

# Building respect for the rule of law in violent contexts: The Office of the High Commissioner for Human Rights' experience and approach

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## **Abstract**

*How does the Office of the High Commissioner for Human Rights (OHCHR) discharge its mandate of “promoting and protecting the effective enjoyment by all of all civil, cultural, economic, political and social rights”, especially in armed conflicts and other situations of violence? What are its concrete responsibilities, and how does it work to generate respect for the rule of law on the ground? This article aims to provide an overview of OHCHR’s activities, and point to some of the challenges associated with its work to generate respect for the rule of law, in particular in violent contexts. It begins with an overview of the unique mandate of OHCHR and situates it within the broader United Nations human rights machinery. It then gives an account of OHCHR’s experience and approach in building respect for the rule of law, including in armed conflicts and post-conflict situations, outlining how this informs OHCHR’s field setup. Finally, the article summarizes the main challenges that OHCHR faces in the discharge of its*

*mandate. It highlights the need for more concerted action on the part of human rights/humanitarian protection organizations on the ground, despite differences in mandates and constituencies.*

**Keywords:** OHCHR, human rights, prevention, rule of law, armed conflict, humanitarian law, High Commissioner for Human Rights.



The creation of the Office of the High Commissioner for Human Rights (OHCHR) in 1993 ushered in a new era for the United Nations (UN), in which the human rights discourse was to be put gradually at the heart of the organization's mandate. As the UN Secretary-General famously declared several years later: "There is virtually no aspect of our work that does not have a human rights dimension. Whether we are talking about peace and security, development, humanitarian action, the struggle against terrorism, climate change, none of these challenges can be addressed in isolation from human rights."<sup>1</sup> In that sense, OHCHR today plays a key role in safeguarding not just one but all three pillars of the UN: peace and security, human rights and development.

But how does OHCHR discharge its mandate, especially in armed conflicts and other situations of violence? What are its concrete responsibilities, and how does it work to generate respect for the rule of law on the ground?

This article will aim to provide an overview of the range of OHCHR's activities and will point to some of the challenges associated with its work to generate respect for the rule of law, in particular in violent contexts. It is structured in three main parts. First, the article provides a brief overview of the unique mandate of OHCHR and situates it within the broader UN human rights machinery. Second, it gives an account of OHCHR's experience and approach in building respect for the rule of law, including in armed conflicts and post-conflict situations. Third, it focuses on the specific mandate of OHCHR with respect to violations taking place in armed conflict, and outlines how this informs OHCHR's field operations. This section also discusses some of the challenges that OHCHR faces in the discharge of its mandate, and highlights some innovative initiatives undertaken in the field.

## **A brief overview of OHCHR's main role and mandate**

OHCHR was created by UN General Assembly Resolution 48/141 of 20 December 1993, following the recommendations of the 1993 World Conference on Human Rights in Vienna.<sup>2</sup> Its general mandate consists of "promoting and protecting the

1 Ban Ki-Moon, UN Secretary-General, "Opening Remarks at News Conference", 23 January 2008, available at: [www.un.org/apps/news/infocus/sgspeeches/search\\_full.asp?statID=176](http://www.un.org/apps/news/infocus/sgspeeches/search_full.asp?statID=176) (all internet references were accessed in December 2014).

2 See paragraph 18 of the Vienna Declaration and Programme of Action: "The World Conference on Human Rights recommends to the General Assembly that when examining the report of the

effective enjoyment by all of all civil, cultural, economic, political and social rights”.<sup>3</sup> OHCHR is required to have as its head a High Commissioner: “a person of high moral standing and personal integrity”, who must “possess expertise, including in the field of human rights, and the general knowledge and understanding of diverse cultures necessary for impartial, objective, non-selective and effective performance of the duties of the High Commissioner”.<sup>4</sup> OHCHR is quite distinct from the Human Rights Council (HRC),<sup>5</sup> with which it is still often confused, and from the different committees established to monitor the implementation of the core human rights treaties,<sup>6</sup> as well as from the various independent experts (named “special procedures”) nominated by the HRC.<sup>7</sup> OHCHR supports the work of the committees and the Special Rapporteurs, but is independent from their mandate.

The work of OHCHR is organized in four substantive divisions: (1) the Research and Right to Development Division, which develops policy and provides guidance, tools, advice and capacity-strengthening support on thematic human rights issues; (2) the Human Rights Treaties Division, which supports the treaty bodies; (3) the Field Operations and Technical Cooperation Division, which is responsible for overseeing and implementing OHCHR’s work in the field; and (4) the Human Rights Council and Special Procedures Division, which provides substantive and technical support to the HRC, the HRC’s Universal Periodic Review mechanism and the HRC’s special procedures.<sup>8</sup>

Conference at its forty-eighth session, it begin, as a matter of priority, consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights.”

3 UNGA Res. 48/141, 20 December 1993, para. 4(a).

4 *Ibid.* The resolution further states that the High Commissioner is appointed by the Secretary-General and approved by the General Assembly, with due regard to geographical rotation, and has a fixed term of four years with a possibility of one renewal for another fixed term of four years. She/he has the rank of Under-Secretary-General.

5 The HRC is an intergovernmental entity made up of forty-seven States, in charge of promoting and protecting human rights as required by the UN Charter (in particular, Article 55). The confusion was even greater at the time when the HRC was named the Commission of Human Rights: see Andrew Clapham, “The Office of the High Commissioner for Human Rights”, in Philip Alston and Frédéric Mégret (eds), *The UN and Human Rights*, 2nd ed., Oxford University Press, Oxford, forthcoming 2016, p. 3, available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2190811](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2190811).

6 To date, ten such committees (or “treaty-based bodies”) are established: the Human Rights Committee; the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Racial Discrimination; the Committee on the Elimination of Discrimination against Women (CEDAW); the Committee against Torture; the Subcommittee on Prevention of Torture; the Committee on the Rights of the Child; the Committee on Migrant Workers; the Committee on the Rights of Persons with Disabilities; and the Committee on Enforced Disappearances.

7 The special procedures report on country-specific human rights situations or particular thematic issues. There are to date thirty-seven thematic and fourteen country mandates; See OHCHR, “Special Procedures of the Human Rights Council”, available at: [www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx).

8 OHCHR, *OHCHR Report 2014*, Geneva, 2014. It is important to note that the OHCHR is currently undergoing changes in its internal structure. See High Commissioner’s Annual Report, Opening Statement, Item 2, available at: [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15642&LangID=E#sthash.2h61aLv3.dpuf](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15642&LangID=E#sthash.2h61aLv3.dpuf).

In addition, as of December 2014, OHCHR had thirteen country offices and thirteen regional offices or centres around the world.<sup>9</sup> It employed 1,189 staff, 474 of who were based in the field, 695 in Geneva and twenty in New York. OHCHR also supported close to 820 human rights officers serving in thirteen UN peace missions or political offices.<sup>10</sup> This combination of substantive research and legal development work, matched with active field presence as it relates to human rights monitoring, is precisely one of OHCHR's specificities.

## **OHCHR's experience and approach in building respect for the rule of law, including in armed conflicts and post-conflict situations**

The approach of OHCHR to protecting and promoting human rights is conceptualized in three different phases: (1) ensuring better *prevention* of human rights violations, (2) enabling *rapid reaction to a crisis and constant monitoring*, and (3) *addressing post-conflict situations*, notably through the support of transitional justice mechanisms. This part of the article addresses each of these phases, while providing some examples of recent tools aimed at generating better respect for the law – before, during and in the aftermath of armed conflicts or other violent situations.

### **Prevention**

These past years, the prevention of human rights and IHL violations has been a daunting but essential task for human rights and humanitarian organizations, including OHCHR.<sup>11</sup> Of course, there is no miracle recipe that could ensure the absolute prevention of human rights violations. Prevention will necessarily be about the implementation of different tools and mechanisms touching different sectors of a society, dealing with issues of development, education, health, rule of law or democratization.

To *prevent* human rights violations, OHCHR works mainly through its field offices, through the human rights component of peace missions, and through advisers in specific countries. The headquarters in Geneva support the field offices, and are also specifically in charge of some countries, such as China and India.

Across the board, OHCHR works closely with other UN agencies, notably to turn into reality the UN Secretary-General's Five-Year Action Agenda of 2012, which among other action points proposes to

9 See OHCHR, "Who We Are", available at: [www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx](http://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx).

10 OHCHR, above note 8.

11 See, on this topic, Christiane Bourloyannis-Vrailas and Linos-Alexander Sicilianos (eds), *The Prevention of Human Rights Violations*, Brill, The Netherlands, 2001.

[a]dvance a preventive approach to human rights by: [d]eveloping a policy framework that identifies basic elements needed to *prevent* human rights violations; [e]stablishing a *preventive matrix* that will chart progress and gaps in the use of a range of human rights instruments; [and] [a]dvancing the responsibility to protect agenda.<sup>12</sup>

### *Capacity-building and technical support*

Encouraging universal ratification of human rights treaties by States and enhancing their implementation is one of the facets of OHCHR's work on prevention. Examples of such work include capacity-building in helping governments to adopt human rights-compliant domestic legislation. For instance, following the Arab Spring in Tunisia, the adoption of the new Constitution was an essential step for the country's transitional process. OHCHR, through the UN country team, provided the National Constituent Assembly Speaker and Consensus Commission with extensive comments and recommendations throughout the drafting process.<sup>13</sup> The Constitution was adopted in January 2014,<sup>14</sup> and although it fell short of incorporating some important provisions,<sup>15</sup> it does include articles on national institutions and bodies related to elections, justice, human rights and the media, and guarantees their constitutional protection according to international standards.<sup>16</sup>

Another example is the support provided to Uganda, in cooperation with the Uganda Human Rights Commission and civil society organizations, which resulted in the adoption of the Prevention and Prohibition of Torture Act, consistent with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>17</sup> Similar support was given to constitutional and legislative processes in Egypt, Fiji, Libya, Somalia and Paraguay.<sup>18</sup>

12 See "The Secretary-General's Five-Year Action Agenda", 25 January 2012, available at: [www.un.org/sg/priorities/sg\\_agenda\\_2012.pdf](http://www.un.org/sg/priorities/sg_agenda_2012.pdf) (emphasis added). Listed goals are: I. Sustainable development; II. Prevention; III. Building a safer and more secure world by innovating and building on our core business; 4. IV. Supporting nations in transition; V. Working with and for women and young people.

13 OHCHR, *OHCHR Report 2013*, Geneva, 2013, "Impunity and the Rule of Law" section, p. 33.

14 H  l  ne Sallon, "Libert  s, droits des femmes: Les avanc  es de la Constitution tunisienne", *Le Monde Afrique*, 27 January 2014, available at: [www.lemonde.fr/tunisie/article/2014/01/27/des-avancees-majeures-dans-la-constitution-tunisienne\\_4354973\\_1466522.html](http://www.lemonde.fr/tunisie/article/2014/01/27/des-avancees-majeures-dans-la-constitution-tunisienne_4354973_1466522.html).

15 See the letter from Navi Pillay to the President of the Assembl  e Nationale Constituante, Mustapha Ben Ja  far, available in French at: <http://news.tunistribune.com/?q=node/3177#sthash.oNRqETQy.dpufhttp://news.tunistribune.com/?q=node/3177>; and also "Navi Pillay: La nouvelle constitution tunisienne r  pond aux normes internationales en mati  re de droits de l'Homme", 3 March 2014, available at: [www.aa.com.tr/fr/afrique/296157-navi-pillay-la-nouvelle-constitution-tunisienne-repond-aux-normes-internationales-en-matiere-de-droits-de-l-homme](http://www.aa.com.tr/fr/afrique/296157-navi-pillay-la-nouvelle-constitution-tunisienne-repond-aux-normes-internationales-en-matiere-de-droits-de-l-homme).

16 See also OHCHR's webpage on Tunisia, available at: [www.ohchr.org/EN/countries/MENARegion/Pages/TNIndex.aspx](http://www.ohchr.org/EN/countries/MENARegion/Pages/TNIndex.aspx).

17 OHCHR, above note 13, "Impunity and the Rule of Law" section, pp. 32–33.

18 *Ibid.*

## *Early warning and rapid response*

Prevention also presupposes the development of tools enabling the international community to detect early signs that a situation might degenerate into one leading to serious human rights violations. Early-warning mechanisms include looking at indicators such as hate speech, discrimination policies, recruitment of child soldiers, or the existence of dire economic and social conditions (starvation, extreme poverty, etc.). In this context, collaboration with other human rights mechanisms such as the special procedures plays a central role, because it enhances the development of country-specific or thematic strategies.<sup>19</sup>

In order to anticipate and respond to a deteriorating human rights situation, OHCHR's Rapid Response Unit tries to swiftly deploy personnel to the field.<sup>20</sup> As explained on OHCHR's website:

The Rapid Response Unit has, in recent times, conducted or coordinated the establishment of fact-finding missions or commissions of inquiry mandated by the Human Rights Council (HRC) on the Occupied Palestinian Territories, Democratic People's Republic of Korea and Syria (on-going since 2011). The Commission of Inquiry on Central African Republic, mandated by the Secretary General, and the OHCHR Investigations on Sri Lanka, mandated by the HRC are also ongoing. Commissions of Inquiry on Gaza and Eritrea are also being established, as is an OHCHR Mission to Iraq, all mandated by the HRC. Additionally, the Rapid Response Unit has established a human rights monitoring team based in Lebanon and sent fact-finding teams to Mali, Central African Republic and Ukraine. In response to humanitarian crises OHCHR staff have been deployed to the Philippines, Myanmar and Lebanon.<sup>21</sup>

The work of fact-finding missions and commissions of inquiry will be addressed later in this article.

In situations of armed conflicts and violence, OHCHR works closely with other UN entities, such as the Department of Peacekeeping Operations (DPKO), the Department of Political Affairs (DPA) and the Office for the Coordination of Humanitarian Affairs (OCHA), to ensure that that all parts of field missions can better respond to the risk of human rights violations. In some instances, however,

19 See, for example, OHCHR, "Towards Developing Country Engagement Strategies on Minorities", available at: [www.ohchr.org/Documents/Publications/Strategies\\_on\\_minoritiesEN.pdf](http://www.ohchr.org/Documents/Publications/Strategies_on_minoritiesEN.pdf).

20 The UN Secretary-General can also trigger a "special circumstances" mechanism, in relation to a country where there is no UN peacekeeping mission or special political mission on the ground but where demands upon the UN are likely to rise due to a situation of armed conflict, heightened political instability or social unrest, or a significant natural disaster with potential political repercussions. Within forty-eight hours of the designation of special circumstances, an inter-agency task force co-chaired by the appropriate Department of Political Affairs senior official and the chair of the relevant regional UN Development Group team has to be established, see United Nations, *Special Political Missions Start Up Guide 2012*, New York, 2012, p. 8, available at: [http://peacemaker.un.org/sites/peacemaker.un.org/files/SPM\\_StartupGuide\\_UNDPA2012.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/SPM_StartupGuide_UNDPA2012.pdf).

21 See OHCHR, "OHCHR in the World: Making Human Rights a Reality on the Ground", available at: [www.ohchr.org/EN/Countries/Pages/WorkInField.aspx](http://www.ohchr.org/EN/Countries/Pages/WorkInField.aspx).

UN coordination and action on the field has been sharply criticized. In 2012, the Petrie Report, an independent report commissioned by the UN Secretary-General, assessed the UN's response to the final months of the war in Sri Lanka.<sup>22</sup> The report was very critical of the UN, characterizing its actions as a "systemic failure".<sup>23</sup> It recommended "a comprehensive review of action by the United Nations system during the war in Sri Lanka and the aftermath, regarding the implementation of its humanitarian and protection mandates". As a response to the report, the UN Secretary-General launched the Human Rights Up Front initiative.<sup>24</sup> The initiative was to be understood primarily as a coordination tool, outlining six actions that could help the UN system meet its responsibilities regarding human rights, namely:

**Action 1:** Integrating human rights into the lifeblood of the UN so all staff understand their own and the Organization's human rights obligations.

**Action 2:** Providing Member States with candid information with respect to peoples at risk of, or subject to, serious violations of human rights or humanitarian law.

**Action 3:** Ensuring coherent strategies of action on the ground and leveraging the UN System's capacities to respond in a concerted manner.

**Action 4:** Clarifying and streamlining procedures at Headquarters to enhance communication with the field and facilitate early, coordinated action.

**Action 5:** Strengthening the UN's human rights capacity, particularly through better coordination of its human rights entities.

**Action 6:** Developing a common UN system for information management on serious violations of human rights and humanitarian law.<sup>25</sup>

In the background paper prepared by OHCHR and the Office of the UN High Commissioner for Refugees (UNHCR) of 8 May 2013, further specific concerns relating to the protection of the rights of persons in humanitarian crises were identified. The paper noted that "at the field level, the humanitarian community faces multiple challenges in ensuring protection, such as for example, being confronted with restricted access and security concerns including direct military attack".<sup>26</sup> It went on to identify some common principles meant to "serve as the foundation for responding to the challenges to the effective protection of human rights in humanitarian crises, including by responding to international human

22 See *Report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka*, November 2012, available at: [www.un.org/News/dh/infocus/Sri\\_Lanka/The\\_Internal\\_Review\\_Panel\\_report\\_on\\_Sri\\_Lanka.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/The_Internal_Review_Panel_report_on_Sri_Lanka.pdf).

23 *Ibid.*, p. 28, para. 80.

24 More information about the initiative is available at: [www.un.org/sg/rightsupfront/](http://www.un.org/sg/rightsupfront/).

25 "Human Rights Up Front"; available at: [www.un.org/sg/rightsupfront/doc/RuFAP-summary-General-Assembly.shtml](http://www.un.org/sg/rightsupfront/doc/RuFAP-summary-General-Assembly.shtml).

26 "The Protection of Human Rights in Humanitarian Crises", Joint Background Paper by OHCHR and UNHCR IASC Principals, 8 May 2013, para. 4, available at: [www.refworld.org/cgi-bin/texis/vtx/rwmain?page=publisher&publisher=IASC](http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=publisher&publisher=IASC).



rights and humanitarian law violations”.<sup>27</sup> These principles, addressing substantive concerns, deserve to be reproduced here in full:

- **Primary responsibility of states:** The protection of the human rights of affected persons is the responsibility of States. Under international law, non-state armed groups also have certain responsibilities.
- **The role of humanitarian actors:** All humanitarian actors have a role to contribute to the protection of the human rights of affected persons either directly or as part of a broader strategy, which may include referring available information to relevant stakeholders, whether at the country or Headquarter level. Humanitarian activities must be aligned with protection priorities.
- **Protection activities** must focus on addressing the most serious violations of international human rights and humanitarian law and respond to the affected population’s needs in a manner that protects human rights as an outcome.
- **‘Protection’** should be centred on ensuring respect for international human rights, humanitarian and refugee law. The law is the principal basis and tool for undertaking effective humanitarian action, and provides advocacy arguments with an objective and impartial basis.
- **Humanitarian access and accountability:** Preserving humanitarian access and addressing accountability for international law violations are both grounded in international law. Both must be treated as human rights and humanitarian imperatives. Given the variety of actors, involved in humanitarian response including NGOs, concerted efforts should be made to ensure that methods and approaches are used complementarily to obtain optimal protection outcomes.
- **Monitoring, analysing and reporting** with respect to the protection of human rights of affected persons in humanitarian crises, including the root causes of violations, are critical in and of themselves and to inform and contextualise broader humanitarian strategies and responses. Human rights information must be analysed and assessed in terms of accuracy, credibility, compliance with international law and used for advocacy and to inform concrete action. Safe and confidential channels for sharing information must be established.
- **Sharing information:** Humanitarian actors should adopt and implement a strategy for regularly sharing information with relevant actors, while fully respecting principles of confidentiality. Risk mitigation measures should be put in place to preserve the safety and security of sources of information, particularly victims, witnesses and local civil society actors.
- In securing the protection of human rights, **humanitarian actors have different responsibilities** to undertake advocacy depending on their mandates and roles (e.g. [humanitarian coordinators] and [Protection Clusters] have a direct responsibility to undertake advocacy). For other

<sup>27</sup> *Ibid.*, para. 15.



humanitarian actors, advocacy can be indirect including through relaying relevant information with duty-bearers and other stakeholders with a view to preventing, putting an end to and seeking accountability for human rights violations, including effective remedies and access to justice for the affected population.

- **Public advocacy**, whether at the national, regional or global level, should take into account as a priority the protection of the human rights of the affected population. This should be based, inter alia, on an analysis of international human rights and humanitarian law violations, the potential role that an advocacy strategy will have in mitigating violations and the protection of humanitarian actors from possible retaliation.
- **Promoting access to justice**, including at the national level, and seeking accountability for violations of human rights law are essential elements of the [Inter-Agency Standing Committee's] commitment to ensuring accountability to affected populations.<sup>28</sup>

A final point to be made concerns the addressees of the preventing measures. OHCHR and the human rights community have traditionally focused very much on engaging State actors. However, since the majority of contemporary armed conflicts are of a non-international character – between States and non-State actors or between two or more non-State actors – OHCHR and the UN more broadly are increasingly required to strategically engage with armed non-State actors on human rights and humanitarian issues.<sup>29</sup> Thus, violations of international law obligations by non-State armed groups are regularly addressed by the reports of peacekeeping missions, such as in the 2014 report on Iraq.<sup>30</sup> OHCHR reports on country situations also mention human rights and IHL violations committed by non-State armed groups. For instance, in its latest report on Ukraine, OHCHR notes that, in the context of the conflict, “the armed groups continued to carry out abductions, physical and psychological torture, ill-treatment and other serious human rights violations”,<sup>31</sup> and further lists other violations committed by armed groups.

### *Reporting and monitoring, including during armed conflicts*

In addition to its work to anchor the protection of human rights at the core of UN peacekeeping missions, OHCHR reports on and monitors respect for human rights

28 *Ibid.*

29 These past years, the UN has elaborated many policy documents on engagement with armed non-State actors. See Brian McQuinn and Fabio Oliva, *Preliminary Scoping Report: Analysing and Engaging Non-State Armed Groups in the Field*, UN System Staff College, 26 June 2014, p. 6, available at: [www.unssc.org/home/news/analyzing-and-engaging-non-state-armed-groups-unssc-scoping-report](http://www.unssc.org/home/news/analyzing-and-engaging-non-state-armed-groups-unssc-scoping-report).

30 See UN, *Report on the Protection of Civilians in the Non International Armed Conflict in Iraq: 5 June–5 July 2014*, available at: [www.ohchr.org/Documents/Countries/IQ/UNAMI\\_OHCHR\\_POC%20Report\\_FINAL\\_18July2014A.pdf](http://www.ohchr.org/Documents/Countries/IQ/UNAMI_OHCHR_POC%20Report_FINAL_18July2014A.pdf); see in particular the section on “Violations Committed by ISIL and Associated Armed Groups”, p. 9.

31 Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Ukraine, UN Doc. A/HRC/27/75, 19 September 2014, paras 16–17.

in situations of armed conflict. The focus of OHCHR's action has been on the rights of those most affected by situations of violence and insecurity, in particular victims of sexual and gender-based violence and other segments of the population with heightened vulnerabilities, as well as people facing a risk of exclusion, marginalization or lack of protection. This may include women, internally displaced persons, children, refugees, migrants, the elderly, the urban and rural poor, persons with disabilities, persons living with HIV/AIDS, persons belonging to minorities and indigenous peoples.<sup>32</sup>

As will be further examined below, OHCHR has also been providing support to fact-finding missions and commissions of inquiry. Other tools include thematic papers on specific issues, such as torture and ill-treatment in Syria,<sup>33</sup> as well as "mapping" exercises that report on human rights violations in a given conflict. For instance, in 2005 OHCHR conducted a mapping of the human rights and IHL violations committed by all parties to the Afghan conflicts between 27 April 1978 and 22 December 2001.<sup>34</sup> Another well-known example of a mapping exercise concerns the conflict in the Democratic Republic of the Congo (DRC), which will be briefly addressed below.

### *The Mapping Report on the Democratic Republic of the Congo (2010)*

In late 2005, three mass graves were discovered in North Kivu by the UN Mission in the Democratic Republic of the Congo (MONUC). In consultation with different UN entities (DPKO, MONUC, OHCHR, DPA, and the Office of Legal Affairs, it was recommended that

a mapping exercise of the most serious violations of human rights and international humanitarian law committed within the territory of the DRC between March 1993 and June 2003 be conducted and, on the basis of the findings of the exercise, that an assessment be carried out of the existing capacities of the Congolese national justice system to address these violations and a series of options formulated for appropriate transitional justice mechanisms that would assist in combating the prevailing impunity in the DRC.<sup>35</sup>

32 OHCHR, above note 13.

33 OHCHR, "Open Wounds: Torture and Ill Treatment in the Syrian Arab Republic", 14 April 2014, available at: [www.ohchr.org/EN/NewsEvents/Pages/TortureInSyria.aspx](http://www.ohchr.org/EN/NewsEvents/Pages/TortureInSyria.aspx).

34 See OHCHR, "High Commissioner for Human Rights Urges Support for Afghan Efforts to Deal with Impunity", press release, 29 January 2005, available at: [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=7941&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=7941&LangID=E). See also the 2012 Nepal conflict mapping, which aimed to document and analyze "the major categories of conflict-related violations of international human rights law and international humanitarian law that allegedly took place in Nepal from February 1996 to 21 November 2006". OHCHR, "UN Releases Report Charting Ten Years of Violations during Nepal Conflict", press release, 8 October 2012, available at: [www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=12637&LangID=E](http://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=12637&LangID=E).

35 OHCHR, *Report of the Mapping Exercise Documenting the Most Serious Violations of Human Rights and International Humanitarian Law Committed within the Territory of the Democratic Republic of the Congo between March 1993 and June 2003*, August 2010, p. 2, available at: [www.ohchr.org/en/countries/africaregion/Pages/rdcProjektmapping.aspx](http://www.ohchr.org/en/countries/africaregion/Pages/rdcProjektmapping.aspx).

On May 2007, the terms of reference of the mission were decided by the UN Secretary-General, and the mapping process, led by OHCHR, began in July 2008. Between October 2008 and May 2009, a total of thirty-three staff worked on the project in the DRC (including Congolese and international human rights experts). Twenty human rights officers were deployed in the country, operating out of five field offices. The mapping team's 550-page report contains descriptions of 617 alleged violent incidents occurring in the DRC between March 1993 and June 2003. Each of these incidents pointed to the possible commission of gross violations of human rights and/or IHL.<sup>36</sup> The methodology of the report was based on 1,280 interviews and analysis of over 1,500 documents; only events reaching a certain threshold of gravity were recorded, and incidents had to be backed up by two independent sources to be reported in the document.<sup>37</sup> The legal framework to which the report referred was international human rights law, IHL and international criminal law.<sup>38</sup>

While reactions to the report were generally very positive – both from human rights NGOs<sup>39</sup> and from States<sup>40</sup> – some of the States implicated in the report, notably Angola, Burundi, Rwanda and Uganda, strongly reacted to it and sent letters of protest to the High Commissioner.<sup>41</sup> The DRC itself criticized the report as being incomplete and biased, and as going outside its mandate.<sup>42</sup>

The Mapping Report was an exceptional exercise realized by OHCHR, in both magnitude and depth. Despite the few criticisms, mainly from implicated States, the report constitutes a thorough and meaningful account of one of the deadliest conflicts in contemporary international relations. It is nevertheless regrettable that there was no follow-up to the report, even though proposals were made in that direction.<sup>43</sup>

### *Fact-finding missions and commissions of inquiry*

Over the past twenty years, OHCHR has assisted almost forty commissions of inquiry and fact-finding missions.<sup>44</sup> Fact-finding missions and commissions of

36 *Ibid.*

37 *Ibid.*

38 *Ibid.*, pp. 369–393.

39 See for example Human Rights Watch, “DR Congo: UN Report Exposes Grave Crimes”, 1 October 2010, available at: [www.hrw.org/news/2010/10/01/dr-congo-un-report-exposes-grave-crimes](http://www.hrw.org/news/2010/10/01/dr-congo-un-report-exposes-grave-crimes).

40 See the press statement of the US Department of State, “UN Mapping Report on Violations of Human Rights in the Democratic Republic of the Congo”, 1 October 2010, available at: <http://www.state.gov/r/pa/prs/ps/2010/10/148549.htm>

41 All comments by States are available on the Mapping Report webpage, available at: [www.ohchr.org/en/countries/africaregion/Pages/rdcProjetmapping.aspx](http://www.ohchr.org/en/countries/africaregion/Pages/rdcProjetmapping.aspx).

42 See Ministry of Justice and Human Rights, DRC, “Observations du gouvernement (de la RDC) sur le Rapport du Projet Mapping concernant les violations les plus graves des droits de l’homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République Démocratique du Congo”, 7 August 2010, available at: [www.ohchr.org/Documents/Countries/CD/DRC\\_Report\\_Comments\\_DRC.pdf](http://www.ohchr.org/Documents/Countries/CD/DRC_Report_Comments_DRC.pdf).

43 See Human Rights Watch, “Tackling Impunity in Congo: Meaningful Follow-Up to the UN Mapping Report”, 1 October 2010, available at: [www.hrw.org/fr/news/2010/09/22/dr-congo-meaningful-follow-un-mapping-report](http://www.hrw.org/fr/news/2010/09/22/dr-congo-meaningful-follow-un-mapping-report).

44 See OHCHR, *Manual on Human Rights Monitoring*, 2011, Chapter 3, available at: [www.ohchr.org/Documents/Publications/Chapter03-MHRM.pdf](http://www.ohchr.org/Documents/Publications/Chapter03-MHRM.pdf).

inquiry can be mandated either by the HRC<sup>45</sup>, by the UN Security Council or by the UN Secretary-General,<sup>46</sup> or can be initiated by OHCHR itself as part of its general mandate under UN General Assembly Resolution 48/141.<sup>47</sup> In the latter case, members of the fact-finding missions are usually OHCHR staff. The membership of commissions of inquiry is otherwise composed of independent experts, while OHCHR provides support in staff or secretarial matters. Whereas commissions of inquiry seem to be more focused on international criminal law, both types of investigative bodies aim at establishing the facts and recording the context of the events, identifying the alleged perpetrators, and providing recommendations to the State concerned as well as to the international community as to how to address violations.<sup>48</sup>

In its 2011 Annual Report, OHCHR underlined that, in the context of setting up commissions of inquiry/fact-finding missions, the office systematically conducted lessons learned exercises to ensure greater cohesive planning and enable future commissions to be established in the light of best practices.<sup>49</sup> Among the lessons learned identified in the report, it mentioned the need to develop a core secretariat team and a witness protection strategy, as well as the inclusion of specific expertise, such as forensics and military advisers.<sup>50</sup> Challenges to commissions of inquiry included:

tight reporting deadlines; parallel investigations occasionally established by other UN bodies; multiple commissions of inquiry established simultaneously; and the lack of a readily available source of regular budget funding for these urgent and time-sensitive mandates, leading to ad hoc

45 Recent commissions of inquiry mandated by the HRC include: the 2006 Commission of Inquiry on Lebanon (HRC Res. A/HRC/S-2/1, 11 August 2006); the 2009 United Nations Fact-finding Mission on the Gaza Conflict (HRC Res. A/HRC/RES/S-9/1, 12 January 2009); the 2010 International Fact-finding Mission to Investigate Violations of International Law, Including International Humanitarian and Human Rights Law, Resulting from the Israeli Attacks on the Flotilla of Ships Carrying Humanitarian Assistance (HRC Res. A/HRC/RES/14/1, 23 June 2010); the 2010 International Commission of Inquiry on Libya (HRC Res. A/HRC/RES/S-15/1, 25 February 2011); the 2011 International Commission of Inquiry on the Ivory Coast (HRC Res. A/HRC/RES/16/25, 25 March 2011); the 2011 Independent International Commission of Inquiry on the Syrian Arab Republic (HRC Res. A/HRC/RES/S-17/1, 18 October 2011); and the 2013 Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea (UN Doc. A/HRC/22/13, 21 March 2013).

46 Recent examples include the 2004 International Commission of Inquiry on Darfur (UNSC Res. 1564 (2004)); the 2009 International Commission of Inquiry on Guinea (established by the UN Secretary-General on 16 October 2009, UN Doc. S/2009/556); the 2010 Secretary-General's Panel of Experts on Accountability in Sri Lanka (established by the UN Secretary-General on 22 June 2010, UN Doc. SG/SM/12967); and the 2013 International Commission of Inquiry on the Central African Republic (UNSC Res. 2127 (2013)).

47 See, for example, the OHCHR Mission to Kyrgyzstan to investigate serious violations of human rights in Andijan, Uzbekistan, in May 2005; the OHCHR Mission to Western Sahara and Refugee Camps in Tindouf (2006); the OHCHR Fact-Finding Mission to Kenya (2008); the OHCHR mission on the situation of human rights in Honduras since the coup d'état of 28 June 2009 (2009); and the OHCHR Mission in Mali (2013).

48 See also Philip Alston, "The Darfur Commission as a Model for Future Responses to Crisis Situations", *Journal of International Criminal Justice*, Vol. 3, No. 3, 2005, pp. 600–607.

49 OHCHR, *OHCHR Report 2011*, "Armed Conflict and Insecurity" section, Geneva, 2011.

50 *Ibid.*, p. 94.

arrangements that complicated administrative procedures and undermined transparency.<sup>51</sup>

One could add to this list the difficulty raised by the fact that commissions of inquiry might not have access to the country concerned (e.g. in Syria or North Korea). This underlines the importance of obtaining the State's consent, for access and cooperation purposes. Finally, the multiplication of fact-finding bodies in one particular situation can at times produce undesirable outcomes, such as contradictory narratives.<sup>52</sup>

In 2015, OHCHR published a guidance document for international commissions of inquiry and fact-finding missions.<sup>53</sup> The study contains methodological as well as practical recommendations. It should allow the UN to make decisions regarding the set-up of commissions of inquiry or fact-finding missions in a more coherent and systematic manner, as well as to avoid discrepancies and possible double standards.

## Implementing the rule of law in societies in transition

As noted by one commentator:

[W]hatever decisions are reached with respect to accountability for past crimes, it is doubtful that there can be stable or sustainable peace unless the immediate post-conflict period addresses protection of human rights in the present. While this issue is closely related to ensuring the rule of law, it is also tied to traditional human rights norms, such as rights to political participation, economic and social rights, freedom of expression, and non-discrimination.<sup>54</sup>

The work of OHCHR in post-conflict settings consists mainly of promoting access to justice for human rights violations. In 2013 and 2014, the focus has been on addressing sexual and gender-based violence. For instance, assessment missions to the Central African Republic, Colombia, the DRC and Somalia made recommendations to strengthen those countries' legal and institutional structures regarding sexual violence in conflict. In the DRC, the UN Joint Human Rights Office supported mobile courts to deal with cases of sexual violence, and provided military prosecutors with technical support to investigate sexual violence and other serious violations in remote areas of the country. OHCHR also supported efforts in Afghanistan, Guinea-Bissau and Sierra Leone to address sexual and gender-based violence. In addition, together with UN Women,

51 *Ibid.*

52 This could be an issue in the Central African Republic, for instance, where both a commission of inquiry and the International Criminal Court are present. See Annyssa Bellal, "Central African Republic: From Conflict to Chaos and Back Again?", in Stuart Casey-Maslen (ed.), *The War Report 2013*, Oxford University Press, Oxford, 2014.

53 Available at: [www.ohchr.org/Documents/Publications/CoI\\_Guidance\\_and\\_Practice.pdf](http://www.ohchr.org/Documents/Publications/CoI_Guidance_and_Practice.pdf).

54 Hurst Hannum, "Human Rights in Conflict Resolution: The Role of the Office of the High Commissioner for Human Rights in UN Peacemaking and Peacebuilding", *Human Rights Quarterly*, Vol. 28, No. 1, 2006, p. 40.

OHCHR finalized a guidance note on reparations for victims of sexual violence and launched a study on reparations for survivors of sexual violence in Kosovo.<sup>55</sup> Finally, OHCHR, “as the lead entity within the United Nations system in the area of transitional justice, has been assisting with developing standards and operational rule of law tools as well with the design and implementation of transitional justice mechanisms”.<sup>56</sup>

## OHCHR’s specific mandate in situations of armed conflict

Within the UN, several entities, offices and agencies have to deal with situations of emergency and armed conflict.<sup>57</sup>

Because respect for human rights also has to take place during armed conflicts,<sup>58</sup> OHCHR’s mandate covers violations of human rights committed in armed conflict, including when they constitute international crimes, as well as issues relating to the protection of civilians.<sup>59</sup> It is thus common for OHCHR reports to include legal assessments of situations under IHL and human rights law, as well as international criminal law and international refugee law.<sup>60</sup>

In working to promote respect for the rule of law in armed conflicts or other violent situations, OHCHR frequently works through its field presence, as well as through the human rights component of UN peacekeeping missions. In addition, the High Commissioner regularly reports to the UN Security Council on the human rights-related issues arising out of armed conflict situations.

## OHCHR’s standalone field presence

OHCHR is the only office which has an investigative mandate within the UN field presence. As such, it plays an essential role in monitoring and addressing human

55 OHCHR, above note 13, “Violence and Insecurity” section, pp. 82–95.

56 See: [www.ohchr.org/EN/Issues/RuleOfLaw/Pages/TransitionalJustice.aspx](http://www.ohchr.org/EN/Issues/RuleOfLaw/Pages/TransitionalJustice.aspx).

57 Among them, one could mention the DPA, DPKO, OCHA, UNHCR and UNICEF.

58 The application of human rights in situations of armed conflict, whether international or non-international, has been confirmed many times by the International Court of Justice in its 1996 *Nuclear Weapons Advisory Opinion* of 8 July 1996, *ICJ Reports 1996*, as well as in its *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 9 July 2004, *ICJ Reports 2004*. The applicability of international human rights law in situations of armed conflict was also confirmed in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, 9 December 2005, *ICJ Reports 2005*.

59 See also Bertrand Ramcharan, “The United Nations High Commissioner for Human Rights and International Humanitarian Law”, *Program on Humanitarian Policy and Conflict Research Occasional Paper Series*, Spring 2005.

60 See, among the many different OHCHR reports on countries in situations of armed conflict, *Situation of Human Rights in the Central African Republic*, Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/24/59, 12 September 2013. In the High Commissioner’s 2008 report on the human rights violations resulting from Israeli military attacks and incursions in the Occupied Palestinian Territory, it was recalled that “both Israel and the Palestinian Authority, as well as Hamas in Gaza, carry obligations under international humanitarian law and international human rights law vis-à-vis the civilian populations in both Israel and the [Occupied Palestinian Territory]”: UN Doc. A/HRC/8/17, para. 4.

rights violations in armed conflict situations. The first OHCHR field presence in Rwanda and Burundi was established in 1994 by Ayala Lasso as an attempt by the then High Commissioner to respond directly to the Rwandan genocide.<sup>61</sup> As of December 2014, OHCHR had twelve country offices (Bolivia, Cambodia, Colombia, Guatemala, Guinea, Mauritania, Mexico, State of Palestine, Togo, Tunisia, Uganda and Yemen) and one standalone office in Kosovo. In addition, there were twelve regional presences which included ten regional offices in East Africa (Addis Ababa), Southern Africa (Pretoria), West Africa (Dakar), South-East Asia (Bangkok), the Pacific (Suva), the Middle East and North Africa (Beirut), Central Asia (Bishkek), Europe (Brussels), Central America (Panama City), South America (Santiago de Chile), a sub-regional centre for human rights and democracy for Central Africa (Yaoundé) and a Training and Documentation Centre for South-West Asia and the Arab Region (Doha).<sup>62</sup>

Field-based activities of OHCHR will often include issues related to obligations of both human rights law and IHL. For example, the agreement on the establishment of an office in Colombia, signed on 29 November 1996, states that OHCHR will receive “complaints on human rights violations and other abuses, including breaches of humanitarian law applicable in armed conflicts”.<sup>63</sup> In that respect, OHCHR monitors and reports on alleged violations committed by both States and non-State actors.<sup>64</sup>

There are several challenges faced by OHCHR in its action on the ground. Some of them are institutional, such as the perceived lack of communication between its field offices and headquarters, or different understandings in fieldwork approaches between different UN departments or agencies. Andrew Clapham has identified further challenges in relation to OHCHR’s fieldwork in the context of the genocide in Rwanda. His observations remain very much valid for current conflicts. He mentions the following issues:

First, how to raise problems relating to the new government’s human rights record when the country is still struggling to cope with a massive genocide which has also destroyed the infrastructure of the country? Second, how to carry out the investigative mandate without interfering with evidence that would be needed to issue the indictments in order to bring to justice those to be tried at the international level? Third, how to cooperate with humanitarian agencies who may only have access to certain camps and places of detention precisely because they will not be collecting information on human rights abuses? Fourth, how to work in close cooperation with the authorities on technical cooperation programmes involving the training of civilian police forces, the establishment of an independent judiciary,

61 H. Hannum, above note 54, p. 19; see also A. Clapham, above note 5, p. 31.

62 OHCHR, above note 8, “OHCHR’s Approach to Field Work” section, p. 141.

63 UN Doc. E/CN.4/1997/11, Annex. See OHCHR, *International Legal Protection of Human Rights In Armed Conflicts*, New York and Geneva, 2011, pp. 104–106.

64 See OHCHR, *Training Manual on Human Rights Monitoring*, New York and Geneva, 2001, Chapter 16, pp. 327–362, available at: [www.ohchr.org/Documents/Publications/training7Introen.pdf](http://www.ohchr.org/Documents/Publications/training7Introen.pdf).



assistance in the preparation of dossiers for the prosecution – yet remain able to take a tough stand with these same authorities when there are allegations of serious human rights violations? Fifth, how to relieve the gross overcrowding in the prisons (at that time 70,000 in prisons designed for around 7,000) without simply encouraging new rounds of arrests?<sup>65</sup>

These challenges are regularly addressed internally by OHCHR, and lessons learned and methodologies are published in its *Manual on Human Rights Monitoring*, which is currently under revision.<sup>66</sup> One chapter in the *Manual* deals precisely with the delicate topic of the interaction with national authorities. The *Manual* recognizes that “[e]ngaging with national authorities and institutions is a challenging task. Field presences have to engage even with those that are not fully committed to promoting and protecting human rights.”<sup>67</sup> The *Manual* reminds human rights officers that they need “to establish smooth and transparent channels of communication with their governmental counterparts at all levels, in order to identify and support ‘allies’ in the implementation of human rights norms, while maintaining the integrity of the field presence.”<sup>68</sup>

The *Manual* also addresses the relationship between human rights law and IHL. In that regard, it advises field staff to adopt a pragmatic approach during monitoring, fact-finding and investigations and to

assess the situation or incident with reference to provisions of both international human rights law and international humanitarian law in order to determine the rules providing the most specific procedural and substantive guarantees. Since there are inconsistencies and gaps between the protection afforded by the various human rights and humanitarian law instruments, as well as national and local laws, the individual should be entitled to the most protective provisions of applicable international, national or local laws. Accordingly, if international humanitarian law affords better protection than human rights law, humanitarian law should be applied and vice versa.<sup>69</sup>

65 A. Clapham, above note 5, p. 33. Another difficulty in human rights fieldwork was highlighted by Todd Howland. Commenting on the work of the Human Rights Division (HRD) of the peacekeeping operation in Angola, he noted that: “The objective for human rights interventionists is to improve the situations they encounter, rather than simply denouncing them. Nonetheless, for most human rights activists, working with a government is heresy. Thus, it is not surprising that the HRD’s work was controversial. Some observers have lauded the HRD’s work with the Angolan government as a creative cooperation that opened opportunities for change previously unavailable in Angola. Others, however, worry that the support provided to the Angolan government by the HRD is nothing more than a costly legitimization of the present widespread violations.” Todd Howland, “UN Human Rights Field Presence as Proactive Instrument of Peace and Social Change: Lessons from Angola”, *Human Rights Quarterly*, Vol. 26, No. 1, 2004, p. 16.

66 See OHCHR, “Policy and Methodological Materials”, available at: [www.ohchr.org/EN/Publications/Resources/Pages/MethodologicalMaterials.aspx](http://www.ohchr.org/EN/Publications/Resources/Pages/MethodologicalMaterials.aspx).

67 OHCHR, above note 44, Chapter 17, p. 4, available at: [www.ohchr.org/Documents/Publications/Chapter17-28pp.pdf](http://www.ohchr.org/Documents/Publications/Chapter17-28pp.pdf).

68 *Ibid.*, p. 3.

69 *Ibid.*, Chapter 5, p. 15, available at: [www.ohchr.org/Documents/Publications/Chapter05-MHRM.pdf](http://www.ohchr.org/Documents/Publications/Chapter05-MHRM.pdf).

When fully revised, the *Manual* will further cover issues such as “Monitoring and Documenting Human Rights Violations”, “Engagement and Partnerships for Protection and Empowerment” (including a section on “Interaction with Non-State Actors”) and “Focus Areas for Human Rights Monitoring”.<sup>70</sup>

## The human rights component of peacekeeping missions

Several general institutional reforms within the UN, such as the UN Secretary-General's reports *An Agenda for Peace: Preventative Diplomacy, Peace-Making and Peace-Keeping*<sup>71</sup> and *Renewing the United Nations: A Programme for Reform*,<sup>72</sup> led to the inclusion of human rights components within UN peacekeeping missions.<sup>73</sup> In 2000, the Report of the Panel on United Nations Peace Operations submitted by Lakhdar Brahimi noted that:

OHCHR needs to be more closely involved in planning and executing the elements of peace operations that address human rights, especially complex operations .... If United Nations operations are to have effective human rights components, OHCHR should be able to coordinate and institutionalize human rights field work in peace operations; second personnel to Integrated Mission Task Forces in New York; recruit human rights field personnel; organize human rights training for all personnel in peace operations, including the law and order components; and create model databases for human rights field work.<sup>74</sup>

Addressing the cause of conflicts and ensuring that human rights are taken into account in peace negotiations and post-conflict settings are the rationales behind the human rights component of peacekeeping and political missions. This forms an important part of OHCHR's efforts to implement the rule of law in armed conflicts. Indeed, as noted by one commentator, “peace operations cannot solely be focused on military and, possibly, civilian police aspects. What these operations are addressing are but symptoms of the absence of a system under the rule of law, which ... pre-supposes a democratic system.”<sup>75</sup> Typical functions of human rights components in peacekeeping missions thus include:

70 The table of contents of the *Manual* is available at: [www.ohchr.org/Documents/Publications/OHCHRTableContents.pdf](http://www.ohchr.org/Documents/Publications/OHCHRTableContents.pdf).

71 *An Agenda for Peace: Preventative Diplomacy, Peace-Making and Peace-Keeping*, Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992, UN Doc. A/47/277–S/2411.

72 *Renewing the United Nations: A Programme for Reform*, UNGA Res. 51/950, UN GAOR, 51st Sess., UN Doc. A/51/950, 1997.

73 Todd Howland, above note 65, p. 4.

74 Report of the Panel on United Nations Peace Operations, UN Doc. A/55/305 S/2000/809, 21 August 2000, para. 244.

75 Hans Corell, UN Legal Counsel, “The Role of the United Nations in Peacekeeping: Recent Developments from a Legal Perspective”, keynote address delivered at “National Security Law in a Changing World: The Tenth Annual Review of the Field”, available at: [http://legal.un.org/ola/legal\\_counsel8.aspx](http://legal.un.org/ola/legal_counsel8.aspx).

- monitoring and reporting on the human rights situation and investigating human rights violations;
- advocating for peace processes to be inclusive, addressing past human rights violations and promoting and protecting human rights;
- integrating human rights in legislative and institutional reforms, including the rule of law and security sectors reforms;
- preventing and redressing violations of human rights and international humanitarian law, with a focus on the protection of civilians;
- building human rights capacities and institutions; and
- mainstreaming human rights into all UN programmes and activities.<sup>76</sup>

As of December 2014, there were fourteen UN peace missions, all of which incorporated human rights promotion and protection into their mandated work.<sup>77</sup>

Human rights divisions are an integral part of the peacekeeping missions. Administratively, human rights officers depend on the DPKO, but the selection of officers is done by OHCHR. In addition, human rights divisions have a dual reporting line: one to the Special Representative of the UN Secretary-General and one to the High Commissioner.

The integration of human rights and rule of law issues within peacekeeping missions has been met with some criticism. As underlined by an OHCHR staff member,

the humanitarian community (including actors outside the UN) is increasingly concerned about the “humanitarian identity” becoming blurred, advocating for further separation from political, military, and human rights actors. Some humanitarians feel that in many parts of the world, their acceptance and safety is endangered due to the perceived blurring of roles.<sup>78</sup>

## The High Commissioner’s briefings to the UN Security Council

One last interesting “tool” used by OHCHR to promote respect for human rights in armed conflicts is the regular briefings of the High Commissioner to the UN Security Council. This practice was initiated by High Commissioner Mary Robinson, and it illustrates the growing interest of the UN Security Council in human rights issues. By 2014, the High Commissioner had briefed the Security Council more than twenty times, attracting its attention to the most pressing

76 OHCHR, above note 8, “OHCHR’s Approach to Field Work” section, p. 143. The text of the memorandum of understanding between OHCHR and the DPKO can be found in Bertrand Ramcharan (ed.), *Human Rights Protection in the Field*, Martinus Nijhoff, Leiden and Boston, 2006, p. 269.

77 These are Afghanistan (UNAMA), Burundi (BNUB – closed in December 2014), the Central African Republic (MINUSCA), Côte d’Ivoire (UNOCI), the Democratic Republic of the Congo (MONUSCO), Guinea-Bissau (UNIOGBIS), Haiti (MINUSTAH), Iraq (UNAMI), Liberia (UNMIL), Libya (UNSMIL), Mali (MINUSMA), Somalia (UNSOM), South Sudan (UNMISS) and Sudan (Darfur) (UNAMID); see *ibid.* See also the DPKO website, available at: [www.un.org/en/peacekeeping/issues/humanrights.shtml](http://www.un.org/en/peacekeeping/issues/humanrights.shtml).

78 OHCHR staff, “Protection in the Field: Human Rights Perspectives”, in B. Ramcharan, above note 76, p. 120.

human rights issues in armed conflicts or other situations of violence.<sup>79</sup> Despite the fact that the Security Council does not necessarily act on these briefings, they nevertheless have the important effect of bringing to the attention of the Council the most serious human rights violations occurring in the year. As a consequence, they also deprive the Security Council of the possibility of arguing that it was not aware of those human rights crises.

## Conclusion

In his 2002 report *Strengthening of the United Nations: An Agenda for Further Change*, the UN Secretary-General stated that “as a worldwide organization, the United Nations provides a unique institutional framework to develop and promote human rights norms and practices, and to advance legal, monitoring and operational instruments to uphold the universality of human rights while respecting national and cultural diversity”.<sup>80</sup> As part of the UN, OHCHR operates within this “unique institutional framework”. In practice, this means that OHCHR has to work not only towards the promotion of respect for human rights by States, but also towards encouraging long-lasting and just solutions to the many challenges and threats to human rights in contemporary international relations. In her last statement to the HRC, High Commissioner Navi Pillay reminded member States:

OHCHR stands at your side, not in your way. It is a friend that is unafraid to speak the truth. This Office does not only seek to help States identify gaps in their human rights protection. It also assists States to repair them, and to pursue policies that promote equality, dignity, development and the resolution of conflict, thus helping to realise the full sense of its double mandate – to promote and to protect the rights of all.<sup>81</sup>

OHCHR has aimed at fulfilling its very large mandate to promote and protect “the effective enjoyment by all of all civil, cultural, economic, political and social rights”. The strategies and tools it has chosen, including in armed conflict situations, have not always been successful. Perhaps this can be explained by the very nature of the human rights protection discourse, embedded in complex ideological and political struggles, or by the fact that the UN is itself a huge institutional machinery, which necessarily causes discrepancies in coordination and approaches between different offices and entities, not to mention coordination with actors outside the UN.

Initiatives such as Human Rights Up Front might improve coordination within the UN system. The work of fact-finding missions and commissions of

79 The list of statements is available at: [www.ohchr.org/EN/NewYork/Pages/Statements.aspx](http://www.ohchr.org/EN/NewYork/Pages/Statements.aspx).

80 *Strengthening of the United Nations: An Agenda for Further Change*, Report of the Secretary-General, UN Doc. A/57/387, para. 47, available at: [www.un.org/events/action2/A.57.0387.pdf](http://www.un.org/events/action2/A.57.0387.pdf).

81 Statement of the High Commissioner at the 26th Session of the Human Rights Council, 10 June 2014, available at: [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14674&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14674&LangID=E).

inquiry supported by OHCHR, and efforts towards their systematization and methodological coherence, are also a step forward towards better documenting, preventing and repressing serious human rights violations. Similarly, analysis of the methodology and practice of human rights monitoring, such as that conducted in OHCHR's field manual, is an essential effort towards ensuring an efficient system that is capable of addressing human rights violations, including in armed conflicts.

It remains to be seen whether OHCHR and the tools it has elaborated will be able to respond effectively to the most pressing protection challenges in light of phenomena such as the engagement of armed groups with radical ideologies (Islamic State in Syria or Boko Haram in Nigeria) and the fragmentation and complexity of parties to armed conflicts (as in Syria, Libya and the DRC). It is fair to say that these challenges are not those of OHCHR alone, but of the broader human rights and humanitarian community. If these challenges are to be met, coordination, or at the very least concerted action between all actors working to strengthen and uphold the protection that human rights and IHL grant in armed conflict, seems warranted, despite the differences in mandates and constituencies.