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NECESSITY OF ESTABLISHING A UN SPECIALIZED AGENCY FOR PROTECTION OF GENDER EQUALITY

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Abstract

A number of recent global issues such as COVID, rise of the Taliban in Afghanistan, inter-state and intra-state conflicts, and gender inequality in Iran show the unprecedented violence against women and other disadvantaged groups of the societies around the globe despite the restless efforts of existing organizations such as the UN Women to protect women's right, and in broader sense, to promote gender equality. The lack of efficiency is partly due to its institutional capacities, e.g. lacking independence, founding treaty, law-making/treaty-making powers, developed institutional structures and enforcement power. This article investigates the shortcomings of the UN Women in fulfilling its targets and some of the major reasons behind it. The authors suggest the UN Women to be transformed to a UN Specialized Agency with wide law-making and treaty-making power as well as the power of on-site inspections and reporting to the UN -more specifically to the Security Council since gender equality is directly connected to the global peace and security.

Keywords: Gender Equality, Law-Making, Treaty-Making, UN Women, UN Specialized Agency.

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I. INTRODUCTION

By joining the United Nation Charter, the members of the United Nations reaffirmed *faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small*¹ and, according the Universal Declaration of Human Rights (UDHR), *all human beings are born free and equal in dignity and rights*². The equal rights of men and women are guaranteed under UDHR's Preamble as well as its Article 16. Moreover, *marriage shall be entered into only with the free and full consent of the intending*

¹ Charter of the United Nations, opened for 24 October 1945, 1 UNTS XVI, (entered into force 31 August 1956), Article 1.

² Universal Declaration of Human Right, opened for signature in 1948, 217 A (III) (entered into force 10 December 1948), Article 1.

spouses.³ The equal rights of men and women are also guaranteed by such other fundamental instruments as the International Covenant on Civil and Political Rights (ICCPR). It stipulates that the States Parties shall *undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights* accordingly.

The United Nations General Assembly (UNGA), in its resolution ‘Transforming our world: the 2030 Agenda for Sustainable Development’⁴ introduces a plan of action for people, planet and prosperity which seeks to strengthen universal peace in larger freedom. Achieving gender equality and empowering all women and girls is one of the 17 goals stipulated in the resolution aiming *inter alia* at ending all forms of discrimination against all women and girls⁵, eliminating all forms of violence against all women and girls in the public and private spheres⁶, and ensuring women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life⁷. However, these targets are unlikely to be achieved within the very short period of eight years which we are still to go. The worsening situation of human rights in Afghanistan since Taliban’s control over great part of the country, such as violating the right to education by banning girls to return to school, violation of the right to work by not allowing women to go to work and impose them to wear *burqa* while appearing in public are just few examples. In its resolution, the UNGA recognized that the COVID pandemic has a disproportionately heavy impact on women.⁸ In its report, the UNICEF confirmed that Women, among other disadvantaged segments, suffer the highest degree of socio-economic marginalization.⁹ As per UNHCR

³ Universal Declaration of Human Right, opened for signature in 1948, 217 A (III) (entered into force 10 December 1948), Article 16.

⁴ UN General Assembly, *Resolutions adopted by the General Assembly on 25 September 2015 (A/RES/70/1)*, 2015.

⁵ *Ibid*, Goal 5, 5.1.

⁶ *Ibid*, Goal 5, 5.2.

⁷ *Ibid*, Goal 5, 5.5.

⁸ UN General Assembly, *Comprehensive and coordinated response to the coronavirus disease (COVID-19) pandemic (A/74/L.92)*, 2022.

⁹ “COVID-19: How to include marginalized and vulnerable people in risk communication and community engagement?” Accessed 17 May 2022, <https://www.cominit.com/africa/content/covid-19-how-include-marginalized-and-vulnerable-people-risk-communication-and-community>.

figures, 82.4 million people worldwide were forcibly displaced, among them some 48% are female.¹⁰

The UNGA, in its resolution in 2021, recognized forms of discrimination and other human rights violations against women and girls in law and in practice in the Islamic Republic of Iran.¹¹ Chapter two addresses some most important global issues related to gender equality and violence against women during COVID pandemic, conflicts and under domestic laws of Islamic states. Chapter three investigated the failures of the UN Women despite its great efforts to achieve its goals. The fourth Chapter suggests transforming the UN Women into a UN specialized agency in order to enjoy more capacity and capability to achieve gender equality goal. Finally, Chapter five brings together the conclusions of this study.

II. GENDER EQUALITY AND MAJOR GLOBAL ISSUES (COVID, ARMED CONFLICTS, BIASED DOMESTIC LAWS)

A. GENDER AND COVID

The early 2020 marks one of the most disastrous situations of our time which took lives of millions and affected the ordinary life in a global scale. Marginalized people become more vulnerable in emergency situations and as an emergency situation, COVID pandemic affected lives of women, the elderly, adolescents, the youth, children, persons with disabilities, indigenous populations, refugees, migrants, and minorities.¹² The situation becomes even more tragic considering that a significant portion of all these segments of society are women and girls.

According to the ‘Spotlight on Gender, COVID-19 and the SDGs’

¹⁰ <https://www.unhcr.org/figures-at-a-glance.html>, (Accessed on 17.05.2022).

¹¹ UN General Assembly, *Resolution adopted by the General Assembly on 16 December 2021 (A/RES/76/178)*, 2022.

¹² “COVID-19: How to include marginalized and vulnerable people in risk communication and community engagement?” Accessed 17 May 2022, <https://www.cominit.com/africa/content/covid-19-how-include-marginalized-and-vulnerable-people-risk-communication-and-community>.

which is a product of UN Women and the Gender and COVID-19 Working Group, “global health emergencies and responses can and often do exacerbate gender inequality and other forms of inequality.”¹³ The Spotlight suggests that women face higher infection risk among frontline workers, biased health management system toward men and women, creation of a higher barrier for women during emergencies, reproductive health services and access to contraception due to problems of supply and demand, a clear gender divide in access to technology and information and increasing violence against women and girls are among the main challenges concerning gender equality.¹⁴

According to a report issued by the UN-Women, the COVID pandemic will push 96 million people into extreme poverty by 2021, 47 millions of whom are women and girls.¹⁵ “Increased maternal mortality, gender-based violence, the burdens of the unpaid care work and unemployment of women, in a context in which many women lack social protection or recourse to support” are also among the impacts observed by the UN ECOSOC in its report ‘Mainstreaming a gender perspective into all policies and programmes in the United Nations system’.¹⁶

B. GENDER AND ARMED CONFLICT

Eliminating ‘all forms of violence against all women and girls in the public and private spheres’ is one of the targets of SDG 5. The UN Security Council *inter alia* in resolution 1325¹⁷ points to the impact of

¹³ Ginette Azcona, et al, “Spotlight on Gender, COVID-19 and the SDGs: Will the pandemic derail hard-won progress on gender equality?” *UN Women* (2020), <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Spotlight-on-gender-COVID-19-and-the-SDGs-en.pdf>.

¹⁴ *Ibid.*

¹⁵ UN-Women, “From insight to action: gender equality in the wake of COVID -19”, 2020, available

at <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/>

2020/gender-equality-in-the-wake-of-covid-19-en.pdf?la=en&vs=5142.

¹⁶ UN Economic and Social Council, *Mainstreaming a gender perspective into all policies and programmers in the United Nation system* (E/2021/52), 2021.

¹⁷ United Nations Security Council, *Resolution 1325 (2000) Adopted by the Security Council at its 4213th meeting, on 31 October 2000* (S/RES/1325), 2000.

armed conflict on women and girls. It further recognized that effective institutional arrangements to guarantee protection and participation of women and girls in the peace process can contribute to the main purpose of the UN- maintenance and promotion of international peace and security. It calls upon the parties to the conflict:

to respect fully international law applicable to the rights and protection of women and girls, especially as civilians, in particular the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Optional Protocol thereto of 1999 and the United Nations Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court.

Protection of women and girls from gender-based violence and all other forms of violence in situations of armed conflict must also be guaranteed under the resolution. The report of the UN Secretary General highlights the role of women in crisis preventing and social movements. Paragraph four reads:

At its core, the women and peace and security agenda is a crisis-prevention agenda. In conflict-affected countries, women's organizations and networks are a lifeline for their communities and at-risk groups. Although the primary responsibility for handling public health emergencies lies with the State, women's groups have demonstrated that they are essential leaders in emergencies and play a key role in maintaining social cohesion and preventing further conflict and instability. They have the community's trust and outreach capacity, which are crucial when managing public health messaging during a pandemic. Unless they are financially supported, such organizations run the risk of halting operations.¹⁸

Yeonju Jung, a former Research Assistant with the SIPRI Peace and Development Programme, while examining the role of women in peace process in the Korean Peninsula, highlights "the presence of strong

¹⁸ UN Security Council, *Women and peace and security* (S/2020/946), 2020.

women's groups already active in a country prior to negotiations is the enabling factor for women's influence during a process."¹⁹

The wars impact women in many ways such as: being victims of direct casualties, displacement, sexual violence during wartime, wartime domestic violence, loss of family, loss of work etc.²⁰ The Russian invasion of Ukraine impacted women, particularly large population of older females due to distinct gendered characteristic of the population of Ukraine.²¹ The rise of Taliban in Afghanistan has destroyed the network of support and, Afghan victims of violence are abandoned, according to Amnesty International.²² Though women are vulnerable targets of violence, they also play significant role in peace-making. Feminist scholars believe that holding significant cultural and spiritual power by women in the society, leads to relatively rare violence by organized groups.²³ Jung regards women participation in the peace process as an efficient tool for implementation of resolution 1325. The UN peacekeeping operations is another platform where women's presence could contribute to implementation of the resolution, however, according to Sofia Sacks Ferrari, a Research Assistant with the SIPRI Peace Operations and Conflict Management Programme, "yet women remain underrepresented at all levels—particularly among troops, which are overwhelmingly the majority of deployed personnel."²⁴

'Rape' during the war is another issue which has been drawn attention of peace and conflict studies scholars. Rape and sexual violence can

¹⁹ "From grassroots to peace talks: Women in the inter-Korean peace process", Yeonju Jung, 4 May 2020, <https://www.sipri.org/commentary/topical-background/2020/grassroots-peace-talks-women-inter-korean-peace-process>.

²⁰ Annick T.R. Wibben and Jennifer Turpin, *Women and War, Encyclopedia of Violence, Peace, & Conflict (Second Edition)*, (2008), 2456-2467.

²¹ UN Women, *Rapid gender analysis of Ukraine: Secondary data review*, 2022.

²² "Afghanistan: Survivors of gender-based violence abandoned following Taliban takeover – new research," Amnesty International, (2021), <https://www.amnesty.org/en/latest/news/2021/12/afghanistan-survivors-of-gender-based-violence-abandoned-following-taliban-takeover-new-research/>

²³ Thomas Clough Daffern, "Peacemaking and Peacebuilding," *Encyclopedia of Violence, Peace, & Conflict (Third Edition)* 1. (2022), 348-368.

²⁴ "Is the United Nations Uniformed Gender Parity Strategy on track to reach its goals?" Sofia Sacks Ferrari, accessed 12 December 2021, <https://www.sipri.org/commentary/topical-background/2019/united-nations-uniformed-gender-parity-strategy-track-reach-its-goals>.

constitute war crimes.²⁵ As Flint wrote “Power relations expressed as patriarchy, generation, ethnicity, and the state make rape as a weapon of war possible”²⁶, this gender-based weapon has been systematically used in South Sudan, former Yugoslavia, Rwanda, Darfur/Sudan, Burma/Myanmar, Jammu and Kashmir.²⁷ Below is story of women in South Sudan who practiced collecting firewood during the conflict:

The women when they go out to get firewood, etc. have to go through several checkpoints where you have the SPLA [Sudan Peoples’ Liberation Army] and in the course of that they are raped continuously. And, the men do not get out of the camp because the men have to make a choice. “If I go out, I get killed. So, I rather send my wife, my daughter or my mother out because the most they can do is rape her. She will come back alive.” So men have to make that difficult decision of either being killed or female members of the family being raped.²⁸

C. BIASED DOMESTIC LAWS

The equal rights of men and women are enshrined in the UN Charter, the Universal Declaration of Human Rights and several other major international instruments as well as the UN Resolutions. The societies under Islamic jurisprudence may well be subject to gender bias and violence against women and girls. Child marriage, biased financial and inheritance rules et cetera are among the major inequalities in Muslim-majority states which pursue *sharia* laws. Below, we bring few examples from two jurisdictions under Islamic laws:

1. Iran

The social situation and legal status of women in Iran has been deteriorating since the

1979 revolution under leadership of Ayatullah Khomeini. Soon after

²⁵ United Nations Security Council, *Resolution 1820 (2008) Adopted by the Security Council at its 5916th meeting on 19 June 2008 (S/RES/1820)*, 2008.

²⁶ Flint, Colin. *Introduction to Geopolitics: Fourth Edition*, (Routledge, 2022).

²⁷ *Ibid.*

²⁸ Bangura, Zainab. “Words of Zainab Hawa Bangura, UN Special Representative on Sexual Violence in Conflict,” in *Introduction to Geopolitics: Fourth Edition*, Colin Flint, (Routledge, 2022).

revolution, Iranian women were forced to use *hijab* while appearing in public and were banned from occupation of certain positions such as serving as judges or becoming singers or playing musical instruments on stage. Discrimination against women are also enshrined in laws. Iranian Civil Code stipulates *marriage before puberty by the permission of the Guardian and on condition of taking into consideration the ward's interest is proper*.²⁹ Therefore, the child marriage is explicitly authorized under Iranian law. According to the same Code, *the marriage of a girl who has not married previously is dependent on the permission of her father or her paternal grandfather even if she has reached the full age of majority*.³⁰ The inheritance laws of Iran are biased against women and girls too. For example, according to Civil Code, *If there are several children, some being sons and some daughters each son takes twice as much as each daughter*.³¹ And, the husband shall be the head of the family as an exclusive right.³² In its resolution in December 2021, the UN General Assembly:

“Strongly urges the Islamic Republic of Iran to eliminate, in law and in practice, all forms of discrimination and other human rights violations against women and girls, to take measures to ensure protection for women and girls against violence and their equal protection and access to justice, including by addressing gaps, adopting and implementing the January 2021 draft bill on protecting women against violence to address the concerning increase of child, early and forced marriage, as recommended by the Committee on the Rights of the Child, to promote, support and enable women's participation in political and other decision-making processes, and, while recognizing the high enrolment of women in all levels of education in the Islamic Republic of Iran, to lift restrictions on women's equal access to free, equitable primary and secondary education and women's free, equal and meaningful participation in the labour market and in all aspects of economic, cultural, social and political life, including participation in and attendance at sporting events, and expresses concern that a bill on youth and protection of the family currently in Parliament would, in its current form, undermine the rights of women and girls to the enjoyment of the highest attainable standard of physical and mental

²⁹ Iran, *The Civil Code of the Islamic Republic of Iran*, Article 1041.

³⁰ *Ibid*, Article 1042.

³¹ *Ibid*, Article 907.

³² Iran, *The Civil Code of the Islamic Republic of Iran*, Article 1105.

health;”³³

Narges Mohammadi is an example of torture case of Iranian detained women. Narges, an Iranian tortured human rights defender, was denied medication according to Amnesty International. Nasrin Sotoudeh, an Iranian lawyer and human rights activist and prisoner of conscience, has been denied medical procedure too.³⁴

The UN Human Rights Council has appointed the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran mandated with submitting report on the implementation of the mandate to the Human Rights Council.³⁵ So far, the Islamic Republic of Iran has not authorized Mr Javaid Rehman’s visit to Iran to implement his duties.

2. Aceh (Indonesia)

The fall of Soeharto’s authoritarian and highly centralized regime led to widespread demands for decentralization, or regional autonomy (*otonomi daerah*). The Article 18 paragraph (5) of the Constitution grants the regional government rights to exercise wide-ranging autonomy, except in the matters that national legislation reserves for the Central Government under the Article 10 Law Number 23/2014 on Governing Regions, namely: foreign affairs, defence, security, justice, monetary and fiscal, and religion.³⁶

Article 1 Paragraph 1 of the Indonesia’s Constitution states that Republic of Indonesia is a unitary state. In this respect, the laws are applicable in all provinces in Indonesia. However, Indonesia has two (2) provinces having special autonomous region status, namely the western-most province, Aceh and its eastern-most, Papua. Law Number 44/1999 gave special autonomous status to Aceh. One of

³³ UN General Assembly, *Resolution adopted by the General Assembly on 16 December 2021 (A/RES/76/178)*, 2022.

³⁴ Amnesty International, “Iran: Further information: Jailed lawyer’s health at serious risk: Nasrin Sotoudeh,” (2020), <https://www.amnesty.org/en/documents/mde13/3118/2020/en/>.

³⁵ UN HRC, *Situation of human rights in the Islamic Republic of Iran (A/HRC/RES/37/30)*, 2018.

³⁶ Simon Butt and Tim Lindsey, *Indonesian Law*, (Oxford University Press, 2018), 19.

the foundation of this provision was the unique religious life of the Acehnese community, including the important role of *ulamas* (*Muslim religious scholars*) as *highly respected community leaders*. In the area of religious affairs, Article 4 paragraph (1) of the Law authorises Aceh to implement Sharia Law.³⁷

Following the promulgation of Law Number 18/2001 granting Aceh special autonomy status and Sharia law also come into formal effect in Aceh.³⁸

Being a unitarian state, Indonesia imposes National laws applicable to all provinces in Indonesia. However, since 2006 following the peace deal entered by the Government of Indonesia and Free Aceh Movement and the promulgation of Law Number 11/2006 on Governing of Aceh Nanggroe Aceh Darussalam (NAD), known as Aceh has its own regional regulations called *Qanun*. The Aceh Province, its Municipality and District ever since have been applying the Islamic/*sharia* law, unlike the rest of other provinces in Indonesia which follow the national law.

The regional government passes regulations in provincial and district or sub district levels called Qanun, derived from Arabic. Despite having autonomous status, regional level regulations shall not contradict with the national or higher laws.

Following the signing of Memorandum of Understanding between the Indonesian Government and the Free Aceh Movement, the Government passed Law Number 11/2006 on Governing Aceh (LoGA) on 11 July 2006. In line with the Governing Regions Law, the Article 7 paragraph (2) reconfirms the authority of regional government.

Shariah Law justice system has been implemented in Aceh since colonial period as early as the sixteenth century,³⁹ but only recognized by the National Government through Law Number 7/1989 on Religious Judicial where Shariah Courts in Aceh renamed as Religious Court. Later in 2001 the Religious Court was renamed as Mahkamah Sharia or Sharia Court and the name remains the same even after Law on

³⁷ Government of Indonesia and United Nations Development Programme, *Access to Justice: Making the Transition to Sustainable Peace and Development in Aceh*, 2007, 46

³⁸ *Ibid*, 42.

³⁹ ³¹ *Ibid*, 46.

Governing in Aceh came into existence. So, Aceh has become the only province in Indonesia having Shariah law implemented. Furthermore, the Provincial Parliament passed *Qanun* Number 10/2002 on Shariah law with jurisdiction over a few areas, such as *ahwal al syakhsbiyah* (religious court procedures), *mu'amalah* (civil law) and *jinayat* (criminal law).⁴⁰

The *Qanun* does not specify the types of offences. It can be categorized as 3 forms, namely *Ahwal al-Syakhshiyah* which covers matters regulated in Article 29 Law Number 7 of Year 1989 concerning Religious Judicature, except for religious donations (*wakaf*), gifts (*hibah*) and alms (*sadaqah*); *Mu'amalah* - covering laws on goods and bonds like buying and selling, as well as debts, capital (*qiradh*), agricultural production sharing (*mukhabarah*), proxy (*wakilah*), consortium (*syirkah*), loans (*ariyah*), wealth confiscation (*hajru*), land right (*syuf'ah*) pawning (*rahnun*), land opening (ihyaul mawat), mining (*ma'din*), weavings (*luqathah*), banking, leasing (*ijarah*), labour, wealth from robbery, donations (*wakaf*), gifts (*hibah*), alms (*sadaqah*) and presents and lastly *Jinayah* which covers three categories of crimes: (i) *Hudud* crimes carry specified sentences to be found in the Qur'an, and include adultery, false accusation or libel (*qadhaf*), stealing, robbing, drinking alcohol (*khamar*) and narcotics, psychotropic substances and other addictive (*napza*), apostasy, revolt (*bughat*); (ii) *Qishas/ diat* crimes cover murder and mistreatment, and are punishable through retaliation or compensation; (iii) *Ta'zir* crimes include gambling, indecent acts, and not carrying out obligated prayers or the fast during Ramadhan. Nevertheless, the sentences are not specified and left to the discretion of the Judges at *Mahkamah Shariah*.⁴¹ Many of criminal offences, especially with women as victims, like sexual offences and rape failed to provide legal protection and justice to women.⁴²

Qanun Jinayat was initially intended as a correction to the limitations of Indonesia's national criminal law but later turned out to have a substantive weakness in providing essential services to guarantee legal

⁴⁰ *Ibid*, 76.

⁴¹ *Ibid*, 47.

⁴² Yogi Febriandi et al, "Seeking Justice through Qanun Jinayat: The Narratives of Female Victims of Sexual Violence in Aceh, Indonesia," *Qudus International Journal of Islamic Studies (QIJIS)*, Vol. 9 No. 1, (2021), 127.

protection for women who are dealing with the law.⁴³

As a product of legal pluralism, *Qanun Jinayat* provides many problems related to the protection of female victims of sexual violence and rape. Therefore, *Qanun Jinayat* which was initially intended as a correction to the limitations of the Indonesia's national criminal law, but later turned out to have a substantive weakness in providing essential services to guarantee legal protection for women who are dealing with the law.

II. THE UN WOMEN, ITS NATURE AND SOME SHORTCOMINGS

The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) was established in accordance with a UN General Assembly resolution in 2010 “to improve the coordination and coherence of gender equality and empowerment of women, and promote more effective gender mainstreaming across the UN system.”⁴⁴ The UN Women is an entity with no founding treaty and legal personality, and it is not qualified to be entitled as an international organization, according to the definition provided by the International Law Commission (ILC).⁴⁵ Instead, it is governed by a multi-tiered intergovernmental governance structure⁴⁶ and shall be headed by an Under-Secretary-General, to be appointed by the UN Secretary-General.⁴⁷ Therefore, on one hand the UN Women does not enjoy the level of independence in decision-making and personality as we perceive in international organizations and lacks enough powers to independently tackle the inequalities timely and independently and, on the other hand the violence against

⁴³ *Ibid.*

⁴⁴ Wagner B. Xu and Maziyar Shokrani, *Reading and Writing for International Organizations* (Zhejiang, China: Zhejiang University Press) (Expected publication in June 2022).

⁴⁵ ILC, *Draft articles on the responsibility of international organisations*, 2011, Article 2(a).

⁴⁶ UN General Assembly, *Resolution adopted by the General Assembly on 2 July 2010* (A/RES/64/289), 2010, 57.

⁴⁷ UN General Assembly, *Resolution adopted by the General Assembly on 2 July 2010* (A/RES/64/289), 2010, 69.

women has worsened due to such global issues as COVID.⁴⁸

No doubt there has been progress since establishment of the UN and especially after the Fourth World Conference on Women and adoption of Beijing Declaration but overall picture is unclear. “There has been progress over the last decades: More girls are going to school, fewer girls are forced into early marriage, more women are serving in parliament and positions of leadership, and laws are being reformed to advance gender equality’, according to the UN.⁴⁹

Today, the UN Women, despite its great contributions, faces critics as being too focused on lobbying with governments, repeating lengthy reports, not being enough practical etcetera according to a report published by Guardian in 2015.⁵⁰ However, from the standpoint of the law of international organization, the shortcomings of the UN Women lie on the lack of institutional structures and powers. UN Women may not engage in law-making and being a platform for adoption of treaties like other international organizations such as the International Labour Organization (ILO). As a UN entity, it lacks a founding treaty, and consequently it is deprived of legal personality and sufficient powers to make –and possibly- enforce laws.

Unlike the UN entities, the UN Specialized Agencies have the mandate for global norms and standard settings.⁵¹ The ILO, a UN specialized agency, tasked with *inter alia* improving the labour conditions, has the power to put forward adoption of conventions and

⁴⁸ UN Women, “Violence against women has worsened due to COVID-19 pandemic,” (2021), <https://www.un.org/africarenewal/magazine/december-2021/violence-against-women-has-worsened-due-covid-19-pandemic>; Gillian Trigg, “Statement attributed to the UNHCR Assistant High Commissioner for Protection” (2021), <https://reliefweb.int/report/world/covid-19-and-climate-crisis-worsen-inequalities-displaced-women-and-girls>.

⁴⁹ United Nations, “Goal 5: Achieve gender equality and empower all women and girls,” <https://www.un.org/sustainabledevelopment/gender-equality/>.

⁵⁰ Harriet Sherwood, Anu Anand, et. al., “What has the United Nations ever done for women?” *The Guardian*, 10 September 2015, accessed June 2022, <https://www.theguardian.com/world/2015/sep/10/un-womens-rights-feminism-equality>.

⁵¹ Thomas Fues, et. al., “The Role of the United Nations in the global development architecture: Steps towards greater coherence,” Paper presented to the Annual Meeting 2007 of the Academic Council on the United Nations System (ACUNS), June 6-8, 2007, New York City.

recommendations by its member States. According to its Constitution,

“When the Conference has decided on the adoption of proposals with regard to an item on the agenda, it will rest with the Conference to determine whether these proposals should take the form: (a) of an international Convention, or (b) of a Recommendation to meet circumstances where the subject, or aspect of it, dealt with is not considered suitable or appropriate at that time for a Convention.”⁵²

By adopting conventions, the ILO contributes to the law-making in domestic level by encouraging the member States to ratify them. Both workers and women have been marginalized segments of societies. The women’s rights, like labour’s rights, are fragile and subject to violations.

Therefore, an independent international organization with affiliation to the UN such as a specialized agency is needed for elimination of gender equality. In the next Chapter, we will explain the main characteristics of the UN Specialized Agencies and discuss why is it recommended to transform the UN Women to a specialized agency.

III.WHY A UN SPECIALIZED AGENCY FOR PROTECTION OF GENDER EQUALITY?

Specialized Agencies are legally independent international organizations which are established by their own founding treaties and have their own rules, membership system, organs and financial resources. “The Specialized Agencies were brought into relationship with the UN through agreements in accordance to Article 57 and 63 of the United Nations Charter.”⁵³ The Specialized Agencies are qualified as international organizations based on the ICL definition and must possess all elements of organizationhood.

⁵² Constitution of the International Labour Organisation, 1 April 1919, entered into force 28 June 1919, Article 19.

⁵³ Wagner B. Xu and Maziyar Shokrani, *Reading and Writing for International Organizations* (Zhejiang, China: Zhejiang University Press) (Expected publication in June 2022).

A. QUALIFICATION AS AN INTERNATIONAL ORGANIZATION

The ILC defines a treaty as “an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities”.⁵⁴ In general, a founding treaty must contain general rules and norms relating to the competences and powers of various organs of an international organization.⁵⁵

Founding treaties must possess the criteria as mentioned in the definition provided by Vienna Convention on the Law of Treaties (VCLT). Accordingly, *‘treaty’ means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.*⁵⁶

Therefore, treaties must be concluded between States; however, in practice, entities other than States may become parties to the treaties in accordance with the treaty provisions too. There are international organizations such as World Trade Organization (WTO)⁵⁷ and the World Meteorological Organization (WMO)⁵⁸ that admit non-states as members. The meetings of the ILO General Conference, as an organization with a unique decision-making mechanism, shall be composed of four representatives of each of the Members: two shall be Government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the member States⁵⁹ which is called

⁵⁴ ILC, *Draft articles on the responsibility of international organisations*, 2011, Article 2(a).

⁵⁵ Pierre, Klein. “International Organizations or Institutions, Internal Law and Rules,” *Max Planck Encyclopedias of International Law*, (2019).

⁵⁶ Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980), Article 2(a).

⁵⁷ Marrakesh Agreement Establishing the World Trade Organisation, (opened for signature 15 April 1994), Article 12.

⁵⁸ Convention of the World Meteorological Organization, opened for signature on 11 October 1947 (entered into force 23 March 1950), Article 3.

⁵⁹ Constitution of the International Labour Organisation, 1 April 1919, entered into force 28 June 1919, Article 3.

‘tripartite system’.⁶⁰ The tripartite system allows the civil society to actively participate in decision-making of an organization which aims at protection and promotion of the welfare of workpeople.

A specialized agency for women may model on other Specialized Agencies such as ILO and WMO, and adopt a decision-making body to enable women NGOs or other bodies within the civil society to participate. It must be also guaranteed that those representatives are real representatives of the civil society, and not simple the representatives of the government under cover of the civil society. Another necessary criteria of the founding treaties is that to be governed by international law *i.e.* to create rights and obligations under international law.⁶¹ Therefore, the member States of an international organization enjoy rights and bear responsibilities and obligations under international law and in accordance with their founding treaty and other basic documents.

B. CONSEQUENCES OF QUALIFICATION AS A SPECIALIZED AGENCY

First, it must have an organ with distinctive will which does not represent the will of member States⁶² which can be in the form of a Secretariat. This organ can play the leadership role in the organization rather than being instructed by more powerful members. Second, the international legal personality will confer the right to contract and to bring/receive claims in a court. Therefore, the organization will be able to employ its staff independently. Third, the organization will enjoy sufficient powers to achieve its goals and fulfill its functions according to prevailing doctrine of ‘implied powers’. While grafting the founding treaty of a specialized agency for women, the drafters may also leave a room for possible empowerment of the organization with Seyersted’s doctrine of ‘inherent powers’.

As such, to the extent that acts of the organization are not prohibited

⁶⁰ Ian Hurd, *International Organizations: Politics, Law, Practice*, (Cambridge, 2021)

⁶¹ Anthony Aust, *Modern Treaty Law and Practice* (Cambridge, 2007), 20.

⁶² Klabbers, Jan. *An Introduction to International Organizations Law. 3rd ed.* (Cambridge: Cambridge University Press, 2015), 12.

in the founding treaty, they must be deemed legally valid.⁶³ This will let the organization to play a greater role in global governance, independently of its member States. The international organizations, in accordance to their funding treaties and international law, adopt legal instruments to be able to take actions. These instruments are adopted in various forms through decision-making process of every organization.

Some organizations are empowered to make laws to be implemented within territories of member States. International Civil Aviation Organization (ICAO), World Health Organization (WHO), International Atomic Energy Agency (IAEA), for example, make laws and regulations to be implemented by member States.⁶⁴ The organization can also be used as a platform to negotiate drafting treaties to which they may become parties too which altered modern multilateral treaty-making.⁶⁵

A specialized agency for women will have the power to actively engage in process of law-making and treaty-making as a way to change the States' behavior with highest level of efficiency. As a specialized agency, and if authorized by the UN General Assembly, it has the power to request the International Court of Justice to render an advisory opinion on legal questions according to the UN Charter.⁶⁶ Decisions of the ICJ Advisory opinions carry the highest authority among other judicial decisions as subsidiary sources of international law.⁶⁷ In order to implement the decisions of a specialized agency for women, active regional centers should be established especially in those regions with highest level of gender inequality and gender-based violence. These centers will provide technical and training support for implementation of the gender-related treaties and other instruments. It will also engage in educational activities. The mandate and activities of such centers can be modeled on the UNODA regional centers such as the UNRCPD.

An effective and impartial national reporting system shall also be

⁶³ *Ibid*, 64.

⁶⁴ *Ibid*.

⁶⁵ Jose Alvarez, *International Organizations as Law-Makers*, (Oxford University Press, 2005), 273.

⁶⁶ Charter of the United Nations, opened for 24 October 1945, 1 UNTS XVI, (entered into force 31 August 1956), Article 96.

⁶⁷ Hugh Thirlway. *The Sources of International Law. 2nd ed.* (Oxford: Oxford University Press, 2019), 134.

developed to receive complaints from society grassroots; and finally, a strong enforcement system such as resort to the UN Security Council decision making and use of force under Chapter VII of the UN Charter shall be introduced to effectively influence the behavior of States toward violations. After all, gender equality is directly connected to the global peace and security. Shall the world watch severe violations of gender equality and violence against Afghan women and girls, and stay calm?

IV. CONCLUSION

Though gender equality is guaranteed by major international documents such as the UN Charter and the Universal Declaration of Human Rights, women are still fighting for their rights. Current global issues show that there is a long way to tread despite running short time in achievement of 2030 Goals. COVID, rise of Taliban in Afghanistan, Russian invasion of Ukraine and worsening gender issues in Islamic jurisdictions such as Iran are alarming events to re-consider and re-structure protection of women. Effective institutional arrangements to guarantee protection and participation of women and girls in the peace process can contribute to the main purpose of the UN- maintenance and promotion of international peace and security Iranian women's voice against gender inequality and violence against them must be heard.

Since Indonesia being the most populous Moslem nation in the world but not an Islamic country, unlike Iran, Afghanistan and Pakistan, *Sharia* Law in is strictly implemented only in Aceh and not in the rest of the Republic; and despite many of criminal offences, especially with women as victims, like sexual offences and rape, the criminal justice system failed to provide legal protection and justice to women. The deterioration of women's rights and gender equality is partly due to absence of an international organization with independent personality and wide range of institutional powers specialized with promotion of gender equality.

The UN Women- as it is today lacks sufficient powers and independence to fully pursue its goals. Establishment of a UN specialized agency with juridical personality and law-making/ treaty-making powers as well as the power to on-site inspections and reporting

to the UN organs including to the Security Council is suggested by the authors. The gender equality is directly connected to the global peace and security, therefore, the enforcement mechanism of the UN Security Council could be invoked to secure women from violence and guarantee gender equality.

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