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## Rhetoric Without Results: United Nations Security Council Resolutions Concerning Rape During Armed Conflict

Rachel Schreck

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**Comments**

**Rhetoric Without Results: United Nations Security Council Resolutions Concerning Rape During Armed Conflict**

Rachel Schreck\*

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\* J.D. Candidate, The Dickinson School of Law of the Pennsylvania State University, May 2010. Special thanks to Professor Gregory S. McNeal for all his assistance and support. This comment is dedicated to the many victims of sexual violence during armed conflict and to those who are advocating for an end to this violence.

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It took Thérèse Mwandeko a year to save the money. She knew she could walk the first 40 kilometers of her journey, but would need to pay for a lift for the last 20. . . . She walked with balled-up fabric clenched between her thighs, to soak up blood that had been oozing from her vagina for two years, since she had been gang-raped by Rwandan militia soldiers who plundered her village in the eastern Democratic Republic of the Congo (DRC). Finally, she arrived at Panzi Hospital [where she] takes her place in line, along with 80 women, waiting for surgery to rebuild her vagina. Dr. Denis Mukwege, Panzi’s sole gynecologist and one of two doctors in the eastern Congo who can perform such reconstructive surgeries, can repair only five women a week. The air is thick with flies. It reeks from women with fistula: rips in the vaginal wall where rape tore out chunks of flesh separating the bladder and rectum from the vagina. Yet Thérèse, 47, is happier than she’s been in years. “Until I came here, I had no hope I could be helped,” she says.<sup>1</sup>

#### I. INTRODUCTION: “ONE OF HISTORY’S GREAT SILENCES”<sup>2</sup>

Despite repeated promises in United Nations Security Council Resolutions, the United Nations (“U.N.”) has failed to implement prevention and rectification measures to address the crime of rape during

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1. Stephanie Nolen, *Not Women Anymore . . . : The Congo’s Rape Survivors Face Pain, Shame and AIDS*, MS. MAGAZINE, Spring 2005, at 56.

2. Jeanne Ward, *Gender-Based Violence Conflict-Affected Populations: Humanitarian Program Responses*, in LISTENING TO THE SILENCES: WOMEN AND WAR 67, 67 (Helen Durham & Tracey Gurd eds., Martinus Nijhoff Publishers 2005).

armed conflict. This failure prolongs a global and historical tendency to ignore or dismiss the prevalent sexual violence against women during war.<sup>3</sup> Historically, women's voices were unheard, rendering the rape and torture of women during armed conflict a seemingly unimportant matter.<sup>4</sup> For example,

[w]hen the issue of sexual violence arose at Nuremberg after the Second World War, the prosecutor said simply: "the Tribunal will forgive me if I avoid citing the atrocious details." With these words, women's suffering was silenced, obscured and stricken from the historical record. In today's war-zones, mass rape remains "atrocious," but it can no longer be dismissed as a "detail."<sup>5</sup>

Over the last decade there has been an increase in data documenting what happens to women during and after armed conflict.<sup>6</sup> This data "finally bring[s] to light 'one of history's great silences': the sexual violation and torture of civilian women and girls during periods of armed conflict."<sup>7</sup> According to the 2002 Report on Women, Peace and Security by the United Nations Secretary-General ("Secretary-General"), women are disproportionately targeted during armed conflict and comprise the majority of all victims.<sup>8</sup> A seasoned peacekeeper recently observed that "it is now more dangerous to be a woman than a soldier in modern conflicts."<sup>9</sup> Nevertheless, research, preventive measures, and judicial remedies for victims of wartime sexual violence are largely underdeveloped.<sup>10</sup>

The lack of attention paid to rape and sexual violence committed during armed conflict caused human rights organizations around the world to rally governments for recognition of the increased sexual violence committed during war and for the implementation of

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3. See *WAR'S DIRTY SECRET: RAPE, PROSTITUTION, AND OTHER CRIMES AGAINST WOMEN 4* (Anne Llewellyn Barstow ed., Pilgrim Press 2000) [hereinafter *WAR'S DIRTY SECRET*].

4. See *id.* at 7.

5. Kathleen Cravero, Assistant Adm'r & Dir., Bureau for Crisis Prevention & Recovery, UNDP, Keynote Address at the Women's Foreign Policy Group: Sexual Violence Against Women and Girls in Crisis: From Advocacy to Action (2008) available at [http://www.undp.org/cpr/whats\\_new/speeches/KC\\_Gender\\_WFPG08.shtml](http://www.undp.org/cpr/whats_new/speeches/KC_Gender_WFPG08.shtml).

6. See *BROKEN BODIES, BROKEN DREAMS: VIOLENCE AGAINST WOMEN EXPOSED 177* (Lisa Ernst ed., United Nations Office at Nairobi 2005) [hereinafter *BROKEN BODIES, BROKEN DREAMS*].

7. *Id.* (citing Ward, *supra* note 2, at 67).

8. The Secretary-General, *Report of the Secretary-General on Women, Peace and Security*, ¶ 6, delivered to the Security Council and the General Assembly, U.N. Doc. S/2002/1154 (Oct. 16, 2002).

9. Cravero, *supra* note 5.

10. See *BROKEN BODIES, BROKEN DREAMS*, *supra* note 6, at 178.

international laws that provide protection and relief to victims.<sup>11</sup> Specifically, international human rights organizations campaigned for the inclusion of wartime rape and other sexually violent acts as war crimes under international law.<sup>12</sup> In addition, international human rights organizations continually work to raise global awareness of the increased use of sexual violence as a weapon of war.<sup>13</sup>

These efforts have shown signs of progress in the last decade, including acts by the international community to initiate standards, mechanisms, and commitments for dealing with wartime sexual violence against women.<sup>14</sup> However, the United Nations Special Rapporteur on Violence Against Women stresses that the key challenge to ending wartime sexual violence against women is the perpetual “lack of will [by the international community] to implement international standards effectively.”<sup>15</sup> If the international community continues to fail in successfully implementing international instruments, the voices of women who come forward to obtain justice and provoke change will have no more effect as when they were silent.

This comment recognizes the mass sexual atrocities committed against women during and after armed conflict and examines the deficient response by the U.N. to reconcile this prevalent issue. After introducing “one of history’s great silences” in Part I, this comment continues in Part II by explaining how rape and sexual violence have a long history of being used as acceptable war tactics.<sup>16</sup> Further, Part II describes the numerous physical and psychological impacts that rape has on victims.<sup>17</sup>

Part III discusses the minimal use of international courts and tribunals to prosecute major offenders of rape and sexual violence crimes.<sup>18</sup> International courts have found accepted definitions of rape and sexual violence and include them among those acts that are war crimes.<sup>19</sup> Rape is also included under the purview of an act of torture and an act of genocide.<sup>20</sup>

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11. See AMNESTY INTERNATIONAL, LIVES BLOWN APART: CRIMES AGAINST WOMEN IN TIMES OF CONFLICT 9 (2004), available at <http://www.amnesty.org/en/library/asset/ACT77/075/2004/en/dom-ACT770752004en.pdf> [hereinafter AMNESTY INTERNATIONAL].

12. See *id.*

13. See *id.* at 10.

14. See *id.* at 9.

15. *Id.* at 10.

16. See *infra* Part II.A-B.

17. See *infra* Part II.C.

18. See *infra* Part III.

19. See *infra* notes 104, 117, 120-21, 133-34 and accompanying text.

20. See *infra* Part III.A-B.

Part IV of this comment examines the recent U.N. Security Council Resolution 1820 and compares it with its predecessor, U.N. Security Council Resolution 1325.<sup>21</sup> The comparison of the two U.N. Security Council Resolutions reveals that U.N. Security Council Resolution 1820 fills in the gaps and weaknesses of the former resolution. The passage of U.N. Security Council Resolution 1820 increases international human rights organizations' hope that the U.N. will finally be able to implement both resolutions.

Part V recognizes that further action by the international community is necessary if U.N. Security Council Resolution 1820 is going to be successfully implemented. Part V identifies five fundamental recommendations from international human rights organizations on how to combat sexual violence against women before, during, and after armed conflict.<sup>22</sup> Part VI continues with a discussion on the importance of further action necessary to accomplish the "aspirations" of U.N. Security Council Resolution 1820.<sup>23</sup> Although the Secretary-General recently submitted a report to the United Nations Security Council ("Security Council") on how to implement U.N. Security Council Resolution 1820, the report contained much of the same unproductive language as the U.N. Resolutions.<sup>24</sup>

This comment concludes by recognizing that the international community is armed with the necessary tools to successfully implement Security Council Resolution 1820. The success of implementation, however, ultimately depends on whether there will be a collective effort of the U.N. devoted to combating the challenge of eliminating rape and sexual violence during armed conflict.

## II. SEXUAL VIOLENCE DURING CONFLICT: "A WAR WITHIN A WAR"<sup>25</sup>

### A. *A Brief Historical Background of Rape During War*

For thousands of years, rape has occurred during war; it is not a new phenomenon.<sup>26</sup> During the last century multiple mass wartime rapes were documented, including the Rape of Nanking during World War II,

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21. See *infra* Part IV.

22. See *infra* Part V.

23. See *infra* Part VI.

24. See *infra* Part VI.A.

25. Anne-Marie Goetz & Letitia Anderson, *Women Targeted or Affected by Armed Conflict: What Role for Military Peacekeepers?*, Summary Report of the Wilton Park Conference, May 27-29, 2008, [http://www.unifem.org/attachments/events/WiltonParkConference\\_SummaryReport\\_200805\\_1.pdf](http://www.unifem.org/attachments/events/WiltonParkConference_SummaryReport_200805_1.pdf).

26. See *THE TRUTH ABOUT RAPE* 81 (Mark J. Kittleson et al. eds., Book Builders LLC 2005).

where the Japanese military systematically raped Chinese women in Nanking;<sup>27</sup> the sexual enslavement of “comfort women” by the Japanese military during World War II;<sup>28</sup> the rape of hundreds of thousands of women by Pakistani militia in Bangladesh during the 1971 war of secession;<sup>29</sup> and the recent mass rapes committed during the 1990’s in Rwanda, the former Yugoslavia, and the eastern Democratic Republic of Congo.<sup>30</sup>

Mass rape during war has long been a systematic and deliberate military strategy<sup>31</sup> because women are considered to be the “embodiment of a community’s honor.”<sup>32</sup> Women are customarily central to the foundation of the family, and during times of conflict, women are the ones who continue the functions of the communities.<sup>33</sup> Therefore, the strategic persecution of a society’s women allows its enemies to crush its morale, weaken its communal life, and, ultimately, defeat that society more easily.<sup>34</sup>

Also, the raping of women is often considered the “ultimate humiliation”<sup>35</sup> for the men to whom the women “belong.”<sup>36</sup> Women who are raped are considered devalued “property” that men failed to protect.<sup>37</sup> The notorious phrase “rape and pillage” indicates a view that women are among the property that the victorious have a right to claim.<sup>38</sup> In this sense, women are literally included among the “booty” earned as a result of the victory.<sup>39</sup>

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27. See generally IRIS CHANG, *THE RAPE OF NANKING: THE FORGOTTEN HOLOCAUST OF WORLD WAR II* (Penguin Books 1997) (documenting the atrocities and destruction of the Chinese city of Nanking when the Japanese military systematically raped, tortured, and murdered Chinese civilians).

28. See generally *WAR’S DIRTY SECRET*, *supra* note 3, at 26-37 (discussing the Japanese government-sponsored sexual enslavement of Korean and Chinese women in brothel-like conditions for the satisfaction of Japanese troops).

29. See generally SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 78-86 (Simon and Schuster 1975) (discussing the rape of Bengali women, the aftermath those women faced, and the international attention the rapes received).

30. See generally *BROKEN BODIES, BROKEN DREAMS*, *supra* note 6.

31. See *WAR’S DIRTY SECRET*, *supra* note 3, at 45.

32. *THE TRUTH ABOUT RAPE*, *supra* note 26, at 82.

33. See Symposium, *Humanitarian Law and Gender Violence: An End to Centuries of Neglect?*, 3 *HOFSTRA L. & POL’Y SYMP.* 87, 89 (1999) [hereinafter Symposium].

34. See *WAR’S DIRTY SECRET*, *supra* note 3, at 45.

35. JOSHUA S. GOLDSTEIN, *WAR AND GENDER* 362 (Cambridge Univ. Press 2003) (2001).

36. Symposium, *supra* note 33, at 3.

37. See GOLDSTEIN, *supra* note 35, at 362.

38. See Symposium, *supra* note 33, at 3.

39. *Id.*

B. *Rape as a War Tactic*

Despite technological advancements in weaponry, troops increasingly resort to one of the oldest forms of attack: rape and sexual torture.<sup>40</sup> The use of sexual violence is considered to be a “tactic of war,”<sup>41</sup> meaning that it is sanctioned rape.<sup>42</sup> Rape and sexual violence are used as “systematic means [for] attaining specific political [and military] objectives.”<sup>43</sup> The various techniques used for fulfilling political and military objectives include rape, sexual slavery, forced prostitution, forced sterilization, trafficking, forced termination of pregnancy, and indecent assault.<sup>44</sup> In addition, forced impregnation, genital mutilation, and intentional HIV transmission are techniques used specifically for advancing the goal of ethnic cleansing.<sup>45</sup> “Sexual violence has become a tactic of choice for armed groups”<sup>46</sup> because it is cheap, effective,<sup>47</sup> and the “least condemned war crime.”<sup>48</sup>

Rape and sexual violence are also used by armed groups as “weapons of war” for the purposes of torturing, extracting information, humiliating and intimidating, punishing, and destroying the spirit of the community.<sup>49</sup> Sexual violence is used to “attack[] women’s physical and emotional sense of security,”<sup>50</sup> thereby forcing a population to flee, causing chaos within a community, breaking the resistance of a person, and terrorizing a population.<sup>51</sup> When armed groups commit rape, they commit a severe attack against a person’s dignity and sense of self.<sup>52</sup> Doctor Denis Mukwege, a gynecologist at the Panzi Hospital in the Democratic Republic of the Congo, explained that “[s]ex is being used to commit evil. [It] is a show of force, of power, it’s done to destroy the

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40. See WAR’S DIRTY SECRET, *supra* note 3, at 45.

41. Cravero, *supra* note 5.

42. See *id.*

43. Nancy Farwell, *War Rape: New Conceptualizations and Responses*, 19 AFFILIA 389, 393 (2004).

44. See GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, WOMEN IN AN INSECURE WORLD: VIOLENCE AGAINST WOMEN: FACTS, FIGURES AND ANALYSIS 113 (Marie Vlachová & Lea BIASON eds., SKO Kundig 2005) [hereinafter GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES].

45. See BROKEN BODIES, BROKEN DREAMS, *supra* note 6, at 183.

46. Cravero, *supra* note 5.

47. See *id.*

48. WAR’S DIRTY SECRET, *supra* note 3, at 10.

49. See AMNESTY INTERNATIONAL, *supra* note 11, at 20.

50. Katrina Lee Koo, *Confronting a Disciplinary Blindness: Women, War and Rape in the International Politics of Security*, 37 AUSTL. J. POL. SCI. 525, 525 (2002).

51. See GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *supra* note 44, at 113.

52. See Ruth Seifert, *War and Rape: Analytical Approaches*, Women’s International League for Peace and Freedom, <http://www.wilpf.int.ch/publications/1992ruthseifert.htm> (last visited Nov. 13, 2008).



person. People flee. They become refugees. They can't get help, they become malnourished, and it's disease which finishes them off."<sup>53</sup>

"Rape is a crime of domination," and war revolves around who is the dominating party.<sup>54</sup> Rape and other sexually violent acts are not committed for the purpose of fulfilling sexual desires.<sup>55</sup> Rather, rape is a "sexual expression of aggression" where the perpetrator is exemplifying anger, violence, and domination toward the enemy party.<sup>56</sup> No act of war illustrates the power of a party better than the defiling of the opponent's women.<sup>57</sup>

### C. *Effects of Rape*

Sexual violence against women during armed conflict has inestimable negative health effects, both in the short term and in the long term.<sup>58</sup> Victims of sexual violence suffer from physical injuries, disease, psychological damage, societal ostracism, emotional torment, and a loss of home and community.<sup>59</sup> In religious communities, rape victims suffer additional ramifications including accusations from family and community members of committing adultery, having an illegal pregnancy,<sup>60</sup> and tainting the family honor.<sup>61</sup> Wives risk being rejected by their husbands, and girls risk being rendered unmarriageable due to their loss of virginity.<sup>62</sup>

Women who are violently gang-raped can suffer from traumatic fistula,<sup>63</sup> which leaves them incontinent.<sup>64</sup> Doctors in the eastern Congo report having seen thousands of women with fistulas.<sup>65</sup> Frequently, fistulas are caused by the deliberate introduction of objects, such as broken bottles, bayonets, sticks, and gun barrels, into the victim's vagina

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53. *60 Minutes: War Against Women: The Use Of Rape As A Weapon In Congo's Civil War* (CBS television broadcast Aug. 14, 2008).

54. GOLDSTEIN, *supra* note 35, at 363.

55. *See* Seifert, *supra* note 52.

56. *Id.*

57. *See* WAR'S DIRTY SECRET, *supra* note 3, at 45.

58. *See* BROKEN BODIES, BROKEN DREAMS, *supra* note 6, at 190.

59. *See* Laura Smith-Spark, *How Did Rape Become a Weapon of War?*, BBC NEWS, Dec. 8, 2004, [http://news.bbc.co.uk/2/hi/in\\_depth/4078677.stm](http://news.bbc.co.uk/2/hi/in_depth/4078677.stm).

60. An "illegal pregnancy" is one that occurs outside the context of marriage. *See* BROKEN BODIES, BROKEN DREAMS, *supra* note 6, at 193.

61. *See* Cravero, *supra* note 5.

62. *See id.*

63. Fistulas are tears in the walls that separate the vagina and bladder or rectum. *See* Rod Nordland, *More Vicious Than Rape*, NEWSWEEK, Nov. 13, 2006, <http://www.newsweek.com/id/44653/page/1>.

64. *See id.*

65. *See* BROKEN BODIES, BROKEN DREAMS, *supra* note 6, at 190.

after rape.<sup>66</sup> In addition, perpetrators might “shoot the victim in the vagina at point-blank range” after rape.<sup>67</sup> Dr. Mukwege says that perpetrators shoot a victim in the vagina carefully so that she does not die from the shot.<sup>68</sup> Dr. Mukwege believes that the perpetrators want the damage to be as bad as possible without killing the victim, so “she goes back to her village permanently and obviously marked.”<sup>69</sup>

Other long-term medical problems faced by rape victims include serious injuries to the reproductive system, such as infertility, miscarriages, and complications caused by self-induced abortions.<sup>70</sup> Some victims have their breasts cut off as a permanent reminder of the rape and a forever failure to feed their children.<sup>71</sup> Survivors may experience uterine prolapse, “the descent of the uterus into the vagina or beyond.”<sup>72</sup> Rape victims also have a high risk of pregnancy, which can cause serious physical and psychological trauma associated with carrying the baby of a rapist and the vulnerability of being pregnant during armed conflict.<sup>73</sup>

A widespread consequence for rape victims is the transmission of sexually transmitted infections, in particular, HIV/AIDS.<sup>74</sup> Women in the conflict zones of Africa are especially at risk for the transmission of HIV/AIDS.<sup>75</sup> A 2004 report by Women’s Equity in Access to Care and Treatment documented the sexual violence in African conflict regions and concluded that there is a humanitarian crisis for the spreading of HIV/AIDS due to widespread rape of women.<sup>76</sup> The Secretary-General stated in a 2000 Children in Armed Conflict report that “[a]rmed conflicts . . . increasingly serve as vectors for the HIV/AIDS pandemic.”<sup>77</sup> However, international recognition of the increasing HIV/AIDS transmission during armed conflicts has not provided victims with sufficient resources for treatment and care.<sup>78</sup>

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66. See Nordland, *supra* note 63.

67. *Id.*

68. *Id.*

69. *Id.*

70. See BROKEN BODIES, BROKEN DREAMS, *supra* note 6, at 190.

71. See GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *supra* note 44, at 117.

72. BROKEN BODIES, BROKEN DREAMS, *supra* note 6, at 190.

73. See GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *supra* note 44, at 114.

74. See *id.*

75. See THE TRUTH ABOUT RAPE, *supra* note 26, at 83.

76. See *id.*

77. The Secretary-General, Report of the Secretary-General on Children and Armed Conflict, ¶ 3, delivered to the Security Council and the General Assembly, U.N. Doc. S/2000/712, A/55/163 (July 19, 2000).

78. See BROKEN BODIES, BROKEN DREAMS, *supra* note 6, at 190.

In addition to the physical consequences of rape, victims also suffer from a multitude of psychological consequences.<sup>79</sup> Anxiety, inner agitation, sleep disorders, nightmares, apathy, loss of self-confidence, emotional numbing, memory loss, and depression are among the psychological conditions rape victims suffer.<sup>80</sup> It is common for rape victims to experience symptoms of psychological distress, such as “shock, fear of injury or death, sense of loss of control, avoidance, feelings of shame, intrusive thoughts, and difficulty re-establishing intimate relationships.”<sup>81</sup> Rape victims may also exhibit denial, depersonalization, and alcohol and substance abuse as defense mechanisms.<sup>82</sup> Unless psychological conditions become psychosomatic, they are usually left unreported.<sup>83</sup> Common psychosomatic conditions include “gastritis, serious headaches, permanent abdominal pain, palpation of the heart, breathing disorders, paroxysms, paralysis[,] and skin disorders.”<sup>84</sup> Finally, rape victims suffer from chronic insecurity in the post-conflict period as well as the fear of coming face-to-face with their attackers.<sup>85</sup>

Although the need for health care services for rape and sexual assault victims is widespread in armed conflict zones, most war-torn countries are unable or refuse to provide women with medical care.<sup>86</sup> However, rape and other forms of sexual assault constitute violations of women’s right to health.<sup>87</sup> The right to health gives women the right to have access to available and acceptable health services, including sexual and reproductive health services.<sup>88</sup> “Under international human rights law, victims of human rights violations[,] such as rape[,] are entitled to a remedy, which must include medical care, both physical and psychosocial.”<sup>89</sup> It is imperative that the international community recognizes the widespread medical needs of rape survivors during and after armed

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79. See GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *supra* note 44, at 120.

80. *See id.*

81. *Id.*

82. *See id.*

83. *See id.*

84. GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *supra* note 44, at 120.

85. *See id.* at 117.

86. *See* BROKEN BODIES, BROKEN DREAMS, *supra* note 6, at 193.

87. *See* U.N. Econ. & Soc. Council [ECOSOC], Committee on Economic, Social and Cultural Rights, *The Right to the Highest Attainable Standard of Health*, ¶ 8, U.N. Doc. E/C.12/2000/4 (Nov. 8, 2000).

88. *See id.* ¶ 12.

89. AMNESTY INTERNATIONAL, *supra* note 11, at 25.

conflict and develop facilities to accommodate the number of women in need.<sup>90</sup>

The international community must act soon to end sexual violence against women in armed conflict so that women do not have to endure effects like those described by a gang-raped survivor in Rwanda:

I regret that I didn't die that day. Those men and women who died are now at peace whereas I am still here to suffer more. I'm handicapped in the true sense of the word. I don't know how to explain it. I regret that I'm alive because I've lost my lust for life. We survivors are broken-hearted. We live in a situation which overwhelms us. Our wounds become deeper every day. We are constantly in mourning.<sup>91</sup>

### III. HOLDING SOME PERPETRATORS ACCOUNTABLE IN INTERNATIONAL COURTS AND TRIBUNALS

There is no simple solution for healing the multifaceted wounds of rape and sexual violence victims in the aftermath of armed conflict. Although nothing can undo the suffering that such atrocities create, ensuring that perpetrators are held accountable may be necessary for those trying to move forward.<sup>92</sup> However, finding a path to justice for wartime rape and sexual violence victims is not an easy task. The effectiveness of national justice systems in the wake of violent conflicts is usually limited and not equipped to hear the claims of rape and sexual violence victims or able to provide fair justice to such victims.<sup>93</sup> In addition, victims commonly do not view their justice systems as viable resources for addressing their grievances "because of corruption, systematic bias, association with abusive past regimes, failure to effectively address past grievances, or severe shortfalls in human and other resources."<sup>94</sup> Victims are also fearful that by coming forward and demanding justice they will trigger more violence.<sup>95</sup> As a result, victims must weigh the consequences of coming forward with those of remaining silent. Victims must ask themselves if it is worthwhile to relive the horrors committed against them, while possibly facing the very

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90. See *BROKEN BODIES, BROKEN DREAMS*, *supra* note 6, at 193.

91. *AFRICAN RIGHTS, RWANDA: BROKEN BODIES, TORN SPIRITS: LIVING WITH GENOCIDE, RAPE, AND HIV/AIDS* 56 (African Rights 2004).

92. See *JANE STROMSETH, DAVID WIPPMAN, & ROSA BROOKS, CAN MIGHT MAKE RIGHTS?: BUILDING THE RULE OF LAW AFTER MILITARY INTERVENTIONS* 249 (2006).

93. *See id.*

94. *Id.*

95. *See id.*

perpetrator who committed such horrors, for a chance that the justice system will hold perpetrators accountable for their actions.<sup>96</sup>

To date, the prosecution of rape and sexual violence committed during armed conflict has primarily focused on major offenders<sup>97</sup> at the international level.<sup>98</sup> While holding individual perpetrators accountable for their conduct is essential for providing victims with some personal closure, prosecuting major offenders is important in deterring future rape and sexual violence crimes.<sup>99</sup> By prosecuting and punishing major offenders at the international level through ad hoc courts developed by the Security Council, “the core international legal rules prohibiting genocide, crimes against humanity, and war crimes” are affirmed and reinforced.<sup>100</sup> Specific ad hoc courts developed by the Security Council to hear cases involving war crimes include the International Criminal Tribunal for the former Yugoslavia (“ICTY”) in 1993 and the International Criminal Tribunal for Rwanda (“ICTR”) in 1994.<sup>101</sup>

The ICTY and the ICTR led to the development of the landmark International Criminal Court (“ICC”) in 1998. The ICC, a permanent international criminal court, went into force in 2002.<sup>102</sup> The ICC was established by the adoption of the Rome Statute.<sup>103</sup> As the founding statute of the ICC, the Rome Statute provides the ICC with the ability to hold perpetrators of wartime rape and sexual violence accountable because the Rome Statute includes rape and sexual violence in the definitions of a war crime<sup>104</sup> and a crime against humanity.<sup>105</sup> Today, 108 countries are members of the ICC.<sup>106</sup>

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96. See Rajeev Bhargava, *Restoring Decency to Barbaric Societies*, in TRUTH V. JUSTICE 55 (Robert I. Rotberg & Dennis Thompson eds., Princeton University Press 2000) (stating that “[i]t is not always easy for victims to publicize their injuries. Without conditions that bolster confidence and reduce fear and, in extreme cases, treat traumatic emotional disorders, victims are usually reticent about entering the public domain. It is well known that only a minuscule proportion of rape victims acknowledge, let alone file, cases”). *Id.*

97. See generally STROMSETH, *supra* note 92, at 249-309 (discussing accountability for atrocities). There is no exact definition for the term “major offenders.” In application, the term has been used to imply those perpetrators who commit “egregious and widespread violations of international humanitarian law.” *Id.* at 263.

98. See LaShawn R. Jefferson, *In War as in Peace: Sexual Violence and Women’s Status*, in HUMAN RIGHTS WATCH WORLD REPORT 2004: HUMAN RIGHTS AND ARMED CONFLICT 336 (2004).

99. See STROMSETH, *supra* note 92, at 255.

100. *Id.*

101. See Jefferson, *supra* note 98, at 336.

102. See International Criminal Court—About, <http://www.icc-cpi.int/about.html> (last visited Dec. 29, 2008) [hereinafter International Criminal Court].

103. See *id.*

104. See Rome Statute of the International Criminal Court art. 8(2)(b), July 17, 1998, 37 I.L.M. 999, available at [http://www.icc-cpi.int/library/about/officialjournal/Rome\\_Statute\\_English.pdf](http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_English.pdf). [hereinafter Rome Statute of the International Criminal Court].

A recent trend in transnational justice is the development of hybrid courts, such as the Special Court for Sierra Leone developed in 2002.<sup>107</sup> Hybrid courts prosecute war crimes and crimes against humanity before a mix of both national and international judges.<sup>108</sup> A positive aspect of hybrid courts is that they are located directly in the affected nation, and, therefore, they are able to provide training and resources to the domestic justice system.<sup>109</sup> In contrast, international criminal tribunals are not located in the affected nation, which makes them more costly, and, unlike hybrid courts, they are not designed to contribute to domestic justice systems.<sup>110</sup>

Nonetheless, the success of the Special Court for Sierra Leone in issuing indictments for crimes of rape and sexual violence thus far is only comparable to the ICTY and the ICTR, whose successes are limited. Crimes of sexual violence were addressed in ten out of the thirteen total indictments issued by the Special Court for Sierra Leone.<sup>111</sup> By comparison, the ICTY issued at least twenty-seven indictments for crimes of rape or sexual violence,<sup>112</sup> and the ICTR issued only one conviction for sexual assault that survived appeal.<sup>113</sup>

#### A. *Prosecuting Rape and Sexual Violence Crimes*

In the beginning, prosecuting gender-related crimes in international courts and tribunals was limited.<sup>114</sup> Both the ICTY and ICTR statutes limited prosecution of gender-related crimes solely to rape, which both statutes list as a crime against humanity.<sup>115</sup> However, the statutes of more recent courts, such as the Special Court for Sierra Leone, expanded the types of gender-related crimes that can be prosecuted.<sup>116</sup> The Rome

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105. *See id.* art. 7(1)(g).

106. *See* International Criminal Court, *supra* note 102.

107. *See* STROMSETH, *supra* note 92, at 256.

108. *See id.*

109. *See id.* at 257.

110. *See id.*

111. *See* Jefferson, *supra* note 98, at 341.

112. *See id.* at 338.

113. *See id.*

114. *See generally* Kelly D. Askin, *The Jurisprudence of International War Crimes Tribunals: Securing Gender Justice for Some Survivors*, in LISTENING TO THE SILENCES: WOMEN AND WAR 127, 127 (Helen Durham & Tracey Gurd eds., Martinus Nijhoff Publishers 2005) (illustrating how the prosecution of gender-related crimes in international courts and tribunals has expanded through the various courts).

115. *See* International Criminal Tribunal for Rwanda art. 3(g) (1994), available at <http://www.un.org/ict/statute.html>; International Criminal Tribunal for the Former Yugoslavia art. 5(g) (2008), available at [http://www.icty.org/x/file/Legal%20Library/Statute/statute\\_sept08\\_en.pdf](http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept08_en.pdf).

116. *See* Askin, *supra* note 114, at 127-28.

Statute of the ICC permits courts to prosecute the acts of “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” as war crimes and crimes against humanity.<sup>117</sup> The Statute of the Special Court for Sierra Leone contains a similar provision for prosecuting crimes against humanity but does not specifically list enforced sterilization.<sup>118</sup> Instead, the Statute for the Special Court for Sierra Leone includes a catch-all phrase that allows for the prosecution “any other form of sexual violence” not specifically listed.<sup>119</sup>

In a move away from its previously limited definition of “sexual violence,” the ICTR broadly defined “sexual violence” during the trial for Jean-Paul Akayesu<sup>120</sup> as “any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.”<sup>121</sup> “Sexual violence” must be defined broadly if sexual crimes not specifically enumerated are to be included under the authority of the international court or tribunal.<sup>122</sup>

Additionally, gender-related crimes, like enforced sterilization and rape, can constitute an act of genocide under the Rome Statute of the ICC because an act that is intended to prevent births or cause serious bodily or mental harm constitutes an act of genocide.<sup>123</sup> As a result of the Rome Statute of the ICC and the Statute for the Special Court for Sierra Leone, other international courts and tribunals have the ability to prosecute a variety of gender-related crimes committed during armed conflict in a variety of ways, including as war crimes, as crimes against humanity, and as an act of genocide.<sup>124</sup>

117. Rome Statute of the International Criminal Court, *supra* note 104, art. 7(1)(g).

118. See Statute of the Special Court for Sierra Leone art. 2(g) (2002), available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=uClnd1MJJeW%3d&tabid=176>.

119. *Id.*

120. See generally Prosecutor v. Akayesu, Case No. ICTR 96-4-T, Trial Chamber Judgment (Sept. 2, 1998) (finding Akayesu guilty of nine counts of genocide and crimes against humanity committed during the Rwandan conflict in 1994).

121. *Id.* ¶ 598.

122. See Askin, *supra* note 114, at 146.

123. See Rome Statute of the International Criminal Court, *supra* note 104, art. 6. “For the purpose of this Statute, ‘genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.” *Id.*

124. See Askin, *supra* note 114, at 127.

*B. Rape: An Act of Torture*

Rape can also constitute an act of torture.<sup>125</sup> Under the U.N. Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment (“Torture Convention”), the definition of torture has three elements: (1) an intentional act, which causes severe physical or mental pain or suffering, (2) used for the purpose of obtaining information, punishing, intimidating, or coercing for any discriminatory reason, and (3) committed by a public official or other person acting in an official capacity.<sup>126</sup> Rape can meet these three elements of torture: it is an intentional act that causes both severe physical and mental pain and suffering;<sup>127</sup> and when rape is committed by a public official or a person acting in an official capacity, the intent is to punish, intimidate, or coerce the victim merely because the victim is on the other side of the armed conflict.<sup>128</sup> When rape meets the three elements of torture, it is classified as torture.<sup>129</sup> A conviction of torture is not only a violation of the Torture Convention, but is also a “grave breach” of the Geneva Conventions.<sup>130</sup> Therefore, while rape it is not

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125. See *id.* at 139. “The *Čelebići*, *Furundžija*, *Kunarac* and *Kvočka* Judgments have held that when a person is raped with an intent to inflict severe pain or suffering on the victim for a prohibited purpose—such as for punishment, intimidation, coercion, discrimination, humiliation or to secure information—the crime may be prosecuted as torture. The *Akayesu* Judgment also recognized rape as a form of torture.” *Id.*

126. See Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment, G.A. Res. 39/46, art. 1(1), U.N. Doc. A/RES/39/46 (Dec. 10, 1984), available at <http://www.un.org/documents/ga/res/39/a39r046.htm>.

127. See *supra* notes 58-91 and accompanying text for a discussion on the physical and psychological effects of rape in armed conflict.

128. See *supra* notes 40-57 and accompanying text for a discussion of the purposes rape serves during armed conflict.

129. See JILL MARSHALL, HUMANITY, FREEDOM AND FEMINISM 159 (Ashgate Publishing Limited 2005).

130. See Geneva Convention Relative to the Protection of Civilian Persons in Times of War art. 147, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Geneva Convention]. “Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.” *Id.*



specifically listed as a grave breach of the Geneva Conventions,<sup>131</sup> it becomes a grave breach when classified as torture.<sup>132</sup>

In the Judgment of *Akayesu*, the ICTR defined “rape” as a “physical invasion of a sexual nature, committed on a person under circumstances which are coercive.”<sup>133</sup> The ICTR stated that “[l]ike torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control[,] or destruction of a person.”<sup>134</sup> The ICTR in the Judgment of *Akayesu* recognized rape as a form of torture.<sup>135</sup> Other international courts, tribunals, and bodies, such as the U.N. Special Rapporteur on Torture, the ICTY in the *Čelebići* Judgment,<sup>136</sup> and the European Court of Human Rights also recognize that rape may constitute torture.<sup>137</sup>

#### IV. THE WAR CRIME OF RAPE: THERE IS NO LONGER A “LICENSE TO RAPE”<sup>138</sup> DURING WAR

The last two decades have marked progress in gender justice and in recognizing the significant impacts of rape and sexual violence committed during armed conflicts.<sup>139</sup> However, while international advancement in the prosecution of major offenders of gender-related crimes has taken place, relatively little progress has been seen in the international community to develop methods for preventing and protecting women from rape and sexual violence. The U.N. passed several resolutions for the prevention and protection of women during armed conflict but to date has failed to develop any successful measures to implement the resolutions.<sup>140</sup> International human rights

131. See *id.* Cf. Geneva Convention, *supra* note 130, art. 27 (indicating that “[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”).

132. See MARSHALL, *supra* note 129, at 158. (stating that “[a]nother way to include rape within the definition of a grave breach is by interpreting rape as torture”).

133. Prosecutor v. Akayesu, Case No. ICTR 96-4-T, Trial Chamber Judgment, ¶ 598 (Sept. 2, 1998).

134. *Id.* ¶ 597.

135. See Askin, *supra* note 114, at 139.

136. See Prosecutor v. Delalic, et al., Case No. ICTY IT 96-21-T, Trial Chamber Judgment (Nov. 16, 1998). Zejnil Delalic, Zdravko Mucic, Hazim Delic, and Esad Landzo were alleged to have been responsible for the cruel and inhumane treatment of Bosnian Serbs in the Celebici prison-camps. Delalic was found not guilty, but the others were found guilty and sentenced to terms of imprisonment ranging from 7-15 years. *Id.*

137. See Askin, *supra* note 114, at 139.

138. Cravero, *supra* note 5.

139. See Askin, *supra* note 114, at 153.

140. See, e.g., Swanee Hunt, *Moving Beyond Silence: Women Waging Peace*, in LISTENING TO THE SILENCES: WOMEN AND WAR 264-266 (Helen Durham & Tracey Gurd eds., Martinus Nijhoff Publishers 2005).

organizations,<sup>141</sup> however, are persistent in advocating and lobbying the international community to take more substantial steps to combat the issues of rape and sexual violence committed during armed conflicts.

*A. U.N. Security Council Resolution (“SCR”) 1820: Is it False Hope?*

International human rights organizations regard June 19, 2008, to be a historical day for women around the world.<sup>142</sup> June 19, 2008, marked a day when the Security Council, the highest decision-making body of the U.N., declared an end to the silence of women by its decision to include sexual violence against women as a security issue belonging on the Security Council’s agenda.<sup>143</sup> After decades of international humanitarian reports showing escalating sexual violence during armed conflict, the Security Council unanimously adopted Resolution 1820.<sup>144</sup> In doing so, the Security Council demanded an end to violence against women as a war tactic and an improvement of measures used to protect women from such violence.<sup>145</sup>

1. Positive Aspects of SCR 1820

There are four key elements in SCR 1820 that illustrate why the Resolution is considered to be a major advancement in addressing the issue of sexual violence against women during war. First, SCR 1820 links the use of rape and sexual violence as tactics of war with the preservation of international peace and security,<sup>146</sup> and, in doing so, it explicitly makes rape in war an issue for the Security Council.<sup>147</sup> This is particularly important because some U.N. member states, such as China and Russia, did not consider wartime sexual violence to be an

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141. Examples of international human rights organizations that advocate for an end to sexual violence during armed conflict include Amnesty International, Human Rights Watch, United Nations Development Fund for Women (UNIFEM), Women for Women International, and MADRE.

142. See, e.g., Marianne Mollmann, *Rape in War: Will the United Nations Walk Its Talk?*, HUMAN RIGHTS WATCH, June 25, 2008, <http://www.hrw.org/english/docs/2008/06/25/global19201.htm>.

143. Maggie Farley, *U.N. Security Council Says Sexual Violence Akin to War Crimes*, L.A. TIMES, June 20, 2008, <http://articles.latimes.com/2008/jun/20/world/fg-violence20>.

144. See *Security Council Demands Action to End Sexual Violence as a Tactic in War*, UN NEWS CENTRE, June 19, 2008, <http://www.un.org/apps/news/story.asp?NewsID=27093&Cr=sexual+violence&Cr1=women&Kw1=rape&Kw2=war&Kw3=> [hereinafter UN NEWS CENTRE].

145. See *id.*

146. Stop Rape Now, PowerPoint Presentation on Security Council Resolution 1820: Women, Peace and Security, <http://www.stoprapenow.org/pdf/Security%20Council%20Resolution%201820.pdf> [hereinafter Stop Rape Now].

147. See S.C. Res. 1820, ¶ 1, U.N. Doc. S/RES/1820 (June 19, 2008).

appropriate issue for the Security Council.<sup>148</sup> Instead, wartime sexual violence was discerned merely as “an unfortunate by-product of war.”<sup>149</sup> SCR 1820 ends this debate by formally including sexual violence committed during armed conflict as a matter for the Security Council’s agenda.<sup>150</sup>

Second, in bringing wartime sexual violence into the purview of the Security Council, there is now “a clear mandate for the Security Council to intervene.”<sup>151</sup> Specifically, SCR 1820 “requests the Secretary-General to submit a report<sup>152</sup> to the [Security Council] by 30 June 2009”<sup>153</sup> that outlines a method for implementing SCR 1820 and suggests strategies for improving the Security Council’s system for obtaining information regarding sexual violence in armed conflicts.<sup>154</sup> Prior to passing SCR 1820, the Security Council did not request incidents of sexual violence to be included in Security Council reports; now this information must be contained in all Security Council reports.<sup>155</sup> As a preliminary matter to SCR 1820, the Secretary-General also plans to appoint a U.N. envoy to advocate for an end to sexual violence against women.<sup>156</sup>

Third, SCR 1820 demands all parties of armed conflict prohibit wartime sexual violence and immediately adopt measures for the protection of women and the prevention of such violence.<sup>157</sup> According to SCR 1820, there is no question that “rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide.”<sup>158</sup> As such, states are urged to develop and strengthen their judicial and health-care systems to be better equipped to support victims.<sup>159</sup> In addition, SCR 1820 requests that the Secretary-General develop and strengthen efforts for implementing a zero tolerance policy on sexual exploitation and abuse.<sup>160</sup> Regarding the context of conflict resolution processes, SCR 1820 requires “the exclusion of sexual violence crimes from amnesty provisions.”<sup>161</sup> This means that war crimes against women will no longer be forgiven, but

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148. See Mollmann, *supra* note 142.

149. Cravero, *supra* note 5.

150. See *id.*

151. Mollmann, *supra* note 142.

152. See *infra* Part VI.A for a discussion of the Report of the Secretary-General pursuant to SCR 1820.

153. S.C. Res. 1820, *supra* note 147, ¶ 15.

154. *Id.*

155. See Mollmann, *supra* note 142.

156. See UN NEWS CENTRE, *supra* note 144.

157. See Stop Rape Now, *supra* note 146.

158. S.C. Res. 1820, *supra* note 147, ¶ 4.

159. See *id.* ¶ 13.

160. See *id.* ¶ 7.

161. *Id.* ¶ 4.

rather, alleged offenders will either be prosecuted or extradited for trial.<sup>162</sup>

The final way in which SCR 1820 serves as an improvement for addressing the issue of sexual violence during armed conflict is the emphasis it places on the importance of including women in all stages for ending sexual violence during armed conflict.<sup>163</sup> Specifically, SCR 1820 identifies the need for women to be involved in peacekeeping missions, in the development of protection strategies, and as an integral part of conflict resolutions.<sup>164</sup> For example, SCR 1820 requests an increase in the amount of women deployed as peacekeepers and police.<sup>165</sup> In addition, women are invited to “participate in discussions . . . at decision-making levels”<sup>166</sup> and are to be consulted for development of “effective mechanisms for providing protection from violence.”<sup>167</sup>

*B. How is SCR 1820 Different from SCR 1325?*

The goal of addressing the impact of armed conflict on women is not a new issue to the Security Council. In fact, SCR 1820 is not the first resolution of the Security Council aimed to address the impacts of armed conflicts from a gender perspective.<sup>168</sup> In 2000, the Security Council unanimously adopted SCR 1325, which laid the groundwork for the recognition that it is necessary for women to be included in efforts to maintain peace and security.<sup>169</sup> Following the passage of SCR 1325, though, the Security Council did virtually nothing to implement its provisions.<sup>170</sup> Now, with the passage of SCR 1820 eight years later, the two resolutions complement one another to enable the implementation of each more successful.<sup>171</sup>

Although the two resolutions are complementary of one another, SCR 1820 adds to the coverage of SCR 1325 in five significant ways.<sup>172</sup> One way in which SCR 1820 adds to SCR 1325 is through its demand of a complete exclusion of sexual violence crimes from amnesty provisions.<sup>173</sup> SCR 1325 only asked states to avoid sexual violence

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162. See Cravero, *supra* note 5.

163. See Stop Rape Now, *supra* note 146.

164. See S.C. Res. 1820, *supra* note 147, ¶¶ 8, 10, 12.

165. See *id.* ¶ 8.

166. *Id.* ¶ 12.

167. *Id.* ¶ 10.

168. See Mollmann, *supra* note 142.

169. See AMNESTY INTERNATIONAL, *supra* note 11, at 45.

170. See Mollmann, *supra* note 142.

171. See Stop Rape Now, *supra* note 146.

172. See *id.*

173. See S.C. Res. 1820, *supra* note 147, ¶ 4.

crimes from amnesty provisions “where feasible.”<sup>174</sup> Since rape and sexual violence are prevalent and long-lasting practices of warfare, nations generally “forgive” each other for the rape and sexual violence committed since both sides are usually guilty of these crimes.<sup>175</sup> With the passage of SCR 1820, nations are required to hold each other accountable for their sexual violence crimes.<sup>176</sup>

A second way that SCR 1820 adds to SCR 1325 is through its declaration that sexual violence is a Security Council issue.<sup>177</sup> Although SCR 1325 was the first Security Council resolution to address the impact of war on women and suggest its connection with peace and security,<sup>178</sup> SCR 1820 was the first Security Council resolution to mandate that the Security Council include sexual violence as a Security Council issue.<sup>179</sup> SCR 1820 also suggests some of the actions that the Security Council intends to do about the existence of widespread sexual violence during armed conflict,<sup>180</sup> although any suggested action is contingent upon the Security Council dedicating more time and resources to develop detailed methods for carrying out such actions.

A third way that SCR 1820 adds to SCR 1325 is by recognizing that to address root causes of rape and sexual violence during armed conflict, efforts need to be made to “debunk[] myths that fuel sexual violence.”<sup>181</sup> In contrast, nowhere in SCR 1325 are the root causes of wartime rape or the myths that surround sexual violence addressed.<sup>182</sup> One myth that was debunked with the passage of SCR 1820 was the Security Council’s own self-perpetuating myth that widespread sexual violence during armed conflict does not occur—a myth perpetuated by Security Council reports that failed to prominently feature the issue.<sup>183</sup> If the Security Council understands why militaries use rape and sexual violence as war tactics, then the Security Council can better establish plans to end its use. In addition, if myths surrounding the prevalence of wartime rape and sexual violence are debunked, then more governments will be able to assist in the implementation of Security Council initiatives to stop wartime rape and sexual violence.

As a fourth addition to the provisions of SCR 1325, SCR 1820 requests the Secretary-General to submit a report to the Security Council

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174. S.C. Res. 1325, ¶ 11, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

175. See *BROKEN BODIES, BROKEN DREAMS*, *supra* note 6, at 197.

176. See S.C. Res. 1820, *supra* note 147, ¶ 4.

177. See Mollmann, *supra* note 142.

178. See *Stop Rape Now*, *supra* note 146.

179. See Mollmann, *supra* note 142.

180. See generally S.C. Res. 1820, *supra* note 147.

181. *Id.* ¶ 3.

182. See *Stop Rape Now*, *supra* note 146.

183. See Mollmann, *supra* note 142.

by June 30, 2009, providing an analysis of information obtained about sexual violence during armed conflicts and a method for how to use that information for implementing SCR 1820.<sup>184</sup> In contrast, SCR 1325 did not contain a method for the Security Council to receive information concerning sexual violence in armed conflict.<sup>185</sup> Before SCR 1820, the patterns of sexual violence during armed conflicts were not featured in Security Council reports. With the passage of SCR 1820, the Security Council demands that this information be provided in the Secretary-General's reports to the Security Council.<sup>186</sup>

Further, under SCR 1820, the Security Council offers more specificity with its implementation plan. SCR 1820 includes provisions for the Secretary-General to "develop mechanism[s] for protecting women/girls in/around U.N.-managed camps"<sup>187</sup> and to devise specific training programs for all peacekeeping, humanitarian personnel, troops, and police on keeping women safe at all stages of conflict.<sup>188</sup> In addition, instead of merely mentioning that "special measures" are needed to protect women from sexual violence,<sup>189</sup> SCR 1820 specifically requests the development of "national institutions, [particularly] of judicial and health systems," for victim assistance.<sup>190</sup>

The passage of both SCR 1325 and SCR 1820 at the highest level of the U.N. is the result of years of protest and planning by international human rights organizations who called worldwide attention to the silent atrocities of armed conflict.<sup>191</sup> SCR 1325 promised that women would be protected during times of armed conflict and that any barriers to the equal participation of women in the planning of peace and security would be eliminated.<sup>192</sup> However, these promises were plagued by gaps and weaknesses in SCR 1325.<sup>193</sup> With the passage of SCR 1820, the Security Council corrected those gaps and weaknesses in SCR 1325. Nevertheless, there remains a substantial amount of work and dedication by the international community to ensure that a successful implementation of SCR 1820 is guaranteed.

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184. See S.C. Res. 1820, *supra* note 147, ¶ 15.

185. See Stop Rape Now, *supra* note 146.

186. See Mollmann, *supra* note 142.

187. Stop Rape Now, *supra* note 146.

188. See S.C. Res. 1820, *supra* note 147, ¶¶ 6-7.

189. S.C. Res. 1325, *supra* note 174, ¶ 10.

190. S.C. Res. 1820, *supra* note 147, ¶ 13.

191. See GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *supra* note 44, at 263.

192. See The Secretary-General, Report of the Secretary-General on Women and Peace and Security, ¶ 121, delivered to the Security Council and the General Assembly, U.N. Doc. S/2004/814 (Oct. 13, 2004).

193. See GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *supra* note 44, at 270.

## V. SKEPTICISM IN IMPLEMENTING SCR 1820: RECOMMENDATIONS TO COMBAT WARTIME RAPE AND SEXUAL VIOLENCE

Around the world, optimistic human rights organizations celebrated the passage of SCR 1820 because it appeared as though the U.N. might be willing to take action against sexual violence during armed conflict. However, there should be concern that the U.N. may once again fail in implementing SCR 1820, just as it failed to implement SCR 1325. Similar to SCR 1325, SCR 1820 lacks directives and methods for implementation, and, therefore, cannot be implemented without substantial further action.

International human rights organizations recommend five fundamental elements that are necessary to combat sexual violence against women before, during, and after armed conflict.<sup>194</sup> First, there must be a commitment of all governments to end impunity for sexual violence.<sup>195</sup> This requires governments to “ensure that laws, rules, regulations[,] and military orders prohibit violence against women and provide for disciplinary and criminal punishments for perpetrators.”<sup>196</sup> For governments to accomplish this, the international community must aid in restructuring national judiciaries so that they are capable of handling sexual violence claims.<sup>197</sup> Restructuring national judiciaries entails providing governments with adequate funding and resources.<sup>198</sup> Such resources include, but are not limited to, training and educating lawmakers, judges, attorneys, and judicial personnel on necessary laws and how to implement them;<sup>199</sup> training police and other officials to properly investigate and document findings;<sup>200</sup> setting up appropriate mechanisms for carrying out punishment;<sup>201</sup> and providing secure and confidential places where women can seek legal aid.<sup>202</sup> “In a world where thousands of women suffer sexual violence committed with impunity in the context of conflict, the message needs to be clear: A single rape constitutes a war crime.”<sup>203</sup>

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194. See, e.g., *id.* at 279-282. See AMNESTY INTERNATIONAL, *supra* note 11, at 54-57 (providing detailed recommendations for how the international community can help end violence against women before, during, and after armed conflict).

195. See AMNESTY INTERNATIONAL, *supra* note 11, at 54.

196. *Id.*

197. See GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *supra* note 44, at 280-81.

198. See *id.* at 281.

199. See *id.* at 279.

200. See BROKEN BODIES, BROKEN DREAMS, *supra* note 6, at 194.

201. See GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *supra* note 44, at 281.

202. See *id.*

203. BROKEN BODIES, BROKEN DREAMS, *supra* note 6, at 197.

Second, it is recommended that the international community and local governments allocate proper budgets to combat wartime rape and sexual violence.<sup>204</sup> For funding to be adequate, it must be long-term.<sup>205</sup> Without long-term funding, the many necessary programs and protection mechanisms for victims will be limited in their development and ability to aid.<sup>206</sup> Further, rather than providing sporadic funding in lump sums, it is imperative that the international community ensures sustained support. In this way, the international community can ensure lasting effects and the ability to reconstruct the lives and communities of rape and sexual violence victims.<sup>207</sup>

Third, international human rights organizations suggest that the international community and local governments work together to develop aid programs and protection mechanisms for victims of wartime rape and sexual violence.<sup>208</sup> For example, it is necessary to establish effective training programs on preventing, recognizing, and responding to wartime sexual violence.<sup>209</sup> The training programs are especially important for troops, police, peacekeeping and humanitarian personnel, and, as stated above, for judges, attorneys, and lawmakers.<sup>210</sup> In addition, it is important to develop education and public information programs to debunk myths about sexual violence and eliminate gender stereotypes.<sup>211</sup> Further, states must establish support mechanisms for victims, such as shelters, counseling services, and medical centers.<sup>212</sup>

Fourth, it is recommended that an independent, international coalition be established for gathering data and information on violence against women so that strategies and effective solutions can be formulated and distributed to governments.<sup>213</sup> Governments should also establish local coalitions for monitoring progress, investigating allegations of sexual violence, and collecting data.<sup>214</sup> Both the international and local coalitions should serve as reporting mechanisms

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204. See GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *supra* note 44, at 281.

205. See *id.*

206. See *id.*

207. See BROKEN BODIES, BROKEN DREAMS, *supra* note 6, at 193.

208. See GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *supra* note 44, at 279.

209. See *id.*

210. See *id.*

211. See AMNESTY INTERNATIONAL, *supra* note 11, at 55.

212. See GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *supra* note 44, at 281.

213. See AMNESTY INTERNATIONAL, *supra* note 11, at 54.

214. See *id.*



to force governments to provide progress evaluations on their efforts to combat violence against women.<sup>215</sup>

Fifth, international human rights organizations recommend that states recognize the importance of integrating women at all levels of decision-making including during preventive diplomacy, peace negotiations, peacekeeping operations, and post-conflict reconstruction.<sup>216</sup> In order for women to be able to participate in decision-making, states must recognize the importance of women's education.<sup>217</sup> The subordinate status of women in many cultures prevents women from obtaining an education or participating in decision-making.<sup>218</sup> However, the opinions of women are necessary in the design, implementation, and assessment of effective solutions and programs focused on preventing and responding to wartime sexual violence.<sup>219</sup>

The above recommendations by international human rights organizations are the result of numerous non-governmental studies and reports on the status of women in war-torn countries.<sup>220</sup> Over the last twenty years, international human rights organizations have gained recognition by the international community for the value and strength of their recommendations.<sup>221</sup> The positive reputation of international human rights organizations has contributed to the presence of the above recommendations in international instruments.<sup>222</sup> However, it seems clear that the international community is continuously treating recommendations for aiding women victims during armed conflict as hopeful endeavors rather than necessary actions.

## VI. WALKING THE TALK: IMPLEMENTING SCR 1820

Two international instruments that recognize the value of the recommendations from international human rights organizations are SCR 1325 and SCR 1820.<sup>223</sup> Both SCR 1325 and SCR 1820 are considered to

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215. See GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *supra* note 44, at 280.

216. See *id.* at 282.

217. See *id.*

218. See *id.* at 281.

219. See *id.* at 282.

220. See GENEVA CENTRE FOR THE DEMOCRATIC CONTROL OF ARMED FORCES, *supra* note 44, at 278.

221. See *id.*

222. See, e.g., G.A. Res. 48/104, U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

223. In SCR 1325, paragraphs 1-6 urge and encourage states to increase the participation of women in various decision-making levels. Paragraphs 6 and 7 in SCR 1325 request the Secretary-General to develop and ensure gender-sensitive training for peacekeepers and military personnel. Paragraph 7 also urges states to increase their financial support for gender-sensitive training efforts. Paragraph 11 in SCR 1325 highlights the states' responsibility to end impunity for rape and sexual violence

be historic achievements because, at last, the Security Council took the first step in publicly condemning wartime sexual violence.<sup>224</sup> Neither resolution, however, mandates that U.N. member states, civil society organizations, or the Security Council execute any of the actions contained in the provisions. While international human rights organizations consider it significant that the Security Council took the first step in implementing their recommendations, the organizations may be celebrating prematurely if SCR 1820 is not properly executed.

SCR 1820, like SCR 1325, provides the necessary legal framework for the Security Council to take action in aiding victims of sexual violence before, during, and after armed conflicts, but SCR 1820 does not provide timetables for developing implementation and action plans. While SCR 1820 adds to the coverage of SCR 1325,<sup>225</sup> it does not add necessary time constraints nor does it mandate action. Rather than requiring or mandating execution of the provisions, SCR 1820 “stresses,” “urges,” and “encourages” action.<sup>226</sup> It is inferable by the use of these terms and the lack of enforcement mechanisms that the provisions in SCR 1820 are more like “aspirations” rather than binding policies. The only provision that mandates action and sets a definitive date for completion is provision 15, which requires the Secretary-General to submit a report by June 30, 2009, to the Security Council regarding a plan for implementing SCR 1820.<sup>227</sup> No other provision in SCR 1820 contains time constraints or benchmarks for measuring progress.

While the passing of SCR 1820 is another positive step towards recognizing and aiding victims of wartime sexual violence, the actual passage of SCR 1820 cannot be the only step. For SCR 1820 to be effective, the Security Council must take the initiative to coordinate an implementation scheme throughout the U.N. The reason that SCR 1325

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committed during armed conflict. Paragraphs 16 and 17 invite the Secretary-General to report to the Security Council his findings on the impact armed conflicts have on women and the progress made in addressing the issue. *See* S.C. Res. 1325, *supra* note 174.

In SCR 1820, paragraph 4 notes that rape and sexual violence can constitute a war crime and stresses the importance of ending the impunity for such acts. Paragraph 13 in SCR 1820 urges the recognition of sustainable assistance to victims of sexual violence. Paragraphs 3 and 6 in SCR 1820 request all parties to develop appropriate training programs for troops and peacekeeping personnel. Paragraphs 9 and 15 request the Secretary-General to report his findings on sexual violence committed during armed conflict to the Security Council. Paragraphs 8, 10, and 12 urge the increased participation of women in decision-making processes. *See* S.C. Res. 1820, *supra* note 147.

224. *See* Stop Rape Now, *supra* note 146.

225. *See supra* notes 172-90 and accompanying text for a discussion of five significant ways in which SCR 1820 adds to the coverage of SCR 1325.

226. *See generally* S.C. Res. 1820, *supra* note 147 (using language such as “stresses,” “urges,” and “encourages”).

227. *See id.* ¶ 15.

remains unimplemented is because there was minimal effort from the Security Council to ensure its implementation.<sup>228</sup> The immense issue of wartime sexual violence requires the Security Council to devote the proper amount of effort necessary for putting an end to rape and sexual violence committed during armed conflict. The time has come for the Security Council to “walk its talk” and fully implement the “aspirations” laid out in SCR 1820.

*A. Report of the Secretary-General Pursuant to SCR 1820*

On July 15, 2009, the Secretary-General submitted a report to the Security Council on the implementation of SCR 1820.<sup>229</sup> This report was submitted pursuant to provision 15 of SCR 1820, which mandated the Secretary-General to submit an implementation progress report by June 30, 2009.<sup>230</sup> Although several weeks behind schedule, the Secretary-General’s report provides a preview for whether the U.N. is prepared to undertake the challenge of eliminating rape and sexual violence during armed conflict.

The twenty-four page report begins with a discussion of the prevalence and trends of sexual violence in armed conflict.<sup>231</sup> This discussion is followed by an outline of the responsibilities of states and other parties in relation to sexual violence in armed conflict.<sup>232</sup> The next section lists efforts by the U.N. to prevent and respond to sexual violence.<sup>233</sup> The remaining pages of the report are dedicated to a discussion on improving data collection and reporting on sexual violence and to the Secretary-General’s recommendations for further action needed by the Security Council for successful implementation of SCR 1820.<sup>234</sup>

While it is evident from the report that implementation of SCR 1820 thus far has been weak,<sup>235</sup> the Secretary-General stressed that the

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228. See Hunt, *supra* note 140, at 265-66.

229. See The Secretary-General, *Report of the Secretary-General pursuant to Security Council Resolution 1820, delivered to the Security Council and the General Assembly*, U.N. Doc. S/2009/362 (July 15, 2009) [hereinafter *Report of the Secretary-General pursuant to Security Council Resolution 1820*].

230. See S.C. Res. 1820, *supra* note 147, ¶ 15.

231. See *Report of the Secretary-General pursuant to Security Council Resolution 1820*, *supra* note 229, ¶¶ 1-16.

232. See *id.* ¶¶ 17-30.

233. See *id.* ¶¶ 31-51.

234. See *id.* ¶¶ 52-58.

235. See SECURITY COUNCIL REPORT, WOMEN, PEACE AND SECURITY (2009), [http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.5263125/k.36C2/July\\_2009brWomen\\_Peace\\_and\\_Security.htm](http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.5263125/k.36C2/July_2009brWomen_Peace_and_Security.htm); see also *Report of the Secretary-General pursuant to Security Council Resolution 1820*, *supra* note 229, ¶ 12. The Secretary-General

Security Council and the member states are ultimately the ones responsible for ensuring that SCR 1820 is fully implemented.<sup>236</sup> The issue of sexual violence during armed conflict is a multisectoral issue that will need the cooperation of all parties for the adoption of effective strategies.<sup>237</sup> As a result, the report contained more of the same unproductive terms, such as “urge,” “stress,” and “encourage,” which make the provisions in the report, like the provisions in SCR 1820, appear more like “aspirations” than mandated goals.<sup>238</sup> The Secretary-General recognized the lack of concerted action, mandated action, or timetables in the report by calling it a “conceptual and operational foundation” that will need to be further developed by collective efforts.<sup>239</sup>

Some of the more notable collective efforts that the Secretary-General “urged” the Security Council to consider include (1) establishing a commission of inquiry, supported by the Office of the U.N. High Commissioner for Human Rights, to report and investigate sexual violence;<sup>240</sup> (2) mandating sanctions committees to address sexual violence;<sup>241</sup> and (3) ensuring that mandates for peacekeeping missions contain provisions addressing sexual violence as well as the necessary reporting requirements.<sup>242</sup>

On behalf of his position, the Secretary-General stated that his office will be advocating an end to sexual violence during armed conflict through his global campaign “UNiTE to end violence against women.”<sup>243</sup> He is also considering the appointment of a special representative on sexual violence tasked with the sole responsibility of strengthening coordination across the U.N. system.<sup>244</sup> In addition, the Secretary-General announced that he is prepared to submit an annual report, outlining the progress of the implementation process.<sup>245</sup>

However, unless the Security Council and member states comply with the Secretary-General’s recommended actions, there will be minimal progress for the Secretary-General to annually report. The

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“informed the [Security] Council that sexual violence continued unabated in the Democratic Republic of the Congo.” *Id.*

236. See *Report of the Secretary-General pursuant to Security Council Resolution 1820*, *supra* note 229, ¶ 56.

237. See *id.*

238. See generally *id.* (using language such as “stress,” “urge,” and “encourage”).

239. See *id.* ¶ 58.

240. See *id.* ¶ 56(i).

241. See *Report of the Secretary-General pursuant to Security Council Resolution 1820*, *supra* note 229, ¶ 56(e).

242. See *id.* ¶ 56(d).

243. See *id.* ¶ 32.

244. See *id.* ¶ 57.

245. See *id.* ¶ 56(k).

process for implementing SCR 1820 began with the research and submission of the July 15, 2009 report. Now, the Secretary-General asks for the collective support of all U.N. stakeholders to assume the responsibility of implementing the concepts laid out in the report.<sup>246</sup> The implementation of SCR 1820 cannot wait for the Security Council to engage in long discussions on the Secretary-General's concepts or to pass another resolution because with every day that passes, more women in areas of armed conflict are becoming victims of sexual violence.

## VII. CONCLUSION: A CHALLENGING ROAD AHEAD

With a legal foundation in place and a report from the Secretary-General containing concepts for implementing SCR 1820, the international community is ready to address the issue of rape and sexual violence committed during armed conflict. The passage of SCR 1820 and the prosecution of major offenders of rape and sexual violence crimes within international criminal courts and tribunals are substantial steps in raising awareness among the international community of the prevalence of wartime rape and sexual violence against women. However, it is still necessary for the international community to strive to create a system that is capable of holding all perpetrators of rape and sexual violence accountable. If there is no fear of prosecution, the violence will not end. Every person, institution, and government must commit to denouncing rape and sexual violence as tolerable results of war.

The next challenge will be engaging all stakeholders in the U.N. to act urgently to successfully implement the "aspirations" of SCR 1820 and of the Secretary-General's report for implementing SCR 1820. As the Security Council considers its next move, human rights organizations around the world are anxiously waiting to see if SCR 1820 will live up to their premature optimism or end in mere rhetoric without results.

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246. See *Report of the Secretary-General pursuant to Security Council Resolution 1820*, *supra* note 229, ¶ 56.