The UN Human Rights Pollar on Shaky Ground

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The UN Human Rights Pillar on Shaky Ground

70 years ago, the UN General Assembly adopted the Universal Declaration of Human Rights as the foundation of human rights treaties and the basis for the work of various institutions. However, current global events put pressure on these achievements. It is of great significance that human rights are taken into account systematically in the security policy debate.

By Céline Barmet

On 10 December 2018, the Universal Declaration of Human Rights (UDHR) will celebrate its 70th anniversary. This landmark document, adopted by the General Assembly of the United Nations (GA) in Paris in 1948, was the first to lay out the fundamental civil, political, economic, social, and cultural rights of every single individual in 30 articles. The UDHR, drafted by experts from various continents and cultural areas, is regarded as the universally acknowledged benchmark and the basis of numerous binding treaties under international law designed to protect human rights. Although the UDHR is not legally binding for UN states, it has achieved great moral weight and normative authority by now.

However, the protection of human rights around the globe remains inadequate, since those rights are often sacrificed in the interest of economic and geostrategic aims. According to *Freedom House*, a Washington based non-governmental organization (NGO) that measures individual rights and liberties in 195 countries alongside the UDHR's precepts, the global situation has worsened in the past ten years. The UN High Commissioner for Human Rights, addressing the UN Human Rights Council (HRC) in Geneva in March 2018, also concluded that human rights were current-

The Universal Declaration of Human Rights, here illustrated at an exhibition, is a milestone document in the history of human rights and will celebrate its 70th anniversary this year. *Mike Segar / Reuters*

ly under acute threat or ignored altogether in more than 50 countries. He criticized conditions in, inter alia, Syria, Gaza, Yemen, Libya, Myanmar, Venezuela, and Burundi, but also the current political situations in Western countries such as Hungary, Poland, or Austria. Usually, responsibility for these emergencies lies with governments that do not feel bound by the

UDHR or global human rights treaties and that are not held accountable for their human rights violations due to a lack of political will.

The increasing influence in international politics of authoritarian states like China and Russia as well as the trend towards favoring regimes that systematically abuse

human rights like in Syria, pose a threat to the international community's fundamental human rights achievements as well as to individual and international security. At the same time, nationalist movements in Europe and in the USA are targeting human rights as part of their assault on globalization and multilateral institutions.

Protecting and respecting human rights is one of the core responsibilities of the UN, closely linked to its two other main pillars, "peace and security" and "development". Switzerland, too, defines its engagement on behalf of human rights as a priority, both in domestic and in foreign policy. Geneva, as the global center of human rights, is venue of numerous institutions, including the HRC – the central intergovernmental organ for the protection, promotion, and observation of human rights in all UN states. Switzerland was closely involved in its creation and since 2016 has been a member for the third time.

However, both in the HRC and in the GA, the Western democratic model based on the concept of universality, indivisibility, and interdependence of human rights has come under growing pressure in the past decade. Western countries often find themselves and their concerns in the minority, and inalienable human rights are increasingly being questioned on a global scale. The HRC finds itself faced with immense

The universality of human rights can only be achieved through an inclusive body and large-scale dialogue.

challenges, given current and future global developments such as increasing intolerance, rising violent and religious extremism, the growing gap between the poor and the rich, climate change, and migration movements that are linked to all of these factors. It seems all the more important to systematically integrate human rights into the security policy debate. In a public appeal at the beginning of its current HRC mandate, Switzerland announced its determination to promote that link. Such considerations are also relevant with a view to Switzerland's efforts to secure a non-permanent seat in the UN Security Council for the period 2023 – 2024.

A Global Institution
Following the atrocities of World War II, the UN, founded in 1945, explicitly re-

The Main HRC Mechanisms (as of December 2017)
Every four-and-a-half years, all UN member states are subject to a **Universal Periodic Review** (UPR). This review covers the human rights record of each state, with an average of 180 recommendations for improvement made by other member states each time. This inspections regime is based on the UN Charter, the UDHR, voluntary undertakings, and all international human rights legislation ratified by the state under scrutiny. The UPR is an opportunity for inventory and contributes to the debate on human rights. However, the effectiveness of this review depends on the willingness of the states in question to implement the legally non-binding recommendations. The HRC may delegate political representatives for **special procedures;** they can observe the human rights situation in a particular state or in connection with a specific topics and it may compile reports and recommendations. Currently, 56 special procedures are underway, including 12 country mandates (e.g., for Syria, Myanmar, or the Palestinian territories occupied since 1967) and 44 thematic mandates (e.g., on torture, modern forms of slavery, or violence against women). The **Advisory Committee,** a platform for discussions and professional exchange, consists of 18 independent experts who support the HRC with expertise and studies upon request. The **complaint procedure** allows individuals and NGOs to call the HRC's attention to serious human rights violations. The HRC may also deploy **commissions of inquiries and fact-finding missions** in response to serious violations of human rights and international humanitarian law. To date, it has created 28 such commissions and missions, including seven currently active ones (e.g., in Yemen, Burundi, or Syria).

ferred to respect for human rights and basic liberties for all in their founding Charter. In 1946, the UN Commission on Human Rights – the predecessor body of today's HRC – was tasked with compiling an international catalog of human rights. The UDHR was adopted in 1948 as a legally non-binding document, while the two international treaties on economic, social, and cultural rights (UN Pact I) and on civil and political liberties (UN Pact II), both signed in 1966, are binding under international law for their signatory states. These three documents gave rise to a web of treaties and institutions, which continue to protect and advance human rights at the international level to this day. In 2006, due to concerns over the commission's credibility, it was replaced by the HRC. This measure was the outcome of an initiative first tabled by Switzerland in 2003 and complemented with further reform proposals by then UN secretary general, Kofi Annan. The resolution on the establishment of the HRC was adopted on 15 March 2006 by 170 votes in favor, with three abstentions and four votes against (the US, Israel, Palau, and the Marshall Islands). Like the Commission on Human Rights before it, the HRC was to have its headquarters in Geneva.

As the primary, universal and intergovernmental UN human rights body, the HRC exercises a variety of mandates. It deals with situations where human rights are violated, issues statements and prepares recommendations, establishes international human rights standards, promotes their enforcement through dialog, capacity-building, and technical support, and develops legally binding instruments for the protection of human rights (e.g., the UN Convention on the Rights of the Child). Moreover, the HRC serves the further development of international law, sensitizes the public, and fosters dialog between states and NGOs. A number of diplomatic and political instruments are at the HRC's disposal in the implementation of these mandates (see info box).

The HRC meets for at least three sessions over at least ten weeks per year. It may call special sessions in cases of ongoing human rights violations, such as Israel's recent use of force against Palestinian demonstrators at the border with the Gaza Strip. During the sessions, the Council is briefed by experts, special rapporteurs, and civil society representatives and negotiates resolutions for the purpose of ending these violations. Thus, cooperation, dialog, and diplomacy are the main precepts of the forum. The HRC has 47 members, with seats allocated based on the UN's geographic allocation formula. Candidates are nominated by their regional groups and elected for three-year terms on a secret ballot in the GA, where they must win an absolute majority of votes. They may run once for immediate reelection, and mandates are staggered, with one third of seats open for replacement every year. Election is open to all UN member states. In theory at least, the potential members must meet the highest standards of human rights. Candidates are further expected to give voluntary assurances, which are to be taken into consideration in the vote.

Members of the HRC in 2018

The 47 HRC members categorized according to Freedom House*
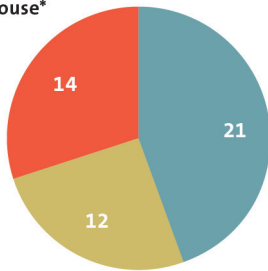
Free (21): Australia (2020), Belgium (2018), Brazil (2019), Chile (2020), Croatia (2019), Germany (2018), Hungary (2019), Japan (2019), Mongolia (2018), Panama (2018), Peru (2020), Republic of Korea (2018), Senegal (2020), Slovakia (2020), Slovenia (2018), South Africa (2019), Spain (2020), Switzerland (2018), Tunisia (2019), United Kingdom of Great Britain and Northern Ireland (2019), United States of America (2019)

Partly free (12): Côte d'Ivoire (2018), Ecuador (2018), Georgia (2018), Kenya (2018), Kyrgyzstan (2018), Mexico (2020), Nepal (2020), Nigeria (2020), Pakistan (2020), Philippines (2018), Togo (2018), Ukraine (2020)

Not free (14): Afghanistan (2020), Angola (2020), Burundi (2020), China (2019), Cuba (2019), Democratic Republic of the Congo (2020), Egypt (2019), Ethiopia (2018), Iraq (2019), Qatar (2020), Rwanda (2019), Saudi Arabia (2019), United Arab Emirates (2018), Venezuela (2018)

Expiration of the term in brackets

* The indicators used to evaluate 195 states in the "Freedom in the World 2018" report by the NGO "Freedom House" are based on the Universal Declaration of Human Rights.

Sources: OHCHR, Freedom House

China's Growing Influence

Despite the awareness that the universality of human rights can only be achieved by an inclusive body and a broadly conceived space for dialog, the composition of the HRC is controversial. Regularly, states are elected into the body that are systematic abusers of human rights and that can prevent the passing of resolutions with their vote. According to Freedom House, only 44.7 per cent of the current HRC members can be considered free countries, with states such as Egypt, Afghanistan, Burundi, China, Saudi Arabia, and Venezuela being among the negative examples (see chart).

Despite voting by secret ballot, the number of candidates nominated by the regional groups does exactly or almost exactly match the number of available seats. This means that the GA is not given a real choice and that by default, countries with weak human rights records will also be voted into the Council. Efforts are currently underway to ensure that only the candidates with good human rights records will run for the available seats. This could be achieved, for instance, by imposing additional checks and requirements, such as a mandatory presentation of the candidates and their human rights commitments. Further steps, such as requiring a two-thirds majority for candidates in the GA vote, or excluding states whose cases are being dealt with by the International Criminal Court (ICC) from becoming candidates, seem unrealistic at present.

Furthermore, a growing conflict can be observed between the industrialized countries of the West and the developing economies of the South. This dispute means that voting majorities are shifting. From the point of view of the West, this is a problem affecting several UN bodies. For instance, states from the global South, many of which have worrying human rights records, hold a two-thirds majority in the GA. In addition to the political alliances within the regional groups, there are also interest groups such as the Non-Aligned Movement (NAM) or the Organisation of Islamic Cooperation (OIC) that have gained influence at the expense of Western states. Such alliances have ensured that the HRC has so far devoted a disproportionate share of its efforts to the cases of Israel and Palestine while blocking resolutions or special sessions on Egypt, Saudi Arabia, Russia, China, or Venezuela. In this context, it is clear that political and geostrategic alliances between states or state blocs outweigh considerations of human rights, preventing a full and effective investigation by the Council under its core mandate.

As far as the great powers in the HRC are concerned, the possibility that the US under President Donald Trump could reduce its engagement – or even withdraw from the HRC – raises concerns regarding the dramatic consequences for the traditional Western conception of human rights, especially at a time when China is constantly expanding its influence. Under then president George W. Bush, the US opposed to the creation of the HRC, deeming the criteria for membership to be insufficiently restrictive and the debate in the Council to be too narrowly focused on Israel for Washington's taste. It was only under President Barack Obama that the US decided to make a bid for a seat on the HRC. Trump has yet to commit himself explicitly to the HRC – and remains generally un-

convinced as to comprehensive US engagement within the UN. At any rate, Washington's UN ambassador Nikki Haley announced in Geneva in June 2017 the US wanted to reform the HRC. Regarding the current discussions on Israel, there is serious reason for concern that the US will actually leave the Council.

While the US hesitates, China has adopted an increasingly active stance within the Council and is propagating its own version of human rights via a series of initiatives. For instance, China would prefer that the right to development be given priority to other human rights. At the same time, China insists on a relativistic interpretation of the concept of human rights, arguing that such rights need to be interpreted by taking into account country-specific cultures, values, and political systems. Hence, China is challenging the universal basic principle of indivisible, interdependent, and inalienable human rights, which may lead to a gradual undermining of the UN human rights system as shaped by Western thinking. At the same time, China's growing global influence, especially in geostrategic and economic matters, means that some countries are less and less motivated to oppose Chinese initiatives in the HRC. Even the US, which traditionally likes to cast itself as a great champion of human rights, currently seems uninterested in responding effectively to these developments. However, all of the UN's bodies remain dependent on strong US engagement, including for financial reasons.

Although the US declared in April 2017 that it would push for a nexus between human rights as well as peace and security, there is still no formal, systematic cooperation between the HRC and the UN Security Council. This despite the fact that stronger cooperation would be the first step towards preventing human rights violations more effectively. The HRC's legally non-binding resolutions can only protect human rights effectively if they lead to changes in national legislation. To reach this change, states must be willing to implement these resolutions. Generating constant diplomatic and public pressure from within the HRC can certainly be an effective measure. However, only the Security Council can pass legally binding measures as a way of penalizing serious human rights violations.

Switzerland's Priorities

In order to ensure it independence, security, and prosperity, Switzerland relies on faithful adherence to rules under international

law, such as respect for human rights. It is therefore a strong advocate of the notion that protecting and implementing human rights is a crucial aspect of peace support that contributes to international, Swiss, and individual security. The fact that Switzerland is thereby committed to the UN's "Three Pillars" principle was stated explicitly, for instance, in June 2016 by then foreign minister Didier Burkhalter. Speaking on the occasion of the HRC's tenth anniversary, his "international appeal to enhance conflict prevention" launched a discussion group that consists of 71 countries so far. The UN's preventive instruments should be strengthened by systematically anchoring human rights in security policy debates. Human rights and security should also be viewed in their mutual contexts, resulting in stronger cooperation between the HRC and the Security Council. Switzerland launched this appeal at the start of its third term in the HRC. After two previous memberships from 2006 to 2009 and from 2010 to 2013, Switzerland's third term will run until the end of 2018. Hence, Switzerland is one of the most active members of the HRC.

In its third period in office, Switzerland – together with other co-sponsors – has submitted 15 resolutions to date, all of which were adopted. They dealt with the following main issues: Abolition of the death penalty, respect for human rights in response to peaceful protest, environmental policy and the global drug problem, an emphasis on how destroying cultural heritage can have negative consequences for cultural rights, measures to prevent child and forced marriages, the right to privacy in the digital age, and finally, the importance of transitional justice mechanisms with regard to impunity and the prevention of atrocities. Switzerland's advocacy in these and other areas including torture prevention, protection of human rights advocates, or adequate financing for the Council is also been pursued in periods of non-membership. Switzerland is an observer to debates over country cases of concern, and participates actively in the regular Universal Periodic Review (UPR) process. In 2017, Switzerland for its part was subjected to a UPR for the third time after 2008 and 2012. From 111 UN member states, it received 251 specific recommendations on how to improve the human rights situation, with an emphasis on the following topics: The creation of an independent national human rights institution, better protection against discrimination connected to race, migration, asylum, gender equality and LGBTI, and the compatibility of popular initiatives with human rights obligations. Switzerland adopted 160 of these 251 recommendations and rejected 91. The implementation of these recommendations will be re-evaluated following the next review in four-and-a-half years.

Enhanced Dialog is Fundamental

The growing, systematic global disregard for human rights is a development with significant implications for security policy. The disastrous consequences of climate change, the resulting destruction of habitable space, and the displacement of population groups will massively affect individual rights. International economic activity, increasing discrimination, and violent extremism are creating a conflict potential that is extremely damaging to the principle of inalienable individual human rights. This means that dealing coherently with human rights and security is a fundamental requirement for any active measures. The HRC is an important forum for dialog between states, NGOs, and civil society and must be strengthened. Through diplomacy, constant application of public pressure, and support for civil society efforts, it possible to improve national legislation, to gather evidence for future criminal juristiction, and to generate general knowledge which support the protection and the promotion of human rights. In responding to countries that are unwilling to cooperate and thus threaten both national and international security, concrete, formalized debate in cooperation with the Security Council is essential.

The appeal published by Switzerland in support of other states in 2016 laid out such demands for conflict prevention. Should Switzerland, as the host state to various human rights institutions in Geneva, win a non-permanent seat on the Security Council in New York for the period 2023–2024, it could make concrete moves to foster this issue. It could use its reputation as a bridge-builder to improve working practices between the two bodies and to contribute to the preservation of a rule-based, liberal international order.

> It is of great significance that human rights are taken into account systematically in the security policy debate.

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