

**THE RELATIONSHIP BETWEEN THE UN HUMAN RIGHTS COUNCIL
AND THE UN SECURITY COUNCIL: LEGAL AND INSTITUTIONAL
ASPECTS**

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Abstract. *This paper examines the legal and institutional relationship between the United Nations Human Rights Council and the Security Council, two bodies that address overlapping subject matter through fundamentally different legal instruments. Drawing on the 2011 Libyan crisis and the Syrian Arab Republic's Commission of Inquiry, the author analyzes how the Council's fact-finding and monitoring outputs interact with the Security Council's exclusive power to adopt binding measures under Chapter VII of the Charter, and assesses recent General Assembly initiatives aimed at narrowing the resulting accountability gap.*

Keywords: *United Nations, Human Rights Council, Security Council, Chapter VII, International Criminal Court, Commission of Inquiry, veto, accountability.*

The United Nations Human Rights Council and the Security Council occupy strikingly different positions within the Organization's legal architecture, notwithstanding the frequency with which their concerns overlap in practice. The

Security Council is a principal organ established directly by Chapter V of the Charter, vested under Article 24 with primary responsibility for the maintenance of international peace and security and empowered, under Chapter VII, to adopt decisions that bind all Member States pursuant to Article 25. The Human Rights Council, by contrast, is a subsidiary organ of the General Assembly, created by an ordinary resolution rather than the Charter itself, whose outputs are, as a rule, recommendatory rather than binding [1]. No provision of the Charter or of General Assembly resolution 60/251 establishes a formal reporting line between the two bodies: the Council reports annually to the General Assembly, not to the Security Council, and the two bodies maintain entirely separate memberships, rules of procedure and voting arrangements [2].

Despite this formal separation, the two bodies' subject-matter jurisdictions overlap wherever a human rights crisis also threatens international peace and security, a category that has expanded considerably as Security Council practice has come to treat gross human rights violations as a recognized trigger for its own involvement. The Libyan crisis of February 2011 offers the clearest institutional illustration of how this overlap can operate. On 25 February 2011, meeting in a special session convened at the request of its members, the Human Rights Council adopted resolution S-15/1, condemning the violence in Libya, recommending the suspension of Libya's own Council membership, and dispatching an independent international commission of inquiry. The very next day, the Security Council unanimously adopted resolution 1970, imposing an arms embargo and targeted sanctions and referring the situation in Libya to the International Criminal Court — a resolution that expressly welcomed the Human Rights Council's special-session

resolution of the previous day [3]. Within days, the General Assembly completed the sequence by suspending Libya's Council membership under the two-thirds procedure of resolution 60/251 [4].

The Syrian Arab Republic's experience illustrates the same institutional linkage under far less favorable conditions, and for that reason more accurately reflects its ordinary limits. The Human Rights Council established an Independent International Commission of Inquiry on Syria on 22 August 2011, through resolution S-17/1; the Commission has since produced more than thirty reports, interviewed upwards of eleven thousand victims and witnesses, and repeatedly recommended that the Security Council refer the situation to the International Criminal Court [5]. On 22 May 2014, a draft Security Council resolution incorporating that recommendation, sponsored by more than sixty States, was defeated by the double veto of the Russian Federation and China — the Council's fact-finding record notwithstanding [6]. The episode demonstrates that the institutional bridge visible in the Libyan case is not a standing procedural entitlement: it depends entirely on the absence of a permanent member's objection, a contingency the Human Rights Council's own procedures have no capacity to influence.

A further, less dramatic but more routine form of interaction has developed through United Nations peacekeeping practice. Security Council resolutions establishing or renewing peacekeeping and special political missions — in the Democratic Republic of the Congo, the Central African Republic, South Sudan and elsewhere — now routinely mandate the mission's human rights component to

monitor, investigate and publicly report on violations, drawing methodologically on standards developed within the Human Rights Council system and frequently coordinating directly with the Office of the High Commissioner for Human Rights. This practice does not alter the formal absence of a reporting line between the two Councils, but it demonstrates that the Security Council has, in its own binding mandates, come to treat human-rights monitoring as an ordinary component of peace operations rather than a matter falling exclusively within the Human Rights Council's domain.

The doctrinal significance of the Libyan and Syrian contrast lies in the distinct legal character of the two bodies' instruments. A Human Rights Council resolution, however unanimous, and a Commission of Inquiry report, however extensively documented, remain soft law: they establish facts and articulate recommendations but create no binding obligation and confer jurisdiction on no court. Only the Security Council, acting under Chapter VII, can extend the jurisdiction of the International Criminal Court to a State that, like Libya and Syria, is not itself a party to the Rome Statute, pursuant to Article 13(b) of that instrument [7]. The Human Rights Council's practical influence over Security Council outcomes is accordingly indirect: it can generate the factual record, the diplomatic momentum, and, on occasion, as in Libya, the immediate political trigger for Security Council action, but it cannot substitute for the concurring votes of the five permanent members that Article 27(3) of the Charter requires for any substantive decision.

Beyond these formal sequences, an informal channel has developed through which human rights information reaches Security Council members without altering the Council's binding decision-making procedure. Commission of Inquiry chairs and Special Rapporteurs have, on a number of occasions, briefed Security Council members through informal “Arria-formula” meetings, and the United Nations High Commissioner for Human Rights has periodically briefed the Security Council directly on specific situations, including Syria, at that Council's own invitation. A related, Secretariat-wide effort to close the same gap emerged from the United Nations' own internal review of its failure to act on early warning signs of mass civilian killings in Sri Lanka in 2009. The resulting Human Rights Up Front initiative, launched by the Secretary-General in 2013, directs UN entities across all three pillars — peace and security, development, and human rights — to treat credible evidence of serious violations as information relevant to the whole Organization's response, rather than as a matter confined to the Geneva-based human rights architecture. Neither channel creates new decision-making power for either body, but both institutionalize the expectation that information generated through Council mechanisms should reach those responsible for peace-and-security decisions before, rather than only after, a crisis has escalated.

The gap between extensive human-rights fact-finding and inconsistent Security Council follow-through has itself generated a distinct set of reform initiatives, formally separate from the Human Rights Council's own institutional structure but directly responsive to the problem its practice repeatedly exposes. Since 2015, the French-Mexican political declaration and the ACT Group's Code of Conduct have invited the Security Council's permanent members to voluntarily

restrain their use of the veto in situations of genocide, crimes against humanity and war crimes; each has attracted the support of more than one hundred Member States, without amending Article 27(3) itself [8]. A further, more structural step followed a permanent member's veto of a draft resolution in February 2022: General Assembly resolution 76/262 of 26 April 2022 now requires the Assembly to convene automatically within ten working days of any Security Council veto, obliging the veto-casting permanent member to justify its position before the wider membership — including, where the underlying situation is also before it, the Human Rights Council's own parent body [8].

The relationship between the Human Rights Council and the Security Council is accordingly best understood as a two-track system joined by informal and contingent bridges rather than a formal hierarchy. The Council's comparative advantage lies in its capacity for sustained, detailed and relatively depoliticized fact-finding, exercised through mechanisms such as the Universal Periodic Review and, more consequentially for this analysis, its Commissions of Inquiry; the Security Council's comparative advantage lies in its unique capacity to convert that record into binding legal consequence, a capacity it exercises only when its permanent members allow it to. Strengthening the practical connection between the two bodies, short of Charter amendment, is likely to proceed as it has so far — through incremental procedural innovation, such as the 2022 veto initiative and the routine incorporation of human-rights components into peacekeeping mandates, rather than through any formal restructuring of either body's founding instrument.

References:

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