

# The Rule of Law: Retreat from Accountability



"anasalhaji / Shutterstock.com"  
Schoolchildren stand on their  
destroyed school because of the war  
in the Yemeni city of Taiz Yemen /  
Taiz City, 2 November 2018

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## Executive Summary

This is Security Council Report's fifth research report on the rule of law. In it, we continue to explore the Security Council's work in upholding individual criminal accountability as an aspect of its rule of law agenda in the context of its primary responsibility for maintaining international peace and security. Through an examination of four situations the Council deals with regularly—Myanmar, Syria, Ukraine, and Yemen—the research report takes stock of and assesses the Council's current attitude and actions in respect of accountability.

The report shows that in some of the most

devastating conflicts of recent times, Council members have—apart from general rhetoric—often ignored issues of accountability.

The primacy of various national and regional interests evident in our four case studies correlates with Council members' inconsistent upholding of accountability when political alliances are at stake. It may also be part of a wider trend in the Council of reduced commitment towards ending impunity.

In previous years, Council members have at times demonstrated their ability to rise above

# Executive Summary

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their disagreements in order to adopt practical measures to advance accountability. The Council currently appears at its most divided since the end of the Cold War, however, and the report's case studies demonstrate that suspected perpetrators of grave crimes can now expect minimal Council consequences for their actions because of the particular interests of one or more of the Council's permanent members.

In these four cases, the Council has as yet been unable either to bring justice to victims or seriously affect the course of the conflict. While other international actors have at times demonstrated a more assertive and proactive response, only the Council has the ability to create binding obligations on the states concerned and the wider UN membership to

cooperate with international criminal mechanisms, and alone has the power to enforce its decisions. Moreover, collective security measures and enforcement action authorised by the Council have a more solid legal basis and enjoy more legitimacy in the eyes of the wider membership than such actions carried out unilaterally.

In the past, while the Council was also inconsistent with respect to accountability, it could be innovative and assertive – for example, by establishing the ad hoc criminal tribunals. Taking decisive approaches towards current conflicts on its agenda, where relevant, would enhance its legitimacy as well as its effectiveness in maintaining international peace and security.

## Part I: Introduction

Security Council Report has published several reports analysing aspects of the relationship between the Security Council and the rule of law. Two of these reports focused on the Council's work in upholding individual criminal accountability as part of its rule of law agenda in the context of its primary responsibility of maintaining international peace and security.

Our 2013 report *The Rule of Law: The Security Council and Accountability* focused on the normative aspect of the Council's work on upholding individual criminal accountability. It found that despite its stated commitment to accountability, both as a principle and as a practical tool that can promote peace and security and have a preventive impact, the Council had been inconsistent in its approach. As several of the case studies in that report showed, the Council has, at times, used the tools available to uphold accountability in ways that had immediate impact and brought long-term improvement at country level. At other times, it failed to emphasise accountability mechanisms and measures, and to follow up on its own previous decisions regarding individual accountability. The report demonstrated that in ignoring accountability issues, the Council may have adversely affected some conflict situations. While many variables are at play

in any given conflict, the case studies suggest that the Council's willingness to back its rhetoric with action could make a difference. The report concluded that a more consistent approach to accountability by the Council could have a positive impact on country situations as well as its own profile in maintaining international peace and security.

Our August 2015 report *The Rule of Law: The Institutional Framework: International Criminal Courts and Tribunals* looked at the institutional architecture that the Security Council had established and used to advance individual criminal accountability. The report analysed the establishment of the two ad hoc tribunals, the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) as well as the successor International Residual Mechanism for Criminal Tribunals (IRMCT) and their respective relationships with the Security Council. It further examined the mixed tribunals (the Special Court for Sierra Leone and the Special Tribunal for Lebanon) that the Council had been involved in establishing. It also reflected on the Council's relatively short yet complex relationship with the ICC. Through these case studies, the report concluded that the Council had proven resourceful over the previous two decades in establishing a framework, or

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## Part I: Introduction

a “tool box”, to contribute to international peace and security through institutional innovation and creativity. At the same time, the Council had not consistently followed up on these significant steps by providing proper institutional support to these bodies to enforce its own decisions and to secure successful completion of the tasks entrusted to them, for example by not taking action to ensure member state cooperation with these mechanisms or by shifting the financial burden of its ICC referrals from the UN to the ICC.

The present report continues Security Council Report’s focus on individual criminal responsibility within the framework of the Security Council’s work. It comes at a time of some achievements, such as the establishment of the UN Investigative Team for Accountability of Da’esh (UNITAD), which is to consist of Iraqi investigative judges and other criminal experts as well as international experts, who were directed to collect, store and preserve evidence of ISIL’s crimes in Iraq that could be used later in criminal proceedings in Iraqi national-level courts. While UNITAD is mandated to investigate only one party to a wider conflict, and those prosecuted with its assistance may be subject to the death penalty, its establishment is a milestone in the Council’s attempt to end impunity for crimes committed by ISIL.

At the same time, due to pressure from some permanent members, the Council has at times in recent years been unable to restate previously agreed language on the

importance and relevance of accountability.

A prime example is the Council’s difficulty in adopting a presidential statement to commemorate, on 20 August 2019, the 70th anniversary of the adoption of the universally ratified four Geneva Conventions, which regulate the conduct of armed conflict and are considered the cornerstone of international humanitarian law. Poland, the Council president, had intended to adopt a short statement on international humanitarian law, based primarily on previously agreed Council language. References to upholding accountability for grave violations of international humanitarian law became contentious, however, and negotiations lasted three weeks. The final text reiterates the obligations of states to ensure the prosecution of those that commit grave breaches under the Conventions, but explicit language calling on states to comply with their obligations to end impunity and to investigate and prosecute those responsible for genocide, crimes against humanity, war crimes or other serious violations of international humanitarian law was found too overreaching by Russia and was excluded, despite similar text in resolution 2467 of 23 April 2019, where Russia had found this language acceptable as it was linked to the specific context of sexual violence in conflict. The animosity of some states towards the ICC meant that even the first version of the draft statement refrained from mentioning it in order to improve the prospects for consensus. For the same reason, references to the ICC’s role in the fight against impunity in the context of

sexual violence were removed from the final version of resolution 2467.

In another example, during the renewal of the mandate of the UN Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) in November 2018, the US objected to previously agreed language regarding MINUSCA cooperation with the ICC in the context of apprehending wanted criminals. (The Central African Republic [CAR] is a party to the Rome Statute, and the ICC is currently investigating alleged crimes committed in the CAR since 2012). Eventually, as a result, resolution 2448 contains additional language intended to narrow the relevance of the ICC in this context.

These and other negotiations and outcomes demonstrate that on top of its inconsistent actions on accountability, the Council’s rhetorical commitment to ending impunity has also regressed.

Through an examination of four situations—Myanmar, Syria, Ukraine, and Yemen—this report assesses the Council’s current attitude towards individual criminal accountability, including whether it has sought information on crimes committed in these situations, the role that accountability played in the Council’s decision-making, the Council’s readiness to take particular measures to uphold individual accountability, and—where relevant—the follow-up on the implementation of these measures.

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## Part II: Case Studies

### MYANMAR

#### BACKGROUND

The first Rohingya refugee crisis can be traced back to 1978. Since then, there have been major movements of Rohingya refugees from Myanmar into Bangladesh in 1992, 2016 and 2017. Although there has been some refugee repatriation over the years, by 2016 there were 200,000 Rohingya in Bangladesh. The Council regularly followed developments in Myanmar since 2006, when the issue was added to the Council’s agenda in the context

of developments in the country that some members believed could have implications for international peace and security. Following positive developments in the political process in 2012, the Council began to pay less attention to the agenda item. Between July 2009 and November 2016, Myanmar was discussed only during informal consultations under “any other business”. The situation in Rakhine State, home to Myanmar’s Rohingya population—along the Bay of Bengal south of Bangladesh—has occasionally been a part of these informal briefings but was not

a particular focus of the Council’s attention.

In October 2016, the Arakan Rohingya Salvation Army (ARSA) attacked three police border posts in Rakhine State, which led to a violent military response from the Myanmar Armed Forces (Tatmadaw) and over 80,000 Rohingya fleeing to Bangladesh. An OHCHR report released in February 2017 found that crimes against the Rohingya community in this context “seem to have been widespread as well as systematic, indicating the very likely commission of crimes against humanity”.

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## Part II: Case Studies (Myanmar)

A new wave of heightened violence erupted in August 2017, after attacks by the ARSA on 25 August against police border posts were met by a violent response against the Rohingya population by Myanmar's security forces. On 11 September, then-UN High Commissioner for Human Rights Zeid Ra'ad al-Hussein told the Human Rights Council that Myanmar's response was "clearly disproportionate" and "without regard for basic principles of international law", as well as a "text-book example of ethnic cleansing". Between August 2017 and the end of 2018, more than 730,000 Rohingya fled to Bangladesh.

Though the height of the current round of fighting seems to be over, there are continued clashes between the ARSA and the Tatmadaw. According to Human Rights Watch, the Tatmadaw have continued to commit grave abuses against Rohingya Muslims. More than 128,000 Muslims remain in detention camps in central Rakhine State, where they have been confined since 2012.

### MYANMAR IN THE SECURITY COUNCIL

#### Broaching accountability in the Security Council

As tensions flared up in Myanmar in October 2016 after the ARSA attacks, the Council was slow to take up the issue. Myanmar was only discussed under "any other business" on 17 November 2016 and again on 17 March 2017. In addition to the traditional reluctance by China to see significant Council involvement in Myanmar, other members—even those who had been supportive in the past—also appeared sceptical about the value of having meetings without any prospect of a Council outcome. Another contributing factor to Council inaction was the reluctance on the part of the Organisation of Islamic Cooperation (OIC) for the Council to intervene, as the OIC was trying to facilitate an end to the crisis, although this remained unsuccessful.

The dynamics in the Council changed significantly on 25 August 2017. Following an ARSA attack on Myanmar security forces at a number of locations, Government forces responded with violence, causing more than

671,000 Rohingya civilians to flee across the border into Bangladesh. The events came a day after the Advisory Commission on Rakhine State, established by State Counselor Aung San Suu Kyi in August 2016 with a mandate to look at the root causes of the conflict and to make recommendations to improve the situation, released its final report. The Commission, which was headed by former Secretary-General Kofi Annan, recommended that Myanmar take concrete steps to end enforced segregation of Rakhine Buddhists and Rohingya Muslims, and several other steps. It also called on Myanmar to hold perpetrators of human rights violations accountable.

On 2 September 2017, the Secretary-General sent a letter to the Council, urging its members to press Myanmar to ensure full respect for human rights and international humanitarian law, and the continued presence and safety of the UN, to allow for humanitarian assistance to those in need without disruption.

The Council thereafter maintained an active interest in the situation in Myanmar until December 2017. During this period, the Council held at least six meetings (either formally or under "any other business" in consultations) and one Arria-formula meeting on Myanmar.

As discussions on Myanmar in the Council became more regular, it was clear that China opposed Council measures or harsh statements on Myanmar. Several Council members expressed interest in adopting an outcome, however, which led to an early October draft resolution on Myanmar co-drafted by France and the UK. While China and Russia were unwilling to engage in a substantive discussion, on 31 October 2017 the co-penholders put the draft resolution under silence. Silence was broken by China, which reiterated that it did not agree with an outcome on the issue.

Over the next few days, the co-penholders had extensive discussions with China, and obtained Chinese and Russian agreement to a presidential statement instead of a resolution. Achieving consensus even on the presidential statement of 6 November 2017 was

difficult, including on issues of accountability for crimes committed in Myanmar. Because of the Chinese position, the presidential statement did not refer to the Independent International Fact-Finding Mission established by the Human Rights Council (HRC) on 24 March 2017 with a mandate to investigate allegations of recent human rights abuses in Myanmar. Instead, the statement stressed the importance of undertaking transparent investigations into allegations of human rights abuses and violations and holding to account all those responsible. The statement called on the government to cooperate with all "relevant United Nations bodies, mechanisms and instruments, in particular the United Nations High Commissioner for Human Rights". In addition, it encouraged the Secretary-General to consider appointing a special adviser on the issue. The General Assembly's Third Committee, acting on a draft resolution proposed by Saudi Arabia on behalf of the OIC, also requested the Secretary-General to appoint a special envoy on Myanmar in a resolution on human rights in Myanmar of 24 December, and he did so on 26 April 2018.

In early 2018, a number of Council members pushed for a Council visiting mission to Myanmar. By the end of March, after Bangladesh had indicated that it would welcome a Council visit, the government of Myanmar also acquiesced. Members of the Council visited Bangladesh and Myanmar from 28 April to 2 May 2018. Council members had the opportunity to meet with refugees in Bangladesh, who shared their stories; many described having lost family members, houses being burnt, and people shot. A group of female refugees spoke to Council members about their experiences, which included sexual abuse and violent assaults by soldiers following the 25 August 2017 attack. Several refugees told Council members that they wanted to see justice served.

In Myanmar, Council members met with Suu Kyi and members of the government for an exchange of views, including on the need for accountability for the violence in Rakhine. At a press conference at the end of the visit, UK Ambassador Karen Pierce mentioned the

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UN DOCUMENTS ON MYANMAR Security Council Presidential Statement S/PRST/2017/22 (6 November 2017) was a presidential statement on the situation in Rakhine State. Security Council Letters S/2018/938 (22 October 2018) was a letter to the President of the Security Council from the permanent representatives of Bolivia, China, Equatorial Guinea and Russia, objecting to a briefing by the Chairperson of the Fact-Finding Mission on Myanmar established by the Human Rights Council. S/2018/726 (20 July 2018) was a letter from the permanent representative of Myanmar to the president of the Security Council with an update on developments related to the three areas outlined in the Council's 31 May letter to the government of Myanmar. S/2018/638 (27 June 2018) was a letter from the permanent representative of Myanmar to the President of the Security Council responding to the 31 May letter sent by Council members to Myanmar in an effort to find a durable solution to the humanitarian situation in Rakhine State

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possibility of the Council assisting in efforts to gather evidence related to crimes committed against the Rohingya, whether as part of an effort to help the authorities of Myanmar or part of an international investigation.

Only a week after returning from the visit, Council members were able to agree on 9 May to a press statement that encouraged increased support to the Bangladesh government, and called for access by UN agencies to Rakhine. Accountability was, again, among the more difficult issues during negotiations over the statement. The press statement urged Myanmar to fulfil its stated commitment to hold accountable perpetrators of violence, including with regard to sexual violence and abuse and violence against children. It seems that China preferred not to have such language at all, but ultimately accepted references to accountability that were less strongly worded than originally.

In further follow up to the visiting mission, on 31 May the president of the Council wrote to the permanent representatives of Myanmar and Bangladesh on the Rohingya situation, highlighting the need for concrete action in three areas: access for UN agencies; an independent investigation into alleged human rights violations; and full implementation of the report of Myanmar's Rakhine Advisory Commission. In order for the Council to agree on the letter, its tone had to be softened, particularly regarding accountability. However, even with the changes, Council members felt that the letter allowed the Council to convey its principal concerns to the Myanmar government, including the importance of accountability.

In a letter to the president of the Council on 27 June, the Myanmar permanent representative responded that while the government would act against perpetrators if there were sufficient evidence, the human rights of all communities needed to be protected. It noted the government's decision to appoint an independent commission of inquiry to look into allegations of human rights violations following the attacks of 25 August 2017. Some Council members were concerned about the independence of the commission and whether it would be able to conduct a fair

investigation into the allegations.

The momentum in the Council on Myanmar during and after the visiting mission subsided, picking up again after the HRC's Independent International Fact-Finding Mission on Myanmar issued a report on 27 August 2018. The report concluded that war crimes and crimes against humanity had been committed and that there was sufficient information to "warrant the investigation and prosecution of senior officials in the Tatmadaw chain of command, so that a competent court can determine their liability for genocide in relation to the situation in Rakhine State". The report recommended that the Council refer the situation in Myanmar to the ICC or create an ad hoc international criminal tribunal similar to those set up to prosecute crimes in Rwanda and the former Yugoslavia. It also suggested that the Council adopt targeted individual sanctions and impose an arms embargo on Myanmar. This prompted Council members again to address issues of accountability in Myanmar, if momentarily.

In a briefing to the Council on 28 August marking the anniversary of the August 2017 attacks, the Secretary-General referred to the findings of the report, noting that accountability was essential for genuine reconciliation among all ethnic groups in Myanmar and a prerequisite for regional security and stability. He noted that Myanmar had refused to cooperate with UN human rights entities and mechanisms despite repeated calls to do so, including from members of the Council. He concluded that the report's findings and recommendations deserved serious consideration and that effective international cooperation would be critical for ensuring credible accountability mechanisms.

Several Council members took the floor, noting the findings of the fact-finding mission and the need for accountability for the crimes it reported. Sweden said that the fact-finding mission should be allowed to present its report to the Security Council. Some, including the P3, expressed doubts about the impartiality of Myanmar's Commission of Inquiry, while others, such as Bolivia and Côte d'Ivoire, viewed its establishment as a positive development. Sweden

and the Netherlands mentioned the possibility of an ICC referral. Both China and Russia emphasised the importance of reconciliation and made no mention of matters pertaining to accountability.

A proposed briefing on the report on 24 October 2018 by Marzuki Darusman, the chair of the fact-finding mission on Myanmar, was itself contested, and required a procedural vote. Darusman stated bluntly that with the help of the Council, accountability in Myanmar was achievable: "The Security Council holds the power to break that cycle. The key is a sharp focus on accountability. Apart from accountability for atrocity crimes being a legal and moral obligation, we submit that there are at least three other compelling reasons for such a focus". He noted that accountability is critical for preventing further violence, securing a safe environment for the return of refugees and for long-term reconciliation. He also reiterated calls for an ICC referral, an arms embargo on Myanmar and targeted sanctions on Myanmar's leaders. Council members' comments that followed reflected, again, the varying national positions on acting on accountability.

Meanwhile, at the request of ICC Chief Prosecutor Fatou Bensouda, an ICC Pre-trial Chamber found on 6 September 2018 that the court had jurisdiction over alleged deportations of the Rohingya people from Myanmar to Bangladesh as a possible crime against humanity. The decision enabled Bensouda to initiate a preliminary examination into the situation. Myanmar, which is not a state party to the Rome Statute, has made clear that it will not cooperate with the Court. On 26 June 2019, Bensouda announced that she would request the court's judges to open an official investigation into the situation. A Pre-Trial Chamber authorised the opening of an investigation on 14 November 2019.

In other Court proceedings, on 11 November 2019, The Gambia filed a complaint against Myanmar before the International Court of Justice (ICJ), accusing the Tatmadaw (military) of committing genocide against the Rohingya.

The Council at present continues to struggle to find common ground on Myanmar,

**UN DOCUMENTS ON MYANMAR** [Security Council Letters S/2018/391](#) (26 April 2018) was a letter containing the terms of reference for the Council visiting mission to Bangladesh and Myanmar. [S/2017/753](#) (2 September 2017) was a letter from the Secretary-General to the president of the Council, expressing concern over the rising violence in Myanmar and welcoming the Council's discussion of the matter on 30 August. [Security Council Meeting Records S/PV.8477](#) (28 February 2019) was a briefing on the situation in Myanmar by Special Envoy Christine Schraner Burgener, who visited the country at the end of January. [S/PV.8381](#) and Resumption 1 (24 October 2018) was the briefing by Marzuki Darusman, the chair of the Independent International Fact-Finding Mission on Myanmar, on the mission's 27 August report [S/PV.8333](#) (28 August 2018) was a briefing by Secretary-General António Guterres, UNHCR Goodwill Ambassador Cate Blanchett, and UNDP Associate Administrator Tegegnetwork Gettu on the situation in Myanmar and the Rohingya refugee crisis.

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## Part II: Case Studies (Myanmar)

including on practical measures to end impunity in the country. In December 2018, Council members negotiated a draft resolution on Myanmar which would have set out a regular reporting cycle on the implementation of the recommendations of the Advisory Committee and progress in investigating allegations of human rights violations. However, China and Russia did not engage on the resolution, and the UK ultimately decided not to table the draft for a vote.

By the beginning of November 2019, the Council had met only four times on Myanmar that year, without any adopted outcomes: on 16 January to be briefed by the Under-Secretary-General for Political and Peacebuilding Affairs, the High Commissioner for Refugees and a UNDP representative; on 28 February and 2 July, to receive updates from the Secretary-General's Special Envoy Christine Schraner Burgener; and on 21 August, under "any other business", following Myanmar's announcement that it had cleared 3,450 Rohingya people for repatriation. Throughout these sparse meetings, there has been no indication that the Council is ready to take any action.

### Interaction with the Human Rights Council

In contrast to the Security Council's slow reaction to the events unfolding in Myanmar from October 2016, the Human Rights Council was comparatively faster to engage. As mentioned above, on 24 March 2017 the HRC established the independent, international fact-finding mission with a mandate to investigate allegations of recent human rights abuses in Myanmar. The Myanmar government indicated that it would not cooperate with the international fact-finding mission, nor allow its members into the country.

The HRC's Special Rapporteur on Myanmar Yanghee Lee reported in early August 2017 that the security and human rights situations had worsened. On 27 October, the Fact-Finding Mission on Myanmar—which had not been granted access to Myanmar—issued a press release at the conclusion of its first visit to Bangladesh. The three experts said they were "deeply disturbed" by the accounts of killings, torture, rape, arson and aerial attacks reportedly perpetrated against

the Rohingya community in Myanmar. UN High Commissioner for Human Rights Zeid Ra'ad al-Hussein was also quick to condemn the violence and on 29 August called for the perpetrators to be brought to justice.

Meanwhile, Security Council members were divided on acknowledging the efforts of the HRC. At the insistence of China, the Council's 6 November 2017 presidential statement did not refer to the fact-finding mission but did call on the government to cooperate with all "relevant United Nations bodies, mechanisms and instruments, in particular the United Nations High Commissioner for Human Rights".

The HRC continued actively to explore new mechanisms and ways of advancing accountability for human rights violations in Myanmar. On 4 July 2018, al-Hussein gave an oral briefing to the HRC on the human rights situation of the Rohingya people in which he urged Myanmar to grant immediate access to special rapporteur Lee, and also urged the Security Council to refer Myanmar to the ICC. Though the Council did not respond to this request, on 27 September, at the request of al-Hussein, the HRC established an "ongoing, independent mechanism", the Independent Investigative Mechanism for Myanmar, to "collect, consolidate, preserve and analyse evidence of the most serious international crimes and violations of international law committed in Myanmar since 2011, and to prepare files in order to facilitate and expedite fair and independent criminal proceedings". It decided that the Mechanism should make use of the information collected by the fact-finding mission as well as continuing to collect evidence. The mechanism was welcomed by the General Assembly in a resolution adopted on 22 December 2018, and the Secretary-General appointed the head of the mechanism, Nicholas Koumjian, on 2 April 2019.

Not only has the Security Council refrained from acknowledging the work of the HRC in outcome documents but hearing directly from the HRC-established bodies has become controversial. The 24 October 2018 briefing from Darusman was only possible after a procedural vote. Nine members—Côte d'Ivoire, France, Kuwait, the Netherlands, Peru, Poland, Sweden, the US

and the UK—had requested the meeting through a 16 October letter to the president of the Security Council. In response, Bolivia, China, Equatorial Guinea and Russia wrote to the Secretary-General on 18 October expressing their objection to such a briefing. In the procedural vote, nine members voted in favour of holding the meeting, three voted against, and four abstained.

Though it submitted its final report in August 2018, the fact-finding mission continues to address issues of accountability in Myanmar. In a statement on 14 May 2019, it urged the international community to cut off all financial and other support to Myanmar's military, saying its commanders need to be isolated and brought before a credible court to answer charges of war crimes, crimes against humanity and genocide. On 23 August 2019, Radhika Coomaraswamy, a member of the fact-finding mission, briefed Council members on accountability for mass atrocity crimes in Myanmar in an Arria-formula meeting.

In 2019, the Council has become less engaged on Myanmar, perhaps fatigued by its inability to find common ground among its members.

### OBSERVATIONS

On 29 May 2019, former Guatemalan Foreign Minister Gert Rosenthal finished an internal review of how the UN system operated in Myanmar from 2010 to 2018, in the years leading up to and following the mass exodus of the Rohingya. The Rosenthal report, commissioned by the Secretary-General and made public, found that the UN system had been "relatively impotent to effectively work with the authorities of Myanmar, to reverse the negative trends in the areas of human rights, and consolidate the positive trends in other areas". The report notes that in grave situations, the Secretariat requires the wider membership, acting through the Security Council, "to act decisively to avert even more horrific outcomes, or reverse the carrying out of human rights abuses already committed. But in the absence of the support of the Security Council, which is frequently restrained due to its composition and system of governance, the options of the United Nations to address the challenge

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**UN DOCUMENTS ON MYANMAR** Security Council Meeting Record S/PV.8060 (28 September 2017) was a briefing by UN Secretary-General António Guterres on the crisis in Myanmar at the request of Egypt, France, Kazakhstan, Senegal, Sweden, the United Kingdom and the United States. Security Council Press Statement SC/13331 (9 May 2018) was the press statement on the Council visit to Myanmar and Bangladesh. General Assembly Documents A/RES/73/264 (22 December 2018) welcomed the establishment of the Independent International Fact-Finding Mission on Myanmar by the HRC. A/RES/72/248 (24 December 2017) requested the Secretary-General to appoint a special envoy for Myanmar.

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in a manner consistent with its values and principles is often rather limited”. According to Rosenthal, this has contributed, among several other things, to the failure of the UN system to address violations of international humanitarian and human rights law that have occurred in Myanmar.

Indeed, political divisions in the Council have impeded serious discussion and pronouncement, as well as meaningful action, on accountability for such crimes in Myanmar. Though several Council members have been keen to focus more on accountability, China, with the support of a few other Council members, has been reluctant to press Myanmar. As time has passed, this reluctance has also been reflected in efforts to downplay the human rights-related aspects of the situation and to focus instead on refugee repatriation and reconciliation. The Council’s inability to support the work of other UN bodies on accountability for crimes committed in Myanmar, and its difficulties in organising a meeting to discuss information from the fact-finding mission, send a message of indifference in the face of the possible commission of grave crimes. As noted by Rosenthal, the Council’s inability to lead on Myanmar has contributed to the gap in the UN response to atrocities there.

The Council has several options for taking steps towards accountability. These could begin with renewed engagement on Myanmar through more regular meetings to discuss the situation. The Council could consider adopting a decision with stronger language on impunity for crimes committed in Myanmar. In addition, it could establish a special tribunal, impose sanctions on the country, such as an arms embargo, or targeted sanctions on individuals responsible for crimes, and demand that Myanmar cooperate with the HRC’s fact-finding mission, the HRC’s evidentiary mechanism, and other actors on accountability, such as the ICC. If some Council members remain reluctant to cooperate with the HRC mechanisms, the Council could establish its own investigative body, or ask the Secretary-General for recommendations on how to proceed independently of the HRC on accountability in Myanmar.

Some Council members have considered the possibility of pursuing a Council referral of the situation to the ICC. While the ICC has ruled that it has jurisdiction to adjudicate

whether the crime of deportation has been committed, the scope of that decision is still limited. Furthermore, as a non-party, Myanmar is under no obligation to cooperate with the court. A Council referral could expand the scope of an ICC probe, give it more international legitimacy, and decide that Myanmar must cooperate with the Court.

### SYRIA

#### BACKGROUND

What began as a string of popular protests against the Syrian government in January 2011, inspired by similar events across the Middle East and North Africa, within a few months descended into a bloody civil war of unthinkable proportions. Different rebel factions, rival jihadists from the Al-Qaida-affiliated Al-Nusra Front, as well as government and Kurdish forces, were engaged in combat in different parts of the country. Capitalising on the ensuing chaos, ISIL took control of large swathes of Syria and Iraq, proclaiming the creation of a “caliphate” in June 2014.

Various international actors, both state and non-state, increasingly became involved in the Syrian conflict. Iranian and Russian forces have supported Syria’s President Bashar al-Assad. The Syrian government has also enjoyed the support of Lebanon’s Shi’a Islamist Hezbollah movement. The Sunni-dominated opposition, now nearly defeated, has been supported to varying degrees by Turkey, Saudi Arabia, Qatar and Jordan, along with the US, UK and France, including through training and military operations. The latter have been aimed mainly at ISIL but have also targeted government forces on occasion. Israel has carried out air raids inside Syria, reportedly targeting Hezbollah and Iranian facilities. At the time of writing, a robust Turkish military offensive against Kurdish militias in north-eastern Syria is ongoing.

Negotiations between the Syrian government and several opposition groups to achieve a political transition in Syria, whether these were UN-facilitated talks conducted in Geneva on and off since June 2012, or the parallel “Astana process” talks sponsored by Iran, Russia and Turkey, have produced agreement only on the composition of a constitutional committee.

The humanitarian situation in Syria is overwhelmingly bleak. It is estimated that

more than 500,000 people have lost their lives in the conflict, most of them at the hands of pro-government forces. According to the UNHCR, out of a pre-war population of 22 million, over 5.6 million Syrian refugees are now in other countries, mainly Lebanon, Turkey and Jordan. Another 6.6 million persons are displaced within Syria.

Syria has also been a theatre for the use of chemical weapons, mainly but not exclusively by government forces, starting in March 2013. International pressure at the time led President Assad to agree to the complete removal and destruction of Syria’s chemical weapons arsenal, as demanded by the Council, and its accession to the Chemical Weapons Convention. Despite these actions, chemical weapons continued to be used in Syria, leading to two rounds of air strikes by the US, the UK and France against Assad’s military assets in 2017 and 2018.

The Security Council has been informed frequently and regularly on the situation in Syria and has acted, to varying degrees, on all three fronts—political, humanitarian and chemical weapons. Matters of individual accountability have been relevant to all three aspects of the conflict. As the following case study will show, aside from certain strides on the chemical weapons track, accountability has largely been marginalised in the Council’s work, despite the efforts of some Council members.

Approaching its ninth year at this writing, the Syrian conflict serves as a reminder not only of the devastating consequences of oppression, but also of the consequences of international divisions, including within the Security Council, where China and Russia have to date jointly vetoed seven resolutions on Syria, and Russia alone, seven more.

### THE SECURITY COUNCIL ON SYRIA

#### The humanitarian situation, besiegement as a method of war

From the outset of the conflict in Syria, hindering humanitarian access and aid to civilians as well as indiscriminate attacks and besiegement of civilians, including to the brink of starvation, became common forms of warfare, particularly at the hands of the Syrian government and its allies. The Council made significant strides on the humanitarian

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track, albeit starting three years after the conflict broke out, adopting resolutions obligating all parties, including the Syrian government, to allow for humanitarian access to besieged areas. Accountability for the tactics of besiegement, impeding humanitarian access and indiscriminate attacks against populated areas was, however, largely ignored. On top of progress on cross-border access in general, at points of heightened conflict over specific besieged areas, the Council tried and at times succeeded—if in very limited fashion—to mitigate somewhat the disastrous effects of the conflict.

The first significant breakthrough in the Council on the humanitarian track came in October 2013. In a presidential statement on 2 October, the Council expressed grave alarm at the significant and rapid deterioration of the humanitarian situation in Syria and recognised that the magnitude of the humanitarian tragedy caused by the conflict required immediate action to facilitate safe and unhindered delivery of humanitarian assistance in the whole country. It condemned all cases of denial of humanitarian access, and recalled that arbitrarily depriving civilians of objects indispensable to their survival, including wilfully impeding relief supply and access, can constitute a violation of international humanitarian law. It urged all parties to facilitate humanitarian efforts and stressed the need to end impunity for violations of international humanitarian law and violations and abuses of human rights, reaffirming that those who have committed or are otherwise responsible for such violations and abuses in Syria must be brought to justice.

Syria's unwillingness to act on the presidential statement led to the first Council resolution on humanitarian access. On 22 February 2014, the Council unanimously adopted resolution 2139 on the initiative of Australia, Jordan and Luxembourg, demanding that all parties, in particular the Syrian authorities, allow humanitarian access across conflict

lines, in besieged areas and across borders, and expressing its intent to take further steps in case of non-compliance.

The vote followed two weeks of intense negotiations that resulted in significant compromises on references in the draft to Syria's unwillingness to implement the presidential statement on humanitarian access, possible sanctions in case of non-compliance, cross-border access and access to besieged areas, aerial bombardment, accountability and counter-terrorism. Russia said both publicly and during negotiations that the threat of sanctions was a non-starter. As a result, the resolution dropped the intent to impose measures under Article 41 if demands were not met within 15 days, which had been included in a previous draft, instead retaining a less specific intent to take further steps in case of non-compliance. An earlier draft had stressed accountability, recalling the relevance of the ICC, but the final text only emphasised that those responsible for violations of international humanitarian law and human rights abuses should be brought to justice. The references to the ICC raised concerns among a few members, particularly Russia, Rwanda and the US.

On 26 June, Under-Secretary-General for Humanitarian Affairs Valerie Amos briefed Council members, reporting the continued lack of progress in implementing any of the key demands in resolution 2139, such as authorising cross-border aid operations, allowing access to besieged or hard-to-reach areas, observing medical neutrality, ceasing aerial bombardments, and easing administrative hurdles. She presented a report to Council members illustrating the Syrian government's abuse of the distribution of humanitarian aid as a tactic of war.

On 14 July 2014, following five weeks of intense negotiations between the penholders on the Syria humanitarian track—Australia, Jordan and Luxembourg—and the P5, and a further three rounds of negotiations with

the full Council, the Council adopted resolution 2165, authorising cross-border and cross-line access for the UN and its partners to deliver humanitarian aid in Syria without state consent. Opening the potential to help 2.9 million people in need, the resolution authorised access through four border crossings and a mechanism to monitor aid convoys and notify the Syrian authorities. The first such convoy traversed the Beb al-Salam crossing from Turkey on 24 July.

On 13 December 2018, the Security Council adopted resolution 2449 prepared by Sweden and Kuwait, once again authorising cross-border and cross-line humanitarian access to Syria. China and Russia abstained. In a preambular paragraph, the Council noted with concern that “impunity in Syria contributes to widespread violations and abuses of human rights and violations of international humanitarian law” and stressed the need to end impunity for these violations, but with no suggestion of follow-up actions.

The story of Aleppo at the end of 2016 is a telling one as to the dire effects of besiegement in Syria and the Council's limitations in this regard. After a short cease-fire between Russian and Syrian government forces and Western-backed rebels collapsed in September 2016, Russia and the Syrian government forces turned their focus to the rebel-held eastern part of Aleppo, unleashing a fierce bombing campaign. Media reports suggested that in their efforts to subdue the rebels, little was done to avoid causing civilian casualties; warplanes dropped indiscriminate munitions such as cluster bombs and incendiary bombs and targeted medical facilities, search and rescue teams, and aid workers.

During the onslaught, the humanitarian penholders—at the time Egypt, New Zealand and Spain—circulated a draft resolution in late November that called for a seven-day pause to all attacks in Aleppo. Russia asserted that a truce in Aleppo should only go into effect after the country-wide separation of

**UN DOCUMENTS ON SYRIA** [Security Council Resolutions S/RES/2449](#) (13 December 2018) was a resolution prepared by Sweden and Kuwait renewing the authorisation for cross-border and cross-line humanitarian access to Syria. [S/RES/2401](#) (24 February 2018) demanded a cessation of hostilities in Syria; it was adopted unanimously. [S/RES/ 2328](#) (19 December 2016) demanded UN access to monitor evacuations from Aleppo. [S/RES/2319](#) (17 November 2016) renewed the mandate of the UN-OPCW Joint Investigative Mechanism for a further year. [S/RES/2235](#) (07 August 2015) established the UN-OPCW Joint Investigative Mechanism (JIM) to determine responsibility for the use of chemical weapons in Syria. [S/RES/2209](#) (6 March 2015) condemned the use of toxic chemicals such as chlorine, without attributing blame; stressed that those responsible should be held accountable; recalled resolution 2118; and supported the 4 February 2015 decision of the OPCW. [S/RES/2165](#) (14 July 2014) authorised cross-border and cross-line access for the UN and its partners to deliver humanitarian aid in Syria without state consent and established a monitoring mechanism for 180 days. [S/RES/2139](#) (22 February 2014) demanded that all parties, in particular the Syrian authorities, allow humanitarian access in Syria across conflict lines, in besieged areas and across borders and expressed the intent to take further steps in the case of non-compliance. [S/RES/2118](#) (27 September 2013) required the verification and destruction of Syria's chemical weapons stockpiles, called for the convening of the Geneva II peace talks, and endorsed the establishment of a transitional governing body in Syria with full executive powers. It was adopted unanimously. [S/RES/2043](#) (21 April 2012) established UNSMIS. [S/RES/2042](#) (14 April 2012) authorised the deployment of 30 military observers to Syria. **Security Council Presidential Statements** [S/PRST/2019/12](#) (8 October 2019) was a presidential statement welcoming the Secretary-General's announcement of the formation of the Constitutional Committee. [S/PRST/2013/15](#) (2 October 2013) was a presidential statement on humanitarian access in Syria, which urged the government to take immediate steps to allow for expanded relief operations and lift bureaucratic obstacles. [S/PRST/2012/6](#) (21 March 2012) was a presidential statement supporting the Joint Special Envoy's six-point plan for mediation of the Syrian crisis. [S/PRST/2011/16](#) (3 August 2011) expressed concern over the deteriorating situation in Syria.



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Al-Nusra terrorist fighters from other armed opposition groups. The humanitarian penholders, the P3 and several other Council members maintained that “counterterrorism” was being used as an excuse by Russian and Syrian forces to justify targeting all opposition groups and civilians in eastern Aleppo. On 5 December 2016, the draft resolution was put to a vote and was vetoed by China and Russia. The targeted attacks and indiscriminate use of munitions were condemned by human rights groups, but continued unabated until the rebel front in Aleppo collapsed in December 2016, while the Council was unable to agree on a ceasefire.

On 13 December, France and the UK called for an emergency meeting of the Council, where the Secretary-General reported that after 48 hours of unprecedented levels of bombardment, the UN had seen an almost complete collapse of the armed opposition’s front lines in eastern Aleppo. He said that civilian deaths and injuries continued at a brutal pace. At that meeting, a majority of Council members called on Russia and Syria to allow impartial observers into Aleppo to monitor the situation of civilians. Meanwhile, Turkey and Russia had reached a deal for the evacuation of fighters and civilians from what remained of rebel-held eastern Aleppo.

The evacuations stalled repeatedly amid reports of convoys coming under fire, evacuation routes being cut off by government-allied militias, individuals being removed from buses leaving eastern Aleppo, and summary executions.

Against this backdrop the OCHA head, Under-Secretary-General for Humanitarian Affairs Stephen O’Brien, briefed Council members under “any other business” on 16 December. He reiterated that the UN stood ready to help but had been granted only very limited access to Aleppo. The UN was waiting for the Syrian government to approve the redeployment to Aleppo of existing UN staff in Syria, and permission for the UN to access

all affected areas there, he said. Following O’Brien’s briefing, France sought a vote on a draft resolution that called for evacuations to be carried out in line with international humanitarian law, and for direct observation, independent monitoring of and reporting on the evacuations and the situation of civilians inside eastern Aleppo. Finally, on 19 December, the Council was able to agree on resolution 2328, demanding UN access to monitor evacuations from Aleppo.

The Council’s inability to be a central actor in de-escalating humanitarian crises and besiegement situations was further evident in Eastern Ghouta and, at the time of writing, is still being manifested in Idlib. With the military offensive in Eastern Ghouta resulting in more than 1,200 civilian casualties since early February 2018, High Commissioner for Human Rights Zeid Ra’ad al-Hussein asked in a statement on 21 February, “How much cruelty will it take before the international community can speak with one voice to say enough dead children, enough wrecked families, enough violence, and take resolute, concerted action to bring this monstrous campaign of annihilation to an end?”

Finding momentary consensus among its members, the Council adopted resolution 2401 on 24 February, demanding that all parties cease hostilities for 30 days without delay and allow safe, unimpeded and sustained access each week to the humanitarian convoys of the UN and its implementing partners, including to hard-to-reach and besieged locations. Based on a Kuwaiti and Swedish draft, the separation of armed groups from terrorist organisations was critical to obtaining Russian agreement to the resolution. Resolution 2401 distinguished between terrorist groups designated by the Council—which would not be protected by the cessation of hostilities—and other armed groups that would be protected. After the resolution was adopted, evacuation of civilians was made possible by Russia’s direct engagement with these

armed groups in Eastern Ghouta (Jaish al-Islam, Faylaq al-Rahman and Ahrar al-Sham), which expressed their commitment to abide by the terms of the resolution.

However, the resolution was not implemented, as Syrian forces pressed forward with their onslaught, claiming they were fighting against the above-mentioned terrorist groups. On 12 March 2018, Secretary-General António Guterres told the Council that there had been no cessation of hostilities and that violence had continued not only in Eastern Ghouta but also in Afrin, Idlib, and Damascus and its suburbs. The delivery of humanitarian aid had not been safe, unimpeded or sustained, and no sieges had been lifted. He also underscored that efforts to combat terrorist groups did not supersede humanitarian obligations. Eventually, the remaining rebels surrendered in early April and those that remained, evacuated to Idlib, the last stronghold of opposition forces.

More generally, the Syrian government continued to advance and consolidate its control over its territory. It also targeted areas that were supposed to be part of the de-escalation zones (areas where fighting was to stop under the Astana agreement of May 2017 between Russia, Iran and Turkey). On 29 May 2018, Under-Secretary-General for Humanitarian Affairs Mark Lowcock told the Council how, after taking control of Eastern Ghouta and Yarmouk, the government had continued to prevent access by UN humanitarian actors, a point repeated in the Secretary-General’s 20 June monthly report on the humanitarian situation. The Director of the Coordination and Response Division of OCHA, John Ging, informed the Council on 27 June 2018 of the escalation of violence in southern Syria, such as the use of heavy artillery and aerial shelling to target civilian infrastructure, including several health facilities.

As the humanitarian situation worsened and denial of humanitarian access became

**UN DOCUMENTS ON SYRIA** [Security Council Presidential Statements](#), [Secretary-General’s Reports S/2019/509](#) (20 June 2019) was the annual report on children and armed conflict. [S/2018/465](#) (16 May 2018) was the latest annual report on children and armed conflict. [S/2016/738](#) (24 August 2016) was the JIM’s third report. [S/2015/813](#) (22 October 2015) was on the humanitarian situation. [S/2015/211](#) (25 March 2015) was on the 18th OPCW report on chemical weapons. [S/2013/735](#) (12 December 2013) was the final report of the UN investigation into chemical weapons use in Syria. [S/2013/149](#) (14 March 2013) was the second annual report on sexual violence in conflict. [Security Council Letters S/2019/208](#) (4 March 2019) was an FFM report regarding the chemical weapons attack in Douma in April 2018. [S/2018/732](#) (23 July 2018) included a report of the OPCW fact-finding mission in Syria regarding the incidents in Al-Hamadaniyah on 30 October 2016 and in Karm Al-Tarrab on 13 November 2016 and an interim report regarding the Douma 7 April 2018 incident. [S/2018/478](#) (17 May 2018) was a report of the Fact-Finding Mission of the OPCW determining that chlorine was likely used as a chemical weapon on 4 February 2018 in Saraqib. [S/2017/904](#) (26 October 2017) was a letter from the Leadership Panel of the OPCW, submitting the seventh report of the Joint Investigative Mechanism. [S/2016/807](#) (21 September 2016) was a letter from the President of the Security Council, in an exchange of letters with the Secretary-General, to extend the mandate of the JIM until 31 October 2016. [S/2015/794](#) (15 October 2015) was a letter from the President of the Security Council to the Secretary-General transmitting an ICRC letter on the ethical principles of health care in times of armed conflict and other emergencies. [S/2015/454](#) (18 June 2015) was a letter to the President of the Security Council by 71 member states that strongly believed the protection situation in Syria was getting worse – including the P3 and elected Council members Jordan, Lithuania, Malaysia, New Zealand and Spain – expressing outrage at the continued indiscriminate use of weapons, such as barrel bombs. [S/2014/955](#) (30 December 2014) was the transmission of the OPCW Fact-Finding Mission’s reports to the Security Council. [S/2014/361](#) (19 May 2014) was a letter from Switzerland, on behalf of 58 member states, calling for all UN member states to co-sponsor the draft resolution referring Syria since to the ICC.

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even more acute, another siege-related humanitarian crisis unfolded in Idlib. Concerns grew in the second half of 2018 when the area hosted 1.4 million civilians displaced by the conflict and 2.9 million people in all, including one million children. Despite constituting the last de-escalation zone, the presence in Idlib of around 10,000 fighters of Hay'at Tahrir al-Sham was used to justify military operations, including Russian and Syrian airstrikes.

The UN repeatedly warned of the possibility of a humanitarian emergency on a scale not yet seen in the Syrian conflict in case of an escalation of military activity in and around Idlib. Accordingly, international engagement over Idlib sought to avert both the anticipated major military operation by the Syrian government and its allies, as well as the humanitarian consequences of an assault. During the month of September 2018, the Council held four meetings on the escalating situation in Idlib. On the day of the final meeting, 18 September, Russia and Turkey announced the establishment of a separation of forces demilitarised zone 15 to 20 kilometres wide along the contact line between armed groups and government troops in Idlib.

The reprieve was temporary, and heavy fighting between the warring parties resumed when Syria and Russia stepped up bombardments in Idlib in April 2019 and Hay'at Tahrir al-Sham and other groups remained active in the demilitarised zone. OHCHR documented 1,089 civilian deaths (including 300 children) as a result of shelling and aerial bombardments in north-western Syria between 19 April and 29 August 2019 while OCHA reported 630,000 displacements—a figure that includes multiple displacements of the same person—between 1 May and 27 August, as people fled the fighting. On 30 August 2019, Russia announced a unilateral ceasefire that was confirmed by the Syrian government and appears to have led to a

reduction in violence.

In a push to achieve a new ceasefire, a Belgium-Germany-Kuwait draft resolution was put to a vote on 19 September 2019, deciding that all parties immediately cease hostilities in Idlib by noon on the following day. It demanded that all parties immediately end indiscriminate aerial bombardments, take feasible precautions to avoid and minimise harm to civilians and civilian objects, and respect and protect medical and humanitarian personnel. It demanded that all parties allow and facilitate safe, unimpeded and sustained humanitarian access for the UN and its implementing partners to requested areas and populations in Syria. The draft further reaffirmed that the Council will take further measures in the case of non-compliance with the resolution, in accordance with the UN Charter. The draft text also stated that all counter-terrorism measures, including in Idlib, must comply with international humanitarian law.

The draft resolution was vetoed by China and Russia, their main objection being the application of the cessation of hostilities to counter-terrorism operations, given that Russia and Syria have justified military operations in response to the threat of terrorist groups, including in Eastern Ghouta, after the adoption of resolution 2401. Russia and China also took issue with a reference to “further measures”, and to a proposed ceasefire monitoring mechanism. China and Russia tabled their own resolution calling for a ceasefire, clarifying that “the cessation of hostilities shall not apply to military operations against individuals, groups, undertakings and entities associated with terrorist groups, as designated by the Security Council”, similar to the distinction made in resolution 2401. Some Council members were concerned that an exception for counter-terrorism operations could offer a loophole to allow continued operations by Syria and Russia in Idlib, as

was the case in Eastern Ghouta. Only China and Russia voted in favour of their draft, with nine votes against and four abstentions.

At the time of writing, the situation in Idlib remains fluid, and the risk of resumed fighting depends largely on the unilateral ceasefire declared by Russia and Syria, which can end at any time. In his 29 August 2019 briefing, Lowcock stressed that 3 million civilians in Idlib remain at risk, reminding the Council that they enjoy “protection under international human rights law and international humanitarian law. The actions killing and displacing them must stop now. The situation in Idlib needs a predominantly political solution.”

### Interaction with the High Commissioner for Human Rights and the Human Rights Council

From the beginning of the conflict, the HRC exercised consistent engagement on accountability, by establishing bodies of inquiry and calling on the Security Council to act. The High Commissioner for Human Rights also engaged with the Security Council. The Council did not follow up and grew reluctant to interact with these bodies. By 2018, the Council was divided over the issue of receiving a Syria briefing from the High Commissioner for Human Rights.

Four days after High Commissioner Navi Pillay urged in informal consultations that the Council consider referring the “pattern of widespread or systematic human rights violations by Syrian security and military forces” to the ICC, the HRC established an Independent International Commission of Inquiry on the Syrian Arab Republic, on 22 August 2011. Its mandate was to investigate all alleged violations of international human rights law in Syria since March 2011. The Commission was also directed to establish the facts and circumstances that might amount to such violations and of the crimes

**UN DOCUMENTS ON SYRIA** [Security Council Letters S/2014/244](#) (2 April 2014) was a letter from France to the President of the Security Council, transmitting the “Caesar Report” regarding torture and executions in Syrian detention facilities. [S/2013/19](#) (14 January 2013) was a letter from Switzerland co-signed by 56 other member states, requesting that it refer the situation as of March 2011 to the ICC. [S/2013/184](#) (25 March 2013) was a letter from the Secretary-General informing the Council of his intention to conduct an investigation into the alleged use of chemical weapons in Syria. [S/2013/19](#) (14 January 2013) was a letter from Switzerland to the President of the Security Council and the Secretary-General, requesting the Council to refer the situation in Syria since March 2011 to the ICC. The letter was co-signed by 56 other member states including Council members Australia, France, Luxembourg, the Republic of Korea and the UK. [Security Council Meeting Records S/PV.8645](#) (24 October 2019) was a meeting on the political and humanitarian situation in Syria. [S/PV.8623](#) (19 September 2019) was on the humanitarian situation in Syria. [S/PV. 8609](#) (20 August 2019) was a meeting on political and humanitarian situations in Syria. [S/PV.8553](#) (18 June 2019) was on the situation in north-western Syria. [S/PV.8527](#) (17 May 2019) was on the situation in north-western Syria. [S/PV.8493](#) (27 March 2019) was a briefing on the political and humanitarian situations in Syria. [S/PV.8411](#) (29 November 2018) was a briefing by Reena Ghelani, Director for Operations and Advocacy in the Office for the Coordination of Humanitarian Affairs on Syria. [S/PV.8355](#) (18 September 2018) was a briefing by Under-Secretary-General for Humanitarian Affairs Mark Lowcock and Special Envoy Staffan de Mistura. [S/PV.8347](#) (11 September 2018) was a briefing requested by Russia on the Astana process. [S/PV.8345](#) (7 September 2018) was a briefing on Idlib by de Mistura and Ging. [S/PV.8269](#) (29 May 2018) was a briefing by Under-Secretary-General for Humanitarian Affairs Mark Lowcock. [S/PV.7476](#) (29 June 2015) was a briefing by Assistant Secretary-General for Humanitarian Affairs Kyung-wha Kang. [S/PV.8296](#) (27 June 2018) was a briefing on cross-border operations by Special Envoy Staffan de Mistura and Director of the Coordination and Response Division of OCHA John Ging. [S/PV.8225](#) (9 April 2018) was a briefing by Deputy to the High Representative for Disarmament Affairs, Thomas Markram, and de Mistura. [S/PV.8209](#) (19 March 2018) was a meeting at which the Council failed to garner nine votes to hold a briefing by High Commissioner for Human Rights Zeid Ra'ad al-Husseini.

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perpetrated and, where possible, to identify those responsible, with a view to ensuring that perpetrators would be held accountable, including for violations that might constitute crimes against humanity. Furthermore, the HRC recommended that the Security Council consider referring the situation in Syria to the ICC, as the High Commissioner for Human Rights had urged.

The following day, in an effort to address accountability, the UK circulated to members of the Security Council a draft resolution imposing sanctions on Syria. The draft, which was supported by the European members of the Council and the US, called for freezing the assets of Assad, other key Syrian figures, and four entities, as well as a travel ban on 22 individuals. It also included an arms embargo, set up a new sanctions committee and requested the Secretary-General to create a panel of experts to support that committee's work. The draft resolution noted the HRC's recommendation regarding a referral to the ICC and welcomed its decision to establish the independent international commission of inquiry. This draft was not put to a vote, due to Russia's known opposition to sanctions against Syrian officials.

A vote did take place on a draft resolution on 4 October 2011. Early versions of the text contained references to accountability, including mention of the ICC in a preambular paragraph, and a number of human rights references. These were later taken out of the final draft in response to requests, in particular by Russia and Brazil, to strengthen language on resolving the crisis peacefully and through an inclusive Syrian-led political process. Language condemning the Syrian crackdown on protesters was retained, as was language on possible consideration of imposing sanctions on Syria. Several Council members still had concerns, especially about including language on the intention

to consider adopting targeted measures. In the end, the draft resolution was vetoed by China and Russia, with Brazil, India, Lebanon and South Africa abstaining.

With Council members still divided and unable to take action, Russia circulated a draft resolution on 15 December 2011. During the negotiations, EU Council members and the US proposed changing language that suggested symmetry in violence by the opposition and the government, and introduced other elements, including stronger human rights references, an explicit call for cooperation with the HRC's Commission of Inquiry, the need for accountability, and a demand for full implementation of an Arab League initiative to stop the violence in Syria. Russia decided not to pursue a resolution.

As soon became clear, the findings of the Commission of Inquiry were pointing principally towards the Syrian government as the main perpetrator of mass crimes. Its update report of 24 May 2012 found that most of the human rights violations were being committed by the Syrian army and security services during military operations conducted in areas regarded as supportive of anti-government armed groups. The Commission received several accounts of anti-government armed groups also committing human rights abuses. Pillay conveyed this information regularly to the Council, reporting on the increase in violence and noting that government forces were likely to have committed crimes against humanity. Nevertheless, the Council was unable to act on this information.

The Commission of Inquiry collected evidence of mass crimes committed in Syria over the years. Though the Council never agreed to be briefed formally by the Commission of Inquiry, members of the Commission briefed Council members in eight Arria-formula meetings between 2012 and 2018. One such meeting occurred when, on the initiative of

France, two members of the Commission team were invited to brief Council members in an Arria-formula meeting on 15 April 2014 as part of a wider strategy to bring accountability for human rights violations to the forefront of Council action. Eventually, a draft resolution referring the situation in Syria to the ICC was vetoed by China and Russia. At press time, the last Arria-formula meeting with the Commission of Inquiry on Syria had been held on 28 November 2018.

The Commission of Inquiry was not alone in highlighting mass crimes being committed in Syria. On 16 May 2012, for example, the UN Committee against Torture considered the situation in Syria, in particular, widespread killings, torture in hospitals and detention centres, torture of children, and sexual torture. The committee had requested a special report from Syria describing the measures it was taking to effectively implement its obligations under the Convention against Torture, but Syria did not provide the report, nor did it attend the session. The committee also discussed alleged violations by armed opposition groups.

In another example, on 18 April 2013, the Special Representative on Sexual Violence in Conflict, Zainab Bangura, highlighted the findings from the recent Secretary-General's report on sexual violence in conflict that identified Syrian government forces and their allied militia, the Shabbiha, as the main perpetrators of sexual violence against women, men and children and noted widening allegations of sexual violence being committed by all parties in the conflict. (Syrian government forces and the Shabbiha were added to the annex of the 2013 Secretary-General's report, which lists parties credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence.) She added that her message to the perpetrators of such abuses is that "justice may be delayed,

**UN DOCUMENTS ON SYRIA Security Council Meeting Records** S/PV.7543 (27 October 2015) was a briefing by OCHA on the humanitarian situation in Syria. S/PV.6949 (18 April 2013) was a briefing by Under-Secretary-General for Humanitarian Affairs Valerie Amos, High Commissioner for Refugees António Guterres, Special Representative of the Secretary-General on Sexual Violence in Conflict Zainab Bangura, and Special Representative of the Secretary-General on Children and Armed Conflict Leila Zerrougui. S/PV.6725 (28 February 2012) was a briefing by Under-Secretary-General for Political Affairs B. Lynn Pascoe on the situation in the Middle East. S/PV.6711 (4 February 2012) was the meeting during which China and Russia vetoed a draft resolution, sponsored by Morocco. S/PV.6531 (10 May 2011) was the debate on the protection of civilians at which Ivan Simonović, the Assistant Secretary-General for Human Rights, briefed. **Security Council Press Statements** SC/12690 (20 January 2017) condemned the destruction of cultural heritage by ISIL in Syria following reports of the destruction of the tetrapylon and parts of the theatre of Palmyra. SC/12569 (28 October 2016) condemned the attack on a school complex in Haas village, Idlib governorate, on 26 October, which killed at least 22 children and teachers, and on a school in the western part of Aleppo on 28 October, which killed a number of children, and called for impartial investigations. SC/11921 (5 June 2015) condemned indiscriminate attacks on civilians. SC/11626 (30 October 2014) expressed support for the role and efforts of the Special Envoy for Syria, Staffan de Mistura. SC/11028 (7 June 2013) expressed grave concern over heavy fighting in Al-Qusayr and called for unhindered humanitarian access. SC/10658 (27 May 2012) condemned the 25 and 26 May attacks in El-Houleh. **General Assembly Documents** A/74/313 (22 August 2019) was the fourth report of the IIM. A/RES/73/182 (17 December 2018) was a resolution on the human rights situation in Syria. A/RES/72/191 (19 December 2017) was a resolution on the human rights situation in Syria. A/RES/71/248 established 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" (IIIM). A/RES/71/203 (19 December 2016) was a resolution on the human rights situation in Syria. A/RES/70/234 (23 December 2015) was a resolution adopted by the General-Assembly's Third Committee on the human rights situation in Syria. A/RES/69/189 (18 December 2014) condemned the Syrian regime and ISIS and expressed regret that a May 2014 Security Council draft resolution referring the situation in Syria to ICC was not adopted.

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but it will not be denied”. Special Representative of the Secretary-General for Children and Armed Conflict Leila Zerrougui drew the Council’s attention to the fact that more than three million children inside Syria had been affected by the conflict, and more than 600,000 children had been counted among the refugees in the subregion.

After the closed consultations that followed, Council members were only able to agree on elements to the press, apparently with great difficulty, in which they strongly condemned incidents of sexual violence and violence against children, urged all parties to protect civilians and respect international humanitarian law, and “underlined the need to facilitate the provision of humanitarian assistance through the most effective ways, including where appropriate across borders in accordance with guiding principles of humanitarian assistance.”

In a final example, the 20 June 2019 annual report of the Secretary-General on children and armed conflict recorded that 2018 had seen the highest number of verified grave violations against children ever recorded in Syria. This finding, which continued the trend identified in the 16 May 2018 annual report, was not met with any reaction from the Council.

The HRC was more assertive than the Security Council on the Syrian conflict, adopting resolutions on the crimes committed and the need for accountability. On 1 October 2015, it adopted a resolution on Syria with 29 votes in favour, six against (including Security Council members Russia, China and Venezuela) and 12 abstentions, including Security Council member Nigeria. The resolution condemned the continued systematic, widespread and gross violations and abuses of human rights and all violations of international humanitarian law by the Syrian authorities and affiliated militias; terrorist acts and violence committed against civilians by ISIL, including the gross and systematic

abuse of women’s and children’s rights; the Syrian authorities’ use of heavy weapons, cluster munitions and aerial bombardments, including any indiscriminate use of ballistic missiles and barrel bombs; attacks on medical facilities and the starvation of civilians as a method of combat. It also recommended that the General Assembly submit reports of the HRC’s Commission of Inquiry on Syria to the Security Council for appropriate action.

On 23 March 2016, the HRC adopted a resolution submitted by France, Germany, Italy, Jordan, Kuwait, Morocco, Qatar, Saudi Arabia, Turkey, the UK and the US on the human rights situation in Syria, with a vote of 27 in favour, six against (including Security Council members China, Russia and Venezuela) and 14 abstentions. The resolution strongly condemned the continued systematic, widespread and gross violations and abuses of human rights and all violations of international humanitarian law by all parties; demanded that all parties take all appropriate steps to protect civilians; stressed the need to pursue practical steps towards accountability, noting the important role the ICC could play; demanded that the Syrian authorities facilitate, and all other parties not hinder, the full, immediate and safe access of UN and humanitarian actors; and extended for one year the mandate of the Commission of Inquiry. The resolution also reiterated the recommendation that the General Assembly submit the reports of the commission to the Security Council for appropriate action.

The activity of the HRC, the reports of its Commission of Inquiry, and statements made by the High Commissioner for Human Rights, Zeid Ra’ad al-Husseini, on atrocities committed in Syria and the need for accountability, led to an unprecedented procedural vote on a briefing by al-Husseini on Syria in 2018.

At an urgent 2 March 2018 HRC debate, al-Husseini mentioned that the perpetrators of crimes in Syria “must know they are

being identified, that dossiers are being built up with a view to their prosecution, and that they will be held accountable for what they have done”. He reiterated his view that the situation in Syria should be referred to the ICC. At the time, the Commission of Inquiry released two reports on crimes committed in Syria. One report found that between 8 July 2017 and 15 January 2018, civilians had been deliberately targeted through unlawful means and methods of warfare, medical facilities and schools were repeatedly attacked, and denial of humanitarian aid was being used as a weapon of war. The second report, of 15 March, focused on sexual and gender-based violence and found that this had been used by parties to the conflict as a means to achieve their objectives. It recommended that the Security Council include regular briefings by the commission as part of its formal agenda, including on the use of sexual violence.

Against the backdrop of his statements on Syria and these reports, al-Husseini was scheduled to brief the Council on the human rights situation in Syria on 19 March. France requested the meeting with the support of the Netherlands, Peru, Poland, Sweden, the UK and the US. However, Russia initiated a procedural vote on whether to convene the meeting, which fell short of the nine votes needed for the meeting to go ahead. Bolivia, China, Kazakhstan and Russia voted against having the meeting, while Côte d’Ivoire, Equatorial Guinea and Ethiopia abstained. In lieu of a formal meeting, al-Husseini was asked to brief members in an Arria-formula format that same afternoon organised by the countries that had requested the meeting. This was the first time a procedural vote was taken specifically on holding a briefing by the High Commissioner in any context.

At press time, this was the most recent attempt to have the High Commissioner for Human Rights brief the Council on Syria. Meanwhile, the HRC remains active on Syria,

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**UN DOCUMENTS ON SYRIA** *General Assembly Documents A/RES/68/182* (18 December 2013) Condemned human rights violations in Syria and urged the Security Council to take measures to end violations there. The resolution was drafted by Saudi Arabia and was passed by 127 votes in favor, 13 against and 47 abstentions. *A/RES/67/262* (15 May 2013) Strongly condemned the Syrian government’s indiscriminate violence against civilian populations and welcomed the establishment of the National Coalition for Syrian Revolutionary and Opposition Forces as interlocutors needed for a political transition. *Human Rights Council Documents A/HRC/42/L.22* (24 September 2019) was a resolution on human rights in Syria by a vote of 27 in favour, six against and 13 abstentions. *A/HRC/42/51* (15 August 2019) was a report of the Independent International Commission of Inquiry on the Syrian Arab Republic. *A/HRC/RES/39/15* (28 September 2018) was a resolution on the human rights situation in Syria. *A/HRC/38/CRP.3* (20 June 2018) was a conference room paper of the Independent International Commission of Inquiry on Syria. *A/HRC/38/29* (15 May 2018) was the summary report on the high-level panel discussion on violations of the human rights of children in Syria. *A/HRC/RES/37/29* (23 March 2018) was a resolution extending the mandate of the Commission of Inquiry on Syria for one year. *A/HRC/37/CRP.3* (15 March 2018) was a conference room paper of the Independent International Commission of Inquiry on Syria on sexual and gender-based violence. *A/HRC/RES/37/1* (5 March 2018) was a resolution on the deteriorating situation of human rights in Eastern Ghouta. *A/HRC/31/CRP.3* (23 February 2018) was a report by the Commission of Inquiry on sexual and gender-based violence in Syria, covering March 2011 to December 2017 and based on 454 interviews. *A/HRC/37/72* (1 February 2018) was the report of the Commission of Inquiry on Syria, presented at the HRC’s 37th session. *A/HRC/34/64* (2 February 2017) was a report of the HRC’s Commission of Inquiry on Aleppo. *A/HRC/S-25/L.1* (21 October 2016) was adopted at a special HRC session, demanding that the Syrian government and its allies end immediately all aerial bombardments of, and military flights over, Aleppo and requests the Commission of Inquiry to conduct an inquiry into the events in Aleppo and present a report to the HRC in March.

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adopting a resolution on 27 September 2019 deploring the fact that the conflict in Syria continues in its ninth year with a devastating impact on the civilian population. The HRC's Commission of Inquiry continues to report on casualties in Syria, including in Idlib and also in north-eastern Syria, the latter as a result of the ongoing Turkish offensive against Kurdish forces. In a press briefing on 15 October, a spokesperson for the High Commissioner for Human Rights (now Michelle Bachelet) noted that "since the Turkish military offensive began on 9 October, we have verified a number of civilian casualties each day as a result of airstrikes, ground-based strikes and sniper fire."

### Attempts at accountability mechanisms: the ICC referral

From the early stages of the conflict, there were calls for the Security Council to act on accountability, particularly to refer the situation in Syria to the ICC.

The General Assembly resolutions of 15 May and 18 December 2013 suggested that the Council should consider referring the situation to the ICC, noting the repeated encouragement by High Commissioner Pillay to do so. It also called on the Council to take appropriate action on accountability.

As the conflict progressed and these calls continued, with no political solution in sight, some Council members sought to recall the relevance of the ICC to the situation in Syria and, eventually, to refer the situation to the ICC. On 14 January 2013 Switzerland submitted a letter to the Council, co-signed by 56 other member states, requesting that it refer the situation as of March 2011 to the ICC. (A similar letter by Switzerland, on behalf of 58 member states, was sent to the Council on 19 May 2014).

Within the Council, however, the mere mention of the ICC in the context of Syria remained divisive: to facilitate agreement, ICC references were deleted from the final

text of resolution 2139 of 22 February 2014 on humanitarian access.

The repeated appeals of successive High Commissioners for Human Rights and HRC resolutions for ICC referral have been largely ignored by the Council. The single attempt by the Council to refer the situation in Syria to the ICC came after an 8 April 2014 briefing by Pillay, where she told Council members that there was "massive evidence" that war crimes and crimes against humanity had been committed and indicated responsibility at the highest level. Once again, she called for a referral to the ICC, adding that the government was responsible for most violations and that her office could identify the perpetrators in the event of a referral.

The collapse of peace talks between the Syrian government and its opponents around that time contributed towards a shift by France and the US, as well as many other Council members, towards taking up Pillay's call. Russia, on the other hand, characterised the idea of an ICC referral as poorly timed and counterproductive. On 22 May 2014, China and Russia cast their fourth joint veto on Syria and blocked the French draft resolution referring Syria to the ICC, which had been co-sponsored by 65 member states. All other Council members voted in favour of the referral.

Though the General Assembly on 18 December 2014 expressed its regret that the draft resolution had failed, and calls continued by the High Commissioner and others to refer the situation to the ICC, Council members have made no further attempts to advance the ICC option.

### Accountability for chemical weapons attacks

In 2013, an alarming new element of the conflict appeared in the form of chemical warfare. The Council has been active on the chemical weapons track with some success, including on accountability, though this consensus

diminished over time.

On 19 March 2013, the Syrian government and opposition each accused the other of employing chemical weapons in an attack that killed dozens in Aleppo province. France raised the issue in the Council under "other matters" on 20 March. At the media stakeout following those consultations, Security Council president Ambassador Vitaly Churkin (Russia) said that the discussions in the Council had included "such exotic proposals" as an investigation of "rumours" of other uses of chemical weapons inside Syria. Difficulties in addressing the use of chemical weapons were made evident when Council members failed to agree on a statement condemning such attacks after a chemical attack in Ghouta, on the outskirts of Damascus, killed hundreds of people on 21 August.

A first sign of progress occurred in the lead-up to possible unilateral US military strikes on Syria over the government's use of chemical weapons, when, on 9 September 2013, Russia proposed that Syrian chemical weapons stocks be put under international control. On 14 September, Russia and the US agreed to a framework for the elimination of such weapons. On 27 September, the Security Council met at ministerial level and adopted resolution 2118, which required the verification and destruction of Syria's chemical weapons by mid-2014.

Security Council members were briefed on 16 December 2013 on the final report of a UN Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic, established by the Secretary-General in March, that included the results of the investigation into seven allegations of chemical weapons use in Syria. The report reiterated that there was convincing evidence that chemical weapons had been used on a relatively large scale in Ghouta on 21 August 2013. The report also described credible evidence of chemical weapons use

**UN DOCUMENTS ON SYRIA** Human Rights Council Documents [A/HRC/33/55](#) (11 August 2016) was the report of the Commission of Inquiry on Syria considered by the HRC during its 33rd session in September. [A/HRC/RES/32/25](#) (1 July 2016) was an HRC resolution that condemned the continued systematic, widespread and gross violations and abuses of human rights and all violations of international humanitarian law by the Syrian authorities and affiliated militias and the terrorist acts committed by ISIL and Al-Nusra. [A/HRC/32/CRP.2](#) (16 June 2016) was a report of the Commission of Inquiry on Syria, which found that ISIL had committed, and continued to commit, the crime of genocide against the Yazidis. [A/HRC/RES/31/17](#) (23 March 2016) was an HRC resolution which strongly condemned the continued systematic, widespread and gross violations and abuses of human rights and all violations of international humanitarian law by all parties; demanded that all parties take all appropriate steps to protect civilians; stressed the need to pursue practical steps towards accountability, and noting the important role the ICC could play. [A/HRC/RES/30/10](#) (1 October 2015) was an HRC resolution which condemned the continued systematic, widespread and gross violations and abuses of human rights and all violations of international humanitarian law by the Syrian authorities and affiliated militias, and terrorist acts and violence committed against civilians by ISIL. [A/HRC/29/CRP.3](#) (23 June 2015) was an oral update of the Commission of Inquiry on Syria. [A/HRC/28/69](#) (5 February 2015) was the ninth report of the Commission of Inquiry on Syria. [A/HRC/RES/27/16](#) (25 September 2014) was an HRC resolution that strongly condemned the lack of cooperation by the Syrian authorities with the Commission of Inquiry. [A/HRC/RES/26/23](#) (27 June 2014) condemned all violations and abuses committed against the Syrian civilian population and demanded Syria's cooperation with the Commission of Inquiry. [A/HRC/RES/23/1](#) (29 May 2013) requested the Commission of Inquiry to investigate the events in Al Qusayr; it was adopted following a three-hour urgent debate held at the request of Qatar, Turkey and the US. [A/HRC/25/65](#) (12 February 2014) was a report by the Commission of Inquiry on Syria saying that absolute impunity pervades the Syrian conflict and that it was for the Security Council to make the pursuit of justice possible, including an ICC referral.

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earlier in 2013 in other locations in Syria.

Nevertheless, while the Council met on a monthly basis to discuss the use of chemical weapons, they did little else in this regard until 30 December 2014, when the P3 (France, the UK and the US), along with Australia, Jordan, Lithuania, Luxembourg and the Republic of Korea, transmitted to the Security Council a report on Syria's use of chlorine bombs by the Fact-Finding Mission (FFM) established by the Organisation for the Prohibition of Chemical Weapons (OPCW). The report concluded with "a high degree of confidence that chlorine has been used as a weapon", and that there was evidence that chlorine had been consistently and repeatedly used in barrel bombs dropped from helicopters. While the FFM did not have a mandate to attribute blame, its report pointed in an obvious direction, as only the government had aerial capacity and only rebel-held areas were targeted.

Frustration was mounting among several Council members by summer 2015 after the matter of chlorine bomb attacks had been raised regularly but fruitlessly for over a year during Council members' monthly consultations on Syrian chemical weapons. After almost four months of P5 negotiations, largely between Russia and the US, the Council adopted resolution 2235 on 7 August 2015 establishing the UN-OPCW Joint Investigative Mechanism (JIM) to determine responsibility for the use of chemical weapons in Syria. This was to allow the Council to receive explicit information identifying the actors responsible for the use of chemical weapons in Syria. The JIM was established for a period of one year. Its mandate to attribute responsibility was tied closely to the OPCW FFM determination of chemical weapons use. In addition, the JIM was not limited to relying on information and evidence obtained or prepared by the FFM.

The JIM would eventually produce seven reports, ascribing responsibility to the Syrian government for four attacks (Khan Shaykhun on 4 April 2017, Qmenas and Sarmin on 16 March 2015, and Talmenes

on 21 April 2014) and to ISIL for two (Um-Hawsh on 15-16 September 2016 and Mar- ea on 21 August 2015).

As the JIM began to assign responsibility in 2016, Russia questioned its working methods, criticising what it considered unsubstantiated conclusions in the reports. Russia also maintained that these findings were not definitive, pending investigations by the Syrian government, and could not be the basis for accountability measures. More broadly, since the beginning of the JIM's mandate, Russia and China advocated for an increased focus on the use of chemical weapons by terrorist groups, and circulated a draft resolution to that effect in April 2016, although this was never put to a vote.

Other Council members sought to take further action based on the JIM's findings. On 19 December 2016, France and the UK circulated a draft resolution seeking to impose sanctions on the Syrian government for the use of chemical weapons against its own population. Eventually, on 28 February 2017, China and Russia vetoed a P3-drafted resolution that would have imposed sanctions on perpetrators identified by the JIM's reports.

A new chemical weapons attack on the Khan Shaykhun area of Idlib on 4 April 2017, killing over 70 people, prompted a P3 draft resolution. The draft emphasised that the cooperation required with the JIM included Syria's obligation to provide information on air operations (such as flight plans and flight logs), names of all individuals in command of any helicopter squadrons, and access to air bases from which the JIM or the FFM believed chemical weapons attacks may have been launched, as well as responses to requests for meetings with generals and other officers. An alternative Russian draft resolution expressed deep concern regarding the "alleged incident with...chemical weapons", calling for a full-scale investigation as soon as possible while requesting the OPCW to share with the Council, for its consideration, the "personal composition" of the team that

would investigate the incident.

On 6 April, the US carried out airstrikes on the Shayrat airbase from which the Khan Shaykhun attack was purportedly carried out. On 12 April, Russia vetoed a draft resolution put forth by the UK, which condemned the chemical attack on Khan Shaykhun and did not mention the US attacks. In addition to the Russian veto, the draft received a negative vote from Bolivia, and abstentions from China, Ethiopia and Kazakhstan.

The Council proved unable to renew the JIM's mandate in 2017. On 2 November 2017, the US and Russia circulated competing draft resolutions on the renewal. The initial US draft characterised the information obtained by the JIM as constituting "sufficient, credible and reliable evidence to reach conclusions on those responsible for the use of chemical weapons", while the Russian text cited its methodological concerns. Though Russia refused to engage on the US draft, there were several rounds of negotiations on that draft with other members. On 16 November 2017, the US draft was vetoed by Russia, and the Russian draft received only four favourable votes (Bolivia, China, Kazakhstan and Russia).

Immediately after the failed votes, Japan circulated a draft that would have extended the JIM's mandate for one month while requesting the UN Secretary-General, in coordination with the OPCW, to submit proposals to the Council for the structure and methodology of the JIM "reflecting views of Security Council members". Twelve members voted for the draft resolution on 17 November, but Russia, which had already signalled that it did not support the draft, cast its 11th Syria veto, and the JIM's mandate ended.

Tensions among the permanent members heightened in April 2018 after the reported use of chemical weapons in Douma in Eastern Ghouta on 7 April. The attack prompted a revival of draft resolutions to establish an investigation mechanism that had been circulated earlier in the year but had not been pursued, intended to fill the vacuum left by

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the failure to renew the mandate of the JIM.

A Russian draft, first circulated on 23 January, proposed to establish the UN Independent Mechanism of Investigation (UNIMI) for a period of one year, in coordination with the OPCW. It urged UNIMI to hold “impartial, independent, professional and credible” investigations and stressed that the Security Council would thoroughly assess UNIMI’s conclusions. Some Council members raised concerns that the draft did not mandate the proposed mechanism to assign accountability for the use of chemical weapons (leaving such decisions to the Council instead) and that it would require on-site visits for reaching conclusions, when such visits were in many cases impossible. The Russian draft also stressed the need for UNIMI to establish its findings “beyond any reasonable doubt”, raising the standard of proof previously required of the JIM, which was “overwhelming”, “substantial” or “sufficient” evidence. On 10 April, the Russian draft was put to a vote and failed to be adopted, receiving six affirmative votes.

In parallel, the US had circulated its own draft resolution in late February. The US draft was also to establish a UNIMI for one year, based on the recommendations provided by the UN Secretary-General, in coordination with the OPCW, to identify those responsible for the use of chemical weapons in Syria. The US draft further condemned the alleged use of chemical weapons in Douma and demanded that all parties in Syria provide free and safe access without delay to any sites deemed relevant by the OPCW FFM. Likewise put to a vote on 10 April, the US draft resolution was vetoed by Russia, as it continued to oppose the idea that UNIMI would assign responsibility for chemical weapons attacks. China abstained.

Seeking common ground in the Council, Sweden had circulated draft elements for support to the FFM investigation into the alleged chemical weapons incident in Douma. Russia then substantially amended those elements – for example, deleting a reference to the situation as a threat to peace

and security – and presented them as a Russian draft. This second Russian draft resolution was also put to a vote on 10 April, but only received five affirmative votes.

At a meeting held the day before the 10 April votes, US Ambassador Nikki Haley said: “Russia’s obstructionism will not continue to hold us hostage when we are confronted with an attack like this one. The United States is determined to see that the monster who dropped chemical weapons on the Syrian people [is] held to account... Important decisions are being weighed even as we speak”. And indeed, on 13 April 2018, the US, along with France and the UK, carried out more than 100 airstrikes against Syrian military facilities that were reportedly involved in the storage and production of chemical weapons. Following the attack, Russia requested a briefing by the Secretary-General the next morning.

There was considerable discussion during the session about the responsibilities of states under international law. Some members (Bolivia, China, and Russia, among others) criticised the airstrikes as a violation of the sovereignty of a member state and an illegal use of force. Other Council members justified the airstrikes (France, the Netherlands, Poland, Sweden and the US), while the UK explicitly maintained that the attacks were legal as a humanitarian intervention, noting that it was hard to believe that it could be within the purposes of the UN Charter to use or condone the use of chemical weapons.

A Russian draft resolution tabled at the end of the meeting condemned the “aggression” against Syria by the US and its allies in violation of international law and the UN Charter. The draft failed to garner nine votes and received negative votes from all P3 members. Only three Council members voted in favour of the draft (Bolivia, China and Russia), while four abstained (Equatorial Guinea, Ethiopia, Kazakhstan and Peru). The remaining Council members voted against the draft.

On 4 March 2019, the Secretary-General submitted the FFM report on Douma, which concluded that there are reasonable grounds to believe that chlorine was used as a weapon there on 7 April 2018.

### Interaction with the General Assembly

The General Assembly has considered the situation in Syria regularly, against the backdrop of the recurrent inability of Council members to act. The Assembly has called for more Council action on Syria, including on matters of accountability, and for the Council to consider and act on the input from the HRC, a subsidiary body of the General Assembly.

As mentioned above, the General Assembly twice requested the Security Council to consider an ICC referral. After the Council failed to adopt the draft resolution referring the situation in Syria to the ICC, the General Assembly expressed regret over this failure in a resolution on 18 December 2014. The resolution emphasised the need to ensure that all those responsible for violations of international humanitarian law or violations and abuses of human rights law be held to account through appropriate fair and independent domestic or international criminal justice mechanisms, and called on the Security Council to take appropriate action to ensure accountability. This General Assembly has since repeated this message annually.

The General Assembly has also taken practical measures, most notably the establishment of the International, Impartial and Independent Mechanism (IIIM) for Syria. As the Council continued to waver on accountability, UN member states looked elsewhere. At the initiative of Liechtenstein and Canada, the General Assembly adopted a resolution on 21 December 2016 to establish 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”. On 3 July 2017, the

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Secretary-General appointed Catherine Marchi-Uhel as head of the IIIM. The IIIM is to collect, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files in order to facilitate criminal proceedings in national, regional or international courts or tribunals that have, or may in the future have, jurisdiction over these crimes, in accordance with international standards. It is thus not a court or a prosecutor's office, but a body that preserves and analyses information for possible future prosecutions. At present, according to its latest report of 22 August 2019, the IIIM is continuously collecting and analysing vast amounts of data from Syria on alleged crimes that have been committed, preparing criminal case files for future use, and responding to information requests from national jurisdictions.

### OBSERVATIONS

Since the conflict in Syria began, the Security Council has repeatedly shown its inability to play a significant role in either ending the crisis or in establishing accountability mechanisms for mass atrocities because of ongoing divisions among the permanent members, four of whom are actively involved in the conflict. Elected members have become increasingly frustrated, compounded by their frequent exclusion from the related negotiations. Syria has also highlighted the difficulty for some elected members to lead decisive Council action on a conflict where the national interests of permanent members are at play.

Such progress as there has been concerning accountability mechanisms in respect of the use of chemical weapons in Syria was a result of both military and political pressure on the Syrian government by several member states, particularly by the P3, which then manifested itself in Council action. Russia may have believed that this particular egregious aspect of the conflict could be contained and treated separately from the wider context of the war. It may be that Russia was also of the view that the mechanisms would enable Syria to avoid deeper consequences; however, once the JIM pointed critically at

the Syrian government's responsibility, Russia moved to end the JIM.

Elected members have been able to initiate Council action with respect to some aspects of the conflict, especially the humanitarian track, despite political pressure from the P5 who at times have preferred a more passive approach. Elected members also worked to reconcile or mitigate differences among permanent members on issues such as the JIM and accountability measures in respect of chemical weapons attacks. At other times, elected members sided with a particular permanent member or disagreed among themselves as to the usefulness of attempting to come between two permanent members with opposing positions.

The Council's success in agreeing on delivery of cross-border humanitarian assistance came with some costs, including toning down language on accountability and avoiding any concrete action on this front. The Council has been able to play only a limited role with respect to the situations in Aleppo, Ghouta and Idlib. Regarding Aleppo, it was only able to assert itself late in the process, after bilateral agreements were reached between Russia and Turkey to assure humanitarian corridors and access. Syria ignored its demand for a Ghouta ceasefire, without repercussions. In Idlib, it is likely that the international attention, including by Council members in several meetings, played a role in the agreement between Russia and Turkey on demilitarised zones, which provided temporary relief. This led to the hope that when the international community is able to coalesce around a particular situation at a particular moment, this can produce enough pressure on state actors, including the permanent members, to curtail some activities. Nevertheless, the reprieve from intense fighting has proven temporary, and renewed violence has resulted in disastrous repercussions for civilians. For its part the Council still struggles to play a significant role in addressing such situations, as shown by the failed 19 September 2019 attempt to impose a ceasefire.

Besides some progress, for a time, on accountability for chemical attacks, other attempts by the Council to end impunity

for crimes committed in Syria have made little headway. This was demonstrated by the vetoes on an ICC referral and the Council's inability to agree on strong language in its outcome documents and press statements over identifying those likely to have been responsible for mass atrocities and international crimes. In particular, any specific and significant language directed at the Syrian government for its responsibility for violations of international humanitarian law and gross violations of human rights law was quashed by Russia, usually with the backing of China and, at times, other Council members. Furthermore, limited progress on the chemical weapons track also highlighted the lack of Council action to curb other illegal methods of war, such as the use of barrel bombs on the civilian population.

The Council remains divided and seems incapable of rising to the needs of critical aspects of the Syrian conflict. It has not been able to seriously consider taking enforcement action in an attempt to end or limit the consequences of the fighting. In light of this, member states and other actors have looked to other bodies such as the General Assembly and the HRC to provide solutions.

Syria's political track has been a matter of discussion between international actors in Geneva, Astana and elsewhere. Enforcement actions have also moved outside the Council: other actors, including permanent members of the Council, have taken it upon themselves unilaterally and without Security Council authorisation to punish the Syrian government for its repeated use of chemical weapons against civilians, including by legally debatable use of force, such as the April 2018 aerial attack by the P3 in Syria.

Similarly, the Council played a very limited role with respect to accountability measures. Another UN organ, the General Assembly, moved to fill this void, regularly calling for practical accountability measures in several resolutions and establishing the IIIM.

The HRC has also been highly active on the Syria file, adopting numerous resolutions demanding the end of impunity in Syria and mandating thorough investigations of events on the ground. The Commission of

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**UN DOCUMENTS ON SYRIA** *Draft Resolutions That Were Not Adopted* [S/2016/846](#) (8 October 2016) was a draft resolution tabled by France and Spain that called for an end to all military flights over Aleppo, which had 43 co-sponsors. Eleven Council members voted in favour; Russia cast its fifth veto on a Syria draft resolution and China abstained, the first time it had not vetoed a Syria draft resolution alongside Russia. Elected member Venezuela voted no and elected member Angola abstained. [S/2014/348](#) (22 May 2014) was a draft resolution that would have referred Syria to the ICC. The draft was vetoed by China and Russia. [S/2012/538](#) (19 July 2012) was a draft resolution that would have stipulated that Syrian authorities cease troop movements and the use of heavy weapons in population centres. The draft was vetoed by China and Russia. [S/2011/612](#) (4 October 2011) was a draft resolution that called for accountability for human rights violations and would have condemned the use of force by Syrian authorities. The draft was vetoed by China and Russia.



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Inquiry established by the HRC continues to report on mass atrocities being committed in Syria and to demand accountability. With no formal link between the two bodies, the Council's interaction with the commission is dependent on the initiative of Council members, both in terms of the reports of the commission and meetings with its members. Successive High Commissioners for Human Rights have repeatedly pointed out the need to end atrocities and bring perpetrators to justice in Syria, calling on the Council to act by referring the situation to the ICC or through other measures. Council members have challenged and curtailed the High Commissioner's ability to provide information to the Council.

The Security Council's inability to take effective action has created a void that no other international body can fill, that of ending the conflict and bringing justice to the people of Syria.

### UKRAINE

#### BACKGROUND

Russia annexed Crimea in 2014, and a war between Ukrainian forces and pro-Russian separatists in eastern Ukraine that began the same year has killed over 13,000 people and injured 25,000 others. By September 2019, OCHA estimated that 3,000 civilians had died in the conflict, with approximately 3.5 million people in need of humanitarian assistance and 1.5 million people internally displaced.

The crisis can be traced back to 21 November 2013. In protest against President Viktor Yanukovich's decision not to sign an association agreement with the EU, crowds took to Kyiv's Independence Square (Maidan Nezalezhnosti) in the hundreds of thousands. Violence erupted on 23 November as riot police dispersed the crowd with extreme force, leaving 121 protesters dead and others unaccounted for.

On 22 February 2014, Yanukovich fled Kyiv with Russian assistance after signing a deal with the opposition to end the political crisis, brokered by France, Germany, Poland and the EU. The Ukrainian parliament (Verkhovna Rada) voted to remove Yanukovich and on 23 February granted expanded powers to its interim speaker, Oleksandr Turchynov, to serve as acting president. Two days later, Russia carried out a large-scale military exercise

in regions bordering Ukraine. In subsequent days, militias loyal to Russia seized government buildings and airports in the Crimean cities of Simferopol and Sevastopol.

On 1 March, Russia commenced a military operation in Ukraine, saying that this was to protect Russian citizens in the Crimean Peninsula. Ukraine described the situation as an invasion and occupation. On 6 March the parliament of the "Autonomous Republic of Crimea", the local Crimean legislature under Ukrainian law, voted to secede from Ukraine and become part of Russia. According to the official results of a referendum on the status of Crimea held on 16 March, over 80 percent of Crimeans favoured joining Russia. Despite targeted travel and financial sanctions imposed by the EU and the US, the formal annexation of Crimea and Sevastopol (which are distinct entities under Ukrainian law) was finalised on 21 March 2014 when President Vladimir Putin signed into law the constitutional amendments adding the two entities to the Russian Federation. Intimidation has continued against those who opposed the referendum and Russia's annexation, in particular the Crimean Tatars.

The situation in eastern Ukraine remains unresolved. Despite several ceasefire agreements between the sides during the conflict, notably the Minsk Agreement of 12 February 2015, endorsed by the Council in resolution 2202, fighting across or near the contact line separating the two sides continues to threaten civilian lives and property. According to the Organization for Security and Co-operation in Europe (OSCE) Special Monitoring Mission, at least 212 civilians were injured or killed in 2018, mostly from shelling and light weapons fire. At 28 October 2019, the mission had recorded 137 civilian casualties, including 16 deaths, and significant damage to civilian infrastructure, including to 11 schools and four kindergartens, by shelling and small-arms fire.

#### THE SECURITY COUNCIL AND UKRAINE

##### Accountability and the Ukrainian conflict

The political sensitivities around the conflict are made clear by the fact that Ukraine as such has never been on the Council's agenda but has been discussed under agenda items

referring to letters sent to the Council by Ukraine and Russia. Nevertheless, in the first few years of the conflict, the Council, at the initiative of Council members Lithuania and then Ukraine, met regularly to discuss the situation in Ukraine.

With the Council unable to take meaningful action due to a permanent member's involvement in the conflict, a difficulty evident from the outset, Ukraine eventually became peripheral to the Council's agenda. On 15 March 2014, on the eve of the Crimean referendum, Russia vetoed a draft resolution proposed by the US that reaffirmed the sovereignty, unity and territorial integrity of Ukraine. The draft called on Ukraine to continue to respect and uphold its obligations under international law and to protect the rights of all persons in Ukraine, including the rights of persons belonging to minorities. At present, this remains the only attempt by the Council to address the issue of Ukrainian territorial integrity. A resolution reaffirming the territorial integrity of Ukraine was passed by the General Assembly twelve days later on 27 March 2014.

At the time of writing, the last Council discussion on the conflict in Ukraine was on 16 July 2019, in a briefing by Under-Secretary-General for Political and Peacebuilding Affairs Rosemary DiCarlo and OSCE High Commissioner on National Minorities Lamberto Zannier. The meeting, on the wider conflict, came after an initial Russian attempt to have the Council discuss the Ukrainian language law that, it claims, runs counter to the spirit of the Minsk agreements and resolution 2202 by discriminating against Russian speakers, a request the Council rejected in a procedural vote on 20 May 2019.

Accountability for human rights and international humanitarian law violations has not been an area of focus for the Council in its consideration of the Ukrainian conflict (the situation is different with respect to the matter of Malaysia Airlines flight MH17, discussed below). Though regularly informed of the ongoing human rights violations, the Council did not move to address them.

The Office of the High Commissioner for Human Rights, at the invitation of the government of Ukraine, deployed the UN Human Rights Monitoring Mission in Ukraine (HRMMU) on 14 March 2014 to monitor and report on the human rights

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## Part II: Case Studies (Ukraine)

situation, recommend concrete follow-up actions to address human rights concerns, prevent human rights violations, and conduct a mapping of alleged human rights violations.

Between March 2014 and the end of 2015, Assistant Secretary-General for Human Rights Ivan Šimonović briefed the Council eight times on the situation in Ukraine. Šimonović and others expressed concern about alleged gross human rights violations, including the excessive use of force and extrajudicial killings, torture, disappearances, and arbitrary arrests and detentions. Drawing on the work of the HRMMU, he stressed the need to guarantee full respect for the rule of law and human rights, ensuring accountability for human rights violations, guaranteeing minority rights, and investigating violations committed during the protests in Kyiv and ahead of the referendum in Crimea.

The Council continued to receive regular updates on the human rights situation, but its attention was largely focused on the evolving humanitarian and political crises in the country, albeit with little progress on either. Beginning in 2016, discussions on the human rights situation in Crimea could no longer take place in public briefings, due to strong objections from Russia, and were confined to the Arria-formula format. An Arria-formula meeting on human rights, media freedom, and the situation of national minorities in Crimea and eastern Ukraine was held on 19 March 2015 at the initiative of Lithuania. Another, on impunity for human rights violations in Crimea, was held on 18 March 2016, initiated by Ukraine and focusing specifically on violations against the Crimean Tatars. During this Arria-formula meeting, the High Commissioner for Human Rights briefed Council members on Ukraine for the first time. Similar Arria-formula meetings on Crimea and the Tatars were convened on 15 March 2018 and 2019, respectively.

Even when the Council was still actively following the conflict in 2014-2015, it gave little attention to attacks against civilians. The Council did not react to an incident on 2 May 2014 in which 48 people were killed and

more than 200 injured, most of them pro-Russian activists, in clashes between political factions in Odessa. To date, according to OHCHR, those responsible have not been brought to justice, with some of the perpetrators yet to be identified and investigations conducted by Ukrainian authorities having been deemed ineffective by the HRMMU by September 2019. Council members did issue a press statement on 13 January 2015, after the shelling of a passenger bus in Volnovakha, Donetsk, in which 11 civilians were killed and 17 injured, condemning the act and calling for an investigation. Thirty people were killed and more than 100 were injured on 24 January 2015 in a rocket attack on the city of Mariupol. Secretary-General Ban Ki-moon condemned the attack, also noting that launching rockets indiscriminately into civilian areas could constitute a violation of international humanitarian law. After deeper analysis, the OSCE's Special Monitoring Mission reported that the rockets had come from rebel-held areas in the Donetsk region. Lithuania, the UK, and the US drafted a press statement condemning the attack on Mariupol. However, the Council failed to adopt the statement due to Russia's disagreement with the proposed language.

### Accountability and Malaysia Airlines flight MH17

Accountability was integral to the Council's consideration of the downing of Malaysia Airlines flight MH17 on 17 July 2014. Flight MH17, a codeshare with KLM Royal Dutch Airlines as KL4103, was proceeding from Amsterdam to Kuala Lumpur when it crashed close to the Russian border in the area of eastern Ukraine where there had been heavy fighting between Ukrainian government forces and separatists. All 298 people aboard were killed. MH17 carried individuals of many nationalities, including Australia, Belgium, Canada, Indonesia, Malaysia, New Zealand, the Philippines, Viet Nam and the Netherlands, the last-named losing 193 of its citizens. Shortly after the crash, representatives of the OSCE

tried to gain access to the site, but according to media reports, their initial attempts were blocked by separatists in control of the area. On 20 July, OSCE monitors were finally allowed to inspect the crash site. In the meantime, the separatists had collected the bodies and stored them in refrigerated train wagons in Torez, a town near the crash site.

As news of the crash broke, the UK, supported by Lithuania, requested an urgent Council meeting on Ukraine, which was held the following day. A press statement calling for a "full, thorough and independent investigation" was adopted just before the 18 July meeting. Council members at the meeting generally condemned the incident and called for an immediate international investigation. Some members, most notably the P3, EU members and Australia, directly blamed Russia for providing separatists with sophisticated weapons capable of downing an airplane at high altitude. Russia, on the other hand, questioned the decision of Ukrainian authorities to allow commercial aircraft to fly over an area of active military operations, saying that Ukraine was responsible for monitoring the safety of its airspace. Australia issued a statement indicating that the press statement by Council members was insufficient and that it planned to propose a draft resolution on the incident.

Three days later, the Council condemned the downing of the plane and called for a "full, thorough and independent" international investigation in accordance with international civil aviation guidelines in resolution 2166 of 21 July 2014. The resolution demanded that those responsible be held accountable and called on all states and actors in the region to cooperate fully with the investigation, and assist it, if requested. It also requested the Secretary-General to "identify possible options for UN support to the investigation and report to the Security Council on relevant developments". The Department of Political Affairs briefed the Council on the investigation twice (18 August and 19 September 2014), but the Secretariat did not produce a report on

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UN DOCUMENTS ON UKRAINE [Security Council Resolutions S/RES/2202](#) (17 February 2015) was a resolution that endorsed the "Package of measures for the Implementation of the Minsk Agreements" signed on 12 February 2015. [S/RES/2166](#) (21 July 2014) condemned the downing of Malaysia Airlines flight 17 and called for an investigation of the crash. [Security Council Presidential Statement S/PRST/2018/12](#) (6 June 2018) expressed concern over the worsening security situation in eastern Ukraine and condemned continuous violations of the ceasefire, including the use of heavy weapons. [Security Council Letters S/2015/528](#) (10 July 2015) was a letter to the President of the Security Council from Australia, Belgium, Malaysia, the Netherlands and Ukraine requesting the Council to establish a tribunal to prosecute persons connected with the downing of MH17. [S/2014/657](#) (9 September 2014) was a letter to the President of the Security Council from the Netherlands, containing the preliminary report of the investigation into the downing of flight MH17. [S/2014/136](#) (28 February 2014) was a letter to the President of the Security Council from Ukraine, requesting an urgent meeting of the Security Council and citing the situation in Crimea as a threat to the territorial integrity of Ukraine. [Security Council Meeting Records S/PV.8575](#) (16 July 2019) was a briefing on the situation in Ukraine by Under-Secretary-General for Political and Peacebuilding Affairs Rosemary DiCarlo and OSCE High Commissioner on National Minorities Lamberto Zannier. .

## Part II: Case Studies (Ukraine)

options for UN support to an international investigation, apparently due to the political sensitivities of the issue among Council members and the productive work of the existing investigations, discussed below.

Ukraine then asked the Dutch Safety Board (DSB) to conduct a technical investigation on its behalf, coordinating a team of international investigators. On 9 September 2014, the DSB issued a preliminary investigation report, which indicated that the airplane had broken up in the air after suffering “impact by a large number of high-energy objects from outside the aircraft”. The report did not assign responsibility for downing the plane.

A criminal investigation was also carried out by a Joint Investigation Team (JIT) created by Australia, Belgium, Malaysia, the Netherlands and Ukraine. While the DSB investigation was aimed at establishing the circumstances of the crash, the JIT-led criminal investigation was designed to determine accountability. Wanting to make headway on potential criminal prosecution, the JIT member countries sent a letter to the president of the Council on 10 July 2015, requesting that the Council “establish an ad hoc international criminal tribunal under Chapter VII of the UN Charter to prosecute persons responsible for crimes connected with the downing of the MH17”. Following this request, elected member Malaysia circulated to the Council a draft resolution to this effect on 10 July. The draft determined that the downing of flight MH17 and its implications for the safety of civil aviation “constitute a threat to international peace and security”.

The Malaysian draft resolution included, in its annex, the statute for the proposed tribunal, which defined its envisioned jurisdiction, structure, and day-to-day work. The statute seemed to have been modelled mostly on the statute of the Special Tribunal for Lebanon (STL), another tribunal with limited jurisdiction focusing mainly on a single event. Identifying the downing of the aircraft as a threat to international peace and security under Chapter VII, the draft was meant

to bind member states to cooperate with the investigation and the tribunal.

From the outset, Russia voiced its opposition to the proposal, taking the view that resolution 2166 provided an optimal framework for the investigation of the MH17 incident. On 20 July, Council members held consultations at Russia’s request on the MH17 incident and the follow-up to resolution 2166. At the meeting, Russia presented an alternative draft resolution calling for a greater role for the Secretary-General and the International Civil Aviation Organization in investigating the incident. It also called for greater transparency in the ongoing investigations, especially the JIT investigation, and full compliance with resolution 2166. The draft also called for the nomination of a Special Representative of the Secretary-General on the incident, but included no reference to a tribunal.

In an effort to reach a compromise, Malaysia produced a revised draft that called on all states and actors in the region to cooperate in the conduct of the international investigation (without specifying which one in particular of the incident) as required by resolution 2166, and called on the JIT to keep the Council regularly informed about the investigation. The draft still called for the establishment of an international tribunal for prosecuting those responsible for the MH17 incident, however, which was unacceptable to Russia.

Malaysia, with the support of the JIT countries, decided to put the draft resolution to a vote despite Russia’s clear intention to veto. Indeed, Russia vetoed the draft resolution on 29 July 2015. Eleven Council members voted in favour of the draft and three members (China, Angola and Venezuela) abstained. The Russian veto marked the end of efforts in the Council to advance accountability for the downing of MH17.

In October 2015, the DSB concluded that flight MH17 had crashed due to impact with a Buk missile, which is a Russian surface-to-air missile.

There was renewed interest in accountability for the MH17 incident when the JIT

presented its factual findings on the incident on 24 May 2018. The JIT determined that the rocket system used to down flight MH17 originated from the Russian 53rd Anti-Aircraft Military Brigade. In a joint statement issued on 25 May, Australia and the Netherlands declared that they held Russia responsible for the incident. They also called on Russia to enter into a dialogue on the issue and said that the next possible action would be to present the case to an international court or organisation for judgment. Russia responded that evidence did not exist to support the findings of the JIT.

In a 29 May 2018 meeting on Ukraine, several Council members, including France, Sweden, the UK and the US, referred to the findings of the JIT and called on Russia to accept its responsibility for the events, enter into discussions with the states concerned, and cooperate with the investigation. Notably, however, most spoke of Russia’s state responsibility rather than the criminal liability of Russian individuals. Other Council members, such as Kazakhstan, noted the findings without taking a clear position on their significance. For its part, Russia reiterated its rejection of the JIT investigation and its conclusions as lacking any credibility. It added that the “true perpetrators of the tragedy must be determined on the basis of reliable evidence and brought to justice” and noted its cooperation with Dutch authorities.

Nearly five years after the MH17 disaster, on 19 June 2019, the JIT investigation concluded with four indictments, filed in a Dutch court, against three Russians with ties to Russian military and intelligence and a Ukrainian connected to Russian separatists. The evidence retained by the JIT allegedly points to the involvement of a former senior aide to President Vladimir Putin in assisting Russian separatists in obtaining anti-aircraft weapons. According to the Dutch authorities, the trial will commence in March 2020, most likely in absentia. In the 16 July 2019 briefing on Ukraine, several Council members called for full cooperation, including by Russia, with consequent efforts to bring the

**UN DOCUMENTS ON UKRAINE Security Council Meeting Records S/PV.8529** (20 May 2019) A procedural vote was held on Russia’s request to hold a meeting because of concerns regarding a recently enacted Ukrainian language law that Russia said ran counter to the spirit of the 2015 Minsk agreements and resolution 2202. Five Council members voted in favour of holding the meeting (China, the Dominican Republic, Equatorial Guinea, Russia and South Africa), six voted against (Belgium, France, Germany, Poland, the UK, and the US), and four abstained (Côte d’Ivoire, Indonesia, Kuwait and Peru) **S/PV.8270** (29 May 2018) was a briefing on the situation in Ukraine chaired by Polish Foreign Minister Jacek Czaputowicz. **S/PV.7205** (24 June 2014) was a briefing on Ukraine by Assistant Secretary-General for Human Rights Ivan Šimonović and Assistant Secretary-General for Political Affairs Tayé-Brook Zerihoun. **S/PV.7157** (16 April 2014) was a briefing by Assistant Secretary-General for Human Rights Ivan Šimonović, who shared findings from his two visits to Ukraine in March. **S/PV.7144** (19 March 2014) was a public meeting on the situation in Ukraine with a briefing by the Assistant Secretary-General for Human Rights and the Deputy Secretary-General. **S/PV.7138** (15 March 2014) was a meeting on the situation in Ukraine during which the Security Council voted on a resolution. **S/PV.7123** (28 February 2014) was a private meeting of the Council, followed by consultations, on the situation in Ukraine.

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## Part II: Case Studies (Ukraine)

perpetrators to justice. Russia has continued to deny any involvement in the incident.

### OBSERVATIONS

The Council's track record on Ukraine showcases the difficulty facing the Council when one of the P5 is a party to, or heavily involved in, a conflict. The Council has mainly focused on the political and humanitarian aspects of the crisis, with little success on either, while giving limited attention to accountability for the grave human rights abuses committed during the conflict, though information on human rights abuses and crimes was presented to the Council in various meeting formats. In most cases, the Council did not respond to specific incidents of grave violence.

This was not the case with the downing of MH17. The incident exacerbated the stark divide between several Council members and Russia. The affected countries actively pursued accountability for what appeared to be an attack—intentional or in error—on a civil aircraft rather than an aviation accident. Two investigations (the DSB and the JIT) were established relatively quickly to hold those responsible accountable. As the investigations continued, they pointed towards the involvement of Russia or Russian-supported rebels, thus pitting Russia against other Council members, as has been the case more generally in the Council with respect to Ukraine.

When the Council contemplated concrete action to set up a tribunal, Russia questioned the relationship of accountability over the downing of flight MH17 to a threat to international peace and security and to resolving the situation in Ukraine. Other Council members made the connection between this incident and the conflict itself. Ultimately, the Council was unable to separate the matter of accountability for this specific grave incident from the politics hampering action in the Council on Ukraine more generally.

The Security Council has the unique ability within the international system to set up

an international criminal tribunal with jurisdiction over an incident such as this under Chapter VII, obligating UN member states to cooperate with a tribunal. But the Council ultimately failed to play a meaningful role with respect to accountability for the downing of MH17. The four indictments being pursued in Dutch courts seem unlikely to receive the necessary cooperation from Russia, and consequently the accused are not expected to be present during their trial.

In resolution 2166, adopted just days after the M17 crash, the Council was able to agree on what was arguably the lowest common denominator—the need for a credible investigation into the incident. Unlike other Council resolutions regarding commissions of inquiry into reported violations of international humanitarian law and human rights law—such as in Darfur in 2004—resolution 2166 did not oblige states to cooperate with the investigation under Chapter VII. Nevertheless, even this resolution demands that those responsible be brought to justice and calls upon states to cooperate with the international investigation. Thus, it contains language that could have been reiterated and followed up by Council members to sustain political pressure for ending impunity for this incident.

In the same vein, despite the explicit invitation contained in the resolution, the Secretariat never followed up on providing options for UN involvement in the MH17 investigation. Though the international investigations of the incident have now concluded, the Secretariat should not refrain from providing options to support accountability mechanisms in the future, even if the likelihood of such options receiving support from Council members is low.

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## YEMEN

### BACKGROUND

The current conflict has its roots in the failure of a political transition that was supposed to bring stability to Yemen, after public pressure during the 'Arab Spring' forced its

longtime authoritarian president, Ali Abdullah Saleh, to hand over power to his deputy, Abdo Rabbo Mansour Hadi, in 2011. Much of the security apparatus remained loyal to Saleh, still active behind the scenes, and Hadi struggled to manage issues such as corruption, unemployment, and food insecurity.

The Houthis—a Zaidi Shi'a rebel group from the north, which waged a series of rebellions against Saleh over the years—took advantage of Hadi's weakness by assuming control of the Zaidi heartland of Saada province and neighbouring areas. In early 2014, sporadic fighting started among three entities: the government, religious Muslim Salafi separatist groups, and the Houthis. The crisis took on fresh dimensions in August of that year when tens of thousands of protestors took part in mass demonstrations in the capital, Sana'a, and several other cities. Houthi leader Abdulmalek al-Houthi had called for the protests against the "corrupt" government for failing to carry out reforms, had demanded the reinstatement of fuel subsidies that had been lifted on 30 July, and had also demanded that President Hadi dissolve the government and replace it with one that was more representative.

Between 18 and 21 September 2014, the Houthis seized several government institutions in Sana'a. Security forces on the whole refrained from confronting the Houthis, most likely due to an alliance formed between the Houthis and Saleh earlier that year. The situation was stabilised through the efforts of UN Special Envoy Jamal Benomar in brokering the 24 September 2014 Peace and National Partnership Agreement (PNPA).

Despite the PNPA, which was to lead to an inclusive government with Houthi representatives in return for their withdrawal from key positions, the situation continued to deteriorate. With civil disobedience turning violent, the situation worsened during the final months of 2014 and early 2015. On 21 February 2015, President Hadi fled from Sana'a to Aden after escaping from the house arrest which the Houthis had imposed on him in January, and declared

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**UN DOCUMENTS ON UKRAINE** [Security Council Press Statements SC/11733](#) (13 January 2015) condemned the killing of 11 civilians as a result of the shelling of a passenger bus in Volnovakha. [SC/11480](#) (18 July 2014) expressed condolences to the families of those killed in the downing of Malaysia Airlines flight 17 and called for a thorough and independent international investigation. [SC/11442](#) (17 June 2014) condemned the killing of two Russian journalists that day in Ukraine. [General Assembly Document A/RES/68/262](#) (27 March 2014) was the General Assembly resolution on the territorial integrity of Ukraine. [Human Rights Council Document A/HRC/28/64/Add.1](#) (27 January 2015) was the report of the Human Rights Mission to Ukraine on the situation in the country, including Crimea. [Other S/2017/754](#) (5 September 2017) was a letter from Russia to the Secretary-General and the president of the Security Council containing a draft resolution on the establishment of a UN support mission to protect the OSCE's Special Monitoring Mission in Eastern Ukraine. [S/2015/562](#) (29 July 2015) was a draft resolution, presented by Malaysia, to establish a tribunal for prosecution of those responsible for the downing of flight MH17. Russia vetoed the draft resolution, and Angola, China and Venezuela abstained. [A/RES/68/262](#) (28 March 2014) was the General Assembly resolution on the territorial integrity of Ukraine. [S/2014/189](#) (15 March 2014) was a draft resolution on Ukraine that was not adopted because of a veto by Russia.

## Part II: Case Studies (Yemen)

Aden as Yemen's temporary capital.

In late March 2015, Yemen descended into full-scale war, and Hadi asked the Gulf Cooperation Council (GCC) states to intervene. In response, on 26 March, a Saudi Arabia-led coalition of nine Arab countries—the others being Bahrain, Egypt, Jordan, Kuwait, Morocco, Qatar, Sudan and the United Arab Emirates (UAE)—commenced Operation Decisive Storm against the Houthis and their allies. The coalition has received logistical and intelligence support from the US, UK, and France, as well as other European countries. The Houthis are reportedly backed by Iran.

After five years of conflict, the war in Yemen has cost over 10,000 lives (by a conservative count: some non-governmental organisations place the number of fatalities at over 90,000), including by direct attacks on civilians, most of which are attributed to the coalition forces. By November 2019, it had displaced over 2 million people, with 22.5 million in danger of starvation, more than half of them children.

The war in Yemen, with its wider array of international actors, risks inflaming an already volatile region of the world. Airstrikes on 14 September 2019, claimed by the Houthis but which the US attributed to Iran, heavily damaged the Abqaiq and Khurais oil facilities in Saudi Arabia, which process more than half of Saudi Arabia's daily crude oil production, or 5 percent of the global market.

Moreover, the protracted conflict has resulted in further disintegration of an already divided country. In August 2019, fighting in southern Yemen between the Yemeni government and the Southern Transitional Council (STC), a separatist group supported by the UAE (which, at the same time, continues to support the Yemeni government through the GCC coalition), created a new front in the war.

The only political headway towards de-escalation to date was made in December 2018 when the Yemeni government and the

Houthi rebels concluded the Stockholm Agreement during consultations in Rimbo, Sweden. The agreement addressed the issues of a ceasefire in Hodeidah and allowing goods through the ports of Hodeidah, Salif, and Ras Isa. Through November 2019, the ceasefire has been partially respected, but implementation of other aspects of the Agreement has been lacking, and the Agreement has not prevented the war from continuing more generally, nor created momentum towards a wider political settlement.

### YEMEN IN THE COUNCIL

#### Accountability for attacks on civilians

From the start, the fighting in Yemen took a heavy toll on the civilian population and the already fragile humanitarian situation. Several actors tried to address accountability for violations of human rights law and international humanitarian law, including the Panel of Experts assisting the Yemen Sanctions Committee, the Children and Armed Conflict Working Group, the OHCHR, and the HRC. The Security Council, for its part, has been unable to take effective action on this issue, and its products reflect only limited language on accountability for violations of international humanitarian law and human rights law in Yemen.

GCC members, notably Saudi Arabia, appear to have exercised a strong influence on Council decision-making and the text of resolutions in both the Security Council and in the Geneva-based Human Rights Council. They also appear to have strong-armed the UN Secretariat over the UN's now 14-year-old process of seeking to hold accountable parties who commit any one of six grave violations of the rights of children in armed conflict.

In the Security Council, particularly strong GCC influence was exercised through GCC members who have served on the Council since the conflict began: Egypt (Council member 2016–2017), Jordan (Council

member in 2014–2015), and Kuwait (Council member in 2018–2019). GCC members were closely involved in the drafting of Resolution 2216 of 14 April 2015, with Jordan leading Council negotiations on the draft. Resolution 2216 demanded that the Houthis withdraw from captured areas and relinquish all seized arms. During negotiations on the draft, language on the killing and maiming of children and attacks against schools and hospitals was proposed but was not retained, due to the members' sensitivity over references to civilian casualties caused by the Saudi-led coalition. The idea of calling for a ceasefire, supported by Russia, was not taken on either, as Jordan, France, the UK, and the US as well as members of the GCC—not officially parties to the negotiations—argued that such a call would undermine Hadi's request for the intervention, if the conflict is not ongoing.

The content of Resolution 2216 is highly significant as it has served as a basis for Council engagement on Yemen. The Saudi-led coalition has since justified its military intervention with reference to resolution 2216. While the resolution did not authorise any specific enforcement measures, it explicitly reaffirmed Hadi's legitimacy and took note of his 24 March 2015 letter informing the Council of his request for military assistance.

At the time of its adoption, Russia was the main dissenting voice on resolution 2216 and abstained alone during the 14 April 2015 vote. Within one month, however, other members—initially supportive of Jordan and the GCC states—had begun to have concerns over resolution 2216, the conflict's humanitarian impact, and the open-ended nature of the Saudi-led military intervention. Some members privately expressed regret over its adoption. But whatever the misgivings, the continuing influence of GCC states was also evident in the presidential statement adopted on 15 March 2018. Focused mostly on the humanitarian situation, the statement also expressed “grave distress” over “indiscriminate attacks in densely populated areas” and

**UN DOCUMENTS ON YEMEN** Security Council Resolutions S/RES/2481 (15 July 2019) renewed the mandate of the UN Mission to Support the Hodeidah Agreement for six months until 15 January 2020. S/RES/2456 (26 February 2019) extended for an additional year the Yemen financial and travel ban sanctions, reaffirmed the provisions of the targeted arms embargo, and renewed the mandate of the committee's Panel of Experts. S/RES/2452 (16 January 2019) established the UN Mission to support the Hodeidah Agreement (UNMHA) for an initial period of six months. S/RES/2451 (21 December 2018) endorsed the agreements reached by the parties during the consultations held in Sweden, and authorised the Secretary-General to establish and deploy, for an initial period of 30 days an advance team to begin monitoring and facilitate implementation of the Stockholm Agreement. S/RES/2216 (14 April 2015) demanded that the Houthis withdraw from all seized areas and relinquish all seized arms and established an arms embargo on the Houthis and forces loyal to former president Ali Abdullah Saleh. S/RES/2201 (15 February 2015) strongly deplored the Houthis' actions to dissolve parliament on 6 February and take over government institutions and urged the acceleration of negotiations to reach a consensus solution regarding the political impasse. S/RES/2140 (26 February 2014) expressed the Council's strong support for the next steps of the political transition and established sanctions against those threatening the peace, security or stability of Yemen. Security Council Presidential Statements S/PRST/2019/9 (29 August 2019) was on developments in southern Yemen and efforts to resume comprehensive political negotiations. S/PRST/2018/5 (15 March 2018) called for the full and sustained opening of all of Yemen's ports, including Hodeidah and Saleef ports, and for increased access to Sana'a airport. S/PRST/2017/14 (9 August 2017) was on the threat of famine in Yemen, Somalia, South Sudan and north-eastern Nigeria. S/PRST/2017/7 (15 June 2017) stressed the importance of keeping all of Yemen's ports functioning, including Hodeidah.

## Part II: Case Studies (Yemen)

called on all parties “to comply with their obligations under international humanitarian law, including to respect the principle of proportionality and at all times to distinguish between the civilian population and combatants”. During the negotiations, Kuwait objected to specific references to airstrikes, which would have implicated the coalition, the only force using aircraft in the conflict and the main cause of conflict-related civilian deaths in Yemen. Kuwait also pushed back on proposals to incorporate the stronger language on accountability found in HRC resolutions on Yemen (see, for example, the HRC resolution of 29 September 2017).

GCC members were also able to influence the decision-making process in Geneva. On 24 September 2015, the Netherlands submitted a draft resolution on Yemen to the HRC requesting the High Commissioner to send a mission to report on abuses and conflict-related international crimes in Yemen. The US had reportedly signalled its support for the Dutch draft resolution and its call for an international inquiry. Subsequently, the US, the UK, and France chose to back a Saudi draft resolution instead, adopted on 2 October 2015 by the HRC, which sidestepped an international independent inquiry. Adopted without a vote, the resolution, while expressing concern over serious abuses and violations of international human rights law and international humanitarian law, focused mainly on technical assistance and capacity-building for Yemeni domestic institutions in the field of human rights.

On 2 June 2016, the Secretary-General’s annual report on children and armed conflict was made public. It identified airstrikes by the Saudi Arabia-led coalition as responsible for 60 percent of child casualties in Yemen during 2015 and for nearly 50 percent of attacks on hospitals and schools. As a consequence, the Saudi Arabia-led coalition was listed in the report’s annex. The Houthis, already on the list for recruitment of children, were also cited for killing and maiming of children and attacks on schools and hospitals. (On top of

these three violations, the other grave violations monitored by the Monitoring and Reporting Mechanism established by the Security Council are sexual violence against children, abduction of children, and denial of humanitarian access for children).

The report triggered a strong reaction. Addressing the media on 6 June, Saudi Arabia’s UN Ambassador Abdallah Yahya Al-Mouallimi claimed that the report’s information was inaccurate and incomplete, adding that its timing could only be counterproductive for negotiations between the parties. Later that day, Secretary-General Ban Ki-moon announced that he was removing the Saudi Arabia-led coalition from the annex and that there would be a joint review with coalition members of the report’s findings. At a press stakeout on 9 June, the Secretary-General acknowledged that he took this decision in the face of Saudi Arabia’s threat to withdraw funding from UN programmes.

Starting with the 24 August 2017 annual report, Secretary-General António Guterres decided that each Annex will now be divided into an “A” section, listing parties that have not put in place measures during the reporting period to improve the protection of children, and a “B” section, listing parties that have put in place some such measures. (Annex I lists parties to armed conflict situations that are on the Council’s agenda, while Annex II covers armed conflict situations which are not on the Council’s agenda but are situations of concern regarding children). The Saudi-led coalition was placed in the “B” section of Annex 1. This approach, creating a new subsection for parties that have taken some but not adequate measures to address grave violations, has drawn criticism for distracting from the fact that the parties listed in the “B” section continue to perpetrate grave crimes against children.

Throughout the conflict, coalition airstrikes have caused significant civilian casualties and hit civilian objects, in many separate incidents. On 28 September 2015, coalition airstrikes killed as many as 135 people at a

wedding party near Al-Mokha. On 27 October 2015, airstrikes destroyed a Médecins Sans Frontières (MSF) hospital in Saada governorate. On 15 March 2016, an airstrike on a marketplace in Hajjah, in north-western Yemen, killed at least 106 people, according to media reports. Criticism of Saudi Arabia intensified as coalition airstrikes continued to be responsible for the majority of civilian casualties. On 22 March 2016, eight non-governmental organisations, including Amnesty International and Human Rights Watch, issued a joint statement calling on all governments to stop supplying arms to the conflict parties. At a press conference, Human Rights Watch stressed that the P3 Council members, the US, the UK and France, should stop sending arms to Saudi Arabia until it ends “unlawful” airstrikes and credibly investigates alleged violations. The joint statement also rejected the credibility of the Yemeni national commission of inquiry set up on 7 September 2015, which, it said, had taken no concrete action to investigate such incidents.

Briefers conveyed these criticisms directly to the Council as well. Briefing on Yemen for the first time on 22 December 2015, the High Commissioner for Human Rights noted that while both sides had engaged in attacks in areas with a high concentration of civilians and against civilian infrastructure, a disproportionate share of these appeared to be from coalition airstrikes. He recalled the recommendation of his office’s 7 September 2015 report on Yemen for an international investigation into credible allegations of human rights violations by all parties to the conflict as well as accountability for perpetrators of all crimes.

After High Commissioner for Human Rights Zeid Ra’ad al-Hussein’s briefing, Chile, speaking in the Council chamber, called on the international community to promote justice and accountability, and said it supported the High Commissioner’s recommendation for “the establishment of an impartial and independent mechanism to investigate all allegations of violations and abuses of

**UN DOCUMENTS ON YEMEN** [Security Council Presidential Statements S/PRST/2015/8](#) (22 March 2015) condemned the Houthis’ unilateral actions and reaffirmed the Council’s readiness to take further measures. [Secretary-General’s Reports S/2019/509](#) (20 June 2019) was the annual report on children and armed conflict. [S/2019/453](#) (3 June 2019) was the Secretary-General’s report on children and armed conflict in Yemen. [S/2018/465](#) (16 May 2018) was the Secretary-General’s annual report on children and armed conflict. [S/2017/821](#) (24 August 2017) was the report of the Secretary-General on children and armed conflict. [S/2016/360/Add.1](#) (24 June 2016) was an Addendum to the annual report of the Secretary-General on children and armed conflict that removed the Saudi Arabia-led coalition from the Annex 1 section on parties in Yemen pending review. [S/2016/360](#) (20 April 2016) was the report of the Secretary-General on children and armed conflict. On 6 June, the Secretary-General removed the Saudi Arabia-led coalition from the listing in Annex 1 of the report, where it had been included for the first time. The removal is considered “pending” until the conclusion of a joint review of the report’s findings with coalition members. [Security Council Letters S/2019/391](#) (14 May 2019) was a letter from Saudi Arabia on the Houthi drone attacks against Saudi oil pumping stations. [S/2015/217](#) (26 March 2015) was a letter to the Secretary-General and the President of the Security Council from GCC members on their decision to respond to Hadi’s request to protect Yemen from Houthi aggression. [Selected Security Council Meeting Records S/PV.8619](#) (16 September 2019) was a briefing on Yemen with Special Envoy Martin Griffiths and Under-Secretary-General for Humanitarian Affairs Mark Lowcock.

## Part II: Case Studies (Yemen)

international human rights law and violations of international humanitarian law”. Nevertheless, there was no serious discussion in the Council of this, nor any action; such infrequent statements did not change the underlying dynamic in the Council.

Starting in its report in October 2015 and throughout the conflict, the Yemen Panel of Experts assisting the 2140 Yemen Sanctions Committee (henceforth, the Panel of Experts) has reported on violations of international humanitarian law and international human rights law committed by Houthi-Saleh forces and the coalition. In its 22 January 2016 report, it recommended that the Council establish a commission of inquiry to investigate these alleged crimes.

The Panel of Experts has also submitted case studies on specific attacks to the 2140 Sanctions Committee. One such case study, submitted on 17 October 2016, concerned coalition airstrikes on 8 October that targeted a high-ranking Houthi official taking part in funerary arrangements for his father in Sana'a. Hundreds of people, including families and political and tribal leaders, were present at the reception hall where the service was being held. More than 140 people were killed and at least 540 injured. The Panel of Experts concluded in its preliminary analysis that the attack was caused by at least two aerial bombs and that evidence suggested that the Saudi Arabia-led coalition had violated its obligations under international humanitarian law. The attack led to an international outcry, and on 15 October the Saudi Arabia-led coalition announced the results of an internal GCC investigation that found the attack to have been based on inaccurate information from the Yemeni government.

The Council took no action and could not agree on a draft press statement circulated by the UK condemning the funeral strike. In a briefing on 31 October 2016, Russia noted, as it has done several times throughout the Yemen conflict, the “cynical double standards” it saw in the different response from the P3 to civilian deaths in Yemen and

Syria. It criticised the UK, asking, “How can a country with a clear material interest in extending the military conflict be a penholder for the Yemen file in the Security Council?” and, pointing to the recent attempt to adopt a press statement it called “weak”, added: “It was not stated who made the strike, even though the coalition has already accepted the responsibility. There was not a call for an investigation to punish those responsible”. Russia called the draft statement “an insult for the Yemenis”.

In fact, the failed press statement had itself been a compromise. Initially, at the Council meeting on 31 October, the UK had outlined four elements of a proposed resolution: an immediate cessation of hostilities, resumption of negotiations, accountability for alleged breaches of international humanitarian law, and unhindered humanitarian access. Reportedly due to Saudi objections to the draft resolution, the UK did not take the initiative further, never circulating the text to the wider membership.

Discussing but not taking action on coalition attacks became a familiar feature in the wake of fresh incidents. On 9 August 2018, a coalition airstrike hit a school bus in Saada, killing 44 children. The next day, at the request of Peru, Council members discussed the attack in consultations. Through press elements, members called for a credible and transparent investigation. Initially, the coalition defended the strike, but on 1 September, the Joint Incidents Assessment Team (JIAT), an investigative body set up by the coalition in August 2016, said the strike had been conducted based on intelligence that Houthi leaders were on the bus but that delays had led to a strike with children on board. However, the JIAT was set up to assess whether proper military procedures were followed in various incidents, not to investigate deadly attacks as such. The JIAT has been criticised by observers including the Group of Eminent Experts established by the HRC as partial and falling short of international standards.

Though the Saudi-led coalition has been

responsible for most civilian casualties in Yemen, the Houthis have reportedly also targeted civilians in what may amount to international crimes. Briefing the Council on 18 August 2017, OCHA head Under-Secretary-General Stephen O'Brien said that indiscriminate shelling of populated areas continued in Taiz, mostly by forces affiliated with the Houthis or former President Saleh. Over the previous two years, O'Brien said, those incidents had reportedly killed or injured dozens of civilians, including children, and damaged civilian infrastructure. He added that he blamed the intensifying violence of the conflict on, among other factors, the absence of accountability mechanisms. The Council has not reacted to Houthi violations, either.

The Group of International and Regional Eminent Experts on Yemen (GEE) established by the HRC on 29 September 2017 and composed of Kamel Jendoubi (Tunisia) as chairperson, Charles Garraway (UK), and Melissa Parke (Australia), published its findings on 28 August 2018. Examining the human rights situation in Yemen, the experts affirmed that individuals from both sides, including Saudi Arabia and the UAE, might have committed war crimes. The report stated that coalition airstrikes might have been conducted in violation of the principles of distinction, proportionality, and precaution. The report recommended that the HRC urge the Security Council to emphasise the human rights dimensions of the conflict in Yemen and the need to ensure that there would be no impunity for the most serious crimes, as did the GEE's report of the following year. One year later, the GEE's 3 September 2019 report detailed similar alleged war crimes committed by the parties to the conflict through airstrikes, but also through indiscriminate shelling, snipers, landmines, arbitrary detention, torture, sexual violence, and impeding access to humanitarian aid. In both years, the group submitted a confidential list to the High Commissioner for Human Rights of individuals possibly responsible for

**UN DOCUMENTS ON YEMEN Security Council Meeting Records** [S/PV.8598](#) (20 August 2019) was a briefing on Yemen by Special Envoy Martin Griffiths and the Assistant Secretary-General for Humanitarian Affairs Ursula Mueller. [S/PV.8578](#) (18 July 2019) was a briefing on Yemen by Special Envoy Martin Griffiths, Under-Secretary-General for Humanitarian Affairs Mark Lowcock, and Executive Director of the World Food Programme David Beasley. [S/PV.8551](#) (17 June 2019) was a briefing on Yemen by Special Envoy Martin Griffiths, Under-Secretary-General for Humanitarian Affairs Mark Lowcock, and Executive Director of the World Food Programme David Beasley. [S/PV.8525](#) (15 May 2019) was a briefing on Yemen by Special Envoy Martin Griffiths, Under-Secretary-General for Humanitarian Affairs Mark Lowcock, UNICEF Executive Director Henrietta Fore, and Ambassador Gustavo Meza-Cuadra (Peru), as the chair of the 2140 Sanctions Committee. [S/PV.8361](#) (21 September 2018) was a briefing on Yemen with Under-Secretary-General for Humanitarian Affairs Mark Lowcock. [S/PV.8348](#) (11 September 2018) was a briefing with UN Special Envoy Martin Griffiths on the Geneva consultations. [S/PV.8027](#) (18 August 2017) was a briefing on Yemen by Under-Secretary-General for Humanitarian Affairs Stephen O'Brien and Special Envoy for Yemen Ismail Ould Cheikh Ahmed. [S/PV.7954](#) (30 May 2017) was a briefing on Yemen by Special Envoy Ismael Ould Cheikh Ahmed, OCHA head Stephen O'Brien and a Yemeni civil society representative, Radhya al-Mutawakel. [S/PV.7797](#) (31 October 2016) was a briefing by Special Envoy for Yemen Ismail Ould Cheikh Ahmed, OCHA head Stephen O'Brien and World Food Programme regional director Muhammad Hadi.

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international crimes. The 2019 report also suggested that the P3 and Iran, among other states, could be responsible for violations of international humanitarian law for transferring arms and providing other logistical or intelligence support to the parties.

The current mandate of the GEE renewed by the Human Rights Council on 29 September 2019, expanded their mandate to report on violations of international humanitarian law on top of human rights violations. Meanwhile, an initiative by Peru to have Jendoubi brief the Council in October 2019 was met with objections from a number of Council members, also echoing the views of Saudi Arabia and the UAE. With a procedural vote likely to fail to gain the required majority for a briefing, Jendoubi met with Council members in an informal setting instead.

### Besiegement as a method of war

Besiegement, blockades, starvation, and intentional blocking of humanitarian assistance have been practised by both parties to the conflict in Yemen. At present, the only achievement aimed at addressing this issue, the Stockholm Agreement between Yemen and the Houthis principally concerning the port of Hodeidah and endorsed by the Council, continues to hold, keeping open this vital supply pipeline.

The Saudi-led coalition imposed a de facto naval and aerial blockade on Yemen in March 2015, by imposing severe restrictions on a country which imported over 90 percent of its food as well as other essential items such as fuel and medicine. Throughout the conflict, the coalition has maintained restrictions on commercial shipping and flights, requiring that Yemen-bound ships be inspected by coalition forces and obtain authorisation to proceed. Coalition airstrikes on 18 August 2015 severely damaged the port of Hodeidah, the main gateway for delivering humanitarian aid to Houthi-controlled parts of Yemen, including destroying the port's cranes (new cranes were delivered in January 2018). In August 2016, the coalition stopped all commercial flights in and out of Sana'a, Yemen's

main airport, among other things making it impossible for civilians to leave Yemen for medical treatment.

On 9 October 2015, the 2140 Yemen Sanctions Committee met to consider the Panel of Experts' findings, circulated in a letter on financial sanctions and international humanitarian law issues. The letter raised concerns about the intentional obstruction of humanitarian access and provision of assistance, including commercial shipping. Among its recommendations, the Panel proposed that the committee chair approach member states that were conducting military operations in Yemen and other relevant parties to stress their responsibility to respect international humanitarian law and to ask that they cooperate with the Panel in investigating potential cases of obstruction of humanitarian assistance. Like other recommendations requesting the chair to approach GCC members and their allies, this proposal was not endorsed by the committee.

Despite disagreements, at certain junctures Security Council members were able to find common ground on the importance of humanitarian access in Yemen. A presidential statement on Yemen of 15 June 2017 focused on the country's humanitarian crisis and confidence-building measures related to Hodeidah port. The statement called on the parties to allow safe, rapid, and unhindered access for humanitarian supplies and personnel and to facilitate essential imports of food, fuel and medical supplies and their distribution throughout the country. In this regard, the Council stressed the importance of keeping all of Yemen's ports functioning, including Hodeidah, as a critical lifeline for humanitarian support and other essential supplies. Notwithstanding the June presidential statement, in response to a missile launched towards Riyadh by the Houthis on 4 November 2017, the GCC coalition imposed a complete blockade on all imports and exports over Yemen for several weeks.

Besiegement and "using the threat of starvation as an instrument of war" were raised in the Yemen Panel of Experts' annual final report to the 2140 Sanctions Committee submitted on 10 January 2018. The report

recommended that the Security Council call on the Saudi-led coalition not to misuse the Council-mandated arms embargo as a justification for obstructing the delivery of essential goods and humanitarian aid.

The Group of Eminent Experts on Yemen also addressed accountability for such actions in their report of 28 August 2018, which stated that there were reasonable grounds to believe that coalition restrictions on commercial shipping had violated the proportionality rule of international humanitarian law, having caused extreme suffering for millions of civilians and not being justified by any possible military advantage. According to the report, the ban on commercial flights to Sana'a constituted a violation of international humanitarian law protections for the sick and wounded. Violations by the Houthis and their allies resulting from indiscriminate attacks and access restrictions in Taiz were also cited, though the experts, who could not visit the city, said further investigations into these issues were required.

As international attention to the humanitarian crisis in Yemen grew, on 15 March 2018 the Council adopted a presidential statement calling for the full and sustained opening of all of Yemen's ports, including the Houthi-controlled Hodeidah and Saleef ports, and for increased access to Sana'a airport. The Council reaffirmed that access restrictions can constitute violations of international humanitarian law and stressed the need to prevent the adverse effects of the arms embargo on commercial and humanitarian imports. As mentioned above, language on accountability for crimes committed was taken out in order to reach consensus.

The situation in Hodeidah took a turn for the worse when, on 13 June 2018, the GCC coalition commenced a long-anticipated offensive against the port city. OCHA had warned on 8 June that such an attack on Hodeidah was likely to prove "catastrophic", predicting that as many as 250,000 lives could be lost as a result of both the fighting and its broader humanitarian impact, as most of the country's food and other critical supplies were imported through Hodeidah port.

Under-Secretary-General for

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**UN DOCUMENTS ON YEMEN Selected Security Council Meeting Records S/PV.7596** (22 December 2015) comprised briefings by Special Envoy Ould Cheik Ahmed, High Commissioner for Human Rights Zeid Ra'ad Al Hussein and Assistant Secretary-General for Humanitarian Affairs Kyung-wha Kang. **Security Council Press Statements SC/13834** (10 June 2019) underlined Council members' full support for the Secretary-General's Special Envoy for Yemen, Martin Griffiths. **SC/13785** (17 April 2019) expressed grave concern that the agreements reached in Stockholm have not yet been implemented. **SC/13713** (22 February 2019) called for the immediate implementation of the Phase 1 redeployment of forces from the Hodeidah agreement. **SC/13690** (4 February 2019) stressed the critical importance of the parties' fulfilling their commitments made in Sweden. **SC/13270** (28 March 2018) condemned the Houthi missile attacks targeting several cities in Saudi Arabia on 25 March and expressed grave concern at the humanitarian situation in Yemen. **SC/13143** (22 December 2017) condemned the 19 December ballistic missile attack by the Houthis on Riyadh.



## Part II: Case Studies (Yemen)

Humanitarian Affairs Mark Lowcock warned the Council on 21 September 2018 that Yemen might be “approaching a tipping point, beyond which it will be impossible to prevent massive loss of life as a result of widespread famine across the country” and described already existing “pockets of famine-like conditions”. In response, Russia and a group of five elected members—Bolivia, the Netherlands, Peru, Poland and Sweden—called for ending offensive operations around Hodeidah. The P3, on the other hand, focused on the need to protect infrastructure and access for humanitarian and commercial goods.

Concurrent with the offensive, the value of the Yemeni rial plummeted, making food unaffordable for millions of Yemenis. Around the same time, the killing of US-based Saudi journalist Jamal Khashoggi on 2 October 2018 inside Saudi Arabia’s consulate in Istanbul triggered fresh international scrutiny of Saudi Crown Prince Mohammed bin Salman and greater attention to Saudi Arabia’s conduct of the war in Yemen.

At a 23 October 2018 briefing of the Council, Lowcock said that an imminent famine threatened the lives of as many as 14 million people. Five steps were necessary to avert a major famine in Yemen, Lowcock said: a ceasefire around critical infrastructure, lifting of access restrictions and keeping open main transport routes, measures to stabilise the economy, increased funding for the humanitarian operation, and resumption of a UN-led political process.

The pressure on the coalition was mounting. On 30 October 2018, then-US Secretary of Defense James Mattis and Secretary of State Mike Pompeo for the first time called for the cessation of hostilities, joining a similar call by the Secretary-General. By 13 November, a tentative pause in Hodeidah operations appeared to have gone into effect. At that point, all Council members were calling for an immediate ceasefire.

In meetings held between 6 to 13 December in Sweden, mediated by the Secretary-General’s Special Envoy Martin Griffiths, the parties reached several agreements: an agreement on the city of Hodeidah and the ports of Hodeidah, Salif, and Ras Isa;

an executive mechanism to implement the prisoner exchange agreement that had been reached prior to the start of consultations; and a statement of understanding on Taiz. Together, these comprised the Stockholm Agreement. Among other things, the agreement over the critical port city of Hodeidah established an immediate ceasefire in Hodeidah governorate and a mutual redeployment of forces from the three ports and Hodeidah city to agreed locations outside the ports and city, to be implemented in phases over three weeks.

The agreement was endorsed by the Council on 21 December in resolution 2451, and on 16 January 2019, the Council adopted resolution 2452, establishing the UN Mission to support the Hodeidah Agreement (UNMHA) for an initial period of six months. Though European Council members and Peru wanted accountability addressed in the text, a paragraph in a previous draft that would have underlined the need for investigations into alleged violations of international humanitarian law and for those found responsible to be held accountable was removed, reportedly at the insistence of the US.

At the time of writing in November 2019, the ceasefire in Hodeidah continues, but has been violated frequently by the two sides. The Council’s call for the agreement’s immediate implementation in press statements on 4 February, 22 February, 17 April and 10 June 2019, and in a presidential statement on 29 August 2019, have largely been ignored. Due to disagreement on the composition of local forces to take over security of the city and ports, there has been only limited progress towards the mutual redeployment of forces as set out in the agreement. In addition, there has been no progress on alleviating the humanitarian situation in the city of Taiz.

At present, Yemen remains the world’s worst humanitarian crisis, with over 24 million people needing humanitarian assistance. Despite the dire need for humanitarian access, the 3 September 2019 report of the Group of Eminent Experts confirms that besiegement as a method of warfare continues in Yemen. According to the report, the blockade, attacks affecting

objects essential to the survival of the population, and impediments to the delivery of aid deprive the population of necessary items for survival.

### The use of sanctions

Though slow to react to the breakout of all-out war in Yemen, Council members recognised early on that Yemen’s political transition was stalling, with spoilers seeking to undermine the process. The Council responded through sanctions, establishing the 2140 sanctions regime on 26 February 2014 to target principally Saleh and the southern separatist groups aligned with him. The measures included travel bans and asset freezes applicable to individuals engaged in “planning, directing or committing acts that violate applicable international human rights law or international humanitarian law or acts that constitute human rights abuses, in Yemen”. (The first designations, however, were not made until 7 November 2014, when two Houthi military commanders and Saleh were listed by the 2140 Yemen Sanctions Committee, as the Council realised, perhaps too late, that the transition process was not merely stalled but had derailed).

Resolution 2216 of 14 April 2015 further broadened the sanctions regime, creating a targeted arms embargo and expanding the designation criteria to include violations of the embargo and obstructing delivery of humanitarian assistance and access. The Council designated al-Houthi and former president Saleh’s son in an annex to the resolution, subjecting them to an assets freeze and a travel ban.

The Yemen Panel of Experts repeatedly reported on violations of international humanitarian law and international human rights law committed by Houthi-Saleh forces and the coalition, including the obstruction of humanitarian assistance, noting that these offences are among the designation criteria. Specifically, it recommended that the Council refer to member states conducting military operations in Yemen and all relevant parties to the conflict and stress their responsibility to respect and uphold international humanitarian law, that the Council encourage Yemen to take steps towards holding perpetrators of crimes accountable, and that the Council

**UN DOCUMENTS ON YEMEN Security Council Press Statements SC/12541** (4 October 2016) strongly condemned an attack by Houthi forces on a UAE vessel operating near Bab al-Mandeb strait on 1 October. **Sanctions Committee Documents S/2017/81** (11 January 2017) was the Panel of Experts’ final report. **S/2016/73** (22 February 2016) was the final report of the Yemen Panel of Experts. **S/2015/125** (20 February 2015) was the final report of the 2140 Yemen Panel of Experts. **Human Rights Council Documents A/HRC/42/L.16** (24 September 2019) renewed the mandate of the Group of Eminent International and Regional Experts on Yemen for one year. **A/HRC/42/CRP.1\*** (3 September 2019) was a report of the Group of Eminent International and Regional Experts on Yemen setting out its detailed findings that were summarized in a second shorter report dated 9 August 2019. **A/HRC/42/17** (9 August 2019) was a report of the Group of Eminent International and Regional Experts as submitted to the United Nations High Commissioner for Human Rights highlighting incidents and patterns of conduct since September 2014.

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consider establishing an international commission of inquiry to investigate reports of violations of international humanitarian law and human rights law in Yemen by all parties and to identify the perpetrators of such violations. The Panel has also expressed its concern that member states of the coalition were hiding behind “the entity” of the “coalition” to divert attention and shield themselves from state responsibility for violations by their forces during airstrikes.

Nevertheless, since the adoption of resolution 2216, Council dynamics around sanctions have focused less on using sanctions to advance accountability and more on disagreement among Council members about addressing the role of Iran in assisting the Houthis and violating the sanctions regime. There have been no listings since resolution 2216, and there are currently no listings of individuals fighting for the coalition.

### OBSERVATIONS

This account is not an exhaustive catalogue of the attacks on civilians, the human rights violations, the destruction of critical infrastructure and besiegement of civilians that may constitute international crimes by all parties to the ongoing conflict in Yemen.

Different members’ political relationships and interests, particularly with Saudi Arabia, have made the Yemen conflict difficult for the Council to address generally, including with respect to accountability aspects. Thus, the general framework for the Council with respect to the conflict remains resolution 2216, drafted by the GCC members led by Saudi Arabia, which places the onus on the Houthis to lay down seized arms and withdraw from captured areas. Elected members Jordan and thereafter Egypt and Kuwait have reflected the views of the GCC in their positions in the Council. The UK and the US have provided the coalition with assistance, both operational and logistical, and have sold it arms, as has France. Other Council members that are customarily at the forefront of pushing for accountability measures have been cautious about taking positions that are contrary to Saudi preferences.

Several members’ close political, financial

and trade relationships with Saudi Arabia, as well as with other GCC countries, have made the Council sensitive to Saudi influence and often restrained members’ ability to discuss the situation more critically, despite most members’ concerns about the prudence of the military intervention and the rapidly deteriorating humanitarian situation.

Russia has played a role in making Council outcomes more even-handed between the parties, especially in the first years of the crisis, by highlighting Houthi perspectives. At the same time, it did not push for any action on accountability.

Uruguay, and also Chile, Poland, the Netherlands, and Sweden, among others, have over the years been willing to use more forceful language on accountability for crimes committed by the coalition during the conflict. But these calls have been inconsistent and have never gained much traction. Even those Council members that have been assertive on the importance of accountability mechanisms in other situations have, on the whole, not displayed such commitment with respect to the situation in Yemen and have not initiated concrete action. One way this has manifested itself is in Council outcomes that avoid references to specific attacks by the GCC coalition, instead using more general language on accountability, violations of international humanitarian law and human rights law. The reluctance to hold the GCC coalition members accountable has also meant, paradoxically, that the Council has been unable to hold the Houthis and their allies accountable for alleged crimes.

What the Council has been able to achieve is the establishment of a sanctions regime with listing criteria that include perpetrating violations of international humanitarian law and human rights law. This was done before the beginning of the crisis, however, mainly with former President Saleh in mind as a spoiler of the political transition. Resolution 2216 added obstruction of the delivery or distribution of humanitarian assistance to the designation criteria. The Panel of Experts assisting the Yemen Sanctions Committee has repeatedly found evidence of such violations

and reported them to the committee, and has also recommended that the Council take a more forceful approach to accountability, including by establishing its own commission of inquiry into the actions of the parties. The Council, or its Sanctions Committee, could threaten or impose sanctions on perpetrators of international crimes. But aside from early listings of opponents of the Yemeni government and Saudi-led coalition, none of which were listed for violations of international humanitarian law and human rights law, the sanctions regime remains underutilised.

In the meantime, other bodies, such as the HRC, have taken a more proactive approach towards accountability for crimes committed during the conflict in Yemen. Though also slow to react because of political considerations, the HRC has taken steps geared towards accountability by establishing an independent investigation into acts committed during the conflict. The grave findings cited above have not prompted a shift in attitude by the Security Council, however. The Council should consider making use of the findings of other bodies or establishing mechanisms of its own to investigate alleged crimes by both parties to the conflict in Yemen.

The enhanced attention to the war at the end of 2018 and the outcry over the disastrous humanitarian situation created enough international pressure to bring the parties together and produce the Stockholm Agreement, under the mediation of Griffiths. Though limited in scope and yet to be implemented, it has produced a ceasefire in Hodeidah and allowed for some easing of the humanitarian crisis. Thus, international pressure can compel the parties, as well as their allies on the Council, to seriously advance efforts to address aspects of the situation in Yemen. At the same time, the lack of implementation of the Stockholm Agreement demonstrates that momentary and inconsistent political pressure to address a humanitarian disaster created by the parties is not enough to bring about a political solution to the situation in Hodeidah, accountability for the use of besiegement as a method of war,

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**UN DOCUMENTS ON YEMEN Human Rights Council Documents** [A/HRC/39/43](#) (17 August 2018) was the report of the High Commissioner for Human Rights containing the findings of the Group of Eminent International and Regional Experts on Yemen. [A/HRC/RES/36/31](#) (29 September 2017) called on the High Commissioner for Human Rights to establish a group of international and regional experts to monitor and report on the situation of human rights in Yemen and carry out a comprehensive examination of all alleged violations and abuses since September 2014. [A/HRC/33/38](#) (4 August 2016) was a report of the High Commissioner for Human Rights on Yemen, reiterating his previous recommendation for an international, independent body to investigate alleged violations in Yemen. [A/HRC/RES/30/18](#) (2 October 2015) was a resolution, requesting the High Commissioner of Human Rights to provide Yemen technical assistance in the field of human rights and to assist a national commission of inquiry. [A/HRC/30/31](#) (7 September 2015) was a UN High Commissioner for Human Rights report on Yemen, which recommended establishing an international mechanism to investigate alleged human rights violations.

## Part III: Observations and Conclusions

### OBSERVATIONS AND CONCLUSIONS

Security Council Report's previous research reports on individual criminal accountability showed that the Security Council, while not always consistent in its actions, views upholding accountability as integral to the maintenance of international peace and security.

This report shows that Council members have been kept informed of violations of international humanitarian law and human rights law in situations on their agenda. This information is provided through a variety of formats – formal meetings, consultations or informal settings such as Arria-formula meetings, by the Secretariat, the High Commissioner for Human Rights, the High Commissioner for Refugees, various special representatives, regional bodies, and civil society. At times the Council was unable to meet briefers in formal meetings, however, because some of its members objected, and some briefings, for example by the HRC's Commission of Inquiry on Syria, have always taken place in informal meetings. In addition, Council members at times could not agree on particular briefers, especially when these appeared likely to be critical of a particular party to a conflict, such as when, on 19 March 2018, Russia initiated a procedural vote that prevented the High Commissioner for Human Rights from briefing the Council on Syria, or on 30 October that year when the European members of the Council urged a procedural vote that prevented a representative of Ukrainian separatists (suggested by Russia) from briefing the Council. Similarly, China opposed a briefing by the chair of the HRC's fact-finding mission on Myanmar in October 2018, which could take place only after a procedural vote. These difficulties notwithstanding, in all cases examined in this report, the Council was amply informed about mass atrocities, human rights and humanitarian law violations, and lack of accountability for such actions.

Perhaps more so than in the preceding period, Council practice surveyed in this report shows that in some of the most devastating conflicts of recent times, the Council has rarely been able to move beyond general

rhetoric on the importance of accountability. In the cases of Syria, Myanmar and Yemen, Council members have even found rhetoric hard to agree on: China has questioned the relevance of justice and accountability to the events in Myanmar, for example, and the P3 and other Council members have avoided language that implies possible violations of the laws of war by Saudi Arabia, the UAE and their allies in Yemen.

In a Council that is perhaps at its most divided since the end of the Cold War, the case studies show that suspected perpetrators of grave violations of international humanitarian law and human rights law, whether they are state or non-state actors, can expect minimal consequences for their actions. The scope of various national and regional interests in these four case studies also demonstrates a lack of consistency by Council members, including those that strongly promote accountability as a matter of principle, in upholding accountability when political alliances are at stake. With the exception of the consensus around ISIL, other actors in these conflicts who commit crimes are able to escape responsibility for their illegal acts, and their crimes are rarely given the attention they deserve. An umbrella of impunity has been created over these conflicts.

The Council can claim credit for some advances, notably on the chemical weapons track in Syria, where it adopted resolutions aimed at ending Syrian capability to use chemical weapons and at identifying the perpetrators of chemical weapons attacks through the Joint Inspection Mechanism (JIM). This was a rare moment of agreement on accountability between Russia and the US. Though partially successful in removing Syrian stockpiles of chemical weapons, eventually the Council's actions fell well short of stopping chemical warfare in Syria. Ultimately, Russia acted to terminate the JIM, sparing Syria and its officials from being held accountable for such crimes.

As the Council has been unable to bring justice to victims, or significantly affect the course of these conflicts, other actors have shown a more assertive and proactive response. First and foremost, the HRC and the OHCHR continued to collect evidence

and seek accountability, establishing mechanisms including commissions of inquiry on Syria and Myanmar and the Group of Eminent International and Regional Experts on Yemen, while pressing the Security Council to take more action, such as an ICC referral or by creating ad hoc tribunals. The Council has not been receptive to these calls and has on several occasions avoided receiving briefings from these commissions in public meetings.

The General Assembly has also taken action to fill the void. This was evident when it established the International Independent Investigative Mechanism to collect and preserve evidence of crimes committed in Syria for future prosecutions. This was a direct result of the lack of progress in the Council on accountability mechanisms for Syria after the Assembly called on the Council to do so in resolutions, as did dozens of member states.

Other bodies also took steps to fill the accountability gap. The OPCW played a prominent investigative role on Syrian chemical weapons. On the downing of MH17 in Ukraine, the Joint Investigation Team, established by Australia, Belgium, Malaysia and Ukraine, took the lead in identifying the perpetrators of the attack despite the Council's veto of a resolution to bring those perpetrators to justice. On Myanmar, while calls for the Council to refer the situation to the ICC have not gained traction, the ICC itself has taken what some might consider a proactive approach to its jurisdictional scope to allow the ICC Prosecutor to begin investigations into the situation.

Non-Council actors are likely to continue to play an important role in the push for accountability for perpetrators of mass crimes. It remains the case, however, that only Council decisions create binding obligations on the relevant states and the wider UN membership to cooperate with accountability mechanisms, and only the Council has the power to enforce these decisions. This is why the Council's passivity in promoting accountability is so significant.

The case studies have identified various measures the Council could take short of establishing its own accountability mechanisms or an ICC referral. These include urging the parties to cooperate with the

## Part III: Observations and Conclusions

mechanisms of the HRC, imposing sanctions on perpetrators of mass crimes, or, in the case of Myanmar, urging it to cooperate with the ICC probe. The Council could adopt forceful language on accountability directed at particular actors in the conflict in order to curb their actions. Where the Council has, as in Yemen, created a panel of experts assisting its sanctions committee, it could give closer consideration to the panel's recommendations on accountability.

The Council's lack of ability to muster an immediate collective response to certain events, such as egregious Syrian chemical attacks on its population, arguably contributed to the P3 taking unilateral action in the form of airstrikes, albeit on questionable legal grounds. Collective security measures and enforcement action authorised by the Council have a sounder legal basis and generally enjoy more legitimacy in the eyes of the wider membership than do unilateral measures.

The inability to end impunity has unfortunate and long-term consequences for the people affected by the conflicts in Syria, Ukraine, Myanmar and Yemen. At times in the past, the Council was innovative and

assertive with respect to accountability: establishing the innovative ad hoc criminal tribunals in the 1990s, for example, or bringing into being the 2006 agreement between the UN and Lebanon that established the Special Tribunal for Lebanon, bypassing the internal political turmoil that kept Lebanon from ratifying the agreement. The Council is challenged in following through in specific situations what its members have acknowledged as a general principle.

Ending impunity is not only a matter of principle. For the Council, it is also a practical tool to maintain international peace and security. Lack of action on accountability in conflicts where mass crimes are committed risks hampering the Council's ability to address and resolve these conflicts more broadly, in a way that ensures long-term stability and avoids the resumption of conflict. Without fresh and decisive approaches to accountability in current conflicts on its agenda, the Council may find it more difficult to retain its legitimacy in exercising its responsibilities under the UN Charter and maintaining international peace and security.

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