



## **Introduction**

United Nations Special Envoy, Deborah Lyons has warned the Security Council of the dire consequences of yet another a civil war in Afghanistan. War is not only catastrophic for the Afghan people but will necessarily “increase[d] insecurity for many other countries, near and far”.

This assessment is shared by numerous organisations including Women's organisations in Afghanistan. The UNSC is fully apprised as to the seriousness of the situation, the real threats to international peace and security, to the civilian population and the gendered nature and impact of those threats. It is reported that crimes against humanity are being committed as the Taliban advance..

Women and girls in Afghanistan are already experiencing the disproportionate adverse effects of the failure of the peace processes, the escalation of violence in all regions, the humanitarian crisis, exacerbated by Covid-19 and drought. The World Health Organisation estimates that at least 18.4 million Afghans require humanitarian assistance. A cease fire is desperately needed to enable multiple humanitarian life-saving actions and to enable the renewal of a peace process.

## **International responsibility of the UNSC and Member States**

The Security Council must act to protect civilians under threat and provide coherence in response to address: security for the domicile population, humanitarian assistance, the prevention of gender persecution.

The requirement on it to do so derives from article 24 UN Charter pursuant to which member states have conferred on the Council primary responsibility to maintain peace and security.”

They also ‘agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.’ This implies the continued interest and responsibility of member states to ensure that the Council takes adequate measures to maintain peace and security and that in discharging its duties it acts in accordance with the purposes and principles of the United Nations.

The Council's primary responsibility does not detract from member states' own obligations under international law including those arising under international humanitarian law and human rights law for the protection of civilians in armed conflict. While IHL is in general directed at the parties to an international or non-international armed conflict, all states parties have the obligation to ‘ensure respect’ for the Geneva Conventions.<sup>1</sup> Human rights law, including that based in customary international law requires states to ‘respect, protect

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<sup>1</sup> Article 1 of all four Geneva Conventions of 1949. All UN member states are parties to the 1949 Geneva Conventions.



and fulfil' the human rights of all individuals, including the right to life. These obligations do not cease in time of armed conflict.<sup>2</sup>

As a matter of legal obligation the Security Council must act to protect civilians under threat and provide coherence in response to address: security for the domicile population, humanitarian assistance, the prevention of gender persecution.

A cease fire is desperately needed to enable multiple humanitarian life-saving actions and to enable the renewal of a peace process.

### **Relevant UNSC Resolutions**

Since 1999 the Security Council has adopted a series of resolutions directed at the protection of civilians in armed conflict, with further resolutions directed at the protection of children in armed conflict. In 2000 the Security Council adopted its first resolution on Women, Peace and Security (WPS) for the protection of women in armed conflict, recognising that this can contribute significantly to the maintenance and promotion of international peace and security.<sup>3</sup> Some relevant aspects of these resolutions are highlighted below but importantly all such resolutions are grounded in these same regimes of international law – IHL, international human rights law and also Refugee law.

The first SC resolution on the protection of civilians explicitly references the Council's primary responsibility for the maintenance of international peace and security and notes that the hardships suffered by civilians in armed conflict, in particular as a result of the violence directed against them, especially women, children and vulnerable groups, have consequent impact on 'durable peace, reconciliation and development.'<sup>4</sup>

Accordingly the Council 'expresses its willingness to respond to situations of armed conflict where civilians are being targeted or humanitarian assistance to civilians is being deliberately obstructed, including through the consideration of appropriate measures at the Council's disposal in accordance with the Charter of the United Nations.' Article 34 of the Charter allows for the Council to 'investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.'

The latest resolution on the protection of civilians in armed conflict, adopted in April 2021<sup>5</sup> reiterates the need to ensure respect for IHL; expresses the Council's grave concern about the level of violence against civilians in armed conflict; its own 'commitment to pursue all possible avenues to prevent and end armed conflicts, including through addressing their underlying root causes in an inclusive, integrated and sustainable manner'.

<sup>2</sup> 'The Committee reiterates that States parties' obligations continue to apply during conflict or states of emergency'; Committee on the Elimination of Discrimination against Women. General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, 18 October 2013.

<sup>3</sup> SC Resolution 1325, 31 October 2000.

<sup>4</sup> SC Resolution 1265, 17 September 1999.

<sup>5</sup> SC Resolution 2573, 27 April 2021



## **Women Peace and Security.**

Like the resolutions on the protection of civilians the nine SC Resolutions on Women Peace and Security that the Council has adopted since resolution 1325 are accumulative, together building a comprehensive agenda for the prevention of and protection against sexual and gender-based violence against women and girls in armed conflict and more generally for the protection of women's human rights.<sup>6</sup>

The ground-breaking resolution 1325 reaffirms 'the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts'. The second WPS resolution, 1820 adopted in 2008, stresses that sexual violence targeted at civilians 'can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security.' Both these first WPS resolutions affirm the Council's ability to act. Resolution 1325 'expresses the Council's willingness to ensure that its missions 'take into account gender considerations and the rights of women, including through consultation with local and international women's groups'. Resolution 1820 affirms its readiness to 'adopt appropriate steps to address widespread or systematic sexual violence.'

Application of these resolutions are directly relevant to the current situation.

The Council and member states must take action for the protection of civilians in Afghanistan. WPS resolution 2467, adopted 23 April 2019, makes clear the responsibility of member states in this regard: 'affirming the primary role of Member States to implement fully the relevant provisions of Security Council resolutions on women, peace and security.' In the present context that obligation requires Member states to urge the Security Council to take action.

The following are measures that need to be urgently undertaken:

1.A UNSC Resolution demanding a Ceasefire under Chapter VII of the Charter.

2.A UNSC mission to Afghanistan.

Addressing first, the need for a ceasefire.

Absent a ceasefire the violations of IHL, including the crime of gender persecution, will persist, the risk to international peace and security will increase. The UNSC has stated obligations as outlined above towards the protection of civilians.

In addition , the Council should recall its own Resolution

S/RES/2532 (2020)

1. Demands a general and immediate cessation of hostilities in all situations on its agenda and supports the efforts undertaken by the Secretary-General and his Special Representatives and Special Envoys in that respect;

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<sup>6</sup> A number of the WPS resolutions recall 'the obligations of States Parties to the Convention on the Elimination of All Forms of Discrimination Against Women and the Optional Protocol thereto' as well as the Convention on the Rights of the Child and its optional protocols. See, eg, SC Resolution 1889, 5 October 2009.



and take all necessary measures to ensure its implementation in relation to Afghanistan.

The Ceasefire must reflect the obligations in WPS Resolution 2467 (2019) which: 'Calls upon parties to conflict to ensure that ceasefire and peace agreements contain provisions that stipulate sexual violence in conflict and post-conflict situations as a prohibited act, particularly in provisions relating to disengagement, ensure further that women are present and meaningfully participate in political pre - negotiation and negotiation processes'.

### **Use of missions by UNSC:**

There is little guidance in the UN Charter or the Provisional Rules of Procedure of the Security Council regarding the use of missions to deliver on its article 24 obligations. . Missions have been deployed under the broad powers granted by Article 29 of the UN Charter, according to which the Council "may establish such subsidiary organs as it deems necessary for the performance of its functions". An examination of the Some 70 visiting missions by the Security Council since 1992 reveals a diversity of practices and working methods, pursuing a wide range of goals and purposes. Objectives have included

- support for a peace process;
- to highlight the dire humanitarian situation;
- to reiterate obligations of the state and NSAs to comply with IL including IHL and Human rights;
- to cooperate and work with people in the region; show support for the people (see for instance objectives of the mission to South Sudan, October 2019)

### **Purpose of a mission to Afghanistan**

To give effect to the obligations cited above and building on the purpose of previous missions, the UNSC should agree a resolution demanding a cease fire and committing to conduct an investigative mission to determine, inter alia:

- the immediate causes of the threats to international peace and security,
- to identify measures to address the underlying root causes in an inclusive, integrated and sustainable manner'
- to determine the concrete actions needed to secure and sustain a cease fire,
- to determine the gendered impact of the continued violence,
- to assess the measures needed for the protection of civilians in Afghanistan, especially women and children,
- the extent of the humanitarian crisis and measures needed to provide relief.

The mission should ensure the application of its own Resolutions on WPS, specifically UNSC 1325, and would prepare for an appropriate and consequential renewal of the UNAMA mandate, ensuring the inclusion of the analysis and demands of women and reflecting the range of obligations contained in the 10 Resolutions on Women Peace and Security.



## Obligations of Prevention

Recalling the decision of the ICJ in the case of Bosnia v Serbia 26th Feb 2007 <sup>7</sup> it is not an option for the UNSC to do nothing. Whilst the case concerned the issue of Genocide the Court made the following relevant observations:

First, the Genocide Convention is not the only international instrument providing for an obligation on the States parties to it to take certain steps to prevent the acts it seeks to prohibit. Many other instruments include a similar obligation, in various forms : see, for example, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (Art. 2) ; the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, of 14 December 1973 (Art. 4) ; the Convention on the Safety of United Nations and Associated Personnel of 9 December 1994 (Art. 11) ; the International Convention on the Suppression of Terrorist Bombings of 15 December 1997 (Art. 15).

The Court likened the test for the prevention of prohibited acts to that of Due Diligence

'while complicity results from commission, violation of the obligation to prevent results from omission; this is merely the reflection of the notion that the ban on genocide and the other acts listed in Article III, including complicity, places States under a negative obligation, the obligation not to commit the prohibited acts, while the duty to prevent places States under positive obligations, to do their best to ensure that such acts do not occur.

The Court indicated that positive obligation with regard to prevention is on those States which have influence over parties that are engaged in hostilities which could lead to violations of the international law cited. That includes; political, military, or economic influence as well as those in geographic proximity.

Certain members of the UNSC as individual States have specific influence ,but, it can be argued that as all members of the Security Council have influence by dint of their presence in the council, hence they are obliged to act.

The list of demands from Afghan Women can be met if the UNSC takes the measures set out above and fulfills the obligations under international law which has been re iterated in the resolutions the UNSC has itself, promulgated.

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<sup>7</sup> Official citation : (FN Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007, p. 43 Mode officiel de citation : Application de la convention pour la prévention et la répression du crime de génocide (Bosnie-Herzégovine c. Serbie-et-Monténégro),