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Thomas Giegerich

UN Security Council Resolution 2681
(2023) on Women's Rights in Afghanistan:
How to Confront a Goyaesque Sleep of
Reason and Its Nightmares



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About the author

Univ.-Prof. Dr. iur. Thomas Giegerich, LL.M. (Univ. of Virginia) is the Director of the Europa-Institut (<https://europainstitut.de/>) and holds a Chair for European Law, Public International Law and Public Law

Preface

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Editor

Lehrstuhl Prof. Dr. Thomas Giegerich

Universität des Saarlandes

Postfach 15 11 50

66041 Saarbrücken

Germany

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In 1799, Francisco de Goya published a series of aquatint etchings under the title “Los Caprichos” (the vagaries). The 43rd etching shows Goya himself asleep leaning on a table, surrounded by eerie nocturnal creatures; it bears the caption: “El sueño de la razón produce monstruos” (the sleep [or dream?] of reason produces monsters). In Afghanistan, reason fell asleep again in August 2021 with the renewed takeover by the Taliban and this is producing human rights nightmares primarily for women and girls to such an extent that the UN Security Council has become active.

A. UN Security Council Resolution 2681: Cautiously Worded Condemnation of an Outrage

The Security Council has for months watched the destruction of the human rights of women in Afghanistan. On 27 December 2022, it reacted informally by having its president issue the following press statement: “The members of the Security Council are deeply alarmed by reports that the Taliban have suspended access to universities for women and girls, and reiterated their deep concern of the suspension of school beyond the sixth grade, and their call for the full, equal and meaningful participation of women and girls in Afghanistan, and called on the Taliban to reopen schools and swiftly reverse these policies and practices, which represent an increasing erosion of the respect of human rights and fundamental freedoms. The members of the Security Council are furthermore profoundly concerned by reports that the Taliban have banned female employees of non-governmental organizations and international organizations from going to work, which would have a significant and immediate impact for humanitarian operations in the country, including those of the United Nations, and the delivery of aid and health work, and that these restrictions contradict the commitments made by the Taliban to the Afghan people, as well as the expectations of the international community. ...”¹

On 27 April 2023, the Security Council seems to have had enough and unanimously adopted Resolution 2681. It came in reaction to the Taliban *de facto* authorities² decision to ban Afghan women from working for the UN in Afghanistan, including UNAMA (UN Assistance Mission in Afghanistan) which provides urgently needed humanitarian assistance. The practical effect is that the delivery of that assistance on which millions of people in Afghanistan depend for their survival will be severely hampered. In a statement published on 11 April, UNAMA provided the following assessment: “The ban is unlawful under international law, including the UN Charter,

¹ Security Council Press Statement on Afghanistan (SC/15165) of 27 December 2022 (<https://press.un.org/en/2022/sc15165.doc.htm>).

² This is the term usually used internationally, including within the UN (see, e.g., <https://unama.unmissions.org/un-protests-order-taliban-de-facto-authorities-prohibiting-afghan-women-working-united-nations>), because the Taliban have not yet been recognised as the *de jure* government of Afghanistan. The resolution 2681 instead speaks of “the Taliban”.

and for that reason the United Nations cannot comply. Through this ban, the Taliban *de facto* authorities seek to force the United Nations into having to make an appalling choice between staying and delivering in support of the Afghan people and standing by the norms and principles we are duty-bound to uphold.”³

In its Resolution 2681, the Security Council is much less explicit in its legal assessment of the situation. In para. 4 of the preamble, it expresses “deep concern at the increasing erosion of respect for the human rights and fundamental freedoms of women and girls in Afghanistan by the Taliban, in particular women and girls’ lack of equal access to education, economic opportunities, including access to work, participation in public life, freedom of movement, justice, and basic services, the absence of which make peace, stability, and prosperity in the country unattainable”. In preambular para. 6, the Security Council refers to Art. 8 UN Charter that requires equal participation of men and women in the UN’s principal and subsidiary organs. In operative para. 1 of the Resolution, it condemns “the decision by the Taliban to ban Afghan women from working for the United Nations in Afghanistan, which undermines human rights and humanitarian principles”. In operative para. 2, it calls for “the full, equal, meaningful and safe participation of women and girls in Afghanistan, calls upon the Taliban to swiftly reverse the policies and practices that restrict the enjoyment by women and girls of their human rights and fundamental freedoms including related to their access to education, employment, freedom of movement, and women’s full, equal and meaningful participation in public life, and urges all States and organizations to use their influence, in conformity with the Charter of the United Nations, to promote an urgent reversal of these policies and practices”.

Primarily two reasons may explain that cautious wording vis-à-vis the nightmare women and girls are enduring in Afghanistan. One is the desire of securing the unanimous support of the Security Council Members in order to demonstrate that the resolution reflects the consensus of the international community as a whole. The second one is the intention not to alienate the Taliban too much. The international community may be compelled to compromise the most fundamental human rights in order to gain access to millions of Afghans in urgent need of humanitarian assistance. The continued presence of UNAMA in Afghanistan is at stake (see operative para. 5). There is also an interest of the Taliban alluded to in operative para. 4 of the Resolution that needs to be taken into account – bringing the assets of Afghanistan’s Central Bank under their control: Could a promotion of women’s rights in Afghanistan be bought by a release of these assets? Are the Taliban ultimately using women and girls as hostages to achieve their goals of international recognition and support? In any event, the Security Council

³ <https://unama.unmissions.org/statement-and-update-united-nations-afghanistan>.

does no more than urge all States and organisations to use their influence on the Taliban in order to improve the situation of women (operative para. 2).

The Security Council's ultimate goal, which can only be realised together with the Taliban, is addressed in operative para. 6 where it "[u]nderscores that dialogue, consultation, and engagement among all relevant Afghan stakeholders, the region and the wider international community is critical for a political settlement in Afghanistan, as well as peace and stability in the country, the region and beyond, and in this regard welcomes diplomatic efforts conducive to such a settlement". The question, however, remains how important an element of such a settlement women's rights will be. If one takes the long-standing Women, Peace and Security Agenda of the Security Council seriously,⁴ the inclusion of women in post-conflict peacebuilding is indispensable, gender-mainstreaming of peace-building processes is essential and sustainable peace cannot be achieved without the protection and promotion of women's rights.⁵

Moreover, there will be no sustainable development in Afghanistan without using women's potential. Goal 5 of the Sustainable Development Goals formulated by the UN General Assembly in its 2030 Agenda for Sustainable Development reads as follows: "Achieve gender equality and empower all women and girls".⁶ In para. 20 of the corresponding Declaration, the representatives of the UN Member States underlined that

"[r]ealizing gender equality and the empowerment of women and girls will make a crucial contribution to progress across all the Goals and targets. The achievement of full human potential and of sustainable development is not possible if one half of humanity continues to be denied its full human rights and opportunities. Women and girls must enjoy equal access to quality education, economic resources and political participation as well as equal opportunities with men and boys for employment, leadership and decision-making at all levels. We will work for a significant increase in investments to close the gender gap and strengthen support for institutions in relation to gender equality and the empowerment of women at the global, regional and national levels. All forms of discrimination and violence against women and girls will be eliminated, including through the engagement of men and boys. The systematic mainstreaming of a gender perspective in the implementation of the Agenda is crucial."

This confirms an assessment already made in the preamble of CEDAW "that discrimination against women ... is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the

⁴ See below xx.

⁵ See in this sense UN Security Council Resolution 2493 (2019) of 29 October 2019.

⁶ UN General Assembly Resolution 70/1 of 25 September 2015 "Transforming our world: the 2030 Agenda for Sustainable Development" – adopted without a vote (<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement>).

prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity” and “that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields”.⁷

Since the goals of sustainable peace and development are presumably shared by “all relevant Afghan stakeholders, the region and the wider international community”,⁸ there is hope after all that the rights of women and girls in Afghanistan can be gradually restored by concerted national, regional and global efforts.

B. Earlier Political Reactions to the Destruction of Women’s Rights in Afghanistan

Since the Taliban resumed power in Kabul in August 2021, they have systematically deprived Afghan women and girls of their fundamental human rights that were proclaimed almost 75 years ago in the Universal Declaration of Human Rights as a constant reminder of a common civilisational achievement for all peoples and nations:⁹ Their access to secondary schools and universities has been blocked, denying their right to education. Their possibilities to work outside their homes have been much restricted, undermining their right to work. Their freedom of movement in general and their right of access to various public accommodations in particular have been severely curtailed. A strict dress code has been imposed on them, in disregard of their right to privacy and their human dignity. They have been deprived of their freedoms of opinion, assembly and association as well as their right of political participation. Their access to health care has been restricted in violation of their right to health. They are subjected to forced marriages, gender-based violence and femicides without protection. Many women and girls are in constant fear and practically live under de facto house arrest. As will be explained below in section III, Afghanistan is obliged under international law with immediate effect to respect, protect, promote and ensure all these rights without discrimination based on sex.

According to a joint statement issued by ten UN human rights experts on 8 March 2023 (International Women’s Day), the Taliban have erased 20 years of progress for women and girls’ rights.¹⁰ That alludes to the progress made after the previous Taliban regime had been deposed by the US-led military intervention which was initiated as an act of self-defence in reaction to the terrorist attacks on the US on 11 September 2001 by Al Qaida that was based in

⁷ Recitals 7 and 12.

⁸ The quote is taken from operative para. 6 of the UN Security Council Resolution 2681 (2023).

⁹ UN General Assembly Resolution 217 A (III) of 10 December 1948.

¹⁰ <https://www.ohchr.org/en/press-releases/2023/03/afghanistan-un-experts-say-20-years-progress-women-and-girls-rights-erased>.

Afghanistan at the time.¹¹ It is an irony of history that the US had supported and armed the Taliban in their struggle against the Soviet occupation forces before 1989, turning the country into a major proxy battleground between the super powers.¹² In the observations of two human rights experts who recently visited Afghanistan, the situation is described as follows: “Since the collapse of the Republic, the de facto authorities have dismantled the legal and institutional framework and have been ruling through the most extreme forms of misogyny, destroying the relative progress towards gender equality achieved in the past two decades.”¹³ They rightly speak of “relative progress” because the situation of women and girls in Afghanistan was far from satisfactory before the return to power of the Taliban.¹⁴

On the same 8 March 2023, a joint Ministerial Statement on the Situation for Women and Girls in Afghanistan was made by 27 foreign ministers (mostly western, but also including Bahrain, Qatar, Saudi Arabia, Türkiye and the United Arab Emirates) and the High Representative of the EU for Foreign Affairs and Security Policy deploring “one of the steepest declines globally in the respect for the human rights of women and girls.”¹⁵ They underlined that “[t]he full respect for the human rights and fundamental freedoms of women and girls and their equal and meaningful participation in society are not only goals in themselves but also are prerequisites for sustainable economic and political development, social cohesion, stability, and peace in Afghanistan.” They also noted “the December 2022 statement by the Organization of Islamic Cooperation (OIC) that the decision to prevent women and girls from accessing education runs contrary to Islamic law.”¹⁶

On 20 March 2023, the Council of the EU adopted conclusions on Afghanistan¹⁷ in which it deplored “continued and systemic violations of civil, political, social, economic and cultural rights of the Afghan people, as recognised by international treaties to which Afghanistan is a State Party. ... The institutionalization of large-scale and systematic gender-based discrimination by the Taliban is a grave concern and is unparalleled in the world. The EU strongly condemns the decisions by the Taliban that have led to an overall deterioration of the situation for women and girls through their exclusion from public life and by denying their human rights, including the rights to education, work, and freedom of movement. Through their discriminatory decision to ban women from working for national and international non-governmental organisations, the Taliban are impeding the delivery of humanitarian assistance and basic needs

¹¹ See UN Security Council Resolution 1368 (2001) of 12 September 2001.

¹² See Ebrahim Afsah, Afghanistan, in: The Max Planck Encyclopedia of Public International Law (online), margin notes 7 ff.

¹³ Preliminary observations of the Special Rapporteur on the situation of human rights in Afghanistan and the Chair of the Working Group on discrimination against women and girls of 5 May 2023 (<https://www.ohchr.org/en/statements/2023/05/afghanistan-systematic-crackdown-womens-and-girls-rights-un-experts-say>).

¹⁴ See Committee on the Elimination of Discrimination against Women, Concluding observations on the third periodic report of Afghanistan (CEDAW/C/AFG/CO/3 of 10 March 2020), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/061/90/PDF/N2006190.pdf?OpenElement>.

¹⁵ <https://www.auswaertiges-amt.de/en/newsroom/news/-/2586632>.

¹⁶ See, e.g., Art. 3, 41 of the revised Arab Charter on Human Rights of 25 May 2004 (<https://digitallibrary.un.org/record/551368>).

¹⁷ 7264/23 (<https://data.consilium.europa.eu/doc/document/ST-7264-2023-INIT/en/pdf>).

support to the Afghan people and since August 2021 are responsible for further exacerbating the dire humanitarian and economic situation in the country.”

C. Establishment of an Apartheid Regime Based on Sex

What the Taliban *de facto* authorities have established in Afghanistan and are implementing by force is an apartheid regime that is not based on race, like the South African model, but on sex. Art. II of the International Convention on the Suppression and Punishment of the Crime of *Apartheid*¹⁸ contains the following definition of apartheid: “... the term ‘the crime of apartheid’ ... shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them: ... (c) Any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association ...”

If one replaces references to race by references to sex, one gets an accurate picture of the current plight of women in Afghanistan: “... the term ‘the crime of apartheid’ ... shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by the male sex over the female sex and systematically oppressing it: ... (c) Any legislative measures and other measures calculated to prevent member of the female sex from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of the female sex, in particular by denying to members of the female sex basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association ...”

This does not mean that the 1973 Convention against racial apartheid can be applied to the gender apartheid in Afghanistan. But it means that the plight of women in Afghanistan is analogous to the plight of non-whites in South Africa under the apartheid regime. It also means

¹⁸ Of 30 November 1973, UNTS vol. 1015, p. 243.

that gender apartheid deserves to be criminalised no less than racial apartheid. Finally, it is an invitation to eradicate gender apartheid from the face of the earth with the same determination that drove the struggle against racial apartheid.

D. International Illegality of the Taliban's Gender Apartheid Regime

I. International Human Rights Law Perspective: Negation of the Human Rights Idea as Such

In 2003, Afghanistan ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹⁹ without reservation, which it had signed as early as 1980. There is no doubt that the systematic denial of the rights of women flagrantly violates each and every line of CEDAW. It also infringes numerous provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁰ the International Covenant on Civil and Political Rights (ICCPR),²¹ to both of which Afghanistan acceded in 1983 without reservation, as well as the Convention on the Rights of the Child (CRC)²² that it ratified in 1994. Its signature of the CRC in 1990 had been accompanied by the following declaration: "The Government of the Republic of Afghanistan reserves the right to express, upon ratifying the Convention, reservations on all provisions of the Convention that are incompatible with the laws of Islamic Shari'a and the local legislation in effect."²³ No such reservations were, however, formulated when Afghanistan ratified the CRC.²⁴

Afghanistan is obliged to respect and ensure all the rights enshrined in the ICESCR, the ICCPR and the CRC to all without discrimination based on sex.²⁵ It seems necessary to recall that all human rights "derive from the inherent dignity of the human person"²⁶ and that "[a]ll human beings are born ... equal in dignity and rights."²⁷ This is why CEDAW rightly recalls "that discrimination against women violates the principles of equality of rights and respect for human dignity".²⁸ The systematic discrimination of women therefore is an assault on human dignity.

In this context, the right to education enshrined in Art. 13 ICESCR, Art. 10 CEDAW and Art. 28 CRC is particularly important. In its General recommendation No. 36 (2017) on the right of

¹⁹ Of 18 December 1979, UNTS vol. 1249, p. 13.

²⁰ Of 16 December 1966, UNTS vol. 993, p. 3.

²¹ Of 16 December 1966, UNTS vol. 999, p. 171.

²² Of 20 November 1989, UNTS vol. 1577, p. 3.

²³ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en.

²⁴ See Art. 23 (2) of the Vienna Convention on the Law of Treaties of 23 May 1969 (UNTS vol. 1155, p. 33) which codifies a rule of customary international law.

²⁵ Art. 2 (2), 3 ICESCR; Art. 2 (1), 26 ICCPR; Art. 2 (1) CRC.

²⁶ First recital of the preambles of the ICCPR and ICESCR. See also second recital of the preamble of the UN Charter.

²⁷ Art. 1 UDHR.

²⁸ Seventh recital of the preamble.

girls and women to education,²⁹ the Committee on the Elimination of Discrimination of Women, the treaty body of CEDAW, stated that “[e]ducation plays a pivotal, transformative and empowering role in promoting human rights values and is recognized as the pathway to gender equality and the empowerment of women. It is also an essential tool for personal development and for the development of an empowered workforce and citizenry that can contribute to civic responsibility and national development ... The education of girls and women is considered to be one of the most effective investments for sustainable and inclusive development ... As a human right, education enhances the enjoyment of other human rights and freedoms, yields significant development benefits, facilitates gender equality and promotes peace. It also reduces poverty, boosts economic growth and increases income, increases the chances of having a healthy life, reduces child marriage and maternal deaths and provides individuals with the tools to combat diseases.”³⁰

Afghanistan has not ratified the Optional Protocol to CEDAW³¹ so that no communication by individual women victims of violations of CEDAW rights can be submitted to the CEDAW Committee pursuant to Art. 2 ff. of the Optional Protocol. The Committee is not competent either to initiate the inquiry procedure regarding the obvious grave and systematic violations of practically all CEDAW rights by Afghanistan under Art. 8, 9 of the Optional Protocol. Afghanistan has not made a declaration pursuant to Art. 41 ICCPR that it recognises the competence of the Human Rights Committee (HRC) to consider communications by other States Parties claiming that Afghanistan was not fulfilling its obligations under the ICCPR. It has not ratified the Optional Protocol to the ICCPR³² and the Optional Protocol to the ICESCR³³ so that no Afghan woman may submit an individual communication to the HRC or the Committee on Economic, Social and Cultural Rights claiming violation of her rights enumerated in the ICCPR or the ICESCR. For the same reason, the inter-State communication procedure under Art. 10 and the inquiry procedure under Art. 11 of the OP-ICESCR are inapplicable. Afghanistan is not party to the Optional Protocol to the CRC on a Communications Procedure³⁴ either, so that no individual or inter-State communications procedure and no inquiry procedure for grave or systematic violations can be initiated. The only available human rights implementation procedure would be the confidential complaint procedure according to para. 85 – 109 of the Annex to UN Human Rights Council Resolution 5/1³⁵ designed to address “consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.” The quote describes precisely the prevailing

²⁹ CEDAW/C/GC/36 of 27 November 2017.

³⁰ Para. 1, 2 and 9 (footnote omitted).

³¹ Of 6 October 1999, UNTS vol. 2131, p. 83.

³² Of 16 December 1966, UNTS vol. 999, p. 171.

³³ Of 10 December 2008, UN General Assembly Resolution 63/117.

³⁴ Of 19 December 2011, UN General Assembly Resolution 66/138.

³⁵ Of 18 June 2007 (https://ap.ohchr.org/documents/dpage_e.aspx?si=a/hrc/res/5/1).

situation in Afghanistan. But the question is whether the conduct of such a procedure would improve that situation.

Within days of the Taliban's return to power, the UN Human Rights Council (UNHRC) on 24 August 2021 adopted Resolution S-31/1 under the title "Strengthening the promotion and protection of human rights in Afghanistan". In this resolution, it expressed "grave concern at all violations and abuses of human rights and violations of international humanitarian law in Afghanistan" and called for "full respect for the human rights of all individuals in Afghanistan, including women, children and persons belonging to ethnic, religious and other minority groups".

On 1 April 2022, the UNHRC appointed Mr. Richard Bennett as Special Rapporteur on the situation of human rights in Afghanistan.³⁶ Together with the chair of the UNHCR Working Group on discrimination against women and girls, Dorothy Estrada-Tanck, he visited Afghanistan from 27 April – 4 May 2023. This is an excerpt of their preliminary observations:

"This extreme situation of institutionalised gender-based discrimination in Afghanistan is unparalleled anywhere in the world. These appalling human rights violations mask other underlying manifestations of gender-based discrimination that precede the rule by the Taliban and are deeply engrained in society, made invisible and even normalised. If we are to eliminate discrimination and break cycles of violence, gender justice requires a holistic understanding as to why such violations are committed. These acts do not occur in isolation. We recommend that the international community develop further normative standards and tools to address the broader phenomenon of gender apartheid as an institutionalised system of discrimination, segregation, humiliation and exclusion of women and girls.

We are deeply concerned about the apparent perpetration in Afghanistan of gender persecution – a systematic and grave human rights violation and a crime against humanity. While we cannot make determinations of individual criminal responsibility, we consider on the basis of information received, including first-hand accounts, that women and girls are being targeted because of their sex and due to the social constructs used to define gender roles, behaviour, activities, and attributes."³⁷

The downgrading of all females to a human underclass by the Taliban *de facto* authorities constitutes degrading treatment, an affront to human dignity and an act aimed at the destruction of all human rights of more than half of the Afghan population. It demonstrates such a degree of disregard and contempt for human rights in quantitative and qualitative terms that it amounts to the utter negation of the human rights idea as such: Either human rights are equal

³⁶ <https://www.ohchr.org/en/special-procedures/sr-afghanistan>.

³⁷ <https://www.ohchr.org/en/statements/2023/05/afghanistan-systematic-crackdown-womens-and-girls-rights-un-experts-say>.

for all humans or there are no human rights to speak of. Negating the human rights of women is a barbarous outrage on the conscience of humankind.

The obvious consequence is that all women and girls in Afghanistan are victims of gender-based persecution that affects them because of their membership of a particular social group,³⁸ in the sense of Art. 1 A (2) of the (Geneva) Convention relating to the Status of Refugees,³⁹ read together with Art. I of the Protocol relating to the Status of Refugees.⁴⁰ This corresponds with the risk analysis by the European Union Agency for Asylum.⁴¹ Each and every Afghan woman who makes it to the borders of a State Party of the Geneva Convention and Protocol should therefore be recognised as a refugee without being required to prove an individual risk⁴² and in particular be protected by the prohibition of *refoulement* from being returned to Afghanistan (Art. 33 Geneva Refugee Convention).⁴³ It remains to be seen if States around the world live up to this obligation.⁴⁴ If enough of them did, and if an “Underground Railroad” like that in the pre-Civil War United States for liberating slaves were established for helping Afghan women and girls to leave their country, would their mass emigration bring the Taliban *de facto* authorities back to their senses?

II. International Criminal Law Perspective: Crime against Humanity

But the extent of the international illegality of the Taliban’s systematic attack on the female half of the Afghan population does not end with violations of human rights treaties. It amounts to a crime against humanity in the sense of Art. 7 (1) lit. h of the Rome Statute of the International Criminal Court⁴⁵ to which Afghanistan acceded in 2003. Crimes against humanity can be committed outside armed conflicts, unlike war crimes. They do not require the special intent the special intent either that characterises genocide.⁴⁶ The Taliban *de facto* authorities’ misogynous measures constitute persecution of an identifiable collectivity (the women of Afghanistan) on gender grounds (because they are female in the sense of Art. 7 (3) of the Rome Statute),

³⁸ See in general Andreas Zimmermann/Claudia Mahler, in: Andreas Zimmermann (ed.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, 2011, Art. 1 A, para. 2, margin notes 489 ff. See also Ivana Krstić, *The Recognition of Refugee Women in International Law*, in: id./Marco Evola/Maria Isabel Ribes Moreno (eds.), *Legal Issues of International Law from a Gender Perspective*, 2023, p. 113 ff.

³⁹ Of 28 July 1951, UNTS vol. 189, p. 137.

⁴⁰ Of 31 January 1967, UNTS vol. 606, p. 267.

⁴¹ Country Guidance: Afghanistan (January 2023), p. 91. (https://euaa.europa.eu/sites/default/files/publications/2023-03/2023_Country_Guidance_Afghanistan_EN.pdf).

⁴² Meltem Ineli-Ciger/Nikolas Feith Tan, *Are all Afghan women and girls refugees? An analysis in light of the Refugee Convention*, EJIL Talk, December 22, 2022.

⁴³ See also Art. 5 of the 2019 ILC Draft articles on Prevention and Punishment of Crimes against Humanity (https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf). On the criminal law perspective, see below under 2.

⁴⁴ For two positive examples, see Anna Højberg Høgenhaug, *Women and girls from Afghanistan to be granted asylum in Denmark and Sweden*, *Verfassungsblog*, 23 February 2023.

⁴⁵ Of 17 July 1998, UNTS vol. 2187, p. 3. See International Criminal Court, Office of the Prosecutor, *Policy on the Crime of Gender Persecution*, 7 December 2022 (<https://www.icc-cpi.int/sites/default/files/2022-12/2022-12-07-Policy-on-the-Crime-of-Gender-Persecution.pdf>).

⁴⁶ See International Law Commission, *Draft articles on Prevention and Punishment of Crimes Against Humanity, with commentaries*, 2019, General Commentary, para. 1 (https://legal.un.org/ilc/texts/7_7.shtml).

in connection with acts of murder, imprisonment, torture, sexual violence and other inhumane acts against many individual women and girls, that persecution being committed as part of a widespread and systematic attack directed against the female part of the civilian population, with knowledge of the attack.⁴⁷ According to a joint statement by thirteen UN human rights experts, the “targeting of women and girls in Afghanistan and denying their fundamental rights because they are women increases concern about gender persecution, a crime against humanity, and those responsible must be held accountable ...”⁴⁸

In the preamble of the 2019 Draft articles on Prevention and Punishment of Crimes Against Humanity,⁴⁹ the International Law Commission underlined that “crimes against humanity threaten the peace, security and well-being of the world, ... the prohibition of crimes against humanity is a peremptory norm of general international law (*jus cogens*)”, that the international community must put an end to the impunity of the perpetrators and that therefore “it is the duty of every State to exercise its criminal jurisdiction with respect to crimes against humanity”. States are therefore required to start an investigation if a person alleged to have committed a crime against humanity is present in territory under their jurisdiction. They must also either extradite that person or submit the case to their competent authorities for the purpose of prosecution.⁵⁰ Quite generally, States must prevent and punish crimes against humanity.⁵¹ Since Afghanistan is party to the Rome Statute of the International Criminal Court⁵² since 2003, the Prosecutor could initiate an investigation either *proprio motu* or upon referral by a State Party.⁵³ The question again is whether the initiation of such an investigation would help improving the situation of women and girls in Afghanistan.

III. UN Law Perspective: The Security Council as Enforcer of Human Rights?

1. Human Rights Obligations Deriving from the UN Charter

One of the Purposes of the UN Charter is “[t]o achieve international co-operation ... in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion ...” (Art. 1 no. 3 of the Charter). Accordingly, pursuant to Art. 55 lit. c of the Charter, the UN “shall promote ... universal respect for, and

⁴⁷ The conditions of the pertinent definitions in Art. 7 (2) lit. a and g of the Rome Statute are fulfilled.

⁴⁸ Statement of 6 April 2023 (<https://www.ohchr.org/en/press-releases/2023/04/afghanistan-taliban-must-stop-targeting-afghan-women>).

⁴⁹ See note 46.

⁵⁰ See Art. 9, 10 of the ILC Draft articles.

⁵¹ Id., Art. 3 (2).

⁵² Of 17 July 1998, UNTS vol. 2187, No. 38455.

⁵³ Art. 13 – 15 Rome Statute.

observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” In Art. 56 UN Charter, Member States pledge themselves to take action in cooperation with the UN for the achievement of that purpose. Read together, these two provisions impose international legal obligations on both the UN and Member States to respect human rights in a rather general sense.⁵⁴ However, the only concrete human rights obligation of UN Members deriving directly from the Charter is to refrain from discrimination based on race, sex, language or religion; this obligation is directly applicable and most likely part of *jus cogens*.⁵⁵

The International Court of Justice confirmed that in its advisory opinion on Namibia where it determined that the introduction of apartheid in Namibia by South Africa was not only a denial of fundamental rights but also “a flagrant violation of the purposes and principles of the Charter.”⁵⁶ Since the UN Charter puts distinctions based on sex on the same level as distinctions based on race, the obvious conclusion is that the gender apartheid introduced in Afghanistan by the Taliban *de facto* authorities also constitutes a flagrant violation of the purposes and principles of the Charter. This is important because of the special dignity of Charter obligations which outrank all other international legal obligations of Member States (Art. 103 UN Charter).

2. The Role of the Security Council

The question, however, is whether and to what extent human rights should concern the Security Council. According to Art. 24 (1), (2) UN Charter, it bears primary responsibility for the maintenance of international peace and security, and in discharging these duties, it is bound to act in accordance with the Purposes and Principles of the UN, including respect for human rights and fundamental freedoms without discrimination as to sex etc. This reference to the human rights (and other) Purposes of the UN in Art. 24 (2) UN Charter is usually interpreted as a limitation on the exercise of the Security Council’s powers regarding peace maintenance: It must not violate human rights in the process of maintaining peace.⁵⁷ Yet, conversely, it can also extend the Council’s duties in the sense that it must protect human rights as a condition for maintaining international peace and security.

This is addressed by the first recital of the preamble of the Universal Declaration of Human Rights⁵⁸ according to which “recognition of the inherent dignity and of the equal and inalienable

⁵⁴ See Eibe H. Riedel/Jan-Michael Arend, in: Bruno Simma/Daniel-Erasmus Khan/Georg Nolte/Andreas Paulus (eds.), *The Charter of the United Nations*, Vol. II, 3rd ed. 2012, Art. 55 (c) margin note 15, with further references.

⁵⁵ See Riedel/Arend (note 54), Art. 55 (c) margin note 17.

⁵⁶ ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion of 21 June 1971, I.C.J. Reports 1971, p. 16, § 131.

⁵⁷ See in this sense CJEU (GC), judgment of 18 July 2013, *Joined Cases C-584/10 P, C-593/10 P and C-595/10 P (Kadi II)*, § 104; ECtHR (GC), judgment of 21 June 2016, *Al-Dulimi and Montana Management Inc. v. Switzerland* (no. 5808/08), §§ 139 f.

⁵⁸ See note 9.

rights of all members of the human family is the foundation of ... peace in the world". It is also reflected in the 3rd recital which warns that without protection of human rights by the rule of law, people will stage rebellions against tyranny and oppression. Since there will be no sustainable internal and international peace without the effective implementation of adequate human rights standards, the Security Council, in protecting and promoting human rights, carries out its duty to maintain international peace and security: Human security is an important aspect of international peace and security, and threats to the former constitute threats to the latter.⁵⁹

The UN General Assembly has clearly expressed the expectation of the international community as a whole that the UN Security Council would play an important role in implementing the "responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (R2P) in Resolution 60/1. This resolution was adopted without vote on 16 September 2005 and is called World Summit Outcome because the General Assembly met at the level of the heads of State or government on the occasion of the 60th anniversary of the founding of the United Nations.

In the World Summit Outcome, each UN Member State acknowledged the primary responsibility "to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. ..."⁶⁰ The first and foremost obligation of States is, of course, not to commit such crimes themselves. UN Member States also accepted the subsidiary responsibility of the international community, through the United Nations, to help them fulfil their primary responsibility, preferably by using peaceful means in accordance with Chapters VI and VIII of the UN Charter. However, the World Summit Outcome continues in para. 139 as follows: "In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity." The Security Council has endorsed the two cited paragraphs of the World Summit Outcome.⁶¹

In practice, the Security Council had long been reluctant to engage with human rights, but its role in this regards has evolved over time.⁶² Already in 1963, it determined that the South

⁵⁹ See Nico Krisch, in: Simma (note 54), Art. 39 margin notes 22 ff.

⁶⁰ *Id.*, para. 138.

⁶¹ Janina Barkholdt/Ingo Winkelmann, Responsibility to Protect, in: The Max Planck Encyclopedia of Public International Law (online), margin note 16 (citing a 2009 report by the UN Secretary General). On Security Council resolutions referring to R2P, see *ibid.*, margin notes 24 ff.

⁶² See Human Rights and the Security Council – An Evolving Role, Security Council Report 2016, No. 1 (25 January 2016), <https://www.securitycouncilreport.org/research-reports/human-rights-and-the-security-council-an-evolving-role.php>.

African apartheid policy was not only contrary to its obligations as a UN Member, but also led to a situation “seriously disturbing international peace and security”.⁶³ In 1976, it reaffirmed “that the policy of *apartheid* is a crime against the conscience and dignity of mankind and seriously disturbs international peace and security ...”.⁶⁴ In the subsequent year, it not only strongly condemned the continuance of apartheid, but took action under Chapter VII of the UN Charter, determined that the acquisition by South Africa of arms constituted “a threat to the maintenance of international peace and security” and therefore imposed a mandatory arms embargo against that country.⁶⁵

With regard to South Africa, the Security Council thus used a combination of the racist character of the regime and its military armament as a basis for determining a threat to the peace in the sense of Art. 39 UN Charter, opening the door to enforcement action under Chapter VII. With regard to Southern Rhodesia, the present Zimbabwe, it went further. Having quickly condemned the unilateral declaration of independence made by a racist settler minority in that British colony⁶⁶ and determined that the continuance in time of the situation resulting therefrom “constitutes a threat to international peace and security”.⁶⁷ One year later, it formally determined that the situation in Southern Rhodesia constituted such a threat and imposed a mandatory economic embargo on the basis of Art. 39, 41 UN Charter.⁶⁸ Since 1991, the Security Council has several times determined that human suffering in the context of armed conflicts involving large-scale violence constitutes a threat to international peace and security.⁶⁹ In such contexts, it has increasingly imposed individualised sanctions also on perpetrators of large-scale human rights violations.⁷⁰

If the Security Council is increasingly paying attention to human rights at least in the context of armed conflicts involving massive violence and took determined action against violently racist regimes in South Africa and Southern Rhodesia, should it not act as decisively against the violently sexist regime in Afghanistan that has been war-torn for decades? Is it even obliged under international law to take action?⁷¹ There is a need for a gender-sensitive operationalization of R2P.⁷² More than 20 years ago, the Security Council adopted Resolution 1325 (2000)⁷³ which is a milestone in the fight against sexual and other violence against women and girls in armed conflicts. But it went much further in reaffirming “the important role of women in the

⁶³ UNSC Resolution 181 (1963) of 7 August 1963.

⁶⁴ UNSC Resolution 392 (1976) of 19 June 1976, para. 3.

⁶⁵ UNSC Resolution 418 (1977) of 4 November 1977.

⁶⁶ UNSC Resolution 216 (1965) of 12 November 1965.

⁶⁷ UNSC Resolution 217 (1965) of 20 November 1965, para. 1.

⁶⁸ UNSC Resolution 232 (1966) of 16 December 1966.

⁶⁹ Krisch (note 59), margin notes 26 f.

⁷⁰ Krisch (note 59), margin notes 6 f.; Joanna Weschler, Human Rights and the Security Council, Discussion Paper (October 2022), p. 6 ff. (https://www.jbi-humanrights.org/JBI_HumanRights%26SecurityCouncil.pdf).

⁷¹ See Karin Oellers-Frahm, Responsibility to Protect: Any New Obligations for the Security Council and Its Members?, in: Peter Hilpold (ed.), *The Responsibility to Protect (R2P): A New Paradigm of International Law?*, 2015, p. 184 ff.

⁷² Martina Caroni/Corinna Seiberth, From Gender-Blind to Gender-Sensitive: The Relevance of the UN Women, Peace, and Security Agenda for Operationalizing Responsibility to Protect, in: Hilpold (note 71), p. 253 ff.

⁷³ UNSC Resolution 1325 (2000) of 31 October 2000.

prevention and resolution of conflicts and in peace-building, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution”.⁷⁴ It introduced gender mainstreaming in peacekeeping operations and post-conflict peacebuilding and initiated the Women, Peace and Security (WPS) Agenda. Nine further resolutions pertaining to that agenda have meanwhile been adopted by the Security Council, the last one was Resolution 2493 (2019).⁷⁵ Since Afghanistan is in desperate need of sustainable post-conflict peacebuilding, it would be of the utmost importance to include Afghan women in the process.

3. Options for Action by the UN Security Council

On that background, the UN Security Council could, from a legal perspective,⁷⁶ easily determine that the establishment and forcible implementation of the gender apartheid regime by the victorious party of a long-standing armed conflict, taken together with the grave humanitarian crisis and the continuously precarious security situation in Afghanistan (where international terrorist groups are operating), constitute a threat to international peace and security in the sense of Art. 39 UN Charter. But what kind of enforcement action could it take in order to fulfil its responsibility to protect? Any mandatory economic embargo measures would exacerbate the already dire humanitarian situation of millions of Afghans. Individualised sanctions against the leading Taliban would probably be a blunt sword – they do not travel, likely have no property abroad that could be frozen and hardly import luxury goods. Perhaps one could target wealthy supporters of the regime. In its conclusions of 20 March 2023 on Afghanistan, the Council of the EU stated that “[t]he EU stands ready to adopt additional targeted restrictive measures against those responsible for serious violations and abuses of human rights. These restrictive measures are designed not to negatively impact the Afghan population and are reversible.”⁷⁷ The Council indicates that the EU would consider autonomous targeted sanctions without waiting for the imposition of sanctions by the UN Security Council.

The strongest possible enforcement measure available to the Security Council is the authorisation of the use of military force according to Art. 42 read together with Art. 48 UN Charter. Since it has no military forces of its own at its disposal, the Security Council could only authorize Member States that are willing to intervene militarily in Afghanistan to defeat the Taliban

⁷⁴ See also 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) of 1 November 2013.

⁷⁵ About Women, Peace and Security in the Security Council (<https://www.peacewomen.org/security-council/WPS-in-SC-Council>).

⁷⁶ Politically the majority requirements of Art. 27 (3) UN Charter (including all the veto powers) would have to be fulfilled – a goal difficult to achieve in a case involving the implementation of human rights.

⁷⁷ Para. 8 (<https://data.consilium.europa.eu/doc/document/ST-7264-2023-INIT/en/pdf>).

and establish a new human (and women's) rights-friendly regime. But after the debacles of the Soviet military intervention in the 1980s and the US-led military intervention in 2001 ff., it is hard to imagine that any UN Member State would be ready to make use of such authorization. It is also hard to imagine that the Afghan population would want to go through another round of heavy fighting in their war-torn country.

Ultimately, the only viable option for the Security Council is a combination of persuasion and compulsion not involving the use of armed force to improve the women's rights situation in Afghanistan. Regarding persuasion, there apparently are more moderate parts of the Taliban that are probably ready to cooperate in effectively distributing humanitarian aid to the Afghan population because they know that this is decisive for the legitimacy of their government. There are also civil society actors in Afghanistan who can be included in a process of strengthening women's rights. Finally, there is a demand in the Afghan society for respect of human rights which the Afghans – women and men – have “tasted” during the last two decades. That demand should not be underestimated; it should rather be promoted. For this very purpose, the UDHR was originally proclaimed – “to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive ... to promote respect for these rights and freedoms ...”. The UN should distribute the text of the UDHR, translated into local languages, throughout Afghanistan, together with humanitarian aid, to further raise awareness of the “common standards of achievement for all peoples and all nations” embodied therein. In this context, one should remember the positive effect which the publication of the humanitarian dimension of the CSCE Final Act had in the States of the former East Bloc. Regarding compulsion, the Security Council must ultimately decide whether it is necessary and proper to impose individualised sanctions on those Taliban figures and civil society actors in Afghanistan that actively thwart improvements regarding women's rights.

4. Involvement of the Neighbouring States

Since there is no regional organisation in the sense of Chapter VIII of the UN Charter that could be included in the process of stabilising and developing Afghanistan and restoring women's rights in the country, the UN is forced to rely on all or some of the six neighbouring States that should have a particular interest in the success of that process: the People's Republic of China, Iran, Pakistan, Tajikistan, Turkmenistan and Uzbekistan. Except Iran, all have ratified CEDAW, with China and Pakistan having entered a reservation pursuant to Art. 29 (2) against the compulsory dispute settlement procedure under Art. 29 (1). But are these States good candidates for helping to restore women's rights in Afghanistan?

The official assessment of the situation of women's rights in Pakistan by the CEDAW Committee shows some positive and many negative aspects.⁷⁸ The assessment by NGOs is even more critical.⁷⁹ The U.S. State Department's 2022 Country Reports on Human Rights Practices: Pakistan paints a rather grim picture in this regard.⁸⁰

In Iran, the human rights situation in general and the situation of women's rights in particular is disastrous. Last year, the UN Human Rights Council strongly deplored the violent crackdown on peaceful protests that erupted after the death of a young woman in Iranian police custody in September 2022 who was arrested for not properly wearing her headscarf. It called upon the Iranian Government "to end all forms of discrimination and violence against women and girls in public and private life and in law and in practice and to uphold all human rights, including the rights to freedom of opinion, expression, peaceful assembly, association and religion or belief". It also established an independent international fact-finding mission with the mandate to "[t]horoughly and independently investigate alleged human rights violations in the Islamic Republic of Iran related to the protests that began on 16 September 2022, especially with respect to women and children ...".⁸¹ The UN Economic and Social Council removed Iran with immediate effect from membership in the Commission on the Status of Women for the remainder of the 2022-2026 term. ECOSOC cited actions by the Iranian Government since September 2022 that "continuously undermine and increasingly suppress the human rights of women and girls, including the right to freedom of expression and opinion, often with the use of excessive force, by administering policies flagrantly contrary to the human rights of women and girls and to the mandate of the Commission on the Status of Women, as well as through the use of lethal force resulting in the deaths of peaceful protestors, including women and girls ...".⁸²

As the concluding observations of the Committee on the Elimination of Discrimination against Women to the periodic reports of Tajikistan, Turkmenistan and Uzbekistan show, the situation of women and girls in all three States is far from compatible with CEDAW standards.⁸³

⁷⁸ See Committee on the Elimination of Discrimination against Women, Concluding observations on the fifth periodic report of Pakistan, CEDAW/C/PAK/CO/5 of 10 March 2020 (<https://documents-dds-ny.un.org/doc/UN-DOC/GEN/N20/062/12/PDF/N2006212.pdf?OpenElement>).

⁷⁹ See the chapter on Pakistan of the World Report 2022 by Human Rights Watch (<https://www.hrw.org/world-report/2022/country-chapters/pakistan#723967>). See also the Amnesty International Report Pakistan 2022 (<https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/pakistan/report-pakistan/>).

⁸⁰ Section 6. Discrimination and Societal Abuses (<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/pakistan/>).

⁸¹ HRC Resolution adopted on 24 November 2022, A/HRC/RES/S-35/1 (<https://documents-dds-ny.un.org/doc/UN-DOC/GEN/G22/602/10/PDF/G2260210.pdf?OpenElement>). The resolution was adopted by a vote of 25 to 6 (including China and Pakistan), with 16 abstentions (including Uzbekistan).

⁸² E/2023/L.4, adopted on 14 December 2022 by a vote of 29 to 8, with 16 abstentions (<https://news.un.org/en/story/2022/12/1131722>).

⁸³ See Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Tajikistan (CEDAW/C/TJK/CO/6 of 14 November 2018), <https://documents-dds-ny.un.org/doc/UN-DOC/GEN/N18/378/38/PDF/N1837838.pdf?OpenElement>; id., Concluding observations on the fifth periodic report of Turkmenistan (CEDAW/C/TKM/CO/5 of 25 July 2018), <https://documents-dds-ny.un.org/doc/UN-DOC/GEN/N18/237/94/PDF/N1823794.pdf?OpenElement>; id., Concluding observations on the sixth periodic report of Uzbekistan (CEDAW/C/UZB/CO/6 of 1 March 2022), <https://documents-dds-ny.un.org/doc/UN-DOC/GEN/N22/274/25/PDF/N2227425.pdf?OpenElement>.

With regard to the People's Republic of China, the general concern about the human rights situation is more serious than any particular concern about women's rights: The PRC constitutes a dictatorship which not only increasingly negates human rights standards internally, but also actively tries to weaken the international human rights protection system. Chinese human rights nihilism has become most obvious in the recent brutal suppression of the Uyghur national and religious minority in Xinjiang which is well documented in a 2022 report by the UN High Commissioner for Human Rights.⁸⁴ China nevertheless managed to prevent a debate of this report at the UN Human Rights Council which significantly undermines the credibility of that institution.⁸⁵ Apart from the Uyghur case, the most recent concluding observations of the Committee on Economic, Social and Cultural Rights paint a bleak picture of the human rights situation in the PRC in general,⁸⁶ and the most recent concluding observations of the Committee on the Elimination of Discrimination against Women demonstrate how far apart the situation of women in the PRC is from CEDAW standards.⁸⁷

And yet, despite all this, it seems necessary to muster the support of Afghanistan's neighbours in order to improve the situation of Afghan women and girls: There obviously will be no sustainable peace in and development of that country without the active participation of women and girls, and the neighbouring States have a particular interest in a stable, peaceful and prosperous Afghanistan.

E. Conclusion: Reawakening Reason through Persistence, Prudence and Patience

After having been devastated by decades of international and non-international armed conflicts, pacifying, stabilising, rebuilding and developing Afghanistan are priority concerns of the international community as a whole, the Central Asian world region and the Afghan people. The situation of human rights in general and women's rights in particular are obviously major elements of all four concerns. Realising them requires the concerted efforts of all national and international stakeholders, including UN institutions such as the Security Council as well as the EU. The concerted efforts will have to be characterised by persistence, prudence and patience on all sides. The exact dosage of these three ingredients depends on the specific circumstances and cannot be determined without intimate knowledge of the situation on the

⁸⁴ OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China, 31 August 2022 (<https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>).

⁸⁵ Aldo Zammit Borda, The Debate on the Debate on Xinjiang at the Human Rights Council: Three Framings, EJIL Talk, November 18, 2022.

⁸⁶ Concluding observations on the third periodic report of China, including Hong Kong, China, and Macao, China (E/C.12/CHN/CO/3 of 22 March 2023), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/048/63/PDF/G2304863.pdf?OpenElement>.

⁸⁷ Concluding observations on the combined seventh and eighth periodic reports of China (CEDAW/C/CHN/CO/7-8 of 14 November 2014), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/33/PDF/N1462733.pdf?OpenElement>.

ground as it develops in the course of time. Even if it sounds disappointing, in view of the outrageous situation: There is no quick and easy way to implement Afghanistan's international legal obligations with regard to the rights of women and girls. Experience shows, however, that the "sleep of reason" in human societies always comes to an end and the monsters it produces disappear. The main thing is to ensure that reawakening reason in Afghanistan does not produce collateral nightmares in the sense of further armed conflict costing many more lives.

On this background, I end my paper with a cautiously optimistic assessment: Resolution 2681 (2023) is a hopeful sign that the UN Security Council has begun to take its R2P regarding women and girls in Afghanistan seriously. Now everything depends on whether international and national stakeholders join forces, succeed in capitalising on the momentum the resolution has generated and achieve progress in small steps through persistence, prudence and patience. It is true that international law actually requires Afghanistan to respect and ensure equal rights for women and girls immediately and not gradually. But the nightmarish situation in Afghanistan is such that it can only gradually be reapproximated to the precepts of international human rights law, if worse collateral nightmares of human suffering are to be avoided.