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The UN Secretary-General's Human Rights Up Front Initiative and the Prevention of Genocide: Impact, Potential, Limitations

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Introduction¹

In September 2013, Secretary-General Ban Ki-Moon adopted the Human Rights Up Front (HRUF) initiative and communicated his decision in a letter to staff in November. He recommitted, on behalf of the UN senior leadership and all staff, to uphold the responsibilities the Charter assigned them whenever there is a threat of serious and large-scale violations of international human rights and humanitarian law.² His successor, Secretary-General Antonio Gutierrez, appears determined to continue the initiative, with regard to the explicit reference in his vision statement³ and congratulating his predecessor in general terms on HRUF in his remarks on taking the oath of office.⁴

Given the confidentiality that surrounds the initiative arising from fear of adverse Member States' reaction, it remains difficult to identify all of its elements and assess its current status of implementation. However, based on publicly available UN documents, recent academic writing⁵ and public statements by UN officials, it is possible to attempt a preliminary evaluation of the impact of the HRUF initiative and its potential contribution to the prevention of genocide and other mass atrocity crimes.⁶

Context

Past UN Action in Situations of Mass Atrocities

According to Deputy Secretary-General Jan Eliasson (DSG), the HRUF initiative is closely related to the recommendations, which derived from past reports reviewing UN action in situations of serious violations of human rights and humanitarian law, particularly the 1994 Rwandan Genocide.⁷ Secretary-General Ban made an explicit reference to the initiative in his remarks at the occasion of the 20th anniversary of the genocide in Kigali in 2014. Thus, as a starting point for evaluating the possible impact of the HRUF initiative on the prevention of and response to, mass atrocity crimes, the main findings and recommendations of relevant reports will be reviewed.

¹ The views expressed herein are those of the author and do not necessarily reflect the views of the United Nations.

² Ban Ki-moon, "Renewing Our Commitment to the Peoples and Purposes of the United Nations" (speech, New York, November 22, 2013), accessed December 30, 2017, <https://www.un.org/sg/en/content/sg/speeches/2013-11-22/renewing-our-commitment-peoples-and-purposes-united-nations-scroll>.

³ António Guterres, *Challenges and Opportunities for the United Nations*, (remarks, New York, April 4, 2016), accessed December 30, 2017, http://www.un.org/pga/70/wp-content/uploads/sites/10/2016/01/4-April_Secretary-General-Election-Vision-Statement_Portugal-4-April-20161.pdf#page=4.

⁴ António Guterres, "Secretary-General-Designate Remarks to the General Assembly on Taking the Oath of Office" (speech, New York, December 12, 2016), accessed December 30, 2017, <https://www.un.org/sg/en/content/sg/speeches/2016-12-12/secretary-general-designate-ant%C3%B3nio-guterres-oath-office-speech>.

⁵ Andrew Gilmour, "The Future of Human Rights: A View from the United Nations," *Ethics & International Affairs*, 28, no. 2 (2014), 239–250; Gerrit Kurtz, *With Courage and Coherence. The Human Rights Up Front Initiative of the United Nations*, (Berlin: Global Public Policy Institute, July 2015); Kristen Boon, "Assessing the UN's new 'Rights Up Front' Action Plan," *Opinio Juris*, February 27, 2014, accessed December 30, 2017, <http://opiniojuris.org/2014/02/27/assessing-uns-new-rights-front-action-plan/>; Jan Eliasson, "The United Nations' Human Rights Up Front Initiative," *ACUNS Quarterly Newsletter* 1 (2015), 3-4, 9.

⁶ "Mass atrocity crimes" are understood as serious violations as described in para. 138 of the World Summit Outcome Document. United Nations, *General Assembly Resolution 60/1, 2005 World Summit Outcome*, October 24, 2005 (UN Doc. A/RES/60/1). The objective to prevent exceptional grave crimes addressed by the R2P has also a moral and value-based dimension, which cannot be described in exact legal terms. Mass atrocities crimes encompass the main elements of genocide, war crimes and crimes against humanity, see David Scheffer, "Genocide and Atrocity Crimes," *Genocide Studies and Prevention: An International Journal*, 1, no. 3 (2006), 229-250.

⁷ Jan Eliasson, *Letter to Special and Personal Representatives, Envoys, Advisers and Coordinators of the Secretary-General, Heads of Mission*, May 7, 2014, accessed December 30, 2017, https://www.humanitarianresponse.info/en/system/files/documents/files/013_fact_sheet_-_rights_up_front_in_the_field_draft_2014-08-21_2.pdf. See the link for other documents quoted in this document.

Secretary-General Annan established the Rwanda Commission of Inquiry in March 1999 and he presented its report to the Security Council in December of that year.⁸ The Commission found that the failure of the United Nations to prevent and, subsequently, to stop the genocide in Rwanda was a failure of the UN system as a whole. The Commission sought to contribute to preventing similar tragedies in the future. The overriding failure the Commission established was a lack of both resources and will to take on the commitment necessary to stop or prevent the genocide. The sequence of events the Commission established in the interaction between the Secretariat, the Security Council and a peacekeeping operation on the ground has been similar in other emergency situations. The Commission looked at the actions of the United Nations Assistance Mission for Rwanda (UNAMIR) rather than any other UN actor present in Rwanda. The Commission found, in particular, inadequate peacekeeping resources and logistics, a lack of analytical capacity, a failure to protect political leaders and civilians and a flawed information flow as the main reasons for the UN's "collective failure."

Secretary-General Annan also submitted a report on the fall of Srebrenica in 1999, pursuant to General Assembly resolution 53/35.⁹ That report aimed at drawing lessons for the Secretariat and Member States from the UN's response to the collapse of the former Yugoslavia, particularly its safe-area policy. While the report also reviewed humanitarian activities, it concentrated mainly on the functioning of the United Nations Protection Force (UNPROFOR) and the role of the Security Council. Similar to the Rwanda report, it noted the UN's difficulty securing sufficient numbers of troops to protect the safe areas and the peacekeeping operation's inadequate capacity, especially the reluctance of Member States to use air power to support the operation. It also deplored the lack of exchange of intelligence information with Member States, which was needed to arrive at a shared analysis of the situation.

The Kosovo Commission of Inquiry was an independent initiative led by Göran Persson, then Prime Minister of Sweden. Its members were appointed in their personal capacity. The final report was handed over to Secretary-General Annan for further consideration.¹⁰ The Commission recommended closing the gap between legality and legitimacy and, with a view to the NATO intervention, called for a principled framework to guide future interventions. The Commission also recommended an increase in peacekeeping capacities to protect civilians on the ground. The Commission's analysis went beyond the limited scope of the Rwanda Commission to include the role of humanitarian workers, NGOs and the media. In this regard the Commission noted a lack of coordination of mainly donor driven humanitarian action, institutional rivalries within the UN and a lack of sufficient high-level UN staff to address the diplomatic challenges. The media were not supporting the humanitarian interests, but reported on the details of violence. The Commission did not look at the role of other UN actors on the ground, such as development agencies.

In order to respond more systematically and coherently to the recommendations regarding peacekeeping operations, the UN Secretariat initiated several broad reviews of UN doctrine and the functioning of its missions.

In May 2000, Secretary-General Annan appointed a Panel to undertake a thorough review of the UN peace and security activities, and to present specific, concrete and practical recommendations. The Panel presented its report to the Security Council in November of that year.¹¹ The report argued that the UN's impartiality was based on the Charter, which includes a number of values and historic experience. Equal treatment of all parties irrespective of their roles as perpetrators or victims had damaged the UN's credibility in the past. The report concluded that, following the experience in Rwanda and Srebrenica, UN troops and police who witness violence against civilians should be presumed to be authorized to stop it within their means, in support of basic UN principles. Any

⁸ United Nations, *Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda*, December 16, 1999 (UN Doc. S/1999/1257).

⁹ United Nations, Report of the Secretary-General pursuant to General Assembly resolution 53/35: *The Fall of Srebrenica*, November 15, 1999 (UN Doc. A/54/549).

¹⁰ Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000).

¹¹ United Nations, *Report of the Panel on United Nations Peace Operations*, August 21, 2000 (UN Doc. A/55/305 – S/2000/809).

UN peace operation must be able to pose a credible deterrent to potential spoilers and UN military units must be capable of defending themselves, other mission components, and the mission's mandate. The report found that in most situations of large-scale violence, the Secretariat was likely to face the challenge of persuading Member States and the international community to step up their efforts. In this regard, pessimism about the lack of political will and strongly held perceptions about the interests of Security Council members were prevalent within the Secretariat and often lead to hesitation and self-censorship. The report recommended the creation of an Information and Strategic Analysis Secretariat to facilitate closer cooperation among the key departments and a more strategic UN approach to conflict prevention, peacekeeping, and peacebuilding.

Secretary-General Ban appointed a High-Level Independent Panel on Peace Operations in October 2014 to review the current state of UN peace operations. In its report, the Panel recommended shifting the UN's focus and, giving primacy to politics, tailoring all missions to context, stronger partnerships with regional organizations, a stronger focus on enabling field missions, and a renewed resolve to serve and protect the people.¹²

The Impact of the Review of UN Action at the End of the Conflict in Sri Lanka

The HRUF initiative explicitly encompasses a series of steps foreseen by the 2012 Review Panel report on United Nations action in Sri Lanka¹³ to ensure that the lessons of that experience are fully learned and acted upon.

The Secretary-General's internal review panel on Sri Lanka was created in 2010 following the recommendation of the Panel of Experts on Sri Lanka the previous year, which had suggested that the UN review its own action during the end phase of the conflict between the government and the Liberation Tigers of Tamil Eelam (LTTE). The internal review panel was requested to look in particular into implementation of the UN's humanitarian and protection mandates and to make recommendations to strengthen UN country teams (UNCTs) and the UN as a whole to respond to 'escalated conflict'. The UN had been present in Sri Lanka throughout the conflict, which began in the 1970s, and worked on the basis of a joint United Nations Development Assistance Framework (UNDAF) and a Common Humanitarian Action Plan (CHAP) and within established coordination and reporting structures with headquarters in a non-mission setting.

The Panel reviewed rather comprehensively the history of the Secretariat's internal decision making history, between agencies at headquarters and in the field, and the discussions within various governmental bodies such as the Security Council, the Human Rights Council and the General Assembly. Rather than analyzing the role of Member States, the Panel made an important contribution by identifying lacunae in the joint analysis and planning capacities at UN headquarters and in the field during crisis, the lack of a common sense of purpose between the different agencies, funds, and entities serving under the same UN flag, and the lack of an UNDAF analysis of government related root causes for conflict and crisis mainly due to institutional competition and narrow approaches to mandate implementation.

The recommendations built explicitly on the Rwanda report and, not surprisingly, stressed the importance of its findings for non-mission settings. However, the report was the first review of UN action in a non-mission context during a situation of unfolding mass atrocity crimes. The vast majority of UN presences are organized in a similar operational setting and, thus, the main responsibility for the internal organization of their cooperation rests with the UNCT rather than Member States.¹⁴

¹² United Nations, High-Level Independent Panel on United Nations Peace Operations, *Uniting Our Strengths for Peace – Politics, Partnerships, and People*, June 1, 2015, accessed December 30, 2017, http://peaceoperationsreview.org/wp-content/uploads/2015/08/HIPPO_Report_1_June_2015.pdf.

¹³ United Nations, *Report of the Secretary-General's Internal Review Panel on United Nations in Sri Lanka*, November 2012, accessed December 30, 2017, http://www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf.

¹⁴ UNCTs exist in 131 countries, covering all 161 UN programming countries, compared to 16 peacekeeping operations and 26 special political missions.

Following the report of the panel, the Secretary-General tasked the UN system to develop an action plan to ensure that the necessary lessons were drawn and that the UN was better positioned to deal with protection challenges during conflict. The HRUF policy is the direct result of these efforts.

The Human Rights Up Front Initiative

Objectives

The HRUF initiative is essentially an internal UN Action Plan, based on the findings of the Sri Lanka report and building on recommendations emanating from previous reports on UN action in situations of serious violations of international human rights and humanitarian law that amount to mass atrocity crimes. The objectives of the initiative are to introduce a cultural change within the UN, an operational change to bring the three pillars of the UN Charter, i.e. development, peace and security, and human rights closer together, and a change to UN engagement with Member States.¹⁵ These objectives are sought to be reached by undertaking a list of activities outlined in the Action Plan.

HRUF is primarily a prevention tool and aims at strengthening the link between early-warning and early-action. It includes procedures to more systematically review the unique information and analysis available from UN field presences, covering almost every country in the world. It is based on a general recognition that human rights violations are early indicators of a deteriorating situation and that field presences can observe changing events and discuss them with their counterparts on the ground. The initiative includes mechanisms for responding to crisis, but seeks to avoid the creation of new heavy structures and to remain cost neutral, in an attempt to remain below the level requiring Member States' budget approval.¹⁶

Different from past initiatives, HRUF seeks to ensure that the UN leverages the full breadth of its existing development, peace and security, and human rights mandates to protect people at risk, based on a collective and individual recommitment of its staff to their responsibilities under the Charter. The individual responsibility of staff members is put into the wider dictum that there can not be peace without development, no development without peace, and there can be neither without human rights.¹⁷

Implementation

With a view to the limited implementation rate of recommendations contained in past panel reports, the most senior UN officials, namely Secretary-General Ban and the DSG, promoted and supported implementation of the initiative through heavy personal engagement.

As can be gathered from the documents available,¹⁸ implementation measures of the HRUF initiative since March 2014 has been considerable and has included measures to clarify the UN vision and responsibility for preventing and responding to serious violations of international human rights and humanitarian law, UN engagement with Member States, UN action at country level, and UN headquarters coordination, in an effort to anchor HRUF permanently in the UN.

Secretary-General Ban shared the renewed commitment to the peoples and purposes of the UN with Member States on different occasions. In December 2013, the DSG delivered remarks at a briefing of the General Assembly on HRUF¹⁹ and sought the views of Member States in Geneva

¹⁵ United Nations, *Human Rights Up Front: A Summary For Staff*, accessed December 30, 2017, <http://www.un.org/News/dh/pdf/english/2016/Human-Rights-up-Front.pdf>.

¹⁶ Bertrand G. Ramcharan, "Early-Warning at the United Nations: The First Experiment," *International Journal of Refugee Law*, 1 (1989), 379, et seq. on the unsuccessful previous attempt to create UN early-warning and early-action mechanisms.

¹⁷ Jan Eliasson and Helen Clark, *Joint letter to Resident Coordinators*, February 24, 2014.

¹⁸ United Nations, "Human Rights Up Front. An Overview," accessed December 30, 2017, https://interagencystandingcommittee.org/system/files/overview_of_human_rights_up_front_july_2015.pdf. This includes a link to the detailed Action Plan.

¹⁹ United Nations, "Deputy Secretary-General's Remarks at Briefing of the General Assembly on Rights Up Front" (remarks, New York, December 17, 2013), accessed December 30, 2017, <https://www.un.org/sg/en/content/dsg/statement/2013-12-17/deputy-secretary-generals-remarks-briefing-general-assembly-rights>.

in July 2014. The DSG updated Member States on the progress that had been made in his remarks during a panel discussion in commemoration of Human Rights Day 2015.²⁰ In January 2016, he held an interactive dialogue with the General Assembly on HRUF.²¹ For the purposes of that briefing, the Secretary-General previously had summarized his interaction with Member States on HRUF in a letter to the President of the General Assembly.²²

The DSG's letter to Special Representatives and Envoys²³ and the joint letter with the chair of the United Nations Development Group²⁴ (UNDG)²⁵ reflected the endorsement of the commitment by the different UN entities, defined their respective roles and responsibilities, and encouraged them to discuss the Action Plan with their senior staff. Resident Coordinators (RCs) were encouraged to undertake discussions with their country teams and share their suggestions. The joint letter with the chair of UNDG was also an attempt to reach out directly to local heads of agencies, funds and programmes, which are only under a limited supervision by the Secretary-General.

The commitment was also embedded in human resources management processes through including effective advocacy of human rights and other UN values, standards, principles and activities in the RC job description.²⁶ Reportedly, 13,000 staff from across various UN entities attended a newly developed mandatory online training on human rights responsibilities.²⁷ Senior UN staff is held accountable for fulfilling their responsibilities regarding the prevention of and response to, serious violations of international human rights and humanitarian law through a revised performance appraisal system for UNCTs and RCs, which includes an annual evaluation with more systematic participation of the UN Office of the High Commission for Human Rights (OHCHR) and the UN Department of Political Affairs (DPA) with regard to the evaluation of the human rights and political aspects of the revised RC job description.

The Secretariat engaged pro-actively with Member States in the Security Council on situations of serious violations of international human rights and humanitarian law. The Council's Informal Expert Group on Protection of Civilians continued to meet regularly and was briefed on key protection concerns in country-specific situations, actions taken to address these concerns and suggestions for possible language to be incorporated in Security Council resolutions. Since the adoption of the HRUF initiative, the expert group has convened several times regarding the situations in Afghanistan, the Central African Republic (CAR), Darfur, the Democratic Republic of Congo (DRC), Iraq, Mali, and Somalia.²⁸ The DPA used a new informal meeting format, the "DPA briefing", which has been considered by some a successor to the "horizon scanning" started in 2010.²⁹ The use of the agenda items "any other business" has increased since the adoption of

²⁰ United Nations, "Deputy Secretary-General's Remarks at Panel Discussion in Commemoration of Human Rights Day" (remarks, New York, December 9, 2015), accessed December 30, 2017, <https://www.un.org/sg/en/content/dsg/statement/2015-12-09/deputy-secretary-generals-remarks-panel-discussion-commemoration>.

²¹ United Nations, "Deputy Secretary-General's Remarks at Interactive Dialogue with the General Assembly on Human Rights Up Front" (remarks, New York, January 27, 2016), accessed December 30, 2017, <https://www.un.org/sg/en/content/dsg/statement/2016-01-27/deputy-secretary-generals-remarks-interactive-dialogue-general>.

²² United Nations, *Letter dated 24 December 2015 from the Secretary-General Addressed to the President of the General Assembly*, January 6, 2016 (UN Doc. A/70/656).

²³ Eliasson, *Letter to Special and Personal Representatives*.

²⁴ Eliasson and Clark, *Joint letter to Resident Coordinators*.

²⁵ The United Nations Development Group (UNDG) unites the 32 UN funds, programmes, specialized agencies, departments, and offices that play a role in development. At the global level, the UNDG serves as a high-level forum for joint policy formation and decision-making. It guides, supports, tracks and oversees the coordination of development operations in 165 countries and territories: <https://undg.org/about/undg-global/>, accessed December 30, 2017.

²⁶ United Nations, *Resident Coordinator Generic Job Description*, approved on February 6, 2014, accessed December 30, 2017, <https://undg.org/wp-content/uploads/2015/04/APPROVED-RC-Job-Descriptions.pdf>.

²⁷ United Nations Secretary-General, *Mandatory Learning Programme: United Nations Human Rights Responsibilities*, bulletin, November 8, 2016 (UN Doc. ST/SGB/2016/12).

²⁸ Security Council Report, *In Hindsight: The Informal Expert Group on the Protection of Civilians*, August 2016 Monthly Forecast, accessed December 30, 2017, http://www.securitycouncilreport.org/monthly-forecast/2016-08/in_hindsight_the_informal_expert_group_on_the_protection_of_civilians.php.

²⁹ Security Council Report, *Horizon-Scanning Briefings*, January 2017, accessed December 30, 2017, <http://www>.

the HRUF initiative and was used, inter alia, to discuss specific incidents in CAR, Guinea-Bissau, Libya, Mali, Burundi, Syria and Yemen.³⁰

At the country level, the UNDG issued interim UNDAF guidance which aims at reflecting better human rights concerns in Common Country Assessments (CCA) and UNDAF processes, including the implementation of development and humanitarian activities.³¹ The UNDG Human Rights Working Group acts as the lead mechanism through which the UNDG can effectively deliver on the responsibilities and demands made on the UN development system by the HRUF initiative.³² So far, interdisciplinary light teams, mainly comprised of OHCHR, DPA and the United Nations Development Programme (UNDP), were deployed to Lesotho, Burkina Faso and Nigeria in order to support UNCTs with conflict prevention and human rights capacity in critical moments of prevention.³³

Some basic procedures and mechanisms were established for better coordination of early-warning and early action at UN headquarters. In order to better organize its early warning and crisis management system, the HRUF initiative looks to develop strategies for different countries through a Regional Quarterly Review (RQR). The RQR is a mechanism through which representatives of UN system regional divisions at headquarters scan all countries in their respective region every three months for early warning signs (developmental, political, humanitarian, or explicitly human rights) and then discuss in more detail those situations that are “evolving” and can presage the risk of serious violations and crisis. Where there is a UN country presence, the senior UN official is consulted by the RQR co-chairs (DPA and Regional UNDG) on the situation. In case of a heightened risk of serious violations of international human rights and humanitarian law, the senior UN representative on the ground or headquarters can call for the establishment of an Inter-Agency Task Force (ITF), which will serve as the principal coordination platform at headquarters.

A Senior Action Group (SAG), which can be convened by the DSG, may provide guidance from executive heads of departments and agencies in situations of a high risk of or ongoing, serious violations.

Reportedly, the response mechanism was activated in 2014 in response to developments in CAR and South Sudan. Early support from headquarters allowed the United Nations Mission in South Sudan (UNMISS) to continue its “open gate” policy, which succeeded in directly protecting 75,000 people in December 2013.³⁴

Perceptions by UN Staff

The DSG reported on the enthusiastic reception of the HRUF initiative by staff. At the same time, it can be perceived that staff at the country level and within small UNCTs may be less enthusiastic regarding their capacity to implement the initiative and may hope that business as usual will return, given the UN's past track-record of change following similar initiatives. This likelihood has increased for guidance material being available only in English; staff members in Arabic, French

securitycouncilreport.org/un-security-council-working-methods/horizon-scanning-briefings.php.

³⁰ Security Council Report, *In Hindsight: Making Effective Use of “Any Other Business”*, April 2016 Monthly Forecast, accessed December 30, 2017, http://www.securitycouncilreport.org/monthly-forecast/2016-04/in_hindsight_making_effective_use_of_any_other_business_1.php.

³¹ United Nations Development Group, *United Nations Development Assistance Framework Guidance*, May 23, 2016, accessed December 30, 2017, http://procurement-notice.undp.org/view_file.cfm?doc_id=120296.

³² United Nations Development Group, “Human Rights Working Group,” accessed November 15, 2017, <https://undg.org/about/undg-global/undg-working-groups/>.

³³ E.g. African Gong, “2015: UN to Deploy Human Rights Up Front Light Team to Nigeria,” blog post, January 5, 2015, accessed December 30, 2017, <https://africangong.wordpress.com/2015/01/05/2015-un-to-deploy-human-rights-up-front-light-team-to-nigeria/>.

³⁴ UN News Centre, “No One Could Have Predicted Scope Of South Sudan Crisis, Outgoing UN Envoy Says,” June 30, 2014, accessed December 30, 2017, <http://www.un.org/apps/news/story.asp?NewsID=48171#.WIT6dFN96M>; United Nations, “Secretary-General’s Briefing to the Security Council on South Sudan,” (statement, New York, May 12, 2014), accessed December 30, 2017, <https://www.un.org/sg/en/content/sg/statement/2014-05-12/secretary-generals-briefing-security-council-south-sudan>.

and Spanish speaking countries may not be able to study the related material themselves and will have to rely on summaries and oral presentations

Heads of agencies at the country level are often unclear about the authority of the Secretary-General versus their Executive Directors and may wait for more detailed instructions coming from their own headquarters. As past experience has shown, there is a general concern over the negative impact on their cooperation with their host governments if they started referring to human rights considerations. Moreover, they often lack the capacity to undertake this analysis. It may be difficult for development and humanitarian agencies to see a benefit for the implementation of their country programmes from the present guidance material on HRUF. Many UNCTs, including those involved in a RQR, may not feel sufficiently included in the discussions in New York.

In addition, the perception of HRUF suffers from its unclear relationship with the Responsibility to Protect (R2P). While there is a clear parallel between the initiative and pillar 2 and the former could, in fact, contribute to the implementation of the latter, the policy does not clarify this relationship leaving it open to speculation in a difficult political environment for both policies.

Evaluation of the HRUF Initiative Regarding the Prevention of and Response to Mass Atrocity Crimes

General Observations

The HRUF initiative is an ambitious policy regarding the prevention of and response to, serious violations of international human rights and humanitarian law, which has already accomplished more than similar initiatives in the past. The Action Plan provides all of the elements of a comprehensive strategy for implementing R2P as it has been discussed since 2005, in particular clear leadership by the Secretary-General based on the Charter, a recommitment to the principles and purposes of the Charter in order to close the commitment gap, and steps to counter the resource gap tailored to align existing processes and structures with the overarching purpose of preventing people from mass atrocity crimes starting with those structures and processes under the authority of the Secretary-General.³⁵ The “open gate” policy applied by UNMISS in South Sudan is an impressive example of the possibilities for the UN to physically protect people from violence.³⁶

Notwithstanding these first successful steps taken under the HRUF, it should be asked whether factors, which inhibited the implementation of past recommendations, have been adequately addressed under HRUF. In addition, the situation in Sri Lanka was characterized by a high level of public attention to the situation, but Member States in the Security Council, the General Assembly and the Human Rights Council, nevertheless, were not able to agree on joint action. The prevailing deadlock led to increased self-censoring within the Secretariat and the UNCT as staff attempted to avoid contributing to the deadlock, while upholding their ability to deliver humanitarian relief. HRUF needs to be sufficiently specific regarding guidance and requires strong leadership from the Secretary-General when confronting this type of scenario.

It should be noted that the documents and statements related to HRUF lack reference to the legal responsibilities of Member States regarding violations of international human rights and humanitarian law. Human rights accountability will need to be established more concretely in each country situation, taking into consideration the recommendations and findings of UN human rights mechanisms regarding the respective country and the general observations on the interpretation of particular rights and corresponding obligations in order to make the implementation appear impartial and non-politicized. Article VIII of the Genocide Convention³⁷ could be used as an encompassing framework for the initiative, if the relationship between HRUF and R2P was clarified.

³⁵ E.g. Ekkehard Strauss, *The Emperor's New Clothes? The United Nations and the Implementation Of The Responsibility To Protect* (Berlin: Nomos, 2009), 122-137.

³⁶ For more details e.g. UN News Centre, “UN Action Saved Thousands in South Sudan: Peacekeeping Chief,” April 2, 2014, accessed December 31, 2017, <https://ourworld.unu.edu/en/un-action-saved-thousands-in-south-sudan-peacekeeping-chief>.

³⁷ United Nations, *General Assembly Resolution 260, Convention on the Prevention and Punishment of the Crime of Genocide*, December 9, 1948 (UN Doc. A/RES/260(III)).

The Relationship Between HRUF and R2P

While in practice there is an overlap between the situations considered under the R2P and the HRUF, the relationship between “serious violations of human rights and humanitarian law” and mass atrocity crimes remains unclear. In addition, the whole history of HRUF, which is built upon past reports of UN shortcomings, points towards a close relationship. Secretary-General Ban has referred to “atrocities and egregious crimes” in his presentations to Member States, which came very close to R2P language. This wording was later replaced for the more general and legalistic expressions of “serious violations of international human rights or humanitarian law”. It will be important to link “serious violations of human rights and humanitarian law” to mass atrocity crimes through a more concrete description of the scenarios the UN has committed to prevent or halt and link their different elements to HRUF and R2P.³⁸ In general, R2P could provide arguments and approaches in cases, where early-warning indicators point towards mass atrocity crimes. In addition, the application of R2P to the respective country situation could clarify responsibilities for taking action agreed in the ITF or SAG. Depending on the risk-level determined and the risks identified, action may be required by political bodies, UN entities - including the Special Adviser on the Prevention of Genocide - or remain at the country level, according to available genocide prevention methodology.

At the same time, HRUF could weaken the application of the R2P by the UN. While in the past the Secretary-General used the latter to call on Member States to provide the mandate and resources for the UN to intervene in situations of evolving mass atrocity crimes, HRUF offers a possibility to carve out space for UN entities sheltered from the political bodies. Given the considerable political investment of the Secretary-General in situations like Syria or Yemen and the negative impact on the authority of the UN of Member States not following his call, HRUF could lead the Secretary-General in future situations to concentrate on internal coordination rather than pleading to non-receptive Member States to uphold their R2P obligations.

The Institutional Commitment

The HRUF, like other initiatives for cooperation among UN entities, has to rely on an institutional commitment based on a limited legal basis for cooperation between specialized agencies and the Secretary-General in the Charter.³⁹ Specialized agencies, and similarly other UN funds and programmes, were created for a greater independence in their operational activities in order to depoliticize certain areas of international cooperation. They are funded through voluntary contributions by Member States, are legally independent and supervised through specific Member States structures. Some of the executive heads of specialized agencies are appointed by the Secretary-General and members of the Chief Executive Board of Coordination (CEB), chaired by the Secretary-General. Thus, the cooperation of specialized agencies, funds and programmes are mainly based on the cooperation provision in the respective relationship agreement with the UN and, ultimately, the cooperation of Member States in their governing bodies.

On the implementation of HRUF, RCs, as representatives of the UNCT, should report to a joint cell in the EOSG rather than the head of UNDP in her capacity as head of UNDG, which creates a constant conflict of interest when the RC is also the UNDP resident representative. This would compensate for the lack of authority of the Secretary-General over agencies, funds and programmes outside the Secretariat, provide direct access to RCs and UNCTs and underline the centrality of HRUF at the field level.

In this regard, the present scope of HRUF may be generally too broad, as it applies a policy, which derived primarily from recommendations developed after reviewing the extraordinary circumstances of the end phase of the conflict in Sri Lanka to any country situation and applies

³⁸ For more details Ekkehard Strauss, “A Short Story of a Long Effort. The United Nations and the Prevention of Mass Atrocities,” in *Reconstructing Atrocity Prevention*, ed. Tibi Galis, Sheri P. Rosenberg, and Alex Zucker (Cambridge, UK: Cambridge University Press, 2015), 428-449.

³⁹ The Charter provisions relating to specialized agencies include arts. 63, 17 para. 3, 58, 60, 62, 64 and 70. For details: Klaus Hüfner, “Specialized Agencies,” in: *A Concise Encyclopedia of the United Nations, Second Revised Edition*, ed. Helmut Volger (Leiden: Brill, 2010), 670-675.

to all human rights violations. This can expose the UNCT and its members to criticism by the host government, whose cooperation many agencies and funds require for implementation of their country programmes. OHCHR, which suffers from considerable funding gaps, may soon find itself overstretched by its role in implementing the policy, which may lead to HRUF being ignored at the country level. Instead, the elements of HRUF should be implemented by every UNCT according to a central schedule and based on questionnaires and reporting guidance distributed by the EOSG. This exercise should benefit from the presence of OHCHR, but should not rely on OHCHR for its implementation.

When the DSG referred to human rights as the “lifeblood” of the UN, he pointed out an important difference between the UN system and, in particular, bi-lateral development and humanitarian actors, i.e. the universal normative framework for all UN action. At the country level, each UN field presence accepted in general human rights and humanitarian law as a basis for joint planning and implementation. This institutional commitment will be sustainable if, inter alia, this position of the UN can be promoted at the country level without a major drop in funding compared to other multi-lateral and bi-lateral actors. UNCT members often compete for limited voluntary contributions by Member States for their activities and support for HRUF will depend in the long-term on its impact on access to this funding.

At the more practical level, HRUF will be difficult to sustain over time without a common information management system linking the field and headquarters, and headquarter entities.

The Individual Commitment of Senior Managers and All Other Staff Members

Unlike past reforms, the HRUF initiative builds on explicit individual commitments of senior managers and all other staff members.

In addition to institutional and structural approaches, which have not lead to sustainable change in the past, HRUF emphasizes the responsibility of every UN staff member to protect human rights regardless of the field in which he or she is working.

The individual responsibility placed on senior staff and each lower level staff member is meant to be compensated by headquarters. The letters of the DSG acknowledged that it was often difficult to choose between the wider humanitarian and development roles and raising serious human rights concerns. The DSG pledged that headquarters would take over the burden of raising serious concerns with state authorities.⁴⁰ The use of Charter article 99 by the Secretary-General in a well-documented and analysed case could encourage all staff members that the risks related to their individual commitment to speak out is equally shared by the Secretary-General himself. However, the structural and procedural distance between RCs, UNCTs and headquarters regarding the RQR and the coordination through the ITFs or SAG will hardly encourage UN staff in the field to raise the alarm, as the possibilities for the field to influence the analysis and its role in decision-making may be very limited and could create concerns of overriding political considerations at headquarters determining the response strategy. It could be preferable to apply the principle of subsidiarity to the response to country situations, i.e. to prioritize local action and participation of local stakeholders over headquarters and, first, target the impact level of violence and the immediate perpetrators and, second, the broader underlying economic and political interests at stake.

The individual commitment of each staff member could make a decisive contribution to the sustainability of HRUF, if the UN succeeded in an increasingly polarized world, united mainly in rejecting international human rights and humanitarian norms running counter to short-term political and economic interests, to bring its diverse work-force behind a commitment that puts them in conflict with many Member States as donors, host-countries or members of mandating bodies. The policy and the accompanying material must be translated into all six UN languages as soon as possible and new material should not be distributed before it exists at least in English, French, Spanish and Arabic. This will avoid the impression in the field that HRUF is an initiative promoted mainly by a former Secretary-General, which will go away over time as similar initiatives in the past.

⁴⁰ United Nations, *Human Rights Up Front: A Summary For Staff*.

The individual commitment of all staff and its inclusion in personnel management tools aims at mainstreaming its content into day-to-day action by individual staff members. The approach of mainstreaming the objectives of HRUF may suffer from the same deficits observed regarding the mainstreaming of other cross-cutting issues in the past, including gender, HIV/AIDS and human rights, unless this general approach is broken down into a list of implementable practical and compulsory activities summarized in a thematic compendium with proposed forms and concrete language. The individual commitment can be translated into individual action only if the respective staff member had simple and practical tools available for the application of the HRUF and understood his/her role in the context of the broader early-warning and early-action methodology applied. The repeated assertion by the DSG that human rights violations are often a precursor to mass atrocities remains too general. The connection between the violation of particular rights and their impact on specific risk factors in a particular country situation remains too vague and requires fine tuning for each country. While any risk analysis will become more reliable after a long-term process of data collection over several years, the expectations towards HRUF are very high. Thus, there is a need to design a strategy for the application of different methodologies of data collection and analysis over the coming years. In addition, detailed analysis could be limited initially to a number of countries, while undertaking more of a screening for others until they pass a particular threshold, i.e. if a 'real risk' of mass atrocity crimes actually appears.⁴¹

Regarding senior managers, annual instructions, including generic elements for the inclusion in annual work-plans of RCs and UNCTs, should be developed by the EOSG as a constant reminder of HRUF.

Implication of Member States

Unlike past reforms, the implementation of the HRUF Action Plan does not depend entirely on Member States' prior approval.

Notwithstanding its focus on elements under the prerogative of the Secretary-General, ultimately, for the different reasons stated above, HRUF will depend on the cooperation of Member States to become sustainable. Thus, it will be important to navigate the different political sensitivities by using all existing tools with great flexibility and to time interventions carefully.

Given its connection to the UN's failure to respond adequately to the situation in Sri Lanka, the HRUF initiative will have to prove its impact on other situations where no UN peace mission is on the ground and which are not on the Security Council's agenda. While Member States have reiterated the importance of early-warning and discussed possible procedures in the Security Council, general sensitivity of early-warning briefings has not been overcome. This suggests that there will continue to be limitations to the enhancement of cooperation with Member States on situations of serious violations of international human rights and humanitarian law.

Conclusion

The HRUF initiative is a promising new attempt to reinforce the UN's capacity to prevent and respond to, serious violations of human rights and humanitarian law. It encompasses the lessons-learned from past failure and translates them into realistic and modest new processes and structures. Given the difficult global environment for the protection and promotion of human rights, it is yet to be seen whether the organization will be granted the time and space required for the initiative to be fully implemented. Much will depend on whether the Member States are prepared to promote in practice early-warning and conflict prevention as main elements of a collective a norms-based international order.

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⁴¹ See for this threshold Sheri P. Rosenberg, *A Common Standard for Applying the Responsibility to Protect*, Cardozo Law School, 2012.

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