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Resolutions Without Resolve: Turning Away from UN Security Council Resolutions to Address Conflict-Related Sexual Violence

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RESOLUTIONS WITHOUT RESOLVE:
TURNING AWAY FROM U.N. SECURITY
COUNCIL RESOLUTIONS TO ADDRESS
CONFLICT-RELATED SEXUAL VIOLENCE

*Emma K. Macfarlane**

In 2008, the United Nations first recognized rape as a war crime with the passage of U.N. Security Council Resolution 1820. Since then, the fight against conflict-related sexual violence has become a frequent subject of Security Council Resolutions. But what, if anything, has changed? Wartime sexual violence is still prevalent today and shows no signs of slowing down. This Note argues that Security Council Resolutions are not an effective method to prevent conflict-related sexual violence. The procedural weaknesses in passing Security Council Resolutions and the structure of the Security Council itself may do more harm than good to the efforts to end wartime sexual violence. Instead, this Note finds a solution in an unlikely realm: using voluntary pollution prevention programs as a template to address wartime sexual violence. In examining the parallels between the two issues, this Note suggests a new framework for addressing wartime sexual violence, relying on three factors in particular: adequate and consistent funding to key organizations, regular and credible monitoring of vulnerable communities, and the credible threat of enforcement.

* J.D. Candidate, University of Michigan Law School (2021). My sincere thanks to the editors of the *Michigan Journal of Gender & Law* for their thoughtful suggestions and insights on this topic.

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INTRODUCTION

“The world must draw a red line on the impunity of abusing women in war.”—Dr. Denis Mukwege, Nobel Peace Prize Laureate 2018.¹

Nadia Murad’s story shocked the public conscience.² Ms. Murad is a Yazidi woman whose hometown is in Sinjar, a district in the moun-

1. “*The World Must Draw a Red Line on the Impunity of Abusing Women in War*,” *Nobel Peace Prize 2018 Laureate—Dr. Denis Mukwege*, NEW AFRICAN (Dec. 10, 2018), <http://newafricanmagazine.com/17552/> [<http://perma.cc/P7FB-Z8J8>].

2. *See Nobel Peace Prize Goes to U.N. Goodwill Ambassador and Congolese Doctor, Highlighting Sexual Violence*, U.N. NEWS (Oct. 5, 2018), <https://news.un.org/en/story/2018/10/1022322> [<http://perma.cc/FKE6-HBCB>].

tains of northern Iraq.³ In 2014, ISIS soldiers kidnapped Ms. Murad from her home.⁴ She was held as a sex slave for three months as she and several hundred other girls and young women were subjected to repeated beatings and rapes.⁵ Ms. Murad eventually escaped and made her way to a refugee camp near Mosul.⁶ She is now an activist for Yazidi women and a Nobel Peace Prize winner, frequently recognized along with gynecologist Denis Mukwege for their advocacy on behalf of victims of sexual violence.⁷ Ms. Murad's work includes rebuilding communities that have suffered through wartime violence; sustainably redeveloping her homeland in Iraq; working with local community groups to promote projects that focus on healthcare, water, and hygiene; and sponsoring education initiatives for women.⁸

The conflict-related sexual violence that Ms. Murad experienced has existed since at least the twentieth century, and almost certainly before this time despite a dearth of documentation.⁹ No geographic region has been immune.¹⁰ It frequently occurs during times of conflict as it is a brutal yet effective way to maintain control over a civilian population.¹¹ Its physical, emotional, and psychological implications are trau-

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3. *About Nadia Murad*, NADIA'S INITIATIVE, <https://nadiainitiative.org/nadia-murad/> [<http://perma.cc/3BA6-J45Q>].
 4. *Nadia Murad—Facts*, THE NOBEL PRIZE, <https://www.nobelprize.org/prizes/peace/2018/murad/facts/> [<http://perma.cc/9WU9-D92T>].
 5. *Id.*
 6. *Id.*
 7. *About Nadia Murad*, *supra* note 3.
 8. *Our Work*, NADIA'S INITIATIVE, <https://www.nadiainitiative.org/our-work> [<http://perma.cc/RS3V-AZH3>].
 9. See Joanna Bourke, *Rape as a Weapon of War*, 383 LANCET e19, e19-20 (2014) (book review).
 10. Examples of nations that have experienced the atrocity include France; the Rhineland; Spain; the former Soviet Union; Greece; and, more recently, within Colombia; Chechnya; India; Bangladesh; the Democratic Republic of Congo; the Central African Republic; and South Sudan. *Id.*; see also *Central African Republic: Sexual Violence as a Weapon of War*, HUM. RTS. WATCH (Oct. 5, 2017, 12:01 AM), <https://www.hrw.org/news/2017/10/05/central-african-republic-sexual-violence-weapon-war> [<http://perma.cc/XJ78-TUZL>]; Rebecca Ratcliffe, *Rape is an Instrument of War in Central African Republic Conflict, Finds Study*, GUARDIAN (Oct. 5, 2017, 8:03 AM), <https://www.theguardian.com/global-development/2017/oct/05/rape-instrument-of-war-central-african-republic-conflict-study-sexual-slavery> [<http://perma.cc/HGY8-BF7W>]; Nick Cumming-Bruce, *Mass Rape, a Weapon of War, Traumatizes South Sudan*, N.Y. TIMES (Mar. 11, 2016), <https://www.nytimes.com/2016/03/12/world/africa/un-reports-systematic-rape-in-south-sudan-conflict.html> [<http://perma.cc/CNC6-JS4P>].
 11. Anna Gopsill, *Recognizing All Victims and Survivors of Sexual Violence in Wartime*, CMI-CHR MICHELSEN INST. (Dec. 10, 2018), <https://www.cmi.no/news/2096-sexual-violence-in-wartime> [<http://perma.cc/XE3T-FB5K>].

matic and long-lasting, and the shame survivors experience can often-times prevent subsequent reports of the widespread sexual violence.¹² The experienced trauma together with the lack of reporting is exactly what makes wartime sexual violence so effective.

In an effort to globally address wartime sexual violence, the United Nations (“U.N.”) first recognized rape as a war crime in 2008 with the passage of United Nations Security Council Resolution 1820.¹³ Other resolutions soon followed. They ranged from responses to specific wars in which sexual violence was committed, like Resolution 2429 (adopted in 2018) that addressed sexual violence taking place in Sudan and South Sudan,¹⁴ to those with broader purposes, like Resolution 2331 (adopted in 2016) that addressed the nexus between sexual violence, terrorism, and transnational organized crime.¹⁵ These resolutions have been met with mixed responses from national governments, international lawyers, and human rights lobbyists due to their varied purposes and effects.

This Note argues that Security Council Resolutions are an ineffective mechanism to respond to conflict-related sexual violence as they do more damage than good. Instead, the U.N. should turn to alternative methods of action that have proved successful in other areas of international law. This Note uses the paradigm of pollution prevention to more effectively address wartime sexual violence.

Section I provides a brief history of wartime sexual violence and describes the Security Council Resolution enactment process. Section II describes the procedural difficulties inherent in using Security Council Resolutions to end wartime sexual violence. It concludes that Security Council Resolutions are not only an ineffective method to end wartime sexual violence, but also frequently lead to damaging discourse that ultimately backtrack women’s rights on an international scale. Section III proposes an alternative to Security Council Resolutions, which more effectively addresses wartime sexual violence. The proposal adopts meth-

12. *Id.*

13. Lindsay L. Wright, *Fails So Good: An Examination of the United Nations’ Ineffective Implementation of Resolution 1820 in Democratic Republic of Congo*, 35 SUFFOLK TRANSNAT’L L. REV. 153, 153 (2012). Security Council Resolutions are “formal expressions of the will or opinion” of the United Nations Security Council. *Resolutions*, UNITED NATIONS SEC. COUNCIL, <https://www.un.org/securitycouncil/content/resolutions-0> [http://perma.cc/C2CU-AKQJ]. For a more in-depth discussion on Security Council Resolutions and their formation, see discussion *infra* Section I.B.

14. S.C. Res. 2429, ¶ 35 (July 13, 2018).

15. S.C. Res. 2331, ¶ 8 (Dec. 20, 2016); see also *Our Mandate*, OFF. OF THE SPECIAL REPRESENTATIVE OF THE SEC’Y-GEN. ON SEXUAL VIOLENCE IN CONFLICT, <https://www.un.org/sexualviolenceinconflict/our-work/our-mandate/> [http://perma.cc/84E3-B7JH].

ods used in voluntary pollution prevention programs to eliminate sexual violence as a weapon of war through U.N. organs. Adequate and consistent funding, regular and credible monitoring, and the threat of enforcement are each explored as tools that may supplant ineffective Security Council Resolutions.

I. WARTIME SEXUAL VIOLENCE AND THE UNITED NATIONS SECURITY COUNCIL

A. *Wartime Sexual Violence*

This Section will provide fundamental historical context for sexual violence during armed conflict and detail the relation between this atrocity and Security Council Resolutions. First, it is important to understand what this violence is. This Note interchangeably uses “wartime sexual violence,” “conflict-related sexual violence,”¹⁶ and “sexual violence during armed conflict.”¹⁷ It intentionally avoids the term “rape as a weapon of war”¹⁸ due to its narrower connotations.¹⁹ Wartime sexual violence is not limited to rape; it concerns violence on a much broader spectrum, including “sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage,” and all other forms of sexual violence linked to a conflict.²⁰ The term “conflict,” in turn, includes situations of “mass armed conflict or ‘lethal intergroup violence.’”²¹ A formal declaration of war is not necessary.²² Indeed, even if only one side is in a position to partake in systematic violence, this may still establish a conflict zone.²³ For example, within the first two

16. See, e.g., *Conflict-Related Sexual Violence*, UNITED NATIONS PEACEKEEPING, <https://peacekeeping.un.org/en/conflict-related-sexual-violence> [http://perma.cc/JED7-P2C4] (defining “conflict-related sexual violence”).

17. E.g., Janie Leatherman, *Sexual Violence and Armed Conflict: Complex Dynamics of Re-Victimization*, 12 INT’L J. PEACE STUD. 53, 55 (2007) (using the term “sexual violence in armed conflict”).

18. See Maria Eriksson Baaz & Maria Stern, *Curious Erasures: The Sexual in Wartime Sexual Violence*, 20 INT’L FEMINIST J. POL. 295, 296 (2018).

19. See Elizabeth D. Heineman, *Introduction to SEXUAL VIOLENCE IN CONFLICT ZONES: FROM THE ANCIENT WORLD TO THE ERA OF HUMAN RIGHTS* 1, 2 (Elizabeth D. Heineman ed., 2013).

20. U.N. Secretary-General, *Conflict Related Sexual Violence*, ¶ 4, U.N. Doc. S/2019/280 (Mar. 29, 2019) [hereinafter *Conflict Related Sexual Violence*].

21. Heineman, *supra* note 19, at 2.

22. *Id.*

23. *Id.*

weeks of the Rwandan genocide in 1994, the Hutu majority engaged in rampant sexual violence against the Tutsi minority.²⁴ While there was no formal declaration of war, this constituted wartime sexual violence all the same.²⁵

Two additional key facts undergird this Note's discussion of conflict-related sexual violence. First, the perpetrators of sexual violence during armed conflict are not exclusively male, and those subjected to it are not exclusively female.²⁶ Although targeting transcends gender, those most commonly subjected to wartime sexual violence are women.²⁷ Second, wartime sexual violence is inextricably linked to the basic human rights of women.²⁸ Wartime sexual violence has been equated to acts of torture,²⁹ genocide,³⁰ and terrorism.³¹ Its psychological, physical, and social consequences can each prove deadly. Survivors describe a range of devastating mental health repercussions: Shame, sadness, anger, fear, anxiety, and depression persist after the violence, and these feelings may

24. Jennifer Rosenberg, *A Timeline of the Genocide in Rwanda*, THOUGHT CO. (Mar. 17, 2020), <https://www.thoughtco.com/rwanda-genocide-timeline-1779930> [http://perma.cc/3QAC-QNTA].

25. *See id.*

26. Dara Kay Cohen, Amelia Hoover Green, & Elisabeth Jean Wood, *Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward*, SPECIAL REPORT (U.S. Inst. of Peace, Wash., D.C.), Feb. 2013, at 1, 2. <https://www.usip.org/sites/default/files/resources/SR323.pdf> [http://perma.cc/5TZ4-A3GR].

27. LaShawn R. Jefferson, *In War as in Peace: Sexual Violence and Women's Status*, in HUMAN RIGHTS WATCH WORLD REPORT 2004 325 (Hum. Rts. Watch. ed., 2004), <https://www.hrw.org/legacy/wr2k4/download/wr2k4.pdf> [https://perma.cc/B64A-B9SE]. This takes into account the sexual violence against men and boys that often goes unreported. *See* Leatherman, *supra* note 17, at 54. While data on the levels of wartime sexual violence against LGBTQIA+ individuals, including transgender, non-binary, and gender nonconforming individuals, is incomplete, the Center for Disease Control and Prevention notes that this demographic experiences sexual violence during peacetime at similar or higher rates than straight, cisgender individuals, in addition to higher rates of hate-motivated violence. *Sexual Assault and the LGBTQ Community*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community> [http://perma.cc/4VVD-SQEV]. It seems possible—if not likely—that these statistics would carry into a wartime setting.

28. *See* Miranda Alison, *Wartime Sexual Violence: Women's Human Rights and Questions of Masculinity*, 33 REV. INT'L STUD. 75, 75 (2007).

29. Pieter Kooijmans, the Former Special Rapporteur on Torture, opined: "Since it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and right to physical integrity of the human being, they accordingly constituted an act of torture." U.N. ESCOR, 48th Sess., 21st mtg. at ¶ 35, U.N. Doc. E/CN.4/1992/SR.21 (Feb. 21, 1992).

30. *Conflict Related Sexual Violence*, *supra* note 20, at ¶ 32.

31. *Id.* ¶¶ 13-14.

be further augmented by unwanted pregnancies.³² Women who survive wartime sexual violence are sometimes left with mutilated genitalia³³ and infected with diseases that can become deadly.³⁴ These traumas, along with living through the experience of sexual violence itself, can render survivors pariahs within their own communities.³⁵ Worse, survivors may later be subjected to domestic violence or family-led honor killings in communities that view any sexual activity outside of marriage as shameful or as bringing dishonor.³⁶ Sexual violence during armed conflict is a uniquely devastating form of violence that has catastrophic effects on the mental and physical health of survivors.³⁷

Sexual violence during times of conflict has been called “as old as warfare.”³⁸ While this may be true, to assert that sexual violence is always present in wartime or during a conflict is to suggest a “natural” pairing between the two phenomena.³⁹ This proposition is in itself destructive. Not only does it conceal the diversity of conflict-related violent experiences,⁴⁰ but it also downplays sexual violence as an inevitable consequence of conflict.⁴¹ Commentators have argued that viewing sexual violence as a foregone conclusion during wartime leads to ignoring

32. GLOB. JUST. CTR., THE RIGHT TO AN ABORTION FOR GIRLS AND WOMEN RAPED IN ARMED CONFLICT 5 (2011), <https://globaljusticecenter.net/documents/LegalBrief.RightToAnAbortion.February2011.pdf> [<https://perma.cc/8JJH-UNLF>].

33. *Id.* at 7.

34. Aryn Baker, *War and Rape*, TIME INT'L, Mar. 21, 2016, at 20, 22-24.

35. GLOB. JUST. CTR., *supra* note 32, at 5.

36. *Id.*; see also, e.g., Lama Abu-Odeh, *Honor Killings and the Construction of Gender in Arab Societies*, 58 AM. J. COMP. L. 911, 918 (2010) (“The physical attachment of the hymen to the body needs to be evidenced and publicized. Killing a woman because she fails to bleed on her wedding night is one possible scenario for an honor killing.”).

37. See generally Mahlet Atakilt Woldetsadik, *Long-Term Effects of Wartime Sexual Violence on Women and Families* (July 2018) (Ph.D. dissertation, Pardee Rand Graduate School) (on file with the Pardee Rand Graduate School Library); see also Véronique Nahoum-Grappe, *Sexual Violence in Wartime*, 2 INFLEXIONS 183, 187 (2011) (“The crime of rape is therefore not only a painful invasion of the body, possession and physical—followed by political—domination, but also a major factor in identity destruction, in cultures where women’s honour is defined by their rejection of unlawful sexual activity and thus, for example by their virginity up to the time of marriage.”).

38. Heineman, *supra* note 19, at 5.

39. Nahoum-Grappe, *supra* note 37, at 184.

40. *Id.*

41. See Elisabeth Jean Wood & Julia Bleckner, *Conflict-Related Sexual Violence*, 3 IISS ARMED CONFLICT SURV. 25, 25 (2017).

sexual violence as an abuse of human rights.⁴² Instead, it is accepted as an “unfortunate but inevitable side effect of sending men to war.”⁴³

The true reach of sexual violence during conflict is difficult to gauge. Historically, few measures have been taken to record sexual violence against women during armed conflict.⁴⁴ Today, flawed methods of determining the number of victims result in estimates plagued by both over- and undercounting; as such, when data is produced, the range of estimated victims is wide.⁴⁵ For example, estimates of the number of sexual violence victims during the 1994 Rwandan genocide range from 250,000 to 500,000 individuals.⁴⁶ Regardless of the lack of conclusive data, what is clear from these estimates is that sexual violence during times of conflict is far from behind us. The former United Nations Secretary-General termed this type of violence a “present-day atrocity”⁴⁷ and characterized its use as a common tactic of modern warfare.⁴⁸

Responses to wartime sexual violence have varied on both national and international levels. The focus of this Note centers on international responses, but frequently, national non-governmental coalitions have effectively contributed in responding to wartime sexual violence. For example, women-led civil society organizations have mobilized politically to protest the threat of conflict-related sexual violence in their countries.⁴⁹ La Ruta Pacífica de las Mujeres⁵⁰ is a grassroots feminist move-

42. *See id.* at 32 (arguing that viewing sexual violence in war as not inevitable strengthens the grounds for holding perpetrators accountable).

43. Dorothy Q. Thomas & Regan E. Ralph, *Rape in War: Challenging the Tradition of Impunity*, 14 SAIS REV. 81, 81 (1994).

44. *Sexual Violence and Armed Conflict: United Nations Response*, WOMEN2000, April 1998, at 2, 3 (1998), <https://www.un.org/womenwatch/daw/public/cover.pdf> [<https://perma.cc/7QZK-BG4B>].

45. Tia Palermo & Amber Peterman, *Undercounting, Overcounting and the Longevity of Flawed Estimates: Statistics on Sexual Violence in Conflict*, 89 BULL. WORLD HEALTH ORG. 924, 924-25 (2011).

46. *Id.*

47. *Deputy Secretary-General's Opening Remarks at Press Briefing with Secretary-General's Special Representative Margot Wallstrom and Under-Secretary-General Alain Le Roy*, U.N. SECRETARY-GENERAL (Feb. 9, 2010), <https://www.un.org/sg/en/content/dsg/press-encounter/2010-02-09/deputy-secretary-generals-opening-remarks-press-briefing> [<http://perma.cc/6JWB-4Y74>].

48. *U.N.: Sexual Violence a 'Tactic of War,'* HUM. RTS. WATCH (Apr. 14, 2015, 10:13 AM), <https://www.hrw.org/news/2015/04/14/un-sexual-violence-tactic-war> [<https://perma.cc/65Q2-BPJS>].

49. *See Anne-Kathrin Kreft, Responding to Sexual Violence: Women's Mobilization in War*, 56 J. PEACE RSCH. 220 (2018).

50. RUTA PACÍFICA DE LAS MUJERES, COLOMBIAN WOMEN'S TRUTH AND MEMORY COMMISSION 1, <https://www.rutapacifica.org.co/descargas/comisionverdad/TruthandMemoryCommission.pdf> [<https://perma.cc/W6CU-T6TK>].

ment in Colombia that was instrumental in negotiating a solution to the country's 1996 armed conflict between the government and guerrilla groups.⁵¹ The organization, still in existence today, describes itself as "feminist, pacifist, and anti-militarist,"⁵² and was formed in a response to the violence women faced in conflict zones.⁵³ The mandate of La Ruta Pacífica is to showcase the effects that war has on women's bodies and to demand both accountability and a negotiated solution to conflict.⁵⁴ The effectiveness of these national responses cannot be understated: Any international solution is necessarily undergirded by the support of national coalitions such as La Ruta Pacífica.

Governments have also worked to prioritize legislation to strengthen protections against wartime sexual violence and to dedicate comprehensive services to survivors. For example, in March 2020, the Sudanese government signed a Framework of Cooperation with the United Nations to address the sexual violence that has occurred for years within the Darfur region.⁵⁵ Among other stipulations, the agreement commits both the Sudanese government and the United Nations to develop and support legislation to bolster protections against wartime sexual violence.⁵⁶ The agreement also lays out commitments to provide wide-ranging health services and support to survivors, and stipulates enhanced methods to investigate and prosecute perpetrators.⁵⁷ Through these responses, among other methods, the United Nations has played a large role in bringing wartime sexual violence to the fore of international conversations on human rights.⁵⁸

51. *Id.*

52. Andrew Willis Garcés, *Ruta Pacífica: Colombian Women Against Violence*, UPSIDE DOWN WORLD (Feb. 4, 2009), <http://upside-downworld.org/archives/colombia/ruta-pacific-a-colombian-women-against-violence/> [<https://perma.cc/C86U-6KUT>].

53. RUTA PACÍFICA DE LAS MUJERES, *supra* note 50.

54. Garcés, *supra* note 52.

55. *See, e.g.*, Press Release, U.N. Off. Special Rep. Sec'y-Gen. on Sexual Violence in Conflict, The Government of Sudan and the United Nations Sign a Framework of Cooperation to Prevent and Respond to Conflict-Related Sexual Violence (Mar. 11, 2020), https://unamid.unmissions.org/sites/default/files/20200311_press_release_foc_sudan.pdf [<https://perma.cc/9MPK-7MQW>].

56. *Id.*

57. *Id.*; *see also* Framework of Cooperation of the Republic of the Sudan and the United Nations on the Prevention and Response to Sexual Violence in Conflict, 3 (Mar. 10, 2020), <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/03/Signed-Framework-of-Cooperation-with-Sudan.pdf> [<https://perma.cc/75BS-8GCG>].

58. *See, e.g.*, *Conflict Related Sexual Violence*, *supra* note 20.

B. *United Nations Security Council Resolutions*

The U.N. has a number of mechanisms at its disposal to address the issue of wartime sexual violence and the organization has deployed these tools with varying levels of success. One such method is the Security Council Resolution.

The United Nations Security Council is one of the six main organs of the United Nations and is tasked with maintaining international peace and security.⁵⁹ To this end, the Security Council has the power to pass resolutions which serve as “formal expressions of the opinion or will of United Nations organs.”⁶⁰ The topics of Security Council Resolutions range from the safety and security of peacekeepers;⁶¹ to commentary on human rights circumstances in a particular country;⁶² to topics applicable to a range of geographic areas, like the threat of terrorist acts.⁶³ In its capacity as a keeper of peace and security, the United Nations Security Council has attempted to address wartime sexual violence through resolutions.

The Security Council is composed of fifteen members.⁶⁴ Five members are permanent, collectively known as the “Permanent Five”—China, Russia, France, the United Kingdom, and the United States—and ten are non-permanent,⁶⁵ elected for two-year terms by the United Nations General Assembly.⁶⁶ Resolutions are passed by an affirmative vote of nine of the fifteen Security Council members.⁶⁷ All members of the “Permanent Five” have veto power under the U.N. Charter.⁶⁸ Thus,

59. U.N. Charter art. 39.

60. *Resolutions*, *supra* note 13.

61. *See* S.C. Res. 2518, 1 (Mar. 30, 2020). Peacekeepers are U.N. agents “called upon not only to maintain peace and security, but also to facilitate the political process, protect civilians, assist in the disarmament, demobilization and reintegration of former combatants; support the organization of elections, protect and promote human rights and assist in restoring the rule of law.” *What is Peacekeeping*, UNITED NATIONS PEACEKEEPING, <https://peacekeeping.un.org/en/what-is-peacekeeping> [<https://perma.cc/L5DV-CCEH>].

62. *See* S.C. Res. 2510 (Feb. 12, 2020).

63. *See* S.C. Res. 2129 (Dec. 17, 2013).

64. U.N. Charter art. 23, ¶ 1.

65. *Id.*

66. U.N. Charter art. 23, ¶ 2. The ten non-permanent members are currently: Belgium, Dominican Republic, Estonia, Germany, Indonesia, Niger, Saint Vincent and the Grenadines, South Africa, Tunisia, and Vietnam. *Current Members*, UNITED NATIONS SEC. COUNCIL, <https://www.un.org/securitycouncil/content/current-members> [<https://perma.cc/WJX9-BHFQ>].

67. U.N. Charter art. 27, ¶ 2.

68. *See id.* ¶ 3.

if any member of the Permanent Five votes against a resolution, the resolution will fail.⁶⁹

The Security Council derives its authority to adopt resolutions from the U.N. Charter. It may enact a resolution under one of two chapters of the Charter. Different international legal consequences flow from resolutions adopted under the respective Chapters. Chapter VII of the Charter allows the Security Council to deploy forces by land, sea, or air to enforce peace and security.⁷⁰ Further, it permits U.N. Member States to take more aggressive measures to address resistance against peacekeeping operations when more protection-oriented measures have failed.⁷¹ These initial protection-oriented measures typically take place under Chapter VI of the U.N. Charter which governs the pacific settlements of disputes.⁷² Resolutions adopted under Chapter VII are generally considered to be legally enforceable, while those adopted under Chapter VI are understood to be non-binding.⁷³

This is not to say that non-binding U.N. resolutions passed under Chapter VI can never contribute meaningfully to international peace and security. But in terms of conflict-related sexual violence, the efficacy of these resolutions is a matter of debate.⁷⁴ Ten years after the enactment of the first Security Council Resolution addressing wartime sexual violence,⁷⁵ this weapon of war is still often used with impunity.⁷⁶ That sex-

69. Note that only a veto (or vote *against* a resolution) forces any resolution to fail entirely. Members of the Permanent Five may abstain from voting with no effect on the outcome of the resolution, providing that the resolution receives the requisite support from other members of the U.N. Security Council. SEC. COUNCIL REP., THE VETO (2015), <https://www.securitycouncilreport.org> (search “The Veto”) [<https://perma.cc/X295-RYKE>]. For more information on the process of abstaining from Security Council votes, see Leo Gross, *Voting in the Security Council: Abstentions from Voting and Absence from Meeting*, 60 YALE L.J. 209 (1951).

70. U.N. Charter arts. 42, 45, 50.

71. See SEC. COUNCIL REP., SECURITY COUNCIL ACTION UNDER CHAPTER VII: MYTHS AND REALITIES (2008), <https://www.securitycouncilreport.org> (search “Security Council Action Under Chapter VII”) [<https://perma.cc/6V3C-BGER>].

72. See U.N. Charter arts. 33-38.

73. See *id.* at 7, 9; see also S.C. Res. 2467 (Apr. 23, 2019); *Sexual Violence Monitoring*, PEACEWOMEN, <http://www.peacewomen.org/security-council/sexual-violence-indicators-and-monitoring> [<https://perma.cc/8ZGB-ZA2Z>].

74. See SEC. COUNCIL REPORT, *supra* note 71, at 9. See also Sophie Huvé, *The Use of U.N. Sanctions to Address Conflict-Related Sexual Violence*, GEORGETOWN INST. FOR WOMEN, PEACE & SEC. 23-26 (2018), <https://giwps.georgetown.edu/wp-content/uploads/2018/03/Use-of-UN-Sanctions-to-Address-Conflict-related-Sexual-Violence.pdf> [<https://perma.cc/RVB5-2XEX>].

75. See S.C. Res. 1820 (June 19, 2008).

ual violence during wartime continues unabated and is even increasing in an alarming number of regions throughout the world⁷⁷ is but one indicator that existing Security Council Resolutions have been and will continue to be an ineffective tool to address this issue.

II. THE DEFICIENCIES OF SECURITY COUNCIL RESOLUTIONS IN ADDRESSING WARTIME SEXUAL VIOLENCE

Problems with addressing conflict-related sexual violence through Security Council Resolutions chiefly stem from the procedural aspects of passing those resolutions. Section II.A details how the consensus-building process necessary to pass a resolution can cause a regression in Security Council precedent, which in turn causes a backsliding of women's rights. Section II.B outlines how the Security Council voting structure creates undesirable incentives for powerful members to veto resolutions that might be used to address human rights abuses within their own borders. Section II.C identifies how the Security Council's limitations necessarily position the protection of women from sexual violence as a means to an end. This creates a hierarchy that subverts women's rights, making them secondary to international peace and security. Finally, Section II.D showcases how, in spite of over a decade's worth of Security Council Resolutions addressing the subject, there is a dearth of normative and behavioral change surrounding sexual violence during conflict.

A. *The Drawbacks of Consensus-Building*

On April 29, 2019, the United Nations Security Council passed Resolution 2467 on Women, Peace and Security.⁷⁸ It was lauded by the

76. See *Sexual Violence as a Weapon of War*, DR. DENIS MUKWEGE FOUND., <https://www.mukwegefoundation.org/the-problem/rape-as-a-weapon-of-war/> [https://perma.cc/HYC3-S9N3].

77. See *id.* Known areas of sexual violence currently include Syria, Iraq, South Sudan and Burma. Christian Caryl, Opinion, *Rape Is Still Being Used as a Weapon of War Right Now. Today.*, WASH. POST (Nov. 21, 2017), <https://www.washingtonpost.com/news/democracy-post/wp/2017/11/21/rape-is-still-being-used-as-a-weapon-of-war-right-now-today/> [https://perma.cc/E3GL-3TBG].

78. Press Release, U.N. Off. Special Rep. Sec'y-Gen. on Sexual Violence in Conflict, Landmark U.N. Security Council Resolution 2467 (2019) Strengthens Justice and Accountability and Calls for a Survivor-Centered Approach in the Prevention and Response to Conflict-Related Sexual Violence (Apr. 29, 2019), <https://www.un.org>

United Nations as strengthening justice and accountability and for its “survivor-centered approach in the prevention and response to conflict-related sexual violence.”⁷⁹ At first blush, the text of the Resolution is encouraging. The Resolution calls upon United Nations Member States to provide care to survivors of rape during situations of armed conflict without “any discrimination,” and draws attention to “groups that are particularly vulnerable or may be specifically targeted” in conflict and post-conflict situations.⁸⁰ The Resolution also requests that the Secretary-General report periodically on Member State compliance and steps taken to implement the Resolution.⁸¹ Finally, Article 35 of the Resolution encourages countries to adopt and regularly refresh fully funded national action plans to progress the U.N.’s Women, Peace and Security Agenda.⁸² This initiative stresses the importance of women’s equal participation in post-conflict reconstruction and in the promotion of peace and security.⁸³ It also encourages the incorporation of all gender perspectives in U.N. efforts to promote and maintain peace and security.⁸⁴ Finally, Resolution 2467 includes a number of firsts. These include welcoming regular briefings by women from civil society groups on conflict-related sexual violence and addressing the unique hardships of mothers of children born from rape.⁸⁵

/sexualviolenceinconflict/press-release/landmark-un-security-council-resolution-2467-2019-strengthens-justice-and-accountability-and-calls-for-a-survivor-centered-approach-in-the-prevention-and-response-to-conflict-related-sexual-violence [https://perma.cc/RZQ2-S5W3] [hereinafter *Landmark U.N. Security Council Resolution 2467*]; *Overview of Resolution 2467: Women, Peace and Security*, PERMANENT MISSION OF THE FED. REPUBLIC OF GER. TO UNITED NATIONS, https://new-york-un.diplo.de/un-en/news-corner/-/2216570 [https://perma.cc/L5QR-UE6V].

79. *Landmark U.N. Security Council Resolution 2467*, *supra* note 78.

80. S.C. Res. 2467, ¶ 16 (Apr. 23, 2019); *see also Landmark U.N. Security Council Resolution 2467*, *supra* note 78.

81. *See* S.C. Res. 2467, ¶¶ 6, 8 (Apr. 2019).

82. *Id.* ¶ 35.

83. *Landmark Resolution on Women, Peace and Security*, OFF. OF THE SPECIAL ADVISER ON GENDER ISSUES & THE ADVANCEMENT OF WOMEN, https://www.un.org/womenwatch/osagi/wps/ [https://perma.cc/FP79-DCQL].

84. *Id.*

85. A Security Council report explains:

For the first time, the Security Council addresses the situation of mothers of children born of sexual violence and their children in detail and spells out the challenges facing them, such as economic and social marginalization, physical and psychological injury, statelessness, discrimination and lack of access to reparations. The resolution requests the Secretary-General to provide a report to the Security Council on this topic until 2021.

These developments should not obscure the reality that the consensus-building process diluted the Resolution and resulted in a watered-down decree that varied widely from its original form.⁸⁶ Certain aspects of Resolution 2467 are a regression. Notably absent from Resolution 2467 is any mention of sexual and reproductive health services for survivors of sexual violence during armed conflict.⁸⁷ This is significant because it is a marked backslide from previous Security Council Resolutions which have recognized the sexual and reproductive rights of women for over twenty years.⁸⁸ Further, the word “gender” is conspicuously absent from the text of the resolution.⁸⁹ This is meaningful because it signals that transgender individuals are excluded from the scope of the resolution.⁹⁰ Moreover, it departs from past practice where the term was used liberally in resolutions addressing conflict-related sexual violence.⁹¹

Landmark U.N. Security Council Resolution 2467, supra note 78.

86. For example, a series of insights produced by the Security Council Report on evolving Security Council actions explains:

Three permanent members of the Council (China, Russia, and the US) expressed opposition to several aspects of the text during the negotiations, and at various stages of the process, all three threatened to use their veto. The original draft resolution was ambitious. Designed to focus on a “survivor-centered approach” to preventing and responding to sexual violence in conflict, it addressed several issues that were controversial for these permanent members. Among the contentious issues were whether to include language on the sexual and reproductive health of victims of sexual violence, whether to establish a formal mechanism (that is, a working group) on sexual violence in conflict, references to the International Criminal Court (ICC), and recognition of LGBTI as a vulnerable group.

See In Hindsight: Negotiations on Resolution 2467 on Sexual Violence Conflict, WHAT’S IN BLUE: INSIGHTS ON THE WORK OF THE U.N. SEC. COUNCIL (May 2, 2019), <https://www.whatsinblue.org/2019/05/in-hindsight-negotiations-on-resolution-2467-on-sexual-violence-in-conflict.php> [<https://perma.cc/ZBM5-Q8AU>].

87. *Id.*

88. *U.S. Stance at U.N. a Backward Step on Women’s Rights*, HUM. RTS. WATCH (Apr. 25, 2019, 11:30 AM), <https://www.hrw.org/news/2019/04/25/us-stance-un-backward-step-womens-rights> [<https://perma.cc/29DP-7WNM>].

89. *In Hindsight: Negotiations on Resolution 2467 on Sexual Violence Conflict, supra note 86.*

90. *See Julian Borger, Trump Administration Wants to Remove ‘Gender’ From U.N. Human Rights Documents*, GUARDIAN (Oct. 25, 2018, 1:00 AM), <https://www.theguardian.com/world/2018/oct/24/trump-administration-gender-transgender-united-nations> [<https://perma.cc/D4RW-JU4B>].

91. *See, e.g.*, S.C. Res. 1820 art. 11 (June 19, 2008); S.C. Res. 2331 Preamble, ¶¶ 8, 19 (Dec. 20, 2016); S.C. Res. 2429 Preamble, ¶¶ 7, 11, 19, 27, 35, 39, 44, 56 (July 13, 2018).

Finally, because the Security Council implicitly adopted the Resolution under Chapter VI of the U.N. Charter,⁹² compliance with the Security Council's recommendations is not mandated and no enforcement actions can be taken.⁹³ Although this does not mean U.N. members may flout the resolution with impunity, holding states accountable is a difficult endeavor. Member states are well aware of this: Although the Council passed the Resolution with strong support—thirteen votes in favor and two abstentions from permanent members China and Russia—U.N. Member States such as China still flouted attempts to establish a formal mechanism implementing the Resolution,⁹⁴ thereby frustrating its effectiveness.⁹⁵

The negotiations leading to Resolution 2467 and its final outcome give insight into why Security Council Resolutions are manifestly deficient in addressing and preventing conflict-related sexual violence. Three key issues remained on the table throughout much of the negotiations involving Resolution 2467: the use of the term “gender” within the text of the Resolution, the desired implementation mechanism for the Resolution, and the inclusion of a reference to sexual reproductive

92. *See infra* Section II.B.

93. However, as has been made known by the International Court of Justice, under Article 25 members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter. *See* U.N. Charter art. 25; CHRISTINE CHINKIN & MADELEINE REES, COMMENTARY ON SECURITY COUNCIL RESOLUTION: CONTINUED STATE OBLIGATION AND CIVIL SOCIETY ACTION ON SEXUAL VIOLENCE IN CONFLICT 2467 4 (2019), <http://www.lse.ac.uk/women-peace-security/assets/documents/2019/Final-WPS-Commentary-Report.pdf> [<https://perma.cc/7JLW-9XWH>]. Although U.N. Members have agreed to accept and abide by Security Council Resolutions, in practice, there is little way to enforce this under Chapter VI.

94. Note that working groups are a common mechanism used in Resolutions and widely thought to represent customary international law, thereby strengthening their implementation. *See, e.g., Working Group on Discrimination Against Women and Girls*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx> [<https://perma.cc/C8KZ-RRJG>]; *Open-Ended Working Group on an Optional Protocol to the Convention on the Rights of the Child to Provide a Communications Procedure*, UNITED NATIONS HUM. RTS. COUNCIL (2011), <https://www.ohchr.org/EN/HRBodies/HRC/WGCRC/Pages/OpenEndedWorkingGroupIndex.aspx> [<https://perma.cc/ME9R-D64Q>]. Instead, Resolution 2467 calls upon “other relevant United Nations missions and United Nations entities,” such as the Working Group on Children and Armed Conflict and the Special Representative of the Secretary-General on Sexual Violence in Conflict, to share information with the U.N. Security Council Sanctions Committees and “strengthen their cooperation” regarding this exchange of information. S.C. Res. 2467, *supra* note 73, ¶ 12.

95. *In Hindsight: Negotiations on Res. 2467 on Sexual Violence Conflict*, *supra* note 86.

rights and services.⁹⁶ Actions by the United States, China, and Russia led to the elimination of text addressing each of these issues. As explained below, the discussions between permanent members and their veto powers are emblematic of the larger problem of using Security Council Resolutions to address and prevent sexual violence as a weapon of war.

First, the United States threatened to veto the resolution if it included any mention of sexual and reproductive health services for survivors of conflict-related sexual violence.⁹⁷ The Trump administration objected to this language for fear of it being construed as in support of abortion.⁹⁸ That members of the Security Council bowed to the United States' objection is stunning when one considers the international community's stated views on a woman's right to abortion following rape: The Human Rights Committee's position is that "countries must provide safe, legal and effective access to abortion . . . most notably where the pregnancy is the result of rape";⁹⁹ the Committee Against Torture notes that forced pregnancy in the context of sexual violence constitutes torture;¹⁰⁰ and both the Committee on Elimination of Discrimination Against Women ("CEDAW") and the Commission on the Rights of Persons with Disabilities state that legal abortion is a "prerequisite for safeguarding . . . human rights to life, health, equality before the law and equal protection of the law, non-discrimination, infor-

96. *Id.*

97. *Id.*; see also Nina Besser Doorley, *Trump Administration Escalates War on Words at the U.N.*, INT'L WOMEN'S HEALTH COAL. (Apr. 30, 2019), <https://iwhc.org/2019/04/trump-administration-escalates-war-words-un/> [<https://perma.cc/25KR-QH3N>].

98. Doorley, *supra* note 97. Note also that some scholars have argued that this policy should be considered in tandem with Trump's revival of the "Global Gag Rule," a policy introduced under the Reagan administration, which bans non-U.S. non-governmental organizations from receiving U.S. funds if they give information and referrals for abortion, provide safe abortion, or call for improved abortion legislation. Zoe Gillard, *In Pursuing a New Resolution on Sexual Violence Security Council Significantly Undermines Women's Reproductive Rights*, LONDON SCH. OF ECON.: WOMEN, PEACE, & SEC. F. (April 25, 2019), <https://blogs.lse.ac.uk/wps/2019/04/25/in-pursuing-a-new-resolution-on-sexual-violence-security-council-significantly-undermines-womens-reproductive-rights/> [<https://perma.cc/WZ9Y-XWEV>]; *What is the Global Gag Rule?*, SHE DECIDES, <https://www.shedecides.com/what-is-the-global-gag-rule/> [<https://perma.cc/AS82-V7HS>].

99. *Stop Regression on Sexual and Reproductive Rights of Women and Girls*, UN Experts Urge, U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMM'R (Sept. 5, 2018), https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Reproductive_Rights_Violations_As_Torture.pdf [<https://perma.cc/WM3S-48DA>].

100. See *Reproductive Rights Violations as Torture or Ill-Treatment*, CTR. FOR REPROD. RIGHTS, <https://www.ohchr.org/Documents/Issues/Women/WG/AmicusBrazil.pdf> [<https://perma.cc/MH4G-QF5C>].

mation, privacy, bodily integrity and freedom from torture and ill treatment.”¹⁰¹

Despite the consensus in the international community that abortion is a vital human right, the United States’ opposition was effective. The language in support of sexual and reproductive services for survivors was eliminated.¹⁰² This illustrates one of the key weaknesses in using Security Council Resolutions to address human rights issues in general, and conflict-related sexual violence in particular: Thanks to the permanent members’ veto power, even one regressive state administration can erase years of global progress on the development of human rights norms through their insistence on the inclusion or omission of choice terms within a resolution’s text.

Two other countries’ objections following the resolution’s passage also exemplify this devastating power dynamic. After Resolution 2467 passed, China and Russia objected to the creation of a working group on sexual violence in conflict (in essence, an accountability mechanism) by way of feeble explanations denouncing an overload of bureaucracy and shortage of “extensive discussions.”¹⁰³ This pretext was to be expected: Both countries frequently vote against or abstain from Security Council Resolutions affirming human rights.¹⁰⁴

Finally, the Security Council eliminated the word “gender” due to an enduring campaign by the Trump administration to remove the term

101. *Ref: Denial of Abortion Services and the Prohibition of Torture and Cruel, Inhuman and Degrading Treatment*, U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMM’R (Sept. 5, 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23503&LangID=E> [<https://perma.cc/2MAU-WGQR>].

102. Doorley, *supra* note 97.

103. A U.N. General Assembly report explains:

China and Russia in particular made clear their reluctance to see a working group at present, with China saying that “it is important to have extensive discussions well in advance” before creating “special mechanisms,” and Russia declaring that it was concerned “about the efforts to increase the number of bureaucratic United Nations bodies in order to create the appearance of robust activity.”

In Hindsight: Negotiations on Resolution 2467 on Sexual Violence Conflict, *supra* note 86.

104. *See, e.g.*, Sophie Richardson, *Is China Winning Its Fight Against Rights at the U.N.?*, HUM. RTS. WATCH (Dec. 12, 2018, 9:41 AM), <https://www.hrw.org/news/2018/12/12/china-winning-its-fight-against-rights-un> [<https://perma.cc/F8UP-HX37>]; Sherine Tadros, *New Low for the U.N. Security Council as Russia Takes Syrian Human Rights off the Table*, AMNESTY INT’L (Mar. 23, 2018), <https://www.amnesty.org/en/latest/news/2018/03/a-new-low-for-the-un-security-council-as-russia-takes-syrian-human-rights-off-the-table/> [<https://perma.cc/GAK2-E2XS>].

from all U.N. human rights documents.¹⁰⁵ Commentators have described this as an “ongoing strategy to undermine the recognized human rights of transgender individuals.”¹⁰⁶ This is consistent with past actions by the Trump administration to ensure that transgender persons are not accorded the same protections as cisgender women and girls. For example, in a previous U.N. draft document promoting gender equality, the U.S. administration under Trump recommended that the section be clarified to refer to only women and girls.¹⁰⁷ The transphobic actions of the Trump administration demonstrate the power dynamics of the Permanent Five in action. Put simply, it only takes one backwards administration to implement unacceptable changes within the text of a Security Council Resolution.

Despite Resolution 2467’s deficiencies, Member States such as France saw it as a step in the right direction.¹⁰⁸ This is unsurprising when one considers the deference accorded to Security Council Resolutions on the international stage. There is a dominant narrative propped up by the media¹⁰⁹ and some members of the international community¹¹⁰ that Security Council Resolutions are both effective and powerful. Throwing the weight of at least three of the permanent members behind the text of any Security Council Resolution related to conflict-related sexual violence serves not only to highlight the issue to an international audience, but can even elicit united action from U.N. Member States and U.N. committees to support the Resolution’s mandate.

When evaluated on the strength of their signaling function, however, the power of Security Council Resolutions may also be their greatest weakness. Security Council Resolutions either seek to “confirm [the Council’s] support for the validity and enforcement of the relevant in-

105. Borger, *supra* note 90.

106. *Id.*

107. Colum Lynch & Robbie Gramer, *At the U.N., America Turns Back the Clock on Women’s Rights*, FOREIGN POL’Y (Mar. 14, 2019), <https://foreignpolicy.com/2019/03/14/at-united-nations-women-rights-gender-health-trump-diplomacy/> [<https://perma.cc/2F2A-GAA6>].

108. *Resolution 2467: The Text Is Not the End of Our Journey*, PERMANENT MISSION OF FRANCE TO THE UNITED NATIONS IN N.Y. (Apr. 23, 2019), <https://onu.delegfrance.org/Resolution-2467-the-text-is-not-the-end-of-our-journey> [<https://perma.cc/37MH-GWR7>].

109. *See, e.g.*, Matthew Hauenstein & Madhav Joshi, *U.N. Resolutions Might Seem Like Cheap Talk. But They Might Actually Work.*, WASH. POST (Sept. 22, 2020), <https://www.washingtonpost.com/politics/2020/09/22/un-resolutions-may-seem-like-cheap-talk-they-might-actually-work/> [<https://perma.cc/36VR-HJKB>].

110. *See, e.g.*, ALEXANDER THOMPSON, CHANNELS OF POWER: THE UN SECURITY COUNCIL AND U.S. STATECRAFT IN IRAQ 204-10 (2010).

ternational norms and instruments,” or “impact, qualify or modify the existing legal position under international law.”¹¹¹ That is to say, omissions speak just as powerfully as affirmative statements. With the Security Council’s deliberate elimination of text supporting access to reproductive health services, Resolution 2467 backslid Security Council precedent by at least ten years. Earlier resolutions in 2009 and 2013 both recognized the need for and promoted access to reproductive health services for victims of sexual violence during wartime.¹¹² The United States’ well-publicized rejection of terms supporting access to these services modifies the U.N.’s previous position that these services are vital, taking a step back rather than confirming their value.¹¹³ Germany, the drafter of Resolution 2467, was forced to accede to U.S. demands or risk foregoing the resolution entirely.¹¹⁴ And herein lies the difficulty: Is the greater risk to deny the passage of any Security Council Resolution, or to pass one that implicitly regresses the Security Council’s stance on women’s rights?

B. *Undesirable Incentives*

The voting structure of the Permanent Five is the second reason that Security Council Resolutions cannot sufficiently address wartime sexual violence. Even if the omissions discussed above insisted upon by the United States are not viewed as significant, the divided votes from the Security Council’s permanent members should be. When 40% of the permanent members decline to support a resolution condemning sexual violence in conflict, claims of the Resolution’s “landmark” status and its characterization as a “powerful new instrument” in the United Nations’ arsenal for addressing wartime sexual violence become far less convincing.¹¹⁵

111. Alexander Orakhelashvili, *The Acts of the Security Council: Standards of Review*, 11 MAX PLANCK Y.B. UNITED NATIONS L. 143, 145 (2007).

112. See KERRY F. CRAWFORD, WARTIME SEXUAL VIOLENCE: FROM SILENCE TO CONDEMNATION OF A WEAPON OF WAR 113-114 (2017).

113. S.C. Res. 1889 ¶ 10 (Oct. 5, 2009); S.C. Res. 2106 ¶ 19 (June 24, 2013); see also *Resolution 2467: The Text Is Not the End of Our Journey*, supra note 108.

114. Vanessa Jackson, *What Does April’s Security Council Resolution on Sexual Violence in Conflict Mean for Women and Girls?*, GLOB. OBSERVATORY (Oct. 16, 2019), <https://theglobalobservatory.org/2019/10/what-does-april-security-council-resolution-sexual-violence-conflict-mean-for-women-girls/> [https://perma.cc/4BTH-4LUN].

115. See *Landmark U.N. Sec. Council Res. 2467*, supra note 78.

Security Council Resolutions can also be a dangerous tool when used to negotiate texts on human rights, and particularly the rights of women. China and Russia, two of the five permanent members of the Security Council, have left unaddressed grave abuses of women within their respective states¹¹⁶ and are thereby incentivized to withhold support for resolutions pertaining to human rights. Similarly, these states are more likely to push back against effective mechanisms such as working groups, which could conceivably be used to support human rights within their own nations' borders.¹¹⁷

C. *The Protection of Women as a Means to an End*

The third problem with using Security Council Resolutions as a mechanism to respond to sexual violence as a weapon of war stems from the mandate of the Security Council itself. The very framework of the Security Council prevents its members from addressing wartime sexual violence in a way that fully recognizes women's rights as human rights. The Security Council's mandate only allows the Council to create binding resolutions—those created under Chapter VII of the U.N. Charter—in order to protect international peace and security.¹¹⁸ This means that resolutions must position the prevention of sexual violence against women as a means to that end, rather than a goal in and of itself¹¹⁹: Pro-

116. See *China: Events of 2018*, HUM. RTS. WATCH (2018), <https://www.hrw.org/world-report/2019/country-chapters/china-and-tibet> [<https://perma.cc/3WME-356G>]; Yulia Gorbunova, *The Chilling Inaction on Domestic Violence in Russia is Endangering Women's Lives*, HUM. RTS. WATCH (July 29, 2019, 11:00 PM), <https://www.hrw.org/news/2019/07/29/chilling-inaction-domestic-violence-russia-endangering-womens-lives> [<https://perma.cc/CUP4-T9QC>].

117. See Alexandra Ma, *China is Reportedly Sending Men to Sleep in the Same Beds as Uighur Muslim Women While Their Husbands Are in Prison Camps*, BUS. INSIDER (Nov. 4, 2019, 7:06 AM), <https://www.businessinsider.com/china-uighur-monitor-home-shared-bed-report-2019-11> [<https://perma.cc/NBC5-EP3E>]; Elizabeth M. Lynch, *China's Attacks on Uighur Women Are Crimes Against Humanity*, WASH. POST (Oct. 21, 2019), <https://www.washingtonpost.com/opinions/2019/10/21/chinas-attacks-uighur-women-are-crimes-against-humanity/> [<https://perma.cc/E3R6-GX5A>]; Yuliana Gorbunova, *"I Could Kill You and No One Would Stop Me": Weak State Response to Domestic Violence in Russia*, HUM. RTS. WATCH (Oct. 25, 2018), <https://www.hrw.org/report/2018/10/25/i-could-kill-you-and-no-one-would-stop-me/weak-state-response-domestic-violence> [<https://perma.cc/7BQT-YZZ9>]; *Russia: Unaddressed Domestic Violence Puts Women at Risk*, HUM. RTS WATCH (Oct. 25 2018, 5:01 AM), <https://www.hrw.org/news/2018/10/25/russia-unaddressed-domestic-violence-puts-women-risk> [<https://perma.cc/JZ3A-BD2Q>].

118. U.N. Charter, art. 23.

119. For example, Resolution 1820 explains:

tecting women is within the purview of the Security Council only insofar as women are a peacebuilding resource.¹²⁰ Sexual violence during wartime must be prevented because it “negatively affects women’s role as agents of peace.”¹²¹ It is the structure of the U.N. Charter itself that promotes this harmful discourse. To create an effective, binding, and enforceable resolution addressing the prevention of wartime sexual violence, the issue must be framed as a mere stop on the road toward the end result of peace and stability within nations.

Of course, the skeptic will be quick to note that the Security Council is not solely limited to the binding resolutions of Chapter VII, and can therefore take certain actions without needing to meet Chapter VII’s restrictive demands. Resolutions brought forth under Chapter VI of the U.N. Charter are non-binding, but unlike Chapter VII, the mandate to act only for purposes of “international peace and security” does not exist.¹²²

While this may make Chapter VI resolutions easier to pass, two key issues remain with these resolutions. First, they are only binding on states that consent to their application.¹²³ If the country upon which the U.N. wishes to impose the resolution is itself a perpetrator of wartime sexual violence,¹²⁴ enforcement becomes exceedingly difficult, as it is unlikely that even a non-binding resolution will earn the support of the offending country. Second, the legality of non-binding Security Council

The Security Council . . . [is d]eeply concerned also about the persistent obstacles and challenges to women’s participation and full involvement in the prevention and resolution of conflicts as a result of violence, intimidation and discrimination, which erode women’s capacity and legitimacy to participate in post-conflict public life, and acknowledging the negative impact this has on durable peace, security and reconciliation, including post-conflict peacebuilding.

S.C. Res. 1820, ¶ 11.

120. *Id.*

121. Maria Jansson & Maud Edwards, *The Politics of Gender in the U.N. Security Council Resolutions on Women, Peace & Security*, 18 INT’L FEMINIST J. POL’Y 591, 598 (2016).

122. Hearing Before the Subcomm. on Int’l Orgs., Hum. Rts., & Oversight of the H. Comm. on Foreign Affs., 110th Cong. 29 (2008) (prepared statement of Michael J. Matheson, Visiting Research Professor of Law, The George Washington University Law School).

123. ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* 49 (1998).

124. For example, wartime rape by government forces occurred during the conflict in Darfur to which the Security Council responded with Resolution 1769. S.C. Res. 1769 (July 31, 2007); HUM. RTS. WATCH, *FIVE YEARS ON: NO JUSTICE FOR SEXUAL VIOLENCE IN DARFUR 10-24* (2008), <https://www.hrw.org/reports/2008/darfur0408/darfur0408webwcover.pdf> [<https://perma.cc/Z9XA-97HZ>].

Resolutions is frequently challenged on jurisdictional grounds.¹²⁵ And even those resolutions stipulating efforts to end sexual violence against women that *do* go unchallenged have historically been ineffective.¹²⁶ In sum, the need for consensus, nations' undesirable and conflicting incentives, and viewing the protection of women as a means to an end are near-insurmountable obstacles that render Security Council Resolutions an ineffective transnational mechanism to prevent wartime sexual violence.

D. Dearth of Lasting Normative and Behavioral Change

In the decade since Security Council Resolutions have begun to address the prevention of conflict-related sexual violence, behavioral norms surrounding the use of this type of violence in war have not undergone any significant changes. Resolution 1888 (2009) was the first to call for any obligation or implementation mechanism to prevent sexual violence as a weapon of war.¹²⁷ Since then, Resolution 1960 (2010) went further by calling for annual reports identifying perpetrators credibly suspected of committing sexual violence to hold them accountable.¹²⁸ Three years later, Resolution 2106 (2013) acknowledged that men and transgender individuals could be targets and victims of conflict-related sexual violence, overturning the assumption that only women are affected by these atrocities.¹²⁹ In spite of this progression in Secu-

125. As Malihe Behfar and Hassan Savari explain:

The text and spirit of the charter does not recognize the Security Council as an authority with infinite jurisdiction. Granting permission to the Security Council of States to make binding decisions doesn't mean that the Security Council can go beyond its jurisdiction directly or indirectly. In this regard legality of Security Council resolutions . . . have been challenged. These resolutions [are] contested by one or some States. These challenges [raise] judicial review of the Security Council decisions.

Malihe Behfar & Hassan Savari, *Evaluation of UN Security Council Resolutions by States*, 10 J. POL'Y & L. 204 (2017).

126. Wright, *supra* note 13, at 101 ("The United Nations deferred formal recognition of rape as a war crime until 2008, when it passed S.C. Res. 1820 (Resolution 1820). Efforts to end sexual violence in the Democratic Republic of the Congo (DRC) failed despite a detailed U.N. strategy to end atrocities."); CRAWFORD, *supra* note 112 ("Resolution 1960 recognizes the all-too-frequent gap between Security Council resolutions and actual commitments by the U.N. and its Member States, and it demonstrates frustration with combatants' continued use and tolerance of sexual violence.").

127. CRAWFORD, *supra* note 112 at 113.

128. *Id.*

129. *Id.*

rity Council discourse, wartime sexual violence is still considered acceptable in many parts of the world, and perpetrators are neither consistently nor effectively held accountable.¹³⁰

III. A NEW SOLUTION TO ADDRESS WARTIME SEXUAL VIOLENCE

Since U.N. Security Resolutions have failed and will continue to fail to effectively stem wartime sexual misconduct, U.N. Member States must turn to alternative mechanisms for addressing and preventing sexual violence during armed conflict. Inspiration may be found in an unlikely setting. The international practices used to create voluntary pollution prevention programs provide an unorthodox yet effective template to address wartime sexual violence.¹³¹ These international practices reveal parallels between the two issues and provide a new framework for addressing wartime sexual violence—one that does not rely on ineffective Security Council Resolutions.

Section III.A details the common themes of the global fight against pollution and the prevention of wartime sexual violence. This analysis underscores why U.N. Member States should turn to the Voluntary Pollution Prevention Framework to address sexual violence as a weapon of war. Section III.B discusses the application of the Voluntary Pollution Prevention Framework to wartime sexual violence and identifies three crucial factors to the success of international cooperation in this realm: Adequate and consistent funding, regular and credible monitoring, and the threat of enforcement.

A. *Common Themes Between the Fight Against Pollution and the Prevention of Wartime Sexual Violence*

The fight against the use of sexual violence as a weapon of war shares three key similarities with the global fight against pollution. First, in each case, there is a dearth of international action despite consensus that a problem exists. Second, when initiatives are undertaken, follow-through and execution are exceedingly rare. Finally, solving both issues

130. *Id.*

131. See generally Donald G. Chittock & Kenneth F.D. Hughey, *A Review of International Practice in the Design of Voluntary Pollution Prevention Programs*, 19 J. CLEANER PROD. 542 (2010) (examining the features of successful voluntary pollution prevention programs undertaken by Australia, Canada, Japan, the United Kingdom, and the United States).

requires cooperation on a global level. Examining the solutions to these problems in the pollution context may prove useful in tackling the prevention of sexual violence during conflict.

i. Consensus

The primary similarity stems from the fact that despite widespread consensus among industry experts on the environmental and economic effects of pollution,¹³² international consensus on plans for action remains lacking. Within the past four years alone, the United States withdrew from the landmark Paris Climate Accord;¹³³ Brazil's president committed to the destruction of the Amazon by way of defending deforestation as "cultural";¹³⁴ and China refused to make any promises to take stronger climate action at the 2019 U.N. Climate Action Summit, despite excoriation from an official at the World Resources Institute and from other climate change advocates and diplomats.¹³⁵

132. See Dana Nuccitelli, *95% Consensus of Expert Economists: Cut Carbon Pollution*, *GUARDIAN* (Jan. 4, 2016, 6:00 AM), <https://www.theguardian.com/environment/climate-consensus-97-per-cent/2016/jan/04/consensus-of-economists-cut-carbon-pollution> [http://perma.cc/DU2U-LWKP]; AM. LUNG ASS'N, *STATE OF THE AIR 2019 4* (2019), <https://www.lung.org/assets/documents/healthy-air/state-of-the-air/sota-2019-full.pdf> [http://perma.cc/A6W3-WZQJ].

133. See Press Statement, Michael R. Pompeo, Sec'y of State, On the U.S. Withdrawal from the Paris Agreement, (Nov. 4, 2019), <https://www.state.gov/on-the-u-s-withdrawal-from-the-paris-agreement/> [http://perma.cc/Y8TZ-A2DH]. Critics of the United States' withdrawal note that this may have a devastating effect on the agreement as a whole. Concerns abound that other nations will follow in the United States' steps to leave; that this is not within the world's best interests, as we are on the brink of a global climate catastrophe; and that the Paris Agreement was the "most realistic approach for all of the nations of the world to positively address climate change." Fran Ulmer & Carlos Curbelo, *Commentary: U.S. Should Not Withdraw from Paris Climate Accord*, *CORDOVA TIMES* (Dec. 16, 2019), <https://www.cordovaitimes.com/2019/12/16/commentary-u-s-should-not-withdraw-from-paris-climate-accord/> [http://perma.cc/VYW9-B8L4].

134. Marina Lopes, *Brazil's Bolsonaro Calls Amazon Deforestation 'Cultural,' Says 'It Will Never End'*, *WASH. POST* (Nov. 20, 2019), https://www.washingtonpost.com/world/the_americas/brazils-bolsonaro-calls-amazon-deforestation-cultural-says-it-will-never-end/2019/11/20/ba536498-0ba3-11ea-8054-289aef6e38a3_story.html [http://perma.cc/P28H-ADM4].

135. Among other issues, environmental advocates wanted China to make commitments to move away from fossil fuels; to show initiative and a commitment to taking climate change seriously; and to meet global expectations for environmental leadership that belie its position as a major world economy. See Somini Sengupta & Lisa Friedman, *At U.N. Climate Summit, Few Commitments and U.S. Silence*, *N.Y. TIMES*

Consider a simplified explanation of incentives that drive environmental policies. The United States' stated reason for withdrawing from the Paris Agreement was because it was "unfair" to the United States compared to the Agreement's treatment of China and India.¹³⁶ The United States further protested that complying with the Agreement departed from the administration's "America First" policy.¹³⁷ Brazil's reluctance to act on environmental conservation efforts stemmed from President Jair Bolsonaro's position that environmental regulations must be relaxed to encourage economic growth.¹³⁸ China refused to take a stronger stance on climate change based on resource concerns: A past green initiative created a heightened demand for certain fuels, which at the time produced a shortage of the resource and left millions without heat.¹³⁹

As with the prevention of sexual violence as a weapon of war, competing motivations in the realm of voluntary pollution prevention have created a tradition in which powerful nations fall short of commitments to robust transnational action plans.¹⁴⁰ Under President Trump, the United States refused to advocate for services that might be interpreted as endorsing abortion within Security Council Resolution 2467 for fear of betraying the Republican Party's position of opposing the procedure at all costs.¹⁴¹ China is also unwilling to sign onto resolutions that endorse human rights for fear of the implications that endorsing such resolutions might have on China itself.¹⁴² These competing motivations prevent full, effective commitments from both countries to address wartime sexual violence.

(Sept. 23, 2019), <https://www.nytimes.com/2019/09/23/climate/climate-summit-global-warming.html> [<http://perma.cc/DV23-P8ZK>].

136. Hai-Bin Zhang, Han-Cheng Dai, Hua-Xia Lai, & Wen-Tao Wang, *U.S. Withdrawal from the Paris agreement: Reasons, Impact and China's Response*, 8 ADVANCES CLIMATE CHANGE RSCH. 220, 221 (2017).

137. *Id.*

138. Mariana Simões, *Brazil's Bolsonaro on the Environment, in His Own Words*, N.Y. TIMES (Aug. 27, 2019), <https://www.nytimes.com/2019/08/27/world/americas/bolsonaro-brazil-environment.html> [<https://perma.cc/ZV4N-6WNG>].

139. Yanzhong Huang, Opinion, *Why China's Good Environmental Policies Have Gone Wrong*, N.Y. TIMES (Jan. 14, 2018), <https://www.nytimes.com/2018/01/14/opinion/china-environmental-policies-wrong.html> [<https://perma.cc/ER4Q-F5VD>].

140. *See, e.g.*, Brittany Gibson, *The Industrialized World is Failing to Meet Paris Agreement Goals*, THE AMERICAN PROSPECT (Oct. 1, 2019), <https://prospect.org/world/climate-crisis-industrialized-world-failing-to-meet-paris-agreement/> [<https://perma.cc/X7B9-8YLQ>].

141. *See supra* Section II.A.

142. *See* Richardson, *supra* note 104.

ii. Follow-Through

The second similarity between these two global issues is a general failure to execute, even when commitments are made on the international level. Domestic implementation of any plan to cut down on pollution requires extensive public infrastructure to ensure success.¹⁴³ The commitment to reduce pollution is more than a high-level pact. It requires an in-the-weeds monitoring system of both small and large industry players alike, a system that must be comprehensive and thorough.¹⁴⁴ Likewise, the prevention of wartime sexual violence extends beyond sweeping resolutions that fail to create a world in which wartime sexual violence ceases to exist. Barring a stark international cultural shift in which every woman is recognized as having full human rights and allotted a position of respect in each society—a goal to work towards, certainly, but that would be naïve to expect in the near future—the commitment takes cooperation and work. There is an ongoing obligation to address the problem before it arises,¹⁴⁵ to deploy defensive mechanisms during the conflict itself,¹⁴⁶ and to aid survivors afterward through the provision of sexual reproductive services and mental and physical therapy.¹⁴⁷ The prevention of wartime sexual violence and voluntary pollution prevention programs have meaningful, core similarities. By studying these programs, the international community may be better able to implement initiatives that will succeed in the prevention of wartime sexual violence.

iii. International Buy-In

A final similarity between the two issues pertains to how the global community can reach a permanent solution. Solving both issues requires a reliance on cooperation at an international level. Voluntary environmental approaches oftentimes include collaboration between individual businesses, industry associations, and regulatory agencies or central gov-

143. See Alex L. Wang, *The Search for Sustainable Legitimacy: Environmental Law and Bureaucracy in China*, 37 HARV. ENV'T L. REV. 365 (2013).

144. See Chittock & Hughey, *supra* note 131, at 548.

145. See *infra* Section III.B.

146. See *infra* Section III.B.

147. Countries frequently fall short on the implementation of these practices. See U.N. Secretary-General, *Report of the Secretary-General on Conflict-Related Sexual Violence*, ¶¶ 19-22, U.N. Doc S/2018/250 (Mar. 23, 2018).

ernments.¹⁴⁸ This cooperation among a panoply of national actors parallels the range of players that the U.N. must bring together in a country to combat sexual violence as a weapon of war.¹⁴⁹

B. *The Application of the Voluntary Pollution Prevention Framework to Addressing Wartime Sexual Violence*

Environmental law has identified several key features of successful voluntary pollution prevention programs that may be applicable to the prevention of sexual violence as a weapon of war. In 2010, environmental law Professors Donald Chittock and Kenneth Hughey conducted a study surveying voluntary approaches to industry-wide pollution prevention programs in Australia, Canada, Japan, the United Kingdom, and the United States.¹⁵⁰ The Chittock research identified key features of successful programs, at least three of which are applicable to the prevention of sexual violence as a weapon of war: Adequate and consistent funding, regular and credible monitoring, and the threat of enforcement. As the study notes, and as an apt precaution when weighing strategies to prevent wartime sexual violence, no single mechanism is likely to work in all circumstances.¹⁵¹ These three approaches are intended to serve as preferred alternatives to Security Council Resolutions. Unlike Security Council Resolutions that risk backsliding international progress, the three recommended mechanisms have the benefit of being more practically effective while pushing forward the conversation surrounding women's rights.

The following proposal will elaborate on how each of the three factors identified in Chittock's study can prove useful in the context of addressing wartime sexual violence. The piecemeal nature of this solution might be unattractive to some. This tripartite solution, however, has the benefit of being realistic. Neither a unilateral change to the approach nor the creation of a new multilateral framework would be an effective answer to how the international community combats conflict-related sexual violence. Although this proposal may be dissimilar to current approaches, it has the advantage of building upon pre-existing structures whenever possible and incorporating mechanisms readily accepted by

148. Chittock, *supra* note 131, at 542.

149. See U.N. ACTION AGAINST SEXUAL VIOLENCE IN CONFLICT, STOP RAPE NOW, https://www.un.org/womenwatch/feature/wps/StopRapeNow_Brochure.pdf [<http://perma.cc/F592-23JE>].

150. See Chittock, *supra* note 131, at 542.

151. *Id.* at 543.

the international community. In sum, a series of small, realistic fixes to the current system is preferable over a theoretically elegant yet practically unworkable solution.

i. Adequate and Consistent Funding

The first element of the new framework is adequate and consistent funding for programs that combat conflict-related sexual violence. In the pollution prevention context, the most successful pollution prevention programs in the Chittock study had the benefit of consistent funding.¹⁵² Other scholars have highlighted this as the “single, most important element” in ensuring the success of the programs.¹⁵³ The Chittock research found that reliable financing helped anti-pollution efforts in two ways. First, the researchers found that adequate and consistent funding worked to solidify pollution prevention’s place as one of the “mainstream goals” in national environmental management programs.¹⁵⁴ Second, the funding worked as a positive incentive to bring key industry players into the fold of the voluntary programs.¹⁵⁵ The consistent stream of capital helped to persuade the actors in question that longevity of the program was assured.¹⁵⁶

One key criticism of the Chittock research should be addressed up front. Commentators have noted that the five countries within the Chittock study were each wealthy, developed nations.¹⁵⁷ One may therefore question whether the study’s outcomes would be the same in less affluent countries. To this point, even if initiatives such as adequate and consistent funding would not have produced a significant positive effect on the lifespan of developing countries’ pollution prevention programs, this does not diminish the study’s use as a template for the prevention of conflict-related sexual violence. It would be naïve to assume there is a

152. *Id.* at 542.

153. Michael Peters & R. Kerry Turner, *SME Environmental Attitudes and Participation in Local-Scale Voluntary Initiatives: Some Practical Applications*, 47 J. ENV’T PLAN. & MGMT. 449, 457 (2004) (noting that a second key part of this “element” was the “co-ordination of certain key players who would enable appropriate contacts to be made and would be able to attract the necessary funding”).

154. Chittock, *supra* note 131, at 545.

155. Chittock and Hughey note that a “collaborative relationship with industry” players is one of the key features of a successful voluntary pollution prevention program. *See id.* at 542.

156. *Id.* at 547, 550.

157. The countries were Australia, Canada, Japan, the United Kingdom and the United States. *Id.* at 542.

“one size fits all” method that would work for each country, region, or city in which violence is occurring. But to write off adequate and consistent funding as a failure because certain research has yet to be conducted would be a mistake.

Based on the findings of the Chittock study, this Note argues that adequate and consistent funding should also be applied in efforts to prevent sexual violence as a weapon of war. States such as France and Germany have the political will and resources to spend on this cause.¹⁵⁸ As such, they need not waste diplomatic efforts on the negotiations of a “watered-down” Security Council Resolution.¹⁵⁹ Instead, these countries can and should redirect their energies toward securing voluntary funds for U.N. offices with the bandwidth to address this issue.

Voluntary funds are one way for states to exert soft power or informal governance over international organizations (IOs) and their subsidiaries.¹⁶⁰ IOs are institutional actors like the United Nations whose membership is composed of at least three nation states.¹⁶¹ There are two main ways that IOs are funded by their members. The first type of IO funding scheme is a restricted voluntary system of funding. In this instance, state donors contribute funds earmarked for specific uses to the IO.¹⁶² This allows members of an IO not only to determine the size of their monetary contribution to the organization, but also to earmark how their donations are used.¹⁶³ In other words, it creates a system of governance in which nations assign their funds to projects of their choosing.¹⁶⁴ To illustrate the popularity of this mechanism, approximately 80% of the World Health Organization’s (“WHO”) voluntary funds are restricted for specific uses by their donors, as are 100% of the

158. See *Resolution 2467: The Text is Not the End of Our Journey*, *supra* note 108 (detailing France’s disappointment in the U.S. position and reaffirming their commitment to sexual health services); Amy Gunia, *U.S. Pressures U.N. into Removing Language from a Resolution on Sexual Violence*, TIME (Apr. 24, 2019, 5:34 AM), <https://time.com/5577089/un-resolution-sexual-violence-weakened-language/> [http://perma.cc/FHR9-NQYC]; see also Florence Schulz, *U.N. Adopts Watered-Down Resolution Against Rape as Weapon of War*, EURACTIV (Apr. 25, 2019), <https://www.euractiv.com/section/defence-and-security/news/un-adopts-watered-down-resolution-against-rape-as-weapon-of-war/> [http://perma.cc/N54R-MGU6].

159. See Schulz, *supra* note 158.

160. See Erin R. Graham, *Money and Multilateralism: How Funding Rules Constitute IO Governance*, 7 INT’L THEORY 162, 163 (2015).

161. See Karen Mingst, *International Organization*, BRITANNICA, <https://www.britannica.com/topic/international-organization> [http://perma.cc/2FZB-ZFKF].

162. See Graham, *supra* note 160, at 173-74.

163. See *id.*

164. See *id.* at 174.

voluntary contributions donated to the United Nations Economic Social Council (“UNESCO”).¹⁶⁵ Thus, donors have the power to shape the agendas of IOs through their contributions.

Restricted voluntary funding schemes stand in contrast to unrestricted voluntary funding methods. In the latter scenario, donors do not earmark their monetary donations, providing the IO with more freedom to implement its various goals.¹⁶⁶ In the context of preventing and addressing wartime sexual violence, the use of a restricted voluntary funding scheme for donations to IOs is preferable to one that uses unrestricted voluntary funding, to ensure that this issue is the priority of IOs.

The restricted voluntary funding scheme also has two distinct advantages over the use of Security Council Resolutions. First, countries that wish to bypass the aforementioned political holdups of Security Council Resolutions may instead publicly earmark their donor funds to U.N. offices. This can signal the attention of the country in question to conflict-related sexual violence and encourage other Member States to do the same in turn.

One existing office to which nations may direct their funds is the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (“SRSG-SVC”).¹⁶⁷ The role of the SRSG-SVC is to provide coherent and strategic leadership; to work effectively with existing U.N. coordination mechanisms; and to engage in advocacy efforts with governments, parties to armed conflict, and civil society.¹⁶⁸ Another potential target of Member States’ voluntary funding contribution is Women’s Protection Advisers (“WPAs”), which takes on the role of advising during peacekeeping and special political missions in the midst of conflict-related sexual violence.¹⁶⁹ By directing restricted voluntary funds to these offices, U.N. Member States could send a stronger message than any non-binding Security Council Resolution brought forth by divided members and lacking an implementation plan ever could. Instead of issuing resolutions “calling upon” other countries to help the cause, states can and should lead by example. This message would become even more powerful should states band together in donative coalitions for this common cause.

165. *See id.* at 173.

166. *Id.* at 173.

167. *See generally* S.C. Res. 2331, *supra* note 15.

168. *See id.*

169. *See id.*

Second, adequate and consistent funding from the U.N. into offices such as the SRSG-SVC will help states fulfill the due diligence aspect of their positive obligations. These include educating employees of the judicial system and ensuring credible, thorough criminal investigations when crimes do occur.¹⁷⁰ This will work to deter and ultimately prevent future violations.¹⁷¹

Critics have argued that restricted voluntary funding is problematic because it distorts IO program priorities and moves IO programming decisions outside the organization itself to individual donors.¹⁷² In the WHO example, critics contend that restricted voluntary funds are more often “aimed at diseases that capture the public’s attention, like HIV/AIDS,” rather than aligned with the true distribution of diseases worldwide.¹⁷³ But without voluntary funding to organizations such as the SRSG-SVC, there is a risk that victims and survivors in conflict-ridden areas risk may be deprived of sorely needed aid. Even if one accepts the premise of the argument in the context of the WHO, the circumstances surrounding wartime sexual violence are very different. Restricted voluntary funding must be considered against the backdrop of Security Council Resolutions which have done little to quell wartime sexual violence; in this context, arguments about the model management of IO funds verge on idealism.¹⁷⁴

A final point in support of restricted voluntary funding over Security Council Resolutions comes from behaviors that may accompany U.N. Member States’ donations. Donations to IOs such as the SRSG-SVC from powerful actors coupled with naming and shaming to prod other donors to do the same has the potential to create a ripple effect of positive outcomes. In keeping with the analogy of pollution prevention, consider what has been coined as the “Greta Thunberg Effect.”¹⁷⁵ Thunberg is a seventeen-year-old Swedish environmental activist.¹⁷⁶ Her

170. See MARIA ERIKSSON, *DEFINING RAPE: EMERGING OBLIGATIONS FOR STATES UNDER INTERNATIONAL LAW* 201-02 (2011).

171. *Id.*

172. See, e.g., Graham, *supra* note 160, at 175, 186.

173. *Id.* at 189.

174. See generally Graham, *supra* note 160.

175. Bonnie Chiu, *The Greta Thunberg Effect: The Rise of Girl Eco-Warriors*, FORBES (Sept. 19, 2019, 2:24 AM), <https://www.forbes.com/sites/bonniechiu/2019/09/19/the-greta-thunberg-effect-the-rise-of-girl-eco-warriors/#7bbcf627407f> [<https://perma.cc/EGU8-4RK4>].

176. As of December 2020, Thunberg is seventeen. Aylin Woodward, *Greta Thunberg Turns 17 Today. Here’s How She Started a Global Climate Movement in Just 18 Months*, BUS. INSIDER (Jan. 3, 2020, 2:36 PM), <https://www.businessinsider.com/greta-thunberg-bio-climate-change-activist-2019-9> [<https://perma.cc/M9A3-3BQ3>].

2019 speech at the U.N.'s Climate Action Summit castigating members for their inaction on climate change was the pinnacle of her widely broadcasted efforts to name and shame world leaders on environmental failures.¹⁷⁷ Thunberg's campaign has had tangible effects. Teenagers across the world are committing themselves to climate activism at a higher rate and earlier age than previously recorded.¹⁷⁸ Some consider Thunberg to be responsible for the incoming European Commission making the climate emergency its topmost priority.¹⁷⁹ And perhaps most striking, there has been a fourfold increase in investments in carbon-reducing projects in developing countries since Thunberg rose to popularity.¹⁸⁰ Voluntary funding can force these changes as it is a multifaceted method. Motivated U.N. Member States that use voluntary funding in conjunction with call-outs for other states to follow their example could prove extraordinarily effective in ending conflict-related sexual violence.

ii. Regular, Credible Monitoring and Threat of Enforcement

The final two factors that will aid in addressing wartime sexual violence are best analyzed together as they are often interrelated. They are, first, regular and credible monitoring, and second, the threat of en-

177. Charlotte Alter, Suyin Haynes & Justin Worland, *Time 2019 Person of the Year: Greta Thunberg*, TIME (Dec. 11, 2019), <https://time.com/person-of-the-year-2019-greta-thunberg/> [<https://perma.cc/JEK3-8L6X>]; *Transcript: Greta Thunberg's Speech at the U.N. Climate Action Summit*, NPR (Sept. 23, 2019, 1:58 PM), <https://www.npr.org/2019/09/23/763452863/transcript-greta-thunbergs-speech-at-the-u-n-climate-action-summit> [<https://perma.cc/EX98-QDAN>].

178. Chiu, *supra* note 175.

179. Ian Wishart & Ewa Krukowska, *Europe's \$13 Trillion Climate Plan Might Be About to Get Serious*, BLOOMBERG (Sept. 30, 2019, 11:00 PM), <https://www.bloomberg.com/news/articles/2019-10-01/europe-s-13-trillion-climate-plan-might-be-about-to-get-serious> [<https://perma.cc/GD9S-3BEM>]. Note that there is a rich debate surrounding which individuals get international media recognition for their activism. BIPOC individuals' efforts are frequently excluded from the dominant narrative and a movement has emerged (spearheaded by young activists such as Vanessa Nakate) to recognize and support diversity in environmental activism. See Kenya Evelyn, *'Like I Wasn't There': Climate Activist Vanessa Nakate on Being Erased from a Movement*, GUARDIAN (Jan. 29, 2020, 3:01 AM), <https://www.theguardian.com/world/2020/jan/29/vanessa-nakate-interview-climate-activism-cropped-photo-davos> [<https://perma.cc/GD9S-3BEM>].

180. Sandra Laville, *'Greta Thunberg Effect': Driving Growth in Carbon Offsetting*, GUARDIAN (Nov. 8, 2019, 5:02 AM), <https://www.theguardian.com/environment/2019/nov/08/greta-thunberg-effect-driving-growth-in-carbon-offsetting> [<https://perma.cc/G3BF-KQ55>].

forcement. In the Chittock study, the most effective pollution prevention programs were those with successful monitoring practices.¹⁸¹ These included enhanced public and private monitoring networks, senior management commitment, and transparency through public reporting.¹⁸² The most successful prevention programs also made use of strong enforcement measures.¹⁸³

U.N. members should make use of monitoring systems already in place¹⁸⁴ and leverage them for this cause. Consider the example of female genital mutilation (FGM) of young girls, a practice in thirty countries around the world.¹⁸⁵ The United Nations Population Fund (“UNFPA”) along with the United Nations Children’s Fund (“UNICEF”) have had great success in accelerating the elimination of the practice, providing more than 3.2 million women in seventeen countries with FGM protection and services.¹⁸⁶ They achieved this progress primarily through the provision of care and protection services, local political backing, and community-led engagement efforts that act as monitoring systems to deter and prevent FGM in their respective countries.¹⁸⁷

The provision of care and protection services is also important within the context of wartime sexual violence. Ensuring that victims of wartime sexual violence have access to abortion and other sexual health services is a requirement under international law.¹⁸⁸ It is also a painfully practical necessity, as survivors forced to carry a child conceived during wartime sexual violence may be ostracized by their community, subjected to spousal abandonment and violence, and even killed for the perceived dishonoring of their family.¹⁸⁹ All these effects are felt on top of the mental and physical agony of the violence itself.¹⁹⁰ The provision of

181. Chittock & Hughey, *supra* note 131, at 545-46.

182. *Id.* at 545.

183. *Id.*

184. See discussion *supra* Section III.B (detailing the Secretary-General on Sexual Violence in Conflict initiative).

185. Although FGM is practiced in thirty countries around the world, note that four countries (Egypt, Ethiopia, Nigeria, and Sudan) account for approximately 42% of all cases. *6 Facts About Female Genital Mutilation (FGM)*, WORLD VISION (2019), <https://www.worldvision.org/child-protection-news-stories/female-genital-mutilation-fgm-facts> [<https://perma.cc/6NKS-UDDQ>].

186. *UNFPA-UNICEF Joint Programme to Eliminate Female Genital Mutilation*, UNITED NATIONS POPULATION FUND, <https://www.unfpa.org/unfpa-unicef-joint-programme-eliminate-female-genital-mutilation> [<https://perma.cc/VP4K-SCB4>].

187. *Id.*

188. GLOB. JUST. CTR., *supra* note 32, at 1-2.

189. *Id.* at 5.

190. *Id.*

sexual health services and abortion for survivors of wartime sexual violence may allow women to escape the piling on of more lasting psychological, economic, and physical burdens.¹⁹¹

To be truly effective, any strategy to combat sexual violence as a weapon of war must begin before conflict arises.¹⁹² For example, studies have shown that a link exists between regions that have high levels of domestic violence during peacetime and the incidents of sexual violence that take place during armed conflict.¹⁹³ Within the pollution context, prevention programs were more successful when there were high levels of commitment by local government;¹⁹⁴ similarly, to prevent sexual violence during wartime, there must be high levels of commitment by local authorities during times of peace to credibly crack down on instances of violence against women.¹⁹⁵ Ensuring the development of successful monitoring systems during times of peace addresses the causes of the issue instead of merely quashing the symptoms. Arguably, by the time a U.N. resolution is deemed necessary to address sexual violence as a weapon of war, it is already too late. Monitoring may therefore prove far more effective at combatting the use of this violence.

In addition to preventative measures such as those described above, the threat of credible enforcement to intervene in and punish wartime sexual violence must also exist. This should come through additional funding and training for U.N. peacekeepers. U.N. peacekeeping missions can be remarkably effective. As of July 2020, there are over 100,000 active peacekeepers taking part in thirteen missions around the world.¹⁹⁶ It is a truly global effort, in that more than 120 countries contribute personnel to the peacekeeping forces.¹⁹⁷ The forces contribute to a variety of efforts, from supporting local regional police on the ground in efforts to end violence; to deterring extrajudicial violence and kidnappings in areas of conflict; to strengthening security, the rule of law,

191. *Id.*

192. See Kirthi Jayakumar, *Sexual Violence as a Peacetime-Wartime Continuum*, PEACE INSIGHT (Apr. 17, 2013), <https://www.peaceinsight.org/blog/2013/04/sexual-violence-as-a-peacetime-wartime-continuum/> [https://perma.cc/64NU-V276].

193. Daniela Nadj, *Sexual Violence Is a Widespread Weapon of War—It's Time International Law Caught Up*, INDEPENDENT (Nov. 10, 2018, 4:42 PM), <https://www.independent.co.uk/news/world/politics/sexual-violence-women-war-feminism-gender-isis-yazidi-boko-haram-nobel-peace-prize-a8595736.html> [https://perma.cc/HSQ2-6SZC].

194. Chittock & Hughey, *supra* note 131, at 546.

195. Nadj, *supra* note 193.

196. *U.N. Peacekeeping*, BETTER WORLD CAMPAIGN, <https://betterworldcampaign.org/un-peacekeeping/> [https://perma.cc/BK44-D2D2].

197. *Id.*

and human rights.¹⁹⁸ Peacekeeping is also cost-efficient. The U.N. peacekeeping budget is less than half of 1% of the amount spent on militaries globally, yet more than eight times as effective as compared to when the United States acts in similar missions by itself.¹⁹⁹

Still, two main problems persist with U.N. peacekeeping missions: inadequate funding and a harmful culture. Each is difficult to separate from the other. Because U.N. peacekeeping missions are far from perfect as they currently exist, solutions are needed before they can play an effective role in enforcement actions. A mere six years ago, a U.N. declaration named sexual exploitation and abuse by peacekeepers as, “the most significant risk to U.N. peacekeeping missions.”²⁰⁰ Some scholars suggest that despite operational directives to prevent this abuse—curfews, non-fraternization policies, uniform requirements, and off-limit locations—success has been limited and sexual abuse by peacekeepers has merely been “pushed underground.”²⁰¹ Commentators opine that training for peacekeeping operations currently functions as an administrative rubber stamp rather than a meaningful program that instills peacekeepers with shared values, knowledge, and practical know-how.²⁰² The training program is bereft of opportunities to think critically, and procedural compliance is considered to be of greater value than reckoning with problematic social structures that prop up cultures of sexual violence.²⁰³

This is a staggering failure in the U.N. peacekeeping culture. Worse, initiatives to correct failures in peacekeeping operations tend to be reactive and largely concerned with the risk to the U.N.’s image, instead of addressing the root of the issue. As Professors Jasmine-Kim Westendorf and Louise Searle note:

198. *U.N. Peacekeeping: A Year in Review*, UNITED NATIONS PEACEKEEPING, <https://peacekeeping.un.org/en/un-peacekeeping-year-review-0> [<https://perma.cc/DX8D-YAUG>].

199. António Guterres, *Peacekeeping is Cost Effective, But Must Adapt to New Reality*, UNITED NATIONS SEC’Y-GEN. (May 30, 2017), <https://www.un.org/sg/en/content/sg/articles/2017-05-30/peacekeeping-cost-effective-must-adapt-new-reality> [<https://perma.cc/M4E3-UDNZ>].

200. THELMA AWORI, CATHERINE LUTZ & PABAN THAPA, FINAL REPORT: EXPERT MISSION TO EVALUATE RISKS TO SEA PREVENTION EFFORTS 1 (2013).

201. Jasmine-Kim Westendorf & Louise Searle, *Sexual Exploitation and Abuse in Peace Operations: Trends, Policy Responses and Future Directions*, 93 OXFORD J. INT’L AFFS. 365, 379 (2017).

202. *Id.* at 383.

203. *Id.*

Despite powerful statements about the ‘cancer’ of [sexual abuse and exploitation during peacekeeping operations] and the U.N.’s commitment to addressing it, the advancement of [sexual abuse and exploitation] policy has been largely reactive, occurring in surges prompted by public outcry at incidents reported in international media . . . Paradoxical though it may seem, [the U.N.] seems concerned with both protecting its image *and* developing robust [sexual abuse and exploitation] framework; but the former creates incentives to downplay difficulties in the latter . . . thereby impairing the chances of arriving at robust assessments of [sexual abuse and exploitation] allegations and policy which might lead to improved approaches.²⁰⁴

This analysis reveals several areas that must be improved for peacekeeping forces to reach their full potential in eliminating wartime sexual violence and to prevent peacekeeping forces from committing the same crimes that they are deployed to prevent.

First, nations must retreat from lofty pronouncements on global statements of principle, such as U.N. resolutions, and use voluntary funding sources to promote transparency and true change within peacekeeping operations through proactive rather than reactive measures. Second, as in the pollution context, commitment by “senior management” and public reporting is key.²⁰⁵ Funds must be devoted to the creation of a system whereby superiors in charge of peacekeeping operations are incentivized to report instances of sexual exploitation by personnel within their ranks with the knowledge that material punishments of

204. *Id.* at 382. Westendorf and Searle continue:

One key weakness is that policy has been developed at the international level in response to major media events with little input from the field about challenges already faced in implementing SEA policies . . . This individualized understanding of SEA masks the diverse range of factors that create circumstances in which individuals choose to exploit or abuse, and obscures the practical challenges that middle- to high-ranking officials pose when they refuse to deal with allegations or are simply too occupied with ‘hard security’ issues to take ‘gender issues’ seriously. Further, a compliance-based approach assumes that robust accountability mechanisms will deter breaches of rules—a logic for which there is little evidence in relation to CRSV, and which is further undermined by the low rates of criminal charges or material punishments for perpetrators of SEA.

Id.

205. Chittock & Hughey, *supra* note 131, at 545.

perpetrators will be issued and enforced.²⁰⁶ This will almost certainly require individualized training to recognize and punish any sexual violence that occurs.²⁰⁷ At present, the U.N. Department of Peacekeeping Operations is woefully underfunded for this task.²⁰⁸

There is no lack of ideas to solve sexual abuse and exploitation by peacekeepers; rather, the problem lies in the capacity, expertise, and money to implement those ideas.²⁰⁹ States with an interest in funding effective programs to prevent sexual violence during times of conflict should view peacekeeping as an integral part of the solution.²¹⁰ Solving the liquidity crisis that the U.N. peacekeeping forces currently face and earmarking funds for robust training practices for the troops will work to prevent sexual abuse and exploitation by peacekeepers. Further, this will serve to reinforce the threat of credible enforcement against would-be perpetrators of sexual violence during times of conflict.

CONCLUSION

U.N. resolutions are frequently used as well-intentioned efforts to draw international attention to the use of sexual violence as a weapon of war. However, they are not only ineffective, but can be damaging to the status of and discourse surrounding women's rights. Each resolution is a gamble: Recent history has shown that disagreements during negotiations and the threat of a veto by a Permanent Five member are likely to derail any meaningful form of progress.

More useful and effective U.N. mechanisms exist and should be used in place of Security Council Resolutions. Solutions may be found by looking to the successes of voluntary pollution prevention programs:

206. Westendorf & Searle, *supra* note 201, at 383.

207. *Id.*

208. *Id.* Westendorf & Searle elaborate:

The problem facing the Department of Peacekeeping Operations is the volume of personnel required to undertake mandatory training: latest statistics show 117,306 military and civilian personnel from at least 125 countries serving in 16 [peace keeping operations]. The vast number of personnel poses the risk that training becomes more an administrative requirement than a tool for effective prevention.

Id.

209. *Id.*

210. Peacekeeping has the potential to be an effective force in reducing sexual violence. See Karin Johansson & Lisa Hultman, *U.N. Peacekeeping and Protection from Sexual Violence*, 63 J. CONFLICT RESOL. 1656, 1678 (2019).

Consistent funding by way of voluntary restricted funding; regular, credible monitoring; and the credible threat of enforcement by U.N. peacekeeping operations may turn the tide on the prevention of sexual violence during wartime. U.N. members should not eschew collaboration on these commitments, but should also exercise independence in pushing toward these goals. This should be the case even if the countries in question are not fully supported by the most powerful states within the U.N.

Although discourse surrounding the prevention of wartime sexual violence has arguably moved past its history of being sidelined as a “feminist research agenda,” there is still a lack of accountability and rigor surrounding estimates of sexual violence during conflict.²¹¹ This means that a large amount of wartime sexual violence still remains unreported,²¹² notwithstanding the extraordinarily grim numbers of which we *are* aware.²¹³ When unanimous agreement is unreachable yet urgently needed, as in Security Council Resolutions, states must make use of institutional mechanisms that currently exist within the U.N. that do not require compromise or concessions. This may come through the provision of voluntary funds to U.N. offices such as the SRSG-SVC and WPA, coupled with naming and shaming of other states who refuse to do the same; through support for U.N. funds that aim to eliminate violence against women during times of peace; and through voluntary funding for the U.N. Department of Peacekeeping Operations. Sexual violence during times of conflict is sure to emerge time and again in new and ongoing conflicts if new strategies are not explored. It is incumbent upon Member States to assume responsibility for these preventable tragedies. The realistic methods outlined within this Note should be the first steps toward a workable and collaborative effort to end wartime sexual violence. ❀

211. Palermo & Peterman, *supra* note 45.

212. *Id.*

213. See, e.g., *Conflict Related Sexual Violence*, *supra* note 20, at 10-30.