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**WOMEN, PEACE AND SECURITY AND
INTERNATIONAL LAW, CHRISTINE CHINKIN,
CAMBRIDGE UNIVERSITY PRESS, 2022**

Dr. Akhila Basalalli*

The social neutrality and gender disregard of mainstream international law have motivated the pioneering works of Christine Chinkin in addressing the gender disparity, for instance, the book 'The Boundaries of International Law: A Feminist Analysis' co-authored with Hilary Charlesworth. The book 'Women, Peace and Security and International Law' by Chinkin is an updated and detailed version of the lecture delivered in the Lauterpacht Centre for International Law in October 2016 as a part of the Lauterpacht lecture series. Subsequently published by Cambridge Publishers in 2022, the book is divided into five parts i.e., Women, Peace and Security Agenda, Women, Peace and Security in International Law, Women and Peace, Women and Security and conclusion to study the meaning and implications of the Security Council Resolution 1325 on Women, Peace and Security (2000) against the realities of women's lives. Chinkin ventures into the novelty of the conjunction of the word 'women' with 'peace and security' as the terms often associated with women are equality, development and peace.

The first chapter/part outlines the substantive and institutional content of the Women, Peace and Security resolutions, (hereafter, WPS resolutions). It provides the timeline of resolutions adopted starting from the efforts of the International Congress of Women, which in 1915, amidst World War I discussed the horror of war and importance of peace, to many other

* Assistant Professor, CMR University School of Legal Studies, Bangalore.

historical developments that facilitated the path towards the adoption of WPS Resolution 1325 of 2000. The First World Conference on Women in Mexico in 1975 marked the UN's International Women's Year and had the agenda of women's participation in the promotion of world peace. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) that came four years later intensified the linkage between women with peace and security associating them with socio-economic justice in its very preamble despite not having any specific provision directly mentioning the link. Subsequently, the author draws attention to the World Conference on Human Rights 1993 where the violation of women during armed conflicts were treated as violation of fundamental principles of international human rights as well as international humanitarian law. The post-war war in former Yugoslavia, Somalia, Haiti, Rwanda and others resulted in the adoption of 'Women and Armed Conflict' as a critical area of concern at the IV World Conference on Women in Beijing in 1995.

Despite the WPS 1325 of 2000 being a pivotal moment for the human rights-based approach to security, the book identifies that there was a consistent effort by the Security Council in addressing the violence against women and children in armed conflict through a series of resolutions and tribunals. The three substantive themes of Resolution 1325 are gender balance, gender mainstreaming and ending perpetual impunity. Ensuring that women's representation is maximized and enhancing the role and contribution of women is a supposed way to attain gender balance while taking into account the special needs of women and girls in post-conflict processes justified the other theme. The author further goes on to study the subsequent resolutions which are 1820 (2008), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013) and 2467 (2019) to understand if they have

complimented or detract from the 1325 Resolution. Considering the resolutions together, the book identifies two sets of four substantive pillars relating to women in armed conflict that comprise the WPS agenda: women's participation and representation; prevention of sexual violence in conflict and prevention of conflict; protection against sexual violence in conflict; and relief and recovery. The other set of four pillars is gender-based violence, access to decision-making; peacekeeping operations; and disarmament, demobilization and reintegration (DDR). The book argues that such categorizations are not to be strictly followed considering the overlap and inconclusive demarcation.

The WPS also proposes institutional measures that are directed at states, UN agencies, donors and civil society. It also includes the creation of new mechanisms especially, the Secretary-General's Special Representative (SRSG) on Conflict-related Sexual Violence to bring coherence and coordination among the UN agencies. The SRSG reports to the Security Council annually which in turn explores the possibility of sanctions to those who perpetuate and direct sexual violence. The Security Council has its own practice with a set-up of Informal Expert Group on WPS with UN Women as the Secretariat.

The book critically evaluates the WPS as a peace agenda where peace is 'absent'. In other words, there is no consideration of what peace might or could mean for women or even mention of some of the main peace concerns of women. The book directs towards the Global Study report of 2015 that gave a clear message from women around the world that the militarization process has to stop. The report further argues that despite WPS being a human rights agenda, it has very limited reference to women's human rights and indifference towards economic, social and cultural rights. The impact of the neoliberal economic agenda on the armed

conflicts and violence against women was not addressed. Further, the book points out that understanding ‘women’ is not problematised but is understood through its gender binary of male and female resulting in the following consequences

- (a) dismissal of historic trajectories of gender;
- (b) non-coherency in the policy of gender;
- (c) exclusion of the realities of the boys and men who have been the victims of sexual violence during an armed conflict;
- (d) no explicit acknowledgement of other gender identities (LGBTQI); and
- (e) disregard the multiple and intersecting discriminations.

After two decades of the 1325 resolution, it is however argued that the need is not for a multiplicity of resolution or change of language or specificity of content but the implementation of them and resistance towards their weakening.

The second chapter, ‘Women, Peace and Security in International Law’ argues that the language of the WPS is not international law primarily but that of international relations, good governance and development. It further reasons that since the 1325 resolution does not adhere to the treaty form, it nevertheless is relevant to examine the binding nature of the Security Council resolutions and their customary normativity. Further, by not adopting the resolution under Article 25 of the Charter, there are challenges regarding its binding nature. It is fuelled by the ICJ decisions in Namibia (1971) and Kosovo (2010) that guide the language and intention of the resolution. The intention of the WPS however, is *per se* non-obligatory in nature but it urges commitment from the state parties. The book further addresses a pertinent question if any aspects of WPS that do not fall within any existing regimes of international law have evolved

or are evolving into customary international law. The book further addresses the question if the WPS has evolved into the WPS law similar to UDHR since the Security Council is silent about the customary international law nature of the resolution. With the decision of the *North Sea Continental Shelf* case¹ The Court explained that the non-state parties are bound by the norms of a treaty if the treaty can declare that a norm is the customary principle or being crystalised into a customary principle. The chapter points out two distinct possibilities

- (a) resolution may influence state behaviour generating state practice;
- (b) it may provide evidence of *opinio juris*.

The WPS has to prove a consistent state practice and *opinio juris* which are addressed in the next two sections. The book draws attention to the National Action Plans of eighty states that implement the WPS as of August 2020. Such NAPs are indicative of WPS being widespread and representative as the states from global north, global south, conflict-affected countries and the countries with contested legal status. The book makes a significant mention of the fact that the major troop countries such as India, Bangladesh and Jordan and the permanent members of the Security Council Russia and China have also not developed NAPs. There appear two problems concerning NAPs: (a) NAPs are not uniform and consistent, thereby state practice is inconclusive, and; (b) NAPs are not the only potential evidence of state practice. However, despite bolstering by the international and regional organizations, generation of institutional practices, and enthusiasm of the civil society organizations the state practice has to be consistent and uniform coupled with *opinio juris*. The author furthers the argument that when there are a series of resolutions, there is a greater possibility of a gradual evolution of *opinio juris*. The

¹ Germany v Denmark and the Netherlands [1969] ICJ 1

reinforcement of the principles, continuous commitment for full implementation with international and regional organizations, coupled with action plans at regional, national and sub-national levels indicates towards *opinio juris* for a rule of customary international law.

The book further ventures into the enforcement and implementation of WPS by identifying the challenges posed to its full realization. It points out the following aspects such as

- (a) WPS lacks a systematic reporting requirement and only the CEDAW committee produces periodic reports;
- (b) CEDAW is toothless as it can only provide recommendations and not accelerate implementation;
- (c) WPS also lacks dedicated Security Council Committee to evaluate the implementation of the WPS agenda;
- (d) lack of accountability to fully implement the agenda.

There is also a lament in the book if such non-implementation dilutes its claim of attaining the status of customary international law. Despite the aforementioned challenges, the Author continues to determine the legal status and provides a silver lining with a substantial amount of hesitation. She clarifies that the WPS gets crystallised into legally binding norm if,

- (a) WPS resolutions reiterate/ incorporate existing treaty obligations are binding on the state parties to those treaties;
- (b) if principles of WPS are reiterated in the UN Chapter VII country-specific resolutions, in accordance to article 25;
- (c) WPS resolution language is synonymous to the accepted international obligation, and;
- (d) aspects of WPS agenda have been accepted as customary international if they are fundamental human rights, prohibition of rape and sexual violence in armed conflict, prohibition of gender-based and sexual

violence against women in human rights regime, aspects of *jus cogens* and peremptory norms of international law. The chapter ends with an assertion that the entire WPS agenda has not attained legal status with a few grey areas but, nonetheless, offers a Grotian moment in international law by bringing in three features fundamental rights and freedoms of the individual, idea of peace and the tradition of idealism and progress.

After a detailed deliberation on determination of legal status and binding character of WPS in international legal order, the book goes on to discuss the association of aspects like peace and security with women in its third and fourth chapters. The third chapter conceptualises 'peace' that the Security Council aims to attain by resolving disputes either through peaceful means and regulated use of force. It does not limit to the call for increased participation by women in conflict prevention, management and resolution but critically examines the reasons for women's exclusion from peace processes and explores the means towards its rectification emphasising the importance of women as peacebuilders. Beginning with an observation that the concept of peace is both continuously present in and strangely absent from mainstream international law, the chapter gives a brief account of world peace being pursued by formation of international institutions and development of substantial principles. The changing facets of peace and contribution of women from the Hague Peace Conference 1899 to the UN Charter system and Geneva Conventions 1949 with their additional protocols is beautifully captured in the book. The international agencies dedicated to peace like ILO as a part of 'peace package' and UNESCO's pursuit towards a culture of peace are discussed at length. Disarmament as an imperative for peace also finds its place in the chapter. The next section explores the relationship between Human Rights and Peace. The book argues that bringing together human rights and peace is

a challenge as neither the UDHR nor the 1966 Covenants have any explicit right to peace. Also, But for the subtle link between disarmament and equality, the CEDAW too is silent on the aspect of right to peace. Noting the glaring silence in the human rights instruments, the chapter turns towards the international soft law instruments, especially the General Assembly resolutions and particularly the Declaration on the Right to Peace 2017. Despite the dynamic definition and scope for peace that is offered, an explicit disregard is manifested in the Declaration towards- (a) women, their role and contribution for peace; (b) gender-based discrimination; (c) misogyny and patriarchy;(d) CEDAW.

The next section critically claims that the position of peace within the WPS resolution is non-self-standing for two-fold reasons; firstly, peace is not understood in a holistic sense and it is constantly understood in the context of conflict, as opposed to conflict. The next part of the chapter is dedicated to the participation of women in peace-making where the Author asks two important questions(i) What are the reasons for women's exclusion from peace processes? (ii) Why does it matter if women are excluded? Drawing attention to real conflict situations from Afghanistan, South Sudan, Darfur (to name a few), the Author eloquently argues that the meaningful participation of women in peace processes may bring alternative visions of social justice and cohesion than the formal peace instruments. The chapter further notes the importance of women in peacebuilding which is essentially different from the peace process as peacebuilding continues beyond the conclusion of peace instruments. The peacebuilding and reconstruction of the post-conflict society are extremely challenging and the Author strongly urges institutional and international community support in furthering the goal.

The fourth chapter on 'Women and Security', similar to the previous chapter, attempts to locate security and its manifestations in the international legal framework. The first section of the chapter ventures into international conventions and reports to map the aspects concerning international security. The following section examines the concept of security construed in the WPS and its adequacy in providing security to women. It argues that the conceptualization of security is limited to its physical sense largely ignoring the political, economic and social dimensions which thereby has pushed the need to address the insecurities resulting from conflict, social attitudes, gender stereotyping, displacement, collapse of the social support system of women to the periphery. Hence these insecurities and social disruption are not addressed by any specific discipline of international law. The next section draws attention to women's sexual identity being perceived as the centre of their security and existence of a whole paradigm of norms to combat sexual violence. It further details a set of specific means of protection offered by WPS as follows: (a) full and meaningful participation in the decision and policy-making in conflict/ post-conflict period; (b) military order and discipline; (c) accountability of perpetrators through criminal prosecution; (d) subjecting perpetrators to Security Council; and, (e) protection through peace-keeping operations.

The Author emphasises the need for sexual violence and rape particular is not a by-product of conflict but a deliberate tactic. Also, the conceptualization of sexual violence as a single-dimensioned phenomenon and addressing sexual violence as a single package among different genders is highly treacherous. The last section of the chapter poses the question if the women and girls are to be protected from the sexual violence arising out of a conflict or the conflict itself. If the assumption is

considered that gender violence is the corollary of the conflict and women cannot be separated from it, then the war is to be prevented. It also points out the structural drivers of conflict such as militarism and militarization, inequalities and availability of arms. The international legal order in addressing the violence has failed to perceive that (a) gender relations and social constructions have contributed to violence, and; (b) the influence of global inequalities and understanding of feminism on hierarchy and power have a huge bearing.

In the concluding chapter, the book in the first part looks into the engagements of WPS with aspects of international significance. Firstly, the language used in WPS for defining a few important terminologies such as gender-based violence, sexual violence etc., seem to be ambiguous and inconsistent. Secondly, human trafficking is not associated with the conflict situation and is isolated from the WPS agenda making the WPS atomistic. Thirdly, the environment and climate security have also been excluded from the WPS agenda though the displaced women and the women and girls from disaster-prone regions are highly susceptible to gender-based violence. Fourthly, the relevance of humanitarian intervention and responsibility to protect is challenged as it is a neo-liberal agenda and not WPS agenda. Fifthly, the need for an inclusive conceptualization of human security. Finally, the linkages between Sustainable Development Goals and WPS agenda are found through the coordination and legal implication is sceptical. The last portion of the chapter asks a very pertinent question if WPS is a special regime of international law? The preliminary observation the Author makes regarding the legal nature of WPS is that it is framed as a policy agenda but for its association and grounding in the UN Charter and other specific regimes. She furthers the argument made by Sandesh Sivakumar that

international law can be made by non-state actors without the formalities of treaty obligations or customary international law. Therefore, WPS agenda when perceived as a comprehensive and holistic framework, then some resistance and protection against gender-based violence may be expected.

The book is a super-specialised contribution not only to the discipline of feminist legal studies but also to other disciplines such as International Humanitarian Law, human rights, International Criminal Law to name a few. The book however has attached peripheral importance to a few aspects. Firstly, conflict (its causes and circumvention) is nominally discussed with hesitant reference to neoliberal and neo-imperial order which is the root cause. Secondly, the power imbalance and undemocratic structure of the Security Council have always raised contestations against the legitimacy of its resolutions, but the book mostly limits its findings to the ambiguous language, inadequate enforcement/implementation and gender binarism of WPS. Thirdly, and most importantly, the struggles and experiences of women from the global south cannot be shepherded into 'women and girls' as their difficulties are not limited to patriarchy and cultural prescriptions alone, but often coupled with poverty, disease, malnourishment, caste etc. Hence, a set of broad preventive and supportive measures are not rational. Finally, the book recommends meaningful participation of 'women' in decision making and peace building which nevertheless is a feature of deliberative democracy, but a generalised expectation without any detail towards its realization, particularly in view of intersectional minorities and subaltern fails the objective. This work nevertheless has a pioneering and cutting-edge role in voicing the expectations of women and plus genders from international legal order during and after conflict.

Statement of Ownership

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