

**Closing the normative gap:
What ten years of Human Rights Council Resolutions tell us about its approach to
the safety of journalists**

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ABSTRACT

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In the last ten years, there have been high levels of development of normative work within the United Nations (UN) system on the issue of the safety of journalists. Since the approval of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity in 2012, the first ever UN strategy on this matter, and the subsequent first Human Rights Council (HRC) Resolution on the safety of journalists that same year, fifteen resolutions have been adopted by the principal UN Charter-based bodies, namely the Security Council, the General Assembly and the HRC, and also UNESCO.

The HRC resolutions, which have been adopted on a biennial basis, have proven to be the most progressive in addressing the safety of journalists from a human rights-based perspective. However, the main challenge remains their effective implementation. How have these resolutions evolved and what do they reveal about how the issue of the safety of journalists is addressed by the HRC? What are the shortcomings and gaps in the protection of the safety of journalists offered by this set of resolutions?

To answer these questions, this paper first undertakes a qualitative document analysis of HRC resolutions. It then analyzes the development of these resolutions from a human-rights perspective. Finally, based on this analysis, it identifies the normative gaps that should be addressed in order to properly respond to the most pressing challenges to the safety of journalists in the years to come.

1. Introduction: The Safety of Journalists in the UN Agenda

The HRC is the inter-governmental body within the UN system tasked with the responsibility of strengthening the promotion and protection of human rights around the globe, addressing situations of human rights violations, and formulating recommendations to spotlight and redress such violations. Since the adoption of the first HRC Resolution on the safety of journalists in 2012, four resolutions have been passed on a biennial basis by this UN body.

The 2012 HRC resolution was the fourth UN resolution dedicated to the subject of the protection of journalists since 1945. The first resolution adopted by a UN body was adopted by the UN General Assembly in 1970 when the protection of journalists was

identified as a priority on the agenda of the UN General Assembly and UNESCO, in particular with regard to situations of conflict.¹

More than twenty years later, in 1997, UNESCO passed Resolution 29 on the Condemnation of Violence Against Journalists. The resolution invited the Director General of UNESCO to “condemn assassination [of] and physical violence against journalists”.² Since then, every killing of a journalist documented by UNESCO has been condemned by the organisation’s Director General. Since 2008, the biennial Report on the Safety of Journalists and the Danger of Impunity by the UNESCO Director-General has analysed the data on the killing of journalists and has requested information from States on judicial inquiries into those killings, information which is provided by States on a voluntary basis.³ Since 2014, UNESCO has also published ‘World Trends Report on Freedom of Expression and Media Development,’ which analyses violence against journalists.

Significantly, in 2006, the UN Security Council addressed the issue of protection of journalists in situations of armed conflict for the first time through the adoption of Resolution 1738, which emphasises the responsibility of States to ensure that journalists, media professionals and associated personnel are considered civilians in contexts of war under international humanitarian law, and that media equipment and installations constitute civilian objects and cannot be subject to attack or reprisals. It is important to note that, unlike the resolutions of the Human Rights Council or UNESCO which are non-binding and considered ‘soft law’, Security Council resolutions are legally binding upon states.

The adoption of the first HRC resolution on the safety of journalists in 2012 took place five months after the UN Chief Executive Board endorsed the UN Plan of Action on the Safety of Journalists and the Issue of Impunity (from now on, UN Plan).⁴ The UN Plan was the first ever UN-wide strategy to address violence against journalists. Austria, which had hosted the second and final UN Inter-Agency meeting in which the UN Plan was finalised, led the development of the HRC resolution and has since convened the core group of States that lead on the drafting and adoption of the five HRC resolutions. The core group in 2012 included Austria, Brazil, Morocco, Switzerland, and Tunisia. Since 2014, Qatar and France have joined the core group, while Switzerland has departed. All resolutions have been approved by consensus (i.e. they did not go to a vote at the HRC) and have also been co-sponsored by certain States with a particular interest in the issue. Resolutions have been co-sponsored by a great number of states at the HRC - by 66 States in 2012; 91 in 2014 and 2016; 89 in 2018 and 70 in 2020. 2012 was also the year in which ‘crimes against freedom of expression’, including against journalists, was the subject of the annual joint declaration by the intergovernmental experts on freedom of expression and freedom of the media from the UN, the Organization of American States (OAS), the African

¹ Chocarro Marcesse, Silvia (2016) *The United Nations’ Role in Promoting the Safety of Journalists from 1945 to 2016*. In *The Assault of Journalism. Building Knowledge to Protect Freedom of Expression*, Nordicom. <https://www.nordicom.gu.se/en/publications/assault-journalism>

² UNESCO (1997), Resolution 29 Condemnation of Violence against Journalists, 12 November 1997, <https://en.unesco.org/sites/default/files/resolution29-en.pdf>

³ See UNESCO Director General’s Reports on The Safety of Journalists and the Danger of Impunity: <https://en.unesco.org/themes/safety-journalists/dgreport>, and UNESCO’s World Trends in Freedom of Expression and Media Development report: <https://www.unesco.org/en/world-media-trends>

⁴ United Nations (2012), UN Plan of Action on The Safety of Journalists and the Issue of Impunity, 12 April 2012, <https://en.unesco.org/un-plan-action-safety-journalists>

Commission on Human and Peoples' Rights (ACHPR) and the Organization for Security and Co-operation in Europe (OSCE).⁵

Since the adoption of HRC Resolution 21/12 in 2012, eleven additional resolutions have been adopted: five by the HRC, five by the General Assembly, one by the Security Council and one by UNESCO. Additionally, many other UN bodies have looked into the issue of the safety of journalists, including the UN special procedures, the Human Rights Committee and other UN treaty bodies. Furthermore, in 2013, the UN General Assembly proclaimed 2 November as the International Day to End Impunity for Crimes against Journalists.⁶

2. Document Analysis: What the HRC Resolutions's Language Tells Us

Given that 2022 marks the 10th anniversary of both the UN Plan on the Safety of Journalists and the adoption of the first HRC resolution on the issue, this paper undertakes an analysis of the five HRC resolutions. It sets out to explore what they reveal about how the issue of the safety of journalists has been addressed by the HRC to date. The focus on the HRC is because the HRC is the principal UN human rights body and its resolutions most clearly demonstrate the normative evolution on the issue of the safety of journalists.

The methodological approach of this paper first embraces a document analysis of the texts of the resolutions in order to identify how language related to issues of journalistic safety has evolved, and how themes and topics are addressed and prioritised by the resolutions over time. Secondly, based on an analysis of key trends, the paper identifies gaps in the texts of the resolutions related to areas this paper argues ought to be addressed in order to properly respond to the most pressing challenges to the safety of journalists in the years to come. This paper considers a functional definition of journalists, as per General Comment 34, which states that 'journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self publication in print, on the Internet or elsewhere'.⁷ Therefore, it interprets 'journalists' the same way in the resolutions.

UN resolutions, including the HRC resolutions on the safety of journalists, are structured in two parts: a preamble, which indicates the context (including the relevant legal context) and the goals of the resolution; and operative paragraphs, which state the position of States in relation to the subject in terms of international law, including by elaborating on the respective obligations and responsibilities of States and other actors, and action to be taken by UN actors, such as the Office of the UN High Commissioner for Human Rights. This document analysis examines both parts, and in the case of the operative paragraphs, it organises the analysis into five analytical categories: prevention, protection, prosecution and remedy, gender, and international coordination. The first three categories (prevention, protection, prosecution/remedy) reflect the widely recognised three-part approach for addressing the safety of journalists implemented by UN bodies such as UNESCO and the Office of the UN High Commissioner for Human Rights (OHCHR or the UN Human Rights Office), and also by regional intergovernmental bodies, notably the Council of Europe and

⁵ See joint declarations: <https://www.osce.org/files/f/documents/c/2/91595.pdf>

⁶ UN General Assembly Resolution 68/163, The safety of journalists and the issue of impunity, 18 December 2013, Doc. No. A/RES/68/163, <https://undocs.org/A/RES/68/163>

⁷ International Covenant on Civil and Political Rights (CCPR), General Comment 34: Article 19: Freedoms of opinion and expression, <https://undocs.org/CCPR/C/GC/34>

the Inter-American Commission for Human Rights (IACHR). The fourth analytical category (gender) captures the growing recognition by the UN of the importance of gender dimensions of issues related to the safety of journalists and examines how the HRC has grappled with this issue over time. The fifth analytical category, international coordination, recognises that the origins of these resolutions are to be understood as interlinked with the adoption of the UN Plan, which focuses on coordinated efforts to address violence against journalists.

The main themes of the HRC may be identified as follows. The first resolution in 2012 offered an overview of the issue of the safety of journalists and contained a series of general recommendations that encompassed core elements of all the analytical categories examined. The second resolution in 2014 had a particular focus on impunity and introduced a set of specific measures to be taken in relation to this specific issue. The 2016 resolution expanded considerably on all analytical categories, making this resolution a core text in the series of resolutions for this reason. The 2018 resolution went beyond the safety of journalists and expanded on the context of media freedom. Similarly, the 2020 resolution paid particular attention to the relationship between journalism and access to information, on the one hand, and the COVID-19 pandemic, on the other, which is explained by the multidimensional impacts of the COVID-19 pandemic on journalism.

2.1. HRC Preambles: Setting the stage for the safety of journalists

The preambles of HRC resolutions acknowledge the normative work on the subject of the safety of journalists and include general observations about the content or purpose of the resolutions. As such, the preamble sections form a basis for the remaining text of resolutions, contextualising the operative sections, including the 'calls to action' towards the end.

In 2012, HRC Resolution 21/12⁸ on the safety of journalists highlighted core normative frameworks related to the protection of human rights (and the rights of journalists), including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Convention for the Protection of All Persons from Enforced Disappearance. The resolution also recognised the importance of all forms of media in relation to the exercise, promotion and protection of the right to freedom of opinion and expression and the role played by journalists in matters of public interest. This first resolution also recognised the importance of taking a gender-sensitive approach to journalism safety issues, although there is no operative paragraph on this matter where States are being called upon to take concrete actions. It can be noted that, despite the fact that the 2012 resolution was in an outcome of processes related to the UN Plan,⁹ the UN Plan itself is not referred to in the preamble. The role of UNESCO, as the UN agency that led the work on adopting the UN Plan, is however expressly referenced in the operative language.

⁸ UN General Assembly (2012), Resolution adopted by the Human Rights Council, Safety of Journalists, 9 October 2012, Doc No. A/HRC/RES/21/12. <https://undocs.org/A/HRC/RES/21/12>

⁹ Chocarro Marcesse, Silvia (2016) *The United Nations' Role in Promoting the Safety of Journalists from 1945 to 2016*. In *The Assault of Journalism. Building Knowledge to Protect Freedom of Expression*, Nordicom. <https://www.nordicom.gu.se/en/publications/assault-journalism>

In the 2014, HRC resolution 27/5¹⁰, in its preamble referred to reports by the UN special procedures, highlighting the fact that between 2011 and 2013, three different special mandates focused their reports to the HRC on the safety of journalists.¹¹ In 2014, the preamble also drew attention to UN Security Council Resolution 1738 on the protection of journalists in situations of armed conflict.¹² It was also the first time the preamble acknowledged the problem of unlawful or arbitrary surveillance and/or interception of communications, in violation of the right to privacy. Similarly, it was the first time the preamble acknowledged impunity as one of the main challenges to the safety of journalists and ensuring judicial accountability as one of the main remedies.

In 2016, HRC resolution 33/2 in its preamble expanded consideration of the UN Plan by drawing on the UN Plan's linkage of the safety of journalists with the UN's broader aim of strengthening peace, democracy and development worldwide.¹³ The preamble also expressed 'deep concern' about 'the growing threat to the safety of journalists posed by non-State actors, including terrorist groups and criminal organisations'. The preamble further highlights the important role of journalism when it comes to enabling informed political decisions and public debate in the context of elections. The 2030 Agenda for Sustainable Development (adopted in 2015) and Sustainable Development Goal 16.10 on 'Ensuring public access to information and protecting fundamental freedoms includes an indicator on the safety of journalists' are also specifically recalled in the preamble of that resolution.

The preamble of the 2018 HRC resolution 39/6 welcomed the decision of the UN Secretary-General to appoint a designated official on the safety of journalists as part of his Executive Office and to mobilise a network of focal points throughout the United Nations system.¹⁴ In comparison to previous years, the 2018 preamble is expanded considerably, identifying a particular concern for the safety of journalists in relation to the undermining of public trust and credibility in journalism, smear campaigns against journalists, online violence against journalists, hacking that targets journalists, including government-sponsored hacking, and denial of service attacks to force the shutdown of particular media websites or services, and the misuse of national laws, policies and practice to silence journalists. The preamble also expresses alarm at instances in which political leaders, public officials and/or authorities denigrate, intimidate or threaten the media, including individual journalists.

¹⁰ UN General Assembly (2014), Resolution adopted by the Human Rights Council, Safety of Journalists, 2 October 2014, Doc No. A/HRC/RES/27/5, <https://undocs.org/A/HRC/RES/27/5>

¹¹ See UN General Assembly, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya*, Doc No A/HRC/19/55, <https://undocs.org/A/HRC/19/55>; UN General Assembly, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank la Rue*, Doc No. A/HRC/20/17, <https://undocs.org/A/HRC/20/17>; UN General Assembly, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns*, Doc No. A/HRC/20/22, <http://undocs.org/A/HRC/20/22>

¹² UN Security Council, Resolution 1738 (2006), 23 december 2006, Doc No. S/RES/1738(2006) [http://undocs.org/S/RES/1738\(2006\)](http://undocs.org/S/RES/1738(2006))

¹³ UN General Assembly (2016), Resolution adopted by the Human Rights Council, Safety of Journalists, 29 September 2016, Doc No. A/HRC/RES/33/2, <https://undocs.org/A/HRC/RES/33/2>

¹⁴ UN General Assembly (2018), Resolution adopted by the Human Rights Council, Safety of Journalists, 27 September 2018, Doc No. A/HRC/RES/39/6, <https://undocs.org/A/HRC/RES/39/6>

In 2020, HRC resolution 45/18 in its preamble focused on access to information at a time when the COVID-19 pandemic was spreading worldwide and measures to tackle the emergency were raising mounting human rights concerns.¹⁵ The preamble emphasises ‘that any measure or restriction introduced under emergency measures must be necessary, proportionate to the evaluated risk and applied in a non-discriminatory way, have a specific focus and duration, and be in accordance with the State’s obligations under applicable international human rights law’ and that ‘the right to seek, receive and impart information requires that media freedom and the safety of journalists is protected during a state of emergency, including in the context of protests’. The resolution recognises that ‘journalists and media workers serve a crucial function in times of crisis’. The resolution expressed concern about incidents of extra-territorial targeting of journalists and media workers, including the use of harassment, surveillance and the arbitrary deprivation of life.

2.2. Prevention: enabling a safe environment for journalists

For the purpose of this paper, the category of prevention captures any calls made in the examined HRC resolutions for the promotion of a safe environment via legislation and public policies. This can also include preventive measures by other actors directed to media and journalists.

The 2012 resolution did not expressly mention ‘prevention’, although it requested the OHCHR to prepare a report on good practices on the prevention of attacks, protection of journalists and the fight against impunity. Nonetheless, the operational paragraphs included commitments on measures that fall under the category of preventing attacks against journalists. In particular, there is a call on States to ‘promote a safe and enabling environment for journalists to perform their work independently and without undue interference’ via a series of actions. These include the following: legislative measures; awareness-raising amongst the judiciary, law enforcement officers and military personnel, as well as amongst journalists and civil society, regarding international human rights and humanitarian law obligations and commitments relating to the safety of journalists; the monitoring and reporting of attacks against journalists; and publicly condemning attacks’.

In the 2014 resolution, the call on States to promote a safe and enabling environment for journalists articulated in the 2012 resolution was re-formulated to ‘urge’ States to take such action. Moreover, the 2014 resolution not only urged States to promote a safe and enabling environment, but also specified that the purpose of such action is ‘to prevent attacks and violence against journalists’. Significantly, this resolution also expands the scope of its application by adding ‘media workers’ as another category of individuals in need of protection. The text also ‘emphasised’ the important role of media organisations in facilitating adequate risk assessment on behalf of journalists. The 2014 resolution further recognised the link between impunity and prevention, acknowledging the fact that the vast majority of crimes against journalists go unpunished contributes to their recurrence.

With the 2016 resolution, prevention took a more prominent role than in previous resolutions. First, it not only called for the prevention of attacks from happening in the first place, but also for the prevention of threats of attacks from occurring. The recurring call on States to ‘promote’ a safe and enabling environment is adapted into a call on States to ‘create and maintain’ such an environment ‘in law and practice’. The 2016 resolution also

¹⁵ UN General Assembly (2020), Resolution adopted by the Human Rights Council, Safety of Journalists, 12 October 2020, Doc No. A/HRC/RES/45/18, <https://undocs.org/A/HRC/RES/45/18>

reinforces the language introduced in 2014 about condemning attacks by calling on States to do so ‘unequivocally and systematically’. This resolution urges States for the first time to bring their laws, policies and practices fully into compliance with their international obligations and commitments under international human rights law, and to review and amend, where necessary; with particular attention to laws on national security, public order and counter-terrorism and their misuse to arbitrarily arrest or detain journalists. With the resolution it is also the first time a safety of journalists’ resolution calls for the protection of confidentiality of journalists’ sources and for non-interference with the use of encryption and anonymity tools by journalists.

The 2018 HRC resolution spotlighted the prevention of “threats and attacks”, as well as “intimidation”. These aspects were not mentioned in previous resolutions. The resolution also expanded the list of actions to be taken by States as compared to the list proposed in the 2014 resolution.

The 2018 resolution calls on States to:

1. first ‘increase and accelerate’, rather than ‘promoting’ a safe and enabling environment;
2. second, to raise awareness of the importance of an independent, plural and diverse media online and offline;
3. third, to publicly, unequivocally and systematically condemn violence, intimidation, threats and attacks;
4. fourth, to establish and enhance information-gathering and monitoring mechanisms to collect, analyse and report data;
5. fifth, to establish early warning systems that are competent and adequately resourced;
6. sixth, to support capacity building of the judiciary and law enforcement;
7. seventh, to put in place gender-sensitive measures;
8. eighth, to ensure better coordination between relevant ministries, law enforcement and the judiciary;
9. ninth, to sign and ratify international and regional human rights instruments;
10. tenth, to implement the recommendations from treaty bodies and resolutions;
11. and eleventh, to integrate the safety of journalists in the 2030 Agenda for Sustainable Development.

The 2018 resolution also included a number of new issues that States need to take into consideration to ensure the safety of journalists. For example, it condemned for the first time measures aiming to unlawfully or arbitrarily block or take down media websites as being in violation of international human rights law. It introduced the understanding that spreading disinformation can affect the right to freedom of expression and incite violence, hatred, discrimination or hostility towards journalists. The resolution also urged political leaders, public officials and authorities to “refrain from denigrating, intimidating or threatening the media and journalists which not only put journalists in danger but (...) also undermines the respect for the importance of independent journalism”. The resolution also went deeper into the misuse of legislation to silence journalists and included new types of legislation that are being abused in this way, namely defamation and libel laws, in particular ‘through excessive criminal sanctions, to illegitimately or arbitrarily censor journalists and interfere with their mission of informing the public, and where necessary to revise and repeal such laws, in compliance with States’ obligations under international human rights law’. Moreover, apart from retaining the call for protecting journalistic sources, the resolution also added a call for the protection of whistleblowers.

The 2020 HRC resolution was clearly influenced by the impact of the COVID-19 pandemic in general and in particular on access to information and journalism at a point in time when reliable information is crucial for public health and wellbeing. It called upon States to adopt and implement 'transparent, clear and expedient laws and policies that provide for the effective disclosure of information held by public authorities, including online, and a general right to request and receive information, for which public access should be granted, except within narrow, proportionate, necessary and clearly defined limitations that comply with international human rights law'. The resolution also made clear that any measure to preserve health cannot be used to arbitrarily detain or arrest journalists. For the first time, the role of civil society in promoting the safety of journalists was also recognised. In a global context of shrinking civic space¹⁶, the text called on States to provide an enabling environment for 'civil society organisations to contribute to monitor and report cases of violence against the media and other infringements of freedom of expression, to provide assistance to journalists and media workers against wrongful prosecutions, and to advocate for crimes against them to be properly investigated and, where appropriate, for improvement of legal frameworks governing an enabling environment for journalists and media workers'. The resolution also addressed the issue of the protection journalists against surveillance in more depth and called on States to ensure that 'targeted surveillance technologies are only used in accordance with the human rights principles of lawfulness, legitimacy, necessity and proportionality, and that legal mechanisms of redress and effective remedies are available for victims of surveillance-related violations and abuses'.

2.3. Protection: Putting in place protection measures for journalists

The 2012 HRC resolution encouraged States to put in place 'voluntary protection programmes', but it did not provide further detail on this matter. It is significant that this point has also not been developed in greater depth in subsequent resolutions, indicating the limits of co-sponsoring states' willingness to publicly commit themselves to such protection programmes. The 2014 resolution focused mostly on impunity, though protection measures were not detailed here either. However, the resolution recognised the role of media organisations in 'providing adequate safety, risk awareness, digital security and self-protection training and guidance to employees, together with protective equipment, where necessary'. This acknowledgement of the role of the media was to be reinforced in 2016 through the addition of a formulation on the role of media outlets to also provide 'insurance' for journalists.

The 2016 resolution was the first resolution to directly urge the immediate and unconditional release of journalists and media workers who had been arbitrarily arrested, taken hostage or were the victims of enforced disappearances. Prior to this resolution, such arbitrary arrests had only been condemned. In 2016, there was also for the first time a specific call on States to pay attention to the protection of journalists during periods of elections and within contexts where people are exercising their right to peaceful assembly and freedom of expression. Early warning systems and rapid response mechanisms are also mentioned as a way to ensure expedient protection for journalists at risk.

The 2018 resolution adds the idea of protection of media from the unlawful or arbitrary blocking or taking down of their websites, including by denial of service attacks. The early warning system text is reinforced by calling for being 'competent and adequately

¹⁶ CIVICUS (2021), *State of Civil Society Report 2020*, <https://www.civicus.org/index.php/state-of-civil-society-report-2020>

resourced'. There was also continued recognition of the role of national human rights institutions in promoting and protecting human rights such as the right to freedom of expression. Importantly, the resolution stressed the need to address such 'human rights violations against journalists through monitoring, educating and awareness-raising activities'. The need for these measures was also emphasised again in the 2020 resolution.

2.4 Prosecution and remedy: achieving justice for crimes against journalists

Notably, the HRC resolutions focus expressly on the matter of 'the safety of journalists' and do not, like resolutions by the UN General Assembly, specify that they also focus on 'the issue of impunity' in their titles. The analysis shows that the issue of impunity has progressively taken a more prominent role in the HRC resolutions nonetheless.

The 2012 resolution expressed 'concern' that attacks against journalists often occur with impunity and called upon States to 'ensure accountability through the conduct of impartial, speedy and effective investigations into such acts falling within their jurisdiction, and to bring to justice those responsible and to ensure that victims have access to appropriate remedies'.

Impunity was a key component of the 2014 resolution. It recognised that impunity is 'one of the main challenges' and that ensuring accountability 'is a key element for preventing future attacks'. The resolution also 'strongly condemned the prevailing impunity' and expressed concern about the fact that the vast majority of crimes against journalists go unpunished, contributing to their recurrence. This resolution also listed a series of actions to be taken by States to combat impunity, including: a) the creation of special investigative units or independent commissions, b) the appointment of a specialised prosecutor, c) the adoption of specific protocols and methods of investigation and prosecution, and d) the training of prosecutors and the judiciary. The resolution also welcomed the proclamation by the UN General Assembly in 2013 of 2 November as the (annual) International Day to End Impunity for Crimes Against Journalists. When it comes to investigations, the resolution further added the need for 'thorough' and 'independent' investigations into crimes committed against journalists; and importantly urged States to bring perpetrators to justice, including 'those who command, conspire to commit, aid and abet or cover up such crimes'. The resolution also included the families of the victims in the call to access appropriate remedies. Furthermore, the resolution called on States to share information on the status of investigations into attacks and violence against journalists with UNESCO.

The 2016 Resolution introduced new elements around combating impunity. Compared to the 2014 resolution where impunity was not thoroughly captured, impunity was a central feature of the 2016 resolution, becoming one of the 'greatest' challenges to journalistic safety. Significantly, while the 2012 resolution called for 'impartial, speedy and effective investigations', the 2016 resolution added the need for 'prompt' investigations, not only into violence against journalists, but also into 'threats'. The resolution reiterates the 2014 list of measures required.

The 2018 resolution expressed 'concern' on impunity and lists the same set of actions to combat impunity when it comes to investigations, adding reference to 'thorough' investigations in the text.

In the preamble of the 2020 resolution the particular need for effective investigations into whether violations and abuses against journalists are connected with their journalistic work

is emphasised. When calling on States to ensure effective investigations and remedies, the resolution further added the need for the victims and families of violence to have access to appropriate 'restitution, compensation and assistance', and to provide assistance to journalists and media workers against 'wrongful prosecutions'. The resolution also called upon States to ensure that legal mechanisms of redress and effective remedies are available for victims of surveillance-related violations and abuses. For the first time, a resolution also called upon States to 'advocate' for proper investigations, indicating that it is not sufficient for states to simply ensure that their own legal and policy frameworks meet international standards on effective investigations into crimes against journalists.

2.5. A gender-based approach to the safety of journalists

The safety of women journalists has been the subject of increasing attention of the UN bodies, particularly through HRC resolutions.¹⁷ The 2012 and 2014 HRC resolutions only refer to the issue in the preamble through acknowledgement of the 'specific risks' faced by women journalists and the importance of taking 'a gender-sensitive approach', the issue was addressed in the operational paragraphs of subsequent resolutions.

Through the 2016 resolution, the HRC goes a step further by explicitly condemning attacks specifically targeting women journalists, including 'sexual and gender-based discrimination and violence, intimidation and harassment, online and offline'.

Female journalists received particular attention through the 2018 resolution. Both the preamble and the operational paragraphs called upon States to take gender-sensitive measures to tackle gender-based discrimination, including sexual and gender-based violence, threats, intimidation, harassment, inequality, and gender-based stereotypes, and to enable women to enter and remain in journalism on terms of equality and non-discrimination while ensuring their greatest possible safety, and to ensure that the experiences and concerns of women journalists are effectively addressed. The resolution also called upon States to put in place 'gender-sensitive preventive measures and investigative procedures' to encourage women to report online and offline attacks against them. It also called for the provision of support, including psychosocial support.

The 2020 resolution introduced new language on the issue, switching from a gender-sensitive approach to a gender-responsive one. This included a request for measures to 'prevent sexual harassment and other forms of sexual and gender-based violence, including threats, threats of rape, intimidation and harassment against women journalists', to encourage 'the reporting of harassment or violence by providing gender-sensitive investigative procedures', to provide 'adequate support, remedy, reparations and compensation for victims, including psychological support as part of broader efforts to promote and protect the human rights of women, to eliminate gender inequality and to tackle gender-based stereotypes in society', and 'to prohibit incitement to hatred against women journalists, online and offline, and other forms of abuse and harassment through relevant policy and legal measures that comply with international human rights law'. The resolution also urged political leaders, public officials and/or authorities to refrain from using 'misogynist or any discriminatory language towards women journalists'. The 2020 resolution is interesting from a diversity perspective more generally because it is the first time a HRC resolution preamble sets the stage for an intersectional approach to the safety

¹⁷ ARTICLE 19 (2022), *The safety of women journalists All you need to know about States' obligations and commitments to strengthen your advocacy*, <https://www.article19.org/wp-content/uploads/2022/03/AdvoSheet1-EN.pdf>

of journalists, affirming that ‘journalists may face specific risks in relation to their work due to various forms of discrimination, such as but not limited to sex, race, religion, ethnicity, minority status, disability or political affiliation’.

2.6. Greater international coordination to tackle violence against journalists

Since the first HRC resolution in 2012, the need for better cooperation and coordination at the international level has been an integral part of HRC resolutions, in line with priorities of the UN Plan.

The 2012 resolution stressed the need for cooperation among UN agencies, funds and programmes, between international and regional organisations, international and regional organisations as well as all relevant stakeholders. It also called for relevant special procedures of the HRC to address the issue of the safety of journalists.

The 2014 resolution included a call on the international community to provide technical assistance and capacity building, and on States to cooperate with UN entities. It also called upon States to address the issue of the safety of journalists in the universal periodic review process and with national human rights institutions.

In the same way as previous resolutions, the 2016 resolution continues to stress the need for better cooperation and coordination at the international level, including through relevant special procedures of the Human Rights Council. In the same way as the 2014 resolution, the 2016 resolution also invites stakeholders to cooperate to promote awareness and implementation of the UN Plan.

In 2018, the HRC resolution introduced language around a need for alignment with the 2030 Agenda for Sustainable Development and Sustainable Development Goal Indicator 16.10.1 which encourages States to collect and report data on the number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention, torture and other harmful acts against journalists. The resolution also recognised the importance of international cooperation in support of national efforts, in particular in strengthening the capacities of States to protect journalists. In 2018, the call for coordination was focused on the national level, calling upon States to better coordinate within and between relevant ministries, law enforcement and the judiciary. In 2020, the resolution added a call upon States to integrate information on the safety of journalists into national development frameworks under the 2030 Agenda for Sustainable Development, and report on SDG voluntary national reports

3. Context Analysis: Linkages Between HRC Resolutions and Global Challenges and Trends to Journalists' Safety

Changes in the language of the HRC resolution texts indicate how the approach of the HRC towards the issue of the safety of journalists has evolved over the decade. The language of the resolutions also provides the basis for a critical assessment of the series of resolutions, in terms of how, as a body of soft law, they are responding to changes in challenges to journalistic safety. This section undertakes a contextual analysis of the HRC resolutions, by examining whether the resolutions are responsive to emerging trends and challenges concerning the safety of journalists as identified by key players in the international community concerned with issues of freedom of expression, media freedom and journalistic safety over the same time period.

To this end, this section analyses the context of the resolutions with reference to reports on freedom of expression and the safety of journalists published on an annual basis by the following organisations: (a) ARTICLE 19 ('Global Expression Reports');¹⁸ (b) the Committee to Protect Journalists ('Annual Reports');¹⁹ (c) Reporters without Borders ('World Press Freedom Index');²⁰ (d) Joint Declarations by the intergovernmental mandate-holders on freedom of expression and freedom of the media of the UN, the Organization of American States (OAS), the African Commission on Human and Peoples' Rights (ACHPR) and the Organization for Security and Co-operation in Europe (OSCE);²¹ (e) the annual reports to the HRC and the UN General Assembly of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression;²² (f) the UNESCO's Director General reports on the Safety of Journalists and the Danger of Impunity;²³ and (g) the UNESCO's World Trends in Freedom of Expression and Media Freedom reports ('UNESCO WTR').²⁴

3.1. 2012 HRC Resolution 21/12

The 2012 resolution was driven by a sense of momentum around the UN Plan and a concerted focus on the safety of journalists by intergovernmental experts on freedom of expression. It represented an overview of the main challenges to the safety of journalists at the time without going into much detail.

3.2. 2014 HRC Resolution 27/5

The 2014 HRC Resolution was informed by the experience of three years of the armed conflict in Syria which had resulted in 60 journalists and media workers being killed between January 2012 and September 2014.²⁵ The 2014 text is clearly orientated towards this context of armed conflict with a reference to the UN Security Council Resolution 1738 on the protection of journalists in situations of armed conflict in its preamble. In expanding the scope of the resolution beyond journalists to also include media workers, the resolution acknowledges that many of those engaged in the practice of journalism who were killed in Syria were not reporters, but media workers, such as camerapersons, photographers, drivers, and so-called 'fixers' or local media workers supporting the work of foreign correspondents on the ground. The 2014 resolution also emphasised the role of media

¹⁸ ARTICLE 19, Global Expression Report, See latest report: <https://www.article19.org/resources/global-expression-report-2021-gxr21-resources-for-the-media>

¹⁹ Committee to Protect Journalists (CPJ), Annual Report, See the latest report: <https://cpj.org/reports/2021/10/killers-of-journalists-still-get-away-with-murder/>

²⁰ Reporters without Borders, World Press Freedom Index, See: <https://rsf.org/en/ranking>

²¹ See Joint Declarations: <https://www.ohchr.org/en/special-procedures/sr-freedom-of-opinion-and-expression/resources>

²² See Annual Reports by the UN Special Rapporteur on freedom of opinion and expression: <https://www.ohchr.org/en/special-procedures/sr-freedom-of-opinion-and-expression/annual-thematic-reports>

²³ See UNESCO Director General's Reports on The Safety of Journalists and the Danger of Impunity: <https://en.unesco.org/themes/safety-journalists/dgreport>

²⁴ See UNESCO's World Trends in Freedom of Expression and Media Development report: <https://www.unesco.org/en/world-media-trends>

²⁵ UNESCO, Observatory of Killed Journalists, Syrian Arab Republic 2011-2022, <https://en.unesco.org/themes/safety-journalists/observatory/country/223818>

organisations in providing adequate risk assessment, training and protection equipment for journalists reporting from conflict. The need for media organisations to take greater responsibility to ensure such safety measures was also one of the issues raised by journalists, in particular in the context of Syria.²⁶

The 2014 HRC resolution's focus on impunity as one of the main challenges to the protection of journalists reaffirmed the 2013 UN General Assembly resolution, which *inter alia* recognised 2 November as the International Day to End Impunity on Crimes against Journalists. Through its Preamble, the 2014 HRC Resolution also acknowledged the problem of unlawful or arbitrary surveillance and interception of communications which undermine the right to privacy and, relatedly, the confidentiality of sources which journalists rely upon in their news-gathering. This inclusion was hardly surprising given the context in which the resolution was adopted, one year after the whistleblower Edward Snowden had leaked information on mass surveillance programmes of the United States and other 'Five Eyes' states.²⁷

3.3. 2016 HRC resolution 33/2

The preamble of the 2016 resolution recognises the concerns surrounding the responsibility of non-State actors, such as terrorist groups and criminal organisations, in driving attacks on journalists. This is understandable, given that the 2016 resolution was the first to be adopted after the murder of 12 journalists and media workers at the office of the French satirical magazine Charlie Hebdo by two men identified as belonging to the Islamic terrorist group al-Qaeda on 7 January 2015. The two years preceding the 2016 resolution were also marked by numerous attacks against journalists by terrorist groups - Islamic State in Syria and Iraq, and Boko Haram in Nigeria, Cameroon and Niger - also by organised crime, particularly in Mexico.²⁸ Therefore, what had been a concern about the killing of journalists in situations of armed conflict morphed into a wider concern about attacks on journalists driven by violent extremism. Indeed, the objective of 'countering violent extremism' was not only a central concern of the 2016 resolution but also the focus of the Joint Declaration by the intergovernmental mandate-holders on freedom of expression and freedom of the media of the UN, the OSCE, the OAS and the ACPHR.

The 2016 resolution called for the first time for the protection of journalistic sources. In doing so, it built on the 2014 resolution's recognition of surveillance as a challenge for journalists, but also the detailed analysis of the issue in UNESCO's 2015 WTR report²⁹ and the 2015 thematic report of the UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression to the UN General Assembly.³⁰

²⁶ Salazar, Maria (2014), *Syrian Journalists Strive to Report, Despite Shifting Dangers*, <https://cpj.org/2014/02/attacks-on-the-press-syria-analysis/>

²⁷ CPJ (2016), *CPJ Risk List: Where Press Freedom Suffered*, <https://cpj.org/2014/02/attacks-on-the-press-cpj-risk-list-1/>

²⁸ RSF (2015) *Non-State Groups: Tyrants of Information*, <https://rsf.org/en/2015-non-state-groups-tyrants-information>

²⁹ UNESCO (2015), *World Trends Report in Freedom of Expression and Media Development*, <https://unesdoc.unesco.org/ark:/48223/pf0000234933>

³⁰ UNGA (2015), Report by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, <https://undocs.org/A/70/361>

The 2016 resolution urges States to bring laws into compliance with their international obligations, in particular those on national security, public order or counter-terrorism. The use, misuse and abuse of this type of legislation to silence journalists was one of the issues highlighted in 2015 RSF Index, 2015 CPJ annual report and 2014 WTR.³¹

As several intergovernmental organisations are actively working to improve the safety of journalists at the regional and international levels, it is to be expected that there will be a certain degree of borrowing and replication of ideas and language across the different evolving approaches. Such cross-fertilisation appears to have taken place between the Council of Europe's Committee of Ministers' Recommendation CM/Rec (2016)4 to member States on the protection of journalism and safety of journalists and other media actors and HRC Resolution 33/2. The Committee of Ministers' Recommendation was adopted on 13 April 2016 and the HRC's Resolution later that year – on 29 September 2016. In HRC Resolution 33/2, several new focuses and measures appear for the first time in HRC Resolutions and they bear much similarity to corresponding focuses and measures in the Committee of Ministers' Recommendation. Examples include the call upon States to review and revise national laws, policies and practices in order to bring them into line with States' obligations and commitments under international human rights law; emphasis on the importance of journalistic reporting of elections and during election periods; the specification that non-State actors targeting journalists with threats or violence can be terrorist or criminal organisations; concerns about the misuse of national laws to thwart journalism, in particular measures to counter terrorism and to preserve national security or public order.

3.4. 2018 HRC resolution 39/6

The 2018 HRC resolution, the first since the election of Donald Trump as President of the United States, reflects rising global concerns about the public denigration of journalists and journalism, particularly by political leaders.³² This resolution urges political leaders to refrain from denigrating, intimidating and threatening journalists as it undermines the safety of journalists and the importance of independent journalism as a whole. Leading freedom of expression organisations had already issued warnings about rhetorical attacks by populist leaders around the world - including the leaders of the United States, Brazil, Philippines, Hungary, and India - upon journalists and the media and the impact of such attacks upon real world violence and public trust in journalists and journalism. A few months before the 2018 resolution's adoption, a group of leading press freedom organisations had undertaken a mission to the United States, concluding that the 'Trump administration's verbal attacks on media and journalists have left journalists facing increasing abuse, harassment, and threats, particularly online'.³³ According to the 2017 RSF World Press Freedom Index, 'never [had] media freedom [been] so threatened'.³⁴ The 2018 resolution echoed civil society organisations by relating the safety of journalists with the context of the media environment and placing emphasis on the importance of the

³¹ See 2015 RSF Index: <https://rsf.org/en/world-press-freedom-index-2015>; 2015 CPJ annual report: <https://cpj.org/wp-content/uploads/2021/11/CPJ.Annual.Report.2015.pdf>; and 2014 WTR report: https://en.unesco.org/sites/default/files/key_sources_and_references_wtr_2014.pdf.

³² ARTICLE 19, CPJ, IFEX, Index on Censorship, International Press Institute (IPI) (2018), *Press Freedom Under Threat: Press Freedom Mission to the US Report*, <https://rsf.org/en/news/rsf-participate-unprecedented-us-press-freedom-mission>

³³ Ibid

³⁴ RSF (2017), *World Press Freedom Index*, <https://rsf.org/en/2017-world-press-freedom-index-tipping-point>

existence of independent, plural and diverse media online and offline. This 2018 text also showed concern about disinformation targeting journalists, thereby reinforcing the position of the 2017 Joint Declaration by the intergovernmental experts on freedom of expression and freedom of the media.³⁵

For the first time, this resolution condemned the take down of websites, a challenge identified both in the CPJ annual report and RSF index in 2017 and 2018, and the 2017/2018 UNESCO's WTR.³⁶ This text also included the need to protect whistleblowers, an increasing concern by the international media community, as reflected in the 2017 RSF Index, and as expressed by the UN special rapporteur on freedom of expression whose UNGA 2015 annual report was partially dedicated to the protection of whistleblowers.

For the first time, this resolution acknowledged the risk of journalists covering elections and it was included in its preamble. This concern was also shared the year before by ARTICLE 19 in its 2018/2019 Global Expression agenda.³⁷

3.4 2020 HRC resolution 45/18

Like the vast bulk of initiatives of UN and other human rights bodies in 2020 and subsequently, the drafting of the 2020 resolution was clearly marked by the COVID-19 pandemic. The 2020 HRC resolution focused on the importance of access to information, a link made by several reports by the international community.³⁸ In particular, the text underlined the need for any emergency measures to address the pandemic to be necessary, proportionate, and time-bounded - requirements for restrictions on rights under international human rights law which were identified by UN human rights experts including the 2020 UN Special Rapporteur on freedom of expression.³⁹

The 2020 resolution was also the first resolution since the high-profile murder of the Saudi journalist Jamal Khashoggi at the Saudi embassy in Istanbul, Turkey. It would come as no surprise that the resolution expressed concern about incidents of extraterritorial targeting of journalists and media workers, including harassment, surveillance and the arbitrary deprivation of life. In doing so, it reinforced in a general way the concerns expressed in the 2019 report of the Special Rapporteur on extrajudicial, summary or arbitrary executions Agnes Callamard following her Investigation into the unlawful death of Jamal Khashoggi,

³⁵ Joint Declaration on Freedom of Expression, "Fake News" and Disinformation (2017), <https://www.osce.org/files/f/documents/6/8/302796.pdf>

³⁶ See 2017 RSF Index: <https://rsf.org/en/2017-world-press-freedom-index-tipping-point>; 2017 CPJ annual report: <https://cpj.org/wp-content/uploads/2021/11/CPJ.2017.Annual.Report.pdf>; and 2017/18 WTR report: https://unesdoc.unesco.org/ark:/48223/pf0000266191_eng.

³⁷ ARTICLE 19 (2019), *2018/19 Global Expression Report*, <https://www.article19.org/reader/global-expression-report-2018-19/>

³⁸ See 2020 RSF Index: <https://rsf.org/en/2020-world-press-freedom-index-entering-decisive-decade-journalism-exacerbated-coronavirus>; 2020 CPJ annual report: <https://cpj.org/wp-content/uploads/2021/11/CPJ.2020.Annual.Report.pdf>; and 2021/22 WTR report: https://unesdoc.unesco.org/ark:/48223/pf0000266191_eng.

³⁹ <https://undocs.org/A/HRC/44/49>

although it did mirror the detail of her recommendations, particularly around the mechanisms of international accountability she recommended.⁴⁰

The role of civil society protecting journalists was also recognised at a time when civic space was and continues to be widely threatened.⁴¹

The 2020 text includes the strongest paragraph in relation to violence against women journalists online and offline to date, thereby reflecting a growing awareness of intensifying online harassment and abuse of female journalists that had been documented by numerous organisations⁴² and that would later be addressed in a UNESCO report.⁴³ The 2020 resolution also includes the strongest call in a HRC resolution for the protection of women journalists against online and offline abuse.

The negative impact of surveillance on the safety of journalists was first identified in the preamble of the 2016 resolution. In 2018, a call to refrain from employing unlawful or arbitrary surveillance is elevated to the operational section of the resolution. challenge recognised by ARTICLE 19's Global Expression Report and in the UNSR's 2019 on freedom of expression report dedicated to surveillance.⁴⁴

4. Looking to the Future: What HRC Resolutions Need to Address

As described in previous sections, the HRC resolutions on the safety of journalists have evolved over their first decade and in doing so have reinforced the existing treaty commitments of States, especially under Article 19 of the ICCPR, by offering an elaboration of what they mean in practice. This paper, however, identifies a selection of emerging challenges and issues that need to be addressed by these resolutions to ensure that States fulfil their obligation to protect journalists in line with international human rights standards and their commitment to promote the safety of journalists in an ever-changing world. This section is informed by the content and context analysis and also by ARTICLE 19 briefings on how to reinforce HRC and UNGA resolutions on the safety of journalists.⁴⁵

4.1. Prevention

⁴⁰ See Report of the inquiry, 19 June 2019 A/HRC/41/CRP.1 and more generally page on inquiry of Special Rapporteur on extrajudicial, summary or arbitrary executions into the killing of Jamal Khashoggi <https://www.ohchr.org/en/special-procedures/sr-executions/inquiry-killing-mr-jamal-kashoggi>

⁴¹ CIVICUS (2021), *State of Civil Society Report 2020*, <https://www.civicus.org/index.php/state-of-civil-society-report-2020>

⁴² See 2020 RSF Index: <https://rsf.org/en/2020-world-press-freedom-index-entering-decisive-decade-journalism-exacerbated-coronavirus>; 2020 CPJ annual report: <https://cpj.org/wp-content/uploads/2021/11/CPJ.2020.Annual.Report.pdf>; and 2021/22 WTR report: https://unesdoc.unesco.org/ark:/48223/pf0000266191_eng

⁴³ UNESCO (2021), *The Chilling: Global trends in online violence against women journalists*, <https://en.unesco.org/themes/safety-journalists/women-journalists>

⁴⁴ UNGA (2019) Report by the UN Special Rapporteur on Freedom of Opinion and Expression. Doc No. A/HRC/41/35, <https://undocs.org/A/HRC/41/35>

⁴⁵ These two briefings prepared for HRC Resolution 45/18 (2020) and UNGA Resolution 76/173 (2021) have not been published. We thank ARTICLE 19 for making them available to us and in particular to A19's staff having drafted it: Callum Birch, Paulina Gutierrez, Anna Oosterlinck, Simon Petitjean, and Silvia Chocarro (co-authors of this paper).

Prevention is about ensuring a safe environment for journalists to exercise the function of journalism. HRC resolutions can further reinforce the call on States to take measures to prevent attacks against journalists from happening.

While HRC Resolution 45/18 of 2020 expressed concern about strategic lawsuits against public participation (SLAPPs) in its preamble, there is no corresponding provision in the operative part of the Resolution calling on States to address the growing problem of SLAPPs. This was a missed opportunity for the HRC to call upon States to take measures to counter an increasing trend that has been identified in several reports by civil society organizations and by UNESCO.⁴⁶ HRC Resolution 45/18 also expressed concern about the misuse of defamation and libel laws, in particular the 'excessive criminal sanctions'. Similar concerns are articulated in General Comment 34, which furthermore recommends that States should consider decriminalising defamation laws.⁴⁷

In recent years, journalists have faced emergency situations and situations of armed conflict, in such contexts as Afghanistan, Myanmar, Nicaragua, and Ukraine. HRC resolutions have the potential of calling on States to be better prepared to address these type of situations, including by creating collective early warning systems and coordination channels between States and between States, civil society organisations, media and journalists to provide rapid and effective response to emergency situations for journalists. These measures include support for access to safe houses and safe passage to move or leave the country, and the creation of emergency visas for journalists at risk and their families.⁴⁸ The implications of situations of armed conflict can be supported by international humanitarian law as well as Security Council resolutions on the protection of civilians in armed conflict.

One of the trends that became even more visible during the COVID-19 pandemic is that restrictions are being put on journalists for accessing public officials, buildings and events, sometimes on the pretext of not having a particular accreditation. HRC resolutions should reflect the recommendations of General Comment 34, which states that accreditation regimes 'must be shown necessary, proportionate and transparent'.⁴⁹ This means that an accreditation procedure should be non-discriminatory, free from political interference, and compliant with Article 19(3) of the ICCPR.

Additionally, ensuring a safe environment for journalists to operate could benefit from promoting media and information literacy public policies insofar as media and information literacy could help to increase public awareness of the importance of independent, critical journalism, and better appreciate the work of journalists. A media-literate society could

⁴⁶ See European Parliament (2021), *The Use of SLAPPs to Silence Journalists, NGOs and Civil Society*, [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694782/IPOL_STU\(2021\)694782_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694782/IPOL_STU(2021)694782_EN.pdf); and ARTICLE 19/MFRR (2022), *SLAPPs against journalists across Europe*, <https://www.article19.org/wp-content/uploads/2022/03/A19-SLAPPs-against-journalists-across-Europe-Regional-Report.pdf>

⁴⁷ International Covenant on Civil and Political Rights (CCPR), General Comment 34: Article 19: Freedoms of opinion and expression, <https://undocs.org/CCPR/C/GC/34>

⁴⁸ Media Freedom Coalition - Consultative Network (2022), *More must be done to defend journalism and media freedom*, <https://www.article19.org/resources/international-more-must-be-done-to-defend-journalists-and-media-freedom/>

⁴⁹ International Covenant on Civil and Political Rights (CCPR), General Comment 34: Article 19: Freedoms of opinion and expression, <https://undocs.org/CCPR/C/GC/34>

thus contribute to a safe environment for journalists to operate and to counter disinformation and smear campaigns against journalists that would put them at risk.⁵⁰

4.2. Protection

The analysis of the HRC resolutions shows that protection is the least developed aspect of the prevention, protection and prosecution approach. There is room to strengthen future resolutions calling on States to put in place and promote specific protection measures for journalists, in particular in collaboration with civil society, media and journalists. Since the approval of the UN Plan of Action, many State actors have developed a variety of protection initiatives, in many cases in collaboration with other actors. Even though there is no 'one size fits all' when it comes to protection measures in which the State is involved, such measures can include plans of action, protection mechanisms, public inquiries, formal and informal multi-stakeholder coordination mechanisms, security measures for journalists at risk, and specific focal points in relevant public institutions with a role to promote coordination on the safety of journalists.

HRC resolutions could also explicitly recognise that journalists reporting of certain subjects are at a heightened risk. The public acknowledgement of the most dangerous issues for journalists could pave the way for States to develop measures to protect journalists addressing those particular issues specifically. As demonstrated by the reports of civil society organisations, the following subjects are the most dangerous for journalists to report on in many states: corruption; natural resources access and management; the environment and the climate emergency; human rights; women's rights; and gender issues.⁵¹

Journalists are especially exposed to danger whilst covering protests. While the need to protect journalists during protests is recognised by HRC Resolution 45/18 of 2020, it does not refer to the recommendation made by General Comment 37 that specifies this protection should also take place even if an assembly 'is declared unlawful or it is dispersed'.⁵² Future HRC resolutions could usefully make explicit reference to this point and thereby ensure alignment with the established approach of the Human Rights Committee.

The preamble of HRC Resolution 45/18 expressed concern about extraterritorial targeting of journalists after the murder of Jamal Khashoggi in the Saudi Arabia Embassy in Turkey. A future HRC resolution could include an operative paragraph calling on States to refrain from any extraterritorial threat, attack, deprivation of life or movement. There has been a growing number of high-profile cases of extraterritorial targeting in recent years, including Saudi journalist Jamal Khashoggi, Iranian journalists Masih Alinejad and Ruhollah Zam

⁵⁰ Chocarro, Sivia et al (2020), *Understanding the link between a media and information literate citizenry and the (un)-safety of journalism*, Paper presented at the Academic Conference on the Safety of Journalists, World Press Freedom Conference 2020, December 9 - 10 December 2020, <https://www.article19.org/resources/media-and-information-literacy-protect-journalists/>

⁵¹ See Transparency International (2020), *The high cost journalists pay for reporting on corruption*, <https://www.transparency.org/en/news/the-high-costs-journalists-pay-when-reporting-on-corruption>; RSF (2021), *Respect the right to cover the environment, RSF and journalists tell COP26*, <https://rsf.org/en/news/respect-right-cover-environment-rsf-and-journalists-tell-cop26>; RSF (2021), *Women's Rights: Forbidden Subject*, <https://rsf.org/en/news/rsf-shines-light-forbidden-coverage-womens-rights>

⁵² International Covenant on Civil and Political Rights (CCPR), *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, <https://undocs.org/CCPR/C/GC/37>

and Belarusian journalist Roman Pratasevich.

It is essential for the protection of journalists to ensure a safe digital space for them. Recent journalism investigative reports have shown how surveillance tools are being used by States to surveil journalists, jeopardising their security and the role of journalism in society.⁵³ The use of mass surveillance and unlawful targeted surveillance is one of the most pressing concerns facing journalists worldwide. HRC resolutions could strengthen and expand on existing language on encryption and anonymity. They could, for instance, call on States to enact laws which recognise that journalists and media workers are free to protect the privacy of their digital communications by using encryption technology and tools that allow anonymity online, and to ensure that legislation and regulations protecting journalists and media workers include provisions enabling access and providing support to use the technologies to secure their communications.⁵⁴ Moreover, as recommended by the UN Special Rapporteur on freedom of expression, future resolutions could call on States to ‘impose an immediate moratorium on the export, sale, transfer, use or servicing of privately developed surveillance tools until a human rights-compliant safeguards regime is in place’.⁵⁵

4.3. Prosecution and Remedy

Although the HRC resolutions are entitled ‘on the safety of journalists’, compared to the UNGA resolutions that are about ‘the safety of journalists and the issue of impunity’, they have paid attention to addressing the issue of impunity, providing concrete recommendations to States. There are some additional measures that can be included to stop the impunity cycle. A reason why attacks against journalists are not being properly investigated is that in many cases the line of enquiry that connects the attack to the profession is not prioritised and exhausted. While HRC resolution 45/18 preamble stressed the need for “effective investigations into whether those violations or abuses were connected with the journalistic work of the victim”, an operational paragraph is needed to call on States ‘to ensure the lines of enquiries that connect violence, threats and attacks with journalistic activities are exhausted’.⁵⁶

On the increasing challenge of abusive lawsuits against journalists, it would be necessary to ensure that journalists and the media have access to effective remedies and procedural safeguards when facing abusive lawsuits. Such lawsuits, or SLAPPs, are typically instituted by public officials or private individuals whose only purpose is to harass or intimidate the targeted journalists or media so that they will engage in self-censorship and cease their (critical) reporting. SLAPPs are also often characterised by an inequality of arms: those initiating SLAPPs are usually rich individuals or organisations with the financial resources to take (multiple) lawsuits, whereas the targeted journalists and media often lack the resources they need to defend themselves in court. These features of SLAPPs contribute to the severe chilling effect that they can have on the exercise of the right to freedom of expression. As suggested above, more focused attention for SLAPPs in the operative part of future resolutions would also be useful in terms of preventive

⁵³ The Pegasus Project, <https://forbiddenstories.org/about-the-pegasus-project/>

⁵⁴ A19 briefing (not published)

⁵⁵ UNGA (2019) Report by the UN Special Rapporteur on Freedom of Opinion and Expression. A/HRC/41/35 <https://undocs.org/A/HRC/41/35>

⁵⁶ A19 briefing (not published)

strategies by States. This would support a more holistic and detailed approach to addressing the diverse challenges presented by SLAPPs. A piecemeal approach would fall short as a coherent and comprehensive approach is needed.

When addressing impunity, there have been examples of initiatives led by intergovernmental organisations from which lessons can be learned and replicated to address impunity. Examples include the report on the investigation of the murder of Jamal Khashoggi by the UN Special Rapporteur on extrajudicial, summary or extrajudicial executions⁵⁷ and the joint investigation by the office of the OAS Special Rapporteur on freedom of expression, the Colombian and Ecuadorian States and civil society of the killing at the border of these two countries of the journalists Efraín Segarra, Javier Ortega and Paul Rivas.⁵⁸ Building on these initiatives, particularly the report of the UN Special Rapporteur on extrajudicial, summary or extrajudicial executions, future HRC resolutions could call on States to support this type of investigative initiative to be part of the regular work of the UN system, whether in the form of a UN standing commission on the investigation ‘for the criminal investigation of allegations of targeted killing or other acts of violence against journalists, human rights defenders or others targeted because of their peaceful activities’ and the establishment of a ‘special procedures task force to: undertake rapid-response missions’.⁵⁹

Ensuring equal access to justice is also crucial, in particular for those journalists in the most vulnerable contexts who might not enjoy equal access to justice. This problem has been acknowledged by several OHCHR reports in relation to children, persons with disability, indigenous people or women, for example.

4.4. Gender approach

In the case of women’s access to justice, CEDAW General Recommendation 33 on women’s access to justice observed “a number of obstacles and restrictions that impede women from realising their right to access to justice on a basis of equality”⁶⁰. Therefore, addressing impunity on crimes against women journalists in particular is required to ensure that ‘all specialised judicial and quasi-judicial mechanisms are available and accessible to women’.

Gender equality has been an increasing concern of HRC resolutions. However, the notion of gender is presumed to denote women or female in the resolutions. In order to fully embrace the principles of equality, diversity and inclusion, the resolutions should embrace

⁵⁷ UNGA (2019), *Investigation of, accountability for and prevention of intentional State killings of human rights defenders, journalists and prominent dissidents: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, <https://undocs.org/A/HRC/41/36>

⁵⁸ Inter-American Commission for Human Rights (2019), *Informe final del equipo de seguimiento especial (ese) designado por la comisión interamericana de derechos humanos seguimiento del componente investigar los hechos que resultaron en el secuestro y asesinato de: javier ortega, paúl rivas y efraín segarra (integrantes del equipo periodístico del diario “el Comercio”)*, http://www.oas.org/es/cidh/expresion/informes/Informe_Final_ESE_MC_Dicc2019.pdf

⁵⁹ UNGA (2019), *Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr. Jamal Khashoggi*, https://www.ohchr.org/en/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_CRP.1.docx

⁶⁰ Convention on the Elimination of All Forms of Discrimination against Women (2015), *General recommendation No. 33 on women’s access to justice*, Doc No. <https://undocs.org/CEDAW/C/GC/33>

a more expansive approach to gender considerations, which would encompass the risks faced by the LGBTQI+ media community.⁶¹ The resolutions' references to 'all women' should be taken to mean all those journalists identifying themselves as such.

HRC resolution 45/18 of 2020 recognised that particular threats and risks demand specific and tailored solutions which respond to any intersecting forms of discrimination that might affect an individual, such as race and ethnicity. However, in this context, gender identity and sexual orientation are not mentioned. In this regard, the UN Special Rapporteur on freedom of expression has stated: 'they can and should be considered grounds for protection in view of the gender equality clauses elsewhere in the [ICCPR] and the broader intersectional approach to non-discrimination that international human rights law has consistently taken in recent decades.'⁶² An exploration of this line of thinking could be useful for strengthening relevant focuses of future HRC Resolutions.

4.5 International coordination

Coordination among various actors has shown to be fundamental in guaranteeing the safety of journalists, at the local, national, regional and international levels.

In this regard, calling for States to better coordinate among the various existing initiatives could improve the effectiveness of the shared goal to promote an environment where journalism can flourish, for example coordination among the intergovernmental group of friends on the safety of journalists and of those with other State-led initiatives, such as the Media Freedom Coalition and the Freedom Online Coalition. It is also relevant to call for more coordination with civil society groups at the local, national, regional and international levels. Of particular relevance is to ensure that States coordinate and take into account civil society inputs when developing the Voluntary National Report to the Sustainable Development Goals' monitoring processes, as indicator SDG 16.10.1 is about the 'number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists'. The UN Department of Economic and Social Affairs' handbook for countries in preparation of presenting voluntary national reviews recommends including contributions made by a wide range of stakeholders, including civil society⁶³

In recent years, there have been more and more reports requesting States to inform on their work to promote the safety of journalists, for example by the HRC, the UNGA, and UNESCO.⁶⁴ However, data shows that less than 15% of States have responded to the call for inputs, even among those who belong to voluntary formal and informal bodies on the safety of journalists, such as the intergovernmental group of friends on the safety of journalists.

Also, in line with the UN Plan of Action, more effective coordination can be requested from UN bodies on this issue, in particular at the local level via, for example, the UN Country

⁶¹ See for example HRC Resolution A/HRC/RES/32/2, <https://undocs.org/A/HRC/RES/32/2>.

⁶² UNGA (2021) Report by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Doc No. A/76/258, <https://undocs.org/A/76/258>

⁶³ UN Department of Economic and Social Affairs (2020), *Handbook for the preparation of the VNRs*, https://sustainabledevelopment.un.org/content/documents/27024Handbook_2021_EN.pdf.

⁶⁴ IFEX (2021), *IFEX Explainer: UN Resolutions on Journalists' Safety: How to Monitor their Implementation*, <https://ifex.org/resolutions-on-journalists-safety-how-does-the-un-monitor-their-implementation/>

Teams, as suggested by UNESCO.⁶⁵

5. Conclusion

Based on the analysis conducted in this paper, it is clear that HRC Resolutions are a dynamic and constantly evolving contribution to international efforts to enhance the safety and protection of journalists and media workers. The analysis has shown that new resolutions build on preceding resolutions in several ways by refining the language used; developing the detail of the measures urged; expanding the focuses of the envisaged measures; and responding to some of the latest emerging threats.

This paper has identified normative gaps in prevention, protection and prosecution and remedy, gender approach and international coordination that should be addressed in future HRC resolutions in order to properly respond to the most pressing challenges to the safety of journalists. This paper has also identified a number of resources by civil society and intergovernmental bodies from which these HRC resolutions can extract relevant recommendations to advance the normative gaps to guarantee the safety of journalists.

In the last ten years, there have been high levels of development of normative work within the United Nations (UN) system on the issue of the safety of journalists. The dynamic and evolving character of the HRC resolutions makes it realistic that the suggestions advanced in this paper could find a place in the 2022 HRC Resolution. This paper argues that further research now needs to be undertaken to assess the implementation of this body of resolutions. After all, international standards would not fulfill their goal unless they are effectively implemented.

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⁶⁵ UNESCO (2022), The Universal Periodic Review and its potential to foster freedom of expression, access to information and safety of journalists: <https://unesdoc.unesco.org/ark:/48223/pf0000377808>

