

# The United Nations



# ON TRIAL

## Briefing Notes

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The information in these briefing notes was compiled by Rebecca Sutton and Aaron Wu.

## Briefing Note 1: United Nations Membership, Organisational Structure, and Financing

### *Brief history of the United Nations*

- The name ‘United Nations’ (UN) was coined by United States President Franklin D Roosevelt, and used in the *Declaration by United Nations* of 1 January 1942. In it, representatives of 26 countries pledged that their governments would continue fighting together against the Axis Powers.
- In August-October 1944, delegates from China, the Soviet Union, the United Kingdom and the United States met at Dumbarton Oaks to discuss proposals for a post-war international organisation.
- In 1945, representatives of 50 countries met in San Francisco at the United Nations Conference on International Organization to draft the United Nations Charter on the basis of proposals discussed the year before at Dumbarton Oaks.
- The UN Charter was signed on 26 June 1945 by the representatives of 50 countries. Poland, which was not represented at the Conference, also signed the Charter and become one of the original 51 Member States.
- The UN officially came into existence on 24 October 1945, when the Charter had been ratified by China, France, the Soviet Union, the United Kingdom, the United States, and by the majority of its other signatories.
- The UN is merely the latest in a series of intergovernmental organisations established by sovereign states to cooperate on specific matters of international concern. In 1865, for example, countries founded the International Telegraph Union. Countries established the Universal Postal Union in 1874. Both are now United Nations specialised agencies.
- The forerunner of the United Nations was the League of Nations, an organisation convened in similar circumstances during the first World War, and established in 1919 under the Treaty of Versailles ‘to promote international cooperation and to achieve peace and security’. The International Labour Organization was also created under the Treaty of Versailles as an affiliated agency of the League of Nations. The League ceased its activities after failing to prevent the Second World War.

### *Membership and structure*

- There are currently 193 United Nations (‘UN’) member states, and two non-member observer states (the Holy See and State of Palestine).
- Membership in the UN is open to all ‘peace-loving states’ that are willing and able to accept the obligations contained in the UN Charter. Admission is effected by a decision of the UN General Assembly upon recommendation of the Security Council.
- The UN System is broadly divided into five principal ‘organs’: the General Assembly; the Security Council; the Economic and Social Council (ECOSOC); the Secretariat, headed by the UN Secretary-General, Ban Ki-Moon; and the International Court of Justice (ICJ) (refer to Figure [x]).
- A sixth principal organ, the Trusteeship Council, suspended operations in 1994 upon the independence of Palau, the last remaining UN trustee territory.
- Four of the five principal organs are located at the main UN Headquarters in New York City. The ICJ is located in The Hague. Major agencies are based in UN offices in Geneva, Vienna, and Nairobi.
- The UN’s six official languages, used in its meetings and its documents, are Arabic, Chinese, English, French, Russian, and Spanish.

- The Secretariat and its related agencies comprise 17 specialised bodies; 14 funds, including the International Monetary Fund; four related organisations, including the World Trade Organization and the International Atomic Energy Agency; two trust funds; and three convention secretariats.
- Under the General Assembly, there are eight committees and a plethora of boards, councils, working groups and panels. There are also 11 ‘programs’, including UNICEF and the UN High Commissioner for Refugees.
- Below the Security Council sit a number of ‘subsidiary bodies’, including peacekeeping operations.
- The Economic and Social Council has five regional commissions, including the Economic Commission for Europe; nine functional commissions; three standing committees; and expert, ad-hoc and related bodies.
- Figures from 2011 indicate that the UN employs approximately 75,000 people in total.

### *Funding*

- The UN is financed from member states’ assessed and voluntary contributions. The General Assembly approves the regular budget and determines the assessment for each member. This is broadly based on the relative capacity of each member state to pay, as measured by its gross national income (GNI), with adjustments for external debt and low per capita income.
- Its regular budget, agreed every two years, pays for the cost of administering the UN. This includes daily allowances for its personnel that far exceed those of American or British civil servants. The two-year budget for 2012-13 has more than doubled over the past two decades, to US\$5.512 billion in total.
- A large proportion of the UN’s expenditure, directed towards its core mission of maintaining peace and security, is assessed separately from the main organisational budget. This peacekeeping budget for the 2015-16 fiscal year is US\$8.27 billion, supporting 124,746 personnel deployed in 16 operations worldwide.
- Former UN Deputy Secretary, Mark Malloch-Brown, has said that the UN budget is ‘utterly opaque, untransparent and completely in the shadow’, and would benefit from being consolidated and audited from the outside.
- In all, over the last 70 years, the Guardian estimates that the UN has spent more than half a trillion dollars. Annual UN expenditure, even accounting for inflation, is 40 times higher than it was in the early 1950s (refer to Figure [x]). Even at that level of funding, some UN specialised agencies warn that they are operating on the brink of bankruptcy.
- Even with costs surging fourfold over the last 20 years, total UN spending this year is still only approximately half of New York City’s US\$75 billion budget. The UN’s total resources and manpower are also only a fraction of what regional organisations (such as the European Union) possess.
- UN peacekeeping activities are more extensive than NATO’s activities, but operates on personnel and equipment borrowed from Member States. Its development budget is also significantly less than the UK’s Department for International Development.

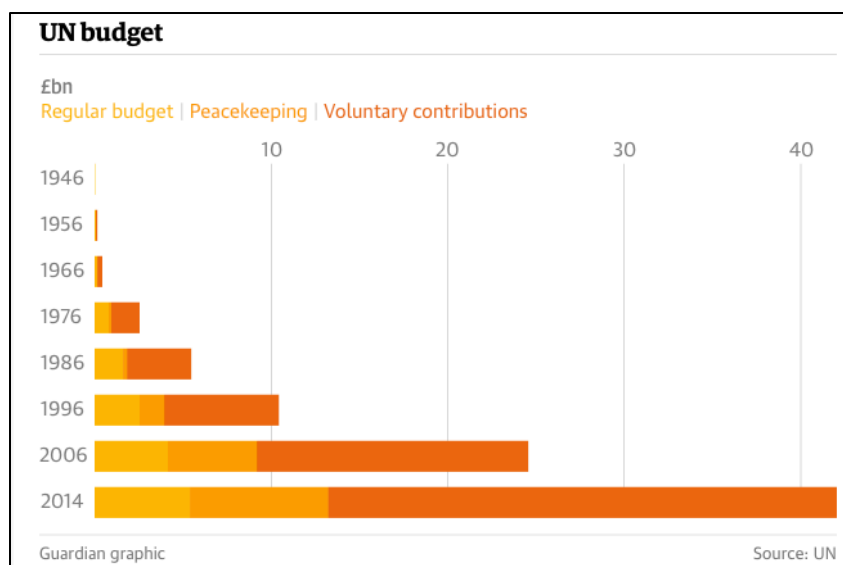


Figure [i]

### *Reported (in)efficiencies*

- Malloch-Brown wrote in 2006 that ‘there’s huge redundancy and lack of efficiency ... but it’s entirely the making of the member states, who want to pass certain resolutions and demand certain papers’. For example, in Geneva alone, the UN held 10,000 meetings in 2009, offered 632 training workshops and translated 220,000 pages of documents for its yearbooks, reports, and working papers.
- Jean-Pierre Lehmann, Professor of International Political Economy at the Lausanne’s IMD Business School has said:  
‘Generally, the UN has been a terrible disappointment compared to the ideas with which it was established ... It serves as a gravy train for a very bloated employment system, and, yes, there is huge overlap between the agencies.’
- Valerie Amos, the UK’s former Minister for International Development, has described the UN as a valuable ally in delivering UK aid, but has also lamented its inefficiency. She reports that:  
‘There were concerns about the UN being overly bureaucratic and slow in the way it dealt with development issues. I think that’s one of the criticisms of the UN that remains until now, that since it was formed it has become bigger and bigger. Many organisations have overlapping mandates. It’s become an organisation that’s quite unwieldy in lots of respects.’
- Helen Clark, head of the UNDP, dealt with the organisation in her former role as Prime Minister of New Zealand. She said that, as the leader of a small country, she valued being able to use the UN’s size and resources to deliver New Zealand’s aid programme, such as emergency assistance to Indonesia after the 2004 Tsunami. But she was less impressed when she started at UNDP six years ago:  
‘When I arrived, the organisation was a little over a year into its first ever strategic plan. What that tells you is that modern management and modern strategic planning was late coming to the UN’.
- David Shearer, who served the organisation in senior posts in Rwanda, Belgrade, Afghanistan, Iraq, and Jerusalem, said the organisation’s strength was in its ‘gravitas’. Governments may turn away NGOs, but the UN cannot be ignored. Neither can the the UN’s huge logistical capabilities,

such as the WFP's airlifts, be matched by any private organisation. Yet, he said the UN was weighed down by 'incompetence' and red tape. He has said:

'It's a very heavily bureaucratic organisation. It hasn't changed in a lot of years. It's built systems on top of systems on top of systems ... Getting the right people, that was the Rosetta Stone of the UN for me. Once I cracked that, it meant I could use the organisation how it was supposed to be used irrespective of the structure, because the structure will always protect the incompetent, in a sense'.

- Critics point to the UN having grown large and cumbersome. For example, support staff are doing ill-defined jobs. Staff costs often account for more than two-thirds of some UN agencies' outgoings. 'Performance management is a joke', said one official. 'Almost everyone gets 'above average' in their assessment'.
- Yet, Jan Kubis, former Executive Secretary of the UN Economic Commission for Europe, has defended the organisation's role, explaining that:  
'We do our standard setting, we do our norm setting, we do our reports and it is so technical and so diverse and so apolitical that we are below the line of visibility ... Very often you hear about this or that development, but rarely are we mentioned'.

### *Reform attempts*

- Since the late 1990s, there have been many calls to reform the UN. Former UN Secretary-General Kofi Annan initiated what he called a 'quiet revolution' by reducing staff, cutting the administrative budget and trying to limit patronage.
- Former Australian Foreign Minister, Gareth Evans has said that 'there is no single institution that I found more exhilarating at its best, yet more debilitatingly frustrating at its worst, than the United Nations'. He said his efforts to advance reform of the UN 'were about as quixotic and unproductive as anything I have ever tried to do'.
- In 2006, the UN published its most enduring report into reform, entitled 'Delivering as One'. Authored by a panel co-chaired by the prime ministers of Mozambique, Norway, and Pakistan, and including the then British Chancellor, Gordon Brown, it detailed criticisms which said the UN was badly failing those it was supposed to help. Its work on development was described as 'often fragmented and weak'; its governance was called 'inefficient and ineffective'. The report said the UN's taste for setting goals at the expense of delivering results failed the poorest and most vulnerable. It also criticised a system of funding for many UN programmes in which officials had to beg for money from governments year after year, making it difficult to plan. It said:  
'Cooperation between organisations has been hindered by competition for funding, mission creep and by outdated business practices ... In some sectors, such as water and energy, more than 20 UN agencies are active and compete for limited resources without a clear collaborative framework. More than 30 UN agencies and programmes have a stake in environmental management.'
- The reform report recommended streamlining operations and functions between different UN agencies and programmes, noting that UN agencies are so fragmented that each has its own IT system. Further, about one-third of the UN operations in 60 countries had a budget of less than US\$2 million per agency, which meant that they could do little more than afford the cost of running the office. Executive Director of the reform report, Adnan Amin, has said the changes proposed in the report were 'fundamentally good ideas', but had not had the impact its authors had hoped for:  
'It's led to reams of reports written in the UN, many of them impenetrable to the rest of the world because of the jargon used. I think there has been incremental progress but I don't think we can say there's been a fundamental change in the way the UN does

business ... What we have now is another multiplication of targets and goals which are an extraordinarily comprehensive assessment of what's needed to be done but there's no operational clarity around them ... We still have a lot of fragmentation. There are about 1,200 country offices of the UN around the world. There are 100 countries with more than 10 UN country offices in each country. You have country offices with a budget of eight or nine million [dollars] and a staff of five people. Half the money goes for the operational expenses of the office, leaving what is actually a minuscule amount of money for programming or key activities. In the context of what's happening today, a few million is not going to make any difference.'

- UN Secretary General Ban Ki-Mon, who recalls learning from books provided by UNICEF as a child after his family was forced to flee during the first UN-led war in his native Korea in the 1950s, has said that streamlining UN operations is a key priority of his administration:  
 'The United Nations of today is hugely different from the United Nations 70 years ago, and therefore it is very important the United Nations changes and adapts itself to changing circumstances ... It's been changing, very drastically now. I have seen this kind of duplication between and among the United Nations agencies, for example water issues.'
- According to Clarke, however, implementing these reforms 'hasn't been easy because there are many different agencies involved and they have all developed over the years their own procedures and ways of working. It has required long and patient negotiation to get the point of having standard operating procedures. It couldn't just be decreed because no one has the power to decree it.'
- UN member states themselves tend to be large obstacles to reform. Amos has said, for example:  
 'I don't think people give enough weight to the fact that the United Nations is a body made up of member states ... coming at the reform agenda with very, very different perspectives. One of the things I saw close up was that if, for example, you had a UN entity based in a particular country and you are seeking to reform and streamline and so on, very often that country will argue strenuously against taking away any resources. ... Even if you're saying you want to cut a few staff because it makes sense to have them somewhere else, there will be really serious lobbying against that.'

#### *Allocation of UN jobs between member states*

- According to Amos, politics continues to play a major part in the allocation of jobs: 'There's an enormous amount of lobbying by member states for particular jobs ... The permanent members of the Security Council all expect to have a senior person from their country around the UN table ... How you reflect in a 193-member state organisation the diversity of the member states and retain a merit-based system is a huge challenge for the UN.'
- A senior UN official has said:  
 'Appointments should be on merit but the truth is that if a particular country, one you need to keep on side for political or financial reasons, wants you to put one of its own in to a particular job, then sometimes you do it if it's not going to mess things up too much. Sometimes that person is very competent. If they're not you just end up working around them. It does mean that there are other people who don't seem to be particularly good or work very hard at what they do. But there are other people who are very good and they carry the rest.'
- Yet India's Ambassador to the UN, Asoke Kumar Mukerji, offers a potential explanation:  
 'If you look at the secretariat of the United Nations it is dominated by industrialised economies because they are the ones who contribute the bulk of the budget and they get the bulk of the positions in the secretariat, managerial positions ... The point that the G77

is an obstacle isn't fair because the G77 is marginalised in the overall secretariat of the United Nations.'

Read more:

1. <http://www.theguardian.com/world/2015/sep/07/what-has-the-un-achieved-united-nations>
2. <http://www.telegraph.co.uk/news/worldnews/11699243/The-UN-is-an-under-funded-bureaucratic-labyrinth-and-a-force-for-good-in-the-world.html>
3. [http://www.nytimes.com/2011/01/06/world/europe/06iht-nations06.html?\\_r=0](http://www.nytimes.com/2011/01/06/world/europe/06iht-nations06.html?_r=0)





# The United Nations System



## UN Principal Organs

General Assembly

Security Council

Economic and Social Council

Secretariat

International Court of Justice

Trusteeship Council<sup>6</sup>

### Subsidiary Organs

Main and other sessional committees  
Disarmament Commission  
Human Rights Council  
International Law Commission  
Standing committees and ad hoc bodies

### Funds and Programmes<sup>1</sup>

**UNDP** United Nations Development Programme  
• **UNCDF** United Nations Capital Development Fund  
• **UNV** United Nations Volunteers  
**UNEP**<sup>2</sup> United Nations Environment Programme  
**UNFPA** United Nations Population Fund  
**UN-HABITAT**<sup>3</sup> United Nations Human Settlements Programme  
**UNICEF** United Nations Children's Fund  
**WFP** World Food Programme (UN/FAO)

### Research and Training

**UNIDIR** United Nations Institute for Disarmament Research  
**UNITAR** United Nations Institute for Training and Research  
**UNSSC** United Nations System Staff College  
**UNU** United Nations University

### Other Entities

**ITC** International Trade Centre (UN/WTO)  
**UNCTAD**<sup>1,4</sup> United Nations Conference on Trade and Development  
**UNHCR**<sup>1</sup> Office of the United Nations High Commissioner for Refugees  
**UNOPS** United Nations Office for Project Services  
**UNRWA**<sup>1</sup> United Nations Relief and Works Agency for Palestine Refugees in the Near East  
**UN-Women**<sup>1</sup> United Nations Entity for Gender Equality and the Empowerment of Women

### Related Organizations

**CTBTO Preparatory Commission**  
Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization  
**IAEA**<sup>1,3</sup> International Atomic Energy Agency  
**ICC** International Criminal Court  
**ISA** International Seabed Authority  
**ITLOS** International Tribunal for the Law of the Sea  
**OPCW**<sup>2</sup> Organisation for the Prohibition of Chemical Weapons  
**WTO**<sup>1,4</sup> World Trade Organization

### Subsidiary Organs

Counter-terrorism committees  
International Criminal Tribunal for Rwanda (ICTR)

International Criminal Tribunal for the former Yugoslavia (ICTY)  
Mechanism for International Criminal Tribunals (MICT)  
Military Staff Committee  
Peacekeeping operations and political missions  
Sanctions committees (ad hoc)  
Standing committees and ad hoc bodies

### Advisory Subsidiary Body

Peacebuilding Commission

### HLPF High-level Political Forum on sustainable development

### Functional Commissions

Crime Prevention and Criminal Justice  
Narcotic Drugs  
Population and Development  
Science and Technology for Development  
Social Development  
Statistics  
Status of Women  
United Nations Forum on Forests

### Regional Commissions<sup>8</sup>

**ECA** Economic Commission for Africa  
**ECE** Economic Commission for Europe  
**ECLAC** Economic Commission for Latin America and the Caribbean  
**ESCAP** Economic and Social Commission for Asia and the Pacific  
**ESCWA** Economic and Social Commission for Western Asia

### Other Bodies

Committee for Development Policy  
Committee of Experts on Public Administration  
Committee on Non-Governmental Organizations  
Permanent Forum on Indigenous Issues  
**UNAIDS** Joint United Nations Programme on HIV/AIDS  
**UNGEGN** United Nations Group of Experts on Geographical Names

### Research and Training

**UNICRI** United Nations Interregional Crime and Justice Research Institute  
**UNRISD** United Nations Research Institute for Social Development

### Specialized Agencies<sup>1,5</sup>

**FAO** Food and Agriculture Organization of the United Nations  
**ICAO** International Civil Aviation Organization  
**IFAD** International Fund for Agricultural Development  
**ILO** International Labour Organization  
**IMF** International Monetary Fund  
**IMO** International Maritime Organization  
**ITU** International Telecommunication Union  
**UNESCO** United Nations Educational, Scientific and Cultural Organization

**UNIDO** United Nations Industrial Development Organization  
**UNWTO** World Tourism Organization  
**UPU** Universal Postal Union  
**WHO** World Health Organization  
**WIPO** World Intellectual Property Organization  
**WMO** World Meteorological Organization  
**World Bank Group**<sup>7</sup>  
• **IBRD** International Bank for Reconstruction and Development  
• **IDA** International Development Association  
• **IFC** International Finance Corporation

### Departments and Offices

**EOSG** Executive Office of the Secretary-General  
**DESA** Department of Economic and Social Affairs  
**DFS** Department of Field Support  
**DGACM** Department for General Assembly and Conference Management  
**DM** Department of Management  
**DPA** Department of Political Affairs  
**DPI** Department of Public Information  
**DPKO** Department of Peacekeeping Operations  
**DSS** Department of Safety and Security  
**OCHA** Office for the Coordination of Humanitarian Affairs

**OHCHR** Office of the United Nations High Commissioner for Human Rights  
**OIOS** Office of Internal Oversight Services  
**OLA** Office of Legal Affairs  
**OSAA** Office of the Special Adviser on Africa  
**PBSO** Peacebuilding Support Office  
**SRSO/CAAC** Office of the Special Representative of the Secretary-General for Children and Armed Conflict  
**SRSO/SVC** Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict

**UNISDR** United Nations Office for Disaster Risk Reduction

**UNODA** United Nations Office for Disarmament Affairs  
**UNODC**<sup>1</sup> United Nations Office on Drugs and Crime  
**UNOG** United Nations Office at Geneva  
**UN-OHRLS** Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States  
**UNON** United Nations Office at Nairobi  
**UNOP**<sup>2</sup> United Nations Office for Partnerships  
**UNOV** United Nations Office at Vienna

### Notes:

- All members of the United Nations System Chief Executives Board for Coordination (CEB).
- UN Office for Partnerships (UNOP) is the UN's focal point vis-a-vis the United Nations Foundation, Inc.
- IAEA and OPCW report to the Security Council and the GA.
- WTO has no reporting obligation to the GA, but contributes on an ad hoc basis to GA and Economic and Social Council (ECOSOC) work on, inter alia, finance and development issues.
- Specialized agencies are autonomous organizations whose work is coordinated through ECOSOC (intergovernmental level) and CEB (inter-secretariat level).
- The Trusteeship Council suspended operation on 1 November 1994, as on 1 October 1994 Palau, the last United Nations Trust Territory, became independent.
- International Centre for Settlement of Investment Disputes (ICSID) and Multilateral Investment Guarantee Agency (MIGA) are not specialized agencies but are part of the World Bank Group in accordance with Articles 57 and 63 of the Charter.
- The secretariats of these organs are part of the UN Secretariat.

This Chart is a reflection of the functional organization of the United Nations System and for informational purposes only. It does not include all offices or entities of the United Nations System.

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Figure [ii]

## Briefing Note 2: Maintaining Peace and Security

### *Background on Responsibility to Protect / Humanitarian Intervention*

- The UN founders were overwhelmingly preoccupied with the problem of states waging war against each other, and the Charter produced a really quite stunning innovation: it outlawed, across the board, the use of force. The only exceptions were self-defence in confronting an attack (Article 51), and when authorized (under Chapter VII) by the Security Council.
- On the question of external force being applied in response to an internal catastrophe, the Charter clearly stated a principle of non-interference (Article 2(7)): “Nothing should authorise intervention in matters essentially within the domestic jurisdiction of any State”.
- The inclination to read the Charter as very limited in its reach was reinforced by the commencement of the Cold War almost immediately after the UN began. The large increase in UN membership during the decolonisation era also had an impact – new states were conscious of their fragility and who saw the non-intervention norm as one of their few defences against threats and pressures from more powerful international actors.
- The quintessential problem of the 1990s became that of intrastate conflict: civil war and internal violence were perpetrated on a massive scale. Following the tragedies in Rwanda and the Balkans in the 1990s, the international community began to seriously debate how to react effectively when citizens’ human rights are grossly and systematically violated.
- The question at the heart of the matter was whether States have unconditional sovereignty over their affairs or whether the international community has the right to intervene in a country for humanitarian purposes. There was fierce debate about what came to be called the issue of “**humanitarian intervention**”.
- On the one hand there were those who argued fiercely for the ‘the right to intervene’; others claimed the primacy and continued resonance of the concept of national sovereignty, seen as a complete inhibitor to any such coercive intervention.
- The issue came to a head when Secretary-General Kofi Annan made the following plea to the UN General Assembly in 2000: ‘If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violations of human rights?’
- In response, the UN-appointed International Commission on Intervention and Sovereignty (ICISS) sought to move the terms of the debate regarding mass atrocities, from the ‘right of intervention’ to the ‘**responsibility to protect**’ (**R2P**). The key tenet of the doctrine was articulated as “focusing attention where it should be most concentrated, on the human needs of those seeking protection or assistance”.
- R2P has quickly moved up the ladder of international law, from an emerging idea in the late 1990s to its official formulation over the turn of the century. At the same time, skeptics and critics have raised concerns about the concept, arguing that it is a veil for self-interested interventions by major powers and a threat to international peace and security.
- Initially, the doctrine was most notably applied to mediate Kenya's post-election violence in 2008, which political scientist Ramesh Thakur refers to as the “only successful R2P marker to date”. Following the mass atrocity crimes spawned by the highly disputed election in Kenya, other nations swiftly applied political and diplomatic pressure to stop violence and encourage a political solution that resulted in a coalition government. Before being cited explicitly in 2011 in reference to the situation in Libya, the Security Council invoked the R2P doctrine for the first time in its 2006 resolution expanding the UN mission in Darfur.

### *The responsibility to protect doctrine*

- The concept of R2P affirms that states and governments do not only have a right to sovereignty, but also a responsibility to protect their populations, and that the international community must take action when states fail to uphold this responsibility.
- R2P has three components:
  - **Responsibility to Prevent:** The basic point of preventive efforts is of course to reduce, and hopefully eliminate, the need for intervention altogether.
  - **Responsibility to Protect:** Should all preventive measures have failed to ease tensions and the state be unable or unwilling to solve the situation, intervention has to be considered. There are 6 criteria for reacting:
    - *Right authority* – the UN is the primary source of authority to intervene.
    - *Just cause* – intervention must be aimed at halting or averting specific events (eg. large scale loss of life which is the product of state action, neglect, or inability to act).
    - *Right intention* – intervention must be intended to ease human suffering
    - *Last resort* – all other pathways (eg. sanctions) must have been tried.
    - *Proportional means* – intervention must be targeted in scope.
    - *Reasonable prospect of success* – intervention must solve the problem at hand and not make things worse.
  - **Responsibility to Rebuild:** this includes the provision of security and protection of the population, as well as disarmament, demobilization, and reintegration of local security forces.

### *Critical views on R2P*

- **UN use of R2P in Libya:** In 2011 the UN Security Council invoked the ‘responsibility to protect’ doctrine and adopted UN SC Resolution 1973 endorsing a no-fly zone over Libya and authorizing member states to ‘take all necessary measures’ to protect civilians under attack from Muammar al-Qaddafi’s government. Western-led air strikes ultimately ousted Qaddafi from power and prompted criticism from Security Council members like Russia that the R2P doctrine was cover for a regime change strategy. Experts say such sentiments, combined with concern about the way Libya’s upheaval spilled over into the region, have given pause to humanitarian interventions backed by regional or global bodies.
- **R2P goes too far:**
  - R2P constitutes the institutionalisation of a doctrine that serves to legitimise instruments and technologies of Western interventionism. Predicated on the Liberal logic of international security, underpinned by the dominant trope of mitigating further state collapse—the invocation of R2P is frequently accompanied by repressive and exclusionary practices, associated with militarisation, securitisation and highly intrusive statebuilding.
  - When nations send their military forces into other nations’ territory, it is rarely (if ever) for ‘humanitarian’ purposes. They are typically pursuing their narrow national interest - grabbing territory, gaining geo-strategic advantage, or seizing control of precious natural resources. Leaders hope to win public support by describing such actions in terms of high moral purposes – bringing peace, justice, democracy and civilisation to the affected area.
  - In the era of colonialism, European governments all cynically insisted that they acted to promote such higher commitments - the ‘white man’s burden’, ‘*la mission civilisatrice*’, and so on and so forth. In 2003, the US-UK invasion and occupation of Iraq was labeled ‘humanitarian intervention’ by UK Prime Minister Tony Blair.

- The appeal to higher moral purposes continues to infect the political discourse of the great powers. R2P is only the latest in this long tradition of political obfuscation.
- **R2P does not go far enough:**
  - Some rights activists and journalists have said regime change should sometimes be part of the process of protecting populations. David Rieff, a journalist who specializes in humanitarian issues, wrote in the *New York Times Magazine* in June 2008: ‘Use any euphemism you wish, but in the end these **interventions have to be about regime change** if they are to have any chance of accomplishing their stated goal’. In the wake of the 2011 crisis in Libya, following calls for regime change, Thakur also argued: ‘R2P is not solely about military intervention but, if it is to have any meaning at all, must include that option **as a last resort**’.

### *Going to war against ISIS*

- In late November 2015, the UN Security Council unanimously adopted **UNSC Resolution 2249 (2015)** regarding ISIS. The resolution does not invoke Chapter VII of the UN charter specifically to authorize the use of outside military force within the borders of a sovereign state. It was nonetheless crafted in a way clearly meant to give countries additional diplomatic and political cover and impetus to target Isis and eliminate it.
- The text of the ISIS Resolution calls on nations ‘with the capacity to do so’ to ‘take all necessary measures’ to ‘redouble and coordinate their efforts to prevent and suppress terrorist acts’ committed by Isis. It also labels the ISIS jihadists a ‘global and unprecedented threat to international peace and security’.
- **News coverage prior to the resolution** being finalised:
  - World powers are poised to forge a single resolution at the UNSC to declare a common war against Isis and ‘eradicate’ jihadists in Iraq and Syria. The attacks in Paris as well as the downing of the Russian jet over the Sinai Peninsula have galvanised a hitherto divided Security Council.
  - With its alleged execution this week of a Chinese national, Isis has now slaughtered citizens of all five permanent Security Council members. French officials said they were formally submitting a draft resolution to the Security Council, pushing aside a competing draft offered by Russia earlier this week.
  - The pressure was greatest on Russia and China, both veto-wielding permanent members traditionally averse to any resolutions that could be perceived as interference in another country’s affairs. The French manoeuvre reflected confidence that its resolution would not provoke Russian or Chinese vetoes and would thus win approval.
- **News coverage following the resolution:**
  - Stunned by the attacks of one week ago in Paris, the French government had correctly calculated that sympathy and a new sense of crisis in the chamber would trump months of ‘dithering and division’ on the combined issues of Isis and the Syrian conflict.
  - All able states should join the fight against Islamic State in Syria and Iraq and redouble efforts to prevent further attacks by the militant group, the United Nations Security Council has declared in a unanimous vote. With a rare rapidity of purpose, the United Nations has unanimously adopted a sweeping anti-Isis resolution imploring the world to unite to defeat Isis. It called on member states to ‘redouble and coordinate their efforts’ to prevent further terrorist horrors by the group and ‘eradicate’ its safe havens straddling parts of Iraq and Syria.
  - Comments by British prime minister David Cameron: ‘The UN security council has unanimously backed action against this evil death cult in both Syria and Iraq ... Today’s vote shows beyond doubt the breadth of international support for doing more in Syria and

for decisive action to eradicate Isil.’

*The case of the Democratic Republic of the Congo*

- As global patterns of conflict in the 21st century have rapidly changed, the UN and other actors have transformed peacekeeping from a process conducted by impartial military observers to one carried out by more robust and offensive entities. Peacekeeping has merged in many ways with peace enforcement.
- The United Nations **Force Intervention Brigade (FIB)** in the Democratic Republic of Congo (DRC) is a peacekeeping operation that has redefined the field.
  - The FIB has a chapter VII mandate and its expressed role is to neutralize armed groups responsible for destabilizing the DRC.
  - This represents **the first time the UN is implementing a chapter VII mandate to its fullest sense**—that is, deploying a combat force to carry out targeted offensive operations, including the use of deadly force, against “hostile forces” or armed groups.
- Following the signing of the Lusaka Ceasefire Agreement in July 1999 between the Democratic Republic of the Congo (DRC) and five regional States (Angola, Namibia, Rwanda, Uganda and Zimbabwe) in July 1999, the Security Council established the UN Mission in the DRC (**MONUC**).
  - The initial mandate was to plan for the observation of the ceasefire and disengagement of forces and maintain liaison with all parties to the Ceasefire Agreement.
  - Later in a series of resolutions, the Council expanded the mandate of MONUC to the supervision of the implementation of the Ceasefire Agreement and assigned multiple related additional tasks.
- On 1 July 2010, the Security Council renamed **MONUSCO** to reflect the new phase reached in the country.
  - The new mission was authorized to use all necessary means to carry out its mandate relating, among other things, to the protection of civilians, humanitarian personnel and human rights defenders under imminent threat of physical violence and to support the Government of the DRC in its stabilization and peace consolidation efforts.
- The mission in the DRC is one of the biggest peacekeeping operations in the world, with almost 20,000 personnel on the ground. It is mandated to protect civilians and also help with the reconstruction of the country. It has played a key role in organising democratic elections in DR Congo and has launched military operations against various rebel groups.
- In March 2013 the UN embarked on a more robust approach in the DRC: it extended the mandate of MONUSCO and established the **Force Intervention Brigade (FIB)**.
  - The FIB was established by the UN following several reports highlighting the changing dynamics of the conflict in the DRC, particularly the recurrent waves of violence in the eastern Congo, that were accompanied by serious human rights violations, including sexual and gender-based violence.
  - The situation was exacerbated by the continued weak capacity of the Congolese state, especially apparent in the national army and police, to safeguard the national territory and protect civilians effectively.
- It was stated in the relevant resolution that the FIB was established ‘**on an exceptional basis** and without creating a precedent or any prejudice to the agreed principles of peacekeeping.’
  - It would consist of three infantry battalions, one artillery and one special force and reconnaissance company with headquarters in Goma, and operate under direct command of the MONUSCO Force Commander.
  - It had responsibility for neutralising armed groups and the objective of contributing to reducing the threat posed by armed groups to state authority and civilian security in

eastern DRC and to make space for stabilisation activities.

- The FIB retains some level of autonomy in implementing its mandate, with leeway to carry out its uniquely branded offensive operations focused on the restoration of normalcy in the eastern DRC. The brigade currently comprises approximately 3,000 forces from three countries in the SADC region—Malawi, South Africa, and Tanzania.

#### *Favourable views of the UN Force Intervention Brigade in the DRC*

- The FIB has changed the meaning of having peacekeepers present in any host community. During its first year, the FIB was credited with disarming several armed groups in the eastern Congo, chief among which was the Mouvement du 23 Mars (M23) rebellion. The brigade carried out targeted offensive initiatives, sometimes pursuing armed groups in localities where they were hiding. In the eastern Congo, the FIB has renewed hope that the objectives of securing the DRC and restoring state authority are achievable.
- Overall, the brigade has positively transformed the practice of peacekeeping at systemic, strategic, operational, and tactical levels. At the systemic level, the FIB has contributed to the relative stability the DRC now enjoys, especially by disarming recalcitrant armed groups such as the M23, which was defeated in November 2013.
- That the Security Council was willing to take the political risk to explicitly authorise a **high-tempo offensive operation** by the UN (what some peacekeeping experts would term ‘peace enforcement’) was seen by many as a contributing factor for the eventual success of the FIB. The particularly forceful language of the resolution also provided a cloak of assurance to the countries contributing to the FIB—Tanzania, South Africa and Malawi—that their unequivocal **readiness to use force** to carry out the mandate in its fullest sense was sanctioned.

#### *Critical views of the UN Force Intervention Brigade in the DRC*

- The relevant UN SC resolution stated that the intervention brigade should not ‘create a precedent or any prejudice to the agreed principles of peacekeeping’. However, at the time of its deployment, there were various concerns about the appropriateness and viability of the FIB and the consequent implications of such a development on current and future UN peace operations.
- The humanitarian community raised concerns that the FIB **makes the UN a party to the conflict**, thereby hampering the humanitarian community’s access to vulnerable communities.
  - The International Peace Institute argued that by giving the FIB a uniquely-offensive mandate, the UN Security Council inadvertently made not just the FIB but MONUSCO as a whole, a party to the armed conflict: ‘As the UN is now a party, all military members of MONUSCO will have lost the protections afforded to them under international law ... and therefore no longer enjoy legal protection from attacks.’
  - Equally, several troop-contributing countries (TCCs) were wary of the scope of the operation.
- The IPI report also contends that in a situation where Congolese government forces are responsible and largely unaccountable for serious violations of human rights and international humanitarian law, the [Force] Intervention Brigade’s offensive mandate to “neutralize” the non-state armed groups and its relative silence on certain government activities **stretches the concept of impartiality**.
- Further, military intervention unsupported by a political process could, in fact, discourage parties from engaging in negotiations.

Read more:

- 1 UNSC Resolution on ISIS: <http://www.un.org/press/en/2015/sc12132.doc.htm>
- 2 Background on the UN Mission in the DRC:  
<http://www.un.org/en/peacekeeping/missions/monusco/background.shtml>
- 3 International Peace Institute, Report on the Force Intervention Brigade in the DRC:  
[http://www.ipinst.org/wp-content/uploads/publications/ipi\\_e\\_pub\\_un\\_intervention\\_brigade\\_rev.pdf](http://www.ipinst.org/wp-content/uploads/publications/ipi_e_pub_un_intervention_brigade_rev.pdf)
- 4 Pingeot and Obenland, 'In Whose Name? A critical view on R2P':  
[https://www.globalpolicy.org/images/pdfs/images/pdfs/In\\_whose\\_name\\_web.pdf](https://www.globalpolicy.org/images/pdfs/images/pdfs/In_whose_name_web.pdf)
- 5 Glover, 'A Critique of the Theory and Practice of R2P': <http://www.e-ir.info/2011/09/27/a-critique-of-the-theory-and-practice-of-r2p/>
- 6 Background on R2P: <http://www.un.org/en/preventgenocide/rwanda/about/bgresponsibility.shtml>

## Briefing Note 3: Promoting Human Rights

### *Background*

- The human cost of terrorism has been felt in virtually every corner of the globe. The United Nations family has itself suffered tragic human loss as a result of violent terrorist acts. The attack on its offices in Baghdad on 19 August 2003 claimed the lives of the Special Representative of the Secretary-General, Sergio Vieira de Mello, and 21 other men and women, and injured over 150 others, some very seriously.
- Terrorism clearly has a very real and direct impact on human rights, with devastating consequences for the enjoyment of the right to life, liberty and physical integrity of victims. In addition to these individual costs, terrorism can destabilize Governments, undermine civil society, jeopardize peace and security, and threaten social and economic development. All of these also have a real impact on the enjoyment of human rights.
- Security of the individual is a basic human right and the protection of individuals is, accordingly, a fundamental obligation of Government. States therefore have an obligation to ensure the human rights of their nationals and others by taking positive measures to protect them against the threat of terrorist acts and bringing the perpetrators of such acts to justice.
- In recent years, however, the measures adopted by States to counter terrorism—many of them at the insistence of the UN—have themselves often posed serious challenges to human rights and the rule of law. For example:
  - In order to counter terrorism, some States have engaged in torture and other ill-treatment, while the legal and practical safeguards available to prevent torture, such as regular and independent monitoring of detention centres, have often been disregarded.
  - Other States have returned persons suspected of engaging in terrorist activities to countries where they face a real risk of torture or other serious human rights abuse, thereby violating the international legal obligation of non-refoulement.
  - The independence of the judiciary has been undermined, in some places, while the use of exceptional courts to try civilians has had an impact on the effectiveness of regular court systems.
  - Repressive measures have been used to stifle the voices of human rights defenders, journalists, minorities, indigenous groups and civil society. Resources normally allocated to social programmes and development assistance have been diverted to the security sector, affecting the economic, social and cultural rights of many.
  - Individuals have been placed on terrorist/sanctions lists with little or no recourse to natural justice in the event they wish to challenge a listing.
- The UN has played a pivotal role in all of this, eg. by calling for increasingly robust anti-terrorism measures through UN SC Resolutions and by directly placing individuals on terrorism lists.
- In its first 44 years, 24 Security Council resolutions cited or used the enforcement powers contained in Chapter VII of the UN Charter; by 1993 the Council was adopting that many such resolutions every year.
- The Council has also expanded the range of its activities, including the establishment of international criminal tribunals, the maintenance of complex sanctions regimes, the protection of civilians, and the temporary administration of territory.
- Since 9/11, anti-terrorism resolutions (see below) have perhaps been the principal manifestations of the Security Council's newfound authority.
- The Security Council's 'Al-Qaida Sanctions Committee' maintains a list of actors deemed terrorists. This 'Al-Qaida Sanctions List' is updated regularly on the basis of relevant information provided by Member States and international and regional organizations. Following 9/11, Al-



Qaida was added to the list on 6 October 2001, as was The Organization of Al-Qaida in the Islamic Maghreb. More recently, Boko Haram was added on 22 May 2014. In 2015 the Committee name was changed to include a focus on Islamic State in Iraq and the Levant (ISIL/Da'esh). It is now 'The ISIL (Da'esh) and Al-Qaida Sanctions Committee'.

### *Key definitions*

- Human Rights:
  - Human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by State agents that interfere with fundamental freedoms, entitlements and human dignity. The full spectrum of human rights involves respect for, and protection and fulfilment of, civil, cultural, economic, political and social rights, as well as the right to development. Human rights are universal—in other words, they belong inherently to all human beings—and are interdependent and indivisible. International human rights law is reflected in a number of core international human rights treaties and in customary international law.
  - These treaties include in particular the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.
  - Human rights law obliges States, primarily, to do certain things and prevents them from doing others. States have a duty to respect, protect and fulfil human rights. *Respect* for human rights primarily involves not interfering with their enjoyment. *Protection* is focused on taking positive steps to ensure that others do not interfere with the enjoyment of rights. The *fulfilment* of human rights requires States to adopt appropriate measures, including legislative, judicial, administrative or educative measures, in order to fulfil their legal obligations.
- Terrorism:
  - The UN has no agreed definition of terrorism. The difficulty in defining “terrorism” is in agreeing on a basis for determining when the use of violence (directed at whom, by whom, for what ends) is legitimate; therefore, the modern definition of terrorism is inherently controversial.
  - Terrorism is commonly understood to refer to acts of violence that target civilians in the pursuit of political or ideological aims. In legal terms, although the international community has yet to adopt a comprehensive definition of terrorism, existing declarations, resolutions and treaties relating to specific aspects of it define certain acts and core elements.

### *Key UN SC Resolutions from 2015:*

- *UNSC Resolution 2253 (2015):*
  - This Resolution came about due to UNSC concerns that previous related resolutions were not implemented adequately by states.
  - In a sweeping move to suppress the financing of terrorism, the Security Council expanded and strengthened its Al-Qaida sanctions framework to include a focus on ISIL; this happened in an unprecedented meeting that heard finance ministers from around the world outline efforts to dismantle funding channels to ISIL, which is now in control of large swaths of Iraq and Syria.
  - The Council called on States to “move vigorously and decisively” to cut the flows of funds and other financial assets and economic resources to individuals and entities on the ISIL (Da'esh) and Al-Qaida Sanctions List. The Council decided that States would take appropriate measures to promote enhanced vigilance by their nationals, persons subject to

- their jurisdiction and entities incorporated on their territory, to prevent ISIL, Al-Qaida and associated individuals and groups from obtaining, handling, storing, using or seeking access to all types of explosives or raw materials that could be used in their manufacture.
  - The 28-page resolution, sponsored by the United States and the Russian Federation, and co-sponsored by a broad array of Governments, covers asset freeze, travel ban, arms embargo and listing criteria for ISIL, Al-Qaida and “associated individuals, groups, undertaking and entities” — measures that the Council decided it would review in 18 months or sooner, with a view to their possible strengthening.
  - The Council reiterated States’ obligation to ensure that their nationals and persons in their territory not make available economic resources to those actors — which applied to both direct and indirect trade (eg. in oil).
- *UNSC Resolution 2199 (2015)*
  - Underlined the obligations of Member States to take steps to prevent terrorist groups in Iraq and Syria from benefiting from trade in oil, antiquities and hostages, and from receiving donations.
  - It affirmed that the direct and indirect trade in oil and refined oil products, modular refineries and related materials was subject to the requirement of resolution 2161 (2014) that countries ensure that their nationals and those in their territories not make assets or economic resources available to ISIL and related terrorist groups.
  - Condemning the destruction of cultural heritage in Iraq and Syria, particularly by ISIL and the Al-Nusrah Front, it decided that all Member States should take steps to prevent the trade in items of cultural, scientific and religious importance illegally removed from either country during periods of conflict.
  - The provisions of resolution 2161 (2014) also banned the payment of ransom to such groups, regardless of how or by whom the ransom is paid. It emphasized the importance of all Member States in preventing their nationals and others in their territories from making donations to the terrorists.
  - Finally, it urged States to prevent the terrorist groups from gaining access to international financial institutions: states are obliged to prevent the groups from acquiring arms and related materiel.

*Pre-2015 UN SC resolutions & other measures:*

- *Resolution 1267:*
  - In 1999, the Security Council adopted Resolution 1267, which imposed sanctions against the Taliban for providing sanctuary and training for terrorists, including Osama bin Laden. The resolution also created a committee charged with gathering and reporting on information concerning the implementation of the resolution from member states and designating the specific resources of the Taliban that would be sanctioned.
  - Subsequent resolutions expanded the sanctions to include designated individuals and entities associated with al-Qaeda, wherever those persons or entities may be located.
- *The ISIL (Da’esh) and Al-Qaida Sanctions Committee/list:*
  - In 2011, the Security Council adopted Resolutions 1988 and 1989, which established two separate lists for designations associated with al-Qaeda and the Taliban.
  - Pursuant to these resolutions, the 1267 Committee, now called **The ISIL (Da’esh) and Al-Qaida Sanctions Committee**, oversees and maintains the ISIL (Da’esh) and Al-Qaida Sanctions list.
  - The Committee holds regular meetings in formal and informal sessions, and makes decisions (including listing or de-listing) by consensus. Any state may request the Committee to consider adding a person or entity to the al-Qaeda sanctions list.
  - The Committee may also receive requests from member states or the U.N. Office of the

- Ombudsman to remove individuals or entities from the sanctions list.
- Countries may also submit requests to the Committee for exemptions to the sanctions, including humanitarian exemptions. The Committee provides the list on its website, and it distributes the list to member states for circulation to domestic bodies, including banks and other financial institutions, airports, intelligence agencies, and charities.

### *Implications of UN anti-terrorism resolutions on human rights*

- *UNSC view:*
  - While condemning terrorism unequivocally and recognizing the duty of States to protect those living within their jurisdictions from terrorism, the United Nations has placed a priority on the question of protecting human rights in the context of counter-terrorism measures.
  - The defense of human rights and upholding the rule of law while countering terrorism is at the heart of the United Nations Global Counter-Terrorism Strategy. Member States acknowledged that effective counter-terrorism measures and the protection of human rights were not conflicting goals but complementary and mutually reinforcing aims. They pledged to take measures aimed at addressing violations of human rights and to ensure that any measures taken to counter terrorism comply with their human rights obligations.
- *The special rapporteur:*
  - Protecting human rights was made an integral part of the international fight against terrorism through the creation in 2005 of a post of ‘Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism’. The Special Rapporteur, operating under the new Human Rights Council, works to identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms. The Special Rapporteur also addresses allegations of human rights violations in the course of countering terrorism.
  - Beginning in 2010, the UN developed and disseminated two guides on stopping and searching of persons and on protecting security infrastructure.
  - While de-listing from the terrorist list is difficult, the UN has de-listed individuals in the past. For example, on 26 October 2015 removed an individual from the list – this happens through the Office of the Ombudsperson that was established in 2009 (UNSC Resolution 1904).
- *Critical views:*
  - The Special Rapporteur himself has critiqued some measures. As he said in a public statement:
  - On 17 June 2011, the Security Council adopted two landmark resolutions that result in a major reform of the Taliban and Al Qaida terrorist sanctions regime. The listing of terrorist individuals and entities by a Committee of the Security Council, and the duty of all states to subject anyone on the list to a freezing of assets and a travel ban has grown from Resolution 1267 (1999). That resolution was limited in time and space, as it merely targeted the then Taliban regime of Afghanistan, to put pressure upon it to hand over terrorist leader Osama bin Laden. Due to the threat posed to international peace and security by the Taliban harboring bin Laden, the resolution was a proper measure under Chapter VII of the UN Charter.
  - A highly problematic step was taken through resolution 1390 (2002) which, under Chapter VII of the Charter, converted the Taliban list into a global consolidated list of Taliban and Al Qaida terrorists, without any temporal or geographic limitations. Coupled with the permanent, or at least indefinite, duration of the resulting sanctions, these features led the Special Rapporteur to conclude that the Security Council is acting ultra vires, beyond its powers, by maintaining under Chapter VII its consolidated list of

- Taliban and Al Qaida terrorists.
- EU Courts:
- Security Council resolutions regarding terrorism have been subject increasingly to the scrutiny of regional organisations, particularly EU courts. The most notable recent example is perhaps the **Kadi case** in which the European Court of Justice (ECJ) ruled that direct adoption of Security Council resolutions by European member states breached fundamental rights.
- Academics:
- The United Nations Security Council's anti-terrorism regime constitutes a serious threat to the legitimacy and unity of the United Nations system as a whole. The Security Council has insufficient internal checks to ensure that it passes resolutions which sufficiently respect human rights norms. Judicial review is therefore required on the part of the International Court of Justice to ensure that the Security Council passes resolutions which remain effective and do not bring the United Nations system into disrepute.
- It appears likely that the Security Council will be subject to increasingly frequent review by regional courts. This creates a challenge to both the legitimacy and unity of the UN system.

Read more:

1. Fraser Galloway, 'Anti-Terrorism Resolutions: The Security Council's Threat to the UN System', *Journal of Terrorism Research*, <http://jtr.st-andrews.ac.uk/articles/10.15664/jtr.231/>
2. UNSC Resolution 2253 (2015): <http://www.un.org/press/en/2015/sc12168.doc.htm>
3. UNSC Resolution 2199 (2015): <http://www.un.org/press/en/2015/sc11775.doc.htm>
4. Full list of UN Resolutions pertaining to terrorism: <http://www.un.org/en/sc/ctc/resources/res-sc.html>
5. Harvard Program on UN Counter-Terrorism Efforts: <http://pilac.law.harvard.edu/international-counterterrorism-efforts-background>
6. Working Group on Protecting Human Rights while Countering Terrorism, Basic Human Rights Reference Guide: Security Infrastructure: [http://www.un.org/en/terrorism/pdfs/bhrrg\\_security\\_infrastructure.pdf](http://www.un.org/en/terrorism/pdfs/bhrrg_security_infrastructure.pdf)
7. Working Group on Protecting Human Rights while Countering Terrorism, Basic Human Rights Reference Guide: The Stopping and Searching of Persons: [http://www.un.org/en/terrorism/pdfs/bhrrg\\_stopping\\_searching.pdf](http://www.un.org/en/terrorism/pdfs/bhrrg_stopping_searching.pdf)
8. Updated Al Quada Sanctions list:

## Briefing Note 4: Prosecuting International Criminal Law

### *Brief history from 1945 to 1948*

- The history of the establishment of the International Criminal Court (ICC) spans over more than a century. Efforts to create a global criminal court can be traced back to the early 19<sup>th</sup> Century with Gustav Moynier, one of the founders of the International Committee of the Red Cross, who proposed a permanent court in response to the crimes of the Franco-Prussian War. The drafters of the 1919 Treaty of Versailles also envisaged an *ad hoc* international court to try the Kaiser and German war criminals of World War I.
- Following World War II, the Allies set up the first international criminal tribunals in Nuremberg and Tokyo to prosecute high-level political Axis officials and military authorities for war crimes and other wartime atrocities.
  - The four major Allied powers—France, the Soviet Union, the United Kingdom, and the United States—set up the International Military Tribunal (ie. the Nuremberg Tribunal) to prosecute and punish ‘the major war criminals of the European Axis’.
  - The Nuremberg Tribunal presided over a combined trial of senior Nazi political and military leaders, in addition to several Nazi organisations. The trial lasted from November 1945 to October 1946, at the culmination of which nineteen individual defendants were found guilty and sentenced to punishments ranging from 15 years’ imprisonment to execution.
  - The International Military Tribunal for the Far East (ie. the Tokyo War Crimes Tribunal) was created pursuant to a 1946 proclamation by US Army General Douglas MacArthur, Supreme Commander for the Allied Powers in occupied Japan. The Tokyo Tribunal presided over a series of trials of 19 senior Japanese political and 18 military leaders pursuant to its authority ‘to try and punish Far Eastern war criminals’ for ‘crimes against peace’, ‘war crimes’, and ‘crimes against humanity’. Of these, 24 defendants were found guilty and sentenced to punishments ranging from 20 years’ imprisonment to execution.
- In 1948, the United Nations General Assembly (UN GA) adopted the Convention on the Prevention and Punishment of the Crime of Genocide in which it called for criminals to be tried ‘by such international penal tribunals as may have jurisdiction’ and invited the International Law Commission (ILC) ‘to study the desirability and possibility of establishing an international judicial organ for the trials of persons charged with genocide’.
  - While the ILC drafted such a statute in the early 1950s, the Cold War stymied these efforts and the General Assembly effectively abandoned the effort pending agreement on a definition for the ‘crime of aggression’ and an international ‘Code of Crimes’.

### *International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR)*

- The UN Security Council established two separate temporary *ad hoc* tribunals to prosecute individuals for alleged crimes against humanity, war crimes, and genocide during conflicts in Bosnia-Herzegovina, Croatia, and Rwanda during the 1990s.
- The ICTY was established by the Security Council in May 1993. The Tribunal has indicted 161 individuals, and has completed 141 trials. Among those prosecuted included Former President Slobodan Milošević, who became the first sitting head of state indicted for war crimes.
- The ICTR was established by the United Nations Security Council on November 1994, and formally closed on 31 December 2015. The Tribunal had a mandate to prosecute persons bearing ‘great responsibility’ for genocide and other serious violations of international humanitarian law committed in the 1994 Rwandan civil war. The first trial started in January 1997.

- By its culmination, the ICTR had sentenced 61 people to punishments of up to life imprisonment. The ICTR held 5,800 days of proceedings, indicted 93 people, issued 55 first-instance and 45 appeal judgements, and heard the ‘powerful accounts of more than 3,000 witnesses who bravely recounted some of the most traumatic events imaginable during ICTR trials’.
- ICTR and the ICTY were established to try crimes committed only within specific time frames and during specific conflicts. This led to views that an independent, permanent criminal court was needed.

### *The ICC: Background*

- The International Criminal Court (ICC), created by the Rome Statute (which entered into force on 1 July 2002 after ratification by 60 countries), establishes a permanent court to help end impunity for the perpetrators of the most serious crimes of international concern.
- The Court is an independent international organisation based in The Hague, which tries cases against people accused of genocide, crimes against humanity, war crimes, or crimes of aggression. It does not form part of the UN system.
- In general, the Court may only assert jurisdiction in states that have signed the Rome Statute.
- Since 2004, the Office of the Prosecutor has indicted 39 suspects, from a total of 10 situations that they have fully investigated. Of these situations, member states (ie. Uganda, the Democratic Republic of the Congo, and the Central African Republic) referred three; the Security Council referred two (Libya and Sudan), the Office of the Prosecutor initiated one (Kenya), and one state (Cote d'Ivoire) gave jurisdiction to the ICC.
- Of these [39] suspects, 8 persons are in detention, [9] remain at large; four are under house arrest but not in the Court’s custody, two are in the pre-trial phase, and ten are at trial. Proceedings against 12 have been completed: two have been convicted, one has been acquitted, four have had the charges against them dismissed, two have had the charges against them withdrawn, one has had his case declared inadmissible, and three have died before trial.

### *ICC Controversies*

- To date, all situations that the ICC has investigated have been in African countries. The ICC has been accused of bias and as an instrument of Western imperialism, punishing leaders from relatively small, weak African states while ignoring crimes committed by richer and more powerful states.
  - Rwanda’s ambassador to the African Union, Joseph Nsengimana has argued that ‘we have seen international justice become more and more a political matter’.
  - Ugandan President Yoweri Museveni has also accused the ICC of ‘mishandling complex African issues’.
  - Ethiopian Prime Minister Hailemariam Desalegn has said: ‘The manner in which the ICC has been operating has left a very bad impression in Africa. It is totally unacceptable.’
  - Responding to Kenya’s calls for an exemption for sitting heads of state, the ICC’s Assembly of State Parties responded in October 2013 by agreeing to consider amendments to the Rome Statute to address the concerns.
- Critics of the Court argue that there are ‘insufficient checks and balances on the authority of the ICC prosecutor and judges’ and ‘insufficient protection against politicized prosecutions or other abuses’.
- Critics also argue that the court has insufficient checks and balances. Thomas Lubanga’s defence team claimed they were given a smaller budget than the Prosecutor and that evidence and witness statements were slow to arrive.

- The rights of the accused under ICC rules have often come under criticism. The Heritage Foundation, an American think tank, has stated for example that:  
‘Americans who appear before the court would be denied such basic US constitutional rights as trial by a jury of one’s peers, protection from double jeopardy, and the right to confront one’s accusers.’
- China and India have also criticised the ICC’s practices on grounds that acceptance of its jurisdiction is not voluntary and ‘complementarity’ gives it the right to judge other nations’ fitness to conduct their own trials. They also claims that the Court’s practices can be easily manipulated by political influences.
- By contrast, Human Rights Watch (HRW) claimed in 2006 that ‘the ICC has one of the most extensive lists of due process guarantees ever written’, including ‘presumption of innocence; right to counsel; right to present evidence and to confront witnesses; right to remain silent; right to be present at trial; right to have charges proved beyond a reasonable doubt; and protection against double jeopardy’.
- Although the United States voted against adoption of the Rome Statue on grounds that to do so would relinquish an unacceptable degree of state sovereignty, David Scheffer, who led the US delegation to the Rome Conference, maintained that:  
‘When we were negotiating the Rome treaty, we always kept very close tabs on, does this meet US constitutional tests, the formation of this court and the due process rights that are accorded defendants? And we were very confident at the end of Rome that those due process rights, in fact, are protected, and that this treaty does meet a constitutional test.’
- HRW also reported that the ICC’s prosecutors take no account of the position and actions of governments in the Ugandan, Rwandan or Congolese conflicts, leading to a flawed investigation.
- Research suggests that prosecutions of leaders in the ICC makes dictators less likely to step down peacefully.
- Some critics have also claimed that the long amounts of time that investigations and trials take can allow suspects to find ways to remain at large.
- Some African states claim that the Court’s temporal jurisdiction limits prosecution for any alleged crimes committed before 1 July 2002. These might have included, for example, the European trans-Atlantic slave trade of 1501-1865, and the European Scramble for Africa of 1881-1914.

Read more:

1. <http://jicj.oxfordjournals.org/content/3/3/608.abstract>
2. <http://www.capitalfm.co.ke/news/2013/11/win-for-africa-as-kenya-agenda-enters-icc-assembly/>
3. <https://web.archive.org/web/20080109092156/http://www.state.gov/t/pm/rls/fs/23428.htm>
4. <http://www.cfr.org/courts-and-tribunals/africa-international-criminal-court/p12048>
5. <http://transcripts.cnn.com/TRANSCRIPTS/0001/02/bp.00.html>
6. <http://jcr.sagepub.com/content/early/2015/02/02/0022002714567946>

## Briefing Note 5: Reducing Poverty and Promoting Development

### *Definitions*

- ‘*Poverty*’ is defined by the UN as: ‘a denial of choices and opportunities, a violation of human dignity. It means lack of basic capacity to participate effectively in society. It means not having enough to feed and cloth a family, not having a school or clinic to go to, not having the land on which to grow one’s food or a job to earn one’s living, not having access to credit. It means insecurity, powerlessness and exclusion of individuals, households and communities. It means susceptibility to violence, and it often implies living on marginal or fragile environments, without access to clean water or sanitation’. Poverty reduction is a major goal of the organisation.
- ‘*Absolute (or extreme) poverty*’ refers to a set standard which is consistent over time and between countries. The World Bank defined the international poverty line as US\$1.25 per day in 2008 for 2005 (equivalent to US\$1.00 per day in 1996 US prices). In 2015, the Bank reset it to US\$1.90 per day.
- ‘*Development*’, according to the UN, ‘is a process of enlarging human choices—as they acquire more capabilities and enjoy more opportunities to use those capabilities. But human development is also the objective, so it is both a process and an outcome. Human development implies that people must influence the process that shapes their lives.’

### *Outcomes – poverty reduction*

- According to UN data, Extreme poverty has declined significantly over the last two decades. The Millennium Development Goal (MDG) target of reducing by half the global proportion of people living in extreme poverty was achieved five years ago, ahead of the 2015 deadline.
- In 1990, 36 per cent of the population in the developing world lived on less than \$1.25 a day; that proportion dropped to 15 per cent in 2011. UN projections indicate that the global extreme poverty rate has fallen further, to 12 per cent, as of 2015. Globally, the absolute number of people living in extreme poverty will have declined from 1.9 billion in 1990 to a projected 836 million in 2015 (refer to Figure [x]).
- The proportion of urban population living in slums in the developing regions fell from 39.4 per cent to 29.7 per cent between 2000 and 2014.
- The number of people in the working middle class—living on more than \$4 a day—has almost tripled between 1991 and 2015. This group now makes up half the workforce in the developing regions, up from just 18 per cent in 1991. The proportion of undernourished people in the developing regions has fallen by almost half since 1990, from 23.3 per cent in 1990-1992 to 12.9 per cent in 2014-2016.
- The world’s extremely poor people are also distributed very unevenly across regions and countries. The overwhelming majority of people living on less than \$1.25 a day reside in two regions—Southern Asia and sub-Saharan Africa—and they account for about 80 per cent of the global total of extremely poor people. Nearly 60 per cent of the world’s 1 billion extremely poor people lived in just five countries in 2011: India, Nigeria, China, Bangladesh and the Democratic Republic of the Congo.
- On a regional basis, all developing regions except sub-Saharan Africa had by 2011 met the target of halving the proportion of people who live in extreme poverty (Oceania has insufficient data).
- Economic growth in China and India played a central role. China’s growth, in particular, has caused the extreme poverty rate in Eastern Asia to drop from 61 per cent in 1990 to 4 per cent in 2015.
- The rate of poverty reduction in Southern Asian countries has also accelerated, with a decline from 52 per cent to 17 per cent during the same period.



- By contrast, sub-Saharan Africa's poverty rate did not fall below its 1990 level until after 2002. More than 40 per cent of the population in sub-Saharan Africa still lives in extreme poverty in 2015.
- In Western Asia, the extreme poverty rate is expected to increase between 2011 and 2015.

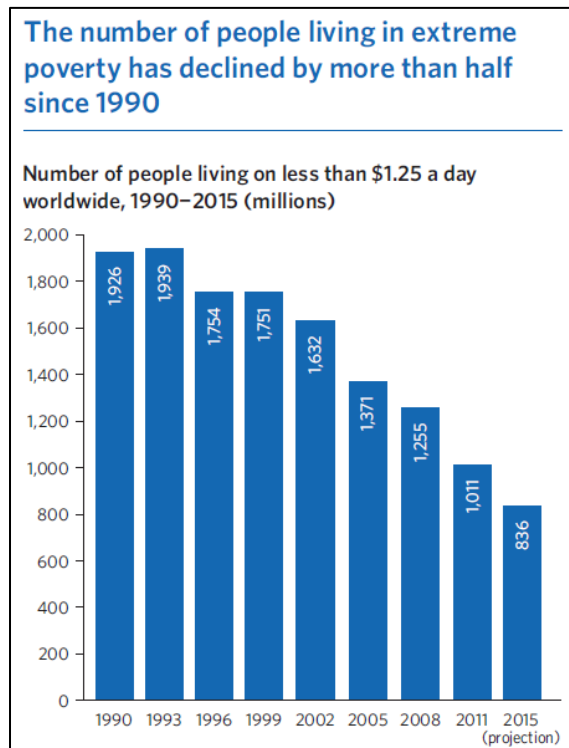


Figure [iii]: UN, MDG Report 2015

#### *Outcomes – other development indicators*

- Between 1990 and 2015, the *child mortality* rate fell by more than half, and ‘under-five’ deaths fell from 12.7 million to 6 million.
- Over the same period, more than 2.6 billion people gained access to improved sources of *drinking water*. As a proportion of the global population, in 2015, 91 per cent of the global population now use improved drinking water sources, compared to 76 per cent in 1990. Since 1990, 2.1 billion people gained access to ‘improved’ *sanitation* facilities, even as the world’s population rose from 5.3 billion to 7.3 billion.
- Yet, these gains have been unequally distributed. There are wide gaps between and within countries. While the *maternal mortality* ratio was 21 per 100,000 live births in the ORCED countries, it was 183 in South Asia. Globally, *women* earn 24 percent less than men and hold only 25 percent of administrative and managerial positions in the business world—while 32 percent of businesses have no women in senior management positions. Women still hold only 22 percent of seats in single or lower houses of national parliament.
- Added to the uneven human development achievements are widespread human deprivations. Nearly 80 per cent of the global population lack social protection, while 12 per cent (842 million people) suffer from chronic hunger—and nearly half of all workers across the world are in informal or precarious employment.
- The UN reports that, by the end of 2015, the world will have met the MDGs for turning around the *health epidemics* of HIV, malaria and tuberculosis, and boosting access to *drinking water*, but

will likely fall short of reaching other health-related goals in areas such as child and maternal deaths and basic sanitation.

- Worldwide 795 million people continue to suffer from *chronic hunger*, 11 *children under five* die every minute and 33 mothers die every hour. About 37 million people live with *HIV* and 11 million with *tuberculosis*. Worldwide 780 million adults and 103 million young people (ages 15-24) remain illiterate. In developed countries, 160 million people are functionally *illiterate*. Globally, 250 million children have not learned *basic educational skills*—even though 130 million of them have spent at least four years in school.
- In all, the UN reports that more than 2.2 billion people are still either near, or living in, a state of deprivation and underdevelopment.
- Added to this is the threat of *environmental crises*. While ozone-depleting substances have been virtually eliminated, and the ozone layer is expected to recover by the middle of this century, global emissions of carbon dioxide have increased by over 50 per cent since 1990. On current trends, the World Bank projects global temperature increases of around 4 degrees by the end of the century. Scientists have also claimed that humanity is currently using the earth's ecological resources at a rate of more than 1.5 times its rate of renewal.

#### *UN Involvement in Poverty Reduction Activities*

- There is 'strong evidence' that troops brought in to assist Haiti's post-earthquake reconstruction as part of the UN stabilisation force (called MINUSTAH) in 2010, had contaminated a river and introduced cholera through a faulty sanitation system.
  - The UN denied that it had caused these problems, and rejected a legal claim for compensation issued on behalf of the cholera victims. In 2015, an American judge reaffirmed the UN's impunity.
  - As of 2013, the UN was unable to raise even a quarter of the \$38 million required to purchase water-purification pills and basic infrastructure for water sanitation.

#### Read more:

1. [http://www.un.org/esa/socdev/unyin/documents/ydiDavidGordon\\_poverty.pdf](http://www.un.org/esa/socdev/unyin/documents/ydiDavidGordon_poverty.pdf)
2. <http://www.worldbank.org/en/news/press-release/2015/10/04/world-bank-forecasts-global-poverty-to-fall-below-10-for-first-time-major-hurdles-remain-in-goal-to-end-poverty-by-2030>
3. HDR 2015
4. MDG Report 2015
5. <http://www.theguardian.com/global-development-professionals-network/2014/jul/24/human-development-report-2014-undp>
6. <http://www.un.org/sustainabledevelopment/blog/2015/05/new-un-report-shows-mixed-results-for-reaching-mdg-health-targets-by-end-of-2015/>
7. Deborah Sontag, 'In Haiti, Global Failures on a Cholera Epidemic' *New York Times* (online), 31 March 2012

8. Louise C Ivers, 'A Chance to Right a Wrong in Haiti' *New York Times* (online), 22 February 2013
9. Randal C Archibold and Somini Sengupta, 'UN Struggles to Stem Haiti Cholera Epidemic' *New York Times* (online), 19 April 2014
10. Anthony Loewenstein, *Disaster Capitalism: Making a Killing out of Catastrophe* (London: Verso, 2015)