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**COUNTRY-SPECIFIC SCRUTINY  
AT THE UNITED NATIONS  
HUMAN RIGHTS COUNCIL**

**MORE THAN MEETS THE EYE**

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Working Paper

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## INTRODUCTION

Since it was established by the United Nations General Assembly in 2006, the Human Rights Council has sought, with mixed success, to fulfill its mandate to strengthen the protection and enjoyment of international human rights around the world. The Council has addressed human rights concerns in multidimensional ways, combining softer approaches like technical and capacity-building assistance with tougher “naming and shaming” tactics involving formal condemnation of state behavior.

While the Human Rights Council has made significant strides in advancing international human rights norms, some critics contend that the Council has failed to live up to its original mandate to “address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon.”<sup>1</sup> Critics argue that instead of tackling the most profound violations of human rights in specific countries, the Council has focused on broad thematic issues that – while mostly well-intentioned – have had little impact on systemic human rights violations in the direst situations.<sup>2</sup> During negotiations to establish the Council, some member states, particularly from Africa, argued for the abolition of any country-specific resolutions. As the Human Rights Council marks its tenth anniversary in 2016, it is worth assessing the progress it has made toward accomplishing its goals, in this case with regards to addressing country-specific human rights concerns.

In that spirit, this paper examines the extent to which the Human Rights Council is addressing country-specific human rights issues through its five major mechanisms: country-specific resolutions, the Universal Periodic Review, Special Procedures, commissions of inquiry, and Special Sessions of the Human Rights Council.<sup>3</sup> (This study does not include treaty bodies as they are not a U.N. Human Rights Council mechanism. However, it is worth noting that in 2015, treaty bodies met for a record combined total of 99 weeks during which time they reviewed reports of 173 states

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<sup>1</sup> Paragraph 159 of resolution 60/1 and paragraph 3 of resolution 60/251. While the words “country-specific” are missing from the phrase, the historical and practical meaning is to specific situations in particular member states.

<sup>2</sup> Glion Human Rights Dialogue “The Human Rights Council at 10: Improving Relevance, Strengthening Impact,” *Universal Rights Group* (September 2015): 3, [http://www.universal-rights.org/wp-content/uploads/2015/09/Glion\\_Outcome\\_Low\\_Res\\_page.pdf](http://www.universal-rights.org/wp-content/uploads/2015/09/Glion_Outcome_Low_Res_page.pdf). See also Brett D. Schaefer, “UN Human Rights Council: A Flawed Body That Should Be Replaced,” *The Heritage Foundation*, November 19, 2013, <http://www.heritage.org/research/reports/2013/11/un-human-rights-council-a-flawed-body-that-should-be-replaced>; and H.R. 3667, “United Nations Transparency, Accountability, and Reform Act of 2015,” sponsored by Ileana Ros-Lehtinen, <https://www.govtrack.us/congress/bills/114/hr3667>.

<sup>3</sup> A 2015 study by the Universal Rights Group claimed that the Council’s agenda in terms of texts adopted and time devoted to thematic versus country-specific resolutions was improperly balanced in favor of thematic resolutions. Their analysis, however, was limited only to item four agenda items (“Human rights situations that require the Council’s attention”) and did not include item ten or other country-specific resolutions and agenda items. Subhas Gujadhur and Toby Lamarque, “Ensuring Relevance, Driving Impact: The evolution and future direction of the UN Human Rights Council’s resolution system,” *Universal Rights Group* (January 2015), <http://www.universal-rights.org/urg-policy-reports/ensuring-relevance-driving-impact-the-evolution-and-future-direction-of-the-un-human-rights-councils-resolution-system/>.

parties.<sup>4</sup>) This study concludes that there has been a significant increase in activity concerning country-specific human rights issues in the number of resolutions passed, commissions of inquiry mandated, and special sessions convened, although activity in other mechanisms has plateaued or even decreased. Furthermore, while Israel/Palestine continues to dominate country-specific human rights issues at the Human Rights Council, recently states have begun more robustly to address dire human rights situations in other countries and regions through special reviews, inquiries, and investigations.

## COUNTRY-SPECIFIC RESOLUTIONS

The bread and butter deliverable of the Human Rights Council is resolutions – formal declarations setting forth the collective opinion of its 47 member states. Human Rights Council resolutions can be either thematic or country-specific in nature.<sup>5</sup> Resolutions can be passed one of two ways: either by a consensus opinion among member states, or by a recorded vote. Additionally, resolutions passed by the Human Rights Council are categorized by their corresponding standing agenda item numbers. For example, item four agenda resolutions deal with human rights situations in specific countries that require the Council’s attention and are usually adopted despite the country’s objections; item seven resolutions concern human rights in Palestine and the occupied Arab territories; and item ten resolutions, usually adopted with the concerned country’s consent and sometimes at the request of the concerned state, are comprised of technical assistance and capacity-building activities. It is important to note that Israel/Palestine is the only country/issue that is accorded its own place on the Human Rights Council standing agenda, to the consternation of some member states.<sup>6</sup>

### *Growth of country-specific Human Rights Council resolutions*

Out of the 824 total resolutions and decisions adopted by the Human Rights Council between 2006 and 2015, 2203 of them – or 24.6 percent – were country-specific in nature.<sup>7</sup> While still disproportionately favoring thematic issues, the trend has been for the

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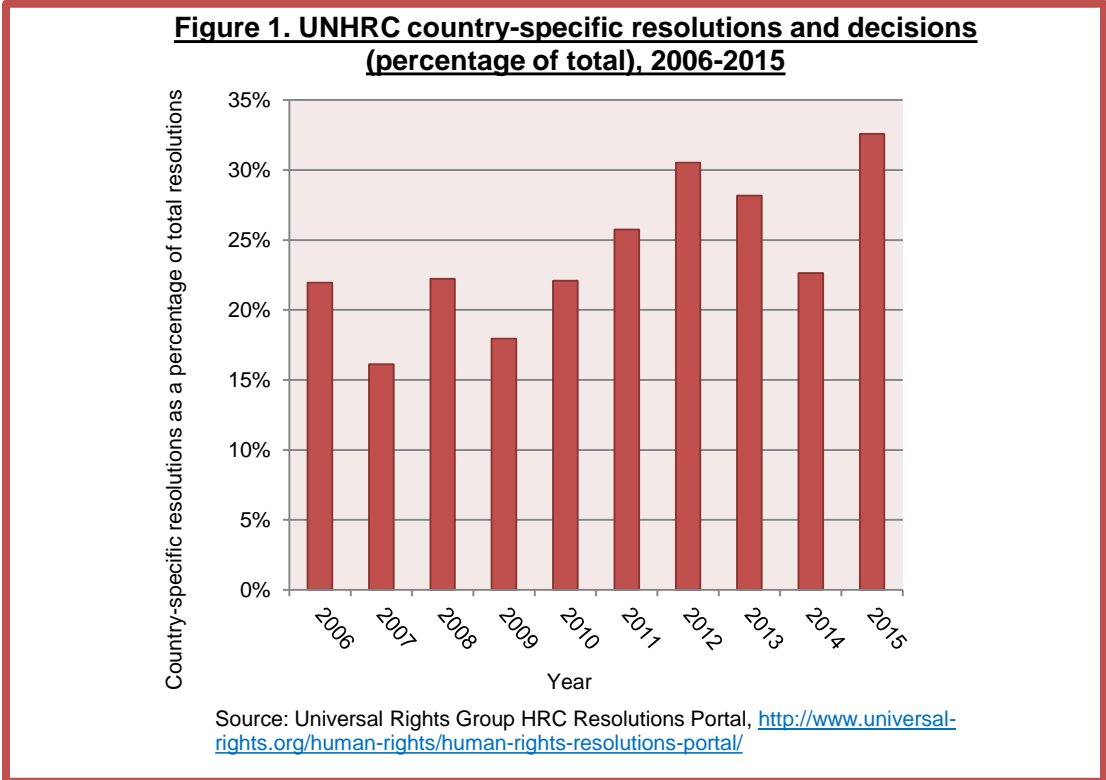
<sup>4</sup> “Statement by Zeid Ra’ad Al Hussein, United Nations High Commissioner for Human Rights, to the Human Rights Council’s 31<sup>st</sup> session,” *Office of the High Commissioner*, March 10, 2016, <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17200&LangID=E>.

<sup>5</sup> An example of a thematic resolution at the Council would be “The Question of the Death Penalty,” which concerns the state of a particular human right, or “thematic issue,” across the entire spectrum of U.N. member states. An example of a country-specific resolution would be “Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka,” which concerns the human rights situation in one member state.

<sup>6</sup> The United States, for example, has long opposed the biased treatment of Israel at the Council. In 2015, Congress pass an omnibus appropriations bill precluding funding of the Council “unless the Secretary of State determines and reports to the Committees on Appropriations that participation in the Council is in the national security interest of the United States *and that the Council is taking significant steps to remove Israel as a permanent agenda item*” (emphasis added). H.R. 2772 and S. 1725.

<sup>7</sup> All data on total number of resolutions includes both resolutions and decisions and comes from the Universal Rights Group HRC Resolutions Portal, sorting by text type, agenda item type, and year. Special

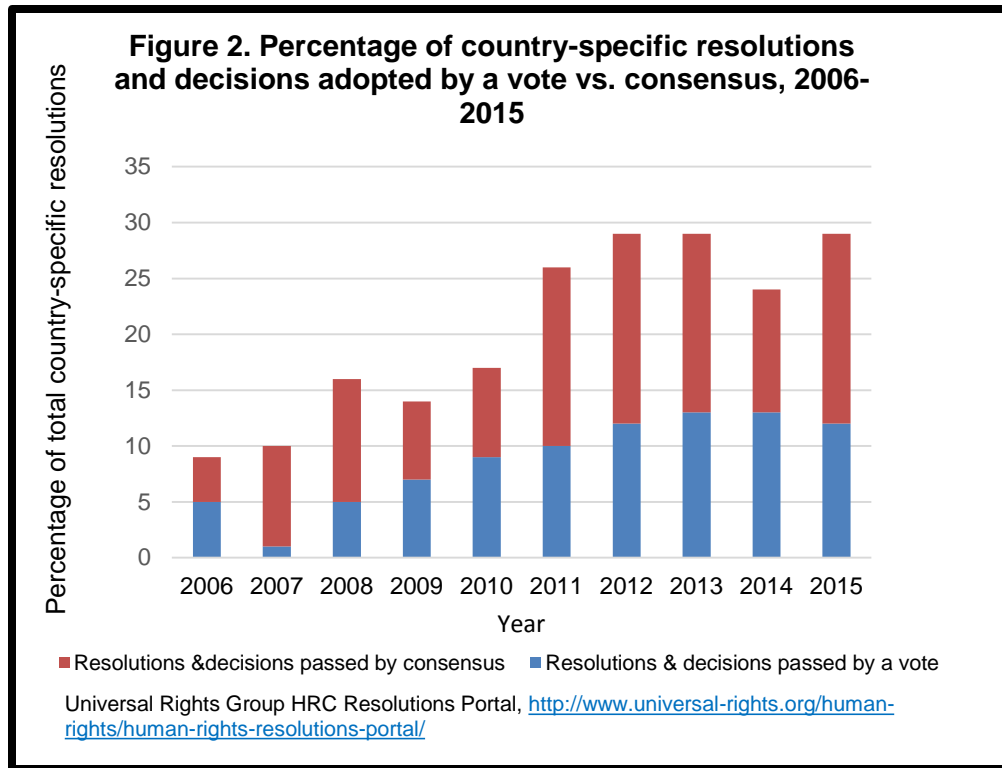
Council to adopt more country-specific resolutions, demonstrating an increase in Council time spent considering these country-specific issues. In 2006, the Council adopted 9 country-specific resolutions out of a total of 43 resolutions, or 21 percent. In comparison, in 2015 the Council passed 29 country-specific resolutions out of a total of 89 resolutions passed that session, or 32.6 percent (Figure 1). In particular, over the past year the Council adopted resolutions on a wide array of country issues ranging from providing additional technical assistance to Guinea, establishing a fact-finding mission to investigate violations in South Sudan, and addressing the human rights situation in Belarus, among others.



Historically, the Human Rights Council has tended to pass more country-specific resolutions by consensus than by a recorded vote (Figure 2). Between 2006 and 2015 this general trend continued, suggesting states tend to prefer resolutions that are less controversial and therefore more likely to be adopted by consensus. Since 2006, however, the overall number of resolutions passed by a vote has grown, suggesting that states are slowly beginning to address more controversial cases, such as promoting reconciliation in Sri Lanka or criticizing Myanmar for its poor treatment of religious minorities.

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sessions were excluded from these calculations – only regular sessions were tabulated. Percentages are the authors’ calculations.



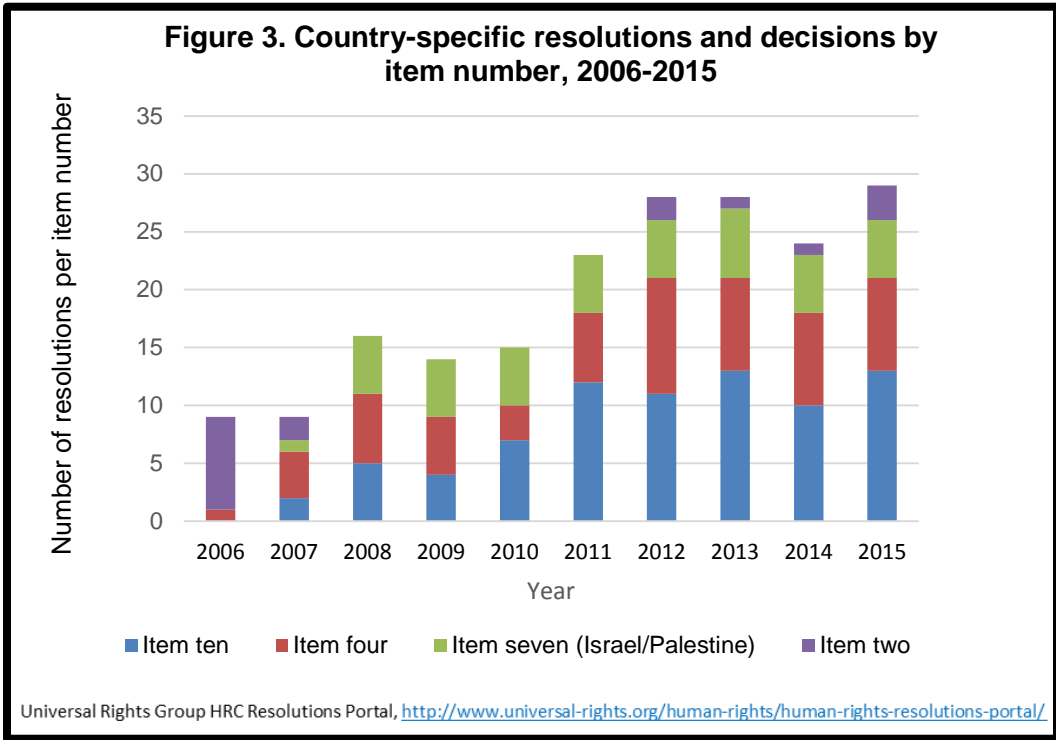
### *Country-specific resolutions by item number and resource implications*

Item four and item ten resolutions are the most commonly adopted by the Council. Out of 29 total country-specific resolutions adopted by the Human Rights Council in 2015, for example, eight were the more critical item four resolutions and 13 were item ten resolutions geared more toward technical assistance. Though the Council has been more and more willing over time to express its scrutiny of country-specific concerns through critical item four resolutions, pairing scrutiny with technical assistance remains its preferred modus operandi.

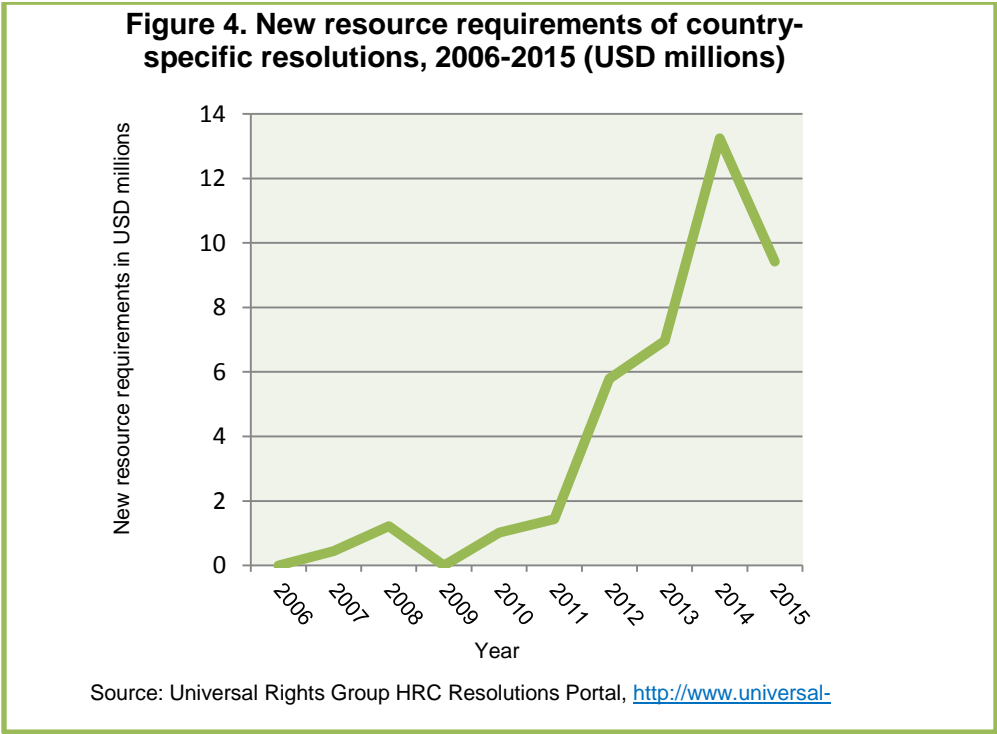
*The exponential growth in the number and type of resolutions adopted has had important budgetary implications for the U.N.'s work on human rights.*

An examination of the country-specific resolutions adopted by the Human Rights Council also reveals a return – albeit slow – to the use of item 2 resolutions, usually involving mandates to the Office of the High Commissioner for Human Rights to study or monitor a country-specific situation. While item two resolutions and decisions accounted for 90 percent of all country-specific resolutions adopted in 2006, in 2008 that number dropped to zero and remained at that level for four years (Figure 3). In 2015, three item two resolutions were passed, indicating that member states are again utilizing this type of resolution, often to reach a compromise rather than leave a country-specific matter unaddressed by resolution. The adoption of item seven resolutions (which concern Israel/Palestine) has remained constant over time, with an average of five passed per year since 2006 – though as the number of resolutions increases each year, the proportion of item seven resolutions decreases, showing that the Council’s attention is growing more diverse.

- U.N. Human Rights Council agenda Items**
1. Organizational and procedural matters
  2. Annual report of the UN High Commissioner for Human Rights and reports of the OHCHR and UN Secretary-General
  3. Promotion and protection of all human rights
  4. Human rights situations that require the Council’s attention
  5. Human rights bodies and mechanisms
  6. Universal Periodic Review
  7. Human rights situations in Palestine and other occupied Arab territories
  8. Follow-up and implementation of the Vienna Declaration and Programme of Action
  9. Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the Durban Declaration and Program of Action
  10. Technical assistance and capacity-building



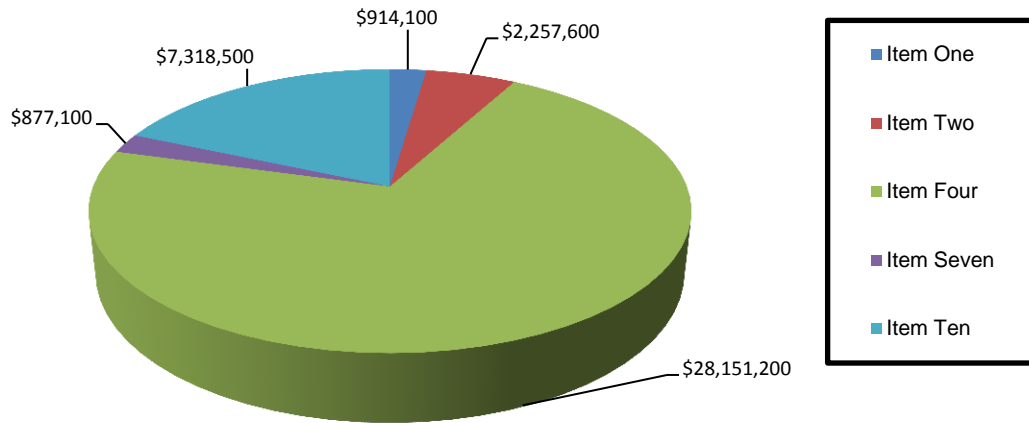
The exponential growth in the number and type of resolutions adopted has had important budgetary implications for the U.N.’s work on human rights. Between 2006 and 2015, the new resource requirements attached to country-specific resolutions adopted by the Human Rights Council increased over nine fold, from no additional resource requirements in 2006 to \$9,419,650 in 2015 (Figure 4). A new resource requirement refers to the funds the Office of the High Commissioner for Human Rights (OHCHR) estimates will be needed to implement the resolution which are not already included in or absorbed by the U.N. regular budget. Often, the amount eventually allocated by the U.N. General Assembly’s Fifth Committee in New York (responsible for budget and administration) is much less than what the Council requests.



When analyzed by item number, item four country-specific resolutions account for the vast majority of new resource requirements (Figure 5). Between 2006 and 2015, item four resolutions accounted for 71.2 percent of all new resource requirements (in comparison, item ten resolutions only accounted for 18.5 percent). While item two resolutions account for only 5.7 percent of all new resource requirements between 2006 and 2015, they had a relatively high new resource requirement per resolution of \$141,100 on average, while item ten resolutions only had an average new resource requirement of \$89,250. This suggests that if the Human Rights Council adopts more item two resolutions – as the trend line suggests – the new resource requirements of country-specific resolutions will increase significantly.



**Figure 5. New resource requirements of country-specific resolutions by item number, 2006-2015 (cumulative, in USD)**



Universal Rights Group HRC Resolutions Portal, <http://www.universal-rights.org/human-rights/human-rights-resolutions-portal/>

## THE UNIVERSAL PERIODIC REVIEW

Created in 2008, the Universal Periodic Review (UPR) is an important new mechanism of the Human Rights Council that allows the human rights practices of all 193 member states of the United Nations to be self-evaluated and subjected to a peer review once every four and a half years. Three sessions are held each year and fourteen states are reviewed each session. Prior to implementation of this new mechanism, most U.N. member states received negligible scrutiny of their human rights records at the U.N.

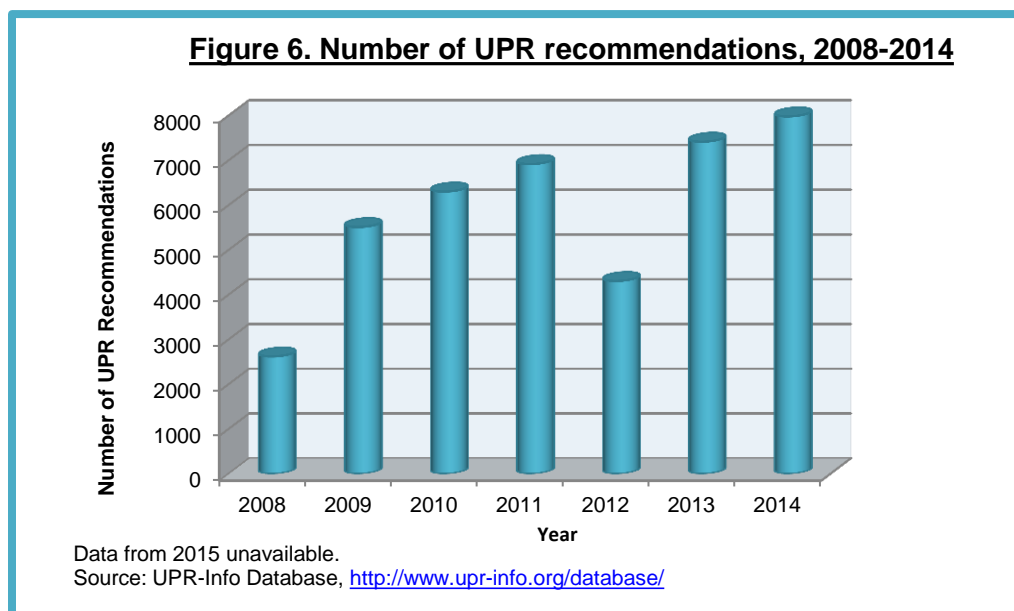
*To date, there is 100 percent participation in the [Universal Periodic Review] mechanism, an unprecedented rate in the U.N. system and its human rights bodies in particular.*

While states are not legally bound to engage with the UPR, to date, there is 100 percent participation in the mechanism, an unprecedented rate in the U.N. system and its human rights bodies in particular. During each UPR session, any state can make recommendations to states under review (SuR) regarding their human rights practices.

Recommendations can be either “noted” – considered but neither accepted nor rejected outright – or formally adopted by states under review. UPR recommendations can fall into one of five categories, a framework developed by Professor Edward McMahon at the University of Vermont. Action one recommendations are directed at non-SuR states, or call upon the SuR to request technical assistance or share information; action two recommendations emphasize continuity; action three recommendations are requests to consider change; action four are recommendations of general action to be taken; and finally, action five recommends specific action be taken.<sup>8</sup>

### *Growth of UPR recommendations and themes addressed over time*

As Figure 6 demonstrates, the UPR process issues substantially more recommendations today than it did when it began in 2008, all of which are country-specific given the nature of the mechanism. As of 2014, there were over three times as many UPR recommendations as in 2008.<sup>9</sup> The Western European and Others Group (WEOG) tends to issue the most UPR recommendations, followed by Latin America and the Caribbean (GRULAC). The Africa and Asia groups issue the least amount of UPR recommendations, stemming both from their weak human rights records and their reluctance to openly criticize other states’ human rights records.



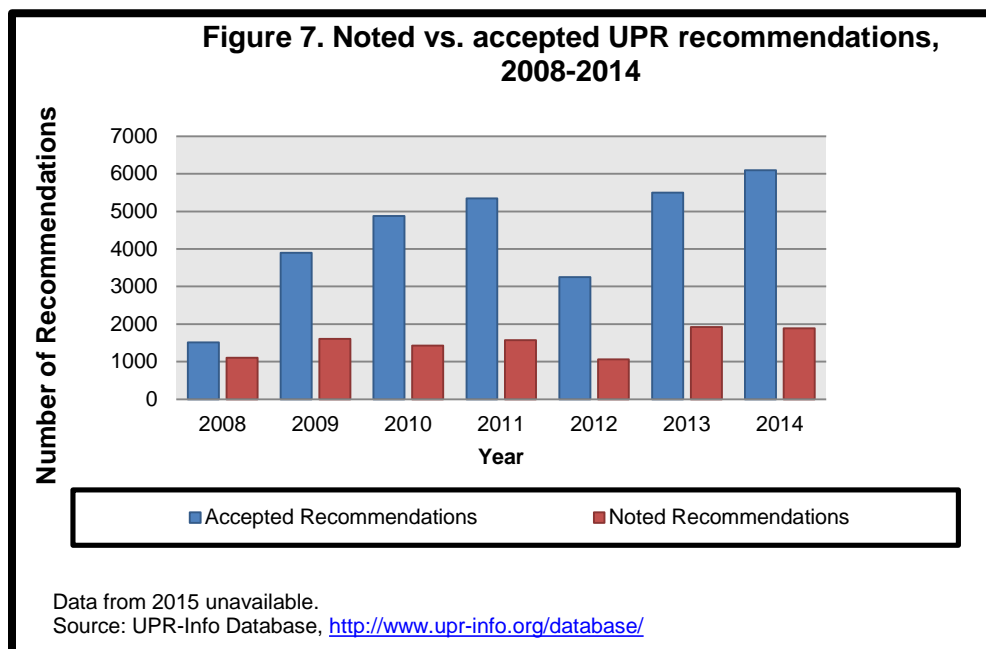
<sup>8</sup> These recommendation action categories were developed by Professor Edward R. McMahon of the University of Vermont with the support of UPR Info, an NGO. Professor McMahon’s feature analyzes the first verb and the overall action contained in the recommendation and ranks it on a scale of 1 (minimal action) to 5 (specific action). The text of level 4 recommendations urge action of a general type, using verbs like accelerate, address, or strengthen. Level 5 recommendations urge specific action and utilize verbs such as conduct or develop, or legal verbiage like abolish, accede, or ratify. “UPR Info’s Database,” UPR Info, [http://www.upr-info.org/database/files/Database\\_Action\\_Category.pdf](http://www.upr-info.org/database/files/Database_Action_Category.pdf).

<sup>9</sup> Note that the UPR-Info database only includes data through 2014. As such, 2015 data is not included in this analysis.

The top five thematic issues addressed in UPR recommendations were (in order): international instruments, women’s rights, rights of the child, justice, and torture and other cruel, inhumane, or degrading treatment. The five themes that were addressed the least were business and human rights, freedom of movement, counter-terrorism, internally displaced persons, and the right to land. The five countries – all emerging or established democracies – that offered the greatest number of recommendations between 2008 and 2014 were (in order): France, Spain, Canada, Norway, and Mexico. On the other hand, the five countries – all repressive regimes – receiving the most UPR recommendations during this time period were: Cuba, Iran, Egypt, the Democratic People’s Republic of Korea, and Vietnam. Notably, Israel/Palestine, which is disproportionately addressed through other Human Rights Council mechanisms, is not within the top five countries receiving recommendations in the Universal Periodic Review, though it did rank sixth.

*Noted versus accepted recommendations in the Universal Periodic Review*

In addition to the Universal Periodic Review process issuing more recommendations, all of which are country-specific, states under review have been accepting far more of the recommendations made to them. As Figure 7 shows, the percentage of UPR recommendations accepted by states has increased substantially since 2008. While in 2008 just 27 percent of all UPR recommendations were accepted, in 2014 this number rose to 69 percent.

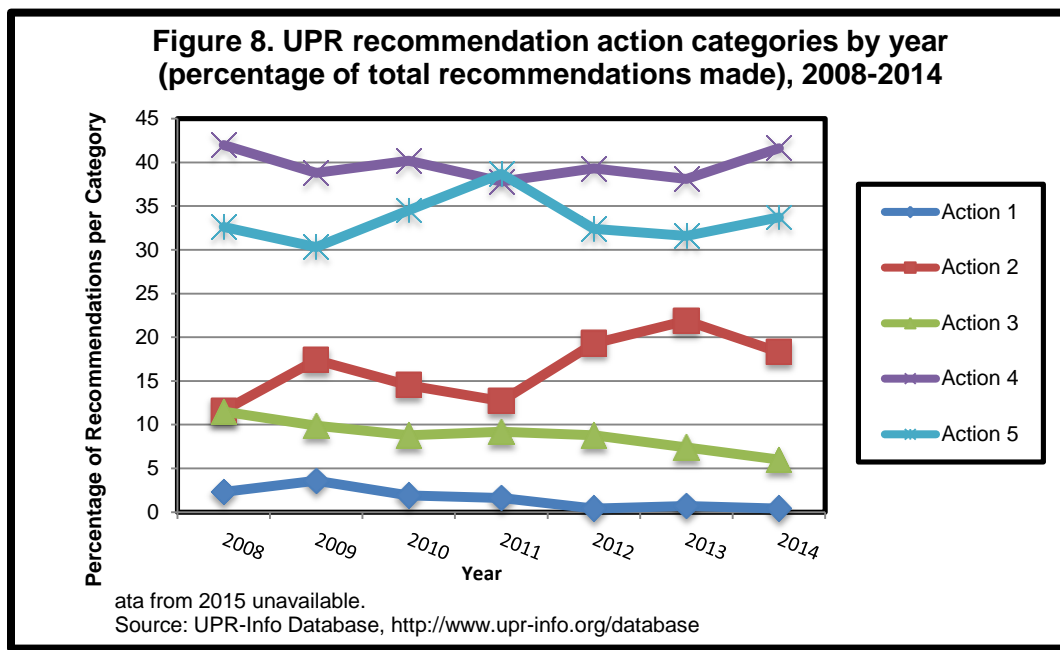


As states have become more comfortable using the UPR, they have increasingly accepted the recommendations made to them by their peers, especially those from the same geographic region. The rate of acceptance for more robust recommendations (action categories four and five), however, is lower than that of weaker

recommendations (action categories three, two, and one).<sup>10</sup> This may be due partly to the probability that states are more likely to accept recommendations that they feel they will be able to implement.

### *Universal Periodic Review recommendations by action category*

An analysis of UPR recommendations by action category reveals that the Universal Periodic Review process has consistently generated recommendations for more specific actions to states under review, as evidenced by the large proportion of action four and five recommendations. The data indicate that states issued a greater number of robust recommendations than weak recommendations for every year between 2008 and 2014. The predominance of robust recommendations indicates that states perceive the UPR process as a legitimate forum to make concrete suggestions for improving human rights in specific countries. However, as Figure 8 indicates, while the trend has been for states to issue more recommendations each year, the proportion of all recommendations considered robust remains at roughly the same level in 2014 as in 2008. In 2008 robust recommendations (categories four and five) accounted for 74.6 percent of all recommendations, and in 2014 robust recommendations accounted for 75.3 percent of all recommendations, only a slight increase.<sup>11</sup> This shows that action-oriented country-specific activity in the Universal Periodic Review process has plateaued. Action one recommendations, the weakest category, have virtually disappeared.



<sup>10</sup> Edward McMahon , “The Universal Periodic Review: A Work in Progress: An Evaluation of the First Cycle of the New UPR Mechanism of the United Nations Human Rights Council,” (Friedrich Ebert Stiftung, September 2012): 13, [http://www.upr-info.org/sites/default/files/general-document/pdf/mcmahon\\_a\\_work\\_in\\_progress.13.09.2012.pdf](http://www.upr-info.org/sites/default/files/general-document/pdf/mcmahon_a_work_in_progress.13.09.2012.pdf).

<sup>11</sup> UPR-Info, Universal Periodic Review Database, <http://www.upr-info.org/database/>.

## HUMAN RIGHTS COUNCIL SPECIAL PROCEDURES

The Special Procedures of the Human Rights Council, which consist of Special Rapporteurs, Independent Experts, and Working Groups,<sup>12</sup> are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. They are appointed by the Human Rights Council and are tasked with reviewing particular human rights situations – either thematic or country-specific – while maintaining independence and impartiality.<sup>13</sup> Special Procedures can also be mandated by the Secretary-General and the OHCHR. Special Procedures are not U.N. staff members, perform their work pro bono, and can serve no more than six consecutive years in their official capacity. To fulfil their mandate of monitoring and reporting on alleged human rights violations, Special Procedures undertake country visits, send communications to states, conduct studies and convene expert consultations, engage in advocacy, and publish and present reports to the Human Rights Council; most also report to the United Nations General Assembly.

*Between 2006 and 2015, the number of country-specific reports submitted to the Human Rights Council by thematic and country-specific mandated Special Procedures increased by 104 percent.*

There has been a significant increase in the number of Special Procedures since the Council was created in 2006. In 2006, there were 41 Special Procedures (28 thematic, and 13 country-specific). As of March 2015, that number had increased to 55 Special Procedures (41 thematic, and 14 country-specific.)<sup>14</sup> Based on current trends, the number could reach between 80 and 100 Special Procedures mandates by 2030.<sup>15</sup> While some welcome the growth of this mechanism, others claim that the increase is

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<sup>12</sup> Commissions of inquiry are considered in a separate section. Due to the expanded mandate of commissions of inquiry (i.e. their emphasis on promoting accountability), they are considered a United Nations human rights mechanism in their own right.

<sup>13</sup> An example of a Special Procedure with a thematic mandate would be the Special Rapporteur on the Right to Water. An example of a Special Procedure with a country-mandate would be the Special Rapporteur on the Human Rights Situation in the Democratic People's Republic of Korea. Thematic special procedures still address country-specific human rights issues through their visits to particular countries and the subsequently generated reports.

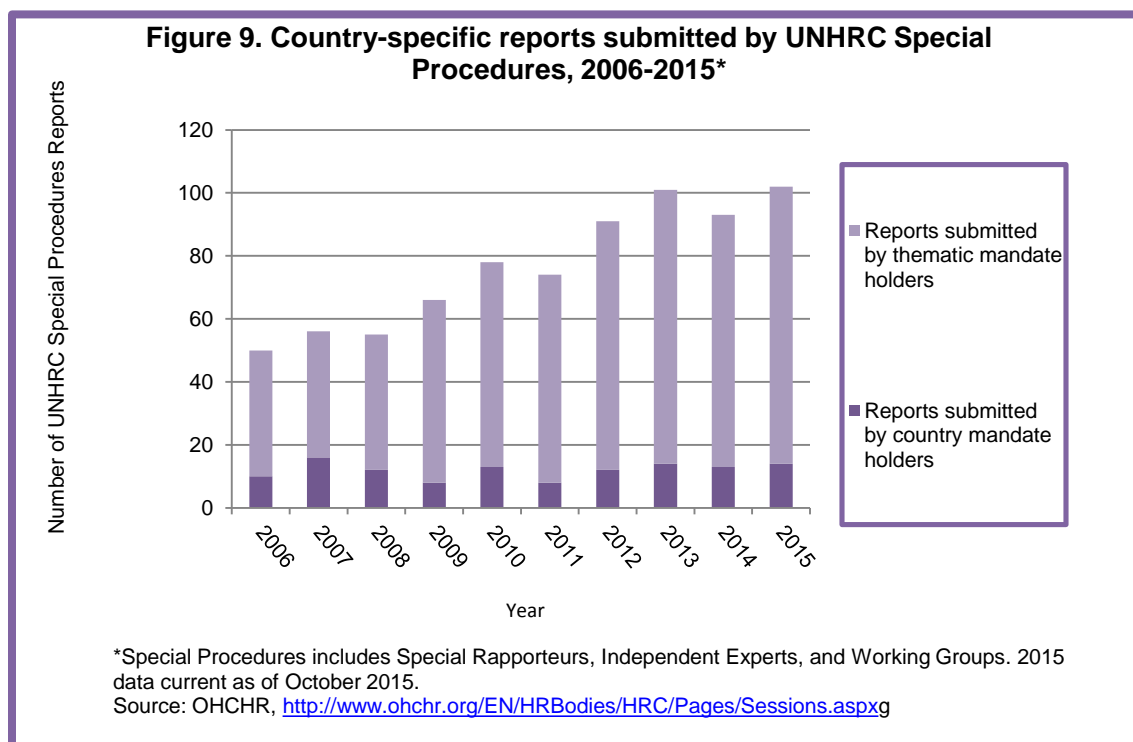
<sup>14</sup> "Thematic Mandates," Office of the High Commissioner for Human Rights, <http://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/ViewAllCountryMandates.aspx?Type=TM>

<sup>15</sup> Marc Limon and Ted Piccone, *Human Rights Special Procedures: Determinants of Influence*, Universal Rights Group (March 2014): 8-9, <http://www.brookings.edu/research/reports/2014/03/19-un-human-rights-experts-evaluation-piccone>.

not sustainable given the severe resource constraints (both time and money) of the U.N. system.

### *Country-specific reports submitted to the Human Rights Council by Special Procedures*

Between 2006 and 2015, the number of country-specific reports submitted to the Human Rights Council by thematic and country-specific mandated Special Procedures increased by 104 percent. In 2006, Special Procedures submitted 50 country-specific reports to the Council while in 2015 there were 102 country-specific reports submitted to the Council. The majority – 84.3 percent – of country-specific reports submitted to the Human Rights Council were submitted by thematic mandate holders (e.g., Special Rapporteur on the Right to Water). Special Procedures reports submitted by country mandate holders (e.g. Cambodia or Myanmar) accounted for only 15.6 percent of all country-specific reports submitted (Figure 9). This trend has remained relatively consistent throughout the history of the Council. Thirty-one of the 802 reports submitted between 2006 and 2015 concerned Israel/Palestine, by far the most for any one country.

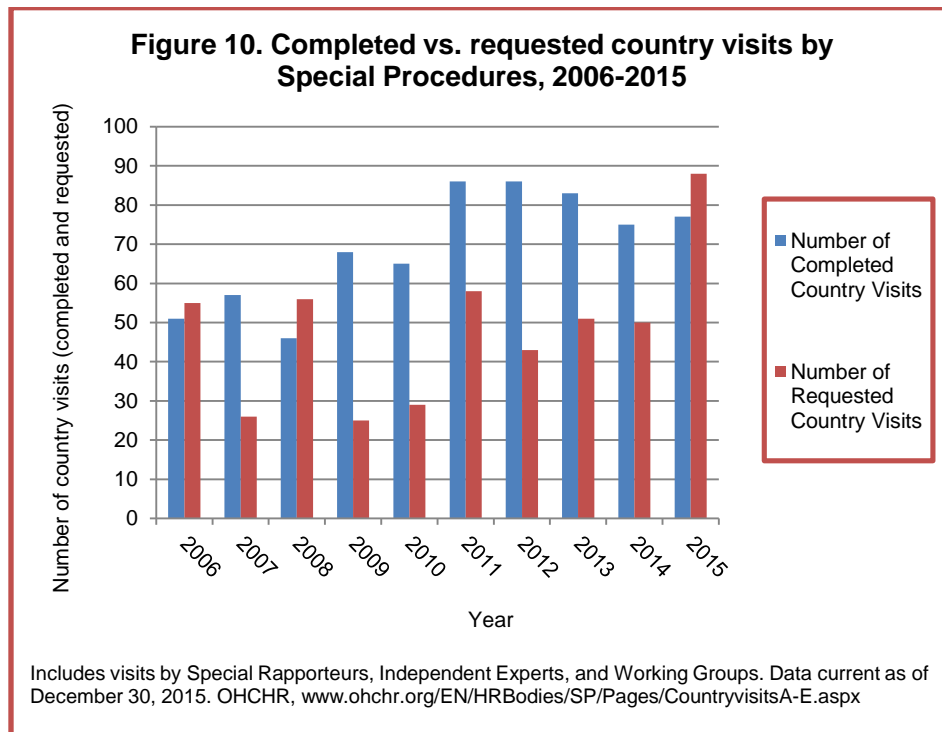


As a comparison, country-specific reports concerning Sudan, the second highest, accounted for 17 of the 802 reports submitted. Haiti, the third highest, accounted for 15 of the 802 reports, and the fourth highest, Syria, accounted for 14 of the 802 reports

submitted by Special Procedures.<sup>16</sup> Special Procedures continue to invest significant time in the human rights situation in Israel/Palestine, although reporting has decreased since the earlier days of the Council.

### *Country visits by Human Rights Council Special Procedures*

Between 2006 and 2012 there was a steady increase in the number of completed country visits by the Council’s Special Procedures (Figure 10). In 2006, there was a total of 51 completed country visits, and in 2012 there was a total of 86. Between 2012 and 2014, however, the number of completed country visits decreased, but in 2015 we see an uptick. While the increase in *completed* country visits by Special Procedures is a positive development with regards to country-specific scrutiny by the Human Rights Council, the number of requested country visits (those which Special Procedures have requested but which have not yet been agreed to, undertaken, or completed) has increased substantially as well.

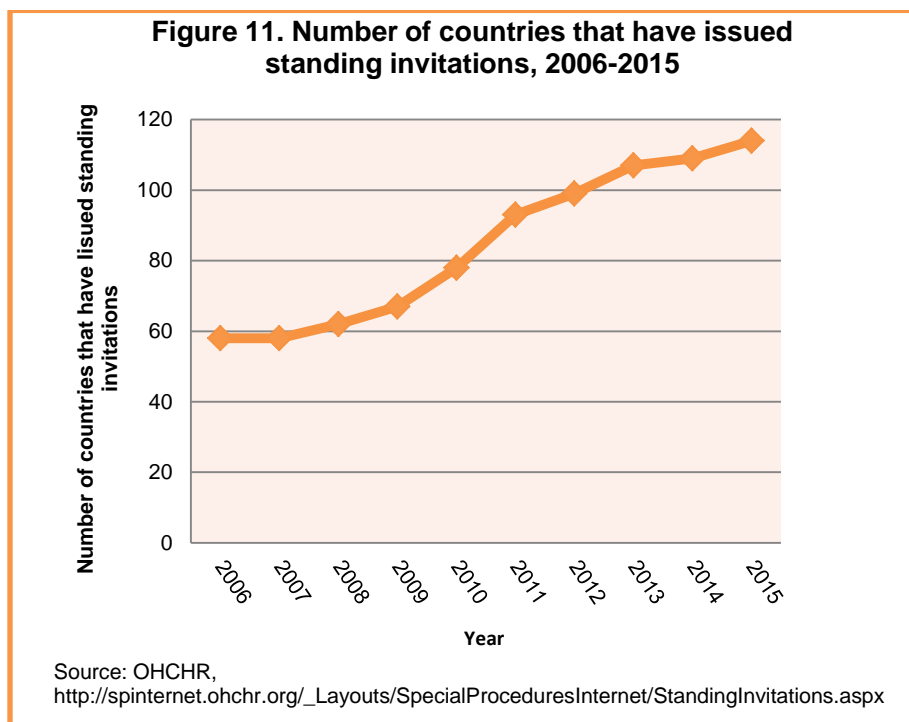


Over the last several years, the number of states that have issued standing invitations for country visits by Special Procedures has increased substantially, rising to 114 (Figure 11). States that have issued a standing invitation commit – in principle – to accept a country visit by a Special Rapporteur, but in practice many states reject, ignore, or delay such requests. As Figure 10 shows, while the number of completed

<sup>16</sup> Author calculations based on data obtained from Universal Rights Group HRC Resolutions Portal, <http://www.universal-rights.org/human-rights/human-rights-resolutions-portal/>.



country visits has increased overall, in 2015 uncompleted visits accounted for almost as many visits as were completed by Special Procedures.

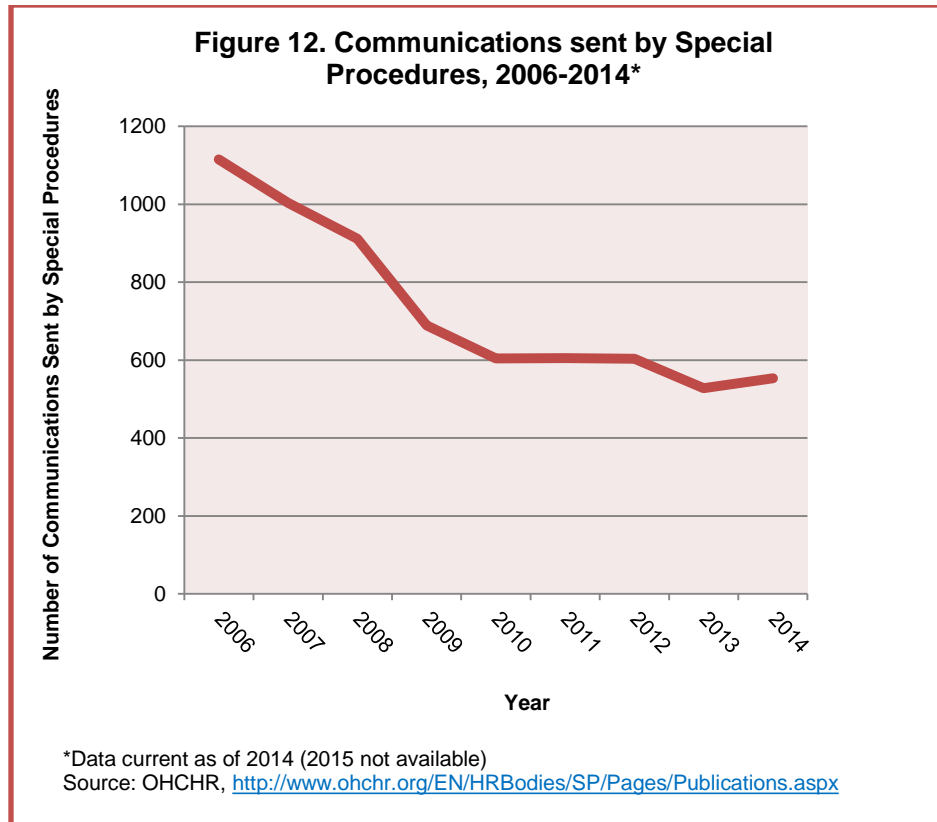


### *Communications sent by Human Rights Council Special Procedures*

One way in which Special Procedures scrutinize a country-specific human rights situation at the Human Rights Council is by sending letters of allegation and urgent appeals regarding specific violations, to which states may or may not respond. At first glance (Figure 12), it appears that Special Procedures have sent substantially fewer communications in 2014 than they did in 2006.<sup>17</sup> The major reason for the sharp decline in the number of communications sent is the increase in the number of joint communications by more than one Special Procedures mandate holder. (Previously, a single communication jointly sent to a state by three mandate holders was triple counted, but that is no longer the case.) In 2006, 53 percent of all communications were sent jointly, and in 2013, 84 percent of all communications were joint communications. This has clearly had an impact in the number of overall communications sent.

<sup>17</sup> In 2006, Special Procedures sent approximately 1,115 communications to states, and in 2014 that number dropped to a mere 553.





Despite the reduction of duplicate communications, from 2013 to 2014 there was a slight increase in communications sent, from 528 to 553.<sup>18</sup> On a side note, the decrease in the overall number of communications sent since 2006 may also reflect the ineffectiveness of this mechanism: in a five-year review of over 9,000 communications, states responded only half the time and only a small fraction led to concrete steps to remedy an allegation.<sup>19</sup>

## **HUMAN RIGHTS COUNCIL MANDATED COMMISSIONS OF INQUIRY**

Commissions of inquiry (COIs), a relatively new mechanism of the U.N. Human Rights Council, are bodies of qualified individuals mandated to investigate systematic, widespread, and grave violations of human rights in specific countries, with the intention of ensuring accountability, including for violations which may amount to crimes against humanity. The role of commissions of inquiry is similar to those of Special Procedures,

<sup>18</sup> Office of the United Nations High Commissioner for Human Rights, *United Nations Special Procedures Facts and Figures 2013* (Office of the United Nations High Commissioner for Human Rights, 2014): 5 and A/HRC/28/41, 5.

<sup>19</sup> Ted Piccone, “Catalysts for Change: How the UN’s Independent Experts Promote Human Rights,” (Washington, DC: Brookings Institution Press, 2012): 37.

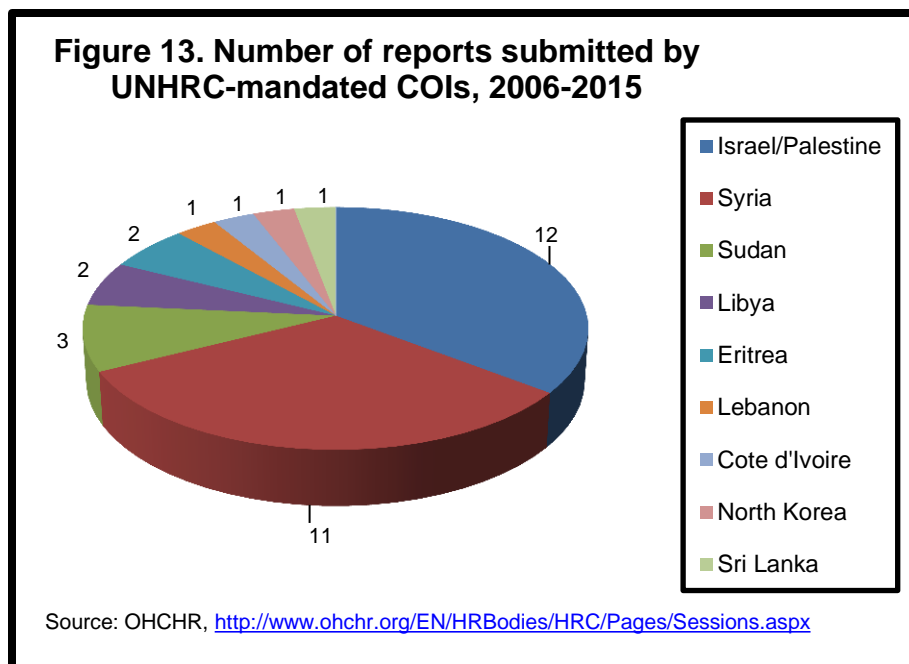
but is expanded, country-specific, and more time bound. At the core of COI mandates are fact-finding investigations, documenting violations and victims, and promoting accountability. It is in this last point – promoting accountability – that distinguish COIs from Special Procedures. COIs usually consist of three qualified human rights experts (with a chair acting as the lead) and are supported by a team of experienced human rights professionals comprising the Secretariat. Resolutions usually establish a COI for up to one year, although some are extended. COIs present oral updates and written reports to the Council, as well as public updates of their work. In addition to the Human Rights Council, commissions of inquiry can also be established by the Office of the High Commissioner for Human Rights, the U.N. Secretary-General, and the Security Council.<sup>20</sup> Often, states of concern do not consent to the commissions of inquiry and do not allow the commissioners physical access within their borders. When this is the case, the COI conducts interviews with those who have fled to third countries. The methods and structure of each COI are different because “they tend to be established after specific incidents in particularized contexts...their creation and operation has tended to be ad hoc.”<sup>21</sup>

Since 2006, the Human Rights Council has mandated 16 commissions of inquiry. Of those 16, seven (almost half) concern Israel/Palestine. Since 2006, Human Rights Council mandated commissions of inquiry have submitted 35 reports to the Council. Reports on the human rights situation in Israel/Palestine accounted for 12 of the 35 reports, or roughly 34 percent. While COIs have disproportionately concerned themselves with the situation in Israel/Palestine, since 2011 the human rights situation in Syria has also occupied the time of the Human Rights Council. Reports concerning Syria accounted for 11 of the 35 reports submitted, or 31 percent (Figure 13). While Israel/Palestine issues have historically dominated the COI agenda, Syria increasingly accounts for a larger share of COI activity.

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<sup>20</sup> For the purposes of this paper, only commissions of inquiry mandated by the Human Rights Council are analyzed.

<sup>21</sup> M. Cherif Bassiouni and Christina Abraham, *Siracusa Guidelines for International, Regional, and National Fact-Finding Bodies*, (Cambridge: Intersentia Publishing Ltd., 2013) 8.



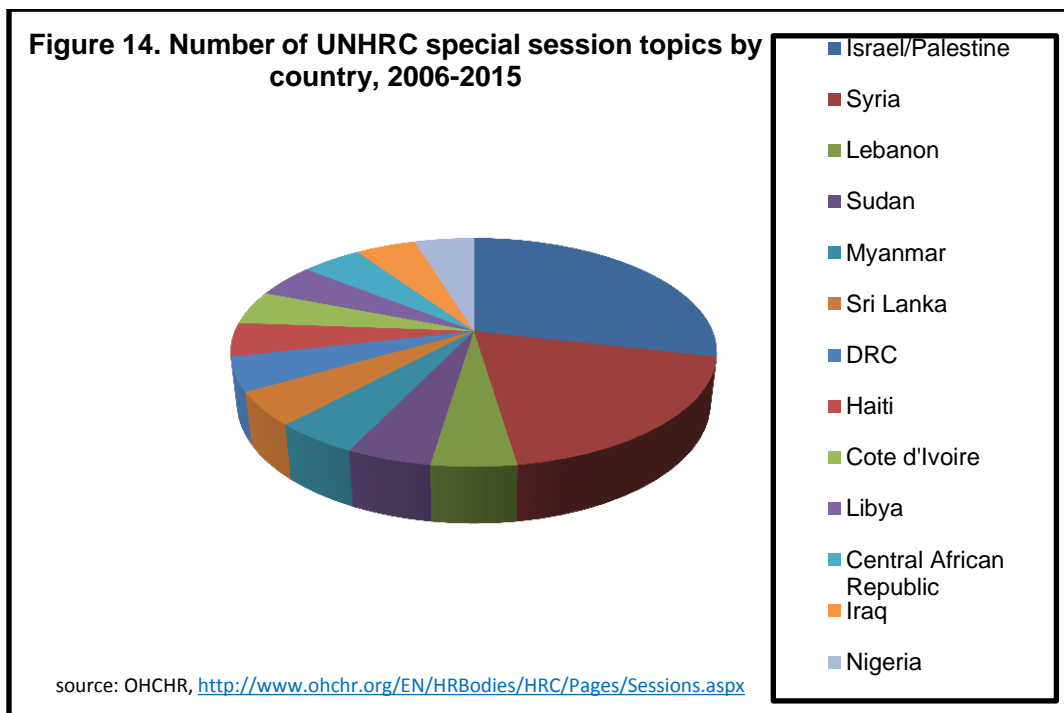
Especially since 2011, COIs have dealt with a wider range of country-specific human rights situations. Since 2011, the Human Rights Council has mandated nine COIs, covering a diverse array of countries from Côte d’Ivoire to Sri Lanka. Additionally, despite the refusal of some states to allow the COIs physically inside their borders to investigate allegations of human rights abuses – such in the cases of North Korea and Eritrea – the reports of these two Commissions in particular were thorough and held in high esteem by both the Council and many human rights observers. While a relatively new and underutilized human rights mechanism, COIs have successfully highlighted systemic violations of human rights within a country-specific framework.

## HUMAN RIGHTS COUNCIL SPECIAL SESSIONS

In addition to the regular sessions convened by the Human Rights Council three times per year (in March, June, and September – early October), the Human Rights Council can at any time convene special sessions regarding particularly urgent and worrisome human rights situations. Support of at least one-third of member states are required in order for a special session to be convened. Special Sessions can be both thematic and country-specific in nature, but have historically tended to be country-specific in character. Of 23 total special sessions convened by the Human Rights Council since 2006, 21 have dealt with country-specific human rights issues.<sup>22</sup>

<sup>22</sup> There have been two special sessions convened in regards to thematic issues: “The Negative Impact of the Worsening World Food Situation” (2008), and “The Impact of the Global Economic and Financial Crisis on the Universal Realization and Effective Enjoyment of Human Rights” (2009).

In 2011, four special sessions were called – one concerning the human rights situation in Libya and three concerning the human rights situation in Syria. As Figure 14 illustrates, Israel/Palestine and Syria account for 47 percent of all country-specific special sessions convened between 2006 and 2015. As cleavages emerge in some traditionally powerful voting blocs, it may become more difficult for the Council’s member states to muster support for special sessions that disproportionately focus on issues concerning Israel/Palestine. In the past four years, for example, the Council has convened special sessions on the human rights situation in Syria, the Central African Republic, and Burundi. Kofi Annan argues that Council action has “been possible due to the support of countries from Africa and Latin America, and even from within the Middle East.”<sup>23</sup>



<sup>23</sup> Kofi Annan, “Despite Flaws, UN Human Rights Council Can Bring Progress,” *The Elders*, December 8, 2011, <http://theelders.org/article/despite-flaws-un-human-rights-council-can-bring-progress>.

## DISCUSSION OF FINDINGS AND RECOMMENDATIONS

The data presented here sheds light on the Human Rights Council's serious and increasing commitment to addressing country-specific human rights issues since 2006. A close examination reveals that member states of the Council are expending increasing amounts of their time and resources to scrutinize country-specific human rights issues. In the past two years alone, the Human Rights Council has mandated five commissions of inquiry on the human rights situations in North Korea, Sri Lanka, Eritrea, the 2014 Gaza Conflict, and South Sudan. Contrary to earlier trends showing a bias towards Israel/Palestine, only one of the COIs established since 2013 concerns this issue. Additionally, the Human Rights Council has adopted nearly three times as many country-specific resolutions in 2015 than it did in 2006, showing that it is increasingly willing to come together as a Council to address dire human rights situations in particular countries. The Council has also shown renewed concern with country-specific issues through the convening of special sessions. Since 2011, the Council has convened nine special sessions – only one concerning Israel/Palestine – regarding country-specific situations in particular countries. The growth of country visits by the Council's independent experts between 2006 and 2015 also indicates that the Council's mechanisms are effectively in monitoring a wide array of rights abuses in specific locations.

*While Israel/Palestine continues to occupy a significant amount of the Council's agenda, states are clearly starting to expand their attention to include a more diverse array of country-specific human rights issues around the world.*

While there has been an increase in activity concerning country-specific human rights issues in the number of country-specific resolutions passed, commissions of inquiry mandated, and special sessions convened, activity has plateaued or even decreased in some of the other mechanisms. For example, while the amount of robust UPR recommendations made by states continue to outpace weaker UPR recommendations, the percent of robust recommendations as a total of all recommendations made has remained relatively consistent since the UPR was created in 2008. For example, in 2008 robust (action 5) recommendations accounted for 32.8 percent of all recommendations made. In six years, the percentage of action 5 recommendations only grew by 1.1 percent. So while states have always tended to make more robust recommendations than weak recommendations in the Universal Periodic Review, there has not been a growth in this trend over time. We also see stagnation in the overall

number of Special Procedures with country-specific mandates. In 2006 there were 13 Special Procedures with country-specific mandates. In 2015, that number has only grown by one. This suggests that the Council needs to focus more attention on advocating country-specific issues through these mechanisms, as to not make them obsolete and subject to drowning in thematic backlog.

An analysis of the Human Rights Council's behavior toward country-specific issues since 2006 also demonstrates that while Israel/Palestine continues to dominate country-specific human rights issues at the Human Rights Council, recently – especially since 2011 – states have begun to more seriously address human rights situations in other countries and regions. For instance, in the early years of the Council, commissions of inquiry disproportionately dealt with the human rights situation in Israel/Palestine, but in the last four years new COIs have been established for a wide range of countries, including the People's Democratic Republic of Korea, Eritrea and Sri Lanka. Additionally, special sessions have been convened in the last three years regarding the situations in the Central African Republic, Iraq, and Nigeria (Boko Haram). While Israel/Palestine continues to occupy a significant amount of the Council's agenda, states are clearly starting to expand their attention to include a more diverse array of country-specific human rights issues around the world.

One way in which the Human Rights Council can strengthen its efforts at country-specific scrutiny is to encourage joint efforts by Council-mandated Special Procedures. While there have been some joint country visits and joint reports submitted by Special Procedures, the Council could effectively help reduce its soaring costs while still increasing its investigations in specific countries by encouraging further collaboration among these experts.

A second policy recommendation to the Council is to continue its activity in the area of fact-finding bodies and commissions of inquiry. While costly, these mechanisms have been particularly effective at highlighting grave abuses in a country-specific context not only in Geneva but in New York as well. Where feasible, the commissions of inquiry should draw upon the work of relevant Special Rapporteurs and collaborate wherever possible. The Human Rights Council should treat commissions of inquiry as a separate and unique human rights mechanism, and continue to update best practices and suggestions for ways in which the processes can be streamlined.<sup>24</sup>

The explosion in the Council's country-specific scrutiny through the Universal Periodic Review mechanism holds promise to further the quest for universalization of human rights norms. To succeed, member states must now refocus their attention on implementation of the hundreds of recommendations accepted each year by states under review. This can be done in part through allocation of additional resources to

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<sup>24</sup> In December 2015, OHCHR released a report offering comprehensive guidance for COIs and other fact finding missions which lays a useful base upon which to build. United Nations, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice*, (New York and Geneva: United Nations, 2015), [http://www.ohchr.org/Documents/Publications/Col\\_Guidance\\_and\\_Practice.pdf](http://www.ohchr.org/Documents/Publications/Col_Guidance_and_Practice.pdf).

support capacity building at the national and local levels to ensure recommendations are fulfilled. UPR also has generated new commitments by states to cooperate with the Council's mechanisms, which further reinforces the gradual buy-in to the U.N.'s human rights system. Holding states accountable for cooperating with the Council's mechanisms, including through country visits by independent experts, would in turn further reinforce and legitimize the UPR process.

## **CONCLUSION**

Since the United Nations Human Rights Council was created in 2006, it has made significant strides toward improving the enjoyment and protection of human rights for all individuals around the world through a complex strategy that involves a combination of softer and tougher approaches, from building up the capacities of states through technical assistance to criticizing them frankly on the international stage. Despite its accomplishments, critics claim that the Council has failed to live up to its original mandate and has devoted far too much attention to vague thematic issues instead of focusing its efforts on addressing serious human rights violations in country-specific contexts. While the Human Rights Council has historically devoted more of its time and resources to thematic concerns, in the past four years it has shown an inclination to confront efforts to curtail country-specific human rights issues with greater country-specific scrutiny. If the current trend persists, the Council will be well placed to have lived up to its mandate to protect and promote human rights by addressing human rights violations wherever they occur.

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