

# INCREASED ACCOUNTABILITY FOR CONFLICT-RELATED SEXUAL VIOLENCE THROUGH UNSC CHAPTER VII ACTIONS

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**Abstract:**

Conflict-related Sexual Violence (CRSV) continues to be used in conflicts despite the existing international law prohibitions contained in the Rome Statute of the ICC and other international agreements. Given the continued violations of these prohibitions, more needs to be done to prevent instances of CRSV and increase prosecutions of perpetrators. This paper focuses specifically on CRSV against women. Through examples of conflicts with varying amounts of CRSV and the enforcement measures taken, this paper argues that the current ICC framework is ineffective and incomplete. This paper proposes three potential improvements the UNSC could make in treating CRSV and demonstrate its expressed commitment to eliminating CRSV and holding perpetrators responsible. 1) the UNSC could grant broader jurisdiction to prosecute sexual violence. In the alternative, 2) the UNSC could establish an automatic determination function for itself in referring instances of CRSV to the ICC under Chapter VII, and 3) the UNSC could authorize universal jurisdiction to domestic courts under Chapter VII so that any jurisdiction can prosecute CRSV.

**Key Words:** *conflict related sexual violence, violence against women, rape, war crimes, crimes against humanity, Rome Statute, International Criminal Court, universal jurisdiction*

Mary and her family were members of the Nuer tribe in South Sudan, caught up in a vicious power struggle between the new country's President Salva Kiir, a member of the Dinka tribe, and his Vice President, Riek Machar, a Nuer. . . . Mary and her family were among the tens of thousands of civilians seeking refuge at a U.N. peacekeeping base in the northern city of Bentiu when they ran into Kiir's forces on the road in June 2014. The 27-year-old recounts what occurred next distantly, as if she were explaining something that happened to someone else. The soldiers told Mary that they considered the Nuers in the camps to be rebels, and that they killed her sons because they

couldn't risk letting them grow up to be fighters. "We don't kill the women and the girls," the soldiers told Mary. "They said they would only rape us. As if rape were different than death," says Mary. . . . After the soldiers killed her husband and sons, five of them held her down and forced her to watch as three others raped her 10-year-old daughter. Her name was Nyalaat. When the men were done, Mary says, "I couldn't even see my little girl anymore. I could only see blood." Then the men took turns with Mary. Nyalaat died a few hours later. "I wanted to die too."<sup>1</sup>

## I. INTRODUCTION: SEXUAL VIOLENCE AS A WEAPON OF WAR

Rape has been used throughout history as a war tactic.<sup>2</sup> Current international law attempts to prevent and prosecute conflict-related sexual violence (CRSV). Sexual violence in conflict significantly harms those who suffer it<sup>3</sup>, and the current international legal protections against sexual violence are insufficient to provide justice for survivors. CRSV "frequently occurs during times of conflict as it is a brutal yet effective way to maintain control over a civilian population."<sup>4</sup> The control is often successful because CRSV is such a lasting, historically private harm that has been seen as "ruining" the purity of the women victims. International legal justifications for treating CRSV as crimes against humanity rely on these links of CRSV to genocidal intentions. This is tracked through UN tribunals and other jurisdictional documents that establish the legal framework of CRSV.

While estimates about CRSV use in conflicts throughout history are appalling, such numbers "may show only the tip of the iceberg" because CRSV is often not reported due to the shame and social taboo often associated with such crimes.<sup>5</sup> The problem is only as bad or even worse than it appears in data estimates.

"State actors, members of organized non-State armed groups, peacekeepers, members of private military and security companies, or

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1 See Aryn Baker, *The Secret War Crime: The Most Shameful Consequence of Conflict Comes Out into the Open*, TIME, <https://time.com/war-and-rape/> (last visited Oct. 31, 2023). See also David S. Mitchell, *The Prohibition of Rape in International Humanitarian Law as a Norm of Jus Cogens: Clarifying the Doctrine*, 15 DUKE J. COMPA. & INT'L L. 219, 219–20 (2005) ("[R]ape, torture, and sexual violence have been endemic during armed conflict for centuries.").

2 Rachel Schreck, *Rhetoric Without Results*, 28 PENN. STATE INT'L L. REV. 83, 87–88 (2009).

3 See Gloria Gaggioli, *Sexual Violence in Armed Conflicts: A Violation of International Humanitarian Law and Human Rights Law*, 96 INT'L REV. RED CROSS 503, 505 (2014); Emma K. Macfarlane, *Resolutions without Resolve: Turning away from U.N. Security Council Resolutions to Address Conflict-Related Sexual Violence*, 27 MICH. J. GENDER & L. 435, 437–38 (2020).

4 Macfarlane, *supra* note 3, at 437.

5 Gaggioli, *supra* note 3, at 504.

simple individuals” can all be perpetrators of CRSV.<sup>6</sup> Often “other violations, such as unlawful killings, child recruitment, destruction of property or looting” occur concurrently with CRSV.<sup>7</sup> While there has been an increase in attention toward CRSV since “United Nations (UN) Security Council Resolution 1325 in 2000, few perpetrators have been prosecuted at international tribunals for sexual violence as a war crime, crime against humanity or genocide. Even fewer have been convicted.”<sup>8</sup> CRSV has been reported in multiple ongoing conflicts: Ukraine, Ethiopia, Myanmar<sup>9</sup>, Sudan, the Democratic Republic of the Congo, Haiti, and Israel/Palestine.<sup>10</sup> Because CRSV is still happening in ongoing conflicts and existing measures have proved insufficient, this paper seeks to address how to best counteract CRSV by analyzing how violations of sexual violence as a weapon of war have historically been addressed.

In Part II, this paper will first provide an overview of the action taken by the international community to prohibit CRSV. The United Nations has issued multiple resolutions denouncing sexual violence in conflict and committing to legal punishments. In addition to resolutions, international tribunals hold some authority over prosecuting perpetrators of CRSV.

In Part III, this paper will provide examples of enforcement of these international provisions prohibiting CRSV. Bosnia-Herzegovina, Rwanda, Sierra-Leonne, and Uganda are used to illustrate conflicts with high instances of CRSV. Sri Lanka and the historical conflict in Israel/Palestine are both examples of conflicts with low CRSV. The final grouping discusses ongoing conflicts with CRSV. Unfortunately, news reports documented the use of CRSV by Hamas in its October 2023 attacks, so Israel/Palestine also appears in this section. As the use of CRSV is a departure from tactics used in the historical conflict, this paper includes Israel/Palestine as both low CRSV and current conflicts with CRSV. In addition to Israel-Palestine, this paper includes Sudan as a second current case study of CRSV.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 504–05.

<sup>8</sup> Kim Thuy Seelinger, *Domestic Accountability for Sexual Violence: The Potential of Specialized Units in Kenya, Liberia, Sierra Leone, and Uganda*, 96 INT’L REV. RED CROSS 539, 540 (2014).

<sup>9</sup> Dara Kay Cohen, *Going Beyond Accountability to Deter Conflict-Related Sexual Violence*, U.S. INSTITUTE OF PEACE (Mar. 14, 2023), <https://www.usip.org/publications/2023/03/going-beyond-accountability-deter-conflict-related-sexual-violence>.

<sup>10</sup> Kathleen Kuehnast, *Sexual Violence Is Not an Inevitable Cost of War*, U.S. INSTITUTE OF PEACE (Dec. 7, 2023), <https://www.usip.org/publications/2023/12/sexual-violence-not-inevitable-cost-war>.

Part IV analyzes the effectiveness of these enforcement examples in prosecuting and preventing CRSV. The conflicts in Bosnia-Herzegovina and Rwanda each led to tribunals credited with forming much of the foundational international law prohibiting CRSV. While these tribunals were limited in jurisdiction to specific conflicts, they influenced the language of the Rome Statute, which is the current main source for international law's prohibition on CRSV.

Part V asserts that existing United Nations Resolutions and tribunals fall short of effectively prosecuting and preventing CRSV. The United Nations Security Council (UNSC) Resolutions hold a lot of nice words that seem to represent a championing of protection of the most vulnerable in conflict through the denouncement of sexual violence in conflict, but these resolutions fall short of actual action. In contrast to the Rwanda or Yugoslavia Tribunal Courts, these resolutions are not issued under Chapter VII. They are pretty words without teeth.

First, I propose the UNSC broaden the definition of CRSV in the Rome Statute to cover more violations. Second, because current procedures where the Security Council makes case-by-case determinations on accountability for CRSV end up being tainted by politics and posturing, losing sight of the ultimate purpose of enforcing prohibitions on CRSV by holding perpetrators accountable under international law, this paper suggests the UNSC implement an automatic referral process of situations with CRSV to the International Criminal Court (ICC) based on pre-identified criteria. Finally, if the Security Council is as serious as it says about dealing with sexual violence in conflict, it should authorize universal jurisdiction over acts of sexual violence on the whole.

## II. EXISTING INTERNATIONAL LEGAL FRAMEWORK PROHIBITING CRSV

This paper defines rape as “the coerced (under physical force or threat of physical force against the victim or a third person) penetration of the anus or vagina by the penis or another object, or of the mouth by the penis... Sexual violence is a broader category that includes rape, coerced undressing, and non-penetrating sexual assault such as sexual mutilation.”<sup>11</sup>

“The post-Second World War Control Council Law No. 10 was the first international legal instrument that expressly included rape in

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11 Elisabeth Jean Wood, *Variations in Sexual Violence*, 34 POL. & SOC'Y 307, 308 (2006).

the list of crimes against humanity.”<sup>12</sup> The Fourth Geneva Convention of 1949, an earlier prohibition than the Rome Statute, provides an even more limited prohibition on CRSV. The relevant provision states,

Protected persons are entitled, in all circumstances, to respect for their persons, their honour [sic], their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour [sic], in particular against rape, enforced prostitution, or any form of indecent assault.<sup>13</sup>

First, this provision has been seen as limiting CRSV to only women because it states that women will be “especially protected.” While this paper focuses on women victims, the silence of the provision on male victims of CRSV is a limitation worth noting. Moreover, the Geneva Convention’s prohibition on rape frames rape as an attack on the honor of the women, which “reinforces harmful stereotypes of women” by focusing on CRSV as an attack on the dignity of women as special persons.<sup>14</sup> By focusing on honor instead of the violence of CRSV itself, the Geneva Convention “distances the violent crime from the perpetrator [and] minimizes the physical and psychological harms of the crime.”<sup>15</sup> Unlike the later International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and ICC, the Geneva convention does not designate CRSV as “grave breaches subject to universal jurisdiction,” which further limits the effectiveness of the Geneva Convention in preventing CRSV.

ICTR included rape as a crime against humanity and rape as a potential way to perpetrate genocide.<sup>16</sup> ICTY represents another instance where rape was included as a crime against humanity alongside other crimes such as torture and extermination, when committed in armed conflict and directed against a civilian population.<sup>17</sup> In contrast to trying rape as a violation of the prohibition on genocide, “[e]levating ‘acts of rape as grave breaches would

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12 Gaggioli, *supra* note 3, at 530 (citing to Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, Control Council Law No. 10, <https://avalon.law.yale.edu/imt/imt10.asp>).

13 Fourth Geneva Convention of 1949 art. 27, Aug. 12, 1949, 75 U.N.T.S 179.

14 Jessica Zaccagnino, *All Roads Lead to Rome: A Jurisprudential Genealogy of Feminism, Sexual and Gender-Based Violence, and International Criminal Law*, 35(3) CONN. J. INT’L L. 363, 386 (2020).

15 *Id.*

16 Gaggioli, *supra* note 3, at 530–31.

17 *Id.* at 530

emphasize the criminality of each particular act of rape (and the importance of each single rape victim), standing on its own, independent of its being part of a massive and systematic pattern.”<sup>18</sup> Constructing rape as a grave breach could allow more prosecution of sexual violence because it may allow each rape to be a prohibited offense. When rape is included only among genocide, only those acts of sexual violence that collectively can be framed in genocide-meeting terms can be held accountable. Each individual rape is not enough on its own. The rapes are prohibited only in the collective.

The Rome Statute which established the ICC includes sexual violence in its jurisdiction for all states subject to the ICC. Article 7 of the Rome Statute lists “[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity” as crimes against humanity.<sup>19</sup>

The wording “any other form of sexual violence also constituting a grave breach” for international armed conflicts and “any other form of sexual violence also constituting a serious violation of article 3 common” for non-international armed conflicts, is not entirely clear. Does it mean that “other forms of sexual violence” must already constitute a grave breach/serious violation of common Article 3 to be criminalized under Articles 8(2)(b)(xxii) or 8(2)(e)(vi) of the ICC Statute? If the answer to this question were positive, the added value (*effet utile*) of this provision would be rather thin. The ICC *Elements of Crimes* tend to indicate that what actually matters is that “the conduct was of a gravity comparable to that of a grave breach” or “to that of a serious violation of article 3 common to the four Geneva Conventions.” Acts of sexual violence not reaching this threshold of gravity might still constitute an international crime, for instance as “outrages upon personal dignity, in particular humiliating and degrading treatment” in international armed conflicts as per Article 8(2)(b)(xxi) of the Rome Statute.<sup>20</sup>

Acts of sexual violence are prohibited in Article 7 and Article 8 of the Rome Statute, and are considered to be crimes against humanity and war crimes. Article 7(1)(g) lists rape and sexual slavery as a crime against humanity if it is ‘committed as part of a widespread or systemic attack directed against any civilian population . . .’ Similarly, Article

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18 Timothy J. Schorn, *Grave Breaches and Sexual Violence: Recognition and Accountability*, 14 GEO. MASON INT’L L. J. 1, 48 (2023) (quoting Oren Gross, *The Grave Breaches System and the Armed Conflict in the Former Yugoslavia*, 16 MICH. J. INT’L L. 783, 823 (1995)).

19 Rome Statute of the International Criminal Court (hereinafter Rome Statute) art. 7(g), July 17, 1998, 2178 U.N.T.S. 94.

20 Gaggioli, *supra* note 3, at 529–30.

7(1)(g) of the EOC specifically criminalizes rape, sexual slavery, and enforced prostitution.<sup>21</sup>

The language prohibiting sexual violence in the Rome Statute does not make sense if all breaches of sexual violence must rise to the level of grave breaches because then a separate provision on sexual violence as a crime against humanity would be superfluous. Presumably, CRSV that meets the elements of a grave breach would not need to be separately listed as a crime against humanity.

Unfortunately, even if the statute is read as prohibiting sexual violence under Article 8 (and not under the grave breach), the prohibition on sexual violence is still tied to justifications other than CRSV itself. Article 8 links sexual violence as a crime against dignity, which hearkens to hierarchical gender constructs where women need special protection.<sup>22</sup> “In her book, *Interpreting Crimes in the Rome Statute of the International Criminal Court*, Leena Grover suggests that the clauses prohibiting sexual violence in the Rome Statute were mere residual clauses that only potentially prohibited sexual misconduct by granting courts broad jurisdiction over any sex offenses of comparable gravity.”<sup>23</sup> Grover’s interpretation requires Articles 7 and 8 to be read as potential prohibitions if the CRSV is as serious as other prohibited conduct in the crimes against humanity framework.

In the years following the Geneva Convention, the ICTY, the ICTR, and the Rome Statute, the UNSC has adopted ten resolutions relevant to conflict-related sexual violence. The first of these resolutions, UNSCR 1325, “addresses how women and girls are disproportionately impacted by violent conflict and war and recognizes the critical role that women can and already do play in peacebuilding efforts.”<sup>24</sup> Resolution 1325 “[c]alls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict.”<sup>25</sup>

UNSCR 1820, the second resolution regarding CRSV,

[n]otes 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, stresses the need for the exclusion of sexual violence

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21 Aileen S. Kim, *Sexual Violence in Armed Conflict under International Law*, 36 CONN. J. INT’L L. 2, 7 (2020).

22 Schorn, *supra* note 18, at 39–40.

23 Kim, *supra* note 21, at 6.

24 *What is UNSCR 1325? An Explanation of the Landmark Resolution on Women, Peace and Security*, UNITED NATIONS, [https://www.usip.org/gender\\_peacebuilding/about\\_UNSCR\\_1325](https://www.usip.org/gender_peacebuilding/about_UNSCR_1325) (last visited Nov. 1, 2023).

25 S.C. Res. 1325, ¶ 10 (Oct. 31, 2000).

crimes from amnesty provisions in the context of conflict resolution processes, and calls upon Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and stresses the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation;<sup>26</sup>

1820's language seeks to cajole member states into prosecuting people responsible for CRSV, but the resolution holds no enforceable authority. The most it can do is reiterate a supposed focus of the Security Council on addressing the problem of CRSV.

UNSCR 1888 (2009) reaffirms many of the commitments of 1820. Notably, 1888 "Urges all parties to a conflict to ensure that all reports of sexual violence committed by civilians or by military personnel are thoroughly investigated and the alleged perpetrators brought to justice, and that civilian superiors and military commanders, in accordance with international humanitarian law, use their authority and powers to prevent sexual violence, including by combating impunity."<sup>27</sup> 1888 also establishes increased reporting requirements for the Secretary-General on sexual violence. While 1888 "demands that all parties to armed conflict immediately take appropriate steps to protect civilians, including women and children, from all forms of sexual violence," the demand is unenforceable because none of the language of 1888 binds the Security Council into actual action.

UNSCR 1889 (2009) "addresses the obstacles to women's participation in peace processes and peacebuilding."<sup>28</sup> UNSCR 1960 "calls for an end to sexual violence in armed conflict, particularly against women and girls, and provides measures aimed at ending impunity for perpetrators of sexual violence, including through sanctions and reporting measures."<sup>29</sup>

UNSCR 2106 is framed by the UN as "provid[ing] operational guidance on addressing sexual violence and call[ing] for the further deployment of Women Protection Advisers."<sup>30</sup> Beyond this general purpose, 2106 includes the following language:

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26 S.C. Res. 1820, ¶ 4 (Jun. 19, 2008).

27 S.C. Res. 1888, ¶ 7 (Sep. 30, 2009).

28 S.C. Res. 1889 (Oct. 5, 2009) summary of purpose, <https://peacemaker.un.org/en/documents/sres1889security-council-resolution-women-peace-and-security#:~:text=%2FRES%2F1889-,Security%20Council%20Resolution%20on%20women%20C%20peace%20and%20security,in%20peace%20processes%20and%20peacebuilding>.

29 What is UNSCR 1325?, *supra* note 24.

30 *Id.*

Having considered the report of the Secretary-General and stressing that the present resolution does not seek to make any legal determination as to whether situations that are referred to in the Secretary-General's report are or are not armed conflicts within the context of the Geneva Conventions and the Additional Protocols thereto, nor does it prejudice the legal status of non-State parties involved in these situations.<sup>31</sup>

This language exposes the limitation of the resolution as not being a binding statement of law. The UNSC uses 2106 to proclaim its views without binding itself to the protocols that would require it to take real action against perpetrators of CRSV.<sup>32</sup>

Looking beyond UN tribunals and UN Resolutions, “[n]o core human rights instrument makes specific reference to rape or sexual violence. However, sex offenses can fall within the sphere of Article 5 of the Universal Declaration of Human Rights (UDHR), Article 7 of the International Covenant on Civil and Human Rights (ICCPR), Article 3 of the European Convention on Human Rights (ECHR), and Article 5 of the American Convention on Human Rights (ACHR).”<sup>33</sup> The lack of explicit inclusion of CRSV in human rights instruments demonstrates the relatively weak measures available in combatting CRSV.

While all these resolutions seem to be a strong denouncement of sexual violence and a clear classification of sexual violence as a potential war crime, all ten resolutions are taken under Chapter VI. Therefore, the resolutions lack any enforcement measures, such as those available to Chapter VII actions.<sup>34</sup> Both ICTY and ICTR were

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31 S.C. Res. 2106, pmbl. (Jun. 24, 2013).

32 *Infra* note 34.

33 Kim, *supra* note 21, at 6.

34 The Security Council explains, “Chapter VI of the Charter contains various provisions according to which the Security Council may make recommendations to the parties to a dispute or situation.” *Pacific Settlement of Disputes (Chapter VI of UN Charter)*, UNITED NATIONS SEC. COUNCIL, <https://www.un.org/securitycouncil/content/pacific-settlement-disputes-chapter-vi-un-charter> (last visited June 8, 2025).

In contrast, the Security Council explains,

Chapter VII of the Charter of the United Nations provides the framework within which the Security Council may take enforcement action. It allows the Council to “determine the existence of any threat to the peace, breach of the peace, or act of aggression” and to make recommendations or to resort to non-military and military action to “maintain or restore international peace and security.”

*Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression*, UNITED NATIONS SEC. COUNCIL, <https://www.un.org/securitycouncil/content/repertoire/actions> (last visited June 27, 2025).

Chapter VII actions of the UNSC, demonstrating the ad hoc granting of jurisdiction for sexual crimes in specific conflicts. In the particular contexts of Yugoslavia and Rwanda and during a discrete time period, the Security Council granted authority for the tribunals to hear multiple claims, including claims of CRSV. The ICC has jurisdiction over CRSV when committed by states that have joined the Rome Statute. The Security Council makes determinations on a case-by-case basis if the conflict and the use of CRSV rises to the level that requires Security Council action. These determinations can result in the UNSC referring a situation to the ICC that does not involve parties to the Rome Statute. Such referred situations bring the non-parties within the ICC's jurisdiction.<sup>35</sup>

### III. EXAMPLES OF CONFLICTS WITH AND WITHOUT HIGH INSTANCES OF CRSV

Before being able to effectively evaluate the existing framework prohibiting CRSV, this paper first explains multiple conflicts with varying instances of sexual violence. I rely heavily on Elisabeth Jena Wood's work where she compared conflicts with high occurrence of sexual violence to conflicts with little to no use of sexual violence as a tactic of war.<sup>36</sup> Instances of high and low occurrences of CRSV are included to demonstrate that current enforcement mechanisms are ineffective across the spectrum of prevalence of CRSV in conflicts.

#### A. *Conflicts with High Occurrence of CRSV*

Bosnia-Herzegovina and Rwanda present two conflicts with high occurrence of CRSV that led to some prosecutions of the violations. In contrast, Uganda and Sierra-Leonne had similarly high levels of CRSV but did not lead to the conflict-specific tribunals or much effective prosecution. Further, these four conflicts were selected to include both ethnically motivated and non-ethnic conflicts.

##### 1. Bosnia-Herzegovina

"Sexual slavery was [] a prominent form of sexual violence in the conflict in the former Yugoslavia in the early 1990s. According to a European Union investigation, approximately 20,000 girls and women suffered rape in 1992 in Bosnia-Herzegovina alone, many of them while held in detention facilities of various types."<sup>37</sup> Other estimates place the

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<sup>35</sup> See *infra* note 116.

<sup>36</sup> Wood, *supra* note 11.

<sup>37</sup> *Id.* at 311.

number of “women and girls [who] suffered rape and other forms of sexual violence during” this conflict as high as 50,000.<sup>38</sup> “Exact victim numbers will probably never be determined.” The use of sexual violence in this conflict was closely tied to goals of humiliation and shame.<sup>39</sup> The violence usually occurred in public places, and the soldier perpetrators made comments during many of the assaults. The soldiers’ comments included telling the women these actions were ordered, informing the women this was happening so they and their families would never want to return to this area, and making ethnically or religiously derogatory statements.<sup>40</sup> “While not explicitly stated in the report, the inference is clear that the [UN] commission believed it probable that a policy of systematic ethnic cleansing including rape existed on the part of the Bosnian Serb forces.”<sup>41</sup>

The ICTY charged 161 individuals in total. Seventy-eight of those “had charges of sexual violence included in their indictments.”<sup>42</sup> “As of September 2016, 32 individuals have been convicted for their responsibility for crimes of sexual violence.”<sup>43</sup> These convictions all assigned individual responsibility, but four also included convictions of superior responsibility.<sup>44</sup> Nine individuals died before their trial, while five had their indictments withdrawn.<sup>45</sup> Fourteen individuals were acquitted of sexual violence charges.<sup>46</sup> The sentences for those convicted ranged from three years to forty years.<sup>47</sup>

## 2. Rwanda

“It is estimated that between April and July 1994, more than 250,000 women were subjected to rape in Rwanda, leaving them to struggle with physical and psychological trauma, disabilities, reproductive health problems, or HIV infection, often fearing their perpetrators and socially marginalized from the stigma associated with

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38 Lizzie Porter, 20 Years After Bosnian War, Rape Survivors Still Live with Trauma, NEWSDEEPLY THE NEW HUMANITARIAN (Nov. 24, 2017), <https://deeply.thenewhumanitarian.org/womenandgirls/articles/2017/11/24/20-years-after-bosnian-war-rape-survivors-still-live-with-trauma>.

39 Wood, *supra* note 11, at 312.

40 *Id.* at 312–13.

41 *Id.* at 313.

42 *Crimes of Sexual Violence: In Numbers (As of September 2016)*, UNITED NATIONS INT’L CRIM. TRIB. FOR THE FORMER YUGOSLAVIA, <https://www.icty.org/en/features/crimes-sexual-violence/in-numbers>.

43 *Id.*

44 *Id.*

45 *Id.*

46 *Id.*

47 *Id.*

sexual violence.”<sup>48</sup> The sexual violence in Rwanda was perpetrated by Hutu militia groups and Rwandan Armed Forces to destroy the Tutsis as a group.<sup>49</sup>

Fifty-two individuals were charged with rape and/or other sexual violence crimes at the ICTR.<sup>50</sup> Of these fifty-two, thirteen received convictions that have either been affirmed or have appeals pending.<sup>51</sup> Seventeen cases were either acquitted or the rape charge was dropped during plea negotiations.<sup>52</sup> Seven cases were transferred to either Rwanda or France.<sup>53</sup>

### 3. Sierra-Leone

In contrast to the conflict following the breakup of Yugoslavia, the sexual violence in Sierra Leone was not tied to ethnic identity.<sup>54</sup> However, similar to Bosnia-Herzegovina, the sexual violence often took the form of sexual slavery, even forced marriages to a particular person.<sup>55</sup> Women were kidnapped, detained, and forced to perform as sexual slaves.<sup>56</sup> The Witness to Truth report states, “[t]his was a war measured not so much in battles and confrontations between combatants as in attacks upon civilian populations.”<sup>57</sup> Specifically considering the impact of the conflict on women, the report summarizes, “[w]omen and girls became the targets in the brutal conflict in Sierra Leone. . . . Their vulnerability was deliberately exploited in order to dehumanise [sic] them. Women and girls were raped, forced into sexual slavery and endured other acts of sexual violence, including mutilations,

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48 UNITED NATIONS POPULATION FUND, *Sound of Silence: Dealing with the Legacy of Sexual Violence as a Weapon of War*, UNITED NATIONS POPULATION FUND (Mar. 17, 2014), <https://www.unfpa.org/news/sound-silence-dealing-legacy-sexual-violence-weapon-war> (last visited Nov. 2, 2023).

49 Binaifer Nowrojee, *Shattered Lives: Sexual Violence During the Rwandan Genocide and Its Aftermath*, HUMAN RIGHTS WATCH (Sept. 1996) (describing “the sexual violence perpetrated against Tutsi women as a means of dehumanizing and subjugating all Tutsi”), <https://www.hrw.org/legacy/reports/1996/Rwanda.htm>.

50 Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Regions: Lessons Learned from the Office of the Prosecutor for the International Criminal Tribunal for Rwanda, *Annex B: Statistics from the ICTR's Rape and Sexual Violence Cases*, UNITED NATIONS INT'L TRIB. FOR RWANDA (Jan. 30, 2014), <https://unictr.irmct.org/sites/unictr.org/files/publications/ICTR-Prosecution-of-Sexual-Violence.pdf>.

51 *Id.*

52 *Id.*

53 *Id.*

54 Wood, *supra* note 11, at 314.

55 *Id.* at 315.

56 *Id.*

57 UNITED NATIONS, *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission*, 2, 1 Executive Summary (2004).

torture and a host of other cruel and inhumane treatment.”<sup>58</sup> “UN agencies estimate that more than 60,000 women were raped during the civil war in Sierra Leone (1991-2002).”<sup>59</sup>

After the civil war, “the international community created two transitional justice mechanisms to address past atrocities: the Truth and Reconciliation Commission (TRC) and the Special Court for Sierra Leone.”<sup>60</sup> Truth and Reconciliation Commissions do not serve punitive enforcement purposes.<sup>61</sup> They are intended to simply compile information and make recommendations for the future.<sup>62</sup> They are not courts and do not have jurisdiction over perpetrators of CRSV or other international law prohibitions. The Special Court shall “have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.”<sup>63</sup> The jurisdiction of the Special Court is limited to those who were the most responsible.<sup>64</sup> “[T]en out of the thirteen accused from the Sierra Leone conflict were charged with the crimes against humanity of rape and sexual slavery, and the war crime of outrages upon personal dignity.”<sup>65</sup>

#### 4. Uganda

Uganda’s “history is replete with conflict,”<sup>66</sup> and this history has included the high use of CRSV by both parties of the conflict.<sup>67</sup> Uganda experienced a civil war from 1986-2006. “[T]he most prevalent form of sexual violence against women in Uganda involves a combination of

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<sup>58</sup> *Id.*

<sup>59</sup> UNITED NATIONS DEP’T OF PUBLIC INFORMATION, *Sexual Violence: A Tool of War*, background note (Apr. 2003).

<sup>60</sup> Nowrojee, *supra* note 49, at 85.

<sup>61</sup> U.S. INSTITUTE OF PEACE, *Truth Commission: Sierra Leone* (Nov. 1, 2002) (“Mandate: The Truth and Reconciliation Commission was to produce a report on human rights violations beginning in 1991, provide a forum for both victims and perpetrators, and recommend policies to facilitate reconciliation and prevent future violations.”), <https://www.usip.org/publications/2002/11/truth-commission-sierra-leone>.

<sup>62</sup> *Id.*

<sup>63</sup> Statute of the Special Court for Sierra Leone, Art. 1 Competence of the Special Court, <https://www.rscsl.org/Documents/scsl-statute.pdf> (last visited June 27, 2025).

<sup>64</sup> *Id.*

<sup>65</sup> Valerie Oosterveld, *Lessons from the Special Court for Sierra Leone on the Prosecution of Gender-Based Crimes Symposium: Prosecuting Sexual and Gender-Based Crimes before Internationalized Criminal Courts*, 17 AM. UNIV. J. OF GENDER, SOCIAL POLICY & THE L. 407, 408 (2009).

<sup>66</sup> Marianne Akumu, *Breaking the Cycle of Conflict-Related Sexual Violence in Uganda*, INT’L CENTER FOR TRANSITIONAL JUSTICE (July 5, 2023), <https://www.ictj.org/latest-news/breaking-cycle-conflict-related-sexual-violence-uganda>.

<sup>67</sup> *Id.*

rape, sexual mutilation, or tying heavy objects onto female genitals.”<sup>68</sup> In Uganda during this period of civil war, “between 60,000 and 80,000 children from northern Uganda” were abducted by the Lord’s Resistance Army.<sup>69</sup> Abducted “girls were often forced to be ‘wives’ to the soldiers. . . . The women and girls in these forced marriages were required to have sex, which often led to forced child-bearing.”<sup>70</sup> Overall it is estimated that “over 25,000 people—women, men, girls, and boys—were victims of sexual and gender-based crimes.”<sup>71</sup>

On February 4, 2021, the ICC found Dominic Ongwen, “a senior leader of the so-called Lord’s Resistance Army,” guilty of “more than [sixty] counts includ[ing] important convictions on the basis of sexual and gender-based crimes and crimes against children [and] including for the first time, the crime of forced marriage and forced pregnancy.”<sup>72</sup> His conviction “of 61 counts of war crimes and crimes against humanity, including 19 counts of sexual and gender-based crimes” was upheld on December 15, 2022.<sup>73</sup> His conviction “kickstarted a reparations program to address some of the long-term physical and psychological harms they have suffered.”<sup>74</sup>

### ***B. Conflict with Low Occurrence of CRSV***

Both Sri Lanka and Israel-Palestine (pre-October 2023) provide examples of conflicts with low CRSV. Sri-Lanka serves as an interesting contrast to Bosnia-Herzegovina since both are ethnic conflicts but only one has high CRSV. Israel-Palestine is included because it has historically been held up as the pinnacle example of a conflict free from CRSV.<sup>75</sup> However, this claim has been modified to apply to only the Israel-Palestine conflict before October 7, 2023, since reports document CRSV in the October 7 attacks.<sup>76</sup>

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68 Oluwaseun Bamidele, “I’m Not Leaving, I’m Not Afraid”: (Re)Visiting the Dysfunctional Systems of Justice on Gender-based Violence (GBV) in Uganda, 12 DEMOCRACY AND SECURITY 23, 24.

69 Seelinger, *supra* note 8, at 545.

70 *Id.*

71 Akumu, *supra* note 66.

72 Int’l Crim. Court, Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, following the conviction of Mr. Dominic Ongwen: “Today was an important milestone in the journey to bring justice to the people of Uganda” (Feb. 4, 2021), <https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-fatou-bensouda-following-conviction-mr>.

73 Akumu, *supra* note 66.

74 *Id.*

75 Wood, *supra* note 11, at 314.

76 See *infra* Part IV, Section 3A.

## 1. Sri Lanka

“Like Bosnia-Herzegovina, Sri Lanka is also a case of a secessionist ethnic conflict, but in Sri Lanka the level of sexual violence appears to be dramatically less.”<sup>77</sup> Human Rights Watch “document[ed] 75 cases of rape—31 of men, 41 of women, and 3 of boys under age 18” that were perpetrated by the security forces. Despite these relatively low confirmed numbers, Human Rights Watch claims the Sri Lanka conflict from 2006-2012 did include state-perpetrated systematic use of sexual violence during the final years of the conflict.<sup>78</sup> While the secessionist forces did not resort to the systematic use of sexual violence and even were found to have punished violators of this non-use of sexual violence, state security personnel did utilize sexual violence as a tactic.<sup>79</sup>

## 2. Israel-Palestine Before October 2023

Historically, the Israel-Palestine conflict has not led to evidence of the systematic use of sexual violence as a tactic.<sup>80</sup> “Within the reporting of international organizations and some feminist scholarship, Palestine/Israel is often held up as a primary example of a conflict from which sexual violence is absent.”<sup>81</sup> While some claim that sexual violence could have been happening and just not being reported<sup>82</sup>, one author “asked representatives of three human rights organizations (two Israeli and one Palestinian) whether they believed sexual assault was occurring but was not reported, or was not taking place. They independently and unanimously stated that they historically received information for almost no cases of sexual assault and that they believed they would hear of it occurring as they did receive reports of fewer instances of sexual harassment (for example, during pat-down searches at checkpoints).”<sup>83</sup> This check provides some assurance that CRSV was

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<sup>77</sup> Wood, *supra* note 11, at 313.

<sup>78</sup> HUMAN RIGHTS WATCH, Sexual Violence against Tamils by Sri Lankan Security Forces, Summary (Feb. 26, 2013), <https://www.hrw.org/report/2013/02/26/we-will-teach-you-lesson/sexual-violence-against-tamils-sri-lankan-security-forces> (last visited Nov. 2, 2023).

<sup>79</sup> THE GENDER SECURITY PROJECT, *CRSV: Sri Lanka*, (Jul. 10, 2021), <https://www.gendersecurityproject.com/post/sexual-violence-in-conflict-sri-lanka> (last visited Nov. 2, 2023).

<sup>80</sup> Wood, *supra* note 11, at 314.

<sup>81</sup> Kathryn Medien, *Israeli Settler Colonialism, “Humanitarian Warfare,” and Sexual Violence in Palestine*, 23 INT’L FEMINIST J. POL. 698, 700 (2021) (arguing that despite international organizations not reporting sexual violence in this conflict, “the State of Israel routinely engages in forms of sexualized torture and violence against Palestinians in its detention and prison facilities”).

<sup>82</sup> *Id.*

<sup>83</sup> Wood, *supra* note 11, at 314.

at least much more limited in the historic Israel-Palestine conflict than many other conflicts, including those discussed above as having high instances of CRSV.

### C. Ongoing Conflicts with Instances of CRSV

While there are multiple ongoing conflicts with documented instances of CRSV, this paper discusses two to demonstrate that CRSV is still occurring and that current mechanisms are not successfully preventing CRSV. The following two case-studies illustrate the continued relevance of addressing CRSV because there are current perpetrators of CRSV violating international law that could be held accountable with the recommended changes to enforcement that follow in Part V of this paper.

#### 1. Current Conflict in Israel-Palestine

Unfortunately, News articles released in December 2023 contain horrifying descriptions of CRSV conducted by Hamas at the Nova festival during the October 7, 2023, attack.<sup>84</sup> Reports allege systematic, ordered use of sexual violence by Hamas against Israelis.<sup>85</sup> The number of CRSV victims during the October 7 attacks and later Hamas action is currently unknown, but “[h]undreds of bodies were collected from the attack sites by volunteers.”<sup>86</sup> Hamas’ October 7 attack killed 1200 people in total.<sup>87</sup> Among those victims, one investigator stated they have “see[n] women of all ages.”<sup>88</sup> Photographs provide further evidence that the attack included the use of CRSV. “Multiple photographs from the sites after the attack show the bodies of women naked from the waist down, or with their underwear ripped to one side, legs splayed, with signs of trauma to their genitals and legs.”<sup>89</sup> Estimates of victims of CRSV have been difficult in large part because there have been no identified survivors of CRSV from this specific incident and

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<sup>84</sup> See *id.*; Sam Mednick, *New Signs Emerge of ‘Widespread’ Sexual Crimes by Hamas, as Netanyahu Alleges Global Indifference*, THE ASSOCIATED PRESS (Dec. 6, 2023, 7:19 AM), <https://apnews.com/article/sexual-assault-hamas-oct-7-attack-rape-bb06b950bb6794affb8d468cd283bc51> (last visited June 27, 2025); Jeffrey Gettleman, Adam Sella & Anat Schwartz, *What We Know About Sexual Violence During the Oct. 7 Attacks on Israel*, NEW YORK TIMES (Dec. 4, 2023) <https://www.nytimes.com/2023/12/04/world/middleeast/oct-7-attacks-israel-hamas-sexual-violence.html>.

<sup>85</sup> Lucy Williamson, *Israel Gaza: Hamas raped and mutilated women on 7 October*, BBC hears, BBC (Dec. 5, 2023, 10:15 AM), <https://www.bbc.com/news/world-middle-east-67629181>.

<sup>86</sup> *Id.*

<sup>87</sup> Marita Moloney, *Hamas Planned Sexual Violence as Weapon of War-Israeli Campaigner*, BBC (Dec. 4, 2023, 10:43 AM), <https://www.bbc.com/news/world-middle-east-67613153>.

<sup>88</sup> Williamson, *supra* note 81.

<sup>89</sup> *Id.*

because the bodies were often dismembered and/or burned before volunteers arrived on the scene. Some claim that the widespread evidence of CRSV against the women in the concentrated time of the October 7 attacks supports Hamas' reliance on CRSV as a weapon of war.<sup>90</sup>

No charges have yet been brought regarding these violations, but UN Women issued a statement on December 1, 2023, condemning the attacks and calling for an investigation. They proclaimed,

We unequivocally condemn the brutal attacks by Hamas on Israel on 7 October. We are alarmed by the numerous accounts of gender-based atrocities and sexual violence during those attacks. This is why we have called for all accounts of gender-based violence to be duly investigated and prosecuted, with the rights of the victim at the core.<sup>91</sup>

This statement is only a public message, not an enforceable or mandatory action. It is not a statement of either the General Assembly or the Security Council.

## 2. Sudan

Since April 2023, Sudan has been in the throes of conflict between the Sudanese Armed Forces and the Rapid Support Forces.<sup>92</sup> During this conflict, "members of the Rapid Support Services (RSF), an Arab-dominated paramilitary group, and allied Arab militiamen" targeted a specific ethnic tribe.<sup>93</sup> The UN has stated,

We are deeply alarmed by reports that women and girls are being abducted and held in inhuman, degrading slave-like conditions in areas controlled by the Rapid Support Forces (RSF) in Darfur, where they are allegedly forcibly married and held for ransom. Credible information from survivors, witnesses and other sources suggests more than 20 women and girls have been taken, but the number could be higher.

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<sup>90</sup> *Id.*

<sup>91</sup> UN Women, UN Women statement on the situation in Israel and Gaza (Dec. 1, 2023), <https://www.unwomen.org/en/news-stories/statement/2023/12/un-women-statement-on-the-situation-in-israel-and-gaza>.

<sup>92</sup> Shayna Lewis, Sexual Violence Still a Major Threat as Sudan's Conflict Grinds On, *Al Jazeera* (Dec. 6, 2023), <https://www.aljazeera.com/features/2023/12/6/sexual-violence-still-a-major-threat-as-sudans-conflict-grinds-on>; Liz Throssell, Press Briefing Notes, *Sudan: Alarming reports of Women and Girls Abducted and Forced to Marry, Held for Ransom*, UNITED NATIONS, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (Nov. 3, 2023), <https://www.ohchr.org/en/press-briefing-notes/2023/11/sudan-alarming-reports-women-and-girls-abducted-and-forced-marry-held>.

<sup>93</sup> Maggie Michael, *Sudanese Women Describe Being Gang-raped in Ethnically Targeted Attacks by Arab Forces*, *REUTERS* (Nov. 30, 2023, 11 AM), <https://www.reuters.com/investigates/special-report/sudan-politics-sexual-violence>.

Among the victims of CRSV, “[w]omen and girls are being kept by their abusers for days following the assault so that they cannot access medical care and are forced to carry pregnancies.”<sup>94</sup> “Survivors of the renewed attacks on the Masalit in El Geneina in early November also recounted incidents of sexual violence. Three said they witnessed sexual attacks by RSF or Arab militia forces.”<sup>95</sup> According to the UN, “at least 105 people [had] been subjected to sexual violence” between April to November 2023.<sup>96</sup> While these numbers are significantly lower than the high instance conflicts discussed above, these are early numbers from the first few months of conflict. Given the conflict is ongoing, the number of victims is likely to continue growing.

No charges have yet been brought regarding these April 2023 violations in Sudan. The long history of conflict in Sudan has led to promises of a hybrid court that would have jurisdiction over war crime offenses, but such promises have yet to be realized since the 2015 Peace Agreement.<sup>97</sup> Given this historical failure of accountability, it is not likely that the recent acts of CRSV will be prosecuted shortly. In April 2025, Sudan renewed a previous agreement to address CRSV. One key priority of the agreement is “engaging with Sudanese justice and security actors, including to enhance capacity for the investigation and prosecution of crimes of sexual violence.”<sup>98</sup> However, the agreement was initially entered into prior to the start of the conflict and has not led to any prosecutions of CRSV in Sudan.

#### IV. EVALUATION OF ENFORCEMENT EFFECTIVENESS

The conflicts in Bosnia-Herzegovina and Rwanda each led to the establishment of tribunals with some jurisdiction over CRSV. The ICTY is lauded as the “first international criminal tribunal to enter convictions for rape as a form of torture and for sexual enslavement as

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<sup>94</sup> Lewis, *supra* note 92.

<sup>95</sup> Michael, *supra* note 93.

<sup>96</sup> SUDAN TRIBUNE, *UN Expresses Grave Concern Over Abduction and Slavery of Women in Sudan* (Nov. 3, 2023), <https://sudantribune.com/article279026>.

<sup>97</sup> HUMAN RIGHTS WATCH, Q&A: Justice for War Crimes in South Sudan, 7 *Why have organizations called for the unilateral establishment of the Hybrid Court for South Sudan?* (Aug. 24, 2020, 7:30 AM), [https://www.hrw.org/news/2020/08/24/qa-justice-war-crimes-south-sudan#\\_Why\\_have\\_organizations](https://www.hrw.org/news/2020/08/24/qa-justice-war-crimes-south-sudan#_Why_have_organizations).

<sup>98</sup> UNITED NATIONS OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON SEXUAL VIOLENCE IN CONFLICT, Press Release, “After Two Years of Deadly Conflict, the Government of the Sudan Renews Its Commitment to Prevent and Address Conflict-related Sexual Violence” (Apr. 16, 2025), <https://www.un.org/sexualviolenceinconflict/press-release/after-two-years-of-deadly-conflict-the-government-of-the-sudan-renews-its-commitment-to-prevent-and-address-conflict-related-sexual-violence>.

crime against humanity.”<sup>99</sup> “Rape is explicitly listed as a crime against humanity in Article 5 of the ICTY Statute and Article 3 of the ICTR Statute.”<sup>100</sup> However, the ICTY and the ICTR only had jurisdiction over the specific conflicts the tribunals were made in response to, so both failed to provide lasting protection against CRSV. The most these conflict-specific, ad hoc tribunals can provide is justice or retribution for the victims of the specific conflicts. Further, as noted above, these tribunals only convicted diminutive numbers of perpetrators compared to the widespread violations and numerous victims of CRSV.

The ICTY and the ICTR are seen as the precursors to the ICC, and the ICC is supposedly an effective mechanism for prosecuting CRSV because it has some jurisdiction over CRSV according to the Rome Statute. However, the ICC is limited both by the language in the Rome Statute as discussed in the above section on the existing legal framework and by the role of the UNSC in referring cases to the ICC. “[S]exual violence appears prosecutable on the international level only when it constitutes crimes against humanity, war crimes, and genocide. The effect of this is that crimes of sexual violence on their own—accountability for its perpetrators, and recognition of and justice for its victims—become second-tier crimes. To overcome this situation, attention from more than the ICC is required.”<sup>101</sup> The ICC alone has not successfully eliminated the use of CRSV, nor has it been able to prosecute even most of the violators of international law prohibiting the use of CRSV.<sup>102</sup>

“Under the Rome Statute, the ICC may prosecute atrocity crimes (genocide, war crimes, and crimes against humanity) committed on the territory or by a national of states parties from July 1, 2002, onward (or the date when the statute entered into force for the party). This includes sexual violence crimes . . . as both crimes against humanity and war crimes”<sup>103</sup>

Outside of the ICC, international law fails even more clearly at prohibiting CRSV and providing a venue for the prosecution of violators. “[T]he statutes fail to define rape as an individual crime and do not include other forms of sexual violence. Moreover, rape is not expressly considered as a war crime or a grave breach of the Geneva

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99 UNITED NATIONS INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA, Crimes of Sexual Violence, <https://www.icty.org/en/features/crimes-sexual-violence> (last visited [date visited by the author]).

100 Mitchell, *supra* note 1, at 241.

101 Schorn, *supra* note 18, at 32.

102 Tanja Altunjan, *The International Criminal Court and Sexual Violence: Between Aspirations and Reality*, 22 GERMAN L. J. 878, 879 (2021).

103 M. P. Broache & Juhi Kore, *Can the International Criminal Court Prevent Sexual Violence in Armed Conflict?*, 22 J. HUMAN RIGHTS 78, 81 (2023).

Conventions under either statute, so sexual violence may be prosecuted as a contributing offense but never as a crime on its own.”<sup>104</sup> Under this construction, rape is not a violation on its own. CRSV is only prosecutable under international law when it is systematic and widespread, especially in pursuit of genocidal acts. Alternatively, the CRSV has to be a grave breach of the Geneva Convention.<sup>105</sup> This means that an individual act of CRSV is unpunishable. Only systemic perpetration or ordered CRSV is covered under the ICC.

Despite the limitations of international law’s coverage of CRSV, the law is not wholly useless in prohibiting and prosecuting CRSV. Gloria Gaggioli, one of the leading authorities on CRSV stated, “The international legal framework for the prohibition and criminalization of sexual violence is thus extremely strong, even if imperfect. Sexual violence is one of those areas where the different international law branches (IHL, human rights law, international criminal law) echo and reinforce each other, providing for an essential complementarity.” She acknowledges that there are gaps between what she sees as the total legal prohibition on CRSV and the continued use of CRSV, but she views this as a result of something other than a failure in the legal framework.<sup>106</sup> Instead, she asserts “[t]he implementation of these rules at the national and international levels [] needs to be strengthened to effectively eliminate or at least reduce the occurrence of sexual violence.”<sup>107</sup> Arguably, the distinction between the implementation of the law and the inadequacy of the law is not necessarily contrary ideas. While this paper argues that there are some limitations in the language of the law itself, both Gaggioli and this paper agree that the law has many effective provisions that are not adequately being implemented to effectively reduce CRSV.

The ICC, while better at covering CRSV than the legal framework that preceded it, is a jurisdictional statute that does not provide universal jurisdiction over CRSV. The ICC prosecutes the most significant or highest-ranking officials when prosecuting CRSV because

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<sup>104</sup> Mitchell, *supra* note 1, at 241.

<sup>105</sup> Schorn, *supra* note 18, at 44 (“For sexual violence to be considered a crime of genocide, there must be added intent to commit the criminal act of rape, for example, to fulfill one of the aims of genocide. For sexual violence to be a crime against humanity, there would need to be a widespread and systematic pattern of sexual violence. But for sexual violence to be considered a war crime, it needs to merely be committed in the course of the conflict. The need to raise the level of accountability, coupled with the other side of the coin, ending impunity, is critically important when sexual violence is utilized by both state and non-state actors as a weapon of war.”).

<sup>106</sup> Gaggioli, *supra* note 3, at 505.

<sup>107</sup> *Id.*

of its historical focus on the “most responsible” perpetrators.<sup>108</sup> The actual soldier perpetrators remain free and unprosecuted in any court. This is a result of historical tradition and UNSC statements encouraging the ICC to pursue only those “most responsible” for the CRSV.

## V. RECOMMENDATIONS FOR DECREASING CRSV

This paper proposes three potential improvements the UNSC could make in its treatment of CRSV to demonstrate its expressed commitment to eliminating CRSV and holding perpetrators responsible. 1) The UNSC could grant broader jurisdiction to prosecute sexual violence. In the alternative, 2) the UNSC could establish an automatic determination function for itself in referring instances of CRSV to the ICC under Chapter VII, and 3) the UNSC could authorize universal jurisdiction to domestic courts under Chapter VII so that any jurisdiction can prosecute CRSV.

### A. UNSC Gives Broad Jurisdiction to the ICC for Prosecutions of Sexual Violence

The Rome Statute allows the ICC to prosecute CRSV under Article 7 Crimes Against Humanity.<sup>109</sup> This authority is not tied to UNSC approval or action, given that the ICC is established as an independent court. The ICC is limited in jurisdiction to parties of the Rome Statute or states that agree to the court’s authority over a matter.<sup>110</sup>

While the prosecutor does have the authority to initiate preliminary investigations (with the opportunity to investigate fully subject to the Pre-Trial Chamber approval), the UNSC also holds authority to refer cases to the ICC under Chapter VII action.<sup>111</sup> In addition to the UNSC referrals, states can self-refer situations to the ICC.<sup>112</sup> “[E]ight of the ICC’s 17 investigations—including six in which the ICC subsequently opened sexual violence cases—have resulted from [the process of governments to initiate ICC interventions using self-referral.]”<sup>113</sup> The high instances of cases coming from non-

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108 CHILE EBOE-OSUJI, *Prosecution of Sexual Violence against Women in Post-Conflict Societies* in INTERNATIONAL LAW AND SEXUAL VIOLENCE IN ARMED CONFLICTS, 257–59 (2012).

109 Rome Statute art. 7(g).

110 Rome Statute art. 4 and art. 12(3).

111 Rome Statute art. 13 (b) and (c).

112 Broache & Kore, *supra* note 103, at 89.

113 *Id.*

prosecutor-initiated investigations further demonstrate the need for improved referral practices.

The UNSC arguably has better access to information particularly on violations of CRSV because of the reporting procedures put in place through its various resolutions on women and sexual violence. The prosecutor's ability set out in Article 15(2) to request additional information from the UN or states does not create any requirement for turning over information to the prosecutor. "Because the Court relies on government cooperation to conduct effective investigations, the prosecutor may be reluctant to target government officials for prosecution in such situations."<sup>114</sup> Given this imbalance of information and the inability to compel information from the UN or states, the UNSC referral process seems to be a potentially more likely tool in bringing more justice to victims of CRSV because the UN holds more information on the use of CRSV.

In addition, under Article 16 of the Rome Statute, the UNSC has the authority to defer an investigation or prosecution for up to 12 months at a time, subject to unlimited renewal by UNSC action.<sup>115</sup> Such authority means that the UNSC can control the prosecutions at the ICC if it is so inclined. If the UNSC determines it does not want a prosecution or investigation to proceed it can defer it indefinitely, in increments of 12 months at a time. Despite the potential abuse of Article 16, the provision represents an improvement from an earlier proposed version that required UNSC affirmative authorization for each case prosecuted by the ICC.<sup>116</sup> Additionally, there are no known reports of UNSC using Article 16 specifically to avoid charges of CRSV.

Considering the above limitations of the ICC, the UNSC could increase the scope of the ICC's jurisdiction by removing its ability to defer investigations or prosecutions. In addition, the UNSC could grant jurisdiction to the ICC over more than just the parties to the Rome Statute.<sup>117</sup> However, this increased granting of jurisdiction could raise

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<sup>114</sup> *Id.*

<sup>115</sup> Rome Statute art. 16

<sup>116</sup> Ken Obura, *The Security Council and the International Criminal Court: When Can the Security Council Defer a Case?*, 1 STRATHMORE L. J. 118, 125, 127 (2015).

<sup>117</sup> Currently, the ICC only has jurisdiction over non-parties when one of three exceptions is met: 1) the situation was referred by the UNSC; 2) crime was committed on the territory of a party; or 3) the non-party consents to the ICC's jurisdiction for that particular crime. See Dapo Akande, *The Jurisdiction of the International Criminal Court over Nationals of Non-Parties: Legal Basis and Limits*, 1 J. INT'L CRIM. JUST. 618, 618–19 (2003). Given the ability of the UNSC to create jurisdiction by referral, the UNSC has the ability to grant the ICC jurisdiction over non-parties. Granting the jurisdiction at the outset removes the possibility of politicized UNSC referrals of situations involving non-parties. It also increases the number of situations the ICC can address and would increase efficiency because the ICC need not wait for UNSC referral to begin investigating and prosecuting non-party perpetrators of CRSV.

concerns about national sovereignty. States that have not consented to the ICC's jurisdiction are likely to object to the ICC exerting jurisdiction over their actions. Because CRSV is nestled within crimes against humanity, the ability to prosecute CRSV is sufficiently important to warrant this increased jurisdiction. As with any court that has jurisdiction over actions, there is some loss of sovereignty. The exchange is arguably worth it here because the ICC is tasked with prosecuting the major crimes under international law. More effectively prosecuting CRSV will hopefully reduce the use of CRSV during ongoing and future conflicts.

The UNSC could also increase the access to information the prosecutor has during pre-investigation and investigation processes. The UNSC could mandate state disclosures of information to ICC investigations under Chapter VII action. Currently, state noncooperation limits the ability of the ICC to prosecute because the ICC cannot access the information it needs to prosecute perpetrators of the CRSV.<sup>118</sup> Again, states are likely to object to sharing more information on national sovereignty grounds. However, the burden on states of simply disclosing information is a relatively low infringement on sovereignty. The reward for disclosures would likely be increased ability to prosecute. Further, states are often already disclosing such information about CRSV to the UN. Disclosing to the ICC would add a layer of seriousness to the disclosure since the ICC can prosecute violators; still, mandatory disclosures to the ICC would solve the problem of states refusing to provide information to the ICC.

The Rome Statute could be amended so that it includes a broader understanding of CRSV by not limiting the violations with the "comparable gravity" language currently in Article 7(g). Moving CRSV outside of the crimes against humanity framework could make CRSV prohibited because of CRSV itself. Current requirements around the crimes against humanity framework exclude CRSV that does not fit the systemic, most egregious violations context<sup>119</sup>, so removing that

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118 "[T]he ICC, like many international human rights tribunals and treaties, has weak enforcement powers. It lacks any real authority to enforce its arrest warrants or requests for information and has no police force or military to capture suspects. Instead, the ICC depends almost entirely on state cooperation in order to bring suspected perpetrators to justice. States vary considerably in whether and how much they cooperate with the ICC. Some states, like the Central African Republic and Uganda, have sought the ICC's help in bringing perpetrators to justice. Others, like Sudan, have issued blanket rejections of the Court's authority, while still others, like Libya and Kenya, have erected pseudo-legal hurdles to cooperation and the extent of their cooperation has varied over time. Yet other states, like Côte d'Ivoire, have cooperated on some cases but not others." Courtney Hillebrecht & Scott Straus, *Who Pursues the Perpetrators? State Cooperation with the ICC*, 39 HUMAN RIGHTS QUARTERLY 162, 163 (2017).

119 "1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force

“comparable gravity” language allows for more instances of CRSV to fall within the ICC’s jurisdiction. While some argue that the prohibition of CRSV is already considered a *jus cogens*<sup>120</sup>, given the stringent and debated nature of *jus cogens* outside of piracy or slavery, it may be more achievable to broaden the Rome Statute than convince the international community to agree to a customary ban on CRSV. Broadening the treatment in the statute may mean that CRSV need not be considered a *jus cogens* for it to be effectively prosecutable and prevented.

### ***B. UNSC Created Automatic Mechanism for Referral of Situations to the ICC***

In light of the limitations discussed in the previous heading, the UNSC could strengthen the ICC’s ability to prosecute CRSV by creating a mechanism that automatically referred situations to the ICC once specified criteria had been met. The Monitoring, Analysis and Reporting Arrangements (MARA), a product of UNSCR 1960, provides the UNSC with “information on patterns and trends of sexual violence in situations of conflict, post-conflict and other situations of concern for the UN Secretary-General such as political strife.”<sup>121</sup> The information provided through MARA could be used to make determinations about referral situations.

Instead of the current structure where the UNSC has full discretion to refer cases to the ICC, the UNSC should agree to an automatic referral process utilizing the information they are already receiving through MARA. Such a determination could be made using criteria such as if the violence reported falls under Article 7(g), how widespread the CRSV is, if the violence is being directed or ordered by commanders, etc. Creating an automatic determination removes any

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or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's incapacity to give genuine consent. 2. Such conduct was of such gravity comparable to the offenses outlined in Article 7, Paragraph 1(g) of the Statute. 3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct. 4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population. 5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.” Elements of Crimes of the International Criminal Court, ICC-ASP/1/3 (2000), art 7(1)(g), element 6.

120 Ntombizozo Dynai-Mhango, *The Jus Cogens Nature of the Prohibition of Sexual Violence Against Women in Armed Conflicts and State Responsibility*, 27 STELLENBOSCH L. REV. 112, 134 (2016).

121 Francesco Seatzu, *The Standardized Monitoring, Analysis and Reporting Arrangements (MARA): An Effective Tool for Ending Armed Conflict-Related Sexual Violence?*, 33 FLA. J. INT’L L. 41, 47 (2021).

political motivations that currently impact the UNSC's decisions to refer a situation to the ICC.

### *C. UNSC Authorizes Universal Jurisdiction for Domestic Courts Over CRSV*

Given the ICC's low convictions of crimes involving CRSV throughout its existence, the UNSC should authorize universal jurisdiction for domestic courts specifically over CRSV. At the broadest understanding of current conduct subject to universal jurisdiction, "[u]niversal jurisdiction can be asserted in relation to . . . war crimes, torture, crimes against humanity, genocide, piracy, hijacking, acts of terrorism, and attacks on UN personnel."<sup>122</sup> While this broad understanding is not universally acknowledged, the international community has agreed to universal jurisdiction over war crimes.<sup>123</sup> While current definitions may allow for the inclusion of CRSV under the war crimes framework, it would be better for the UNSC to explicitly authorize universal jurisdiction over CRSV. This would enable any domestic court to prosecute violators of CRSV, regardless of where the conduct occurred or what nationals perpetrated the violence.

The ICC has referred specific cases to domestic courts, including cases with charges of rape or other sexual violence. According to the United States Institute of Peace, "some countries, such as Germany, have expanded existing war crime definitions under the principle of universal jurisdiction to include sexual violence. This has allowed German courts to convict members of ISIS for crimes committed in Iraq against Yazidis, including crimes of sexual violence."<sup>124</sup> The model presented by Germany here would only be strengthened by UNSC Chapter VII action authorizing universal jurisdiction over CRSV. What is currently only happening in some countries via action at the national level or ICC referral could be expanded to any country at any time. Broadening the courts that have jurisdiction over CRSV could increase

<sup>122</sup> HUMAN RIGHTS WATCH, Basic Facts on Universal Jurisdiction: Prepared for the Sixth Committee of the United Nations General Assembly (Oct. 19, 2009, 8:45 AM), <https://www.hrw.org/news/2009/10/19/basic-facts-universal-jurisdiction>.

<sup>123</sup> INT'L COMMITTEE OF THE RED CROSS, Factsheet, Universal Jurisdiction Over War Crimes (May 21, 2023), <https://www.icrc.org/en/document/universal-jurisdiction-over-war-crimes-factsheet>.

<sup>124</sup> Chantal de Jonge Oudraat & Kathleen Kuehnast, *Five Gains and Gaps in the Campaign to End Conflict-Related Sexual Violence*, U.S. INSTITUTE OF PEACE (Nov. 15, 2023), <https://www.usip.org/publications/2023/11/five-gains-and-gaps-campaign-end-conflict-related-sexual-violence#:~:text=At%20the%20national%20level%2C%20some,including%20crimes%20of%20sexual%20violence.>

the convictions of perpetrators of CRSV. Increased convictions could then likely lead to decreased occurrence of CRSV due to the deterrent effects of increased punishment.

The ICC has cited its own budgetary constraints as an explanation for not pursuing prosecution in certain circumstances.<sup>125</sup> The ICC already constrains its prosecution to situations where domestic courts “are unwilling or unable to prosecute perpetrators of international crimes within their jurisdiction.”<sup>126</sup> Therefore, if the UNSC would spread out the burden of prosecuting CRSV to other domestic courts, there would be more resources available. The ICC lacks sufficient funding to cover all the instances of CRSV that are left unaddressed by national authorities. CRSV, as a crime against humanity, is sufficiently important to justify the intrusion on national sovereignty of universal domestic court recognition. Further, such a granting of jurisdiction simply expands ICC practice of case-by-case coordination and delegation of jurisdiction with states.

While all three of this paper’s proposals would likely be met with resistance from states as intrusions on national sovereignty, the prosecution and prevention of CRSV is sufficiently important to warrant the intrusion. In addition, the proposals seek to realize commitments that states have largely previously agreed to and recognized via both UN resolutions and the Rome Statute itself. The expansions in enforcement mechanisms are within the existing spirit of the law governing CRSV. These proposals simply make it more feasible to actually prosecute perpetrators of CRSV.

## VI. CONCLUSION

Overall, “despite these legal achievements, the reality on the ground is appalling. In order to fill the gap between the law and the reality, there is an urgent need to strengthen the implementation of the international prohibition of sexual violence and the prosecution of sexual violence both at the domestic and international levels.”<sup>127</sup> The current international law framework, where the ICC has the primary role in prosecuting violators of CRSV international legal prohibitions, is insufficient to prevent CRSV and bring perpetrators to justice. CRSV has devastating effects on the survivors and their communities at large.

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<sup>125</sup> Yvonne M. Dutton & Milena Sterio, *Beyond Policy: Overcoming Challenges in Prosecuting Gender Persecution at the International Criminal Court*, 19 FIU L. REV. 521, 526 (2025).

<sup>126</sup> *Id.* at 524.

<sup>127</sup> Gaggioli, *supra* note 3, at 537.

These victims deserve justice against those who violated international law by engaging in CRSV.

This paper proposes that the UNSC grant the ICC increased jurisdiction, create an automatic determination mechanism for when it refers situations to the ICC, or authorize universal jurisdiction over CRSV to all domestic courts. Each of these recommendations serves to increase the effectiveness of the international community in enforcing prohibitions of CRSV.