consecutive votes on five different drafts were required before agreement was eventually reached among the members of the Security Council.⁸² Renewing the authorization for one border crossing only, though for a period of 12 months, Resolution 2533 was ultimately adopted on 11 July after various amendments presented by China and Russia failed.⁸³

The negotiation of what was originally a purely humanitarian issue promises to be even more politically difficult in July 2021, when the authorization of the last remaining crossing next expires. Given its utmost operational importance, heightened by the Covid-19 pandemic, let us nonetheless note that scholarly legal debate has just emerged around the necessity of securing either

78 What’s in Blue, ‘Syria: A Council Divided’, 17 April 2018, <https://www.whatsinblue.org/2018/04/syria-a-council-divided.php> (last accessed 24 September 2020).

79 What’s in Blue, ‘Syria: Resolution on Cross-Border Humanitarian Access and Humanitarian Briefing’, 13 December 2018, <https://www.whatsinblue.org/2018/12/syria-resolution-on-cross-border-humanitarian-access-and-humanitarian-briefing.php> (last accessed 24 September 2020).

80 The draft resolution presented by Belgium, Germany and Kuwait (UN doc S/2019/961, 20 December 2019) was vetoed by Russia despite a strong expression of support by a well-coordinated group of (current and incoming) elected members who underlined the purely humanitarian character of the initiative. The draft resolution presented by Russia (UN doc S/2019/962, 20 December 2019) did not gather the nine affirmative votes required for adoption. See What’s in Blue, ‘Syria Briefing and Competing Draft Resolutions’, 19 December 2019, <https://www.whatsinblue.org/2019/12/syria-briefing-and-competing-humanitarian-draft-resolutions.php> (last accessed 24 September 2020).

81 UNSC Res 2504, 10 January 2020.

82 The Security Council voted on 7 July on a draft presented by Germany and Belgium (the humanitarian co-penholders in 2020); on 8 July on a competing draft presented by Russia; on 10 July in the morning on a new draft presented by the co-penholders; on 10 July in the evening on another draft presented by Russia; and on 11 July on a last successful draft presented by the co-penholders. See What’s in Blue, ‘Syria: Vote on a Fifth Draft Resolution on Cross-Border Humanitarian Access’, 11 July 2020, <https://www.whatsinblue.org/2020/07/syria-vote-on-fifth-draft-resolution-on-cross-border-humanitarian-access.php> (last accessed 24 September 2020).

83 UNSC Res 2533, 11 July 2020.

Syria’s consent or the Security Council’s authorization for the legalization of cross-border activity in Syria.⁸⁴

2. A BRIEF OVERVIEW OF CHEMICAL WEAPONS⁸⁵

Created by Resolution 2235, the Joint Investigative Mechanism (JIM) of the UN and the Organisation for the Prohibition of Chemical Weapons was mandated to assign responsibility for the use of chemical weapons in the Syrian Arab Republic.⁸⁶ One can thus envisage it as a mechanism for accountability, even if devoid of consequences for perpetrators. Following its third and fourth reports in 2016, Russia began questioning the JIM’s working methods and criticizing its conclusions for being unsubstantiated. Russia also argued that, pending an investigation by the Syrian Government, the JIM’s findings could neither be final nor serve as a basis for taking legal decisions on criminal accountability.⁸⁷ Although Russia’s increasing dissatisfaction resulted in the JIM’s termination at the end of 2017 (through two consecutive vetoes), one should not overlook the efforts of the Security Council’s then elected members such as Japan and Italy in the last stretch of the negotiations.⁸⁸ This is particularly remarkable since the file on chemical weapons had previously been monopolized by permanent members; the very establishment of the JIM was indeed largely the product of bilateral negotiations between Russia and the United States.⁸⁹

3. REPEATED ATTEMPTS (AND FAILURES) TO ADDRESS CRIMINAL ACCOUNTABILITY

Seemingly unreconcilable divisions that are now showing within the Security Council with regard to the humanitarian situation have long existed on the issue of criminal accountability. While any reference to the ICC in draft resolutions on Syria always constituted a no-go for Russia,⁹⁰ the veto of the French text put forward in May 2014 permanently killed any other initiative at the Security Council level for a deferral of the situation to the ICC. Member states of the UN, who addressed a dedicated letter to the Security Council in January 2013 at the initiative of Switzerland,⁹¹ never reiterated their call for such action. However, it is worth

84 See for instance, R. Barber, ‘Is Security Council Authorisation Really Necessary to Allow Cross-Border Humanitarian Assistance in Syria?’, *EJIL:Talk!*, 24 February 2020, <https://www.ejiltalk.org/is-security-council-authorisation-really-necessary-to-allow-cross-border-humanitarian-assistance-in-syria/> (last accessed 24 September 2020).

85 For an exhaustive narrative of accountability efforts related to the use of chemical weapons in Syria, see SCR, *The Rule of Law: Retreat from Accountability*, supra fn 5, pp 13–15.

86 UNSC Res 2235, 7 August 2015.

87 SCR, *The Rule of Law: Retreat from Accountability*, supra fn 5, p 14.

88 SCR, ‘In Hindsight: Emergence of the E10’, supra fn 54; SCR, *The Rule of Law: Retreat from Accountability*, supra fn 5, p. 14.

89 Ibid.

90 See section 5A1 above.

91 The letter, which eventually gathered about 60 signatures, is available at <http://www.news.admin.ch/NSBSubscriber/message/attachments/29293.pdf> (last accessed 24 September 2020).

emphasizing that the French draft resolution⁹² exclusively relied on language already agreed on in the context of the 2011 Libya deferral.⁹³ This goes to show that the organ's blockage lies in the members' political positioning rather than on mere substantive issues.

The Security Council's inability to pursue avenues for international criminal justice on Syria, including during and after the gruesome siege of Eastern Aleppo in autumn 2016, led to the creation by the General Assembly of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011.⁹⁴

4. LESSONS LEARNED

- Following Australia's and Luxembourg's initial engagement in 2013, elected members have become, and remain, the official penholders on the 'humanitarian track' for Syria. A diverse geographical composition of the core group (with the inclusion of Arab states) as well as the transparency of the negotiation process contribute to the credibility of the endeavour. So does the expression of support by neighbouring and/or concerned countries, seated inside and outside of the Security Council.⁹⁵
- The adoption of Resolution 2165 was only possible thanks to the progressive work continuously undertaken by elected members since autumn 2013. This goes to show that success at the Security Council is slow and incremental, often starting with the inclusion of relevant language in more modest outcomes (such as press elements or presidential statements). In other words, achieving success requires patiently building momentum and often agreeing to build bridges among the P5.
- Close and continuous consultations with OCHA were essential to ensure the operational relevance of Resolution 2165 and its successors.
- As exemplified by the negotiation of draft resolutions on both humanitarian access and the use of chemical weapons, contentious elements are rarely to do with the content of the law (for instance the prohibition of a certain method of warfare). Rather, states' and a fortiori the P5's political positioning are what ultimately matter. In other words, the issue lies with compliance with/

⁹² The draft text is available at <https://www.justsecurity.org/wp-content/uploads/2014/05/Draft-UNSC-French-Resolution-on-Syria-Referral-to-ICC.pdf> (last accessed 24 September 2020). For a detailed account of its negotiations, see What's in Blue, 'Syria: Vote on ICC Referral', 15 May 2014, <https://www.whatsinblue.org/2014/05/syria-vote-on-icc-referral.php> (last accessed 24 September 2020).

⁹³ The situation in Libya was deferred to the ICC through UNSC Res 1970, 26 February 2011, operational paras 4–8.

⁹⁴ UNGA Res 71/248, 11 January 2017.

⁹⁵ In 2017, Turkey's support contributed to the renewal of the authorization of cross-border humanitarian access through four border crossings. See What's in Blue, 'Syria: Resolution on Cross-Border Humanitarian Access and Political and Humanitarian Briefings', supra fn 77.

enforcement of the legal framework – especially in a context where some of the P5 are involved on the ground.

- Russia's and China's traditional emphasis on state sovereignty results in a positioning against meaningful means of enforcing Security Council decisions. Despite years of blatant disregard by the Syrian authorities for such decisions, relevant resolutions refer, at best, to Article 25 of the Charter. Additionally, while Security Council outcomes systematically include a general reference to the fight against impunity, specific mention of the ICC Court has become a no-go. Since the termination of the JIM's investigative mandate, promoting accountability is proving to be increasingly challenging – contributing to a noticeable gap between the Security Council's rhetoric and actions.
- However, all the Security Council's temporary successes – if not simply a lack of inaction – with regard to Syria were brought about with the active contribution of elected members. It is also worth mentioning that the failure of a draft resolution or of proposed language does not prevent external observers from noting the E10's principled engagement, as was the case with Belgium regarding Resolution 2504.
- Interested members of the E10 (currently Belgium and Germany) continue to hold the pen on humanitarian access, although such a position might become less and less enviable as time passes.

B. THE POC AGENDA

As already stated above,⁹⁶ the thematic work of the Security Council on humanitarian issues has unfortunately not always remained immune to contamination by the political divisions prevailing between permanent members with regards to various aspects of the organ's work on Syria. We therefore now turn to the examination of the many recent developments on the PoC agenda – the Security Council's thematic agenda item with biggest 'common contact surface area' with IHL. It should nonetheless be pointed out that while some reflections on the evolution of and challenges remaining for the PoC agenda are presented here, more exhaustive reports have been published on the occasion of its twentieth anniversary.⁹⁷

⁹⁶ See Section 5A and fn 62 above.

⁹⁷ See most notably, Center for Civilians in Conflict (CIVIC), *POC20: Twenty Years of the Protection of Civilians – Challenges, Progress and Priorities for the Future*, September 2019, https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/POC19/POC_20_Twenty_Years_of_the_Protection_of_Civilians.pdf (last accessed 24 September 2020); S. Adamczyk, *Twenty Years of Protection of Civilians at the UN Security Council*, Humanitarian Policy Group (HPG), Policy Brief 74, May 2019, <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12709.pdf> (last accessed 24 September 2020).

1. SETTING THE STAGE

Much has already been written about the historical evolution of the PoC agenda since its creation in 1999 through Resolution 1265.⁹⁸ For our present purpose, it is sufficient to recall the following elements.

Moving away from the Security Council's approach to the issue exclusively focused on peacekeeping, the item's first decade consisted of awareness raising, fostering acceptance of both the variety of protection-related concerns and the essential character of the protection of civilians in armed conflict for the maintenance of international peace and security.⁹⁹ This culminated in Resolution 1894, the last all-encompassing outcome adopted by the Security Council on PoC, testifying to the organ's newly developed broad understanding of the concept.¹⁰⁰ The text most notably deals with – in no particular order of importance – indiscriminate and disproportionate (deliberate) attacks against civilians; the ratification and implementation of relevant international treaties; the applicability of human rights to situations of armed conflict; the International Humanitarian Fact-Finding Commission; the facilitation of humanitarian assistance and the protection of humanitarian personnel; the role of the ICC in ensuring accountability for international crimes; and improved oversight of peacekeeping operations.

The following decade was characterized by somewhat contradictory tendencies. On the one hand, the Security Council began addressing a wide range of protection-related concerns in country-specific resolutions more frequently *and* more comprehensively than it had done in the past. Such concerns also permeated other thematic agenda items, resulting in a mainstreaming of the PoC agenda. On the other hand, the Security Council engaged in the development of sub-thematic issues through the adoption of resolutions focusing on specific areas of IHL.¹⁰¹ The following section (critically) engages with this second tendency towards fragmentation.

It is finally worth recalling that the Security Council's approach to PoC has been – and continues to be – influenced by the existence of a corresponding Aide Memoire based on resolutions and presidential statements.¹⁰² Elaborated by OCHA at

98 UNSC Res 1265, 17 September 1999. For a historical perspective see E.-C. Gillard and J. Piacibello, 'The Role of the Security Council in Enhancing the Protection of Civilians in Armed Conflicts', in Instituto Diplomático/Ministério dos Negócios Estrangeiros (eds), *A Participação de Portugal no Conselho de Segurança: 2011-2012*, 2015, pp 67–74; Adamczyk, *Twenty Years of Protection of Civilians at the UN Security Council*, supra fn 97, pp 2–3 (general), 3–6 (on mechanisms and procedures) and 5–6 (on peacekeeping).

99 Gillard and Piacibello, 'The Role of the Security Council in Enhancing the Protection of Civilians in Armed Conflicts', supra fn 98, pp 67–68.

100 UNSC Res 1894, 11 November 2009.

101 This tendency towards fragmentation is notably highlighted and questioned by Adamczyk, *Twenty Years of Protection of Civilians at the UN Security Council*, supra fn 97, pp 6–7.

102 Since the first adoption of the Aide Memoire by the Security Council in 2002, there have been seven versions of the document (2002, 2003, 2009, 2010, 2014, 2016 and 2018). It is now also available in the form of an easy-to-browse online interface, accessible at <https://poc-aide-memoire.unocha.org> (last accessed 24 September 2020). Gillard and Piacibello, 'The Role of the Security Council in Enhancing the Protection of Civilians in Armed Conflicts', supra fn 98, pp 69–71, provide a useful analysis of the evolution of the document between 2002 and 2015.

the request of the Security Council,¹⁰³ this document notably compiles previously agreed language with the aim of fostering legal soundness and consistency. Informal mechanisms such as the Informal Expert Group¹⁰⁴ and the Group of Friends¹⁰⁵ (established in 2009 and 2007, respectively) have equally contributed to the organ's work on PoC.

2. SELECTED SUB-THEMATIC RESOLUTIONS

Although the Security Council did not adopt any resolution on PoC between 2009 and 2014, initiatives have since increased exponentially. Out of the seven resolutions adopted during this period,¹⁰⁶ the focus here is on Resolutions 2286 (2016), 2147 (2018), 2474 and 2475 (both 2019). This selection is based on recurring references made by our interlocutors during interviews.

In spring 2016 – i.e. a few months after the dramatic bombardment of the Médecins sans Frontières' (MSF) hospital in Kunduz – a geographically diverse group of five elected members (Egypt, Japan, Spain, New Zealand and Uruguay) presented a draft resolution on the protection of healthcare in armed conflict. From the outset, the penholders insisted that their intention was simply to reinforce existing obligations under IHL while sending a strong political signal to perpetrators of violations.¹⁰⁷ The result innovates by requiring the Secretary-General to not only address the sub-thematic issue in his country-specific reports, but also make recommendations to the Security Council on how to improve compliance with the relevant rules as well as accountability for their violations (operational paragraphs 12 and 13, respectively).¹⁰⁸

Although Russia originally opposed the principle of dedicating a resolution to a specific category of civilians in need of protection,¹⁰⁹ it ultimately concurred

103 UN Doc S/2001/614, 21 June 2001.

104 Open only to members of the Security Council, the Informal Expert Group meets regularly to receive briefings and provide guidance on protection-related concerns. Agencies of the UN, such as OCHA, UNICEF or UNHCR, can attend its meetings. For information on its role and activities, see Gillard and Piacibello, 'The Role of the Security Council in Enhancing the Protection of Civilians in Armed Conflicts', supra fn 98, pp 71–74; Adamczyk, *Twenty Years of Protection of Civilians at the UN Security Council*, supra fn 97, pp 4–5.

105 Established at the initiative of Switzerland, the Group of Friends is open to the whole membership of the UN. Although equitable geographical representation remains a challenge, it currently consists of more than 20 like-minded countries (including the UK and France). It most notably provides a platform of influence for non-members of the Security Council, and contributes to maintaining momentum around PoC throughout the year. For some, albeit little, information about its activities, see Adamczyk, *Twenty Years of Protection of Civilians at the UN Security Council*, supra fn 97, p 5. For the sake of transparency, it should be stated that we have also had access to confidential information on the group's work.

106 The full list of resolutions is available at https://www.securitycouncilreport.org/un_documents_type/security-council-resolutions/?ctype=Protection%20of%20Civilians&cctype=protection-of-civilians (last accessed 24 September 2020).

107 Confidential document provided by one of our interlocutors.

108 The Secretary-General presented his detailed recommendations to the Security Council a few months later, see UN doc S/2016/722, 12 August 2016.

109 Confidential document provided by one of our interlocutors.

with the unanimous adoption of Resolution 2286, co-sponsored by 84 member states.¹¹⁰ Lasting several months and described as constructive, transparent and inclusive,¹¹¹ the negotiations evidently entailed the penholders making compromises, both amongst themselves *and* with the P5. As had previously been the case (with regards to resolutions on cross-border humanitarian access to Syria),¹¹² a significant concession concerned the striking of any explicit reference to the ICC.¹¹³ The text nonetheless retained language borrowed from Article 8 of the Rome Statute as well as references to accountability throughout (for instance in operational paragraphs 7–9), which some of our interlocutors still described as ‘standard’. It is also worth noting that the wording on the non-punishment of medical personnel for the mere carrying out of their duties in line with medical ethics (preambular paragraphs 13 and 19) constituted another subject of debate.

Besides the abovementioned (strong) reporting and recommendation mechanisms – and perhaps even more so given its unfortunate lack of significant impact on the ground – the originality of Resolution 2286 stems from its process of elaboration. First, the work of the informal Group of Friends contributed to the choice of issue to bring forward to the Security Council, as well as ensuring large co-sponsorship for the ensuing resolution.¹¹⁴ Second, the text was notably elaborated in close collaboration with MSF, the ICRC and concerned UN entities.¹¹⁵ Finally, the fact that five elected members launched and co-held the pen on a thematic initiative radically departed from the organ’s previous practice, which implicitly reserved that right to the P3.¹¹⁶ Incidentally, this initiative set the tone (in terms of both substance and format) for future engagement by the E10 with the PoC agenda.

About two years later, the Security Council unanimously adopted Resolution 2417 on conflict and hunger.¹¹⁷ Presented by four elected members (Côte d’Ivoire, Kuwait, the Netherlands¹¹⁸ and Sweden), the final text aimed at both focusing the organ’s attention on challenges related to belligerents’ ways of conducting hostilities in relation to food *and* reaffirming the relevant legal framework. Elaborated in close cooperation with and to the apparent satisfaction of the ICRC, OCHA and the World Food Programme, it provides a noteworthy holistic approach to the issue;

110 UNSC Res 2286, 3 May 2016.

111 These adjectives stem from both What’s in Blue, ‘Briefing and Resolution on Healthcare in Armed Conflict’, 2 May 2016, <https://www.whatsinblue.org/2016/05/briefing-and-resolution-on-healthcare-in-armed-conflict.php> (last accessed 24 September 2020), and from interviews with experts familiar and/or involved in the negotiations.

112 See section 5A1 above.

113 What’s in Blue, ‘Briefing and Resolution on Healthcare in Armed Conflict’, *supra* fn 111.

114 Confidential document provided by one of our interlocutors.

115 What’s in Blue, ‘Briefing and Resolution on Healthcare in Armed Conflict’, *supra* fn 111.

116 On penholdership, see section 3A2 above.

117 UNSC Res 2417, 24 May 2018.

118 It is worth noting that the Netherlands had worked for months towards building momentum around the topic. It organized, in cooperation with Switzerland, a series of events in Geneva, Rome and New York throughout the autumn of 2017 (i.e. before beginning its tenure at the Security Council), and convened a briefing during its presidency of the Security Council in March 2018.

addressing challenges related to the conduct of hostilities (for instance operational paragraphs 1 and 5), forced displacement (operational paragraph 2) as well as humanitarian assistance (operational paragraphs 4, 6 and 7).¹¹⁹ In a similar way to its predecessor, the resolution also requests action from the Secretary-General in the form of country-specific reporting and annual briefing (operational paragraphs 11–13). However, to the regret of some of our interlocutors, the resolution’s achievements in terms of accountability are mixed. On the one hand, it reiterates the Security Council’s power to adopt targeted sanctions (operational paragraph 9) and strongly condemns the use of starvation of civilians as a method of warfare (operational paragraph 5).¹²⁰ On the other, it contains no mention of the ICC and does not provide for any enforceable mechanism for follow-up.

With regard to the process, commentators once again agree that the penholders’ patient, inclusive and transparent approach to the negotiations was instrumental in securing the adoption of the resolution.¹²¹ Given China’s, Ethiopia’s and Russia’s original scepticism towards the initiative,¹²² some even stated that its success was ‘unhoped for in view of wider Security Council’s dynamics’.¹²³

Finally, contrary to Resolutions 2286 and 2417, which were both intrinsically linked to developments in country-specific situations on the Security Council’s agenda (such as Afghanistan, Syria and Yemen), Resolutions 2474 and 2475 address sub-thematic issues that are far less politically sensitive.¹²⁴ As a country particularly attuned to the need to elucidate the fate of missing persons, Kuwait initiated the elaboration of Resolution 2474 in close consultation with the ICRC. Like its predecessors, the text can be once again characterized by its strong focus on IHL, while lacking elements on accountability such as reference(s) to international criminal and/or investigative mechanisms.¹²⁵ Poland and the UK co-held the pen on Resolution 2475, dedicated to persons with disabilities. The lengthy negotia-

119 Confidential document provided by one of our interlocutors.

120 One should emphasize that the latter not only constituted a first for the Security Council, but also facilitated the 2019 negotiations of the amendment of Art 8 of the Rome Statute extending the war crime of starvation to non-international armed conflicts. For a critical assessment of the amendment, see K. J. Heller, ‘The Rome Statute’s Flawed Amendment Regime – Starvation in NIAC Edition’, *OpinioJuris*, 7 December 2019, <http://opiniojuris.org/2019/12/07/the-rome-statutes-flawed-amendment-regime-starvation-in-niac-edition/> (last accessed 24 September 2020).

121 What’s in Blue, ‘Security Council to Adopt a Resolution on Hunger in Armed Conflict’, 23 May 2018, <https://www.whatsinblue.org/2018/05/security-council-to-adopt-a-resolution-on-hunger-in-armed-conflict.php> (last accessed 24 September 2020). This was confirmed by many interviewees familiar with and/or involved in the process.

122 While, according to our information, the permanent members questioned the thematic nature of the endeavour (by opposing the Security Council’s country-specific work on hunger as they had previously done with regards to Resolution 2286), Ethiopia notably feared that the situation prevailing under its national jurisdiction would fit within the scope of the resolution.

123 Confidential document provided by one of our interlocutors.

124 UNSC Res 2474, 11 June 2019; UNSC Res 2475, 20 June 2019.

125 What’s in Blue, ‘Missing Persons in Armed Conflict Briefing and Resolution’, 10 June 2019, <https://www.whatsinblue.org/2019/06/missing-persons-in-armed-conflict-briefing-and-resolution.php> (last accessed 24 September 2020).

tions proved comparable to those of Resolutions 2286 and 2417 – with Russia and China expressing serious reservations regarding the suitability of the sub-thematic approach.¹²⁶ The ensuing text draws heavily on IHL as well as on human rights, and also builds on previous resolutions of the Security Council: ‘This was done, according to the penholders, to underline that [it was] not meant to create new law but to gain compliance with existing laws.’¹²⁷

3. CRITICAL ASSESSMENT

Even though each of the abovementioned resolutions has allowed the Security Council to focus, for the very first time, on a specific sub-thematic humanitarian issue as a stand-alone subject – rather than broadly addressing it within the PoC general framework – one can nonetheless question their (respective and aggregated) added value. And there is no easy answer.

From an operational perspective, it is doubtful that Security Council resolutions have caused an effective change in conduct of belligerents on the ground. Still, a few of our interlocutors argued that, by requiring dedicated reporting from the Secretary-General, they have successfully contributed to the mainstreaming of sub-thematic issues throughout the entire UN system and to the corresponding dissemination of IHL.

What of the systemic perspective? Without effective mechanisms to strengthen compliance or foster accountability, does the mere reaffirmation of political relevance really contribute to the creation of a more robust legal framework when the rules concerned are already universally ratified and/or customary in nature (as is the case of the majority of IHL rules)? Does the Security Council’s silence on other sub-thematic issues equate to the lessening of their relevance, or does it simply speak volumes about the political dynamics of a Security Council of whose five permanent members four are involved in armed conflicts? In the face of the risks associated with the potential further fragmentation of the PoC agenda, which many of our interlocutors have repeatedly and forcefully underlined, the Secretary-General has ‘urge[d] the [Security] Council to maintain a comprehensive approach to the protection of all civilians and ensure that other pressing and emerging issues – such as urban warfare and conduct of hostilities – are fully addressed’.¹²⁸ The Security Council’s follow-up on sub-thematic issues also needs to be improved, and incoming elected members should be encouraged to pick up where their predecessors left off. In the latter regard, our interviewees pointed to the integration of a workstream on Resolution 2286 in the Group of Friends of PoC as a humble yet encouraging example. The same can be said of the adoption on 29 April 2020 of a Security Council presidential statement on conflict and hunger at

126 What’s in Blue, ‘In Hindsight: Persons with Disabilities in Conflict’, 28 June 2019, <https://www.whatsinblue.org/2019/06/in-hindsight-persons-with-disabilities-in-conflict.php> (last accessed 24 September 2020).

127 Ibid.

128 Protection of Civilians in Armed Conflict: Report of the Secretary-General, UN doc S/2019/373, 7 May 2019, para 12.

the Dominican Republic’s initiative.¹²⁹ In sum, ‘[t]he test for [the PoC agenda item] as a broad umbrella remains how to create a shared agenda that is more than the sum of parts and not just an agglomeration of the respective components under its remit’.¹³⁰ The challenge indeed consists in (re)creating a common approach to the protection of civilians in armed conflict, including to relevant legal definitions. This is why some of interlocutors pleaded in favour of future and prospective elected members approaching the agenda item – and a fortiori IHL and accountability – in a principled and coherent manner that does not focus on securing the adoption of an outcome.

From a more general and strategic standpoint, one last element is worth mentioning. Officially arguing that it leads to fragmentation and/or that suggested issues are already addressed in country-specific resolutions, Russia appears to be (almost) systematically initially opposed to engaging with sub-thematic issues under the PoC agenda. During interviews, most experts attributed such reluctance to Russia’s narrow understanding of the Security Council’s mandate under Article 24(1) of the Charter. Perhaps more worryingly, some also warned that Russia’s ultimate acquiescence did not necessarily imply that it would either support the necessary budgetary adjustment by the Fifth Committee of the General Assembly or refrain from ‘claiming favours’ elsewhere in the UN’s work. Although less obvious, such factors should therefore be equally carefully considered before launching a sub-thematic initiative.

4. LESSONS LEARNED

- All the above-mentioned sub-thematic resolutions were co-drafted by elected members who had either shown previous engagement with the concerned topic (such as Poland and persons with disabilities in armed conflict) – including before taking their seat at the Council (such as the Netherlands and conflict and hunger) – or had been directly affected by it (such as Kuwait and missing persons). This goes to show that success often requires building momentum around a specific topic ahead of the negotiations, for instance by organizing open debates, briefings and Arria-formula meetings.¹³¹
- The launch of a sub-thematic initiative, and/or the adoption of the related resolution, sometimes coincides with the presidency of an involved E10 member, as it did in the cases of the Netherlands (in March 2018) and Kuwait

129 Statement by the President of the Security Council, UN doc S/PRST/2020/6, 29 April 2020. For more information on the negotiations of the document, see What’s in Blue, ‘Presidential Statement on Conflict-Induced Hunger’, 28 April 2020, <https://www.whatsinblue.org/2020/04/presidential-statement-on-conflict-induced-hunger.php> (last accessed 24 September 2020).

130 Adamczyk, *Twenty Years of Protection of Civilians at the UN Security Council*, supra fn 97, p 7.

131 Informal in nature and flexible in format, such meetings do not appear on the official programme of work of the Security Council, and members are not obliged to attend. They nonetheless provide a useful opportunity for direct dialogue with other UN entities, non-governmental organizations and representatives of civil society, and thus undoubtedly contribute to the more nuanced grasping of an issue by the Security Council. For more information, see SCR, ‘Arria Formula Meetings’, <https://www.securitycouncilreport.org/un-security-council-working-methods/aria-formula-meetings.php> (last accessed 24 September 2020).

(in June 2019). As reiterated later,¹³² this triggers the risk of privileging the adoption of a Security Council outcome over ensuring the quality of its substance, and therefore leaves the penholder(s) more vulnerable to pressure during negotiations. By way of a contrary example, Poland was praised by many of our interlocutors for not insisting on synchronizing the adoption of an outcome with the exact date of the seventieth anniversary of the Geneva Conventions of 1949. Waiting a few more days allowed the negotiation of a substantially more satisfying presidential statement.¹³³

- In initiating sub-thematic resolutions, elected members aim to strengthen respect for specific rules of IHL by re-emphasizing their continued applicability and relevance. However, substantive compromises made (sometimes even before the start of negotiations) to secure the resolutions' adoption often concern elements related to accountability. This tendency is due to the emerging shift, mainly pushed for by China and Russia, in favour of national sovereignty for the purpose of implementing obligations under international law.¹³⁴ One thus wonders whether, in the (geo)political climate currently prevailing at the Security Council, elected members interested in championing IHL should opt for an approach that is less focused on the adoption of formal outcomes. It is worth noting that Poland and Belgium have been praised by many of our (non-diplomatic) interlocutors for adopting such an approach, which they deemed differently ambitious and perhaps more principled.

C. OTHER RELEVANT THEMATIC AGENDA ITEMS

Although not as evidently linked with the topic at hand as the abovementioned PoC agenda, this paper would not be complete without brief mention of the Security Council's work on two other thematic agenda items: Children and Armed Conflict and Women, Peace and Security. Both are indeed intrinsically linked to situations of armed conflict, and each has a relatively robust mechanism of monitoring and reporting that allows for some form of accountability.

1. CHILDREN AND ARMED CONFLICT (CAAC)¹³⁵

The specificity of this agenda item undoubtedly lies in its permanent monitoring and reporting mechanism on six grave violations against children in situations of armed conflict.¹³⁶ Activated through the listing of an entity – state or non-state

132 See below section 5C2.

133 Statement by the President of the Security Council, *supra* fn 38.

134 See notably, SCR, *Monthly Forecast*, April 2019, p 7, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/2019_04_forecast.pdf (last accessed 24 September 2020). According to confidential documents consulted during our research, this tendency was diagnosed as early as 2015 by OCHA through its work on updating the Aide Memoire.

135 For a detailed assessment of recent work of the Security Council under this agenda item, see SCR, *Children and Armed Conflict: Sustaining the Agenda*, Research Report no 4, 27 October 2017, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research_report_children_armed_conflict_2017.pdf (last accessed 24 September 2020). SCR has previously published seven other reports dedicated to Children and Armed Conflict.

136 UNSC Res 1612, 26 July 2005; UNSC Res 1882, 4 August 2005.

party to an armed conflict – by the Secretary-General in the annexes of his corresponding annual report, this mechanism is unique in that it directly and pragmatically engages with concerned entities. Improved compliance with international law ultimately leads to delisting.¹³⁷ A dedicated formal Working Group assists the Security Council in its consideration of country-specific situations.¹³⁸ Thanks to the active engagement of (permanent and elected) members chairing it,¹³⁹ the activities of this subsidiary organ have been instrumental to the mainstreaming of the agenda item, and have led to the improvement, including through streamlining, of relevant substantive language in Security Council outcomes across the board.¹⁴⁰ However, in recent years, the agenda item, including the Working Group, has been contaminated by political considerations. Some attributed this to the spillover of the difficult dynamics regarding Syria,¹⁴¹ while others pointed to the sometimes-questionable listing decisions made by the Secretary-General.¹⁴²

2. WOMEN, PEACE AND SECURITY¹⁴³

Although its overall scope resolutely lies beyond mere situations of armed conflict – it, for instance, includes women's participation in peace processes as well as their contribution to violent extremism – this agenda item features a monitoring and reporting mechanism dedicated to conflict-related sexual violence.¹⁴⁴ Yet, the Security Council's recent work on the latter issue was repeatedly mentioned as an example of bad practice by our interviewees, and blame was put on tactical mistakes by an elected member.

Ahead of its presidency in April 2019, Germany worked towards building momentum around the need for better accountability for conflict-related sexual violence by initiating (in partnership with nine other members) an Arria-formula meeting

137 More information on the so-called 'MRM' is available at Office of the Special Representative of the Secretary-General for Children and Armed Conflict, 'Monitoring and Reporting on Grave Violations', <https://childrenandarmedconflict.un.org/tools-for-action/monitoring-and-reporting/> (last accessed 24 September 2020). It is nonetheless worth emphasizing here that only five of the six abovementioned grave violations trigger listing; the exception being the denial of humanitarian assistance for children.

138 UNSC Res 1612, 26 July 2005. For detailed information on the work of the Working Group, see UNSC, 'Working Group on Children and Armed Conflict', <https://www.un.org/securitycouncil/subsidiary/wgcaac> (last accessed 24 September 2020).

139 SCR, *Children and Armed Conflict: Sustaining the Agenda*, fn 135, pp 4–8, provides an exhaustive analysis of the Working Group's evolution over the years, as well as a chronological table of its chairs.

140 *Ibid*, p 17.

141 What's in Blue, 'Open Debate on Children and Armed Conflict', 5 September 2014, <https://www.whatsinblue.org/2014/09/open-debate-on-children-and-armed-conflict.php> (last accessed 24 September 2020).

142 SCR, *Children and Armed Conflict: Sustaining the Agenda*, *supra* fn 135, pp 18–19. For instance, the UK and Russia 'convinced' the Secretary-General to remove them from his list; see Children and Armed Conflict: Report of the Secretary-General, UN doc A/58/546/Corr.1 – S/2003/1053/corr.1, 20 February 2004.

143 SCR's full narrative and analytical reporting on this agenda item is available at SCR, 'Women, Peace and Security', <https://www.securitycouncilreport.org/women-peace-and-security/page/1> (last accessed 24 September 2020).

144 UNSC Res 1960, 16 December 2010.

in February of that year,¹⁴⁵ and then pursued the negotiation of what would become Resolution 2467.¹⁴⁶ Following weeks of extremely difficult negotiations with three of the P5 (China, Russia and the US), the final text significantly differs from Germany's original ambitious draft.¹⁴⁷ It indeed goes back on previously agreed language on both sexual and reproductive health and the ICC – the former being particularly hard to swallow for other Security Council members. Conversely, Germany was able to reiterate elements pertaining to the consideration of the inclusion of conflict-related sexual violence as a criterion in targeted sanctions regimes on the one hand, and to add a new reporting requirement for the Secretary-General on the other.¹⁴⁸ While our interviewees criticized Germany for privileging the adoption of a Security Council outcome during its presidency over ensuring the quality of its substance, thus taking the risk of potentially weakening the Women, Peace and Security agenda item in the long run, such perspectives 'reveal many complicated questions about Council deliberations that have no simple answers'.¹⁴⁹

3. LESSONS LEARNED

- Mainstreaming a thematic issue and improving relevant substantive language in Security Council outcomes across the board takes time, sometimes even decades, and can be facilitated by the work of a dedicated Working Group. This goes to show that, once again, progress at the Security Council is incremental, and requires (patiently) building on the previous undertakings of others.
- The preceding statement holds especially true during times of particularly trying political dynamics among the permanent members but raises the following question: Should the Security Council pause its work on – i.e. should elected members refrain from tackling – a thematic issue if there exists a risk of weakening previously agreed language? Such risk can, for instance, emanate from a permanent member having changed its national positioning on an issue, as the US did on sexual and reproductive health, as well as on the ICC, following the election of Donald Trump in 2016.

Last but not least, let us turn to areas of Security Council work where, according to some of our interlocutors, elected members' principled engagement in favour of IHL could make a significant and palpable difference. The following section delves more into the substance of and less into procedures surrounding the adoption of Security Council outcomes.

145 What's in Blue, 'Arria-formula Meeting: Accountability for Conflict-Related Sexual Violence', 7 February 2019, <https://www.whatsinblue.org/2019/02/arrria-formula-meeting-accountability-for-conflict-related-sexual-violence.php> (last accessed 24 September 2020).

146 UNSC Res 2467, 23 April 2019.

147 What's in Blue, 'In Hindsight: Negotiations on Resolution 2467 on Sexual Violence in Conflict', 2 May 2019, <https://www.whatsinblue.org/2019/05/in-hindsight-negotiations-on-resolution-2467-on-sexual-violence-in-conflict.php> (last accessed 24 September 2020).

148 Ibid.

149 Ibid.

D. SANCTIONS REGIMES AND COUNTERTERRORISM MEASURES

It goes without saying that sanctions regimes and counterterrorism measures constitute two distinct frameworks of Security Council action under Chapter VII. Because both cause (or at least risk causing) similarly negative consequences with regards to humanitarian concerns, it has been decided – as in many other cases¹⁵⁰ – that they be addressed in the same section. For the sake of clarity, let us note that the intention is not to provide an exhaustive analysis or full-fledged recommendations, but rather an overview of existing challenges.¹⁵¹

1. WHAT'S WHAT?

Because they constitute technically intricate features of the Security Council's toolbox, let us begin by quickly defining, in turn, sanctions regimes and counterterrorism measures.

- Established pursuant to Article 41 of the Charter, sanctions consist of economic measures (such as travel bans, embargoes and asset freezes) decided on by the Security Council for the general purpose of maintaining international peace and security. The 14 sanctions regimes currently in existence concern country-specific situations and/or non-state (terrorist) organizations, and can qualify as 'targeted' in that the measures target only specific individuals or entities. Amongst other objectives, such regimes have, for instance, been established with the aims of countering terrorism and protecting the civilian population in countries affected by armed conflict.¹⁵² Each individual regime functions based on its own designation criteria¹⁵³ decided by the Security Council through the relevant resolution(s).¹⁵⁴ Although such criteria can include violations of IHL or human rights, listing has very rarely

150 See, for instance, ICRC, Webinar: Counter-Terrorism, Sanctions and Humanitarian Access in the Covid-19 Era, 6 May 2020, <https://www.icrc.org/en/event/counter-terrorism-sanctions-access-covid-19-era> (last accessed 24 September 2020); A. Debarre, *Safeguarding Medical and Humanitarian Action in the UN Counterterrorism Framework*, Policy Paper, IPI, September 2018, https://www.ipinst.org/wp-content/uploads/2018/09/1809_Safeguarding-Medical-Care.pdf (last accessed 24 September 2020).

151 For detailed readings on these topics, see notably SCR, *UN Sanctions*, Special Research Report no 3, 25 November 2013, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf (last accessed 24 September 2020); A. Debarre, *Making Sanctions Smarter: Safeguarding Humanitarian Action*, Policy Paper, IPI, December 2019, available at: https://www.ipinst.org/wp-content/uploads/2019/12/1912_Making-Sanctions-Smarter.pdf (last accessed 24 September 2020); A. Debarre, *Safeguarding Humanitarian Action in Sanctions Regimes*, Issue Brief, IPI, June 2019, https://www.ipinst.org/wp-content/uploads/2019/06/1906_Sanctions-and-Humanitarian-Action.pdf (last accessed 24 September 2020); K. King, N. K. Mordizadeh and D. Lewis, *Understanding Humanitarian Exemptions: U.N. Security Council Sanctions and Principled Humanitarian Action*, Working Group Briefing Memorandum, HLS PILAC, April 2016, http://blogs.harvard.edu/pilac/files/2016/04/Understanding_Humanitarian_Exemptions_April_2016.pdf (last accessed 24 September 2020).

152 SCR, *UN Sanctions*, supra fn 151, pp 4–5, provides a detailed account of all the objectives of sanctions regimes existing in 2013, with references to relevant regimes.

153 For a thematic categorization of designation criteria, see *ibid*, p 9.

154 As a side note, sanctions regimes are thus colloquially known by the number of the resolution on which they are based.

been triggered on such grounds.¹⁵⁵ This calls into question the effective added value of sanctions regimes as a means of strengthening compliance with IHL. It is finally worth noting that the compatibility of targeted sanctions with human rights (and especially rules on due process) has long been an issue.¹⁵⁶

- Broader in scope, counterterrorism measures consist of various measures adopted by the Security Council under Chapter VII with the purpose of fighting terrorism as a threat to international peace and security. Forming the (extremely) complex UN counterterrorism architecture,¹⁵⁷ such measures notably include the abovementioned targeted sanctions, the qualifying of an entity as ‘terrorist’, as well as the prohibition of certain activities related to the financing and perpetrating of ‘terrorism’.¹⁵⁸ As addressing the many shortcomings of counterterrorism measures goes well beyond the scope of this paper, let us simply recall that the overall challenge lies in the combination of a multiplicity of decisions (by both the Security Council and the General Assembly) resulting in the creation of ‘what can be described as an international [...] regime’¹⁵⁹ with the paradoxical absence of a legal definition of the very notion of ‘terrorism’.

In sum, certain sanctions regimes – such as the regime against al-Qaeda, Islamic State of Iraq and the Levant (ISIL) and designated associates – have been partly adopted by the Security Council for counterterrorism purposes, and are thus located at the crossroads of the abovementioned frameworks.

2. THE OVERLAP WITH THE ISSUE AT HAND

Because counterterrorism measures and sanctions regimes are decided under Chapter VII, member states have the obligations to pursue their implementation at the national, regional and international levels. However, inadequate language in relevant documents (Security Council’s resolutions as well as ensuing guidelines enacted by subsidiary organs such as sanctions committees or the Counter-Terrorism Committee Executive Directorate) trigger unintended negative consequences on activities lawful under IHL and a potential risk to the integrity of the legal framework as such.¹⁶⁰

¹⁵⁵ One of the few existing examples consists in the 2012 listing of four individuals and two entities under the 1533 sanctions regime on the Democratic Republic of the Congo; see SCR, *UN Sanctions*, supra fn 151, p 5.

¹⁵⁶ See notably, *ibid*, pp 13–16.

¹⁵⁷ For a visual overview of such architecture, see Debarre, *Safeguarding Medical and Humanitarian Action in the UN Counterterrorism Framework*, supra fn 150, p 11.

¹⁵⁸ It is worth underlining that the UN has not adopted a legal definition of the concept of ‘terrorism’.

¹⁵⁹ Report of the Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism, UN doc A/72/495, 27 September 2017, para 22.

¹⁶⁰ On the latter issue, see Lewis et al, *The Counter-Terrorism Committee Executive Directorate and International Humanitarian Law*, supra fn 39, who highlight concerns related to the ‘owning’ of IHL by a UN counterterrorism entity.

a. Safeguarding Humanitarian Assistance in Sanctions Regimes

Counterterrorism measures such as targeted sanctions often apply to situations of armed conflict,¹⁶¹ which are regulated by IHL (and human rights). This specific legal framework explicitly outlines the protection of the provision of, and access to, principled – i.e. carried out in a neutral, impartial and independent manner – humanitarian assistance, for instance taking the form of medical care or food supplies.¹⁶² Although states have become increasingly aware of, and concerned by, the potential for adverse humanitarian impact in recent years thanks to the multiplication of dedicated research and advocacy by concerned organizations,¹⁶³ relevant wording employed in UN documents often remains too wide in reach and/or too general in character. This has resulted in an overall chilling effect on humanitarian organizations, who are struggling to navigate complex parameters such as the national criminalization of certain legitimate activities,¹⁶⁴ the delays associated with applying for exemptions under certain sanctions regimes¹⁶⁵ and restrictive clauses in donor agreements.¹⁶⁶

The abovementioned research by others has already outlined – better than is possibly here – several potential avenues for the safeguarding of humanitarian assistance, specifically concerning targeted sanctions.¹⁶⁷ Let us focus on one of them. Although a rare occurrence, certain Security Council resolutions – such as Resolution 1916 on Somalia and Eritrea in its operational paragraph 5 – contain a so-called ‘humanitarian exemption clause’.¹⁶⁸ Though effectively using such an ad hoc clause remains a technical challenge due to associated costs and delays,¹⁶⁹ its importance for the work of humanitarian organizations should not be understated. In this regard, significant concern briefly spread through the humanitarian community when Kenya proposed in 2019 to list al-Shabab under the counterterrorism sanctions regime. Targeting al-Qaeda, ISIL and designated associates, this regime indeed remains silent on humanitarian exemption, and the success of Ken-

¹⁶¹ As explained by Debarre, *Safeguarding Humanitarian Action in Sanctions Regimes*, supra fn 151, p 1 and footnote 1, the vast majority of the 14 sanctions regimes currently in existence apply to countries experiencing armed conflict.

¹⁶² *Ibid*, p. 1.

¹⁶³ Organizations such as HLS PILAC, IPI, OCHA, HPG, the Norwegian Refugee Council, Chatham House and the University of Essex have all undertaken work on the issue. For recent case studies on specific country situations, see Debarre, *Making Sanctions Smarter*, supra fn 151, pp 5–17.

¹⁶⁴ See notably, D. Lewis and N. K. Mordizadeh, ‘Counterterrorism and Humanitarian Action: Will 2020 be a Turning Point for International Humanitarian Law and the United Nations?’, *Lawfare*, 31 March 2020, <https://www.lawfareblog.com/counterterrorism-and-humanitarian-action-will-2020-be-turning-point-international-humanitarian-law> (last accessed 24 September 2020).

¹⁶⁵ Debarre, *Safeguarding Humanitarian Action in Sanctions Regimes*, supra fn 151, pp 3–4.

¹⁶⁶ *Ibid*, pp 4–5.

¹⁶⁷ See most notably Debarre, *Making Sanctions Smarter*, supra fn 151, pp 17–35; King et al, *Understanding Humanitarian Exemptions*, supra fn 151, pp 13–17.

¹⁶⁸ UNSC Res 1916, 19 March 2010 is mentioned as one of two examples of good practice at the international level, along with Resolution 2009, 16 September 2011, on Libya. See King et al, *Understanding Humanitarian Exemptions*, supra fn 151, p 10.

¹⁶⁹ Debarre, *Safeguarding Humanitarian Action in Sanctions Regimes*, supra fn 151, pp 3–4.

ya's endeavour would have therefore risked cancelling that of Resolution 1916.¹⁷⁰ Six members of the Security Council ultimately opposed the listing; a result attributed by our interlocutor to the efforts of a specific elected member in actively reaching out to others.

b. The Overall Interaction of Counterterrorism Measures with the IHL

In addition to challenging the delivery of principled humanitarian assistance (for instance through the abovementioned targeted sanctions), counterterrorism measures adopted by the Security Council and implemented by member states impact IHL in various ways: testing the principle of equality of belligerents by outlawing certain non-state entities involved in non-international armed conflicts; or blurring the rules on the qualification of persons by creating new categories.¹⁷¹

However, key Security Council resolutions that established the UN counterterrorism framework long stayed silent on states' obligations to equally comply with other relevant international bodies of law, including IHL. Dedicated language dates from 2004 onwards but remains extremely general,¹⁷² thus leading to problematic uncertainties about the interaction of the legal regimes.¹⁷³ Certain states, including Mexico, Switzerland and Germany, have recently undertaken initiatives to raise the issue for more consistent consideration.¹⁷⁴ Some (very relative) progress was made with the adoption of Resolutions 2462 and 2482 in 2019¹⁷⁵ thanks to the engagement of some elected members.

Initiated by France, Resolution 2462 on the financing of terrorism originally contained dissatisfactory language on the compatibility of counterterrorism measures with states' other obligations under international law, including IHL. This triggered strong reactions, as well as intense advocacy efforts, from many organizations (including the ICRC) concerned with the safeguarding of lawful humanitarian activities.¹⁷⁶ Sensitized to the issue, Germany and Belgium actively participated in the negotiations in view of strengthening future operational paragraphs 5 and 6. According to our information, Belgium even reached out to and conveyed sugges-

170 Debarre, *Making Sanctions Smarter*, supra fn 151, p 17. It is also worth noting that that event was regularly referred to by interlocutors during our interviews.

171 Lewis et al, *The Counter-Terrorism Committee Executive Directorate and International Humanitarian Law*, supra fn 39, pp 29–31, conflate both issues under the heading 'discerning the identification of the parties to an armed conflict and the status of certain individuals and entities'. On pp 28 and 31–35, they examine other examples of potentially problematic interaction between the UN counterterrorism framework and IHL.

172 UNSC Res 1535, 24 March 2004, preambular paragraph 4.

173 Report of the Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism, supra fn 159, paras 19–26.

174 Lewis and Mordizadeh, 'Counterterrorism and Humanitarian Action', supra fn 164.

175 UNSC Res 2462, 28 March 2019; UNSC Res 2482, 19 July 2019.

176 What's in Blue, 'Combating Financing of Terrorism Open Debate', 27 March 2019, <https://www.whatsinblue.org/2019/03/combating-financing-of-terrorism-open-debate.php> (last accessed 24 September 2020).

tions from like-minded countries outside of the Security Council.¹⁷⁷ Although the final text of the resolution is not as robust as humanitarian organizations would have hoped, the negotiations process did – finally – shed full light on the utmost importance of actively engaging with member states and a fortiori the Security Council as a whole, to increase understanding about challenges resulting from the interaction between counterterrorism measures and IHL.¹⁷⁸ As pointed out by one interviewee, the number of member states who raised the issue during the open debate preceding the adoption of Resolution 2462 constitutes an encouraging sign.

Adopted a few months later, Resolution 2482 replicates the abovementioned language on the interaction between counterterrorism measures and IHL. By breaking the silence of the first draft that had been tabled by Peru, the UK and Belgium played an essential role in securing its insertion.¹⁷⁹ One can only hope that the broad scope of operational paragraph 16 – concerning all measures adopted for counterterrorism instead of just focusing on financing as in operational paragraphs 5 and 6 of Resolution 2462 – will serve as a precedent for future Security Council resolutions.

3. LESSONS LEARNED

- The importance of standing up for the preservation and/or renewal of the few existing humanitarian exemption clauses cannot be overstated, especially since not all member states of the UN seem aware of the sanctions regimes' negative consequences on humanitarian action yet. Awareness raising and principled engagement by interested states thus remains critical. This obviously also concerns elected members of the Security Council, who chair sanctions committees.
- Although slow progress has recently been made through the adoption of relevant language in Resolutions 2462 and 2482 – attributable to the mobilization of concerned organizations and the ensuing engagement of (elected and permanent) members – similar awareness raising is still required as regards the interaction of counterterrorism measures with states' obligations under IHL. According to our interlocutors – and based on the fact that the ETO, except for Belgium and Germany, seemed relatively absent from the negotiations of the abovementioned resolutions – this seems to be especially necessary with non-Western states.
- While cooperation with the UN, non-governmental organizations and/or international humanitarian organizations can be important for ensuring the operational relevance of Security Council actions, it appears to be even more crucial with regards to targeted sanctions and counterterrorism measures.

177 Confidential document provided by one of our interlocutors.

178 Ibid.

179 What's in Blue, 'International Terrorism and Transnational Organized Crime', 19 July 2019, <https://www.whatsinblue.org/2019/07/international-terrorism-and-transnational-organised-crime.php> (last accessed 24 September 2020).

In the latter instances, something bigger than mere operational relevance or legal soundness is indeed at stake – i.e. the very existence of adequate space for the continuation of humanitarian activities.

- As the Security Council's practice on counterterrorism develops, new concerns continue to emerge. Importantly, one wonders whether the Security Council might authorize a subsidiary organ to interpret and assess member states' compliance with IHL in certain counterterrorism contexts.¹⁸⁰

¹⁸⁰ Lewis et al, *The Counter-Terrorism Committee Executive Directorate and International Humanitarian Law*, supra fn 39, are the first to point this out.

6. CONCLUSION

Because of the organ's very nature, humanitarian considerations and references to existing rules of international law can never be immune to the challenging political dynamics prevailing within the Security Council. Such dynamics directly result from those in the real world – as notably exemplified by the negotiation of selected resolutions pertaining to the situation in the Syrian Arab Republic, thematic agenda items (PoC, CAAC and Women Peace and Security) and counterterrorism measures.

While recent positive developments are often attributed to the initiative and engagement of elected members – who are bridging divides between permanent members, conducting negotiations as inclusively as possible and consulting with other interested stakeholders – securing a Security Council outcome can also imply significant compromises (on substance) to the detriment of elements on accountability, consistence in wording and/or the unity of certain agenda items. Under the current political circumstances, bridging the gap between Security Council rhetoric and action thus remains, more than ever, a challenge. Future and prospective elected members interested in promoting humanitarian concerns and a rules-based international order where violations are met with consequences should be encouraged to do so. However, their commitment (and corresponding positioning) should rest on a carefully elaborated policy cognizant of potential opportunities and associated risks – both for their own reputations and for the integrity of the legal frameworks at hand. Only then can they ensure that their chosen approach will remain principled, coherent and consistent when colliding with high-stakes realpolitik. In closing, it is hoped that the following guiding questions, framed in very general terms, will contribute to the formulation of policies mindful of the abovementioned considerations.

- Can an increase in global influence combined with the further establishment of one's reputation be envisaged as the results of a successful two-year mandate at the Security Council? In other words, how does one frame one's own ambition, and how does one define failure?
- Are the abovementioned results necessarily guaranteed by the adoption of a Security Council outcome (resolution or presidential statement)? Is this so even when significant concessions on substance have had to be made by the penholder(s)? Conversely, does the unanimous adoption of a Security Council outcome automatically constitute success?
- How does a state define both its (political and substantive) added value *and* red lines? In doing this, how can it cooperate with concerned stakeholders such as non-governmental organizations, UN agencies and humanitarian organizations?

- How open is a state to building/following-up on the work previously undertaken by others to mitigate the risk of fragmentation of certain agenda items? How can it efficiently encourage others to equally do so at the end of its own Security Council tenure?
- Could challenging political dynamics be circumvented through technical (low-key) processes focused on detaching substantive issues from country-specific situations as a first step towards progress? Conversely, does Security Council action make sense if fully dissociated from operational concerns?

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The Geneva Academy
of International Humanitarian Law
and Human Rights

Villa Moynier
Rue de Lausanne 120B
CP 1063 - 1211 Geneva 1 - Switzerland
Phone: +41 (22) 908 44 83
Email: info@geneva-academy.ch
www.geneva-academy.ch

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