

Chapter 15

Transforming Reality: Employing International Law to End Practices that Exclude Women as Peacemakers, Peacekeepers, and Peacebuilders

Cornelia Weiss

In Cecilia Bailliet (ed.), *Research Handbook on International Law and Peace*, Cheltenham, UK: Edward Elgar, 329-350, published April 2019, <https://www.elgaronline.com/view/edcoll/9781788117463/9781788117463.xml>

I. Introduction

UNGA Declaration on the Right to Peace recognizes ‘the importance of peacekeeping, peacemaking, and peacebuilding . . . for the global pursuit of peace’ while recalling that ‘the cause of peace require[s] the maximum participation of women, on equal terms with men, in all fields’.¹ This chapter addresses how international law can be employed to end practices that exclude women as peacemakers, peacekeepers, and peacebuilders. I write this chapter to challenge us to employ international law to end practices that exclude women from power in our individual lives as well as power to create the world we want live in. My analysis is influenced by my experiences, to include having served over a quarter century as a reserve military lawyer (JAG) in the US military in Europe, the Pacific, and the Western Hemisphere. I currently hold the rank of colonel. The opinions and views expressed are my personal views and are not intended to represent in whole or in part the opinions of the US government or any of its components.

My thinking about the exclusion against women as peacemakers, peacekeepers, and peacebuilders began when I learned that the Colombian government was excluding women as front line negotiators during peace talks in the early 2010s with the FARC (one of the armed entities that have been fighting the Colombian government for decades). Given my experiences while deployed to Colombia in the mid-2000s (to include celebrating the first women appointed to head the Colombian Military Justice Corps and the Colombian Military Justice School), I was shocked. I raised the issue in an academic conversation with members of the security and defense community of the Western Hemisphere. I received two responses: 1) from a high-ranking military male who stated ‘women not important’ and 2) from a male presiding professor that women did not need to be represented at the ‘peace table’ because ‘male negotiators are able to fully represent women’s interests’. Whether such opinions are due to ignorance,² misogyny,³

¹ UNGA Declaration on the Right to Peace (31 October 2016) A/C.3/71/L.29.

² Such as not knowing that ‘Ruta Pacifica de la Mujer and the Women’s Association of Eastern Antioquia negotiated local-level ceasefires’, that ‘women dialogued directly with armed groups to secure the release of hostages, to prevent violence and displacement, to recover children recruited by the armed actors, to protect their communities, and to secure basic necessities’, and made ‘their way through occupied territories and persuaded the insurgents to lift road blockades and to allow the passage of food, medicine,

‘stereotypes . . . which exclude women from all aspects of decision-making’⁴ or discrimination so ‘pervasive and persistent and deeply entrenched in social behaviour and organization, often involving unchallenged or indirect discrimination’ to include ‘legal rules, policies, practices or predominant cultural attitudes . . . which create relative disadvantages for some groups, and privileges for other groups’,⁵ I leave for others to explore. Being serious about peace for all requires advancing beyond the intellectual shrugs, silences, glazed eyes, and dismissive ‘We have more important things to discuss’ responses I have encountered when raising questions about the exclusion and minimization of women.

My goal for this chapter is to provide inspiration and tools, for scholars and practitioners, to end exclusionary practices as well as highlight areas of needed scholarship. First, I define peacemaking, peacekeeping, peacebuilding, and exclusion. Second, I analyze the effect of international treaties. Third, I examine the power of general recommendations. Fourth, I address compliance mechanisms. Fifth, I investigate the potential of UN Security Council resolutions. Throughout the chapter, I highlight responsibilities and opportunities we all have to make a difference. As long as exclusion continues, promoting peace through international law is illusory.

2. Definitions

I define ‘peacemakers’ as ‘first line of key negotiators in the peace process’,⁶ ‘peacekeepers’ as military, police and civilians employed in peace operations,⁷ and ‘peacebuilders’ as participants in ‘action[s] to solidify peace and avoid relapse into conflict’⁸ to include, but not limited to, the 2010 UN Women’s Participation in Peacebuilding provisions that: 1) ‘women are fully engaged in, and timely gender expertise is provided to, all peace talks’; 2) ‘in post-conflict planning processes, including

and people through insurgent, paramilitary, and military checkpoints’, Virginia Bouvier, ‘Gender and the Role of Women in Colombia’s Peace Process’ (UN Women 4 March 2016) 18-19 <<https://tinyurl.com/y7dzavz6>> accessed 11 January 2018.

³ Dan Lamothe, ‘This Marine Tried to Stop Misogyny in the Military, Now He’ll Take On the Pentagon from the Outside’ (The Washington Post 8 January 2018) <https://www.washingtonpost.com/news/checkpoint/wp/2018/01/08/this-marine-tried-to-stop-misogyny-in-the-military-now-hell-take-on-the-pentagon-from-outside/?utm_term=.9d53d7cbf6ff> accessed 8 January 2018.

⁴ Committee on the Elimination of Discrimination against Women (CEDAW Committee) ‘General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations’ (GR30), 18 October 2013, UN Doc. CEDAW/C/GC/30, para 43.

⁵ Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights) (2 July 2009) E/C.12/GC/20, para 12.

⁶ CEDAW Committee, ‘Concluding Observations on the combined seventh and eighth periodic reports of Colombia’ (29 October 2013) CEDAW/C/COL/CO/7-8, para 23.

⁷ The UN defines ‘peacekeeping’ as ‘a technique that expands the possibilities for both the prevention of conflict and the making of peace’ peace’, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, ‘An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping’ (17 June 1992) UN Doc. A/47/277 - S/24111, para 20 <<http://www.un-documents.net/a47-277.htm>> accessed 16 June 2014.

⁸ UN Doc. A/47/277 - S/24111, para 21.

donor conferences, women should play substantive roles and methods should be used to ensure that comprehensive attention is paid to gender equality'; 3) 'adequate financing – both target and mainstream – is provided to address women's specific needs, advance gender equality and promote women's empowerment'; 4) 'deployed civilians possess the necessary specialized skills, including expertise in rebuilding States institutions to make them more accessible to women'; 5) 'women can participate fully in post conflict governance, as civic actors, elected representatives or decision-makers in public institutions, including through temporary special measures such as quotas'; 6) 'rule-of-law initiatives encourage women's participation in the process of seeking redress for injustices committed against them and in improving the capacity of security actors to prevent and respond to violations of women's rights'; and 7) 'economic recovery prioritizes women's involvement in employment-creation schemes, community-development programmes and the delivery of front-line services'.⁹

I define 'exclusion' as failing the parity line test of at least 50 per cent women at every level and at every activity of peacemaking, peacekeeping, and peacebuilding. For those who decry that 50 per cent is too much for women, I incorporate the observation of US Supreme Court Justice Ruth Bader Ginsburg that "'when I'm sometimes asked when will there be enough [women on the US Supreme Court] and I say when there are nine [100 per cent], people are shocked" but no one has "ever raised a question" when nine men were serving on the bench'.¹⁰

In peacemaking, the exclusion against women is reflected in that 92 per cent of negotiators, 98 per cent of mediators, and 95 per cent of witnesses and signatories to peace agreements between 1990 and 2017 were not women.¹¹

In peacekeeping, in examining the police and military only, the exclusion against women is reflected in that 90.6 per cent of police and 96.33 per cent of military deployed are not women. There are only about 125,000 UN peacekeepers¹² deployed at a given moment. Of 10 States reporting on women in police and 12 States reporting on women in militaries, States employ women for 12.3 per cent of their police and for less than 12 per cent of their military.¹³ Yet States sent men, not women, for 90.2 per cent of UN police positions in 2013,¹⁴ with an increase, as of August 2017, to 90.6 per cent of police

⁹ UN General Assembly Security Council, 'Women's participation in peacebuilding: Report of the Secretary-General' (7 September 2010) UN Doc. A/65/354-S/2010/446, <http://www.un.org/ga/search/view_doc.asp?symbol=A/65/354> accessed 6 December 2017.

¹⁰ 'Ginsburg Wants To See All-Female Supreme Court' (CBS 27 November 2012) <<http://washington.cbslocal.com/2012/11/27/ginsburg-wants-to-see-all-female-supreme-court/>> accessed 14 January 2018.

¹¹ Council on Foreign Relations, 'Women's Roles in Major Peace Processes, 1990–2017' <<https://tinyurl.com/y83zft3r>> accessed 11 January 2018.

¹² SADC, SARDC (2016) *SADC Gender and Development Monitor 2016*. SADC, SARDC. Gaborone, Harare, at 72, Table 2.2, <https://www.sadc.int/files/8415/0340/7935/SGDM_2016_ENGLISH.pdf> accessed 24 November 2017.

¹³ United Nations Security Council, 'Report of the Secretary-General on women and peace and security' (9 September 2016) S/2016/822, fn 15 <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2016_822.pdf> accessed 11 January 2018.

¹⁴ Sahana Dharmapuri, 'Core Issues Stall Women's Participation in UN Missions' (Global Observatory 13

personnel.¹⁵ For military positions, States sent men, not women, for 99 per cent of peacekeeping military personnel in 1993,¹⁶ 98 per cent in 2013,¹⁷ 97 per cent in 2014,¹⁸ 96.8 per cent in 2015,¹⁹ and, as of August 2017, 96.33 per cent.²⁰ In addition to *de jure* and *de facto* State exclusion against women in their police and militaries, the numbers indicate that States increase this exclusion against women during deployments to peace operations (and thereby also exclude women from the career advancement and financial benefits that deployments bring).

In peacebuilding, the exclusion against women is reflected, for example, by the Colombian government's exclusion against women from almost 87 per cent of the seats in the post-peace process; that is, from all but 6 of 45 seats on the peace monitoring committees.²¹

3. International treaties

International treaties are binding international law for ratifying States. Given that excluding women includes 'multiple and intersectional discrimination',²² applicable international treaties are not limited to the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).²³ CEDAW applies to all States except the US, Iran, Somalia, Sudan, South Sudan, Tonga, and Palau, which have not ratified CEDAW.²⁴

CEDAW's Preamble declares 'the cause of peace require[s] the maximum participation of women, on equal terms with men in all fields'. Maximum participation of women on equal terms with men in all fields means that States and organizations may not exclude women in peacemaking, peacekeeping, and peacebuilding.

March 2013) <<http://www.theglobalobservatory.org/analysis/455-core-issues-stall-womens-participation-in-un-peacekeeping.html>> accessed 16 June 2014.

¹⁵ Thalif Deen, 'UN Member States Pay Lip Service to Women & Peacekeeping' (Inter Press Service 31 October 2017) <<http://www.globalissues.org/news/2017/10/31/23661>> accessed January 2018.

¹⁶ Deen.

¹⁷ Dharmapuri.

¹⁸ SADC, SARDC, 72, using 2014 numbers.

¹⁹ S/2016/822.

²⁰ Deen.

²¹ Anastasia Moloney, 'Put women at the Centre of Colombia Peacebuilding to ensure lasting peace – campaigners' (Thomas Reuters 21 June 2017) <<http://news.trust.org/item/20170621153005-9tapj/>> accessed 11 January 2018.

²² Committee on the Rights of Persons with Disabilities (CRPD), Concluding observations on the initial report of Colombia (30 September 2016) CRPD/C/COL/CO/1.

²³ UNGA Res. 34/180, 34 UN GAOR Supp. (No. 46), 193, UN Doc. A/34/46; 1249 UNTS 13; 19 ILM 33 (1980).

²⁴ United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination Status as at 16 June 2014, <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en> accessed 16 June 2014.

CEDAW's potential power to promote peace is visible in the case of Colombia. Women made up between 35 to 45 per cent of the FARC.²⁵ The FARC's ability to recruit women was, in part, due to governmental and societal discrimination against women.²⁶ It has been argued that women warriors of the FARC were 'key to the FARC insurgency'²⁷ and that 'to win the war, Colombia need[ed] female fighters to lay down their arms'.²⁸ That is, 'without the dedication, organizational skills and courage displayed by females, the FARC could not function with the level of combat proficiency that it has achieved, nor indeed survive as an organization'.²⁹ Had the government of Colombia not discriminated against women, Colombia would not have suffered war to the extent that it did.

Colombians, in an October 2016 referendum, rejected a peace agreement with the FARC.³⁰ The agreement contained over 150 references to women.³¹ It has been asserted that Colombians rejected the agreement because 'gender equality was more of a threat than conflict'.³² Whether this analysis is correct or whether the majority voted 'no' because the government gave its people only a week to read, debate, and decide on a 297 page peace agreement³³ or because of concerns about immunity for human rights violations committed by the Colombian military,³⁴ I leave to others to decipher.

After its people rejected the agreement, the Colombian government and the FARC revised the agreement. This time the government did not submit the agreement to the Colombian people, but instead to the Colombian Congress.³⁵ The revised agreement

²⁵ 'Hernández and other guerrilla leaders say anywhere from 35 to 45 percent of the FARC's estimated 7,000 fighters are women'. Jim Wyss, 'From Combat to Kitchen: Colombia's female fighters wary of what awaits after peace agreement' (Miami Herald 24 June 2016) < <https://tinyurl.com/yazxpxx> > accessed 14 January 2018.

²⁶ Natalia Herrera and Douglas Porch (2008) "'Like going to a fiesta' - the role of female fighters in Colombia's FARC- EP', *Small Wars & Insurgencies*, 19:4, 609 — 634.

²⁷ Nadja Drost, 'To Win the War, Colombia needs Female Fighters to Lay Down Their Arms' (Globalpost 1 June 2011), < <http://www.globalpost.com/dispatch/news/regions/americas/colombia/110525/farc-female-guerrillas> > accessed 11 January 2018.

²⁸ Drost.

²⁹ Herrera and Porch, 612.

³⁰ 'Colombia referendum: Voters reject Farc peace deal' (BBC 3 October 2017) < <http://www.bbc.com/news/world-latin-america-37537252> > accessed 10 January 2018.

³¹ Acuerdo Final, 24.08.2016, Acuerdo Final por la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera < <https://tinyurl.com/ycpzlrq6> > accessed 11 January 2018.

³² Gabriela Buchner, panelist, 'Leadership for Stability and Security', Woodrow Wilson Center, Washington DC, 25 April 2017; Salvesen, Hilde and Dag Nylander, 'Towards an inclusive peace : women and the gender approach in the Colombian peace process' (Norwegian Centre for Conflict Resolution - NOREF 2017) < <https://noref.no/Publications/Regions/Colombia/Towards-an-inclusive-peace-women-and-the-gender-approach-in-the-Colombian-peace-process> > accessed 11 January 2018.

³³ Acuerdo 24 August 2016.

³⁴ Amnesty International, 'Colombia: Historic peace deal must ensure justice and an end to human rights abuses' (26 September 2016) < <https://www.amnesty.org/en/latest/news/2016/09/colombia-historic-peace-deal-must-ensure-justice-and-an-end-to-human-rights-abuses/> > accessed 11 January 2018.

³⁵ 'Acuerdo Final Para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera', 24 November 2016 < <http://www.altocomisionadoparalapaz.gov.co/procesos-y-conversaciones/Documentos%20compartidos/24-11-2016NuevoAcuerdoFinal.pdf> > accessed 10 January 2018; Chris Kraul, 'Colombian Congress passes amended peace deal to end decades of civil war' (LA

contains over 209 references to women; the agreement obligates the government of Colombia to address discrimination against women.³⁶ Yet Colombia, a party to CEDAW, already had the obligation to not discriminate against women.³⁷ CEDAW provides for the fundamental rights of women,³⁸ for rural women,³⁹ for equal opportunity for women,⁴⁰ for equality for women,⁴¹ for access to justice for women,⁴² for non-traditional opportunities for women,⁴³ for access to finance for women,⁴⁴ and for political participation for women.⁴⁵ The revised agreement states that it gave special attention to the fundamental rights of women⁴⁶ while highlighting rural women,⁴⁷ equal opportunity for women,⁴⁸ equality for women,⁴⁹ access to justice for women,⁵⁰ non-traditional occupations for women,⁵¹ access to finances for women,⁵² and political participation for women.⁵³ It does not appear that the original and revised agreements provided for more than Colombia's already existing obligations to women.

4. General recommendations

The UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee) issues general recommendations. Other treaty committees issue similar instruments.

In October 2013, 34 years after the emergence of CEDAW, the CEDAW Committee issued general recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (GR 30).⁵⁴ GR 30's paragraph 2 mandates State responsibility for

Times 30 November 2016) < <http://www.latimes.com/world/mexico-americas/la-fg-colombia-peace-deal-20161130-story.html> > accessed 10 January 2018.

³⁶ Revised Acuerdo 24 November 2016.

³⁷ Colombia signed the Convention on 17 July 1980, ratified it on 19 January 1982. The Convention entered into force in Colombia on 18 February 1982. United Nations Treaty collection, 'Status as at: 23-12-2017 05:00:26 EDT', https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en; Status of Ratification < http://www.bayefsky.com/pdf/cedaw_ratif_table.pdf > accessed 14 January 2018.

³⁸ CEDAW, Art 3.

³⁹ CEDAW, Art 14.

⁴⁰ CEDAW, Articles 4 and 8.

⁴¹ CEDAW Articles 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 16, and 23.

⁴² CEDAW, Art 15, see also General recommendation on women's access to justice (23 July 2015) CEDAW/C/GC/33.

⁴³ CEDAW, Articles 5, 10, and 13(c).

⁴⁴ CEDAW, Art 13.

⁴⁵ CEDAW, Art 7.

⁴⁶ Revised Acuerdo, 3.

⁴⁷ Revised Acuerdo, 10.

⁴⁸ Revised Acuerdo, 10.

⁴⁹ Revised Acuerdo, 12.

⁵⁰ Revised Acuerdo, 18.

⁵¹ Revised Acuerdo, 27.

⁵² Revised Acuerdo, 30.

⁵³ Revised Acuerdo, 35.

⁵⁴ GR 30. GR 30 is not the first time the CEDAW Committee addressed State exclusion against women as peacemakers, peacekeepers, and peacebuilders. *See* CEDAW general recommendations 23 (in 1997) and 8 (in 1988).

‘advancing substantive gender equality before, during and after conflict and ensuring that women’s diverse experiences are fully integrated’. While the Colombian peace talks are lauded for creating a subcommittee on gender to ensure a gender perspective and women’s rights were included,⁵⁵ the subcommittee was created as an ‘after thought’ in September 2014, due to ‘the pressure of women’s organizations’.⁵⁶ Thus, it is questionable whether the requirement that ‘women are fully engaged in, and timely gender expertise is provided to, all peace talks’⁵⁷ was realized during Colombia-FARC negotiations.

In contrast to the peace talks, Colombia may be the global leader in complying with part of the CEDAW Committee’s general recommendation No. 33 on women’s access to justice (GR 33), issued in 2015.⁵⁸ GR 33’s paragraph 15(f) recommends States ‘[c]onfront and remove barriers to women’s participation as professionals within all bodies and levels of judicial and quasi-judicial systems and providers in justice related services’ and to ‘[t]ake steps, including temporary special measures, to ensure that women are equally represented in the judiciary and other law implementation mechanisms as magistrates, judges, prosecutors, public defenders, lawyers, administrators, mediators, law enforcement officials, judicial and penal officials and expert practitioners, as well as in other professional capacities’.⁵⁹ Of the judges appointed to Colombia’s war tribunals in 2017, 53 per cent are women and of ‘the women judges appointed, more than 10 percent are Afro-Colombian and a further 10 percent come from indigenous groups’.⁶⁰ Colombia achieved arguable gender parity through 1) a large candidate pool (there were over 2,500 candidates for 51 positions), 2) required diversity of experience and expertise (the diversity sought included defending human rights as well as backgrounds in academia, the courtroom, and politics – to prevent inefficiency and backlogs), 3) required diversity of gender, race, ethnicity, and place of origin, and 4) consideration of citizen complaints and comments about candidates.⁶¹ That is, unlike the UN requirement for ‘rule-of-law initiatives [to] encourage women’s participation in the process of seeking redress for injustices committed against them’,⁶² Colombia’s implementation of GR 33 views women as decisionmakers, not as limited to seeking

⁵⁵ UN Women, ‘Women take the reins to build peace in Colombia’ (28 May 2015) <<http://www.unwomen.org/en/news/stories/2015/5/women-build-peace-in-colombia> > accessed 11 January 2018.

⁵⁶ Jody Williams, ‘Back to Colombia: Jody Williams’ (Nobel Women’s Initiative 25 May 2016) <<https://nobelwomensinitiative.org/back-to-colombia-jody-williams/> > accessed 11 January 2018.

⁵⁷ UN Doc. A/65/354–S/2010/446, para 6.

⁵⁸ CEDAW Committee, ‘General recommendation on women’s access to justice’ (23 July 2015) CEDAW/C/GC/33.

⁵⁹ GR 33.

⁶⁰ Anastasia Moloney, ‘Gender Justice: Women Judges to Dominate Colombia War Tribunals’ (Reuters 28 September 2017) <<https://www.reuters.com/article/us-colombia-women-rights/gender-justice-women-judges-to-dominate-colombia-war-tribunals-idUSKCN1C324M> > accessed 11 January 2018.

⁶¹ ‘Listos los magistrados: ¿qué viene para la JEP?:El Comité de Escogencia reveló la lista de los 51 magistrados titulares y suplentes que integrarán la JEP. Se trata de un elección fundamental: serán ellos los encargados de juzgar a los responsables de las atrocidades cometidas durante más de 50 años de guerra.’ (El Espectador 26 September 2017) <<https://colombia2020.elespectador.com/jep/listos-los-magistrados-que-viene-para-la-jep> > accessed 11 January 2018.

⁶² UN Doc. A/65/354–S/2010/446, para 6.

redress. Colombia may understand that encouraging women to seek redress from male-centric courts that exclude all but token women as judges requires believing that a system that excludes women as judges will not discriminate against women as litigants. To end exclusion, incorporating features of Colombia's selection process may be a solution for all judicial bodies. As stated by Nienke Grossman in 2015: '[I]t is difficult to believe that in a world of over 7 billion people, only one woman is qualified to sit on the seven-member benches of the ECOWAS, IACHR, and WTO Appellate Body, and on the 21-member bench of ITLOS'.⁶³

5. Compliance mechanisms

Compliance mechanisms include periodic scrutinization of State compliance with treaties, communications with treaty bodies, inquiries under treaties, inter-State complaints, and engaging with Working Groups. To date, most mechanisms have not been utilized. This is an area for expansion.

5.1 Periodic Scrutinization

States are required to report to committees monitoring compliance with treaties. For example, the CEDAW Committee, per CEDAW's Article 18, periodically scrutinizes the *de facto* and *de jure* status of women in each ratifying State.⁶⁴

The CEDAW Committee, in its 29 October 2013 concluding observations on Colombia, criticized Colombia's '**exclusion** [of women] in the first line of key negotiators in the peace process' (emphasis mine).⁶⁵ The CEDAW Committee recommended Colombia 'ensure the effective and meaningful participation of women in the first line of negotiations within the peace process'.⁶⁶ During the pre-peace talks (Phase One), the Colombian government's five-person team⁶⁷ had 40 per cent women and 60 per cent men.⁶⁸ For the peace talks (Phase Two), the Colombian government increased male representation 100 per cent (from three to six) and decreased female representation 100 per cent (from two to zero). On 11 September 2013, the Presidential High Advisor for the Equality of Women announced the government's national public policy for gender

⁶³ Nienke Grossman, 'Achieving Sex Representative International Court Benches' (2016) 110 Am J Int'l L 82, 86, using numbers from mid-2015, with the number of women on these bodies having fluctuated since the study, to include three women now on the ITLOS, Grossman email 4 January 2018.

⁶⁴ Aisling Swaine and Catherine O'Rourke, Guidebook on CEDAW General Recommendation 30 and the UN Security Council Resolutions on Women, Peace and Security (UN Women 2015), *see* Table C for 'questions for States parties to ensure that reports to the CEDAW Committee maximize the reinforcement of the GR30 and WPS resolutions frameworks', 21, 22-24
<http://www.peacewomen.org/sites/default/files/CEDAW-Guide-REV2_UNW.pdf> accessed 11 January 2018.

⁶⁵ CEDAW Committee 'Concluding observations on the combined seventh and eighth periodic reports of Colombia' (29 October 2013) UN Doc. CEDAW/C/COL/CO/7-8, para 23.

⁶⁶ CEDAW/C/COL/CO/7-8, para 24.

⁶⁷ The Phase One males representing the Colombian government are identified, *see* Pat Paterson, 'Conflict Resolution in Colombia' (Perry Center Occasional Paper June 2013) fn 25. The women are not.

⁶⁸ Sergio Jaramillo, Colombian High Commissioner for the Peace, letter to author, dated 24 June 2013.

equity,⁶⁹ yet the government continued to exclude women as front line negotiators. About two weeks after the CEDAW Committee's observations, Colombia ended its absolute exclusion of women by adding one woman to the peace talks and shortly thereafter a second woman.⁷⁰ The addition occurred after a year of male-only talks. Whether adding two women to a group of six men at that point in the negotiations was 'meaningful and effective participation'⁷¹ is doubtful. The inclusion of one Afro-Colombian woman⁷² in the peace negotiations did not lead the Committee on the Elimination of Racial Discrimination (CERD), in 2015, to find 'effective participation of indigenous peoples and the Afro-Colombian population'.⁷³ The 19 October 2017 Concluding Observations of the Committee on Economic, Social and Cultural Rights (CESCR) noted Colombia's 'failure to guarantee women's effective participation in the implementation of the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace (art. 3)'.⁷⁴

Whether Colombia stops excluding women and instead works proactively to 'ensure women's effective participation in the implementation of the Final Agreement'⁷⁵ awaits future research. It has been asserted that women are 'more likely to become disabled as a result of violence, armed conflicts, aging, and gender-based cultural practices.'⁷⁶ The Committee on the Rights of Persons with Disabilities (CRPD) recommends '[e]stablish[ing] penalties under the law and remedies for those affected'⁷⁷ by exclusion, to include women with disabilities. Whether Colombia establishes penalties and remedies remains to be seen. Given that the 'immediate aftermath of conflict can provide a strategic opportunity for States parties to adopt legislative and policy measures to eliminate discrimination against women in the political and public life of the country' as well as 'to ensure that women have equal opportunities to participate in the new, post-conflict structures of governance',⁷⁸ Colombia has an unparalleled opportunity. Whether Colombia embraces or rejects this opportunity is an area for future research.

⁶⁹ 'Dos mujeres reforzarán equipo de Gobierno en La Habana:El presidente Santos formalizó el ingreso de María Paulina Riveros y Nigeria Rentería' (El Espectador 26 November 2013) < <http://www.elespectador.com/noticias/paz/dos-mujeres-reforzaran-equipo-de-gobierno-habana-articulo-460571> > accessed 16 June 2014.

⁷⁰ Anastasia Moloney, 'Colombia appoints female peace negotiator' (Thomson Reuters Foundation 19 November 2013) < <http://www.trust.org/item/20131119171835-o0wuv/?source=hpeditorial> > accessed 16 June 2014; 'Dos mujeres' (El Espectador 26 November 2013).

⁷¹ GR 30, para 42.

⁷² 'Nigeria Rentería, mujer plenipotenciaria en La Habana' (El Espectador 18 Nov 2013) < <https://www.elespectador.com/noticias/paz/nigeria-renteria-mujer-plenipotenciaria-habana-articulo-459068> > accessed 15 January 2018.

⁷³ Committee on the Elimination of Racial Discrimination (CERD), Concluding observations on the combined fifteenth and sixteenth periodic reports of Colombia, International Convention on the Elimination of All Forms of Racial Discrimination (25 September 2015) CERD/C/COL/CO/15-16, para 11(b).

⁷⁴ Committee on Economic, Social and Cultural Rights (CESCR), 'Concluding observations on the sixth periodic report of Colombia' (19 October 2017) E/C.12/COL/CO/6, para 25.

⁷⁵ CESR Colombia 2017, E/C.12/COL/CO/6, para 26(c).

⁷⁶ Stephanie Ostoleva, 'Women with Disabilities: The Forgotten Peacebuilders' (2010) 33(1) *Loy LA Int'l & Comp Lx Rev* 83, 93.

⁷⁷ Committee on the Rights of Persons with Disabilities (CRPD), 'Concluding observations on the initial report of Colombia' (30 September 2016) CRPD/C/COL/CO/1, para 15(b).

⁷⁸ GR 30, para 43.

5.2 Communications

A second compliance mechanism is for individuals to communicate with treaty committees. Yet despite the ‘particularly cruel effect of enforced disappearance on the human rights of women’ to include vulnerability to ‘sexual and other forms of gender-based violence’ and given that ‘[w]omen who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones’,⁷⁹ States can silence people by not ‘recogniz[ing] the competence’ of committees ‘to receive and consider individual and inter-State communications’⁸⁰ needed to ‘reinforce the protections’.⁸¹ As of 27 October 2016, Colombia had not recognized the competence of the Committee on Enforced Disappearances (CED).⁸² Whether States should have the power to deny people the right to be heard by the international community is beyond the scope of this chapter. However, a way to be heard is to determine through which treaty optional protocols a State has permitted its people to communicate - and then use that route. For example, the Optional Protocol to CEDAW (Protocol)⁸³ enables individuals claiming violation of CEDAW to ‘communicate’ to the CEDAW Committee.⁸⁴ Exhaustion of remedies within the State is required first though.⁸⁵ The CEDAW Committee then has the power to ‘urgently’ request the State party to ‘take steps to protect the alleged victim or victims from irreparable harm’.⁸⁶ The State party must ‘provide a written response, including remedial steps taken’.⁸⁷ To date, no ‘communication’ has been made to CEDAW to address State practices that exclude women as peacemakers, peacekeepers, and peacebuilders, to include enforced disappearances.⁸⁸

5.3 Inquiries

A third compliance mechanism is the power to designate an ‘inquiry’. For example, the CEDAW Committee may designate an inquiry if it receives ‘reliable information indicating . . . systemic violations by a State Party’.⁸⁹ The CEDAW Committee used this tool in the 2005 Ciudad Juárez, Mexico femicide inquiry. It addressed ‘the negligence

⁷⁹ Committee on Enforced Disappearances (CED), ‘Concluding observations on the report submitted by Colombia under article 29 (1) of the Convention’ (27 October 2016) CED/C/COL/CO/1.

⁷⁹ CED/C/COL/CO/1, para 42.

⁸⁰ CED/C/COL/CO/1, para 11.

⁸¹ CED/C/COL/CO/1, para 12.

⁸² CED/C/COL/CO/1, para 11.

⁸³ UNGA Res. 54/4, annex, 54 UN GAOR Supp. (No. 49) at 5, UN Doc. A/54/49 (Vol. I); 2131 UNTS 83.

⁸⁴ Protocol Articles 1 and 2.

⁸⁵ Protocol Art. 4.

⁸⁶ Protocol Art. 5.

⁸⁷ Protocol Art. 7.

⁸⁸ For ‘communications’ brought to date, see Optional Protocol to the Convention on the Elimination of Discrimination against Women, Jurisprudence,

<<http://juris.ohchr.org/en/search/results?Bodies=3&sortOrder=Date>> accessed 6 December 2017.

⁸⁹ Protocol Art. 8.

and complicity of public authorities'.⁹⁰ The femicide inquiry language points to potential use in initiating inquiries regarding the failure of States to comply with their treaty obligations.

5.4 Inter-State Complaints

A fourth compliance mechanism could have States suffering from their neighbor State's lack of peace bringing a case to the International Court of Justice (ICJ) as an inter-State complaint. For example, the ICJ, under CEDAW's Article 29, exercises jurisdiction over claims arising out of CEDAW (except for those States that have made such a reservation). The ICJ has the power to judicially compel the peace lacking State to comply with CEDAW. To date this has not been used.

5.5 Working Groups

A fifth compliance mechanism could have Working Groups, like the Working Group on discrimination against women in law and practice (WG), address State laws and practices that exclude women as peacemakers, peacekeepers, and peacebuilders. The WG appears to be proactive, to include an amicus brief in Brazil.⁹¹ Further, it accepts invitations from States to conduct missions, to include a 2016 mission to the US.⁹² Its 2016 mission report on the US did not address laws and practices that exclude women as peacemakers, peacekeepers, and peacebuilders. This is an area for expansion.

6. UN Security Council resolutions

When the CEDAW Committee issued GR 30, the UN Security Council already had a decade of creating legal tools addressing women peacemakers, peacekeepers, and peacebuilders, starting with UNSCR 1325⁹³ in October 2000. Subsequent resolutions include, but are not limited to, UNSCR 1888⁹⁴ in September 2009, UNSCR 1889⁹⁵ in October 2009, UNSCR 1960⁹⁶ in December 2010, and UNSCR 2122⁹⁷ in October 2013, UNSCR 2242⁹⁸ in October 2015, and

⁹⁰ CEDAW Committee, 'Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico', Thirty-second session (January 10-28, 2005) UN Doc. CEDAW/C/2005/OP.8/MEXICO, para 274 <<http://www.un.org/womenwatch/daw/cedaw/cedaw32/CEDAW-C-2005-OP.8-MEXICO-E.pdf>> accessed 16 June 2014.

⁹¹ Petition Number ADJ/ADPF 5581, undated, submitted jointly with special rapporteurs to include the Special Rapporteur on Torture <<http://www.ohchr.org/Documents/Issues/Women/WG/AmicusBrazil.pdf>> accessed 15 January 2015

⁹² Report of the Working Group on the issue of discrimination against women in law and in practice on its mission to the United States of America (4 August 2016) A/HRC/32/44/Add.2 <<http://www.refworld.org/docid/5800dd4a.html>> accessed 14 January 2018.

⁹³ UNSCR 1325 (31 October 2000) UN Doc. S/RES/1325.

⁹⁴ UNSCR 1888 (30 September 2009) UN Doc. S/RES/1888.

⁹⁵ UNSCR 1889 (5 October 2009) UN Doc. S/RES/1889.

⁹⁶ UNSCR 1960 (16 December 2010) UN Doc. S/RES/1960.

⁹⁷ UNSCR 2122 (18 October 2013) UN Doc. S/RES/2122.

UNSCR 2282⁹⁹ in April 2016.

6.1 Status

Scholars differ as to the legal status of UN Security Council resolutions addressing women peacemakers, peacekeepers, and peacebuilders. Some maintain these Security Council resolutions are binding. Others counter that they are not. What is not disputed is whether Security Council resolutions are enforceable.

Scholarship contending the resolutions are binding ranges from in-depth legal analysis to declarative statements. Appiagyei-Atua, in 2011, in an article devoted to addressing the legal status of UNSCR 1325, concludes UNSCR 1325 is legally binding ‘because it authorizes acts that are intra vires the UN Charter and other international laws’.¹⁰⁰ Haynes, Cahn and Ní Aoláin, in 2012, claim ‘U.N. Security Council . . . resolutions [1325 et al] are both determinative and binding as legal, political, and normative pronouncements’.¹⁰¹

Those contending the resolutions are not binding use UN Charter Chapter (Chapter) based rationale. Bell and O’Rourke, in 2010, argue that ‘Resolution 1325 is a “thematic” resolution best understood as a Chapter VI UN Charter (non-binding) resolution’ and that ‘[i]ts legal authority has been accentuated by the fact it was passed unanimously and that the resolution uses the language of obligation’.¹⁰² Chapter VI addresses ‘Pacific Settlement Of Disputes’.¹⁰³ Otto, in 2009, maintains UNSCR 1325 is not binding, using Chapter VII rationale.¹⁰⁴ Chapter VII addresses ‘Action With Respect To Threats To The Peace, Breaches Of The Peace, And Acts Of Aggression’.¹⁰⁵

While the question of whether a UN Security Council resolution is binding or not is contested, the answer as to whether it is enforceable is not. As Rosalyn Higgins asserts, ‘it is incorrect to assume that non-binding resolutions are necessarily without legal effect’.¹⁰⁶ Ignoring UN Security Council resolutions can have consequences. The 1992 UN Legal Adviser’s memo on resolutions is clear: ‘NO SECURITY COUNCIL RESOLUTION CAN BE DESCRIBED AS UNENFORCEABLE’.¹⁰⁷

⁹⁸ UNSCR 2242 (13 October 2015) UN Doc. S/RES/2242.

⁹⁹ UNSCR 2282 (27 April 2016) UN Doc. S/RES/2282.

¹⁰⁰ Kwadwo Appiagyei-Atua, ‘United Security Council Resolution 1325 on Women, Peace, and Security – Is It Binding?’ (Spring 2011) Human Rights Brief 18, Issue 3, 6 <<http://www.wcl.american.edu/hrbrief/18/3atua.pdf>> accessed 16 June 2014.

¹⁰¹ Dina Francesca Haynes, Naomi Cahn and Fionnuala D. Ní Aoláin, ‘Women in the Post-Conflict Process: Reviewing the Impact of Recent U.N. actions in Achieving Gender Centrality’ (2012) Santa Clara Journal of International Law 11, 226.

¹⁰² Christine Bell and Catherine O’Rourke, ‘Peace Agreements or Pieces of Paper? The Impact of UNSCR 1325 on Peace Processes and Their Agreements’ (October 2010) Int’l & Comp L Q 59, Part 4, 943, fn 17.

¹⁰³ UN Charter, Chapter VI.

¹⁰⁴ Diane Otto, ‘Exile of Inclusion’ (2009) Melb J Int’l L 10, 11-12.

¹⁰⁵ UN Charter, Chapter VII.

¹⁰⁶ Rosalyn Higgins, ‘The Identity of International Law’, in *Themes and Theories: Selected Essays, Speeches, and Writings in International Law* (Oxford University Press 2009) 95.

¹⁰⁷ Boutros Boutros Ghali, *Unvanquished: A U.S. – U.N. Saga* (Random House 1999) 182.

An example of enforceability can be found in a case involving the UN Security Council denying access to a Kosovo-based women's network. UNSCR 1325's paragraph 15 states: 'Expresses its willingness to ensure that Security Council missions take into account gender considerations and the rights of women, including through consultation with local and international women's groups'. After being shown the operative paragraph 15 of UNSCR 1325, the Security Council met with the women's network.¹⁰⁸ Thus a UN Security Council resolution effected and affected change in at least one UN Security Council practice.

6.2. Compliance

Given the disparity between the data demonstrating exclusion against women and the UN Security Council resolutions that seek to end exclusion against women, the question must be asked whether a tool exists to fight all practices of exclusion, to include exclusion against women as peacemakers, peacekeepers, and peacebuilders. One tool is to simultaneously employ 1) sanctioning by the UN and 2) monitoring by non-UN bodies. Research indicates that 'UN sanctions and monitoring by non-UN bodies reduce the probability of non-compliance from 74 to 17 percent'.¹⁰⁹ Under Chapter VII of the Charter, the Security Council can take enforcement measures to maintain or restore international peace and security. Sanctions can be as simple as travel bans.¹¹⁰

6.2.1 Peacemakers

Since 2000, the UN Security Council has passed numerous resolutions against the exclusion of women in peacemaking, to include:

- UNSCR 1325 (2000) '*urges* . . . increased representation of women';¹¹¹
- UNSCR 1888 (2009) notes the 'underrepresentation of women in formal peace processes';
- UNSCR 2122 (2013) '*calls on* all parties to such peace talks to facilitate the **equal and full** participation of women at decision-making levels' [emphasis mine];¹¹² and
- UNSCR 2242 (2015) '*reiterates* its call for Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, and resolution of

¹⁰⁸ Aisling Swaine, 'Assessing The Potential Of National Action Plans To Advance Implementation Of United Nations Security Council Resolution 1325' (24 March 2010) Yearbook of International Humanitarian Law Vol. 12, 406, fn 13, citing Nobel Women's Initiative (2007), 'The Nobel Women's Initiative's First International Conference: Women Redefining Peace in the Middle East and Beyond Ireland'.

¹⁰⁹ Christoph Mikulaschek, 'From Paper to Peace? Compliance With UN Security Council Resolutions in Civil War', 7 April 2013, 3, unpublished paper presented at the Annual Conference of the Midwest Political Science Association held in Chicago on April 11-14, 2013.

¹¹⁰ Travel bans impede shopping. Travel enables shopping - a number one requested activity by military men when in a State not their own.

¹¹¹ UNSCR 1325, para 1.

¹¹² UNSCR 2122, para 7(c).

conflict, encourages those supporting peace processes to facilitate women's meaningful inclusion in negotiating parties' delegations to peace talks'.¹¹³

Colombia ended its practice of excluding all women at the peace table (while continuing to fail to provide for equal representation) about a month after UNSCR 2122 emerged. Whether UNSCR 2122 was instrumental in Colombia's ending its exclusion of all women at the peace table is an area for further research.¹¹⁴ Colombia may have believed that UN Security Council resolutions did not apply to Colombia. Indeed, in June 2013, the Colombian High Commissioner for Peace stated that UNSCR 1325 did not 'end with the appointment of a woman to the peace table'.¹¹⁵

Third parties to peace processes that have ratified CEDAW are required to apply the Convention.¹¹⁶ CEDAW requires States parties, *inter alia*, to condemn and eliminate discrimination,¹¹⁷ to ensure full development and advancement of women,¹¹⁸ to modify social and cultural patterns of conduct that result in discrimination,¹¹⁹ to ensure women's 'equal representation in political and public life',¹²⁰ to take 'all appropriate measures to ensure women, on equal terms with men and without discrimination, the opportunity to represent their Governments at the international level',¹²¹ and to take 'all appropriate measures to ensure women, on equal terms with men and without discrimination, the opportunity . . . to participate in the work of international organizations'.¹²² In the case of the Colombia-FARC peace negotiations, it does not appear that any third-party State sent women as primary representatives at the peace table. CEDAW ratifying third parties to the peace process with the FARC included Norway, Cuba, Chile, and Venezuela. These States had also domestic legal obligations not to exclude women. For example, Norway's 2011-2013 Women, Peace and Security Strategic Plan mandated: 'There is to be an even gender balance among Norwegian participants in peace and reconciliation processes',¹²³ yet it appears that Norway failed to provide an 'even gender balance' of Norwegians

¹¹³ UNSCR 2242, para 1 (13 October 2015).

¹¹⁴ In October 2013, the National Summit of Women and Peace in Bogotá, Colombia took place. 'Women take the reins to build peace in Colombia: The voices of women as experts, survivors and negotiators have been included in a peace process with an unprecedented gender perspective, with the support of UN Women and other partners' (UN Women May 2015) <

<http://www.unwomen.org/en/news/stories/2015/5/women-build-peace-in-colombia#sthash.iHDe0TKG.GdBctzGv.dpuf> > accessed 14 January 2018.

¹¹⁵ 'Aunado a lo anterior y teniendo en cuenta, que la finalidad del mencionado instrumento juridico no se agota con el nombramiento de una mujer en la Mesa de Conversaciones'. ('In addition to what has been stated and bearing in mind that the aim of the aforementioned legal instrument does not end with the appointment of a woman to the negotiation table'.) Colombian High Commissioner for the Peace Letter.

¹¹⁶ GR 30, para 9.

¹¹⁷ CEDAW, Art 2.

¹¹⁸ CEDAW, Art 3.

¹¹⁹ CEDAW, Art 5.

¹²⁰ CEDAW, Art 7.

¹²¹ CEDAW, Art 8.

¹²² CEDAW, Art 8.

¹²³ Norwegian Ministry of Foreign Affairs, 'Women, Peace, and Security, Norway's Strategic Plan 2011-2013', 7, stating compliance required with section 21 of the Norwegian Gender Equality Act < http://www.regjeringen.no/upload/UD/Vedlegg/FN/Kvinner_likestilling/sr1325_strategic_planE880E_web.pdf > accessed 14 January 2018.

appointed to sit as Norway's primary representatives at the peace table.¹²⁴ For non-ratifying parties, like the US, domestic obligations also exist. For example, the 2015 US National Security Strategy, issued 9 February 2015, stated that the US 'will continue to lead the effort to ensure women serve as mediators of conflict'.¹²⁵ Later that same month, when the US obtained a seat at the table, the US did not send a woman to serve as the US representative to the Colombian peace talks.¹²⁶ Whether these third party States affirmatively disregarded not only international law, but also domestic legal and policy obligations, I leave for others to analyze. If third party States expect States in conflict to be bound by international law, they must address whether third party States should themselves comply with international law.

The UN Secretary-General also has obligations under UN Security Council resolutions. In 2000, UNSCR 1325 'encouraged' the Secretary-General to 'implement his strategic plan of action (A/49/587)¹²⁷ calling for an increase in the participation of women at decision-making levels in conflict resolution and peace processes'.¹²⁸ In 2009, UNSCR 1888 noted 'with concern' the 'lack of women as Chief or Lead peace mediators in United Nations-sponsored peace talks.' Yet the UN Secretary-General, even two years after the passage of UNSCR 1888, still had not appointed a woman to be the chief mediator of a peace process.¹²⁹ In 2013, UNSCR 2122 requested that the Secretary-General 'support the appointments of women at senior levels as United Nations mediators and within the composition of United Nations mediation teams'.¹³⁰ Whether the UN Secretary-General's appointment of Mary Robinson on 18 March 2013 to serve as the UN Secretary-General's Special Envoy for the Great Lakes region of Africa¹³¹ was the result of UNSCR 1888 or the pending UNSCR 2122 (which came into being in October 2013) and whether the appointment of Hiroute Guebre Sellassie on 1 May 2014 as

¹²⁴ 'Nylander of Norway and Benitez of Cuba read a joint declaration in Havana' (Reuters 6 November 2013) < <http://www.trust.org/item/20131106200658-u3c4y/?source=search> > accessed 16 June 2014; Joey O'Gorman, '4 Cuban and Norwegian guarantors accompany Colombia peace process: Report' (Colombia Reports 5 September 2012) < <http://colombiareports.co/4-cuban-and-norwegian-guarantors-accompany-colombia-peace-process-report/> > accessed 14 January 2018.

¹²⁵ US 2015 National Security Strategy (7 February 2015) 11 < <http://nssarchive.us/wp-content/uploads/2015/02/2015.pdf> > accessed 14 January 2018.

¹²⁶ 'U.S. special envoy meets Colombian peace teams for first time' (Reuters 1 March 2015) < <http://www.reuters.com/article/2015/03/02/us-usa-colombia-envoy-idUSKBN0LY03O20150302> > accessed 14 January 2018. Aaronson did not meet with the representatives from both sides of the conflict until 1 March 2015. That is, after the US Government issued the 2015 US National Security Strategy.

¹²⁷ 'Advancement of Women Human Resources Management: Other Human Resources Questions – Improvement of the status of women in the Secretariat' (Report of the Secretary-General 1 November 1994) UN Doc. A/49/587, para 32 < <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/WPS%20A%2049%20587.pdf> > accessed 16 June 2014.

¹²⁸ UNSCR 1325, para 2.

¹²⁹ OSCE, 'Gender Balance Report OSCE Parliamentary Assembly: The Effective Implementation of UN Security Council Resolution 1325 within the OSCE and in Participating States' (July 2013) Presented By Dr. Hedy Fry, Special Representative on Gender Issues of the OSCE PA, 23 < <http://www.oscepa.org/publications/reports/special-reports/gender-issues-reports/1879-2013-sr-on-gender-issues-report/file> > accessed 16 June 2014.

¹³⁰ UNSCR 2122, para 7(c).

¹³¹ UN, 'Secretary-General Appoints Mary Robinson of Ireland Special Envoy For Great Lakes Region Of Africa' (18 March 2013) SG/A/1394-AFR/2581-BIO/4454 < <https://www.un.org/press/en/2013/sga1394.doc.htm> > accessed 22 December 2017.

Special Envoy for the Sahel¹³² was the result of UNSCR 1888 and UNSCR 2122 are areas for research. Given that it may be the norm for the Secretary-General to ignore UN Security Council resolutions seeking to end discrimination against women, we must ask whether it is a surprise that the evidence demonstrates women ‘are better off leaving the UN’ for career progression.¹³³ Since at least 1994, gender parity at the UN has been a stated goal.¹³⁴ Whether it is illogical to expect gender parity at the UN without the UN ending practices that disadvantage women, to include excluding women from positions as special envoys to UN sponsored peace talks, is a question I leave for others to explore. A starting point might be examining why it is that, while women made up 35 to 45 per cent of the FARC in Colombia,¹³⁵ the UN Mission in Colombia is ‘very far from the goal of [women as] 20 per cent of observers’ sent to monitor and verify the peace process.¹³⁶

6.2.2 Peacekeepers

GR 30, UNSCR 1325’s paragraph 4, UNSCR 1820’s paragraph 8, UNSCR 1960’s paragraph 15, UNSCR 1888’s paragraph 19, UNSCR 2106’s paragraph 4, UNSCR 2122’s paragraph 9, and UNSCR 2242’s paragraph 8 address women peacekeepers. State responsibility to apply CEDAW includes ‘national contingents that form part of an international peacekeeping or peace-enforcement operation’.¹³⁷

While arguments abound that States are unable to deploy women to peace operations, the evidence suggests the contrary. The 2008 Indian Formed Police Unit (FPU) in the UN Mission in Liberia (UNMIL) consisted of 105 women and 20 men, with the men acting in support and logistics roles.¹³⁸ GR 30’s paragraph 42 addresses ‘the inclusion of a critical mass of women in peacekeeping activities’. Whether GR 30’s ‘critical mass’ requires 105 front line female peacekeepers for every 20 male support staff demands future exploration. More recently, the examples of Malawi and Sierra Leone may prove instructive. In Malawi, ‘almost 50 percent of the individual force contribution in 2015 was made up of women (48.8%)’.¹³⁹ How was Malawi able to accomplish this? It appears that Malawi took ‘[m]easures . . . to increase the number of women deployed and also

¹³² UN, ‘Secretary-General Appoints Hiroute Guebre Sellassie of Ethiopia as Special Envoy for Sahel and Head of Office’ (1 May 2014) SG/A/1462-AFR/2876-BIO/4585, <<https://www.un.org/press/en/2014/sga1462.doc.htm>> accessed 22 December 2017.

¹³³ Henrik Ryden, ‘Are women paying a higher price for a UN career?’ (Impactpool, White Papers 15 June 2017) <<https://blog.impactpool.org/hubfs/Resources/eBooks/Are%20women%20paying%20a%20higher%20price%20for%20a%20UN%20career.pdf?t=1510236276703>> accessed 15 January 2018.

¹³⁴ ‘Advancement of Women Human Resources Management: Other Human Resources Questions – Improvement of the status of women in the Secretariat’ (Report of the Secretary-General 1 November 1994) UN Doc. A/49/587, para 32 <<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/WPS%20A%2049%20587.pdf>> accessed 16 June 2014.

¹³⁵ Wyss.

¹³⁶ Report of the Secretary-General to the Security Council on the United Nations Mission in Colombia (18 August 2016) S/2016/729, para 31.

¹³⁷ GR 30, para 9.

¹³⁸ Precarious Progress, 11.

¹³⁹ SADC, SARDC. 2016. *SADC Gender and Development Monitor 2016*, 71, see also table 8.1.

ensure that there are always women available for any mission'.¹⁴⁰ In 2015, Sierra Leone committed to sending 500 police, of which 300 are women; that is, 60 per cent women.¹⁴¹ Whether the 2018 XIII Conference of Defense Ministers of the Americas (CDMA) - 'in the pursuit of achieving . . . integration of women in the armed forces of the hemisphere'¹⁴² - chooses to learn from Malawi, Sierra Leone, and India remains to be seen. Whether the CDMA compiles a list of what member State militaries and police still have *de jure* discrimination against women serving as peacekeepers will provide insight into CDMA's commitment to the women of the Western Hemisphere. Further, whether CDMA resolves to end, in States without *de jure* discrimination, other forms of anti-woman discrimination will determine whether the CDMA can show the UN Security Council how not to discriminate. The reality is that UN Security Council resolutions discriminate against military members. For example, UNSCR 1820 fails to recognize that military members (women and men); not only civilians, also have the right to be protected against sexual assault and harassment by their military colleagues.

In addition to external approaches, internal approaches are needed to end practices of exclusion. GR 30's paragraph 44 requires 'measures' to address 'gender discrimination and inequality in conflict-affected areas' and to ensure 'women's equality'. In addition to addressing discrimination and inequality in conflict, we must address discrimination and inequality in militaries and police, whether at home or deployed. These 'measures' could include 'screening based on beliefs about gender equality'¹⁴³ in deciding who is hired, promoted, and discharged. Measures would also include professional education, exercises, and dedicated funding that result in security sectors that address gender discrimination and inequality rather than perpetuate it. If States sponsor research that investigates whether women should be part of security sectors, whether that research should also investigate if men should be part of security sectors¹⁴⁴ is an area of research ethics that must be grappled with. Further, whether military research that excludes women fulfills the obligations of researchers to protect human subjects and to adhere to ethical standards is an area for further investigation.

¹⁴⁰ Benson Linje, 'Peacekeeping Contributor Profile: Malawi' (Providing for Peacekeeping November 2015) <

<http://www.providingforpeacekeeping.org/2015/03/23/contributor-profile-malawi/> > accessed 24 November 2017.

¹⁴¹ Providing for Peacekeeping, 'United Nations Peacekeeping Pledges: Summary of pledges made in 2015' <

<http://www.providingforpeacekeeping.org/capabilities-summits/united-nations-peacekeeping-pledge-counter/> > accessed 24 November 2017.

¹⁴² Twelfth Conference of Defense Ministers of the Americas, 'Strengthening Defense and Security Cooperation in the Hemisphere in an Increasingly Volatile Global Environment' (Declaration of Port of Spain) (Port of Spain, Trinidad and Tobago October 10-12, 2016), para 27.

¹⁴³ To include Sabrina Karim and Marsha Henry, 'Gender and Peacekeeping' in Fionnuala Ni Aoláin, Naomi Cahn, Dina Francesca Hayes, and Nahla Valji (eds) *The Oxford Handbook on Gender and Conflict* (Oxford University Press December 2017) online publication, February 2018 hardback publication, 401-402.

¹⁴⁴ Karl E. Friedl, 'Biases of the Incumbents: What If We Were Integrating Men into a Women's Army?' (March-April 2016) *Military Review* < http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20160430_art015.pdf > accessed 14 January 2018.

If militaries and police are unable and unwilling to end exclusion against women in their own institutions, believing they are capable of enacting ‘measures’ to address ‘gender discrimination and inequality in conflict-affected areas’ requires credulity.

Two approaches to militaries and police that are unwilling to transform themselves are public letters and litigation.

Public letters would include the 2017 letter by 1768 women in the Swedish defense that highlighted examples of rape, sexual harassment, and discrimination by male colleagues.¹⁴⁵ Examples included, during a wargaming exercise, the recommendation to ‘straffknalla’ the opponent.¹⁴⁶ Whether public letters effect changes in militaries remains under-researched.

Litigation includes cases like the December 2017 filed *SWAN v. Mattis*¹⁴⁷ seeking the end of exclusion of women from all positions in the US military. Further litigation seeking to end *de facto* exclusion may include a US case, also filed in December 2017, that alleges: ‘Even as the military lifts *de jure* restrictions on women’s equal participation in its ranks, many *de facto* barriers to women’s advancement endure’,¹⁴⁸ to include ‘the persistent and pervasive culture of harassment and discrimination’,¹⁴⁹ such as ‘40% percent of active duty service members stat[ing] they experienced professional reprisal after they reported sexual assault’.¹⁵⁰

6.2.3 Peacebuilders

Peacebuilding requires that the international community, States, institutions, and individuals do not exclude women at any point of the continuum of peace and war.¹⁵¹ Peacebuilding requires strategies and practices that result in ‘greater physical security and better socio-economic conditions’ through ‘education, economics, access to basic services and justice, gender-responsive law enforcement, and enhanced public decision-making engagement’.¹⁵² Given that ‘postconflict is usually preconflict’,¹⁵³ the challenge

¹⁴⁵ DN Debat, ‘1 768 kvinnor i försvaret: ”Alla anmälningar måste tas på allvar”’(Dagens Nyheter 29 November 2017).

¹⁴⁶ A definition of ‘straffknalla’ is ‘“fuck for punishment” rape’. After this recommendation was made, it appears that the professor did not object nor did anyone else; when later told by a colleague that she thought he (the recommender of this measure) behaved inappropriately, he spoke about her behind her back, calling her a ‘moral police’ that people should ‘watch out for’ and someone who ‘cannot even tolerate a joke’.¹⁴⁶

¹⁴⁷ 12 CV 06006 (filed 18 December 2017) < https://www.aclu.org/sites/default/files/field_document/e-filed_second_amended_complaint_swan_v_mattis.pdf > accessed 15 January 2018.

¹⁴⁸ *Protect Our Defenders and the Connecticut Veterans Center v. Department of Defense and Department of Homeland Security*, 17 CV 02072, para 29 of the Complaint (filed December 13, 2017).

¹⁴⁹ *Protect Our Defenders*, para 30.

¹⁵⁰ *Protect Our Defenders*, para 41, citing U.S. Dep’t. of Defense, *Annual Report on Sexual Assault in the Military FY2016*, 32.

¹⁵¹ Women’s ‘involvement in peace building processes [is] strongly linked to reductions in armed conflict’. New Zealand Future Land Operating Concept, 2035 < <https://tinyurl.com/yepdvjw3> > accessed 14 January 2018.

¹⁵² UNSCR 1889, para 10.

¹⁵³ Swanee Hunt, *Rwandan Women Rising* (Duke University Press 2017) 366.

is to turn war into peace. Yet, as acknowledged in 2016 by the UN Secretary General, '[f]or many women, the end of a conflict does not mean greater security since **violence against women often spikes during the peacebuilding period**, and rule of law institutions are too weak to respond' (emphasis mine).¹⁵⁴ In Colombia, the 'power vacuum' created by the 'absence or inadequate presence of state institutions', after the peace treaty with the FARC, has 'enabled illegal armed groups to spread rapidly' along with 'an increase in violence' and 'new displacements'.¹⁵⁵ Whether the norm should be to negotiate treaties for 'peace', without the capacity to provide institutional presence, is an area for further research.

Institutions and individuals, such as those on the Norwegian Nobel Committee, can be part of the solution by recognizing and awarding women peacebuilders. Whether the 2011 awarding of the Nobel Peace Prize to Ellen Johnson Sirleaf, Leymah Gbowee and Tawakkol Karman 'for their non-violent struggle for the safety of women and for women's rights to full participation in peace-building work'¹⁵⁶ should be the only time women peacebuilders struggling for women's rights to full participation in peacebuilding are recognized by the highest prize for peace is a question to be asked each year by and of the Nobel Committee.

Given that '[w]omen's rights in . . . post-conflict processes are affected by various actors, including States',¹⁵⁷ 'simultaneous and complementary sets of obligations' arise under CEDAW.¹⁵⁸ State responsibility 'to apply' CEDAW includes 'bilateral or multilateral donor assistance for . . . post-conflict reconstruction'.¹⁵⁹ The UN requires that 'in post-conflict planning processes, including donor conferences, women should play substantive roles and methods should be used to ensure that comprehensive attention is paid to gender equality' and that 'adequate financing – both target and mainstream – is provided to address women's specific needs, advance gender equality and promote women's empowerment'.¹⁶⁰ UNSCR 1889 advises promoting women's leadership and capacity to engage in aid management and planning; supporting women's organizations; and countering negative societal attitudes about women's capacity to participate equally. UNSCR 2122 '[e]ncourages the development of dedicated funding mechanisms to support women's full participation in all levels of decision-making'.¹⁶¹

Despite these obligations, the data show that in 2014, while 'more than 51 per cent of the total aid from OECD-DAC donor countries was allocated to conflict and post-conflict countries', 'only 7 per cent of aid to those countries was specifically marked as targeting

¹⁵⁴ S/2016/822, para 66.

¹⁵⁵ S/2017/1117, para 21.

¹⁵⁶ The Norwegian Nobel Committee, 'The Nobel Peace Prize for 2011', <
https://www.nobelprize.org/nobel_prizes/peace/laureates/2011/press.html > accessed 15 January 20 18.

¹⁵⁷ GR 30, para 13.

¹⁵⁸ GR30, para 13.

¹⁵⁹ GR 30, para 9.

¹⁶⁰ UN General Assembly Security Council, 'Women's participation in peacebuilding: Report of the Secretary-General' (7 September 2010) UN Doc. A/65/354-S/2010/466, <
http://www.un.org/ga/search/view_doc.asp?symbol=A/65/354 > accessed 16 June 2014.

¹⁶¹ UNSCR 2122, para 7(b).

peace and security, and of that amount, less than 1 per cent targeted gender equality significantly'.¹⁶² Further, it appears that funding for women's organizations is disappearing due to how anti-terrorism laws are drafted,¹⁶³ despite UNSCR 2282's paragraph 21 requiring 'the consideration of gender-related issues in all discussions pertinent to sustaining peace'. As of 9 January 2018, the US has not delisted the FARC as a Foreign Terrorist Organization (FTO).¹⁶⁴ That means it is 'unlawful for a person in the United States or subject to the jurisdiction of the United States to knowingly provide "material support or resources" to a designated FTO; to include lodging, training, expert advice or assistance, safehouses, and transportation'.¹⁶⁵ What effect that this prohibition on US 'persons or entities to provide "material support" to FARC members' transition from militants to civilians'¹⁶⁶ has on Colombia's attempt to get to positive peace is needed research, to include whether US persons or entities may answer the call of the UN Secretary General in December 2017 (when addressing '[f]emale ex-combatants' in Colombia), that 'support is required for the economic empowerment of women'.¹⁶⁷ Whether this lack of support results in female ex-combatants returning to war is a question for the future. For all women, it appears that the 'specific security risks to women' are not being adequately addressed by the current deployed security personnel. The UN Secretary General, in December 2017, stated: 'It is important that the armed forces and police make an effort to increase the presence of women among deployed security personnel, in order to help improve the response to the specific security risks to women'.¹⁶⁸ Without security, other aspects of peacebuilding are beyond difficult. If the international community is unwilling or unable to heed the words of the Secretary General that more women are needed to improve the response to the specific security risks to women, the question of whether the international community directly and indirectly is promoting the exclusion of women from 'greater physical security', from 'better socio-economic conditions,' and from 'education, economics, access to basic services and justice, gender-responsive law enforcement, and enhanced public decision-making engagement'¹⁶⁹ deserves to be answered.

10. Conclusion

How do we end being excluded?

¹⁶² S/2016/822, para 97.

¹⁶³ Duke Law International Human Rights Clinic and Women Peacemakers Program, 'Tightening the Purse Strings: What Countering Terrorism Financing Costs Gender Equality and Security (2017)' < <https://law.duke.edu/sites/default/files/humanrights/tighteningpursestrings.pdf> > accessed 14 January 2018.

¹⁶⁴ Foreign Terrorist Organizations (FTOs), Bureau of Counterterrorism, US Department of State < <https://www.state.gov/j/ct/rls/other/des/123085.htm> > accessed 9 January 2018.

¹⁶⁵ FTOs.

¹⁶⁶ Xun Yuan, 'Does FARC's "terrorist" designation by U.S. hurt Colombia's peace' (The City Paper 10 October 2017) < <https://thecitypaperbogota.com/news/does-farcs-terrorist-designation-by-u-s-hurt-colombias-peace/18147> > accessed 14 January 2018.

¹⁶⁷ Report of the Secretary-General on the United Nations Verification Mission in Colombia (27 December 2017) S/2017/1117, para 51 < http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2017_1117.pdf > accessed 9 January 2018.

¹⁶⁸ S/2017/1117, para 24.

¹⁶⁹ UNSCR 1889, para 10.

According to UNSCR 2122's paragraph 15, 'without a significant implementation shift, women . . . will continue to be underrepresented'. Absent this implementation shift, the content and quantity of UN Security resolutions, CEDAW Committee general recommendations, international agreements, and national laws are irrelevant.¹⁷⁰ As of December 27, 2017, the number of UN Security Council resolutions referencing UNSCR 1325 stands at 259,¹⁷¹ the most recent at the time of this writing is UNSCR 2396 (December 21, 2017). Whether States and the international community will assume the responsibility for 'advancing substantive gender equality before, during and after conflict and ensuring that women's diverse experiences are fully integrated'¹⁷² is the question. This chapter explored how a single implementation shift - ending the exclusion of women - can be as simple as complying with existing international law. This will require that discrimination against women cease, this includes eliminating laws and practices that discriminate against women.¹⁷³ Given that this implementation shift has not occurred as of January 2018 (at the time that I write this chapter), whether we can further delay pursuing peace through the tools of international law by employing fresh and innovative thinking, to include that explored throughout this chapter, is a question we must all ask of ourselves.

¹⁷⁰ Only issuing more law may result in 'cosmetic changing of desk chairs on a . . . passageway to failure'. Fionnuala D. Ní Aoláin, 'International law, gender regimes and fragmentation: 1325 and beyond' in Cecilia M. Bailliet (ed.) *Non-State Actors, Soft Law and Protective Regimes: From the Margins* (Cambridge University Press 2012) 55.

¹⁷¹ UNSCR, Search Engine for United Nations Security Council Resolutions < <http://unscr.com/en/search?SearchForm%5Byear%5D=&SearchForm%5Btxt%5D=1325&SearchForm%5Bmode%5D=and> > accessed 27 December 2017.

¹⁷² GR 30, para 2.

¹⁷³ Report of the Working Group on the issue of discrimination against women in law and in practice, A/HRC/35/29 (19 April 2017) Human Rights Council, Thirty-fifth session, < <https://tinyurl.com/jlc3ulr> > accessed 14 January 2018.