

*Tiina Pajuste & Julia Vassileva\**

## INCLUSION OF WOMEN IN THE UKRAINIAN PEACE PROCESS – CAN INTERNATIONAL LAW PLAY A BIGGER ROLE IN ENSURING INCLUSION?

**Abstract:** *The international community has repeatedly committed to the implementation of the Women, Peace and Security Agenda (WPS) initiated by UN Security Council Resolution 1325. Yet progress on the ground has been slow and sporadic, which can also be seen in the Ukrainian peace process starting from 2014. This article looks at the different areas of inclusion of women in both policy and practice, in order to highlight the existing discrepancies and draw attention to the need to improve the international community's approach to inclusion. The role of the different international actors (e.g. UN, EU, NATO, OSCE) is assessed in terms of their contribution to or emphasis on the need for inclusion. The article also aims to illustrate how international law and policy can be utilised by civil society activists in order to implement inclusion in practice, thereby highlighting the potential for international legal norms to positively impact enhancement of the position of women in (post)conflict situations around the world.*

**Keywords:** women, international law, inclusion, Ukrainian peace process, international involvement

### INTRODUCTION

Despite the numerous commitments by international organisations and states to ensure inclusion in peace processes, the exclusion of women remains the norm, even in relation to conflicts taking place in Europe. This has been made painful-

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\* Tiina Pajuste, Professor of International Law and Security Studies, School of Governance, Law and Society, Tallinn University (Estonia); e-mail: t.pajuste@gmail.com; ORCID: 0000-0001-8205-7585. Julia Vassileva, PhD student and Junior Research Fellow, School of Governance, Law and Society, Tallinn University (Estonia), e-mail: julia.vassileva@tlu.ee.

ly clear by the overwhelmingly male “cast” of the sporadic negotiations taking place in relation to Russia’s aggression against Ukraine. The European context of this conflict serves to highlight the problems that the international community is having with the implementation of the concept of inclusion. One would expect inclusion to be facilitated on a continent where the EU, as its leading actor, has declared that “[t]here is no lasting peace if half of society is excluded from it” (EU High Representative Mogherini).<sup>1</sup> Yet the same problems that have arisen in other various contexts and continents have also emerged in relation to Ukraine. However, despite the visible lack of women in the Ukraine-Russia peace process, there are some examples of successful inclusion activities that have taken place since 2014. This article provides an overview of how inclusion has worked (or not worked) in this conflict, analysing the role of different international actors in the process and the potential for international law to play a greater role as a facilitator of inclusion.

## 1. INCLUSION IN INTERNATIONAL LAW AND POLICY

In order to understand the requirement of inclusion (of women) in peace processes, it is first necessary to elaborate on what a “peace process” is. Although the UN and other organisations consistently refer to “peace processes”, there is no formal definition of this term in their documents.<sup>2</sup> Peace processes are generally understood to encompass a multitude of diplomatic and political efforts aimed at resolving conflicts and establishing a lasting peace between opposing parties. A peace process can begin before the parties to the conflict have even demonstrated willingness to end or resolve the conflict (and it should be noted that not all peace processes are successful). Such processes typically involve negotiations, mediation and peacebuilding activities (like reconciliation and dialogue initiatives, economic development programmes, reconstruction efforts, and awareness-raising).<sup>3</sup> A broad understanding of peace processes can also include military actions in the form of peacekeeping operations and security sector reform.

The need for inclusion in peace processes has been highlighted in the UN Guidance for Effective Mediation, which emphasises that an “inclusive process is more likely to identify and address the root causes of conflict and ensure that the needs

<sup>1</sup> European External Action Service (EEAS), *Women, Peace and Security: There is no lasting peace if half of society is excluded from it, Mogherini says*, 3 July 2019, available at: [https://www.eeas.europa.eu/node/64969\\_en](https://www.eeas.europa.eu/node/64969_en) (accessed 30 April 2023).

<sup>2</sup> See e.g. UNDPO, *United Nations Peacekeeping Operations: Principles and Guidelines*, 2008, available at: [https://peacekeeping.un.org/sites/default/files/capstone\\_eng\\_0.pdf](https://peacekeeping.un.org/sites/default/files/capstone_eng_0.pdf) (accessed 30 April 2023), which refers to the term “peace process” 30 times without including the term in its annexed glossary of acronyms and terms (which does define, e.g. peacebuilding, peacekeeping, and peacemaking).

<sup>3</sup> See the UN website section on “Peacebuilding” for more detail regarding specific activities.

of the affected sectors of the population are addressed”.<sup>4</sup> That report defines “inclusivity” as “the extent and manner in which the views and needs of parties to a conflict and other stakeholders are represented, heard, and integrated into a peace process”.<sup>5</sup> This understanding of inclusivity is closely linked to international law rules regarding participation, representation, and the rights to voice one’s opinion and to have it heard.

### 1.1. Relevant international law rules and principles

One of the foundational principles of international law – self-determination – gives peoples the right to “freely determine their political status and freely pursue their economic, social and cultural development”.<sup>6</sup> The internal aspect of self-determination is understood to imply “meaningful participation in the process of government”.<sup>7</sup> In the context of peace processes, self-determination has been relied upon by different academics to argue that there is a need to ensure inclusion in all aspects of governance and in the reconstruction process.<sup>8</sup>

The second relevant rule of international law is the right to vote and take part in public affairs.<sup>9</sup> As “public affairs” have been given a broad interpretation, the right to take part in public affairs could encompass the right to partake in peace processes. The Human Rights Committee’s (HRC) General Comment on Article 25 defines the conduct of public affairs as “a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels”.<sup>10</sup> As peace processes determine many aspects of “public affairs” – both during and after a conflict – the right to participate can be utilised in this context.

<sup>4</sup> *Peacebuilding in the Aftermath of Conflict. Report of the Secretary-General*, 8 October 2012 A/67/499–S/2012/746, para. 35.

<sup>5</sup> *Ibidem*.

<sup>6</sup> Art. 1 of the International Covenant on Civil and Political Rights (signed on 16 December 1966, entered into force on 23 March 1976), 999 UNTS 171 (ICCPR); Art. 1 of the International Covenant on Economic, Social and Cultural Rights (signed on 16 December 1966, entered into force on 3 January 1976), 993 UNTS 3.

<sup>7</sup> H. Hannum, *Autonomy, Sovereignty, And Self-Determination: The Accommodation of Conflicting Rights*, revised edition, University of Pennsylvania Press, Philadelphia, PA: 1996, p. 30.

<sup>8</sup> M. Saul, *Popular Governance of Post-Conflict Reconstruction*, Cambridge University Press, Cambridge: 2019, p. 38. Saul uses the term “popular involvement” instead of “inclusion”; E. Demir, *The Right to Internal Self-determination in Peacebuilding Processes: A Reinterpretation of the Concept of Local Ownership from a Legal Perspective*, 8 *The Age of Human Rights Journal* 18 (2017), pp. 35-36.

<sup>9</sup> For a more detailed consideration of the relevant international legal rules regarding inclusion, see T. Pajuste, *Inclusion and Women in Peace Processes*, in: M. Weller, M. Retter, A. Varga (eds.), *International Law and Peace Settlements*, Cambridge University Press, Cambridge: 2021, pp. 297-306.

<sup>10</sup> HRC, *General Comment No. 25, Article 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, para. 5.

Thirdly, the fundamental rules of equality and non-discrimination also need to be applied in peace processes. Whenever specific measures or initiatives are planned, they need to be analysed to ensure that they are in accordance with the rule of non-discrimination. Human rights instruments ban discrimination on various grounds.<sup>11</sup> Art. 2 of the Universal Declaration of Human Rights prohibits discrimination on the following grounds: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth and other status. Similar lists are included in other human rights instruments. All these grounds may be of significance in relation to inclusion activities in the post-conflict context. As this article focuses on the inclusion of women, discrimination based on sex is of particular relevance.

The HRC has declared that “the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant”.<sup>12</sup> Accordingly, it is possible to construct inclusion mechanisms that provide specific rights (or even more rights) to groups that have suffered discrimination in the past (e.g. addressing gender-based discrimination).

The most important legal instrument in relation to women’s rights – the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) – contains some provisions that can be utilised in relation to peace processes. CEDAW obliges states parties to incorporate gender equality into all levels of domestic law and take all appropriate measures to eliminate discrimination against women.<sup>13</sup> The Committee on CEDAW 2013 General Recommendation No. 30 attempts to further state parties’ implementation of CEDAW in relation to conflict situations.<sup>14</sup> It outlines the requirements for the application of CEDAW to conflict prevention, the conflicts themselves, and post-conflict situations in and by member states. Among other things, the Committee states that:

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<sup>11</sup> Art. 2 of the Universal Declaration of Human Rights, UNGA Resolution 217 A(III), 10 December 1948; Arts. 2, 26 ICCPR; Art. 2(2) ICESCR; Art. 2 of the Convention on the Rights of the Child (signed on 20 November 1989, entered into force on 2 September 1990), 1577 UNTS 3; Art. 5 of the Convention on the Rights of Persons with Disabilities (signed on 13 December 2006, entered into force on 24 January 2007). There are also treaties that prohibit discrimination on specific grounds, e.g. the International Convention on the Elimination of All Forms of Racial Discrimination on the Ground of Race (signed on 21 December 1965, entered into force on 4 January 1969), 660 UNTS 195; and the Convention on the Elimination of All Forms of Discrimination Against Women (signed on 18 December 1979, entered in force on 3 September 1981), 1249 UNTS 13 (CEDAW) on the ground of gender.

<sup>12</sup> HRC, *General Comment No. 18*, para. 10.

<sup>13</sup> Art. 2 CEDAW.

<sup>14</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-conflict Situations*, 18 October 2013, UN Doc. CEDAW/C/GC/30.

Protecting women's human rights at all times, advancing substantive gender equality before, during and after conflict and ensuring that women's diverse experiences are fully integrated into all peacebuilding, peace-making, and reconstruction processes are important objectives of the Convention. The Committee reiterates that States parties' obligations continue to apply during conflict or states of emergency without discrimination between citizens and non-citizens within their territory or effective control, even if not situated within the territory of the State party.<sup>15</sup>

Although the Committee's recommendations are not binding on the treaty parties, they do provide an authoritative interpretation of CEDAW and can help guide the development of relevant rules.

Art. 3 CEDAW requires that states take "all appropriate measures" to ensure the advancement of women, "in particular in the political, social, economic and cultural fields", to ensure that they can fully enjoy their human rights. Art. 4 clarifies that in order to "accelerat[e] de facto equality", temporary measures can be taken, which will not be considered discrimination and which have to be "discontinued when the objectives of equality of opportunity and treatment have been achieved". Art. 7 obliges states to ensure that women are not discriminated against in the "political and public life of the country" and that they have the same rights as men "to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government". Art. 8 requires member states "to ensure to women, on equal terms with men, and without any discrimination, the opportunity to represent their Governments at the international level".<sup>16</sup> These articles highlight the importance of equal representation at all levels of decision- and policy-making. There is no viable justification to exclude peace processes from the overall public policy and governance processes. Failure to include women in such processes violates the commitments under CEDAW and other human rights instruments.

## 1.2. Inclusion in international policy

The principle of "inclusion" is reflected in a growing number of policy documents of the UN, as well as in regional or specialised organisations like the EU, NATO and OSCE. On the UN level, such documents include the 2030 Agenda and the Sustainable Development Goals (particularly Goal 16); the sustaining peace and prevention agenda; the work on UNSC Resolution 1325 on Women, Peace and Security; and UNSC Resolution 2250 on Youth, Peace and Security, as well as

<sup>15</sup> *Ibidem*, para. 2.

<sup>16</sup> Arts. 3-4, 7-8 CEDAW.

the study by the World Bank and the UN on Pathways for Peace.<sup>17</sup> Two of the main (and connected) inclusion initiatives are the gender mainstreaming policy and the Women, Peace and Security Agenda (WPS agenda evolving from UNSC Resolution 1325).

Gender mainstreaming made its first appearance in international texts in 1985, following the third UN World Conference on Women held in Nairobi, in relation to the debate within the UN Commission on the Status of Women regarding the role of women in development.<sup>18</sup> The 1993 Vienna Declaration and Programme of Action proclaimed that the “equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity”.<sup>19</sup> A few years later, in 1997, the Economic and Social Council defined gender mainstreaming as “the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels... in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated”.<sup>20</sup>

This mainstreaming policy was explicitly incorporated into the context of peace processes in October 2000 by UNSC Resolution 1325. This resolution emphasized that the involvement of women in all stages of the peace process is one of the main aims of the gender mainstreaming policy. Resolution 1325 urges member states “to ensure increased representation of women at all decision-making levels in national, regional and international institutions”, and calls on all actors involved to adopt measures that “involve women in all of the implementation mechanisms of the peace agreements”, as well as emphasises the importance of women’s participation in relation to the “constitution, the electoral system, the policy and the judiciary”.<sup>21</sup>

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<sup>17</sup> UNGA, *Resolution 70/1: Transforming Our World: The 2030 Agenda for Sustainable Development and Sustainable Development Goals and Targets*, 25 September 2015, UN Doc. A/Res/70/1, Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels; UN and World Bank, *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict*, World Bank, Washington, DC: 2018, available at: <https://www.pathwaysforpeace.org/> (accessed 30 April 2023); UNSC Resolution 2250 (2015), UN Doc. S/RES/2250(2015).

<sup>18</sup> United Nations, *Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace*, 15-26 July 1985, UN Doc. A/CONF.116/28/Rev.1, paras. 30, 44, 66, 274.

<sup>19</sup> World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, UN Doc. A/CONF.157/23, 12 July 1993, para. 37.

<sup>20</sup> UN Economic and Social Council, *Report of the Economic and Social Council for 1997*, 18 September 1997, UN Doc. A/152/3, 28.

<sup>21</sup> UNSC Resolution 1325 (2000), paras. 1, 8.

There have been several follow-up resolutions that clarify and extend the commitments of Resolution 1325. In particular, Resolution 1889 (2009):

Urges Member States, international and regional organisations to take further measures to improve women's participation during all stages of peace processes, particularly in conflict resolution, post-conflict planning and peacebuilding, including by enhancing their engagement in political and economic decision-making at early stages of recovery processes, through inter alia promoting women's leadership and capacity to engage in aid management and planning, supporting women's organizations, and countering negative societal attitudes about women's capacity to participate equally.<sup>22</sup>

And in 2013 the Security Council expressed "its intent to employ, as appropriate, all means at its disposal to ensure women's participation in all aspects of mediation, post-conflict recovery and peacebuilding".<sup>23</sup>

The above resolutions emphasize the need to involve women beginning in the first stages of peace-making processes. For example, Resolution 1889 emphasises the "need to improve the participation of women in political and economic decision-making from the earliest stages of the peacebuilding process".<sup>24</sup> The 2015 Report of the High-level Independent Panel on Peace Operations reiterated that the UN "should champion the inclusion of women in mediation processes" and listed some specific actions that should be taken. Special envoys and special representatives of the Secretary-General were given a number of duties, such as ensuring "consistent and systematic consultation with women leaders and those from diverse sectors of society"; spurring "capacity development programmes for women, where required, so that women can credibly participate in peace negotiations and decision-making processes"; and encouraging "parties to the conflict to include specific issues relating to the participation of women in conflict mitigation and prevention, recovery and reconciliation, as well as protection measures, in peace agreements".<sup>25</sup>

The gender mainstreaming policy tries to accomplish the aim of ensuring the equal participation of women in all stages of the peace process by encouraging positive practical measures and inclusion activities. As Chinkin highlights, the

<sup>22</sup> UNSC Resolution 1889 (2009), UN Doc. S/RES/1325(2009), para. 1.

<sup>23</sup> UNSC Resolution 2106 (2013), UN Doc. S/RES/2106(2013), para. 5 (emphasis added).

<sup>24</sup> UNSC Resolution 1889 (2009), para. 15.

<sup>25</sup> *Report of the High-level Independent Panel on Peace Operations on Uniting Our Strengths for Peace: Politics, Partnership and People*, 17 June 2015, UN Doc. A/70/95-S/2015/446, para. 79.

commitment to gender mainstreaming demands that obstacles to women's participation be identified and removed.<sup>26</sup>

Other international organisations, like the EU, NATO and OSCE, have followed suit and also adopted the gender mainstreaming policy. The EU has tried to position itself as a global leader in relation to implementing the Women, Peace and Security [WPS] Agenda. The EU has consistently emphasised the significance of gender equality as a fundamental value of the Union, which needs to be reflected in all of the EU's actions and policies, both internally and externally. The EU asserts that gender equality and women's meaningful participation are "essential factors to prevent, manage and resolve conflict and crises".<sup>27</sup> The EU Strategic Approach to Women, Peace and Security adopted in December 2018 "aims to ensure that women and girls from diverse and variable backgrounds are entitled to participate equitably and substantially in preventing and resolving conflicts, and in preventing conflict-related violence, including all forms of sexual and gender-based violence".<sup>28</sup> Importantly, the document highlights the universality of the WPS agenda and its binding character, to be implemented by all EU actors and all Member States, as well as in all interactions with non-EU countries.

In January 2022, the Council of the EU adopted Conclusions on Taking the EU-UN Strategic Partnership on Peace Operations and Crisis Management to the Next Level. Among other things, it calls for

an increased effort to accelerate the operationalisation of this political commitment through strengthening cooperation at field level, ensuring systematic gender mainstreaming in all activities, as well as an increased participation and enhanced role of women in peace operations, peace and political processes, conflict prevention, mediation and peacebuilding.<sup>29</sup>

<sup>26</sup> C. Chinkin, *Gender, Human Rights, and Peace Agreements*, 18(3) *Ohio State Journal on Dispute Resolution* 867 (2006), p. 871. For more on inclusion and women, see S. Aroussi, *Women, Peace and Security: Repositioning Gender in Peace Agreements*, Intersentia, Cambridge: 2015; N.R. Cahn, *Women in Post-Conflict Reconstruction: Dilemmas and Directions*, 12 *William and Mary Journal of Women and the Law* 335 (2006); M.E. McGuinness, *Women as Architects of Peace: Gender and the Resolution of Armed Conflict*, 15 *Michigan State Journal of International Law* 63 (2007); C. Bell, C. O'Rourke, *Peace Agreements or Pieces of Paper? The Impact of UNSC Resolution 1325 on Peace Processes and Their Agreements*, 59(4) *International and Comparative Law Quarterly* 941 (2010); E.M. Grina, *Mainstreaming Gender in Post-Conflict Settings*, 17 *William & Mary Journal of Women & the Law* 435 (2011).

<sup>27</sup> EEAS, *Women, Peace and Security: There is no lasting peace if half of society is excluded from it*, Mogherini says, 3 July 2019, available at: [https://www.eeas.europa.eu/node/64969\\_en](https://www.eeas.europa.eu/node/64969_en) (accessed 30 April 2023).

<sup>28</sup> EEAS, *EU Strategic Approach to Women, Peace and Security*, 2018, Council Doc 15086/18, 10 December 2018.

<sup>29</sup> Council Conclusions on Taking the EU-UN Strategic Partnership on Peace Operations and Crisis Management to the Next Level: Priorities 2022-2024, Council Doc 5451/2022, para. 8 (emphasis added).

As can be seen from the UN and EU examples, the inclusion of women in peace processes has become a consistently emphasised requirement in policy documents. However, an analysis of the implementation of this policy reveals that practice is often lagging far behind the promises made on paper.

## 2. INCLUSION OF WOMEN IN THE UKRAINIAN PEACE PROCESS

Despite the main international focus being on the 2022 escalation of Russian aggressive actions, the conflict in Ukraine has been ongoing since 2014 and, as with all conflicts, has impacted the lives and position of women in many ways. There has been an increase in the number of women who are actively participating in the country's defence.<sup>30</sup> The conflict has also resulted in an increase in gender-based violence and violations of human rights.<sup>31</sup> On the one hand, the Ukrainian government has taken many actions to advance gender equality, and public perceptions on women's roles have shifted. On the other hand, the still limited gender consciousness among the society in general, lack of resources, ongoing military conflict, and the devolution of power to local governments with limited capacity all work against progress on gender equality in Ukraine.<sup>32</sup>

Scholars have pointed to various structural barriers in Ukraine which impede the inclusion of women in peace and security issues, such as the prevalence of lip-service rather than action; social inequalities; funding challenges; and the lack of enforcement mechanisms to name only a few.<sup>33</sup> In addition to this, the case of Ukraine encompasses the specificities of the post-Soviet environment. According to Van Metre and Steiner,<sup>34</sup> the institutionalisation of gender equality has been stagnant due to the belief that equality had already been achieved in Ukraine under the Soviet regime;<sup>35</sup> which implemented a rather traditional understanding of the role of women.<sup>36</sup> Other impediments include patterns of Western NGO funding

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<sup>30</sup> L. Krymets, L. Hrebenuik, *The NATO Gender Policy: Is That An Issue For The Armed Forces of Ukraine?*, Редакційна Колегія [Editorial board] (2021), p. 111.

<sup>31</sup> *Ibidem*.

<sup>32</sup> L. Van Metre, S. Steiner, *U.S. Civil Society Working Group on Women, Peace, and Security - Building Gender Equality in Ukraine*, U.S. CSWG Policy Brief 2017.

<sup>33</sup> M. Guinan, *Frustrating Anniversaries: International Women's Day and International Action on Women, Peace, and Security*, The Academic Blog of the Department of War Studies, King's College London (2015), available at: [https://www.strifeblog.org/author/webmaster\\_strife/page/22/](https://www.strifeblog.org/author/webmaster_strife/page/22/) (accessed 30 April 2023).

<sup>34</sup> Van Metre, Steiner, *supra* note 32.

<sup>35</sup> A. Hrycak, *The Dilemmas of Civic Revival: Ukrainian Women since Independence*, 26(1–2) *Journal of Ukrainian Studies* 135 (2001).

<sup>36</sup> M. Rubchak, *Seeing Pink: Searching for Gender Justice through Opposition in Ukraine*, 19(1) *European Journal of Women's Studies* 55 (2012).

which undermine local activism;<sup>37</sup> economic crises which as per usual significantly affect women negatively;<sup>38</sup> a rise of domestic violence;<sup>39</sup> and a step back on women's rights, which were seen as "European values" under the Yanukovich regime.<sup>40</sup>

### 2.1. UNSC Resolution 1325 and the Ukrainian National Action Plans

Ukraine has adopted two national action plans (NAPs) to comply with the commitments as stipulated in UNSC Resolution 1325, as well as other Security Council resolutions of the Women, Peace and Security Agenda.<sup>41</sup> The first NAP was adopted in 2016, during active military conflict,<sup>42</sup> and it subsequently (in September 2018) led the Ukrainian parliament to pass legislation that lifted barriers for women to hold positions in the military, resulting in a significant increase of the number of women in the Ukrainian armed forces.<sup>43</sup> The second NAP was adopted on 28 October 2020, in response to the ongoing problem of women being much less involved in the settlement and resolution of the international armed conflict in Ukraine, and the needs of different groups of women and men affected by conflict not being fully taken into account in transitional (restorative) justice.<sup>44</sup> Ukraine is also revising its NAP in the context of the 2022 Russian invasion.<sup>45</sup>

<sup>37</sup> A. Hrycak, *Foundation Feminism and the Articulation of Hybrid Feminisms in Post-Socialist Ukraine*, 20(1) East European Politics and Societies 69 (2006).

<sup>38</sup> N. Pignatti, *Gender Wage Gap Dynamics in a Changing Ukraine*, 1(1) IZA Journal of Labor & Development, 1 (2012).

<sup>39</sup> B.J. Barrett, N. Habibov, E. Chernyak, *Factors Affecting Prevalence and Extent of Intimate Partner Violence in Ukraine: Evidence from a Nationally Representative Survey*, 18(10) Violence Against Women 1147 (2012).

<sup>40</sup> Van Metre, Steiner, *supra* note 32.

<sup>41</sup> 1820 (2008); 1889 (2009); 1960 (2010); 2106 (2013); 2122 (2013); 2242 (2015); Yet, the question has been raised whether having multiple resolutions but little substantive change might be diluting international commitments. See further O. Yarosh, *Ukraine's Strategies of Empowering Women In Peace-Building: Implementation of UN Security Council Resolution 1325 On Women, Peace and Security*, 2 The Copernicus Journal of Political Studies 33 (2020), p. 36.

<sup>42</sup> Yarosh, *supra* note 41, p. 33.

<sup>43</sup> U. Schmidt, *Advancing the Women, Peace and Security Agenda, Draft General Report*, Committee on the Civil Dimension of Security (CDS), NATO (2020), p. 5.

<sup>44</sup> Ukrainian National Action Plan for the implementation of UN Security Council Resolution 1325 on Women, Peace, Security until 2025, Regulation No.1544-p of the Cabinet of Ministers of Ukraine, 28 October 2020, p. 3.

<sup>45</sup> Information available online at the Women's International League for Peace and Freedom website: <http://1325naps.peacewomen.org/index.php/ukraine/> (accessed 30 April 2023).

### 2.1.1. NAP 2016

The adoption of the first Ukrainian NAP took place in 2016. Ukraine was thereby the first country to adopt a NAP during an active military conflict.<sup>46</sup> A draft NAP was created in 2011 by civil society organizations, led by the Women's International League for Peace and Freedom (WILPF). Subsequently, the Ministry of Social Policy took upon itself the task of creating a formal NAP (as it is responsible for gender-related legislation). The Ministry's official NAP differs from the civil society-led plan initiated by WILPF, as instead it incorporated input from UN Women, the OSCE, the United Nations Population Fund, and 15 civil society organisations (including the Women's Information Consultative Center, HealthRight International, UWF, La Strada, and the EOC). The international organisations involved – e.g. UN Women and OSCE – had previously lobbied for the creation of the NAP and for its formulation to be done in an inclusive and accountable manner.<sup>47</sup>

As the NAP was adopted during a time of conflict, scholars have noted the negative consequence that the WPS agenda had become strongly linked to military security and took a “narrow militarized form”.<sup>48</sup> The NAP I contained six overarching focus areas (peacekeeping; peacebuilding; prevention; protection; assistance and rehabilitation; and monitoring of the implementation of UNSC Resolution 1325); divided into 10 goals that were broken down into 49 concrete activities and 69 indicators to measure progress.<sup>49</sup> Certain indicators were measured against yearly targets, resulting in legislative acts, materials, and campaigns.<sup>50</sup> At the same time, this led to a formalised top-down approach to develop local, regional, and sectoral action plans on the implementation of UNSC Resolution 1325.<sup>51</sup> Overall, the plan laid out an agenda to increase women's participation in conflict-related processes and to address women's needs in the conflict. Amongst other things, the NAP had

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<sup>46</sup> Y. Dudko, Y. Langenhuizen, *Localisation of the UNSCR 1325 Agenda: Lessons from Post-Maidan Ukraine (2014–2020)*, 17(1) *Journal of Regional Security* 25 (2022), p. 30; Yarosh, *supra* note 41.

<sup>47</sup> R. Warren et al., *Women's Peacebuilding Strategies Amidst Conflict: Lessons from Myanmar and Ukraine*, Georgetown Institute for Women, Peace and Security 2018, available at: <https://giwps.georgetown.edu/wp-content/uploads/2017/01/Womens-Peacebuilding-Strategies-Amidst-Conflict-1.pdf> (accessed 30 April 2023), p. 33.

<sup>48</sup> M. O'Sullivan, “*Being Strong Enough to Defend Yourself*”: *Untangling the Women, Peace and Security Agenda amidst the Ukrainian Conflict*, 21(5) *International Feminist Journal of Politics* 746 (2019).

<sup>49</sup> Dudko, Langenhuizen, *supra* note 46, p. 31.

<sup>50</sup> C. Hamilton, N. Naam, L.J. Shepherd, *Twenty Years of Women, Peace and Security National Action Plans: Analysis and Lessons Learned*, The University of Sidney, Sidney: 2020, p. 19.

<sup>51</sup> Dudko, Langenhuizen, *supra* note 46, p. 26.

components that foresaw the participation of women in negotiations and dialogue and in peacekeeping and peacebuilding.<sup>52</sup>

Ukraine's 2016 NAP has been subjected to the criticism that "the bridging of security and economy is entirely absent in Ukraine's WPS agenda, which has largely prioritized military security while failing to connect it to the austerity policies and the gendered structural inequalities deepened by the ongoing conflict".<sup>53</sup> Various laws limiting women's rights had to be amended or re-developed. Some scholars contend that the issue of discrimination "was not considered as one that requires a detailed solution".<sup>54</sup> While the Ministry of Defence, among other things, "extended the list of military positions available for women, conducted an assessment of women's infrastructural needs in the Armed Forces, introduced gender-sensitivity training" and "developed a new code of conduct for military personnel",<sup>55</sup> two-thirds of military positions remained inaccessible to women.<sup>56</sup> Overall, the NAP focused more on protection against gender-based violence and domestic violence,<sup>57</sup> and on the integration of women in Ukraine's security sector, rather than on peace and dialogue initiatives.<sup>58</sup>

Despite some of its flaws, the 2016 NAP was used to guide the creation of more detailed plans for women, peace, and security in the different Ukrainian ministries, particularly in the Defence and Internal Affairs Ministry, as well as in local administrations in conflict areas.<sup>59</sup> Civil society actors have noted that the 2016 NAP provided a foundation and a structure for their collaboration with various governmental agencies.

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<sup>52</sup> Warren et al., *supra* note 47, p. 31.

<sup>53</sup> M. O'Sullivan, *The Forgotten Lives: Connecting Gender, Security, and Everyday Livelihoods in Ukraine's Conflict*, 16(3) *Politics & Gender* E13 (2020).

<sup>54</sup> N.A. Bukovynska et al., *Legal Support of Gender Policy and the Correlation with the Concept of "Equality of Rights"*, XIII(1) *Avant* 1 (2022), p. 8.

<sup>55</sup> T. Martsenyuk, G. Grytsenko, A. Kvit, *The "Invisible Battalion": Women in ATO Military Operations in Ukraine*, Ukrainian Women's Fund, Kiev: 2016, p. 182.

<sup>56</sup> *Ibidem*, p. 183; O. Bryla, *Women Rights Violation During the Military Conflict in Ukraine*, Recommended for printing by the Academic Council of the Institute of UDO of Ukraine KNU named after Taras Shevchenko (Protocol No. 3 dated November 30, 2021), p. 312.

<sup>57</sup> UN Women: "it is important to distinguish measures to ensure UNSCR 1325 implementation in the context of conflict from other gender-related programmes" and "NAP 1325 should maintain its focus on the intended objectives of the WPS agenda, avoiding the mistake of including domestic violence issues that should be covered by independent, adjacent policies".

<sup>58</sup> Dudko, Langenhuisen, *supra* note 46, p. 31; T. Kyselova, *Mapping Civil Society and Peacebuilding in Ukraine: Peacebuilding by Any Other Name*, Inclusive Peace and Transition Initiative & Mediation and Dialogue Research Center, Geneva-Kyiv: 2019; O'Sullivan, *supra* note 48.

<sup>59</sup> Kyselova, *supra* note 58, p. 7.

### 2.1.2. NAP II 2020

Discussions on the second NAP began in 2018, with the main goals being to overcome discrimination against women and girls; reduce and prevent gender-based violence; and improve women's access to education and various social services.<sup>60</sup> NAP II was subsequently adopted on 28 October 2020. This plan involved several levels, defined by Yarosh as: mega-level (international institutions); macrolevel (national approval institutions of equal rights and opportunities); meso-level (local institutions ensuring gender equality); and microlevel (corporate and individual awareness and consciousness).<sup>61</sup> Nonetheless, the policies of gender equality and gender integration in peace and security issues still face implementation challenges in Ukraine.<sup>62</sup>

The implementation of NAP II has also faced difficulties in integrating proposals from civil society and public organisations, which is partially owing to the fact that the authorities and the government strive for an “international rather than national reputation”, something which appears to be “a common feature of all post-Soviet countries that are in the process of democratic transition”.<sup>63</sup>

Overall, the adoption of the national action plans can be seen as a positive step, as it requires a systemic review and consideration of gender issues, and ensures that the topic is at least on the agenda of the relevant governmental authorities. The main problem is that the implementation of the formal commitments has not been achieved in many areas.

## 2.2. Involvement of women in practice

Overall, during the past decades there has been progress in terms of gender equality in Ukraine. Certain domains, such as education, healthcare, and the labour market have seen improved conditions for women, and traditional gender roles have been challenged.<sup>64</sup> Furthermore, between 2014 and 2020 the number of women participating in local and national politics increased substantially.<sup>65</sup> Post-Maidan, women in Ukraine engaged more actively in local and national governance, which also offered them opportunities for further emancipation. Women participated in the 2013 protests against the Yanukovich government and during the period of

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<sup>60</sup> Bukovynska et al., *supra* note 54, p. 8; N. Kaminska, S. Chernyavskiy, O. Perunova, *Legislation and International Standards of Gender Equality*, Ministry of Internal Affairs, Kyiv: 2020, p. 1.

<sup>61</sup> Yarosh, *supra* note 41, pp. 34-35.

<sup>62</sup> *Ibidem*, p. 45.

<sup>63</sup> *Ibidem*, p. 46.

<sup>64</sup> B. Rohwerder, *Priority Gender Issues in Bosnia and Herzegovina; Georgia; Moldova; Serbia; and Ukraine-with Consideration to Gender and Governance*, GSDRC (2016), p. 56.

<sup>65</sup> Dudko, Langenhuizen, *supra* note 46, p. 29; Martsenyuk, Grytsenko, Kvit, *supra* note 55.

the 2014 annexation of Crimea and the military operations in eastern Ukraine.<sup>66</sup> Yet women's political participation and representation is still "lagging far behind", along with the persistence of gender stereotypes and discrimination.<sup>67</sup> In the context of the conflict, women are among the most affected members of society. Most internally displaced persons (IDPs) from Eastern Ukraine, responsible for relatives and children, are women.<sup>68</sup> The conflict has also led to an increase in gender-based violence and violations of women's rights.<sup>69</sup>

In the Rada (parliament of Ukraine), the Equal Opportunities Caucus (EOC) – created in 2011 and comprising over 45 of the Rada's 450 MPs – leads the gender equality effort. Some of these activities grew out of the Euromaidan protests. After working together in that context, MPs Mariia Ionova, Iryna Gerashchenko and Iryna Lutsenko formalised their collaboration in the EOC. Lutsenko has reported that her male colleagues agreed to support women MPs' legislative efforts because of their leadership at Euromaidan, arguing that women MPs "forced [them] to join [the] Equal Opportunity Caucus by [their] activism".<sup>70</sup>

The EOC has led several successful initiatives. In particular, they successfully advocated for the creation of electoral quotas at the local level, opening positions in the military to women, and drafting and monitoring the 2016 NAP. In 2016 the EOC established the Public Council on Gender, which convenes six gender working groups, each of which is co-chaired by an MP and civil society leader. The working groups offer an opportunity for coordinated advocacy efforts on legislative priorities, such as preventing domestic violence, promoting equal pay, and political participation. As an example, the working group on economic empowerment is co-chaired by MP Aliona Babak and Natalia Karbowska of the Ukraine Women's Fund. The working group meets bimonthly to debate possible policy changes and to develop strategies to achieve change.<sup>71</sup> Ukrainian women actively try to influence national legislation related to women's protection, especially on preventing gender-based and domestic violence. The EOC often leads legislative advocacy and aids in mobilising support.

Women's visibility in the Ukrainian armed forces has increased, partly through an advocacy campaign called the "Invisible Battalion".<sup>72</sup> This led to an ending of a gender ban on various professions and opened combat positions to women.<sup>73</sup> However,

<sup>66</sup> Van Metre, Steiner, *supra* note 32, p. 1.

<sup>67</sup> Rohwerder, *supra* note 64, p. 56.

<sup>68</sup> Martsenyuk, Grytsenko, Kvit, *supra* note 55, p. 172.

<sup>69</sup> E. Benigni, *Women, Peace and Security in Ukraine: Women's Hardship and Power from the Maidan to the Conflict*, 27(1–2) Security and Human Rights 59 (2016).

<sup>70</sup> Warren et al., *supra* note 47, p. 33.

<sup>71</sup> *Ibidem*.

<sup>72</sup> Martsenyuk, Grytsenko, Kvit, *supra* note 55.

<sup>73</sup> UN Women, *Rapid Gender Analysis of Ukraine: Secondary Data Review*, 2022, p. 15.

scholars have argued that the increase in female participation in the armed forces is also due to the fact that men are unwilling to take up lower-paid positions.<sup>74</sup> Hence, in the security sector, a gender division of labour and gender-based employment discrimination persists, with women having to face sexist remarks and stereotypes.<sup>75</sup> The “deep-rooted patriarchal culture embedded in Ukrainian society” has been found to be one of the reasons why women face difficulties when trying to pursue a military career.<sup>76</sup> Women take up the majority of “feminized”<sup>77</sup> or “peaceful” positions.<sup>78</sup> While the list of military professions available to women has been increased to more than 100 combat specialities,<sup>79</sup> most women still work in nursing, finance, logistics, communications, etc.<sup>80</sup> Certain military positions are “still inaccessible to women, especially in special units and high-level landing troops”.<sup>81</sup> Gender segregation problems persist, the contributions of women are under-recognised, and the “state regulates work conditions of military women via a paternalist (protective) approach”.<sup>82</sup> The psychological aspect of women in the military is linked to the association of war with certain gender roles, reinforcing stereotypes and portraying war as a domain of security and “male business”.<sup>83</sup> In this context, women’s skills and roles in the conflict are often underestimated and there is the perception that they must prove themselves in order for their opinions to be heard and respected.<sup>84</sup>

One of the main areas where the inclusion of women has been most lacking is the process of official peace negotiations between Ukraine and Russia. The CEDAW Committee, in its 2017 review of Ukraine’s policies and progress, expressed concern that women have been excluded from the peace process.<sup>85</sup> The Minsk process (talks taking place in Minsk from 2014 with the aim of finding a peaceful solution to the conflict initiated by Russia in Donbas) has been widely criticised

<sup>74</sup> Martsenyuk, Grytsenko, Kvit, *supra* note 55, pp. 175-176.

<sup>75</sup> *Ibidem*.

<sup>76</sup> I. Fellin, *The Role of Women and Gender Policies in Addressing the Military Conflict in Ukraine*, Istituto Affari Internazionali (IAI), Rome: 2015, pp. 8, 15; Bryla, *supra* note 54, p. 31.

<sup>77</sup> UN Women, *supra* note 73, p. 15.

<sup>78</sup> I. Gritsay, *Principle of Gender Equality in the Armed Forces of Ukraine: Problems and Perspectives*, 2 *Науковий Вісник Дніпропетровського Державного Університету Внутрішніх Справ* [Scientific Bulletin of the Dnipropetrovsk State University of Internal Affairs] 77 (2018), p. 79.

<sup>79</sup> *Ibidem*.

<sup>80</sup> Martsenyuk, Grytsenko, Kvit, *supra* note 55, pp. 175-176.

<sup>81</sup> Gritsay, *supra* note 48.

<sup>82</sup> T. Martsenyuk, G. Grytsenko, *Women and Military in Ukraine: Voices of the Invisible Battalion*, 1(7) *Ukraine Analytica* 29 (2017), p. 29.

<sup>83</sup> *Ibidem*, p. 34.

<sup>84</sup> *Ibidem*.

<sup>85</sup> Committee on the Elimination of Discrimination Against Women, *Concluding Observations on the Eighth Periodic Report of Ukraine*, CEDAW/C/UKR/CO/8, CEDAW Committee, Geneva: 2017, p. 4.

by international organisations and civil society movements for its lack of inclusion of women.<sup>86</sup> This is illustrative of the general trend (according to scholars and UN reports) of women still being largely excluded from peace negotiations, and their roles in conflict resolution being under-recognised.<sup>87</sup>

### 3. ROLE OF CIVIL SOCIETY ORGANISATIONS

In general, it has been noted that women's civil society representatives and organisations play an important role in post-Soviet peacebuilding contexts, despite their frequent exclusion from formal peace negotiations by governments.<sup>88</sup> It is argued that inasmuch as in other parts of the world the role of women peace builders and civil society is key to building a lasting peace, their significance and roles should also be recognised in the post-Soviet region.<sup>89</sup>

In the case of Ukraine, the development of the NAPs took place in part because of the strong voices from women's civil society organisations and representatives, to begin the drafting. While certain women's organisations were included in the process of developing the NAPs, scholars such as Dudko and Langenhuizen argue that nevertheless the process "could have been more inclusive, especially with regard to including groups such as internally displaced women".<sup>90</sup> These women's organisations possessed the necessary knowledge and awareness of the specificities of the conflict, and would have been able to voice possible effective solutions.<sup>91</sup>

The Minsk process lacked an official mechanism for civil society's participation, which limited women's access to and participation in the process. Some civil society organisations tried to find ways to participate, but such attempts were rarely successful. For example, the Ukraine Women's Fund (UWF) approached the French embassy with the aim of arranging a formal platform for civil society that would run parallel to the Minsk process, but the plan was not successful. Natalia Karbowska (the director of strategic development at UWF), highlighted the connection between the UWF's local peacebuilding efforts and the Minsk process (as

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<sup>86</sup> Benigni, *supra* note 69.

<sup>87</sup> K.A. Sullivan, E. Bjerten-Günther, R. Irwin, *Gender, Security and Development*, SIPRI Yearbook 322 (2015), p. 331.

<sup>88</sup> L.A. Dean, *Women's Organizations Peacebuilding across Conflicts in the Former Soviet Union*, Wilson Center, Kennan Cable, No. 26 (2017).

<sup>89</sup> *Ibidem*.

<sup>90</sup> Dudko, Langenhuizen, *supra* note 46, p. 42.

<sup>91</sup> Dean, *supra* note 88.

both had the overarching aim of achieving peace and stability), but those involved in the formal process did not acknowledge that connection.<sup>92</sup>

Nevertheless, despite the lack of formal recognition and real opportunities, the women in Ukraine have led several informal peacebuilding efforts, hosting and participating in dialogues at the local, national, and international levels. One example is the Regional Women's Dialogue Platform on UNSC Resolution 1325, which brings together female civil society leaders in Ukraine and Russia (as well as other countries in the region), with the aim of bridging cultural divides between the east and west while creating platforms to exchange peacebuilding practices.<sup>93</sup> In addition, many women in government, including in several high-level positions, are advancing peacebuilding efforts in official legislative or military capacities.<sup>94</sup>

In the context of the Russia's act of aggression in 2022, women's grassroots organisations have taken on important roles in their communities, depending on their professional qualifications and/or community needs:<sup>95</sup>

The majority of women's rights and feminist organizations, including those working with LGBTQIA+ that had been active in advocacy, mobilization and direct engagement with communities, have reoriented their work towards the evacuation of people from occupied or heavily shelled cities, the provision of basic supplies to those who are still in their hometowns, and securing shelters for the evacuated (both in Ukraine and abroad, especially in cases of at-risk groups, such as LGBTQIA+ or people with disabilities).<sup>96</sup>

Regional feminist organisations began to provide legal advice, and the grassroots movement "Women's March" began assisting with issues such as displacement and migration, as well as health matters.<sup>97</sup>

Yet, while women's contributions at the civil society level have been recognised in media, social media, as well as official speeches (among them by President Zelensky), "it has not necessarily led to their inclusion in decision-making at the higher levels".<sup>98</sup> Overall, women and women's organisations have not been included at the decision-making level and in the official negotiations between the Russian Federation and Ukraine.<sup>99</sup>

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<sup>92</sup> Warren et al., *supra* note 47, p. 32.

<sup>93</sup> *Ibidem*, p. 7.

<sup>94</sup> *Ibidem*, p. 32.

<sup>95</sup> UN Women, *supra* note 73, p. 22.

<sup>96</sup> *Ibidem*.

<sup>97</sup> *Ibidem*.

<sup>98</sup> *Ibidem*, p. 24.

<sup>99</sup> *Ibidem*.

## 4. INTERNATIONAL ACTORS INVOLVED IN THE UKRAINIAN PEACE PROCESS

### 4.1. United Nations

The most important UN organisation working towards the protection of women's rights and their inclusion in all domains is UN Women. Accordingly, their main goals are the "elimination of discrimination against women and girls, the empowerment of women and the achievement of equality between women and men as partners and beneficiaries of development, human rights, humanitarian action and peace and security".<sup>100</sup> It is them who operate from the UN side to ensure the implementation of UNSC Resolution 1325 and all further resolutions, as well commitments on gender mainstreaming and gender equality.<sup>101</sup>

Since 2015 UN Women has been scaling-up its presence and programme in Ukraine, in order to provide more support. UN Women tries to aid with gender mainstreaming in the assessment of humanitarian needs and planning; as well as provides support for greater engagement of women (with a special focus on those facing compound discrimination due to displacement, age, disability, and ethnic or other backgrounds); and contributes to the recovery and peacebuilding efforts by advocating for and supporting the implementation of the Women, Peace and Security (WPS) Agenda. UN Women is involved in capacity-building of the state institutions focused on inclusive development and the effective implementation of the National Action Plan on Women, Peace and Security.<sup>102</sup>

### 4.2. NATO

Like other international organisations involved in the context, NATO is committed to implementing the WPS agenda within the organisation itself, in its member states; as well as in partner countries such as Ukraine. Hence, NATO has encouraged the increase of female participation in the Ukrainian army and various conflict-related institutions.<sup>103</sup> When it comes to these efforts, NATO also faced the aforementioned difficult conditions and perceptions with respect to including women in the Ukrainian military.<sup>104</sup> A major challenge here is that "not only quantity, but also quality of inclusion of women is crucial".<sup>105</sup>

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<sup>100</sup> UN Women, *supra* note 73, p. 31.

<sup>101</sup> *Ibidem*.

<sup>102</sup> UN Women, *Ukraine*, available at: <https://eca.unwomen.org/en/where-we-are/ukraine> (accessed 30 April 2023).

<sup>103</sup> Schmidt, *supra* note 43, p. 5.

<sup>104</sup> Krymets, Hrebeniuk, *supra* note 30, p. 113.

<sup>105</sup> *Ibidem*.

Overall, Ukraine aims to meet the NATO and EU standards, as outlined by Martsenyuk et al.,<sup>106</sup> quoting the National Security Strategy of 2015 according to which Ukraine aims “to achieve the full compatibility of the security and defence sector of Ukraine with those of NATO member states” and “foresees changes to the education system, military, and special training for defence sector agencies; the maximization of the compatibility of the Armed Forces of Ukraine with the armed forces of NATO members by introducing NATO standards; the strengthening of military discipline; and other interventions that imply changes favourable for women’s integration into the defence and security sector”.<sup>107</sup>

### 4.3. OSCE

Arguably, the OSCE has made considerable efforts to integrate the WPS agenda in its policies and actions in Ukraine. This includes a network of Gender Focal Points around the world, as well as a full-time gender adviser to the OSCE Special Monitoring Mission to Ukraine (2014) “who trains the mission staff on how to address gender issues in their daily work and reaches out to women’s organizations in the country”.<sup>108</sup>

However, insofar as concerns the Minsk Agreement, when it came to the Contact Groups tasked with the peace plan (consisting of representatives from Ukraine, the Russian Federation, and the OSCE, the Ukrainian delegation of seven contained only two participants who were women – Irina Gerashchenko (First Vice Speaker of the Verkhovna Rada) and Olha Aivazovska (from the NGO OPORA Civic Network)<sup>109</sup> – who in turn were tasked with humanitarian and socioeconomic issues<sup>110</sup> as opposed to the security and political issues, which were handled by the male members of the delegation.<sup>111</sup>

### 4.4. Council of Europe

The Council of Europe (CoE) has also been active in supporting gender equality activities in Ukraine, and more specifically in promoting the inclusion of women in the Ukrainian peace process. For example, a 2022 CoE Parliamentary Assembly resolution on Justice and security for women in peace reconciliation highlights that:

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<sup>106</sup> Martsenyuk, Grytsenko, Kvit, *supra* note 55, pp. 183-184.

<sup>107</sup> *Ibidem*.

<sup>108</sup> C. Ormhaug, *OSCE Study on National Action Plans on the Implementation of the United Nations Security Council Resolution 1325*, OSCE, 2014, p. 37.

<sup>109</sup> Dean, *supra* note 88.

<sup>110</sup> I. Lukianchenko, *Gender-Responsive Government Transitional Justice Policies-A Path to Sustainable Peace and Post-Conflict Reconstruction*, Law Review of Kyiv University of Law 55 (2021).

<sup>111</sup> *Ibidem*.

The ongoing war in Ukraine is demonstrating once again that while women and girls are among the first casualties of war, notably as victims of conflict-related sexual violence – among the most systematic and cruel acts of warfare – women are also at the political, military and humanitarian forefront. It is therefore unrealistic and even surreal to see that women are absent from the negotiating table during peace talks.<sup>112</sup>

The CoE Office in Ukraine facilitates the implementation of the CoE mission in the country and plays a coordinating role with regard to measures implementing the CoE Action Plan for Ukraine.<sup>113</sup> The Plan entails measures, based on CoE standards, aimed at accompanying the reconstruction process in Ukraine with support to strengthen the resilience of Ukrainian public institutions; to enhance democratic governance and the rule of law; and to protect citizens' fundamental rights.<sup>114</sup> The Plan includes a section on promoting gender equality and equal rights for women and men, girls and boys in the war and post-war period and providing support to victims of violence against women and girls. It also foresees support to Ukrainian authorities on the implementation of the CoE Gender Equality Strategy 2018-2023 and of the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which was ratified by Ukraine in 2022 (11 years after signing the instrument, demonstrating the enhanced commitment to gender issues by Ukraine; partially ignited by the promise of joining the EU).<sup>115</sup>

#### 4.5. European Union

Ukraine's relationship with the EU is formally determined by the 2014 Association Agreement. Insofar as regards gender policies and equality, the Agreement foresees the commitment to equal opportunities for men and women in all sectors. This policy is supported through various financial packages and aid. The EU's priorities in this regard are:

achievement of the equal economic independence of men and women by reducing the pay gap, promoting female entrepreneurship, upgrading of social protection and

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<sup>112</sup> CoE Parliamentary Assembly, Resolution 2450(2022), 22 June 2022, available at: <https://pace.coe.int/pdf/a206eb74d0194f73268a95af72adb9476343686df919c9139c581ac3b834a572/res.%202450.pdf> (accessed 30 April 2023), para. 4.

<sup>113</sup> Information available at the CoE website at: [https://www.coe.int/en/web/kyiv#{"7074895"}:\[0\]](https://www.coe.int/en/web/kyiv#{) (accessed 30 April 2023).

<sup>114</sup> CoE Action Plan for Ukraine "Resilience, Recovery and Reconstruction" 2023-2026, approved 14 December 22, available at: <https://rm.coe.int/action-plan-ukraine-2023-2026-eng/1680aa8280> (accessed 30 April 2023).

<sup>115</sup> *Ibidem*, section 1.2.

poverty alleviation, etc.; implementation of measures that would contribute to the harmonious combination of work, personal and family spheres of life, mobility of labour contracts, and an increase in the number of services (state/private property) for the care of children and elderly; providing a family state policy, sensitive to representatives of both sexes; attraction of men and women to equal participation in decision-making in politics, economics and business, science and modern technologies; elimination of gender stereotypes.<sup>116</sup>

The implementation of these policies and achievement of equality is also a prerequisite for the European integration of Ukraine.<sup>117</sup>

Next to its diplomatic mission (EU Delegation to Ukraine), the EU is represented in Ukraine through the EUAM (European Union Advisory Mission). Yet, in the mandate of the mission (Council Decision 2014/486/CFSP, Council Decision (CFSP) 2016/712), there is no reference to WPS or the role of gender equality and gender dimensions for the mission.<sup>118</sup> While the EEAS had called for consideration of gender balance in the mission, its de facto design does not reflect this. The majority of the staff of the mission are men, and despite one gender adviser being included after 2016, the leadership continued to consist of “three middle-aged men, defying the EU’s own internal commitments to gender equal representation”.<sup>119</sup> Scholars and practitioners have heavily criticised this lack of implementation of the EU’s commitments in the mission:<sup>120</sup> “It is thus unsurprising that when CSDP planners request gender advisers and gender-balanced teams from Member States, these are not so forthcoming, and consequently the missions remain gender imbalanced”.<sup>121</sup>

## 5. AFTERMATH OF 24 FEBRUARY 2022

Upon the outbreak of the war in 2022, Ukrainians mobilised quickly, with many women joining the armed forces. According to UN Women in Ukraine, “service-women make up 12 per cent of the AFU, and women constitute 22 per cent of all AFU personnel”.<sup>122</sup>

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<sup>116</sup> Y.V. Chystiakova, *Gender Policy and Its Implementation in Ukraine Within The Framework of European Integration*, Baltija Publishing, Riga: 2021, p. 257.

<sup>117</sup> *Ibidem*, p. 263.

<sup>118</sup> N. Ansorg and T. Haastrup, *Gender and the EU’s Support for Security Sector Reform in Fragile Contexts*, 56(5) *Journal of Common Market Studies* 1134 (2018).

<sup>119</sup> *Ibidem*.

<sup>120</sup> *Ibidem*.

<sup>121</sup> *Ibidem*, p. 1139.

<sup>122</sup> *Ibidem*.

The 2022 war in Ukraine caused severe internal displacement and refugees. The majority of those were women and children.<sup>123</sup> This also resulted in an increased risk of trafficking and gender-based violence.<sup>124</sup> The situation has caused a reaction by European institutions, which have expressed concern regarding the risk of trafficking and sexual exploitation in the context, and have stressed the need to support Ukraine in combatting it (2022/2633(RSP)) (European Parliament, 2022).<sup>125</sup> As a signatory of various international conventions on the topic – such as the United Nations Convention against Transnational Organized Crime, the Convention on the Elimination of All Forms of Discrimination against Women, the Council of Europe Convention on Action against Trafficking in Human Beings – Ukraine also has international commitments on this issue.<sup>126</sup>

In particular as regards the WPS agenda, women have been absent from negotiation tables, with images showing settings of men-only from both the Russian as well as the Ukrainian sides. There was no criticism of this from the West, and surprisingly none from the EU, European states, or NATO.<sup>127</sup> Scholars argue that “this appears surprising given that WPS has been a cornerstone of the West’s relationship with Ukraine since 2014”<sup>128</sup>, and have coined the phrase “gendered silences in Western responses to the war”.<sup>129</sup>

While the EU did express some solidarity with the women of Ukraine,<sup>130</sup> NATO, in particular, made no mention of WPS in relation to the context: “Even on International Women’s Day just short of two weeks after the Russian invasion – a time that NATO usually uses to showcase its work on the WPS agenda – NATO remained silent on what it was doing to support the WPS agenda except for deploying women as part of NATO’s Response Force”.<sup>131</sup> NATO’s “silence” on WPS has been criticised by feminist scholars as an example of the “disjuncture between the rhetoric and the reality of the global commitment to the WPS agenda”, as well as risking to undermine its “wider work on the agenda and put at risk the possibility of a lasting and inclusive peace reflective

<sup>123</sup> *Ibidem*.

<sup>124</sup> S. Garashchenko et al., *Ukraine’s International Obligations to Respond to and Address Gender Challenges and Problems Caused by the War*, 10(10) *Ukrainian Policymaker* 11 (2022).

<sup>125</sup> *Ibidem*, p. 13.

<sup>126</sup> *Ibidem*.

<sup>127</sup> K.A.M. Wright, *Where Is Women, Peace and Security? NATO’s Response to the Russia–Ukraine War*, 5(2) *European Journal of Politics and Gender* 275 (2022).

<sup>128</sup> K.A.M. Wright, *Gendered Silences in Western Responses to the Russia–Ukraine War*, 19 *Place Branding and Public Diplomacy* 237 (2022).

<sup>129</sup> *Ibidem*.

<sup>130</sup> European External Action Service, *Tribute to Ukrainian Women on International Women’s Day, 2022* available at: [https://www.eeas.europa.eu/eeas/tribute-ukrainian-women-international-women%E2%80%99s-day\\_en](https://www.eeas.europa.eu/eeas/tribute-ukrainian-women-international-women%E2%80%99s-day_en) (accessed 30 April 2023); Wright, *supra* note 127, p. 2.

<sup>131</sup> Wright, *supra* note 127, p. 275.

of the whole of Ukrainian society”.<sup>132</sup> Women and women’s civil society organisations and agencies appear overlooked in this context, indeed “almost invisible”.<sup>133</sup>

## 6. INCREASED ROLE FOR INTERNATIONAL LAW

In Section 1.1. we tried to demonstrate that there already exist relevant international legal rules that could be utilised in the context of the inclusion of women in peace processes. Practice has shown that whenever there is a willingness (by states or other international actors), even broad and seemingly unrelated provisions can be interpreted in a creative way to broaden the scope of existing obligations. One mechanism to speed up the expansion of the understanding of certain human rights obligations is the option of human rights treaty bodies publishing their interpretation of the provisions of a respective human rights treaty in the form of “general comments” or “general recommendations”. Thus the HRC could adopt a General Comment that would explicitly state that the right to vote and take part in public affairs (or the right to self-determination) should be interpreted in a manner that includes the right to take part in peace processes. Or the Committee on CEDAW could build on its General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations to map out more concrete obligations in relation to the inclusion of women in peace processes designed to resolve conflict situations.<sup>134</sup> However, as such interpretative instruments are not binding on states, their implementation would depend on the willingness of states parties to the relevant treaties to accept such interpretations.

This is related to the main problem with respect to the inclusion of women – the lack of implementation of existing commitments. Some of the reasons behind this may be the formal structure of the peace processes (including only high-level officials, which in many countries are still mostly male), as well as cultural reasons and traditional gender roles and perceptions of efficiency. These factors can decrease the willingness to ensure women’s inclusion in peace processes, especially in a situation where the relevant obligations of inclusion are phrased in a general manner and the specific duties would have to be distilled from a multitude of relevant documents and adapted to the circumstances of the situation (be it during conflict or post-conflict).

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<sup>132</sup> *Ibidem*, p. 277.

<sup>133</sup> M. O’Sullivan, *Where Are the Ukrainian Women? Respecting Female Voices Now and in Post-War Times*, Heinrich Böll Stiftung, Prague: 2022.

<sup>134</sup> Committee on the Elimination of Discrimination against Women, *General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-conflict Situations*, 18 October 2013, UN Doc. CEDAW/C/GC/30.

One way to decrease the impact of these negative factors would be to include clear provisions regarding the inclusion of women in peace processes in relevant legal instruments (e.g. CEDAW), and/or framing such obligations in the form of a new treaty. Of course, creating new legal rules or instruments does not automatically result in their application in practice, but it would emphasise the relevance of such commitments for the international community and bring about clarity in relation to what is expected from states (and international organisations) in terms of the inclusion of women.

Looking at conflict situations around the world, practice has demonstrated that women have successfully leveraged regional and international standards and norms to advocate for women's rights and peace. For example, in Myanmar women successfully promoted and utilised frameworks such as CEDAW, UNSC Resolution 1325, and the Beijing Platform for Action. In Ukraine, women have also advocated for standards in line with EU gender equality policies, presenting this as a way for peace process stakeholders to improve their international reputation. Women have tried to leverage Ukraine's desire for European integration – and the associated reforms – to push for more gender-inclusive policies.<sup>135</sup>

This demonstrates the relevance of applicable international legal rules. Perhaps it is time for international law to increase its contribution to the inclusion of women in peace processes? Policy documents have resulted in progress in this matter, but implementation is lagging behind and more detailed legal provisions could provide a valuable tool for women's groups around the world.

## CONCLUSIONS

As regards the formal implementation of UNSC Resolution 1325, it is unsurprising that Ukraine's two NAPs have not led to a major policy change and successes. Most NAPs around the world have been criticised for being “all plan and no action”<sup>136</sup>, and most measures to implement UNSC Resolution 1325 have focused on protecting women from sexual and gender-based violence during conflicts, rather than actively including them in the peace process and at the decision-making level.<sup>137</sup> Overall, studies have found that NAPs are “not yet fully realising their potential to deliver on women's rights”.<sup>138</sup> Ukraine is no different. Despite the progress in

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<sup>135</sup> Warren et al., *supra* note 45, pp. 7, 29.

<sup>136</sup> B.A. Reardon, *Peoples' Action Plans: Pursuing Human Security with Local Civil Society Actions to Implement UNSCR 1325*, Openings for Peace: UNSCR 1325, Women and Security in India (2016), p. 247.

<sup>137</sup> *Ibidem*, p. 248.

<sup>138</sup> A. Swaine, *Globalising Women, Peace and Security: Trends in National Action Plans*, Rethinking National Action Plans on Women, Peace and Security, IOS Press: 2017, p. 7.

certain areas described in this article, a systematic enhancement of the position of women is still far from accomplished.

As for the practical aspects of inclusivity and gender-sensitivity, critical scholars frequently state that “at the forefront of all this is the masculinity of war”, stressing that it is crucial to understand “how the war is deeply gendered and ensuring that [women’s] diverse voices are included now and in post-war times”.<sup>139</sup> This has been the case not only following the 2014 Russian unlawful annexation of Crimea, but also during the developments of 2022. The images spread are those of men fighting, negotiating, and making tough decisions, while women and children constitute the majority of refugees “going to safety”.<sup>140</sup> Such deep-rooted perceptions are difficult to change and constitute one of the biggest hurdles in relation to the inclusion of women in peace processes. The impact of such perceptions can be decreased by making the commitments regarding the inclusion of women more concrete, detailed, and legally binding. The current provisions – with their general wording and broad obligations – leave a lot to the discretion of the interpreter, which allows for gender stereotypes and traditional perceptions of war and peace processes to impact the way in which inclusion is (or is not) implemented.

The Ukrainian peace process illustrates the multifaceted difficulties in ensuring inclusive peace processes. If European actors are unable to ensure inclusion even on their own continent, what hope is there for inclusion on a global scale? Yet systemic work and reinforced commitments can bring about change. And one way to do this would be to strengthen the legal regulations in this area, so that they match the policy commitments made at both the regional and global levels.

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<sup>139</sup> O’Sullivan, *supra* note 133.

<sup>140</sup> *Ibidem*.