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“Mainstreaming” Women through U.N. Security Council Resolutions: Comments on a Paper by Haynes, Cahn, & Aoláin

Abraham D. Sofaer*

The paper by Haynes, Cahn & Aoláin¹ is a clear and helpful analysis of recent U.N. Security Council resolutions that seek to improve conditions for women in post-conflict situations. The authors not only provide an analysis of the four resolutions at issue, they examine how the resolutions are being applied, their weaknesses, and their prospects. They make several recommendations, including the point that the Council should use its power over the distribution of funds to leverage change.

When Professor Beth van Schaack asked me to comment on this excellent paper, she suggested that I focus on what might be done to enhance the effectiveness of Security Council resolutions related to women’s rights. This assignment is a good example of how a brilliant and compassionate friend can be cruel. Urging the Security Council to improve its resolutions is easy to do, but change is difficult to accomplish. And even though Security Council resolutions are authoritative declarations of international law under the U.N. Charter, their enforcement has been notoriously difficult. Most frustrating of all, the particular objective of improving the role and treatment of women in post-conflict situations is a peculiarly, perhaps even a hopelessly, narrow way of attempting to deal with the fact that the mistreatment of a huge proportion of the women in the world is the greatest challenge facing civilization today. Rather than addressing this universal problem head on, however, the Security Council has addressed the issues only in the narrow post-conflict context. Accepting Professor van

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1. Dina Francesca Haynes, Naomi Cahn & Fionnuala Ní Aoláin, *Women in the Post-Conflict Process: Reviewing the Impact of Recent U.N. Actions in Achieving Gender Centrality*, 11 SANTA CLARA J. INT’L L. 189 (2012), presented at the *Santa Clara Journal of International Law Symposium, Emerging Issues in International Law*, held on February 3–4, 2012.

Schaack's suggestion, this Comment identifies several methods for improving Security Council resolutions.

Language

The language of these resolutions could easily be improved. Those discussed in the Haynes-Cahn-Aoláin paper—Nos. 1325, 1820, 1888 and 1889—are, as the authors recognize, written in vague, non-mandatory language.² For example, paragraph 8 of Resolution 1325

Calls on all actors involved, when negotiating and implementing peace agreements, *to adopt a gender perspective*, including, inter alia:

(a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction;

(b) Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements;

(c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary . . .³

What does it mean “to adopt a gender perspective”? Surely the Security Council could be more specific. Resolution 1888 “[r]ecognize[s] that the promotion and empowerment of women and that support for women's organizations and networks are essential in the consolidation of peace to promote the equal and full participation of women and *encourage[s]* Member States, donors, and civil society, including non-governmental organizations, to provide support in this respect.”⁴ What is meant by the “promotion and empowerment of women” and what support must Member States provide to satisfy this requirement? The potential value of such provisions would be enhanced if the Security Council focused on those objectives about which it is prepared to be specific.

Attacking the U.N. Glass Ceiling

The resolutions at issue have several objectives, some more general than others, but none that is general enough. One aim that is repeatedly mentioned is to increase the number of women engaged in the post-conflict negotiations and management processes and the level at which they function. Several operative provisions are addressed explicitly to the Secretary-General (one would think that a private meeting should have enabled the Security Council to instruct its own executive). In some provisions, the Security Council pronounces its own readiness to respond to the needs of women; this may be intended to reassure, but it does the opposite for me. This aspect of the resolutions seems essentially an effort by female professionals—diplomats, politicians, economists, and others—to break the glass ceiling at

2. S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000); S.C. Res. 1820, U.N. Doc. S/RES/1820 (June 19, 2008); S.C. Res. 1888, U.N. Doc. S/RES/1888 (Sept. 30, 2009); S.C. Res. 1889, U.N. Doc. S/RES/1889 (Oct. 5, 2009).

3. S.C. Res. 1325, *supra* note 2, ¶ 8 (emphasis added).

4. S.C. Res. 1888, *supra* note 2, pmb1.

the U.N. This is a good development. It is reassuring to see females behaving like men! Advancing professional women in post-conflict governance will help because women know better how to deal with the problems of inequality and oppression. But no one should be under the illusion that helping some professional women find positions during transitions is going to open up governments that currently systematically exclude and oppress women.

Getting Beyond “Protection”

A pervasive objective of the resolutions is to “protect” women from physical assaults, rape, hunger, and disease. Protecting women is often essential. But “protection” in the post-conflict context often means putting women and children into refugee camps where they have nothing to do, have no educational opportunities or work, and become easy targets of predatory gangs and even of peacekeepers. We have learned by now how destructive it is to take women away from their homes for long periods. This kind of “protection” does more harm than good in the long run. The overriding purpose in post-conflict situations should not be “protection” but rather ensuring that women have access to a normal life, with the opportunities for education and work.

All four of the resolutions call for the integration of women into security roles thus far exclusively reserved for men. This recommendation should be made into a mandate and should extend to training women in the use of firearms and the construction and operation of defensive facilities. Women who know how to arrange for the security of groups against violence will be able to return to their homes much sooner than if they are exclusively dependent on the “protection” of others. The international community is often unable or unwilling to intervene in the exercise of its responsibility to protect; in those situations it should arm victims of oppression so they are able to deter criminal conduct.

Monetary Penalties and Incentives

The paper points out the leverage the Security Council has in controlling the funds used in post-conflict operations. That leverage should be used to enforce the prescriptions on conduct and opportunities that the Security Council mandates. The resolutions are currently far too lax in this regard; they need to make very clear that failing to achieve key objectives will result in the loss of funds. Affirmative action is entirely appropriate where intentional discrimination, often mandated by law, created disparities.

The “Mainstreaming” Objective

The most far-reaching purpose of these resolutions is to “mainstream” women into political, economic, and social institutions. Limiting this objective to “post-conflict” situations is, however, artificial and based on the view that the U.N. Security Council cannot order Member States to extend equal rights to women. The mainstreaming objective sought by these resolutions is universally applicable and should have no temporal limit. Starting to mainstream women in the post-conflict context may result in progress that remains part of the society after transition from conflict to normality. But this premise seems unrealistic with respect to the most essential changes, such as providing women with meaningful educational

opportunities, as sought in Resolution 1889, which “[u]rges Member States . . . including non-governmental organizations, to take all feasible measures to ensure women and girls’ equal access to education in post-conflict situations, given the vital role of education in the promotion of women’s participation in post-conflict decision-making.”⁵ The education of women is essential to achieve mainstreaming, but not only for some women in post-conflict situations—for all women, everywhere. And, to have lasting impact, educational opportunity requires permanent, nation-wide commitments to all; not just temporary opportunities to those women caught up in temporary conflicts.

A Model Resolution

How could the Security Council express its objectives concerning women in a more general manner that is at the same time specific as to duties and remedies? I see no benefit in more resolutions that contain only sweeping pronouncements listing areas in which women are the victims of discrimination, such as Resolution 1889’s pronouncement recognizing “the particular needs of women and girls in post-conflict situations, including, inter alia, physical security, health services including reproductive and mental health, ways to ensure their livelihoods, land and property rights, employment, as well as their participation in decision-making and post-conflict planning, particularly at early stages of post-conflict peacebuilding.”⁶ Enough of this feel-good stuff, I say, and on to legislation.

The model here should be Resolution 1373, adopted after the attacks of September 11, 2001, which details, in a manner resembling legislation, obligations of Member States concerning individuals or groups within their territories who would attack other Member States.⁷ Resolution 1373, in sweeping terms, prohibits all forms of assistance to terrorists, insists upon measures to prevent them from obtaining funds or other support, and sets up a committee to receive reports from states of their actions to comply. The objective of enabling women to become productive members of the societies in which they live is no less important as a matter of human, economic, or political policy than preventing cross-border terrorism. Some Member States oppose insisting upon principles and practices concerning women that they or other Member States regard as inconsistent with their religious, social, and legal structures. But it is both necessary and proper for the Security Council to declare that certain, fundamental principles and policies related to mainstreaming women are mandatory objectives. The principles involved have been published and approved universally in general declarations, and the Security Council should insist upon their implementation.

A good resolution regarding women would have to contain its share of “Whereas” clauses, reminding all, for example, that basic U.N. declarations have long enshrined the principles of equal opportunity for all mankind, including the Beijing Declaration and Platform for Action and other pronouncements. Most importantly, its operative provisions must recite those fundamental obligations that are both widely accepted and achievable which relate not just to “protection” but also to ensuring that women obtain equal access to education and work. The

5. S.C. Res. 1889, *supra* note 2, ¶ 11.

6. *Id.* pmb.

7. S.C. Res. 1373, U.N. Doc. S/RES/1373 (Sept. 28, 2001).

objective of returning women and children to their homes must be both clearly stated and implemented through measures that mandate training women to use force to protect their communities. In addition to mandating compliance with existing laws related to the protection of women and children, the resolution should adopt a plan to create an agile and practical law enforcement mechanism to prosecute offenders, especially peacekeepers, who mistreat refugees. A special division of the International Criminal Court could be created for this purpose with streamlined procedures and ability to travel to conflict zones and to handle dozens of cases per month, as normal courts do, rather than a handful every decade. While the Security Council would be unlikely to expressly authorize the use of force to enable women to move from camps back to their homes, if it sets the right goals, states and regional organizations will be more likely to enforce them, as we can also see in the suppression of terrorism.

Those working for women's rights in the real world know how little impact Security Council pronouncements have in bringing about the ends they mandate. Women can be empowered only by winning the battle against those opposed to their empowerment. Fundamental social changes are like tectonic shifts. They cannot be achieved through abstract declarations, but rather only by doctrine and actions that produce results. Such doctrinal changes and actions disrupt expectations and are always messy. It will be messy to arm women with weapons in some contexts; it will cause great discomfort to increase accountability for rapes and assaults through swift justice and where necessary the use of force and it will be offensive in the extreme in some places to insist that education for women is a prerequisite of sovereign legitimacy. These changes must nonetheless be imposed because without them the condition of women will not change materially and, as a consequence, the world will be deprived of the huge human, social, and economic gains it is certain to achieve when the changes finally take place. The agenda for mainstreaming women must, in short, be no less radical and transformative than the changes we have achieved over the last two decades in the rules and practices adopted to protect against terrorism. While Resolution 1373 has failed to achieve universal adherence, the proper standards have been set: terrorism has been thoroughly discredited, and the international community is today far more prepared to act collectively and individually against it. That sort of transformation in dealing with the mainstreaming of women would be a welcome development.

