

# Revitalising the United Nations Human Rights Special Procedures Mechanisms as a Means of Achieving and Maintaining International Peace and Security

Claire Breen\*

*The task is not to find alternatives to the SC as a source of authority but to make it work better.<sup>1</sup>*

- I. Introduction
- II. The Basis for the Promotion and Protection of Human Rights
- III. Establishing a Dialogue between the Security Council and Special Procedures Mandate Holders: Some Significant Occurrences
- IV. Arria Formula Meetings
- V. Conclusion

## I. Introduction

Numerous provisions of the Charter of the United Nations<sup>2</sup> underline the obligations of Member States of the United Nations (UN) to promote and protect human rights. The Charter also provides for the es-

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<sup>1</sup> *In Larger Freedom: Towards Development, Security and Human Rights for All*, Report of the Secretary-General, Doc. A/59/2005, para. 126; *A More Secure World: Our Shared Responsibility*, Report of the High-level Panel on Threats, Challenges and Change, Doc. A/59/565, para 198.

<sup>2</sup> *Yearbook of the United Nations* 59 (2005), 1601 et seq.

establishment of UN bodies to assist in this endeavour, the General Assembly and the Economic and Social Council (ECOSOC) being the primary responsible organs in this regard. What is perhaps less clear in this respect is the extent of the role of the Security Council in connection with the promotion and protection of human rights. Although the controversies surrounding recent instances of armed intervention have overshadowed the burgeoning role of the Council in this regard, the Security Council has for almost two decades expressed its concern about massive human rights violations. It has recognised that gross human rights violations may often be the precursor to the (re)emergence of conflict.

The Council's concerns have often arisen as a consequence of receiving information provided to it by ECOSOC in addition to information received from the Office of the UN High Commissioner for Human Rights (OHCHR) by way of briefing from the High Commissioner and/or the mandate holders of the special procedures mechanisms, as established by the former Commission on Human Rights and for which now the Human Rights Council has continued responsibility. The Security Council's relationship with ECOSOC and the Commission on Human Rights has been sporadic despite calls for increased relationship.<sup>3</sup>

This article focuses upon the role of the Commission on Human Rights (and its successor the Human Rights Council), as the body which has been responsible for the elaboration and implementation of UN human rights standards. It asserts that the Security Council can do more to strengthen visibly its role in the promotion and protection of human rights given that the Security Council itself has recognised the link between gross human rights violations and the (re)emergence of conflict. The dialogue that developed between the Security Council and the UN human rights bodies in the early to mid part of this decade is to be commended. Nevertheless, it will be argued that there should be increased encouragement for a greater level of dialogue, whereby such dialogue is informed by way of a clearer and effective use of the special procedures mechanisms which have been elaborated in some detail to meet the Charter's mandate for promotion and protection of human rights. The article concludes with the suggestion that those more informal mechanisms that facilitate the flow of human rights information be-

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<sup>3</sup> See C. Breen, "The Necessity of a Role for the ECOSOC in the Maintenance of International Peace and Security", *Journal of Conflict and Security Law* 12 (2007), 261 et seq.

tween the Security Council and UN human rights bodies be formalised in order to complement the increased profile of human rights within Security Council deliberations.

## II. The Basis for the Promotion and Protection of Human Rights

From the outset, the UN Charter indicates that the organisation's determination is not only "to save succeeding generations from the scourge of war" but also "to reaffirm faith in fundamental human rights."<sup>4</sup> The Charter establishes the linkages between international peace and security and the advancement of human rights with its commitment, "to ensure ... that armed force shall not be used, save in the common interest" and to promote "the economic and social advancement of all peoples."<sup>5</sup> Article 1 outlines the purposes of the United Nations which include the maintenance of international peace and security<sup>6</sup> as well as the achievement of:

"international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>7</sup>

The provisions of Article 1 are elaborated by the mandatory wording of Article 13 regarding the initiation of studies and the making of recommendations by the General Assembly including those for the purpose of, "assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." In spite of articulating the promotion of respect for human rights with a view to creating peaceful and friendly relations among nations,<sup>8</sup> by which states undertake joint and separate action,<sup>9</sup> the Charter does not establish any immediate obligation in this regard. However, Charta Chapter X's provisions relating to the establishment of ECOSOC have resulted in an elaborated framework for setting human rights standards and identifying violations of those standards.

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<sup>4</sup> Preamble, UN Charter.

<sup>5</sup> *Ibid.*

<sup>6</sup> Article 1 para. 1.

<sup>7</sup> *Ibid.*, para. 3.

<sup>8</sup> Article 55 lit. (c).

<sup>9</sup> Article 56.

Under the terms of Article 60 of the Charter ECOSOC is the functional body responsible for the discharge of the UN's mandate of human rights promotion and protection. Article 68, *inter alia*, empowers ECOSOC to set up commissions for the promotion of human rights and it is this Charter provision which constituted the legal basis for the establishment of the Commission on Human Rights. During its lifetime, the Commission generated a vast body of international human rights law including a core of primary human rights treaties, a range of Optional Protocols and over one hundred other human rights instruments.

The ratification of a human rights treaty requires a State Party to undertake to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognised in that treaty. Such undertakings are legally binding obligations in international law. A State Party becomes obliged to uphold these rights as soon as the treaty enters into force in that state and to perform its obligations in accordance with the treaties in good faith.<sup>10</sup> That said, the consequences for states which fail to uphold their human rights treaty obligations, are less than severe. Violations are, for the most part, dealt with by the treaty monitoring framework which is consensus driven and operates on a reporting system which triggers nothing more than a series of Recommendations and Conclusions. Such limitations reflect the recognition accorded to state sovereignty within the UN system in general and within the arena of human rights protection in particular, and limitations articulated by the ICJ in *Nicaragua v United States*, when the Court stated that, "the use of force could not be the appropriate method to monitor or ensure such respect."<sup>11</sup> However, the value of such treaties lies in their articulation of social and legal standards to be achieved and maintained. In extreme cases, gross violations may act as a system of early warning that a conflict is about to break out. In post-conflict situations, the articulation of human rights standards may provide the basis for the prosecution of those individuals charged with gross human rights violations constituting international crimes such as war crimes or crimes against humanity.

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<sup>10</sup> Article 26 of the Vienna Convention on the Law of Treaties, UNTS Vol. 1155 No. 18232, "[P]acta sunt servanda – Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

<sup>11</sup> Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v United States of America*), ICJ Reports 1986, 14 et seq., (para. 268).

Since the early 1990s, the Security Council had increasingly to consider violations of human rights as falling within its primary ambit of maintaining international peace and security. This evolving role has required the elaboration of mechanisms for bringing such human rights information more squarely within the Council's consideration. Article 65 of the Charter<sup>12</sup> is one mechanism, by which the Council may receive information from ECOSOC and its organs. Rule 39 of the Security Council's Rules of Procedure has also been employed to allow e.g. the President of ECOSOC to address the Council. In spite of the recognised utility of such measures, both mechanisms have been badly underutilised to date.<sup>13</sup>

Whilst commending the Security Council on its initiatives but being mindful of the reservations attached to such initiatives, there are other more direct means of gathering human rights information on situations which are of concern to the Security Council, namely the special procedures mechanism which covers a wide range of procedures. The mechanism may designate either an individual (who may be accorded one of a number of titles such as "Special Rapporteur", "Special Representative of the Secretary-General", "Representative of the Secretary-General", or "Independent Expert"), or a group of individuals, a Working Group, with the responsibility of operating the special procedure. Currently, there do exist 29 thematic and 9 country mandates (June 2008). The OHCHR provides these mechanisms with personnel, logistical and research assistance to support them in the discharge of their mandates. Although their titles vary, each is considered as an "expert on mission" within the meaning of the Convention on the Privileges and Immunities of the United Nations. Mandate-holders of the special procedures serve in their personal capacity and as independent experts. Such independence is crucial to the requirement that mandate-holders act impartially.<sup>14</sup>

The mandates of the special procedures are established and defined by the respective resolutions passed by the Human Rights Council in continuation of the function previously carried out by the Commission on Human Rights. Country specific mandates are reviewed annually by

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<sup>12</sup> Article 65 states, "[t]he Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request."

<sup>13</sup> See generally, Breen, see note 3, 272-273.

<sup>14</sup> OHCHR, Fact Sheet 27, available at: <<http://www2.ohchr.org/english/about/publications/docs/factsheet27.pdf>>.

the Council and thematic mandates are reviewed every two to three years. For the mandate to be continued, the Human Rights Council must adopt a resolution specifically renewing the mandate and identifying its scope.<sup>15</sup> In April 2000, the Commission on Human Rights decided that experts should serve a maximum term of 6 years. It also decided that there should be a turnover in the experts on working groups as well.<sup>16</sup> Since June 2006, the Human Rights Council engaged in an institution building process, which included a review of the special procedures system. The Human Rights Council adopted Resolution 5/1 entitled “Institution-building of the United Nations Human Rights Council,” which included provisions on the selection of mandate holders and the review of all special procedures mandates. All mandates were extended (except the mandates on Belarus and Cuba) until they are next considered by the Human Rights Council and the review is undertaken.

Around one third of the experts also report to the General Assembly and as will be seen, some have briefed the Security Council on both an informal and formal basis. According to the draft *Manual of the United Nations Human Rights Special Procedures*, special procedures mandate-holders are required to:

- **analyse** the relevant thematic issue or country situation on behalf of the international community;
- **advise** on the measures which should be taken by the government(s) concerned and other relevant actors;
- **alert** United Nations organs and agencies and the international community in general to the need to address specific situations and issues. In this regard they have a role in providing “early warning” and encouraging preventive measures;
- **advocate** on behalf of the victims of violations through measures such as requesting urgent action by relevant states and calling upon governments to respond to specific allegations of human rights violations and provide redress;

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<sup>15</sup> OHCHR, *Enhancing and Strengthening the Effectiveness of the Special Procedures of the Commission on Human Rights. An open-ended Seminar in Consultation with the Expanded Bureau of the Commission, as Part of the Effort to Enhance and Strengthen the Effectiveness of the Special Procedures Reference*, CHR Decision 2005/113 Background Paper.

<sup>16</sup> Doc. E/CN.4/1999/104.

- **activate** and mobilise the international and national communities to address particular human rights issues and to encourage cooperation among governments, civil society and inter-governmental organisations.<sup>17</sup>

However, the obligations upon the mandate-holders do not stop once these requirements have been met. Follow-up work is regarded as being a crucial element in ensuring that appropriate measures are taken in response to the work of the special procedures.<sup>18</sup> The precise approach adopted may vary from one mandate to another,<sup>19</sup> but it will include the adoption of a full range of “measures taken to encourage, facilitate and monitor the implementation of recommendations by any of the Special Procedures.”<sup>20</sup> Interactive dialogue between mandate-holders and various UN organs, such as the Human Rights Council and the General Assembly, constitutes one of the most important forms of follow-up.<sup>21</sup> Generally, the mandate-holder provides some response to, or evaluation of, the exchange.<sup>22</sup>

Given that one of the key functions of the special procedures system is to act as an early warning mechanism in relation to situations involving serious violations of human rights, it may be appropriate for the mandate-holders, to call the attention of the Security Council to the need for urgent action such as the convening of a special session. Possible engagement of the Security Council could also be envisaged where such situations amount to a threat to or breach of the peace.<sup>23</sup> The sig-

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<sup>17</sup> Draft Manual of the United Nations Human Rights Special Procedures, June 2006, para. 5.

<sup>18</sup> Draft Manual, see note 17, para. 88.

<sup>19</sup> Examples of well-developed follow-up arrangements can be found, for example, in the work of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, see Draft Manual, see note 17.

<sup>20</sup> Report of the 12th Annual Mtg of Special Procedures mandate-holders, Doc. E/CN.4/2006/4, para. 85.

<sup>21</sup> Draft Manual, see note 17, para. 89.

<sup>22</sup> *Ibid.*, para. 90-91.

<sup>23</sup> See Doc. E/CN.4/SUB.2/DEC/2000/9. See also, Report of the United Nations High Commissioner for Human Rights and Follow-Up to the World Conference on Human Rights – Effective Functioning of Human Rights

nificance to be attached to the early warning function of the special procedures has been highlighted by the OHCHR, which stated:

“Given that one of the key functions of the special procedures system is to act as an early warning mechanism in relation to situations involving serious violations of human rights, it may be appropriate for the mandate-holders, acting through the Coordination Committee, to call the attention to the Commission/Council to the need for urgent action such as the convening of a special session. *Possible engagement with the Security Council could also be envisaged where such situations amount to a threat to or breach of the peace*” (emphasis added).<sup>24</sup>

A report from the UN High Commissioner for Human Rights transmitted to the members of the Commission on Human Rights provided one example of the recognised need to move towards more effective functioning of human rights protection within the United Nations. In the context of UN reform that was taking place, the report noted the identification of a number of steps designed to ensure that the special procedures system would be able to carry out effectively its role at the core of the United Nations human rights programme.<sup>25</sup> In particular, it was stated:

“The special procedures system has a responsibility to act as an early warning mechanism in relation to situations involving serious violations of human rights. ... More effective use should also be made in this regard of the possibility of engaging with the Security Council, whether on the basis of the Arias [sic.] formula or some other basis.”<sup>26</sup>

The United Nations has provided for the establishment of a series of effective mechanisms for the reporting of gross human rights abuses, particularly those that have the potential to descend into conflict. Increased and more effective usage of such mechanisms can only be to the advantage of the Security Council and the mechanisms themselves.

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Mechanisms, Note by the United Nations High Commissioner for Human Rights, Doc. E/CN.4/2006/4, paras 65-76.

<sup>24</sup> OHCHR (2005), *Enhancing and Strengthening the Effectiveness of the Special Procedures of the Commission on Human Rights, An open-ended Seminar in Consultation with the Expanded Bureau of the Commission, as Part of the Effort to Enhance and Strengthen the Effectiveness of the Special Procedures*, Background Paper, 9.

<sup>25</sup> Doc. E/CN.4/2006/4, see note 23.

<sup>26</sup> *Ibid.*, para. 76.



### III. Establishing a Dialogue between the Security Council and Special Procedures Mandate Holders: Some Significant Occurrences

Article 65 and the already mentioned Rule 39 of the Security Council's Rules of Procedure allow the Security Council to invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence.<sup>27</sup> The Council has utilised this rule to invite ECOSOC representatives, the High Commissioner for Human Rights to address the Security Council,<sup>28</sup> and other individuals that it regarded as competent to assist the Security Council. Since the early part of this decade, the Security Council has increased its previously almost non-existent dialogue with ECOSOC, primarily by way of Rule 39 rather than by way of Article 65.<sup>29</sup>

It was not until the early 1990s that a pattern of communication between the Security Council and the OHCHR became discernible.<sup>30</sup> Although the Security Council continued its long-established patterns of not utilising Article 65, the flow of information between the two bodies became more perceptible. In 1992 then, two conflicts changed the scene as the Security Council received information about the situation between Iraq and Kuwait and the situation in the former Yugoslavia from the special procedures' mandate holders of the Commission on Human Rights, about grave human rights abuses and violations of international humanitarian law.

With regard to the situation between Iraq and Kuwait, the Security Council had "condemn[ed] the Repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish-populated areas, the consequences of which threaten[ed] international peace and security in the region."<sup>31</sup> The Council also demanded that Iraq, "as a contribution to removing the threat to international peace

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<sup>27</sup> Provisional Rules of Procedure of the Security Council, Doc. S/96/Rev. 7.

<sup>28</sup> Doc. S/PV/4312.

<sup>29</sup> Breen, see note 3.

<sup>30</sup> Repertoire of the Practice of the Security Council Supplement 1989-1992, Chapter VI, Relations with other United Nations Organs, Part II, Relations with the Economic and Social Council, A. Practice in Relation to Article 65 of the Charter, 206, available at: <<http://www.un.org/Depts/dpa/repertoire/index.html>>.

<sup>31</sup> S/RES/688 (1991) of 5 April 1991, op. para. 1.

and security in the region, immediately end this repression”, and expressed the hope that an open dialogue would take place to ensure that the human and political rights of all Iraqi citizens were respected.<sup>32</sup>

When the Security Council reviewed this matter in March 1992, several Council members<sup>33</sup> referred to the findings contained in the report on the human rights situation in Iraq dated 18 February 1992 prepared by Mr. Max van der Stoep, Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in Iraq.<sup>34</sup> Of particular significance was para. 159 of the report, in which the Special Rapporteur, in referring to resolution S/RES/688 (1991), stated that, inasmuch as the repression continued, he could only conclude that the threat to international peace and security in the region mentioned in that resolution remained.<sup>35</sup> At the same meeting, the President of the Security Council made a statement, on behalf of the Council, concerning the status of Iraq’s compliance with the various obligations imposed upon it by resolutions concerning the situation between Iraq and Kuwait.<sup>36</sup> With respect to the implementation of Resolution 688 (1991), the President made specific reference to the work of the Commission on Human Rights and the Special Rapporteur with his statement that:

“33. The Council remains deeply concerned at the grave human rights abuses that, despite the provisions of resolution 688 (1991), the Government of Iraq continues to perpetrate against its population, in particular in the northern region of Iraq, in southern Shi’a centres and in the southern marshes (Commission on Human Rights resolution 1992/71 of 5 March 1992). The Council notes that this situation is confirmed by the report of the Special Rapporteur of the Commission on Human Rights ...

34. The members of the Council are particularly concerned at the reported restrictions on the supplies of essential commodities, in particular food and fuel, which have been imposed by the Govern-

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<sup>32</sup> Ibid., op. para. 2.

<sup>33</sup> Doc. S/PV/3059, 22 (Austria), 30 (United Kingdom), 45-46 (United States), (51-52) Russian Federation, 67 (Belgium), in *Repertoire of the Practice of the Security Council Supplement 1989-1992*, see note 30.

<sup>34</sup> Doc. S/23685/Add.1. The report had been prepared in accordance with Resolution 1992/71 of the Commission on Human Rights and approved by ECOSOC Decision 1992/241.

<sup>35</sup> *Repertoire of the Practice of the Security Council Supplement 1989-1992*, Chapter VI, see note 30, 207.

<sup>36</sup> Doc. S/23699.

ment of Iraq on the three northern governates of Dohuk, Erbil and Sulaymaniyya. In this regard, as the Special Rapporteur has noted in his report, inasmuch as the repression of the population continues, the threat to international peace and security in the region mentioned in resolution 688 (1991) remains.”<sup>37</sup>

By separate letters dated 7 August 1992 addressed to the President of the Security Council, the representatives of Belgium, France, the United Kingdom and the United States,<sup>38</sup> requested the convening of a special session of the Council to consider the repression of the civilian population in parts of Iraq. They stated that their governments were of the view that the work of the Council would be greatly assisted by the participation of Mr. Max van der Stoel under Rule 39 of the Provisional Rules of Procedure of the Council, and therefore requested that the Council extend an invitation to him under Rule 39. One of the representatives noted that Mr. van der Stoel’s interim report on the human rights situation in Iraq had been distributed as a document of the Security Council.<sup>39</sup> At an urgent follow-up meeting held on 11 August 1992,<sup>40</sup> the Council had before it the interim report on the human rights situation in Iraq prepared by the Special Rapporteur.<sup>41</sup> Several Council members expressed reservations about the appropriateness of the Security Council inviting the Special Rapporteur, on the ground that questions of human rights ought to be dealt with by the Commission on Human Rights, the body which had appointed him.<sup>42</sup> The President of the Security Council drew attention to this request and highlighted the fact that the invitation was extended to the Special Rapporteur acting in his personal capacity only. Nevertheless, several other Council members<sup>43</sup> expressed reservations about the appropriateness of the Security

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<sup>37</sup> See, *Repertoire of the Practice of the Security Council Supplement 1989-1992*, Chapter VI, see note 30, 207.

<sup>38</sup> Docs S/24393, S/24394, S/24395 and S/24396, respectively, in *Repertoire of the Practice of the Security Council Supplement 1989-1992*, Chapter III, Participation in the Proceedings of the Security Council, B. Invitations Extended under Rule 39 (members of the Secretariat or other persons), 56-57, available at: <<http://www.un.org/Depts/dpa/repertoire/index.html>>.

<sup>39</sup> *Ibid.*

<sup>40</sup> Doc. S/PV/3105.

<sup>41</sup> Doc. S/24386.

<sup>42</sup> *Repertoire of the Practice of the Security Council Supplement 1989-1992*, Chapter III, see note 38, 57.

<sup>43</sup> Doc. S/PV/3105, 6-7 (India), 7-10 (Ecuador), 11-12 (Zimbabwe) and 12 (China), in: *Repertoire*, see above, 57.

Council extending an invitation to Mr. van der Stoel, on the ground that matters relating to human rights did not fall within the competence of the Security Council. They believed that such matters should be discussed by the Commission on Human Rights and the General Assembly. They pointed out that Mr. van der Stoel had been appointed as Special Rapporteur on the human rights situation in Iraq and that his appointment had been made by the Commission on Human Rights, a subsidiary body of ECOSOC. As the Security Council did not have competence in the matter, it would not be possible for it either to examine his report or to take a stand on it.<sup>44</sup> Equally, however, these same representatives also noted that Mr. van der Stoel had been invited strictly in his personal capacity and not in any representative capacity.<sup>45</sup> After the decision had been made to note such observations, the Council then decided to extend an invitation to Mr. van der Stoel to participate in the meeting under Rule 39.<sup>46</sup> Mr. van der Stoel, acting in his personal capacity once again, made a statement in which he reported on the government of Iraq's continued policy of repression against the Kurdish population in the north and the Shiites in the southern marshes, in violation of Resolution 688 (1991).<sup>47</sup>

The Council renewed its consideration of this item in November 1992.<sup>48</sup> The Special Rapporteur participated in that meeting also. Similarly to his August statement, the Security Council President, on behalf of the Council, expressed his concern regarding the status of Iraq's compliance with the various obligations placed upon it by the Council. In relation to Resolution 688 (1991), the statement referred to a resolution of the Commission on Human Rights, the Special Rapporteur's reports and the public meeting held with Mr. van der Stoel:

“30. The Security Council remains deeply concerned at the grave human rights abuses ... The Security Council notes that this situation is confirmed by the reports of the Special Rapporteur of the Commission on Human Rights (E/CN.4/1992/ 31, also circulated as document S/23685 and Add.1, and part I of the interim report circu-

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<sup>44</sup> Ibid., 57.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid. For a similar discussion see Doc. S/PV/3139 in Repertoire of the Practice of the Security Council Supplement 1989-1992, Chapter III, see note 38, 57.

<sup>47</sup> See Repertoire of the Practice of the Security Council Supplement 1989-1992, Chapter VI, see note 30, 207.

<sup>48</sup> Doc. S/PV/3139.

lated as document S/24386). The members of the Council recall their public meeting with Mr. Max van der Stoel on 11 August 1992.<sup>49</sup>

The Security Council met with a second Special Rapporteur that year also. In August 1992, the Security Council adopted S/RES/771 (1992) of 13 August 1992 arising from continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia and, particularly in Bosnia and Herzegovina. The Security Council called upon states and appropriate, international humanitarian organisations to collect substantiated information on violations of humanitarian law, including grave breaches of the Geneva Conventions, being committed in the territory of the former Yugoslavia, and to make that information available to the Council.<sup>50</sup> Also in August 1992, the Commission on Human Rights held a special session in which it adopted Resolution 1992/S-1/1 regarding the human rights situation in the territory of the former Yugoslavia. The Resolution noted the Security Council President's statement. The Commission appointed a Special Rapporteur, to investigate first-hand the human rights situation in the territory of the former Yugoslavia and, in particular, within Bosnia and Herzegovina. The Commission requested the Special Rapporteur to report his findings and recommendations to the Commission on Human Rights and the General Assembly. It also requested the Secretary-General to make the reports of the Special Rapporteur available to the Security Council.<sup>51</sup>

The Security Council met in October 1992 having before it the first report of the Special Rapporteur on the human rights situation in the former Yugoslavia.<sup>52</sup> The Special Rapporteur recommended the prosecution of those individuals responsible for serious human rights violations and breaches of international humanitarian law. He further re-

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<sup>49</sup> Doc. S/24836.

<sup>50</sup> Doc. S/4378. The presidential statement concerned reports of the imprisonment and abuse of civilians in camps, prisons and detention centers within the territory of the former Yugoslavia, and especially in Bosnia and Herzegovina, and called upon "all parties, States, international organizations and non-governmental organizations" to make available to the Council any further information they might possess, see *Repertoire of the Practice of the Security Council Supplement 1989-1992*, Chapter VI, see note 30, 207-208.

<sup>51</sup> *Ibid.*, 208.

<sup>52</sup> Doc. S/PV/3119, Doc. S/PV/24516.

commended that a commission should be created to assess and further investigate specific cases in which prosecution might be warranted.<sup>53</sup> In an ensuing resolution, the Security Council requested states, relevant United Nations bodies, and relevant organisations to make available, “information ... relating to the violations of humanitarian law, including grave breaches of the Geneva Conventions ... being committed in the territory of the former Yugoslavia.”<sup>54</sup> The Council requested the Secretary-General to establish a Commission of Experts and requested the above mentioned entities to provide appropriate assistance to this Commission in its examination and analysis of the information submitted pursuant to S/RES/771 (1992) of 13 August 1992 and 780 (1992) of 6 October 1992. Several Council members stated their understanding that the Council’s request to “relevant United Nations bodies” included the Special Rapporteur of the Commission on Human Rights, and that the Special Rapporteur’s report should be taken into account by the impartial Commission of Experts.<sup>55</sup>

In November 1992, on the basis of proposals by France and Belgium, the Security Council invited the Special Rapporteur to participate in its meeting under Rule 39 of its provisional rules of procedure. Again reservations were expressed by China and Zimbabwe that since the Special Rapporteur had been appointed by the Commission on Human Rights, he should report to that body only.<sup>56</sup> The President of the Security Council noted the observations, and stated that they would be reflected in the Verbatim Records of the Council. The Council then extended an invitation to the Special Rapporteur under Rule 39, without the President mentioning that he was invited in his personal capacity.<sup>57</sup>

The Council had before it two reports which had been prepared by the Special Rapporteur on the human rights situation in the territory of the former Yugoslavia.<sup>58</sup> In the preamble of S/RES/787 (1992) of 16 November 1992 the Security Council:

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<sup>53</sup> Doc. S/24516, *ibid.*, paras 69 and 70.

<sup>54</sup> S/RES/780 (1992) of 6 October 1992.

<sup>55</sup> See Doc. S/PV/3119, 8 (Venezuela), 12 (United States), 13 (Hungary), 16-17 (France), in *Repertoire of the Practice of the Security Council Supplement 1989-1992*, Chapter VI, see note 30, 208.

<sup>56</sup> Doc. S/PV/3134, 9-11, see *Repertoire of the Practice of the Security Council, Supplement 1989-1992*, Chapter III, see note 38, 57.

<sup>57</sup> *Ibid.*

<sup>58</sup> Docs S/24516 and S/24766.

“not[ed] with grave concern the report of the Special Rapporteur ... which ma[de] clear that massive and systematic violations of human rights and grave violations of international humanitarian law continue[d] in the Republic of Bosnia and Herzegovina.”

In paras 7 and 8 of the resolution the Council, *inter alia*, condemned all violations of international law, including in particular the practice of “ethnic cleansing” and the deliberate impeding of the delivery of food and medical supplies to the civilian population of Bosnia and Herzegovina. The Council reaffirmed that the perpetrators of such acts would be held individually responsible. It welcomed the establishment of a Commission of Experts, and asked the Commission on Human Rights to pursue actively investigations with regard to grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia.<sup>59</sup>

The situation did not change much in 1993. The Security Council once again received information from ECOSOC, through the Commission on Human Rights, about grave human rights abuses and violations of international humanitarian law about the situation between Iraq and Kuwait; the situation in the former Yugoslavia; and now the one concerning Rwanda. The Security Council also received information in relation to the situation in Burundi from a Commission of Inquiry established at its request by the Secretary-General. The Commission’s report included information provided by the Special Rapporteur on the situation in Burundi.<sup>60</sup>

With regard to the situation between Iraq and Kuwait, the Commission on Human Rights requested the Special Rapporteur to submit an interim report to the General Assembly and to the Commission itself.<sup>61</sup> In his interim report the Special Rapporteur concluded, *inter alia*, that a number of acts of the government of Iraq constituted a policy of repression in violation of para. 2 of S/RES/688 (1991).<sup>62</sup> He also concluded

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<sup>59</sup> Repertoire of the Practice of the Security Council Supplement 1989-1992, Chapter VI, see note 30, 208-209.

<sup>60</sup> Repertoire of the Practice of the Security Council Supplement 1993-1995, Chapter VI, Relations with other United Nations Organs, Part II, Relations with the Economic and Social Council, A. Practice in Relation to Article 65 of the Charter, 30 available at: <<http://www.un.org/Depts/dpa/repertoire/index.html>>.

<sup>61</sup> CHR Resolution 1993/7, CHR Resolution 1994/74, CHR Resolution 1995/76.

<sup>62</sup> Doc. A/48/600, paras 61 and 81.

that the continuing difficulties in facilitating the humanitarian work of international organisations in the country constituted a violation of para. 3 of the same resolution. The attention of the President of the Security Council was drawn to these conclusions regarding Resolution 688 with the request that the interim report be circulated as a document of the Security Council.<sup>63</sup>

In relation to the situation in the former Yugoslavia, the Commission on Human Rights requested the Special Rapporteur to continue to submit periodic reports, as appropriate, to the Commission and the General Assembly. The Commission requested the Secretary-General to continue to make the reports of the Special Rapporteur available also to the Security Council,<sup>64</sup> which happened as such.<sup>65</sup> The Security Council subsequently adopted S/RES/1034 (1995) of 21 December 1995 on the situation in Bosnia and Herzegovina. The resolution affirmed that the violations of humanitarian law and human rights in the areas of Srebrenica, Zepa, Banja Luka and Sanski Most from July to October 1995 had to be fully and properly investigated by “the relevant United Nations and other international organizations and institutions.”<sup>66</sup> It demanded that the Bosnian Serb party give immediate and unrestricted access to the areas in question, including for the purpose of the investigation of the atrocities, to representatives of “the relevant United Nations and other international organizations and institutions, *including the Special Rapporteur of the Commission on Human Rights*” (emphasis added).<sup>67</sup>

In 1994 the situation concerning Rwanda was the basis for intense inter-Council dialogue. The United Nations Commission on Human Rights had by resolution S-3/1 of 25 May 1994 adopted a Special Rapporteur for Rwanda. It also had requested the Secretary-General to make the report of the Special Rapporteur available to ECOSOC, the General Assembly and the Security Council.<sup>68</sup> Subsequently, the Security Council unanimously adopted S/RES/925 (1994) of 8 June 1994 on

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<sup>63</sup> Repertoire of the Practice of the Security Council Supplement 1993-1995, Chapter VI, see note 60, 31.

<sup>64</sup> CHR Resolution 1993/7, 1994/72, 1995/89.

<sup>65</sup> Docs S/26469, S/26383, S/26415, S/26765, S/1994/265, S/1994/743, S/1994/967, S/1994/1252, S/1995/79, S/1995/80, S/1995/597, S/1995/801, S/1995/93.

<sup>66</sup> S/RES/1034 (1995) of 21 December 1995.

<sup>67</sup> *Ibid.*, op. para. 8.

<sup>68</sup> CHR Resolution S-3/1.



the situation concerning Rwanda. In the preamble, the Council noted the appointment of the Special Rapporteur for Rwanda and in the operative part under para. 10, the Council, *inter alia*, requested the Secretary-General to ensure that the United Nations Assistance Mission for Rwanda (UNAMIR) extended close cooperation with the Special Rapporteur. During the discussion, the representative of China expressed reservations on “the resolution’s elements relating to the human rights rapporteur.”<sup>69</sup> Recalling that the United Nations Charter contained explicit provisions on the mandates of the Security Council, the General Assembly and other United Nations organs, he stressed that the Council should “refrain from involvement in activities that [went] beyond its mandate”.<sup>70</sup> He added that his delegation was “not in favour of wilfully linking the work of the Council with that of other organs.”<sup>71</sup> Conversely, the representative of New Zealand welcomed:

“the recognition given in [the] resolution to the importance of close cooperation between UNAMIR and the activities of the ... recently appointed United Nations Special Rapporteur for Rwanda.”<sup>72</sup>

The representative of the Czech Republic spoke of, “going ... beyond the horizon of today’s draft resolution”, suggesting that in future the Council might wish to request the Special Rapporteur to report to it directly.<sup>73</sup> Also other Council members stressed the need for close cooperation between the Special Rapporteur and the Commission of Experts.<sup>74</sup>

In 1995 Burundi was the country being especially focused. The Security Council adopted S/RES/1012 (1995) on 28 August 1995. By this resolution, the Council requested the Secretary-General to establish an international Commission of Inquiry and it called upon states and relevant United Nations bodies and appropriate international humanitarian organisations to collate substantiated information in their possession and to make such information available as soon as possible and to provide appropriate assistance to the Commission of Inquiry. The Com-

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<sup>69</sup> Doc. S/PV/3388, 12. See Repertoire of the Practice of the Security Council Supplement 1993-1995, Chapter VI, see note 60, 33.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid., 9-11.

<sup>73</sup> Ibid., 3-4 (Czech Republic).

<sup>74</sup> Doc. S/PV/3400, 3-4 (United States), 7 (China), 5 (France). See Repertoire of the Practice of the Security Council Supplement 1993-1995, Chapter VI, see note 60, 34.

mission of Inquiry's final report noted that the Commission had, in the course of its work, met with the Special Rapporteur of the United Nations Commission on Human Rights for Burundi.<sup>75</sup>

This initial period of formal dialogue between the Special Rapporteurs and the Security Council was brief and seems to have ended in the mid-1990s but with a further brief re-emergence in the first three years of this century, which coincided with a brief period during which the High Commissioner for Human Rights addressed the Council on a number of occasions. The apparent decrease in direct and formal dialogue between the OHCHR and the Security Council also came at a time of the increased use of Arria Formula meetings (see below).

In April 2001, the High Commissioner for Human Rights, addressed the Security Council at its meeting on the protection of civilians in armed conflict.<sup>76</sup> The High Commissioner noted that in recent years, the Security Council had broken new ground in its efforts to implement the Charter's blueprint for the maintenance of international peace and security. She applauded the fact that the Council's security concepts, strategies and methods had taken on a distinctly more people-oriented focus grounded in the norms of international law, human rights and humanitarian law.<sup>77</sup> In terms of the protection of civilians in armed conflict, the High Commissioner stated that international human rights law insisted on standards of protection that were to be applicable in all places, times and circumstances. There was a rich jurisprudence and practice in the human rights area that, she believed, should be an essential point of departure for the Council in judging the acceptability or unacceptability of behaviour of combatants, states and non-state actors during conflicts, internal or international. As far as human rights mechanisms were concerned, she welcomed the fact that the Security Council was increasingly looking to and drawing on the expertise of the special mechanisms of the Commission on Human Rights. In that respect she observed that:

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<sup>75</sup> Doc. S/1996/682, para. 35. See generally *Repertoire of the Practice of the Security Council Supplement 1993-1995*, Chapter VI, see note 60.

<sup>76</sup> Doc. S/PV/4312, 4. In 2002, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator had addressed the Security Council on the Protection of Civilians in Armed Conflict, Docs S/PV/4660 and S/PV/4660 (Resumption 1).

<sup>77</sup> Doc. S/PV/4312, 4.

“I consider the reports of country rapporteurs and thematic rapporteurs to be an indispensable information base for the efforts of this Council and of other United Nations bodies to strengthen conflict prevention in the United Nations. I believe that it is of the utmost importance that this Council be provided regularly with briefings on the information available in the reports of these mechanisms of the Commission. I also draw the Council’s attention to the role of the human rights treaty bodies and their increasing capacity to take urgent action.”<sup>78</sup>

In response to a number of comments and questions posed by Security Council members to the High Commissioner on her views on improving the protection afforded to civilians in armed conflict, the High Commissioner suggested that any high level mediation should draw on the work of country or thematic Rapporteurs, the present work of the OHCHR or components of peacekeeping. As part of the human rights community she greatly welcomed the fact that the Security Council had e.g. been hearing, in particular, the Special Rapporteur for the Democratic Republic of the Congo and she urged the wider use made of the experts, Special Rapporteurs and Special Representatives. With regard to the situation in the DRC, she strongly emphasised the resource of work of her Office on the ground and she referred to the work that could take place in situations of quite serious conflicts, especially the linkages and support for human rights NGOs and their very close working relationship with MONUC (United Nations Organization Mission in the Democratic Republic of the Congo). The High Commissioner expressed her hope that, in the opportunities that were opening up, the work of the High Commissioner’s Office could be reinforced and that it could be more known to and drawn upon by the Security Council in its assessment of the situation and in the role of enhanced peacekeeping. She also stated that she believed that, in relation to other conflict situations particularly in Africa, the OHCHR’s missions were an important resource for the Security Council and for the human rights community.<sup>79</sup> In terms of the role of the Security Council she stated:

“I have to say in conclusion that it is very instructive from my point of view to see how practical the contributions have been from the members of the Security Council. I am very encouraged by this and

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<sup>78</sup> *Ibid.*, 5.

<sup>79</sup> *Ibid.*, 20.

it confirms that making a closer link with Geneva and the human rights machinery makes every sense in this context.”<sup>80</sup>

In response to the High Commissioner’s presentation and subsequent comments, it was discussed at the Council that all peacekeeping operations should contain a human rights component, funded from assessed contributions and further the possibility for reports to the Council by the High Commissioner following important fact-finding missions to areas of major conflict. Finally Arria Formula meetings of Council members had to be used more regularly.<sup>81</sup>

In July 2001 the situation in the DRC again led to discussions between the Security Council and Human Rights organs. In relation to the question of the defence of human rights, the representative of the DRC, stated that it would be useful for the Security Council to look at the Special Rapporteur’s reports in order to put an end to impunity. He also expressed the hope that the Special Rapporteur would be able to provide the Security Council with useful information as to the implementation of the different national programs, particularly those concerning the demobilisation and the reintegration of child soldiers and those relating to the protection of vulnerable persons.<sup>82</sup>

The DRC was addressed again in February 2003, when the UN High Commissioner for Human Rights approached the Security Council on the situation.<sup>83</sup> The High Commissioner provided an overview of extensive and gross human rights abuses that had occurred there.<sup>84</sup> In response to a further series of questions and comments about the situation on the ground, the High Commissioner noted that various members of the Security Council themselves had stated that peace was a precondition and that human rights-related provisions in the respective peace agreement had to be implemented.<sup>85</sup> In July 2003, the Security Council was addressed on the situation, under Rule 39.<sup>86</sup> It was stated that the concept and content of security was evolving and that human

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<sup>80</sup> Ibid., 20.

<sup>81</sup> Ibid. Further support for a closer relationship between the OHCHR and the Security Council was expressed at page 10 (Ukraine), 12 (Tunisia), 17 (China), 18 (United States), 21 (Russia), 26 (Mali).

<sup>82</sup> Ibid., 28. The DRC reiterated this point in Doc. S/PV/4361, 7.

<sup>83</sup> Doc. S/PV/4705.

<sup>84</sup> Ibid., 4-7, 7.

<sup>85</sup> Ibid., 22-24.

<sup>86</sup> Doc. S/PV/4784. The Council was also briefed by Mr. Jean-Marie Guéhenno, Under-Secretary-General.

security was defined by the international human rights norms, which gave it content.<sup>87</sup> According to the Deputy High Commissioner making the presentation, the frequency of his briefings to the Security Council was in itself a clear indication of the very serious and continuous nature of human rights violations occurring in the DRC and reflected the Council's recognition of that.<sup>88</sup> In strongly welcoming the second public meeting of the Council with the OHCHR on the DRC, the representative of Germany stated such meetings also reminded the Council of the fact that military action alone, as important as it might be in a given situation, would not achieve a lasting solution to a conflict and that the Council needed, "a comprehensive approach to security and human rights, and human rights are a central element of that approach."<sup>89</sup> In response to the questions and comments relating to joint missions of Special Rapporteurs, that had been put forward by the French representative, it was stated that sometimes, in situations of this nature, it had been found useful to put together a set of Thematic Rapporteurs. Conceptually, the role of such a joint mission was that it brought added authority and insights.<sup>90</sup>

In May 2004, during a Security Council discussion of complex crises and conflict prevention, it was stated that early warning must be accompanied by an early response. Although it was recognised that many early-warning systems existed within the United Nations, they required co-ordination so that the information at their disposal could contribute effectively and immediately to the decision-making process. In the prevention of a crisis or its recurrence, it was stated that the Security Council ought not to be the only body involved and that this task had to be shared by the system's agencies and organisations. This issue raised the crucial issue of the organisation's requisite institutional architecture. It was stated that the Council had to determine whether it was suitable, in particular in the post-conflict transitional phase, for moving states towards stabilisation, rehabilitation and reconstruction. Increased interaction between the Security Council and other UN bodies including the UN High Commissioner for Human Rights had become ever more necessary to provide a consistent and integrated response to the

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<sup>87</sup> *Ibid.*, 5.

<sup>88</sup> *Ibid.*, 7-8.

<sup>89</sup> *Ibid.*, 14.

<sup>90</sup> *Ibid.*, 24. He also recommended that the Special Rapporteur on Violence against Women its Causes and Consequences should look into this situation, *ibid.*, 26.

challenges inherent in complex crises.<sup>91</sup> Calls for closer co-ordination between the Security Council and the OHCHR were not only necessary for the general mainstreaming of human rights within the UN system but, during Council meetings in 2004, members identified more particularly the necessity of a closer relationship in order to set up an early-warning network that would make it possible to prevent conflict.<sup>92</sup> According to one permanent member, the Council's taking effective action in terms of protection also depended on what tools and what information were available to it. The practice of providing biannual briefings could be supplemented by more specific briefings which could deal with especially worrisome situations, being given without prejudice to other measures such as the Council hearing the UN High Commissioner for Human Rights.<sup>93</sup>

This theme re-emerged during the course of 2005. It was stated that regular briefings by the OHCHR and by holders of mandates under the special procedures established by the Commission on Human Rights could greatly contribute to the capacity of the Council both to prevent effectively abuses of civilian populations and to monitor the implementation of the relevant provisions of resolutions that it had adopted.<sup>94</sup> The representative of e.g. Argentina reaffirmed his country's support for the Security Council's cooperation with the OHCHR in promoting unfailing respect for human rights that were seen as inalienable, in a context in which, unfortunately, the Council continued to hear accusations of steady movement in the opposite direction.<sup>95</sup> During further Council discussion on the protection of civilians in armed conflict it was stated that an integrated approach to the protection of civilians in armed conflict had to be implemented in close conjunction with the mainstreaming of human rights protection into the whole UN system. It was also noted that the protection and promotion of human rights was one of the three core functions of the United Nations.<sup>96</sup> Similar observations were made in 2006 when it was stated that, "[S]ystematic reporting to the Security Council is important to facilitate and strengthen decision-making and effective response", in relation to

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<sup>91</sup> Doc. S/PV/4980, 7 (Spain).

<sup>92</sup> Doc. S/PV/5100, 10 (Chile).

<sup>93</sup> Doc. S/PV/5100, 12-13 (France).

<sup>94</sup> Doc. S/PV/5100 (Resumption 1), 18 (Liechtenstein).

<sup>95</sup> *Ibid.*, 19.

<sup>96</sup> Doc. S/PV/5209, 31 (Norway).

the protection of civilians.<sup>97</sup> It was further observed by Council members and the President that timely briefings from other UN actors including the UN High Commissioner for Human Rights, have been regarded as being extremely helpful in drawing the attention of the international community to areas where conflicts are prone to erupt.<sup>98</sup>

In 2007 in respect to discussions of civilians in armed conflict, the President, in a Council discussion on peace and security in Africa, stated that the Council was gradually including the underlying causes of conflicts in its field of research for better ways to address issues related to peace and security. Part of this process was the strengthening of the role of the Security Council and part of that strengthening process was related to other UN institutions such as the General Assembly, ECOSOC, the Peacebuilding Commission, and the Human Rights Council which, he said, could do more to join forces with the Security Council in an appropriate forum to show a spirit of coherence, which the United Nations needed in the area of conflict prevention.<sup>99</sup> Also in 2007, the President referred to S/RES/1674 (2006) of 28 April 2006 and stated that it was crucial to recall and to stress states' responsibility to end impunity and to bring to justice the perpetrators of genocide, crimes against humanity, war crimes and other flagrant violations of international humanitarian law.

However, actual and direct input would appear to be decreasing so that, for example, it would seem that from the period from August 2006 to July 2007, the Security Council heard only one briefing by the UN High Commissioner for Human Rights, which related to her visit to the Great Lakes region.<sup>100</sup>

The issues, concerns and recommendations expressed between the Security Council, the UN High Commissioner and the Special Rapporteurs are all very real and pragmatic. Earlier concerns regarding the allocation of responsibilities as between different UN bodies seem to have evaporated, yet, as this section has demonstrated, formal dialogue between the Security Council and the OHCHR as well as Special Rapporteurs seems to be the exception not the norm. By this concrete and real means of a more effective human rights infused mandate to main-

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<sup>97</sup> Doc. S/PV/5577, 16 (Greece). Similarly Doc. S/PV/5577 (Resumption 1), 11 (Finland, speaking on behalf of the EU).

<sup>98</sup> Doc. S/PV/5703, 31 (Germany). See also 26 (Japan). See, also the comments of the President in Doc. S/PV/5319 (Resumption 1).

<sup>99</sup> Doc. S/PV/5735, 24.

<sup>100</sup> Doc. A/62/2, 13.

tain international peace and security slips. The Security Council has been denying itself access to an extremely valuable source of in-depth first hand knowledge of human rights violations that have the potential to descend into a situation of full-scale conflict. Such a denial is not only an extravagant waste of the scarce UN resources, it is also suggestive of the degree of significance that the Security Council apparently attaches to the work of its fellow UN bodies. As the degree of engagement with such reporting mechanisms declined, it is arguable too that the UN Charter's mandate to maintain international peace and security and promote and protect human rights is being undermined.

#### IV. Arria Formula Meetings

A couple of words have to be said in respect of Arria Formula meetings. Currently, Arria Formula meetings are the primary source of contact between the Security Council and the Human Rights Council and its predecessor the Commission on Human Rights. Arria Formula meetings enable the President of the Security Council, or other Council members, to invite Special Procedures mandate-holders to provide informal briefings to interested Security Council members in relation to thematic and specific country situations. The presence of all fifteen members may in fact be expected at such meetings.<sup>101</sup> Arria Formula meetings allow for informal and confidential meetings to take place outside of the Council chamber.<sup>102</sup> In many ways Arria Formula meetings continue to be a useful tool because the informality of the process provides Security Council members with the opportunity to meet with a range of individuals who represent organisations or institutions that are in a position to contribute to a better understanding of the human rights situation in question. Special Procedures mandate holders, because of their independence and expertise as well as the influence that they wield as a representative of the UN in general and as a representative of the Human Rights Council in particular, have fallen into this category and have demonstrated themselves to be strongly placed to provide direct information and assessments of the human rights situa-

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<sup>101</sup> S. Bailey/ S. Daws, *The Procedure of the Security Council*, 3rd edition, 1998, 68.

<sup>102</sup> Doc. A/53/865-S/1999/286.



tion in question.<sup>103</sup> However, despite the fact that informal Arria Formula meetings appeared to have become a regular part of Security Council briefings and Special Procedures mandate-holders have briefed the Security Council on a reasonably regular basis, when invited by the President of the Council, the informality of this useful mechanism can have negative impact on the significance of the role of mandate-holders in themselves, as well as their role in representing those UN organs promoting human rights protection. A balance has to be struck between preserving the original rationale for organising the Security Council as it is and allowing for a more equitable relationship between the Council and other UN bodies especially those charged with human rights protection given the increased recognition that human rights violations can constitute threats to international peace and security.<sup>104</sup>

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<sup>103</sup> The year 2002 being a good example. An Arria Formula meeting of Council members was convened e.g. by Singapore on 5 March 2002 to address the difficulty of getting humanitarian assistance to the people of Angola. Apart from Council members, participants included representatives of Human Rights Watch, Médecins Sans Frontières, Save the Children and Oxfam. On 8 March an Arria Formula meeting was convened by the United Kingdom to hear a report from a visit to Sierra Leone by the Special Rapporteur on Violence against Women its Causes and Consequences. An Arria Formula meeting to address issues relating to abuses of women and children in Mano River countries (Sierra Leone, Liberia and Guinea) was held on 19 March, convened by Singapore. Apart from Council members, participants included two independent experts from the United Nations Development Fund for Women. On 22 March Ireland convened an Arria Formula meeting to hear a presentation by the Office of the United Nations High Commissioner for Refugees and the International Centre for Transitional Justice on the establishment of a truth and reconciliation commission in Sierra Leone, see Doc. S/2002/663, letter dated 12 June 2002 from the Permanent Representative of Norway to the United Nations addressed to the President of the Security Council, 7-8. In October another Arria Formula meeting took place, convened by the Permanent Mission of Jamaica, during which the humanitarian situation in Liberia was addressed. This work with the Security Council is considered highly valuable for the NGOs and has become more important in recent years, see also, K. Martens, "An Appraisal of Amnesty International's Work at the United Nations: Established Areas of Activities and Shifting Priorities since the 1990s", *HRQ* 26 (2004), 1050 et seq. (1059).

<sup>104</sup> In the case of the DRC there was a meeting under this formula in October 2000, Doc. E/CN.4/2001/40, *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, Report on the Situation of Human Rights in the Democratic Republic of the Congo*, submitted

It is only recently that the Security Council has returned to the issue of whether such meeting should be the subject of greater formality. The Chair of the Security Council's Informal Working Group on Documentation and Other Procedural Questions noted, that, in 2006, the Working Group had examined various proposals in respect of the question of the relationship with non-members.<sup>105</sup> As a result of the discussions, the Working Group had produced a set of recommendations to be presented to the Council for its approval. The recommendations included existing agreements on working methods, some of which went as far back as 1993, as well as newly agreed or updated measures for improvement. In the latter half of 2006, the Working Group continued its discussions, mainly on two issues, the procedure for conducting Arria Formula meetings and the way to promote the implementation of the recommendations contained in the note by the President. With regard to holding Arria Formula meetings, the Chair noted that Council members had requested the Working Group in September 2006 to discuss the appropriate way to conduct the meetings, believing that there was need for some clarity on that aspect. In response to that request, the Working Group had met twice and had reached a common understanding on the conduct of Arria Formula meetings. Accordingly, Council members were encouraged to plan Arria Formula meetings in accordance with para. 54 of the President's note and to take part in such meetings. Any Council member convening an Arria Formula meeting was encouraged to organise carefully the meeting, so as to maintain its informal character. Also, any member convening an Arria Formula meeting should inform all participating Council members about the planned procedure for, and participants in, the meeting.<sup>106</sup> The Security Council committed itself to make efforts to enhance its interaction and dialogue with non-Council members and implementing the measures described in the Annex to the President's note. They also expressed their intention to utilise Arria Formula meetings as a flexible and informal forum for enhancing their deliberations.<sup>107</sup>

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by the Special Rapporteur, in accordance with CHR Resolution 2000/15, paras 3-4. See also Doc. E/CN.4/2002/14, para. 36.

<sup>105</sup> Doc. S/2006/507.

<sup>106</sup> *Ibid.*, para. 54.

<sup>107</sup> *Ibid.*, para. 1.

## **V. Conclusion**

The UN Charter provides that it is incumbent upon both the United Nations as collective whole and the Member States as individual constituents of that whole to promote and protect human rights. This article highlighted the role that the Security Council has played in the past two decades in emphasising the promotion and protection of human rights as an aspect of maintaining international peace and security. The Council has been assisted in this regard by ECOSOC, the OHCHR and Special Rapporteurs in a manner that, regrettably, has tended to be somewhat sporadic and informal.

It has been identified that the Security Council can and must do more to promote and protect human rights. Not only should the Council engage more fully with ECOSOC, it should furthermore make a more effective use of the special procedures mechanisms. Given that such mechanisms facilitate the flow of human rights information between the Council and other UN human rights bodies, this conduit of information should be formalised in order to complement the increased profile of human rights within Security Council deliberations.

It is worth concluding with a stark reminder of what may be at stake and what has been regarded as perhaps one of the greatest missed opportunities for the Security Council, namely the warning in April 1993 by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, that a genocide was being planned in Rwanda. The Special Rapporteur's report was not studied or further being taken notice of and the observations facilitated by this Special Procedures mechanism remained tragically unnoticed by the Security Council.