



THE LONDON SCHOOL  
OF ECONOMICS AND  
POLITICAL SCIENCE ■

# COMMENTARY ON SECURITY COUNCIL RESOLUTION 2467

**Christine Chinkin  
& Madeleine Rees**

Continued State Obligation  
and Civil Society Action on  
Sexual Violence in Conflict

**CENTRE FOR  
WOMEN, PEACE  
+ SECURITY**

Research at LSE ■

WOMEN'S INTERNATIONAL LEAGUE FOR  
**PEACE & FREEDOM**







Resolution 2467, the latest UN Security Council (SC) Resolution on Women, Peace and Security (WPS), adopted on 23 April 2019, has been greeted with scepticism and dismay with respect to advancement of the WPS agenda. Two concerns predominate: that this Resolution – along with the previous eight WPS Resolutions – lacks binding legal force; and that this Resolution in particular weakens the WPS agenda and thus the ability of civil society to use it for advancing women's rights during and in the aftermath of conflict.

In this Commentary we argue that there are reasons for optimism with respect to these issues and that this Resolution, in conjunction with the earlier WPS Resolutions, ensures continuation of State legal obligations and the basis for civil society action for implementation of those obligations.

**Christine Chinkin**, CMG FBA, is Professorial Research Fellow in the Centre for Women, Peace and Security.

**Madeleine Rees**, OBE is a British lawyer and current Secretary General of the Women's International League for Peace and Freedom.

# ACKNOWLEDGEMENTS



This Commentary was co-authored by Madeleine Rees and Christine Chinkin. It is produced as part of the ‘Gendered Peace’ project funded by the European Research Council.

# CONTENTS

<b>PART I: Legal Status of the WPS Agenda</b>	<b>4</b>
<b>A</b> Legal status of Security Council resolutions	<b>4</b>
<b>B</b> WPS as customary international law	<b>7</b>
<b>C</b> Conclusions with respect to normative weight	<b>11</b>
<b>PART II: Potential of Resolution 2467 to Advance WPS</b>	<b>12</b>
<b>A</b> The Preamble	<b>12</b>
<b>B</b> Legal obligations	<b>14</b>
<b>C</b> Sexual and reproductive rights	<b>15</b>
<b>D</b> Remedies	<b>16</b>
<b>E</b> Domestic law reform and access to justice	<b>16</b>
<b>PART III: Practical Application</b>	<b>19</b>
<b>A</b> Commissions of Inquiry	<b>19</b>
<b>B</b> Peacekeeping operations	<b>20</b>
<b>C</b> Economic, social, and cultural rights	<b>21</b>
<b>D</b> Consultations as a mechanism for change	<b>22</b>
<b>E</b> Entry points for practical application in Resolution 2467	<b>22</b>
<b>PART IV: Failure of the Normative Agenda</b>	<b>24</b>
<b>A</b> Securitisation	<b>24</b>
<b>B</b> Systemic, institutional obstacles	<b>25</b>
<b>PART V: Conclusion</b>	<b>27</b>

# PART I: LEGAL STATUS OF THE WPS AGENDA

## A. LEGAL STATUS OF SECURITY COUNCIL RESOLUTIONS

- Security Council Resolution 2467 was not adopted under UN Charter chapter VII and therefore comes implicitly under chapter VI. It is often asserted that this is the crucial difference with respect to the binding nature of SC resolutions: whether they are adopted under chapter VI or chapter VII of the Charter and that UN Charter article 25 applies only to resolutions with respect to SC enforcement action mandated under the latter. However, it has long been pointed out, including by the International Court of Justice (ICJ), that article 25 makes no reference to chapter VII but rather asserts that “the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”

In the *Namibia* opinion the ICJ determined that article 25 could not apply only to chapter VII resolutions with respect to UN enforcement action for if that had been the case “then Article 25 would be superfluous, since this effect is secured by Articles 48 and 49 of the Charter.”<sup>1</sup>

- The Court considered that what is all important is the language of any resolution, which must be:
  - carefully analysed before a conclusion can be made as to its binding effect. In view of the nature of the powers under Article 25, the question whether they have been in fact exercised is to be determined in each case, having regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council.
- Admittedly the WPS Resolutions – including Resolution 2467 – do not use the language of SC decision-making but rather other verbs such as “encourage” “welcome” “urge” “request” etc. Nevertheless – as the Court sets out – other factors should be considered in determining the legal effect of any SC resolution. Some of the relevant factors are the following:

### Reference to already existing international legal obligations

- A SC resolution may incorporate international obligations that are already binding upon States through existing law. There are many such references in SC Resolution 2467 which expressly:

Reaffirms the obligations of State Parties to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol, 2000 (Preamble).

Recalls “the obligations applicable to parties to armed conflict under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977” (Preamble).

Emphasises “dedicated commitment” to the “protection and promotion of human rights” (Preamble).

Acknowledges the “inclusion of sexual and gender-related crimes among the most serious crimes of international concern in the Rome Statute of the International Criminal Court, which entered into force on 1 July 2002” (Operative Paragraph 15).

Recalls the “**applicable provisions of international law on the right** to an effective remedy for **violations of human rights**”(Operative Paragraph 17).

Urges States to “recognize **the equal rights** of **all** individuals affected by sexual violence in armed conflict, including women, girls and children born of sexual violence in armed conflict, in national legislation, consistent with their **obligations** under the **Convention on the Elimination of All Forms of Discrimination against Women** and the **Convention on the Rights of the Child**, as applicable” (Operative Paragraph 18).

Recognises “in accordance with **international refugee law** and **international human rights law**, as applicable, sexual violence in armed conflict and post-conflict situations may constitute a gender related form of persecution for the purposes of determining eligibility asylum or refugee status” (Operative Paragraph 31).

These provisions expressly reaffirm treaty obligations, which are legally binding upon all States Parties. It is worth remembering that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is binding upon its 189 States Parties and the Children’s Convention on its 193 States Parties.

It is also significant that CEDAW – the international blueprint for the legal guarantee of women’s human rights – has only rarely been expressly referenced in earlier WPS Resolutions. Inclusion of CEDAW within an operative paragraph in Resolution 2467 means that it is stronger than previous WPS Resolutions in this respect.<sup>2</sup>

- In addition, the Committee on the Elimination of Discrimination against Women, General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations is noted in the Preamble. In this General Recommendation the CEDAW Committee reiterated “the need for a concerted and integrated approach that places the implementation of the Security Council agenda on women, peace and security into the broader framework of the implementation of the Convention and its Optional Protocol.”

The ICJ has commented that the views of a UN human rights treaty body – “an independent body established specifically to supervise the application of that treaty” – should be given great weight.<sup>3</sup> By noting this General Recommendation the Security Council appears to be inviting the CEDAW Committee to include WPS in its concluding observations to State reports, something that it is already doing.<sup>4</sup>

### Repetition of language that has been given particular normative effect in other instruments

- It is to be expected that language that has been given a specific legal interpretation in other contexts is to be understood in the same way when repeated in a Security Council resolution. Eg, the Preamble recognises the need for survivors to be “free from torture



and cruel, inhuman or degrading treatment, and that violations of the obligations on the treatment of victims can amount to serious violations of international law.” Human rights bodies have recognised that denial or criminalisation of abortion can come within this prohibition (eg, CEDAW Committee, General Recommendation No. 35, 2017: “criminalisation of abortion, denial or delay of safe abortion and post-abortion care, ... are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.”) The CEDAW Committee cites a number of sources for this statement.

- The Resolution uses the term “gender-based violence” in a number of provisions. This carries with it the definition of gender-based violence in CEDAW Committee, General Recommendation No. 19 as discrimination within article 1 of CEDAW and as “violence that is directed against a woman because she is a woman or that affects women disproportionately.” This definition has been accepted in other international instruments and gender-based violence is widely accepted as a violation of international human rights law giving rise to the right to a remedy.
- “Human rights” are explicitly recognised in the operative paragraphs. This must include the entire canon of human rights, that is both civil and political rights and economic, social, and cultural rights.

### Repetition of resolutions

- United Nations resolutions are recognised as “formal expressions of the opinion or will of United Nations organs”.<sup>5</sup> While accepting that repetition of itself does not alter the formal legal status of a resolution, their accumulation must nevertheless add to the resolutions’ authoritative weight. Along with the associated resolutions on protection of children in armed conflict, no other thematic agendas of the SC have been so consistently returned to and reinforced through the now annual open debates on WPS and sexual violence in armed conflict during which States frequently use the language of commitment.
- Commitment to the “continuing and full implementation” of all eight previous WPS Resolutions is “reaffirmed”. The earlier Resolutions are not replaced or superseded. Accordingly, all provisions from the previous WPS Resolutions must be understood as remaining intact.
- The reiteration of the “decision” of the Council “to remain actively seized of the issue” since Resolution 1325 (2000) demonstrates that WPS is an ongoing matter of international peace and security, comes within the Council’s mandate and thus must create expectations of compliant behaviour by States.

### The language used in Security Council debate on WPS

- The ICJ included as one of the factors to be taken into account in determining the authority of a SC resolution the discussions leading to its adoption. In the open debate on Resolution 2467 many States engaged the language of commitment.



## Repeated references to monitoring, analysis and reporting arrangements

- Resolution 2467 makes reference to monitoring, analysis and evaluation of implementation in a number of operative paragraphs (1, 5, 6, 7, 8, 9, 11, 12, 22, 32). This enhances the significance to be given to these tasks and emphasises the need for robust mechanisms. Monitoring would not be required if the provisions carried no normative weight.

## Possibility of sanctions

- The possibility of SC imposed targeted sanctions against persons listed by the Special Representative of the Secretary-General (SRSG) on sexual violence in armed conflict in accordance with Resolutions 1888 (2009), 1960 (2010), 2106 (2013), and 2242 (2015) is assumed in Resolution 2467, which:

Urges existing Sanctions Committees, where within the scope of the relevant criteria for designation, and consistent with the present and other relevant resolutions to apply targeted sanctions against those who perpetrate and direct sexual violence in conflict; and reiterates its intention, when adopting or renewing targeted sanctions in situations of armed conflict, to consider including designation criteria pertaining to acts of rape and other forms of sexual violence.

- Sanctions are imposed by the Council in accordance with UN Charter article 41, which is located within chapter VII. The possibility of sanctions within the WPS Resolutions thus provides a linkage between these Resolutions and chapter VII and reinforces that failure to comply constitutes breach of obligations.<sup>6</sup>

## B. WPS AS CUSTOMARY INTERNATIONAL LAW

- Customary international law (CIL) is binding upon all States. It is unwritten law and comprises uniform and consistent State practice and *opinio juris* – the belief that the practice is required by law.
- It is accepted GA resolutions can represent existing CIL, or can generate the requisite State practice and *opinio juris* to lead to the evolution of new rule(s) of CIL. The same is true of a treaty that has not been ratified.<sup>7</sup> It must therefore also be true of SC resolutions, especially those that are reiterated over a period of nearly 20 years, as is the case with those comprising the WPS agenda.
- The SC cannot claim the universal membership of the General Assembly but the rotating membership of the 10 non-permanent members gives regional and broad-based representation. Sir Michael Wood – rapporteur of the International Law Commission (ILC) Working Group on Identification of Customary International Law<sup>8</sup> – has suggested that the SC through its action or inaction might “stimulate developments in general international law” and that the SC and member States may “develop law through practice”.
- Can it therefore be said that the WPS agenda has become binding as CIL? Can the repetition of principles of WPS through the successive nine Resolutions constitute *opinio juris* with the repetition demonstrating the required legal intent and the surrounding activity that has been generated evidence of State practice? Or is it just reiteration of a political agenda?

## Required legal intent

- Evidence of legal intent is found in the “public statements made on behalf of States”,<sup>9</sup> including those made in the Security Council debates as discussed above.
- The required legal intent may also be found in statements by States in other public fora such as key conferences and public meetings. Final documents of a Global Summit are not of themselves legally binding but the ILC’s Draft Conclusions on the Identification Customary International Law (2018), Conclusion 12 states that: while “[a] resolution adopted by an international organization or at an intergovernmental conference cannot of itself create a rule of customary international law”, such activities “may provide evidence for establishing the existence and content of a rule of customary international law, or contribute to its development.”<sup>10</sup>
- Such evidence is available. The key principles of what became WPS were adopted in the Declaration and Platform for Action at the Global Summit on Women in Beijing in 1995 and the five-year follow-up Declaration. The Beijing Declaration and Platform for Action was adopted unanimously at an intergovernmental conference.
- Aspects of WPS, notably the pillar relating to prevention of sexual violence, have also been developed through a range of other non-binding instruments, for instance the G8 Declaration on Preventing Sexual Violence in Conflict adopted in April 2013 and the Declaration of Commitment to End Sexual Violence in Conflict. The former was described by William Hague as a “historic agreement” by “some of the world’s largest economies and most powerful nations.” The commitments it contained were formally recognised in SC Resolution 2106 in 2013. The latter was launched by the UK at the start of the 68th session of the General Assembly and is now endorsed by over 150 States worldwide.
- The reiteration of commitment has also been at the regional level. For instance, the Council of the European Union adopted conclusions on WPS that recalled “commitments of the European Union and its member States to the full implementation of the WPS agenda, which consists of UN security council resolution 1325 and its follow-up resolutions, ensuring that it is fully integrated into all EU policies and efforts in promoting the important role of women’s engagement in support of sustainable peace, security, human rights, justice and development.”<sup>11</sup>
- Repetition of key principles by States in public fora and through international and regional organisations suggests a level of intent that is consistent with the required *opinio juris*.

## Uniform and consistent State practice

- *Opinio juris* alone is not sufficient but must be backed with uniform and consistent practice. The WPS agenda since the adoption of Resolution 1325 has generated widespread and uniform State, institutional and civil society practice. The ILC Draft Conclusions include as evidence of State practice “conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference.” (Conclusion 6). WPS is integrated into national policy and practice through National Action Plans (NAPs), which is precisely “conduct taken in connection with resolutions”. Currently over 60 States have NAPs including the US, UK and States from all continents. They include currently conflict-affected States (Ukraine; South Sudan), post-conflict States (Bosnia; Nepal; Liberia) and States not involved in conflict (Belgium, Austria).

- This practice by States is evidently continuing. At the open SC debate in April 2019 on Resolution 2467 over half (35 of 65) of the speakers committed to creating, modifying, or strengthening the implementation of their NAPs. Nine countries confirmed that they will be developing their first ever NAPs: Uruguay, Cyprus, Malta, Egypt, Ethiopia, Bulgaria, Latvia, Sri Lanka, and South Africa. Thirteen Member States confirmed they recently have or will be updating existing NAPs: Serbia, Belgium, Japan, Norway, Croatia, Brazil, Czech Republic, Nepal, Namibia, Chile, Italy, Romania, Estonia. The European Union will also be updating its 1325 Regional Action Plan. Eighteen other Member States committed to prioritising implementation of existing NAPs, for example through additional funding or investment in monitoring, evaluation, and learning methods; while several others, including Spain, Japan, and Belgium noted they were providing financial or technical support to implementation of other States' NAPs. Serbia will be deploying a NAP tracking software to allow for timely reporting on various indicators. The African Union (AU) also committed to 50 per cent of AU Member States having NAPs by 2020.
- Some States have formed an informal, *ad hoc* advocacy group for implementation of Resolution 1325 – the “Friends of 1325” that is organised by Canada.
- State practice is also evidenced at the regional level through regional action plans. For instance, the EU has adopted a Comprehensive Approach on Women, Peace and Security; NATO States and their partners have acted since 2007 to promote the role of women in peace and security, including creating the post of the Secretary General's Special Representative for Women, Peace and Security. There are Gender Adviser positions within NATO military structures. The African Union has created an Office of the Special Envoy on Women, Peace, and Security and in 2016 the African Union Commission issued a Report on Implementation of the Women, Peace and Security Agenda in Africa.<sup>12</sup> ECOWAS and IGAD have also developed regional action plans.
- Other State practice is through national legislation, appointment of ministerial positions, inclusion in national defence strategies, development of parliamentary committees, national level reporting to Parliament or other designated bodies as provided for within NAPs, mainstreaming into other plans for promoting gender equality.
- The annual report on WPS made by the Secretary-General to the Security Council identifies trends and provides examples of good practice. While implementation remains slow this of itself does not deny the evolution of State practice; what is not in doubt is the range of actions that have been undertaken pursuant to Resolution 1325 and the subsequent WPS Resolutions.

### Institutional practice

- Sir Michael Wood has recorded his view that “the practice of international (intergovernmental) organizations as such, in certain cases, may contribute to the creation, or expression, of customary international law.” James Crawford too has noted that although “the activities of international organizations do not feature in the sources of international law enumerated in Article 38 of the Statute of the International Court. ... they are well placed to contribute to its development. This is due primarily to the capacity for international organizations to express collectively the practice of member States.” In numerous ways WPS principles have shaped the composition and agendas of institutions. While this has not been fully or effectively implemented it does not alter the reality of significant institutional practice relevant for the identification of customary international law. Some example are as follows.



In the State-centric framework of international law civil society actions have of course never counted for the creation of custom, but they are still relevant in the pressure they assert over States thereby influencing State practice.

- Institutional practice includes the creation of new gender architecture at the international and regional levels to support implementation of the WPS agenda. At the international level UN Women is a lead player in providing input to the Council and member States on integrating WPS, facilitates the participation of women from civil society in relevant thematic and country-specific meetings and works on peace and security matters in 65 countries.<sup>13</sup> The Council has mandated new institutional offices, most notably the Special Representative of the Secretary-General on sexual violence in armed conflict.<sup>14</sup> In addition, gender advisers, women protection officers in peace operations and teams of experts to operate within conflict-affected areas have all been instituted.<sup>15</sup>
- Training programmes on WPS and for gender advisers are offered by States<sup>16</sup> and within NATO. Resolution 2242 (2015) provided for an Informal Experts Group on Women, Peace and Security. Operational since 2016 the Group provides for consultations between the Council and local experts on the situation with respect to WPS in countries on the Council's agenda. Resolution 2467 recognises the work of the Informal Experts Group and emphasises that all aspects of the WPS agenda should be addressed in this way (Operative Paragraph 4).
- Resolution 2242 (2015) also "*commits to ensuring* that the relevant expert groups for sanctions committees have the necessary gender expertise." In Resolution 2467 the Secretary-General is encouraged to ensure this with respect to expert groups, monitoring teams, and panels for sanctions committees.
- Civil society practice has also developed around WPS, for instance through the activities of the NGO Working Group on WPS. The Women's International League for Peace and Freedom provides PeaceWomen.org as "a space for peacemakers to engage, learn and be part of a global movement to advance a holistic Women, Peace and Security Agenda."<sup>17</sup> In the UK the Gender Action Group for Peace and Security (GAPS) works to hold the Government to account with respect to its implementation of the WPS agenda, including preparing shadow reports for submission to Parliament. There are many other examples of women's organisations worldwide working on WPS. There are academic centres on Women, Peace and Security or Gender Peace and Security in the US, UK, Australia, Norway, Ghana, and associated institutions elsewhere. In the State-centric framework of international law civil society actions have of course never counted for the creation of custom, but they are still relevant in the pressure they assert over States thereby influencing State practice.

## C. CONCLUSIONS WITH RESPECT TO NORMATIVE WEIGHT

Since it is accepted that UN General Assembly resolutions – although formally recommendatory only – can reflect or generate customary international law it would be surprising if the same isn't true of SC thematic resolutions. The considerable amount of State-based and institutional activity around WPS, as well as the many repeated and strong statements endorsing its principles make it difficult to conclude that all this activity does not represent some form of legal obligation. There are some conclusions that can be drawn with respect to Resolution 2467 and more generally with respect to the WPS agenda:

- Where Resolution 2467 reiterates or incorporates existing law it is clearly binding.
- Where obligations are reiterated in chapter VII country-specific resolutions then they are binding on Member States in accordance with UN Charter article 25.
- Where Resolution 2467 engages language that has already been accepted as comprising international legal obligation, such legal obligation can be assumed.
- Certain aspects of WPS constitute already binding legal obligation: human rights obligations with respect to non-discrimination and equality; the obligation to prevent and protect against sexual and gender-based violence in armed conflict, to end perpetrator impunity and secure accountability for such violence and victims' right to an effective remedy. These reinforce and are reinforced by normative standards relating *inter alia* to access to justice, law reform, protection of victims and witnesses and remedies.
- The reiteration of the prohibition of sexual and gender-based violence in international humanitarian law, human rights law and its designation as a war crime and crime against humanity makes a strong case for its *jus cogens* status, a peremptory norm of international law.<sup>18</sup>
- The development of customary international law is a dynamic process so that even if certain parts of the WPS agenda have not yet attained this status, continued State practice and statements of intent may lead to change. It is thus important for continued pressure to be exerted on States and institutions by civil society to develop further practice.



The considerable amount of State-based and institutional activity around WPS, as well as the many repeated and strong statements endorsing its principles make it difficult to conclude that all this activity does not represent some form of legal obligation.

# PART II: POTENTIAL OF RESOLUTION 2467 TO ADVANCE WPS

The above analysis makes clear that there is a good deal of substantive content to the WPS agenda and also that a SC resolution is expected to have legal as well as practical consequences. It also demonstrates – and this is not doubted – that since the adoption of Resolution 1325 in 2000 there has been a great deal of focused activity by States, the UN, regional institutions, and, far more energetically, by women’s NGOs in seeking to realise the promise of such an agenda.

But what is also evident is that progress in implementation is painfully slow. Women’s participation in peace processes remains minimal and they are denied access to political spaces. The Secretary-General has reported that “significant challenges persist with regard to the meaningful participation of women in conflict resolution.”<sup>19</sup> Similarly as it pertains to conflict-affected sexual violence the activity around it has failed to eradicate or even reduce its prevalence.<sup>20</sup> The two are connected: “Preventing sexual violence requires the advancement of substantive gender equality before, during and after conflict, including by ensuring women’s full and effective participation in political, economic and social life.”<sup>21</sup>

Does Security Council Resolution 2467 change any of this? We argue that there are elements in this Resolution which provide entry points to substantially improve the way in which conflict-related sexual violence is addressed and which can in turn be located within the broader framework and demands of the WPS agenda. However, while Resolution 2467 may be engaged with in this way, effectiveness of the WPS agenda to achieve feminist goals ultimately depends on the removal of structural, institutional and legal divides.

## A. THE PREAMBLE

Although there are differing opinions as to the value and weight to be accorded the Preamble to a Security Council resolution, it essentially states its purpose, aims, and justification and locates it within existing legal and political structures. The Preamble to Resolution 2467 has some helpful legal language and entry points for action.

- The Preamble reaffirms all earlier WPS Resolutions and commitment to their “continuing and full implementation”. This incorporates the language of all those Resolutions.
- The women-specific instruments from other fora are recalled – CEDAW and its General Recommendation No. 30 and Beijing. The former brings the Resolution within the realms of legally binding human rights obligations and progressive understandings, which are itemized in the rest of the Preamble.



- Recognition of the need for gender equality, political, social and economic empowerment, and the need for physical safety, which are inextricably linked to the increase of women's meaningful participation in peace processes and in leadership positions.
- Recognition that discrimination against women and girls, under-representation in decision-making and structural inequalities exacerbate the disproportionate impact of sexual violence in armed conflict. This wording implicitly implicates CEDAW, especially articles 3, 7 and 8, as well General Recommendation No. 30.
- Reference to "harmful social norms and practices" and "discriminatory views on women or gender roles in society". This is a new reference for the Security Council, which echoes CEDAW, article 5 and the obligation to "modify the social and cultural patterns of conduct" and stereotypes that reinforce gender hierarchies. In light of the insistence on removal of the language of gender during negotiations this inclusion is surprising and welcome.
- Recognition of the continuum of violence and that conflict affects the frequency of other forms of gender-based violence. This too invokes the broader understandings and incidence of gender-based violence before, during, and post-conflict as made by the CEDAW Committee in its General Recommendations No. 30 and No. 35.
- Importantly the Preamble contains a subtle reference to sexual and reproductive rights: "the need for a survivor-centered approach in preventing and responding to sexual violence in conflict and post-conflict situations, *further recognizing* the need for survivors of sexual violence to receive non-discriminatory access to services such as medical and psychosocial care to the fullest extent practicable and need to be free from torture and cruel, inhuman or degrading treatment, and that violations of the obligations on the treatment of victims can amount to serious violations of international law." This builds on existing legally recognised language, notably that of the Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment and CEDAW.
- The Preamble also recalls Security Council Resolutions 2122 (Preamble Paragraph 16) and 2242 (Preamble Paragraph 15) in recognising the link between small arms and sexual and gender-based violence in conflict and the obvious need to control the illicit weapons trade and for States to do more to give effect to article 7 (4) of the Arms Trade Treaty.<sup>22</sup> This relates to National Plans of Action on Small Arms and light weapons in accordance with the UN Programme of Action, which should be linked to NAPs on WPS.
- New in the Preamble is reference to the impact of resource extraction, "conflict minerals" and the need for private sector actors to ensure that their proceeds do not fund armed groups that perpetuate conflict and conflict-related sexual violence.



Preventing sexual violence requires the advancement of substantive gender equality before, during and after conflict, including by ensuring women's full and effective participation in political, economic and social life.



More could be said, but in effect the Preamble provides a description of the causes and context in which so much of conflict arises and how conflict-related sexual and gender-based violence becomes legion. In short, it opens the door for interpretation of the Operative Paragraphs in ways that civil society can make good use of them to further State and institutional implementation.

## B. LEGAL OBLIGATIONS

Careful interpretation of Resolution 2467, read in conjunction with the earlier WPS Resolutions (which have not been rescinded) and existing international law, allows for the assertion of State legal obligations and corresponding individual rights.

The Resolution for the first time explicitly puts survivors and their rights and needs at the centre of all actions. Human rights law rests on State obligations towards individuals and their corresponding rights. Remedies must thus be accorded to the individual whose rights have been violated – survivors. Although the centring of survivors is new language in the WPS Resolutions it is required language by human rights law.

Resolution 2467 throughout avoids reference to sexual violence as a tactic or weapon of war and thus avoids this limiting language of earlier resolutions. It also has an implied wider coverage of survivors of sexual violence by its reiteration of “all” sexual violence and language such as victims of sexual violence, “including women and girls, who are particularly targeted.” Other language highlights the “disproportionate impact of sexual violence in armed conflict and post-conflict situations on women and girls” (Preamble, Operative Paragraph 32); and the “disproportionate burden of HIV and AIDS on women and girls” (Operative Paragraph 16(b)). This retains the character of WPS as a women’s agenda while indicating other victims – men and boys – who are explicitly noted in Operative Paragraph 32 and making this the first WPS Resolution since the Preamble of Resolution 2106 (2013) to do so.

LGBTIQ persons are also implicitly included through reference to “groups that are particularly vulnerable or may be specifically targeted” in Operative Paragraph 16. The historic targeting of those whose sexual preference or gender identity is deemed to be deviant is well documented, as is the case in contemporary conflict such as in Syria and Iraq.<sup>23</sup>

The following section looks at some of these legal obligations.



The Resolution for the first time explicitly puts survivors and their rights and needs at the centre of all actions. Human rights law rests on State obligations towards individuals and their corresponding rights. Remedies must thus be accorded to the individual whose rights have been violated – survivors.



The greatest criticism levelled at Resolution 2467 is that sexual and reproductive rights are not spelled out and specific references to these rights were withdrawn after the threat from the US to veto the Resolution. There is a perception therefore that rights have been eroded and access to appropriate healthcare compromised. We argue that this is not actually the case.

## C. SEXUAL AND REPRODUCTIVE RIGHTS

The greatest criticism levelled at Resolution 2467 is that sexual and reproductive rights are not spelled out and specific references to these rights were withdrawn after the threat from the US to veto the Resolution. There is a perception therefore that rights have been eroded and access to appropriate healthcare compromised. We argue that this is not actually the case.

- The language of Security Council Resolutions 2106 and 2122 remains the agreed language on sexual and reproductive rights and has not been replaced or removed. There is clear human rights language on the right to access the full range of sexual and reproductive health services without discrimination. Two decades ago the CEDAW Committee affirmed that “[i]t is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women” and that “access to health care, including reproductive health, is a basic right” under the Convention.<sup>24</sup>
- CEDAW Committee General Recommendation No. 30 addresses the issue of safe abortion directly, understanding sexual and reproductive health care to include, *inter alia*, access to information, family planning services, including emergency contraception; maternal health services; safe abortion services; and post-abortion care.<sup>25</sup> This too is referenced by the Preamble noting of General Recommendation No. 30.
- This is strengthened by the Framework of Cooperation between the CEDAW Committee and the SRSG on Sexual Violence in Armed Conflict which “affirms the ways in which the Convention on the Elimination of Discrimination against Women, the response to conflict-related sexual violence and the broader discourse on women, peace and security and gender equality are linked.”<sup>26</sup>
- As noted above the Preamble recognises “the need for survivors of sexual violence to receive non-discriminatory access to services such as medical and psychosocial care to the fullest extent practicable and need to be free from torture and cruel, inhuman or degrading treatment, and that violations of the obligations on the treatment of victims can amount to serious violations of international law.” This is an important and bold statement in the Security Council context. It indicates that States have a responsibility to ensure appropriate care or to be potentially accountable for violations. As indicated above, this is language from the European Court of Human rights, CEDAW and the Human Rights Committee.

- This Preambular reference is further strengthened by language in a number of Operative Paragraphs. Operative Paragraph 16 reiterates the survivor-centred approach and non-discrimination and references those “particularly vulnerable ... notably in the context of their health”. Operative Paragraph 16a repeats the prohibition of discrimination in receiving the care “required by their specific needs” whilst Operative Paragraph 17 references the right to an effective remedy. Operative Paragraph 18 recognises the situation of women and girls who have become pregnant as a result of sexual violence in conflict. By specifically referring to those “who choose to become mothers” there is an implication of choice and that other women choose legitimately not to give birth.

In short, what we appear to have lost, we have not, the language is still there. Early access to appropriate healthcare is vital for obvious reasons. This language should enable first responders to provide that full range of care and services and claim legal grounds for so doing. An intelligent approach is to use the full range of entry points to assert these rights.

## D. REMEDIES

Resolution 2467 explicitly and unequivocally refers to “the applicable provisions of international law on the right to an effective remedy for violations of human rights.” These provisions are found in numerous instruments as listed in the General Assembly’s Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.<sup>27</sup> As stated earlier “human rights” applies to the entire canon of human rights – civil and political, economic, social and cultural, including sexual and reproductive rights. It also encompasses non-discrimination in the according of remedies.

States’ legal obligation is to ensure that remedies are made available and are “adequate, effective, promptly attributed, holistic and proportional to the gravity of the harm suffered.”<sup>28</sup> They include access to justice and reparation, which itself may be through “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.”<sup>29</sup> All such forms are especially pertinent for survivors of conflict-related sexual and gender-based violence. The requirement of appropriate remedies provides further support for the right to an abortion following conflict-affected sexual violence. The CEDAW Committee has recommended that remedies include rehabilitation which it describes as “medical and psychological care and other social services”<sup>30</sup> while restitution seeks to “whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred.”

## E. DOMESTIC LAW REFORM AND ACCESS TO JUSTICE

Operative Paragraphs 14 and 15 bring real legal reform into WPS in new and innovative ways, which also amplify and give effect to the CEDAW Committee’s General Recommendations No. 30 and No. 33 on access to justice. If taken to their logical conclusions, they could have dramatic consequences for how sexual violence is prosecuted at the national level.

The wording “in the context of justice sector reform efforts” does not clarify if reform is required or whether the listed criteria should be included if a State happens to be engaged in it. However, by referring back to the Preamble, and the demand for gender equality, read in conjunction with Operative Paragraph 15 and “strengthening access to justice”, there is a strong argument that States should, indeed, undertake law reform, especially with



The evidence is legion, from national prosecutions of rape and of sexual violence in non-conflict situations, through to the prosecutions in the ad hoc and hybrid international criminal tribunals that the legal system does not work well for women.



Challenging cultural assumptions also supports access to justice for LGBTIQ persons and men and boys in trials of sexual and gender-based violence. They too face discrimination and adverse treatment rooted in socially held bias. Cultural mores shift and change over time, often guided by law. The provisions in Resolution 2467 for law reform could indeed generate such a moment.

respect to prosecutions of sexual and gender-based violence. The evidence is legion, from national prosecutions of rape and of sexual violence in non-conflict situations, through to the prosecutions in the ad hoc and hybrid international criminal tribunals that the legal system does not work well for women. Discriminatory laws and gendered stereotypes of women and the issue of consent have continued to be the basis of defence against rape. Inevitably this increases the trauma for women witness/ survivors and is one of the reasons, for example in Europe, that the prosecution of rape is less than nine per cent of all reported cases.

There was some greater protection through the Rules of Procedure and Evidence in the International Criminal Tribunals for the former Yugoslavia and Rwanda<sup>31</sup> and in the ICC,<sup>32</sup> but even these have proved to be penetrable. This is where this Resolution is strong and has pushed the boundaries to challenge existing and inimical discriminatory practices.

Operative Paragraphs 14 and 15 seek to address the obstacles identified so that women can feel able to access justice. They should be read in conjunction with the CEDAW Committee General Recommendation on access to justice,<sup>33</sup> emphasising again the importance of incorporation of CEDAW in the Resolution.

Walking through the process, States are called upon to:

- Establish victim and witness protection laws and provide, where appropriate, legal aid for survivors. Ensuring security and protection is a vital element of encouraging survivors to come forward. If that is in place then stage two is having confidence in those who investigate and adjudicate. Hence the call for “specialized police units and courts to address such crimes”.

- Operative Paragraph 15 takes the opposite approach to that in the 2019 decision of the ICC with respect to Afghanistan in which it was deemed that too much time had passed for investigations and prosecution to be “in the interests of justice”.<sup>34</sup> This approach is rejected and States are to remove procedural impediments to justice for victims such as restrictive limitation periods for filing claims. This is important with respect to conflict-affected sexual and gender-based violence as continued political instability and failed social structures may impede any activity with respect to criminal charges for long periods of time; in non-conflict situations too, there may be reasons for delay prior to commencement of investigation.
- Resolution 2467 is thus good on reform to criminal process but it is the next part which could prove a real breakthrough in bringing greater gender equality into legal proceedings by refusing to endorse culturally held views of women. These are rooted in masculine and discriminatory interpretations of human interactions, which have been brought into law. This rejection is found in the call to end “corroboration requirements that discriminate against victims as witnesses and complainants, exclusion or discrediting of victims’ testimony by law enforcement officials and within judicial and other proceedings”. This is exactly what is needed for justice to be made accessible whereby potential witnesses need not fear that they will be subjected to cross examination, to be at risk of ostracism because of direct attacks on their credibility and, worse, which often puts them at risk of being killed in the name of honour.

Operative Paragraphs 14 and 15 should be linked to those on the need to strengthen policies that offer appropriate care and the call to challenge cultural assumptions. The former is a precursor to participation in seeking justice and thus core to transitional justice.<sup>35</sup> Challenging cultural assumptions also supports access to justice for LGBTIQ persons<sup>36</sup> and men and boys in trials of sexual and gender-based violence. They too face discrimination and adverse treatment rooted in socially held bias. Cultural mores shift and change over time, often guided by law. The provisions in Resolution 2467 for law reform could indeed generate such a moment.

Of course, a great deal of work needs to be done to actually change the historical practice, but this opens up enormous potential.



Commission of Inquiry reports could play a positive role in informing peace processes and assisting in the design of transitions so as to ensure that the responses needed in both law and practice reflect the gendered impact of behaviours and violations, the accountability framework, and what is needed for restitution and redress.

# PART III: PRACTICAL APPLICATION

To undertake a full analysis of all the legal obligations continued and reinforced in the Operative Paragraphs of Resolution 2467 is beyond the scope of this Commentary. What is important is to examine the practical application of some of the most pertinent provisions to determine how they could impact on securing accountability for conflict-affected sexual violence in the broader context of WPS.

Thus far the UN has utilised two basic intervention mechanisms in conflict settings:

- Commissions of Inquiry, mandated by the Human Rights Council; and
- Peacekeeping operations mandated by the Security Council.

## A. COMMISSIONS OF INQUIRY

A criticism of Commissions of Inquiry is that they rarely fully address gender analysis or address sexual and gender-based violence against men and boys or against LGBTIQ persons.<sup>37</sup> They should now do so as the Security Council has encouraged the Human Rights Council to include references to all sexual violence in the mandate, calls upon the Commissioners to document its occurrence in conflict and post-conflict and to take into account the specific needs of survivors.

This requires Commissioners both to identify survivors' needs, necessitating a gender analysis, and recognises that conflict and violence do not end, particularly for women with the signing of a ceasefire or peace agreement.<sup>38</sup> Read together with Operative Paragraph 16 on "including groups that are particularly vulnerable or may be specifically targeted", the Human Rights Council is explicitly encouraged to work with the OHCHR secretariat to bring clarity to mandates and with the Secretary-General to "ensure that they are established and operationalized with the capacity and relevant expertise to address such considerations." This is essentially to encourage repetition of the approach taken by the Independent International Commission of Inquiry on the Syrian Arab Republic in its investigation and documentation of sexual violence against all who have been subjected to it (including men and boys) and in addressing the gendered context and consequences.<sup>39</sup>

In adopting this methodology, a Commission of Inquiry report can help to guide the member States' response in the survivor-centred approach encouraged in Operative Paragraph 16 and its sub paragraphs. In addition, when done well, Commission of Inquiry reports could play a positive role in informing peace processes and assisting in the design of transitions so as to ensure that the responses needed in both law and practice reflect the gendered impact of behaviours and violations, the accountability framework, and what is needed for restitution and redress.



The broad range of economic, social and cultural rights are vital to the creation of an enabling environment in which women can participate and that must start in the humanitarian space.

Commissions of Inquiry report to the Human Rights Council, which enables States and civil society to engage in debate, expose where there has been a failure to uphold the Resolution's provisions and, of great importance, to take note of the documented follow-up so as to use the UN human rights treaty body reporting mechanisms and the Universal Periodic Review (UPR) to hold the State accountable for ensuring implementation of what are, after all, human rights obligations required by the law.

## B. PEACEKEEPING OPERATIONS

For peacekeeping mandates there is finally an acknowledgement of what women have long demanded, not least in Arria formula meetings of the Security Council, that Council members meet with women in country so that the mandate reflects what women say on what is needed and how to do it.<sup>40</sup> Operative Paragraph 21 welcomes this form of briefing and Operative Paragraph 13 delivers the intention to have interactive consultation in country.

This has transformative potential but only if words become deeds and attitudes change. Peacekeeping operations have been notoriously lacking in the degree of seriousness they apply to WPS. They typically have too few real gender experts, often so designated simply because they are women. Women in peacekeeping missions have informally spoken of the high expectations vested in them that they will address everything from sexual exploitation and abuse (SEA), to maternal health, to conflict-affected sexual violence, and make the tea! In addition, "Multiple masculinities, patriarchy and sexism undermines the ability of women peacekeepers to imbue alternative ways of dealing with and resolving conflict."<sup>41</sup>

Operative Paragraph 22 seeks to address this by requesting that the Secretary-General deploy Women Protection Advisers at a senior level, with access to senior UN leadership so as to deliver on the implementation of this Resolution. If taken and implemented seriously and in line with his gender parity policy, the Secretary-General could and should ensure that entrenched gender hierarchies in the UN system are disrupted in favour of gender parity amongst the senior leadership officials. Accountability is also important, for example but not exclusively, through a performance appraisal, which examines what relevant personnel have done to secure implementation.

If this work is directly and regularly linked to that of the office of the SRSG on sexual violence in armed conflict there would be available better documentation of conflict-affected sexual violence. The SRSG's reports to the Security Council could then be harder hitting and more specific, thereby increasing the possibility of tailored measures for perpetrators, specifically through the possible use of individual targeted sanctions as anticipated in Operative Paragraph 10.<sup>42</sup>

Whilst it is for the Department of Peace keeping and Political Affairs to fulfil this part of the Resolution, the success will be dependent on the existence of a safe and enabling environment within which civil society can organise and ensure their information can be



shared with the relevant parts of the UN. The evidence shows an increase in attacks and lack of security for Human Rights Defenders, not least within the UN fora, which clearly has to be addressed. Whilst there is no overt, direct reference to Human Rights Defenders as individuals in the Resolution there is reference to the need for security in the Preamble: *"remaining deeply concerned about threats, attacks and restrictions on the work of civil society organizations that inhibit their ability to contribute to international peace and security"* and Operative Paragraph 19 calls for:

States to condemn acts of discrimination, harassment and violence against civil society, and journalists who report on sexual violence in conflict and who are important to changing norms on roots causes, namely structural gender inequality and discrimination, and develop and put in place measures to protect them and enable them to do their work.

Clearly such actions are already legally prohibited,<sup>43</sup> but the evidence shows these laws are poorly complied with and this Operative Paragraph strengthens the need for further legislation and implementation.

The broad range of economic, social and cultural rights are vital to the creation of an enabling environment in which women can participate and that must start in the humanitarian space. Absent a coherent gendered analysis and participation in the design and delivery of such assistance and a proactive transition to the responsible State authorities, information on conflict-related sexual violence and other violations will be limited as will participation in post-conflict transformation, as called for in Operative Paragraph 16 and earlier WPS Resolutions.

Support for women and women's civil society organisations does not have to be performed directly by UN bodies. Civil society actors are often more specialised with better access, a more specific and relevant skill base, local knowledge and trust.

## C. ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

This feeds into Operative Paragraph 16 (d), which, for the first time in a WPS Resolution, calls for the participation of survivors of sexual and gender-based violence in the design of transitional justice processes and in decision-making positions. This apparently small addition has enormous potential to unlock what has been long hidden: the recognition of the differences faced by men and women in accessing post-conflict justice and what gendered justice entails. From the Global Study<sup>44</sup> to academic research and most obviously from women who have experienced conflict, the overwhelming call is for economic, social and cultural rights to be recognised, funded and implemented as the basis for transformative justice.<sup>45</sup> Unfortunately the reference to the responsibility of the International Financial



This is the framework for a process to address a specific crime – sexual and gender-based violence – but one which will fail unless the appropriate rights of survivors are provided. Absent that support no matter how much participation in peace processes, or in transitional justice, for example, is wished for, it will not happen.

Institutions from an early draft of the Resolution was lost. This should be sought again in any future WPS Resolution.

## D. CONSULTATIONS AS A MECHANISM FOR CHANGE

In practice therefore, using Security Council consultation with women's groups as an entry point, building capacity and consistent inclusion in driving policy and process would make a substantial difference, not least by providing information that can be used by the Office of the SRSG bolstered by the Informal Expert Group. This would then feed directly into the Security Council process and open doors for the NGOs to hold the State accountable as discussed further below.

In relation to the direct interventions just discussed, that the UN traditionally makes, this is helpful. If the references to gender analysis in DDR programmes (Operative Paragraph 27) and in relation to IDPs (Operative Paragraph 31) are added, the practical possibilities in the continuum from conflict to transition become clearer and, with cooperation, transparency and genuine political will within the UN and States, should lead to a serious improvement in the way that these interventions are made.

A desirable outcome would be, if, as a result of regular consultations, there was a realisation that on the whole, for women, sending in men with guns to keep a 'sort of peace' is not always what is wanted or needed and may be counter-productive. Such speculation is beyond the scope of this Commentary but it might well be that understanding better the reality of peacekeeping would lead to a redesign of approaches and structures for delivery, which is very much overdue!

This is the framework for a process to address a specific crime – sexual and gender-based violence – but one which will fail unless the appropriate rights of survivors are provided. Absent that support no matter how much participation in peace processes, or in transitional justice, for example, is wished for, it will not happen. It starts with immediate, emergency and gender appropriate health care and moves into ensuring a safe context for survivors to recover and feel sufficiently secure, not just physically but in terms of economic, social and cultural structures, to be fully part of that process.

## E. ENTRY POINTS FOR PRACTICAL APPLICATION IN RESOLUTION 2467

Resolution 2467 provides clear entry points, as set out above, where civil society can work to hold States accountable and which are the essential elements of working with the multilateral system:

- Engage in drafting National Action Plans so as to include references which will implement the new elements in Resolution 2467 and insist on adequate funding.
- Draft shadow National Action Plans to expose where States fall short in implementation of their obligations; disseminate these widely, for instance to Parliamentary bodies, to bodies such as gender equality commissions, ombudspersons, or national human rights institutions.
- Document and monitor the legal implementation of Operative Paragraphs, in particular Paragraphs 14 and 15.

- Document violations as a result of arms transfers which are likely to be in breach of art 7(4) of the Arms Trade Treaty and ensure the information is included in reports on the respective States.
- Civil society should work with States to implement the UN Plan of Action on small and light weapons, through for instance the development of National Action Plans which can then be tied into NAPs on WPS.
- Submit shadow reports to UN human rights treaty bodies, especially to the CEDAW Committee and the Committee on the Rights of the Child as these are directly brought into Resolution 2467. As discussed above the CEDAW Committee already assesses States' implementation of WPS and makes relevant recommendations in its concluding observations; other treaty bodies might do likewise.
- Use the Universal Periodic Review process to raise issues of WPS.
- Make use of national and regional judicial bodies where appropriate and possible.
- In conflict-affected areas ensure liaison with the office of the SRSG on conflict-affected sexual violence to document violations that can be taken forward into the Secretary-General's annual report to the Security Council.
- Advocate for and participate in Arria formula briefings at the Security Council.
- Resist and campaign against budget cuts to the UN human rights system, notably to the treaty bodies.

The above are the basic tools of the human rights mechanisms within the UN but civil society also needs to be part of a coherent diagnostic so that the causes and consequences of conflict can be better contextualised and understood, giving the WPS agenda greater opportunity to progress. One such entry point is around Commissions of Inquiry where a combination of surfacing the reality of gender in the continuum of peace and conflict and in the political economy, using different academic disciplines to provide analysis and apply new directions as to how conflict is addressed, would undoubtedly be a move in the right direction.

# PART IV: FAILURE OF THE NORMATIVE AGENDA

As stated above, it is evident that progress in implementation of the WPS agenda is painfully slow. We have argued that the law exists, the WPS agenda exists, the institutions exist so where lies the logjam?

We argue that it lies in a combination of 'systems' and institutions:

- The UN security system
- The global arms trade system
- The neo-liberal exploitative economic system
- The countering violent extremist and anti-terrorism systems

Together these have undermined the force of the agenda by failing to address – or even take into account – the consequences of militarised security, of the arms trade, or of the inequalities that lie at the root of the ongoing violence of conflict and post-conflict. Instead it has brought – co-opted – women into those systems and left patriarchy undisturbed.

## A. SECURITISATION

We argue that this has its origins in WPS as a Security Council agenda and hence with an emphasis on a particular approach to security. Resolution 1325 commenced an agenda committed to recognising “the important role of women in the prevention and resolution of conflicts and in peace-building”, and this is continued through subsequent WPS Resolutions. Civil society celebrated the adoption of the Resolution 1325 as setting a new standard for the Security Council, UN member States and the UN system as a whole. However, civil society efforts to include disarmament and the promotion of human security failed in the initial iteration. This in and of itself was a warning that the Council was not reversing its approach to protection, which was still hard wired to militarised security. As Dianne Otto has commented, it was perhaps not then appreciated that there might be a price to pay, that although Resolution 1325 was, in the words of a 2015 Global Study on its implementation, “conceived of and lobbied for as a human rights resolution that would promote the rights of women in conflict situations”,<sup>46</sup> its location in the Security Council also made it a security issue, which inevitably sees women as victims in need of protection.<sup>47</sup>

The emphasis in the WPS Resolutions on women in the security sector, on conflict-related sexual violence as a weapon of war (and later a weapon of terror), and almost nothing on the root causes, in particular the political economy of violence and its role in preventing participation, runs counter to the progress made in other areas.<sup>48</sup> Despite emphasis in later WPS Resolutions on women's active engagement, the tendency has been to reinforce a gender stereotype of women as peacemakers compounded by an emphasis on conflict-

related sexual violence, which has attracted far more attention than other areas, including for instance the introduction by Resolution 1888 (2009) of a SRSG on sexual violence in armed conflict who reports annually to the Security Council. The need for criminal prosecution of alleged perpetrators and an end to impunity has been a constant, as it should be, but the means to attaining these goals, despite the SRSG Office, have failed to take a long, hard look at why it is that progress is snail like.

In short, the problem is a failure to look beyond a militarised security approach, which is antithetic to a human security approach that could be achieved through the realisation of human rights. As a result, the 'silos' have been exacerbated. Essentially there is a fear that placing human rights at the core and using the Geneva based mechanisms as vehicles for delivery on the SC Resolutions would lead to the WPS agenda being "downgraded" away from security (and the Security Council) to the "less prestigious" world of human rights. In turn this is reflective of the hierarchical structures which govern the UN and, almost inevitably, influence the way in which NGOs engage.

## B. SYSTEMIC, INSTITUTIONAL OBSTACLES

The systems that are either explicitly tasked with implementing WPS or are implicitly involved include:

- States, which have primary obligations to respect, protect and fulfil human rights and, as set out above, obligations to comply with international law and certain obligations towards Security Council resolutions.
- Institutions. The United Nations through its organs and agencies, including the Security Council, the General Assembly, the specialised Departments and Committees, and the Secretariat, all of which should ensure that all UN programming and interventions uphold human rights and international obligations.
- International Financial Institutions. States are not absolved of their legal obligations, including those under international human rights law, through membership of an IFI and, as we have argued elsewhere, there is a growing understanding that the World Bank, IMF and other such institutions cannot continue to eschew their own responsibilities under international law.<sup>49</sup>
- Civil society organisations which play a vital role in ensuring the transfer of local experiences into the multilateral system, in advocating an appropriate response and ensuring the use of all available accountability mechanisms.

This is the basic structure of the international system, which has evolved in order to ensure that the Charter of the UN is upheld. But the institutional structure lacks coherence and each operates in accordance with its own mandate, processes and priorities, thereby undermining a common and focused approach to advancement of the relevant agendas. Whilst there has been much discussion about the fragmentation of international law into a proliferation of specialised regimes and an apprehension that this would undermine the coherence and thus legitimacy of the discipline, less concern has been expressed about the institutions there to uphold law: the institutional and substantive overlap between, and the dissolution of conceptual boundaries separating, such legal regimes.<sup>50</sup> The legal fora for accountability are also fragmented through national legal systems, regional mechanisms, international legal tribunals such as the ICC and the ICJ, and human rights, quasi-judicial



The UN and its agencies must work closely with civil society organisations, particularly in country, to ensure that local expertise and knowledge is brought into policy and approach, both during conflict and in the transitional period, to give effect to the demands of the WPS agenda, including now Resolution 2467.

bodies. Different procedural and jurisdictional rules, as well as the applicable law, allow for diverging jurisprudence and forum shopping, although earlier concerns about this have not to date proved justified.

WPS is founded upon a number of such regimes – International Humanitarian Law, International Human Rights Law, International Criminal Law, Refugee Law. The SC WPS Resolutions refer to each in an *ad hoc* and inconsistent manner and attempt neither to address their fragmentation nor to clarify their overlap. Substantive and institutional siloing has impeded convergence around the WPS agenda and this, we argue, is central to the failure to realise its transformative potential.

What is needed, therefore, is to examine how law, in particular human rights law, can finally shine a light on these systems, expose their biases, and provide them with the guidance needed to change. The objective must be structural reform and greater and principled convergence of international law so that it can be put into effect broadly and specifically in relation to the various SC WPS Resolutions. Self evidently, as for law, there must be a gender analysis applied to the inner and outer workings of those systems and institutions if there is to be the necessary serious progress. The emphasis on changing cultural bias, gender equality, and on women's participation in all areas in this resolution clearly supports such an approach.

The UN itself needs internal reform. How this could be effected is, again, beyond the scope of the Commentary but hierarchy and a culture of male privilege does not serve the Organisation well and needs to be challenged by States, civil society and, indeed, staff. At a minimum, all UN agencies must be held accountable for delivery on human rights and the WPS agenda and they will be unable to do so without internal change. The UN and its agencies must work closely with civil society organisations, particularly in country, to ensure that local expertise and knowledge is brought into policy and approach, both during conflict and in the transitional period, to give effect to the demands of the WPS agenda, including now Resolution 2467. Above all in the current climate, resources for human rights institutions must be maintained and improved.

## PART V: CONCLUSION

The international system as it currently exists is vulnerable to rising populism, the pernicious effects of the concept of 'gender ideology' (a phrase to be resisted) and erosion of multilateralism. Adherence to international law is at risk and indeed, is being severely undermined by many of the most powerful of States. This, in and of itself, is one of the most significant threats to international peace and security. The WPS agenda, based as it is on the multiple and intersecting applicable laws, is inevitably weakened as a result. This must not happen. As set out above, there are many entry points in Resolution 2467, which builds upon and reinforces the previous WPS Resolutions, but the emphasis on the participation of women in all things structurally related to militarised security and on merely counting the numbers of women so included, has diverted attention from actions that could and should have been taken so as to make the agenda live up to its potential. The UN and its agencies must take a new direction and give leadership to enable this to succeed. Civil society organisations must be clear of the need to resist pushback and to take advantage of the entry points in Resolution 2467 to make changes and where such changes should be headed, and that it will take a cooperative effort to make this happen.

Finally, whilst the erosion of international law is a threat, it is as nothing compared to the greatest threat to WPS, and indeed, to international peace and security, and that is the impact of climate change and environmental destruction. Climate change has become a root cause of conflict and displacement; it is estimated that there will be more than 200 million climate refugees in the next two decades. What that means for other species and the continued existence of a habitable planet is well documented.



Civil society organisations must be clear of the need to resist pushback and to take advantage of the entry points in Resolution 2467 to make changes and where such changes should be headed, and that it will take a cooperative effort to make this happen.



SC Resolution 2242 on WPS noted the impact of climate change as part of the changing peace and security environment and reiterated its intention to “increase attention to women, peace and security as a cross-cutting subject in all relevant thematic areas of work on its agenda.” Unfortunately, and unsurprisingly in the current political climate, this was not repeated in Resolution 2467. However, on the same argument that sexual and reproductive rights are recalled in Resolution 2467, so too is this reference to climate change. The CEDAW Committee’s General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change<sup>51</sup> is the first such analysis of the potential gendered threat to women and girls caused by climate change and that conflict situations expose further these risks. As discussed above it is important that WPS and the work of the CEDAW Committee are more integrated, and this is made possible by resolution 2467. But if there is to be a new WPS Resolution for 2020, then we should work together to ensure that the “peace” of the agenda, has at its core the preservation of life in all its forms.



It is important that WPS and the work of the CEDAW Committee are more integrated, and this is made possible by resolution 2467. But if there is to be a new WPS Resolution for 2020, then we should work together to ensure that the “peace” of the agenda, has at its core the preservation of life in all its forms.

# REFERENCES

- <sup>1</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* 1971 ICJ Reports, para 114.
- <sup>2</sup> CEDAW is referenced in SC Resolution 1325 (2000) in Operative Paragraph 9; in the Preamble only in Resolutions 1820 (2008); 1888 (2009); 1889 (2009), 2122 (2013) and 2242 (2242). It does not even receive a preambular reference in Resolutions 1960 (2010) and 2106 (2013).
- <sup>3</sup> *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* 2010 ICJ Reports, para 66. The treaty body in question was the Human Rights Committee but the comment must be equally applicable to the CEDAW Committee.
- <sup>4</sup> Eg., Concluding Observations, Colombia, CEDAW/C/COL/CO/9, 14 March 2019, paras 15 and 16; Myanmar, CEDAW/C/MMR/EP/CO/1, 8 March 2019, paras 62 and 63; United Kingdom, CEDAW/C/GBR/CO/8, 14 March 2019, paras 39 and 40.
- <sup>5</sup> UN Website at <http://research.un.org/en/docs/resolutions>
- <sup>6</sup> The Secretary-General has noted that “important advances have been made around Security Council sanctions. Stand-alone designation criteria on sexual violence were included in the sanctions regimes for the Central African Republic, Libya, Somalia and South Sudan.” Report of the Secretary-General, Conflict-related Sexual Violence, S/2019, 280, 29 March 2019, para 30.
- <sup>7</sup> *North Sea Continental Shelf cases*, 1969 ICJ Reports 3.
- <sup>8</sup> International Law Commission’s (ILC) Draft Conclusions on the Identification of Customary International Law (2018). The ILC’s Draft Conclusions were presented to the General Assembly as part of the ILC Annual report in 2018; UN Doc. A/73/10. They provide an authoritative methodology for determining customary international law.
- <sup>9</sup> *Ibid.*, at Conclusion 10.2.
- <sup>10</sup> James Crawford too has noted that “The ‘final act’ or other statement of conclusions of a conference of States may be a form of multilateral treaty, but, even if it is an instrument recording decisions not adopted unanimously, the result may constitute cogent evidence of the state of the law on the subject.” James Crawford. *Brownlie’s Principles of Public International Law*, (8th ed. 2012) 42.
- <sup>11</sup> Council of the European Union, Council Conclusions on Women, Peace and Security, Brussels, 10 December 2018, Annex at <https://www.consilium.europa.eu/media/37412/st15086-en18.pdf>

- <sup>12</sup> At <https://www.peacewomen.org/sites/default/files/Implementing%20WPS%20in%20AFrica.pdf>
- <sup>13</sup> Report of the Secretary-General on women and peace and security, S/2018/900, 9 October 2018, para 23.
- <sup>14</sup> The position was mandated by SC Resolution 1888 (2009).
- <sup>15</sup> Report of the Secretary-General on women and peace and security, S/2018/900, 9 October 2018, para 22: In 2017, 25 gender advisers in 12 field missions or offices of special envoys; 9 out of 15 peacekeeping missions have gender units; 53 gender advisers and officers in these units; 12 police gender and sexual and gender-based violence advisers, 18 military gender and protection advisers, two United Nations Police specialized teams focusing on sexual and gender-based violence deployed in Haiti and South Sudan, and 21 women's protection advisers deployed in seven mission settings.
- <sup>16</sup> Eg, the UK Defence Academy delivered its first Military Gender and Protection Advisers course in November 2018.
- <sup>17</sup> <https://www.peacewomen.org/>
- <sup>18</sup> Vienna Convention on the Law of Treaties, 1969, article 53: "a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted".
- <sup>19</sup> Report of the Secretary-General on women and peace and security, S/2018/900, 9 October 2018, para 1.
- <sup>20</sup> As reported in the Report of the Secretary-General, Conflict-related Sexual Violence, S/2019, 280, 29 March 2019.
- <sup>21</sup> Ibid., Introduction.
- <sup>22</sup> Arms Trade Treaty, article 7 (4): "The exporting State Party, in making this [Export] assessment, shall consider the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4 being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children."
- <sup>23</sup> Independent International Commission of Inquiry on the Syrian Arab Republic: " 'I lost my dignity': Sexual and gender-based violence in the Syrian Arab Republic", UN Index: A/HRC/37/CRP.3, 8 March 2018.
- <sup>24</sup> CEDAW Committee, General Recommendation No. 24, Article 12 of the Convention (women and health) (1999).
- <sup>25</sup> CEDAW Committee, General Recommendation No. 30, para 52(c).
- <sup>26</sup> Report of the Secretary-General, Conflict-related Sexual Violence, S/2019, 280, 29 March 2019, para 3.

- <sup>27</sup> General Assembly Resolution 60/147, 16 December 2005.
- <sup>28</sup> CEDAW Committee, General Recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 3 August 2015, para 19 (b).
- <sup>29</sup> General Assembly Resolution 60/147, 16 December 2005, para 18.
- <sup>30</sup> CEDAW Committee, General Recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 3 August 2015, para 19 (b).
- <sup>31</sup> ICTY and ICTR Rules of Procedure and Evidence, Rule 96.
- <sup>32</sup> ICC, Rules of Procedure and Evidence, Rules 70 and 71.
- <sup>33</sup> CEDAW Committee, General Recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 3 August 2015.
- <sup>34</sup> *Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan*, ICC-02/17, 12 April 2019: "the Chamber believes that, notwithstanding the fact all the relevant requirements are met as regards both jurisdiction and admissibility, the current circumstances of the situation in Afghanistan are such as to make the prospects for a successful investigation and prosecution extremely limited." One of the factors was that "most of the incidents referred to in the Request allegedly occurred between 2005 and 2015; most of them date back to the early part of that decade. During this period, by its own admission, the Prosecution was not in a position to meaningfully act for the purposes of preserving evidence, or for the protection of witnesses. The very availability of evidence for crimes dating back so long in time is also far from being likely."
- <sup>35</sup> Madeleine Rees and Christine Chinkin, "Exposing the gendered myth of post conflict transition: the transformative power of economic and social rights", 48 (4). New York University Journal of International Law and Politics (2016), 1211.
- <sup>36</sup> Committee, General Recommendation No. 33 on women's access to justice, para 8.
- <sup>37</sup> Exceptions are Report of the Commission on Human Rights in South Sudan, A/HRC/37/CRP.2, 23 February, 2018; Independent International Commission of Inquiry on the Syrian Arab Republic: "I lost my dignity": Sexual and gender-based violence in the Syrian Arab Republic", UN Index: A/HRC/37/CRP.3, 8 March 2018.
- <sup>38</sup> CEDAW Committee, General Recommendation No.30, para 35 notes that "For most women in post-conflict environments, the violence does not stop with the official ceasefire or the signing of the peace agreement and often increases in the post-conflict setting."
- <sup>39</sup> Independent International Commission of Inquiry on the Syrian Arab Republic: "I lost my dignity": Sexual and gender-based violence in the Syrian Arab Republic", UN Index: A/HRC/37/CRP.3, 8 March 2018; Christine Chinkin and Madeleine Rees, "A commentary on the Syria Col report on sexual and gender-based violence" at <http://www.lse.ac.uk/women-peace-security/assets/documents/2018/LSE-WPS-WILPF-Syria-SGBV.pdf>

- <sup>40</sup> Eg, Julianne Lussenge from Democratic Republic of Congo: "You must support our grassroots organizations and their community peacebuilding efforts. International organizations must coordinate their own work with what we are already doing and support locally led initiatives. Without a comprehensive approach and a dynamic change cycles of violence against women and girls will continue – unless we address the entire ecosystem." UN Security Council Open Debate on Women, Peace and Security, 13 October 2015 at [http://www.womenpeacesecurity.org/files/NGOWG\\_UNSC\\_OpenDebate\\_Statement\\_Lusenge\\_10-2017.pdf](http://www.womenpeacesecurity.org/files/NGOWG_UNSC_OpenDebate_Statement_Lusenge_10-2017.pdf). She has made similar compelling arguments to this end on at least 3 occasions.
- <sup>41</sup> Lindy Heineken, "Challenges Facing Women in Peacekeeping", at <https://www.oxfordresearchgroup.org.uk/blog/challenges-facing-women-in-peacekeeping>
- <sup>42</sup> "Important advances" with respect to listing and imposition of sanctions are already taking place; Report of the Secretary-General, Conflict related Sexual Violence, S/2019, 280, 29 March 2019, para 30.
- <sup>43</sup> Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, article 79 provides that journalists "shall be protected as such under the Conventions and this Protocol."
- <sup>44</sup> *Preventing Conflict, Transforming Justice, Securing the Peace. A Global Study on the Implementation of UN Security Council resolution 1325* (UN Women, 2015).
- <sup>45</sup> Madeleine Rees and Christine Chinkin, "Exposing the gendered myth of post conflict transition: the transformative power of economic and social rights", 48 (4). New York University Journal of International Law and Politics (2016), 1211.
- <sup>46</sup> *Preventing Conflict, Transforming Justice, Securing the Peace. A Global Study on the Implementation of UN Security Council resolution 1325* (UN Women, 2015), 15.
- <sup>47</sup> Dianne Otto, "Women, Peace and Security: A Critical Analysis of the Security Council's Vision", LSE Working Paper Series, (1/2016) at <http://www.lse.ac.uk/women-peace-security/assets/documents/2016/wps10tto.pdf>
- <sup>48</sup> Eg, in law, the Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011 (Istanbul Convention); CEDAW Committee, General Recommendation No.30 on women in conflict prevention, conflict and post-conflict situations (2013).
- <sup>49</sup> A Feminist Perspective on Post-Conflict Restructuring and Recovery – the Study of Bosnia and Herzegovina, WILPF (2017) at <http://wilpf.org/wp-content/uploads/2017/08/Feminist-political-economy-ENG-FINAL.pdf>
- <sup>50</sup> Christine Chinkin, The Third Hilding Eek Memorial Lecture, "Violence against Women: International Human Rights Law, Criminal Law and Security", 87 Nordic Journal of International Law (2018) 229-248.
- <sup>51</sup> General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change, CEDAW/C/GC/37, 7 February 2018.





THE LONDON SCHOOL  
OF ECONOMICS AND  
POLITICAL SCIENCE ■

Centre for Women, Peace and Security  
London School of Economics and Political Science  
Houghton Street  
London WC2A 2AE

[women.peace.security@lse.ac.uk](mailto:women.peace.security@lse.ac.uk)

The LSE Centre for Women, Peace and Security is an academic space for scholars, practitioners, activists, policy-makers and students to develop strategies to promote justice, human rights and participation of women in conflict-affected situations around the world.

Through innovative research, teaching, and multi-sectoral engagement, the Centre for Women, Peace and Security aims to promote gender equality and enhance women's economic, social and political participation and security.

[lse.ac.uk/wps](https://lse.ac.uk/wps) + [blogs.lse.ac.uk/wps](https://blogs.lse.ac.uk/wps) + [@LSE\\_WPS](https://twitter.com/LSE_WPS)

**CENTRE FOR**  
**WOMEN, PEACE**  
**+ SECURITY**

Research at **LSE** ■