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Between Rhetoric and Reality: Ten Years of the United Nations

Human Rights Council

James Gallen

School of Law and Government, Dublin City University

ABSTRACT

2016 marks ten years since the foundation of the United Nations Human Rights Council and concludes Ireland's membership of the council between 2013 and 2015. This article reviews the experience of the Human Rights Council as an organ of the United Nations tasked with promoting and protecting human rights and preventing their violation. It examines the establishment and reviews the progress of the Human Rights Council in its first ten years of operation. It then highlights Ireland's role as a member of the council between 2013 and 2015. In particular, it identifies the value of the two resolutions of the council led by Ireland, on the protection of civil society space and on the prevention of early childhood morbidity and mortality; evaluates Ireland's role in the treatment of states as a member of the Human Rights Council; and explores how the council links to the broader system of international human-rights protection in the international legal system.

INTRODUCTION

The year 2016 marks 10 years since the establishment of the United Nations Human Rights Council and concludes Ireland's membership of the council between 2013 and 2015. This article will review the experience of the Human Rights Council as an organ of the United Nations tasked with promoting and protecting human rights and preventing their violation. It will examine the establishment and review the progress of the Human Rights Council in its first ten years of operation and highlight Ireland's role as a member of the council between 2013 and 2015. In particular, it will identify the value of the two resolutions led by Ireland, on the protection of civil society space and on the prevention of early childhood morbidity and mortality; assess Ireland's role in the treatment of states as a member of the Human Rights Council; and examine how the council links to the broader system of international human-rights protection in the international legal system.

HISTORY OF THE HUMAN RIGHTS COUNCIL

The Human Rights Council was established in 2006 in response to the perceived failures of its predecessor, the Commission on Human Rights. In 1946 the United Nations Economic and Social Council (ECOSOC) established the Commission on Human Rights. The commission had a broad mandate to prepare recommendations and reports regarding an international bill of rights; international declarations, or conventions on civil liberties; the status of women; freedom of

information and similar matters; the protection of minorities; the prevention of discrimination on the basis of race, sex, language, or religion; and any other matter concerning human rights. In its early years, the commission drafted the Universal Declaration of Human Rights, reflecting its focus on standard-setting. And in the challenging context of the Cold War and decolonisation, the commission drafted a series of new human-rights treaties, including those on racial discrimination; economic, social and cultural rights; civil and political rights; women's rights; the prohibition of torture; children's rights; migrant workers, and disabled persons. In acknowledgement of the limitations of treaties for the effective protection of human rights, the commission also developed monitoring and evaluation mechanisms, such as reporting procedures, working groups, special rapporteurs, independent experts, field operations, motions and complaints procedures.

Over time, however, the commission fell into disrepute. States with problematic human-rights records sought election to it to defend themselves from attacks by other states. Their election was in part facilitated by the requirement to secure only 28 votes from the Economic and Social Council and the practice of regional groups approving candidates without any debate about their commitment to human rights. Amnesty International accused the body of routinely resorting to double standards, declaring 'membership is too often used to shield the Commission members from human rights scrutiny instead of to protect and promote human rights'. For instance, in 2004 Sudan attained membership of the commission after an uncontested election at a time when it was engaged in significant gross violations of human rights in the Darfur region. These signature failures, however, masked deep disagreements about the broader failings of the commission and suitable methods to reform it. Flinterman and Baehr observed that 'despite all its shortcomings, [the Commission] has a proud history in the creation, consolidation and gradual strengthening of the present international system of protection and promotion of human rights.' In discussing broader United Nations reform, however, the High-Level Panel on Threats, Challenges and Change concluded '[t]he Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.' According to then Secretary-General Kofi Annan, its credibility deficit cast a shadow on the reputation of the United Nations system as a whole. The collapse of the legitimacy of the commission contrasts with the growing use, in the same period, of regional human-rights courts, especially the European Court of Human Rights and the Inter-American Court of Human Rights, despite criticism of their legitimacy in recent years.

The establishment of the Human Rights Council (HRC) was a response to criticisms of the commission, and the resolution establishing it emphasised 'the importance of ensuring universality, objectivity and non-selectivity...and the elimination of double standards and politicization'. In contrast to the commission, the HRC was created as a subsidiary body of the General Assembly, not of the Economic and Social Council. Second, the HRC meets several times a year (there was a single annual customary meeting of the commission), and extends to include special sessions in response to emergent crises of gross violations of human rights. Third, the number of members was reduced from 53 at the commission to the 47 in the council, elected through an individual and secret ballot. The distribution of seats over regional groups was adjusted, and the number of reelections was restricted to prevent the existence of de facto permanent members.

Resolution 60/251 sets out the council's mandate to protect and promote human rights, to: 'address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon'. Paragraph 4 directs that the council 'shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation', and seeks to ensure that the Council will overcome the levels of politicisation that had contributed to the commission's failing. In its regular sessions, member states may raise any issues

relating to protecting or promoting the-matic (Agenda Item 3), country-specific human rights (Agenda Item 4) or promoting human rights through technical assistance and capacity-building (Agenda Item 10). However, Agenda Item 7 addresses solely the human rights situation in 'Palestine and other occupied Arab territories', and thus contradicts the HRC's founding principles of non-selectivity and universality. The council is also enabled to mandate special procedures and, innovating from the commission, to provide a comprehensive peer-based assessment of states' human rights record, which is termed the universal periodic review. Both of these functions are discussed in detail below. Finally, in 2007, the Human Rights Council established a new complaint procedure to address consistent patterns of gross violations of all human rights reported by individuals, groups, or non-governmental organisations that claim to be victims of human-rights violations or that have direct, reliable knowledge of such violations. With these range of options, the HRC was, therefore, established as a political, state-led institution, the design of which sought to ameliorate and address the failures of the Commission on Human Rights and provide more effective promotion and protection of human rights. Although it remains a political institution, the council's state-led design facilitates the potential to review the human-rights records of states not likely to join more demanding treaty-based regimes, and enables the review of powerful states, such as permanent members of the United Nations Security Council, that can otherwise avoid scrutiny. In the first ten years of its operation, patterns of both success and failure have emerged.

REVIEWING TEN YEARS OF THE HUMAN RIGHTS COUNCIL

Given its mandate and context for creation, the HRC should be assessed not only on its stated goal of the promotion and protection of human rights, but also on whether its practice reflects institutional integrity, that is, whether there has been consistent application of its claimed principles and values. Salil Shetty assessed the council along the following axes:

A successful Council would contribute substantively to preventing serious human rights violations; it would respond promptly; it would promote accountability; it would be consistent; it would promote good human rights practice input throughout the UN system; and it would promote full implementation of human rights obligations everywhere.

First, in terms of promoting human rights, the council followed the standard-setting tradition of the commission by adopting the International Convention for the Protection of All Persons from Enforced Disappearance and the UN Declaration on the Rights of Indigenous Peoples. The council has also agreed valuable new standards, such as the 'Guiding principles on business and human rights'. Other rights, such as water and sanitation, have, importantly, been clarified. The special procedures processes have expanded, with welcome new mandates on the right to privacy and the elimination of discrimination against women. As will be discussed below, the Universal Periodic Review has been a reasonably effective mechanism, if understood as a state-led process.

The HRC's record on supporting the protection of human rights, however, is far weaker. During its first ten years, situations of gross violations of human rights emerged in Iraq, Syria, Yemen, Sudan, South Sudan and Sri Lanka, among others, and the council's debates failed to reflect fully the urgency and seriousness of these situations. Similarly, Human Rights Watch has stated that the council 'has been unable to make a difference in places such as Afghanistan, Guantanamo, Iran, Sri Lanka, Uzbekistan, and Zimbabwe'. Practical protection of human rights remains a key criterion for assessing the effectiveness of human rights mechanisms. The council can thus be legitimately

criticised for its limitations in this regard, but as is often the case with United Nations organs, blame should also be apportioned to the states that enable or disable the HRC's decision-making processes. Furthermore, these criticisms are not unique and are shared with human-rights mechanisms seen as more robust than the council, such as regional courts or international criminal tribunals.

One area of human-rights protection in which the HRC remains effective is its use of special procedures. As of 2016, 56 special procedures mandates exist. The positive impact of the special procedures' work and methodology depend to a significant extent on the involvement of civil society stakeholders, through country visits, communication with victims and their representatives, and the lodging of urgent appeals and allegation letters with the council, based on the information provided by civil society stakeholders. According to the latest special procedures communication report, in 2015 alone 915 individual communications were received by mandate holders.

A second key illustration of the effectiveness of the council in the protection of human rights is its use of commissions of inquiry. While such commissions are necessarily reactive to emergent human-rights crises, they can play a key role in facilitating legal responsibility for gross violations of human rights, in addition to their role as fact-finding instruments. A number of reports from commissions of inquiry have been used by the Office of the Prosecutor at the International Criminal Court to provide evidence in pre-trial chambers of a sufficient basis to begin investigations. Commissions of inquiry thus enable the HRC to contribute to addressing an impunity gap that may arise from inaction on the part of the UN Security Council and can enable the HRC to provide a counterweight to the former. The ability of the HRC to provide for systemic forms of human-rights investigation through commissions of inquiry is a welcome distinctive feature of the council's operations.

A key limitation of the council's protection system, including special procedures, however, remains that states often ignore recommendations or attempt to discredit the mandate holders. Under Agenda Item 5 on human-rights bodies and mechanisms, the HRC could address the status of cooperation with special procedures. A second limitation is financial; there is a significant need to enhance the annual support to special procedures, especially in light of their proliferation in recent years. Third, despite the detailed fact-finding and analysis provided to the council by special procedures, the HRC does not always respond to or take action on the special procedures' findings or recommendations, rendering this work less effective and impactful.

A major opportunity for improving the performance of the HRC was provided by a review process mandated by UN General Assembly resolution 60/251 after five years of the council's existence. The outcome of the review was a rather meagre report, but it highlighted the weaknesses of the council, especially around its ability to respond swiftly to urgent human-rights situations. During this reform process, two suggestions were made that were ultimately not accepted but remain valuable in terms of enhancing human-rights protection and promotion. First, a trigger system was proposed in order to allow an assessment of a serious human-rights situation exclusively in accordance with normative standards, without the politically motivated debate and necessary bargaining among member states to have the item placed on the agenda. Such a system would be based on objective reports by independent experts, such as the UN's high commissioner for human rights, the mandate holders of the UN special procedures or the UN secretary-general. A second proposal which could be re-visited would be to develop a comprehensive and accessible integrated calendar for the council, including a list of resolutions and when they will be negotiated.

The record of the Human Rights Council over its first ten years reflects a shift in reality from the practice of the Commission on Human Rights in its later years. The council has a full agenda that has

sought to address and respond to an extremely wide range of issues and emergent human-rights crises. In this regard it offers the ability to capture the reality of global human-rights challenges, albeit imperfectly, in a way more focused, treaty-based, human rights mechanisms cannot. This marks a shift from the way in which the Commission operated; its practices were less frequent and were met with less cooperation and acknowledgment from states. The work of the HRC so far represents a shift from questioning whether the UN human rights bodies will address an issue, to now assuming an issue will be addressed and posing the question 'What are you going to do about it?'

IRELAND'S MEMBERSHIP OF THE COUNCIL 2013–15

In 2012, the Irish government sought and achieved election to membership of the HRC, for a three-year term beginning on 1 January 2013. The then tánaiste, Eamon Gilmore, claimed the vote represented 'a major endorsement of Ireland's international standing, in particular, our advocacy of human rights across the globe'. In reforming membership of the Human Rights Council, state candidates were encouraged to make voluntary campaign commitments and pledges, and the possibility was introduced to suspend member states that commit serious human-rights violations. Ireland made a number of voluntary pledges and commitments in furtherance of its membership of the council. These included 'Investing in development is investing in human rights', 'Combating discrimination and gender-based violence', 'Addressing global hunger, health and poverty', 'Supporting human rights defenders', and 'Strengthening the United Nations human rights treaty body system'. Ireland made a number of commitments to uphold human rights in its own jurisdiction, including ratification of the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearances; provision of support for human-rights education and training domestically, in order to enhance awareness and respect for human rights across all sectors of society; and upholding the independence of Ireland's national human-rights institution.

In reflecting on its own performance on the council in one of its final statements in December 2015, Ireland stated that it had 'sought to strengthen and preserve the integrity of this institution', and to uphold the spirit of the council's mandate, particularly, 'the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation'. This article will assess Ireland's contribution to the integrity of the HRC along three axes: integrity of the treatment of states, integrity in the development of human-rights law, and integrity in the role of the HRC in human rights-law more generally. It is in this context that we can assess the role Ireland has played between 2013 and 2015 and if it maintained its voluntary pledges, and whether the Human Rights Council has offered an effective reform or tangible difference in its first ten years of operation.

PROMOTING HUMAN-RIGHTS LAW: INTEGRITY OF HUMAN-RIGHTS LAW

Human rights law is subject to a well-established critique that it has privileged the development of civil and political rights over the development of socio-economic rights, despite their claimed equal importance and indivisibility. This debate has developed into discussion around the scope and nature of international cooperation and 'third generation rights'. Freedman and Mchangama contend that it remains unclear from state practice at the national level or from voting records at the HRC that the concept of indivisibility is an accurate reflection of how states actually view and approach human rights. It is possible to assess therefore whether the council has continued this trend, or sought to re-balance the priority between civil and political and socio-economic rights, and to assess the contribution of the resolutions and practices led by Ireland between 2013 and 2015.

Given the uneven support for and ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) among states, the HRC provides a crucial forum for accountability in regard to ESCR and offers recognition of the indivisibility of human rights. For instance, the council's drafting of the human-rights guidelines for pharmaceutical companies in relation to access to medicines by the special rapporteur on the right to health, which offered precise, specific and operational requirements under international human-rights law for non-state actors. Such guidelines represent important standard-setting practices for the council, but also demonstrate the need to engage non-state actors, including large multinational corporations.

More generally in state reports and recommendations, however, there is limited reference made to the language of the ICESCR, specifically to the obligation to take steps to secure economic, social or cultural rights. Nor is there much reference to the language of core obligations or progressive realisation, although some states do provide detailed information on steps taken towards the realisation of economic, social and cultural rights. Similarly, until 1995, Commission on Human Rights special procedures focused almost exclusively on civil and political rights, such as, for example, the mandate on toxic dumping. Since then, twelve special procedures mandates have addressed questions of economic social and cultural rights. In addition, some thematic work by the council has addressed economic, social and cultural rights, such as resolutions on the rights to education, food, adequate housing, cultural rights or health. Other thematic work, such as on the rights of persons with disabilities, necessarily addresses both civil and political and economic and social rights. Finally, various special procedures have focused on economic, social and cultural rights during armed conflict.

Between 2013 and 2015, Ireland led negotiations on two resolutions at the council: one on the protection of civil-society space and the other on the prevention of early-childhood mortality and morbidity. These addressed questions of civil and political and socio-economic rights, respectively. Ireland's resolution on civil-society space is highly timely and has the potential to cohere diverse national human-rights priorities. Since 2012, more than 120 laws in 60 countries have been proposed or enacted restricting freedoms of association or assembly. The greatest increase, however, has been in restrictions on international funding, which now account for 35 percent of all restrictive measures. Ireland's resolution clarifies and protects civil-society space at a time when governments violently impose restrictions and surveillance on civil-society organisations, facilitated, in part, by the fact that relevant concepts and definitions are contested. The diverse expressions of civil society recognised in the resolution strengthen the protection of a wide range of human-rights actors and enable greater international support for local ownership of human-rights priorities. The resolution was met with several hostile amendments, but was successfully concluded with its substance intact. Cuba, China, India, the Russian Federation, and Venezuela presented a total of ten amendments, while Ireland and other states sponsoring the resolution had conducted six rounds of consultation to gather support around a single text.

A particularly concerned group that benefits from greater protection of civil society space is human-rights defenders, who can be defined as people who, individually or with others, act to promote or protect human rights. The work of human-rights defenders cuts across a broad spectrum of interventions by a wide range of actors, promoting and protecting civil, political, economic, social and cultural rights. Theoretically, every individual could be a human-rights defender at any given time and, thus, individuals could be understood and targeted as a human-rights defender solely for a specific piece of work or action. In several states, to be a human-rights defender remains a highly dangerous role. Reprisals against human-rights defenders have even extended to national human rights institutions (NHRIs). While the HRC was conducting its 27th session, the supreme court in the

Maldives charged all members of the Maldives Human Rights Commission with high treason for submitting a report to the council's universal periodic review (UPR) process.

Beyond the resolutions on civil society and early childhood mortality, Ireland consistently raised the issue of civil society space at the HRC through its written interventions at the UPR in the examination of other states on issues of concern and resolutions on human rights in individual countries. Regrettably, civil society actors continue to find their recognition by and access to the UN threatened by an increasing range of states, including democratic ones. To enable greater protection, especially for human-rights defenders, it is hoped that the HRC can in the future examine how state and non-state actors, including businesses, co-operate with each other to strengthen, especially through informal means, or undermine the protection of civil society.

While the choice of civil society space as the subject of a resolution enabled a localised protection of human-rights prioritisation that could incorporate a balanced consideration of both civil and political and socio-economic forms of human rights, Ireland's resolution on the morbidity and mortality of children under five must also be commended. It helped to promote the indivisibility of human rights by directly considering the more neglected category of socio-economic rights. Ireland's justification for pursuit of this resolution was a humanitarian commitment to the prevention of childhood mortality. Ireland's resolution aligns with prior resolutions on preventable maternal and early childhood mortality; both early childhood and maternal deaths among women of reproductive age are widespread in developing countries. The human rights-based approach to these issues can remind the international community of their commitments in different treaty-based and soft-law instruments, in special procedures, and from previous consensus meetings. The HRC's technical guidance on implementation of resolutions and other forms of legislation on these issues illustrates how it can encourage monitoring and assessment of disparities among different states' approaches.

Beyond these issues, Ireland's record during its time on the HRC on balancing the two traditional categories of rights remained mixed. Ireland failed to honour its commitments to ratify the Convention on Enforced Disappearances or the Convention on the Rights of Persons with Disabilities into domestic Irish law; nor did its voluntary pledge to combat discrimination and gender-based violence extend to its own ratification of the Istanbul Convention on preventing and combating violence against women. As a reviewing state, Ireland made supportive reference to treaty ratification and the work of treaty bodies and special procedures. It recommended the submission of overdue treaty body reports and emphasised the need for states to seek the technical assistance offered by the OHCHR to ensure reports are provided to treaty bodies and to other regional human rights mechanisms on time. Curiously, given Ireland's own position rejecting the need for domestic ratification, it encouraged other states to ratify the ICESCR into domestic law. It is notable that such an approach increased significantly in the last year of Ireland's membership of the HRC, and this should provide a template for the work of new council members. Ireland's experience on the HRC between 2013 and 2015 suggests that in fostering future coherent development of the indivisibility of rights in the context of limited time and capacity at the council, issues such as the human-rights implications of austerity, of the sustainable development goals (and their link to armed conflict), and the impact of climate change on human rights all deserve to be given greater attention by the council. In addition, there is a need to clarify the obligations of businesses, especially transnational corporations, regarding socio-economic rights, such as the right to health.

EQUAL TREATMENT OF STATES AT THE HUMAN RIGHTS COUNCIL

The credibility of the Commission on Human Rights and subsequently of the Human Rights Council have often been criticised as being subject to politicisation, defined as ‘the introduction of unrelated controversial issues by countries seeking to further their political objectives’. Politicisation is sometimes evidenced by state actions, such as bloc voting and selectivity regarding country-specific human rights situations. .

In the context of a state-led institution, claims of politicisation can be overstated. The structure and behaviour of the Human Rights Council is best understood in light of the diverse preferences across the bloc of states that informed its creation. The UN’s membership is often divided into five regional groupings that are used for the purposes of apportioning membership to the organisation’s bodies. Geographic regional groups are not the only form of alliances at the UN. Developing states have formed stronger political alliances than developed nations, owing to their greater need for collective strength. Both forms of alliance allow a larger number of states’ views to be represented through collective voices, providing an alternative to powerful states dominating council proceedings. Conor Gearty deems it crucial to view human rights as part of, rather than as superior to, politics. In 2003, referring to the HRC, Sergio Vieira de Mello stated:

most of the people in this room work for government or seek to affect the actions of government. That is politics. For some to accuse others of being political is a bit like fish criticising each other for being wet.

Paulo Pinheiro concluded that the ‘political nature of the Human Rights Council is an essential element for its functioning’, and that it would be ‘naive to expect that this political behaviour of the member States would change only because the structure of the body has changed’. The distinctive feature of the council, and the predecessor commission, is to make the politics of human rights overt, in contrast to potentially covert or implicit judicial politics. What is important is what kind of politics are practised and their impact on human rights.

The effects and dynamics of bloc politics have shifted since they held a position of dominant influence over the Commission on Human Rights. During the first ten years of the HRC’s operations, significant rifts emerged within the African States Group and within the Organisation of Islamic Cooperation (OIC) and the Non-Aligned Movement (NAM). For instance, South Africa defied the majority of the African group in 2011 by launching a resolution on the rights of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people. This mirrors recent disagreement about the South African courts’ compliance with an arrest warrant from the International Criminal Court for Sudanese president Omar Al-Bashir. The number of thematic, cross-regional initiatives being raised in the council is increasing, on topics such as trafficking in women and children; the human rights of persons with disabilities; the rights of the child; the human rights of internally displaced persons; enforced or involuntary disappearances; business and human rights; and LGBTI rights, among others. There are also cross-regional initiatives concerning country situations, such as the resolution on the situation of human rights in the Islamic Republic of Iran, and a similar resolution on Sri Lanka. There may, thus, be scope for further opening up of existing thematic resolutions and mandates for joint, cross-regional sponsorship, especially regarding socio-economic rights, such as the right to safe drinking water and sanitation, which remains an issue of major interest to many countries from the global South. There is, however, no guarantee that this cooperation will continue when new members join the council.

Some critics of the HRC have singled out the EU as having played a particularly dis-appointing role on the council. A European Council on Foreign Relations report charged that the 'EU's lack of leadership, miserliness and hypocrisy have begun to convince even its allies that making the HRC work is not a European priority'. Between 2013 and 2015, the EU sought to use its role in the council to promote a drive for greater effectiveness in its operations. While the EU member states are more united and can agree to issue more statements and make more interventions in the council, as compared with their efforts on the Commission on Human Rights, they are struggling to influence the HRC's agenda and outcomes. To pursue further cross-regional coalitions, and thereby have a greater impact outside of the EU, actors within the EU bloc should consider modelling regional self-criticism to overcome stale bloc dynamics. Further coherence could be developed by integrating the EU's own human-rights obligations and regime.

The claim of politicisation is often made in regard to the council's treatment of Israel. Prior to the creation of the HRC, the average percentage of Commission on Human Rights action aimed against Israel was around 30%. Since the establishment of the council, Israel has been the target of 56.25% of national resolutions. Attempts to re-focus the council's work away from Israel were stymied, however, by the renewal of significant hostilities in Gaza in the summer of 2014. At a special session, the council established an international commission of inquiry into allegations of war crimes. While the resolution was adopted with 29 votes in favour, the United States opposed it and there were 17 abstentions, including by Ireland. Explaining the Irish government's decision not to support the resolution, Minister for Foreign Affairs and Trade Charlie Flanagan said the government had wanted the motion 'to include all violent acts on all sides including Hamas and other militant groups in the region', but he opined that 'the resolution failed to recognise the right of Israel as a democratic state in the region and its right to defend itself'. Subsequently, the office of the prosecutor at the International Criminal Court opened a preliminary investigation on the situation in Israel and Palestine, and it may derive evidential support from the HRC's commission of inquiry report.

It remains the case that factors other than human rights will continue to influence states who are members of the HRC and may inhibit the council from fulfilling its mandate. Ireland rightly called on all member states to engage with the substance and merits of country-specific initiatives, although these are by no means perfect, rather than to object to them in principle. To pursue greater equal treatment of states, both Ireland and new council members may wish to consider revisiting the issue of independently generated triggers to oblige the council to consider new themes or national situations, based either on independent institutional actors or thresholds of human rights indicators. Weaker criticism of human-rights violations in Asia and Africa generally persist, but opportunities to reduce traditional patterns of support among the five regional blocs of states, or between alliances of developing states, through regional self-criticism are welcome. In addition, to enable greater objective scrutiny of member-state effectiveness, it may be suitable to track and evaluate member states based on the implementation of their voluntary pledges.

THE HUMAN RIGHTS COUNCIL, TREATY-BASED BODIES AND THE INTERNATIONAL HUMAN-RIGHTS SYSTEM

The integrity of the Human Rights Council necessarily rests upon its interaction with the entirety of the international human-rights system in protecting human rights in reality. A number of views persist regarding the appropriate relationship between the council and the greater human-rights system in international law, particularly the treaty body system. One perspective may be that the council represents a diplomatic and state-led approach to human rights, which enables greater flexibility and freedom for states to address human-rights issues in a non-confrontational manner. As a result, there is no strong pressure to refer to the views and recommendations of UN treaty

bodies, which may not have these considerations in mind. In-deed, one concern may be that the council could misuse or dilute treaty-body recommenda-tions and create problems for the international rule of law.

Another perspective would suggest the need for integration of treaty-body views with those of the Human Rights Council, to avoid risks of institutional fragmentation and over-come the deliberate set-up of United Nations mechanisms in a fashion designed to weaken effective scrutiny of states' human-rights records. Phillip Alston described the sine qua non for the success of the UPR procedure:

to take full account of all country-specific information generated by the process of re-orting to the various treaty bodies and, most importantly, of all of the reports gener-ated by the system of special procedures which has been carried over to the Council from the Commission.

Since 2006, the rate of treaty ratification, and thus the workload of treaty bodies, has in-creased exponentially. The reference by council member states to the broader human-rights system remains mixed. As noted above, Ireland made supportive reference to the work of treaty bodies as part of its reference to other human-rights mechanisms more generally, in-cluding to other regional human-rights mechanisms. A coherent approach, drawing on all hu-man-rights mechanisms, not only increases the coherence of the Human Rights Council's ac-tions, but also has the potential to alleviate the resource and expertise burden for developing or less-resourced states who wish to model their behaviour on Ireland or similar states. A co-herent approach, employing all treaty reporting bodies, could also be facilitated through the OHCHR's suggestion of the introduction of a comprehensive reporting calendar.

Further reforms could strengthen the integrity of the council relative to the rest of the international human-rights system. First, states could provide greater financial and political support to the office and person of UN High Commissioner for Human Rights, which have continually been the target of attacks by a number of states because of their impartial assess-ment of human-rights situations in particular countries. Second, states should consider the introduction of explicit follow-up procedures emerging from recommendations from special procedures and other forms of investigation, as part of a mechanism designed to integrate recommendations from the UPR, special procedures and treaty bodies, in order to foster more comprehensive deliberation on guidance for implementation at the national level. Finally, the council should consider how it can more effectively link recommendations and appeals to the UN Security Council, including in situations when it wishes to refer cases to the International Criminal Court.

THE UNIVERSAL PERIODIC REVIEW (UPR)

Resolution 60/251 mandates the Human Rights Council to:

undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States.

The UPR is governed by principles that include the universality, indivisibility, interdependence, and interconnectedness of all rights; cooperation and interactive dialogue; universal coverage and equal treatment of states; complementarity with other mechanisms, such as representing an added value to the existing UN human-rights machinery; and participation of relevant stakeholders. The UPR has the four phases: (i) the gathering and collation of information on the human-rights situation in the state under review; (ii) an interactive dialogue in the UPR Working Group, in which a troika of rapporteur states plays a leading role, including the drafting of the 'outcome' report; (iii) the final adoption of the 'outcome' report, including recommendations to the reporting state, by the plenary council; and (iv) the 'follow-up' to the review.

The UPR should be conceived of as an example of what Marilyn Strathern has dubbed 'audit culture', in which actors provide an account of themselves and of others. The UPR also reflects already existing—and politically controversial—institutional processes of expertise, 'knowledge transfer' and 'capacity building'. The practice of UPR has been alternatively characterised as either a friendly and cooperative learning experience, requiring critical self-reflection on the part of the state being reviewed, or as a hierarchical and public schooling process. These models reflect an older model of tutelage in which an enlightened West guides a backward non-West in its efforts to 'catch up' with the norms that the West has set.

Nonetheless, a number of positives can be discerned from the operations of the UPR. First, the process has largely been accepted as such by states. More than two-thirds of all 20,000 recommendations issued at the end of the first review cycle were accepted, and an increasing number of states voluntarily provided mid-term reports. There was, however, a general effort on the part of most of the states under review to avoid explicitly rejecting recommendations by providing very general responses or giving no response; for example, simply 'taking note of' the review's recommendations. African and Asian states are more likely to present their recommendations to countries of their own regional groups and to make recommendations in terms of what the state under review is already doing, or to recommend a general, fairly nonspecific action. In contrast, the Western European and Others Group (WEOG) and the EU members of the Eastern European Group mostly address states of Asia and Africa. Democratically ruled states tend to make stronger recommendations than less democratic states. The high rate of acceptance of recommendations reflects the political nature of the process. States are likely to want to have as high an acceptance rate as possible, both because of the content of the recommendations and because they are concerned about the visuals of not accepting a large number of recommendations. Many participating states also view recommendations not accepted as 'wasted', since states under review have no obligation to take action on them. The overall high acceptance rate reflects the view of many states that reform through the UPR must be largely evolutionary, rather than revolutionary. Cochrane and McNeilly note that overly broad recommendations fail to identify specific problems and therefore make it difficult for even the most well-intentioned states under review to respond effectively, while also enabling uncommitted states to make vague responses.

Second, NGO engagement with the UPR has proved highly valuable in increasing the legitimacy and effectiveness of the review process. NGOs can legitimately engage in the UPR and advocate national consultation, visits of special procedures mandate holders to their States or ratification of human-rights treaties. NGOs can provide a clear statement about facts and concerns in relation to the human-rights situation in the state under review and propose concrete and specific recommendations that are action-orientated and measurable. On the other hand, the full and effective participation of people from the global South in the UPR process remains unresolved, as a consequence of imbalances in capacity and finance. Furthermore, and aligned with the need to

protect civil-society space identified earlier, there is a need for an urgent response mechanism to protect NGOs working with the UN from reprisals in their country of origin.

Third, the UPR process is largely supportive of the development of the international human-rights system's integrity, by referencing treaty bodies and special procedures. Some states engaged in the process specifically asked questions about recommendations of treaty bodies and special procedures. A number of references were also made to late reports and the need for states to seek the technical assistance offered by the OHCHR to ensure reports are provided to treaty bodies on time. Additionally, as part of the process, non-state parties were asked about steps taken towards ratification of treaties and optional protocols. Good, but selective, practice is emerging in relation to economic, social and cultural rights, with significant reference to recommendations, and in relation to states promoting submission of reports and ratification of treaties and protocols. The lack of overt incorporation of existing human-rights treaties within the national laws and constitutions could be ameliorated by the provision of clear, comprehensive human-rights action plans, which could support states in taking official cognisance of international human-rights treaties. Finally, the crucial criterion for assessing the real success of the UPR is whether effective follow-up to the recommendations formulated during the previous review cycle is delivered. Without this the UPR cannot achieve its purpose of fostering tangible improvements in the protection of human rights.

CONCLUSION

As with all human rights instruments, the effectiveness of the Human Rights Council should be assessed in terms of the improvements that it makes to individual lives, not the number of resolutions that it adopts. In regard to promoting human rights, the institutions of the UN will continue to be a reflection of the preferences of its member states until a sufficient number of those states have improved their human-rights records to the point where they are no longer threatened by a powerful Human Rights Council. One of the biggest structural challenges for the council arises from its increased workload, a problem shared with treaty-based bodies and regional human-rights tribunals, and a broad structural problem for funding international organisations in an age of austerity. A huge number of issues are addressed by the HRC throughout the course of a year, but with limited time and resources allocated to deal with them, there is a risk that the council is overburdened and only addresses issues in a superficial fashion. Specific recommendations for enhancing the council's ability to promote and protect human rights persist in civil society. Three prominent examples are the creation and use of an automatic trigger system; the institutionalisation of a follow-up mechanism for decision making, resolutions and recommendations; and an integrated calendar.

This article also critically assessed Ireland's membership of the Human Rights Council, with a view to exploring its legacy as a member and its future and continued engagement. In three areas—the indivisibility of rights, the treatment of states, and the link between the council and the international human-rights system—Ireland's contribution on the council between 2013 and 2015 has created opportunities but also presented challenges as new members begin their work. As a result, Ireland's experience presents both a model and a warning for new members in their efforts at securing effective human-rights protection via the HRC. Ireland's record on its voluntary pledges as a member of the council remains mixed, and, as it concludes its membership, re-focuses attention on Ireland's commitment to its own domestic human-rights record. In seeking to uphold the integrity of the Human Rights Council, Ireland's own integrity in its support of human rights is, justifiably, scrutinised.