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„The United Nations Security Council's Response to Severe Violations
of Women's Rights by the Taliban 2.0 Regime in Afghanistan“

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Abstract

This thesis investigates why the UN Security Council, despite asserting jurisdiction over severe human rights abuses through an expansive interpretation of the UN Charter, has not enacted legally binding decisions in response to severe violations of women's and girls' rights by the Taliban 2.0 regime in Afghanistan between August 15, 2021, to December 31, 2023. Drawing on insights from literature emphasizing the significance of law, the study employs discourse analysis on Council's resolutions and public meeting's protocol as primary data within the theoretical framework of law as a language of power. The analysis reveals that while law serves as a persuasive or coercive tool driven by interests, as evidenced by the unanimous acknowledgment of the humanitarian crisis and terrorism threat in Afghanistan enabling legal action, differing P-5 perspectives on the Taliban's rise to power shaped by geopolitical and economic interests define their Afghan approach. This divide leads the P-3 to advocate for women's rights while the P-2 prioritizes other issues. However, the P-5's focus on advocacy neglects accountability, resulting in a failure to adopt legally binding decisions. These findings underscore a significant gap between legal principles and their practical application, emphasizing the marginalization of women's rights amidst geopolitical rifts among the P-5.

In dieser Arbeit wird untersucht, warum der UN-Sicherheitsrat trotz der Behauptung einer Zuständigkeit für schwere Menschenrechtsverletzungen durch eine expansive Auslegung der UN-Charta keine rechtsverbindlichen Beschlüsse als Reaktion auf die schweren Verletzungen der Rechte von Frauen und Mädchen durch das Taliban-2.0-Regime in Afghanistan zwischen dem 15. August 2021 und dem 31. Dezember 2023 gefasst hat. Die Studie stützt sich auf Erkenntnisse aus der Literatur, in der die Bedeutung des Rechts hervorgehoben wird, und verwendet eine Diskursanalyse der Resolutionen des Rates und des Protokolls der öffentlichen Sitzung als Primärdaten im theoretischen Rahmen des Rechts als Sprache der Macht. Die Analyse zeigt, dass das Recht zwar als interessengesteuertes Überzeugungs- oder Zwangsmittel dient, wie die einhellige Anerkennung der humanitären Krise und der terroristischen Bedrohung in Afghanistan zeigt, die rechtliche Maßnahmen ermöglicht, dass aber unterschiedliche P-5-Perspektiven zur Machtübernahme der Taliban, die von geopolitischen und wirtschaftlichen Interessen geprägt sind, ihren Ansatz für Afghanistan bestimmen. Diese Kluft führt dazu, dass sich die P-3 für die Rechte der Frauen einsetzen, während die P-2 anderen Themen Priorität einräumt. Allerdings vernachlässigt die P-5 durch Fokus auf eigene Interessen ihre Rechenschaftspflicht, was dazu führt, dass sie keine rechtsverbindlichen Beschlüsse gefasst werden. Diese Ergebnisse unterstreichen die große Diskrepanz zwischen den Rechtsgrundsätzen und ihrer praktischen Anwendung und verdeutlichen die Marginalisierung der Frauenrechte inmitten der geopolitischen Gräben zwischen den P-5.

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List of Abbreviations

CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women

ECOSOC – Economic and Social Council

ECOWAS – Economic Community of West African States

HRs or HRS – Human Rights

GCC – Gulf Cooperation Council

ICC – International Criminal Court

IHL – International Humanitarian Law

IHRL – International Human Rights Law

LAS – League of Arab States

P2 – China and Russia

P3 – The USA, The UK, France

P5 – The USA, The UK, France, China and Russia

PKO – Peace Keeping Operations

R2P – Responsibility to Protect

SC or UNSC – Security Council or United Nations Security Council

SVWGRs – Severe Violations of Women's and Girls' Rights

UN – United Nations

UNAMA – United Nations Assistance Mission in Afghanistan

UNGA – United Nations General Assembly

VWGRs – Violations of Women's and Girls' Rights

WGR – Women's and Girls' Rights

WiB – What's in Blue

Pledge of Honesty

Pledge of Honesty: *On my honour as a student of the Diplomatische Akademie Wien, I submit this work in good faith and pledge that I have neither given nor received unauthorized assistance on it.*

Mansoor Hussein Ayobi

1. Introduction

Since Mid-August 2021, Taliban's takeover, the plight of women and girls under the terror group's rule has dominated the discussion about Afghanistan on the international level. This is because the Taliban, in almost three years, has systematically and increasingly imposed severe measures against women and girls in Afghanistan that breach International Humanitarian Law (IHL), International Human Rights Law (IHRL).¹ Above all, it is argued that the policies of the Taliban amount to "gender persecution" a criminal offense under International Criminal Law (ICL).² Given the continuity and severity of these violations by the Taliban 2.0³ regime, the question of holding the Taliban accountable is prominent. In this regard the United Nations Security Council (SC) considering its authority provided by the United Nations Charter (UNC) and its practice seems relevant.

The United Nations Security Council (SC) has remained seized of the situation of Afghanistan for many decades now.⁴ The SC has since Taliban's take over adopted several resolutions, presidential statements and issued numerous press statement concerning the situation of Afghanistan, in particular related to the violations of women's rights. However, the council has condemned the Taliban's policies against women but has so far not imposed any legally binding measure to hold them accountable. Considering that the SC in numerous cases has taken such legally binding decisions in response to severe violations of human rights, this paper intends to

¹ "Situation of Women and Girls in Afghanistan: Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan and the Working Group on Discrimination against Women and Girls*," A/HRC/53/21 (United Nations General Assembly, June 15, 2023), <https://www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur#:~:text=In%20the%20present%20report%2C%20the,fall%20of%20the%20Islamic%20Republic,https://documents.un.org/doc/undoc/gen/n23/258/87/pdf/n2325887.pdf?token=JD8CeScqfXOAYd0BDn&fe=true>, 3-6.

² Rangita de Silva de Alwis, "Holding the Taliban Accountable for Gender Persecution: The Search for New Accountability Paradigms under International Human Rights Law, International Criminal Law and Women, Peace, and Security," *German Law Journal* 25, no. 2 (March 2024): 289-334, <https://doi.org/10.1017/glj.2023.113>, 294.

³ Taliban 2.0 refers to the Taliban's second time ruling Afghanistan following the collapse of the Islamic Republic of Afghanistan collapsed on 15.08.2021.

⁴ A quick overview on the council webpage suggests that Afghanistan has remain on the agenda of Council since January 3, 1980 after the Soviet invasion. "Agenda Items: Asia," accessed March 31, 2024, <https://www.un.org/securitycouncil/content/repertoire/asia>.

scrutinize why has the council not adopted such measures against the Taliban based on severe violations of women's and girls' rights (SVWGRs) in Afghanistan.

A review of the literature focusing on SC's response to such violations in Afghanistan since Taliban's take over, as well as how the Council response to the Taliban's violations of women's rights in the 1990s, did not yielded any result. Furthermore, a literature review on the SC's response to severe violations of women's rights in general seems to be limited, too. On the one hand, the bulk of the literature focusing on women evolves around the SC's thematic Resolutions entitled "Women, Peace, Security" which was first adopted in Resolution 1325(2001).⁵ On the other hand, the literature is focused on SC's response to severe violations of human rights which does not explicitly deal with violations of women's rights. Therefore, this work intends to contribute to fill this gap in the literature. Moreover, this work aspires to understand why the council, unlike its past practice of adopting legally binding measures in the situations involving severe violations of human rights, has failed to enact such measures when such severe violations predominantly target women and girls.

Studies focusing on SC's response to mass violations of huma rights suggests that decisions of the council occur at the interplay of law and politics and that the discourse within the council matters.⁶ Furthermore, the literature highlights the prominence of the Permanent Members (P-5) due to their veto power. Building on these insights from the literature review and the importance of legal arguments in multilateral fora, including security council,⁷ this

⁵ A good overview on this regard is provided by: Catherine O'Rourke, "Women and the UN Security Council," in *Oxford Bibliography of International Law* (Oxford University Press, 2022), <https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0234.xml>.

⁶ For instance, Inger Österdahl, "The Exception as the Rule: Lawmaking on Force and Human Rights by the Un Security Council," *Journal of Conflict & Security Law* 10, no. 1 (2005): 11.; Carrie Booth Walling, "Human Rights Norms, State Sovereignty, and Humanitarian Intervention," *Human Rights Quarterly* 37, no. 2 (2015): 383–413.; Jess Gifkins, "The UN Security Council Divided: Syria in Crisis," *Global Responsibility to Protect* 4, no. 3 (January 1, 2012): 377–93, <https://doi.org/10.1163/1875984X-00403009>;

⁷ Ian Johnstone et al., eds., "Toward a Theory of Legal Argumentation: Ian Johnstone and Steven Ratner," in *Talking International Law: Legal Argumentation Outside the Courtroom* (Oxford University Press, 2021), 339–56, <https://doi.org/10.1093/oso/9780197588437.003.0017>.

paper develops its theoretical framework relying on the work of Sheeran⁸ and Paige.⁹ This theoretical framework accounts both law and politics in the decision-making of the Council by suggesting that law is the language of power. By employing a discourse analysis within this framework, examining the Council's Resolutions and the P-5's public statements, this thesis aims to discern why the council has failed to take legally binding decision in response to severe violations of women's and girls rights by the Taliban 2.0.

Following this introduction, the background information chapter provides detailed account of the severe violations of rights of women and girls by the Taliban and discusses the relationship between the United Nations (UN), in particular the SC with issues human rights. This discussion is followed by a section presenting the research question and its relevance. Next, the literature review is provided, followed by a section on research design that presents the theoretical framework and methodology of this work. This is followed by a chapter presenting the result Analysis. Then, the final two chapters provide the discussion and conclusion.

2. Background Information

Afghanistan falling under the Taliban's rule for the second time in its recent history is in a new phase of its almost half a century of ongoing turmoil of war and conflict. The impact of this tragical trajectory has disproportionately harmed the women and girls in the country. Whereas women and girls experienced a significant progress towards gender equality during the 20 years of the Republic era, thanks in large part to the support of the international community,

⁸ ;Scott P. Sheeran, "Argumentation in the UN Security Council International Law as Process," in *Talking International Law: Legal Argumentation Outside the Courtroom*, ed. Ian Johnstone and Steven Ratner (Oxford University Press, 2021), 0, <https://doi.org/10.1093/oso/9780197588437.003.0004>.

⁹ Tamsin Phillipa Paige, "Theory and Methodology," in *Petulant and Contrary: Approaches by the Permanent Five Members of the UN Security Council to the Concept of "threat to the Peace" under Article 39 of the UN Charter* (Brill Nijhoff, 2019), <https://brill.com/display/book/9789004391420/BP000002.xml>.

especially the West, since Taliban's takeover of power in mid-August 2021, the women and girls of Afghanistan has been suffering the most of Taliban's crack down on human rights.¹⁰

Taliban's delegation pledged to uphold women's rights in Afghanistan during the so-called ill-developed and ill-lead Doha negotiations.¹¹ Similarly, the terror group's spokesperson reiterated such promises shortly after it took over Kabul, nevertheless, while many news headlines featured catchy phrases of conveying a message that the group will respect women's rights, within the same articles the later lines rightfully did not miss to point out to the conditional phrase of "within the norms of Islamic law."¹² Such commitments were not upheld even for few weeks. For example, by September 2021, the Taliban had already banned girls from secondary School, instructed working women to stay home,¹³ prohibited women from doing sports, and enforced gender segregation in higher education,¹⁴ replaced/renamed the Ministry of Women's Affairs with the Ministry of Propagation of Virtue and Prevention of Vice.¹⁵ Limiting the timeline of Taliban's violations of women's and girls' rights to the period under scrutiny in this work, namely 15.08.2021 to 31.12.2023, some sources, who documents Taliban's massive violations of women' and girls' rights in Afghanistan, counts over a hundred of decrees, orders, and directives that severely violates women's and girls' rights in Afghanistan; among them rights to education, justice, freedom of expression, freedom of

¹⁰ Lisa Curtis, Annie Pforzheimer, and Jan Mohammad Jahid, "Women and Girls Bear Brunt of Taliban Crackdown," *Against All Odds* (Center for a New American Security, 2023), <https://www.jstor.org/stable/resrep48431.6>.

¹¹ "It Was a Historic Day': Taliban's Top Negotiator Says," *TOLOnews*, February 29, 2020, <https://tolonews.com/afghanistan/%E2%80%99Cit-was-historic-day%E2%80%9D-taliban%E2%80%99s-top-negotiator-says>.

¹² Ahmad Seir et al., "Taliban Vow to Respect Women, despite History of Oppression," *The Associated Press*, August 18, 2021, <https://apnews.com/article/afghanistan-taliban-kabul-1d4b052ccef113adc8dc94f965ff23c7>.

¹³ Emma Graham-Harrison, "Taliban Ban Girls from Secondary Education in Afghanistan," *The Guardian*, September 17, 2021, sec. World news, <https://www.theguardian.com/world/2021/sep/17/taliban-ban-girls-from-secondary-education-in-afghanistan>.

¹⁴ "Sports Ban, Segregated Education: Afghanistan Women Worried by First Taliban Measures," *France 24*, September 11, 2021, sec. asia/-pacific, 24, <https://www.france24.com/en/asia-pacific/20210911-sports-ban-segregated-education-afghanistan-women-worried-by-first-taliban-measures>.

¹⁵ Alasdair Pal, "Taliban Replaces Women's Ministry with Ministry of Virtue and Vice," *Reuters*, September 17, 2021, sec. Asia Pacific, <https://www.reuters.com/world/asia-pacific/taliban-replaces-womens-ministry-with-ministry-virtue-vice-2021-09-17/>.

movement, access to public services, employment in all sectors both private and public (with some strict exception in health care and primary education).¹⁶

Furthermore, a number of reports on the situation of women and girls in Afghanistan under the Taliban 2.0 regime maintained that the violations of their rights are “systematic” and constitute crimes that fall under Rome Statute, an aspect that can qualify the violations to be considered as gross/mass atrocities.¹⁷ According to the Special Rapporteur on the situation of human rights in Afghanistan, for example, the policies of the regime against women and girls “constitute gender persecution and an institutionalized framework of gender apartheid.”¹⁸ Whereas the gender persecution is enlisted as a core crime under Rome Statute Art.7(2)(g), in the case of gender apartheid there is longstanding movement that strives to include gender in the definition of apartheid as a crime against humanity enlisted in Rome Statute.¹⁹ Furthermore, in a similar vein human rights organizations, such as Human Rights Watch in their annual reports concludes that “the pattern of abuses against women and girls in Afghanistan amounts to the crime against humanity of gender persecution.”²⁰ Nevertheless, in spite of all these findings, the international

¹⁶ Feminist Majority Foundation, “A Timeline of Horror: 100+ Taliban Edicts, Orders and Directives Denying Afghan Women and Girls Their Human Rights and Existence,” *Ms. Magazine*, August 15, 2023, <https://msmagazine.com/2023/08/15/list-timeline-taliban-orders-women-girls-afghanist/>; “Taliban Edicts Against Afghan Women and Girls,” Feminist Majority Foundation, accessed December 18, 2023, <https://feminist.org/our-work/afghan-women-and-girls/taliban-edicts/>; United States Institute of Peace, “Tracking the Taliban’s (Mis)Treatment of Women” (United States Institute of Peace, since 08/21), <https://www.usip.org/tracking-talibans-mistreatment-women>.

¹⁷ “The Corporate Responsibility to Respect Human Rights: An Interpretive Guide” (United Nations, 2012), <https://digitallibrary.un.org/record/734366>, 11.

¹⁸ “Situation of Women and Girls in Afghanistan: Report of the Special Rapporteur on the Situation of Human Rights in Afghanistan and the Working Group on Discrimination against Women and Girls*,” A/HRC/53/21 (United Nations General Assembly, June 15, 2023), <https://www.ohchr.org/en/documents/country-reports/ahrc5321-situation-women-and-girls-afghanistan-report-special-rapporteur#:~:text=In%20the%20present%20report%2C%20the,fall%20of%20the%20Islamic%20Republic,https://documents.un.org/doc/undoc/gen/n23/258/87/pdf/n2325887.pdf?token=JD8CeScqfXOAYd0BDn&fe=true>, 17-18.

¹⁹ The issue of including gender in the definition of apartheid in the Rome Statute was discussed widely when the Taliban came into power during the 1990s that led to scholarship on the issue, for instance: Guglielmo Verdirame, “Testing the Effectiveness of International Norms: UN Humanitarian Assistance and Sexual Apartheid in Afghanistan,” *Human Rights Quarterly* 23, no. 3 (2001): 733–68.

²⁰ Human Rights Watch, “Afghanistan,” in *World Report 2024: Events of 2023*, 34th annual World Report (New York: Human Rights Watch, 2024), 16–22, <https://www.hrw.org/world-report/2024>, 17.

community has not taken any serious international collective measure against the Taliban 2.0 for their gross violations of women's and girls' rights in Afghanistan.

A collective action by the international community, or on behalf of international community can realistically be expected only by such an organ that on the one hand, it is entrusted with taking collective measures, on the other hand, the organ is mandated with issues concerning human rights. To this end, the United Nations (UN) with a membership of 193 countries is the most prominent organization established for such objectives, particularly the United Nations Security Council (SC). The UN and the SC has growingly gained influence and played a key role in numerous similar situations throughout its history, including in Afghanistan. Therefore, against this backdrop the next section discusses the link between Human rights (HRs)-Women's and girls' rights (WGRs) with the UN and the SC.

3. The United Nations and Human Rights

The relationship between human rights and the UN in general can arguably be considered as well-established both based on the United Nations Charter (UNC) and through decades of practice of the UN itself. In the UNC according to Nowak human rights makes the third main objectives of establishing the (UN) in the aftermath of Second World War.²¹ Furthermore, this is also reflected in several references made to human rights both in the preamble and across the provisions of the Charter, among others in Art. 1(3), 13(1)(b), 55(c), 62(1), 62(2), 76(c).²² It is of essential importance to note that in the aforementioned provisions of the charter references to human rights is meant for all i.e. regardless of race, gender, religion or language.²³ Moreover, the development of what are known as International Human Rights Law (IHRL)—which exist whether on the basis of UNC provisions or under UN auspices—further strengthens the bond

²¹ Manfred Nowak, "An Introduction to the UN Human Rights System," in *All Human Rights for All; Vienna Manual on Human Rights*, ed. Manfred Nowak, Karolina M. Januszewski, and Tina Hofstätter, 1st Edition (Vienna - Graz: Intersentia & Neuer Wissenschaftlicher Verlag, 2012), 65–92, <https://www.verlagoesterreich.at/all-human-rights-for-all/99.105005-9783708308531>, 65.

²² These articles deals directly with the issues of human rights in the charter, there are also other articles which could be considered to refer indirectly to the human rights. United Nations, "United Nations Charter (Full Text)" (United Nations), accessed January 26, 2024, <https://www.un.org/en/about-us/un-charter/full-text>.

²³ Therefore, in the subsequent discussion any reference made on human rights is automatically including women's rights.

between human rights and the UN. For instance, the adoption of the Universal declaration of Human Rights in the General Assembly or human rights treaties such as, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), etc. The conclusion of these declarations and conventions have led to establishing several bodies whose mandates are focused on promoting, reporting, and protecting human rights across the globe. Whereas there is a well-established relationship between human rights and the UN in general, it is essential to note that the implementation of these laws lies primarily upon the states. When it comes to imposing any obligatory collective action within the UN system, it falls under the mandate of the SC as stipulated in Art.24 of the UNC.

1.1 Violations of Human Rights and SC

In order to understand whether the SC has the authority to take measures in the wake severe violations of human rights and/or women's rights, it is crucial to discuss it from a legal standpoint. Since the UNC is the constituting instrument of establishing and defining its mandate. First, the provision of the Charter related to SC and then the practice of the SC will be explored. The practice of the SC is examined, since it shows how the SC itself has interpreted the Charter's provisions through its practices and since the practice of the council has legal and normative consequences.²⁴

1.1.1 Human Rights and Security Council in the UNC

While the UN General Assembly (UNGA) and the Economic and Social Council (ECOSOC) are expressly tasked with addressing human rights issues, a literal reading of the Security Council provisions in the UNC does not explicitly mention human rights. Some scholars argue that SC's mandate is limited to maintaining peace and security, and that as a result, the enforcement measure at the discretion of SC under Chapter VI and VII are not applicable to the internal affairs of a state, such as in the case of violations of a state's own population's human rights. These arguments are supported by the drafters' intentions following World War II and

²⁴ Inger Österdahl, "The Exception as the Rule," 19.

their emphasis on the charter's principles of state sovereignty and non-interference in the domestic affairs of other states.²⁵ It is also noted that the human rights provisions found in UNC, such as in Articles 55 and 56, are described as ““non-committal” and “protection mechanisms and specific obligations are non-coercive””.²⁶ Therefore, scholars point out that the Charter “privilege[s] peace over dignity” because, in contrast to the prohibition of threat or use of force, human rights are only promoted and encouraged.²⁷ However, such reading of the charter has changed since its inception in 1945.

1.1.2 Reinterpretation of the UNC

There are three lines of arguments that support the change in interpretation of the UNC. First, the idea of redefining sovereignty as a state. Le Mon & Taylor, for example, maintain that the ambiguity in the Charter's provision and the willingness of the SC to incorporate "changing notions of state sovereignty and human rights into its mandate" have led to practices of the SC that take actions under Chapter VII on the basis of human rights violations, even though, they maintain that the Charter's drafters would have been surprised to hear Kofi Annan suggesting that not allowing massive violations of human rights should be a principle of the UN action(s) or the redefinition of human rights as "inextricable component of international peace and security that fell within their purview of the UNSC."²⁸ The authors maintain that the concept of sovereignty is not absolute since its proponents did foresee exceptional situations that would allow interventions, such as in the case of the collapse of state for Kant or the unwaivable nature of human rights and its protection for Rousseau.²⁹ Therefore, the severe violations of human rights within the boundaries of a state are not immune from interventions to prevent such violations and state's sovereignty cannot shield a state from such interventions as in numerous

²⁵ Julie A. Mertus, “The Security Council,” in *The United Nations and Human Rights A Guide for a New Era*, 2nd Edition (Oxon & New York: Routledge, 2009), 98.

²⁶ Christopher J. Le Mon and Rachel S. Taylor, “Security Council Action in the Name of Human Rights General Articles,” *African Yearbook of International Law* 11 (2003): 269.

²⁷ Simon Chesterman, Ian Johnstone, and David M. Malone, “Human Rights,” in *Law and Practice of the United Nations; Documents and Commentary*, 2nd Edition (New York: Oxford University Press, 2016), 477.

²⁸ Le Mon and Taylor, “Security Council Action in the Name of Human Rights General Articles,” 263-264.

²⁹ Le Mon and Taylor, 265.

instances, such as Southern Rhodesia and South Africa during the cold war and numerous cases after the cold war demonstrate.

Second, the development of a notion of positive peace allowed the SC to introduce measures under Chapter VII based on consideration of human rights violations. The main purpose of the UN is considered to be the maintenance of international peace and security according to Art.1(1) of the UNC,³⁰ it is the SC who based on Art.24 of the Charter is discharged with the responsibility to take action on behalf of all the member states to realise this and other purposes of the UN. And Chapter VII of the UNC provides what action the security council may take. However, taking any action under Chapter VII is conditioned to a positive finding of a) threat to the peace, b) breach of the peace or c) act of aggression in accordance with Art. 39 of the UNC. As was previously mentioned, the emphasis of these provisions is on peace and security rather than human rights. However, the SC's expansive interpretation of peace— definition of peace to soft factors beyond mere absence of the use of force (negative peace) among others, to respect for human rights (positive notion of peace), allows the SC to consider severe violations of human rights as a threat to the peace.³¹ The reason why such expansive interpretation of “threat to peace” is possible lies in the fact that the term peace remains undefined in the charter, and it gives the SC a great discretion³² to (re)define it.³³ Thus, allowing security council to take decisions in situations that are not inter-state conflict rather civil war,

³⁰ Franz Cede, “Historical and Legal Foundations for Activities of the United Nations,” in *The United Nations Law and Practice*, ed. Franz Cede and Lilly Sucharipa-Behrmann (Hague, Norwell, Dordrecht: Kluwe Law International, 2001), 14.

³¹ Matthias Ruffert and Christian Walter, “Substantive Legal Regimes,” in *Institutionalised International Law* (Baden-Baden: Nomos Verlagsgesellschaft mbH & Co. KG, 2015), 193–220, <https://doi.org/10.5771/9783845258973>, 188-189.

³² However, any measures introduced in a decision of the council based on Art.39 is subject to accord with the general rule of international law, such as proportionality in case of measures taken include use of force or applicability of standards of human rights, such as right to judicial review. (Ruffert & Walter, 198-200) Furthermore, it is generally accepted that SC's decision too is not exempted from respecting peremptory rules of international law from which no derogation is allowed.

³³ Ruffert and Walter, “Substantive Legal Regimes,” 192.

or situation in which mass violations of human rights are happening, protection of democratic structures, concrete (terrorist attack) or abstract (terrorism) threats.³⁴

Third, there are arguments that the promotion and encouraging of human rights is one of main purposes of the UN. Cede, for example, while discussing the preamble of the charter argues that the inclusion of human rights in the charter originated from a “firm belief” that without protection of human rights realisation of peace and security would not be possible.³⁵ Mertus maintains that the Article 24(2) of the Charter states that the UNSC shall act in accordance with the purposes and the principles of the charter, which among others, also includes promoting and encouraging for respect of human rights.³⁶ Therefore, the SC has the authority and responsibility to act on this regard. However, scholars acknowledge that the principle of non-interference is considered as a constraint for any intervention since the human rights issues falls under domestic jurisdiction of a state.

The idea that human rights is an issue, falling essentially under domestic jurisdiction, is rejected by other scholars. It is argued that, even if it was initially considered a domestic issue, due to the developments such as, conclusion of several human rights treaties,³⁷ and that violations of human rights such as in cases of Southern Rhodesia and apartheid regime in South Africa show that it is an issue of concern for the international community.³⁸ Gowlland-Debbas while reaffirming the aforementioned arguments adds that the Art.2(7) of the charter itself exempts SC’s measures adopted under chapter VII from the principle of non-intervention, and that whereas the principle of non-intervention among states has been emphasized upon, this has

³⁴ Ruffert and Walter, 189-191.

³⁵ Cede, “Historical and Legal Foundations for Activities of the United Nations,” 1-25.

³⁶ Mertus, “The Security Council,” 99-100.

³⁷ Le Mon and Taylor, “Security Council Action in the Name of Human Rights General Articles,” 270-271.

³⁸ Nowak, “An Introduction to the UN Human Rights System,” 83-84.

eroded in the relation between the UN and its member states.³⁹ Therefore, it could be suggested that human rights issues do not fall anymore under domestic jurisdiction of a state.

In conclusion, the evolving interpretation of the UN Charter supports the UNSC's authority to address severe human rights violations. Redefining state sovereignty, the concept of positive peace, and recognizing human rights as integral to international security allow the UNSC to act under Chapter VII. Historical precedents and the development of international norms further justify these interventions, showing that human rights issues are no longer solely domestic matters. Thus, it could be maintained that SC's mandate includes safeguarding human rights to maintain global peace and security. Furthermore, SC practice, especially since the end of Cold War, confirm this claim.

1.1.3 Practice of the SC in the wake of Severe Violations of human rights

The practice of SC prior to the end of Cold War provides little evidence for Council's action (intervention) on the basis of severe violations of human rights. However, though limited the Council did act in Southern Rhodesia and South Africa cases. In both cases the Council based its decision to take measures, among other reasons, on the basis of gross and systematic human rights violations,⁴⁰ thus equating such violations to constitution of a threat to international peace and security. The end of Cold War, however, provides numerous examples for council's intervention.

The end of the Cold War in general raised the hope that the UN would become "a major vehicle of promoting human rights" as exemplified in the Vienna declaration of 1993.⁴¹ Moreover, unlike the era prior to the 1990s, whereas the UNSC has taken limited actions concerning the gross violations of human rights,⁴² the UNSC became growingly concerned with promotion of

³⁹ Vera Gowlland-Debbas, "3 The Security Council as Enforcer of Human Rights," in *Securing Human Rights?: Achievements and Challenges of the UN Security Council*, ed. Bardo Fassbender, Online Edit. (Oxford University Press, 2011), 0, <https://doi.org/10.1093/acprof:oso/9780199641499.003.0003>, 47.

⁴⁰ Nowak, "An Introduction to the UN Human Rights System," 84.

⁴¹ Nowak, 88.

⁴² Jack Donnelly, "Humanitarian Intervention against Genocide," in *Universal Human Rights; in Theory and Practice*, 3rd edition (Ithaca and London: Cornell University Press, 2013), 255-56.

human rights by identifying violations of human rights as a threat to international peace and security.⁴³ Two developments in this regard illustrate how the council actively made use of its power to address the violations of human rights. First, several countries such as, Iraq, Yugoslavia, Afghanistan, Somalia, Liberia, etc. faced sanctions based on human rights violations.⁴⁴ Second, the development and authorization of new generations of Peace Keeping Operations (PKO) whose mandates were expanded to provide protection to civilians, promoting and protecting human rights.⁴⁵ Some authors, such as Chesterman et al. call the 90s as an era of new Interventionism,⁴⁶ or the 1990s is called an era in which PKO mushroomed.⁴⁷ The crucial development in the UNSC resolutions concerning PKOs as well as in the cases of humanitarian intervention apart from other justifications and motives, the human rights dimensions were included across all of them.⁴⁸ Furthermore, the gross violations of human rights and the failure of the international community to prevent such violations triggered new efforts within the UN to push for new doctrine to further link the peace with protection of human rights.

Even though a link was gradually established between human rights - peace and security within both in SC and UNGA, cases of gross violations of human rights, in particular genocide happened in Rwanda, Bosnia Herzegovina, and ethnic cleansing in Kosovo during the 1990s. In the wake of the UN and the international community's failure to prevent these gross violations of human rights, on the initiative of Kofi Annan—the former General Secretary of the

⁴³ Mertus, "The Security Council," 100.

⁴⁴ Nowak, 84.

⁴⁵ For instance, UNSC resolution 593(1991) on El Salvador entails direct reference to monitoring, investigating, and promotion of human rights. Chesterman, Johnstone, and Malone, "Peace Operations," 329-330. UNSC resolution 986 (1995) on Iraq adopted changes to the resolution 661(1990) to mitigate the adverse impacts of the sanctions on the general population of Iraq as well as to provide assistance to the group of people oppressed by Saddam's regime such as the Kurds on the basis of human rights. Simon Chesterman, Ian Johnstone, and David M. Malone, "Sanctions," in *Law and Practice of the United Nations; Documents and Commentary*, 2nd Edition (New York: Oxford University Press, 2016), 378-79.

⁴⁶ Simon Chesterman, Ian Johnstone, and David M. Malone, "The UN Charter," in *Law and Practice of the United Nations; Documents and Commentary*, 2nd Edition (New York: Oxford University Press, 2016), 17-21.

⁴⁷ Catherine O'Rourke, ed., "An Overview of Laws and Institutions," in *Women's Rights in Armed Conflict under International Law* (Cambridge: Cambridge University Press, 2020), 34-105, <https://doi.org/10.1017/9781108667715.002>, 99.

⁴⁸ Mertus, "The Security Council," 110.

UN—and the support of Canadian government the doctrine of “Responsibility to Protect” (R2P) was adopted in the World Summit 2005.⁴⁹ The doctrine entails three pillars to protect the population from gross violations of human rights: first, the state has the responsibility to protect. Second, if a state fails to fulfil this responsibility, it is upon the international community to act through peaceful means to provide protection. Third, if the first two fail, it is the responsibility of the SC (not a right) to take measures under Chapter VII to protect the populations from gross violations of human rights,⁵⁰ limited to core crimes defined in the Rome Statute, such as genocide, crimes against humanity, war crimes and ethnic cleansing.⁵¹ The SC has referred explicitly to R2P in some of their resolutions, for instance, in the context of the so-called Arab Spring in the resolution of 1973(2011) in the Libya case.⁵² Therefore, it can be argued that SC has gradually equated and linked gross violations of human rights to the peace and security and has adopted measures under Chapter VII in accordance with Art.39 of the UNC. Nevertheless, the new or reinterpretation of the UNC and the practice of the SC suggests above, SC has failed to demonstrate consistency while dealing with situations where severe violations of human rights occur. One of such active cases at the moment is Afghanistan.

4. Research Question

Afghanistan is one of those countries that has persistently been on the SC’s agenda due to its long and ongoing conflict and turmoil. Human rights breaches have unfortunately not been uncommon in Afghanistan throughout this bleak period as is typical in any conflict-torn country. However, the magnitude of the abuses occurring under the Taliban 2.0 rule since August 15, 2021, is unprecedented. Whereas a massive violation of human rights is a general pattern of conducts of the regime, the severity of such violations imposed upon women and

⁴⁹ Nowak, “An Introduction to the UN Human Rights System,” 84-86.

⁵⁰ Simon Chesterman, Ian Johnstone, and David M. Malone, “Hard Cases,” in *Law and Practice of the United Nations; Documents and Commentary*, 2nd Edition (New York: Oxford University Press, 2016), 47-51.; Nowak, 86-88.; Mertus, 108.

⁵¹ Angieszka Bieńczyk-Missala, “States, International Institutions and Instruments,” in *Preventing Mass Human-Rights Violations and Atrocity Crimes*, trans. Joanna Torzewska and James Richards, vol. 42, STUDIES IN POLITICS, SECURITY AND SOCIETY (Peter Lang, 2021), 25-52, <https://www.peterlang.com/document/1146944>, 31.

⁵² Nowak, “An Introduction to the UN Human Rights System,” 88.

girls is widely understood as “crime against humanity”⁵³ and has led to several women’s rights activists to call Taliban’s regime a gender apartheid regime.⁵⁴ The SC since the return of Taliban 2.0 regime have remained actively involved in the situation of Afghanistan. The UNSC has adopted several resolutions concerning Afghanistan, where in most of them there is reference made to the violations of human rights, particularly to violations women’s and girls’ rights, however, the UNSC has not taken any decision in relation to protection of human rights and the women’s and girls’ right. Therefore, the following question rises which this work will strive to answer:

“Why the Security Council has not taken any legally binding measures to address the severe violations of human rights, specifically in relation to severe violations of women’s and girls’ rights by the Taliban regime 2.0 since their return to power on 15th August 2021?”

There are several reasons why this research question is relevant. First and foremost, it is imperative to comprehend why the SC has not made any decisions under Chapter VII even though the SC has made decisions based on serious human rights breaches and has progressively elevated such violations as a threat to peace in other cases. It is of vital importance to see what is different in the case of Afghanistan this time, that the Council has not yet opted to impose measures to prevent these grave violations. Second, the case study of Afghanistan, amidst turbulent geopolitical rifts between the major powers, would shed light on whether the SC entrusted with the maintenance of peace and security still has the capacity to fulfil this obligation. Third, it contributes to understand the dynamics of whether severe violations of women’s rights are taken as seriously as other gross human rights violations. Fourth, it may provide insights on whether the international law, especially the international human rights laws are applied universally or selectively. Fifth, the SC response to the situation of Afghanistan

⁵³ For instance, see Amnesty International et al., “Alliance for Human Rights in Afghanistan - Joint Statement – Afghanistan: Call for Justice Accountability and Effective Response to Ongoing Violations and Gender Persecution” (Amnesty International, December 15, 2023), <https://www.amnesty.org/en/documents/asa11/71110/2023/en/>.

⁵⁴ UN Women, “Expert Group Meeting on International Strategies and Tools to Address the Situation of Women and Girls in Afghanistan” (Un Women, July 2023), <https://www.unwomen.org/sites/default/files/2023-09/expert-group-meeting-report-international-strategies-and-tools-to-address-the-situation-of-women-and-girls-in-afghanistan-en.pdf>.

concerning the severe violations of human rights since the return of the Taliban 2.0 regime has remained understudied, thus, this research will contribute to fill this gap in the literature.

The next section will examine the literature on how the SC makes decisions in the wake of grave human rights violations.

5. Literature Review

1.2 SC approach to violations of human rights

The literature on the security council's work in relation to mass violations of human rights seems to be rich, however, if the violations of women's and girls' rights are taken as a starting point, the literature seems to be very limited. A quick overview on different search engines indicates that the term "women's rights" is vastly discussed within the discussion on the SC's resolutions on thematic issues of "Women, Peace, Security". However, as these resolutions mainly focuses on the participation of women,⁵⁵ and the discussions are more interested in the impacts and implications of them, it does not serve the purpose of this work. Therefore, following the main objective of this work—the lack of adopting binding decision by the SC in the wake of severe violations of women's and girls' rights (VWGRs)—the body of literature addressing the SC in(action) in relation to mass violations of human rights is considered relevant to this work since human rights are inherently inclusive of women's rights. s.

Scholars have analyzed the SC's (in)action concerning severe violations of human rights from different perspectives to explain what factors contribute to the SC decision-making in this regard. Scholars, in particular from international law perspective, have focused on how SC has expanded the definition of "threat to the peace" to situations that contain or result in severe human rights violations by analyzing the facts of the situation and the discussions related to these situations within the Security Council.⁵⁶ Whereas the finding of these analyses varies

⁵⁵ O'Rourke, "An Overview of Laws and Institutions," 80.

⁵⁶ Ingersol Österdahl, "By All Means, Intervene! (The Security Council and the Use of Force under Chapter VII of the UN Charter in Iraq (to Protect the Kurds), in Bosnia, Somalia, Rwanda and Haiti)," *Nordic Journal of International Law* 66, no. 2-3 (January 1, 1997): 241-71, <https://doi.org/10.1163/15718109720295274>; Österdahl, "The Exception as the Rule."; Walling, "Human Rights

according to their main objectives, there are two common aspects within this body of literature. On the one hand, it seems that the facts of the situation—be it the actual severe violations, foreseeable imminent occurrence of severe violations or accountability of the perpetrators—play a crucial role in the decision-making of the Council. On the other hand, it is highlighted that though the Council has repeatedly taken measures under Chapter VII based on or including severe violations of human rights, its approach remains inconsistent.⁵⁷ Scholars provide different explanations as to why this is the case.

The SC emphasizes the exceptionality of the situation when making decisions falling under Chapter VII, resulting in an ad hoc approach and lacking consistency. The reason behind this, according to scholars, is the novelty of the practice of the SC taking measures under Chapter VII in the cases of severe violations of human rights and the Council's strive to not set precedent—avoiding setting norms that might have binding effects on the council itself on similar cases.⁵⁸ In addition to this, whereas Österdahl underlines the economical and logistical reasons alongside the political aspect as other important factors influencing SC decisions,⁵⁹ Aznar-Gómez underscores the discretion provided under Art.39 of the UNC as well as the varying intentions of the prominent members of the council as reasons leading to the ad-hoc approach of the Council. However, Aznar-Gómez finds the inconsistency of the SC leading to deregulation in addressing severe violations of human rights,⁶⁰ Österdahl concludes that regardless of the inconsistency where the controversy on the practice is in decay as well as the

Norms, State Sovereignty, and Humanitarian Intervention.”; Daphna Shraga, “2 The Security Council and Human Rights—from Discretion to Promote to Obligation to Protect,” in *Securing Human Rights?: Achievements and Challenges of the UN Security Council*, ed. Bardo Fassbender (Oxford University Press, 2011), 8–35, <https://doi.org/10.1093/acprof:oso/9780199641499.003.0002>.

⁵⁷ Mariano J. Aznar-Gómez, “A Decade of Human Rights Protection by the UN Security Council: A Sketch of Deregulation?,” *European Journal of International Law* 13, no. 1 (February 1, 2002): 223–41, <https://doi.org/10.1093/ejil/13.1.223>; Bruno Stagno-Ugarte, “Mass Atrocity Crimes and Human Rights Discourse at the UN Security Council: Three Case Studies Bruno Stagno-Ugarte,” in *Talking International Law: Legal Argumentation Outside the Courtroom*, ed. Ian Johnstone and Steven Ratner (Oxford University Press, 2021), 175–80, <https://doi.org/10.1093/oso/9780197588437.003.0008>.

⁵⁸ Österdahl, “The Exception as the Rule,” 10–11.; Aznar-Gómez, “A Decade of Human Rights Protection by the UN Security Council,” 225–27.

⁵⁹ Österdahl, 11.

⁶⁰ Österdahl, “The Exception as the Rule,” 19–20.

exceptional labelling within SC resolutions, the practice of the council does have normative implications.⁶¹ Thus, implying that there is a rising expectation of the council taking actions based on severe violations of human rights.

This would suggest that it could be expected that by now, after more than three decades of this development, the SC should have taken measures to protect human rights and prevent further violations in cases like the situation of women and girls in Afghanistan, which is called out as unprecedented. However, focusing on the norm establishment, it seems that intervention based on humanitarian reasons has not fully evolved into a guiding principle of the SC. One explanation for this is how the norms of human rights have co-evolved within the Security Council vis-à-vis the norm of sovereignty.

Walling in her study discusses the interplay between the norms of human rights and sovereignty by conceptualizing norms from a social constructivist perspective while conducting a discourse analysis on the public discussions of the SC on eight cases of mass violations of human rights that the SC has decided to intervene in five of them and taking no action in other three cases.⁶² She maintains that the discursive justifications of the Council concerning the two norms play a crucial role in decision-making of the council to intervene or not.⁶³ She identifies that “humanitarian intervention occurs only in situations when sovereignty is discursively constructed as consistent with, and complementary to, the promotion of human rights,”⁶⁴ and maintains that three narratives: a) sovereign authority is discursively lacking; b) referent of sovereignty would benefit from human rights protection; c) governing authorities are deemed illegitimate and sovereign authority is transferred to the people.⁶⁵ She further maintains that if

⁶¹ Aznar-Gómez, “A Decade of Human Rights Protection by the UN Security Council,” 240–41.

⁶² Walling, “Human Rights Norms, State Sovereignty, and Humanitarian Intervention.”

The cases and relevant resolutions discussed in this study are: where security council intervened: Iraq 1991 (Protecting Kurds population – Res.688); Somalia (ensuring humanitarian assistance – Res. 794 & 688); Bosnia (protection of human rights and arms embargo on Serbia – Res. 770 & condemnation of ethnic cleansing – Res,771); Sierra Leone (Establishment of UN Mission – Res. 1270); Libya (Responsibility to protect civilian population – Res.1973). The cases SC failed to take actions: Rwanda (Genocide), Kosovo, Darfur (Genocide).

⁶³ Walling, 393.

⁶⁴ Walling, 389.

⁶⁵ Walling, 389.

the perpetrators are governments whose sovereignty is uncontested a decision of the council to intervene becomes unlikely arguing that the stronger norm, more established one—sovereignty—prevails, and only if both norms, human rights and sovereignty, are discursively constructed as complementary by altering the conception of sovereignty—appealing to popular sovereignty or sovereignty as responsibility— or by making citizen of state instead of the state itself as a referent of sovereignty, the division in the council can be overcome and makes council’s intervention possible.⁶⁶

This study demonstrates, on the one hand, the development of the human rights norm in decision-making of the council, on the other hand, by analyzing the discursive justification of the council on norms of human rights and sovereignty, provides us insights not only concerning the inconsistency of the council, but also sheds light on how the council’s discourse contributes to making interventions (im)possible. Therefore, building on these findings to understand the SC response to the severe violations of women’s rights and girls’ rights (SVWGRs) by the Taliban 2.0 regime, it deems necessary to delve into the discourse of the council. Nevertheless, whereas the author does not ignore the influence of power politics in these studies, focusing on discourse analysis on interplay of two norm might not hinder to account sufficiently the power politics among the council members which can influence their discourse within the council. Therefore, to answer the research question this aspect must be considered, too. Furthermore, considering that the severe violations of women’s and girls’ rights by the Taliban 2.0 is considered to constitute crime against humanity, it is also essential to explore how has the SC acted in situations where the core crimes falling under Rome Statute is involved, both within and outside of the responsibility to protect doctrine (R2P).

1.3 SC’s approach in the wake mass atrocities (Core Crimes under Rome Statute)

The R2P doctrine allows the security council to act through variety of measures at its disposal within its mandate according to the UNC, including those in Chapter VII, thus, assigning the SC a crucial role as the third pillar of the doctrine for protection and prevention of mass atrocities (Genocide, crimes against humanity, war crimes, crime of aggression) against a

⁶⁶ Walling, 390.

civilian population.⁶⁷ In the study by Walling discussed previously, the author discusses how the R2P as human rights norm served as the main basis of the Security Council's intervention in the Libyan civil war of 2011, however, she cautions to not raise the hope too high while pointing to Syrian civil war case, and despite the fact that in 2014 numerous Security Council resolutions contained at least a reference to the doctrine.⁶⁸ Later studies, such as Genser in 2018 while analyzing 11 situations of mass atrocities in relation to the doctrine also finds that the doctrine has been implemented successfully in three cases only.⁶⁹

The author finds three conditions for the successful intervention of the SC in the cases of Côte d'Ivoire, Mali, Libya. In all of the cases three conditions were met for a successful intervention of the SC: first, there was no obstruction from the state concerned, such in the case of Côte d'Ivoire and Mali or such obstruction was overcome by the will of P-5 members of the SC; second, crucial cooperation between the SC and regional organization to determine the best response to the situation, for instance, ECOWAS⁷⁰ in the cases of Côte d'Ivoire, and GCC⁷¹ and LAS⁷² in the case of Libya; third, the capacity to react, such as a standing mission of the UN in Côte d'Ivoire or the capacity to take actions provided by a particular member or a willing group of state in the other two cases, were identified as main factors contributing to the SC successful intervention on the basis of R2P doctrine.⁷³

In regard with the case under study, VWGRs under Taliban 2.0 regime, these preconditions seem to be absent. The Taliban 2.0 regime obviously is in a strong opposition to even any influence from anyone, especially from foreign countries or international organizations. The

⁶⁷ Jared Genser, "The United Nations Security Council's Implementation of the Responsibility to Protect: A Review of Past Interventions and Recommendations for Improvement," *Chicago Journal of International Law* 18, no. 2 (January 1, 2018), <https://chicagounbound.uchicago.edu/cjil/vol18/iss2/2>, 429-34.

⁶⁸ Walling, "Human Rights Norms, State Sovereignty, and Humanitarian Intervention," 409-412.

⁶⁹ Genser, "The United Nations Security Council's Implementation of the Responsibility to Protect," 434-496.

⁷⁰ Economic Community of West African States (ECOWAS).

⁷¹ Gulf Cooperation Council (GCC)

⁷² League of Arab States (LAS)

⁷³ Genser, "The United Nations Security Council's Implementation of the Responsibility to Protect," 249-50.

group has formed its identity on the name of independence and ousting foreigners.⁷⁴ Furthermore, a comparable organization such as ECOWAS or LAS does not exist in the region.⁷⁵ Above all if a will among the P-5 existed to take measures, then this research question was not relevant anymore and as well as there is no capacity comparable to those cases discussed above to take action through them in Afghanistan. Therefore, it could be argued that discussing Afghanistan's situation within this doctrine is void, since Lack of one or two of these conditions were also found as main factors for unsuccessful implementation of the R2P doctrine in four cases of The Democratic Republic of Congo, Sudan (Darfur and Blue Nile & South Kodrofan), South Sudan and Central African Republic.⁷⁶ In addition, the author argues that more important than these factors is the threat or actual use of Veto by one or more P-5 member in the Council, for instance where the SC do make a reference to the R2P related to Yemen's responsibility, it fails to invoke SC responsibility to act since UK and the US would have vetoed it due to their relations with Saudi Arabia and similarly in the case of Syria, Myanmar and DPRK⁷⁷ it was China and Russia preventing council to take decisions to address mass atrocities in these cases.⁷⁸

Furthermore, the author in these case studies while discussing the role assigned to SC in the R2P doctrine applies the rules to the resolutions of the Council to determine its success, or lack thereof, or failure to reach decisions due to institutional design of the SC decision-making process- the Veto. This points out the importance of the P-5 when it comes to the Council's decision-making concerning mass violations of human rights. Other studies focusing on R2P or studying the response of the council to mass atrocities while delving deeper into the

⁷⁴ Lindsay Maizland, "The Taliban in Afghanistan," *Council on Foreign Relations*, January 19, 2023, <https://www.cfr.org/backgrounder/taliban-afghanistan>.

⁷⁵ One of such regional organization could be the Shanghai Cooperation, however, as it is more a loose multipolar forum of discussion and so far it has engaged seriously in any issues related to human rights in the region, expecting it to cooperate in any case of SC decision seems to be highly unlikely regardless of the fact that both strong members of the organization China and Russia traditionally stands in fierce opposition to any intervention.

⁷⁶ Genser, 450–78.

⁷⁷ Democratic People's Republic of Korea (DPRK)/ Nother Koreas

⁷⁸ Genser, "The United Nations Security Council's Implementation of the Responsibility to Protect," 478–94.

discourses within the council provide us further insights into how the SC has responded to mass atrocities.

Mulford focusing on R2P's status as a norm from a constructivist perspective while conducting a discourse analysis of SC's resolutions and meeting's protocol on Yemen concludes that the R2P is invoked both directly and indirectly by the council's members, however, by employing "rhetorical adaptation" technique that allows the P2 (China and Russia) to disregard, the P3 (US, UK, Fr) to avoid, and Peru to hollow R2P norm, thus, evading from SC responsibility according to third pillar of the R2P (SC discretion to take measures) that leads to erosion of the R2P norm.⁷⁹ Similar to Genser, Mulford too argues conflicting norms of R2P with sovereignty and competing trade priorities and strategic interests are drivers that lead to inconsistency and erosion of the norm.⁸⁰ Case studies of Syria refer to similar argument as main factors leading to council's failure to act. For instance, Gifkins highlights the differing interpretation of the situation, ways of framing the conflict both informed by members interest in the situation as main reasons of failure to impose measures.⁸¹ Borea studies of SC response to Syria during 2013-2015 (timeframe that Gifkin does not cover), underscores that though council resolutions that entailed references to human rights violations and R2P, sanctions introduced were mainly based on terrorism and chemical weapons.⁸² In the latter case, where the Assad regime was the perpetrators, the SC resolution failed to address the accountability aspect in this matter. Borea, similar to Gifkin, maintains that lack of resoluteness to resolve the situation in Syria is driven by the power balance among the P-5 members of the council. Therefore, it can be suggested that when the issue of mass violations of human rights is involved, the national interest of the

⁷⁹ Felicity Mulford, "Circumventing the Responsibility to Protect in Yemen: Rhetorical Adaptation and the United Nations Security Council," *Global Responsibility to Protect* 14, no. 1 (February 1, 2022): 75–104, <https://doi.org/10.1163/1875-984X-14010009>, 99.

⁸⁰ Mulford, 100.

⁸¹ Gifkins, "The UN Security Council Divided," 389–93.

⁸² Pasquale Borea, "Violations of Human Rights, Use of Chemical Weapons and the Phenomenon of Non-State Actors: A Reflection about the U.N. Security Council Resolutions Related to Syria," *Misión Jurídica: Revista de Derecho y Ciencias Sociales* 9, no. 10 (2016): 43–54.

council's members matters,⁸³ in particular P-5's interest shape the outcome of the council decisively.

The importance of P-5 members is also evident when the P-5 members response to mass atrocities in the context of international criminal law is considered. For instance, Forsythe identifies that in general pattern of the P-5 regarding the development of criminal law in the council is that P-3 (US,UK,Fr) has initiated many development and P2 (China and Russia) has remained hesitant to such developments, and underscores that inconsistency emanates from an short-sighted approach to manage the situations to protect their own interest rather than producing a common good. The author adds that US, Ch, R also strive persistently to safeguard their nations from international accountability.⁸⁴ Therefore, relying on these findings in the literature, this work will focus on the position of the P-5 members of the Council. The literature review also highlights how the council take its decision concerning the mass atrocities.

As some studies discussed above that norm contestation and the discourse of the council are factors alongside the interest of members interest that shape council's decisions in the wake of severe violations of human rights. It suggests that the council decision-making is informed by both politics and legal arguments. This duality in the Council's decision-making is also highlighted by other scholars. For instance, Stagno-Ugarte discussing SC's response through a discourse analysis of council's discussion on three cases (Syria, Yemen, Myanmar) where the mass violations involved were those enlisted in the Rome Statute,⁸⁵ notes that the negotiations within the UNSC is greatly political, however, it does include legal arguments, too.⁸⁶ Therefore, for the purpose of this work, it's crucial to conduct the study from a perspective that enable to scrutinize the Council's lack of adopting legally binding decision in a nexus of law and politics. In this regard, the comprehensive study by Paige while studying 22 cases from 1946-2013 deems to provide such a lens. Paige in her study focusing on SC's discourse from a legal

⁸³ Carrie Booth Walling, "The United Nations Security Council and Human Rights," *Global Governance* 26, no. 2 (2020): 291–306.

⁸⁴ David P. Forsythe, "The UN Security Council and Response to Atrocities: International Criminal Law and the P-5," *Human Rights Quarterly* 34, no. 3 (2012): 840–63.

⁸⁵ Stagno-Ugarte, "Mass Atrocity Crimes and Human Rights Discourse at the UN Security Council," 175-80.

⁸⁶ Stagno-Ugarte.

sociology perspective, suggesting that Law is the language of politics and finds that the legal discourse of the P-5 informs their decision to positive/negative finding of “threat to the peace” under Art.39.⁸⁷ The next section discusses this approach together with legal argumentation to develop the theoretical framework of this work.

6. Research Design

1.4 Theoretical Framework

The discussions in the literature review underscores the political weight of the P-5 and their preferences or interest in regard with the Council being able to take decisions in the wake of mass atrocities, however, at the same time it highlights that if zoomed into the deliberations and the discussions of the council’s members within the council on such situations, indifferent to what their political position or interest might be, it reveals the importance of legal argumentation within their deliberation on a given situation. Therefore, it can be maintained that the security council decision-making is influenced in a matrix of international law and political considerations of the council’s members, especially the P-5. This in turn would implicate for the objective of this work to utilize a theoretical lens which can consider how both legal and political consideration forms council’s decision-making.

The theoretical framework of this work is developed while relying on the discussion of legal argumentation within the council discussed by Sheeran and Paige’s theory of law as the language of power in her study of how the Council has defined the “threat to the peace.” The former while insisting on the political nature of the Council identifies that there are four typology of issues where legal argumentation is relevant: a) violations of international law, including human rights law, b) when a situation constitutes a “threat to the international peace and security”, c) if council’s considering to impose binding measures, including sanctions or measures related to international criminal justice and d) the binding effects of council’s

⁸⁷ Tamsin Phillipa Paige, “Petulant and Contrary: Approaches by the Permanent Five Members of the UN Security Council to the Concept of ‘threat to the Peace’ under Article 39 of the UN Charter,” in *Petulant and Contrary: Approaches by the Permanent Five Members of the UN Security Council to the Concept of “threat to the Peace” under Article 39 of the UN Charter* (Brill Nijhoff, 2019), <https://brill.com/display/title/54194>.

decisions.⁸⁸ The above-mentioned issues correspond and is related to the main objective of this work, as lack of legally binding decisions of the council in the wake of violations of international law, especially women's and girls' rights. Furthermore, the nature of research question involves considering the lack of adopting measures that correspond with issues in c) and d) as well as it can be considered as a matter of b) since imposing legally binding decisions, in particular measures under Chapter VII of the UNC requires a positive finding of Art.39. Therefore, based on this and what part of the literature review in the previous section suggest, legal argumentation is relevant in the council's decision-making. However, what constitutes legal argumentation needs to be defined first.

What constitutes a legal argumentation or good arguments, according to Johnston & Ratner "may be traceable to the subject area."⁸⁹ In relation to the case study of this work, any argumentation that invokes the UNC; International Human Rights Law (IHRL); International Humanitarian Law (IHL); International Core Crimes under Rome Statue as well as relevant Security Council resolutions is regarded as a legal argumentation. It's crucial to note here that as this definition sets out what arguments will be considered as legal; the profound question remains how legal argumentation influence the decision-making of the Council which is primarily a political organ.

Sheeran in his discussion does point out the limitations to legal argumentation in practice which can be summarily regarded as legal and political in nature. Whereas lack of adjudication and determinacy on council's decision constitute a legal limitation in nature, other limitations, such as selective approach of the council, divergence from the legal rules in the practice of the council as well a range of other non-legal elements,⁹⁰ are political limitations.⁹¹ However, this discussion does not provide a systematic lens to understand the relationship between politics

⁸⁸ Sheeran, "Argumentation in the UN Security CouncilInternational Law as Process," 75–76.

⁸⁹ Johnstone et al., "Toward a Theory of Legal Argumentation," 341.

⁹⁰ These elements can be political sensitive issues and national interest question, or the overall atmosphere among the P-5 in the council; resistance against council to act by some members; council general resistance to acceding to normative argumentation which would impose a legal obligation on council to act. Sheeran, "Argumentation in the UN Security CouncilInternational Law as Process," 81.

⁹¹ Sheeran, 77–81.

and law in the decision-making of the council. Paige's theory of "law as the language of power" provides a systematic approach in understanding the relationship between law in politics.

Paige in developing her theory of law is the language of power resort to, first, a body of international law literature, in particular discussing Koskenniemi and Johnstone conception of law within the Council's work or similar fora. Whereas both authors conception of law is postulating it as a separate unit from politics where law serves as a restraint to the politics,⁹² their conception differs slightly on explaining their relationship. For Koskenniemi, law is "the public face of political power" i.e. providing justification for political purposes, however, not as instrument for advancing self-interest rather resonating with the culture within which it rests and points out the mutual influence of one on the other.⁹³ Johnstone in addition to pointing out to law providing justification for political purposes, discusses the motives that drives usage of legal justifications in the context of the Council, such as avoiding possible negative judgement by international public opinion for their action as well as an inherent interest in maintaining reliable international order. This is interpreted by Paige as considering law as "a method of expressing and justifying political power," and providing "an invaluable foundation in conjunction with Koskenniemi's work, to the notion of law as the lingua franca of international political power, rather than as the separate restraining entity that they conceive it to be."⁹⁴ The author by adding the discussion of Johnstone on the socialization of norm further advance the idea of law operating as a language of power.

Paige building upon the discussion of Johnstone on the socialization of law as a norm, achieved through "the use of and reference to law" in justifying political actions, emphasises on the law becoming a norm of behaviour and discourse in international relations and leading to the emergence of an interpretative community as an outcome of such socialization.⁹⁵ The discussion on socialization of law as a norm suggests that law becomes a norm of communication for transmitting political decision which can be interpreted by the interpretative

⁹² Tamsin Phillipa Paige, "Theory and Methodology," 23.

⁹³ Paige, 23–24.

⁹⁴ Paige, 24–25.

⁹⁵ Paige, 25.

community comprising of those who are engaged in international law practice and scholarship. The author adds that a significant effect is that a baseline is provided—normative framework for the interpretation of international legal discourse and instrument—that enables to distinguish between good and bad arguments which in turn forces the state to provide compelling justifications for their action.⁹⁶ However, for Paige the arguments of law as façade for politics as suggested by Koskenniemi, and use and referring to law that leads to a socialization of law as a norm of behaviour and discourse that also lead to creating an interpretative community as suggested by Johnstone while providing “solid foundational notions do not adequately explain the interlinked, co-dependent nature of the relationship—namely, that law is the language of power.”⁹⁷ Paige for advancing her theory, secondly, resort to de-centring law from its outset.

According to Paige, law in the Western culture is considered the language of power which is criticized for de-centring law as it does not consider law as power itself. However, she states that it is necessary to de-centre law from the outset. i.e. law akin to language is a social product which is formed within the power relation which pre-exist law. And law itself, in particular international law, is formed through political process within such power relations, becomes an expression of power.⁹⁸ Therefore, she maintains that law and politics are “intertwined, co-dependent and inseparable.”⁹⁹ Furthermore, she argues that de-centred analysis of law is not marginalizing it rather grasps the interdependency of law with other forms of power since with the rise of modernity law by using non-legal forms of power has itself become the language of these forms of power which regulates and shapes behaviour in a society.¹⁰⁰ Hence, law is interlinked with politics as it becomes the expression of power.

In the context of Security Council, Paige’s theory allows to understand not only that international law and politics within the council function as two interlinked units, but also that they are codependent. This in turn suggests that even if the organ is political in nature, the

⁹⁶ Paige, 25–26.

⁹⁷ Paige, 27.

⁹⁸ Paige, 27.

⁹⁹ Paige, 28.

¹⁰⁰ Paige, 28.

behaviour and discourse of the council's members are also shaped by law as a result of socialization of law within the council by resorting to legal argumentation. Therefore, it allows to analyse lack of council's legally binding decision in a matrix of international law and politics. An additional benefit of employing this theoretical framework is that it does not marginalize law at expense of politics or the other way around since it does not subsume law as an instrument of politics. Following this theoretical framework, the next section will discuss what data and methodology is utilized to analyse the data while following the theory of law is the language of power.

1.5 Data and Methodology

The UNC in Art.30 allows the SC to adopt its rules of procedure, and it has led to council's creativity in organising its working method, for instance SC has developed meeting formats that can be formal/informal and public/private to meet its need.¹⁰¹ The Council provides documents communicating the output of its work through a resolution, presidential statements or press statements. In this study 11 resolutions of the council and the meetings' protocols leading to their adoption between 15.08.2024 – 31.12.2023 are analysed as primary data to comprehend the lack of adopting legally binding decision in regard with the women's and girl's rights violations.

The rationale behind selecting resolutions over other documents provided by the Council are: a) resolutions are adopted in a public meeting with 9 affirmative votes of the members including at least no veto from the P-5, whereas the presidential statements and press statements are finalized through informal meetings of the council with no public records available how the consensus were reached, in some cases some members have distanced themselves from such statements,¹⁰² b) resolutions can be considered to be the main instrument for conveying council's decision with binding effect, in contrast press statements are not considered to convey

¹⁰¹ "Conduct of Business," in *The UN Security Council Handbook; A User's Guide to Practice and Procedure* (New York: Security Council Report, 2019), 19–40, <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/the-un-security-council-handbook-by-scr-1.pdf>, 31–32.

¹⁰² "Conduct of Business," 37.

council's decision rather agreement between member states on their individual capacity,¹⁰³ in relation to presidential statements they are also contended to convey the Council's decision,¹⁰⁴ however, decisions conveyed through presidential statements are not wished to be perceived as final step of the council action on a situation.¹⁰⁵ Therefore, the resolutions and their public meeting protocol are analysed as primary data focusing only on the position of the P-5. This is due to the importance of the P-5 compared to other members discussed previously. However, the resolutions and even the statements delivered in the public formal meetings of the Council are the last stage of council's decision-making process since prior to adoption of a resolution the Council conduct private meetings and negotiations to reach an agreement on the text of the resolution. This in turn has led to criticism of the Council in terms of transparency in its decision-making process,¹⁰⁶ and it also limits to get deeper into the deliberation of the council.

To overcome this, the reports—What's in Blue (WiB)—provided by the “Security Council Report”¹⁰⁷ a New York based think tank, on the informal meetings and negotiation among the member states before finalizing the draft of a resolution to be voted on is taken into consideration as secondary data to achieve a better understanding of the context within which the Council reaches its decision. Furthermore, all 29 reports within the timeframe of the study are taken into account in understanding the context of the Council's works while focusing on the discussions about human rights, in particular women's and girls' rights. It's important to note that where the Council has adopted 11 resolutions in 10 public meetings, the rest of council's meetings on Afghanistan has been mainly informal closed-door meetings, where in 10 instances the Council is briefed by representative of other UN relevant bodies and/or women

¹⁰³ “Security Council Action Under Chapter VII: Myths and Realities,” Special Research Report (Security Council Report, Inc., June 23, 2008), <https://www.securitycouncilreport.org/research-reports/lookup-c-glkwlemtisg-b-4202671.php>, 16.

¹⁰⁴ “Conduct of Business,” 37.

¹⁰⁵ Joanna Harrington, “The Working Methods Of The United Nations Security Council: Maintaining The Implementation Of Change,” *International & Comparative Law Quarterly* 66, no. 1 (January 2017): 39–77, <https://doi.org/10.1017/S0020589316000397>, 59.

¹⁰⁶ Harrington, 66.

¹⁰⁷ The think tank is based in New York which defines its mission “to advance the transparency and effectiveness of the UN Security Council” and is supported by a range of countries most of which are European countries and none of the P-5 members are enlisted as their supporter. “About Security Council Report,” Security Council Report, accessed June 1, 2024, <https://www.securitycouncilreport.org/about-security-council-report>.

representative of Afghan civil society followed by closed consultation, 4 closed consultation meetings, 2 closed Aria-formula meetings and 3 meetings being open briefing, quarterly meetings and open Aria-formula meeting. Additionally, the developments in Afghanistan as well as reports by the special Rapporteur about Human Rights in Afghanistan are also studied for further strengthened comprehension of the context of the Council's lack of introducing legally binding measures. The paper furthermore includes two semi-structured expert interviews with an academic expert on international public law and an expert holding both practical and academic background with the work of the SC.

Following the emphasis of the theoretical framework which considers law is the language of power where law and power are interlinked and co-dependent, which within the Security Council context is expressed through the data material discussed above. To discern why the Council has failed to take legally binding decision, methodically, Socio-cognitive approach, a subset of Critical Discourse Analysis, is adopted to conduct the analysis.

This approach distinguished by proposing a triangularity of society, discourse and cognition where cognition carried out by language (text and talk as one form) is assigned a mediatory role between the two others allowing them to influence one another,¹⁰⁸ this provides to understand how the Council's members while interacting in a social setting (both among themselves and wider international public) by resorting to discourse, which can influence social interactions, express their positions. Furthermore, the emphasis of this approach on both subjective and shared mental models (cognition structures) is fundamental to allow the researcher to make sense of what the discourse of the Council's members provides.¹⁰⁹ Thus, in the case of this paper, international law and principles form both subjective and shared cognitive structures, to express underlying political considerations, which can discern why the Council has not adopted a legally binding decision. In other words, they enable us to answer the research question. Furthermore, this approach being interested in power relations, especially in groups that "directly or indirectly control public discourse",¹¹⁰ makes it an appropriate choice since P-

¹⁰⁸ Teun A. Van Dijk, "Critical Discourse Studies: A Sociocognitive Approach," in *Methods of Critical Discourse Studies*, ed. Ruth Wodak and Michael Meyer, 3rd ed. (London, California, Delhi, Singapor: SAGE, 2015), 64.

¹⁰⁹ Van Dijk, "Critical Discourse Studies: A Sociocognitive Approach," 67–70.

¹¹⁰ Van Dijk, 70.

5 members of the council are undeniably in a dominant position due to their veto power in the decision-making of the Council, in particular when legally binding decisions are involved.

The analysis following this method is applied in the following steps: a) the primary data (resolutions and its meeting's protocols) are analysed and coded to identify the discourse structure (theme and underlying ideologies of discourse);¹¹¹ for each P-5 member while taking the secondary data into account as context of the discourse. b) in the second step the themes recognised within the discourses of P-5 members are categorised within a broader general theme focusing on the main objective of the work to discern what is the function of these discourses concerning the decision-making of the council. while conducting the analysis in the second step, sufficient attention is paid to go back and forth between the themes identified in first step and formed in the second step to ensure that the result of analysis remain faithful to the data. Furthermore, this was necessary to avoid being biased in providing the result of analysis due to my personal attachment to the topic.¹¹² The next section provides the analysis.

7. Analysis

The result of P-5 discourse analysis at the SC can be categorised into three main themes: the situation of Afghanistan, the P-5's approach to the Taliban 2.0 regime and how have the P-5 approach the severe violations of women's and girls' rights. Based on these findings, the analysis aims to discern why the Council has not taken any legally binding decisions in relation to VWGRs.

1.6 Situation of Afghanistan

The analysis identifies three main themes within the P-5 discourse concerning the situation of Afghanistan since the Taliban's takeover. While they all share concerns about the dire humanitarian crisis, the threat of terrorism and their views on the Taliban's return to power

¹¹¹ Van Dijk, 72–74.

¹¹² My attachment to the issue of Taliban's return to power and their conduct emanates from the fact, that I was born in Afghanistan, and I strongly oppose the group. Due to this and consuming a lot of information on daily basis concerning how international community react to the Taliban's behavior, I have consciously remained focused to not provide any biased analysis.

differ significantly. These discourses of the P-5 have notable implications on how they address the VWGRs at the SC.

1.6.1 Humanitarian Crises

The primary theme within this discourse is the humanitarian crisis, along with the associated assistance and access, on which the Council members hold a shared viewpoint. These topics are prominently present not only in the resolutions but also within the public statements and in closed meetings of the Council throughout the entire period under study. For instance, the first resolution adopted after Taliban's takeover enlists humanitarian access to Afghanistan is one of the three main expectations from the Taliban,¹¹³ moreover, paragraphs that emphasise on importance of these topics or express concern on issues related to humanitarian assistance and aid delivery are incorporated in almost all of the resolutions.¹¹⁴ The persistent presence of these topics could be attributed to the fact that Council members as well as the whole international community more or less are well-aware of the dire situation of Afghanistan and understand how crucial the aid delivery to those in need is.¹¹⁵ Concerning how these themes are discussed within the Council, the data suggests, that they are discussed closely within the context of IHL.

Such recourse to International Law within this discourse seems to be genuine. There are two main reasons that would support this claim. First, incorporating paragraphs that underlines obligations under IHL from the beginning, as seen in Resolution 2593(2021)– first resolution adopted after Taliban's return to power–could be attributed to uncertainty about how the Taliban would behave. The group had imposed serious restriction on aid delivery during its first

¹¹³ United Nations Security Council, *Resolution 2593 (2021)*, S/RES/2593 (2021), 2021, [http://undocs.org/en/S/RES/2593\(2021\)](http://undocs.org/en/S/RES/2593(2021)).

¹¹⁴ For instance, Resolution 2678 which renews UNAMA's mandate does not include any such paragraph, however, it recalls resolution 2626 which while redefining the missions mandate include paragraphs that deals with these topics.

¹¹⁵ "AFGHANISTAN; UNITED NATIONS COUNTRY RESULTS REPORT 2022" (United Nations, April 2023), <https://afghanistan.un.org/en/227956-2022-un-afghanistan-annual-results-report>, 5.; "Annual Report 2023" (United Nations, April 2023), <https://afghanistan.un.org/en/227956-2022-un-afghanistan-annual-results-report>, 9–11.

regime in the 1990s.¹¹⁶ Above all its return to power was by force rather than a political settlement. In light of this historical experience and lack of any commitment of the Taliban either to the people of Afghanistan or the broader international community,¹¹⁷ it is plausible to argue that reminding the group of their obligations under IHL to allow humanitarian access may stem from a genuine concern about those laws. Furthermore, as reports on the situation of Afghanistan provided to the Council keep highlighting the challenges faced in delivering aid, including security issues,¹¹⁸ this, along with the dire humanitarian situation, ought to have led to continued calls for upholding IHL obligations.

Second, the Council adopts a resolution (resolution 2615) granting exemptions from sanctions imposed on the Taliban before their return to the power,¹¹⁹ in order to facilitate humanitarian aid delivery. Therefore, one could argue that the employment of legal arguments by the Council regarding the humanitarian situation might be based on genuine consideration of fulfilling obligations under IHL. However, if the analysis zooms on the P-5 members, political considerations appear to play a crucial role, too.

For the P-3, who have already suffered political damage due to Taliban's return to power,¹²⁰ failing to make Taliban allow humanitarian aid, which would inevitably worsen human

¹¹⁶ Marti Flacks, Lauren Burke, and Nicolas Jude Larnerd, "The Taliban's Increasing Restrictions on Civil Society and Aid Organizations," February 16, 2023, <https://www.csis.org/analysis/talibans-increasing-restrictions-civil-society-and-aid-organizations>.

¹¹⁷ Taliban had only negotiated and signed the so-called "Agreement for Bringing Peace to Afghanistan" with the USA which they signed February 29, 2020. It suffice here to say that this agreement does not entail a signal word on obligations of the Taliban concerning human rights issues. "Agreement for Bringing Peace to Afghanistan Between the Islamic Emirate of Afghanistan Which Is Not Recognized by the United States as a State and Is Known as the Taliban and the United States of America" (U.S. DEPARTMENT of STATE), accessed June 8, 2024, <https://2017-2021.state.gov/agreement-for-bringing-peace-to-afghanistan/>.

¹¹⁸ These challenges are reported in many different reports that are delivered to the Council. For example: UN Secretary-General, "The Situation in Afghanistan and Its Implications for International Peace and Security; Report of the Secretary-General" (United Nations, December 7, 2022), <https://digitallibrary.un.org/record/3997785>, 12.; UN. Secretary-General, "The Situation in Afghanistan and Its Implications for International Peace and Security; Report of the Secretary-General" (United Nations, February 27, 2023), <https://digitallibrary.un.org/record/4005377>, 12.

¹¹⁹ United Nations Security Council, *Resolution 2615 (2021)*, S/RES/2615 (2021), 2021, [http://undocs.org/en/S/RES/2615\(2021\)](http://undocs.org/en/S/RES/2615(2021)).

¹²⁰ For instance, in the case of US the collapse of Afghan government and the withdrawal had political consequence within the US but also credibility damage on the international level. Laura Santhanam, "Here's

suffering, would have led to aggravate that damage. In the case of China and Russia (P-2), as well as other regional countries, a deeper humanitarian crisis has the potential to destabilise the region further. This in turn read together with the terrorism concerns (will be discussed in detail later) would have security repercussions for them.¹²¹ Therefore, one may contend that humanitarian situation lingering as a priority issue, finds its expression in obligations under IHL i.e. P-5 strives to assert power on Taliban by resorting to IHL to persuade/ coerce them not to impede aid delivery. The implication of this discourse on how the Council addresses the VWGRs is twofold: a) it shows that the Council can conclude legally binding decision—for instance, granting exemptions from sanctions—when the provisions of law correspond to political interests of the P-5. b) As addressing these issue serves political interest of the P-5, they remain relatively fixated with this matter, to notable varying degrees, despite being aware of deteriorating situation of WGRs under the Taliban.

More importantly, amidst a rising conflictual hegemonic struggle among major powers, particularly the USA, China and Russia,¹²² and in the aftermath of Russia's war of Aggression on Ukraine as well as the looming tensions on Taiwan,¹²³ the P-5 debates on the situation of Afghanistan within the Council are inevitably influenced by the global developments. Thus, making the discussion on Afghanistan susceptible to misuse/exploitation by the P-5 in advancing their political interest. This is evident in how P-5 members attribute responsibility for the situation.

Who Americans Blame for U.S. Failures in Afghanistan," *PBS NewsHour*, September 2, 2021, sec. Politics, <https://www.pbs.org/newshour/politics/most-americans-think-u-s-failed-in-afghanistan>. Furthermore, The Taliban's takeover of Kabul is also called a diplomatic disaster by analysts, for example: Ahmad Shuja Jamal and William Maley, "Diplomatic Disaster," in *The Decline and Fall of Republican Afghanistan*, ed. Ahmad Shuja Jamal and William Maley, Online edition (Oxford University Press, 2023), 125–46, <https://doi.org/10.1093/oso/9780197694725.003.0006>.

¹²¹ Fischer Sabine and Angela Stanzel, "Afghanistan: The West Fails – a Win for China and Russia?," *Stiftung Wissenschaft Und Politik (SWP)*, September 2021, sec. SWP Comment.

¹²² Susanne Weigelin-Schwiedrzik, "China, die USA und Russland oder: Wie Dreieckbeziehungen die Welt Bestimmen," in *Brandstätter Verlag*, ed. Hannes Androsch, 1st ed., Auf dem Punkt (Wien: Brandstätter, 2023), 66–117, <https://www.brandstaetterverlag.com/buch/china-und-die-naechste-weltordnung/>.

¹²³ Nora Maher, "US-China Policy amid a Persistent Strategy: Is Conflict over Taiwan Inevitable?," *Review of Economics and Political Science* ahead of print (December 9, 2023): 1–17, <https://doi.org/10.1108/REPS-05-2023-0040>.

P-5 members hold divergent views on main drivers behind the crisis in Afghanistan. Russia and China (P-2) while sharing similar views, raise issues of frozen assets of the Afghanistan Central Bank (ACB) and unilateral sanctions imposed by the USA, cessation of economic aid, restriction on banking system as well as the USA withdrawal and the whole engagements of the West during the republic era (20 years of state building efforts) repeatedly as key factors leading to current crises. For instance, China in one instance states:

“Power politics, military interference and so-called democratic transformation are the root causes of those problems.”¹²⁴

Russia, too, echoes similar arguments in its statements.¹²⁵ Indeed, these topics are rightfully interlinked with the crisis in Afghanistan, they gains significance as the West, in particular the USA, are blamed as sole responsible for this crisis.¹²⁶ This discourse of the P-2 has significant impact both on how they approach the situation of Afghanistan as well as how it leads to disagreement among the P-5 in making-decisions within the council.

One tangible implication of this discourse of P-2 on the SVWGRs is that despite the significant increase in Taliban’s violations of WGRs, their discourse about Afghanistan remains pinned to the humanitarian crises—unaffected by the deteriorating situation of WGRs. For example, both countries’ positions during the negotiations and in their public statements on Resolution 2681(2023), which addresses Taliban’s ban on women from working for the UN, primarily revolve around blaming the West and emphasising aforementioned issues, with a marginal attention paid to the main topic.¹²⁷ Therefore, one could argue that by sticking to humanitarian

¹²⁴ United Nations Security Council, *Security Council Seventy-Sixth Year 8862nd Meeting Friday, 17 September 2021, 10 a.m. New York*, S/PV.8862 (New York, 2021), <https://undocs.org/S/PV.8862>, 4.

¹²⁵ United Nations Security Council, *Security Council Seventy-Seventh Year 9222nd Meeting Friday, 16 December 2022, 10 a.m. New York*, S/PV.9222 (New York, 2022), <https://undocs.org/S/PV.9222>, 5.; United Nations Security Council, *Security Council Seventy-Eighth Year 9314th Meeting Thursday, 27 April 2023, 5.20 p.m. New York*, S/PV.9314 (New York, 2023), <https://undocs.org/S/PV.9314>, 5.

¹²⁶ Who bears the responsibility on the situation of Afghanistan is a topic which is out of the scope of this work, therefore, it’s only discussed here in relation to how the situation of Afghanistan is discursively perceived and presented.

¹²⁷ “Afghanistan: Vote on Draft Resolution*,” What’s In Blue (Security Council Report, April 27, 2023), <https://www.securitycouncilreport.org/whatsinblue/2023/04/afghanistan-vote-on-draft-resolution.php>; United Nations Security Council, *Security Council Seventy-Eighth Year 9314th Meeting Thursday, 27 April 2023, 5.20 p.m. New York*.

situation and by adding them into every discussion, both countries mainly focus on these issues while marginally addressing the SVWGRs.

P3, in their public statements, refrain from disputing responsibility for the crisis in Afghanistan. However, the reports on drafting process of the resolutions suggest their disagreement with the position of China and Russia.¹²⁸ It's noteworthy that France, in one instance only, calls out Taliban as main responsible for exacerbation of the humanitarian situation.¹²⁹ Furthermore, P3 do not ignore the other issues raised by China and Russia, but remain persistent in reminding the importance of humanitarian access under international law, encourage international community to provide support, and on occasion, both the UK and France announce their contribution to the humanitarian assistance budget for Afghanistan.¹³⁰ Overtime, in contrast to P-2, in addition to humanitarian situation as the severity of VWGRs by the Taliban rise, they do become more responsive in addressing those violations.

Overall, as both groups' discourses on the situation of Afghanistan shares a common understanding and their political interests align, the Council can make decision. However, conflicting political struggles emerges in discussions about who is responsible for the crises. With differing views on responsibility, P-2 remains highly focused on crisis-related issues, overlooking VWGRs by the Taliban, while P-3 alongside with humanitarian situation become more responsive to the increasing violations of WGRs. Nevertheless, despite this divergence the Council remain keen to address the humanitarian crisis. Another issue which the Council seems to hold a unified approach is threat of terrorism in/from Afghanistan.

¹²⁸ For instance, "Afghanistan: Vote on the Mandate of the Monitoring Team Supporting the 1988 Sanctions Committee," What's In Blue (Security Council Report, December 16, 2022), <https://www.securitycouncilreport.org/whatsinblue/2022/12/afghanistan-vote-on-the-mandate-of-the-monitoring-team-supporting-the-1988-sanctions-committee.php>.

¹²⁹ United Nations Security Council, *Security Council Seventy-Sixth Year 8941st Meeting Wednesday, 22 December 2021, 9 a.m. New York*, S/PV.8941 (New York, 2021), <https://undocs.org/S/PV.8941>.

¹³⁰ For instance, France announces to have contributed 100 million €: Meeting Protocol Res. 2615/ P. 6/7. The UK announces to have donated 660 millions €: MP Resolution 2681, p. 5/5; The US announce to

1.6.2 Threat of Terrorism

The P-5 members seem to have comparable concern about the threat of terrorism in Afghanistan as they do about the humanitarian crisis. Both the Council Resolutions and the P-5 Public statements underscores this share concern, recall previous resolutions of the council, and remind Taliban of their commitments to prevent Afghanistan from becoming a hub of terrorism. For instance, in resolution 2593(2021), the council demands the Taliban to uphold this commitment. However, even though the council seems to have a common concern and unified approach towards terrorism. China's stance differs from other members to some extent.

Among the P-5, China distinguishes itself from others concerning terrorism issue. First, China, unlike others who remind Taliban of their commitment and expectation of the international community to prevent Afghanistan from becoming a terrorism hub, urges and express hope that the Taliban uphold those commitment.¹³¹ Second, China does not view the current sanction regime as appropriate anymore and call for its adjustment based on changes on the ground, whereas other P-5 members, including Russia, acknowledge the positive impact of the sanctions in fighting terrorism.¹³² Third, China proposes and calls for more coordinated effort to combat terrorism in Afghanistan, among those it maintains to work what it refers to authorities (Taliban) in Afghanistan.¹³³ It's noteworthy that Russia in relation to adjustment of sanctions and engagement with the Taliban to fight terrorism shares to some extent Chinese perspective. Nevertheless, these differing viewpoint of China (to limited extent Russia, too) do not prevent council to take measures under Chapter VII.

Resolutions 2611(2022), 2615 (2022), 2665(2022) and 2716(2023) find the situation of Afghanistan to constitute "a threat to the international peace" and take measures under Chapter VII of the UNC while mainly addressing issues related to terrorism and sanctions. The

¹³¹United Nations Security Council, *Security Council Seventy-Seventh Year 9222nd Meeting Friday, 16 December 2022, 10 a.m. New York.*;United Nations Security Council, *Security Council Seventy-Eighth Year 9506th Meeting Thursday, 14 December 2023, 10 a.m. New York, S/PV.9506* (New York, 2023), <https://undocs.org/S/PV.9506>.

¹³² United Nations Security Council, *Security Council Seventy-Eighth Year 9506th Meeting Thursday, 14 December 2023, 10 a.m. New York.*

¹³³ United Nations Security Council.

discussion on this issue like humanitarian situation is presented within the context of law, if it is agreed with quasi-legislative nature of Council's resolutions.

Considering that combating terrorism and preventing its spread remain major concern for all P-5 countries, each having their fears and experience with devastating effects, recalling and listing relevant resolutions as well as demanding compliance of all states, serves as an example of how convergence of interest among the P-5 provides for enabling the council to make legally binding decisions. Furthermore, it also exemplifies, as in the case of humanitarian situation, that when provisions of law correspond with political interests of the P-5, law become the language of power to advance those political interests. The implication of this for women's right is that it shows how the VWRs are not considered as an issue of high politics. This can be substantiated through a deeper examination of the resolutions.

First, while these resolutions express concerns or recall the importance of upholding human rights and women's and girls' rights in their preambular paragraphs, the measures introduced do not address these violations rather only ensure that Monitoring Team has a mandate to assist the sanction committee. Second, as VWGRs continue and gain significant severity, resolutions adopted on terrorism do not bring any substantive change to already in place sanctions. Therefore, one could argue that violations of women's rights compared to terrorism as an issue of high politics (security issue) do not warrant Council's binding decisions or add anything to the substance of the resolutions adopted on terrorism. A viewpoint with which Prof. Wittich agrees and adds that "Women's rights don't have any significance in terms of geopolitics, as compared to security particularly to terrorism and combating terrorism."¹³⁴

In conclusion, the discourse of P-5 on terrorism, like the humanitarian situation, achieve considerable attention of the Council based on their political interest leading to finding the situation of Afghanistan posing a threat to peace. The previous resolution adopted on terrorism are proposed as a source of law to ensure compliance of the UN members with the sanctions. This adoption of resolutions on terrorism show P-5 prioritise the issue over women's rights, relegating it to secondary importance.

¹³⁴ Univ.-Prof. Mag. Dr. Stephan Wittich, interviewed by author, Vienna, May 31, 2024.

1.6.3 Taliban's return to power

The overall stance of P-3 concerning the rise of Taliban to power can be described as “wait and watch.” The Taliban's ascent to power is not explicitly thematised, even though their illegal rise to power contradicts both the UNC and Council's Resolutions.¹³⁵ One possible reason for such avoidance might be that P-3 has obviously no interest to engage in any discussion on the Taliban's return to power, since in a sense it was a defeat of the West, too.¹³⁶ However, in general, the USA sees the situation of Afghanistan to be “fluid and dynamic,”¹³⁷ and similar to France¹³⁸ and the UK,¹³⁹ the USA seems to see and watch Taliban action, closely.¹⁴⁰ The implication of this approach is that on the one hand, P-3 evade to subsume its approach to the fact of Taliban's return to power and/or to differing views by P-2. At the same time, they maintain some level of political leverage to assert influence on the Taliban. This in turn forms the foundations of how P-3 address the SVWGRs.

The discourse of Russia and China on the rise of Taliban to power differs fundamentally from P-3. The Chinese constantly repeats not only that Afghanistan has undergone a “fundamental

¹³⁵ Larry D. Johnson, “Expert Backgrounder: How Can The Taliban Be Prevented From Representing Afghanistan In The United Nations?,” Just Security, August 18, 2021, <https://www.justsecurity.org/77806/expert-backgrounder-how-can-the-taliban-be-prevented-from-representing-afghanistan-in-the-united-nations/>.

¹³⁶ The collapse of the so-called Republic Afghanistan, which was heavily backed by the West, in particular the US, UK and France, I argue was a result of an accumulation of several failures both originating from within the domestic political scene of Afghanistan and due to the lack of clear strategy or vision by the international community, especially the US. The collapse itself had arguably inflicted at least reputational damage on the West. For instance, Jennifer Murtazashvili, “The Collapse of Afghanistan,” *Journal of Democracy* 33, no. 1 (January 2022): 40–54, <https://doi.org/10.1353/jod.2022.0003>.

¹³⁷ United Nations Security Council, *Security Council Seventy-Sixth Year 8848th Meeting Monday, 30 August 2021, 3 p.m. New York*, S/PV.8848 (New York, 2021), <https://undocs.org/S/PV.8848>.

¹³⁸ United Nations Security Council, *Security Council Seventy-Sixth Year 8848th Meeting*.

¹³⁹ *Security Council Seventy-Eighth Year 9521st Meeting Friday, 29 December 2023, 10 a.m. New York*, S/PV.9521 (New York, 2023), <https://undocs.org/S/PV.9521>.

¹⁴⁰ United Nations Security Council, *Security Council Seventy-Seventh Year 8997th Meeting Thursday, 17 March 2022, 10 a.m. New York*, S/PV.8997, 2022, <https://undocs.org/S/PV.8997>.

change,”¹⁴¹ but soon adapt its perception to “Afghanistan is in critical transitional period,”¹⁴² and later to “critical peaceful reconstruction.”¹⁴³ Russia remains persistent on calling the situation of Afghanistan since the rise of Taliban to power as a “new reality.”¹⁴⁴ Though both countries do not entirely ignore the violations of women’s and girls’ rights, the rise of the Taliban in their discourse, unlike P-3, is discussed within context of principle of the UNC.

However, China again stands out in this regard compared to Russia. Within its evolving discourse on the situation of Afghanistan since Taliban’s return, China from time to time refers to principles of the UNC, such as right to self-determination, sovereignty, independence, etc.¹⁴⁵ It’s notable that many of the resolutions do state that the Council respect its independence, sovereignty, territorial integrity and so on, it, only does not suffice for Chinese. The reason for this lies on China’s political interest in supporting Taliban which will be discussed in the next section.

In conclusion, the P-3 do not per se thematise the rise of the Taliban to power due to political considerations, opting instead for a “wait-and-watch” approach. By doing so, the P-3 keeps its options open regarding how to deal with the Taliban, retaining some leverage to assert influence on them. In contrast, the P-2 perceive the situation of Afghanistan as new reality, with China standing out as the most outspoken supporter of the Taliban in its stance, asserting that the international community shall adapt to this change. The P-2’s approach is mainly driven by security, political and economic reasons, although China invokes principles of the UNC. These

¹⁴¹ United Nations Security Council, *Security Council Seventy-Sixth Year 8848th Meeting Monday, 30 August 2021, 3 p.m. New York.*

¹⁴² United Nations Security Council, *Security Council Seventy-Sixth Year 8862nd Meeting Friday, 17 September 2021, 10 a.m. New York.*

¹⁴³ United Nations Security Council, *Security Council Seventy-Eighth Year 9283rd Meeting Thursday, 16 March 2023, 10 a.m. New York, S/PV.9283 (New York, 2023), <https://undocs.org/S/PV.9283>.*

¹⁴⁴ For instance, United Nations Security Council, *Security Council Seventy-Sixth Year 8862nd Meeting Friday, 17 September 2021, 10 a.m. New York.*; “Afghanistan: Vote on Draft Resolution on UNAMA’s Mandate*,” *What’s In Blue (Security Council Report, March 17, 2022), <https://www.securitycouncilreport.org/whatsinblue/2022/03/afghanistan-vote-on-draft-resolution-on-unamas-mandate.php>.*; United Nations Security Council, *Security Council Seventy-Eighth Year 9283rd Meeting Thursday, 16 March 2023, 10 a.m. New York.*

¹⁴⁵ United Nations Security Council, *Security Council Seventy-Seventh Year 9222nd Meeting Friday, 16 December 2022, 10 a.m. New York.*

discourses of the P-5 on situation of Afghanistan, in turn, define their approaches towards Afghanistan. Their implications on how the P-5 then address VWGRs will be revealed in later sections.

1.7 P-5's approach towards Afghanistan under Taliban 2.0

The P-5's approach is fundamentally shaped by their perceptions and understanding of the situation of Afghanistan, particularly regarding the Taliban's rise to power. These views, as detailed in previous sections, reveal significant differences between the P-3 and P-2. Consequently, their approaches towards Afghanistan under the Taliban 2.0 regime diverge notably.

1.7.1 P-3's Approach

Following the P-3's discourses in the previous sections—remaining concerned about humanitarian crises and adopting a wait-and-watch strategy regarding the Taliban's return to power—their approach to Afghanistan is characterized by pressuring the Taliban while avoiding direct contact as much as possible and leveraging the UN mission to advance their interests in Afghanistan. The reason for such an approach lies in the fact that on one hand, the P-3 have lost their influence in Afghanistan since the Taliban's return to power; on the other hand, profound differences, especially on human rights and women's rights, make the normalization of relations quite impossible.

The liberal democratic identity of P-3 is obviously irreconcilable with Taliban's political and ideological identity, which is characterized by a strive of an “absolute domination” through “necropolitics” strategy.¹⁴⁶ This characteristic, which at its core contends that the Taliban's politics do not only regulate life (biopolitics) but also the death (necropolitics), distinguishes the group from other authoritarian regimes. Therefore, it could be argued that due to such

¹⁴⁶ Pamir H. Sahill, “Dwelling in an All-Male World: A Critical Analysis of the Taliban Discourse on Afghan Women,” *Women's Studies International Forum* 98 (May 1, 2023): 1–9, <https://doi.org/10.1016/j.wsif.2023.102748>, 6–7.

profound difference, the P-3 attempt to avoid as much direct interaction as possible,¹⁴⁷ and the UN mission provides this opportunity. This strategy can also be interpreted as a cautious approach towards Taliban, since any serious engagement would be perceived as ignoring the rule of law, both domestic and international. This in turn can have political consequences (negative) for incumbent governments in P-3 countries. Further analysis of their discourse provides more support for this suggestion.

The sensitivity of P-3 regarding how to refer to the Taliban, their readiness to expressly reject Taliban's policies, and their willingness to condemn the Taliban's edicts support the idea that they consider the principle of rule of law in conjunction with aforementioned political considerations. The P-3 remain consistent and sensitive on how to refer to the Taliban. For instance, the USA reportedly expressed discontent with calling the Taliban "de facto authorities," arguing that it might imply recognition.¹⁴⁸ Nevertheless, this phrase is entertained within the resolutions. The phrase, as a reference to the Taliban, is accepted by everyone not only because the UN reports by Secretary-General introduced it, but also that other Council members, specifically China, Russia as well as Emirates (Penholder), maintain that it is reflective of the reality/ new reality of Afghanistan.¹⁴⁹

Therefore, it could be argued that political considerations, including concerns of rule of law, influence P-3's approach towards Taliban. Furthermore, the P-3's readiness to send message through Council's resolutions,¹⁵⁰ their resoluteness in condemning the Taliban in resolution 2681 (the only one dealing with women's rights to work for the UN), and their repeated references to expectation in resolution 2593 indicate that P-3's general approach towards

¹⁴⁷ It's essential to note that the US and the EU has appointed Special Envoys for Afghanistan who maintains some sort of direct or indirect contact with the Taliban, however, its significance does not amount to a formal diplomatic relation.

¹⁴⁸ "Afghanistan: Vote on Draft Resolution on UNAMA's Mandate*," What's In Blue (Security Council Report, March 17, 2022), <https://www.securitycouncilreport.org/whatsinblue/2022/03/afghanistan-vote-on-draft-resolution-on-unamas-mandate.php>.

¹⁴⁹ "Afghanistan: Vote on Draft Resolution on UNAMA's Mandate*," What's In Blue (Security Council Report, March 17, 2022)

¹⁵⁰ United Nations Security Council, *Security Council Seventy-Eighth Year 9283rd Meeting Thursday, 16 March 2023, 10 a.m. New York.* ;United Nations Security Council, *Security Council Seventy-Eighth Year 9314th Meeting Thursday, 27 April 2023, 5.20 p.m. New York.* ;*Security Council Seventy-Eighth Year 9521st Meeting Friday, 29 December 2023, 10 a.m. New York.*

Afghanistan is formed by political considerations interlinked with considerations of rule of law. Thus, it could be argued that one implication of this discourse on how they address SVWGRs is that they cannot afford to ignore the issue. However, their concrete approach is discussed in depth in another section. Another explanation for why the P-3 adopt an UN-centred approach is the geopolitical circumstances.

The Russian war of aggression on Ukraine since February 2022 and the rising geopolitical tension with China, particularly the potential for a new conflict related to Taiwan, have significant implications for the P-3's approach to Afghanistan. These pressing issues demand serious attention and resources from the P-3 in support of Ukraine and Taiwan, inevitably diverting their focus and imposing limitations on their capacity to invest in the situation of Afghanistan.¹⁵¹ Therefore, outsourcing the issues of Afghanistan to the UNAMA is arguably a cost-effective strategy that aligns with the P-3's political objectives interlinked with the rule of law. Regarding the violations of women's and girls' rights, one can expect the P-3 to proactively address the issue. The analysis suggests that the P-3 is open to adopting an increasingly harsher approach towards the Taliban in response to their escalating violations of women's and girls' rights.

The P-3's discourse suggests that their approach grow harsher in response to the evolving situation in Afghanistan, particularly concerning the VWGRs by the Taliban. This development is evident from analysing P-3's statements overtime. During the first public meeting on the resolution 2593(2021), the P-3 merely reiterates the resolution's wording to outline expectations from the Taliban.¹⁵² In contrast, the later public meetings, such as on Resolution 2678/2679 (2023) or 2681(2023), are distinguishable for the increased emphasis on women's and girls' rights is paid to and the stronger language used. However, France stands out among the P-3 for adopting the most outspoken and straight-forward approach. The implication of such discourse is discussed in depth in later section.

¹⁵¹ Scott Worden, "Russia's Invasion of Ukraine Helps the Taliban and Makes Afghans Worse Off," *United States Institute of Peace*, March 16, 2022, sec. Analysis, <https://www.usip.org/publications/2022/03/russias-invasion-ukraine-helps-taliban-and-makes-afghans-worse>.

¹⁵² United Nations Security Council, *Security Council Seventy-Sixth Year 8848th Meeting Monday, 30 August 2021, 3 p.m. New York*.

In conclusion, the P-3's approach to Afghanistan is characterized by cautious engagement through the UN, driven by political considerations and the imperative of respecting the rule of law as a core aspect of their identity. Their discourse indicates a readiness to adopt a harsher stance on the Taliban's violations of women's and girls' rights. This approach contrasts sharply with the P-2's stance, highlighting significant divergences in engagement strategies among the major powers. P-2's approach

1.7.2 P-2's Approach

The P-2's discourse on their general approach is mainly characterised by themes of being supportive of the Taliban, based on their recognition of Taliban as new reality of Afghanistan. This stance rejects the P-3's approach and places on over-emphasis on the need of engagement with the Taliban.

The suggestion of P-2 supporting Taliban might seem an exaggeration, but the analysis suggests that their general approach originating from recognizing Taliban as a new reality of Afghanistan lends credence to this claim. The P-2 persistently strive to remove texts that would allow a vigorous oversight to the Taliban's behaviour. For instance, both countries successfully opposed inclusion of the phrase that "the Council will monitor Taliban's action" within resolution 2593.¹⁵³ Given that this is the first resolution on Afghanistan right after the Taliban's return to power, opposing such a phrase seems questionable unless viewed as a demonstration of political support for the Taliban. Since on the one hand, the phrase itself is vague both in substance and lack any other specifics, on the other hand, the council remains either way seized of the situation of Afghanistan which inevitably entails monitoring.

Furthermore, both countries' opposition to a robust mandate of the UNAMA provides further evidence on this regard. The arguments that UNAMA's expanded mandate is unrealistic or suggestions that the mission shall implement its mandate in a balanced manner,¹⁵⁴ emphasising that the mission shall be focused on coordinating and delivering assistance, implies that both

¹⁵³ "Afghanistan: Vote on Resolution on Recent Developments*," What's In Blue (Security Council Report, August 20, 2021), <https://www.securitycouncilreport.org/whatsinblue/2021/08/afghanistan-vote-on-resolution-on-recent-developments.php>.

¹⁵⁴ United Nations Security Council, *Security Council Seventy-Seventh Year 8997th Meeting Thursday, 17 March 2022, 10 a.m. New York*.

countries at least indirectly support Taliban's power consolidation. Afghanistan, while suffering disastrous humanitarian crisis, undoubtedly needs humanitarian assistance, insisting on facilitating assistance per se is not problematic. However, P-2's rejection to include language that provides stronger oversight,¹⁵⁵ and preventing inclusion of a provision that would prevent diversion of aid to those under sanction,¹⁵⁶ could be considered as an indication of supporting power consolidation of the Taliban. Moreover, how P-2 refer to the Taliban provide further evidence of supporting the Taliban.

Russia refers to the Taliban as Afghan authorities in their public statements on Resolution 2593 and Resolution 2596, later, it switches to what is proposed by the General-Secretary's report. Russia sticking to the standard language of the UN seems hard to explain. However, one could argue that Russia while facing serious threats of terrorism from Afghanistan,¹⁵⁷ would like to keep some degree of leverage on the Taliban to make ensure they take measures against terrorist groups which might destabilise the central Asian countries, where Russia has huge interest. Furthermore, going a middle way between China and P-3 might also lie in the fact that country has a very limited economic ties with Afghanistan under the Taliban 2.0 regime compared to other regional countries.¹⁵⁸ Therefore, it can be argued that due to such constraints Russia, for example, despite mainly siding with China, does agree on the need of a unified approach of international community.¹⁵⁹ Notwithstanding, it is contended that Russia's preoccupation with

¹⁵⁵ "Afghanistan: Vote on Draft Resolution on UNAMA's Mandate*." What's In Blue (Security Council Report, August 20, 2021).

¹⁵⁶ "Afghanistan: Vote on 1988 Sanctions Resolution*," What's In Blue (Security Council Report, December 21, 2021), <https://www.securitycouncilreport.org/whatsinblue/2021/12/afghanistan-vote-on-1988-sanctions-exemption-resolution.php>.; "Afghanistan: Vote on the Mandate of the Monitoring Team Supporting the 1988 Sanctions Committee," (Security Council Report, December 16, 2022)

¹⁵⁷ Diana Janse, "Russian Interests in Afghanistan" (Stockholm Centre For Eastern European Studies, October 27, 2021), <https://sceeus.se/publikationer/russian-interests-in-afghanistan/>, 5–6.

¹⁵⁸ Ruslan Suleymanov, "Russia's Growing Ties With Afghanistan Are More Symbolism Than Substance," *Carnegie Politika* (blog), September 19, 2023, <https://carnegieendowment.org/russia-eurasia/politika/2023/09/russias-growing-ties-with-afghanistan-are-more-symbolism-than-substance?lang=en>.

¹⁵⁹ United Nations Security Council, *Security Council Seventy-Eighth Year 9283rd Meeting Thursday, 16 March 2023, 10 a.m. New York*.

Ukraine has led it towards accepting and entering in relations with the Taliban.¹⁶⁰ In contrast, Russia and China which do not face similar constraints strongly support the group evidenced in its language within the Council.

China's switch from accepted UN terminology "de facto authorities" to "interim government" in its public speech on Resolution 2626(2022),¹⁶¹ and later to "authorities" in its public statement on resolution 2678/2679(2023) onwards,¹⁶² is significant both legally and politically. The term "de facto authorities" recognises the Taliban's effective control over Afghanistan while highlighting the lack of legal recognition.¹⁶³ In contrast, the term "interim government" suggests a shift in China's stance, implying that legitimacy of the Taliban is not an issue for China.

Legally speaking, referring to the Taliban as an "interim government" does not equate to formal recognition, as the practice of states remains ambiguous, particularly in the case of the Taliban.¹⁶⁴ However, when this terminology is considered alongside China's engagement with the Taliban—such as entering into international agreements—it can be interpreted as an elevation of the Taliban's status. This change suggests a level of legitimacy, as it portrays the Taliban as capable of conducting international relations and fulfilling state functions.¹⁶⁵ Similarly, the use of "authorities" indicates a significant shift, further suggesting an implicit recognition of the Taliban's governance capabilities.

From a legal perspective, referring to the Taliban as "authority" can be considered vague, but the omission of "de facto" in Chinese statements provides room for interpretation. Considering

¹⁶⁰ Shanthie Mariet D'Souza, "Russian Roulette in Taliban-Held Afghanistan," *The Diplomat*, June 16, 2023, <https://thediplomat.com/2023/06/russian-roulette-in-taliban-held-afghanistan/>.

¹⁶¹ United Nations Security Council, *Security Council Seventy-Seventh Year 8997th Meeting Thursday, 17 March 2022, 10 a.m. New York*.

¹⁶² *Security Council Seventy-Eighth Year 9521st Meeting Friday, 29 December 2023, 10 a.m. New York*.

¹⁶³ Michele Metych, "De Facto | Meaning, De Jure, & Facts |," in *Encyclopedia Britannica*, June 4, 2024, <https://www.britannica.com/topic/de-facto>.

¹⁶⁴ Seyfullah Hasar, "Recognition of Governments and the Case of the Taliban," *Chinese Journal of International Law* 23, no. 1 (March 1, 2024): 73–122, <https://doi.org/10.1093/chinesejil/jmae014>, 90–91.

¹⁶⁵ Hasar, 90.

contextual factors enable us to make sense of it. China uses this reference while describing Afghanistan being in a phase of “critical peaceful reconstruction,”¹⁶⁶ and within the context of discussions on appointing a special envoy for Afghanistan.¹⁶⁷ Given this context, one can argue that by referring to Taliban as “authority,” China underscores the Taliban’s absolute control on Afghanistan and implies they have a legitimate right to have a say in matters concerning the country. If the latter is read together with the fact, as mentioned previously, that China invokes principles of non-interference or right to self-determination, it can be maintained that China increasingly aggravate its support in consolidating Taliban’s power and legitimizing their rule. However, as Prof. Wittich points out that “basic principles are so broad and indeterminate, vaguely formulated that you may easily pay lip services to them without subscribing to a specific meaning,”¹⁶⁸ vague references by China can hardly be considered genuine, especially when China’s economic interest is taken into account.

The collapse of a West-friendly government in Afghanistan coupled with the power vacuum left by withdrawal of US and its allies forces, has significantly influenced the political dynamics in the region. China’s political support for the Taliban, framed by a discourse that describes Afghanistan being in a peaceful reconstruction period, if analysed in conjunction with the resource abundance in Afghanistan,¹⁶⁹ it could be argued that for Chinese, its economic interest is a crucial factor in supporting the Taliban. Russia, like China, has economic and political interest in supporting the Taliban.¹⁷⁰ This is also evident from their persistent call to release the foreign asset of Afghanistan Central Bank, provision of economic aid, as well as stressing the

¹⁶⁶ United Nations Security Council, *Security Council Seventy-Eighth Year 9283rd Meeting Thursday, 16 March 2023, 10 a.m. New York.* ;United Nations Security Council, *Security Council Seventy-Eighth Year 9506th Meeting Thursday, 14 December 2023, 10 a.m. New York.*

¹⁶⁷ United Nations Security Council, *Security Council Seventy-Eighth Year 9506th Meeting Thursday, 14 December 2023, 10 a.m. New York.*

¹⁶⁸ Univ.-Prof. Mag. Dr. Stephan Wittich, interviewed by author, Vienna, May 31, 2024.

¹⁶⁹ Lynne O’Donnell, “China’s Got Afghan Fever, Again,” *Foreign Policy*, April 24, 2023, <https://foreignpolicy.com/2023/04/24/china-afghanistan-lithium-critical-minerals-taliban-energy-environment/>.

¹⁷⁰ Michael Scollon, “Taliban-Russia Deal A Drop In The Bucket That Could Fuel Future Trade,” *RadioFreeEurope/RadioLiberty*, October 5, 2022, <https://www.rferl.org/a/32169660.html>.

need of Afghanistan to develop.¹⁷¹ P-2 as within their discourse on the situation of Afghanistan, in their approach towards Afghanistan while supporting the Taliban, strives to reject P-3's approach by sticking to these issues due to their economic interests. Moreover, on the basis of this discourses both put an immense emphasis on engagement with the Taliban, to undermine West's dominance.

China and Russia view the situation in Afghanistan as an opportunity to challenge and counter the dominance of the West, particularly the USA, in global politics. Both countries consider the USA and the West responsible for Afghanistan's situation, seeing their failure within the context of liberal interventions as a chance to undermine Western credibility,¹⁷² thus, their dominance on the world politics. This perspective is evident from P-2 statements; for instance, China opposed the Western stance on the international community's expectations from the Taliban, rejecting pressure or sanctions as hegemonic practice, after emphasising on several principles of the United Nations Charter, such as respect for Afghanistan's sovereignty, independence, and territorial integrity, as well as the Afghan people's right to self-determination.¹⁷³ Similarly, Russia opposes "imposed solutions" arguing that the West shall learn from the history of Afghanistan.¹⁷⁴ Unlike China, Russia primarily links its rejection with need for humanitarian

¹⁷¹ Russia and China does not only express raise this issue during the negotiations, their public statements, or push to somehow include them within the text of resolutions, but also convene Arria-Formula Meetings focusing on such issues. "Arria-Formula Meeting on Afghanistan: What's In Blue: Security Council Report," accessed June 7, 2024, <https://www.securitycouncilreport.org/whatsinblue/2022/11/arrria-formula-meeting-on-afghanistan-2.php>.

¹⁷² Brian Carlson, "The Taliban Takeover and China-Russia Relations," *Center for Security Studies (CSS)*, CSS Analyses in Security Policy, no. 294 (November 2021), <https://css.ethz.ch/en/services/digital-library/publications/publication.html>, 2.

¹⁷³ United Nations Security Council, *Security Council Seventy-Sixth Year 8848th Meeting Monday, 30 August 2021, 3 p.m. New York*.

¹⁷⁴ *Security Council Seventy-Eighth Year 9521st Meeting Friday, 29 December 2023, 10 a.m. New York*. It's crucial to note that reference to history of Afghanistan originates from the misleading notion of "Afghanistan as graveyard of empires" which is deeply established both within in Afghanistan as well as among the international community. After the US withdrawal and Taliban's takeover this notion once again gained prominence and has been widely repeated in the discussions related to Afghanistan. For instance, Braithwaite in his discussion on end of liberal interventions focusing on Afghanistan begins his analysis based on this notion. Rodric Braithwaite, "Afghanistan: The End of Liberal Interventionism?," *Political Insight* 12, no. 4 (December 1, 2021): 16–19, <https://doi.org/10.1177/20419058211066515>. Similarly, the U.S. President repeated this notion: "Remarks by President Biden on Afghanistan" (The White House, August 16, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/16/remarks-by-president-biden-on-afghanistan/>.

assistance, avoiding discussions on principles of the UNC possibly to sidestep criticism regarding its own actions in Ukraine. The discourse analysis of P-2's approach highlights their over-emphasis on engaging with the Taliban while opposing Western strategies.

Unlike P-3, which prefer engaging with the Taliban through the UN, China and Russia, while generally supportive of the UN's mission in Afghanistan, advocates for direct engagement with the Taliban. They encourage not only engagements through UN's mission but also calls upon everyone to engage with the Taliban constructively. For instance, China calls for providing guidance rather than pressuring the Taliban.¹⁷⁵ P-2's approach, pushing for more engagement with the Taliban, is shared among the pen holders such as Japan, too. However, the over-emphasis of P-2's approach is well-depicted: For example, a) in the following Russia's statements:

“We would like to be absolutely clear: we will not support his decision without agreement from the de facto authorities.”¹⁷⁶

“To our great regret, we continue to see stubborn ignorance of the new realities in the country and the promotion of irrelevant approaches.”¹⁷⁷

b) in China's statement:

This notion, however, has not gone unchallenged. For instance, Steele counts among one of myths about Afghanistan: Jonathan Steele, “10 Myths about Afghanistan,” *The Guardian*, September 27, 2011, sec. World news, <https://www.theguardian.com/world/2011/sep/27/10-myths-about-afghanistan>. Or Baker calls it a cliché: Kevin Baker, “The Old Cliché About Afghanistan That Won't Die,” *POLITICO*, August 28, 2021, <https://www.politico.com/news/magazine/2021/08/28/afghanistan-graveyard-britain-us-russia-506990>. The notion is also challenged in the wake of Taliban's return within the public discourse of Afghanistan. For instance, Yaqubi in his article dissects this cliché maintaining that this myth has led to a fake sense of proudness that clouds understanding of history among the Afghan and international community. Aref Yaqubi, “کالبدشکافی یک ”افغانستان اینتر نیشنال“ گورستان امپراتوری ها” است؟”, May 8, 2024, <https://www.afintl.com/202405086601>.

¹⁷⁵ United Nations Security Council, *Security Council Seventy-Sixth Year 8941st Meeting Wednesday, 22 December 2021, 9 a.m. New York.*; United Nations Security Council, *Security Council Seventy-Seventh Year 8997th Meeting Thursday, 17 March 2022, 10 a.m. New York.*; *Security Council Seventy-Eighth Year 9521st Meeting Friday, 29 December 2023, 10 a.m. New York.*

¹⁷⁶ *Security Council Seventy-Eighth Year 9521st Meeting Friday, 29 December 2023, 10 a.m. New York, 5.*

¹⁷⁷ United Nations Security Council, *Security Council Seventy-Seventh Year 8997th Meeting Thursday, 17 March 2022, 10 a.m. New York, 5.*

“No matter how complex the problem is, maintaining dialogue and engagement remains the right approach to promote problem-solving, whereas mere condemnation and pressure can only be counterproductive.”¹⁷⁸

In conclusion, the P-2 approach to Afghanistan, driven by economic interests and geopolitical power struggles, aims to support the Taliban to advance their own agendas while opposing the West. China leverages the principles of the UNC as a pretext, whereas Russia relies on arguments emphasizing the need for humanitarian assistance. Consequently, both countries, largely denying the violations of women's and girls' rights by the Taliban, advocate for direct engagement with the regime.

Concluding this analysis of the P-5's general approach to the situation in Afghanistan, their discourses profoundly influence how the Council addresses severe violations of women's and girls' rights by the Taliban 2.0 regime. These discourses not only lay the foundations but also significantly shape their discussions on the primary concern of this study. Moreover, they primarily reflect the political motivations behind these discourses, providing insights into how these considerations are transmitted within the Council's discourse on women's and girls' rights. The next section will analyse the P-5's discourses on violations of women's and girls' rights and human rights in general.

1.8 SC and Women's rights; Between Advocacy and accountability

The discourse analysis of the Council concerning WGRs and VWGRs suggests that the P-5 appears as advocates of those rights rather than ensuring accountability concerning VWGRs. The resolutions adopted by the Council, with the exception of resolution 2678,¹⁷⁹ along with statements delivered by the P-5 in public meetings, consistently emphasize the importance of upholding human rights, including women's rights. Moreover, both the resolutions adopted by the Council and the statements delivered by the P-5 in public meetings, though varying in

¹⁷⁸ United Nations Security Council, *Security Council Seventy-Eighth Year 9314th Meeting Thursday, 27 April 2023, 5.20 p.m. New York, 4.*

¹⁷⁹ Resolution 2678(2023) which renews United Nations Assistance Mission for Afghanistan (UNAMA) does not entail any direct reference to women rights. However, the resolution in paragraph 3 extends the mandate as defined in 2626 (2022) which entails paragraphs that explicitly address the issue of human rights and women's rights.

emphasis, clearly underscore the importance of upholding human rights, including women's rights. Furthermore, the wording of these resolutions evolves in response to the rising severity of VWGRs by the Taliban 2.0 regime.

The language used in the resolutions increasingly emphasizes the importance of upholding human rights, specifically women's and girls' rights. This evolution is reflected in expressions of concern about the deteriorating situation of women's and girls' rights, calls for women's inclusion in all processes, calls upon the Taliban to form a government that includes and represents women, and stresses on the indispensable role of women and girls in Afghan society. For example, when Resolution 2626 (2022) was adopted, the Taliban had already imposed severe restrictions on women and girls in Afghanistan, including the closure of secondary schools for girls, restrictions on women traveling without a male guardian (Mahram), and an order prohibiting women from working or leaving home.¹⁸⁰ In response to these developments, the resolution not only acknowledges the violations and expresses deep concern about VWGRs but also includes paragraphs such as (e), which mandates UNAMA alongside other issues to:

“promote, support, and advice on Afghanistan's implementation of provisions of instruments concerning human rights and fundamental freedoms to which Afghanistan is a State party and by which it is bound, including the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)”¹⁸¹

Furthermore, paragraph (f) of the resolution mandates UNAMA to integrate gender mainstreaming based on Resolution 1325 into its mandate and requires the mission to specifically report on violations, abuses, and reprisals committed against women.¹⁸² Another notable instance illustrating the Council's response to violations of women's and girls' rights occurred when the Taliban prohibited women from working for UN agencies and NGOs in

¹⁸⁰ Feminist Majority Foundation, “A Timeline of Horror.”

¹⁸¹ United Nations Security Council, *Resolution 2626 (2022)*, S/RES/2626 (2022), 2022, [https://undocs.org/en/S/RES/2626\(2022\)](https://undocs.org/en/S/RES/2626(2022)).

¹⁸² United Nations Security Council, *Resolution 2626 (2022)*.

April 2023.¹⁸³ In response, the Council adopted Resolution 2681 to condemn the Taliban and reiterated the importance of respecting women's and girls' rights while expressing concern over the increasing erosion of their rights.¹⁸⁴ Therefore, it can be argued that the Council, in general, advocates for women's and girls' rights in Afghanistan.¹⁸⁵ However, while resolutions indicate unity in advocating for respect of these rights, there are significant differences among the P-5 members when considering their statements and reports. Although nuances exist within the discourses of the P-5, their positions can be grouped into two categories: P-3 (USA, UK, France) and P-2 (China, Russia).

1.8.1 P-3 and Women's rights

The P-3 discourse on the situation in Afghanistan, driven by a nexus of political and legal considerations, takes the humanitarian crisis and the need to combat terrorism seriously. In response to the Taliban's rise, the P-3 has opted for a "wait-and-watch" approach, influenced by geopolitical priorities like supporting Ukraine and Taiwan, as well as political considerations regarding the respect for the rule of law. This strategy involves avoiding direct relations with the Taliban, allowing them to remain responsive to the SVWGRs by the Taliban 2.0 regime.

The P-3 not only consistently advocate for upholding human rights and women's rights from the outset but also dedicate considerable attention to SVWGRs under the Taliban 2.0 regime. Analysis of Council meetings reveal numerous instances where the P-3, to varying degrees, strive to include paragraphs in resolutions emphasizing women's rights or broader human rights issues. If it's relied solely on WiB reports one would have the impression that paragraphs concerning women's and girls' rights are included in Resolutions due to efforts made by P-3

¹⁸³ Dawa Sherpa, "Taliban's Ban on Afghan Women Working in UN Pushes Them Into Further Deprivation," *The Diplomat*, May 24, 2023, <https://thediplomat.com/2023/05/talibans-ban-on-afghan-women-working-in-un-pushes-them-into-further-deprivation/>.

¹⁸⁴ United Nations Security Council, *Resolution 2681 (2023)*, S/RES/2681 (2023), 2023, [http://undocs.org/en/S/RES/2681\(2023\)](http://undocs.org/en/S/RES/2681(2023)).

¹⁸⁵ It's crucial to note here that most of the resolutions were adopted unanimously, however, in resolution 2593 and 2721 China and Russia abstain and in resolution 2626 Russia abstains only.

members or their non-opposition to such inclusions.¹⁸⁶ Furthermore, this advocacy is also evident in their public statements.

However, among the P-3, France stands out as the most vocal advocate for women's rights, consistently pushing for language in resolutions addressing human rights concerns. France, unlike others, on occasions reminds every one of their obligations under IHL and IHRL. For instance, in its statement on Resolution 2593(2021),¹⁸⁷ or on Resolution 2615(2021) calling on council to ensure Taliban fulfil their obligations under IHL and IHRL.¹⁸⁸ Moreover, as the severity of the VWGRs rise, France, condemn Taliban's actions as "systematic persecution of people of Afghanistan."¹⁸⁹ In contrast, while the UK initially takes a quieter stance, its position gradually aligns with France's. The UK in one stance calls Taliban's policy as "systematic erasure of women and girls from Society."¹⁹⁰ The US, comparatively less vocal among the P-3 on women's rights, frames these violations within broader implications for Afghanistan's development and peace. The P-3's discourse, strongly advocating for respect of WGRs or HRs in Afghanistan in the wake of Taliban's violations originate from the fact that respect for HRs and WGRs is a core element of their identity.

Donnelly argues that Western democracies, by integrating human rights into their national identities, have also incorporated them into their foreign policies, crucial for both domestic and international legitimacy.¹⁹¹ Examining the discourse of the P-3 within the Council concerning

¹⁸⁶ It's crucial to note that the one could assume that reports provided by SecurityCouncilReport.org (a New York based think-thank) is biased. Analysing and reading those reports, one can observe that on issues which are contentious within the council, it mostly reports on how Russia and China were opposing the others. This give a sense of P-2 being at odds with everyone. Therefore, while discussing such disagreements it's doublechecked whether the public statements suggests them, too.

¹⁸⁷ United Nations Security Council, *Security Council Seventy-Sixth Year 8848th Meeting Monday, 30 August 2021, 3 p.m. New York, 3.*

¹⁸⁸ United Nations Security Council, *Security Council Seventy-Sixth Year 8941st Meeting Wednesday, 22 December 2021, 9 a.m. New York, 6.*

¹⁸⁹ *Security Council Seventy-Eighth Year 9521st Meeting Friday, 29 December 2023, 10 a.m. New York, 6.*

¹⁹⁰ United Nations Security Council, *Security Council Seventy-Eighth Year 9314th Meeting Thursday, 27 April 2023, 5.20 p.m. New York, 4.*

¹⁹¹ jack Donnelly, "Human Rights and Foreign Policy," in *Universal Human Rights; in Theory and Practice*, 3rd edition (Ithaca and London: Cornell University Press, 2013), 197–213.

the severe violations of women's rights by the Taliban 2.0, it appears that the P-3 has limited its approach to preserving legitimacy by engaging in what Donnelly terms "public human rights diplomacy."¹⁹² This includes activities such as gathering and disseminating information, expressing dissenting views, and mobilizing pressure, which can be summarized as advocacy.¹⁹³ Considering this finding alongside the P-3's overall approach to Afghanistan discussed earlier, it can be argued that the P-3 presents itself as a defender of human rights and women's rights primarily for political interests rather than a genuine commitment to the application of those rights. This is also evident from how the P-3 evade to take responsibility to ensure accountability.

Firstly, the P-3's strategy to address violations of women's and girls' rights in Afghanistan centres around the role of the UN mission, UNAMA. They view UNAMA not only as a coordinator of humanitarian assistance and a monitor of rights violations but also as crucial for protecting and respecting human rights, including women's rights. For instance, the USA argues that extending UNAMA's mandate enables the UN to continue its efforts in ensuring Afghans can enjoy their human rights, including those of women.¹⁹⁴ The UK similarly asserts that UNAMA can play a role in holding the Taliban accountable.¹⁹⁵

Secondly, the P-3 explicitly voice their concerns about the restrictions imposed on women's and girls' rights by the Taliban. They tie recognition or engagement with the Taliban to their adherence to women's and girls' rights and meeting international expectations outlined in Resolution 2593 (2021). For example, the USA, while acknowledging these restrictions (rather than violations), states that they move the Taliban further away from normalization.¹⁹⁶ France,

¹⁹² Donnelly, 202.

¹⁹³ Donnelly, 202.

¹⁹⁴ United Nations Security Council, *Security Council Seventy-Eighth Year 9283rd Meeting Thursday, 16 March 2023, 10 a.m. New York, 3.*

¹⁹⁵ United Nations Security Council, *Security Council Seventy-Eighth Year 9283rd Meeting Thursday, 16 March 2023, 10 a.m. New York, 3.*

¹⁹⁶ United Nations Security Council, *Security Council Seventy-Eighth Year 9314th Meeting Thursday, 27 April 2023, 5.20 p.m. New York, 3.* ; *Security Council Seventy-Eighth Year 9521st Meeting Friday, 29 December 2023, 10 a.m. New York, 3.*

while referring to Resolution 2593 (2021), emphasizes that fulfilling these obligations "remains the essential condition for the international community to engage with the Taliban."¹⁹⁷ However, except for France, other P-5 members generally avoid using the term "obligations under international law" in their statements. In contrast, the P-2 show minimal attention to women's and girls' rights violations compared to the vocal support of the P-3.

1.8.2 P-2 and Women's rights

The P-2's discourse on the situation of Afghanistan, primarily driven by security concerns and a strategic opposition to Western dominance, is also highly focused on the humanitarian situation and combating terrorism. Concerning the rise of the Taliban, both countries perceive them as an integral reality of Afghanistan and push for engagement with them to secure their security interests and advance their geopolitical and economic objectives. In doing so, they marginally pay attention to the SVWGRs by the Taliban 2.0 regime.

One could argue that based on the WiB reports, P-2 has consistently pushed for the exclusion of human rights issues, including women's rights, from resolutions. As an example, WiB on resolution 2626(2022) suggests that both countries opposed the inclusion of references to CEDAW or legal instruments that uphold human rights and fundamental freedoms during negotiations,¹⁹⁸ despite the ongoing restrictions on women in Afghanistan. Similarly, they resisted the inclusion of text advocating for consultations with Afghan women and civil society.¹⁹⁹ However, neither country exercised its veto power over any of the resolutions, and their remarks suggest a general support for upholding human rights. Compared to the approach of the P-3, both P-2 members remain notably moderate in their advocacy.

China, in comparison to Russia, demonstrates a relatively greater emphasis on the issue of women's and girls' rights. For instance, in its statement on Resolution 2596, China suggests

¹⁹⁷ *Security Council Seventy-Eighth Year 9521st Meeting Friday, 29 December 2023, 10 a.m. New York, 6.*

¹⁹⁸ "Afghanistan: Vote on Draft Resolution on UNAMA's Mandate*," *What's In Blue* (Security Council Report, March 17, 2022).

¹⁹⁹ "Afghanistan: Vote on Two Draft Resolutions*," *What's In Blue* (Security Council Report, March 15, 2023), <https://www.securitycouncilreport.org/whatsinblue/2023/03/afghanistan-vote-on-two-draft-resolutions.php>.

that the international community should pressure the Taliban to respect human rights.²⁰⁰ Similarly, during discussions on Resolution 2626, China advocates for international assistance to Afghanistan in protecting the basic rights of all people, including women's rights.²⁰¹ However, in its statement on Resolution 2678/2679, China supports the resolution without mentioning human rights or women's rights explicitly. Yet, in its statement on Resolution 2681, it expresses hope that the Taliban will protect the rights of everyone, including women, China diverges from other Council members by refraining from outright condemnation of the Taliban. Instead:

“China shares the regret and concerns of many countries about the recent ban on Afghan women working for the United Nations.”²⁰²

In subsequent statements, China notably avoids making any reference to violations of women's rights. In contrast, Russia's stance appears weaker compared to China's regarding human rights or women's rights issues.

In general, Russia tends to avoid mentioning human rights and women's rights issues. Unlike other P-5 members, Russia first mentioned human rights during its statement on Resolution 2626, while only referring to the UNAMA's potential to address political and human rights issues while considering regional and cultural specifics.²⁰³ This mention appears more as a response to oppose what other council members, especially the P-3, have advocated for rather than a genuine interest in the issue itself. Furthermore, Russia briefly acknowledges these violations in its statement on Resolution 2681, rhetorically stating that:

²⁰⁰ United Nations Security Council, *Security Council Seventy-Sixth Year 8862nd Meeting Friday, 17 September 2021, 10 a.m. New York*, 4.

²⁰¹ United Nations Security Council, *Security Council Seventy-Seventh Year 8997th Meeting Thursday, 17 March 2022, 10 a.m. New York*, 6.

²⁰² United Nations Security Council, *Security Council Seventy-Eighth Year 9314th Meeting Thursday, 27 April 2023, 5.20 p.m. New York*, 3.

²⁰³ United Nations Security Council, *Security Council Seventy-Seventh Year 9222nd Meeting Friday, 16 December 2022, 10 a.m. New York*, 5.

“Of course, we do not welcome the decision by the Taliban to restrict the rights of women and girls. Of course, those bans must be lifted.”²⁰⁴

Thus, it can be argued that in the case of P-2, both countries, albeit to differing degrees, pay very little attention to violations of human rights and women’s rights. Therefore, it could be argued that if they fail to even advocate for respecting women’s rights it would be very hard to discuss if they intend to hold anyone accountable in the wake of violations. Nevertheless, since the council in its entirety has achieved some advocacy, P-2 discourse in terms of accountability is analysed, too.

When it comes to P-2 and their commitment to women’s rights or holding the Taliban accountable for severe violations, both countries consistently reject incorporating strong language related to women’s rights in resolutions and issue minimal statements on the topic. This avoidance reflects their stance on Afghanistan's situation and their overall approach to the Taliban. P-2 views the Taliban's authority as a new reality, diametrically opposed to Western approaches driven by economic and geopolitical considerations. They prefer to view human rights as a domestic issue immune to international intervention, hoping the Taliban will voluntarily uphold rights rather than enforcing accountability under international law. Consequently, expecting P-2 to advocate for Taliban's legal obligations or accountability for violations remains a wishful thinking. The approach of P-3 does not significantly differ when it comes to ensuring accountability.

The P-5, when it comes to ensuring accountability for themselves or holding the Taliban accountable for severe violations of women's and girls' rights (SVWGRs), deliberately avoid including any text that might have a legally binding effect on them. They refrain from applying existing IHL or IHRL or acknowledging reports that classify SVWGRs as crimes against humanity. This deliberate choice of not including any breach of a specific provision of law allows them to avoid taking responsibility or ensuring accountability. For instance, France, China, and Russia oppose inclusion of a proposed text that would urge member states to

²⁰⁴ United Nations Security Council, *Security Council Seventy-Eighth Year 9314th Meeting Thursday, 27 April 2023, 5.20 p.m. New York, 5.*

implement recommendations from independent assessments,²⁰⁵ illustrating their collective effort to evade taking any measures that might inflict obligations on them.

8. Discussion

This study sought to address the Security Council's failure to adopt legally binding decisions in response to the severe violations of women's and girls' rights by the Taliban 2.0 regime in Afghanistan. Drawing on existing literature, the research focused specifically on the P-5 members of the Council, whose veto power significantly influences decision-making of the Council. The analysis identified three major themes within the discourse of the P-5: their perception of the situation of Afghanistan, their approaches since the Taliban's return to power, and their discussions on severe violations of women's and girls' rights (VWGRs) by the Taliban 2.0 regime.

The findings illustrate that when P-5's political interests and the obligations under international law are interlinked, such as P-5 interest in delivering aid and the obligations under IHL, the Council is able to adopt legally binding decision. In their discourse, they also resort to legal argumentation to assert power whether by trying to persuade others or rely on the coercive power of the law. For instance, Russia and China by insisting on the need for unblocking Afghanistan's ACB asset be used to milder the effects of crisis, as finally incorporated in the resolution, though with a vague language.²⁰⁶ The U.S. agreement to not oppose it in the Resolution might also lie in the fact that a group of UN experts had called the asset freeze illegal under IHL.²⁰⁷ Therefore, it illustrates how law becomes the expression of power. Similarly, it is true for the Council's response in relation to terrorism.

Even though the division among the P-5 is evident regarding who bears responsibility for the humanitarian situation in Afghanistan. The Council manages to adopt 4 Resolutions which

²⁰⁵ "Afghanistan: Vote on Draft Resolution*," What's In Blue (Security Council Report, December 28, 2023), <https://www.securitycouncilreport.org/whatsinblue/2023/12/101627.php>.

²⁰⁶ United Nations Security Council, *Resolution 2626 (2022)*.

²⁰⁷ "Afghanistan: UN Experts Call on US Government to Unblock Foreign Assets of Central Bank to Ease Humanitarian Impact" (United Nations, April 25, 2022), <https://www.ohchr.org/en/press-releases/2022/04/afghanistan-un-experts-call-us-government-unblock-foreign-assets-central>.

entail measures taken under Chapter VII of the UNC. This possible as P-5 members, each with their own interest in combating terrorism, while failing to do so regarding SVWGRs by the Taliban. In these Resolutions, the Council and members provide their arguments within the context of resolutions on terrorism to ensure compliance by UN member states, using law as a language of power.²⁰⁸ In the case of SVWGRs, despite the abundance of council's resolutions that in one way or another address the issue of violations of human rights.²⁰⁹ One reason behind this, as Prof. Wittich suggests, might be that for P-5 Women's rights do not have the same geopolitical importance compared to issues of terrorism.²¹⁰ Moreover, the Council, while assuming a quasi-legislative function, has developed a well-established norm to combat terrorism. Since the Council declared in Resolution 1373 (2001) that terrorism constitute a threat to international peace without bringing it into relation with any specific situation,²¹¹ whereas the council has failed to do so regarding the severe violations of human rights/women's rights. Therefore, confirming what the literature suggests (literature review) as well as both experts points at—an ad-hoc approach leading to inconsistency in Council's action.²¹²

Another important finding of this work shows that the divergent viewpoint concerning Taliban's return to power is fundamental in defining how the P-5 approach the issue of SVWGRs by the Taliban. Above all, the analysis maintains that both P-3 and P-2 shape their approach towards Taliban's rise to power based on their own political considerations. For the P-3, their liberal democratic identity in fundamental contradiction with the Taliban and their geopolitical priorities does not allow them to engage with them. And for the P-2, not facing similar ideational constrains as the P-3, see engagement with the Taliban as an opportunity to

²⁰⁸ This is holds true, if only we agree with O'Rourke and other scholars on the Council's quasi legislative role. O'Rourke, "An Overview of Laws and Institutions," 54.

²⁰⁹ Bruno Stagno Ugarte and Jared Genser, "Evolution of the Security Council's Engagement on Human Rights," in *The United Nations Security Council in the Age of Human Rights*, ed. Bruno Stagno Ugarte and Jared Genser (Cambridge: Cambridge University Press, 2014), 3–32, <https://doi.org/10.1017/CBO9781139626972.003>.

²¹⁰ Univ.-Prof. Mag. Dr. Stephan Wittich, interviewed by author, Vienna, May 31, 2024.

²¹¹ Eric Rosand, "Security Council Resolution 1373, the Counter-Terrorism Committee, and the Fight Against Terrorism," *American Journal of International Law* 97, no. 2 (April 2003): 333–341, <https://doi.org/10.2307/3100110>, 333–34.

²¹² Prof. Larry D. Johnson, interviewed by author, Vienna, April 23, 2024.; Univ.-Prof. Mag. Dr. Stephan Wittich, interviewed by author, Vienna, May 31, 2024.

advance their interests while paying marginal attention to the issue of women's and girls' rights in Afghanistan. Within this discourse of the P-5, the P-3 avoid discussing Taliban's rise to power at all, and the P-2, in particular China, invoke principles of UNC. These in turn hand confirm that the P-5 use/ or not use of legal argumentations is instrumental.²¹³ Moreover, as Allen suggests, the political relationships have an impact on the Council's decision,²¹⁴ one could argue that P-2's growing relationship with the Taliban would impact their decision whether to allow Council take binding decisions or not.

The analysis further maintains that P-3 through its "wait-and-watch" approach remains responsive towards the rising violations of WGRs by the Taliban 2.0 regime. Though their response evolves over time, this never goes beyond mere advocacy for respecting those rights. This is evident from both how the P-3 strives to expand the Mandate of UNAMA as well as in their statements. Among the P-3, France distinguishes itself from the others due to its outspoken language to address the VWGRs by the Taliban. As France shares more or less the same liberal democratic values as the UK and the USA, one could argue that it might be the European identity of France that has an effect on its outspokenness in the Council. One evidence for this could be the fact that European Union is the first organ who has introduced sanctions on Taliban based on their violations of women's rights.²¹⁵ The P-2, in contrast to P-3, assign sheer of their focus on the issues of humanitarian and economic crises and play a very moderate advocacy role for respecting human rights/ women's rights in Afghanistan. One main reason for this is that the P-2 are eager to engage more with the Taliban. This also explains why they do not condemn the Taliban like others and abstain from Resolution 2681. Prof. Johnson suggests that for China condemning the Taliban seems to be very "disrespectful and self-defeating, if you are going to have dialogue with them."²¹⁶ The net effect of this, differing discourse within the Council regarding women's rights emanating from varying approaches to and perceptions of

²¹³ Sheeran, "Argumentation in the UN Security Council International Law as Process," 64.

²¹⁴ Susan Hannah Allen and Amy T Yuen, "Action or Inaction: United Nations Security Council Activity, 1994–2013," *Journal of Peace Research* 57, no. 5 (September 1, 2020): 658–65, <https://doi.org/10.1177/0022343319900222>, 622.

²¹⁵ "EU Sanctions Three Senior Taliban Leaders over Women's Rights Abuses," *KabulNow*, July 21, 2023, <https://kabulnow.com/2023/07/eu-sanctions-three-senior-taliban-leaders-over-womens-rights-abuses/>.

²¹⁶ Prof. Larry D. Johnson, interviewed by author, Vienna, April 23, 2024.

the situation of Afghanistan, is that the consensus needed within the Council to adopt a legally binding decisions is pushed to close zero. Regardless of this, the analysis indicates that accountability regarding SWGRs by the Taliban has not been made into the P-5 discourse.

Another significant finding of the analysis is that the P-5 have not yet engaged in any discussions regarding accountability. On the contrary, the P-5 endeavors to avoid incorporating any language that could have legal implications. Professor Johnson argues that the terminology used in Resolutions is crucial for the Council's members because it might or might not have binding effects. However, he also notes that diplomats working in the Council prefer to use ambiguous language as a form of constructive ambiguity. However, relying on the WiB reports on Resolution 2681, the initial draft suggesting Taliban's edicts constitute violations of IHRL does not make it second draft.²¹⁷ In this case the P-5, while being well-aware of the effects of terms they use, strategically evade employing language which might have binding effect on them. Therefore, one could argue that the Council ignore the issue of accountability in response to SVWGRs by the Taliban. Even if these violations, according to civil society organizations, constitute crimes against humanity.

When both experts were asked about the effect of reports of civil society organizations, calling Taliban's policies against women and girls constituting crimes against humanity under Rome Statue, on the decision-making of the council: both experts highlighted the importance of a consensus view among the P-5 members is a precondition for the council to take legally binding decision (or act).²¹⁸ Prof. Wittich, adds that a consensus for the time being on sensitive issues of human rights, particularly women's rights in Afghanistan, a consensus is illusory.²¹⁹ Therefore, a legally binding decision in response to severe violations of women and girls by the Taliban 2.0 regime cannot be expected.

This study, by examining the discourse of the P-5 members through the lens of "law as a language of power," aimed to understand why the Council does not take legally binding actions

²¹⁷ "Afghanistan: Vote on Draft Resolution*", What's In Blue (Security Council Report, April 27, 2022).

²¹⁸ Prof. Larry D. Johnson, interviewed by author, Vienna, April 23, 2024.; Univ.-Prof. Mag. Dr. Stephan Wittich, interviewed by author, Vienna, May 31, 2024.

²¹⁹ Univ.-Prof. Mag. Dr. Stephan Wittich, interviewed by author, Vienna, May 31, 2024.

in response to severe violations of women's and girls' rights by the Taliban regime. However, the study's reliance primarily on resolutions and the Council's public meeting protocols might impose some limitations on its findings. Furthermore, since the study focuses on the internal discourse of the P-5 members within the Council, it takes exogenous factors into account to comprehend the discourse. Other studies focusing on how relationships between P-5 members outside the Council affect their discourse can complement these findings.

Additionally, although reports provided to the Council on the situation in Afghanistan and other related reports were considered to understand the context of the discourses used, the abundance of such data suggests that further studies could explore how this information might impact the Council's decision-making concerning severe violations of women's rights. Moreover, given the study's findings indicating that severe violations of women's and girls' rights have not prompted a legally binding decision from the council, it is imperative to undertake additional research focusing on the intersection of women's rights protection and the Security Council responsibility. Closing the discussion on the limitation of this paper and recommendations for further research here, the next section concludes this paper.

9. Conclusion

This research relying on the arguments that the SC through an expansive interpretation of the UN Charter has established to have jurisdiction upon situations involving severe violations of human rights. From this starting point the research question was formulated to scrutinize the Council's response to severe violations of women's and girls' rights by the Taliban 2.0 regime in Afghanistan. The timeline of the study was limited to August 15, 2021 – December 31, 2023. Then the paper indulged in the available literature discussing how the Council has reacted in other cases or in general towards severe violations of human rights.

The Literature review provided extensive insight on, first, how the Council has defined situation involving severe violations of human rights as threat to peace under Art.39 allowing them to take legally binding decisions. Second, Scholars while underling the novelty of this practice, on the one hand, point how the council through practice establishes a norm of human rights in their conduct, others contested this while pointing on the inconsistency of this practice. Furthermore, the literature review provided that the legal discourse within the council influence

their decision-making. Following on insights from literature review the paper developed its theoretical framework.

The theoretical framework was developed by relying on the importance of legal argumentation within the security council and how law functions as the language of power. This framework on the one hand, underlines the importance of law within the council's discourse. On the other hand, it conceptualizes power and Law as two interlinked units. It further posits that since law in the context of SC is invoked repeatedly, it leads to a socialisation of law which become the language of power. This lens allows to comprehend Council's decision-making in a matrix of law and politics. Thus, allowing to find an answer for the research question.

The analysis and discussion provide that the failure of the Council to adopt a legally binding decision in response to severe violations of women's and girls' rights in Afghanistan stems from the differing perspectives among the P-5 members regarding the Taliban's ascension to power and subsequently how they approach the situation of Afghanistan. Despite agreeing on the humanitarian crisis and the threat of terrorism, the P-5's viewpoints diverge significantly on the Taliban's rise to power. They use legal arguments in their discourse to assert authority through law as a language of power. However, these differing views divide them, thus hindering their ability to reach a consensus to enact legally binding decisions. Other geopolitical and political considerations while reinforcing the division, also lead to notable varying approaches towards SVWGRs which do not go beyond advocacy. The implication is that legal argumentations are employed in such a way that accountability for SVWGRs can be ignored. This finding of the paper can be well concluded in the words of the Ambassador of Emirates to the UN, which was delivered during the last (under study of this work) Council's meeting discussing the severe violations of Women's and girls' rights by the Taliban:

“What was clear then — and is abundantly clear now — is that there is no coherent international strategy for Afghanistan. Afghanistan and its people — to be crystal clear, that includes its women and girls — are isolated, left to fend for themselves as their tragedy is instrumentalized by outsiders for performative virtue-signaling and cynical self-interest.”²²⁰

²²⁰ *Security Council Seventy-Eighth Year 9521st Meeting Friday, 29 December 2023, 10 a.m. New York, 3.*

These findings contribute significantly to the literature on how the international community responds to severe violations of women's rights. They emphasize that despite strong declarations of respect for human rights and women's rights, power politics within the Security Council significantly influence how these violations are addressed. Furthermore, they highlight that as currently international law, a cornerstone of international order, is violated blatantly by one of P-5 members, the current Security Council fails in preventing or halting mass atrocities. This, in turn, suggests the urgent need for the United Nations to be reinvigorated, despite the undeniable complexity of it. Moreover, these findings underscore the disparity between legal principles articulated in international instruments and their application in practice. In this regard, by showcasing this discrepancy, this work contributes to activism for upholding human rights and women's rights. Finally, this work also contributes to draw attention to suffering of women in Afghanistan under the rule of a terror regime.

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2. Annex

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1. Resolution 2593 (2021). August 30, 2021
[http://undocs.org/en/S/RES/2593\(2021\)](http://undocs.org/en/S/RES/2593(2021))
2. Resolution 2596 (2021). September 17, 2021
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3. Resolution 2611 (2021). December 17, 2021
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4. Resolution 2615 (2021). December 22, 2021
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5. Resolution 2626 (2022). March 17, 2022
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6. Resolution 2665 (2022). December 16, 2022
[http://undocs.org/en/S/RES/2665\(2022\)](http://undocs.org/en/S/RES/2665(2022))
7. Resolution 2678 (2023). March 16, 2023
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8. Resolution 2679 (2023). March 16, 2023
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9. Resolution 2681 (2023). April 27, 2023
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10. Resolution 2716 (2023). December 14, 2023
[http://undocs.org/en/S/RES/2716\(2023\)](http://undocs.org/en/S/RES/2716(2023))
11. Resolution 2721 (2023). December 29, 2023
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2. Resolution 2596 (2021). September 17, 2021
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a.m. New York
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3. Resolution 2611 (2021). December 17, 2021
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p.m. New York
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4. Resolution 2615 (2021). December 22, 2021
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5. Resolution 2626 (2022). March 17, 2022
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 8. Resolution 2679 (2023). March 16, 2023
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3. Afghanistan: UNAMA Mandate Renewal*, September 16, 2021
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5. Afghanistan: Vote on Sanctions Draft Resolution*, December 17, 2021
<https://www.securitycouncilreport.org/whatsinblue/2021/12/afghanistan-vote-on-sanctions-draft-resolution-2.php>
6. Afghanistan: Vote on 1988 Sanctions Resolution*, December 21, 2021
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7. Afghanistan: Briefing and Consultations, January 25, 2022
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<https://www.securitycouncilreport.org/whatsinblue/2022/03/afghanistan-vote-on-draft-resolution-on-unamas-mandate.php>
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13. Arria-formula Meeting on Afghanistan, October 23, 2022
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14. Arria-formula Meeting on Afghanistan, November 16, 2022
<https://www.securitycouncilreport.org/whatsinblue/2022/11/arria-formula-meeting-on-afghanistan-2.php>
15. Afghanistan: Vote on the Mandate of the Monitoring Team Supporting the 1988 Sanctions Committee*, December 16, 2022
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16. Afghanistan: Briefing and Consultations, December 19, 2022
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18. Afghanistan: Closed Consultations, January 27, 2023
<https://www.securitycouncilreport.org/whatsinblue/2023/01/afghanistan-closed-consultations.php>

19. Afghanistan: Briefing and Consultations, March 7, 2023
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20. Afghanistan: Vote on Two Draft Resolutions*, March 15, 2023
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21. Afghanistan: Closed Consultations, April 5, 2023
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23. Afghanistan: Briefing and Consultations, June 20, 2023
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24. Afghanistan: Briefing and Consultations, September 25, 2023
<https://www.securitycouncilreport.org/whatsinblue/2023/09/afghanistan-briefing-and-consultations-7.php>
25. Afghanistan: Private Meeting*, November, 27, 2023
<https://www.securitycouncilreport.org/whatsinblue/2023/11/afghanistan-private-meeting-and-closed-consultations.php>
26. Afghanistan: Closed Arria-formula Meeting, December 8, 2023
<https://www.securitycouncilreport.org/whatsinblue/2023/12/afghanistan-closed-arria-formula-meeting.php>
27. Afghanistan: Vote on the Mandate of the Monitoring Team Supporting the 1988 Sanctions Committee*, December 13, 2023
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29. Afghanistan: Vote on Draft Resolution*, December 28, 2023
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Expert Interviews

1. Transcript and consent Form Prof. Larry D. Johnson
https://docs.google.com/document/d/1GJNsGJHn-_ymf69SRoToV9U2rHIn0w4X3JP4hD7_9x4/edit?usp=sharing
2. Transcript and consent Form of Univ.-Prof. Mag. Dr. Stephan Wittich
<https://docs.google.com/document/d/1iZpADP8MVu7mNoZFIzG5RpIAN44gBzkOmxS91sgvaRM/edit?usp=sharing>