

In-person Roundtable Discussion
**Holding the Taliban Accountable:
Utilising International Laws**

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AISS Report



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The last year of the Taliban de facto regime is proof in itself that the group has not changed despite the assurances it gave to the international community. The Taliban continued to subjugate and oppress women, minorities (both ethnic and religious) have remained under attack, the education of young girls remained restricted and the space for media freedom and civil society has shrunk further. Despite their visible involvement in the abovementioned predicaments, the Taliban haven't been held accountable for their crimes against the people of Afghanistan. For this vision on agenda, the Afghan Institute for Strategic Studies (AISS-UK), relocated to the United Kingdom, organised the second roundtable discussion of its series on "Holding the Taliban Accountable: Utilising International Laws" on 28th October 2022 at Frontline Club, London.



The discussion was divided into two panels. The first session was moderated by Horia Mosadiq, Executive Director of Safety and Risk Mitigation Organization, and human rights activist. Heather Barr, Associate Director of the Women's Rights Division at Human Rights Watch, was the keynote speaker. The other panellists of the session included Dr Ewelina U. Ochab, Human rights advocate, author, and co-founder of the Coalition for Genocide Response, Dr Moheb Mudessir; a doctoral candidate at the School of Law, University of Sussex. The second session was moderated by Dr Homira Rezai, Chairperson of the Hazara Committee, UK. The keynote speaker for the session was Dr Nasir A. Andisha, Ambassador and Permanent Representative of Afghanistan to the UN in Geneva. The other panellists

included Saman Zia-Zarifi, Secretary General, International Commission of Jurists (ICJ); Dr Latifa Jafari Alavi, International Law Researcher, University of Strasbourg and Bismillah Alizada, a doctoral candidate at SOAS, University of London.

Holding the Taliban accountable

The nature of crimes, committed in the 1990s and post-2021, is a matter of deep concern. Dr Mudessir argues that “If you put the Taliban crimes together, they qualify for war crimes and crimes against humanity”. The speakers including the audience critically discussed the elements of genocide, particularly against Hazaras in Afghanistan. Dr Ochab was of the view that one of the main challenges is that there are not many ways you can identify genocide until the case comes to court. “Therefore, the goal should prevent a genocide before it happens”.

There was a general consensus that there is a dire need for a new mechanism to hold the Taliban accountable. Dr Andisha stressed the need for independent investigative mechanisms. Dr Ochab also echoed and suggested that “the UN established special mechanism for Ukraine, Syria, Myanmar, we need to ask for such a mechanism for Afghanistan”. Heather Barr also echoed that we need to advocate for a new UN-mandated accountability mechanism. “There is currently no mechanism for the Taliban crimes. There are very few means to investigate crimes against different groups”, she added.

The participants also mentioned some particular terms where the Taliban can be targeted. For example, Barr suggested that the Taliban’s discriminatory treatment, such as banning girls’ education and restricting women’s public participation, can be explored through the lens of ‘gender apartheid’. Therefore, United Nations Assistance Mission in Afghanistan (UNAMA) can hold the Taliban accountable under the 1979 Convention on the Elimination of All Forms of Discrimination. Similarly, Bismillah Alizada suggested exploring such as ‘ethnic cleansing’ as “certain groups are totally erased from Afghanistan”.

Sanctioning the Taliban

Saman Zia-Zarifi highlighted the issue within the sanctions against the Taliban. He argued that most sanctions against the group are based on counter-terrorism measures. Subsequently, human rights violations were not given importance in the sanctions against the Taliban. “There are few sanctions based on human rights violations. The international community must adopt this approach”, he added.

The other speakers advocated for specific individual/group-based sanctions. For example, Barr demanded more travel bans on the Taliban leaders. “Travel ban has a symbolic value: it prevents legitimacy”. She also echoed Zarifi’s point that the current sanctions are applied through the terrorism lens. “Travel ban is mostly terrorism-related but we need to add the human rights angle”. Dr Ochab emphasized the use of Magnitsky legislation, a bill passed by the US Congress in 2012 to target individuals who have been involved in human rights abuses. “We should make the best use of it. We need to target their assets. Individuals who are helping them in western countries, we should make them accountable”, she added.

However, speakers also believed that accountability should not be only restricted to the Taliban. Zarifi cautioned that when we talk about accountability, our focus shouldn’t be only on criminals. “The Taliban committed most of the violence but that doesn’t mean we don’t look others. Justice shouldn’t be selective”, he reminded.

Challenges

The speakers also mentioned the challenges in collecting and preserving the evidence against the Taliban and other terror groups. Dr Ochab added that “there is a problem accessing reliable information as well as big challenges collecting and preserving evidence”. Zarifi also differentiated between evidence and documentation. He argued that we have a huge amount of documentation but we need to convert them into evidence.

Almost everyone speaker suggested involving the International Criminal Court (ICC) to investigate the crimes of the Taliban. However, Dr Alavi highlighted a key concern which requires the state’s cooperation with ICC. She argued that ICC will unable to function without state collaboration/cooperation. She presented a scenario in which ICC issues a warrant for the Taliban leader, will the Taliban arrest and hand over their own people? “Mechanism of ICC

requires state's collaboration. ICC investigation will be challenged by the state's inability to cooperate".

The participants also lauded the UN Special Rapporteur on the situation of human rights in Afghanistan for his efforts and commitment despite limited resources. Barr added that Special Rapporteur "should be commended for his openness, but his team consist of four people and the level of resources he has are grossly inadequate".

Way forward

The panellists expected a similar, if not the same, response from the international community as in the case of Ukraine. Dr Ochab added that "we have seen incredible support in Ukraine. We need to replicate that model in other countries such as Afghanistan". Barr was more critical of the response so far on Afghanistan. She added that we need to move beyond issuing statements of deep concern to swift action. She stressed that "international institutions need to earn the confidence now. ICC's swift action in Ukraine and continue to ignore Afghanistan is an issue of concern".

Alizada emphasized the importance of collective actions and urged the diaspora to politically organise. "As Afghans, it's not others who will give the opportunity, it will be us who will be shaping our future".

The panellists also brought some positive outcomes and initiatives in recent past which they think will help the Afghanistan's cause. Dr Ochab informed that the UK government is identifying individuals and asked civil society to submit names. "This is a new practice and let's see how it turns out". Dr Andisha was also optimistic that the Taliban's case will go to ICC in 2023. "We are moving slowly but we are moving in the right direction", he added.

The End