

## **To ensure its universality, the United Nations must address the increasingly worrying situation of human rights defenders in Eastern Europe**

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The United Nations has just marked 70 years since its inception, and this landmark year has brought much reflection on the functioning of UN institutions. In 2016, a new UN global development agenda will enter into force and a new Secretary General will be appointed. But what about human rights – one of the three pillars of the UN?<sup>2</sup>

The UN Human Rights Council, now in its 10th year, is entrusted to universally promote and protect human rights, but events in European countries in recent years have called into question the universal nature and effectiveness of the HRC, specifically its motivation and ability to address human rights in Europe. For example, the UN has been inaudible in its reaction to Russia's clampdown on civil society, media, and opposition, and it failed to react effectively to EuroMaidan in Ukraine and other rapid developments in Eastern Europe.

This essay will examine the UN's effectiveness in promoting and protecting civil and political rights in Europe, considering the UN's inconsistent approach in addressing human rights degradations and how independent voices and UN rapporteurs have struggled to engage with governments in the region.

### **The Human Rights Council's inability to address European situations**

The Human Rights Council was established to act as the UN's political tool to address human rights violations, next to the treaty bodies. The UN is founded on the principle of universality, but it has failed in 10 years to credibly look into situations developing in Europe, due to problems with the composition of the Council, politically directed actions that have alternative motives than to hold parties to their human rights obligations, and a lack of willingness from many stakeholders to put human rights violations in a European country on the UN agenda.

The effectiveness of the Council is undermined by the uncompetitive and political process to elect states to the Council, and the subsequent composition of the Council to include states with dubious-to-dire human rights records. Late Václav Havel addressed the situation in 2009, at the time questioning the candidacies of Azerbaijan, China, Cuba, Russia, and Saudi Arabia.<sup>3</sup> Excluding Azerbaijan, these states hold seats on the Council today.

The Eastern European Group (EEG)<sup>4</sup> has notably avoided presenting a candidate to run against the Russian Federation. Inevitably, on 12 November 2013, Russia was among the 14 States elected. None of the European Union member States from the EEG dared standing in the election against Russia? The EU will have a chance to challenge Russia's re-election at the end of this year, as its 3-year term ends.

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<sup>2</sup> UN, The Three Pillars of the United Nations, <http://www.un.org/un70/en/content/videos/three-pillars>

<sup>3</sup> Václav Havel, *A Table for Tyrants*, in *The New York Times*, 11 May 2009.

<sup>4</sup> The Eastern European Group is one of the five unofficial regional groups in the United Nations, as established in 1966. The group is today composed of 23 members, the Russian Federation, Eastern European States, former soviet republics, and countries in the Balkans. EU members are divided between the EEG and the Western European Group.

In November 2013, Ukrainian police reacted violently to protests in Kyiv's Maidan Nezalezhnosti (Independence Square), producing massive protests in December 2013. Soon after more than a hundred people were shot in the streets and mass violence erupted in Kyiv, leading to President Viktor Yanukovich leaving Ukraine and ultimately the presidency.

The UN was slow to respond, with its first reaction to EuroMaidan coming in a statement on 21 January 2014, in which the High Commissioner for Human Rights called on 'all parties to exercise restraint,'<sup>5</sup> but made no mention of the excessive use of violence and provocation by police agents – even as information was available on the now infamously brutal Berkut units.<sup>6</sup> This statement followed Ukraine's adoption of repressive legislation on 17 January 2014 aimed at a 'complete restriction of fundamental rights.'<sup>7</sup>

The second official UN reaction came on 19 February 2014 following the death of 22 protestors in Kyiv.<sup>8</sup> While condemning the killings, the High Commissioner urged 'the Government and protestors to act to defuse tensions and to take a swift action to find a peaceful solution to the ongoing crisis.'<sup>9</sup>

These statements do not encourage UN action, and in this case failed to have any impact on the situation. Clear and early UN condemnation of police violence should have come; this could have helped to stem the violence.<sup>10</sup> The UN said even less in its response to Russia's invasion of Crimea and the immediate human rights consequences.

In HRHN's intervention at the Human Rights Council on 7 March 2014, HRHN asked the High Commissioner to document the work relating to EuroMaidan undertaken by the UN's team in Ukraine, which was already quite strong at the time and included a human rights presence. HRHN expressed regret that 'the High Commissioner's Office has not been more proactive in Ukraine,' and called on the Office to 'establish a rapid response in the context of protests.'

The Council itself took action on Ukraine with a resolution on cooperation between the UN and Ukraine. This did not reference the obligations of the Ukrainian State to investigate the EuroMaidan violence and hold those guilty accountable, and it made little reference to the structural reforms needed. Significantly, the resolution was led by Ukraine and simply signed off by its international partners in the West, and other resolutions and statements have since been made by the Council in the same manner. This process reflects a complete misuse of the Council, which should base its resolutions on UN reporting and other sources. This resolution was not adopted to hold Ukraine and non-State actors in Ukraine to their human rights obligations in the aftermath of the EuroMaidan crisis, but rather as a tool by European countries to show political support to Ukraine.

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<sup>5</sup> UN High Commissioner for Human Rights Navi Pillay press release, 'New laws could seriously curtail fundamental human rights in Ukraine', 21 January 2014, available at

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14187&LangID=E#sthash.oM6AUh4H.dpuf>.

<sup>6</sup> HRHN, 'The Berkut riot police used excessive force against peaceful protesters', 9 January 2014, available at

<http://humanrightshouse.org/Articles/19903.html>.

<sup>7</sup> HRHN, 'Complete restriction to fundamental rights in Ukraine', 17 January 2014, available at

<http://www.humanrightshouse.org/Articles/19918.html>.

<sup>8</sup> HRHN, 'Ukraine government must stop use of violence', 31 January 2014, available at

<http://humanrightshouse.org/Articles/19937.html>.

<sup>9</sup> UN High Commissioner for Human Rights Navi Pillay press release, 'Ukraine crisis: Pillay sends urgent call for restraint after deadly clashes in Kiev', 19 January 2014, available at

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14261&LangID=E#sthash.K4fz9Kc0.dpuf>.

<sup>10</sup> HRHN issued a joint letter to President Viktor Yanukovich, already on 3 December 2013, calling on him to immediately revoke measures aimed at using force against protestors, to release all detained protestors and journalists, and to ensure that relatives of injured and arrested protestors and journalists are informed of their situation. A copy was sent to the Office of the High Commissioner. Letter available at [humanrightshouse.org/Articles/19816.html](http://humanrightshouse.org/Articles/19816.html).

In Belarus, in contrast to the approach taken in Ukraine, the EU attempted to use the Human Rights Council for its designed purpose: to uphold human rights. This followed election-night violence in December 2010, which saw massive arrests – including seven presidential candidates – and subsequent repression of civil society, media, and political activists. In June 2011, the EU requested that the High Commissioner report on the situation. In June 2012, following the conclusions of the report, the EU pushed for the UN to mandate an independent expert to monitor the human rights situation in Belarus, to cooperate with Belarusian civil society and prevent further negative developments.

This mandate was established but saw resistance from the Office of the High Commissioner, which argued that Belarus would in any case not cooperate on civil and political rights – the main focus of the rapporteur. The local UN presence in Belarus under the leadership of the Resident-coordinator<sup>11</sup> has been unwilling to support the mandate, showing the same disregard and ignorance as the Belarusian government. Worse still, the UN accompanied Sanaka Samarasinha's nomination as the new UN Resident Coordinator to Belarus with a statement expressing 'hope that the cooperation between the UN and Belarus will continue to develop successfully.'<sup>12</sup>

In Geneva, the EU raised the situation of Belarus at the Council, hoping for more involvement from countries from other regions. Such support never came, just as it never came for the resolutions and statements on Ukraine. Every resolution on Belarus and Ukraine has been adopted with a high level of abstentions from States outside the European groups, as if issues arising in Europe are not a matter of preoccupation for non-European States. Diplomats in Geneva representing some African States, as well as smaller Latin American States, who do not necessarily have diplomatic representations in concerned European countries, often invoke that they lack of information on the situation to be able to offer a position to their capitals. Truth is though that they are unwilling to stand up to Russia in particular.

These examples illustrate the difficulty of raising human rights violations at the political level within the UN when they concern a European country, and demonstrate the lack of willingness from many sides – the UN itself, European States, and States from other regions – to put human rights violations occurring in Europe on the agenda of the UN.

The Council is in general reluctant to examine country situations. As observed by the Universal Rights Group, 'the Council has consistently prioritised discussion of general thematic issues over addressing country-specific human rights situations.'<sup>13</sup> The Group documents that 55% of the resolutions adopted since the Council's creation have been on general thematic issues, while country-specific resolutions account for just 7%.

This phenomenon is even more prominent when it comes to European countries, and advocacy of human rights groups on European countries is often countered by the argument that these States are members of the Council of Europe and that Strasbourg must take care of the problems – often ignoring that Belarus is not a member of the Council of Europe.

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<sup>11</sup> The resident-coordinator system encompasses all organisations of the United Nations system, regardless of their formal presence in the country. The positions of resident-coordinator are funded and managed by the United Nations Development Programme. The Resident-coordinator is hence the UN's representative in the country.

<sup>12</sup> United Nations Development Programme press release, 'New UN Resident Coordinator/UNDP Resident Representative presented his credentials to the Prime Minister of Belarus', 13 May 2013, available at [www.by.undp.org/content/belarus/en/home/presscenter/pressreleases/2013/05/13/new-un-resident-coordinator-undp-resident-representative-sanaka-samarasinha-presented-his-credentials-to-the-prime-minister-of-belarus-mikhail-myasnikovich.html](http://www.by.undp.org/content/belarus/en/home/presscenter/pressreleases/2013/05/13/new-un-resident-coordinator-undp-resident-representative-sanaka-samarasinha-presented-his-credentials-to-the-prime-minister-of-belarus-mikhail-myasnikovich.html).

<sup>13</sup> Marc Limon and Subhas Gujadhur, 'The Human Rights Council at 10: too much talk, too little action?', 27 March 2015, available at <https://www.opendemocracy.net/openglobalrights/marc-limon-subhas-gujadhur/human-rights-council-at-10-too-much-talk-too-little-acti>.

These issues shatter the belief that, as Yvonne Terlingen put it, the Council is an opportunity for a 'new era' in human rights marked by less double-standards and politics.<sup>14</sup>

The reluctance of the Council to focus on country-specific issues is also reflected in UN special procedures, in which mandates are largely established on thematic issues rather than country situations. The vast majority of non-EU States refuse on principle to support country mandates, declaring them intrinsically politicised.

European States tend to take one of three approaches to special procedures: they reject, they pretend to collaborate, or they truly collaborate.

Rejectionists simply do not cooperate with the mandates they dislike, as is the case with Belarus, or they feign cooperation with all mandates but manoeuvre to ensure this never materialises, the approach taken by Azerbaijan. Azerbaijan has been officially thanked for extending an invitation to Maina Kiai, UN Special Rapporteur on the rights to peaceful assembly and association in his statement on 30 May 2013 at the Human Rights Council. Since, however, it appears that the mandate holder has never visited Azerbaijan and indeed could not agree on a date with the Azerbaijani government.

Ceremonial collaborationists pretend to collaborate with special procedures, and may even invite mandate holders for official country visits, but their cooperation is ceremonial at best. They ignore the recommendations of special procedures and ensure they have no effect on the ground or on policy.

In Armenia, for example, the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, visited the country and reported that 'human rights defenders operate in a difficult environment in Armenia,'<sup>15</sup> and offered a set of recommendations to improve the situation. However, years later, NGOs are still harassed and human rights defenders verbally and physically attacked when raising issues considered delicate, such as gender equality<sup>16</sup> or rights of LGBTI people.<sup>17</sup>

True collaborationist States are the ones using special procedures as tools to improve their policies. States' engagement with special procedures illustrates their willingness – or lack thereof – to truly implement UN human rights recommendations 'back at home.'

Our experience is also that the United Nations itself, in various countries, does not push for human rights issues to be raised. It can be even a force against the promotion of human rights on the ground, as is the case in Belarus. For example, for Belarus's second review at the Universal Periodic Review (UPR), the Office of the UN Resident Coordinator in Belarus organised training for civil society, but invited only NGOs legally registered in Belarus.<sup>18</sup>

The largest domestic human rights organisation, Viasna, could not participate, and the organisation's chairperson, Ales Bialiatski, was until recently detained. In its decision of 24 July

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<sup>14</sup> Yvonne Terlingen, 'The Human Rights Council: A New Era in UN Human Rights Work?', *Ethics & International Affairs*, Volume 21.2 (2007), pages 167-178.

<sup>15</sup> United Nations Special Rapporteur on the situation of human rights defenders Margaret Sekaggya, Report to the Human Rights Council, Mission to Armenia, 23 December 2010 (UN Doc: A/HRC/16/44/Add.2), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-44-Add2.pdf>.

<sup>16</sup> The smear campaign and attacks against the Women Resource Centre in 2013 serve as another example, available at <http://humanrightshouse.org/Articles/19558.html>

<sup>17</sup> PINK Armenia, 'US Ambassador, UN, and Frontline Defenders condemned the harassment of Armenian LGBTI community,' available at <http://www.pinkarmenia.org/en/2015/11/us-un-frontline>.

<sup>18</sup> Source on file with the authors.

2007,<sup>19</sup> the United Nations Human Rights Committee considered the dissolution of Viasna as a violation of the right to freedom of association, and supported Viasna's right to be re-registered.<sup>20</sup> This is a ludicrous situation in which a UN legal body, acting under an instrument ratified by the concerned State,<sup>21</sup> is not even respected by the UN's own representation in the country. This *de facto* excluded international actors working on Belarus – when international engagement is essential in such a closed country – as well as domestic NGOs who are banned from public life by Belarusian legislation.

The UPR places a country at the centre of the Council's agenda and extends UN participation to local NGOs. Whether the UPR can overtime become a way of scrutinising the human rights records of European countries will depend on the political will of all States to raise those human rights violations. Low engagement from non-European countries, a praising process rather than a critical mind and a lack of ability to implement 'back at home' are some of the elements one would need to look into in more detail.

In the countries mentioned, space for civil society is indeed shrinking and the environment is increasingly dangerous for human rights defenders. This is not helped by the poisonous combination of the UN not expecting enough when it comes to civil and political rights from European countries, European countries not receiving enough attention from special procedures, and European countries not doing enough to raise developments in other European countries at the UN.

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<sup>19</sup> View Belyatsky et al. vs. Belarus on the communication No. 1296/2004 of 24 July 2007, published on 7 August 2007.

<sup>20</sup> More information in HRHN submission on the implementation of the Human Rights Committee's view of 24 July 2007, available at <http://humanrightshouse.org/Articles/11201.html>.

<sup>21</sup> The Republic of Belarus ratified the Optional Protocol to the International Covenant on Civil and Political Rights of 16 December 1966 on 30 September 1992.