

United Nations Peacebuilding in Afghanistan and its Challenges

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Abstract:

Afghanistan has had tribal and non-democratic political systems since its inception. Ethnic politics and domination, discrimination, oppression and occupation of the lands of other ethnic groups have always kept Afghanistan in an open and hidden conflict. With the communist coup of 1979 and then the arrival of Soviet forces and the beginning of Jihad, this ethnic dominance was somewhat weakened. With the fall of the communist government in 1992 and the coming to power of the Tajiks, civil wars based on ethnic identities intensified. The ethnic-religious Pashtun movement, called the Taliban, emerged in 1994 to restore their ethnic power, and occupied major parts of Afghanistan. Under the support of the Taliban, Al-Qaeda carried out the terrorist attack of 9/11. Following this attack, the international community under the supervision of the UN decided to establish a multi-ethnic and democratic political system based on respect for human rights. based on this, The Bonn agreement was prepared. But this process faced challenges, such as the weak role of the UN, inappropriate political system, non-participation of the Taliban in the "UN talks", corruption and foreign interventions, which ultimately caused its failure. This article analyzes these challenges and searches for a way to establish sustainable peace in accordance with the multi-ethnic society of Afghanistan in the light of the Security Council Resolution 1378(2001).

Keywords: *conflict, peacebuilding, Bonn Agreement, challenges, United Nations, Afghanistan*

1 Introduction

Afghanistan, an underdeveloped country composed of ethnic minorities, as a national government has always faced many challenges. Either tyranny and severe suffocation prevailed or it turned into a failed State.¹ Basically, this country was born imperfect from the beginning. Great Britain and Tsarist Russia created a buffer State between them for their colonial purposes. They established a foreign dependent tribal kingdom over a mosaic of peoples who were not integrated into a common economy or nation.² Finally, by drawing the so called Durand line in 1893 between India (British) and Afghanistan,³ its borders were established.

In Afghanistan, the nation has not yet been formed. Most people consider their ethnic identity important and identify themselves with it, not based on the nation. Accordingly, it has been said that: "Afghanistan is a country of minorities",⁴ or "a country of a nation of minorities",⁵ or "a country without a nation"⁶. A careful understanding of the ethnic

¹ Failed States 2022, retrieved 17 Des 2022, available at, <https://worldpopulationreview.com/country-rankings/failed-states>.

² Barnett R. Rubin, The Fragmentation of Afghanistan, Foreign Affairs, Vol. 68, No. 5, Winter-1989, pp 150-151, retrieved 27 Jul 2022, available at, <http://www.jstor.com/stable/20044205>.

³ William Maley, The Afghanistan Wars, first published by Palgrave Macmillan, New York, 2002, p 7.

⁴ Charles Santos, Myth of 'One Afghanistan', in Los Angeles Times, May 25, 2003. retrieved 13 Aug 2022, available at, <https://www.latimes.com/archives/la-xpm-2003-may-25-op-santos25-story.html>.

⁵ Jawad Nassim, Afghanistan: A Nation of Minorities, Minority Rights Group International, London, 1992, p 7.

⁶ Shivan Mahendrarajah, Afghanistan: A Country not a Nation, Middle East Reports, Oct 1 2021, retrieved 19 Sep 2022, available at, <https://middleeast.substack.com/p/pashtun-ethno-nationalism-and-the>.

structure in Afghanistan shows that there are many areas of conflict. Therefore, this country has seen no peace and tranquility since its establishment, because either there was an actual conflict in it, or there was a hidden conflict in the form of tyranny and resistance.

Internal and external factors in Afghanistan's conflicts have strengthened each other in mutual relations. In other words, the internal factors of conflicts provide the basis for external intervention, and the external factors cause the persistency of internal conflicts. The competition of superpowers has also turned Afghanistan into a proxy battlefield. The two-way relationship between the April 1979 coup and the entry of Soviet forces in 1979 can be analyzed in this regard. With the arrival of Soviet troops, Afghanistan practically became the battlefield of the Eastern and Western blocs. Considering the bipolar atmosphere in the world, the UN Security Council could not take basic measures, and referred the matter to the General Assembly. The General Assembly has also issued a resolution against the intervention of foreign forces in Afghanistan first in the emergency session⁷ and then every year until 1989.⁸ According to the "Bilateral Agreement Between the Republic of Afghanistan and the Islamic Republic of Pakistan on the Principles of Mutual Relations, in Particular on Non-interference and Non-intervention",⁹ Soviet troops withdrew from Afghanistan in 1989. The collapse of the Soviet-backed government in 1992 led to civil wars. Finally, according to the World Bank's indicators, Afghanistan was ranked 8th Failed States, and, according to the report of the Peace Fund and Foreign Policy magazine, it was ranked 7th among the Failed States countries.¹⁰

Taking political power by the Tajiks, the Pashtuns united in the form of the "Taliban" to take over political power. Taliban hosted Al-Qaeda in Afghanistan. Then Al-Qaeda from Afghanistan developed its operations globally, the most important of which is the 9/11 attacks. Following these attacks, the Security Council recognised the inherent right of individual or collective self-defence in accordance with the UN Charter against a stateless entity in resolution 1368 (2001).¹¹

Based on resolution 1378 (2001), it approved the permission to replace the single-ethnic government of the Taliban with a multi-ethnic government.¹² Then the UN organized the International Conference on Afghanistan, to draw a road map. Finally, the Agreement on provisional arrangements in Afghanistan pending the re-establishment of permanent government institutions (Bonn Agreement) was signed by Four Afghan groups on December 5, 2001 to create peace and establish an inclusive and legitimate government.¹³

The efforts of the UN in the field of peace and state building were positive and necessary. But this process has also faced challenges. This article, well explain: First, the origins and background of conflicts in Afghanistan; then, the peace efforts of the UN; and, finally the challenges of this peace building process.

⁷ General Assembly Sixth Emergency Special Session, UN Doc. A/ES-6/PV.7, 14 Jan. 1980.

⁸ عبدالعزیز دانش، بررسی حقوقی عملکرد سازمان ملل متحد در استقرار صلح و حکومت جدید در افغانستان. پایان نامه دکتری. دانشکده حقوق و علوم سیاسی. دانشگاه تهران، 1392، ص 3.

⁹ This agreement was signed after 41 rounds of negotiations between the governments of Afghanistan and Pakistan with the guarantees of the Soviet Union and the US under the auspices of the UN on April 14, 1988 in Geneva, Switzerland. retrieved 11 Jul 2022, available at, <https://digitallibrary.un.org/record/41127>.

¹⁰ John Yoo, Fixing Failed States, California Law Review, Vol. 99, No. 1, February 2011, pp 101-103. retrieved 16 Sep 2022, available at, <https://www.jstor.org/stable/23014430>.

¹¹ Security Council Resolution 1368 (2001), Preamble.

¹² Security Council Resolution 1378 (2001), Preamble and para 3.

¹³ Agreement on provisional arrangements in Afghanistan pending the re-establishment of permanent government institutions. Annex of Letter dated 5 December 2001 from the Secretary-General addressed to the President of the Security Council, UN Doc. S/2001/1154, 5 December 2001.

2 Conflicts in Afghanistan

Afghanistan has been less than peaceful due to various reasons, including foreign occupation, monopoly, ethnic, religious and cultural heterogeneity. The political history of Afghanistan shows that throughout its history, this country has faced problems in establishing an efficient and legitimate government due to tribal rivalries and civil wars.¹⁴ William Maley has divided the contemporary conflicts in Afghanistan into three waves: the first wave from the entry of the Soviet forces until the departure of these forces; the second wave from 1992 after the fall of Najibullah's government; and the third wave after the 9/11 terrorist attack.¹⁵ Until the fall of the Taliban in 2001, some have divided the contemporary conflicts in Afghanistan into four stages.¹⁶ But these conflicts can be classified according to the reasons of the conflict and its parties, as follows: the first wave (1979-1989) of conflicts caused by the invasion of the former Soviet Union; the second wave (1989-2001), which itself has two sections: (a) Mujahideen's war with the communist government (1989-1992); (b) ethnic conflicts and the collapse of the political system (1996-1992); the third wave- conflicts caused by the rise of the Taliban (1996 until now); this stage also has three sections: (a) the Taliban on one side and the Northern Alliance on the other (1996-2001); (b) 11/9 attacks and the entry of international coalition forces into Afghanistan (2001-2021); (c) the re-establishment of the Taliban from 2021.

2.1 War against foreign occupation

The former Soviet Union was a neighbouring country with a long border with Afghanistan. This country has exercised a great influence in the political-military matter of Afghanistan in various ways, including financial aid and training of the young generation.¹⁷ Afghanistan-Soviet relations have been growing after the independence of Afghanistan by King Amanullah in 1919. The Soviet Union was the first country to recognize Afghanistan's independence from Britain.¹⁸ The peak of these relations was after 1953, when Soviet financial aid to development projects in Afghanistan was at the highest level of foreign aid.¹⁹ In addition to political influence, the promotion of communist ideology and the formation of communist parties, the Soviet Union has also been an important trainer of the Afghan military forces.

The Soviet Union gradually assumed the most important role in the reconstruction and equipping of the Afghan army. Soviet-trained officers played a central role in the 1973 ouster of King Zahir and the 1979 coup.²⁰ The "Khalq" Communist Party established a Soviet-affiliated government with the cooperation of these forces. They immediately began their socialist reforms and resorted to violence, torture and mass executions to implement them. Against that, uprisings began, which later became known as the Islamic

¹⁴ John Yoo, op cit, p 101.

¹⁵ William Maley, op cit, pp 1-2-6.

¹⁶ Robert Nickelsberg, Afghanistan: a distant war, Prestel, 2013, pp 11-14, retrieved 14 Nov 2022, available at, https://prestelpublishing.penguinrandomhouse.de/leseprobe/Afghanistan-A-Distant-War/leseprobe_9783791348650.pdf.

¹⁷ ظاهر طنين، افغانستان در قرن بیستم (1996-1900)، نشر عرفان، تهران، 1384، صص 106-107.
¹⁸ روح اله بهرامی، "شبه مدرنیسم امان الله خان و جنبش بچه سقا در افغانستان"، فصلنامه علمی- تخصصی تاریخ، سال یکم، شماره سوم، 1385، ص 33.

¹⁹ William Pelfini, Soviet development theory and Industrialization policies in Afghanistan (1954-1979): A Modernization success? 2018. retrieved 11 Nov 2022, available at, https://www.academia.edu/38823151/Soviet_development_theory_and_industrialisation_policies_in_Afghanistan_1954_1979_A_modernisation_success.

²⁰ Azhar Javed Siddiqui and Khalid Manzoor Butt, Afghanistan-Soviet Relations during the Cold War: A Threat for South Asian Peace, South Asian Studies, Vol. 29, No.2, Jul- Dec 2014, p 623.

Resistance.²¹ As the uprisings spread, the communist government repeatedly asked the Soviet government for military intervention, but was met with Soviet opposition.²² Security concerns on the southern borders of the Soviet Union and the failure of military advisers to stabilize the People's Democratic Party regime made military intervention the preferred option.²³ Therefore, factors such as the March 1979 uprising in Herat (which led to the murder of more than 40 Russian advisers and their families), the Soviet Union's suspicion of Hafizullah Amin's policies -due to his relations with the West- and NATO's movements in Eastern Europe determined the military intervention.²⁴ According to this decision, in December 1979, the 40th Soviet Army officially entered Afghanistan, Although groups of Soviet military forces had already entered the country.²⁵ After nearly ten years of military presence in Afghanistan, the former Soviet forces finally withdrew from Afghanistan in February 1989 according to the Agreements on the settlement of the situation relating to Afghanistan (1988).²⁶ As a result of this invasion, in addition to many casualties, statistics show that a total of 876,825 Afghans (which is about 3.5% of the total population) were killed in this war,²⁷ and Soviet casualties amounted to 13,310 people.²⁸

2.2 Internal conflicts

With the departure of the Soviet forces in 1989, it was thought that Najibullah's government would fall immediately, but it continued for almost three years. In April 1992, when the members of “Watan Party” and the armed forces of the government joined the Mujahideen, President Najibullah became a refugee at the UN office in Kabul, and his government fell.²⁹ After the withdrawal of the Soviet forces, there was an opportunity to form a comprehensive and legitimate government in Afghanistan. But the internal parties did not have the ability to do so, and the international community lacked any political strategy for Afghanistan between 1992 and 1994.³⁰ With the fall of the communist government, a kind of power vacuum was created. Therefore, before the Mujahideen Transitional Government came to Kabul from Pakistan, the civil war had started.³¹ It was supposed that the leadership of this interim government would be held by Sibghatullah Mojaddedi for two months and Burhanuddin Rabbani for another six months. Mojaddedi tried to save himself but could not, and finally surrendered the power he did not have to Rabbani.³² But Rabbani refused to step down from this position until

²¹ Ashley Jackson, *The Cost of War, Afghan Experiences of Conflict, 1978 – 2009*, Publisher: Oxfam International, Kabul, 2009, p 7.

²² روح اله بهرامی، پیشین.

²³ Uday Rai Mehra, *Why Did the Soviet Union Invade Afghanistan in 1979?* 9 Oct 2014, retrieved 22 Sep 2022, available at, <https://www.e-ir.info/2014/10/09/why-did-the-soviet-union-invade-afghanistan-in-1979/>.

²⁴ Diego Cordovez and Selig S. Harrison, *Out of Afghanistan: The Inside Story of the Soviet Withdrawal*, Oxford University Press, New York, 1995, p 48.

²⁵ سلطانعلی کشتمند، پیشین، ص 582.

²⁶ Agreements on the settlement of the situation relating to Afghanistan (April 1988) UN Doc. S/19834, 26 April 1988 Annex I.

²⁷ Noor Ahmad Khalidi, “Afghanistan: Demographic Consequences of War, 1978-1987 Central Asian Survey. Feb 1991. P 106. DOI: 10.1080/02634939108400750.

²⁸ Diego Cordovez and Selig S. Harrison, op cit, p 72.

²⁹ Barnett R. Rubin, *Post-Cold War State Disintegration: The Failure of International Conflict Resolution in Afghanistan*, *Journal of International Affairs*, Vol. 46, No. 2, Winter 1993, p. 469. retrieved 26 Jul 2022, available at, <https://www.jstor.org/stable/24357144>.

³⁰ Barnett R. Rubin, *U.S. policy in Afghanistan*, Muslim politics report, no. 11. Jan-Feb 1997, pp 1-2.

³¹ ظاهر طنین، پیشین، صص 393-392.

³² Barnett R. Rubin, *The Fragmentation of Afghanistan: State Formation and Collapse in the International System*, Second Edition, Yale University Press, New Haven and London, 2002, p 273.

2001, even though there was practically no government, because in 1996, Kabul was captured by the Taliban. During this period, the Taliban and Rabbani both claimed to be in power, while each was more illegitimate than the other.

Since during the period of Jihad, the ethnic groups liberated their territory as a result of the struggle and were in control of it, they no longer accepted ethnic discrimination and monopoly of power and wanted to participate in the new political system. In other words, the collective participation of ethnic groups in jihad and resistance fundamentally changed the structure governing the power play between ethnic groups forever.³³ In fact, wars that had the nature of jihad against foreign occupation turned into internal justice-seeking resistance. Considering the historical tyranny, these resistances had serious popular support.³⁴ In this regard, the justice-seeking resistance of the west of Kabul led by Abdul Ali Mazari is very prominent. He presented the plan of a broad-based government, and firmly declared: "we want the rights of our nation and social justice, and we reject monopoly by anyone".³⁵

2.3 The war and the challenge of the Taliban

After the fall of Najibullah's government in April 1992, Hekmatyar, the desired leader of the ISI,³⁶ did not come to power, and the Tajik government was not acceptable, especially to the Pashtuns.³⁷ Therefore, the Taliban emerged as a Pashtun ethnic unifying movement in Kandahar in 1994 with the support of foreign States. Ahmad Rashid³⁸ introduces the Taliban as literally orphans of war, rootless, unemployed and deprived and lacking self-knowledge. They favoured war because it was the only occupation they could adapt to.³⁹ The Taliban movement has benefited from the financial support of Al-Qaeda, the drug mafia, donations from Arab countries and the Pashtun diaspora in Karachi and Dubai, and networks related to the Pakistani government.⁴⁰

The Al-Qaeda network became increasingly integrated into the Taliban structure, both through the personal relationships between Bin Laden and Mullah Omar, in addition through the military services Al-Qaeda provided through its 055 Brigade. This unit prepared the most effective supports for the Taliban's military sector.⁴¹ Relations between the Taliban, especially the Haqqani network, and al-Qaeda are still very close, based on friendship, history of joint struggle, ideological sympathy, and mixed marriages.⁴² Instead, the Taliban provided a safe haven for their terrorist activities in Afghanistan. This interaction strengthened both sides. At the same time, al-Qaeda was able to organize its global activities.

³³ مجیب الرحمن رحیمی، (1398) نقدی بر ساختار نظام در افغانستان، انتشارات عازم، چ اول، زمستان 1398، کابل، ص 78.

³⁴ Richard S. Newell, Post-Soviet Afghanistan: The Position of the Minorities, *Asian Survey*, Vol. 29, No. 11 Nov., 1989, p. 1094, retrieved 21 Aug 2022, available at, <http://www.jstor.com/stable/2644731>.

³⁵ The speech of the Secretary-General of the Islamic Unity Party, "Abdul Ali Mazari", Kabul, 6 Jan 1993.

³⁶ Inter-Services Intelligence (ISI) is the pioneer intelligence service of Pakistan.

³⁷ Anwar-ul-Haq Ahady, The Decline of the Pashtuns in Afghanistan, *Asian Survey*, Jul., 1995, Vol. 35, No. 7, 1995, pp. 623-624. University of California Press. retrieved 26 Aug 2022, available at, <https://www.jstor.org/stable/2645419>.

³⁸ Ahmed Rasheed is a famous Pakistani journalist and author who has published many books and articles on Afghanistan, Pakistan and Central Asia.

³⁹ Ahmed Rashid, *Taliban: Militant Islam, Oil, and Fundamentalism in Central Asia*, 2d ed. (New Haven, CT: Yale University Press, 2000), 2000, p 32.

⁴⁰ Barnett R. Rubin, (2002) op cit, p xxi.

⁴¹ Barnett R. Rubin, (2002) op cit, p xx-xxi.

⁴² Eleventh report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to resolution 2501 (2019) concerning the Taliban and other associated individuals and entities constituting a threat to the peace, stability and security of Afghanistan, UN Doc S/2020/415, 27 May 2020, paras 32-44.

2.3.1 Gross and widespread violation of human rights

Since their seizure of power, the Taliban has a heavy record of gross and extensive violations of human rights and committing serious crimes, even genocide. In 1998, the Taliban massacred about eight to ten thousand Hazara people just because they belonged to the Hazara ethnicity and the Shiite religion. According to Ahmed Rashid: "What followed was another brutal massacre, genocidal in its ferocity".⁴³ He narrates quoting a Taliban commander that: "Mullah Omar had given them permission to kill for two hours, but they had killed for two days. He adds that the Taliban targeted men, women and children without discrimination. And Soon the streets were covered with dead bodies and blood. No one was allowed to bury the corpses for the first six days. Dogs were eating human flesh and going mad and soon the smell became intolerable".⁴⁴

The human rights situation was so deplorable that the UN Secretary-General considered Afghanistan to be one of the deadliest places on earth, especially for women and children. He announced that Deliberate abuse of civilians, destruction of property, forced migration, separation of men from families, arbitrary detention, violence against women, use of child soldiers, indiscriminate bombing and use of landmines, as a model of war, lead to gross and widespread human rights violations.⁴⁵ The Security Council has described this situation as a widespread and systematic violation of human rights and a severe and serious violation of international humanitarian law.⁴⁶ The special rapporteur on violence against women, Coomaraswamy, also noted after her visit to Afghanistan that "she has never seen the suffering she saw in Afghanistan."⁴⁷ Basically, Taliban is the most misogynistic religious sect due to its traditional and religious beliefs. They have deprived women of their political, social and cultural rights such as the right to study, work, travel without a mahram,⁴⁸ to be in the community, and basically they are forced to stay at home and do not even have the right to go to the mosque for worship.⁴⁹

2.3.2 Threat to international peace and security

The Taliban's hosting and cooperation with terrorist groups, especially Al-Qaeda, made the territory occupied by the Taliban become training and operational bases for Al-Qaeda's global goals. At the same time, al-Qaeda was able to organize its global activities and expand its attacks in Asia, Europe and Africa. Like the terrorist attacks in Al-Dhahran, Nairobi and Dar Es Salaam in 1998, the crisis in Afghanistan spread to other regions and international peace and security faced major threats. Following these attacks, the Security Council asked the Taliban to hand over Osama Bin Laden.⁵⁰ The Taliban did not comply with the resolutions of the Security Council to close the shelters and training camps of terrorist groups and hand over the accused terrorists, especially Bin Laden, to the hands of justice; therefore, certain sanctions were imposed by the Security Council against them.⁵¹ The Taliban reiterated that Bin Laden remains a guest of the Afghan people and cannot be forced to leave the country unless he did so voluntarily.⁵² By hosting

⁴³ Ahmed Rashid, (2000), op cit, p 73.

⁴⁴ Ibid.

⁴⁵ Report of the Secretary-General, UN Doc. A/54/378 -S/1999/994, 21 Sep 1999, para 32.

⁴⁶ Security Council Resolution 1214 (1998), para 7.

⁴⁷ Report of the Secretary-General, UN Doc. A/54/378 -S/1999/994, 21 Sep 1999, paras 32-33.

⁴⁸ As for the legal terminology, what is meant by the mahrams of a woman: the men whom a woman is not permitted to marry permanently.

⁴⁹ عبدالحكيم الحقاني، الاماره الاسلاميه و نظامها، مكتبه دار العلوم الشرعيه، الطبعة الاولى، رمضان 1443 (2022) صفحات 151-154 و 248-288.

⁵⁰ Security Council Resolution 1214 (1998), para 13.

⁵¹ Security Council Resolution 1267 (1999), para 4.

⁵² Report of the Secretary-General, UN Doc. A/54/536- S/1999/1145, 16 Nov 1999, para 22.

and continuously cooperating with international terrorism, it created serious threats against international peace and security,⁵³ and even after the September 11 attacks, the Taliban continued to oppose the international community.

3 UN peacebuilding in Afghanistan

According to the UN Charter, international peace and security is the main goal of this organization, and the primary responsibility for maintaining international peace and security rests with the Security Council. But the international community is still based on national sovereignty. As Saksena says: "The reality is that the UN is what it is, viz an association of sovereign states. It is not a world Government. It can act only when its Member States decide that it should".⁵⁴ Therefore, the expectation from this organization should be in line with the realities governing the international community. The challenges of UN peacebuilding in Afghanistan are also mainly caused by these facts.

3.1 UN efforts before 2001 (peace-making)

Since the entry of Soviet troops into Afghanistan, the UN has always been involved in the Afghan crisis. The entry of the Soviet forces was considered by the UN, the Mujahedeen and the Westerners as an aggression and a violation of the UN Charter. However, the communist government of Kabul and the Soviet Union considered it the implementation of the provisions of the "Afghanistan-Union of Soviet Socialist Republics: Treaty of Friendship, Good neighbourliness and Cooperation" treaty, which was concluded on December 5, 1978 in Moscow.⁵⁵ According to Article IV of this treaty, Afghanistan could request Soviet military assistance when necessary.⁵⁶ The Soviet representative in the Security Council had also said that a small group of Soviet armed forces had been sent there due to the friendship, good neighbourliness and cooperation agreement at the request of the Afghan government.⁵⁷

In the Security Council, after two days of discussion about this matter, finally on January 6, 1980, Bangladesh, Jamaica, Niger, Philippines and Zambia proposed a draft resolution to the Security Council calling for the respect of the territorial integrity of Afghanistan and the withdrawal of foreign forces from Afghanistan.⁵⁸ But this resolution was removed from the agenda of the Security Council the next day, because of the veto of the Soviet Union.⁵⁹ A few days later, due to the lack of consensus among its permanent members, the UN Security Council referred the issue to the General Assembly by issuing Resolution 462 based on the resolution of the «Uniting for Peace».⁶⁰ According to this request of the Security Council, on January 14, 1980, in an emergency session, the General Assembly demanded the immediate, unconditional and complete withdrawal of foreign forces from Afghanistan with 104 votes in favour, 18 votes against, and 18 abstentions.⁶¹ Until the

⁵³ Security Council Resolution 1193 (1998), 28 Aug 1998, Preamble.

⁵⁴ K.P. Saksena, Afghanistan Conflict and The United Nations, International Studies, Volume 19, Issue 4, October 1980, p. 678. retrieved 16 Aug 2022, available at, <https://journals.sagepub.com/doi/10.1177/002088178001900407>.

⁵⁵ Afghanistan-Union of Soviet Socialist Republics: Treaty of Friendship, Good neighborliness and Cooperation (Done at Moscow, December 5, 1978), Cambridge University Press, International Legal Materials, January 1980, Vol. 19, No. 1, pp. 1-3. retrieved 19 June 2023, available at, <https://www.jstor.org/stable/20692120>

⁵⁶ سلطانعلی کشتمند، پیشین، ص 595.

⁵⁷ Diego Cordovez and Selig S. Harrison, op cit, p 74.

⁵⁸ Security Council draft resolution S/13729 (1980), 6 Jan 1980.

⁵⁹ The «Afghan Question» at the sixth emergency special session of the UN General Assembly (10–14 Jan 1980). retrieved 13 Jan 2023, available at, <https://history-ejournal.cdu.edu.ua/article/view/4019>.

⁶⁰ Security Council Resolution 462 (1980), 9 Jan 1980.

⁶¹ General Assembly Resolution, 6th Emergency special sess, UN Doc. ES-6/2, 14 Jan 1980, para 4.

withdrawal of Soviet troops from Afghanistan, the General Assembly issued 9 resolutions every year against the intervention of foreign forces in Afghanistan.⁶² On the other hand, the UN Secretary-General, through his special representative in Afghanistan, started efforts, but these efforts did not have a significant impact due to various reasons, including the bipolarity of the world and the weak role of the UN. Pérez de Cuéllar was the first special representative of the Secretary-General of the UN in Afghanistan conflicts. After him, Diego Cordovez was elected to this position and played a relatively more active role during the peace negotiations in Geneva.

The Geneva negotiations led to the signing of the Bilateral Agreement Between Afghanistan and Pakistan on April 14, 1988,⁶³ which specified the withdrawal of Soviet forces by February 15, 1989, and the UN provided diplomatic cover for the Soviet decision to withdraw.⁶⁴ Except for the withdrawal of the Soviet forces, the other provisions of the agreements were not implemented. Because Pakistan continued to send weapons to the Mujahedeen and with Pakistan's support, a "transitional government" was built in Peshawar. Pakistan's military institutions claimed the right to decide who would rule in Kabul or not because of helping the Mujahideen.⁶⁵ This was a clear violation of the Geneva agreement, according to which the parties must fully respect the principle of non-intervention.⁶⁶

When the Soviet Union left, the UN did not have a clear plan for peace and the establishment of a new government. According to Cordovez, the special representative of the Secretary-General, "The United Nations had, in the meantime, sat on the sidelines, passive and presumably unable to move in any direction".⁶⁷ But on his own initiative, he had prepared a plan under the title "Peaceful way towards the formation of a legitimate and broad-based government in Afghanistan" after many consultations with Washington, Moscow, Tehran, Islamabad and Kabul, which included: 1- Reconciliation period: to renew solidarity, 2- Establishment of national government to establish peace and reconstruction, 3- Establishment of ceasefire.⁶⁸ Cordovez favoured inclusive participation, but the Assistant Secretary-General opposed it and acted as if the Soviets and Peshawar parties were the only parties to the crisis.⁶⁹ Then, in the spring of 1992, an opportunity arose again to form an inclusive government. Benon Sevan, the representative of the UN Secretary-General, followed up on the plan to form an inclusive government by preparing a list of people for the transitional administration in Afghanistan, which was partially agreed upon by the interested parties.⁷⁰ But with the fall of the communist government, this plan failed.

After the fall of the communist government from 1992 to 2001, the UN did not take any serious measures regarding the situation in Afghanistan. Through The good offices and

⁶² عبدالعزيز دانش، (2013). پیشین، صص 2-3.

⁶³ Bilateral Agreement Between the Republic of Afghanistan and the Islamic Republic of Pakistan on the Principles of Mutual Relations, in Particular on Non-interference and Non-intervention, Geneva, UN Doc S/19835 (1988), 14 Apr 1988. retrieved 8 Aug 2022, available at, <https://digitallibrary.un.org/record/41127>.

⁶⁴ Barnett R. Rubin, Afghanistan under the Taliban, Current History, Vol. 98, No. 625, The Middle East, Feb 1999, p 89.

⁶⁵ Anthony Davis, how the Taliban become a military force, in William maley (editor) Fundamentalism reborn: Afghanistan and the Taliban, New York University press, New York, 1998, p 70.

⁶⁶ Bilateral Agreement Between the Republic of Afghanistan and the Islamic Republic of Pakistan on the Principles of Mutual Relations, in Particular on Non-interference and Non-intervention (Article I).

⁶⁷ Diego Cordovez and Selig S. Harrison, op cit, p 385.

⁶⁸ Diego Cordovez and Selig S. Harrison, op cit, p 370.

⁶⁹ Diego Cordovez and Selig S. Harrison, op cit, pp 382- 385.

⁷⁰ ظاهر طنین، پیشین، صص 359 و 360.

mediation of the Secretary-General, the Security Council has also reacted ineffectively by issuing reactive resolutions to human rights violations and terrorist acts.⁷¹ With the emergence of the Taliban, the situation in Afghanistan became more complicated and peace became more elusive. Because of the Taliban's cooperation and hosting of international terrorism, Afghanistan turned from a failed state to a rogue state.⁷² This situation caused the crisis to spread from Afghanistan to other regions and international peace and security faced serious threats. The 9/11 terrorist attacks clearly showed the seriousness of these threats.

3.1.1 The efforts of the UN Secretary-General

The UN re-established “United Nations Special Mission to Afghanistan” (UNSM) in December 1993 after the failure to establish an inclusive government and the ineffectiveness of the Benon Sevan activities in 1992. Then, in July 1997, Lakhdar Brahimi was appointed as a UN special envoy at the highest level.⁷³ During this period, the UN Secretary-General has mainly discussed peace with two groups of countries (6+2 and 21).⁷⁴ The 6+2 group, which was established with the aim of adopting a common strategy to achieve a peaceful solution to the conflict in Afghanistan, according to the Secretary-General's report, has hindered the achievement of peace with their continuous interference.⁷⁵ The Ashgabat talks in 1999 and then Tashkent, were held with the participation of the 6+2 group and the conflicting parties. Even when the conflicting parties committed in writing to participate in the peace talks with serious intention and good faith under the supervision of the UN Secretary-General,⁷⁶ none of them had any results. because the Taliban with the assurance of foreign support, made the continuation of the dialogue conditional on the acceptance of the Taliban emirate system. The presence of thousands of foreign fighters alongside the Taliban, including children under the age of 14 who came from religious schools in Pakistan, and independent units of Arab and non-Afghan fighters who fought alongside the Taliban made the Taliban think only of conquests.⁷⁷ The unabated external involvement in the Afghan conflict, especially some members of the "six plus two" countries, with their continuous support to some Afghan factions,⁷⁸ and its impact on the continuation of the conflict, caused the UN Secretary-General to openly declare that until these governments exert their influence in a positive and constructive way, “the efforts made by my representatives, however dedicated and skilled, will not suffice to bring peace to Afghanistan”.⁷⁹ In addition, he announced that “Sadly, it could be argued that in these circumstances the role of the UN in Afghanistan is little more than that of an alibi to provide cover for the inaction -or worse -of the international community at large”.⁸⁰ So, before the terrorist attack of 11 Sep 2001, the efforts of the UN Secretary-General were unsuccessful.

⁷¹ Report of the Secretary-General, UN Doc. A/52/682 -S/1997/894, 14 Nov 1997, paras 18,36,54.

⁷² Barnett R Rubin, 2002, op cit, p xi.

⁷³ Barnett R. Rubin, Afghanistan under the Taliban, Current History, The Middle East, Vol. 98, No. 625, University of California Press. Feb 1999, p 89. retrieved 6 Jul 2022, available at, <https://www.jstor.org/stable/45318300>.

⁷⁴ Group of 2+6 neighboring countries of Afghanistan, (Iran, Pakistan, China, Tajikistan, Uzbekistan and Turkmenistan) plus US and Russia, and Group of 21 countries also include China, Egypt, France, Germany, India, Iran, Italy, Japan, Kazakhstan, Kyrgyzstan, Netherlands, Pakistan, Russian Federation, Saudi Arabia, Sweden, Tajikistan, Turkey, Turkmenistan, UK, Northern Ireland, US and Uzbekistan.

⁷⁵ Report of the Secretary-General, UN Doc. A/54/378-S/1999/994, 21 Sep 1999, Para 42.

⁷⁶ Report of the Secretary-General, UN Doc. A/55/633-S/2000/1106, 20 Nov 2000, Para 85.

⁷⁷ Report of the Secretary-General, UN Doc. A/54/536-S/1999/1145, 16 Nov 1999, Para 75.

⁷⁸ Report of the Secretary-General, UN Doc. A/54/378- S/1999/994, 21 Sep 1999, para 42

⁷⁹ Report of the Secretary-General, UN Doc. A/52/682-S/1997/894, 14 Nov 1997, Para 55.

⁸⁰ Ibid.

3.1.2 The actions of the UN Security Council

The actions of the Security Council in that period are consistent with the general approach of the UN Security Council Resolution 1267 (1999) that sanctioned the Taliban as a terrorist entity and has not allowed any other travel, except for humanitarian needs and Hajj,⁸¹ and has prohibited any direct or indirect financial funding to the Taliban.⁸² Resolution 1333 (2000) of the Security Council imposed military, diplomatic and foreign traffic sanctions on the Taliban. It asked the governments to prohibit the movement of all senior Taliban officials at the rank of deputy minister or higher, the same rank as armed personnel under the control of the Taliban, and other senior advisors of the Taliban in their territory and to take the necessary measures unless their travel was necessary for humanitarian purposes, performing the Hajj, or for the peaceful resolution of the conflict in Afghanistan.⁸³ However, these sanctions were not respected especially by the countries supporting the Taliban. The Taliban also did not comply with the requirements of the Security Council's resolutions on closing terrorist camps and handing over Bin Laden.

3.2 UN efforts after 2001 (peacebuilding)

Despite the doubts about the perpetrators of the 9/11 attack,⁸⁴ it caused a huge shock in the world public opinion. These attacks were the peak of the terrorist attacks that were said to have been carried out by the Al-Qaeda network and caused the attention of the international community to be drawn to Afghanistan again. This attack not only shook US, but also had a great impact on international relations and on the legal field. The Security Council issued resolution 1368 (2001) calling on “all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks and stresses that those responsible for aiding, supporting or harboring the perpetrators, organizers and sponsors of these acts will be held accountable”.⁸⁵ More importantly, it recognized the inherent right of individual or collective self-defense in accordance with the Charter.⁸⁶

This resolution clearly changed the concept of war and self-defense. Previously, it was possible to resort to legitimate defense against an armed attack by a government according to Article 51 of the Charter. But this resolution also made it possible to resort to legitimate defense in the case of attacks by non-state actors.⁸⁷ The US considered the 9/11 attacks a war and declared its and its allies' military attacks a war on terrorism, but in Antonio Cassese's view, under the rules of international law, "it is obvious that in this case 'war' is a misnomer. War is an armed conflict between two or more states. Here we are confronted with an extremely serious terrorist attack by a non-state organization against a state".⁸⁸ As a result, the legal consequences of war do not follow. But the Security Council considered it as an armed attack, while previously it had not accepted the justification of legitimate defense in similar cases. Such as Israel's 1985 attack on the PLO headquarters in Tunisia, which was strongly condemned by the Security Council as an act of aggression, and the 1986 US attack in Libya, which was declared a violation of the UN

⁸¹ Muslim religious journey to Mecca.

⁸² Security Council Resolution 1267 (1999), 15 Oct 1999, paras 3-4.

⁸³ Security Council Resolution 1333 (2000), 19 Dec 2000, paras 11-14.

⁸⁴ Thierry Meyssan, *9/11 The Big Lie*, Carnot Publishing Ltd, London, 2002.

⁸⁵ Security Council Resolution 1368 (2001), 12 Sep 2001, para 3.

⁸⁶ Security Council Resolution 1368 (2001), 12 Sep 2001, preamble.

⁸⁷ Antonio Cassese, *Terrorism is also disrupting some crucial legal categories of international law*, EJIL, Vol. 12, No. 5, 2001, p. 993, retrieved 23 Aug 2022, available at, <https://doi.org/10.1093/ejil/12.5.993>.

⁸⁸ Antonio Cassese, *op cit*, p 993.

Charter by the General Assembly.⁸⁹ Also, this resolution changed the conditions of legitimate defense. Because one of the conditions of legitimate defense is urgency, otherwise the case should be handed over to the Security Council, but this resolution accepted delayed defense. Because the narrow interpretation of the powers of the Security Council also faces more serious challenges and makes the decisions of this council incompatible with the realities of the world.⁹⁰

3.2.1 United Nations Peacebuilding Parameters in Afghanistan

Peacebuilding is a term that has a more recent origin and is an effort to solve the root of the conflict, which is a concept beyond the absence of war.⁹¹ In 1992, upon the request of the Security Council, the UN Secretary General, Boutros-Ghali, prepared a report containing an agenda for peace. In this report, different levels of peace are mentioned, and the concepts of peacemaking, peace-keeping and peacebuilding are separated.⁹² In fact, peacebuilding with the concept of "positive peace" describes a situation not only with the absence of hostility, but also with many other specific political, economic and social achievements such as; the rule of law, democracy and good governance, respect for people's right to self-determination and human rights are linked.⁹³ Peacebuilding usually involves a fourfold proposition: (1) security transition, from a situation of open violence to the gradual establishment of sustainable peace; (2) socio-economic transition, from a conflict-controlled economy to a peace economy or market economy; (iii) transition to the rule of law to support reconciliation and justice; and (iv) democratic transition, from an authoritarian system to a representative government system.⁹⁴

Therefore, after the September 11 attacks, the international community and the UN laid the foundation for peacebuilding with a series of measures and peacebuilding components, including the creation of a new political system in Afghanistan, and the Security Council explicitly supported the efforts of the Afghan people to replace the Taliban regime in resolution 1378 (2001). The terrorist group, which violated human rights in a gross and organized manner, had in fact ruled as the de facto government. Based on the right of self-determination, this resolution gave the people of Afghanistan the right to freely determine their political, economic, social and cultural system.

According to the fields of conflicts in Afghanistan, the Security Council in its resolution 1378 (2001) specified the road map for establishing sustainable peace in Afghanistan based on the following components:

- 1- *Inclusiveness and multi-ethnicity of the political system;*
- 2- *Observing the human rights of all Afghan people;*
- 3- *Respecting Afghanistan's international obligations and making peace with its neighbors;*
- 4- *Fighting terrorism and drug trafficking;*

⁸⁹ Christian J. Tams, The Use of Force against Terrorists, The European Journal of International Law Vol. 20 No. 2, 2009, p. 367. doi: 10.1093/ejil/chp031.

⁹⁰ Andrea Bianchi, Assessing the Effectiveness of the UN Security Council's Anti-Terrorism Measures: The Quest for Legitimacy and Cohesion, EJIL, Vol. 17 no.5, 2007, p 887.

⁹¹ Report of the Panel on United Nations Peace Operations, UN Doc. A/55/305-S/2000/809, 21 Aug 2000, para 13.

⁹² Secretary-General Reports, UN Doc. A/47/277-S/24111, 17 June 1992, paras 20.

⁹³ SWP-Berlin Towards an International Legal Framework for Post-Conflict Peacebuilding, February 2009, p 15. retrieved 8 June 2023, available at, https://www.swp-berlin.org/publications/products/research_papers/2009_RP03_slr_ks.pdf.

⁹⁴ Thilo Marauhn, Sven Simon, Peacebuilding, Oxford Public International Law, July 2016, retrieved 10 June 2023, available at, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e363>.

*5- Providing humanitarian aid, and solving the problem of refugees and displaced persons.*⁹⁵

On November 12, 2001, the six plus two foreign ministers and other senior representatives also emphasized the peace building components and conditions contained in resolution 1378 (2001) and pledged to support the new political system. They welcomed the central role of the UN in helping the Afghan people to create a political alternative to the Taliban regime. In particular, they supported the work of the Secretary-General's Special Representative, Brahimi, including facilitating the efforts of Afghan groups committed to a free and peaceful Afghanistan to establish an inclusive government in Afghanistan as a matter of urgency. They also welcomed the efforts of the international community to begin planning for the long-term reconstruction of Afghanistan after the establishment of an inclusive government and the establishment of peace.⁹⁶

At this stage, the UN promoted peace-building, which is a set of reconstruction activities in the post-war phase to solve the root of the conflict, such as democratization, economic development and social justice.⁹⁷ Therefore, in the Bonn agreement, International Security Assistance Force (ISAF) was considered for providing security, and UN Assistance Mission in Afghanistan (UNAMA) for political assistance to establish peace and a new government. As a result, the destruction of the host regime of terrorism and then the creation of a new government was done based on legitimate foundations and in accordance with the resolutions of the Security Council and the UN Charter.

3.2.2 Peacebuilding activities of the United Nations

A. Drawing a road map in the Bonn negotiations: After the operation of the international coalition led by the US, and the fall of the Taliban regime, the creation of a new government was considered an urgent need. In this context, James Dobbins, the special representative of the US government, and Brahimi, the special representative of the UN Secretary General, were two key figures.⁹⁸ The UN planned negotiations to form an interim government for Afghanistan in Bonn, Germany. The UN had invited four Afghan groups to participate in this dialogue without delay, in good faith and without preconditions,⁹⁹ the most important of which was the Northern Coalition. The UN also invited interested countries to send delegations as observers to the Bonn conference. Seventeen countries sent representatives at different levels. They were Austria, Belgium, Canada, China, France, India, Iran, Italy, Japan, Norway, Pakistan, Republic of Korea, Russia, Turkey, Netherlands, UK, US, Switzerland and the European Union.¹⁰⁰ The main goal of the international community was the agreement of the Afghan groups on a broad and multi-ethnic temporary administration headed by a Pashtun person.¹⁰¹ Finally, on December 5, 2001, the participating groups signed the Bonn Agreement, which was approved by UN Security Council resolution 1383 (2001).¹⁰²

⁹⁵ Security Council Resolution 1378 (2001), 14 Nov 2001, para 1.

⁹⁶ Statement on the situation in Afghanistan adopted on 12 November 2001 by the Ministers for Foreign Affairs and other senior representatives of the six plus two, Annex Report of the Secretary-General, A/56/681-S/2001/1157, 6 Dec 2001.

⁹⁷ Astri Suhrke, Kristian Berg Harpviken & Arne Strand, *After Bonn: conflictual peace Building*, Third World Quarterly, Vol 23, No 5, 2002. p 876.

⁹⁸ Steve Coll, *Directorate S, the C.I.A. and Americas secret wars in Afghanistan and Pakistan*, Penguin Press, New York, 2018, p 105.

⁹⁹ Security Council Resolution 1378 (2001), 14 Nov 2001, preamble.

¹⁰⁰ Satinder K. Lambah, *India at United Nations Talks on Afghanistan (Bonn, 27 Nov-5 Dec 2001)*, Indian Foreign Affairs Journal, Vol. 1, No. 1 Jan-Mar, 2006, p 74.

¹⁰¹ Satinder K. Lambah, *op cit*, p 82.

¹⁰² Security Council Resolution 1383 (2001), 6 Dec 2001, para 1.

The Bonn agreement (2001) was approved based on the principles and components that were proposed in paragraph 1 of a resolution 1378 (2001) for the establishment of sustainable peace in Afghanistan. It was stipulated in this agreement that: all actions of the interim government must be in accordance with the Security Council resolution 1378 (2001) and other relevant Security Council resolutions regarding Afghanistan.¹⁰³ Based on this, the following principles were emphasized in the Bonn Agreement:

1- The inclusiveness of the political system and choosing the members of the interim government based on merit and taking into account the fair ethnic, geographical and religious composition of Afghanistan and the participation of women;¹⁰⁴

2- Compliance with international humanitarian and human rights rules was considered one of the practical principles of the interim government.¹⁰⁵ This government was obliged to establish an independent human rights commission with the help of the UN to protect human rights and develop them, as well as to investigate human rights violations.¹⁰⁶ More importantly, the UN was recognized as having the right to investigate human rights violations and order disciplinary actions if necessary.¹⁰⁷

3- The new government committed to respecting international laws and having friendly relations with neighboring countries and other international communities.¹⁰⁸

4- It was also decided that the new government should cooperate with international communities in the fight against terrorism, drugs and organized crimes,¹⁰⁹ and the UN, the international community and regional organizations were also requested to cooperate in the fight against international terrorism, cultivation and drug trafficking.¹¹⁰ Subsequently, these principles were somehow reflected in the Constitution of Afghanistan (2004) and officially took on a legal aspect.¹¹¹

B. Establishment of ISAF

In the first annex of the Bonn Agreement, the international community was asked to help in the creation and training of the new security and armed forces of Afghanistan, and the UN Security Council is requested to issue permission for the early deployment of a force under the command of the UN in Afghanistan, so that these forces help in maintaining the security of Kabul and its surrounding areas.¹¹² Referring to this request and the demand of the interim government,¹¹³ the Security Council, in resolution 1386 (2001), while emphasizing the threat of the situation to international peace and security, allowed the creation of an International Security Assistance Force (ISAF) for 6 months to provide

¹⁰³ Bonn Agreement (2001), Section V (Final Articles), para 5.

¹⁰⁴ Bonn Agreement (2001) Part I (General Provisions), Paragraph 7 and Part V (Final Articles), Para 4.

¹⁰⁵ Bonn Agreement (2001) Section V (Final Articles), para 2.

¹⁰⁶ Bonn Agreement (2001) Section III (Obligations), para 6.

¹⁰⁷ Bonn Agreement (2001) Annex II (Role of the United Nations in the Interim Period), para 6.

¹⁰⁸ Bonn Agreement (2001) Section V (Final Articles), para 2.

¹⁰⁹ Bonn Agreement (2001) Section V (Final Articles), para 3.

¹¹⁰ Bonn Agreement (2001) Annex 3: Request of the participants of the United Nations negotiations on Afghanistan from the United Nations, para 6.

¹¹¹ In this constitution, the Afghan government is obliged to support (Article 6) and observe the United Nations Charter, the rights of the Universal Declaration of Human Rights and international treaties (Article 7). Based on the fifty-eighth article, in order to monitor the observance of human rights in Afghanistan and to improve and protect it, the Independent Human Rights Commission of Afghanistan was established.

¹¹² Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions, Annex I, International Security Force, UN Doc. S/2001/1154, 5 Dec 2001.

¹¹³ Letter dated 19 December 2001 from the Permanent Representative of Afghanistan to the UN addressed to the President of the Security Council, UN Doc. S/2001/1223, 19 Dec 2001.

security for the interim administration and the UN staff. Therefore, the member states were asked to take the necessary measures in this direction and these forces should perform their duties in the implementation of the mission in consultation with the interim government and the special representative of the Secretary General.¹¹⁴ ISAF's activity was initially limited to Kabul and its surrounding areas; however, in 2003, the Security Council, based on the request of NATO¹¹⁵ and the transitional government,¹¹⁶ allowed it to expand to the rest of Afghanistan.¹¹⁷ ISAF's mission was extended by the Security Council until December 2014 and renamed to Resolute Support Mission on January 2015.

C. Establishment of UNAMA

In the second Annex of the Bonn Agreement, it was specified that the role of the UN was carried out through the Special Representative of the Secretary-General. He has been entrusted with the responsibility of all the activities of the UN, assisting and supervising the implementation of the Bonn Agreement, resolving disputes, promoting human rights and investigating its violations. According to this appendix, and the report of the UN Secretary-General on March 18, 2002, the Security Council, by issuing Resolution 1401(2002), decreed the establishment of UNAMA, and approved its mission for an initial 12-month period. "This mandate has changed over time to reflect the needs of the country and was last extended on 16 March 2023, by UN Security Council Resolution 2678 (2023)".¹¹⁸

The Special Representative of the Secretary-General was given full authority over the planning and implementation of all UN activities in Afghanistan.¹¹⁹ UNAMA's mission has been renewed annually. After the fall of the republic, it was extended for one year and asked UNAMA to continue leading and coordinating international civilian efforts.¹²⁰ In addition to the central office in Kabul and about ten provincial offices, UNAMA has liaison offices in Pakistan and Iran, and after the Taliban's takeover in September 2021, it has also opened an office in Kazakhstan.¹²¹

D. Approving the new Constitution and holding Elections

Drafting a constitution based on new requirements, which is the basis of the rule of law, has now become a principle and a part of any peacebuilding strategy.¹²² In the Bonn Agreement, it was stipulated to hold a constitutional conference within 18 months after the establishment of a transitional government for the approval of a new constitution. The transitional administration was obliged to establish a constitutional commission within two months.¹²³ This commission was created on October 5, 2002, the draft constitution was then reviewed by the revision commission and finally approved on July 4, 2004.

¹¹⁴ Security Council Resolution 1386 (2001), 20 Dec 2001, paras 1-4.

¹¹⁵ Letter dated 7 Oct 2003 from the Secretary-General addressed to the President of the Security Council, UN Doc. S/2003/970 (2003), 8 Oct 2003.

¹¹⁶ Letter dated 13 Oct 2003 from the Secretary-General addressed to the President of the Security Council, UN Doc. S/2003/986 (2003), 13 Oct 2003.

¹¹⁷ Security Council Resolution 1510 (2001), 13 Oct 2003, para 1.

¹¹⁸ UNAMA, retrieved 23 June 2023, available at, <https://unama.unmissions.org/mandate>.

¹¹⁹ Security Council Resolution 1401 (2002), 28 Mar 2002, para 2.

¹²⁰ Security Council Resolution 2626 (2022), 17 Mar 2022, para 4.

¹²¹ UNAMA, retrieved 2 Feb 2023, available at, <https://unama.unmissions.org/about>.

¹²² Christian Schaller, Towards an international legal framework for post conflict peacebuilding, SWP Research Paper, Berlin, 2009, P 16. retrieved 23 Aug 2022, available at, https://www.swp-berlin.org/publications/products/research_papers/2009_RP03_slr_ks.pdf

¹²³ Agreement on provisional arrangements in Afghanistan pending the re-establishment of permanent government institutions, 5 Dec 2001.

Holding elections according to the new constitution was actually the last step in the peace process. According to the new constitution, national sovereignty belongs to the nation and the nation exercises it directly or through its representatives.¹²⁴ Therefore, it was decided that the president and members of the Parliament should be elected freely, publicly, secretly and directly based on the elections and by the people's votes.¹²⁵ The Loya Jirga elections were held to determine the transitional government and the constitution and to hold the presidential and parliamentary elections with the cooperation of donor countries and the UN and affiliated institutions. In addition to monitoring all the election processes, UNAMA has also been one of the three pillars of handling electoral complaints. Due to the existence of widespread corruption, the elections were accompanied by major challenges and widespread frauds, to the extent that the legitimacy of the elections and the elected officials were questioned.

4 Challenges of UN peacebuilding in Afghanistan

Despite the very positive effects of the UN peace in Afghanistan, it faced a series of fundamental challenges that eventually led to its failure and somehow all the efforts, material and spiritual costs of the international community did not reach their final goal. Now the question arises as to what shortcomings the UN peacebuilding faced and what factors caused its failure. This section evaluates these challenges.¹²⁶

4.1 The Light Footprint approach of the UN

Following the 9/11 terrorist attack, the Security Council, on the one hand, recognized the right of self-defense for US and, on the other hand, announced the process of peacebuilding and establishment of a new government in Afghanistan. The synchronization of these two issues caused complications and the lack of clear demarcation between them led to the more prominent role of the US and the weakening of the role of the UN. The UN also adopted a light footprint approach. This approach was based on the premise that, first of all, it should strengthen Afghanistan's capacity (both official and non-governmental) and rely as much as possible on limited international presence and mainly on Afghan employees.¹²⁷

The political inflammatory situation and the shock caused by the 9/11 attack had caused less focus on the effective role of the UN in peacebuilding in Afghanistan and its requirements. During the early stages of military action, there was debate about the role of the UN in Afghanistan after the war, and there was concern that the US would hand the UN a poisoned chalice after achieving its military goals. There was also enthusiasm for a UN leadership role in rebuilding Afghanistan along the lines of Kosovo and East Timor.¹²⁸ But the expectation of peacebuilding on the scale and model of Kosovo and East Timor never materialized, because in these two cases, a transitional administration was established under the supervision of the UN, and the UN played an effective and central role. For example, in Security Council resolution 1272 (1999), a UN Transitional Administration in East Timor (UNTAET) was created, which was responsible for the

¹²⁴ Constitution of Afghanistan (2004), Article Fourth.

¹²⁵ Constitution of Afghanistan (2004), Articles sixty-one and eighty-third.

¹²⁶ In its November 2022 report, SIGAR has identified six factors involved in the collapse of the Afghan government in 2021, which are mainly related to the state of Ashraf Ghani's government. But this research has examined the root issues that Ashraf Ghani's government and its failure were the result of these challenges. retrieved 19 Mar 2023, available at, <https://www.sigar.mil/pdf/evaluations/SIGAR-23-05-IP.pdf>.

¹²⁷ Simon Chesterman, *You, The People: The United Nations, Transitional Administration, and State-Building*, Oxford University Press Inc., New York, 2004, pp 89 -90.

¹²⁸ *Ibid.*

overall administration of East Timor and had the authority to exercise all legislative and executive powers, including the administration of justice.¹²⁹ Also in the case of Kosovo, the Secretary-General was authorized to establish an interim administration for Kosovo under which the people of Kosovo could enjoy significant autonomy within the Federal Republic of Yugoslavia.¹³⁰ But in Afghanistan, Brahimi believed that such a mission was "neither necessary nor possible".¹³¹ At the beginning of the UN talks in Bonn, the Afghan negotiators were informed about the "light footprint approach" of the UN. Fisher, Kofi Annan and Brahimi emphasized the responsibility and leadership of the Afghan people and pointed to the role of the international community as a facilitator.¹³²

In fact, UNAMA's mission was interpreted in such a way that instead of leading the peace process and state building, the UN was demoted to a facilitator.¹³³ The lack of leadership of the UN caused each country to have its own specific and desired leadership. For example, the US accepted the reconstruction of the army, Germany the police, Great Britain the fight against drugs, Italy justice; and Japan was also responsible for the Disarmament, demobilization and reintegration (DDR). This approach did not work well. In many areas, the participating countries did not perform well. In addition, the lack of unity of command created implementation problems,¹³⁴ while the effective and prominent presence of the UN was a necessity for peacebuilding and effective organization of international support.

4.2 The Decisive Role of the United States

From the US point of view, peacebuilding in Afghanistan was not the main goal, but an incidental matter and a part of the consequences of the 9/11 attack. If this attack had not happened, the peacebuilding program of the international community and the UN would not have been carried out in Afghanistan. The US and the al-Qaeda network had no problem with each other during the war against the Soviet Union. Also, the US had a favorable opinion towards the Taliban. Foreign Minister Albright stated that the door was open to the recognition of the Taliban.¹³⁵ Barnett Rubin believes that the Bonn talks only took place because of 9/11 and that the US government decided to respond to the threat of Al-Qaeda by toppling the Taliban regime militarily. If the US had not done so, there would have been no talks in Bonn, no interim or transitional administration, and the Taliban would still be in control of Afghanistan. These strange conditions also caused serious birth defects in the provisional government and its successor.¹³⁶ He states that: according to, the main goal of our policy in Afghanistan was not to create a better regime

¹²⁹ Security Council Resolution 1272 (1999), 25 Oct 1999, paras 1-4.

¹³⁰ Security Council Resolution 1244 (1999), 10 June 1999, paras 5-10.

¹³¹ Ibid.

¹³² Satinder K. Lambah, India at United Nations Talks on Afghanistan (Bonn, 27 Nov- 5 Dec 2001), *Indian Foreign Affairs Journal*, Vol. 1, No. 1, Jan-Mar 2006, p 79. retrieved 7 Des 2022, available at, <https://www.jstor.org/stable/45340546>.

¹³³ Simon Chesterman, *op cit*, p 179.

¹³⁴ Seth G. Jones, Jeremy M. Wilson, Andrew Rathmell and K. Jack Riley, *Establishing Law and Order After Conflict*, Published by: RAND Corporation, 2005, p. 62. retrieved 16 Aug 2022, available at, <https://www.jstor.org/stable/10.7249/mg374rc.12>.

¹³⁵ Gregory Lee Ryckman, *The Macro-Politics of the Afghan Crisis: A U.S. Perspective*, Thesis Master of Arts, Presented to the Faculty of the Graduate School of the University of Texas at Austin, 1999, pp 93-99.

¹³⁶ Barnett R. Rubin, (Re)Building Afghanistan: The Folly of Stateless Democracy, *Current History*, Vol. 103, No. 672, South and Southeast Asia, University of California Press. Apr 2004, p. 167. retrieved 3 Sep 2022, available at, <https://www.jstor.org/stable/45317940>.

for the people of Afghanistan. If US wanted to do this, it could have done it earlier much easier and cheaper.¹³⁷

In practice, the US authorities in Afghanistan were the real decision-makers and the interim, transitional and elected governments all considered themselves to be obedient to their orders. Because apart from the complete dependence of these governments on the support of the US, Karzai, as their head, was a person dependent on the US; as Steve Coll said, Karzai was chosen because he was a CIA agent and trusted by the ISI.¹³⁸ The US ambassador has said about Karzai's strong dependence; he was the first and last person whom Karzai consulted before any decision during his presidency.¹³⁹ According to Ben Norton, President Ghani Ahmadzai, the most corrupt leader in the world, was also raised by various US institutions to lead Afghanistan.¹⁴⁰

Khalilzad, the special representative of the president George W. Bush and US ambassador to Afghanistan- who is from the same tribe as the Taliban group- has played a key role in guiding US policy in Afghanistan after 2001. The great upheaval caused by 9/11 put Khalilzad at the center of the great political process,¹⁴¹ in a way that the helm of Afghanistan was practically in his hands. In 2018, as the representative of the US, Khalilzad led the Doha talks with the Taliban without the participation of the Kabul government. After the collapse of the republic, Special Inspector General for Afghanistan Reconstruction (SIGAR) assessed the removal of the Afghan government from the negotiations between the US and the Taliban as the second factor in the fall of the republic and stated that this policy weakened the Kabul government and encouraged the Taliban to seek military victory.¹⁴² As Thomas Joscelyn has said about Khalilzad's role in the victory of the Taliban and the fall of the republic, the only movements that should thank Khalilzad for his services are the Taliban and Al-Qaeda.¹⁴³

The prominent role of the US in Afghanistan caused this country to sign the Doha Agreement on February 29, 2020 with the Taliban insurgent and terrorist group, contrary to international principles and rules. This was done while the US had previously signed a strategic agreement¹⁴⁴ and a security agreement¹⁴⁵ with Afghanistan, and was committed to all-round assistance and cooperation, especially in security matters. According to the Vienna Convention on the Law of Treaties 1969: "Every treaty in force is binding upon

¹³⁷ Ibid.

¹³⁸ Steve Coll, op cit.

¹³⁹ زلمی خلیلزاد، فرستاده، مترجم هارون نجفی زاده، انتشارات عازم، کابل، تابستان، 1395، ص 137.

¹⁴⁰ Ben Norton, How elite US institutions created Afghanistan's neoliberal President Ashraf Ghani, who stole \$169 million from his country, 2 Sep 2021, retrieved 11 Feb 2023, available at, <https://thegrayzone.com/2021/09/02/afghanistan-ashraf-ghani-corrupt/>.

¹⁴¹ Di Francesca Manenti e Pierluigi Barberini, Afghanistan 2001-2021: Il Futuro Del Paese Tra Disimpegno Internazionale E Processo Di Riconciliazione Inter-Afghano, CeSI-Centro Studi Internazionali, Mag 2021, pp 9-10.

¹⁴² Special Inspector General for Afghanistan Reconstruction (SIGAR), Why The Afghan Government Collapsed, Nov 2022, retrieved 28 Mar 2023, available at, <https://www.sigar.mil/pdf/evaluations/SIGAR-23-05-IP.pdf>.

¹⁴³ Thomas Joscelyn, The Taliban's Man in Washington, 5 Nov 2021. retrieved 14 Jan 2023, available at, <https://www.fdd.org/analysis/2021/11/05/the-talibans-man-in-washington/>.

¹⁴⁴ Enduring Strategic Partnership Agreement between the Islamic Republic of Afghanistan and the United States of America, Kabul, 2 May 2012, Entered into force July 4, 2012, retrieved 21 June 2023, available at, <https://2017-2021.state.gov/wp-content/uploads/2019/02/12-704-Afghanistan-Relations.pdf>.

¹⁴⁵ Security and Defense Cooperation Agreement Between the United States of America and The Islamic Republic of Afghanistan, Kabul, 30 Sep 2014, Entered into force January 1, 2015. retrieved 21 June 2023, available at, <https://www.state.gov/wp-content/uploads/2019/02/15-101-Afghanistan-Defense-Cooperation.pdf>.

the parties to it and must be performed by them in good faith”,¹⁴⁶but instead of implementing the provisions of previous agreements and helping to eliminate security threats, the US signed the Doha Agreement to the Taliban terrorist group in order to create the government that the Taliban wanted.

In addition, signing an agreement with a terrorist group for the purpose of establishing a new government for Afghanistan was contrary to the binding resolutions of the Security Council, such as resolutions 1267(1999), 1333(2000), and 1373(2001), which had been previously issued regarding the Taliban and terrorist groups. Certainly, all members of the international community, including the US, are obliged to implement the provisions of these resolutions, and actions contrary to these resolutions do not seem justified in terms of international law.

4.3 Creating an inappropriate political system

One of the main roots of conflicts in Afghanistan is ethnicization of political power. Basically, ethnic enmity and conflicts are the result of polarizing politics based on ethnic discrimination.¹⁴⁷During the 275-year history of Afghanistan, Pashtuns have tried to dominate the country. In this regard, even the crimes that are now called genocide according to the Convention on the Prevention and Punishment of the Crime of Genocide (1948)¹⁴⁸ have also occurred.¹⁴⁹ The massacre of 62% of the Hazara population and the enslavement and sale of tens of thousands of them like cattle and sheep,¹⁵⁰ by Abdul Rahman in the 1890s and the decree of their complete destruction reveal this issue.¹⁵¹

Ethnic division is the main cause of conflicts in Afghanistan. Considering this issue, Security Council resolution 1378 (2001) stipulated that an inclusive political system should be established. But when drafting the new constitution, Brahimi was pressured by Karzai and his allies to create a strong presidential system similar to the US. They did not pay attention to the warnings of experts about the ineffectiveness of centralized system in war-torn country with ethnic divisions.¹⁵² Khalilzad's effort to centralize power in the hands of the president and ensure the superiority of Pashtuns in political power was also very effective in creating a centralized system. According to Barfield instead of creating a workable framework for governance, Afghanistan's 2004 Constitution, with Khalilzad's direct intervention, "created a regime that was hardly distinguishable from the monarchies and centralized dictatorships that characterized previous regimes."¹⁵³ The highly centralized presidential system was in conflict with the objective situation of the society. Nigel advises that: “Any future government in Afghanistan will have to resolve the

¹⁴⁶ Vienna Convention on the Law of Treaties 1969, (Article 26), Text available at, https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

¹⁴⁷ محیب الرحمن رحیمی، پیشین، ص 91.

¹⁴⁸ This convention was unanimously approved by the UN General Assembly on Dec 9, 1948, and entered into force on Jan 12, 1951. Genocide has been defined and criminalized as an international crime. UN Doc. A/RES/260 (III), annex, Text available at, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/044/31/IMG/NR004431.pdf?OpenElement>.

¹⁴⁹ Gregory H. Stanton, world's genocide expert on the Hazara genocide. retrieved 15 Mar 2023, available at, <https://www.youtube.com/watch?v=tSGVix0x2X4>

¹⁵⁰ Hasan Kawun Kakar, Government and Society in Afghanistan: The Reign of Amir Aha al-Rahman Khan, University of Texas Press, Austin, 1979, p 176.

¹⁵¹ ملا فیض محمد، کاتب، سراج التواریخ، جلد سوم، قسمت اول، ارگان نشراتی سید جمال الدین حسینی، قم، 1372، ص 251.

¹⁵² Amin Saikal, The UN and Afghanistan: Contentions in Democratization and state building International Peacekeeping, Vol.19, No.2, Taylor & Francis, April 2012, p. 223. retrieved 25 Aug 2022, available at, <http://dx.doi.org/10.1080/13533312.2012.665701>.

¹⁵³ Sayed Ziafataullah Saedi, Why Is Zalmay Khalilzad Such a Controversial Figure in Afghanistan? The diplomat, April 04, 2019, retrieved 11 Aug 2022, available at, <https://thediplomat.com/2019/04/why-is-zalmay-khalilzad-such-a-controversial-figure-in-afghanistan/>.

problem of representation in a government based on population, and most importantly, on territorial representation that will accommodate most major ethnic groups and regional alignments”.¹⁵⁴ According to SIGAR's evaluation, one of the main factors of the collapse of the republican system was the unreasonable concentration and monopoly of power. Because this new constitution of Afghanistan (2004) had given the power of the king and the prime minister together to the president, this had caused rampant corruption and questioned its legitimacy.¹⁵⁵

Charles Santos, the former adviser of the UN in Afghanistan affairs, believes that Afghanistan is a country of minorities, and complex ethnic and regional divisions are ignored. Instead of building trust and creating grounds of goodwill between ethnic groups, which was necessary after decades of war and a century of brutal ethnic and religious persecution, US and the UN turned their attention to creating a centralized government. Dealing with issues and ethnic diversity is described as a conspiracy by outsiders to divide the country. As a result, the necessary dialogue between the communities has been thwarted by Kabul authorities. Santos has rightly stated that “Centralization can’t work in Afghanistan, {...} The fractured relations and history of violence among communities demand that a greater political space be created in Afghanistan. A two-track political approach, with both a national government in Kabul and regional power centers within a loosely federated or confederated democratic system, could create that space”.¹⁵⁶

4.4 Non-participation of the Taliban as the main party

Before the signing of the agreement, the de facto government of the Taliban was ruling in Kabul, and three countries, Pakistan, Saudi Arabia, and the UAE, had recognized it. Therefore, the real side of the conflict, which should have been present in the UN talks in Bonn, was the Northern Alliance,¹⁵⁷ on one side and the Taliban on the other. Not ceremonial groups such as Rome, Cyprus, and Peshawar, which were basically not parties to the conflict and there was no reasonable justification for their presence as parties to the dialogue. But the presence of the Taliban as a party to the conflict and acceptance of peace and acceptance of its conditions could be effective in the establishment of lasting peace. In this sense, some researchers have rightly reminded that the Bonn Agreement was not a peace agreement between the warring parties, but merely a statement of general goals and power sharing among the victors of the conflict, whose enemy, the Taliban, was suddenly overthrown by the intervention of external factors.¹⁵⁸ According to Barnett Rubin, the Bonn Agreement was not a peace agreement in the normal sense of the word, which was an agreement between the conflicting parties. Because the main side of the conflict was the Taliban movement, which was not present in the peace talks.¹⁵⁹ After their defeat, they wanted to contact Karzai and the US in various ways. Steve Coll points to a letter from the Taliban leader that indicated his intention to participate in the new process, but the Bush administration did not accept them.¹⁶⁰ But after the Taliban reorganized themselves with the help of Pakistan and returned to the battlefield, the US

¹⁵⁴ Nigel J.R. Allan, Rethinking Governance in Afghanistan. *Journal of International Affairs*, Vol. 56, No. 2, 2003, p 201.

¹⁵⁵ Special Inspector General for Afghanistan Reconstruction, *Why The Afghan Government Collapsed*, Nov 2022, pp. 20-21. retrieved 26 Mar 2023, available at, <https://www.sigar.mil/pdf/evaluations/SIGAR-23-05-IP.pdf>.

¹⁵⁶ Charles Santos, (2003), op cit.

¹⁵⁷ The Northern Alliance was a military coalition against the Taliban government that was established in the winter of 1996 after the capture of Kabul by the Taliban.

¹⁵⁸ Astri Suhrke, Kristian Berg Harpviken & Arne Strand, 2002, op cit, p 878.

¹⁵⁹ Barnett R. Rubin, 2004, op cit, p 167.

¹⁶⁰ Steve Coll, op cit, p 140.

first took the path of engagement and then preferred handing over the government to the Taliban. In fact, the Doha agreement clearly bypassed the existing government of the republic and talks about the "new post-settlement Afghan Islamic government".¹⁶¹

4.5 Limitless corruption

Public institutions, such as the government and organizations, due to their belonging to the public and the tendency of individuals to use illegal means for their personal benefit, may be affected by corruption in some way. Even all the mechanisms to deal with corruption may not be able to reduce it to zero. But the story of corruption in the twenty years of the republican period in Afghanistan is very special. In particular way that all political, economic, scientific, social and cultural structures are governed by corruption. Basically, there is a perception among the authorities that: "Everything in Afghanistan is money business. Politics is for money, war is for money, the government is for money".¹⁶² This approach caused a large part of the aid to be received by the people around Hamid Karzai and deposited into their bank accounts and sometimes invested in Dubai and Abu Dhabi.¹⁶³

Organized corruption has caused a grossly unfair geographic distribution of international aid. A very large share of aid was allocated to the Pashtun-inhabited southern provinces where there was a rebellion. For example, Helmand province alone has been the fifth largest recipient of financial aid from USAID, globally.¹⁶⁴ The per capita aid allocated in Panjshir province was 685 dollars per person, while the benefit of the people of Daikundi province was less than 30 dollars per person.¹⁶⁵ Worst of all, these aids are also available to the Taliban due to corruption.¹⁶⁶

Foreign donors and UN institutions have also committed corruption in this country. For example, the head of the UN Office of Project Services (UNOPS), Gary Helseth, was accused by the UN Procurement Task Force of embezzling half a million dollars in road, school and clinic money to finance his lifestyle.¹⁶⁷ Also, huge amounts of aid have been lost in the profits of contractors' companies, which can reach 50% in one contract. A large portion of the grant was generously spent on outside consultants, each of whom received fees of \$250,000 to \$500,000 per year.¹⁶⁸ Hence, it is estimated that 40% of aid is returned to donor countries.¹⁶⁹ Thus, widespread corruption has questioned the legitimacy and

¹⁶¹ Agreement for Bringing Peace to Afghanistan between the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban and the United States of America, February 29, 2020, retrieved 16 Jan 2023, available at, <https://www.state.gov/wp-content/uploads/2020/02/Agreement-For-Bringing-Peace-to-Afghanistan-02.29.20.pdf>.

¹⁶² Steve Coll, 2018, op cit, p 138.

¹⁶³ Robert Nickelsberg, 2013, op cit, pp 55-60.

¹⁶⁴ Matt Waldman, Falling Short: Aid Effectiveness in Afghanistan, ACBAR Advocacy Series, Oxfam International, Afghanistan, March 2008, pp. 2-3. retrieved 18 Aug 2022, available at, [http://www.acbar.org/ACBAR%20Publications/ACBAR%20Aid%20Effectiveness%20\(25%20Mar%2008\).pdf](http://www.acbar.org/ACBAR%20Publications/ACBAR%20Aid%20Effectiveness%20(25%20Mar%2008).pdf).

¹⁶⁵ Matt Waldman, Mar 2008, p 12.

¹⁶⁶ The Afghan questions: What do Afghans think about past, present, and future? 19 Jul 2022, retrieved 27 Feb 2023, available at, <https://www.eureporter.co/world/afghanistan/2022/07/19/the-afghan-questions-what-do-afghans-think-about-past-present-and-future/>.

¹⁶⁷ Nadia Sarwar, (Spring & Summer 2010) UN Role in rebuilding Afghanistan, Strategic Studies, Vol. 30, No. 1/2, p. 194, retrieved 10 Des 2022, available at, <https://www.jstor.org/stable/10.2307/48527671>,

¹⁶⁸ Matt Waldman, (March 2008) op cit, p 3.

¹⁶⁹ Matt Waldman, (March 2008) op cit, p 5.

acceptability of the government supported by the international community, and according to Sigar's assessment, it has been one of the main reasons for its decline and collapse.¹⁷⁰

4.6 Non-implementation of transitional justice

Peacebuilding follows a conflict and in conflicts usually crimes occur that need to be investigated and tried. Dealing with the crimes committed is now one of the important components of peacebuilding. As the UN Secretary-General has stated in his December 2001 report, sustainable peace, reconciliation, reconstruction and development cannot be based on impunity. Therefore, the people of Afghanistan and their international partners must commit to addressing the problems of the past by ending impunity and ensuring accountability for past violations, including gross and systematic human rights violations. In addition, international human rights and humanitarian law standards should provide the basis for all reconstruction and development activities.¹⁷¹

In the draft of Bonn Agreement prepared by the UN, there was an article regarding the implementation of transitional justice, but due to the fragile political situation and the opposition of jihadi leaders, this article was finally removed.¹⁷² Establishing sustainable peace requires forgiveness and justice. Failure to execute justice can lead to more serious crimes.¹⁷³ Unlike most peace agreements, the Bonn Agreement did not establish a process for establishing the truth or accountability for past crimes.¹⁷⁴ At that time, the perception of the international community and the UN was based on the premise that insisting on the implementation of transitional justice may challenge the principle of the peace agreement. As Brahimi argued, observing the fragility of the Afghan peace process, "security is more important than justice".¹⁷⁵ But at the same time, the Bonn Agreement stipulated that an independent human rights commission be established to monitor human rights, investigate human rights violations, and develop human rights. This commission was established later in 2002, but it did not have the necessary competence, independence and ability to pursue and implement transitional justice.

4.7 External interventions

Afghanistan was basically formed on the basis of the policy of powerful countries and its rulers owed their power to a foreign power. In this sense, no government has ever come to power in Afghanistan on the legitimate basis of the people.¹⁷⁶ Many powerful regional and extra-regional countries are involved in the politics and fate of Afghanistan. These interventions are not only political, but also in the form of military support for the two conflicting parties. The UN Secretary-General has repeatedly reported to the Security Council that the intervening countries are openly violating the resolutions of the General Assembly and the Security Council, which calls for the cessation of foreign military

¹⁷⁰ Special Inspector General for Afghanistan Reconstruction, *Why the Afghan Government Collapsed*, November 2022, P 20, retrieved 21 June 2023, available at, <https://www.sigar.mil/pdf/evaluations/SIGAR-23-05-IP.pdf>.

¹⁷¹ Report of the Secretary-General, UN Doc. A/56/681-S/2001/1157, 6 Dec 2001, para 83.

¹⁷² Patricia Gossman, *Truth, justice and stability in Afghanistan*, *Transitional Justice in the Twenty-First Century Beyond Truth versus Justice* Edited by, Naomi Roht-Arriaza and Javier Mariezcurrena, Cambridge University Press, 2006, p. 261.

¹⁷³ ابراهيم بيگ زاده، در تکیاوی صلح پایدار، مجله تخصصی الهیات و حقوقی/پژوهش ها، تابستان 1387، شماره 28، ص 19.

¹⁷⁴ Oxfam Research Report, *The Cost of War: Afghan Experiences of Conflict, 1978-2009*, November 2009, p 13, http://www.oxfam.org.uk/resources/policy/conflict_disasters/downloads/the-cost-of-war-afghanistan.pdf.

¹⁷⁵ Amin Saikal, *The UN and Afghanistan: Contentions in Democratization and State building International Peacekeeping*, Vol.19, No.2, Taylor & Francis, Apr 2012, p. 223. retrieved 4 Aug 2022, available at, <http://dx.doi.org/10.1080/13533312.2012.665701>.

¹⁷⁶ Amin saikal, 1998, op cit, p 39.

intervention. These countries seriously undermine the peace efforts of the UN.¹⁷⁷ Interference by countries and undermining of UN peace efforts has continued and has never stopped.

5 Concluding remarks

Afghanistan is the territory of heterogeneous ethnicities, with different religions, cultures and languages, and is a place of potential and actual conflicts. In some cases, these conflicts have led to great crimes and sometimes to the collapse of the political system. After the attacks of 9/11, the international community and the UN tried to build peace in Afghanistan through nation-state building. But these efforts finally failed after many human sacrifices and huge material costs. The factors of this failure are the challenges that the UN peacebuilding process has faced. The major challenge was actually caused by the shock of the 9/11 attack, which left the US as a powerful victim nation in a state of anger and revenge. This situation caused the application of extensive political and military powers of the US in Afghanistan. In 2001, the US refused to involve the Taliban in the peace process, and, in 2021, it signed the Doha Agreement with the Taliban without the presence of the Kabul government. Peacebuilding required that all members of the international community, including the US, operate under the leadership and authority of the UN, and the UN played a leading role and created the necessary institutions such as East Timor and Kosovo. Other factors such as the creation of a centralized structure far removed from the realities of the heterogeneous and fragile structure of the Afghan society, widespread corruption, non-implementation of transitional justice, overt and covert intervention of foreign governments have each played a major role in the failure of the peace process. It seems that the provisions of the UN Security Council resolution 1378 (2001) to create an inclusive and participatory political system that respects human rights and is decentralized at the same time can still be the solution. It should also stress that in a country with a mosaic structure of ethnic groups, the centralized government has led to ethnic domination and lack of legitimacy and is not a solution. Rather, on the contrary, to the extent that political power is decentralized, the satisfaction of the ethnic groups is achieved and totalitarianism and corruption are reduced. Perhaps in countries with a heterogeneous, ethnic, linguistic, and religious structure like Afghanistan, a more open structure like a federal structure is the best option.

¹⁷⁷ Report of the Secretary-General, UN Doc. A/52/682-S/1997/894, 14 Nov 1997, Para 18.