

UN Entities' Powers to Establish Administrative Reparations Programs

A Briefing Paper for Discussions on
the Armed Conflict in Yemen

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1. Introduction

The aim of this briefing paper is to provide an overview of the powers of various UN entities to establish administrative reparations programs for gross violations of international human rights law, serious violations of international humanitarian law and/or international crimes, and their past practice on this subject. The focus will be on non-judicial reparations that are not depending on the outcomes of a legal proceeding. A chapter on court-ordered reparations in the context of international criminal proceedings is included as a brief introduction to judicial reparations, a detailed consideration is beyond the scope of this briefing paper.

This memo is structured in five sections and has one Annex. *Section I* briefly defines administrative reparation programs; *Section II* outlines the main standards and basic principles on the right to reparations; *Section III* provides an overview of the authority of UN entities (namely the Security Council, the General Assembly, and the Human Rights Council) to establish such administrative reparations programs where states themselves do not take the initiative to do so; *Section IV* focuses on the administrative reparations programs that have in fact been established (or proposed to be established) by UN entities; and *Section V* provides an analysis of the language used in resolutions of the UN Security Council, the UN General Assembly and the UN Human Rights Council in which “reparations” or “compensation” have been mentioned. Finally, *Section VI* provides a short description of the practice of reparations attached to criminal court proceedings at the international level.

We would like to thank Fiona McKay, Duru Yavan and Beini Ye for their contribution to this report.

2. What are Administrative Reparation Programs?

The mechanisms that award reparations to victims of gross violations of international human rights law, serious violations of international humanitarian law and/or international crimes may be judicial or non-judicial. In other words, reparations can be implemented through administrative programs or enforced as the outcome of litigation or criminal proceedings.

Cases of mass violations pose significant challenges both for the judicial mechanisms seeking to afford reparations, and for the victims of mass violations. The judicial mechanisms face challenges of limited availability of resources, the sheer number of victims that makes the assessment of individual harms complicated, difficulties in identifying the victims particularly affected and locating each individual victim, the presence of both individual and collective forms of harm, and difficulties in the disbursement of awards.¹ The victims, on the other hand, often have difficulty in proving their status in a court of law (including by providing all the necessary evidence), paying the expensive costs of litigation, and waiting several years before their claim is successful, if at all.² These challenges raise the stark question of how best to achieve meaningful reparation that responds to the various harms suffered by large number of victims in an adequate and effective way. In such circumstances, the establishment of administrative (non-judicial) reparation mechanisms that operate independently of judicial procedures are often essential and represent the most realistic way to deliver prompt, adequate and effective reparation to victims of mass violations.³ For claimants as well, administrative reparation programs compare more than favorably to judicial procedures in circumstances of mass violations, “offering faster results, lower costs, relaxed standards of evidence, non-adversarial procedures and a higher likelihood of receiving benefits”.⁴

Administrative reparation programs have been highly heterogeneous, varying widely in their purpose, scope, establishment, administration, the forms of benefits provided and the range of victims to whom benefits have been afforded. There are different types of administrative reparation programs that have been set in place in various geographies with the purpose of giving some measure of redress to a large universe of victims of violations. They can be established by a

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- 1 Inter American Court of Human Rights (IACtHR), [Reaching for Justice The Right to Reparation in the African Human Rights System](#), October 2013, p. 76.
 - 2 UN Office of the High Commissioner for Human Rights (OHCHR), [Promotion of truth, justice, reparation and guarantees of non-recurrence](#), A/69/518, 14 October 2014, para. 5.
 - 3 REDRESS, [Articulating Minimum Standards on Reparations Programmes in Response to Mass Violations](#), July 2014, para. 10.
 - 4 OHCHR, [Promotion of truth, justice, reparation and guarantees of non-recurrence](#), A/69/518, 14 October 2014, para. 4.

single country or by multi-lateral agreements between different countries. This briefing paper will not endeavor to encompass all domestic and multi-national programs but rather will limit itself to the practice at the UN level.

3. Standards and Basic Principles on the Right to Reparations

International human rights law recognizes that victims of violations of human rights have the right to an effective remedy, including reparation.⁵ Reparations are intended to render justice to the victims by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations.

The Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Principles)⁶ and the updated Set of Principles for the protection and promotion of human rights through action to combat impunity, (Updated Set of Principles)⁷ refer to domestic reparation programs as effective remedies to provide reparation for mass violations; and serve as a key reference point for the determination of duties of

5 International Covenant on Civil and Political Rights (ICCPR), Article. 2(3), 9(5), and 14(6); International Convention on the Elimination of Racial Discrimination (ICERD), Article 6; Convention Against Torture (CAT) Article 14. See also REDRESS, [Articulating Minimum Standards on Reparations Programmes in Response to Mass Violations](#), July 2014, para. 1.

6 UN General Assembly, [Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law : resolution / adopted by the General Assembly](#), 21 March 2006, A/RES/60/147.

7 UN Economic and Social Council, Promotion and Protection of Human Rights, Impunity Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, [Addendum Updated Set of principles for the protection and promotion of human rights through action to combat impunity](#), E/CN.4/2005/102/Add.1, 8 February 2005. (“The updated Set of Principles”)

States in international, regional and domestic systems in situations of mass violations.⁸

The UN Basic Principles provide general overarching standards about **the nature of reparation to be provided**.⁹ Reparation for gross violations of human rights (i) must be adequate, effective and prompt;¹⁰ (ii) should be proportional to the gravity of the violations and the harm suffered;¹¹ (iii) must be provided by the State for acts or omissions that can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law;¹² and (iv) should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be “full and effective”, and include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.¹³

The UN Basic Principles also provide general overarching standards about **the processes through which reparation can be provided**.¹⁴ Regardless of whether reparations are delivered through judicial processes or other non-judicial/administrative mechanisms, States should (i) disseminate information about available remedies;¹⁵ (ii) take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses;¹⁶ and (iii) provide proper assistance to victims

8 REDRESS, [Articulating Minimum Standards on Reparations Programmes in Response to Mass Violations](#), July 2014, paras. 7-8.

9 Ibid.

10 UN Basic Principles, para. 11(b).

11 UN Basic Principles, para. 15.

12 UN Basic Principles, para. 15.

13 UN Basic Principles, para. 18.

14 REDRESS, [Articulating Minimum Standards on Reparations Programmes in Response to Mass Violations](#), July 2014, paras. 9-13.

15 UN Basic Principles, para. 12(a).

16 UN Basic Principles, para. 12(b).

seeking access to justice.¹⁷ In addition, the UN Basic Principles stress the principle of non-discrimination, setting out clearly that the principles must be applied and interpreted without any discrimination of any kind or on any ground, without exception.¹⁸ The Updated Set of Principles further indicate that “victims and other sectors of civil society should play a meaningful role in the design and implementation of such program”, and that victims, particularly women and minorities, should be consulted and participate in such processes.¹⁹ There is a dearth of significant practice to shed light on how best to carry out such participation and consultation.²⁰

Finally, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence notes some minimum requirements that reparation programs ought to fulfil, which represents the **elements to be considered in designing and implementing a reparation program**.²¹ UN guidance specifies that reparation programs must be (i) *complete*, whereby “every victim actually receives the benefits, although not necessarily at the same level or of the same kind”;²² (ii) *comprehensive*, in terms of the types of violations that are selected for reparation;²³ (iii) *complex*, in terms of the forms and diversity of reparation used to redress victims;²⁴ (iv) *coherent* internally, in the relationship between the different forms of reparation received by victims, and externally, in the relationship between these programs and other measures taken. Domestic

17 UN Basic Principles, para. 12(c).

18 UN Basic Principles, para. 25.

19 The updated Set of Principles, Principle 32

20 OHCHR, [Promotion of truth, justice, reparation and guarantees of non-recurrence](#), A/69/518, 14 October 2014, paras. 74-80.

21 OHCHR, [Promotion of truth, justice, reparation and guarantees of non-repetition](#), A/HRC/42/45, 11 July 2019, paras. 44-45.

22 OHCHR, [Rule-of-Law Tools for Post-Conflict States: Reparation Programs](#) (United Nations publication, Sales No. E.08.XIV.3), p. 15.

23 Ibid. p. 19. See also: OHCHR, [Promotion of truth, justice, reparation and guarantees of non-recurrence](#), A/69/518, 14 October 2014, para. 26.

24 OHCHR, [Promotion of truth, justice, reparation and guarantees of non-recurrence](#), A/69/518, 14 October 2014, para. 30.

programs should also aim at (v) *finality*, which addresses the question of the potential coexistence of judicial reparation and domestic reparation programs.²⁵ Finally, (vi) *munificence* of a reparation program, which looks at how dignifying the benefits will be, is also an important element. The munificence of a reparation program can be affected by the manner in which benefits are provided and is also related to who contributes to the reparation of victims.²⁶ However it is to be noted that, after all, none of these elements themselves is indicative of the success or failure of a reparation program.²⁷

In addition, some civil society initiatives have published guidelines and principles aiming to promote victims' rights regarding reparations.²⁸ For example, the *Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation* ("Nairobi Declaration") provides for gender specific considerations regarding the formulation and implementation of reparations programs and underlines

25 OHCHR, [Rule-of-Law Tools for Post-Conflict States: Reparation Programs](#) (United Nations publication, Sales No. E.08.XIV.3), p. 35. Note also: "Although the demand for reparation may continue until victims consider that they have been accorded justice, the finality of the reparation process is also affected by whether other avenues of civil redress remain open to victims. In designing a reparation program, it therefore becomes important to consider the potentially destabilizing effect and inefficiency associated with having victims continue to seek more or other forms of reparation. However, this risk must be weighed up against the benefits (and potential costs) that could result from providing more comprehensive reparation to particular victims, as well as the negative consequences of not affording the same rights to victims as compared to other persons within that society who suffer similar harm." See: Mark Richards, [The Design and Implementation of an Optimal Reparation Program: How Should Limited Resources for Material Reparation Be Distributed Across Victims of the Colombian Conflict?](#), Documentas de CERAC (Centro de Recursos para el Análisis de Conflictos), ISSN: 1909-1397, May 2007, p. 10.

26 Mark Richards, [The Design and Implementation of an Optimal Reparation Program: How Should Limited Resources for Material Reparation Be Distributed Across Victims of the Colombian Conflict?](#), Documentas de CERAC (Centro de Recursos para el Análisis de Conflictos), ISSN: 1909-1397, May 2007, pp. 10-11.

27 Ibid.

28 REDRESS, [Articulating Minimum Standards on Reparations Programmes in Response to Mass Violations](#), July 2014, para. 5.

additional aspects that are important in the process of awarding reparations.²⁹ Other recent documents include the *International Law Association's Declaration of International Law Principles on Reparation for Victims of Armed Conflict* (2010),³⁰ and *Procedural Principles for Reparation Mechanisms* (2014).³¹

4. UN Entities' Authority to Establish Administrative Reparations Programs

This section outlines the authority of the Security Council, the General Assembly, and the Human Rights Council to establish administrative reparation programs for gross violations of international human rights law, serious violations of international humanitarian law and/or international crimes.

In a nutshell, neither the General Assembly, nor its subsidiary organ the Human Rights Council has the power to establish such a mechanism without states' consent. However, they can establish other mechanisms that lack compulsory legal authority over individuals or states but that lay the groundwork for future reparation mechanisms, such as investigative or fact-finding bodies, and can also set standards, make recommendations and initiate studies and inquiries. In the context of Yemen, this could translate into naming the parties to the conflict who have obligations to provide reparations, commissioning studies on needs of affected communities or modalities of reparations and making proposals for the shape of an administrative reparation program. Where a state itself expresses the will to set up such processes, there is a lot more that UN bodies can do to provide support and cooperation. If any party to the conflict in Yemen were to agree to set up a administrative reparation program, both technical and financial assistance could be sought from the General Assembly or the Human Rights Council.

29 [Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation](#), 21 March 2007. See also African Commission on Human and Peoples' Rights, [Resolution 111 on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence](#), adopted in Brazzaville, Republic of Congo, 28 November 2007, ACHPR/Res.111(XXXXII)07.

30 International Law Association, [Declaration of International Law Principles for Victims of Armed Conflict](#), adopted at the 74th ILA Conference, Resolution 2/2010.

31 International Law Association, [Declaration of Procedural Principles for Reparation Mechanisms](#), adopted at the 76th ILA Conference, Resolution 1/2014.

The Security Council, on the other hand, in theory has the power to establish administrative reparations programs among other measures, where it establishes a threat to international peace and security. However, exercising this authority seems to be quite challenging in practice, as a veto from any of the permanent members can easily halt any possible action the Security Council may take.

4.1. The Security Council

4.1.1. *Relevant Functions and Powers*

The Security Council has the ‘primary responsibility for the maintenance of international peace and security.’³² Accordingly, above all, the Security Council has the authority to *determine* the existence of any threat to the peace, breach of the peace or act of aggression.³³ Upon this determination, the Security Council can *make recommendations* or *resort to enforcement measures* to ‘maintain or restore international peace and security.’³⁴ These enforcement measures may include for example the authorization to use force by a peacekeeping operation, by multinational forces or by interventions by regional organizations; but also “measures not involving the use of armed force”.³⁵ Measures not involving the use of armed force taken by the Council may include the creation of international

32 UN Charter, Article 24(1).

33 UN Charter, Article 39. The range of situations which the Security Council has determined as giving rise to threats to the peace includes country-specific situations such as inter- or intra-State conflicts or internal conflicts with a regional or sub-regional dimension. See: Repertoire of UN Security Council’s Actions, [Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression](#).

34 UN Charter, Articles 41–42. See: Repertoire of UN Security Council’s Actions, [Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression](#).

35 UN Charter, Article 41.

tribunals,³⁶ the establishment of inquiry missions to investigate human rights violations³⁷ and the creation of compensation commissions.³⁸

4.1.2 Authority to Establish an Administrative Reparation Program

It is quite clear that the Security Council has the authority to establish an administrative reparation program that would adjudicate on reparations claims in a way that would amount to creating legal obligations on states or non-state actors, provided that the aim is to maintain or restore international peace and security. Indeed, only the Security Council has the authority under the UN Charter to establish bodies with compulsory legal authority over individuals or states.³⁹

However, while the Security Council clearly has the authority to create such a reparation program in theory, exercising this authority can be quite challenging in

36 The Security Council established two ad hoc criminal tribunals, those for the Former Yugoslavia and Rwanda in 1993 and 1994.

37 The inquiry missions created by Security Council are as follows: Security Council Commission concerning Israeli settlements in Arab territories occupied since 1967, including Jerusalem, Commission of experts to investigate situation in the former Yugoslavia, Panel of Inquiry on Liberia to conduct a thorough and full investigation of the massacre of the civilians, which occurred near Harbel, Liberia on the morning of 6 June 1993, Preparatory fact-finding mission to Burundi to investigate the coup d'état of 21 October 1993, the assassination of President Melchior Ndadaye, and the subsequent massacres, Commission of experts to examine and analyse the continuing reports indicating that systematic, widespread and flagrant violations of international humanitarian law, including acts of genocide, have been committed in Rwanda, International commission of inquiry for Burundi, International commission of inquiry to investigate all human rights violations committed in Côte d'Ivoire, International commission of inquiry on Darfur in order immediately to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, International Commission of Inquiry to investigate events in the Central African Republic since 1 January 2013. See:

<https://libraryresources.unog.ch/c.php?g=462695&p=3162812#s-lg-box-wrapper-11490317>.

38 See: The United Nations Compensation Commission (UNCC), <https://uncc.ch/home>.

39 Alex Whiting, 'An Investigation Mechanism for Syria The General Assembly Steps into the Breach', *Journal of International Criminal Justice* 15, 2017, p. 232.

practice, as a veto from any of the permanent members can easily halt any possible action the Security Council may take.

The Security Council has already exercised this authority when it established the *UN Compensation Commission (UNCC)* - (for details about this program see below Section IV). The Security Council's decision to create the UN Compensation Commission to handle claims against Iraq based on the invasion of Kuwait constitutes its first ever measure aimed at dealing with an invasion and imposing a redress mechanism.⁴⁰ "Despite the political and legal controversy during and after its establishment,⁴¹ the UNCC set a unique precedent in international law as the first mechanism created by the UN whereby individual victims could claim compensation for violations in armed conflict".⁴² It also demonstrated the practical role the Security Council could play in supporting implementation of the right to reparation.⁴³

Nonetheless, it is important to note that the UN Compensation Commission is quite an exceptional example where all members of the Security Council could reach agreement.⁴⁴ Regrettably, the Security Council has not reached such an

40 Diana Itza Contreras Garduño, [Collective Reparations - Tensions and Dilemmas Between Collective Reparations and the Individual Right to Receive Reparations](#), Human Rights Research Series, Volume 84, Utrecht University School of Law, September 2018, p. 263.

41 Christine Evans, '[The Right to Reparation in International Law for Victims of Armed Conflict](#)', Cambridge University Press, 2012, p. 139. See also: David D. Caron, Brian Morris, '[The UN Compensation Commission: Practical Justice, not Retribution](#)', European Journal of International Law, Volume 13, Issue 1, February 2002, pp. 183–199; Andrea Gattini, '[The UN Compensation Commission: Old Rules, New Procedures on War Reparations](#)', European Journal of International Law, Volume 13, Issue 1, February 2002, pp. 161–181.

42 Christine Evans, '[The Right to Reparation in International Law for Victims of Armed Conflict](#)', Cambridge University Press, 2012, p. 140.

43 Ibid. p. 139.

44 Romesh Weeramantry, The Practice of the United Nations Compensation Commission and the Eritrea Ethiopia Claims Commission, UN Security Council [Report of the workshop on accountability and fact-finding mechanisms for violations of international humanitarian law and human rights law: the role of the Security Council — past and future](#), Panel 3: Reparations, New York, 1 November 2011, p. 57.

agreement or given equal priority to this issue when confronted with subsequent conflicts in other parts of the world, e.g. the *Proposed Compensation Commission for international crimes perpetrated in Darfur, Sudan* (for details about this proposed program see below Section IV).⁴⁵ Thus, the unprecedented operational modalities of the UN Compensation Commission have not been repeated in other instances and the Security Council failed to endorse subsequent initiatives.⁴⁶

Finally, it should be noted that while some have questioned the Security Council's competence to create and impose such compensation mechanisms,⁴⁷ some recommend that consideration should be given to the widest possible role of the Security Council in the area of reparations, which could even "go beyond the establishment of international reparations programmes to the authorization of the use of assets frozen under sanctions regimes to make reparations as well as the possible support of national reparations programmes."⁴⁸

4.2. The General Assembly

4.2.1. Relevant Functions and Powers

The General Assembly is the main deliberative, policymaking and representative organ of the UN, and its authority is framed as limited to discussion and making recommendations. Through its regular meetings, the General Assembly provides a forum for States to express their views to the entire membership and find consensus on difficult issues. It makes recommendations in the form of General Assembly resolutions and also plays a significant role in the process of standard-setting and the codification of international law.

The General Assembly's functions and powers are addressed in Articles 10-17 of the UN Charter. Accordingly, above all, the General Assembly has the authority

45 Christine Evans, '[The Right to Reparation in International Law for Victims of Armed Conflict](#)', Cambridge University Press, 2012, p. 144.

46 Ibid, p. 139.

47 Stanley J. Glod, '[International Claims Arising from Iraq's Invasion of Kuwait](#)', The International Lawyer Journal, Volume 25 No 3, 1991, p. 715.

48 UN Security Council [Report of the workshop on accountability and fact-finding mechanisms for violations of international humanitarian law and human rights law: the role of the Security Council—past and future](#), Executive Summary, New York, 1 November 2011, p. 13.

to *discuss* any questions or matters within the scope of the UN Charter or relating to the powers and functions of any organs provided for in the UN Charter,⁴⁹ including those relating to the maintenance of international peace and security which are brought to it by any member of the UN, or by the Security Council.⁵⁰

In addition, except where the Security Council is exercising its authority, the General Assembly can *make recommendations* with regard to any question or matter within the scope of the UN Charter or relating to the powers and functions of any organs provided for in the UN Charter, including those relating to the maintenance of international peace and security.⁵¹ The General Assembly is also allowed to “recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations,” again, only if the Security Council is not exercising its authority.⁵² To clarify the exception, if the Security Council is exercising the functions assigned to it in the UN Charter in respect of any dispute or situation, the General Assembly cannot make any recommendation with regard to that dispute or situation –unless the Security Council so requests.⁵³

The General Assembly also has the authority *to initiate studies and make recommendations* for the purpose of “promoting international cooperation in the political field and encouraging the progressive development of international law and its codification” and “assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”⁵⁴ Under this mandate, it might be possible for the General Assembly to commission a study on reparation for a specific country, such as Yemen, although this has not been done before.

49 UN Charter, Article 10.

50 UN Charter, Article 11.

51 UN Charter, Articles 10 and 11.

52 UN Charter, Article 14.

53 UN Charter, Article 12.

54 UN Charter, Article 13(1).

Finally, the General Assembly can establish "subsidiary organs as it deems necessary for the performance of its functions".⁵⁵ However when exercising this authority, the General Assembly "cannot transfer more powers to subsidiary organs than it possesses under the Charter."⁵⁶

4.2.2 Authority to Establish an Administrative Reparation Program

To date, the General Assembly has not established an administrative reparation program that would adjudicate on reparations claims in a way that would amount to creating legal obligations on states or non-state actors. Nor has there been an authoritative decision that directly addresses whether the General Assembly has such authority.

As the General Assembly's authority is clearly limited to discussion, making recommendations and initiating studies;⁵⁷ it is highly questionable that the General Assembly has the power to establish an administrative reparation program as such. Therefore, a General Assembly resolution regarding the creation of an administrative reparation program would very likely constitute at most a recommendation without the binding force of a Security Council resolution, and would not be backed by the possibility of subsequent coercive measures.⁵⁸

However it is still important to note that, while only the Security Council has such authority, the effectiveness of the Security Council has been brought into question

55 UN Charter, Article 22.

56 Daniel-Erasmus Khan, 'Ch.IV The General Assembly, Procedure, Article 22', *The Charter of the United Nations: A Commentary*, Volume I, 3rd Edition, (eds.) Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf, 2012, p. 732. Whether operational and adjudicatory functions can be assigned to particular subsidiary organs is questionable, as can be seen from the example of the former UN Administrative Tribunal. See: International Court of Justice, *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, Advisory Opinion, I.C.J. Reports 1954, p. 51.

57 Underscoring that the General Assembly's authority is limited to discussion and making recommendations, Article 11 also stipulates explicitly that "[a]ny such question on which action is necessary shall be referred to the Security Council by the General Assembly, either before or after discussion." See: UN Charter, Article 11(2).

58 Andrew J. Carswell, '[Unlocking the UN Security Council: The Uniting for Peace Resolution](#)', *Journal of Conflict & Security Law*, Oxford University Press 2013, p. 454.

in many armed conflicts in different geographies, as the veto-wielding permanent members have blocked various attempts to ensure accountability for international crimes committed during conflicts in regions where they have an interest.⁵⁹ Unfortunately, such deadlocks in the Security Council have made it ineffective in providing a timely, strong, comprehensive and adequate response in terms of accountability for large-scale violations.⁶⁰ In order to fill this gap, the General Assembly has established other mechanisms that lack compulsory legal authority over individuals or states but that lay the groundwork for future accountability mechanisms, e.g. it has initiated independent inquiries into certain conflicts to document and collect evidence regarding violations.

This practice of the General Assembly and the surrounding discussions about the General Assembly's authority to establish such investigative mechanisms can shed light on whether its authority might also extend to the establishment of a reparations program. Despite significant evidence of atrocity crimes being committed, the Security Council has been paralyzed in Syria, and has been unable to take any steps towards accountability (such as referring the case to the International Criminal Court (ICC), creating an international tribunal to investigate and prosecute crimes or consequently establishing a compensation commission).⁶¹ As a response, the General Assembly created the *International, Impartial and Independent Mechanism* (IIIM) for Syria in 2016. Consistent with the General Assembly's limited power, the IIIM has been established only "to collect, consolidate, preserve and analyses evidence of violations of international humanitarian law and human rights violations and abuses" for future use;⁶² as well as to inform the General Assembly's related discussions and recommendations.⁶³ To accomplish this task, the General Assembly Resolution requested only

59 Niriksha Sanghvi, '[The Evolution of the International Fact-Finding Missions in Armed Conflicts – From Collecting Facts to Collecting Evidence](#)', Responsibility to Protect Journal, School of Politics and International Studies, University of Leeds.

60 Ibid.

61 Alex Whiting, '[An Investigation Mechanism for Syria The General Assembly Steps into the Breach](#)', Journal of International Criminal Justice 15, 2017, p. 232.

62 General Assembly Resolution, A/71/L.48, 21 December 2016, para. 4.

63 Bay Jaber, '[Working Methods of the United Nations Security Council Failures in Syria](#)', 16 March 2020.

voluntary cooperation, calling upon all States, all parties to the conflict as well as civil society to cooperate fully with the IIIM.⁶⁴

The opponents of the IIIM have challenged the General Assembly's authority to establish even this type of a body, with the Russian delegation at the forefront.⁶⁵ First, they have argued that the General Assembly does not have the power to establish the IIIM and confer it with quasi-prosecutorial powers as it does not itself have those powers.⁶⁶ However, the powers of the IIIM are actually not 'prosecutorial in nature' in the sense that they entail the prosecution of individuals; rather, it is simply a fact-finding body that adheres to a criminal law standard in performing its functions, i.e. collecting and analyzing evidence.⁶⁷ Secondly, the IIIM was challenged on the ground that it was not in conformity

64 Ibid. para. 6. See also: Ibid. para. 4, where the Resolution specifically instructed the new IIIM to 'closely cooperate' with the Independent International Commission of Inquiry on the Syrian Arab Republic, established by the Human Rights Council on 23 August 2011. Note that a subsequent 19 January 2017 report of the Secretary General to the General Assembly, setting forth the terms of reference of the new Mechanism, explains the difference in the purposes of the Commission of Inquiry and the Mechanism: the Commission's primary function is to collect evidence broadly of human rights violations, reporting them to the Member States, whereas the Mechanism's role will be more specific, to collect and analyze evidence identifying specific perpetrators that could support criminal prosecutions. See: The Secretary-General, Report of the Secretary General on the Implementation of the resolution establishing the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, UN Doc. A/71/755, 19 January 2017, paras. 30-31. See also: Alex Whiting, 'An Investigation Mechanism for Syria The General Assembly Steps into the Breach', *Journal of International Criminal Justice* 15, 2017, p. 233.

65 Alex Whiting, 'An Investigation Mechanism for Syria The General Assembly Steps into the Breach', *Journal of International Criminal Justice* 15, 2017, pp. 233-234. See also: Derek Jinks, '[Does the U.N. General Assembly have the authority to establish an International Criminal Tribunal for Syria?](#)', *Just Security*, 22 May 2014.

66 Bay Jaber, '[Working Methods of the United Nations Security Council Failures in Syria](#)', 16 March 2020.

67 Ibid.

with Article 12 of the UN Charter, given that the General Assembly was not empowered to act if the Security Council was exercising its function on the same matter.⁶⁸ As a response, it was argued that the General Assembly's authority could be derived from a reverse interpretation of Article 12 of the UN Charter: the General Assembly has the power to consider a matter related to the maintenance of peace and security, if the Security Council is not exercising its function '*at the same moment*'.⁶⁹ Finally, the 1950 Uniting for Peace resolution also makes provision for when the Security Council fails to act because of lack of unanimity among permanent members and allows General Assembly to 'consider the matter with a view to making recommendations to Members for collective measures to maintain or restore international peace and security'.⁷⁰

Consequently, it seems that the General Assembly can establish mechanisms in relation to international human rights law and international humanitarian law violations during an armed conflict, especially when the Security Council is paralyzed. However, these mechanisms would not have a compulsory legal authority over individuals or states, rather they could be used to lay the groundwork for future accountability mechanisms to be established, for example by collecting and analyzing evidence.

Nevertheless, it is important to note that although the General Assembly's authority is limited to discussing, making recommendations and initiating studies,

68 Niriksha Sanghvi, '[The Evolution of the International Fact-Finding Missions in Armed Conflicts – From Collecting Facts to Collecting Evidence](#)', Responsibility to Protect Journal, School of Politics and International Studies, University of Leeds.

69 Ibid. See also: Bay Jaber, '[Working Methods of the United Nations Security Council Failures in Syria](#)', 16 March 2020.

70 Niriksha Sanghvi, '[The Evolution of the International Fact-Finding Missions in Armed Conflicts – From Collecting Facts to Collecting Evidence](#)', Responsibility to Protect Journal, School of Politics and International Studies, University of Leeds.

General Assembly, Resolution 377A: Uniting for Peace Resolution, A/RES/377(V), 3 November 1950. "The Assembly may also take action if the Security Council fails to act, owing to the negative vote of a permanent member, in a case where there appears to be a threat to the peace, breach of the peace or act of aggression. The Assembly can consider the matter immediately with a view to making recommendations to Members for collective measures to maintain or restore international peace and security".

it can still be influential in bringing about various accountability processes that include reparations,⁷¹ and enter agreements to support and cooperate in establishing such processes.⁷² The General Assembly can call upon/urge States to provide reparations and can set standards on what a reparation program should look like see Section V below on the language used in its resolutions). Similarly,

71 See below section on the Language on Reparations in UN Resolutions for country-specific recommendations.

72 For example in 1997, the then two Cambodian Co-Prime Ministers wrote to the UN Secretary-General requesting assistance to bring to justice those most responsible for the crimes committed during the reign of the Khmer Rouge regime (1975–1979). It took some years of protracted negotiations before the Royal Cambodian government and the UN were able to conclude, in 2003, an agreement to establish the ECCC. See: General Assembly, Resolution 52/135, 12 December 1997 (Situation of human rights in Cambodia). Note also that in accordance with General Assembly resolution 52/135, the Secretary-General created the Group of Experts for Cambodia in July 1998. After a thorough analysis of the issues assigned to the Group, it presented a summary of its principal recommendations. One of the recommendations was the following: “We recommend that the tribunal established provide for the possibility of reparations by defendants to victims, including through a trust fund or some other special fund, and that States holding such assets arrange for their transfer to the tribunal as required to meet the defendants’ obligations in this regard.” (emphasis added). See: Hans Corel, [‘Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea Phnom Penh’](#), United Nations Audiovisual Library of International Law, 6 June 2003.

See also: General Assembly resolution 57/228, 18 December 2002 where General Assembly recalled that the serious violations of Cambodian and international humanitarian law during the period of Democratic Kampuchea from 1975 to 1979 continue to be matters of vitally important concern to the international community as a whole. The General Assembly also recognized the legitimate concern of the Government and the people of Cambodia in the pursuit of justice and national reconciliation, stability, peace and security. The Cambodian authorities requested assistance from the United Nations in bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible of the crimes in question. See: [Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea](#), 6 June 2003.

the General Assembly can be involved in establishing or supporting the creation of a mass claims process/redress mechanism if it were to be established on the basis of state agreement.⁷³ A number of mass claims/redress mechanisms have been established on the basis of provisions in peace agreements, whether the agreement is international or domestic. Finally, “even if a State has no legal consequences to fear from disregarding a General Assembly decision supported by a large majority of the international community, it exposes itself to international disapproval via the General Assembly. In the long run, no State can do this without being pushed into the position of an outsider”.⁷⁴

4.3. The Human Rights Council

4.3.1. *Relevant Functions and Powers*

Established as a subsidiary organ of the General Assembly, the Human Rights Council reports directly to the General Assembly. The Human Rights Council is responsible for “promoting universal respect for the protection of all human rights and fundamental freedoms for all.”⁷⁵ It aims to prevent and combat human rights violations, including gross and systematic violations, and to *make recommendations* thereon. The Human Rights Council also works to *promote and coordinate* the mainstreaming of human rights within the UN system. It should be noted that the Human Rights Council’s decisions, resolutions and recommendations are not legally binding.⁷⁶

73 For example, the General Assembly welcomed the agreement reached between the Government of Guatemala and civil society to establish a National Reparations Commission and called upon the Congress to adopt the draft law on the National Reparations Programme. See: A/RES/57/161 (16 December 2002). For more examples see last section on Language on Reparations in UN Resolutions.

74 Eckart Klein, Stefanie Schmahl, ‘Ch. IV The General Assembly, Functions and Powers, Article 10’, *The Charter of the United Nations: A Commentary*, Volume I, 3rd Edition, (eds.) Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf, 2012, p. 488.

75 UN General Assembly, [Establishing the Human Rights Council](#), A/RES/60/251, 3 April 2006.

76 Luisa Blanchfield and Michael A. Weber, [The United Nations Human Rights Council: Background and Policy Issues](#), 25 November 2020, p. 3.

4.3.2. Authority to Establish an Administrative Reparation Program

Recalling that the General Assembly cannot transfer more powers to subsidiary organs than it possesses under the UN Charter, the Human Rights Council, as a subsidiary organ of the General Assembly, clearly has no authority to establish an administrative reparation program which would adjudicate on reparations claims in a way that would amount to creating legal obligations on states or non-state actors. Yet still, the Human Rights Council can also be very influential in bringing about various accountability processes that include reparations, by setting standards about the right to reparation and transitional justice; by promoting the individual's right to reparation for violations of international human rights law and international humanitarian law; and by calling upon/urging States to provide reparations to victims (see Section V below on the language used in its resolutions).⁷⁷

In addition, just like the General Assembly, “the Human Rights Council has stepped up to fill the gap left by a paralyzed Security Council”.⁷⁸ Although a weaker option, the Human Rights Council has in many situations broadened its human rights mandate into international humanitarian law and international criminal law; and has established multiple commissions of inquiry, fact-finding missions and expert groups to investigate atrocity crimes.⁷⁹ Obviously, these commissions only have voluntary jurisdiction and can make only non-binding recommendations to the Security Council and member states to take steps.⁸⁰ However, such fact-finding bodies can make detailed proposals on administrative reparation programs, as the UN Commission of Inquiry on Darfur did (see Section

77 For example, the Human Rights Council has supported the establishment of transitional justice institutions in South Sudan, and called upon all parties to cooperate fully in the implementation of the Revitalized Agreement, including the establishment of the commission for truth, reconciliation and healing, the hybrid court for South Sudan and the compensation and reparation authority, as outlined in its chapter V.” See: [A/HRC/RES/40/19](#) (22 March 2019). For more examples see last section on Language on Reparations in UN Resolutions.

78 Niriksha Sanghvi, ‘[The Evolution of the International Fact-Finding Missions in Armed Conflicts – From Collecting Facts to Collecting Evidence](#)’, Responsibility to Protect Journal, School of Politics and International Studies, University of Leeds.

79 Ibid.

80 Ibid.

IV below), which outline the forms of reparation, beneficiaries, persons/groups responsible for providing reparations and funding sources.

Another untested option could be for the Human Rights Council to enter into agreements with specific states to support and establish a reparation program. As mentioned above, the General Assembly has done this so for the creation of a hybrid tribunal in Cambodia. As a subsidiary organ of the General Assembly, it could be argued that the Human Rights Council has the same authority.

5. Administrative Reparations Programs Established by UN Entities

This section provides an outline of three administrative reparations programs that have been established - or proposed to be established - by UN entities to date: (i) the United Nations Compensation Commission, which was established in 1991 as a subsidiary organ of the Security Council to address all compensation claims against Iraq as a result of its invasion of Kuwait; (ii) the Proposed Compensation Commission for international crimes perpetrated in Darfur, Sudan, which was proposed by the International Commission of Inquiry on Darfur that had been established by the Security Council; (iii) the Housing and Property Claims Commission, which was established by regulations promulgated by the Special Representative of the UN Secretary-General, within the mandate of the UN Interim Administration Mission in Kosovo (UNMIK) - a peacekeeping mission established by the Security Council.

5.1. Iraq: The United Nations Compensation Commission (UNCC)

The United Nations Compensation Commission was established in 1991 as a subsidiary organ of the Security Council to address all compensation claims against Iraq as a result of its invasion of Kuwait.

5.1.1. Background

The Iraqi invasion of Kuwait refers to a two-day-long operation conducted by Iraq in August 1990, which consequently resulted in a seven-month-long Iraqi military occupation of the country. In response to the invasion, the Security Council delivered an ultimatum for Iraq to withdraw from Kuwait.⁸¹ The failure of Iraq to

⁸¹ UNSC, Resolution 678, Doc. S/RES/678, 29 November 1990.

comply led to Security Council-authorized armed action against Iraq. Military operations were commenced by Allied Coalition Forces against Iraq on 16 January 1991. Kuwait was liberated on 25 February 1991.⁸²

In the aftermath of Iraq's military defeat, the Security Council established Iraq's legal responsibility for losses resulting from Iraq's invasion and occupation of Kuwait and forced Iraq to accept its liability for "any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait."⁸³

With this aim, a few weeks following the end of the Iraqi occupation of Kuwait, the Security Council decided to create a fund to pay compensation for claims that fell within Iraq's legal responsibility for losses resulting from Iraq's invasion and occupation of Kuwait and to establish the United Nations Compensation Commission (UNCC) to administer the fund.⁸⁴ The purpose of establishing the UNCC therefore, was to contribute to the reconciliation process between Iraq and

82 Romesh Weeramantry, The Practice of the United Nations Compensation Commission and the Eritrea Ethiopia Claims Commission, UN Security Council [Report of the workshop on accountability and fact-finding mechanisms for violations of international humanitarian law and human rights law: the role of the Security Council — past and future](#), Panel 3: Reparations, New York, 1 November 2011, p. 51. See also: Timothy J. Feighery, Christopher S. Gibson, and Trevor M. Rajah, [War Reparations and the UN Compensation Commission: Designing Compensation After Conflict](#), Oxford Publishing 2015.

83 UNSC, Resolution 687, Doc. S/RES/687, 3 April 1991, para. 16.

84 UNSC, Resolution 687, Doc. S/RES/687, 3 April 1991, para. 18. The Security Council also directed the UN Secretary General to develop and present to the UN Security Council, recommendations for the fund and a program to implement decisions concerning this legal responsibility. See: UN Secretary-General, [Report pursuant paragraph 19 of the UNSC Resolution 687 \(1991\)](#), S/22559, 2 May 1991. As envisaged in the UN Secretary General's Report, the Governing Council of the UNCC issued "Provisional Rules for Claims Procedure" which contained detailed rules on the submission and filing of claims, the appointment of the Commissioners, the procedure governing the work of the panels, the applicable law and evidentiary rules. See: UNCC Provisional Rules for Claims Procedure S/AC.26/1992/10, 26 June 1992.

Kuwait by providing compensation to a large number of victims in an expeditious manner.⁸⁵

5.1.2 *Mandate*

The UNCC was tasked specifically with the “fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payment and resolving claims” for damages resulting from Iraq’s unlawful invasion and occupation of Kuwait.⁸⁶ The UNCC was set up as a subsidiary organ of the Security Council, and so it was neither a court nor a tribunal with an elaborate adversarial process.⁸⁷

85 Diana Itza Contreras Garduño, [Collective Reparations - Tensions and Dilemmas Between Collective Reparations and the Individual Right to Receive Reparations](#), Human Rights Research Series, Volume 84, Utrecht University School of Law, September 2018, p. 250.

86 Ibid. See also: Hans van Houtte, Hans Das, Bart Delmartino, The United Nations Compensation Commission, in The Handbook of Reparations, Pablo de Greiff (ed.), Oxford University Press, 2006, p. 327; Diana Itza Contreras Garduño, [Collective Reparations - Tensions and Dilemmas Between Collective Reparations and the Individual Right to Receive Reparations](#), Human Rights Research Series, Volume 84, Utrecht University School of Law, September 2018, p. 279; International Organization for Migration (IOM), [Property Restitution and Compensation. Practices and Experiences of Claims Programmes](#), 2008, p. 26.

Note also that the UNCC has been criticised in this regard, because during the conflict, both Iraq and Kuwait most likely engaged in unlawful activities that caused harm, and so, in principle both countries should have been liable for their violations of international law. Yet only Iraq was declared liable for the harm that it had caused. See: Diana Itza Contreras Garduño, [Collective Reparations - Tensions and Dilemmas Between Collective Reparations and the Individual Right to Receive Reparations](#), Human Rights Research Series, Volume 84, Utrecht University School of Law, September 2018, p. 262. See also: Andrea Gattini, The UN Compensation Commission: Old Rules, New Procedures on War Reparations, 13 European Journal of International Law, 2002, p. 171.

87 See the recommendation of the UN Secretary General in his [Report pursuant paragraph 19 of the UNSC Resolution 687 \(1991\)](#), S/22559, 2 May 1991: “The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims; it is only in this last respect that a quasi-judicial function may be involved.” See also: International Organization for Migration

Rather, the UNCC was created as a claims resolution facility that could make determinations on a large number of claims in a reasonable time. As such, the UNCC operated in an administrative manner rather than in a litigation format.⁸⁸

Notably “the UNCC did not have exclusive jurisdiction to deal with claims arising from Iraq’s unlawful invasion and occupation of Kuwait. Claimants could also pursue their claims against Iraq in their domestic legal systems. Where this occurred, Claimants were under an obligation to notify the UNCC of the domestic court proceedings pending with regard to their loss.”⁸⁹

5.1.3. Funding

To finance the reparation claims and cover the UNCC’s operational costs, the Security Council created a special fund, the Compensation Fund.⁹⁰ While the Compensation Fund at first relied on reimbursable voluntary contributions from governments and on proceeds of Iraqi oil sold after the invasion of Kuwait that had been frozen by various governments, the regular financing of the UNCC was made possible through proceeds of the “oil-for-food” mechanism established by Security Council Resolution 986 (1995) and subsequent resolutions.⁹¹ A share of originally 30% and later 25% of the proceeds was reserved for compensation.

(IOM), [Property Restitution and Compensation. Practices and Experiences of Claims Programmes](#), 2008, p. 26.

88 Ibid.

89 See: International Organization for Migration (IOM), [Property Restitution and Compensation. Practices and Experiences of Claims Programmes](#), 2008, p. 27.

90 UN Security Council (UNSC), Resolution 687, S/RES/687, 3 April 1991, para. 18.

91 UNSC, Resolution 986, S/RES/986, 14 April 1995. See also: International Organization for Migration (IOM), [Property Restitution and Compensation. Practices and Experiences of Claims Programmes](#), 2008, p. 92. For further details see: REDRESS, [Resource Materials On Other Trust Funds And Compensation Mechanisms](#), p. 7-14. Also see: Singh, R., “Raising the Stakes: evidentiary issues in individual claims 61 before the United Nations Compensation Commission” in *Redressing Injustices through Mass Claims Processes: Innovative Responses to Unique Challenges*, by Permanent Court of Arbitration, Oxford University Press, 2006, p. 63; Diana Itza Contreras Garduño, [Collective Reparations - Tensions and Dilemmas Between Collective Reparations and the Individual Right to Receive Reparations](#), Human Rights Research Series, Volume 84, Utrecht University School of Law, September 2018, p. 261.

When the oil-for-food program was terminated after the new war in Iraq in 2003, the share of oil revenues dedicated to reparation was lowered to 5%.⁹²

5.1.4. *Organizational Structure*

The UNCC was composed of three organs:

(i) *The Governing Council*, “whose membership mirrored that of the UNSC [UN Security Council] and was responsible for policymaking regarding the procedures before the Commission, approving compensation awards, and administering the Compensation Fund.”⁹³ Thus, “it served both as the UNCC’s policy-making body and as the final decision-making body with the function of approving the reports of the Panels of Commissioners”;⁹⁴

(ii) *the Panels of Commissioners* were “composed of 54 commissioners, each of whom was an expert in a field such as law, finance, accounting, insurance, or engineering. There were 19 Panels of Commissioners, each of which comprised three members and was responsible for deciding on the compensation claims before the UNCC”;⁹⁵

(iii) *the Secretariat*, “chaired by the Executive Secretary, was composed of 350 members, of whom the majority were lawyers and accountants. It was responsible for supporting the Governing Council and the Panels of Commissioners with legal, technical, and administrative assistance. The Secretariat was also delegated

92 Hans van Houtte, Hans Das, Bart Delmartino, [The United Nations Compensation Commission](#), Chapter 9 in *The Handbook of Reparations* Pablo de Greiff (ed.), Oxford University Press, 2006.

93 Diana Itza Contreras Garduño, [Collective Reparations - Tensions and Dilemmas Between Collective Reparations and the Individual Right to Receive Reparations](#), Human Rights Research Series, Volume 84, Utrecht University School of Law, September 2018, p. 261.

94 International Organization for Migration (IOM), [Property Restitution and Compensation. Practices and Experiences of Claims Programmes](#), 2008, p. 61.

95 Diana Itza Contreras Garduño, [Collective Reparations - Tensions and Dilemmas Between Collective Reparations and the Individual Right to Receive Reparations](#), Human Rights Research Series, Volume 84, Utrecht University School of Law, September 2018, p. 262.

with the task of reviewing certain claims as well as grouping together larger claims with common legal and factual issues.”⁹⁶

5.1.5. Type of Violation

The finding on Iraq’s State responsibility is based on its violation of the *jus ad bellum* (the prohibition on the threat or use of force in Article 2(4) of the Charter) rather than on *jus in bello* breaches (violations of international humanitarian law).⁹⁷ Yet, one commentator wrote, “*jus in bello* may have been a more appropriate legal basis in a significant number of cases (including any future UNCC-type Security Council reparations activity), as many of the UNCC claims appeared to be factually more connected with *jus in bello* violations.”⁹⁸

5.1.6. Type of Reparation

The UNCC provided only financial reparations, i.e. compensation.⁹⁹

5.1.7. Beneficiaries

The UNCC was mandated to offer compensation to individuals, governments, corporations and international organizations that had suffered any *direct* loss,

96 Diana Itza Contreras Garduño, [Collective Reparations - Tensions and Dilemmas Between Collective Reparations and the Individual Right to Receive Reparations](#), Human Rights Research Series, Volume 84, Utrecht University School of Law, September 2018, p. 261.

97 “In contrast to UNCC, the violations that were to be determined by Eritrea-Ethiopia Claims Commission did not focus on the *jus ad bellum*, but rather on international humanitarian law (or *jus in bello*).” Noting that EECC was not the creation of the UN Security Council, but “the progeny of an agreement between Eritrea and Ethiopia. According to the Agreement, the parties agreed to establish EECC”. See: Romesh Weeramantry, The Practice of the United Nations Compensation Commission and the Eritrea Ethiopia Claims Commission, UN Security Council [Report of the workshop on accountability and fact-finding mechanisms for violations of international humanitarian law and human rights law: the role of the Security Council—past and future](#), Panel 3: Reparations, New York, 1 November 2011, pp. 51 and 55.

98 Ibid. p. 58.

99 Diana Itza Contreras Garduño, [Collective Reparations - Tensions and Dilemmas Between Collective Reparations and the Individual Right to Receive Reparations](#), Human Rights Research Series, Volume 84, Utrecht University School of Law, September 2018, p. 268.

damage, or injury, including environmental damage, resulting from Iraq's invasion of Kuwait.¹⁰⁰ "The UNCC excluded certain individuals from being beneficiaries: no Iraqi national could be a beneficiary, unless they were also a national of another state, and no member of the military forces could be a beneficiary unless they were a prisoner of war or could prove an injury that resulted from violations of international humanitarian law".¹⁰¹

The UNCC created six different categories of beneficiaries depending on the status of the claimant, the type of loss, and the amount claimed. "The UNCC decided that as long as the claim could demonstrate a direct causation stemming from Iraq's liability, it would be compensated."¹⁰²

Category A included those who had to depart from Kuwait or Iraq between the date of Iraq's invasion of Kuwait on 2 August 1990 and the date of the cease-fire, 2 March 1991.

Category B included those individuals who suffered serious personal injury or whose spouse, child or parent died as a result of Iraq's invasion and occupation of Kuwait.

Category C included individuals claiming damages up to USD 100,000. Under this category, claimants were able to claim 21 different types of losses, including those relating to departure from Kuwait or Iraq, personal injury, mental pain and anguish, loss of personal property, loss of bank accounts, stocks and other

100 UNSC, Resolution 687, Doc. S/RES/687, 3 April 1991, para. 16.

101 Diana Itza Contreras Garduño, [Collective Reparations - Tensions and Dilemmas Between Collective Reparations and the Individual Right to Receive Reparations](#), Human Rights Research Series, Volume 84, Utrecht University School of Law, September 2018, p. 284. See: UNCC Decision 1, Criteria for Expedited Processing of Urgent Claims, Doc. S/AC.26/1991/1, 2 August 1991, para. 17. UNCC Decision 11, Eligibility for Compensation of Members of the Allied Coalition Armed Forces, Doc. No. S/AC.26/1992/11, 26 June 1992.

102 Diana Itza Contreras Garduño, [Collective Reparations - Tensions and Dilemmas Between Collective Reparations and the Individual Right to Receive Reparations](#), Human Rights Research Series, Volume 84, Utrecht University School of Law, September 2018, p. 296. See: UNCC Decision 15, Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures were also a cause, S/AC 26/1992/15, 4 January 1993, para. II.

securities, loss of income, loss of real property, and individual business losses.¹⁰³ The concept of personal injuries included dismemberment, permanent or temporary disfigurement, a permanent or temporary significant limitation of the function of an organ or system, sexual assault, torture, as well as suffering caused to a spouse, child, or parent by the death of a relative.¹⁰⁴

Category D included individuals claiming damages above USD 100,000. The types of losses that could be claimed under Category D are the same as those under Category C.

Category E were claims made by corporations, other private legal entities and public sector enterprises. They include claims for construction or other contract losses, losses from the non-payment for goods or services, losses relating to the destruction or seizure of business assets, loss of profits, and damage and losses caused to Kuwait's oil sector.¹⁰⁵

Category F were claims by governments and international organizations for losses incurred in evacuating citizens, providing relief to citizens, damage to diplomatic premises and other government property, and damage to the environment. They included also the claims by Kuwait for damage to its infrastructure.¹⁰⁶

In its first decision, the Governing Council decided to give priority to individual claimants for their smaller claims in categories A, B and C, in both the processing and the payment of claims.¹⁰⁷

Note also that individuals could not petition the UNCC directly, but only governments and international organizations were entitled to submit claims to the

103 International Organization for Migration (IOM), [Property Restitution and Compensation. Practices and Experiences of Claims Programmes](#), 2008, p. 27.

104 Diana Itza Contreras Garduño, [Collective Reparations - Tensions and Dilemmas Between Collective Reparations and the Individual Right to Receive Reparations](#), Human Rights Research Series, Volume 84, Utrecht University School of Law, September 2018, p. 288.

105 Ibid.

106 Ibid.

107 Ibid. See: UNCC Decision 1, The Criteria for Expedited Processing of Urgent Claims, S/AC.26/1991/1.

UNCC.¹⁰⁸ A government could submit claims on behalf of its nationals and, at its discretion, of other persons resident in its territory.¹⁰⁹ A government could submit claims on behalf of corporations and other entities that, on the date on which the claims arose, were incorporated or organized under the law of that state.¹¹⁰ If a government failed to submit a claim on behalf of a corporation or other private legal entity within the established time-limit, the corporation or other private legal entity could itself bring the claim to the Commission within three months following the deadline.¹¹¹ In contrast to governments, international organizations could submit claims only on their own behalf.¹¹² Some international organizations also submitted claims on behalf of individuals, in particular of stateless persons.¹¹³

108 International Organization for Migration (IOM), [Property Restitution and Compensation. Practices and Experiences of Claims Programmes](#), 2008, p. 28. See: Article 15 of the UNCC Provisional Rules for Claims Procedure, S/AC.26/1992/10, 26 June 1992.

109 Ibid.

110 Ibid.

111 Ibid.

112 Ibid.

113 See: Christine Evans, '[The Right to Reparation in International Law for Victims of Armed Conflict](#)', Cambridge University Press, 2012, P.141.

5.1.8. *Result*

The UNCC considered compensation claims for 14 years and handed down its final decision in June 2007.¹¹⁴ It processed 2.6 million claims in total¹¹⁵ and awarded compensation for 1.5 million claims amounting to USD 52 billion.¹¹⁶

5.2. **Sudan: The Proposed Compensation Commission for international crimes perpetrated in Darfur**

5.2.1. *Background*

The conflict in Darfur, Sudan began in February 2003 when rebel groups launched an insurrection to protest what they contended was the oppression of its non-Arab population and the Sudanese government's disregard for the western region. In response, the government equipped and supported Arab militias (which came to be known as *Janjaweed*) to fight against the rebel groups in Darfur. It has been reported that the Sudanese government and Arab militias carried out massive violations of international human rights and international humanitarian law which constituted war crimes and/or crimes against humanity.

On 18 September 2004, the Security Council expressed its concern about "the lack of progress with regard to security and the protection of civilians, disarmament of the Janjaweed militias and identification and bringing to justice of the Janjaweed leaders responsible for human rights and international humanitarian law violations in Darfur."¹¹⁷ Acting under Chapter VII of the UN Charter, the Security Council,

114 Sandrine Giroud and Sam Moss, [Mass Claims Processes under Public International Law](#), in *Collective Redress in Europe—Why and How?*, Eva Lein et al. (eds.), London, British Institute of International and Comparative Law, 2015, p. 488.

115 Romesh Weeramantry, *The Practice of the United Nations Compensation Commission and the Eritrea Ethiopia Claims Commission*, UN Security Council [Report of the workshop on accountability and fact-finding mechanisms for violations of international humanitarian law and human rights law: the role of the Security Council—past and future](#), Panel 3: Reparations, New York, 1 November 2011, p. 53.

116 Diana Itza Contreras Garduño, [Collective Reparations - Tensions and Dilemmas Between Collective Reparations and the Individual Right to Receive Reparations](#), Human Rights Research Series, Volume 84, Utrecht University School of Law, September 2018, p. 262.

117 UNSC Resolution 1564 on Darfur, Sudan, S/RES/1564, 18 September 2004.

requested, inter alia, that the UN Secretary-General “establish an international commission of inquiry in order to immediately investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable.”¹¹⁸

5.2.2. *Report of the International Commission of Inquiry on Darfur*

The International Commission of Inquiry was established by the UN Secretary-General and began its work on 25 October 2004. The Commission endeavoured to fulfil four key tasks: (i) to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties; (ii) to determine whether or not acts of genocide have occurred; (iii) to identify the perpetrators of violations of international humanitarian law and human rights law in Darfur; and (iv) to suggest means of ensuring that those responsible for such violations are held accountable.¹¹⁹

On 25 January 2005, the International Commission of Inquiry on Darfur submitted its Final Report. The Commission found that although it could not reach the conclusion that a genocidal policy had been pursued and implemented in Darfur by the Government authorities, international crimes no less serious and heinous than genocide, such as crimes against humanity and war crimes, had been committed in Darfur.¹²⁰ The Commission also identified a number of likely suspects in this context.¹²¹

118 Ibid. See also: REDRESS, [Accountability and Justice for International Crimes in Sudan A Guide on the Role of the International Criminal Court](#), 2007, p. 22.

119 Note that while the Commission considered all events relevant to the current conflict in Darfur, it focused in particular on incidents that occurred between February 2003 and mid-January 2005. See: [Report of the International Commission of Inquiry on Darfur to the Secretary-General](#), Pursuant to Security Council Resolution 1564 of 18 September 2004, S/2005/60, 25 January 2005, Executive Summary, p. 2.

120 Ibid., paras. 489-522. See: Luigi Condorelli and Annalisa Ciampi, [Comments on the Security Council Referral of the Situation in Darfur to the ICC](#), *Journal of International Criminal Justice* 3, Oxford University Press, 2005, p. 591.

121 Ibid., paras. 523-564.

The Commission expressed the view that measures should be taken by the Security Council: (i) to subject the perpetrators of the crimes committed in Darfur to prosecution; and (ii) to provide for compensation to the victims.¹²² It recommended that the Security Council “immediately refer the situation of Darfur to the International Criminal Court”¹²³ and that it establish “a Compensation Commission designed to grant reparation to the victims of the crimes, whether or not the perpetrators of such crimes have been identified.”¹²⁴ The Commission clarified that the establishment of a Compensation Commission was proposed not as an alternative, but rather as a measure complementary to the referral to the ICC.¹²⁵ In order to justify this, the Commission stated that “whenever a gross breach of human rights is committed which also amounts to an international crime, customary international law not only provides for the criminal liability of the individuals who have committed that breach, but also imposes an obligation on States of which the perpetrators are nationals, or for which they acted as de jure or de facto organs, to make reparation (including compensation) for the damage made.”¹²⁶

On 31 March 2005, the Security Council, adopted Resolution 1593 (2005),¹²⁷ which constitutes the Security Council’s response to the Commission’s twofold

122 Luigi Condorelli and Annalisa Ciampi, [Comments on the Security Council Referral of the Situation in Darfur to the ICC](#), *Journal of International Criminal Justice* 3, Oxford University Press, 2005, p. 591.

123 The Commission ruled out other accountability mechanisms. In particular, the Commission strongly advised against the setting up of an ad hoc International Criminal Tribunal, the expansion of the mandate of one of the existing ad hoc International Criminal Tribunals and the establishment of mixed courts. For a thorough examination of the reasons justifying the involvement of the ICC. See: *ibid.* paras. 571-572.

124 *Ibid.* para. 600.

125 *Ibid.* para. 590.

126 *Ibid.* para. 598.

127 UNSC Resolution 1593, S/RES/1593, 31 March 2005. Note that this Resolution was adopted by a vote of 11 in favor to none against, with four abstentions (Algeria, Brazil, China and the United States). See: Luigi Condorelli and Annalisa Ciampi, [Comments on the Security](#)

recommendation. Having determined that the conflict in the region constituted a threat to international peace and security; the Security Council agreed to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the ICC and formally requested the Prosecutor to consider opening an investigation into international crimes in Darfur. This was the first time that the Security Council had referred a situation to the ICC.¹²⁸

The Security Council ignored, however, the proposal to establish a Compensation Commission, other than a reference in para. 3 of the Preamble: “recalling articles 75 and 79 of the Rome Statute and encouraging States to contribute to the ICC Trust Fund for Victims”. Effectively, the Security Council found that since the ICC had the power to award reparation to victims, it was not necessary to establish an additional mechanism.¹²⁹ This has been interpreted as a completely unsatisfactory response to the demand for justice put forward by the Commission.¹³⁰

Therefore, while the resolution represents a historical first Security Council referral to the ICC, it confines itself to justice mechanisms already in place, while, at the same time, seriously limiting - rather than expanding - their scope of application. On the other hand, even though the Security Council did not take up the recommendation to establish a Compensation Commission, the reference in the resolution was significant, nevertheless, “as a reflection of international recognition of the need for reparations”.¹³¹

[Council Referral of the Situation in Darfur to the ICC](#), Journal of International Criminal Justice 3, Oxford University Press, 2005, p. 591.

128 Luigi Condorelli and Annalisa Ciampi, [Comments on the Security Council Referral of the Situation in Darfur to the ICC](#), Journal of International Criminal Justice 3, Oxford University Press, 2005, p. 592.

129 See: Luigi Condorelli and Annalisa Ciampi, [Comments on the Security Council Referral of the Situation in Darfur to the ICC](#), Journal of International Criminal Justice 3, Oxford University Press, 2005, p. 598.

130 Ibid., p. 591.

131 Suliman Baldo and Lisa Magarrell, [Reparation and the Darfur Peace Process: Ensuring Victims' Rights](#), International Center for Transitional Justice (ICTJ), November 2007, p. 3.

5.2.3. *Proposed Organizational Structure*

The Commission of Inquiry on Darfur proposed to establish an International Compensation Commission, consisting of fifteen members, ten appointed by the UN Secretary-General and five by an independent Sudanese body.¹³² It was suggested the Commission be chaired by an international member and be composed of persons with an established international reputation, some specializing in law, others in accounting, loss adjustment and environmental damage.¹³³ The Commission was planned to be split into five chambers, each of three members.¹³⁴

Four Chambers would have dealt with compensation for any international crime perpetrated in Darfur; while a special fifth Chamber would have dealt specifically with compensation for victims of rape.¹³⁵ According to the Commission of Inquiry on Darfur such a chamber was necessary considering the widespread nature of this crime in Darfur and the different nature of the damage suffered by the victims.¹³⁶ The Commission recognized the fact that compensation also took on a special meaning here considering that, for rape in particular, it was very difficult to find the actual perpetrators, so many victims would not benefit from seeing their aggressor held accountable by a court of law.¹³⁷ Hence, according to the Commission, a special scheme might be advisable to ensure compensation (or, more generally, reparation) for the particularly inhumane consequences suffered by the numerous women raped in Darfur.¹³⁸

132 [Report of the International Commission of Inquiry on Darfur to the Secretary-General](#), Pursuant to Security Council Resolution 1564 of 18 September 2004, S/2005/60, 25 January 2005, para. 601.

133 Ibid.

134 Ibid.

135 Ibid.

136 Ibid.

137 Ibid.

138 Ibid.

5.2.4. *Proposed Beneficiaries*

According to the proposal, the Compensation Commission would pronounce on claims for compensation made by all victims of crimes, that is (in accordance with the UNGA Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted on 29 November 1995), persons who “individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights” as a result of international crimes in Darfur, committed by either Government authorities or any de facto organ acting on their behalf or by rebels, whether or not the perpetrator has been identified and brought to trial.¹³⁹

5.2.5. *Proposed Funding*

The Commission of Inquiry on Darfur proposed that funding of compensation to victims of crimes committed by government forces or de facto agents of the government should be provided by the Sudanese authorities.¹⁴⁰ Sudan would be requested by the Security Council to place the necessary sum into an escrow account. Funding for compensation of victims of crimes committed by rebels on the other hand (whether or not the perpetrators have been identified and brought to trial) would have been afforded through a Trust Fund to be established on the basis of international voluntary contributions.¹⁴¹

5.2.6. *Proposed Violations to be Compensated*

The Commission of Inquiry on Darfur concluded that Sudanese government forces and their proxy, the Janjaweed militias, were responsible for violations of international human rights and humanitarian law, which appeared “likely to amount to war crimes” and also, given the systematic and widespread pattern of many of the violations, crimes against humanity.¹⁴² In particular, the Commission found that Government forces and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced

139 Ibid. para. 602.

140 Ibid. para. 603.

141 Ibid.

142 Ibid. para. 630.

displacement, throughout Darfur.¹⁴³ These acts were conducted on a widespread and systematic basis, and therefore may amount to crimes against humanity.

The extensive destruction and displacement had resulted in a loss of livelihood and means of survival for countless women, men and children. In addition to the large-scale attacks, many people had been arrested and detained, and many had been held incommunicado for prolonged periods and tortured. Notably, the Commission concluded too that “in many instances” rebel groups had also committed “violations which amount to war crimes.”¹⁴⁴ The Commission, in this regard, stated that, in addition to Sudan’s obligation to pay compensation for all the crimes committed in Darfur, “[a] similar obligation is incumbent upon rebels for all crimes they may have committed, whether or not the perpetrators are identified and punished”.¹⁴⁵

5.3. Kosovo: The Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC)

5.3.1. Background

From 1974 until 1989 Kosovo was an autonomous province within the Republic of Serbia, one of six republics that made up the Socialist Federal Republic of Yugoslavia.¹⁴⁶ In 1989 the Serbian government repealed Kosovo’s autonomous status and introduced nationalist legislation that discriminated against the Kosovo Albanian population.¹⁴⁷ A separatist movement grew, which in 1998 resulted in an armed struggle for independence between Kosovo Albanian militant groups and Serbian government security forces.¹⁴⁸ Thousands were killed and hundreds of

143 Ibid. para. 126.

144 Ibid para, 190. See also: Suliman Baldo and Lisa Magarrell, [Reparation and the Darfur Peace Process: Ensuring Victims’ Rights](#), International Center for Transitional Justice (ICTJ), November 2007, p. 17.

145 Ibid, para. 600.

146 International Organization for Migration (IOM), [Property Restitution and Compensation. Practices and Experiences of Claims Programmes](#), 2008, pp. 17-18.

147 Ibid.

148 Ibid.

thousands expelled from their homes.¹⁴⁹ On 24 March 1999, NATO forces intervened in the conflict and commenced a bombing campaign against Serbian security forces in Kosovo as well as targets in Serbia proper.¹⁵⁰ After 78 days, Serbia agreed to withdraw its security forces from Kosovo. These were replaced by NATO troops and, on 10 June 1999, the United Nations Interim Administration Mission in Kosovo (UNMIK) – a peacekeeping mission established by the Security Council – was established.¹⁵¹

As part of the UNMIK mission, Security Council Resolution 1244 of 10 June 1999 gave the Special Representative of the Secretary General in Kosovo, *inter alia*, the authority to establish institutions responsible for the restitution of property in Kosovo. In other words, according to the Security Council Resolution, UNMIK was given the responsibility to ensure “an unimpeded return of all refugees and displaced persons to their homes in Kosovo” until the local institutions are capable of taking over such responsibility.¹⁵² Thus based on this mandate explicitly conveyed by the Security Council, one of the main objectives of the UNMIK after its deployment in Kosovo was creation of an effective and impartial mechanism to resolve housing and property matters.¹⁵³

Acting upon this authority, on 15 November 1999 the Special Representative of the Secretary General of the United Nations signed UNMIK Regulation no. 1999/23, which established *the Housing and Property Directorate* (HPD) and *the Housing and Property Claims Commission* (HPCC).¹⁵⁴ The HPD and the HPCC were established as internationally supervised institutions with a mandate to

149 Ibid.

150 Ibid.

151 Ibid. UNSC Resolution 1244 (1999), S/RES/1244, 10 June 1999.

152 UNSC Resolution 1244 (1999), S/RES/1244, 10 June 1999. See also: OSCE, [Property Rights Mass-Claim Mechanism: Kosovo experience](#), June 2020, p. 5.

153 Ibid. The UNMIK was established pursuant to Security Council Resolution 1244, which was passed on 10 June 1999. In that Resolution, the Security Council decided to “[deploy] in Kosovo, under United Nations auspices, [an] international civil and security [presence]”.

154 Fatlum Halimi, ‘Extrajudicial Protection of Property Rights in the Aftermath of Kosovo Armed Conflict’, *Iliria International Review*, 2014/2, pp. 218-219.

resolve certain categories of property claims and settlement of property disputes in relation to residential properties.¹⁵⁵

Since the restitution process undertaken by HPD was not helping much in the process of returning internally displaced people and refugees, the UNMIK was looking for additional means to promote the return process. In April 2006 the Special Representative of the UN Secretary General promulgated Regulation 2006/10, later amended by Regulation 2006/50, by which *the Kosovo Property Agency* (KPA) and *the Kosovo Property Claims Commission* (KPCC) were established. The KPA, apart from finalizing the mandate of the HPD, is also mandated to resolve claims resulting from the 1998 – 1999 armed conflict in respect of private immovable property, including residential, agricultural and commercial property.

5.3.2. Mandate

UNMIK Regulation 1999/23 established the HPD, with a mandate to “provide overall direction on property rights in Kosovo until the Special Representative of the Secretary General determines that local government institutions are able to carry out the functions entrusted to the Directorate.”¹⁵⁶ As an exception to the jurisdiction of the local courts, the HPCC was authorized to receive and register *certain* types of residential property claims, which corresponded to the type of property violations that had occurred in Kosovo between 1989 and 1999. This means that although the HPCC was primarily responsible for the property claims, the Kosovo courts still played a role in property disputes. The HPD ceased its existence in 2006 following the establishment of the KPA.

5.3.3. Organizational Structure

The HPD was responsible for the administrative management of claims, while the HPCC, composed of two internationals and one local member, had jurisdiction to

155 Ibid. UNMIK Regulation 1999/23 on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission, UNMIK/REG/1999/23, 15 November 1999, Section 1, 2.1, 2.5 and 2.7

156 UNMIK Regulation 1999/23, Section 1.1.

adjudicate claims. The members of the HPCC were distinguished lawyers and experts in the field of property law.¹⁵⁷

5.3.4. Funding

The HPD and HPCC relied entirely on funds from international donors. The funding organizations and countries have changed throughout the project period and there has not been a stable supply of funds. The main supporters of the property restitution process were Canada, Finland, Germany, Ireland, the Netherlands, Norway, Switzerland, the United States, the European Union, Organization for Security and Co-operation in Europe (OSCE), Kosovo Forces and UNMIK.¹⁵⁸

5.3.5. Beneficiaries

The direct beneficiaries of the property claims program in Kosovo were those victims of the conflict who once enjoyed a right to residential property but lost that right between 1989 and 1999 due to the conflict, and who submitted a claim for restitution of this right to the HPD. The HPD/HPCC only accepted claims filed by natural persons; claims submitted by legal entities were not admitted.¹⁵⁹ The process was open to power of attorney holders and heirs of victims, if they could provide evidence that they inherited the property right from the victim.¹⁶⁰

There were three categories of claims under the jurisdiction of HPD/HPCC:¹⁶¹

A category claims (discrimination): Claims by individuals whose ownership, possession or occupancy rights to residential real property were revoked

157 Fatlum Halimi, 'Extrajudicial Protection of Property Rights in the Aftermath of Kosovo Armed Conflict', *Iliria International Review*, 2014/2, p. 220. For details see: International Organization for Migration (IOM), [Property Restitution and Compensation, Practices and Experiences of Claims Programmes](#), 2008, pp. 49-54.

158 International Organization for Migration (IOM), [Property Restitution and Compensation, Practices and Experiences of Claims Programmes](#), 2008, p. 90.

159 UNMIK Regulation 2000/60 of 12 April 2001 confirms that, "Claims must ... be brought by natural persons (not by legal persons or institutions, etc.)."

160 International Organization for Migration (IOM), [Property Restitution and Compensation, Practices and Experiences of Claims Programmes](#), 2008, p. 20.

161 UNMIK Regulation 1999/23, Section 1.2 (a, b, c).

subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or intent. In these cases, the HPCC had to determine whether claimants had valid occupancy or ownership rights and if those rights were lost as a result of discrimination. Any person who lost a property right due to ethnic discrimination was entitled to restitution, which could take the form of restoration of the property rights (i.e. restitution in kind) or monetary compensation.¹⁶²

B category claims (informal transactions): Claims by persons who entered into informal, residential property transactions on a voluntary basis between 23 March 1989 and 13 October 1999 and who wished to formalize those transactions. This category aimed to enable the persons who had entered into informal transactions over residential property due to restrictions in legislation enacted to limit real estate transactions and prevent the sale of properties from Kosovo Serbs to Kosovo Albanians, with intent to stem the migration of the Serb population from Kosovo.¹⁶³

C category claims (displacement): Claims by persons who had rights over residential property on or before 24 March 1999 and subsequently lost possession of their property involuntarily due to circumstances surrounding the NATO air campaign. This category of claim was intended to facilitate the return process of displaced persons who had rights over property on 24 March 1999, and who were displaced due to circumstances originating from the armed conflict. Persons who lost possession of their homes on 24 March 1999 and had not voluntarily disposed of them were entitled to an order from the Commission for repossession of the property.¹⁶⁴

5.3.6. Type of Violation

The HPD/HPCC dealt exclusively with violation of property rights during the conflict.

¹⁶² UNMIK Regulation 2000/60, Section 2.2.

¹⁶³ Law on Changes and Supplements on the Limitation of Real Estate Transactions (Official Gazette of the Socialist Republic of Serbia, 22/9). This law has been repealed by UNMIK with Regulation 1999/10 as being discriminatory in its intent.

¹⁶⁴ UNMIK Regulation 2000/60, Section. 2.6.

5.3.7. *Type of Reparation*

The remedies that the HPCC was mandated to give were set out in UNMIK Regulation 2000/60, and included: granting or dismissing a claim, including orders for restoration of property rights, repossession of property, registration of property rights in the public property records and monetary compensation. The Commission could refer issues relating to a claim that were not within its jurisdiction to a competent local court, administrative body or tribunal.¹⁶⁵

6. Language on Reparations in UN Resolutions

This section provides an analysis of the language used in resolutions of UN entities (namely the Security Council, the General Assembly and the Human Rights Council) in which “reparations” or “compensation” have been mentioned. The full excerpts from all relevant resolutions can be found in **Annex A**.

The analysis looks at:

- What resolutions call for or acknowledge
- What standards for reparation are mentioned
- Which specific violations are mentioned as a cause for reparation
- Which specific victim groups are mentioned
- Which specific reparation measures are mentioned
- How the relationship between accountability and reparation is mentioned
- Who the resolutions are addressed to

6.1. Security Council Resolutions

In its resolutions the Security Council, **recognizes the right to reparations** for violations of individual rights, the importance of reparations in response to serious violations of international humanitarian law and gross human rights violations (see below S/RES/1894, S/RES/2122, S/RES/827, S/RES/2514). In its context-

¹⁶⁵ Fatlum Halimi, ‘Extrajudicial Protection of Property Rights in the Aftermath of Kosovo Armed Conflict’, *Iliria International Review*, 2014/2, p. 223.

specific resolutions, the Security Council urges or **calls upon States to provide reparations** (see below S/RES/1304, S/RES/471, S/RES/475), to **take concrete steps** in this regard (see below S/RES/2499, S/RES/2552), or to **design and implement the reparation programs in a certain way** (see below S/RES/2118). Sometimes it simply recognizes the right to reparation of a State (see below S/RES/573, S/RES/546, S/RES/567); and sometimes, directly demands to **hold those responsible accountable including through reparations**, or to make the payment by a State of compensation to another State for the damage and loss of life resulting from its act of aggression (see below S/RES/527, S/RES/580, S/RES/2567, S/RES/2514). In cases where there are ongoing efforts to provide reparations in the country, the Security Council **welcomes the steps initiated by the governments** in establishing transitional justice mechanisms to ensure accountability and reparation for victims, or at least encourages the authorities to continue their efforts in this regard (see below S/RES/2387, S/RES/2448, S/RES/2566). The Security Council also **acknowledges the important role of civil society** organisations in supporting victims to access reparations and justice (see below S/RES/2106). It can **request the Secretary-General to report** on a regular basis (see below S/RES/2467).

With regard to the **type of violation**, there is a strong emphasis on the need to provide reparations to women and girls who were subjected to sexual violence during armed conflicts (see below S/RES/1888, S/RES/2106, S/RES/2242, S/RES/2467). Some resolutions, in particular in cases of aggression by one state against another, also mention the loss of life (see below S/RES/573, S/RES/527) and property damage as violations giving rise to reparation (see below S/RES/1304, S/RES/475, S/RES/568, S/RES/455).

Security Council resolutions specifically mention the importance and the specificities of reparations to be provided to specific **categories of victims**, namely **(i)** the survivors/victims of sexual and gender-based violence during armed conflicts, and children born of rape (see below S/RES/1888, S/RES/2106, S/RES/2242, S/RES/2467, S/RES/2514) and **(ii)** persons with disabilities (see below S/RES/2475).

With regard to sexual violence in conflict, the Security Council mentions specific **reparation measures**, including health care, psychosocial care, safe shelter, livelihood support and legal aid (see below S/RES/2467). In some resolutions, dating from the 1980s and 1990s, compensation is explicitly referred to (see below S/RES/471, S/RES/827, S/RES/859, S/RES/527, S/RES/475). In one

resolution, the restoration of equipment and materials seized by invading forces is also listed (see below S/RES/387).

In several resolutions, the Security Council positions **accountability** parallel to the right to reparation by demanding investigations and prosecutions together with reparations (see below S/RES/1894, S/RES/2242, S/RES/2467, S/RES/2118, S/RES/2514, S/RES/2448) and by considering reparations as a component of accountability for such serious crimes (see below S/RES/1894, S/RES/2122, S/RES/827, S/RES/2514). When establishing the International Tribunal for the Former Yugoslavia, the Security Council explicitly spelled out that “the work of the International Tribunal shall be carried out without prejudice to the right of the victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law” (see below S/RES/827).

While the Security Council resolutions implicitly recognize that **non-state actors may also be responsible** for gross human rights violations or serious violations of international humanitarian law (see below S/RES/2467), they predominantly address States.

6.2. General Assembly Resolutions

In its resolutions the General Assembly **acknowledges the individual right to obtain an effective remedy and reparation** for gross violations of human rights and serious violations of international humanitarian law (see below A/RES/47/147); and the **need to study the interrelationships** between the right to the truth and the right to access to justice, the right to obtain effective remedy and reparation and other relevant human rights, (see below A/RES/68/165). In its few context-specific resolutions, the General Assembly recognizes the right to reparation of a certain State (A/RES/50/22C) or a group of victims in a specific geography (see below A/RES/47/147, A/RES/48/153, A/RES/49/196). It **underlines the importance of victim-driven reparation programs** (see below A/RES/67/262, A/RES/68/182). In cases where there are ongoing efforts to provide reparations in the country, the General Assembly **calls upon States to implement them effectively** and to take the necessary steps to operationalize the relevant plans, e.g. by adopting the necessary legislation (see below A/RES/57/161); and sometimes it **notes that a national reparations program in a certain country is “insufficient”**, falls short of expectations (see below

A/RES/58/238) or is not yet implemented (see below A/RES/62/102, A/RES/61/112).

Furthermore, the General Assembly sets **standards**¹⁶⁶ regarding the nature of reparation to be provided and the processes through which reparation can be provided (see below A/RES/60/147). It specifically urges or calls upon States to provide adequate, effective and prompt reparation, and to take into full account the specific needs of victims (see below A/RES/68/156, A/RES/70/146, A/RES/72/163). Compensation should be fair and adequate (see below A/RES/68/156).

In some resolutions, the General Assembly reference **specific violations**, such as: (i) torture or other cruel, inhuman or degrading treatment or punishment (see below A/RES/68/156; A/RES/70/146; A/RES/72/163); (ii) gender-related killing of women and girls and their families or dependents (see below A/RES/70/176); (iii) enforced or involuntary disappearances or their families (see below A/RES/59/200); (iv) acts of racism, racial discrimination, xenophobia and related intolerance (see below A/RES/56/267) etc.

The General Assembly in some resolutions mentions specific **reparation measures**, such as legal, medical, psychological and social support (see below A/RES/70/176). Compensation is also referred to in some resolutions (see below A/RES/50/22C, A/RES/62/102)

In the same manner as the Security Council, the General Assembly pairs **accountability** with reparation by calling for both investigation and prosecution in parallel to reparation (see below A/RES/70/176, A/RES/65/221, A/RES/42/17).

166 According to the UN Basic Principles, reparation for gross violations of human rights and serious violations of international humanitarian law must be adequate, effective and prompt (UN Basic Principles, para. 11-b); should be proportional to the gravity of the violations and the harm suffered (UN Basic Principles, para. 15); must be provided by the State for acts or omissions that can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law (UN Basic Principles, para. 15); should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be “full and effective”, and include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (UN Basic Principles, para. 18).

The resolutions of the General Assembly are addressed to States.

1.1. Human Rights Council Resolutions

In its resolutions the Human Rights Council **recognizes the individual right to reparation** and emphasizes the importance of a comprehensive and holistic approach to transitional justice, which incorporates the full range of judicial and non-judicial measures, including reparations. It **recognizes the fundamental role of civil society**, through its engagement, advocacy and participation in decision-making processes, in preventing violations and in addressing their legacy by promoting the right to reparation (see below A/HRC/RES/42/17). It **welcomes that a growing number of peace agreements contain provisions** for reparations programs (see below A/HRC/RES/9/10, A/HRC/RES/12/11, A/HRC/RES/21/15, A/HRC/RES/33/19, A/HRC/RES/42/17, A/HRC/RES/43/29). In addition, the Human Rights Council acknowledges the **need to study the interrelationship** between the right to the truth and the right to access to justice, the right to obtain effective remedy and reparation, and other relevant human rights. (E/CN.4/RES/2005/66, A/HRC/RES/9/11, A/HRC/RES/12/12, A/HRC/RES/21/7). In its context-specific resolutions, the Human Rights Council welcomes the commitment of governments when they undertake a comprehensive approach to dealing with the past, incorporating the full range of judicial and non-judicial measures, including reparations (see below A/HRC/RES/30/1, A/HRC/RES/40/1); **underlines the importance of effective participation and consultation of victims** to the design and implementation of reparation programs (see below A/HRC/RES/21/26 et al., A/HRC/RES/31/27, A/HRC/RES/22/21); urges and **calls upon State authorities to provide** adequate reparation or establish appropriate reparation programmes (A/HRC/RES/39/14, A/HRC/RES/45/19, A/HRC/RES/39/19); welcomes and **supports the establishment of transitional justice institutions**, including reparation programs and their effective implementation (see below A/HRC/RES/40/19, A/HRC/RES/25/37) and sometimes **expresses its dissatisfaction** in this regard (see below A/HRC/RES/42/26); encourages the governments to continue actively their efforts, with the support of the international community, to ensure that victims of such violations, abuses and related crimes receive adequate reparations (A/HRC/RES/39/20, A/HRC/RES/42/34, A/HRC/RES/45/34). In one situation, the Human Rights Council called upon the High Commissioner to “explore and determine the appropriate modalities for the **establishment of an escrow fund** for the provision of reparations” (see below A/HRC/RES/13/9).

The resolutions affirm certain **standards** by requiring reparations to be adequate, effective and prompt for the harm suffered (see A/HRC/RES/33/19, A/HRC/RES/42/17, A/HRC/RES/45/11). For children, the Human Rights Council has demanded adequately funded, appropriately gender-sensitive, safe and confidential, accessible and child-sensitive programs (see below A/HRC/RES/28/19, A/HRC/RES/25/6, A/HRC/RES/28/19). For women and girls subjected to violence, the Human Rights Council requires reparation to be available, accessible, acceptable, age- and gender-sensitive, transformative, culturally sensitive and adequately addressing victims' needs (see below A/HRC/RES/20/12).

Some resolutions mention the **type of violation**, including (i) trafficking (see below A/HRC/RES/44/4); (ii) right to education (see below A/HRC/RES/29/7); (iii) torture and other cruel, inhuman or degrading treatment or punishment, including in times of international or internal armed conflicts (see below A/HRC/RES/13/19, A/HRC/RES/22/21).

The Human Rights Council also specifically urges or calls upon States to provide reparation for specific **categories of victims**, such as: victims of sexual violence, particularly women and girls in conflict and post-conflict situations, (A/HRC/RES/14/12, A/HRC/RES/17/11, A/HRC/RES/20/12, A/HRC/RES/19/30); children, including those belonging to particularly vulnerable groups, including children involved in or affected by armed conflict or other violence (A/HRC/RES/25/6, A/HRC/RES/28/19); detainees; internally displaced people; and disappeared persons (see A/HRC/RES/45/21).

The Human Rights Council sometimes explicitly proposes certain **reparation measures** by stressing that for victims of sexual violence measures should include access to health care, psychosocial support, legal assistance and socioeconomic reintegration services, and may include public apologies, commemorations and judicial decisions (A/HRC/RES/14/12, A/HRC/RES/17/11, A/HRC/RES/20/12, A/HRC/RES/19/30, A/HRC/RES/19/30); medical, social and psychological support services to protect, treat, counsel and reintegrate child victims, as well as child-friendly and safe spaces, including schools (see below A/HRC/RES/28/19, A/HRC/RES/42/36). In some instances, the Human Rights Council mentions the need for collective and individual reparation (see below A/HRC/RES/42/36). Compensation is also referred to in some resolutions (see below A/HRC/RES/19/30, A/HRC/RES/23/23, A/HRC/RES/43/38).

In the same vein as the other UN entities, the Human Rights Council also sees **accountability** and reparation as co-existing (see A/HRC/RES/33/19, A/HRC/RES/42/17, A/HRC/RES/45/10, A/HRC/RES/20/12 A/HRC/RES/30/1, A/HRC/RES/45/21 A/HRC/RES/42/25, A/HRC/RES/40/19).

The resolutions are addressed to States.

7. Practice of UN entities on reparations attached to criminal court proceedings

UN entities have been involved in different ways in establishing international or hybrid criminal courts and tribunals. Few of these have been given power to award reparations to victims and none have as extensive powers as the International Criminal Court with regard to reparations.

The two **ad hoc international criminal tribunals for Rwanda and Former Yugoslavia** were the only international criminal tribunals set up by the Security Council to date. Neither of them had a mandate to provide reparations.

Beyond this, the UN has in some situations formed an agreement with a national government to set up a hybrid tribunal. The **Special Court for Sierra Leone** and the **Special Tribunal for Lebanon** were both established on the basis of such agreements underpinned by a Security Council resolution (S/RES/1315(2000) and S/RES/1757(2007)), but neither was given the power to award reparation to victims.

The **Extraordinary Chambers in the Courts of Cambodia (ECCC)** on the other hand, which was also established through an agreement between the UN and the Cambodian government – in this case the UN General Assembly ¹⁶⁷ did have a reparation mandate, albeit a limited one. This was based on the fact that the ECCC in principle applies the domestic laws of Cambodia, including the criminal procedural code, which (following the French model) gives criminal courts the

167 Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, 6 June 2003, [https://www.eccc.gov.kh/sites/default/files/legal-documents/Agreement between UN and RGC.pdf](https://www.eccc.gov.kh/sites/default/files/legal-documents/Agreement%20between%20UN%20and%20RGC.pdf) (hereinafter “ECCC Agreement”).

power to issue reparation to victims in the case of a conviction.¹⁶⁸ The ECCC developed its own rules on reparation in its Internal Rules.¹⁶⁹ The Court has the mandate to award “collective and moral reparations” only, monetary payments are not possible.¹⁷⁰ Examples of reparation awards include the publication of the judgment, psycho-social support services, training for history teachers, theater performances and exhibitions about victims and the crimes committed, among others.¹⁷¹ According to the ECCC’s Internal Rules, these reparations were intended to address the harm suffered as a result of crimes of which the accused was convicted.¹⁷²

The court can either order the accused to bear the costs of such awards, or award reparations for which victims had secured funding from outside the court.¹⁷³ In practice, all reparation awards were funded by external donors because those convicted claimed to be indigent. NGOs in collaboration with victims’ lawyers and victims designed projects, fund-raised for them and presented them to the ECCC to be recognized as reparations. They are implemented by the respective NGOs without the ECCC taking any role or responsibility. The beneficiaries can be wider than the group of victims who were recognized by the court and authorized to participate in the trial.

168 Art. 12(1) ECCC Agreement.

169 ECCC Internal Rules (Rev. 9), as revised on 16 January 2015, https://www.eccc.gov.kh/sites/default/files/legal-documents/Internal_Rules_Rev_9_Eng.pdf (hereinafter “ECCC Internal Rules”), Rule 23 quinquies.

170 Rule 23 quinquies (1) ECCC Internal Rules.

171 See full list in: ECCC, Case 002/2 Judgment, E465, 16 November 2018, <https://drive.google.com/file/d/1LA9ttO7C4fgC1aSb1cAoe9ofzwDuERx5/view?ts=5c9c9bb0>, chapter 21.

172 Rule 23 quinquies (1)(a) ECCC Internal Rules.

173 Rule 23 quinquies (3) ECCC Internal Rules.

ANNEX A: List of Relevant UN Resolutions

This annex lists the UN resolutions that make reference to reparations and form the basis of the analysis of the language of UN resolutions above (Chapter V). They are grouped by the three different UN organs (Security Council, General Assembly and Human Rights Council). The full text of all resolutions can be accessed by following the link for each resolution.

UN Security Council

(1) Thematic resolutions

Topic	Resolution
International Criminal Tribunal for the Former Yugoslavia	S/RES/827 (25 May 1993)
Protection of Civilians in Armed Conflict	S/RES/1894 (11 November 2009)
Protection of Civilians in Armed Conflict – Persons with Disabilities	S/RES/2475 (20 June 2019)
Syria, Middle East, Non-proliferation of weapons	S/RES/2118 (27 September 2013)
Women Peace and Security / Sexual Violence against Women and Children in Situations of Armed Conflict	S/RES/1888 (30 September 2009) S/RES/2106 (24 June 2013) S/RES/2122 (18 October 2013) S/RES/2242 (13 October 2015) S/RES/2467 (23 April 2019)

(2) Country specific resolutions

Country	Resolution
Argentina	S/4349 Resolution 138 (23 June 1960)
Benin	S/RES/405 (14 April 1977)
Bosnia and Herzegovina	S/RES/859 (24 August 1993)
Central African Republic	S/RES/2387 (15 November 2017) S/RES/2448 (13 December 2018) S/RES/2499 (15 November 2019) S/RES/2552 (12 November 2020) S/RES/2566 (12 March 2021)

Democratic Republic of the Congo	S/RES/1304 (16 June 2000)
Israel	S/RES/573 (4 October 1985)
Lebanon	S/RES/1757 (30 May 2007)
South Africa / Angola	S/RES/387 (31 March 1976) S/RES/475 (27 June 1980) S/RES/546 (6 January 1984) S/RES/567 (20 June 1985) S/RES/571 (20 September 1985) S/RES/577 (6 December 1985)
South Africa / Botswana	S/RES/568 (21 June 1985); S/RES/572 (30 September 1985)
South Africa / Lesotho	S/RES/527 (15 December 1982); S/RES/580 (30 December 1985)
Sudan / South Sudan	S/RES/1769 (31 July 2007) S/RES/2514 (20 March 2020) S/RES/2567 (12 March 2021)
Territories occupied by Israel	S/RES/471 (5 June 1980)
Zambia	S/RES/455 (23 November 1979)

General Assembly

(1) Thematic resolutions

Topic	Resolution
Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law	A/RES/60/147 (16 December 2005)
Enforced disappearances	A/RES/59/200 (20 December 2004)
Human rights and counter-terrorism	A/RES/65/221 (21 December 2010) A/RES/64/168 (18 December 2009)
Middle East	A/RES/50/22C (25 April 1996)
Racism and racial discrimination	A/RES/56/267 (15 May 2002)

Responsibility of States for internationally wrongful acts	A/RES/56/83 (28 January 2002)
Right to truth	A/RES/68/165 (18 December 2013)
Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/68/156 (18 December 2013) A/RES/70/146 (17 December 2015) A/RES/72/163 (19 December 2017)
Violence against women and girls	A/RES/69/147 (18 December 2014) A/RES/70/176 (17 December 2015)

(2) Country specific resolutions

Country	Resolution
Former Yugoslavia	A/RES/47/147 (24 April 1993); A/RES/48/153 (7 February 1994); A/RES/49/196 (23 December 1994)
Guatemala	A/RES/57/161 (16 December 2002) A/RES/58/238 (23 December 2003)
Israel/ Palestine	A/RES/59/124 (10 December 2004); A/RES/60/107 (8 December 2005); A/RES/61/119 (14 December 2006); A/RES/62/109 (17 December 2007); A/RES/63/98 (5 December 2008); A/RES/64/94 (10 December 2009); A/RES/65/105 (10 December 2010); A/RES/66/79 (9 December 2011); A/RES/67/121 (18 December 2012); A/RES/68/83 (11 December 2013); A/RES/69/93 (5 December 2014); A/RES/70/90 (9 December 2015); A/RES/71/98 (6 December 2016); A/RES/72/87 (7 December 2017)
Palestine	A/RES/62/102 (17 December 2007), A/RES/61/112 (14 December 2006)
Syria	A/RES/67/262 (15 May 2013); A/RES/68/182 (18 December 2013);

Human Rights Council

(1) Thematic resolutions

Topic	Resolution
Counter-terrorism and human rights	A/HRC/RES/37/27 (23 March 2018) A/HRC/RES/42/18 (26 September 2019) A/HRC/RES/45/11 (6 October 2020)
Human rights, democracy, rule of law	A/HRC/RES/19/36 (23 March 2012)
Human trafficking	A/HRC/RES/44/4 (16 July 2020)
Prevention of genocide	A/HRC/RES/43/29 (22 June 2020)
Right to education	A/HRC/RES/29/7 (2 July 2015)
Right to truth	E/CN.4/RES/2005/66 (20 April 2005) A/HRC/RES/9/11 (18 September 2008) A/HRC/RES/12/12 (12 October 2009) A/HRC/RES/21/7 (10 October 2012)
Rights of the child	A/HRC/RES/25/6 (27 March 2014) A/HRC/RES/28/19 (7 April 2015)
Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence	A/HRC/RES/18/7 (13 October 2011) A/HRC/RES/27/3 (3 October 2014) A/HRC/RES/36/7 (5 October 2017) A/HRC/RES/45/10 (6 October 2020)
Torture and other cruel, inhuman or degrading treatment or punishment	A/HRC/RES/13/19 (26 March 2010) A/HRC/RES/22/21 (22 March 2013)
Transitional justice	A/HRC/RES/9/10 (24 September 2008) A/HRC/RES/12/11 (12 October 2009) A/HRC/RES/21/15 (11 October 2012) A/HRC/RES/33/19 (5 October 2016) A/HRC/RES/42/17 (26 September 2019)
Violence against women	A/HRC/RES/14/12 (28 June 2010) A/HRC/RES/17/11 (17 June 2011) A/HRC/RES/20/12 (5 July 2012)

(2) Country specific resolutions

Country	Resolution
Burundi	A/HRC/RES/39/14 (5 October 2018) A/HRC/RES/45/19 (12 October 2020) A/HRC/RES/42/26 (27 September 2019)

Central African Republic	A/HRC/RES/33/27 (10 October 2016) A/HRC/RES/36/25 (5 October 2017) A/HRC/RES/39/19 (28 September 2018) A/HRC/RES/42/36 (27 September 2019)
Democratic Republic of the Congo	A/HRC/RES/39/20 (3 October 2018) A/HRC/RES/42/34 (2 October 2019) A/HRC/RES/45/34 (12 October 2020)
Guinea	A/HRC/RES/13/21 (26 March 2010) A/HRC/RES/19/30 (23 March 2012) A/HRC/RES/23/23 (14 June 2013); A/HRC/RES/25/35 (28 March 2014)
Israel/ Palestine	A/HRC/RES/13/9 (25 March 2010) A/HRC/RES/16/32 (13 April 2011) A/HRC/RES/19/16 (22 March 2012) A/HRC/RES/22/28 (22 March 2013) A/HRC/RES/25/29 (28 March 2018) A/HRC/RES/28/27 (27 March 2015) A/HRC/RES/31/34 (26 Mart 2016) A/HRC/RES/34/31 (3 April 2017) A/HRC/RES/37/35 (23 March 2018) A/HRC/RES/37/36 (6 April 2018) A/HRC/RES/40/24 (17 April 2019) A/HRC/RES/40/23 (22 March 2019) A/HRC/RES/43/31 (22 June 2020) A/HRC/RES/43/32 (22 June 2020) A/HRC/RES/29/25 (3 July 2015) A/HRC/RES/34/28 (24 March 2017) A/HRC/RES/37/37 (23 March 2018) A/HRC/RES/40/13 (3 April 2019) A/HRC/RES/43/3 (19 June 2020)
Libya	A/HRC/RES/25/37 (15 April 2014) A/HRC/RES/31/27 (20 April 2016)
Mali	A/HRC/RES/40/26 (22 March 2019) A/HRC/RES/43/38 (22 June 2020) A/HRC/RES/46/28 (24 March 2021)
South Sudan	A/HRC/RES/S-26/1 (19 December 2016) A/HRC/RES/31/20 (27 April 2016) A/HRC/RES/34/25 (5 April 2017) A/HRC/RES/37/31 (23 March 2018) A/HRC/RES/40/19 (22 March 2019) A/HRC/RES/43/27 (22 June 2020)
Sri Lanka	A/HRC/RES/30/1 (14 October 2015)

	A/HRC/RES/40/1 (4 April 2019)
Syria	A/HRC/RES/21/26 (17 October 2012) A/HRC/RES/22/24 (12 April 2013) A/HRC/RES/23/26 (14 June 2013) A/HRC/RES/25/23 (9 April 2014) A/HRC/RES/26/23 (27 June 2014) A/HRC/RES/27/16 (3 October 2014) A/HRC/RES/30/10 (13 October 2015) A/HRC/RES/29/16 (2 July 2015) A/HRC/RES/31/17 (8 April 2016) A/HRC/RES/32/25 (1 July 2016) A/HRC/RES/33/23 (6 October 2016) A/HRC/RES/34/26 (5 April 2017) A/HRC/RES/35/26 (14 July 2017) A/HRC/RES/36/20 (9 October 2017) A/HRC/RES/37/29 (9 April 2018) A/HRC/RES/38/16 (19 July 2018) A/HRC/RES/39/15 (8 October 2018) A/HRC/RES/40/17 (12 April 2019) A/HRC/RES/41/23 (23 July 2019) A/HRC/RES/42/27 (8 October 2019) A/HRC/RES/43/28 (29 June 2020) A/HRC/RES/44/21 (17 July 2020) A/HRC/RES/45/21 (12 October 2020)
Venezuela	A/HRC/RES/42/25 (27 September 2019)