

Support civil society at the UN Security Council

By Kaavya Asoka

NGOWG (01.07.2020) – <https://bit.ly/3eaCtXg> – Six months into 2020, during what should be a celebratory year for women's civil society marking the 20th anniversary of Resolution 1325 (2000), their voices are barely heard at the UN Security Council. Why?

Since 1 January 2020, the Council has held 53 formal meetings and 64 open VTCs during which 21 civil society briefers have delivered statements, 11 of whom were women. This represents a 38.9% decrease compared to 2019.

The current limitations facing the Security Council as it conducts its work virtually undoubtedly pose challenges to civil society participation. However, in the more than three months since the Council began working remotely, it has become clear that these are not merely technical challenges but a lack of political will – a deprioritization of the voices of independent civil society despite Council member's claims of women's critical role in ensuring peace and security.

The NGO Working Group on Women, Peace and Security (NGOWG) has nominated 18 civil society representatives under all six presidencies to brief the Council on 12 different agenda items, pursuant to the Security Council's commitment to invite women civil society representatives to brief during country-

specific meetings under Resolution 2242 (2015).

Warnings from civil society about exclusion

On April 18, along with 30 other human rights, humanitarian, development and women's rights organizations, we wrote to the President of the Security Council to raise concerns around the transparency of the work of the Security Council and obstacles to the effective participation of civil society due to changes to its working methods under the COVID-19 pandemic. On May 11, we followed up with supportive Council members to continue to raise the alarm regarding what we saw as a continuing pattern of exclusion. In parallel, other civil society organizations have raised similar concerns around barriers to inclusive and meaningful engagement of civil society as well as risks of intimidation and reprisals in the context of other virtual UN meetings, including the High-Level Political Forum and the Human Rights Council.

However, despite the repeated warnings issued by dozens of organizations from around the world, the pattern of exclusion continues. This trend must be urgently reversed, lest we lose the gains made over the last four years.

In response to this downward trend, since early April, we have continued to facilitate informal briefings between women's civil society representatives and Security Council members on Colombia, Afghanistan, the Democratic Republic of the Congo, Iraq, Yemen, Mali, the Central African Republic and South Sudan. With our support, Council members have heard from 14 women with expertise on nine different countries over the

course of the last two months.

However, we are concerned that these informal channels will become a replacement for civil society participation in the formal work of the Security Council. As we have repeatedly raised with Council members: women civil society representatives must not be relegated to only informal spaces, where they will not be able to share their perspectives with the full Council membership. This is counter to the Council's own commitments as laid out in Resolution 2242 (2015).

The Security Council must live up to its own promises

Over the last 19 years, the Security Council has reinforced, acknowledged and highlighted the role of civil society over 500 times, calling for Member States and the UN to work with civil society in conflict prevention efforts, peacebuilding, provision of humanitarian assistance and peace processes[1] and has, on multiple occasions, recognized the role of civil society, particularly women's groups, as crucial interlocutors in conflict situations.

Since the adoption of Resolution 2242 (2015), the number and diversity of women civil society briefers at the UN Security Council has increased; from nine women in 2016 to 40 in 2019. These briefers bring a wealth of expertise and experience to the Security Council, enriching its discussions by highlighting marginalized perspectives and raising issues that would otherwise be overlooked in favor of political considerations. The importance of these briefings, however, goes far beyond numbers.

Issues related to women, peace and security are less likely to be raised if they aren't raised first by a civil society briefer.[2] Briefings by civil society leaders expand the understanding of policymakers related to the role of women's organizations in mediating and negotiating local disputes or advocating on behalf of their communities in parallel to formal peace processes. The tendency of the international community to focus largely on high-level, formal processes is detrimental to a deeper understanding of the complexity of crisis situations and, importantly, the central role of women peacebuilders, human rights defenders and women's civil society organizations on the frontlines providing essential services and resolving conflicts. This means that without these briefings, the critical perspectives of individuals and communities who are directly affected by the Council's decision-making are not being heard, nor are Council members making these decisions with a full picture of the situation on the ground.

Civil society can often be more effective than international actors in settling local disputes or providing services such as humanitarian and development assistance – these are, after all, their own communities, and they have valuable insight into what drives local conflicts as well as the best solutions. Yemeni activists, for example, have recently highlighted that the Mothers of Abductees Association, who were excluded from the Stockholm peace talks, have negotiated the release of more than 940 arbitrarily detained persons – meanwhile, there has been no progress through the UN-led process to date. The Security Council only stands to benefit from hearing these perspectives – and learning from and supporting such strategies – when civil society contributes to its discussions. This is also why we have strongly advocated for women-led society to be actively consulted and included in

shaping responses to COVID-19 and emphasized the importance of women's leadership in designing and implementing pandemic responses.

Civil society briefers take risks to share their perspectives in public fora – it is therefore essential that they are heard at the highest levels, and that their recommendations are acted upon. As an organization that has supported 47 briefers in Security Council meetings and open debates since 2009, we are acutely aware of the risks that civil society take when they criticize their governments or parties to conflict and challenge social and gender norms. They work in dangerous contexts, relentlessly undertaking courageous work to serve their communities – defending human rights, delivering life-saving services to survivors of gender-based violence, advocating for the protection of women's rights in law and practice, and undertaking direct negotiations with armed actors on the local level, to name but a few. In 2019 alone, at least three civil society briefers experienced a backlash following their briefings to the Security Council as a direct result of raising issues related to attacks on civil society, enforced disappearances, gender-based violence and systematic exclusion of women from public and political processes. Each brifer was harassed via social media, and one brifer was the subject of a formal letter of complaint by their government to the President of the Security Council. There are, of course, many others.

Civil society representatives brief the UN Security Council in the hope that the Council will not simply listen to them but hear what they have to say. But if their recommendations are not acted upon, the risks they face are all for nothing.

Concerns are now deepening among civil society that the current deprioritization of civil society access and participation will be exploited by Security Council members that have historically been hostile to their participation in the first place upon returning to formal, in-person meetings. Supportive Council members must act now to ensure that civil society is heard and that their concerns are reflected in Council discussions. Security Council members must elevate their voices, their work and their legitimacy, and lay the important groundwork for civil society, human rights defenders and peacebuilders to be recognized and valued, to protect civic space, and to prevent attacks and reprisals rather than responding to them after they have taken place.

We therefore urge the Security Council to prioritize the following:

- In line with Resolution 2242 (2015), ensure women civil society briefers are invited to brief the Security Council during country-specific meetings, including during open VTCs, and not limited to briefing only during thematic open debates, informal briefings or side events.
- Maintain the foundational principle of independence by ensuring that civil society briefers are selected and supported by civil society organizations, and not only hand-picked by Security Council members.
- Ensure that the recommendations put forth by civil society briefers are acted upon in all outcome documents

and statements delivered by Security Council members, and track and follow implementation of these recommendations as called for by the UN Secretary-General in 2019 as one of six immediate actions to be taken by Security Council members.

As a coalition dedicated to gender equality and women's human rights, the voices of grassroots women's civil society are at the heart of the NGOWG's work; they should be at the center of the Security Council's work as well. In a year that was meant to resonate with the voices of women – 40 years since the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 25 years since the adoption of the Beijing Declaration and Platform for Action, and 20 years since the adoption of Security Council Resolution 1325 (2000) – the Security Council can and should do better. If not now, when?

UKRAINE: Ukraine's legal cases against Russia in international courts

By Gregorio Baggiani

Eurasia Daily Monitor (01.03.2017) – <http://bit.ly/2lWCPJl> – Ukraine has just concluded its month-long role as rotating president of the United Nations Security Council (UNSC) during February 2017. Kyiv has specifically pledged to use this high-level international forum to confront Moscow for its aggression and to seek reimbursement for the damages Ukraine

has incurred following Russia's forced annexation of Crimea and subsequent war in Donbas (Ukraineun.org, accessed March 1). Indeed, the question of how to legally pursue damages using international law and multinational courts has been gaining momentum recently, as Ukraine prepares for its case to be heard before the UN International Court of Justice, in The Hague (see below).

In October 2016, Ukrainian energy giant Naftohaz and six of its oil and natural gas subsidiaries officially filed an arbitration against Russian authorities, who seized the companies' assets after Moscow illegally occupied Crimea in March 2014. The Ukrainian firms heretofore operating on the Crimean peninsula never received any material compensation from Moscow. The damages are estimated at \$2.6 billion (Naftogaz.com, October 19, 2016). Naftogaz, in particular, lost 15 oil and gas field-connected facilities in Crimea and offshore, 3 potential oil and gas extraction areas, the underground storage facility in Glebovskoe, over 1,200 kilometers of main gas pipelines, 43 gas distribution stations, 29 extraction facilities, and several other assets (Zerkalo Nedeli, October 19, 2016; see EDM, April 24, 2014). According to the Ukrainian Ministry of Foreign Affairs, six lawsuits have been initiated against the Russian Federation regarding the energy sector (Mfa.gov.ua, accessed February 28). The lawsuits were filed based on a clause in the Ukrainian-Russian intergovernmental agreement on the encouragement and mutual protection of investments, better known as the Russian-Ukrainian Bilateral Investment Treaty (Investmentpolicyhub.unctad.org, November 27, 1998). These lawsuits were initiated by Privatbank, Ukrnafta, Belbek Airport, Stabil, Everest Estate and Oschadbank. Naftogaz and several other companies are also in the process of preparing lawsuits, and they have involved legal advisers from the start so as to avoid early mistakes in forming their legal position (Zerkalo Nedeli, January 27, 2016).

In a January 2016 interview with Zerkalo Nedeli, Ukrainian Deputy Foreign Minister Elena Zerkal explained that while her government continues to strive unrelentingly to protect Ukraine's sovereign rights and the rights of its citizens, Kyiv's actions are limited to some degree by various multilateral and bilateral agreements—including ones binding for both Ukraine and Russia (Zerkalo Nedeli, January 27, 2016). The problem is that there are not many tribunals whose jurisdiction is recognized by both Kyiv and Moscow.

One such prominent institution, however, is the International Court of Justice—the most authoritative judicial body with regard to handling cases involving the sovereign interests of states in the broadest sense. And indeed, as noted above, Ukraine will be pursuing its case against Russia in this forum. The trial will take place on March 6 to 9 (Zerkalo Nedeli, February 1). But complicating matters for Kyiv in this approach is the fact that both Ukraine and Russia have inherited the old Soviet practice of a highly selective recognition of the ICJ. In other words, the two sides are only able to use the ICJ to enforce their rights when both Ukraine and Russia decide at that instance to recognize the jurisdiction of the International Court of Justice. Therefore, when it comes to relying on the authority of this international tribunal, the options Ukraine could take advantage of are actually quite limited.

Earlier this year, Ukraine filed a lawsuit against Russia in the ICJ over the latter's annexation of Crimea and mistreatment of the local Crimean Tatar population (UAWire, January 17). Specifically, Kyiv charged Moscow with contravening several international treaties, including the Convention on the Elimination of All Forms of Racial Discrimination (pertaining, in this case to the harassed Tatar minority in Crimea) (Ukrinform, February 15), the Convention for the Suppression of the Financing of Terrorism (including considering Russia's role in the downing of Malaysian Flight

17 over occupied Donbas in mid-2017), as well as the United Nations Convention on the Law of the Sea (concerning Russian exploitation of Ukrainian fishery stocks, prevention of free navigation to Ukrainian vessels in and around Crimean waters, as well as Russia building infrastructure to which Ukraine has not given its consent). But Moscow has simply replied that everything it had done was in full compliance with international law and refused, therefore, to “legitimize” its actions by arguing its case before the ICJ (Mid.ru, January 17).

Notwithstanding its pending cases in the ICJ, the Ukrainian Ministry of Justice has repeatedly stated, in the past, that the economic losses suffered by the state following the occupation of Crimea will be reimbursed as part of the claim presented by Ukraine against Russia at the European Court of Human Rights (ECHR) (Interfax, February 2). Whether such an approach ultimately proves fruitful remains to be seen—especially considering that in the past two years, Russia has backed away from coming under the jurisdiction of several international tribunals. In December 2015, the State Duma passed a law allowing Russia to overrule decisions made in the ECHR; and last November, Moscow pulled out of the International Criminal Court (ICC) (The Moscow Times, December 15, 2015; Sputnik News, November 16, 2016).

The decision by the Russian authorities to circumvent various international law institutions highlights Moscow’s approach to dealing with Ukrainian efforts to defend its sovereign and commercial interests in international tribunals. Indeed, Ukrainian investors who lost valuable assets in Crimea as a consequence of the occupation have a better chance of winning their case in arbitration under the bilateral agreement on the mutual protection of investments. Still, some mechanisms exist that could compel Russia to implement the decisions of the International Court of Justice in the event of a judgement friendly to Ukraine: A failure to comply with ICJ decisions

would trigger the involvement of the UNSC. And as laid out in the United Nations Charter, Russia, as a member of the Security Council involved in a judicial litigation, would have to abstain from voting. In its role as a non-permanent UNSC member, Ukraine will almost certainly seek to utilize such legal strategies and institutional mechanisms this year.

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